



**Training
Centre**
Visitor



Guardian
for Children and
Young People

**OGCYP Submission to the Inquiry into the
application of the Aboriginal Child Placement
Principle in South Australia**

March 2023

PREPARED BY

**Office of the Guardian for Children
and Young People**

The Office of the Guardian for Children and Young People respectfully acknowledges and celebrates the Traditional Owners of the lands throughout South Australia and pays its respects to their Elders, children and young people of past, present and future generations.



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Suggested citation

OGCYP submission to the Inquiry into the application of the Aboriginal Child Placement Principle in South Australia. Office of the Guardian for Children and Young People, Adelaide 2023.

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23 March 2023

Ms April Lawrie
Commissioner for Aboriginal Children and Young People
GPO Box 1072
ADELAIDE SA 5001

By email: CommissionerACYP@sa.gov.au

Dear Commissioner Lawrie

Please see the enclosed submission, to your current Inquiry into the Application of the Aboriginal Child Placement Principle in South Australia.

This submission is presented in my capacities as South Australia's Guardian for Children and Young People, Training Centre Visitor and Child and Young Person's Visitor.

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a long horizontal stroke.

With kind regards

Shona Reid

Guardian | Training Centre Visitor
Office of the Guardian for Children and Young People

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A caution

This submission contains some case examples and sensitive information that may be distressing to some readers.

If that is the case for you, we encourage you to seek support from family, friends and community or contact a service like **Kids Help Line** on **1800 551 800** or **Lifeline** on **13 11 14**.

Terminology

Reflecting community preference, the term Aboriginal as used in this report includes both Aboriginal and Torres Strait Islander people.

The terms 'children' and 'young people' are used interchangeably throughout this submission.

Data

Please note that some data may not add up due to decimal rounding. All unattributed data is sourced from internal OGCYP records.

Quotes from children and young people

Quotations from children and young people in care are included throughout this submission. They come from consultation sessions conducted by OGCYP, including the most recent in October 2022. All unattributed quotations in this submission are statements made directly from children and young people to our office.

Our determination to amplify the voices of children and young people means that this submission comes with a language warning. Some quotes may be considered offensive or non-inclusive, but we believe that the context for the citation warrants that use.

Glossary

ACCO	Aboriginal community-controlled organisation
ACIST	Aboriginal Cultural Identity Support Tool
ACPP	Aboriginal Child Placement Principle
AYTC	Adelaide Youth Training Centre (otherwise referred to as Kurlana Tapa Youth Justice Centre)
CARP	Contact Arrangements Review Panel
<i>CYP Safety Act</i>	<i>Children and Young People (Safety) Act 2017 (SA)</i>
DCP	Department for Child Protection
DHS	Department for Human Services
NDIS	National Disability Insurance Scheme
OGCYP	Office of the Guardian for Children and Young People
OOHC	Out-of-home care
SACAT	South Australian Civil and Administrative Tribunal
SADI Project	South Australian Dual Involved Project
SADI Report	Final Report of the South Australian Dual Involved Project
UNCRC	<i>United Nations Convention on the Rights of the Child</i>
UNDRIP	<i>United Nations Declaration on the Rights of Indigenous Peoples</i>

INTRODUCTION

The Office of the Guardian for Children and Young People (OGCYP) advocates for the rights and best interests of children and young people in care and youth detention in South Australia. We provide advocacy on individual and systemic issues, as well as monitoring the safety and wellbeing of these children and young people.

The office currently provides oversight for three areas, performing the following functions:

- The Guardian for Children and Young People promotes and protects the rights and best interests of children and young people in care,
- The Child and Young Person's Visitor promotes and protects the rights and best interests of children and young people in residential care, and
- The Training Centre Visitor¹ promotes and protects the rights and best interests of children and young people detained in the Adelaide Youth Training Centre (AYTC).

In delivering these programs, our office works with and for Aboriginal children and young people in the child protection system everyday. With bravery and piercing clarity, children tell us their stories and ask for our help.

We see children who are enjoying and flourishing in their time in care, and valuing the opportunity to connect with family members and community.

We also see children living in lonely places, who feel that they have been forgotten. Children who are crying out for connection, identity, loving relationships and adults to care for and about them. We know these children have not been forgotten, that they are deeply loved by their families and communities.

We also see a child protection system that struggles to meet its responsibilities to engage with Aboriginal families and children to identify and make decisions in **the best interests of every child**. There is a legacy in the child protection sector through forced removals, denial of culture and forced assimilation that cannot be ignored. The results of such action in this jurisdiction (and others across Australia) has laid a tumultuous foundation for improving practice, breaking racist and racially biased practices and unravelling a system that was built to impede Aboriginal families, not help them.

What we have today is the legacy of:

- Decades of repeated systemic failures to respect Aboriginal ways of knowing and raising children, and prioritise community led solutions to community challenges.
- Strong advocates for children, who come up against impenetrable walls of bureaucracy.
- Well-meaning efforts by workers and carers who may not have the knowledge or resources to properly support the Aboriginal children and young people in their care.
- At times, an alarming lack of humanity in the way the State treats Aboriginal children and fails to discharge its responsibility to care for them.

We see the way that absolution of responsibility – no matter how small – can have devastating and long-lasting consequences.

The formula for raising safe and supported children has long been held by First Nations people. The resilience and wisdom of ancestors and elders drives First Nations communities to continue,

¹ Since November 2021, the TCV has been assigned the Youth Treatment Orders Visitor role, pursuant to the *Controlled Substances Act 1984* (SA).

unrelenting, to advocate for the power, authority and social inclusion to raise children strong and happy.

The OGCYP recognises there is an opportunity to, humbly and respectfully, redress decades of system and bureaucratic failings here in South Australia: an inquiry into the contemporary removal of Aboriginal children led by a First Nations Commissioner for Aboriginal children. We pay our deep respect to the import of this moment in the making and we offer a contribution to Commissioner Lawrie's inquiry – through:

- Reflection on our experience in child advocacy.
- Putting forward the views and experiences of the children we have, and currently, work with, and
- Presenting the evidence we hold to support the full implementation of the Aboriginal Child Placement Principle, in its truest form, with the intent for which it was originally developed all those years ago by a national and international community movement.

THE ABORIGINAL CHILD PLACEMENT PRINCIPLE

The Aboriginal Child Placement Principle (ACPP) is a foundational element of contemporary child protection practice in Australia.

It is grounded in the international decolonisation movement, advocating for the realisation of the basic human right First Nations peoples hold to self-determination for their own communities.

In the Australian context, the ACPP has a history spanning decades, driven by 'grassroots' activism from AICCAs and informed by the experience of First Nations peoples around the world – in particular, experiences in North America, and inspired by the success of the *Indian Child Welfare Act 1978*.²

All jurisdictions in Australia have, to varying extents, responded to this activism by embedding the ACPP in legislation. South Australia has done so at a baseline level, within section 12 of the *Children and Young People (Safety) Act 2017 (CYP Safety Act)*. This legislative provision applies to a very specific area of child protection practice; namely, the placement of Aboriginal children who have entered out-of-home care.

The fundamental goal of the Principle is to enhance and preserve Aboriginal children's connection to family and community and sense of identity and culture. It is important to acknowledge that the words in the SA legislative provision do not represent the full **meaning**, or **intent**, of the ACPP.

The ACPP is underpinned by an understanding that removing Aboriginal children and young people from their families should only ever be **a matter of last resort**. Children have a fundamental human right to grow up with their families. Governments have an obligation to provide families with the financial, social and other supports needed to ensure children have the best possible care, without discrimination, **within their families and communities**.

Where children and young people are genuinely in need of care outside of their families, the ACPP calls for policies, practices and legislation that recognises the imperative for Aboriginal children to **maintain every opportunity to stay connected with their family, culture and community**.

So, while, child protection legislation in South Australia includes a provision entitled the 'Aboriginal Child Placement Principle', it is clear that the narrow scope of this provision, restricted to the placement of children, does not reflect the intended meaning of the ACPP.

Policies and procedures within the Department for Child Protection (DCP) do progress further. But there remain serious gaps in the knowledge, resources and value placed in Aboriginal culture, that are required to transform this legacy system into one that plays its part in facilitating the strengthening and rebuilding of Aboriginal families and communities by investing in their children and young people.

² For a more comprehensive history of the Principle, see Commonwealth of Australia, *Bringing them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) ('*The Bringing them Home Report*').

The OGCYP submits that a full commitment to the ACPP in South Australia requires extensive reform across legislation, policy and practice, to reflect that:

- Preventing removal, and partnership with children, families and communities must start well before a child is at risk of removal.
- Active participation in decision-making by the child or young person, their families and communities must begin at the state of engagement and continue well beyond the point of removal of an Aboriginal child.
- Connection with families, culture and communities is a lifeline and an inherent right for Aboriginal children and young people in care (it is not a 'perk'),³ and is directly related to outcomes and wellbeing across all areas of their lives.

³ Andrew Jackomos, former Victorian Commissioner for Aboriginal Children and Young People.

UNDERSTANDING THE OUTCOMES

The Aboriginal Child Placement Principle is a matter of social justice, aligned with **internationally recognised principles of human rights for Indigenous peoples**. As a signatory to the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), Australia has an obligation to promote, respect and protect the rights of Aboriginal peoples to be **free from discrimination** and **exercise self-determination**.⁴

Children are the future of all communities, and the right to raise children within their own communities is one of the most fundamental expressions of self-determination. Parents, families and communities for children are rights-holders in this respect.

The ACPP is equally grounded in **rights and outcomes for Aboriginal children and young people**, who should have every opportunity to grow into their place in their communities, confident and supported in their sense of place and identity. The ACPP is a key mechanism for safeguarding the rights they hold, both under **UNDRIP** and the **United Nations Convention on the Rights of the Child (UNCRC)**.⁵

We know that Aboriginal children are offensively overrepresented in the child protection and youth justice systems, and that Aboriginal children who have experienced out-of-home care fare worse than their peers across outcomes in key life domains including health and education, and removal of their own children later in life.

We also know that poor outcomes are **not an inevitability** for Aboriginal children and young people. Children who grow up safely, supported by their families and communities, experience greater life expectancy, lower contact with the justice system, lower contact with child protection system in relation to their own children later in life, and higher rates of social and emotional wellbeing outcomes.⁶

There is a growing evidence-base supporting positive health and wellbeing outcomes for Aboriginal people associated with increased cultural connection. This is reflected in *Mayi Kuwayu* – the national study of Aboriginal and Torres Strait Islander wellbeing – which has identified 41 studies demonstrating improved social and emotional wellbeing outcomes for Aboriginal people associated with the following cultural domains:

- Connection to country
- Cultural beliefs and knowledge
- Language
- Family, kinship and community
- Cultural expression and continuity
- Self-determination and leadership.⁷

⁴ United Nations (UN) General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution/adopted by the General Assembly*, 2 October 2007, A/RES/61/295, Articles 3 and 4 ('UNDRIP').

⁵ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol 1577, p 3.

⁶ *Mayi Kuwayu, Extent of evidence about Aboriginal and Torres Strait Islander culture and wellbeing* (2019); Child Development Council (CDC), *How are they faring? South Australia's 2021 Report Card for all Children and young people* (2021), p 18; Catia Malvaso (et al), *The intersection between the child protection and youth justice systems in South Australia* (2020).

⁷ *Mayi Kuwayu* (n 6), p 3.

But child protection is challenging work, often completed by overburdened practitioners within overburdened systems. In the busy practice of investigations and case management, the OGCYP holds concerns that the ACPP is too often assigned the bureaucratic status of a decision-making tool; nice to have, useful guidance, but something to let go of when resourcing pressures build. When utilised, ultimately a principle that is framed by the practical application to case management, and distilled into tick boxes that are separated from the meaning and goals it seeks to achieve.

This was a concept that was explored in the New South Wales Independent Review of Aboriginal Children and Young People in Out-of-Home Care, through the lens of **ritualism**:

Ritualism is defined as 'acceptance of institutionalised means for securing regulatory goals while losing all focus on achieving the goals or outcomes themselves'. This means that in a work environment, like FACS which has a regulatory framework of law and policy that has been, until now, attuned to risk aversion, caseworkers take comfort in the rituals of casework, such as safety assessment and risk assessment while losing focus on the goal of child protection, to reunite children with their families.⁸

With respect to application of the ACPP, the Review concluded:

Ritualism is never more valid than when it comes to the implementation of the Aboriginal Child Placement Principle (ACPP). The ACPP was recognised in the primary child protection statute by our democratically elected legislators as a commitment to keeping Aboriginal children with their family. Yet this Review has found it is poorly implemented and misunderstood. The commitment, the language, the implementation of the ACPP is replete with ritualism. Ritualism takes the form of compliance manifest in endlessly changing policies espousing departmental commitment to ACPP, meetings (where minutes are more important than substance), glossy brochures, tick-a-box forms etc. Despite this, the outward appearance of compliance – formal participation in a system of regulation – shields a culture of non-compliance.⁹

To challenge ritualism, it is vital to reengage with the meaning and the goals of the ACPP in child protection practice in South Australia. The primacy of the ACPP needs to be understood as indivisible from every key national framework in place to improve the lives of Aboriginal people and children – **Closing the Gap**,¹⁰ **Safe and Supported**,¹¹ progression towards implementation of the **Uluru Statement from the Heart** through **Voice, Treaty and Truth**.¹² The actions that all levels of government have agreed upon with First Nations peoples under these plans and strategies are not optional. Governments have made commitments, and Aboriginal peoples have the right to expect that governments will honour their promises. Implementing the ACPP is key to doing so.

The below discussion highlights the dearth of publicly reported data regarding wellbeing outcomes for Aboriginal children in out-of-home care that are aligned with these agreements

⁸ Professor Megan Davis, *Family is Culture: Independent Review into Aboriginal Out-of-Home Care in New South Wales*, Final Report (2019), p 25.

⁹ Ibid, p xiv.

¹⁰ *National Agreement on Closing the Gap* (2020). The parties to the agreement are the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and all Australian Governments, including the Commonwealth and South Australia.

¹¹ Commonwealth of Australia, *Safe & Supported: The National Framework for Protection Australia's Children 2021 – 2031* (2021). The framework is supported by two actions plans, with a specific action plan for Aboriginal children: Commonwealth of Australia, *Aboriginal and Torres Strait Islander First Action Plan 2023 – 2026 under Safe and Supported: the National Framework for Protecting Australia's Children 2021 – 2031* (2023).

¹² First Nations National Constitutional Convention, *Uluru Statement from the Heart* (2017).

and strategies – including across social, emotional and cultural domains. This information is essential for monitoring compliance with the ACPP and **measuring success for Aboriginal children**.

Responding to these limitations and to support the CACYP's Inquiry, the OGCYP offers contemporary information and data obtained through our monitoring and oversight functions regarding outcomes for Aboriginal children in care.

Challenges in measuring success: uncovering information about outcomes for children in out-of-home care

There is limited independent research available about the outcomes for children and young people who enter out-of-home care following adverse childhood experiences,¹³ compared to children and young people who are not removed from their families in these circumstances. This is largely due to significant methodological challenges for social researchers, associated with key differences between the two population groups that are likely to be present in many cases. This includes:

- Differences in the severity and prevalence of adverse childhood experiences.
- The policies and practices of particular child protection offices and jurisdictions, with respect to removal and placement decisions.
- Variance in the access to, and engagement with, family support services across the two population groups.
- The wide variance in experiences for children and young people in the out-of-home care system, related to factors such as placement type, duration in care and placement stability.¹⁴

A recent literature review conducted by the New South Wales (NSW) Department of Communities and Justice considered research assessing developmental, educational, health and wellbeing and youth justice outcomes for children who have been placed in out-of-home care following 'maltreatment', compared to children who remained with their birth families. The review concluded:

Findings from the research are ultimately inconclusive. Some evidence suggests out-of-home care might have a protective effect for children in the physical health, language, cognitive and education domains, but not in the emotional or social domains or in relation to police contacts. Children in out-of-home care have considerably higher rates of diagnosed mental health disorders.

Research into this question faces methodological challenges that make it hard to determine the contribution of out-of-home care placements to varied outcomes for maltreated children. Children in out-of-home care have often experienced greater socio-economic disadvantage, more severe maltreatment and trauma, and higher levels of prior contact with child protection services than children at risk who were not removed from their parents' custody ...

¹³ Adverse childhood experiences is terminology arising out of the Adverse Childhood Experiences Scale, developed to measure childhood trauma by VJ Felitti and colleagues. See Felitti et al, 'Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults. The Adverse Childhood Experiences (ACE) Study' (1998) 14 *American Journal of Preventative Medicine* 245.

¹⁴ NSW Department of Communities and Justice, *Comparing outcomes for maltreated children: Out-of-home care versus remaining at home – A literature summary* (2022), p 1.

*Further research could provide stronger evidence of the effectiveness of out-of-home care versus remaining at home for improving the wellbeing of maltreated children. However, some methodological challenges will remain, even with robust research.*¹⁵

The study noted that research comparing or differentiating outcomes for Aboriginal and non-Aboriginal children was even more limited.¹⁶

While methodological challenges have resulted in limited research in this area, there is already a strong evidence-base demonstrating poorer outcomes across developmental domains for children and young people who have experienced out-of-home care.

The South Australian Early Childhood Data Project, operating out of the University of Adelaide's BetterStart group, conducts research through linking de-identified administrative data for children born in South Australia between 1991 and 2016.¹⁷ This research has demonstrated the significant developmental vulnerability experienced by South Australian children with child protection contact:

*As the level of contact with the child protection system increases, so does the prevalence of developmental vulnerability on 1 or more [Australian Early Developmental Census] domains at age 5. Children who have experienced OOHC are almost 3 times more likely to be vulnerable than children with no child protection contact. It is important to note that these results also show that even children who have only ever been notified (never screened in), and never had any more serious child protection contact, are nearly twice as likely to be developmentally vulnerable at age 5 (approximately 36% developmental vulnerability among children notified compares with 17.7% among children with no contact) ... This level of increased developmental risk is similar to the differences between the most and least socioeconomically disadvantaged.*¹⁸

It is acknowledged that supporting children's recovery after adverse childhood experiences in the family home presents a complex social policy challenge for governments. The OGCYP observes that, at times, these challenges can result in a sense of inevitability, or acceptance, of negative consequences for children who have experience early life traumas. But it is vital to resist relying on these developmental vulnerabilities as a rationalisation for accepting poor outcomes for children in out-of-home care. Instead, this information is a call to action, to identify and enact **evidence-based solutions** to **ensure success** for children in care.

This is reflected in emerging research from the BetterStart group. For example, in 2021, data from the South Australian Early Childhood Data Project was used to support an article focused on identifying characteristics of children on-track to meet early developmental domains, despite experiencing adverse childhood experiences. The researchers note that **'[u]nderstanding characteristics of these children who thrive, against the odds, [helps] identify intervention opportunities to improve child development'**.¹⁹

¹⁵ Ibid, p 14.

¹⁶ Ibid, p 1.

¹⁷ For more information about the BetterStart group and the SA ECDP project, see: the University of Adelaide, *BetterStart: Research* (online): <<https://health.adelaide.edu.au/betterstart/research>>.

¹⁸ Australian Institute of Health and Welfare (AIHW), *Australia's welfare 2019: data insights* (2019), ch 8, p 168.

¹⁹ Catherine Chittleborough et al, 'Thriving in adversity: positive child development despite early disadvantage in a whole-of-population data linkage study' (2021) 50 *International Journal of Epidemiology* 1.



Public reporting on outcomes for Aboriginal children in out-of-home care

Despite the clear importance of understanding the lives of children who thrive in out-of-home care, it is a difficult task to uncover comparative – or even baseline – information in public records.

One of the barriers to uncovering this information is the restricted focus in national reporting on indicators about the rate of children and young people in care, without transparent and readily available data about wellbeing outcomes for children in care. For Aboriginal children, this focus is particularly on their overrepresentation in the out-of-home care system.²⁰

It is, of course, an imperative to monitor the worsening overrepresentation of Aboriginal children in care. But restricting the scope of national reporting to overrepresentation does not allow independent interrogation and analysis of what this overrepresentation means for Aboriginal children – and areas to focus the development and implementation of policies and programs to better support Aboriginal children in care. While reporting overrepresentation focuses on the **Prevention** element of the ACP, it tells us little about **Partnership, Placement, Participation and Connection**.

There are reporting mechanisms in place for assessing South Australia's performance against *Closing the Gap* targets for Aboriginal children. However, this information is not disaggregated to differentiate between children and young people in out-of-home care and those living outside the statutory care system. With respect to Aboriginal children in care, public reporting on *Closing the Gap* focuses strongly on **Outcome 12**: that Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system.

The data is clear that **we are not on track** to meet the target associated with Outcome 12, to reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent.²¹ For the large number of Aboriginal children who are (and will become) caught up in the child protection system, we need to understand where they are **thriving and falling behind**, so we can steer the system where it is most effective. This is an essential step to **diverting the socioeconomic drivers of the intergenerational removal cycle**, whereby so many children in care grow to have their own children removed.

The OGCYP submits that targeting resources and efforts to 'turn the tide on over-representation'²² requires a complete understanding of the variance in wellbeing outcomes for Aboriginal children in different care and family living arrangements. This includes for Aboriginal children living in:

- Out-of-home care, compared to children living outside the statutory removal system, and

²⁰ See, eg, AIHW, *Child protection Australia 2020-21* (2022); AIHW, *National framework for protecting Australia's children indicators* (2022); Productivity Commission, *Report on Government Services 2023* (2023), Part F, Section 16 ('ROGS 2023'). Significantly, the newly published *Safe and Supported: Aboriginal and Torres Strait Islander Outcomes Framework* (2023) includes outcomes to support the achievement of Closing the Gap Target 12, which are directed towards building the community-controlled sector, and substantive wellbeing outcomes targeted towards the drivers of child removal and long-term guardianship orders. However, the outcomes are of general application to Aboriginal children and families regarding an overrepresentation target, and still do not specifically consider outcomes across measures for children in out-of-home care.

²¹ Office of the Guardian for Children and Young People (OGCYP), *Snapshot of South Australian Aboriginal Children and Young People in Care and/or Detention from the Report on Government Services 2021* (2021), p 9.

²² SNAICC – National Voice for our Children and Family Matters – Strong communities. Strong culture. Stronger culture, *The Family Matters Report 2022: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander Children in Out-of-Home Care in Australia* (2022) ('the Family Matters Report 2022'), p 5.

- Different out-of-home care arrangements, including kinship care, foster care, independent living and residential care.

Reimagining data collection in this sense is a key step towards meeting the South Australian government's commitment to **Priority Reform Four** under the **National Agreement on Closing the Gap**:

*Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally-relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.*²³

As explained in the National Agreement, **Priority Reform Four** supports Aboriginal communities and organisations to achieve all other Priority Reforms:

- Priority Reform One:** *Participating as equal partners with government, with equal access to all processes and information to support shared decision-making.*
- Priority Reform Two:** *Driving their own development by making evidence-based decisions on the design, implementation and evaluation of policies and programs for their communities in order to develop local solutions for local issues.*
- Priority Reform Three:** *Measuring the transformation of government organisations operating in their region to be more responsive and accountable for Closing the Gap.*²⁴

The below discussion in **OGCYP monitoring and oversight** presents OGCYP data, collected through auditing a sample of DCP's 'Annual Reviews'²⁵ for Aboriginal children over a two-year period. Through these audits, we assessed that **Aboriginal children in kinship care are faring better across nearly all of the substantive wellbeing outcomes we measure**, compared to Aboriginal children living in other types of out-of-home care. And there were also some key areas we identified where Aboriginal children experienced even better outcomes when living with their Aboriginal family and relatives. Significantly, OGCYP audits assessed that **Aboriginal children living in kinship care were 35% more likely to have contact with their culture and community**, compared to the overall rate for Aboriginal children living in family-based care. For those living with their Aboriginal family or relatives, this figure **nearly doubles**, to 65% above outcomes for Aboriginal children in family-based care more generally. Collecting and publishing data on this indicator:

- Supports advocacy efforts for removing structural barriers to Aboriginal families caring for their own children, and
- Identifies a key area to target resources, policies and programs and resources – namely, supporting foster carers and non-Aboriginal kinship carers to connect Aboriginal children with their culture and community.

Recording and publishing this data at a local level has the opportunity to provide communities with even greater scope to identify priority reform areas, and design and lead solutions.

Accordingly, the OGCYP submits that the focus on collecting information and assessing progress against targets under key frameworks and agreements must **extend beyond**

²³ Commonwealth of Australia, *Closing the Gap: Priority Reforms* (online): <<https://www.closingthegap.gov.au/national-agreement/priority-reforms>>.

²⁴ *National Agreement on Closing the Gap* (n 20), p 13. For more information about the first three priority reforms, see *ibid*.

²⁵ For an explanation of Annual Reviews, and the OGCYP's audit process, see **OGCYP monitoring and oversight** below.

overrepresentation, to focus on **measuring and achieving success**, spanning all targets relevant to childhood development, transition into adulthood and lifelong outcomes.

