1) a member of the young person's family,
2) a member of the young person's community or language group,
3) another Aboriginal or Torres Strait Islander person who is familiar with the young person's community or language group, and
4) another Aboriginal or Torres Strait Islander person who does not come under point 2 or 3 above.

Only when an appropriate placement cannot be found in the groups listed above can Aboriginal or Torres Strait Islander young people be placed with a non-Aboriginal and Torres Strait Islander carer.

The Indigenous Child Placement Principle is consistent with article 20 of the CRC which requires states to consider ensuring continuity in the young person's upbringing and to the young person's ethnic, cultural and linguistic background. There is, however, a lack of consistency in the implementation of the Indigenous Child Placement Principle. Aboriginal and Torres Strait Islander young people are often not placed according to the preferred placement hierarchy because there is a shortage of Aboriginal and Torres Strait Islander carers. There are several explanations in regards to this shortage. These include:

- the sheer number of young people being placed into out of home care and the small population from which carers may be recruited;
- overly bureaucratic requirements within the recruitment screening process and the time it takes to complete these;
- many Aboriginal and Torres Strait Islander adults suffer an inability to care for young people on account of trauma and disadvantage associated with the Stolen Generations;
- some Aboriginal and Torres Strait Islander adults are unable to reconcile their attitudes and emotions associated with the welfare system, on account of past government practices, including forced removal; and
- the requirement to undergo a police check. A high number of Aboriginal and Torres Strait Islander adults have police records and whilst for many, the records relate to minor offences such as public intoxication, they are often used against them. Furthermore, Aboriginal and Torres Strait Islander adults may choose not to volunteer as a carer so as to avoid the emotional trauma associated with past charges that may possibly reflect previous discrimination against them, particularly in relation to policing practices.[14]

To date there is no policy or practice framework in relation to the Indigenous Child Placement Principle to aid its implementation.

Disappointingly, once an Aboriginal or Torres Strait Islander young person enters the child protection system there is no guarantee that they will no longer suffer from abuse and neglect. Abuse and neglect can continue to occur as the cultural and spiritual needs of Aboriginal and Torres Strait Islander young people are often not met. Connections with families and communities are often lost particularly when young people are removed and placed in different communities with non-Aboriginal and Torres Strait Islander families. One way in which this issue can be

[14] Bromfield, L M et al, 'Why Standard Assessment Processes are Culturally Inappropriate' (2010) *Australian Institute of Family Studies National Child Protection Clearinghouse Promising Practices in Out-of-Home Care for Aboriginal and Torres Strait Islander Carers and Young People: Strengths and Barriers, Paper 3,* 4.

addressed is through the development of a cultural plan which encompasses how cultural, spiritual, family and community connections are to be developed and maintained. However, it is a major concern that only 20 per cent of Aboriginal and Torres Strait Islander young people considered to require a Cultural Plan have one developed.[15]

In addition, there is a focus by State and Territory governments on indicators that measure a young person's administrative status (e.g. reasons for coming into care, time in care, racial and ethnic identity, compliance with the Aboriginal and Torres Strait Islander Child Placement Principle, continuity of caseworkers and location of placement), rather than on indicators that reflect a young person's wellbeing and functioning. When indicators of wellbeing are assessed they tend to only include health, educational progress and social development. Wellbeing indicators for Aboriginal and Torres Strait Islander young people should also include cultural and spiritual dimensions as well as physical, emotional and social status. Other indicators of the young person's community, including housing, employment and other economic indicators should also be included when assessing wellbeing.

If a young person's needs are not met they can exhibit disruptive and anti-social behaviour, and a concerning pattern has developed whereby this type of behaviour by young people in alternative care is being criminalised when the situation gets beyond the control of the carer. For example, a young person may break a window because of unaddressed anger management issues and the carer (or refuge worker etc) then calls the police to deal with this behaviour. It is the NATSILS experience that young people in alternative care can accumulate large numbers of insignificant charges and convictions in this way.

These same concerns have been raised by the Committee in the past.[16]

**Proposed Question to the Australian Government:**

What capacity building and oversight measures are in place to ensure that the Indigenous Child Placement Principle achieves 100 per cent implementation and that Aboriginal and Torres Strait Islander young people retain their connections to community and culture once they are placed in alternative care?

**Suggested Recommendations:**

2. That a policy and practice framework be developed in consultation with Aboriginal and Torres Strait Islander peoples and organisations in relation to the Indigenous Child Placement Principle to aid its implementation.

3. That a review occurs of the screening processes of Aboriginal and Torres Strait Islander carers, in particular, kinship carers, and that resources be allocated to support and increase the number of potential carers.

[15] Brouwer G E, *Own motion investigation into the Department of Human Services Child Protection Program* (2009) Ombudsman's report presented to Parliament 25 November 2009, 77.
[16] Committee on the Rights of the Child, above n 2, [37 (b) -38 (c), 39].

4. That Cultural Plans be developed and updated at least every six months for each Aboriginal and Torres Strait Islander young person in care in consultation with the young person's family and community.

5. That wellbeing indicators be developed in consultation with Aboriginal and Torres Strait Islander peoples and Aboriginal and Torres Strait Islander organisations and peak bodies to assess and enhance the wellbeing of Aboriginal and Torres Strait Islander young people.

### 3.4 Family Reunification after Separation (art 10)

Reunification is a long standing issue for Aboriginal and Torres Strait Islander peoples, tracing back to the Stolen Generations. Aboriginal and Torres Strait Islander young people are less likely than non-Aboriginal and Torres Strait Islander young people "to have contact with their families, particularly in the first few months after being placed into care, and are also less likely to be reunified with their families."[17] This is because Aboriginal and Torres Strait Islander young people can often be placed outside of their communities and resource issues arise in respect to reunification.

**Proposed Question to the Australian Government:**

What measures are in place to ensure that the child protection system focuses on family reunification as a priority, when in the best interest of the young person?

**Suggested Recommendation:**

6. That, when in the best interest of the young person, the child protection system focus on family reunification as a priority and that until reunification is achieved Cultural Plans (see recommendation 4) be strictly followed so as to maintain the young person's connection to community and culture.

### 3.5 Separation from Parents Due to Detention or Imprisonment (art 9)

Aboriginal and Torres Strait Islander adults are disproportionately over-represented in the criminal justice system. The rate of imprisonment for Aboriginal and Torres Strait Islander adults was 14 times higher than the rate for non-Aboriginal and Torres Strait Islander adults at 30 June 2009 and between 2000 and 2008, the Aboriginal and Torres Strait Islander adult imprisonment rate rose by approximately 40 per cent.[18]

As a result of such incarceration rates, separation from parents due to detention or imprisonment is a core issue affecting Aboriginal and Torres Strait Islander young people as the Committee recognised in its most recent Concluding Observations.[19] The management of this issue and ensuring that Aboriginal and Torres Strait Islander young people maintain personal relations and direct contact with a detained or imprisoned parent/s on a regular basis, where it is in the young person's best interest, is far from consistent and is regularly unsatisfactory.

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[17] Richardson, N et al, 'Cultural Considerations in Out-of-Home Care' (2007) *Australian Institute of Fomily Studies National Protection Clearinghouse Research Brief, No. 8*, 5.
[18] Australian Bureau of Statistics, *Prisoners in Australia* (2009).
[19] Committee on the Rights of the Child, above n 2, [40].

The case study below captures what can be at stake when a young person's right to maintain relations and have regular contact with an incarcerated parent is not protected.

**Case Study: access to an incarcerated parent**

"Joel" is a young Aboriginal boy who has been removed from his mother's care and placed in a youth group home between the ages of 11-14 after unsuccessful foster care placement. Joel's father is in prison and Joel has no contact with his mother. Joel's father calls Joel regularly from prison.

In order for Joel to visit his father, the Department of Human Services (DHS) has to arrange a prison visit and a case worker has to ensure Joel is mentally prepared to see his father in a prison environment and cope with going to a prison himself. Both Joel and his father reportedly have a positive and calming effect on each other.

Joel is moved from one group home to another. Joel's father has no knowledge of where his son has gone and is unable to speak to Joel on the phone for 2 weeks. Unable to contact his son, Joel's father becomes increasingly agitated and displays aggression. As a result, Joel's father is moved to a higher security prison. As a result of this relocation, all links and support networks between Joel, the DHS caseworker and the prison needed to be reconstructed which further delayed Joel's access to his father. This is an extremely onerous task considering Joel's fathers poor literacy and consequent difficulties fulfilling the paperwork requirements to gain telephone and face-to-face contact with his son. This results in considerable time passing before Joel and his father can have visitation.

A VALS staff member involved in the above case stated that Joel and his father better cope with their lives when in contact with each other and that the difficulty they had in accessing time with each other made life extremely stressful for both parties. The staff member also stated that it is a common perception that prison visits are the bottom of the priority list for DHS workers.

Given the over-representation of Aboriginal and Torres Strait Islander adults in detention and the over-representation of Aboriginal and Torres Strait Islander young people in alternative care, it is likely that many other Aboriginal and Torres Strait Islander young people are in similar situations to that of Joel and his father. As the Committee has recommended previously,[20] the Government must do more to ensure that Aboriginal and Torres Strait Islander young people with an incarcerated parent/s are provided with adequate support and that contact between the young person and parent/s is maintained.

**Proposed Question to the Australian Government:**

To what extent is arranging contact between Aboriginal and Torres Strait Islander young people in alternative care and their incarcerated parent/s and other family members, where it is in the young person's best interest, a priority within the child protection system and what oversight mechanisms are in place to monitor the regularity of such visits?

**Suggested Recommendation:**

7. That the child protection system educate its staff on the importance of maintaining relations between Aboriginal and Torres Strait Islander young people in alternative care and their incarcerated parent/s and ensure that such contact is designated as a priority area within their case work obligations.

[20] Committee on the Rights of the Child, above n 2, [41].

## 4. Aboriginal and Torres Strait Islander Young people and the Justice System

### 4.1 Over-representation of Aboriginal and Torres Strait Islander Young people in the Criminal Justice System

Aboriginal and Torres Strait Islander young people remain significantly over-represented in the criminal justice system. While rates of non-Aboriginal and Torres Strait Islander young people in detention have decreased, rates of Aboriginal and Torres Strait Islander young people in detention continue to increase.[21] Aboriginal and Torres Strait Islander young people comprise 54 per cent of all young people in detention, despite comprising only 5 per cent of the 10-17 year old age group, and are detained at a rate 26 times higher than that of non-Aboriginal and Torres Strait Islander young people.[22] There are a number of causal factors related to this over-representation.

In the recent Senate Committee report 'Doing Time – Time for Doing' the over-representation of Aboriginal and Torres Strait Islander young people in the criminal justice system has been linked to the broader social and economic disadvantage faced by many Aboriginal and Torres Strait Islander peoples, including:

- poor education outcomes;
- high rates of unemployment;
- high levels of drug and alcohol abuse;
- over-crowded housing and high rates of homelessness;
- over-representation in the child protection system;[23]
- high levels of family dysfunction; and
- a loss of connection to community and culture.[24]

In addition to these, through their experience on the ground the NATSILS have also identified the following as critical factors that contribute to the over-representation of Aboriginal and Torres Strait Islander young people in the criminal justice system:

- over-policing and poor utilisation of diversionary schemes by police;
- absence of crisis care accommodation, bail hostels and rehabilitation programs;
- limited access to legal advice;
- mandatory sentencing and other punitive laws; and
- Aboriginal and Torres Strait Islander young people being remanded in custody at higher rates.

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[21] Standing Committee on Aboriginal and Torres Strait Islander Affairs, above n 3, 8-9.

[22] Australian Institute of Criminology, *Australian Crime: Facts and Figures* (2009), 113.

[23] Stewart, A, *Transitions and Turning Points: Examining the Links Between Child Maltreatment and Juvenile Offending* (2005) at <www.ocsar.sa.gov.au/docs/other_publications/papers/AS.pdf>. Stewart found that in Queensland 54 per cent of Aboriginal and Torres Strait Islander males, and 29 per cent of Aboriginal and Torres Strait Islander females, involved in the child protection system go on to criminally offend.