In this context, the OGCYP notes that there is currently a review underway into the Child Development Council's (CDC) Outcomes Framework for South Australian children and young people. The Outcomes Framework is a key mechanism for collecting data and reporting outcomes for children and young people in South Australia, across the following domains and outcomes:

1. **Health:** Young South Australians are physically, mentally and emotionally healthy
2. **Safety:** Young South Australians are safe and nurtured
3. **Wellbeing:** Young South Australians are happy, inspired and engaged
4. **Education:** Young South Australians are successful learners
5. **Citizenship:** Young South Australians participate actively in society.²⁶

In July 2022, the OGCYP provided a submission to the review, with two key recommendations:

1. To include specific measures and indicators that reflect the lives and experiences of children in care and/or detention
2. Increase efforts to source disaggregated data for children and young people living in out-of-home care and detention, including at the local level for Aboriginal children and young people and children living in regional or remote areas.

The OGCYP welcomes upcoming opportunities to work with the CDC, regarding expanding data collection and reporting on key outcomes and indicators for children in care.

Public reporting on Aboriginal Child Placement Principle indicators

With respect to public reporting mechanisms that are specifically aimed at monitoring the ACP, the following indicators are monitored in government national datasets:

- The type of caregiver for Aboriginal children and young people.²⁷
- Reunification rates for Aboriginal children and young people.²⁸
- The proportion of Aboriginal children with a current cultural support plan.²⁹

These are, of course, highly important areas to monitor, and reflect key indicators under the *National Framework for Protecting Australia's Children 2009 – 2020* (the framework in place prior to the publication of *Safe & Supported: The National Framework for Protection Australia's Children 2021 – 2031*).³⁰

But it is important to note that reporting placement type and reunification rates for Aboriginal children, and the mere existence of cultural support plans, does not provide transparency about:

²⁶ Child Development Council (CDC), *South Australia's Outcomes Framework for Children and Young People: Every young South Australian counts* (2019), p 9.

²⁷ AIHW, *The Aboriginal and Torres Strait Islander Child Placement Principle Indicators* (2022); Productivity Commission, *ROGS 2023* (n 20); AIHW, *National framework for protecting Australia's children indicators* (n 20).

²⁸ AIHW, *The Aboriginal and Torres Strait Islander Child Placement Principle Indicators* (n 26).

²⁹ AIHW, *National framework for protecting Australia's children indicators* (n 20).

³⁰ National Standards for Out-of-Home Care, Indicators 3.1 and 10.1: Department of Families, Housing, Community Services and Indigenous Affairs together with the National Framework Implementation Working Group, *An outline of National Standards for Out-of-home Care: A Priority Project under the National Framework for Protecting Australia's Children 2009 – 2020* (2011), pp 9, 12.

- The drivers of slow progress in increasing placements with family, relatives or other Aboriginal carers,³¹ and low reunification rates.³²
- The extent to which Aboriginal children with cultural support plans in place are in fact provided adequate support to be connected to their families and culture – and if not, why not.³³

Recently, the *Safe & Supported: Aboriginal and Torres Strait Islander Outcomes Framework* (published in January 2023) has developed new outcomes and sub-outcomes for monitoring the current national framework, which have greater relevance to monitoring compliance with the ACPP. This includes:

*Governments undertake active efforts to implement **all 5 elements of the ATSICPP**. All jurisdictions demonstrate **transparency and accountability for their performance against the ACPP**, via timely reporting of high-quality data.*³⁴

The Monitoring and Evaluation Strategy – which is still under development and is anticipated to be available by the end of 2023 – will publish indicators to measure these outcomes.³⁵ The *Aboriginal and Torres Strait Islander Outcomes Framework* suggests that potential data sources include the Child Protection National Minimum Data Set and other government reporting.³⁶

The OGCYP notes that the move to measuring compliance in a meaningful manner across all five elements of the ACPP will pose significant challenges to the South Australian government, based on current data capabilities and definitions of compliance.

To illustrate these concerns, we highlight that section 156 of the *CYP Safety Act* currently places an obligation on the DCP to publish information relevant to the **Connection** element, regarding the extent to which agreements reached in case plans regarding cultural supports were in fact implemented, and whether Aboriginal children in care had access to a case worker, relative or other person from the same community as the young person. Despite this legislative obligation coming into effect on 22 October 2018, the DCP's most recent annual report indicated that reporting capability is still under development.³⁷ This issue is discussed in more detail below, in the [Connection](#) section.

Naming the challenges in building data and reporting capabilities does not mean accepting unreasonably slow progress from the South Australian government. Expanding opportunities to monitor success for Aboriginal children in out-of-home care is an **urgent** task, and it demands significant **investment** from government in the appropriate information technology to assess progress in wellbeing for children in care across domains including:

- Connection to culture, family and community
- Safety
- Physical health

³¹ See relevant discussion at: [Placement](#).

³² See relevant discussion at: [Prevention](#).

³³ See relevant discussion at: [Connection](#).

³⁴ Commonwealth of Australia, *Safe & Supported: Aboriginal and Torres Strait Islander Outcomes Framework* (2023), SFN2.1.

³⁵ Commonwealth of Australia, Department of Social Services, *Families and Children: Monitoring and reporting of Safe and Supported* (online): <<https://www.dss.gov.au/families-and-children-programs-services-children-protecting-australias-children/monitoring-and-reporting-of-safe-and-supported>>.

³⁶ Commonwealth of Australia, *Safe & Supported: Aboriginal and Torres Strait Islander Outcomes Framework* (2023).

³⁷ Government of South Australia, Department for Child Protection (DCP), *Department for Child Protection 2021-22 Annual Report* (2022), p 34.

- Mental health and emotional wellbeing
- Educational outcomes
- Social connections and inclusion.

Meeting **Priority Reform Four** requires a commitment to **partnering** with Aboriginal communities and organisations in setting the priorities for data collection, **sharing** this information with the Aboriginal community-controlled sector, and **devolving** the resources to the sector to design and implement solutions.

OGCYP monitoring and oversight

The Guardian for Children and Young People’s statutory functions include to monitor the circumstances, and promote the best interests, of children in care.³⁸

In performance of these functions, the OGCYP collects data relevant to monitoring implementation of the ACPP, across both the youth justice and child protection spaces. Most relevantly, this includes:

- **Wellbeing outcomes** for Aboriginal children, assessed by auditing a portion of 4 – 5 % of the Annual Reviews conducted by DCP each year, and
- Collecting and reporting on data regarding the **overrepresentation** of children under care and protection orders, who are also held on remand or detention at the AYTC.

The below discussion presents evidence from an audit of 383 Annual Reviews for children and young people, conducted between 1 January 2021 and 31 December 2022. 149 of these reviews were for Aboriginal children and young people. **Attachment 1** sets out the data tables which form the basis for the following analysis.

This Part also provides information about the number of children and young people on care and protection orders who were held at the AYTC between February and December 2021, and between 1 July and 31 December 2022. The OGCYP utilises the term **‘dual involved’** to describe children and young people in these circumstances, to reflect that they live under two separate court orders: relating to their **care and protection**, and their **detention**.

As discussed in detail below, the data collected and analysed by the OGCYP establishes a positive connection between improved wellbeing outcomes for Aboriginal children who are placed with relatives, kin or in other family-based care with Aboriginal carers.³⁹ It also establishes evidence of poorer outcomes for Aboriginal children and young people in care across health, education, youth justice involvement and placement in residential care facilities, in comparison to non-Aboriginal children.

Data from the South Australian Dual Involved Project

The periods for data collection regarding children in youth detention are aligned with a funded monitoring project the OGCYP completed between 1 February 2021 and 31 December 2021 (the SADI Project), and a newly established monitoring project which commenced in the 2022-23

³⁸ *Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)*, s 26(1).

³⁹ These are the three highest priority caregiving environments for Aboriginal children, under the Placement element of the Aboriginal and Torres Strait Islander Child Placement Principle: see, SNAICC – National Voice for our Children (SNAICC), *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy and program development* (2017), p 5 (*Understanding and Applying the ACPP*).

financial year, utilising existing resources and daily AYTC population data provided by the Department of Human Services (DHS).

The SADI Project described and analysed the over-representation of children and young people from residential care placements in detention. The OGCYP describes children as 'dual involved' if they are under the guardianship of the Chief Executive of DCP and have been remanded or detained in a youth detention facility.

The project focused specifically on children and young people living in residential care. It drew on interviews and other interactions with dual involved children and young people at AYTC, providing them with personal advocacy if required. We sought their views about why they were in detention and whether or how residential care environments influenced their offending behaviour.

The OGCYP published an interim report in October 2021, with the final report published in July 2022.

In future, there may be opportunities to collect, analyse and publish data relating to dual involved children and young people over a broader timeframe.

Annual Review Audits: Methodology and limitations

Every child in care is entitled to have their circumstances reviewed by DCP at least once per year.⁴⁰ The review must be carried out by a panel appointed by DCP for the purpose, and must have regard to whether existing care arrangements remain in the best interests of the child or young person and provide the support necessary to meet the needs of the child or young person.⁴¹ Following the completion of the review, the panel must prepare and provide DCP with a written report setting out their conclusions about the existing care arrangements and any recommendations relating to the care of the child or young person.

The process by which the panel meets, reviews and reports on the circumstances of children in care is referred to as an **Annual Review**.

OGCYP Annual Review audits focus on monitoring individual and overall wellbeing outcomes for children and young people in out-of-home care. The audit involves examining case planning processes and attending Annual Review meetings. OGCYP make audit findings based on reviewing DCP's file records, and our participation at Annual Review meetings.

The purpose of the audits is to ensure that the child or young person is included in their Annual Review and decision-making process, that their best interests and support needs are being met, and to contribute to learning and continuous quality improvement in the out-of-home care system. In some instances, the OGCYP will assume individual or systems advocacy from Annual Reviews, and/or monitor the timely completion of casework actions to address gaps in supports and care.

⁴⁰ *Children and Young People (Safety) Act 2017* (SA), s 85(1).

⁴¹ *Ibid*, s 85(3).

Annual Review audits are the OGCYP's primary mechanism for monitoring the circumstances of children and young people in family-based care, noting that the majority of enquiries received by our office pertain to children and young people living in residential care.⁴²

To guide the Annual Review audit process and for reporting purposes, the OGCYP has developed **12 Wellbeing Statements for children and young people in care**, reflecting the *Charter of Rights for Children and Young People in Care*.⁴³ From these statements, the OGCYP has developed indicators to provide guidance regarding the measurement of how the rights of children and young people are being upheld and reflected across case planning and implementation.

The OGCYP records the total number and percentage of children and young people for whom each statement was assessed as 'Met' from the Annual Review audit. The OGCYP then reports annually on these figures.⁴⁴

Our office acknowledges that, while informative, data collected and analysed through Annual Review audits is a sample only. Annual Reviews may be targeted around strategic priorities and intelligence collected by our office, which may result in greater attention on offices with identified or suspected practice issues or particularly vulnerable population cohorts. This may result in 'skewed' data in some instances, that amplifies those areas of concern or challenges for vulnerable children and young people.

It is also important to note that our monitoring and participation in Annual Reviews for children in out-of-home care is not primarily intended as a statistical measure; rather, it is an opportunity for the OGCYP to provide active input and advocacy support to a selection of children in care. Accordingly, the below results are centred around, and should be interpreted in light of, the Guardian's particular statutory functions established by the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.

Finally, wellbeing outcomes for children in care are influenced by much broader matters than their current placement – including histories of placement stability, the nature and prevalence of maltreatment or adverse childhood experiences, socioeconomic status, length of time in care, age of entry into care, existence of disabilities, baseline wellbeing outcomes when entering care and the personal characteristics of individual children. As such, there are inherent limitations regarding the extent to which conclusions can be drawn from statistical trends identified.

While noting these limitations, the OGCYP submits that the considerable sample size – 383 audits over a two-year period, with 149 of these being for Aboriginal children – provides strong evidence from which to identify positive or negative connections in the data regarding different population cohorts.

With respect to conclusions about causation for the trends identified, the OGCYP offers our observations and experience regarding potential drivers and factors. We recognise that many of these areas require further investigation and, ideally, independent academic research. Where positive or negative connections exist in the OGCYP's data, we submit that this should be treated

⁴² OGCYP, *Guardian for Children and Young People 2021-22 Annual Report* (2022), p 11.

⁴³ Section 13 of the *Children and Young People (Safety) Act 2017* (SA) provides that the GCYP must prepare and maintain a *charter of Rights for Children and Young People in Care*. More information about the Charter, including the full text, is available on the OGCYP website, at: OGCYP, *What we do: Your rights in care* (online): <<https://gcyyp.sa.gov.au/what-we-do/your-rights-in-care>>.

⁴⁴ For the most recent reporting period, see OGCYP, *GCYP Annual Report 2021-22* (2022).

as a call to government to invest resources into this further investigation – to identify protective factors and strategies for success, and the drivers and potential solutions for inequities.

Outcomes for Aboriginal and non-Aboriginal children and young people in care

The OGCYP acknowledges the significant complexities underlying discrepancies between outcomes for Aboriginal and non-Aboriginal children in out-of-home care. This includes baseline outcomes for children entering care, and inequities which affect Aboriginal children on a broader scale, regardless of their care experiences.

At a broad level, the OGCYP considers that, where negative outcomes are identified for Aboriginal children and young people in comparison to non-Aboriginal children and young people, this is most likely indicative of systemic barriers to accessing service, support and economic needs for children and their families. These barriers arise as a result of both direct and indirect discrimination, and are likely to have occurred prior to entering care, in addition to continuing during and after periods spent in care. Barriers to accessing appropriate supports and financial resources, and experiences of discrimination for Aboriginal children, are highly likely to span services and support needs broader than those offered by the DCP.

Even with the understanding that the complexities underlying negative outcomes for Aboriginal children are a whole-of-government responsibility that cannot be resolved within the child protection portfolio alone, it is still important to identify the inequities in outcomes for Aboriginal children in care. The knowledge and experience that Aboriginal children are likely to be impacted by these issues and outcomes prior to entering care, carries the responsibility to proactively plan and address the eventuality.

Education

OGCYP audits for 383 children and young people in care during the period concluded, positively, that the majority of children and young people in out-of-home care were engaged in full-time education: 84% for Aboriginal children, and 86% for non-Aboriginal children.

But, for those who were not engaged in full-time education, outcomes diverged for Aboriginal and non-Aboriginal children.

The majority of non-Aboriginal children who were not engaged in full-time education were still attending education on modified hours. Contrastingly, Aboriginal children were nearly twice as likely to be disengaged, suspended or not enrolled in education at all (8%, compared to 5%).

no one ever says, "Do you want to go to school?" 'cause they just think, "Oh, he's, he just wants to go out and do crime," 'cause that's all they know about me when they read on the folders that and they think, "Oh, yeah, he's a bad kid. He doesn't need nothing. We can just let him, let him do his thing," you know.

- Young person in care

A small number of Aboriginal children were not enrolled in school at all (3%), at a rate three times higher than for non-Aboriginal children (1%).

Disability supports

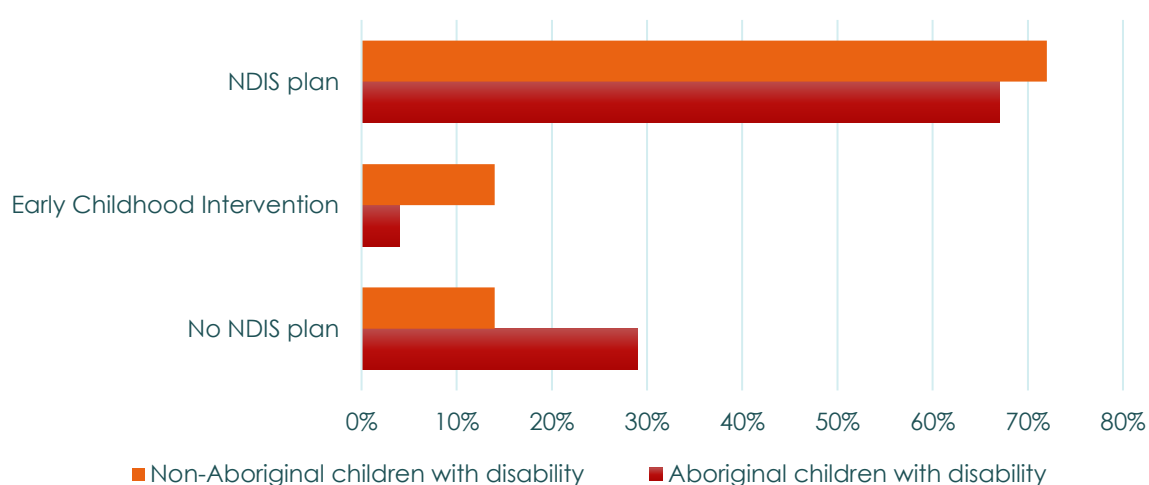
OGCYP audited 124 Annual Reviews for children with a diagnosed disability during the period, with 50 of these audits being for Aboriginal children.

The rate of children with a diagnosed disability was approximately equal across Annual Review audits completed for Aboriginal and non-Aboriginal children (34% compared to 33%).

However, there was a concerning discrepancy in the rate of children and young people with disability who had a National Disability Insurance Scheme (NDIS) plan or Early Childhood Intervention supports:

- 14% of non-Aboriginal children with diagnosed disability did not have an NDIS plan or Early Intervention supports in place.
- For Aboriginal children, this figure was more than double, at 29%.

Figure 1: Proportion of children with NDIS supports in place, by cultural background – 124 OGCYP Annual Review audits for children with disability in out-of-home care, 1 January 2021 to 31 December 2022



Children and young people with disability who did not have NDIS supports in place were primarily outside of the Early Childhood Intervention support age (58% of Aboriginal children, and 60% of non-Aboriginal children, were 10 years or older).⁴⁵ The majority of relevant children lived in family-based care (93% for Aboriginal children, and 90% for non-Aboriginal children).

For children with disability who were not receiving NDIS support, the most common disabilities – when this information was known and available to the OGCYP – were developmental delay and intellectual disability.

⁴⁵ While the cut-off for early intervention supports is seven years, OGCYP datasets contain information about children and young people's age in ranges spanning multiple years: 0 – 4, 5 – 9, 10 – 14 and 15 – 17 years. Accordingly, 10 – 14 and 15 – 17 years are the most relevant age ranges for identifying children above the early intervention support age.

Table 1: Proportion of children with no NDIS supports in place, by cultural background and disability type – 124 OGCYP Annual Review audits for children with disability in out-of-home care, 1 January 2021 to 31 December 2022

Disability type	Aboriginal children	Non-Aboriginal children
Developmental delay	14.3%	40.0%
Intellectual	14.3%	10.0%
Hearing	0.0%	10.0%
Foetal Alcohol Spectrum Disorder	7.1%	0.0%
Oppositional Defiance Disorder	14.3%	0.0%
Other	14.3%	40.0%
Unknown	35.7%	0.0%
Total	100.0%	100.0%

These figures should be interpreted with caution, noting that not all children with disability are eligible for NDIS supports, and variation may be related to factors such as the length of time in placement, and whether children are living in regional or remote areas. However, evidence arising from the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* has provided compelling evidence regarding barriers experienced by Aboriginal children and young people in care, in meeting access for the NDIS and then implementing identified supports. This includes:

- Inadequate service provision and ‘thin markets’ in all areas, but particularly remote areas in South Australia.
- Difficulties in accessing NDIS services for trauma related disorders or other psychosocial disabilities.
- Culturally inappropriate processes for accessing disability supports, which impact on NDIS applications, eligibility decisions and broader engagement with Aboriginal families.
- A lack of integration between NDIS supports for children and young people, and more comprehensive social supports for their families. While this can be a barrier for many families, it is particularly important for families who are vulnerable to systemic discrimination in child protection and health services, including Aboriginal families.⁴⁶

In light of the considerable sample size and the nature of the disabilities identified, the OGCYP is concerned that there may be systemic drivers within the child protection system – in addition to the above points identified of more general application – that are influencing this discrepancy in achieving NDIS supports for Aboriginal children.

Placement stability

The Department for Child Protection provides an annual dataset to the OGCYP, which sets out the number of placements for children exiting out-of-home care, broken down by their duration

⁴⁶ *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*, ‘Overview of responses to the experience of First Nations people with disability in Australia Issues Paper’ (2021), pp 6 – 7.

in care. This data has been provided between the 2018 and 2021 financial years and is disaggregated for Aboriginal and non-Aboriginal children.

Attachment 2 sets out the relevant tables from OGCYP's analysis of the DCP datasets provided, which the below discussion is based upon.

The OGCYP deliberately monitors placement stability for children in care, in the knowledge that this is one of the biggest concerns children and young people express to our office.⁴⁷

Placement stability is highly important for children and young people's development and future wellbeing outcomes. Achieving a feeling of psychological safety promotes recovery from trauma and engagement in pro-social behaviours or activities. Even when a child or young person is physically safe, they are unlikely to feel safe in unstable situations or in placements where they do not feel at home. Instability in placement disrupts a young person's capacity to form and continue relationships, attend school and or participate in community activities. A study commissioned by the *Royal Commission into the Protection and Detention of Children and Young People in the Northern Territory* concluded that placement instability is one of the strongest and most consistent predictors of offending behaviours for children and young people in care.⁴⁸

In this context, our office is concerned that information in DCP datasets indicates significant discrepancies between placement instability outcomes for Aboriginal and non-Aboriginal children.

On average, non-Aboriginal children exiting care between 1 July 2018 and 30 June 2021 spent longer durations in out-of-home care. While Aboriginal and non-Aboriginal children were approximately equally likely to have been in care for 2 or more years, **non-Aboriginal children were 18% more likely to have been in care for 5 or more years** (37.4% compared to 31.5%).

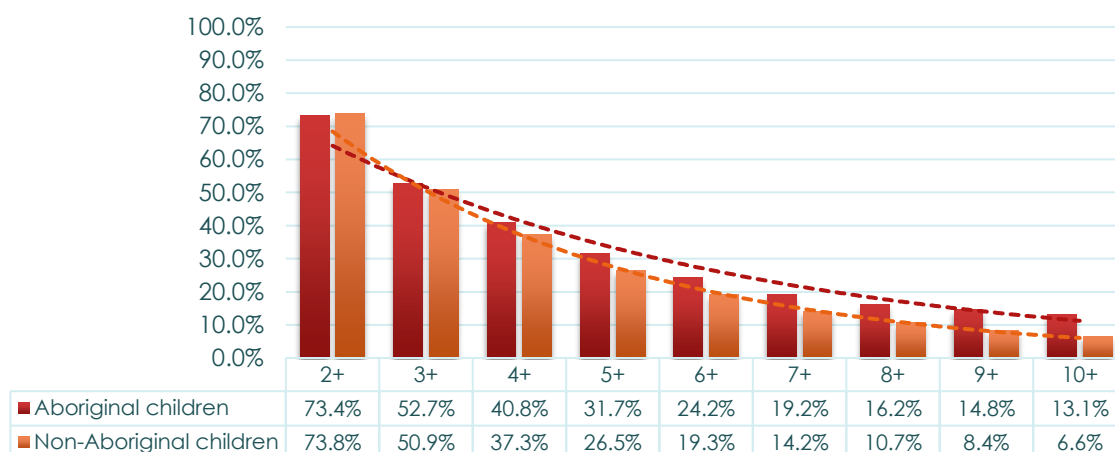
Despite being in care for a shorter duration, on average, **Aboriginal children were twice as likely to have experienced 10 or more placements by the time they exited care** (13.1%, compared to 6.6%).

While Aboriginal and non-Aboriginal children were approximately equally likely to have experienced only 1 – 2 placements prior to exiting care (1 in 2 children), placement stability starts to diverge at 3 or more placements. The gap in stability outcomes then progresses at an exponential rate, as the number of placements increases, with poorer stability outcomes for Aboriginal children.

⁴⁷ OGCYP, *A rights-based approach to safety: OGCYP submission to the five-year legislative review of the Children and Young People (Safety) Act 2017* (2022), pp 26 ('Submission to the CYP Safety Act Review').

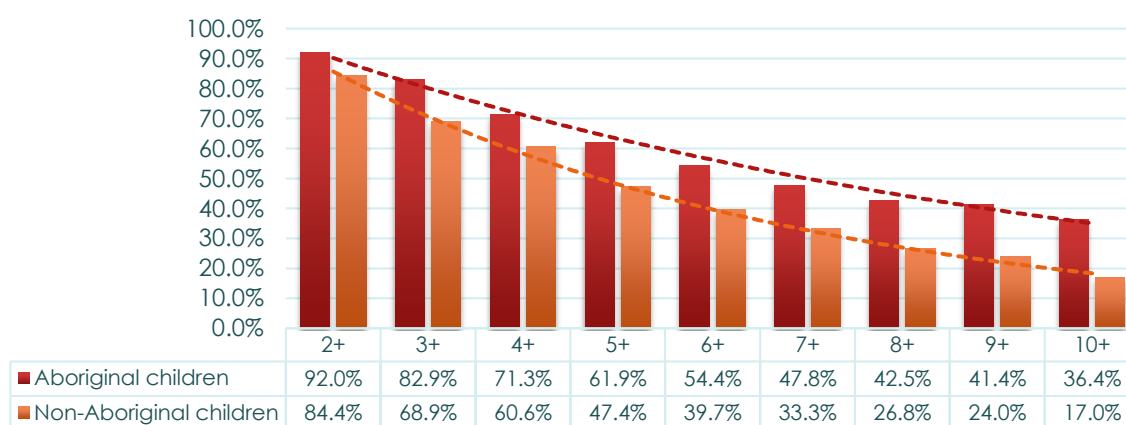
⁴⁸ Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report, vol 3B (2017), p 9.

Figure 2: Proportion of children exiting care between 1 July 2017 and 30 June 2022, by number of placements and cultural background



The OGCYP has also observed that the gap in placement stability between Aboriginal and non-Aboriginal children and young people grows with the time spent in care. More than 1 in 3 Aboriginal children (36.4%) exiting care, who had been in care for 5 years or more, had experienced 10 or more placements. This was nearly double the rate for non-Aboriginal children (17.0%).

Figure 3: Proportion of children exiting care between 1 July 2017 and 30 June 2022, who spent 5 years or more in care, by cultural background and number of placements



The OGCYP is unable to draw definitive conclusions from this data regarding the causation for the exponential nature of the divide in outcomes for Aboriginal children and young people in out-of-home care. However, based on our experience and observations, we note that:

- Placements in residential care and/or youth detention involvement are key contributors to placement instability in South Australia.⁴⁹
- The rate of overrepresentation for Aboriginal children in residential care and youth detention is worsening.⁵⁰

⁴⁹ This was a key theme that arose in interviews with children and young people for the SADI Project. See OGCYP, *The Final SADI Report* (n 40), pp 37 – 41.

⁵⁰ See below discussion in 'Youth detention'.

Youth justice

OGCYP Annual Review audits record whether the young person has current youth justice involvement, at the time of the Annual Review. Youth justice involvement relates to any alleged or proven offending by a young person, whether or not they have spent time on remand or detention at the AYTC.

Significantly, there were no relevant audits for young people living in family-based care, where the young person had current youth justice involvement at the time of the audit.

There were, however, 12 Annual Review audits where children and young people in residential care or other placement types had current youth justice involvement at the time of the audit, the majority of whom were Aboriginal (75%). In fact, Aboriginal children and young people were four times more likely to be involved in the youth justice system: 12%, compared to 3% for non-Aboriginal children and young people.

We note that the Training Centre Visitor's mandate is specifically for young people in youth detention and does not extend to the youth justice sector more broadly. Accordingly, the OGCYP does not undertake extensive monitoring functions in the youth justice sector and is unable to draw definitive conclusions about drivers regarding higher youth justice involvement for Aboriginal children in care. Further investigation in this area is required, in consultation with the Department of Human Services Youth Justice team.

The below discussion does highlight our observations and experience with respect to Aboriginal children in care who experience youth detention.

Youth detention



Following the publication of the Final SADI Report, the OGCYP has continued to monitor the circumstances of dual involved children detained at the AYTC.

The OGCYP can reveal that, for the first two quarters of the current financial year (between 1 July 2022 and 31 December 2022):

- 224 children and young people were detained at the AYTC, 113 (50%) of whom were Aboriginal,
- Nearly a third of Aboriginal children detained were on child protection orders, compared to 1 in 5 for non-Aboriginal children.⁵¹

⁵¹ This data is based on daily AYTC population lists that DHS provided to the OGCYP each day during the period.

Table 2: Number of dual involved children and young people, by cultural background – 1 July 2022 to 31 December 2022

	Aboriginal children and young people	Non-Aboriginal children and young people
All children and young people	113	111
Dual involved children and young people	36 	24 

Only 4 of the Aboriginal children on child protection orders who were detained at AYTC served any part of a sentence of detention or imprisonment during the period. The remainder were on remand for the entirety of the period they spent in custody. More information about the nature and extent of issues regarding Aboriginal children spending extensive periods in custody on remand is discussed below: [Remand as a placement.](#)

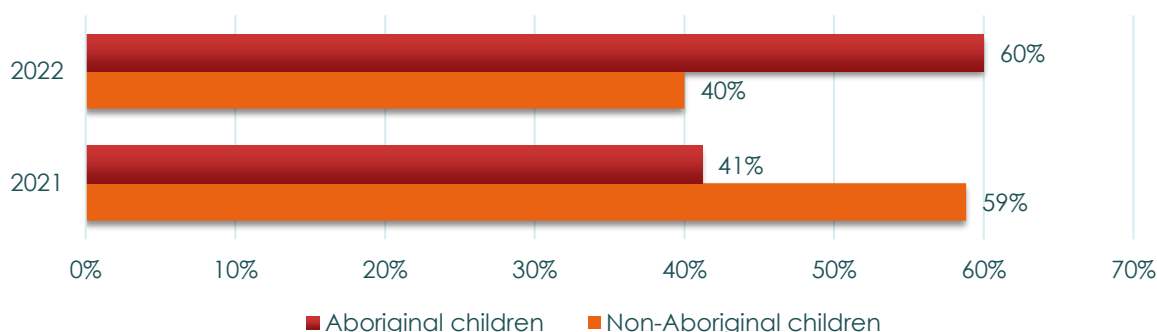
It's not good in here. It's not good stuck in cells
- Young person in care

In order to understand changes in population trends since the conclusion of the SADI project, the OGCYP compared information about the number and personal characteristics of dual involved children and young people detained over a six-month period during the SADI project in 2021,⁵² compared to the six-month period between 1 July 2022 and 31 December 2021.

This analysis demonstrated a significant change in the proportion of dual involved children and young people who were Aboriginal:

- In the 2021 period, 40% of dual involved children and young people were Aboriginal.
- This proportion has now reversed in the 2022 period – with 59% of dual involved children and young people detained being of Aboriginal background.

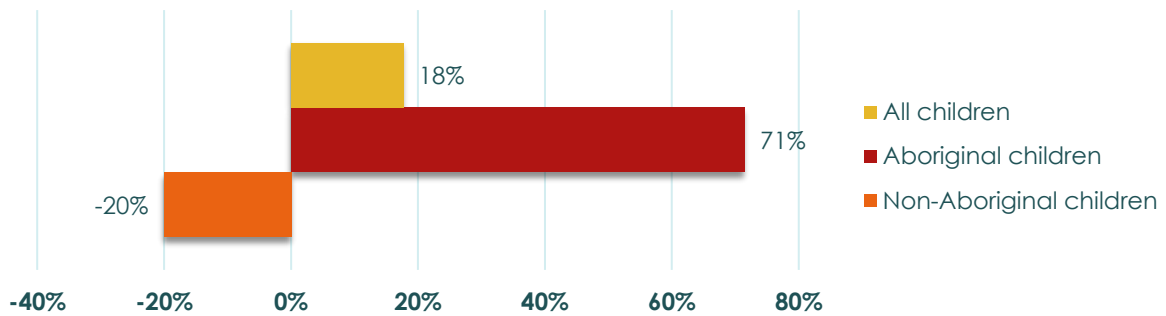
Figure 4: Proportion of dual involved children detained during a six-month period in 2021, compared to a six-month period in 2022



⁵² These figures have been extracted from the interim SADI report, which reported on data collected between 1 February 2021 and 31 July 2021: OGCYP, *The Interim SADI Report* (n 39), Part 2.

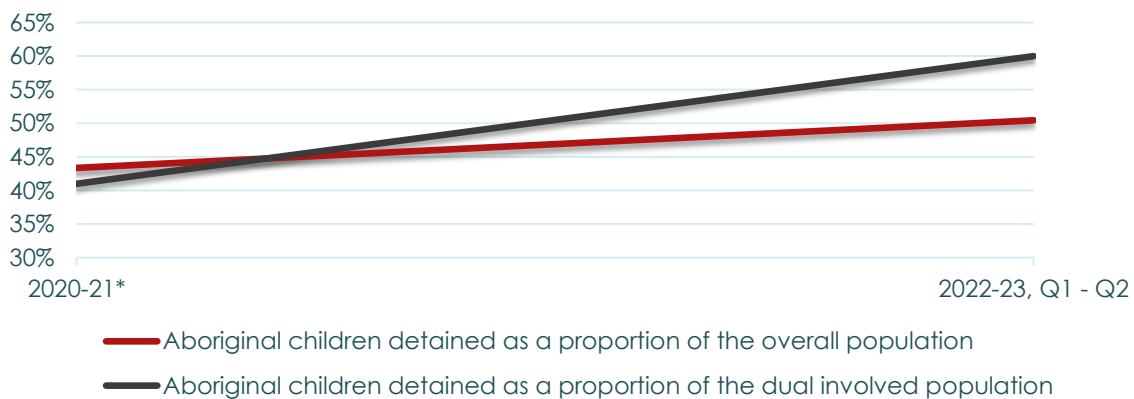
Over this period, there was a **71% increase** in the number of Aboriginal dual involved children and young people detained. Contrastingly, there was a **20% reduction** in the number of non-Aboriginal dual involved children and young people detained.

Figure 5: Growth/reduction in the number of dual involved children detained over a six-month period in 2022, compared to a six month period in 2021



The increase in Aboriginal dual involved detainees reflects an overall trend, regarding growth in the proportion of children and young people on remand or detention at AYTC who are Aboriginal. However, OGCYP analysis indicates that the proportional growth for the dual involved children and young people is progressing at a much higher rate.

Figure 6: Growth in Aboriginal children detained as a proportion of the dual involved population, compared to the overall detention population at AYTC – 2021 compared to 2022⁵³



The OGCYP observes that this growth in the population of Aboriginal children on child protection orders detained at AYTC is occurring parallel to growths in the rate of Aboriginal children in residential care, and on child protection orders more generally. Figures 7 and 8 demonstrate the proportional growth across the care and residential care populations generally, against the rate of growth for Aboriginal children in care, residential care and youth detention.

⁵³ For 2020-21, the proportion of the overall population is based on annual dataset provided by DHS for the full financial year, whereas the proportion of the dual involved population is based on data published in the interim SADI report for the six-month period between February and July 2021: *ibid*.

Figure 7: Growth in the number of children in care and residential care, from 30 June 2021 to 30 June 2022⁵⁴

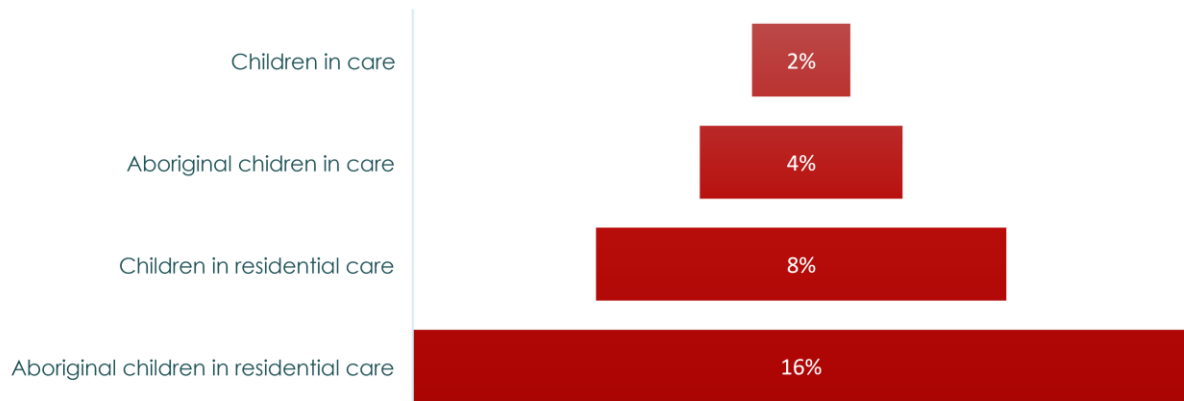
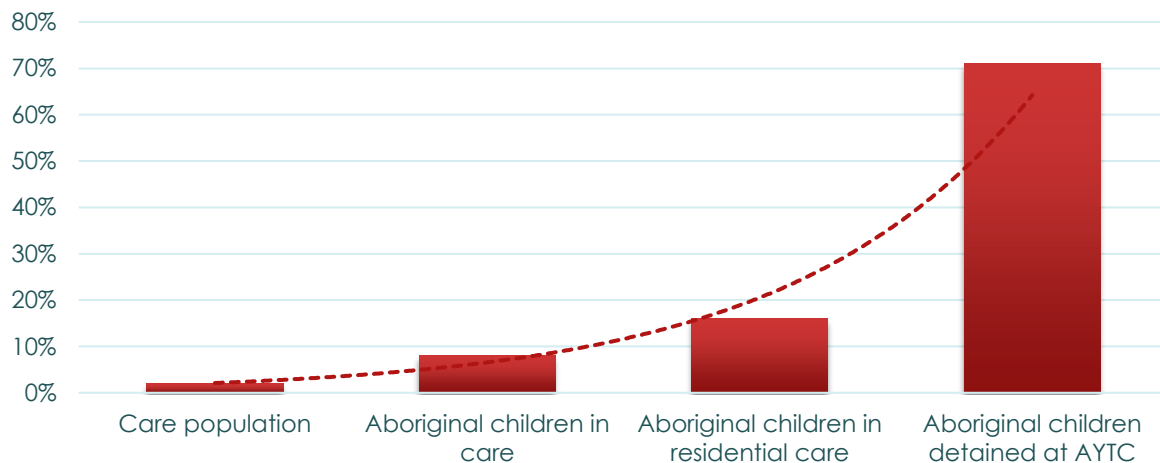


Figure 8: Growth in the number of Aboriginal children in care, residential care and detained at AYTC, between 2021 and 2022⁵⁵



These figures clearly depict an out-of-home care system in South Australia that is under severe pressure, with systemic challenges disproportionately impacting Aboriginal children:

- The number of Aboriginal children in care is growing at twice the rate of growth of the general care population.
- The number of Aboriginal children in residential care is growing at four times the rate of the growth in Aboriginal children living in out-of-home care.
- The number of Aboriginal children in youth detention is growing at over four times the rate of the growth in Aboriginal children living in residential care.

⁵⁴ Figures regarding the growth of children in care and residential care are based on the annual dataset the DCP provides to the OGCYP. This information was presented and discussed in OGCYP, *GCYP 2021-22 Annual Report* (n 43), pp 6-7.

⁵⁵ See above footnote.

As discussed in detail in the Final SADI Report, there is a clear correlation between placement in residential care and being detained at AYTC.⁵⁶ The rising proportion of Aboriginal children and young people in the dual involved population demonstrates that implementing changes to reduce the criminalising effect of the residential care environment is a fundamental priority for First Nations justice, and achieving South Australia's Closing the Gap targets.

So like if I wasn't in care I wouldn't even be here, bro. I wouldn't have even known what this place was

- Young person in care

The SADI Report made 15 recommendations to reduce criminogenic aspects of the residential care environment and reduce the rate of incarceration for dual involved children and young people.⁵⁷ This includes measures aimed at:

- Improving safety in residential care units, Early assessment and interventions for disability support needs, including for children and young people who are not (or would not be) eligible for NDIS services
- Inclusion of cultural support needs into case planning (both identification and implementation)
- Assessing both DCP and police responses to behavioural incidents for children and young people in residential care,
- A specialist DCP team for highly vulnerable dual involved children and young people
- Bolstering independent oversight and advocacy, including for places of detention
- Transition planning from youth detention back to DCP care.

The OGCYP notes that, nine months after delivery of the Final Report to the Ministers for Child Protection and Human Services, there has still been no response from the South Australian government indicating whether these recommendations are accepted and will be implemented – and, if not, why not.

Outcomes for Aboriginal children and young people in care, by placement type

The above evidence, demonstrating poorer outcomes for Aboriginal children and young people in care than their non-Aboriginal peers, carries an imperative for governments to do better and commit to family-led and evidence-based solutions.

In this context, the OGCYP highlights that analysis of 149 audits of Annual Reviews for Aboriginal children in care, between 1 January 2021 and 31 December 2022 demonstrates a positive connection in South Australia between family-based placements – particularly kinship care – and experiencing better outcomes across most wellbeing domains identified for the OGCYP's advocacy and monitoring purposes. The below analysis draws on the data set out in

Attachment 1.

⁵⁶ OGCYP, *The Final SADI Report* (n 40), p 8-9. For a literature review including relevant evidence from other jurisdictions, see OGCYP, *A Perfect Storm? Dual status children and young people in South Australia's child protection and youth justice systems – Report 1* (2019).

⁵⁷ OGCYP, *The Final SADI Report* (n 40), pp 10-18.

Outcomes in residential care

For nearly all substantive wellbeing measures, OGCYP assessed that Wellbeing Statements were 'Met' for a higher proportion of Aboriginal children in family-based care, in comparison to those in residential care.

There was a particularly large difference in outcomes for Aboriginal children and young people in family-based care, compared to residential care, across the following measures in **Table 3** below.

Table 3: Proportion of children for whom Wellbeing Statement is 'Met' (1, 2a, 2b, 5, 7b, 9a), by placement type - 149 OGCYP Annual Review audits for Aboriginal children in out-of-home care, 1 January 2021 to 31 December 2022

No.	Wellbeing statement	Residential care	Family-based care	Diff.
1	This child lives in a kind and nurturing environment	73%	96%	+32%
2a	This child is, and feels, physically and emotionally safe	68%	97%	+43%
2b	This child is, and feels, culturally safe	45%	92%	+104%
5	This child is cared for in a placement that is stable and secure	59%	96%	+63%
7b	This child has contact with their culture and community	23%	52%	+126%
9a	This child is getting an education suited to their needs	68%	78%	+15%

For children living in residential care, the OGCYP was only satisfied that 1 in 5 children had sufficient contact with their culture and community, to satisfy a baseline standard that the Wellbeing Statement was 'Met'.

I don't have a mum and dad or my little brother or my siblings. So it was, it was, yeah, I just felt abandoned, I guess, felt lonely and like, like I didn't have no one

- Young person in care

Less than 1 in 2 children were assessed to be, and feel, culturally safe in these placements.

There were, however, two substantive wellbeing outcomes where OGCYP assessed a higher rate of wellbeing for children and young people in residential care, compared to those in family-based care; namely, access to secure and private personal spaces, and disability services for children with disability.

Table 4: Proportion of children for whom Wellbeing Statement is 'Met' (6, 8b), by placement type - 142 OGCYP Annual Review audits for Aboriginal children in residential and family-based care, 1 January 2021 to 31 December 2022

No.	Wellbeing statement	Residential care	Family-based care	Diff.
6	This child/young person has a secure personal space to which they can withdraw and where personal things are kept safe	100%	91%	-10%
8b	This child/young person has access to disability services that meet their needs	90%	56%	-61%

It is relevant to note that indicators 6 and 8b are influenced by access to material resources and government services.⁵⁸ This indicates that further financial resources are required to support Aboriginal children living in families to adequate housing, and greater efforts are required to support connection to culturally safe disability services that encourage engagement from families caring for Aboriginal children.

Analysis conducted by the OGCYP also indicated that Aboriginal children and young people in family-based care experienced poorer outcomes against all **procedural** wellbeing measures, relating to their involvement with, and treatment by, case workers:

Table 5: Proportion of children for whom Wellbeing Statement is 'Met', by placement type (3, 12a, 12b, 12c) - 149 OGCYP Annual Review audits for Aboriginal children in out-of-home care, 1 January 2021 to 31 December 2022

No.	Wellbeing statement	Residential care	Family-based care	Diff.
3	This child/young person is treated with respect by workers and carers	100%	97%	-3%
12a	This child/young person has regular contact with the same case worker	82%	71%	-15%
12b	This child/young person's case worker is skilled, knowledgeable and respectful	95%	93%	-2%
12c	This child/young person's case worker advocates energetically in their best interests	55%	43%	-28%

There may be understandable reasons why fewer Aboriginal children and young people in family-based care had regular contact with the same case worker, and case workers who energetically advocated in their best interests. This includes different levels of engagement with DCP from families, compared to residential care workers.

⁵⁸ This was a relevant finding of the literature review the NSW Department of Communities and Justice conducted, into outcomes for children with substantiated risk of harm who were placed in out-of-home care compared to those who were not. This research noted difficulties in comparing outcomes for children across the two groups, due to differing access to support services: NSW Department of Communities and Justice (n 15), p 4.

But, concerningly, it may also be indicative of different levels of effort and resources directed to supporting Aboriginal children in family-based care; whether that be due to conscious or unconscious biases, prioritisation decisions, or a skill-based gap around building strong relationships of trust with families caring for Aboriginal children.

Outcomes in different family-based placement types

The OGCYP has also observed areas where there is a significant difference in outcomes for Aboriginal children and young people living in family-based care generally, compared to those specifically living in kinship care.

These results are concentrated across social and emotional indicators; namely, domains relevant to family contact, identity, cultural safety and connection.

Table 6: Proportion of children for whom Wellbeing Statement is ‘Met’, by family-based caregiver type (2b, 7a, 7b, 10) – 149 OGCYP Annual Review Audits for Aboriginal children in out-of-home care, 1 January 2021 to 31 December 2022

No.	Wellbeing statement	Family-based care	Kinship care	Aboriginal family and relatives	Diff. ⁵⁹
2b	This child/young person is, and feels, culturally safe	92%	94%	100%	8%
7a	This child/young person has contact with their family and/or other significant people who provide a sense of identity and belonging	66%	87%	88%	33%
7b	This child/young person has contact with their culture and community	52%	70%	86%	65%
10	This child/young person understands to the full extent of their capacity their life history and why they are in their current circumstances	67%	70%	74%	10%

The OGCYP submits that evidence supporting positive outcomes across domains of cultural connection and wellbeing should be given high priority in evaluating and promoting evidence-based solutions to improve overall outcomes and wellbeing for Aboriginal children and young people.

As discussed above, research out of the Mayi Kuwayu study is providing the evidence to support what is known by communities: that connection to country, cultural beliefs and knowledge and language are protective factors in the lives of First Nations peoples. The below Model of Social

⁵⁹ Difference is calculated as the difference between Aboriginal children living in family-based care generally, and Aboriginal children living with Aboriginal family members, relatives and kin.

and Emotional Wellbeing depicts the inseparable roles of culture, country, community and family in supporting positive outcomes for Aboriginal children and young people’s social and emotional wellbeing. This model highlights both how cultural and family connection is essential to achieving positive wellbeing outcomes, as well as the way these protective factors are impacted by external determinants influencing Aboriginal children and young people as they grow and develop their sense of self and identity.

Figure 9: Model of Social and Emotional Wellbeing, cited in the *National Strategic Framework for Aboriginal and Torres Strait Islander People’s Mental Health and Social and Emotional Wellbeing* (2017)⁶⁰



In line with this understanding of social and emotional wellbeing, the above OGCYP data supports community knowledge and observational evidence that Aboriginal children in kinship placements – and particularly those in placements with Aboriginal kin – are experiencing more positive wellbeing outcomes than Aboriginal children in other placement types.

⁶⁰ Adapted from Graham Gee (et al) *Aboriginal and Torres Strait Islander Social and Emotional Wellbeing* (2013).

ACHIEVING THE OUTCOMES

The preceding discussion aims not only to highlight the OGCYP's concerns about the circumstances of Aboriginal children in care, but also the significant **potential** to improve and achieve **positive outcomes**.

The understanding that living safely within family and culture leads to better lives for Aboriginal children and young people comes with a legal and moral imperative to uphold the right children hold to grow up in these environments.

The Aboriginal Child Placement Principle provides the framework, and the pathway, for Australian governments to reduce the overrepresentation of Aboriginal children in the out-of-home care system.

Applying the ACPP in a meaningful way requires a commitment to all five elements, throughout policy, practice and legislation: **prevention, partnership, placement, participation and connection**.

This Part draws on statistical evidence, and the OGCYP's observational experience, to identify some of the key areas in South Australia where targeted resources are required to improve compliance with the intent and purpose of the Aboriginal Child Placement Principle.

Prevention

Each Aboriginal and Torres Strait Islander child has the right to be brought up within their own family and community⁶¹

The Prevention arm of the ACPP requires committing governmental efforts and resources to support Aboriginal families to safely care for children, on an equitable footing to non-Aboriginal families.⁶²

This involves removing barriers to accessing mainstream support services, investing in the development and expansion of culturally appropriate support services and addressing discriminatory policies, practice and resourcing decisions within the child protection system which contribute to the:

- High rates of removal of Aboriginal children
- Quick 'permanency outcomes' for Aboriginal children, by way of long-term guardianship orders and
- Low rates of attempts to reunify Aboriginal children with their families.

The below discussion analyses information in public datasets to highlight some of the key ways in which South Australia is falling behind other comparable jurisdictions, in putting the efforts and resources where its most needed to keep Aboriginal children and young people with their families.

⁶¹ SNAICC, *Understanding and applying the ACPP* (n 40), p 4.

⁶² Ibid.

Understanding the data

When separated into discrete indicators, the full extent of South Australia's poor performance regarding the Prevention element is not immediately apparent. However, when information across admission and discharge from out-of-home care, permanency outcomes and reunification are read in conjunction, a disturbing picture emerges.