[24] Standing Committee on Aboriginal and Torres Strait Islander Affairs, above n 3, 12-13.

**Proposed Question of Australian Government:**

To what extent does the Government's approach to the criminal justice system and Aboriginal and Torres Strait Islander young people focus on addressing the broader causal factors of offending and over-representation?

**Suggested Recommendations:**

8. That the Government work with State and Territory Governments to create a holistic youth justice system that responds effectively to the causal factors of offending and over-representation by diverting young people from contact with the criminal justice system and judicial proceedings and referring them to appropriate support and rehabilitative services wherever possible.

9. That necessary resources be made available by Commonwealth, State and Territory Governments to prevent young people coming into contact with the criminal justice system in terms of investing in education, housing, rehabilitation services, youth bail hostels, support services, employment and training and recreational activities under a framework of justice reinvestment.

### 4.2 Discriminatory Laws (art 2)

Due to their public presence, it is generally accepted that young people are over-policed particularly if they have mental health issues, are homeless or are dark-skinned.[25] There are a number of laws within Australia which discriminate against Aboriginal and Torres Strait Islander young people. For example, a range of public space 'move on' laws across Australia are discriminatory as they disproportionately affect Aboriginal and Torres Strait Islander young people who are highly visible in public space as it is used as cultural space and used for congregation and socialisation as well as living space due to high levels of homelessness and low levels of property ownership. Also, these laws are implemented by police at disproportionate rates against young people. The Committee has raised concerns about these laws in the past and despite ongoing domestic lobbying efforts, they continue to remain in place.[26] There is considerable evidence to show that move-on powers are used disproportionately against Aboriginal and Torres Strait Islander young people.[27] A survey of young people conducted in Queensland following the expansion of move on powers highlighted police practices such as a failure to inform young people of the nature or details of their move on notice (including its duration and what constitutes a breach) and disproportionate use of the powers against Aboriginal and Torres Strait Islander young people.[28]

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[25] National Crime Prevention Attorney General's Department, *Hanging out: Negotiating Young People's Use of Public Space* (1999) at http://www.ag.gov.au/agd/www/rwpattach.nsf/viewasattachmentPersonal/(E24C1D4325451B61DE7F4F2B1E155715)~no7_summary.pdf/$file/no7_summary.pdf; Grosman, M and Sharples, J, *Don't Go There: Young People's Perspectives on Safety and Community Policing* (2010) at http://www.vu.edu.au/sites/default/files/mcd/pdfs/dont-go-there-study-may-2010.pdf .

[26] Committee on the Rights of the Child, above n 2, [73 (e), 74 (h)].

[27] NSW Ombudsman, *Policing Public Safety* (1999) at http://www.ombo.nsw.gov.au/publication/PDF/Other%20Reports/PPS%20Report-part%201.pdf

[28] Paul Spooner, 'Moving in the wrong direction' (2011) *Youth Studies Australia,* vol. 20 no. 1, 29-30 in Youthlaw, *Position Paper: Police Powers in Victoria* (2011).

Recent changes increasing the onerous nature of bail conditions has also elevated the risk of young people either being denied bail because they cannot meet the requirements, or being remanded in detention for conditional or technical breaches of bail. As a result of some of the broader social and economic disadvantages faced by Aboriginal and Torres Strait Islander peoples, as described above, changes to bail laws disproportionately impact upon and therefore, indirectly discriminate against Aboriginal and Torres Strait Islander young people. For example, it is the NATSILS' experience that Aboriginal and Torres Strait Islander young people are often being denied bail because they lack access to appropriate accommodation or due to family dysfunction, a responsible adult to whom they can be bailed. As a result, it is also the NATSILS' experience that many young people will choose to enter a plea of guilty simply to finalise their court matters quickly and avoid lengthy periods detained on remand.

The following case studies show how social and economic factors can both restrict Aboriginal and Torres Strait Islander young people's access to bail and make it difficult for them to comply with bail conditions once bail is granted, resulting in extended periods being spent detained on remand:

**Case Study: Family Dysfunction and Bail**

1. A 17 year old Aboriginal boy was arrested early on a Saturday morning in July 2010 in Karratha for breach of bail in relation to breaches of a conditional release order and a trespass charge. He was remanded in custody to the following Tuesday. On that Tuesday he was granted bail in relation to the charges on which he was arrested and other fresh charges. However, no responsible adult could be located until Wednesday and the boy therefore spent five days in the police lockup.

2. A 12 year old Aboriginal boy spent nine days in isolation in May 2011 in a police lockup designed for adult offenders in a small regional town in the Kimberley. No responsible adult could be found nor a bail hostel arranged for the boy to be released under supervision. The boy had been charged for burglary offences, later released and then remanded in custody by a Justice of the Peace after breaching a court-imposed curfew. He was remanded in custody while Juvenile Justice staff attempted to contact a responsible adult. He was eventually flown down to a youth remand centre in Perth, sentenced for the burglaries, and then flown back to the small town.

3. A 10 year old Aboriginal boy from Broome, with foetal alcohol syndrome and other behaviour issues, spent five days in police custody in August 2010. Whilst in custody he was allegedly mistreated by police who threatened to withhold food and take away his blanket. The boy was in custody for breaching bail conditions arising from a stealing charge. The boy had been trying to run away at night from the remote community where he was located. There was no responsible adult available for the boy. The boy was in custody after being refused bail by a Justice of the Peace on a Saturday in Broome due to the absence of a responsible adult. His family attended Broome shortly afterwards but the Justice of the Peace refused to re-list the matter and the boy was remanded in custody until Monday. On that Monday, he was granted bail to reside at Mt Barnett Station but was to remain in custody until a responsible adult could transport him. As no responsible adult appeared and the road to Mt Barnett was flooded, the boy was driven by police to Mr Barnett after five days in police custody, after the floods had subsided.

4. In November 2010 a 14 year old Aboriginal boy from Geraldton spent an excessive period of 29 days in custody despite his young age and lack of criminal record. The boy had a lack of adult supervision or support which contributed to his offending and time in custody. Despite having an open file with the Department of Child Protection (DCP), no DCP case worker ever attended court as a responsible adult on upward of nine court appearances. The boy spent 29 days in custody before the matters were dealt with by way of no further punishment due to time spent in custody. Essentially, it would appear that the boy was subjected to excessive periods in detention for welfare, rather than criminal justice purposes.

A worrying pattern has also emerged whereby strict bail conditions of Aboriginal and Torres Strait Islander young people are being 'over-policed' in some communities. For example:

**Case Study: Over-Policing of Bail**

1. A 15 year old Aboriginal boy from Geraldton was released on bail to reside at his girlfriend's house as he had no suitable family with whom to stay in May 2009. His bail conditions included a curfew between 7.00pm and 7.00am that required him to present at the front door when requested by police. The police attended the address at different times every day, usually after midnight to confirm his compliance with his curfew. On one occasion, the police attended at his address in Geraldton at 4:30am. No one responded to police knocks as the household was asleep. Inside at the time was a responsible adult, the boy, his girlfriend and two other younger, primary school aged children. Two days later police attended the address at 9.00am and arrested the boy for breaching his curfew. He was held in custody until he appeared in court at midday. ALSWA submitted in court that given the natural state of deep sleep experienced at 4.30am, it is to be expected that no one was awakened by police knocks. ALSWA submitted it was unfair to charge the boy because no one answered the front door. The Magistrate agreed and stated if people were asleep in the house it hardly constituted a breach.

2. A 14 year old Aboriginal boy from Geraldton spent an unnecessary night in custody in May 2010 for associating with a boy whom the police wrongfully believed he was precluded from associating with as a result of bail conditions. The boy was on bail for a number of offences. At varying times, he was subject to a myriad of bail conditions imposed under different bail undertakings for the different charges. He had been bailed by both police and a Magistrate at different times on different charges. One condition of bail imposed by the Magistrate precluded the boy from contacting his co-accused. The boy pleaded guilty to all the charges and his matters were adjourned for a pre-sentence report. During this period of adjournment, police sought to revoke his bail stating he had been seen (not by the police) breaching his bail by talking to a person included in the non-association bail condition. The boy was arrested and questioned by police for the alleged breach of bail and spent one night in police custody. The boy instructed ALSWA he had not spoken to the person police alleged he had been speaking with. It became apparent the person whom police alleged he had spoken with had never been the subject of a non-association condition of the boy's bail.

In instances where Aboriginal and Torres Strait Islander young people are granted bail, cultural obligations can sometimes make the onerous conditions difficult to abide by and can thus, increase the risk of young people breaching those conditions and being taken into custody. The following is a case study example:

**Case Study: Cultural Obligations vs. Strict Bail Conditions**

Sam has been charged with unlawful entry, criminal damage and stealing from an incident which occurred at night time involving a group of young people breaking into the Sports Store and stealing sporting goods.

Sam was placed on bail which involved curfew and residential conditions. Sam's matter was mentioned in court and adjourned to allow Sam's lawyer to write representations for the charges to be amended.

In the meantime, a death occurred in Sam's immediate family. According to traditional custom, Sam's family had to vacate the house in which they lived and reside at an alternative location. The police breached Sam's bail because he was not residing at the prescribed address. Sam spent the morning in custody before being bailed to an alternative address.

The police continually checked on Sam throughout the night, irrespective of the fact that his family was going through Sorry Business.

One week later the end of the football season arrived and Sam decided to attend a party and celebrate with his friends. Sam was again breached and spent time in custody for not complying with his curfew bail condition.

Sam's family decided to move him to a remote community where some family lived, due to this trouble with the police. There was no High School on the community so Sam stopped attending school for a period of time. Three weeks later, facts had been agreed upon and Sam's matter was before the court. Sam received a without conviction good behavior bond for the offending.

**Proposed Question to the Australian Government:**

What action is the Government taking to ensure that legislation does not have a discriminatory effect on Aboriginal and Torres Strait Islander young people?

**Suggested Recommendations:**

10. That all legislation be reviewed for its impact upon Aboriginal and Torres Strait Islander peoples, including young people specifically, and that all future bills introduced into Australian parliaments include a statement of impact in relation to Aboriginal and Torres Strait Islander peoples, including young people specifically.

11. That where legislation is identified as having a discriminatory impact upon Aboriginal and Torres Strait Islander young people, such legislation be amended so as to not be discriminatory, or that implementation and support measures be put in place to assist young people coming into contact with the legislation to achieve an equitable outcome.

12. That the Government work with State and Territory governments to expand the availability of youth bail hostels so that young people without access to appropriate accommodation or a responsible adult are not inappropriately remanded in custody.

13. That legislation in each jurisdiction dictating bail considerations and presumptions be amended to create a presumption in favour of bail for young people and to ensure that bail conditions take account of social and cultural factors and can be reasonably met by Aboriginal and Torres Strait Islander young people.

14. That immediate action be taken to dramatically reduce the numbers of Aboriginal and Torres Strait Islander young people on remand.

### 4.3 Cautioning, Restorative Justice Approaches and Diversion Options (art 40 (3) (b))

There is evidence to suggest that while police cautioning and restorative justice measures have been successful in diverting young people from the criminal justice system, Aboriginal and Torres Strait Islander young people are often not afforded access to, or the benefits of, these and other diversionary measures.[29] While there are a range of diversionary options provided for in the legislation of each State and Territory, there is major concern surrounding the underutilisation of these options by police, particularly in relation to Aboriginal and Torres Strait Islander young people. For example, Aboriginal and Torres Strait Islander young people in Western Australia receive only 28 per cent of all cautions issued by police but represented 80 per cent of the total population of in young people in detention. Also, 80 per cent of non-Aboriginal and Torres Strait

[29] Richards, K, 'Trends in Juvenile Detention in Australia' (2011) *Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice no.416, 6.*

Islander young people are diverted whereas only 55 per cent of Aboriginal and Torres Strait Islander young people are diverted.[30]

As a means to try and address this situation, for the last three years ALRM have requested funds from the Commonwealth Attorney-General's Department to establish a youth diversion solicitor who would focus on giving advice to Aboriginal young people in Adelaide and ensure that as many as possible are diverted by police to formal and informal cautioning as well as family conferencing. Despite support from the South Australia Police Commissioner and a Senior Judge of the Youth Court, ALRM's requests have been consistently denied.

The following cases demonstrate an emerging pattern of police preferring to lock up Aboriginal and Torres Strait Islander young people for minor offences rather than divert them from the criminal justice system.

**Case Studies: Locking Up Our Young people For Minor Offences**

1. A 15 year old boy from Onslow was charged with attempting to steal a $2.05 ice cream, where the offence could have been the subject of diversion or a Juvenile Justice Team referral. The boy was arrested by police, refused police bail, remanded in custody by a court, transported to a youth detention centre in Perth and then spent 10 days in custody prior to his matter being dealt with in Perth Children's Court. The charge was dealt with by way of a dismissal on the basis that the boy had already been punished as a consequence of the time spent in pre-sentence detention.

2. A 16 year old boy from Kalgoorlie attempted to commit suicide by throwing himself in front of a moving vehicle. The attempt was unsuccessful. The police were called and arrested the boy. The boy was charged with damaging the vehicle. At the time of the attempt the boy had a visible scar on his neck from a previous attempted suicide when he tried to slash his throat with a knife. The charge was later withdrawn after numerous representations to police were made by ALSWA.

3. An 11 year old girl, with no prior contact with the justice system, was charged with threats to harm following an incident at her primary school where she allegedly threatened her teachers whilst holding plastic scissors. The girl was arrested by police at her school, sprayed with capsicum spray, hosed down with cold water in the yard of her school after the capsicum spray was administered and then transported in police custody, without notifying her family, to a Perth police station. The case was not dealt with by way of either a police caution or a referral by police to a Juvenile Justice Team, but instead proceeded by way of a formal prosecution. The girl was ultimately found not guilty by a Magistrate at a defended hearing.

4. A 13 year old boy from Wyndham was throwing water balloons at his friends. A water balloon was thrown through the open window of a passing car. The balloon burst on impact inside the car. A rear seat passenger was covered in water. It was not suggested that the passenger was injured or that the driver's capacity to control the car was affected. The boy was charged with common assault. Repeated representations to police to withdraw the charge, effectively endorsed by the local Magistrate, have failed. The charge will be the subject of a defended hearing.

5. A 12 year-old boy faced the Children's Court in Northam on 16 November 2009 charged with receiving a stolen Freddo Frog chocolate bar, allegedly stolen by his friend. The Freddo Frog cost 70 cents. The boy had no prior convictions and faced a further charge involving the receipt of a stolen novelty sign from another store, which read, "Do not enter, genius at work". The boy missed the first court appearance due to a misunderstanding about Court dates and was then apprehended by police at 8.00am on a school day and taken into custody where he was imprisoned for several hours.[31] When the boy appeared before Justices of the Peace, after spending most of the

[30] The Hon Dennis Mahony AO QC Special Inquirer, *Inquiry into the Management of Offenders in Custody and in the Community* (2005), 341

[31] Farouque, F, 'Stolen Freddo: boy, 12, charged', *The* Age, November 16 2009 at http://www.theage.com.au/national/stolen-freddo-boy-12-charged-20091115-igec.html.

day in the police lock-up, he was released to bail with conditions that he remain at his home between the hours of 7.00pm and 7.00am and that he not attend the central business district of Northam except in the company of his mother or older brother. The charges were eventually withdrawn and costs awarded to the boy, despite police defending their actions as "technically correct". ALSWA maintained the charges were scandalous and would not have occurred if the boy had come from a middle-class non-Aboriginal or Torres Strait Islander family.

**Proposed Question to the Australian Government:**

What practical measures does the Australian Government have in place to guarantee that young people are diverted from the justice system in appropriate circumstances and what oversight mechanisms are in place to assess the rate at which Aboriginal and Torres Strait Islander young people are being diverted in comparison to non-Aboriginal and Torres Strait Islander young people?

**Suggested Recommendation:**

15. That the Australian Government work with State and Territory governments to introduce legislation that requires the police to lodge a written document with the court upon the commencement of criminal proceedings against a young person outlining why all diversionary processes were inappropriate in the circumstances.

16. That Commonwealth, State and Territory governments commit to working with police to increase the rate at which Aboriginal and Torres Strait Islander young people are diverted from the formal justice system.

17. That statistics be recorded by police and courts in regards to diversions and the stated offence/s.

### 4.4 Specialised and Separate Courts

There are separate specialist children/youth courts in every State and Territory in Australia except for the Northern Territory. While every other State or Territory has a separate children/youth courts with specially trained magistrates and workers, in the Northern Territory the Youth Justice Court sits as a subsidiary of the adult Magistrate's Court with magistrates acting in both jurisdictions, and simply putting on their youth justice hats when the Youth Justice Court sits. The outcome of this is that young people are denied access to a specialist court service which is geared towards addressing the specific issues faced by young people.

In addition to specialist children/youth courts, Victoria and Queensland also have specialist sentencing courts for Aboriginal and Torres Strait Islander young people who plead guilty. In these courts Elders and other respected persons from Aboriginal and Torres Strait Islander communities are involved in the sentencing process and restorative justice principles are utilised. ATSILS (Qld) however, has noted that in practice Aboriginal and Torres Strait Islander young people are not often referred to this court.

Western Australia also has a specific Children's Court Drug Court which has had some success however, this has been limited with Aboriginal and Torres Strait Islander young people. Of the 36 young people who have graduated from the Drug Court since it's commencement in 2000, only four have been Aboriginal. A lack of culturally appropriate rehabilitation services offered through

the Children's Court Drug Court continues to be a barrier that inhibits the success of Aboriginal and Torres Strait Islander young people.

A critical issue for young people seeking to participate in the Drug Court is the lack of residential rehabilitation facilities available. There is only one such facility in all of Western Australia, which is inadequate in relation to the large number of young people who have substance abuse problems that bring them into contact with the criminal justice system.[32] Consequently a number of young people are in custody waiting for a bed to become available in a facility so that they can participate. This raises obvious concerns about the appropriateness of young people spending unnecessary time in custody where they are not receiving proper support and assistance in overcoming substance abuse issues. A further issue is that upon completion of the program, many participants are simply left to return to dysfunctional environments which can lead to reoffending.

The following case study demonstrates the consequences of letting drug and substance abuse issues go unaddressed and what happens to young people in contact with the criminal justice system when there is a chronic lack of rehabilitation and support facilities.

**Case Study: Substance Abuse, a Lack of Rehabilitation Facilities and Detention**

A 14 year old Aboriginal boy from Bunbury with no prior criminal record became engaged in volatile substance use and minor offending behaviour. The boy, who was in the care of the Department of Child Protection (DCP) , was being cared for by an Aunt and had to relocate from his community due to family feuding and violence which saw him hiding with siblings in the roof of a neighbouring house while his own home was destroyed. Despite being a suitable candidate for bail, the boy was remanded in custody in February 2011 due to continued use of volatile substances and consequent inability by family to regulate his behaviour. His family strongly opposed his use of volatile substances given that two cousins had sniffing related deaths and his older brother had been attempting to stop his sniffing through violence. No community services were available to assist the family or the boy to overcome the volatile substance use. DCP representatives appeared as the responsible adult for the boy at Court and opposed his release on bail, causing him to be remanded at Rangeview Remand Centre in Perth. The matter remains ongoing.

**Proposed Question to the Australian Government:**

What action is the Government taking to ensure that in each State and Territory there are well resourced specialised courts for young people which focus on diverting them from the criminal justice system by addressing the underlying causes of offending and connecting offenders to appropriate support and rehabilitation services?

**Suggested Recommendation:**

18. The development and expansion of a specific justice system for young people which is adequately funded, coordinated and dynamic and which works towards the implementation of culturally appropriate restorative justice initiatives (such as the Victorian Children's Koori Court and the Queensland Youth Murri Court). We further consider it imperative that any youth justice system be framed in youth friendly terms so that young people understand the court system and experience it as meaningful and restorative rather than alienating.

[32] Auditor General's Report, 'Performance Examination, The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994' (2008) *WA Report No 4*, 7.

19. That the Commonwealth, State and Territory Governments commit to working with Aboriginal and Torres Strait Islander communities and Elders in the development and dispensation of youth justice.

20. Increased provision of culturally appropriate support and treatment facilities for young people with drug and substance abuse issues in metropolitan, regional and remote areas.

### 4.5 Provision of Legal Assistance (art 37 (d))

A core issue affecting the provision of legal assistance to Aboriginal and Torres Strait Islander young people is the chronic underfunding of the ATSILS, Family Violence Prevention Legal Services (FVPLS) and Aboriginal and Torres Strait Islander interpreter services. Without adequate funding, and access to trained interpreters, the capacity of the ATSILS and FVPLS to provide quality legal assistance services to Aboriginal and Torres Strait Islander young people in metropolitan, regional and remote communities is severely restricted. In particular, FVPLS are not funded to provide services in metropolitan areas, denying many perpetrators and victims of family violence specialised legal and support services. Furthermore, , despite recent increases in funding, the ATSILS still remain well below parity with mainstream legal aid services and are being forced to close some of their offices.

Many police prosecutions involving Aboriginal and Torres Strait Islander young people are underpinned by admissions made by the accused in police interviews. In many instances, the only evidence of guilt comes from a confession made in a police interview. Common law tradition and legislation provide that an arrested suspect is entitled to a reasonable opportunity to communicate or attempt to communicate with a legal practitioner. In most instances when a young person contacts an ATSILS lawyer advice is given that the young person should exercise their right to silence and not participate in an interview with police. In order for a young person to properly exercise their right to silence on advice from a lawyer, it is essential that the lawyer be in a position to communicate that advice to police.

In some jurisdictions, automatic notification systems exist whereby the relevant ATSILS is contacted whenever an Aboriginal and Torres Strait Islander person is arrested. Furthermore, some States, such as Victoria, have additional programs that provide independent support people to Aboriginal and Torres Strait Islander young people to ensure that their rights whilst in custody are protected.[33] Such protections do not exist in every State and Territory however, and Aboriginal and Torres Strait Islander young people suffer the consequences.

The NATSILS have concerns in relation to police practices whereby police insist on conducting a video recorded interview with a young person as "a matter of fairness" so as to "put the allegations to the young person", or refuse to speak with the ATSILS lawyer so that the advice given to the young person cannot be communicated. If police proceed to commence an interview to record a refusal to participate, it is then a short step for police to place subtle pressures on vulnerable young people to answer questions and make admissions against their interest. Once a refusal is communicated by the lawyer to the police, a young person should not be taken into the interview room to formally decline the record of interview. Communication by the lawyer should be sufficient.

[33] Youth Referral and Independent Person Project (YRIPP).

The following case studies are provided by way of illustration.

1. In October 2009, a lawyer with ALSWA's office in Broome, received a telephone call from a police officer advising that four Aboriginal and Torres Strait Islander boys, aged between 13 and 14, were in custody at Derby Police Station, having been arrested on suspicion of stealing a motor vehicle. The police wished to formally interview all of them by electronic means.

   The lawyer then spoke individually to the parents of the boys and advised them that their children did not have to participate in a video recorded interview with police. As a consequence of this advice, each parent agreed that their child would not participate in a police interview. Further, each parent indicated to the lawyer that they did not wish their child to do a police interview for the sole purpose of recording the child's refusal to participate and that they would inform officers from the Derby Police Station of their decision, namely, that they did not consent to their child being interviewed for any purpose.

   After providing this advice to the parents, the lawyer then asked to speak to an officer at Derby Police Station to inform the officer of the advice given and to reiterate that no interviews were to take place. No officer would come to the telephone to speak with the ALSWA lawyer, and the ALSWA lawyer heard an officer in the background say "we don't talk to the ALS".

2. An 11 year old boy from Broome was arrested by police. Broome police advised an ALSWA lawyer that the boy was in police custody as a suspect and that police wished to interview him. Ten minutes later, an ALSWA lawyer telephoned and spoke to a police officer at Broome Police Station.