According to most recent publicly available datasets, South Australia has the **second highest rate of removal of Aboriginal children** in the first 2,000 days of their life, before their fifth birthday (32.7 per 1,000 children). Overall, including non-Aboriginal children, South Australia in fact has the **highest rate of removal of all children** in this age bracket (4.6 per 1,000 children).⁶³

This high rate primarily consists of infant removal, with the rate of admissions to out-of-home care for children under the age of 1 year in South Australia as follows:

- **Aboriginal children:** 87.9 per 1,000 children – 86% above the national rate of 47.3 per 1,000 children
- **All children:** 7.7 per 1,000 children – 73% above the national rate of 4.5 per 1,000 children.⁶⁴

While South Australia has a high rate of admissions to out-of-home care in early years, admissions stabilise, equivalent to the national rate, in the 5 – 9 years age bracket (1.5 per 1,000 children, for the overall population). South Australia then falls below the national rate in the 10 – 14 years (1.4 compared to 1.6 per 1,000 children) and 15 – 17 years (1.0 compared to 1.7 per 1,000 children) age brackets. The total rate of 2.2 per 1,000 children puts South Australia fourth in the country overall, for admissions to out-of-home care.

Table 7: All children admitted to out-of-home care in South Australia, 2020-21⁶⁵

Age group	Rate per 1,000 children	Comparison to national rate	National ranking for South Australia	Highest rate: jurisdiction
< 1	13.1	 + 73% above national rate	Highest rate	South Australia
1 - 4	2.6	 + 17% above national rate	Third highest rate	Victoria
5 - 9	1.5	 + 6% above national rate	Fourth highest rate	Northern Territory
10 - 14	1.4	 - 13% below national rate	Below national rate	Northern Territory
15 - 17	1	 - 39% below national rate	Below national rate	Queensland
All children	2.2	 + 10% above national rate	Fourth highest rate	Northern Territory

⁶³ Data sourced from AIHW, *Child protection Australia 2020-21* (n 20), Tables S5.1 and P1.

⁶⁴ Ibid.







⁶⁵ Ibid.

But the story plays out in a different way, with respect to the rate of removal for Aboriginal children. For Aboriginal children:

- South Australia again has the second highest rate of admission to out-of-home in the 5 – 9 years age bracket, 55% above the national rate (15.0 per 1,000 children, compared to 9.7 per 1,000 children nationally).
- Admission to out-of-home care then stabilise at only slightly above the national rate in the 10 – 14 years age bracket (10.6 compared to 10.3 per 1,000 children) and falls below the national rate in the 15 – 17 year bracket (9.4 compared to 11.0 per 1,000 children).

The resulting outcome is that, although South Australia ranks fourth in admissions to out-of-home care for the total child population, it ranks second in admissions for Aboriginal children across all age brackets (17.9 per 1,000 children, compared to 13.3 nationally).

Table 8: Aboriginal children admitted to out-of-home care in South Australia, 2020-21⁶⁶

Age group	Rate per 1,000 children	Comparison to national rate	National ranking for South Australia	Highest rate: jurisdiction
< 1	87.9	 + 86% above national rate	Second highest rate	Victoria
1 - 4	18.4	 + 27% above national rate	Second highest rate	Victoria
5 - 9	15.0	 + 55% above national rate	Second highest rate	Victoria
10 - 14	10.6	 + 3% above national rate	Third highest rate	Victoria
15 - 17	9.4	 - 14% below national rate	Below national rate	Victoria
All children	17.9	 + 35% above national rate	Second highest rate	Victoria

While South Australia is comparable to Victoria in the high rate of admissions to out-of-home care, it diverges from Victoria in the rate of discharge from out-of-home care, including through reunification:







- Discharges from out-of-home care for Aboriginal children in Victoria were 33.6 per 1,000 children – **9% below** the rate of admission (36.5 per 1,000 children)
- Contrastingly, in South Australia, discharges are 12.6 per 1,000 children, which is **42% below** the rate of admission (17.9 per 1,000 children).⁶⁷

This significant gap means that, for every 10 Aboriginal children who are discharged out-of-home care in South Australia, 14 Aboriginal children are admitted. This is the highest rate in the country, with the national ratio being 11 Aboriginal children admitted to out-of-home care for every 10 discharged.

⁶⁶ Ibid.







⁶⁷ Ibid, Table S5.2.

Table 9: Ratio of Aboriginal children entering to exiting out-of-home care in South Australia, 2020-21⁶⁸

Age group	Ratio	Comparison to national rate	National ranking for South Australia	Highest entry to exit rate: jurisdiction
< 1	4.4 : 1.0	 - 0.1 below national rate	Third highest rate	NSW
1 - 4	2.3 : 1.0	 + 0.7 above national rate	Second highest rate	NSW
5 - 9	2.1 : 1.0	 + 0.9% above national rate	Highest rate	South Australia
10 - 14	1.1 : 1.0	 + 0.1% above national rate	Highest rate	South Australia
15 - 17	0.3 : 1.0	 - 0.1% below national rate	Second lowest rate	Queensland
All children	1.4 : 1.0	 + 0.3 above national rate	Highest rate	South Australia

Significantly, South Australia also faces a high ratio of **non-Aboriginal children** entering out-of-home care, compared to exiting care – with 13 non-Aboriginal children entering care, for 10 children exiting care. In comparison, the national ratio is 1.0 : 1.0, meaning that for every non-Aboriginal child that is admitted to care, a non-Aboriginal child is discharged.

Table 10: Ratio of non-Aboriginal children entering to exiting out-of-home care, 2020-21⁶⁹

Age group	Ratio	Comparison to national rate	National ranking for South Australia	Highest entry to exit rate: jurisdiction
< 1	5.9 : 1.0	 + 2.4 above national ratio	Third highest ratio	NSW
1 - 4	2.0 : 1.0	 + 0.8 above national rate	Second highest ratio	ACT
5 - 9	1.4 : 1.0	 + 0.4 above national rate	Second highest ratio	ACT
10 - 14	1.5 : 1.0	 + 0.4 above national rate	Highest ratio	South Australia
15 - 17	0.2 : 1.0	 - 0.2 below national rate	Fourth highest ratio	Queensland
All children	1.3 : 1.0	 + 0.3 above national rate	Highest ratio	South Australia

Aboriginal children in South Australia face a **double jeopardy** in this respect; associated with the socioeconomic drives of their disproportionate representation in the child protection system,

⁶⁸ Ratio calculated by OGCYP, based on data in *ibid*, Tables S5.1 and S5.2.

⁶⁹ *Ibid*.

and factors specific to the South Australian context which adversely impact all children and young people in this jurisdiction.

Technical note: national counting rules

It appears likely that national counting rules regarding admissions and discharges from out-of-home care are obscuring the true extent of the gap between removals of Aboriginal children, and exits from care.

Admissions to out-of-home care excludes children who return to care if they exited care less than 60 days previously. However, children in this category may be counted as a discharge.⁷⁰ As such, it appears that children and young people who return to care shortly after being 'discharged' are not reflected as an admission, which may artificially inflate the rate of exits from care.

To illustrate the point, 324 Aboriginal children were admitted to out-of-home care between 1 July 2020 and 30 June 2021, and 228 Aboriginal children were discharged during that time. As a matter of common sense, it would be expected that the rate of Aboriginal children in out-of-home care would have risen between 30 June 2020 and 30 June 2021 by the difference between entries and exits – namely, 96 children. In fact, the number of Aboriginal children in out-of-home care rose by 118 children (1,519 at 30 June 2020, to 1,637 at 30 June 2021).

A similarly disturbing picture emerges with respect to reunification figures in South Australia.

South Australia is well below the national rate for successful reunifications – 10% in South Australia, compared to the national rate of 16%.⁷¹

But citing the rate of 10% masks the dire state of reunification in South Australia. In fact, only **64 Aboriginal children living in out-of-home care were reunified with their family** in the 2020-21 financial year. This is only 4% of the total number of Aboriginal children in out-of-home care at 30 June 2021 (n: 1,637).⁷²

The discrepancy in these figures arises from the fact that the reunification rate indicator, in accordance with national counting rules, excludes children and young people who are on a long-term finalised guardianship or custody order for the entire reporting period.⁷³ This artificially inflates the success of jurisdictions that rush to permanency outcomes through applying for long-term guardianship orders, or third-party orders, shortly after children come into out-of-home care.

This counting rule is highly significant in the South Australia context, as our jurisdiction has the highest percentage of children and young people in out-of-home care, who are on a long-term finalised guardianship or custody order.⁷⁴

⁷⁰ Although, each child will only be counted once as an admission or discharge for the year: AIHW, *Child protection Australia 2020-21* (n 20), 'Technical Notes' and 'Out-of-Home Care'.

⁷¹ Ibid, Table S5.5.

⁷² Ibid, Tables S5.5 and S6.1.

⁷³ Ibid, Table S6.1, Note 1.

⁷⁴ Ibid, Table S6.2.

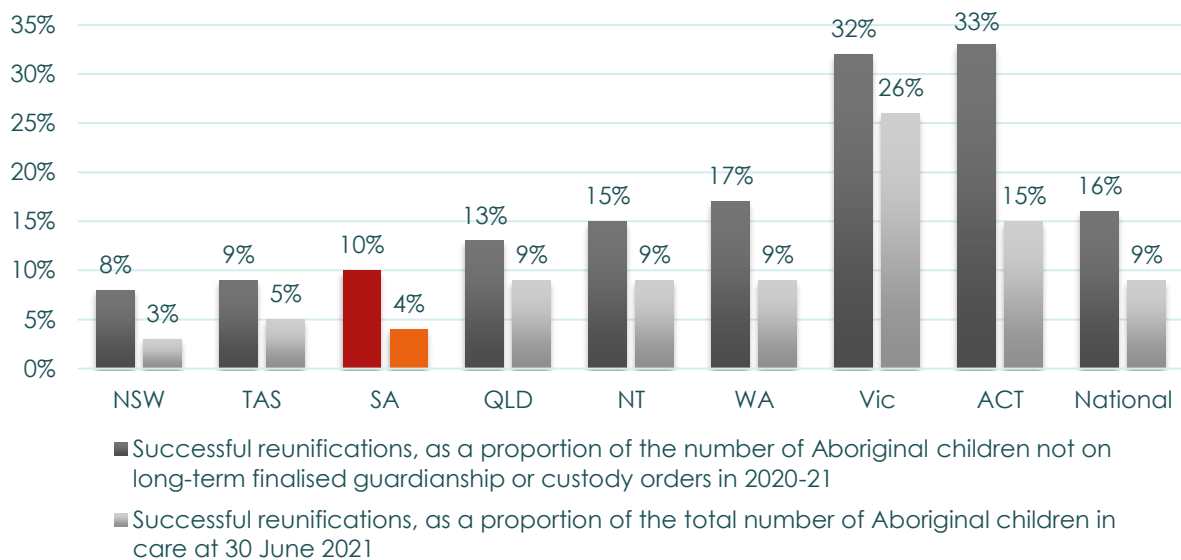
- In South Australia, 81% of Aboriginal children on Care and Protection orders are on finalised long-term orders, with this figure being 77% for children overall
- This is 40% above the national rate (58% for Aboriginal children, with 51% for children overall)

Table 11: Proportion of children on long-term finalised guardianship or custody orders, as a proportion of all children in out-of-home care, by cultural background, 2020-21⁷⁵

Cultural background	%	Comparison to national rate	National ranking for South Australia	Highest entry to exit rate: jurisdiction
Aboriginal	80.7%	↑ + 40% above national rate	Highest rate	South Australia
Non-Aboriginal	75.5%	↑ + 61% above national rate	Highest rate	South Australia
All	77.3%	↑ + 51% above national rate	Highest rate	South Australia

Figure 10 below demonstrates how the high rate of long-term orders in South Australia means that the gap between the reunification rate in our jurisdiction and national rates is much more significant than appears on the face of data published under national counting rules.

Figure 10: Reunification rate for Aboriginal children in out-of-home care in South Australia, 2020-21⁷⁶



In circumstances where more Aboriginal children are coming into care than leaving care, and reunification rates are alarmingly low, South Australia is **not making progress** towards its **responsibility and commitment** to meet **Closing the Gap Target 12**: to reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent within the next eight years.

⁷⁵ Ibid.

⁷⁶ Calculations based on data sourced from ibid, Tables S5.5 and S6.1.

Understanding the story

It is apparent from the above figures that the South Australian government does not have the legislative and social infrastructure in place to support the reunification of Aboriginal children with their families. This is a dangerous trajectory for a jurisdiction with such a high reliance on removals, and placement of Aboriginal children in institutional facilities.

The below discussion explores features of the landscape in South Australia that are contributing to this story.

Systemic failures to partner with, and promote participation, by Aboriginal and communities

South Australian legislation and resourcing is falling behind the rest of the country, in the devolution of power and resourcing to Aboriginal families and communities.

This is discussed in more detail, in the [Partnership](#) and [Participation](#) sections below.

A culture of removal?

In recent years, there has been a significant focus across inquiries, coronial inquests and media reporting in South Australia, about the consequences of failing to remove children and young people from families where they are at risk of significant harm.⁷⁷

It is a core responsibility of child protection departments to investigate the circumstances of children who are at risk of harm, and make the difficult but necessary decision to intervene and enact statutory removal powers when children cannot remain safely with their families. Failing to do so has resulted in tragic and irreparable consequences for children and families.

When we explore areas where improvements are needed to better protect children and young people from harm, we need to remain mindful of the figures set out in the preceding discussion. Namely, that the South Australia child protection system in fact already has **a very high reliance on statutory removal** compared to other jurisdictions, coupled with a **low rate of reunification**. We also have the **highest reliance of any jurisdiction on residential care** as a placement.⁷⁸

Understanding that South Australia is already very quick to remove children, in comparison to other jurisdictions, it is important to explore what this means for those children and young people removed from their families.

As discussed above, outcomes for children in out-of-home care are opaque. But the OGCYP has serious concerns, borne out in evidence and the stories we hear from children and young people, that residential care placements lead to poorer outcomes for children in comparison to their peers living in family-based care. The increasing numbers of children being placed into residential care, which disproportionately impacts on Aboriginal children, demonstrates that our child protection system is unable to cope with the culture of removal, and permanency

⁷⁷ See, eg, *Inquest into the Death of Chloe Lee Valentine: Finding of the State*, 9 April 2015; *Inquest into the Deaths of Amber Rose Rigney and Korey Lee Mitchell: Finding of the State*, 21 April 2022; Malcolm Hyde AO, Independent Report of the Review of Child Deaths at Munno Para and Craigmore (2022).

⁷⁸ OGCYP, *South Australian child protection expenditure from the Productivity Commission's Report on Government Services 2022* (2022), p 1.

outcomes through rushing into long-term guardianship orders for children. And this causes a unique kind of harm to children and young people.

These issues are impacting on Aboriginal children, but they are also impacting on non-Aboriginal children. To complement examination of compliance with the ACPP in the specific application to Aboriginal children, there are also features of general application within South Australia's child protection system contributing to these issues.

In this context, our recent submission to the review of the *CYP Safety Act* considered whether South Australia's child protection legislation is achieving the right balance, in setting the decision-making principles that guide statutory removal decisions.⁷⁹

We noted the history of legislative changes that came into effect in 2016 in South Australia, which redefined decision-making principles from a best interests assessment, to placing primacy on protecting children from 'harm'. This legislative change arose out of recommendations from a coronial inquest; namely, that legislation be amended, to

'make it plain that the paramount consideration is to keep children safe from harm. Maintaining the child in her or his family must give way to the child's safety'.⁸⁰

Under the *CYP Safety Act*, harm and safety is not defined as a holistic concept, encompassing a child's overall wellbeing – including physical, mental, emotional and cultural safety. Instead, it is defined to mean physical or psychological harm, caused by act or omission, including by sexual, physical, mental or emotional abuse or neglect. The definition expressly excludes 'emotional reactions such as distress, grief, fear or anger that are a response to the ordinary vicissitudes of life'.⁸¹

This legislative definition places the focus on injuries that may be inflicted on children and young people, by 'act or omission'. It does not consider the trauma of being separated from families, the impact on the child's human right to grow up within their culture and family or the developmental and emotional consequences for children living in a jurisdiction with the highest rate of reliance on providing care within institutional environments.

telling someone you are being removed is like telling someone you have cancer
- Young person in care

While the OGCYP understand the drivers of the legislative change that occurred in South Australia, we maintain that this change has pushed our jurisdiction out-of-step with contemporary, best practice approaches to child protection decision-making.

Consistent with the status of legislation in all other Australian jurisdictions,⁸² we recommended a legislative amendment to make it explicit that the **best interests of the child** – which includes their safety and wellbeing – is the **paramount consideration** in decision-making.

⁷⁹ The below discussion is based on OGCYP, *Submission to the CYP Safety Act Review* (n 49), pp 2 – 7.

⁸⁰ *Inquest into the Death of Chloe Lee Valentine: Finding of the State*, 9 April 2015, [22.12].

⁸¹ *Children and Young People (Safety) Act 2017* (SA), s 17.

⁸² *Children and Young People Act 2008* (ACT), s 8; *Care and Protection of Children Act 2007* (NT), s 10; *Children, Young Persons and Their Families Act 1997* (Tas), s 10E; *Children, Youth and Families Act 2005* (Vic), s 10; *Children and Community Services Act 2004* (WA), s 7; *Child Protection Act 1999* (Qld), s 5A. New South Wales legislation has a slight variation to the wording of the paramount consideration from other jurisdictions, namely, that the paramount consideration is the safety, welfare and wellbeing of the child: *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 9.

Article 3 of the UNCRC enshrines the child's right to have their best interests taken as a primary consideration in all actions that affect them. This fundamental right is aimed at ensuring that the wellbeing and development of children and young people is placed at the forefront of decision making that impacts upon their lives.⁸³

The best interests principle is at 'the heart of the contemporary out-of-home care legislative and practice framework'⁸⁴ – and it must be, in order to meet Australia's obligations under the CRC. In its concluding observations to Australia in 2019, the United Nations Committee on the Rights of the Child expressly highlighted that inconsistent application of Article 3 across jurisdictions, and the use of different criteria for child removal and placement in OOH, was a human rights issue for children in Australia. The Committee recommended that Australia harmonise child protection models across the country,⁸⁵ and ensure that guidance for determining the best interests of the child is coherent and consistently applied.⁸⁶

In addition to being required by the UNCRC, consideration of a child's best interests is a useful tool for guiding child-focused systems and processes. Rather than applying blanket rules, it provides the important protection for each child to be considered as an individual in their own right, accounting for their age, gender, culture, maturity and other personal characteristics. It is also responsive to the dynamic nature of best interests for developing children and young people, with issues and circumstances that are continuously evolving.

There is no conflict between the right of the child to have their best interests taken into account, and the safety and wellbeing of the child. All human rights for a child are in their best interests. Rather, Article 3 provides the methodology for achieving these rights: that the decision maker should give primary consideration to all of the child's rights under the UNCRC and other international human rights instruments – including UNDRIP – and identify the action that achieves these rights to the fullest extent possible. This includes the child's right to only be separated from their family as a matter of last resort.

Erasing the best interests of a child – including their right to live with their family wherever it is safe and possible to do so – from the legislative basis for decision-making is not solely an academic or legalistic matter. It also impacts upon the framework and organisational culture that child protection practitioners work within. Rather than a requirement to engage in comprehensive rights impact assessments and planning the best care for a child or young person, the system places paramountcy on moving from crisis to crisis and avoiding a narrow, statutorily-defined set of harms. It places child protection workers in a bind where the starting position is that they need to justify decisions to keep children with their families, rather than justifying the reasons why they remove them.

Child protection expenditure in South Australia

High admission, and low discharge and reunification rates cannot be separated from the historical state of South Australia's child protection funding. This history continues to influence and reinforce current practice.

⁸³ UN Committee on the Rights of the Child, *General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para 1)*, 29 May 2013, CRC/C/GC/14, [4].

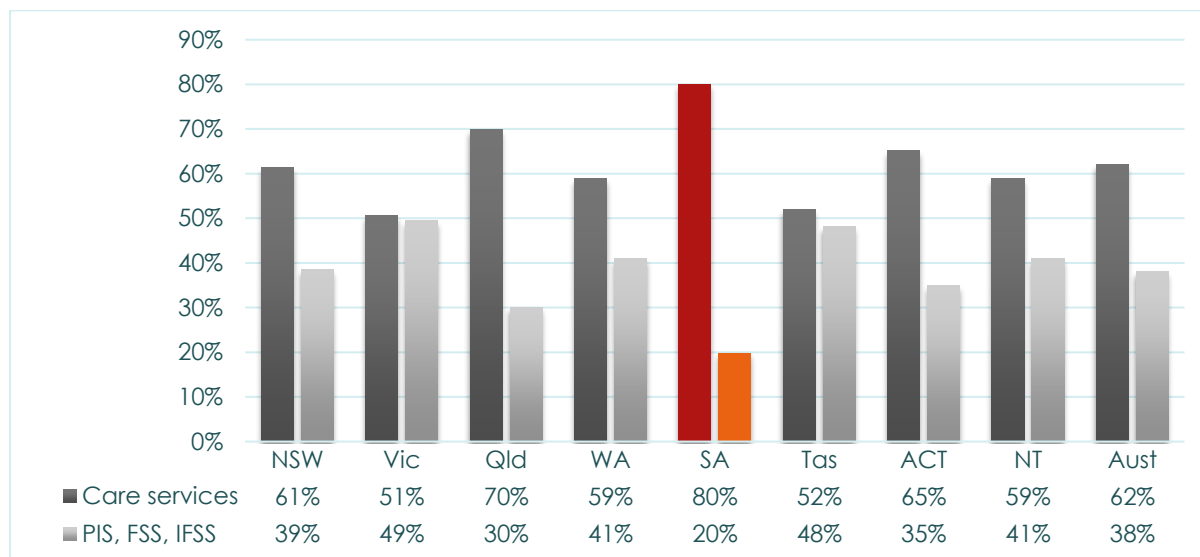
⁸⁴ *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, 15 December 2017), vol 12, [2.6.7].

⁸⁵ UN Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, 1 November 2019, CRC/C/AUS/CO/5-6, [34].

⁸⁶ *Ibid*, [20].

In 2021-22, 80% of South Australia's child protection expenditure was spent on care services. This was the highest proportion nationally, and comes at the cost of expenditure on Protective Intervention Services (PIS), Family Support Services (FSS) and Intensive Family Support Services (IFSS).⁸⁷

Figure 11: Proportion of child protection expenditure by jurisdiction, 2021-22

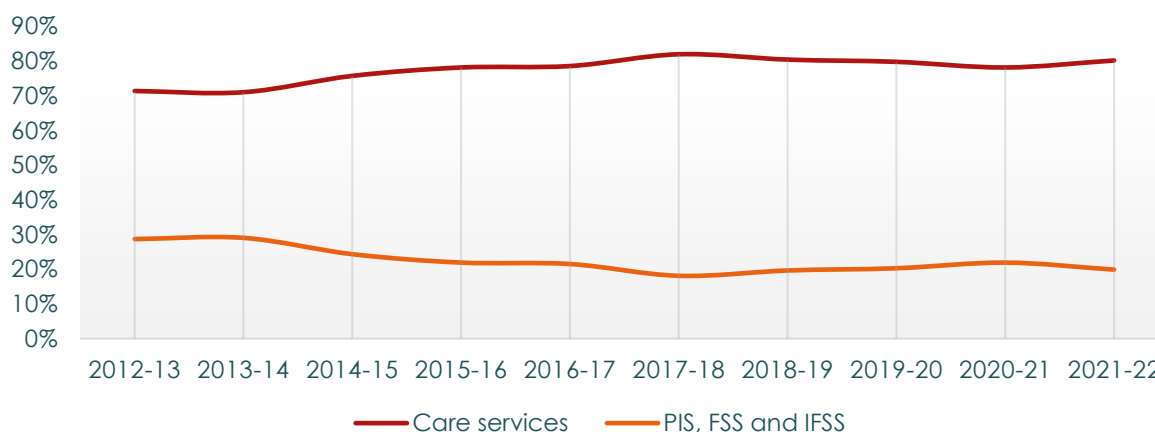


Ten years ago, South Australia started with low funding for PIS, FSS and IFSS, and the proportion of spending has not improved over this time. In fact, the proportion of expenditure on PIS, FSS and IFSS has lowered from 29% in 2012-13 to 20% in 2021-2022.

⁸⁷ Productivity Commission, *ROGS 2023* (n 20), Part F, Section 16, Table 168A. This table includes the following relevant interpretative notes for South Australia:

- 2020-21 included a redesign of services (family support and intensive family support) within the Community Sector Organisations, effective 1 April 2021. The redesign of programs/services has resulted in additional programs being included that were previously excluded as they were universal to all.
- SA expenditure data prior to 2017-18 do not align with the child protection data manual for 2019-20. The revised cost allocation methodology from 2017-18 resulted in a shift of expenditure from Intensive Family Support Services and to a lesser extent Family Support Services to Child Protection.
- All intensive family support services funded by the Australian Government are reported as being provided to children in the NT. However, a small amount of the expenditure is for services provided to children in SA who live in Anangu Pitjantjatjara Yankunytjatjara lands.
- SA: Family Support Services data were not available for 2012-13 so the totals for SA and Australia are understated.

Figure 12: Proportion of child protection expenditure in South Australia: 1 July 2012 – 30 June 2022⁸⁸



The recent child protection review, conducted by Kate Alexander, noted the consequences of the ‘imbalance’ in South Australia’s child protection expenditure:

The spending on early intervention and intensive family support is the lowest of all Australian states and territories. This imbalance is set against clear evidence that investing in quality early intervention and family preservation services stems the flow of children into the care system. ...