   The ALSWA lawyer then spoke to both the boy and his grandmother. The boy supplied instructions that he wished to exercise his right to silence and decline to be interviewed. The ALSWA lawyer conveyed those instructions to the police officer. The police officer responded in terms that he intended to conduct a video record of interview with the boy nonetheless, so as to put the allegations to him and obtain a recorded refusal from the boy. The ALSWA lawyer made it clear to the police officer that this was unnecessary and improper, that the boy was a juvenile declining to be interviewed through legal Counsel, and that there was no need to conduct a video record of interview to properly record those matters. The police officer refused to alter his position, an interview was conducted, admissions were made by the boy and he was further charged.

**Proposed Questions to the Australian Government:**

What measures are in place to ensure Aboriginal and Torres Strait Islander young people have access to culturally appropriate and accessible legal advice?

What role do police play in protecting Aboriginal and Torres Strait Islander young people's rights to legal advice, representation and silence whilst in police custody?

**Suggested Recommendations:**

21. That the ATSILS' funding is increased so as to achieve parity with mainstream legal aid services.

22. That FVPLS be funded to provide services in metropolitan areas.

23. That increased funding is provided for the expansion of Aboriginal and Torres Strait Islander interpreter services so as to create a coordinated national Aboriginal and Torres Strait Islander interpreter service that covers all metropolitan, regional and remote areas.

24. That laws be amended to make it mandatory for police to contact an Aboriginal and Torres Strait Islander Legal Service in every circumstance where an Aboriginal and Torres Strait Islander young person is taken into police custody, and that adequate funding is sufficiently provided to support this additional service.

### 4.6 Protection of Privacy and Protection of the Image (art 16)

Western Australia recently introduced laws that involve the naming and shaming of offenders who commit anti-social offences. The *Prohibitive Behaviour Order Act 2010 (WA)* ('PBO Act') enables courts to issue a Prohibitive Behaviour Order (PBO) to a person from the age of 16 who has been convicted of an offence, if he or she has committed an anti-social offence more than once in three years and the person is likely to commit a further relevant offence unless constrained from certain otherwise lawful activities.[34] The PBO Act broadly defines anti-social behaviour as "behaviour that causes or is likely to cause ... harassment, alarm, fear or intimidation to one or more persons; or ... damage to property".[35]

The orders are to be imposed in addition to any penalty imposed for a criminal offence. Of particular concern is that the PBO Act provides for the publication of the order, including the name of the young person and their residential address and photograph, and permits anyone to republish that information. This is a complete departure from current laws protecting the privacy and identity of young people so as to best aid their rehabilitation. This law may lead to government sanctioned vigilantism. Further, the law is likely to have a demoralising effect on Aboriginal and Torres Strait Islander young people.

In addition to the publication of the order and images of young offenders, the terms of an order may restrict freedom of movement and association. For example, a young Aboriginal and Torres Strait Islander person who engages in graffiti and is dealt with by a Court for criminal damage may also be subjected to a prohibited behaviour order preventing them from going to an area where the graffiti occurred.

The likelihood of young people complying with such orders is very low. A breach of a PBO is punishable by a fine of up to $2000 or two years imprisonment or both, for matters dealt with in the Children's Court of Western Australia.[36]

**Proposed Question to the Australian Government:**

What measures are in place to protect young people aged 16-18 years from publication of their personal details and photographs on government departmental websites, or on the internet and other publications generally?

[34] *Prohibitive Behaviour Order Act, 2010* (WA) s 8.
[35] *Prohibitive Behaviour Order Act 2010* (WA) s 3.
[36] *Prohibitive Behaviour Order Act 2010* (WA) s 35(1).

**Suggested Recommendation:**

25. That the Australian Government urge the Western Australian Government to amend legislation to prevent the publication of personal information and photographs of young offenders subject to Prohibitive Behaviour Orders to ensure their privacy is protected.

### 4.7 Minimum Age that a Person Can Be Tried as an Adult

The Committee has previously voiced its concerns in relation to the minimum age that a person can be tried as an adult in Queensland.[37] Despite repeated calls for action, the minimum age that a person in Queensland can be tried as an adult remains at 17 years of age.

**Proposed Question to the Australian Government:**

What progress has been made to bring the minimum age that a person can be tried as an adult in Queensland up to a more acceptable level that is in line with other States and Territories in Australia and international human rights jurisprudence?

**Suggested Recommendations:**

26. That the age for adult criminal responsibility be raised from 17 to 18 years old in Queensland.

27. That a time specific commitment is made to transfer 17 year olds in Queensland from adult prisons to youth detention centres and that all young people under the age of 18 years fall within the jurisdiction of the *Youth Justice Act* 1992 (Qld) and have access to the Charter of Youth Justice Principles.

## 5. Young People Deprived of Their Liberty, Including Any Form of Detention, Imprisonment or Placement in a Custodial Setting

### 5.1 Detention as a Last Resort (art 37 (b))

Aboriginal and Torres Strait Islander young people are frequently placed in custody despite legislative recognition that detention and imprisonment of a young person shall only be used as a measure of last resort.

The percentage of young people that are in detention on remand has increased significantly over the past 30 years. In June 1981, 33.1 per cent of female young people in detention were remanded.[38] By June 2008 this had nearly doubled to 64.8 per cent.[39] For male young people the proportion has almost trebled, from 20 per cent being remanded in June 1981 to 59.2 per cent in June 2008.[40] Given the over-representation of Aboriginal and Torres Strait Islander young people in the criminal justice system, this pattern severely impacts upon the detention rates of these

[37] Committee on the Rights of the Child, above n 2, [73 (c), 74 (g)]
[38] Richards, above n 29, 4
[39] Ibid.
[40] Ibid.

young people. For example, the proportion of Aboriginal and Torres Strait Islander young people in detention on remand increased from 32.9 per cent in 1994 to 55.1 per cent in 2008.[41]

The widespread and increasing use of remand is inconsistent with article 37 (b) and the principle of detention as a last resort.[42] It is also not proportional to the level of offending as only a small proportion of remand episodes result in the young person being convicted and sentenced to a custodial order.[43]

In addition to the socio-economic reasons that can sometimes prevent Aboriginal and Torres Strait Islander young people from being granted bail, as described above, a concerning pattern is also developing whereby police are opposing bail unnecessarily in favour of keeping young people in custody. The following case studies show the high occurrence of detention of Aboriginal and Torres Strait Islander young people in circumstances that were unnecessary or could have been avoided:

**Case Studies: Bail, Remand and Detention as the First Resort**

1. A 13 year old Aboriginal boy from a small town near Kalgoorlie was arrested and brought before a Justice of the Peace in May 2011 for breaching bail conditions and providing false information to the police. The boy had no prior record and the matters for which the boy was on bail had been referred to court conferencing and would not involve a term of detention. No responsible adult was available for the boy to be released on bail. ALSWA submitted the best option for the boy would be to release him on bail to a local bail hostel to receive constant supervision, rather than to remand him in custody until the matter could be dealt with by a Magistrate. The police prosecutor opposed bail on the basis that the boy had breached his bail and stated "I just know that they've taken off from the bail hostel on previous occasions, so there's just no guarantees." This generalisation was made despite the fact the boy had never attended the bail hostel and submissions by ALSWA that the boy was willing to agree to the conditions and stay at the hostel. The boy was remanded in custody and stayed at the police lockup in Kalgoorlie for three days.

2. In February 2010 a 15 year old Aboriginal boy was arrested at 11.10am for disorderly behaviour outside a high school in Geraldton and refused bail by police. The boy had a minimal criminal record. ALSWA was not immediately notified the boy was in custody, despite ALSWA staff being contactable until after 5.00pm. ALSWA was only notified that the boy was in custody the following morning by fax. By the time the boy appeared in court that morning he had been in police custody for over 24 hours. There was no issue as to locating a responsible adult for bail as his sister and father were both contactable and able to act as responsible adults. Police indicated bail had been refused because of police fears that the boy would commit further offences if released on bail. The prosecutor and Magistrate agreed this was inappropriate and the matter was dealt with by way of no further punishment given the time the boy had spent in custody.

Another concern for the NATSILS is the failure of police to deal with mental illnesses and/or intellectual deficiencies of a young person who has come into contact with the criminal justice system without resorting to judicial proceedings and detention. Remand is increasingly being used by police in order to manage mental health concerns experienced by young people. This can either be because the mental illness or intellectual deficiency goes unidentified or the chronic lack of support and treatment facilities. The case studies below illustrate types of situations which the NATSILS often witness:

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[41] Richards, above n 29, 4.
[42] Ibid 5.
[43] Mazerolle, P and Sanderson, J, 'Understanding Remand in the Juvenile Justice System in Queensland' (2008) *Griffith University*, 10.

**Case Studies: Dealing with Mental Illness through Prosecution and Detention**

1. A 16 year old Aboriginal girl with no criminal record was kept in custody for an unreasonable period in order to address her mental health needs. The girl was charged with two disorderly conduct offences that allegedly occurred on a Saturday in August 2009 in Geraldton. The allegations related to behaviour she exhibited at the hospital when taken by her family for a mental health assessment. According to the Statement of Material Facts, when police arrived they offered to restrain her while she was assessed but the hospital refused to assess her. She was taken into custody at about 6.00pm and appeared in court on the following Monday. The girl was very agitated and exhibited worrying behaviour in Court. She was granted bail but her family who were present indicated they would not take responsibility for her until her mental health was assessed. The girl was remanded in custody for the purpose of being observed and assessed and she was held in the police lockup in Geraldton. Upon arriving at the police lockup, ALSWA was informed the girl was naked in her cell. ALSWA queried why she was not being assessed and treated at the hospital and was informed by police that there was nothing else to demonstrate she had a mental health problem. A female officer persuaded the girl to put on clothes and ALSWA spoke to her. The girl was behaving erratically. She had shredded a polystyrene cup and scattered it like confetti over the mattress. She alternated between appearing willing to speak to ALSWA and being aggressive. She made a number of seemingly random statements and claimed that her name was something else. Her biggest preoccupation throughout the day was that someone had "killed" her babies. The girl was taken to Perth on Tuesday morning. She was admitted to the Bentley Adolescent Mental Health ward prior to her Court appearance on Friday and there was a report confirming her unfitness to plead. The prosecution, on invitation by the Magistrate, withdrew the charges effectively explaining that they were only "holder charges" intended to get the girl some treatment.

2. A 15 year old Aboriginal boy with a minor criminal history was charged with offences despite police knowledge about his mental health concerns. Additionally, he unnecessarily spent two nights in custody in late 2009 due to police delays in granting bail and his mother was granted a Violence Restraining Order (VRO) against him despite her maintaining contact with him. In September 2009 the boy spent one night in custody on charges of threatening behaviour and criminal damage, instigated by his mother, after police refused to grant him bail. It was evident that the boy had mental health concerns and prior to his arrest, police had taken the boy to hospital due to his behaviour causing an appointment to be arranged with Central West Mental Health Service. Despite these mental health concerns, charges were laid and police bail refused because the boy was in breach of a previous bail condition to reside with his grandfather when police arrested him at his brother's house. The arrest was purportedly due to "welfare concerns" and on this occasion the boy spent one night in custody before being granted bail by a Magistrate. As a result of the charges, the boy's mother applied for a VRO against the boy. In November 2009, the boy was charged with breaching the VRO with his mother. He was granted bail for the offence with a curfew condition which he breached. He instructed ALSWA that he had not understood that the curfew applied for the entire period of bail but had believed it was for only one night. As a result of the curfew breach, the boy spent a second night in police custody.

3. A 16 year old Aboriginal boy from the Goldfields was charged with serious violent offences against another boy, in a similar fashion to offences he witnessed his father commit against his mother at a young age that resulted in her death. The boy did not receive counselling at the time of the domestic incident but has now been diagnosed with schizophrenia and had been living a shambolic life in the care of his maternal grandmother. He was illiterate and innumerate. He did not have assistance to regularly take medication for his schizophrenia or diabetes and had no access to psychological services. The Community Adolescent and Mental Health Services in the Goldfields were responsible for managing his mental health needs but did not provide services to the Central Desert where he resided nor was there a psychiatric service in this region. Prior to the offending, he was twice admitted to the Mental Health ward at Kalgoorlie Hospital in 2009 demonstrating a deteriorating mental state. The boy was sentenced to 15 months detention.

Hence, whether it is due to socio-economic factors such as homelessness or family dysfunction, the punitive approach preferred by police, or because of a lack of other means by which to deal with mental illness, Aboriginal and Torres Strait Islander young people are routinely being placed in detention unnecessarily.

**Proposed Question to the Australian Government:**

Beyond legislation, what measures are in place on the ground to ensure that detention is only used as a measure of last resort and that young people are not sentenced to remand unnecessarily because of socio-economic factors or mental illness issues?

**Suggested Recommendations:**

28. That in cases where bail is difficult due to an inability to locate a responsible adult and where remand is highly inappropriate, an out-of-court caution or referral to a Juvenile Justice Team or equivalent be recognised as the most suitable outcome.

29. That all States and Territories introduce legislation to ensure that a judicial officer review all police decisions in relation to bail as soon as reasonably possible after charging to ensure that appropriate bail conditions are set and to minimise the numbers of young people detained in custody.

30. That stronger measures to be put in place to require police and courts to deal with young people with mental health concerns and or/intellectual deficiencies who are in conflict with the law without resorting to judicial proceedings and detention.

31. Increased provision of culturally appropriate support and treatment facilities for young people with mental health issues in metropolitan, regional and remote areas.

### 5.2 Suspended Sentences and Other Non-Detention Sentences (art 37 (b))

In relation to suspended sentences, Victoria has recently passed legislation to remove suspended sentences for serious offences for both young people and adults with the intention to incrementally remove suspended sentences for all criminal offences. Furthermore, the Victorian Government is also legislating to remove home detention as a sentencing option. Such actions impede upon the discretion and expertise of members of the judiciary to consider the circumstances and merits of each case and make an appropriate judgement accordingly. By removing non-detention and tailored sentencing options from the discretion of the Victorian judiciary, the risk of young people ending up in arbitrary detention is dramatically increased.

In relation to other non-detention sentencing options, there is an overwhelming scarcity of community based sentencing options for Aboriginal and Torres Strait Islander young people in many parts of Australia. More specifically, there is lack of community based projects available and high levels of disadvantage can also rule out home detention as an option for many Aboriginal and Torres Strait Islander young people. The remoteness of some communities can also be an issue when it comes to the application of supervision orders and has led some to say that this results in "justice by geography". In Western Australia, Chief Justice Martin has observed that

> The judges and magistrates sentencing Aboriginal offenders in regional Western Australia commonly have no practical alternative to a custodial sentence because of the unavailability of non-custodial programmes, and limited availability of non-custodial supervision. Imprisoning offenders because of a lack of non-custodial options is expensive and counter-productive. It discriminates between regional and metropolitan residents, and has the consequence that the former are more likely to go to

prison.[44]

These issues were also recently highlighted by Magistrate Oliver from the Northern Territory in testimony before the House of Representatives 'Inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system.' Her Honour stated:

> I mentioned before that I am going to Borroloola next week. Last time I was out there, a month ago, there were no community projects. That is the case across many, many communities. Community work is not available. Home detention is not a viable option, sometimes because of overcrowding in the house or the sort of conduct that is being engaged in by other people who are living in the house. There are no surveillance officers available to go and check on people who have been ordered to serve home detention. So the sentencing dispositions are very limited.[45]

Her Honour concluded by saying "the other thing I would note about rehabilitation is that it is basically only available in the major centres."[46] A lack of alcohol, drug and substance abuse facilities outside of major centres often means that offenders from outside these areas cannot access these services as part of their sentence.

**Proposed Question to the Australian Government:**

What action is the Government taking to ensure that a full range of non-custodial sentencing options are available to courts and that offenders residing in regional, remote and very remote communities are afforded the same options for sentencing as those residing in metropolitan areas?

**Suggested Recommendations:**

32. That the Government urge State and Territory Governments to maintain separation of powers and not intrude upon the independence and expertise of courts by introducing legislation that restricts sentencing options (such as suspended or mandatory sentences).

33. That the Government work with State and Territory governments to extend the availability of community sentencing options in regional and remote areas so that justice is not determined by geography and young people from these areas are not placed in detention unnecessarily.

34. That the Government work with State and Territory Governments to achieve the provision of culturally appropriate alcohol, drug and substance abuse rehabilitation facilities in regional and remote areas.

### 5.3 Mandatory Sentencing (art 37 (b))

One reason why Aboriginal and Torres Strait Islander peoples are imprisoned more often than non-Aboriginal and Torres Strait Islander people is that they are disproportionately affected by an increasingly rigid approach to offending. A recent study examined the substantial rise in the

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[44] The Hon Wayne Martin Chief Justice of Western Australia, *Corrective Services for Indigenous Offenders – Stopping the revolving* Door (2009) Presentation to Joint Development Day Department of Corrective Services, 14.
[45] See the transcript of proceedings from the Darwin hearings at ATSIA 49: http://www.aph.gov.au/hansard/reps/commttee/R12981.pdf (last viewed 4 June 2010)
[46] See the transcript of proceedings from the Darwin hearings at ATSIA 51: http://www.aph.gov.au/hansard/reps/commttee/R12981.pdf (last viewed 4 June 2010).

Aboriginal imprisonment rate between 2001 and 2008 and noted that there had not been a corresponding rise in the conviction rate for Aboriginal and Torres Strait Islander peoples over this period.[47] As a result, it concluded that "the substantial increase in the number of Indigenous people in prison is mainly due to changes in the criminal justice system's response to offending rather than changes in offending itself."[48]

Western Australia has had mandatory sentencing laws for some years and Victoria has recently announced plans to introduce statutory minimum sentencing laws for young people aged 16-17 (and adults) who commit the yet to be defined offence of "gross violence". The Victorian proposal would remove any discretion that the judiciary would have in certain cases to consider the wider circumstances and address those factors leading to the offending. VALS provides the following case study by way of example.

**Case Study: "Jo"**

Jo is an Aboriginal person aged between 16-17 years of age charged with recklessly causing a serious injury in circumstances that would likely equate to "gross violence" (should the term be defined). The plea was heard in the Victorian Children's Koori Court. The young person was told by the Magistrate that custody would be the likely outcome given the nature of the offending. However, sentencing was deferred to enable Jo to engage in a detoxification program, and link in to education, training and employment programs with the supervision of Youth Justice. At the time of the offending, Jo had been a daily user of marijuana, and was not enrolled in school or any educational program. Nor was the young person employed.

During the deferral period, Jo successfully completed a detoxification program. Jo then enrolled in TAFE, and was engaged in a program with an Aboriginal organisation. Jo, with the support of family, successfully participated in training with this organisation, and now has prospects of on-going, paid employment through the organisation. The organisation will also provide support in relation to ongoing TAFE studies. Further, Jo has access to ongoing drug and alcohol counselling through the organisation.

The matter returned for sentencing, and the Magistrate was impressed with Jo's progress. The Magistrate emphasised the seriousness of the offending and noted again that Jo was at serious risk of being placed in custody. However, the Magistrate decided to place Jo on a Youth Supervision Order, which requires on-going supervision from Youth Justice, continued engagement with the training program, TAFE and drug and alcohol counselling. The Magistrate did, nonetheless, record a conviction to reflect the serious nature of the offending.

It is clear that the discretion afforded to the Magistrate in relation to this matter enabled Jo to access programs and support that addressed the causes of the offending, and were directed at reducing the risk of re-offending in the future. The sentence was also in line with the sentencing considerations set out in the *Children, Youth and Families Act*, in particular, in having regard to the need to "continue the child's education, training and employment," and "strengthening and preserving the relationship between the child and the child's family."

Had this offending attracted a mandatory sentence of imprisonment, the programs critical to Jo reconnecting with culture, gaining skills for meaningful employment and addressing drug and alcohol use would not have been available.

The program that Jo was enrolled in was culturally appropriate and assisted Jo in re-engaging with community and family. This was critical for a young person who had been estranged from their wider family members. It is notable that the Magistrate found it important that Jo remain in community with access to the tailored program.

[47] Fitzgerald, J, 'Why are Indigenous Imprisonment Rates Rising?' (2009) *NSW Bureau of Crime Statistics and Research Crime and Justice Statistics Issue Paper no. 41*, 6.
[48] Ibid.

Western Australia has two types of mandatory sentencing laws. Adults and young people convicted of a home burglary must be sentenced to a minimum of 12 months imprisonment or detention if they have been convicted of two or more previous home burglaries.[49] Additionally, adults, and young people between the ages of 16 and 18 years, who are convicted of an assault on police or other public officers, causing either bodily harm or grievous bodily harm, must be sentenced to a mandatory term of imprisonment or detention ranging from 3 to 12 months.[50] Furthermore, Western Australia has recently announced a proposed extension to its mandatory sentencing laws by introducing legislation requiring a mandatory term of imprisonment for adults and young people who breach a Violence Restraining Order for a third time.[51]

Mandatory sentencing laws are arbitrary, often disproportionate to the crime and do not allow regard for the circumstances of the particular offence or offender.[52] Furthermore, mandatory sentencing has been shown to be costly, ineffective in deterring criminal activity, increase the likelihood of reoffending and breach Australia's human rights obligations. The NATSILS consider it essential to an effective criminal justice system that a decision maker be allowed to take into account an offender's unique circumstances, and have the full host of sentencing options available when applying sentencing principles of general and specific deterrence and rehabilitation, and subsequently, when making a decision as to sentence.

Furthermore, as a result of the elevated contact of Aboriginal and Torres Strait Islander peoples with the criminal justice system, mandatory sentencing disproportionately affects Aboriginal and Torres Strait Islander peoples, resulting in greater Aboriginal and Torres Strait Islander incarceration rates. Importantly, mandatory sentencing laws breach Australia's obligations under international law[53] and under the CRC in particular.[54]

**Proposed Question to the Australian Government:**

What steps are being taken by the Government to guarantee appropriate sentencing options are afforded and tailored to individual Aboriginal and Torres Strait Islander young people in contact with the justice system, in particular those affected by mandatory sentencing laws currently in operation?

**Suggested Recommendation:**

35. The Government urge State and Territory governments to repeal mandatory and minimum sentencing laws.

### 5.4 The Right to be Separated from Adults whilst in Detention (art 37 (c))

There is a distinct lack of youth bail and detention facilities in Australia, especially in regional, rural and remote Aboriginal and Torres Strait Islander communities. As a result, young people are

[49] *Criminal Code 1913* (WA) s401(4).
[50] *Criminal Code 1913* (WA) s297, s318.
[51] See http://au.news.yahoo.com/thewest/a/-/breaking/9669122/warning-on-restraint-order-changes/.
[52] Australian Human Rights Commission, *Mandatory Detention Laws in Australia* (2009) *at* http://www.hreoc.gov.au/human_rights/children/mandatory_briefing.html.
[53] *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, I-14668, [arts 9, 10, 14, 24, 2 , 26 and 50] (entry into force 23 March 1976).
[54] Convention on the Rights of the Child, above n 12, [arts 2, 3, 4, and 40].

inappropriately placed in adult detention facilities and lock-ups where they are not protected from adult detainees and offenders and are vulnerable to abuse. The following case study explains.

**Case Study: 12 Year Old Boy Endures a Week in Adult Lock-Up**

In May 2011 a 12 year old Aboriginal boy spent over a week in the Kununurra adult police lock-up after breaching bail conditions for two burglary offences. ALSWA report that Kununurra is over-policed and young people are regularly picked up for breaching bail conditions such as curfews.

He was remanded in custody on three separate occasions by both a Justice of the Peace and a Magistrate because no responsible parent could be found to meet the bail requirements and there are no youth bail facilities in Kununurra.

After a week in the adult lock-up the 12 year old boy was flown to a youth detention facility in Perth (a five hour flight away) where he spent several more days until he was sentenced via video link for the burglaries in Kununurra.