The point is not that South Australia should suddenly reduce its spending on children in care. Those children are the responsibility of the state and their wellbeing needs to continue to be of high priority. The imbalance in spending reflects a complex problem and one that is a product of past as well as recent practice. For example, the origins of the growth in and spend on residential care services, frequently for adolescents whose behaviours are challenging, date back to when those young people entered the care system. Instead the point is that the imbalance needs to be met with a concentrated and deliberate effort at the front end of the system, accompanied by whole-of-government and sector commitment because the success of early intervention work often takes years to be evident in the data.⁸⁹

The OGCYP echoes Ms Alexander’s observation in this respect. Without intervention in the current cycle of government spending, it is a predictable and inevitable path that more children will come into out-of-home care when they otherwise may have been able to remain with their families.

Successive governments faced with evidence of poor living environments for children in state-run care and carers struggling to support children in family-based care have responded to the ethical and legal obligation to increase spending in these places. In tight budgets, funding decisions in the child protection space have proceeded in a dichotomous and oppositional manner, with the dollars spent on care services detracting from opportunities for growth in services to support ‘the front end’. So, with each year, as increased spending is required to address immediate harms for children in out-of-home care, departments struggle with the leftovers to implement successful and meaningful reform to improve the lives of children and

⁸⁸ Ibid.

⁸⁹ Kate Alexander, *Trust in Culture: A review of child protection in South Australia* (2022), p 100.

young people in care. The OGCYP is concerned that this story played out again in the 2022-23 State Budget, including forward estimates.

As highlighted by Ms Alexander, diverting this cyclical problem does not mean cutting funds to out-of-home care services; to do so would be unconscionable. But if governments do not find the funds to invest in front end services, the dilemma will continue to worsen and become harder to resolve.

Partnership

The participation of Aboriginal and Torres Strait Islander community representatives, external to the statutory agency, is required in all child protection decision-making, including intake, assessment, intervention, placement and care, and judicial decision-making processes⁹⁰

A partnership approach requires movement **beyond merely consulting** with Aboriginal families and communities about child protection decision-making. Instead, it's about committing to **working together with** families and communities, and being **led by their knowledge and understanding** of how to achieve and promote the best interests of Aboriginal children.

The Partnership element does not call for a once-off event, at the time of removal or placement. Protecting this right, and achieving the benefits of this right for Aboriginal children, requires partnership in all stages of decision-making.

The OGCYP notes a commitment in departmental policies to promote partnership with Aboriginal families and communities in child protection decision-making. However, these policies are insufficient to make up for the more significant structural ways that South Australia is falling behind other jurisdictions – including the funding arrangements, legislation, case management and decision-making models to embed the Partnership element across child protection practice.

Legislation

Aboriginal children and young people, as well as their families and communities, experience unique and culturally specific traumas when engaging with the child protection system. This occurs against a background of the history of racially discriminatory and race-based child removal practices across Australia, including the Stolen Generations. This history means that Aboriginal children and young people and their families can find engaging with government services to be distressing and retraumatising, they may also carry different fears and worries to non-Aboriginal families. Receiving services through Aboriginal organisations can help people feel safe to talk about what is happening within their family and receive culturally tailored supports.

I felt bad, like sad and everything [indistinct] that's when they took my brother and my sister and that, chucked them in the car, but I didn't know what they was so like I didn't move. I were sitting in a tree out the front and they would be, "Come on, mate." The cops would yell at you or the welfare, but I didn't, didn't know what they were taking us for, you know.

- Young person in care

South Australia has taken some steps towards funding Aboriginal organisations to provide relevant child protection services, including residential care and supports for kinship carers.

⁹⁰ SNAICC, *Understanding and applying the ACPP* (n 41), p 4.

However, a commitment to meeting Australian governments' obligations under UNDRIP and the National Closing the Gap Agreement requires greater and more purposeful progress towards implementing a framework of legislation and practice, that provides the space for Aboriginal-led decision making.

As highlighted in the *Bringing them Home Report*:

'Self-determination requires more than consultation, because consultation alone does not confer any decision making authority or control over outcomes. Self-determination also requires more than participation in service delivery because in a participation model the nature of the service and the ways in which the service is provided have not been determined by Indigenous peoples. Inherent in the right of self-determination is Indigenous decision making carried through into implementation'.⁹¹

In our recent submission to the review of the *CYP Safety Act*, we called for legislative reform to allow the progressive delegation of functions to Aboriginal organisations, through an express power in the *CYP Safety Act* to authorise an appropriate officer of an Aboriginal organisation to exercise the legislative powers conferred on the Chief Executive.⁹²

We note that Australian jurisdictions are making progress towards devolving power and resources to Aboriginal organisations at different speeds, and Victoria and Queensland are currently the only Australian jurisdictions that expressly provide for the delegation of legislative functions to Aboriginal organisations.⁹³ An important foundational step to progress reform in South Australia is amending the *CYP Safety Act* to **allow** functions to be performed by Aboriginal organisations so the child protection system can then **grow** into delegating these functions.

OGCYP notes that this legislative reform must occur parallel to an ongoing commitment to build and improve cultural competency within DCP and other mainstream organisations that exercise child protection functions for Aboriginal children.

Funding

The Family Matters Report 2022 highlighted with alarming clarity that South Australia is far off course, with regards to the financial investment required to strengthen the community-controlled sector in our jurisdiction.

[a] mother could be worried about white people
- *Young person in care*

The report outlined that the proportion of FSS and IFSS expenditure that South Australia provided to ACCOs was 'disappointingly low' at 5%; in fact, it was the second lowest in the country, following Tasmania.⁹⁴ In comparison, the ACT and Victoria each contribute over 12% of FSS and IFSS funding to ACCOs.⁹⁵

⁹¹ Commonwealth of Australia, *The Bringing them Home Report* (n 2), p 276.

⁹² See, OGCYP, *Submission to the CYP Safety Act Review* (n 49), pp 11-13.

⁹³ *Child Protection Act 1999* (Qld), s 148BB; *Children, Youth and Families Act 2005* (Vic), s 18.

⁹⁴ SNAICC, *The Family Matters Report 2022* (n 22), p 43.

⁹⁵ *Ibid.*

Case management

Aboriginal representatives on Annual Review panels

The OGCYP positively notes DCP practice to include Aboriginal representation on Annual Review panels for Aboriginal children, where possible. This is a matter of policy though, and is not supported by a legislative obligation.⁹⁶

Annual Review audits for 149 Aboriginal children in care, conducted between 1 January 2021 and 31 December 2022, indicated that compliance with this policy position was reasonably high, at 84%.

The OGCYP intends to continue to monitor the rate at which Aboriginal representatives are invited to participate in Annual Reviews for Aboriginal children. In the absence of a legislative obligation upon DCP, this initiative may benefit from public reporting against published targets, to promote continuous improvement.

Aboriginal recruitment within DCP

A theme that has arisen in OGCYP's engagement with Aboriginal children and young people is the importance children place on having the opportunity to engage with, and receive support from, Aboriginal workers.

Aboriginal children have made the following suggestions to the OGCYP, to further opportunities for engagement with Aboriginal people while they are living in out-of-home care.

Figure 13: Views expressed by Aboriginal children in out-of-home care during OGCYP consultations



Providing Aboriginal children with the opportunities to receive this support directly from Aboriginal workers and carers requires improved efforts to recruit Aboriginal staff to work in mainstream child protection services, and deliver the culturally safe workplaces required to retain staff.

⁹⁶ This is contra to the legislative obligation upon the Contact Arrangements Review Panel to sit with an Aboriginal representative, when determining matters related to Aboriginal children: *Children and Young People (Safety) Regulations 2017 (SA)*, r 26(b).

Placement

Placement of an Aboriginal or Torres Strait Islander child in out-of-home care is prioritised in the following way:

- 1. with Aboriginal or Torres Strait Islander relatives or extended family members, or other relatives or extended family members; or***
- 2. with Aboriginal or Torres Strait Islander members of the child's community; or***
- 3. With Aboriginal or Torres Strait Islander family-based carers.***

If the preferred options are not available, as a last resort the child may be placed with

- 4. a non-Indigenous carer or in a residential setting.***

If the child is not placed with their extended Aboriginal or Torres Strait Islander family, the placement must be within close geographic proximity to the child's family.⁹⁷

The Placement element is embedded in legislation in South Australia, through section 12 of the *CYP Safety Act*.

Section 12 prescribes that Aboriginal children should be placed, 'if reasonably practicable', with a member of a child's family, community or a person of Aboriginal cultural background. This reflects the three preferred placement options above.

If it is not 'reasonably practicable', or it is not in their best interests to do so, the child or young person should be given the opportunity for continuing contact with their family and community.

Before placing an Aboriginal child or young person, a 'recognised Aboriginal or Torres Strait Islander organisation' must be consulted, where it is reasonably practicable to do so, and regard must be had to their submissions. Aboriginal Family Support Services remains the only 'recognised Aboriginal or Torres Strait Islander organisation' in South Australia.

Despite the legislative commitment contained in section 12 of the *CYP Safety Act*, the OGCYP has serious concerns about departmental compliance with the Placement element.

Listening to children and young people's views about placements

It is important to preface discussions about placements for Aboriginal children and young people by acknowledging that individuals in care have varying experiences of their connection to culture, identity, family and community. For many children and young people, their connection is a lifeline. Others may be at an early stage of their connection journey and worry about their place, or they may not want to engage or identify with their cultural connections or ancestry at a particular stage in their life.⁹⁸

Many Aboriginal children and families do not know much information about their cultural, language, familial and Country connections. The child protection system holds significant responsibility for these circumstances, which often arise as a consequence of successive

⁹⁷ SNAICC, *Understanding and applying the ACPP* (n 40), p 4.

⁹⁸ This was a theme that arose in several interviews with Aboriginal children and young people for OGCYP's South Australian Dual Involved Project. See OGCYP, *The Interim SADI Report* (n 38), p 15.

generations of child removals and colonial practices which dislocated people from Country, and punished people for speaking their language and practising their culture.

The child protection system also holds considerable economic resources that can be used to help children and families uncover information about their story and restore connections to their communities. The practices that are being embedded into the child protection system to identify children and young people as Aboriginal are an important part of the healing journey for communities. These processes may identify children and young person who did not know about their Aboriginal heritage before coming into care.

But the process of introducing a child or young person to their Aboriginality, community and culture, is highly delicate. It is very different to helping children and young people to maintain or build upon existing connections they hold. If not handled sensitively, it has the potential to cause significant harm, and can lead to strong negative emotions such as shame, fear, instability and resentment.

Children and families in these circumstances need to have control over their own journey of connection. If the process is rushed or forced, the distress and trauma experienced by children and young people can have the very opposite effect to the intention of the ACPP: to support connection and ensure that children grow to feel safe and comfortable to move between their worlds.

Our office has observed practice issues in this area, where placement decisions are approached in a rigid way that does not leave children and young people with the space to express their views and be introduced to their culture and community in a culturally safe way, at their own pace. We consider that there is a need to provide decision makers and practitioners with much greater support, to assist children and young people to navigate this important area, while feeling safe and supported. To understand, and explore, the reasons why children and young people with Aboriginal ancestry may not identify as Aboriginal or show desire to engage with their culture. And, importantly, how identity and desire to connect with culture may change over the course of their childhood, adolescence and adulthood.

In our recent submission to the legislative review of the Safety Act, the OGCYP highlighted core fundamental approaches that should be utilised in supporting children and young people in these situations, such as:

- Providing opportunities for children and young people to express their views
- Giving due weight to these views, in accordance with trauma-informed practice and the child or young person's age, maturity and development
- Undertaking active efforts to identify key information about the young person's culture and support networks, including their nation and people within their family and community who can support the young person
- Maintaining opportunities for future engagement and connection with their family, community and culture, if these connections cannot be utilised immediately
- Regularly reviewing changes in their views or circumstances throughout their time in care. It is important that review of a young person's circumstances and views occurs throughout case planning processes and is not limited to transition planning when a young person is leaving care.⁹⁹

⁹⁹ OGCYP, *Submission to the CYP Safety Act Review* (n 49), p 13.

National reporting on South Australia’s compliance with the Aboriginal Child Placement Principle

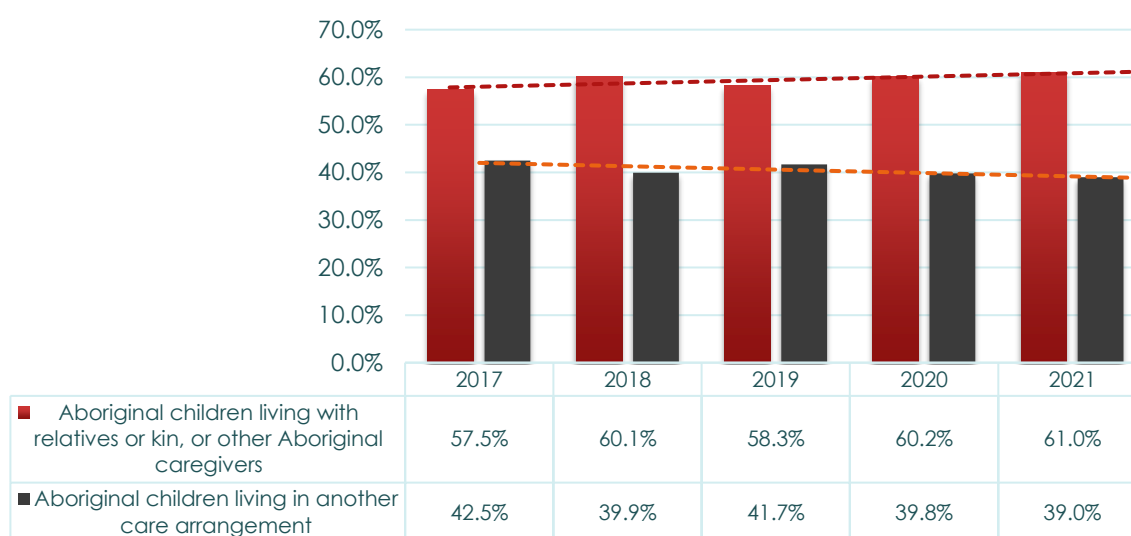
As discussed earlier in this submission, public reporting on the ACPP focuses on the number of Aboriginal children placed with relatives or kin, or family-based care provided by an Aboriginal persons. This is in line with Indicator 3.1 of the *National Standards for Out of Home Care* under the *National Framework for Protecting Australia’s Children 2009 – 2020*. This outcome has now been replaced by the *Safe & Supported: Aboriginal and Torres Strait Islander Outcomes Framework (2023)*, with indicators anticipated to be published in the Monitoring and Evaluation Strategy under development, by the end of 2023.

The below discussion draws on the most recent published national datasets, for the 2020-21 financial year.

At 30 June 2021, 61.0% of Aboriginal children in South Australia were living in one of these placement options. This is below the national rate, of 63.1%.¹⁰⁰

Over past years, there has been a gradual increase in the rate of placement with relatives, kin or other Aboriginal carers. **Figure 14** depicts the increase in this rate, by 3.5 percentage points since 30 June 2017 financial year.

Figure 14: Proportion of Aboriginal children living with relatives or kin, other Aboriginal caregivers or another care arrangement, by financial year, from 2017-18 to 2020-21¹⁰¹



Significantly, although the rate of placement in the general category of ‘relatives, kin or other Aboriginal caregivers’ has increased between 30 June 2017 and 30 June 2021, **placement with Aboriginal family members or other Aboriginal carers has actually decreased:**

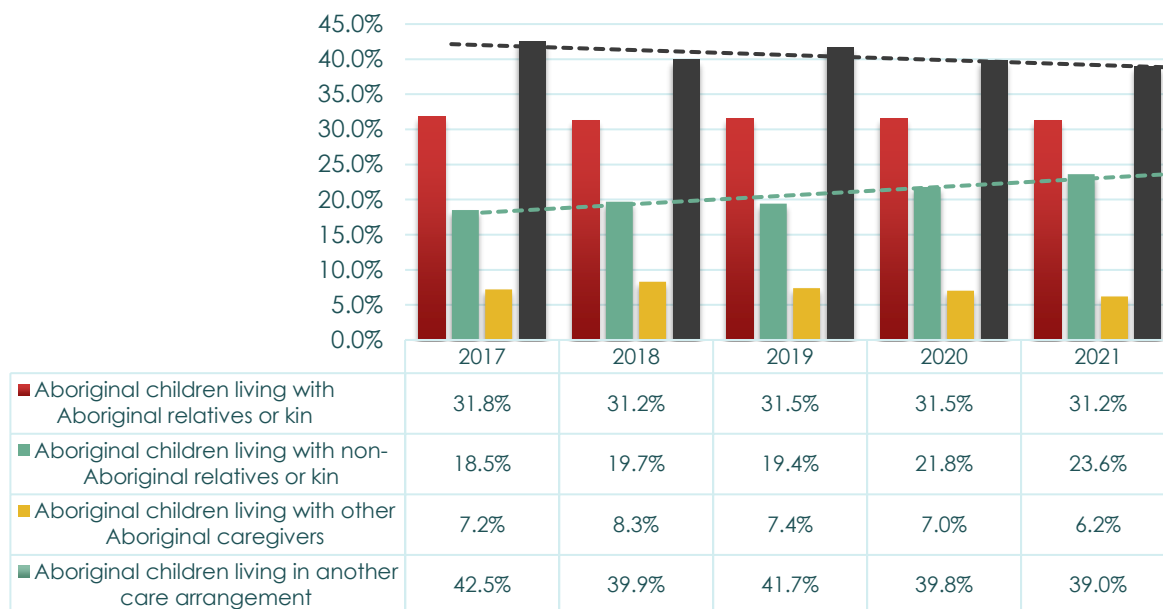
- At **30 June 2017**, 31.8% of Aboriginal children were living with Aboriginal relatives or kin, and 7.2% were living with an Aboriginal carer (overall, **39.0% with Aboriginal carers**)
- In comparison, at **30 June 2021**, 31.2% of Aboriginal children were living with Aboriginal relatives or kin, and 6.2% were living with another Aboriginal carer (overall, **37.4% with Aboriginal carers**).

¹⁰⁰ AIHW, *Aboriginal and Torres Strait Islander Child Placement Principle Indicators* (n 25), Table S1.1.

¹⁰¹ Ibid.

Figure 15 below demonstrates how the gradual increase in Aboriginal children living with family, kin or other Aboriginal carers is occurring through an **increased rate of placement with non-Aboriginal relatives or kin**.

Figure 15: Proportion of Aboriginal children, by financial year and placement type, from 2017-18 to 2020-21¹⁰²



Placements decisions for Aboriginal children should always be guided by the best interests of the individual child. Highlighting the growth in placement with non-Aboriginal family members is not to suggest that placements in this environment is not appropriate or in a particular child’s best interests.

Rather OGCYP highlights this trend as an indicator that departmental efforts to increase the placement of Aboriginal children in kinship care does not appear to be extending to placement with Aboriginal family members. This suggests that departmental resources and efforts directed to the goal of removing systemic discrimination against Aboriginal families in the child protection system are insufficient, misdirected – or, most likely, a combination of both.

An example is continual deficits in the extent to which thorough family mapping is occurring before children and young people are placed (discussed in the ‘Family Mapping’ section below), and structural elements of screening and assessment processes that disproportionately, and potentially inappropriately, exclude Aboriginal kinship carers.¹⁰³

Departmental reporting on South Australia’s compliance with the Aboriginal Child Placement Principle

Further information about the Placement element of the ACPP in South Australia is available in DCP annual reports and state budget papers. DCP reports against a key performance indicator, regarding placements that are ‘in accordance with the Aboriginal Child Placement Principle’.¹⁰⁴

¹⁰² Ibid.

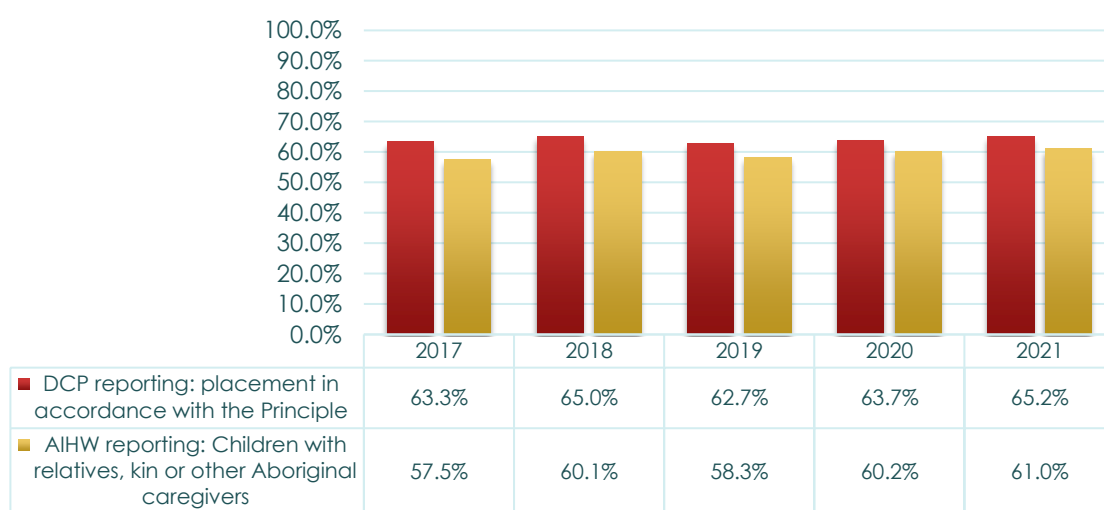
¹⁰³ See, eg, SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation* (2019), p 48 (*A guide to support implementation*); Davis (n 8), p 294.

¹⁰⁴ See, eg, DCP, *2021-22 Annual Report 2021-22* (n 36), p 15.

Significantly, for the same time period as depicted above (30 June 2017 to 30 June 2021), DCP reported a higher rate of placements for Aboriginal children that were 'in accordance with the Aboriginal Child Placement Principle', compared to the figures available in national datasets regarding the indicator that children have been placed with relatives, kin or other Aboriginal caregivers.

DCP reporting about compliance with the placement component in section 12 of the *CYP Safety Act* is based on the number of Aboriginal children and young people who are placed with relatives, kin, other Aboriginal caregivers or **residential care placements** provided by an Aboriginal Community Controlled Organisation (ACCO).¹⁰⁵

Figure 16: DCP reporting regarding compliance with the ACPP, compared to AIHW placement information for Aboriginal children, by financial year, from 2017-18 to 2020-21¹⁰⁶



The OGCYP holds the view that it is problematic to assert that a child has been placed in accordance with the ACPP by reference solely to the nature of the child's placement. While placement type is an important indicator, it is difficult to draw conclusions about compliance with the intent of the Placement component based on statistics alone.

Understanding progress to make placement decisions in accordance with the ACPP requires more fulsome consideration of what measures the department has taken before reaching decisions about where a child should be placed. The ACPP sets the highest priority for placement as a child's family, and requires that Aboriginal children in out-of-home care are given

¹⁰⁵ DCP provides an annual dataset to the OGCYP with data on the total number of Aboriginal children in out-of-home care at the end of the financial year, broken down into the following header placement types: (1) Indigenous children placed with relatives/kin, other Indigenous caregivers or in Indigenous residential care; and (2) Indigenous children placed with another non-Indigenous caregiver or in non-Indigenous residential care. The figures in the overall category of 'Indigenous children placed with another non-Indigenous caregiver or in non-Indigenous residential care reflect the rate of placements that DCP reports are in accordance with the Aboriginal Child Placement Principle.

¹⁰⁶ Data regarding AIHW reporting was sourced from AIHW, *Aboriginal and Torres Strait Islander Child Placement Principle Indicators* (n 26), Table S1.1. Data regarding DCP reporting was sourced from the following annual State Budget papers: Government of South Australia, *State Budget 2022-23: Budget Paper 4, Agency Statements* (2022) vol 1, p 93; Government of South Australia, *State Budget 2021-22: Budget Paper 4, Agency Statements* (2021) vol 1, p 89; Government of South Australia, *State Budget 2020-21: Budget Paper 4, Agency Statements* (2020) vol 1, p 97; Government of South Australia, *State Budget 2019-20: Budget Paper 4, Agency Statements* (2019) vol 1, p 85; Government of South Australia, *State Budget 2018-19: Budget Paper 4, Agency Statements* (2018) vol 1, p 87.

opportunities to build and maintain their connection to culture. This is reflected in the legislative obligations under section 12 of the *CYP Safety Act*.

As such, it cannot be said that an Aboriginal child was placed in accordance with the ACPP simply because they have been placed with an Aboriginal foster carer. Instead, assessing compliance with the ACPP in such circumstances involves consideration of matters such as whether thorough family scoping occurred, and whether there was engagement and partnership with the child's family, community and Aboriginal organisations regarding the placement decision, and whether DCP has given the child or young person adequate opportunity for continuing contact with their family, community and culture.