The NATSILS are particularly concerned by recent developments in the Northern Territory where by the minimum security cottages within the Alice Springs Correctional Centre, an adult custodial facility, have been made into the Alice Springs Juvenile Detention Centre (ASJDC). The ASJDC is a youth facility incorporated within an adult prison with minimal meaningful efforts having been made to separate young detainees from adult prisoners.

**Case Study: A Detention Centre within a Prison**

Young people detained in the ASJDC have continued aural and visual exposure to minimum security adult prisoners incarcerated within the Alice Springs Correctional Centre given that they are only separated from the adult facility by a mesh fence. Despite the fact that detainees can both see and hear adult prisoners and hear the Correctional Centre loudspeaker announcements, rules within the ASJDC preclude young detainees from communicating with adult prisoners. When a detainee was caught by guards speaking through the detention centre fence with an adult prisoner in early 2011, the detainee was disciplined through a period of isolation.

**Proposed Question to the Australian Government:**

What measures are the Government taking to ensure that adequate youth detention facilities are available so that when a young person must be placed in detention they are not inappropriately placed in adult detention facilities?

**Suggested Recommendations:**

36. That the Government work with State and Territory Governments to expand the availability of bail hostels and appropriate youth detention centres to regional and remote areas.

37. That the Government remove its reservation to art 37 (c) of the CRC and art 10 (2)(b) of the International Convention on Civil and Political Rights relating to the separation of young people from adults in detention.

## 5.5 The Right not to be Subjected to Torture or Other Cruel, Inhumane or Degrading Treatment or Punishment, Including Corporal Punishment (arts 37 (a) and 28 para 2)

The NATSILS hold significant concerns in relation to the state of some of Australia's youth detention facilities. These concerns relate in particular to issues of over-crowding, personal safety, hygiene, appropriate heating and air-conditioning given the extreme climates in Australia and the mixing of remanded detainees with sentenced offenders. The case study below highlights some of these concerns.

**Case Study: Melbourne Youth Justice Precinct**

Early in 2010, the Victorian Ombudsman released a report[55] in response to allegations from a whistleblower regarding serious misconduct of staff at a Melbourne youth detention centre. The allegations related to staff at the Melbourne Youth Justice Precinct:

a) inciting assaults between detainees;
b) assaulting detainees;
c) restraining detainees with unnecessary force;
d) supplying contraband to detainees, including tobacco, marijuana and lighters; and
e) stealing goods and consumables.

The disclosure also included allegations relating to general mismanagement of the Precinct, overcrowding, poor adherence to operational procedures and an organisational culture that fostered unethical conduct. During site visits, the Ombudsman officers observed many design features within the Precinct that did not appear suitable for a custodial environment for young people, including hanging points throughout the Centre and land-fill which contained pieces of glass rising to the surface. Some of the safety and health concerns identified by the Ombudsman included:

a) mouldy and dirty conditions;
b) a high prevalence of communicable infections such as scabies, Staphylococcus - Aureus and school sores;
c) electrical hazards; and
d) unhygienic conditions in food preparation areas.

Investigation also identified the following concerns:

a) Overcrowding has resulted in mattresses being placed in isolation rooms with young people having to go to the toilet in buckets;
b) The number of beds in the Precinct is not sufficient for the number of remanded or sentenced detainees that the Precinct is required to accommodate. As a result, undesirable mixing of detainees of widely varying ages and different legal status occurs; and
c) Remanded detainees are being placed in units with sentenced offenders which has presented a significant problem. Mixing of remanded and sentenced detainees of varying ages occurs despite section 22(2) and 23(1) of *the Victorian Charter of Human Rights and Responsibilities 2006* and section 482(1)(c) of the *Children, Youth and Families Act*. Both the Charter of Human Rights and the Act discuss the separation of persons accused of an offence from persons convicted of an offence.

In the Ombudsman's view, the conditions of the Youth Justice Precinct in Victoria reflect little regard for human rights principles for young people in custody.

[55] Ombudsman G E Brouwer, *Whistleblowers Protection Act 2001: Investigation into conditions at the Melbourne Youth Justice Precinct* (2010) *at* http://www.ombudsman.vic.gov.au/resources/documents/Investigation_into_conditions_at_the_Melbourne_Youth_Justice_Precinct_Oct_20101.pdf .

In addition, the following are examples of reported cases of abuse and maltreatment of Aboriginal and Torres Strait Islander young people during their arrest and detention.

**Case Studies: Abuse and Maltreatment**

1. In December 2009 a slightly built 15 year old Aboriginal boy was arrested in Geraldton. He was charged with a burglary, possession of stolen property and stealing. The boy instructed ALSWA that when his pockets were being emptied during his arrest, a police officer put a knee in his neck. He also said that when he was being questioned an officer slapped him. He was arrested again the following Saturday for a burglary and granted bail. The boy instructed ALSWA that at the time of his arrest he initially ran from police towards his home. Upon arrival, he found the door locked and surrendered himself to police by standing facing them with his hands up. He instructs he was then taken to the ground by police with his arms twisted behind his back. He instructs that he said "my arms" and may have wriggled slightly. He instructs that a different officer took his legs and that officer kneed him in the back of the head. The boy hit his face against the concrete causing his front tooth to break in half. He instructs that when he saw the blood he moved more and was thrown into a paddy wagon. He further instructs that at some point he was also punched from behind to his left cheek. He says there were four male officers involved. His sister (the responsible adult) advised that she arrived when the boy was at the back of the paddy wagon. She objected to the police treatment of her brother. The police replied something along to the effect of, "well, he shouldn't do burglaries then".

2. A 13 year old boy from Mullewa was arrested in October 2010 for various serious burglary offences. He was remanded in custody due to having breached bail by committing fresh offences. Juvenile Justice contacted ALSWA on the morning of his court appearance and relayed concerns about the welfare and health of the boy. Youth and Family Services had conducted a welfare check on the boy while he was in police custody and described him as distraught, having been goaded by police, and referred to suicidal ideations. They advised the boy had a history of self harm. The boy had a wound on his leg about which Youth and Family Services were concerned and asked the police to take him for medical treatment. The police were initially reluctant as it would "tie up an officer", but eventually agreed. The boy told ALSWA that he did not receive medical attention as the police came to him at 12.00am, which he described as "too late". He said that he had not been placed in the cell with the television, that police kept "annoying" him and that police swore at him. He was given toast and a burger, but no fruit or vegetables to eat. The boy's responsible adult was his mother who Juvenile Justice described as "not in a good way". The boy is an open case with DCP. A DCP officer attended at court but only contributed words to the effect of "we've just found out about him being in custody, and suggest it's up to justice to work on some strategies". The boy was granted bail to be assisted by Youth Bail Services.

**Proposed Questions to the Australian Government:**

Given recent evidence on the unsatisfactory and unsafe conditions in some youth detention centres (e.g. Melbourne Youth Justice Precinct), what action is the Government taking to improve standards are ensure that they are in line with its international obligations?

What training and oversight measures are in place to ensure that during arrest and any subsequent detention, young people are not maltreated or subjected to excessive force?

**Suggested Recommendations:**

38. The Australian Government ratify the Optional Protocol to the Convention Against Torture, and implement a national preventative mechanism, similar to but expanding on the Office of the Inspector of Custodial Services in Western Australia,[56] that has the power to inspect youth detention centres and police lock up facilities.

[56] See http://www.custodialinspector.wa.gov.au/.

39. Implement training for all police officers on their obligations under the CRC in relation to the rights and treatment of young people.

## 6. Summary of Proposed Questions and Suggested Recommendations

**Protection from abuse and neglect (art 19)**

**Proposed Question to the Australian Government:**

How is the effectiveness of initiatives to improve the living standards of Aboriginal and Torres Strait Islander young people measured and what plans are in place to amend such initiatives if they are proven to be ineffective?

**Suggested Recommendations:**

1. That the Government strengthen its current efforts to address the living conditions of Aboriginal and Torres Strait Islander peoples so that fewer Aboriginal and Torres Strait Islander young people are taken into alternative care by:

    d) committing to improving evidence gathering mechanisms through the incorporation of Aboriginal and Torres Strait Islander methodologies in relation to standards of living of Aboriginal and Torres Strait Islander young people;

    e) implementing independent reviews with the involvement of Aboriginal and Torres Strait Islander peoples of the success of the Closing the Gap campaign and the Northern Territory Intervention and committing to amend these initiatives in light of the reviews' results; and

    f) developing a system in consultation, partnership and collaboration with Aboriginal and Torres Strait Islander peoples for increased early and therapeutic family interventions and parental support which focuses on increasing the chances of young people remaining within their families.

**Indigenous Child Placement Principle and Preservation of Identity (arts 20 (3) and 8)**

**Proposed Question to the Australian Government:**

What capacity building and oversight measures are in place to ensure that the Indigenous Child Placement Principle achieves 100 per cent implementation and that Aboriginal and Torres Strait Islander young people retain their connections to community and culture once they are placed in alternative care?

**Suggested Recommendations:**

2. That a policy and practice framework be developed in consultation with Aboriginal and Torres Strait Islander peoples and organisations in relation to the Indigenous Child Placement Principle to aid its implementation.

3. That a review occurs of the screening processes of Aboriginal and Torres Strait Islander carers, in particular, kinship carers, and that resources be allocated to support and increase the number of potential carers.

4. That Cultural Plans be developed and updated at least every 6 months for each Aboriginal and Torres Strait Islander young person in care in consultation with the young person's family and community.

5. That wellbeing indicators be developed in consultation with Aboriginal and Torres Strait Islander peoples and Aboriginal and Torres Strait Islander Peak Bodies to assess and enhance the wellbeing of Aboriginal and Torres Strait Islander young people.

**Family Reunification after Separation (art 10)**

**Proposed Question to the Australian Government:**

What measures are in place to ensure that the child protection system focuses on family reunification as a priority, when in the best interest of the young person?

**Suggested Recommendation:**

6. That, when in the best interest of the childyoung person, the child protection system focus on family reunification as a priority and that until reunification is achieved Cultural Plans (see recommendation 4) be strictly followed so as to maintain the young person's connection to community and culture.

**Separation from Parents Due to Detention or Imprisonment (art 9)**

**Proposed Question to the Australian Government:**

To what extent is arranging phone calls and visits between Aboriginal and Torres Strait Islander young people in alternative care and their incarcerated parent/s, where it is in the young person's best interest, a priority within the child protection system and what oversight mechanisms are in place to monitor the regularity of such visits?

**Suggested Recommendation:**

7. That the child protection system educate its staff on the importance of maintaining relations between Aboriginal and Torres Strait Islander young people in alternative care and their incarcerated parent/s and ensure that such contact is designated as a priority area within their case work obligations.

**Over-representation of Aboriginal and Torres Strait Islander Young people in the Criminal Justice System**

**Proposed Question of Australian Government:**

To what extent does the Government's approach to the criminal justice system and Aboriginal and Torres Strait Islander young people focus on addressing the broader causal factors of offending and over-representation?

**Suggested Recommendations:**

8. That the Government work with State and Territory Governments to create a holistic youth justice system that responds effectively to the causal factors of offending and over-representation by diverting young people from contact with the criminal justice system and judicial proceedings and referring them to appropriate support and rehabilitative services wherever possible.

9. That the necessary resources be made available by Commonwealth, State and Territory Governments to prevent young people coming into contact with the criminal justice system in terms of investing in education, housing, rehabilitation services, youthyouth bail hostels, support services, employment and training and recreational activities under a justice reinvestment framework.

**Discriminatory Laws (art 2)**

**Proposed Question to the Australian Government:**

What action is the Government taking to ensure that legislation does not have a discriminatory effect on Aboriginal and Torres Strait Islander young people?

**Suggested Recommendations:**

10. That all legislation be reviewed for its impact upon Aboriginal and Torres Strait Islander peoples, including young people specifically, and that all future bills introduced into Australian parliaments include a statement of impact in relation to Aboriginal and Torres Strait Islander peoples, including young people specifically.

11. That where legislation is identified as having a discriminatory impact upon Aboriginal and Torres Strait Islander young people, such legislation be amended so as to not be discriminatory, or implementation and support measures be put in place to assist young people coming into contact with the legislation to achieve an equitable outcome.