Reporting in this way presumes compliance with departmental policies; namely, that a child would not be placed in accordance with a lower priority caregiver without exhausting all higher priority options, and that DCP is adequately supporting Aboriginal children in placements to be connected to their culture, community and families within their placements. This impacts transparency and creates challenges for external oversight – including by Aboriginal communities and organisations – to interrogate whether DCP is meeting its commitments to the ACPP.

Reporting in this manner is also indicative of an attitude that treats placements for children and young people as finalised, even if they are not in the highest priority placement – with their families. The placement of Aboriginal children and young people in these circumstances should be regularly reviewed to identify whether evolving circumstances have opened placements that are more aligned with the child's best interests. This is particularly concerning in the context that DCP's performance indicator includes children placed in residential care delivered by an ACCO. **Residential care facilities are not a preferred placement under the ACPP;** in fact, it is explicitly a last resort.

We note that measuring compliance with the ACPP was a key focus of the Victorian Commissioner for Children and Young People's 2015 inquiry into the Aboriginal Child Placement Principle. The Inquiry put forward 20 compliance indicators that should be measured, across the five elements of the ACPP. With respect to **Placement**, the Inquiry concluded that the most significant compliance measure was:

is there evidence that the child was placed at the highest possible level of the ACPP placement hierarchy?¹⁰⁷

The indicators put forward to support this measure were records that the child identifies as Aboriginal, recording information about the child's family and Aboriginal community, and evidence of **considering** a placement with each of the following persons, in order, before moving to the next level:

- Aboriginal extended family or relatives
- Non-Aboriginal extended family or relatives
- An Aboriginal family from the local community within close geographical proximity
- An Aboriginal family from another community
- A non-Aboriginal family living in close proximity.¹⁰⁸

¹⁰⁷ Commissioner for Children and Young People (Victoria), *In the Child's Best Interests: Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria* (2015), pp 89-90 ('*In the Child's Best Interests*').

¹⁰⁸ *Ibid*, p 90.

Even noting the serious limitations with the articulation of DCP's performance indicator, the OGCYP observes that the rate of substantive growth in this indicator is progressing slowly and not always at a forward rate. This is despite the existence of strong departmental policies and resources,¹⁰⁹ and publication of an annual Aboriginal Action Plan¹¹⁰ between 2019 and 2022 financial years to guide application of the ACPP to the standard of 'active efforts', and DCP's *Reconciliation Action Plan: May 2022 – May 2025*.

In fact, DCP's 2021-22 Annual Report noted a 0.7 percentage point decline in the proportion of Aboriginal children placed in accordance with the ACPP at 30 June 2022, compared to 30 June 2021.

The OGCYP further notes a recent decline in the target attached to DCP's performance indicator. For each of the 2019-20, 2020-21 and 2021-22 financial years, the target for this measure was set at 70.0%. However, for the 2022-23 financial year, this performance indicator has been reduced to 65.0%.

Table 12: Department for Child Protection performance indicator outcomes and targets, 2021-22 to 2022-23¹¹¹

Performance indicator	Target: 2021-22	Actual: 2021-22	Target met?	Target adjustment: 2022-23
Number of Aboriginal children 'placed in accordance with the Aboriginal Child Placement Principle'	1270	1133	✗	Reduced to 1187
Proportion of Aboriginal children 'placed in accordance with the Aboriginal Child Placement Principle'	70.0%	64.5%	✗	Reduced to 65.0%

Reducing targets for placing Aboriginal children in accordance with a legislatively mandated approach to making placement decisions demonstrates a certain **complacency towards legislative non-compliance**. It is also inconsistent with the South Australian government's commitments under the *National Closing the Gap Agreement*, and the newly agreed upon *Partnership Agreement on Closing the Gap with the South Australian Aboriginal Community Controlled Organisation Network*.

Family mapping

Family scoping and mapping is one of the most fundamental elements to meeting the Placement component of the ACPP. But, in the experience of our office, it is also an area where the child

¹⁰⁹ DCP, *Aboriginal and Torres Strait Islander Child Placement Principle Practice Paper* (2020); DCP, *Aboriginal and Torres Strait Islander requirements* (online): <<https://www.childprotection.sa.gov.au/service-providers/service-provision-requirements/aboriginal-and-torres-strait-islander-requirements>>.

¹¹⁰ For the most recent action plan, see: DCP, *Aboriginal Action Plan 2021-2022* (2021). Implementation highlights from past action plans are available at: DCP, *Aboriginal Action Plan* (online): <<https://www.childprotection.sa.gov.au/department/about-us/aboriginal-action-plan>>.

¹¹¹ Actual figures sourced from DCP, 2021-22 Annual Report (n 35), p 15. Target figures sourced from Government of South Australia, *State Budget 2022-23: Budget Paper 4, Agency Statements* (n 108), p 93.

protection system in South Australia seriously struggles to meet its obligations and enact best practice.

The OGCYP was concerned to learn from case management (during Annual Review audits conducted in late 2021-22 in a regional area), that the Aboriginal Family Finding and Mapping Team (AFFMT) is reprioritising its resources to 'front end' family mapping (i.e. scoping for Aboriginal children entering care) – in order to place efforts to source appropriate placements as early as possible in a child or young person's entry into care. We understand that, if required, mapping for children and young people on longer term orders can be referred to this program. However, OGCYP have been advised by DCP that they may not be triaged 'in' for service due to reprioritising.

The OGCYP maintains the importance of this program and for regional and remote areas to have full access. As explained by SNAICC – National Voice for our Children:

Practitioners have a duty to actively engage with the child's family, community and local relevant ACCOs in locating a child's kin. Kinship and family scoping programs, ACCO-led programs for placement identification and assessment, and reconnection for children in lower-level placements are all important resources to draw upon in identifying potential kinship placements for children placed in out-of-home care.¹¹²

Our observations through Annual Review audits and advocacy matters have been that, without the support of the AFFMT, staff may only engage in basic family mapping and contact attempts. This office acknowledges that regional locations and staff within those locations often have very good connections with their local community, which may assist with family mapping. However, it is important to note this is variable across areas and locations, relying on relational abilities that may not be sustained when individuals move on or change jobs. Systemically, this does not provide a uniformed approach to local community family mapping opportunities.

Restricted access to AFFMT services lends to concerns about the cultural appropriateness of some placements and cultural safety for children and young people in care. This may, in turn, contribute to reduced compliance with the ACPP and efforts to ensure children and young people can maintain their connection with their Aboriginal family and community.

Residential care as a last resort

Best practice guidance is clear that placement in residential care should be a matter of last resort, after exhausting options to place children with their relatives, kin or other Aboriginal family-based carers.¹¹³

It's a normal house but I mean until you turn to your left there's an office in a bedroom and it's like, "What the fuck?" It's like they got cabinets and everything. It's like that shit's not in a house. You know straight away it's not a house.

- Young person in care

¹¹² SNAICC, *A guide to support implementation* (n 106), p 48.

¹¹³ SNAICC, *Understanding and applying the ACPP* (n 41), p 5.

While DCP policies and strategies clearly articulate the requirement to adhere to the ACPP – including that priority should be given to family-based placements – the OGCYP’s experience is that residential care placements are not truly treated as a last resort.

The below case study, which appeared in the OGCYP’s *Final Report of the South Australian Dual Involved Project*,¹¹⁴ provides an example of an instance where OGCYP advocacy led to a young person being moved from a residential care placement to a kinship placement – and the positive impact this had for intervening in an ongoing cycle of remand and release at the AYTC.

Ellie’s story

The Office of the Guardian for Children and Young People (OGCYP) had worked with Ellie since she first entered youth detention at the age of ten. Since then, she had consistently served excessive periods of time on remand. Ellie is an Aboriginal child in care and has an intellectual disability. Placements in residential care (24 by 2019) did not meet her needs, with almost all being culturally inappropriate. DCP admitted they were unable to keep her safe.

Ellie was incarcerated on six separate occasions during 2019-20 for a total of 340 days, at an estimated cost of \$1,061,225. She was held under remand orders, and most frequently brought back to detention for breaching her bail conditions. OGCYP records indicate that periods of remand were applied due to DCP’s failure to attend court, and/or provide a bail address.

Some officers concluded that Ellie’s incarceration was good for her given that it provided access to education as well as some physical and mental health support and therapeutic programs. Some DCP staff expressed the view that she was safer in detention and she engaged more meaningfully with staff within the detention centre.

Stuck in a cycle of detention, then release back into the same environment within which her offending arose, Ellie told OGCYP Advocates that she did not like her residential care placement and wanted to live with family. She attributed her repeated admissions to the fact that DCP did not advocate hard enough to have her released on bail and SAPOL Prosecutions argued she should be held on remand every time she went to court. Ellie said that DCP representatives often agreed with SAPOL’s remand request.

Despite repeated admissions, no effective intervention or planning occurred to prevent future periods of incarceration.

In early 2021, DCP acknowledged that Ellie’s cycle of detention and return to an unsuitable placement had to be broken. After examining the feasibility of placing her in several metropolitan and regional areas, a culturally appropriate kinship placement was found. Supported by family and immersed in her culture, Ellie did not return to custody.

Ellie’s story has the disturbing appearance of government agencies interacting in a way that deprived Ellie of her liberty, rather than properly exploring alternatives to detention that would meet her needs. The results of Ellie’s family placement and eventual access to cultural support demonstrated that her 24 residential care placements – and the periods of remand and detention she experienced whilst in those placements – were clearly not a matter of last resort.

Unfortunately, this is not an isolated incident; the OGCYP’s observation is that the placement of Aboriginal children in mainstream residential care services, when kinship placements have not been fully explored but are in fact available, is prevalent.

¹¹⁴ Case study is adapted from OGCYP, *The Final SADI Report* (n 40), p 46.

Remand as a placement

The OGCYP has observed that the AYTC appears, at times, to serve as an alternative placement for children and young people in residential care, whose behaviours are deemed difficult to manage in a community setting. This is a statement OGCYP acknowledges is confronting and is often refuted by agencies responsible for the care and placement of children. However, we maintain this line, through operational knowledge and information provided to us from children and young people themselves.

Interviews during the course of the SADI Project confirmed that some children and young people are unnecessarily detained at the AYTC on remand, simply because suitable child protection placements are not available. Several young people told us that DCP representatives had actively advocated for them to remain in custody.¹¹⁵

No, sometimes they try and get me into more trouble. Like one time the thing was like, "Is, do you reckon she's suitable to go back to placement?" and one of the carers was like, "Well, she keeps blowing it. You see, she never comes home and she doesn't go to school," like then feel like I'm like real bad, you know, and sometimes they're, "Oh, we'll keep her in here for longer then," and so I've gone, "so what the fuck man," when she could have said, "Yeah, she's right to come home." I would agree to that, and I would have got out. I only had to do three days and I got out.

- Young person in care

As highlighted in discussion above, 36 Aboriginal children spent time in custody at AYTC during 1 July and 31 December 2022 – but only 4 of these children (11%) served any part of a sentence of detention during that period.¹¹⁶

For those who were admitted to custody and did not serve a sentence of detention:

- Nearly a third (32%) were only admitted once during the period, for less than 7 days,
- Nearly two thirds of young people (65%) were admitted on more than three occasions, spending an average period of 40 days in custody – more than one in 5 days out of the total period (22% of 184 days)
- Nearly one in five young people (19%) were admitted on more than six occasions, spending an average period of 62 days in custody – more than one in three days out of the total period (34% of 184 days)
- The longest period on remand was over 3 months, more than half the period (57%). This young person was then released without serving any period on a detention order.

The OGCYP understands that the reasons young people spend time on remand are complex and multifaceted, including the progression of criminal investigations and prosecution cases, changing circumstances in an individual's life and delays in hearings – both avoidable and unavoidable. However, the significant time spent on remand for Aboriginal children and young people in care, who are then most often released without spending time serving a sentence of detention, reinforces concerns that this time spent in custody is not a matter of last resort. In the

¹¹⁵ OGCYP, *The Final SADI Report* (n 40), pp 72-3.

¹¹⁶ This data is sourced from daily AYTC population lists provided by DHS to the OGCYP each day during the period.

experience of OGCYP staff, remand decisions are too often influenced by considerations regarding the availability and suitability of placements.

The OGCYP reiterates our position that detention should only ever be a matter of last resort, consistent with standards of international human rights,¹¹⁷ incorporated into domestic legislation through the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.¹¹⁸

We also note Recommendation 12 from the Final SADI Report, that relevant South Australian government agencies investigate and address the relationship between residential care, remand and detention to identify discriminatory impacts for children and young people in residential care. This includes the **extent to which bail is denied due to unsuitable DCP placements and/or on DCP's request**.¹¹⁹

As highlighted above, the OGCYP is yet to receive a response from the South Australian government regarding whether these recommendations are accepted – and, if not, why not.

Participation

Aboriginal and Torres Strait Islander children, parents and family members are entitled to participate in all child protection decisions affecting them regarding intervention, placement and care, including judicial decisions¹²⁰

The **Participation** element recognises that the best outcomes are reached when decisions are informed and led by the people affected. Children must be recognised as experts in their own lives, and Aboriginal peoples must be recognised as experts in their own communities.

As highlighted by SNAICC – National Voice for Our Children:

*Aboriginal and Torres Strait Islander children and families **have the best knowledge about the caring strengths and risks that exist in their own families and communities.** Involving family members in decision-making can assist to widen circles of support for parents and children, identify placement options with family and community and ensure families take responsibility for plans to address safety concerns that are of their own making.*¹²¹

The below discussion highlights two key areas where the OGCYP has observed that improvements are required to ensure that Aboriginal children and young people in out-of-home care, and their families, have meaningful opportunities to participate in decision-making about their lives.

Cultural safety in Court

In providing an advocacy function for children and young people in out-of-home care, our office has noted that children and young people and their families often have minimal understanding of the roles and processes of the Youth Court and South Australian Civil and Administrative Tribunal (SACAT) – or are reluctant and hold significant worries about engaging in these processes. While these challenges may be experienced widely throughout the community, there

¹¹⁷ UNCRC (n 5), Article 37b.

¹¹⁸ *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (SA), s 5.

¹¹⁹ OGCYP, *The Final SADI Report* (n 40), Recommendation 12, p 16.

¹²⁰ SNAICC, *Understanding and applying the ACPP* (n 41), p 5.

¹²¹ *Ibid.*

are specific stories and histories behind these concerns for Aboriginal communities that require particular attention.

The inclusion of Aboriginal membership in decision-making bodies is one measure that we consider carries significant potential to promote cultural safety for Aboriginal children and young people and their families and incorporate a First Nations cultural lens into decision making. This is consistent with the National Principles for Child Safe Organisations, which requires child safety and wellbeing to be embedded in organisational leadership, governance and culture. Meeting this standard involves a broad understanding of safety, which encompasses cultural safety.¹²² This means that Aboriginal children and young people, as well as their family and communities, should feel safe when travelling through the child protection system that their culture and identity is acknowledged, respected and unchallenged.¹²³

The OGCYP acknowledges the step to include a legislative requirement in the *CYP Safety Act* that the Contact Arrangements Review Panel (CARP) must, in the case of a review relating to an Aboriginal child or young person, sit with a member who is an Aboriginal person. We consider that a similar requirement has an equally important role to play in judicial proceedings.

This membership should be supported by culturally and trauma informed practice, recognising the importance of taking the time to safely engage with children and young people and their families, build trust and rapport, and receive the fulsome information needed to understand their circumstances, strengths and needs. Culturally safe practice also involves respecting the boundaries children and young people and their families may have, and the reasons why engagement may be retraumatising or inappropriate in some circumstances. Accordingly, in addition to incorporating Aboriginal membership in decision making bodies, it is also important to consider other aspects of Youth Court and SACAT practice that can be improved to support trust, engagement, choice and participation in proceedings. This includes reviewing the physical environment, information and communication practices, and individual and organisational cultural competency.

Supporting cultural competency in SACAT and Court proceedings could include – as recommended by the 2019 NSW Family Culture Review Report – induction and ongoing training about the Aboriginal Child Placement Principle for judicial members.¹²⁴

Creating Aboriginal specific resources, practices and processes is another method that may help foster trust and encourage children and young people and their families to feel culturally safe. An example of positive practice in this respect is Marram-Ngala Ganbu (meaning ‘we are one’ in Woiwurrung language), a weekly Koori Family Hearing Day at the Children’s Court of Victoria. The process incorporates a yarning circle format, physical representations of Aboriginal culture in the environment and Aboriginal staff to provide support to families and coordinate listings.¹²⁵

SNAICC’s 2020 Implementation Review of the Aboriginal Child Placement Principle noted that stakeholders reported higher standards of cultural safety through the Marram-Ngala Ganbu program in comparison to ordinary court processes. One notable feature was the inclusion of a broader network of family to be involved, which also assists the Court to receive higher quality

¹²² Australian Human Rights Commission, *National Principles for Child Safe Organisations* (2018), p 9.

¹²³ SNAICC, *Keeping Our Kids Safe: Cultural Safety and the National Principles for Child Safe Organisations* (2021), p 5.

¹²⁴ Davis (n 8), p 305.

¹²⁵ K Arabena (et al), *Evaluation of Marram-Ngala Ganbu: A Koori Family Hearing Day at the Children’s Court of Victoria in Broadmeadows* (2019), pp 17-18.

information about the needs of children and young people and make decisions in their best interests.¹²⁶

Participation by children and young people

In the course of advocacy matters for children and young people, the OGCYP has identified a number of consistent areas where children and young people have expressed (or we have observed) that they were not adequately consulted in decision making, and/or their views were not given sufficient weight.

In our recent submission into the review of the *CYP Safety Act*, we noted that the legislation contains little protection, by way of concrete obligations on decision makers, to ensure that children and young people have the opportunity to participate and be heard in a process of decision-making that relates to them personally.¹²⁷

The primary focus on enabling participation by children is through broad statements of respect for young people's voices, and general guiding principles regarding involving children in decision-making.¹²⁸ However, there are significant gaps in setting out concrete legislative obligations to provide children with opportunities to meaningfully participate in decision-making processes.

These issues affect all children in care, but our office holds concerns that the structural barriers to children expressing their views and participating in decision-making impacts disproportionately upon Aboriginal children – for reasons including intergenerational mistrust of government officials, speaking English as a multiple language, cross-cultural communication methods, different contextual understandings and, at times, the individual biases of decision-makers.

One area of concern for our office is the participation of children in the Annual Review process. While children and young people may have opportunities to communicate their views to carers and case managers through the course of the year, the Annual Review is an important opportunity for the panel to holistically assess whether care arrangements remain in their best interests.

On this basis, section 85 of the *CYP Safety Act* requires that the panel must notify the child or young person of the review and give them a reasonable opportunity to **make submissions** (in whatever manner the child or young person thinks fit including, if they so wish, in the absence of a person who has care of them). Further, the ACPPs of intervention in section 10 requires that, if a child or young person is able to form their own views on a matter concerning their care, they should be given an opportunity to express those views freely and due weight must be given to these views.

Relevantly, the obligation on the Annual Review panel to seek the views of the child is framed in different terms to that placed on both the Court and SACAT. These provisions require that a child or young person to whom the proceedings relate must be given a reasonable opportunity to **personally present** their views related to their ongoing care and protection, unless the child or

¹²⁶ SNAICC, *Reviewing Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Victoria* (2020), pp 14-15.

¹²⁷ OGCYP, *Submission to the CYP Safety Act Review* (n 48), pp 16-24.

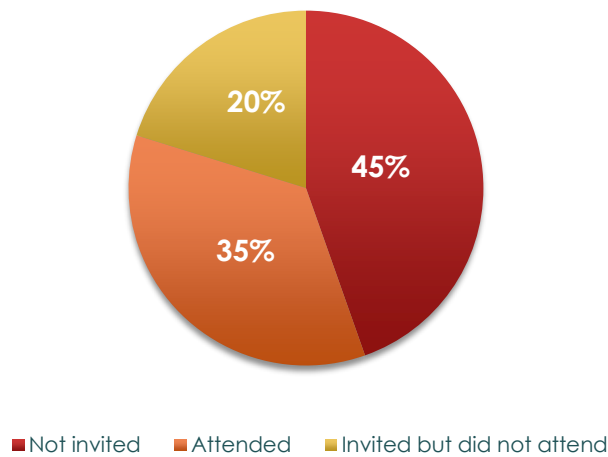
¹²⁸ *Children and Young People (Safety) Act 2017 (SA)*, ss 4, 8 and 10.

young person is not capable of doing so, or to do so would not be in the best interests of the child or young person.¹²⁹

The OGCYP is concerned that the lower obligation on the Annual Review panel to seek a child or young person's views is inconsistent with the high level of decision-making that occurs through this process. For further discussion of this issue and the OGCYP's recommendations for legislative reform, see OGCYP's submission to the review of the *CYP Safety Act*.¹³⁰ Part 3: Promoting the Right to be Heard.

In practice, the OGCYP has consistently observed that there is very low attendance and participation by children at their Annual Reviews. We recently reported that, for the 2021-22 financial year, Annual Review audits identified that:

Figure 17: Attendance of children and young people at Annual Reviews audited by OGCYP – 2021-22



This is consistent with the findings of Annual Review Audits of 383 children in care (149 of whom were Aboriginal) between 1 January 2021 and 31 December 2022, which demonstrated that Aboriginal children had a slightly higher rate of attendance at their Annual Reviews than non-Aboriginal children.

However, the overall presence and strength of the child's voice, as an indicator of their active participation in the Annual Review process, was observed to be significantly lower for Aboriginal children.

¹²⁹ Ibid, ss 62, 159.

¹³⁰ OGCYP, *Submission to the CYP Safety Act Review* (n 49), pp 16-24.

Table 13: Attendance and participation by children in their Annual Review, by cultural background – 383 OGCYP Annual Review audits for children in out-of-home care, 1 January 2021 to 31 December 2022

Indicator	Aboriginal children	Non-Aboriginal children	Diff.
Attendance by child	33%	31%	+6%
Strength of child’s voice in Annual Review (assessed as ‘strong’ or ‘very strong’)	26%	31%	-19%

When children and young people are not in attendance, the OGCYP is concerned that their ‘voice’ at the Annual Review may be largely second-hand and reliant on carer or case manager feedback.

However, it is clear from the above results that higher rates of attendance alone do not contribute to greater participation in decision-making. As discussed in the preceding section on cultural safety in court, improving participation in decision-making process requires rethinking and redesigning non-Aboriginal systems, to make participation in these processes a culturally safe experience for Aboriginal children and families.

Legal representation for children

Another area of concern for the OGCYP is the extent to which Aboriginal children and young people have the opportunity to be represented in proceedings where significant decisions are made about their lives.

SNAICC guidance is clear that the Participation element of the ACPP requires ‘limits on judicial decision-making if children ... are unrepresented’.¹³¹ In South Australia, there are currently significant gaps in legislative obligations to ensure that this occurs, in judicial and quasi-judicial proceedings.

The *CYP Safety Act* does provide that the Court must not hear an application under the Act unless the child or young person to whom the application relates is represented in the proceedings by a legal practitioner, or the Court is satisfied that the child or young person has made an informed and independent decision not to be so represented.¹³²

However, there is no equivalent provision to ensure that children and young people have the opportunity to be represented in SACAT, internal reviews of DCP decisions, or review of contact determinations by the CARP despite the potential that decisions made in those forums will significantly impact on the lives and care of children.¹³³

While the OGCYP understands that it may be appropriate for administrative reviews to be conducted with less formality than court proceedings, children and young people still rely

¹³¹ SNAICC, *Understanding and Applying the ACPP* (n 40), p 8.

¹³² *Children and Young People (Safety) Act 2017 (SA)*, s 64(1).

¹³³ This requirement is absent from provisions relation to SACAT, CARP and internal reviews: *Children and Young People (Safety) Act 2017 (SA)*, ss 85, 95, 157.

significantly on advocacy in these circumstances to navigate processes, explain information in child-friendly ways and ensure they have the opportunity to express their views.

The OGCYP echoes SNAICC guidance in this respect, and asserts that children and young people should be entitled to access advocacy or representation at SACAT, CARP Reviews and with respect to internal reviews of DCP decisions. This includes to ensure that the child or young person understands their rights, and is supported to express their views.

Accordingly, as we advocated in our recent submission to the review of the CYP Safety Act, the OGCYP considers that legislative amendment is required, to provide children and young people with the right to be represented by an advocate in these settings, unless the child or young person has made an informed and independent decision not to be so represented.¹³⁴

Connection

Aboriginal and Torres Strait Islander children in out-of-home care are supported to maintain connection to their family, community and culture, especially children placed with non-Indigenous carers¹³⁵

The Connection element is aimed at ensuring that Aboriginal children 'do not endure the same sense of loss of identity and dislocation from family and community as the Stolen Generations'.¹³⁶

Meeting this outcome requires **active efforts** to connect children and young people with their families and communities. This includes:

- Developing, and regularly reviewing, cultural care plans for every Aboriginal child in care
- Resourcing, supporting and monitoring implementation of these cultural care and case plans
- Holding carers and care teams accountable to the commitments they make, to support Aboriginal children in their care to maintain connection to families, communities and culture,
- Avoiding permanency planning decisions that sever connection to families, communities and culture for Aboriginal children.

As with all elements of the ACPP, improving outcomes for Aboriginal children requires concerted efforts across legislation, policy and practice.

Cultural support plans

The *CYP Safety Act* includes an obligation for case planning to include a part setting out a cultural maintenance plan, where 'relevant to the ... child or young person's circumstances'.¹³⁷

It's important to note that this provision does not explicitly require the development of a cultural support plan for Aboriginal children. In our recent submission to the review of the *CYP Safety Act*, the OGCYP submitted that the legislation should be amended to clarify that cultural support

¹³⁴ OGCYP, *Submission to the CYP Safety Act Review* (n 49), pp 25-6.

¹³⁵ SNAICC, *Understanding and applying the ACPP* (n 41), p 5.

¹³⁶ *Ibid.*

¹³⁷ *Children and Young People (Safety) Act 2017 (SA)*, s 28(2).

plans must be completed for Aboriginal children,¹³⁸ consistent with legislation in other jurisdictions.¹³⁹

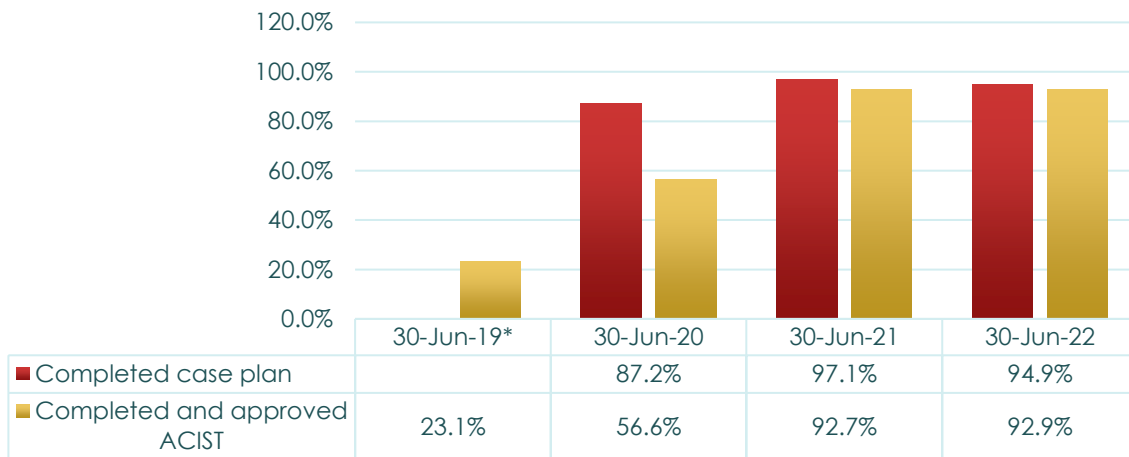
As a matter of practice, cultural maintenance plans for Aboriginal children are completed through incorporation of the Aboriginal Cultural Identity Support Tool (ACIST) into Aboriginal children’s case plans.

To enable transparency and oversight regarding cultural supports, the *CYP Safety Act* includes an obligation that the Chief Executive must report, annually, on the following information regarding Aboriginal children and young people:

- **Section 156(1)(a)(i):** The extent to which case planning includes cultural maintenance plans with input from local Aboriginal communities and organisations
- **Section 156(1)(a)(ii):** The extent to which agreements made in case planning relating to support cultural needs are being met
- **Section 156(1)(a)(iii):** The extent to which children and young people have access to a case worker, community, relative or other person from the same community as the child or young person

DCP commenced reporting on the first measure in the 2018-19 financial year.¹⁴⁰ The most recent DCP annual report, published in October 2022, indicates that the rate of completion for the Aboriginal Cultural Identity Support Tool (ACIST) has more than tripled over the past three years (from 23.1% at 30 June 2019, to 94.9% at 30 June 2022).

Figure 18: Completed case plan and ACIST for Aboriginal children, by financial year – 2019-20 to 2021-22



*DCP was unable to report data regarding the proportion of case plans completed for Aboriginal children at 30 June 2019.

The reporting obligations on DCP have been in place since the commencement of the *CYP Safety Act* on 22 October 2018. DCP’s most recent annual report indicated that the department’s capacity to report under section 156(1)(a)(ii) and 156(1)(a)(iii) – regarding the extent to which

¹³⁸ OGCYP, *Submission to the CYP Safety Act Review* (n 48), p 11.

¹³⁹ See, eg, *Care and Protection of Children Act 2007* (NT), s 70; *Children and Community Services Act 2004* (WA), s 89A; *Children, Youth and Families Act 2005* (Vic), s 176.

¹⁴⁰ DCP, *Department for Child Protection 2018-19 Annual Report* (2019), p 23.

agreements about cultural support needs are met, and access to a case worker, relative or other person from the same community as the young person – is still under development.¹⁴¹

The OGCYP acknowledges DCP efforts to raise the rate of ACIST completion by such a significant amount in a relatively short period of time. We do note though, that in the absence of reporting data under section 156(1)(a)(ii) and 156(1)(a)(iii) of the *CYP Safety Act*, it is not possible to draw conclusions about the **quality** and **implementation** of case plans. In the experience of our office, the mere existence of case plans that incorporate an ACIST for the child is, at times, disconnected from the reality of the support Aboriginal children in care receive to build or maintain connection with their culture, family and communities.

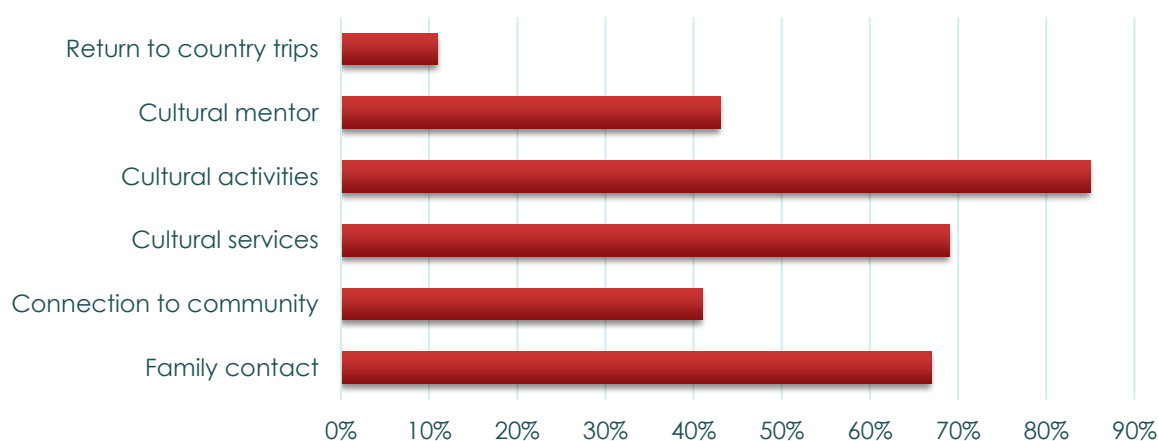
In this context, we note that OGCYP Annual Review audits for 149 Aboriginal children, between 1 January 2021 and 31 December 2022, identified significant concerns regarding the extent to which key indicators of cultural support planning were actually incorporated into the lives of Aboriginal children and young people in care.

While more than **90% of children** who Annual Reviews were audited had a completed ACIST on file, **less than 1 in 2 children** were supported to connect with their communities, or had a cultural mentor.

Further, only **1 in 10** (11%) of Aboriginal children who were not already living on Country were supported with return to Country trips.

Support for family contact and engaging cultural services was relatively higher (67% and 69%, respectively). Support to participate in meaningful cultural activities was the most consistent measure (85%).

Figure 19: Cultural supports implemented – 149 OGCYP Annual Review audits for Aboriginal children in out-of-home care, 1 January 2021 to 31 December 2022



The OGCYP welcomes the opportunity to monitor cultural supports for Aboriginal children and young people on a more wide-scale level, once DCP commences full reporting under section 156(a) of the *CYP Safety Act*.

¹⁴¹ DCP, 2021-22 Annual Report (n 36), p 34.

Contact with family

OGCYP's experience working with all children in care, including Aboriginal children, is that contact with family members and significant people, community connections and loving relationships **matters to children**.

A key component of a child's best interests is their social and emotional wellbeing, developed and maintained through attachments with family, siblings, friends, carers and other people who are important to them.

The status of family life holds a special importance in international rights instruments, with the preamble to the UNCRC recognising that,

the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

The importance of this issue for children and young people is reflected in requests for GCYP advocacy, with family contact and/or contact with other significant people consistently featuring among the top presenting issues.¹⁴²

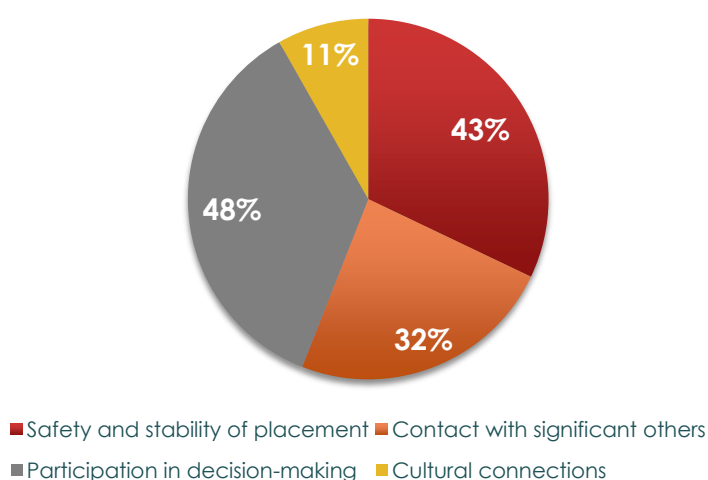
Between 1 January 2021 and 31 December 2022, OGCYP received a total of 253 enquiries, relating to 333 Aboriginal children. Nearly a third (32%) of these enquiries related to contact with significant people in children and young people's lives.

I haven't been home for like seven years now. So my sister was like seven years old when I left and she's 13 now

- Young person in care

More than half of enquiries relating to Aboriginal children in care came directly from the children themselves, or their families (54%).

Figure 20: Proportion of Aboriginal children involved in enquiries made to OGCYP, by subject matter – between 1 January 2021 and 31 December 2022



¹⁴² See, OGCYP, *GCYP 2021-22 Annual Report* (n 43), p 33.

Associated themes for these enquiries included sibling contact, children not having contact with their Aboriginal communities, and not being able to return to Country.¹⁴³

OGCYP Annual Review Audit data

OGCYP Annual Review audits collect information about the number of significant connections children and young people have in their lives and their contact with family members.

Annual Review audits for 149 Aboriginal children and young people in care, between 1 January 2021 and 31 December 2022, showed that 80% of children had 3 or more significant connections in their life. In comparison, audits for 234 non-Aboriginal children and young people in care showed a higher rate of children with this number of connections (85%).

The discrepancy between connection outcomes for Aboriginal and non-Aboriginal children was again reflected in differences with respect to family contact. Aboriginal children were significantly less likely to have contact with their birth parents or extended family.

Table 14: Family contact, by cultural background – 383 OGCYP Annual Review audits for children in out-of-home care, 1 January 2021 to 31 December 2022

Family contact indicator	Aboriginal	Non-Aboriginal	Diff.
Children who have contact with birth mother	46%	59%	-28%
Children who have contact with birth father	28%	31%	-11%
Children who have contact with siblings	78%	78%	N/A
Children who have contact with extended family	67%	72%	-7%

In our recent submission to the review of the *CYP Safety Act*, the OGCYP noted that children and families have limited access to redress, if DCP makes an adverse contact determination.¹⁴⁴

Under section 93 of the *CYP Safety Act*, power to determine contact arrangements lies with the Chief Executive. These arrangements may relate to any person, including parents, siblings, grandparents, previous carers and other members of a child or young person’s family or community.

The only avenue for reviewing a contact determination made by the Chief Executive is through the Contact Arrangements Review Panel (CARP). Contact determinations have expressly been excluded from both internal and SACAT reviews.¹⁴⁵

Despite the far-reaching implications for a child and young person’s wellbeing and social development, the *CYP Safety Act* and Regulations do not expressly provide a process for obtaining the views of children and young people in either the initial contact determination, or the CARP

¹⁴³ Ibid, p 32.

¹⁴⁴ OGCYP, *Submission to the CYP Safety Act Review* (n 49), pp 23-24, 53.

¹⁴⁵ *Children and Young People (Safety) Regulations 2017 (SA)*, r 40; *Children and Young People (Safety) Act 2017 (SA)*, s 158(1).

review. Further, as contact determinations are not reviewable by SACAT, children and young people are unable to access the important procedural right in section 158, which requires SACAT to provide reasonable opportunity for a child or young person to personally present their views.

This exclusion is inconsistent with best practice guidance regarding implementation of the Connection element of the ACPP – which requires opportunities for family contact to be adjudicated by courts, rather than internal departmental processes or administrative arrangements.¹⁴⁶

To improve family contact outcomes for Aboriginal children, we maintain the recommendation we made to the review of the *CYP Safety Act*: that section 158 be amended to include Part 4 of Chapter 7 (contact determinations) in decisions reviewable by SACAT.

¹⁴⁶ SNIACC, 2019, p 68.

CONCLUSION

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.

These dimensions of our crisis tell plainly the structural nature of our problem. This is the torment of our powerlessness.

- Uluru Statement from the Heart, 2017

The pages of this submission set out facts and figures. The numbers and observations we present tell a disturbing – but deeply familiar – story, involving the ongoing structural layers of racism in the South Australian child protection system and how they intersect with real and tangible outcomes for Aboriginal children, young people, families and communities.

Engaging with the solutions to this story means addressing the hard truths about our history in Australia. This involves acknowledging, and facing, the reality that our child protection system grew upon the foundational viewpoint that removing Aboriginal children from their family and their culture was in children’s best interests. The core (unfathomable) belief, at the genesis of the child protection system in this country, was that a child’s Aboriginality was the very thing that they need to be protected from.

As time and generations have moved on, ideas of harm, safety and ‘best interests’ have changed. At a surface level, these concepts meet contemporary social justice principles and express commitments to the rights Aboriginal peoples hold to self-determination, cultural connection and to be free from discrimination.

But as we know and experience, government entities and systems become ‘living things’, with their own ecosystems and survival mechanisms that tend to resist substantive progress and change. These entities and systems evolve disjointedly to the views of individual staff members or leaders who work within them. And improved legal protections, or changing social attitudes to racial discrimination do not, in and of themselves, create a system that genuinely values Aboriginal cultures.

Structurally, the child protection system overall is highly resistant to making room for Aboriginal ways of knowing, being and doing. Aboriginal knowledge about child rearing practices and community developed solutions to social policy challenges have been, for decades upon decades, presented to governments in good faith and in the hope of improving outcomes for children, families and communities. Yet these knowledges and solutions are continually interpreted and reinterpreted into Western governance structures through policy documents, case prompts and boxes on forms – until their context, meaning and purpose is lost or simply reimaged into the Western context. The consequence is that the child protection system’s core work continues to be the removal of Aboriginal children from their families and communities.

So, if the question is: does the sector have good policies and procedures in place to support implementation of the ACPP? Then the answer is, largely, yes.

But if the question is: are Aboriginal children and young people leaving care with strong connections to their culture and community? The answer, too often, is no.

For many Aboriginal children, their story in care is one of sharp and sudden disconnection, and social and cultural isolation. It's a story of loneliness, and separation from their identity, familial supports and community. It's a story of loss – of the knowledge, people and frameworks to make sense of their world, lives and selves, which all individuals need to thrive both as children and adults.

The story follows that Aboriginal children are removed from their families as infants and young children at an alarming rate. The child protection system takes the path of least resistance, and funnels children into the next stage of the system: long-term orders. Connecting children to culture and their families becomes a tick-box exercise, satisfied by planned attendance at NAIDOC and Reconciliation Week events. Unique and individual children and young people experience challenges in their lives – many of which are largely connected to the distress surrounding separation from their family and supports, and systemic racism experienced across multiple and intersecting government services and systems. Placements break down, and the system files Aboriginal children into 'last resort' institutional facilities. Too often, this paves the way to institutionalisation throughout adulthood.

It is deeply troubling to know that this story is familiar to most who read it, and yet it continues to repeat itself over and over again. These stories come from children themselves, families, even Aboriginal staff in the sector who have given their all to influence system and individual case change. The tide of 'system resistance' is so strong, it can feel impenetrable.

These outcomes are not an inevitability for Aboriginal children. The alternative path, which is at the heart of the Aboriginal Child Placement Principle, is to work with families to find out what they need to safely care for their children and put those supports in place. Where children have been removed, the intent of the ACPP is to guide the child protection system towards helping children to come home. And, when that is not possible, the ACPP sets out the ways to make sure that children are surrounded by their families and community, so that they grow up loved, secure, healthy and fulfilled. In the words of Andrew Jackomos, the first Commissioner for Aboriginal Children and Young People in the country:

Culture is not a 'perk' for an Aboriginal child – it is a life-line¹⁴⁷

The challenge for the child protection sector in 2023 is how do we move from writing about the ACPP in departmental policies, to living it in practice?

How do non-Aboriginal governmental structures and communities in Australia move from an understanding that it is wrong to be prejudiced against Aboriginal people, to genuinely celebrating the value, strength and stories of Aboriginal families, cultures and knowledges?

How does the child protection system resist its reliance on case management forms, manuals and procedures, and instead build strong cross-cultural partnerships based on mutual trust, respect and understanding?

¹⁴⁷ Andrew Jackomos, former Victorian Commissioner for Aboriginal Children and Young People.

How does the child protection system use the economic resources gained as one of the largest contemporary arms of this country's colonial government, to be part of the solution to heal and restore First Nations families?

OGCYP's commitment

As highlighted throughout this submission, our office holds the view that current reporting mechanisms to monitor compliance with the ACPP are inadequate to meaningfully assess the **efforts** undertaken by DCP, and the **experience** of cultural connection for children and young people. Placement outcomes and the existence of cultural support plans are important indicators; but, alone, they are not measures of compliance.

We consider that fulsome and independent monitoring, oversight and advocacy is essential to changing the child protection system's approach to the implementation of the ACPP.

The Guardian for Children and Young People's legislative functions include a monitoring role for children in care. Our office is committed to continuing to monitor the implementation of the ACPP at every Annual Review audited for an Aboriginal child or young person, and to publicly report on our findings. This includes across the following areas:

1. **Partnership:** Aboriginal organisations and/or community representatives are invited to participate in every Aboriginal child's Annual Review, and the advice provided leads to actions and outcomes that are reported at each Annual Review.
2. **Participation:** Meaningful and culturally safe opportunities are provided for Aboriginal children and families to participate in the Annual Review process, and demonstration of efforts for inclusion are reported on.
3. **Placement:**
 - a. Thorough family scoping has occurred, and (where applicable) there is evidence that placement options with a child's family have been exhausted before alternative placement decisions are made
 - b. That where children have been placed in residential care, continued family scoping is undertaken until all options have been exhausted. During which, active efforts and extra efforts are made to connect child or young person to their culture.
 - c. That where children have been placed outside their family or cultural group, the Annual Review process involves a genuine assessment of whether it is possible, and in the child's best interests, to reconnect the child to a higher priority placement option
4. **Connection:**
 - a. Fulsome information about the child or young person's identity is recorded on their case file, including family, community, cultural and Country connections
 - b. Case planning sets clear actions, developed in consultation with Aboriginal family members, organisations and community members, to meaningfully connect children with their family, culture, Country and community
 - c. Connection opportunities are individually tailored to the child or young person
 - d. Cultural support planning addresses not only the methods of supporting connection, but how these methods will be resourced and enacted
 - e. The Annual Review process identifies and makes recommendations to address any barriers for the child or young person to have opportunities to build and maintain their cultural connections.

In addition to this ongoing commitment, we would welcome opportunities for our office to direct greater efforts to independent monitoring and oversight of the ACPP in the future, supported by:

- The findings and recommendations arising from the Commissioner for Aboriginal Children and Young People's Inquiry
- Dedicated funding and resources to monitor compliance, provide advice to government and deliver advocacy services for Aboriginal children and young people, specific to the ACPP.

We note that, despite the significant overrepresentation of Aboriginal children in care, the Guardian's statutory functions do not require a special focus on the rights and best interests of Aboriginal children. The OGCYP would welcome legislative change to the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* to address this issue.

To progress the capacity of our office to escalate monitoring and advocacy in this space, we also consider it is necessary for our office to have an **identified position** for an Aboriginal person embedded in our leadership structure, to provide expert guidance and lead strategic advice and advocacy about the cultural needs of Aboriginal children in care.

Accordingly, to support the findings and recommendations of the Commissioner for Aboriginal Children's Inquiry, we put forward the following suggestions about the future role, funding and structure of the OGCYP's monitoring role, regarding compliance with the ACPP in South Australia:

1. An amendment to section 26 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, to insert a requirement that the Guardian for Children and Young People must, in performing functions, pay particular attention to the needs of Aboriginal children and young people in care
2. Dedicated and ongoing funding for a Principal Aboriginal Advocate position in the OGCYP's budget, with responsibility to lead advice and advocacy within our organisation regarding the ACPP.

In addition to the above suggestions, we have set out recommendations from recent OGCYP reports and submissions at **Attachment 3**, which have been referred to throughout this submission. While many of these recommendations are applicable to all children and young people, we believe that these recommendations would particularly improve the circumstances of Aboriginal children and young people in care.

We also propose that it would be valuable to establish dedicated pathways for DCP to seek expert panel guidance, on a regular and ongoing basis, specific to the application of the ACPP and related matters. In this respect, we acknowledge the considerable work and progress over past years, led by SNAICC, to develop national guidance on the implementation of the ACPP. This work has been invaluable to establishing structures for monitoring compliance, identifying areas of systemic reform and improving child protection practice. However, we note that each jurisdiction is unique in the challenges it faces, and the South Australian child protection sector would benefit from a jurisdictional-specific and consistent understanding of the implementation of the ACPP – including the actions that constitute active efforts – across the sector in South Australia. This should be led by First Nations leadership and voices, and tailored to South Australia's specific history, as well as the current state of our legislation, policy and practice.

In this context, we welcome the South Australian government's recent commitment to establish a peak body for Aboriginal Children and Families, with responsibilities to:

- Partner with government to reduce the overrepresentation of Aboriginal children and young people in the child protection system, and
- Strengthen the Aboriginal community-controlled sector to deliver child protection services.

We would be pleased to work with the expertise of the peak body (once established) and the Commissioner for Aboriginal Children and Young People on building an agreed jurisdictional-specific understanding of compliance with the ACPP, to the standard of active efforts. We would also welcome opportunities to collaborate across independent monitoring and advice functions.

Finally, the OGCYP would like to again take the opportunity to express our gratitude for the Commissioner for Aboriginal Children and Young People's work in undertaking an Inquiry into the application of the ACPP in South Australia. We look forward to reading the report and recommendations, to guide our ongoing work to advocate for the rights, and improve the lives, of Aboriginal children and young people in care.