12. That the Government work with State and Territory governments to expand the availability of youth bail hostels so that young people without access to appropriate accommodation or a responsible adult are not inappropriately remanded in custody.

13. That legislation in each jurisdiction dictating bail considerations and presumptions be amended to create a presumption in favour of bail for young people and to ensure that bail conditions take account of social and cultural factors and can be reasonably met by Aboriginal and Torres Strait Islander young people.

14. That immediate action be taken to dramatically reduce the numbers of Aboriginal and Torres Strait Islander young people on remand.

**Cautioning, Restorative Justice Approaches and Diversion Options (art 40 (3) (b))**

**Proposed Question to the Australian Government:**

What practical measures does the Australian Government have in place to guarantee that young people are diverted from the justice system in appropriate circumstances and what oversight mechanisms are in place to assess the rate at which Aboriginal and Torres Strait Islander young people are being diverted in comparison to non-Aboriginal and Torres Strait Islander young people?

**Suggested Recommendation:**

15. That the Australian Government work with State and Territory governments to introduce legislation that requires the police to lodge a written document with the court upon the commencement of criminal proceedings against a young person outlining why all diversionary processes were inappropriate in the circumstances.

16. That Commonwealth, State and Territory governments commit to working with police to increase the rate at which Aboriginal and Torres Strait Islander young people are diverted from the formal justice system.

17. That statistics be recorded by police and courts in regards to diversions and the stated offence/s.

**Specialised and Separate Courts**

**Proposed Question to the Australian Government:**

What action is the Government taking to ensure that in each State and Territory there are well resourced specialised courts for young people which focus on diverting them from the criminal justice system by addressing the underlying causes of offending and connecting offenders to appropriate support and rehabilitation services?

**Suggested Recommendation:**

18. The development and expansion of a specific justice system for young people which is adequately funded, coordinated and dynamic and which works towards the implementation of culturally appropriate restorative justice initiatives (such as the Victorian Children's Koori Court and the Queensland Youth Murri Court). We further consider it imperative that any youth justice system be framed in youth friendly terms so that young people understand the court system and experience it as meaningful and restorative rather than alienating.

19. That the Commonwealth, State and Territory Governments commit to working with Aboriginal and Torres Strait Islander communities and Elders in the development and dispensation of youth justice.

20. Increased provision of culturally appropriate support and treatment facilities for young people with mental health and drug and alcohol abuse issues in metropolitan, regional and remote areas.

**Provision of Legal Assistance (37 (d))**

**Proposed Questions to the Australian Government:**

What measures are in place to ensure Aboriginal and Torres Strait Islander young people have access to culturally appropriate and accessible legal advice?

What role do police play in protecting Aboriginal and Torres Strait Islander young people's right to legal advice, representation and the right to silence whilst in police custody?

**Suggested Recommendations:**

21. That the ATSILS and FVPLS funding is increased so as to achieve parity with mainstream legal aid services.

22. That FVPLS be funded to provide services in metropolitan areas.

23. That increased funding is provided for the expansion of Aboriginal and Torres Strait Islander interpreter services so as to create a coordinated national Aboriginal and Torres Strait Islander interpreter service that covers all metropolitan, regional and remote areas.

24. That laws be amended to make it mandatory for police to contact an Aboriginal and Torres Strait Islander Legal Service in every circumstance where an Aboriginal and Torres Strait Islander young person is taken into police custody, and that adequate funding is sufficiently provided to support this additional service.

**Protection of Privacy and Protection of the Image (art 16)**

**Proposed Question to the Australian Government:**

What measures are in place to protect young people aged 16-18 years from publication of their personal details and photographs on government departmental websites, or on the internet and other publications generally?

**Suggested Recommendation:**

25. That the Australian Government urges the Western Australian Government to amend legislation to prevent the publication of personal information and photographs of young offenders subject to Prohibitive Behaviour Orders to ensure their privacy is protected.

**Minimum Age that a Person Can Be Tried as an Adult**

**Proposed Question to the Australian Government:**

What progress has been made to bring the minimum age that a person can be tried as an adult in Queensland up to a more acceptable level that is in line with other States and Territories in Australia and international human rights jurisprudence?

**Suggested Recommendations:**

26. That the age for adult criminal responsibility must be raised from 17 years old to 18 years old in Queensland.

27. That a time specific commitment is made to transfer 17 year olds in Queensland from adult prisons to youth detention and that all young people under the age of 18 years fall within the jurisdiction of the *Youth Justice Act* 1992 (Queensland) and have access to the Charter of Youth Justice Principles.

**Detention as a Last Resort (art 37 (b))**

**Proposed Question to the Australian Government:**

Beyond legislation, what measures are in place on the ground to ensure that detention is only used as a measure of last resort and that young people are not sentenced to remand unnecessarily because of socio-economic factors or mental illness issues?

**Suggested Recommendations:**

28. That in cases where bail is difficult due to an inability to locate a responsible adult and where remand is highly inappropriate, an out-of-court caution or referral to a Juvenile Justice Team or equivalent be recognised as the most suitable outcome.

29. Introduce legislation to ensure that a judicial officer review all police decisions in relation to bail as soon as reasonably possible after charging to ensure that only appropriate bail conditions are set and to minimise the numbers of young people detained in custody.

30. Stronger measures to be put in place that require police and courts to deal with young people with mental health concerns and or/intellectual deficiencies who are in conflict with the law without resorting to judicial proceedings and detention.

31. Increased provision of culturally appropriate support and treatment facilities for young people with mental illness in metropolitan, regional and remote areas.

**Suspended Sentences and Other Non-Detention Sentences (art 37 (b))**

**Proposed Question to the Australian Government:**

What action is the Government taking to ensure that a full range of non-custodial sentencing options are available to courts and that offenders residing in regional, remote and very remote

communities are afforded the same options for sentencing as those residing in metropolitan areas?

**Suggested Recommendations:**

32. That the Government urge State and Territory Governments to maintain separation of powers and not to intrude upon the independence and expertise of courts by introducing legislation that restricts the sentencing options available to courts (such as suspended sentences).

33. That the Government work with State and Territory governments to extend the availability of community based sentencing options in regional and remote areas so that justice is not determined by geography and young people from these areas are not placed in detention unnecessarily.

34. That the Government work with State and Territory Governments to achieve the provision of culturally appropriate alcohol, drug and substance abuse rehabilitation facilities in regional and remote areas.

**Mandatory Sentencing (art 37 (b))**

**Proposed Question to the Australian Government:**

What steps are being taken by the Government to guarantee appropriate sentencing options are afforded and tailored to individual Aboriginal and Torres Strait Islander young people in contact with the justice system, in particular those affected by mandatory sentencing laws currently in operation?

**Suggested Recommendation:**

35. The Government urge State and Territory governments to repeal mandatory and minimum sentencing laws.

**The Right to be Separated from Adults whilst in Detention (art 37 (c))**

**Proposed Question to the Australian Government:**

What measures are the Government taking to ensure that adequate youth detention facilities are available so that when a young person must be placed in detention they are not inappropriately placed in adult detention facilities?

**Suggested Recommendations:**

36. That the Government work with State and Territory Governments to expand the availability of bail hostels and appropriate youth detention centres to regional and remote areas.

37. That the Government remove its reservation to art 37 (c) of the CRC and art 10 (2)(b) of the International Convention on Civil and Political Rights relating to the separation of young people from adults in detention.

**The Right not to be Subjected to Torture or Other Cruel, Inhumane or Degrading Treatment or Punishment, Including Corporal Punishment (arts 37 (a) and 28 para 2)**

**Proposed Questions to the Australian Government:**

Given recent evidence on the unsatisfactory and unsafe conditions in some youth detention centres (e.g. Melbourne Youth Justice Precinct), what action is the Government taking to improve standards are ensure that they are in line with its international obligations?

What training and oversight measures are in place to ensure that during arrest and any subsequent detention, young people are not maltreated or subjected to excessive force?

**Suggested Recommendations:**

38. The Australian Government ratify the Optional Protocol to the Convention Against Torture, and implement a national preventative mechanism, similar to but expanding on the Office of the Inspector of Custodial Services in Western Australia, that has the power to inspect youth detention centres and police lock up facilities.

39. Implement training for all police officers on their obligations under the CRC in relation to the rights and treatment of young people.

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United Nations

# United Nations DECLARATION on the RIGHTS of INDIGENOUS PEOPLES

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United Nations

# United Nations Declaration on the Rights of Indigenous Peoples

# Resolution adopted by the General Assembly

[*without reference to a Main Committee (A/61/L.67 and Add.1)*]

## 61/295. United Nations Declaration on the Rights of Indigenous Peoples

*The General Assembly,*

*Taking note* of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,[1] by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

*Recalling* its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

*Adopts* the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

*107th plenary meeting*
*13 September 2007*

### Annex

## United Nations Declaration on the Rights of Indigenous Peoples

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

*Affirming* that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

[1] See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53* (A/61/53), part one, chap. II, sect. A.

*Affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

*Recognizing* the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

*Recognizing also* the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

*Welcoming* the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

*Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recognizing* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

*Emphasizing* the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social

progress and development, understanding and friendly relations among nations and peoples of the world,

*Recognizing in particular* the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

*Considering* that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights[2] and the International Covenant on Civil and Political Rights,[2] as well as the Vienna Declaration and Programme of Action,[3] affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Bearing in mind* that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Encouraging* States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

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[2] See resolution 2200 A (XXI), annex.

[3] A/CONF.157/24 (Part I), chap. III.

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

*Recognizing* that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

*Solemnly proclaims* the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

*Article 1*

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights[4] and international human rights law.

*Article 2*

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

*Article 3*

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

*Article 4*

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to

[4]Resolution 217 A (III).

their internal and local affairs, as well as ways and means for financing their autonomous functions.

*Article 5*

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

*Article 6*

Every indigenous individual has the right to a nationality.

*Article 7*

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

*Article 8*

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(*a*) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(*b*) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(*c*) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(*d*) Any form of forced assimilation or integration;

(*e*) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

*Article 9*

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

*Article 10*

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

*Article 11*

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

*Article 12*

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

*Article 13*

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

*Article 14*

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

*Article 15*

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

*Article 16*

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

*Article 17*

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

*Article 18*

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

*Article 19*

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

*Article 20*

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

*Article 21*

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

*Article 22*

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

*Article 23*

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

*Article 24*

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

*Article 25*

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

*Article 26*

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

*Article 27*

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

*Article 28*

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources

equal in quality, size and legal status or of monetary compensation or other appropriate redress.

*Article 29*

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

*Article 30*

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

*Article 31*

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

*Article 32*

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

*Article 33*

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

*Article 34*

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

*Article 35*

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

*Article 36*

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

*Article 37*

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

*Article 38*

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

*Article 39*

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

*Article 40*

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

*Article 41*

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

*Article 42*

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

*Article 43*

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

*Article 44*

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

*Article 45*

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

*Article 46*

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law

and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

# Convention on the Rights of the Child

**Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989**

**entry into force 2 September 1990, in accordance with article 49**

## Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing 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,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

## PART I

### Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

### Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

### Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

### Article 6

1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

**Article 7**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

**Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

**Article 9**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

**Article 10**

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their

own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

**Article 11**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

**Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

**Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

**Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

**Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

**Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

**Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

**Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

**Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

**Article 21**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

**Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention.

**Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

**Article 24**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

**Article 25**

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

**Article 26**

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

**Article 27**

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

**Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy

throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

**Article 29**

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

**Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

**Article 31**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

**Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

**Article 33**

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

**Article 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

**Article 35**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

**Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

**Article 37**

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

**Article 38**

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

**Article 39**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

**Article 40**

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

**Article 41**

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

**PART II**

**Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

**Article 43**

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute

a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

**Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

**Article 45**

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

**PART III**

**Article 46**

The present Convention shall be open for signature by all States.