Attachment 1: OGCYP Annual Review audit data tables

Table 1: OGCYP assessment of Wellbeing Standards for 383 children in out-of-home care, by cultural background – 1 January 2021 – 31 December 2022

No.	Wellbeing statement	Aboriginal children		Non-Aboriginal children	
		Met (no.)	Met (%)	Met (no.)	Met (%)
1	This child/young person lives in a kind and nurturing environment	138	93%	210	90%
2a	This child/young person is, and feels, physically and emotionally safe	138	93%	204	87%
2b	This child/young person is, and feels, culturally safe	127	85%	205	88%
3	This child/young person is treated with respect, by workers and carers	145	97%	226	97%
4	This child/young person is receiving appropriate shelter, clothing and nourishment	146	98%	229	98%
5	This child/young person is cared for in a placement that is stable and secure	133	89%	199	85%
6	This child/young person has a secure personal space to which they can withdraw and where personal things are kept safe	138	93%	228	97%
7a	This child/young person has contact with family and/or other significant people who provide a sense of identity and belonging	97	65%	171	73%
7b	This child/young person has contact with their culture and community	70	47%	7	27%
8a	This child/young person has access to health services that meet their needs	141	95%	223	95%
8b	This child/young person has access to disability services that meet their needs*	31	62%	50	68%
9a	This child/young person is getting an education suited to their needs	112	75%	178	76%
9b	This child/young person has the opportunity for artistic, cultural, spiritual, recreational and/or sporting development	138	93%	221	94%
10	This child/young person understands to the full extent of their capacity their life history and why they are in their current circumstances	102	68%	169	72%
11	This child/young person has knowledge of and participates in decisions that affect them	104	70%	177	76%
12a	This child/young person has regular contact with the same case worker	107	72%	155	66%
12b	This child/young person's case worker is skilled, knowledgeable, and respectful	138	93%	221	94%
12c	This child/young person's case worker advocates energetically in their best interests	67	45%	101	43%
Annual Reviews audited for Aboriginal children		No.	% of all audits	No.	% of all audits
All children		149	39%	234	61%
+Non-Aboriginal children from CALD backgrounds		N/A	N/A	26	100%
* Children with disability		50	40%	74	60%

Table 2: OGCYP assessment of Wellbeing Standards for 136 children in kinship care, by cultural background – 1 January 2021 – 31 December 2022

No.	Wellbeing statement	Aboriginal children		Non-Aboriginal children	
		Met (no.)	Met (%)	Met (no.)	Met (%)
1	This child/young person lives in a kind and nurturing environment	50	93%	75	91%
2a	This child/young person is, and feels, physically and emotionally safe	51	94%	79	96%
2b	This child/young person is, and feels, culturally safe	51	94%	75	91%
3	This child/young person is treated with respect, by workers and carers	51	94%	79	96%
4	This child/young person is receiving appropriate shelter, clothing and nourishment	53	98%	81	99%
5	This child/young person is cared for in a placement that is stable and secure	51	94%	75	91%
6	This child/young person has a secure personal space to which they can withdraw and where personal things are kept safe	49	91%	78	95%
7a	This child/young person has contact with family and/or other significant people who provide a sense of identity and belonging	47	87%	70	85%
7b	This child/young person has contact with their culture and community	38	70%	2	50%
8a	This child/young person has access to health services that meet their needs	54	100%	81	99%
8b	This child/young person has access to disability services that meet their needs*	8	47%	16	76%
9a	This child/young person is getting an education suited to their needs	40	74%	68	83%
9b	This child/young person has the opportunity for artistic, cultural, spiritual, recreational and/or sporting development	48	89%	77	94%
10	This child/young person understands to the full extent of their capacity their life history and why they are in their current circumstances	38	70%	69	84%
11	This child/young person has knowledge of and participates in decisions that affect them	36	67%	60	73%
12a	This child/young person has regular contact with the same case worker	35	65%	64	78%
12b	This child/young person's case worker is skilled, knowledgeable, and respectful	48	89%	80	98%
12c	This child/young person's case worker advocates energetically in their best interests	21	39%	39	48%
Annual Reviews audited for Aboriginal children		No.	% of all audits	No.	% of all audits
All children		54	40%	82	60%
+Non-Aboriginal children from CALD backgrounds		N/A	N/A	4	100%
* Children with disability		17	45%	21	55%

Table 3: OGCYP assessment of Wellbeing Standards for 55 children in residential care, by cultural background – 1 January 2021 – 31 December 2022

No.	Wellbeing statement	Aboriginal children		Non-Aboriginal children	
		Met (no.)	Met (%)	Met (no.)	Met (%)
1	This child/young person lives in a kind and nurturing environment	16	73%	21	62%
2a	This child/young person is, and feels, physically and emotionally safe	15	68%	16	47%
2b	This child/young person is, and feels, culturally safe	10	45%	20	59%
3	This child/young person is treated with respect, by workers and carers	22	100%	32	94%
4	This child/young person is receiving appropriate shelter, clothing and nourishment	21	95%	31	91%
5	This child/young person is cared for in a placement that is stable and secure	13	59%	19	56%
6	This child/young person has a secure personal space to which they can withdraw and where personal things are kept safe	22	100%	34	100%
7a	This child/young person has contact with family and/or other significant people who provide a sense of identity and belonging	13	59%	27	79%
7b	This child/young person has contact with their culture and community	5	23%	0	0%
8a	This child/young person has access to health services that meet their needs	20	91%	30	88%
8b	This child/young person has access to disability services that meet their needs*	9	90%	9	75%
9a	This child/young person is getting an education suited to their needs	15	68%	21	62%
9b	This child/young person has the opportunity for artistic, cultural, spiritual, recreational and/or sporting development	20	91%	33	97%
10	This child/young person understands to the full extent of their capacity their life history and why they are in their current circumstances	15	68%	25	74%
11	This child/young person has knowledge of and participates in decisions that affect them	18	82%	30	88%
12a	This child/young person has regular contact with the same case worker	18	82%	29	85%
12b	This child/young person's case worker is skilled, knowledgeable, and respectful	21	95%	34	100%
12c	This child/young person's case worker advocates energetically in their best interests	12	55%	24	71%
Annual Reviews audited for Aboriginal children		No.	% of all audits	No.	% of all audits
All children		22	40%	34	60%
+Non-Aboriginal children from CALD backgrounds		N/A	N/A	3	100%
* Children with disability		10	43%	12	57%

Table 4: OGCYP assessment of Wellbeing Standards for 142 Aboriginal children in out-of-home care, living in family-based care or residential care, by placement type – 1 January 2021 – 31 December 2022

No.	Wellbeing statement	Residential care		Family-based care	
		Met (no.)	Met (%)	Met (no.)	Met (%)
1	This child/young person lives in a kind and nurturing environment	16	73%	115	96%
2a	This child/young person is, and feels, physically and emotionally safe	15	68%	116	97%
2b	This child/young person is, and feels, culturally safe	10	45%	110	92%
3	This child/young person is treated with respect, by workers and carers	22	100%	116	97%
4	This child/young person is receiving appropriate shelter, clothing and nourishment	21	95%	118	98%
5	This child/young person is cared for in a placement that is stable and secure	13	59%	115	96%
6	This child/young person has a secure personal space to which they can withdraw and where personal things are kept safe	22	100%	109	91%
7a	This child/young person has contact with family and/or other significant people who provide a sense of identity and belonging	13	59%	79	66%
7b	This child/young person has contact with their culture and community	5	23%	62	52%
8a	This child/young person has access to health services that meet their needs	20	91%	114	95%
8b	This child/young person has access to disability services that meet their needs*	9	90%	22	56%
9a	This child/young person is getting an education suited to their needs	15	68%	93	78%
9b	This child/young person has the opportunity for artistic, cultural, spiritual, recreational and/or sporting development	20	91%	111	93%
10	This child/young person understands to the full extent of their capacity their life history and why they are in their current circumstances	15	68%	80	67%
11	This child/young person has knowledge of and participates in decisions that affect them	18	82%	79	66%
12a	This child/young person has regular contact with the same case worker	18	82%	85	71%
12b	This child/young person's case worker is skilled, knowledgeable, and respectful	21	95%	111	93%
12c	This child/young person's case worker advocates energetically in their best interests	12	55%	51	43%
Annual Reviews audited for Aboriginal children		No.	% of all audits	No.	% of all audits
All children		22	15%	120	77%
* Children with disability		10	20%	39	80%

Table 5: OGCYP assessment of Wellbeing Standards for 54 Aboriginal children in kinship care by cultural background of caregiver – 1 January 2021 – 31 December 2022

No.	Wellbeing statement	Kinship care - Aboriginal family		Kinship care - Other family	
		Met (no.)	Met (%)	Met (no.)	Met (%)
1	This child/young person lives in a kind and nurturing environment	40	93%	10	91%
2a	This child/young person is, and feels, physically and emotionally safe	41	95%	10	91%
2b	This child/young person is, and feels, culturally safe	43	100%	8	73%
3	This child/young person is treated with respect, by workers and carers	41	95%	10	91%
4	This child/young person is receiving appropriate shelter, clothing and nourishment	42	98%	11	100%
5	This child/young person is cared for in a placement that is stable and secure	41	95%	10	91%
6	This child/young person has a secure personal space to which they can withdraw and where personal things are kept safe	38	88%	11	100%
7a	This child/young person has contact with family and/or other significant people who provide a sense of identity and belonging	38	88%	9	82%
7b	This child/young person has contact with their culture and community	37	86%	1	9%
8a	This child/young person has access to health services that meet their needs	43	100%	11	100%
8b	This child/young person has access to disability services that meet their needs*	6	46%	2	50%
9a	This child/young person is getting an education suited to their needs	32	74%	8	73%
9b	This child/young person has the opportunity for artistic, cultural, spiritual, recreational and/or sporting development	40	93%	8	73%
10	This child/young person understands to the full extent of their capacity their life history and why they are in their current circumstances	32	74%	6	55%
11	This child/young person has knowledge of and participates in decisions that affect them	30	70%	6	55%
12a	This child/young person has regular contact with the same case worker	27	63%	8	73%
12b	This child/young person's case worker is skilled, knowledgeable, and respectful	38	88%	10	91%
12c	This child/young person's case worker advocates energetically in their best interests	19	44%	2	18%
Annual Reviews audited for Aboriginal children		No.	% of all audits	No.	% of all audits
All children		43	29%	11	7%
*Children with disability		13	76%	4	24%

Table 6: OGCYP assessment of Wellbeing Standards for 66 Aboriginal children in other family-based care (1 January 2021 – 31 December 2022)

No.	Wellbeing statement	Aboriginal carer		Non-Aboriginal carer	
		Met (no.)	Met (%)	Met (no.)	Met (%)
1	This child/young person lives in a kind and nurturing environment	17	100%	48	98%
2a	This child/young person is, and feels, physically and emotionally safe	17	100%	48	98%
2b	This child/young person is, and feels, culturally safe	17	100%	42	86%
3	This child/young person is treated with respect, by workers and carers	17	100%	48	98%
4	This child/young person is receiving appropriate shelter, clothing and nourishment	17	100%	48	98%
5	This child/young person is cared for in a placement that is stable and secure	17	100%	47	96%
6	This child/young person has a secure personal space to which they can withdraw and where personal things are kept safe	16	94%	44	90%
7a	This child/young person has contact with family and/or other significant people who provide a sense of identity and belonging	8	47%	24	49%
7b	This child/young person has contact with their culture and community	9	53%	15	31%
8a	This child/young person has access to health services that meet their needs	13	76%	47	96%
8b	This child/young person has access to disability services that meet their needs*	7	70%	7	58%
9a	This child/young person is getting an education suited to their needs	14	82%	39	80%
9b	This child/young person has the opportunity for artistic, cultural, spiritual, recreational and/or sporting development	16	94%	47	96%
10	This child/young person understands to the full extent of their capacity their life history and why they are in their current circumstances	10	59%	32	65%
11	This child/young person has knowledge of and participates in decisions that affect them	11	65%	32	65%
12a	This child/young person has regular contact with the same case worker	15	88%	35	71%
12b	This child/young person's case worker is skilled, knowledgeable, and respectful	17	100%	46	94%
12c	This child/young person's case worker advocates energetically in their best interests	9	53%	21	43%
Annual Reviews audited for Aboriginal children		No.	% of all audits	No.	% of all audits
All children		17	11%	49	33%
Children with disability		10	45%	12	55%

Table 7: OGCYP assessment of Wellbeing Standards for 7 Aboriginal children in other placements (1 January 2021 – 31 December 2022)

No.	Wellbeing statement	Independent living		Self-placed	
		Met (no.)	Met (%)	Met (no.)	Met (%)
1	This child/young person lives in a kind and nurturing environment	4	100%	3	100%
2a	This child/young person is, and feels, physically and emotionally safe	4	100%	3	100%
2b	This child/young person is, and feels, culturally safe	4	100%	3	100%
3	This child/young person is treated with respect, by workers and carers	4	100%	3	100%
4	This child/young person is receiving appropriate shelter, clothing and nourishment	4	100%	3	100%
5	This child/young person is cared for in a placement that is stable and secure	4	100%	1	33%
6	This child/young person has a secure personal space to which they can withdraw and where personal things are kept safe	4	100%	3	100%
7a	This child/young person has contact with family and/or other significant people who provide a sense of identity and belonging	2	50%	3	100%
7b	This child/young person has contact with their culture and community	1	25%	2	67%
8a	This child/young person has access to health services that meet their needs	4	100%	3	100%
8b	This child/young person has access to disability services that meet their needs*	N/A	N/A	0	0%
9a	This child/young person is getting an education suited to their needs	3	75%	1	33%
9b	This child/young person has the opportunity for artistic, cultural, spiritual, recreational and/or sporting development	4	100%	3	100%
10	This child/young person understands to the full extent of their capacity their life history and why they are in their current circumstances	4	100%	3	100%
11	This child/young person has knowledge of and participates in decisions that affect them	4	100%	3	100%
12a	This child/young person has regular contact with the same case worker	2	50%	2	67%
12b	This child/young person's case worker is skilled, knowledgeable, and respectful	3	75%	3	100%
12c	This child/young person's case worker advocates energetically in their best interests	2	50%	2	67%
Annual Reviews audited for Aboriginal children		No.	% of all audits	No.	% of all audits
All children		4	3%	3	2%
*Children with disability		0	N/A	1	100%

Attachment 2: Placement instability data

Table 1: Placement stability for children and young people exiting out-of-home care, by financial year and cultural background – 2017-18 to 2020-21¹⁴⁸

Duration	Number of placements	Aboriginal				Non-Aboriginal			
		2020-21	2019-20	2017-18	Average	2020-21	2019-20	2017-18	Average
All duration	1	30.3%	23.1%	26.4%	26.6%	24.1%	22.3%	32.3%	26.2%
	2+	69.7%	76.9%	73.6%	73.4%	75.9%	77.7%	67.7%	73.8%
	3+	47.4%	62.8%	47.9%	52.7%	48.0%	54.1%	50.6%	50.9%
	4+	31.8%	50.0%	40.7%	40.8%	34.6%	39.1%	38.1%	37.3%
	5+	19.9%	41.0%	34.3%	31.7%	23.3%	25.0%	31.1%	26.5%
	6+	14.7%	30.8%	27.1%	24.2%	15.4%	17.9%	24.5%	19.3%
	7+	11.8%	25.0%	20.7%	19.2%	11.0%	11.4%	20.2%	14.2%
	8+	9.0%	22.4%	17.1%	16.2%	6.7%	8.2%	17.1%	10.7%
	9+	7.6%	20.5%	16.4%	14.8%	4.4%	7.3%	13.6%	8.4%
	10+	6.6%	19.2%	13.6%	13.1%	4.1%	5.2%	10.5%	6.6%
	11+	5.2%	3.2%	12.1%	6.9%	3.2%	0.0%	9.7%	4.3%
1 - 5 months	1	54.1%	55.2%	60.0%	56.4%	57.7%	25.9%	73.5%	52.4%
	2+	45.9%	44.8%	40.0%	43.6%	42.3%	74.1%	26.5%	47.6%
	3+	13.5%	10.3%	5.0%	9.6%	13.5%	22.4%	8.8%	14.9%
	4+	8.1%	0.0%	0.0%	2.7%	1.9%	8.6%	2.9%	4.5%
	5+	0.0%	0.0%	0.0%	0.0%	0.0%	5.2%	0.0%	1.7%
	6+	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	7+	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	8+	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	9+	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	10+	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
	11+	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
6 months +	1	25.3%	15.7%	20.8%	20.6%	18.2%	21.6%	26.0%	21.9%
	2+	74.7%	84.3%	79.2%	79.4%	81.8%	78.4%	74.0%	78.1%
	3+	54.6%	74.8%	55.0%	61.5%	54.1%	60.0%	57.0%	57.0%
	4+	36.8%	61.4%	47.5%	48.6%	40.4%	44.8%	43.5%	42.9%
	5+	24.1%	50.4%	40.0%	38.2%	27.4%	28.7%	35.9%	30.7%
	6+	17.8%	37.8%	31.7%	29.1%	18.2%	21.3%	28.3%	22.6%
	7+	14.4%	30.7%	24.2%	23.1%	13.0%	15.2%	23.3%	17.2%
	8+	10.9%	27.6%	20.0%	19.5%	7.9%	11.3%	19.7%	13.0%
	9+	9.2%	25.2%	19.2%	17.9%	5.1%	10.3%	15.7%	10.4%
	10+	8.0%	23.6%	15.8%	15.8%	4.8%	7.7%	12.1%	8.2%
	11+	6.3%	3.9%	14.2%	8.1%	3.8%	1.6%	11.2%	5.5%

¹⁴⁸ Data provided by to the OGCYP annually. Excludes data for 2018-19, as DCP were unable to verify accuracy of the data that financial year.

Duration	Number of placements	Aboriginal				Non-Aboriginal			
1 year +	1	14.8%	15.5%	18.8%	16.3%	14.3%	23.4%	19.7%	19.1%
	2+	85.2%	84.5%	81.3%	83.7%	85.7%	76.6%	80.3%	80.9%
	3+	63.7%	77.3%	64.6%	68.5%	60.2%	62.1%	65.6%	62.6%
	4+	43.0%	65.5%	57.3%	55.2%	45.5%	46.7%	52.5%	48.2%
	5+	28.9%	54.5%	50.0%	44.5%	32.4%	31.4%	43.2%	35.7%
	6+	23.0%	42.7%	39.6%	35.1%	21.7%	24.9%	33.9%	26.8%
	7+	18.5%	34.5%	30.2%	27.8%	15.6%	18.0%	28.4%	20.7%
	8+	14.1%	30.9%	25.0%	23.3%	9.4%	13.4%	24.0%	15.6%
	9+	11.9%	30.0%	24.0%	21.9%	6.1%	12.3%	19.1%	12.5%
	10+	10.4%	28.2%	19.8%	19.4%	5.7%	9.2%	14.8%	9.9%
	11+	8.1%	5.5%	17.7%	10.4%	4.5%	1.9%	13.7%	6.7%
2 years +	1	13.2%	11.8%	10.6%	11.9%	9.2%	23.4%	17.9%	16.8%
	2+	81.1%	80.0%	72.7%	78.0%	82.1%	67.6%	70.7%	73.4%
	3+	67.9%	83.5%	81.8%	77.8%	66.7%	67.6%	71.5%	68.6%
	4+	45.3%	72.9%	75.8%	64.7%	50.3%	54.8%	63.4%	56.2%
	5+	34.0%	62.4%	66.7%	54.3%	36.9%	39.9%	53.7%	43.5%
	6+	27.4%	54.1%	54.5%	45.3%	25.6%	32.4%	48.0%	35.4%
	7+	22.6%	44.7%	42.4%	36.6%	19.0%	24.5%	42.3%	28.6%
	8+	17.0%	40.0%	34.8%	30.6%	11.3%	18.6%	35.8%	21.9%
	9+	14.2%	38.8%	33.3%	28.8%	7.7%	17.0%	28.5%	17.7%
	10+	12.3%	36.5%	28.8%	25.8%	7.2%	12.8%	22.0%	14.0%
	11+	10.4%	7.1%	25.8%	14.4%	5.6%	2.7%	20.3%	9.5%
5 years +	1	2.8%	12.7%	8.3%	8.0%	4.3%	22.5%	20.0%	15.6%
	2+	97.2%	87.3%	91.7%	92.0%	95.7%	77.5%	80.0%	84.4%
	3+	78.9%	83.6%	86.1%	82.9%	69.6%	66.7%	70.5%	68.9%
	4+	50.7%	80.0%	83.3%	71.3%	56.5%	58.9%	66.3%	60.6%
	5+	38.0%	72.7%	75.0%	61.9%	42.0%	43.4%	56.8%	47.4%
	6+	31.0%	65.5%	66.7%	54.4%	31.2%	36.4%	51.6%	39.7%
	7+	26.8%	58.2%	58.3%	47.8%	23.2%	29.5%	47.4%	33.3%
	8+	21.1%	56.4%	50.0%	42.5%	14.5%	24.8%	41.1%	26.8%
	9+	19.7%	54.5%	50.0%	41.4%	14.5%	24.8%	32.6%	24.0%
	10+	18.3%	49.1%	41.7%	36.4%	8.7%	17.1%	25.3%	17.0%
	11+	15.5%	5.5%	38.9%	19.9%	6.5%	2.3%	24.2%	11.0%

Table 2: Placement duration for children and young people exiting out-of-home care, by financial year and cultural background – 2017-18 to 2020-21¹⁴⁹

Length of time in care	Aboriginal				Non-Aboriginal			
	2020-21	2019-20	2017-18	Average	2020-21	2019-20	2017-18	Average
1 - 5 months	17.5%	18.6%	14.3%	16.8%	15.1%	15.8%	13.2%	14.7%
6 months+	82.5%	81.4%	85.7%	83.2%	84.9%	84.2%	86.8%	85.3%
1 year +	64.0%	70.5%	68.6%	67.7%	70.9%	70.9%	71.2%	71.0%
2 years +	50.2%	54.5%	47.1%	50.6%	56.7%	51.1%	47.9%	51.9%
5 years+	33.6%	35.3%	25.7%	31.5%	40.1%	35.1%	37.0%	37.4%

¹⁴⁹ Data provided by DCP to the OGCYP annually. Excludes data for 2018-19, as DCP were unable to verify accuracy of data that financial year.

Attachment 3: Relevant recommendations from recent OGCYP reports and submissions

Final Report of the South Australian Dual Involved Project (July 2022)

Recommendation 3

3.1 That the South Australian government commission an independent review of DCP and DHS files to investigate and determine:

- a. The rate of compliance with existing policies regarding ... cultural support needs assessments for children and young people in care ... The audit should specifically consider policies that address the: (i) cultural needs of Aboriginal children and young people ...
- c. The extent to which identified strategies, applicable placement principles, access to services and other cultural and therapeutic supports are implemented; and
- d. Targeted recommendations to improve compliance with policies regarding assessment, case planning and implementation of health, disability and cultural support needs.

3.2 That DCP develop and incorporate the following into the assessment and planning procedures for children and young people in care:

- a. Culturally appropriate tools to identify risk factors for offending behaviours;
- b. Targeted therapeutic and other interventions to mitigate these risks and divert potential youth justice involvement; and
- c. Clear placement principles to avoid placing children and young people with an identified risk of offending behaviours in criminogenic environments.

Recommendation 4

That DCP deploy additional effort and investment to support connection to culture for Aboriginal children and young people living in residential care, paying particular attention to the causes of, and potential consequences for, those who have offending behaviours or whose behaviours may risk involvement in the youth justice system.

Recommendation 9

9.1 That DCP and DHS collaborate with other relevant government departments and agencies (such as SAPOL, the Courts Administration Authority, Education and SA Health) to undertake improved collection of data and other information pertaining to the circumstances of dual involved children and young people. Data capture should enable analysis of the following matters for all children and young people in care:

- a. The reasons for and outcomes of police attendance at care placements
- b. Instances and periods of detention in police vehicles and cells
- c. Access to diversion
- d. Access to bail
- e. Bail conditions and breach of bail offences
- f. The practice of 'over-charging'
- g. Charges that relate to conduct occurring at the care placement
- h. Charges that relate to a child or young person being missing from placement; and

- i. Sentencing practices and outcomes.

9.2 That the data should be disaggregated to enable reporting regarding children and young people according to their gender and the following characteristics:

- a. Aboriginal children and young people
- b. Children and young people with disability
- c. Placement type, including residential care.

Recommendation 12

That DCP, SAPOL and the Youth Court collaborate to investigate and address the relationship between bail-related offences, residential care, remand and detention by –

- a. Reviewing bail and remand practices to identify discriminatory impacts for children and young people in residential care. The review should specifically consider:
 - i. Curfew and non-association bail conditions;
 - ii. The extent to which bail is denied due to unsuitable DCP placements and/or on DCP's request;
 - iii. Cautioning or charging a child or young person with the offence of breach of bail; and
 - iv. Sentencing for the offence of breach of bail.
- b. Developing alternative diversionary responses for children and young people who breach bail for offences committed while in residential care (including to prevent the subsequent impact of remand on placement stability).

Recommendation 14

14.1 That DCP establish a specialist 'dual involved team' with the role of –

- a. Providing, expert and intensive support to children and young people involved in the youth justice system
- b. Functioning as a central contact point for other relevant agencies and service providers for dual involved children or young people
- c. Ensuring that placements are available for dual involved children and young people when they are released from Kurlana Tapa
- d. Coordinating appropriate bail addresses and bail support to reduce the incidence of dual involved children and young people breaching bail conditions
- e. Providing intensive case management to facilitate better access to established mainstream service providers and support while young people are within Kurlana Tapa.

14.2 That the specialist DCP dual involved team include Aboriginal designated positions.

OGCYP Submission to the Five-Year Review of the Children and Young People (Safety) Act 2017 (November 2022)

Recommendation 1

The legislation should be explicit that the best interests of the child – which includes their safety and wellbeing – is the paramount consideration in decision making.

Recommendation 2

Embed the standard of 'active efforts' for implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, accompanied by legislative guidance of actions that evidence active efforts.

Recommendation 3

The legislation should be explicit that, for an Aboriginal child or young person, providing the child or young person with the opportunity to maintain and build connections to their Aboriginal family, community and culture must be taken into account in determining their best interests.

Recommendation 4

Embed a requirement in the legislation that a case plan for an Aboriginal child or young person must include a cultural plan. The plan should be developed in consultation, to the fullest extent possible, with the child or young person, their family, community and relevant Aboriginal organisations.

Recommendation 5

Consult with Aboriginal organisations and community members in South Australia about methods to improve cultural safety for children and young people and their families in Youth Court and SACAT proceedings.

Recommendation 6

The following provisions of the CYP Safety Act be amended to mirror the requirement on the Court and SACAT to provide reasonable opportunity for children and young people to personally present their views unless they are not capable of doing so or it would not be in their best interests:

- a. Section 85: Annual reviews
- b. Section 157: Internal reviews
- c. Section 95: Review by Contact Arrangements Review Panel

Recommendation 7

The CYP Safety Act should include a provision that requires children and young people to be represented by an advocate in SACAT proceedings, Internal Reviews and CARP Reviews, unless the child or young person has made an informed and independent decision not to be so represented.

Recommendation 19

The CYP Safety Act should expressly acknowledge that sibling relationships are a matter that should be taken into account in determining the best interests of children and young people.

Recommendation 21

Amend section 158 of the CYP Safety Act, to remove the exclusion of Chapter 7, Part 4 (contact determinations) from decisions reviewable by SACAT.

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