**Article 47**

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 48**

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

**Article 49**

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

**Article 50**

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any

amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

**Article 51**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

**Article 52**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

**Article 53**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

**Article 54**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

# Submission on the Development, Implementation and Review of Queensland Aboriginal & Torres Strait Islander Cultural Support Plans within the Child Protection System

**February 2012**

## 1. Introduction

We thank you for the opportunity to provide comment on the development, implementation and review of Cultural Support Plans within Queensland Child Protection. We acknowledge the particular importance of such a review, to the Queensland Commission for Children and Young People and Child Guardian, Department of Communities - Child Safety Services, the Queensland public and perhaps most importantly, the 37.6 % of Aboriginal and Torres Strait Islander children represented in Queensland's Child Protection System.

## 2. Preliminary Consideration: Our background for meaningful comment

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd ("ATSILS") provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Our primary role is to provide criminal, civil and family law representation inclusive of child protection representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of Law and Social Justice Reform, Community Legal Education and monitoring Aboriginal and Torres Strait Islander Deaths in custody. As an organisation which for four decades has practiced at the coalface of the justice arena, we believe we are well placed to provide meaningful comment, not only from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences. Consequently, we hope that our comments are of assistance in this very important area of much needed reform.

Please note: Whilst there are certain systemic deficiencies identified within the body of this submission – we do acknowledge that the Department of Communities – Child Safety Services employees, perform a highly demanding role in often trying circumstances, with strong commitment and integrity. Our submission is based upon our first-hand experiences, with the aim of supporting enhanced, holistic quality outcomes for Aboriginal and Torres Strait Islander children and thus promoting positive systemic change.

| Summary of our Position |
| --- |
| Given the relatively small percentage of Aboriginal and Torres Strait Islander children in Queensland, the fact that they comprise 37.6 % of those placed statutorily in out-of-home care, |

constitutes a gross and alarming over-representation. Cultural Support Planning is an instrumental practice approach which can assist in the achieving of an holistic best interest, wellbeing and safety of Aboriginal and Torres Strait Islander children in an effective and timely manner. Appropriate Cultural Support Plans are a right and benefit to all 3017 Aboriginal and Torres Strait Islander children in out of home care. However, for the 47.8% of children placed outside the preferred Child Placement Principle hierarchy it is essential.[1] Cultural Support Planning is integral to achieving the legislated intention of the Aboriginal and Torres Strait Islander Child Placement Principle and preservation of a child's cultural identity.

ATSILS questions the current Department of Communities – Child Safety Cultural Support Plan reported data of 73% current plans and 92.7% total plans based on a comprehensive review of ATSILS' child protection case files and complying child protection stakeholder responses.[2]

ATSILS is of the view that the accurate percentage of quality Cultural Support Plans will reflect significantly lower adherence. ATSILS presents recommendations outlining required practice enhancements for the benefit of Aboriginal or Torres Strait Islander children in out of home care. ATSILS and the department have a vested interest in ensuring that the internationally and nationally legislated cultural rights of Aboriginal and Torres Strait Islander children are maintained regardless of their out of home care status.

## 3. Background

### 3.1 Over-Representation

Aboriginal and Torres Strait Islander children are over-represented across all phases of the child protection continuum including Intake, Investigation and Assessment and Ongoing Intervention.

Aboriginal and Torres Strait Islander children represent around 6.5% of all young people (aged 0-17 years) in Queensland, yet as at 31 March 2011 accounted for:

[1] Queensland Aboriginal and Torres Strait Islander Child protection Peak, *Losing Ground – A report on adherence to the Aboriginal & Torres Strait Islander Child Placement Principle in Queensland* (2011) at http://www.qatsicpp.com.au/wp-content/uploads/Losingground010911.pdf.

[2] Queensland Department of Communities. *Our performance* (2012) at http://www.communities.qld.gov.au/childsafety/about-us/our-performance.

- 25.8% of children notified (4,836 of 18,774)
- 29.1% of children substantiated (1,748 of 6,004)
- 40.4% of children admitted to child protection orders (1,731 of 4,282)
- 37.2% of children subject to child protection orders (3,086 of 8,290)
- 37.6% of children living away from home (3,017 of 8,025).[3]

In 2009-10, Aboriginal and Torres Strait Islander children were:

- 4.7 times more likely to be notified for alleged harm or risk of harm
- 6.1 times more likely to be substantiated for abuse or neglect
- 8.4 times more likely to be subject to a care and protection order
- 8.4 times more likely to be living away from home.[4]

### 3.2 Previous contact with Department

Aboriginal and Torres Strait Islander children are more likely than non-Aboriginal and Torres Strait Islander children to have had previous contact with the Department prior to their current intake. For children subject to an intake during the year ending 31 March 2011, 71.6% of Aboriginal and Torres Strait Islander children had previously been subject to an intake (9,467 of 13,214), compared to 53.1% for non-Aboriginal and Torres Strait Islander children (29,781 of 56,133).[5]

### 3.3 Culturally appropriate placements

As at 31 March 2011, Child Safety reported that 52.2% of Aboriginal and Torres Strait Islander children in out-of-home care were placed with kin, an Aboriginal and Torres Strait Islander carer, or an Aboriginal and Torres Strait Islander residential care service.[6]

### 3.4 Cultural support plans

As at 31 March 2011, there were 4,052 Aboriginal and Torres Strait Islander children subject to ongoing intervention. Of these, purportedly 3,756 or 92.7% had a cultural support plan. Of those Aboriginal and Torres Strait Islander children subject to ongoing

[3] Ibib.
[4] Ibid.
[5] Ibid.
[6] Queensland Department of Communities. above n 2.

intervention with a cultural support plan, 2,743 (73.0%) are reported to have had a current cultural support plan (i.e. either initially created in the last six months or reviewed in the last six months). [7]

## 4. Purpose of Cultural Support Plans

### 4.1 Cultural Support Plan Objectives

> "Any definition of the rights of the child and criteria which seek to determine what is in the best interests of the child must recognise the right to culture as formative for identity and therefore that *maintenance of cultural identity is in the best interests of the child.*" Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd (QATSICPP Ltd)[8]

The legislative intention is that Cultural Support Plans must support Aboriginal and Torres Strait Islander children to reach their full potential and develop into strong secure adults. Where children are supported to be grounded in a foundation of cultural identity and a relationship with their family, extended kin, and community it creates the required linkages to their traditional and modern innate belonging. Their cultural identity must be supported by the holistic life concepts of Aboriginal or Torres Strait Islander traditions which their ancestors, elders, kin and immediate families have accomplished and embedded within their cultural heritage.[9] This legacy has survived the test of time and is a pathway to understanding or an imperative guide supportive of Aboriginal or Torres Strait Islander children and young people's unique experiences in out of home care.

Ideally Cultural Support Plans must assist Aboriginal and Torres Strait Islander children to utilise this foundation of cultural strength to successful navigate the unintended detrimental experiences related to statutory out of home care.

In accordance with the legislated and procedural requirements, a Cultural Support Plan is intended to create an environment of resilience supportive of the child's developmental stages and transition to adulthood through the long term development of relationships with positive

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[7] Ibid.

[8] Queensland Aboriginal and Torres Strait Islander Child Protection Peak., *Long-Term Guardianship position Paper* (2011).

[9] Dodson M, *The Wentworth Lecture- The end in the beginning: re(de)finding Aboriginality* in *Journal of the Australian Institute of Aboriginal and Torres Strait Islander Studies* (1994).

immediate and extended family and community members creating a supportive safety network.[10]

The intended resilience established within a child's family, cultural and community groups creates a sense of belonging and active supportive safety network to better support children and young people to successfully navigate high risk environments. Through these linkages children might develop a sense of belonging to country and a sense of understanding of who they are as an Aboriginal or Torres Strait Islander person. Children with this sense of belonging and understanding are imbued with the disciplined positive cultural norms of their people and country.

Cultural Support Plans must create a positive environment where Aboriginal and Torres Strait Islander children and young people regardless of their out of home care status are afforded opportunities to reach their full potential as Aboriginal or Torres Strait Islander peoples and as Australian children and future adults.[11]

### 4.2 Cultural Support Plan Requirements

In developing a Cultural Support Plan all stakeholders must consider and are required to meet the obligations outlined in the Queensland *Child Protection Act 1999,* inclusive but not limited to sections:

***5C Additional principles for Aboriginal or Torres Strait Islander children***

*The following additional principles apply in relation to an Aboriginal or Torres Strait Islander child —*

*(a) the child should be allowed to develop and maintain a connection with the child's family, culture, traditions, language and community;*

*(b) the long-term effect of a decision on the child's identity and connection with their family and community should be taken into account.*

***6 Recognised entities and decisions about Aboriginal and Torres Strait Islander children***

*(1) When making a significant decision about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must give an opportunity to a recognised entity for the child to participate in the decision-making process.*

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[10] Queensland Department of Communities., *Child Safety Practice Manual-Practice resource Developing a cultural support plan for an Aboriginal or Torres Strait Islander child (2012)* at http://www.communities.qld.gov.au/resources/childsafety/practice-manual/pr-developing-cultural-support-plan-atsi.pdf.

[11] *Queensland Child Protection Act 1999,* reprinted as in force on 1 January 2012 reprint No. 7c

*(2) When making a decision, other than a significant decision, obout an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a recognised entity for the child before making the decision.*

*(3) However, if compliance with subsection (1) or (2) is not practicable because a recognised entity for the child is not available or urgent action is required to protect the child, the chief executive or an authorised officer must consult with a recognised entity for the child as soon as practicable after making the decision.*

*(4) If the Childrens Court exercises a power under this Act in relatian to an Aboriginal or Torres Strait Islander child, the court must have regard to —*

*(a) the views, about the child and about Aboriginal tradition and Island custom relating to the child, af —*

*(i) a recognised entity for the child; or*

*(ii) if it is not practicable to obtain the views of a recognised entity for the child — members of the cammunity to whom the child belongs; and*

*(b) the general principle thot an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal ar Torres Strait Islander community.*

*Editor's note—The Acts Interpretation Act 1954, section 36, contains definitions of Aboriginal tradition and Island custom.*

*(5) As far as is reasonably practicable, the chief executive or an authorised officer must try to conduct consultations, negatiations, family group meetings and other proceedings involving an Aboriginal person or Torres Strait Islander (whether a child or not) in a way and in a place that is appropriate to Aboriginal tradition or Island custom.*

*(6) In this section— **significant decision**, about an Aboriginal or Torres Strait Islander child, means a decision likely to have a significant impact on the child's life.*

*Examples of decisions reloting to an Aboriginal or Torres Strait Islander child that moy be significant decisions—*
*1 a decision made in the course of investigating an allegation of harm to the child*
*2 a decision about placing the child in care*

***51B What is a case plan***

*(1) A **case plan** for a child is a written plan for meeting the child's protection and care needs*

*(2) A case plan may include any of the following matters—*

*(a) a goal or goals to be achieved by implementing the plan;*

*(b) arrangements about where or with whom the child will live, including interim arrangements;*

*(c) services to be provided to meet the child's protection and care needs and promote the child's future wellbeing;*

*(d) matters for which the chief executive will be responsible, including particular suppart or services;*

*(e) the child's contact with the child's family group or other persons with whom the child is connected;*

*(f) arrangements for maintaining the child's ethnic and cultural identity;*

*(g) matters for which a parent or carer will be responsible;*

*(h) a proposed review day for the plan.*

***83 Additional provisions for placing Aboriginal and Torres Strait Islander children in care***

*(1) This section applies if the child is an Aboriginal ar a Torres Strait Islonder child.*

*(2) The chief executive must ensure a recognised entity for the child is given an opportunity to participate in the process for making a decision about where or with whom the child will live.*

*(3) However, if because of urgent circumstances the chief executive makes the decision without the participation of a recognised entity for the child, the chief executive must consult with a recognised entity for the child as soon as practicable after making the decision.*

*(4) In making a decision about the person in whase care the child should be placed, the chief executive must give proper consideration to placing the child, in order of priority, with—*

*(a) a member of the child's family; or*

*(b) a member of the child's community or language group; or*

*(c) another Aboriginal person or Torres Strait Islander who is compatible with the child's community or language graup; or*

*(d) another Aboriginal person or Torres Strait Islander.*

*(5) Also, the chief executive must give proper consideration to—*

*(a) the views of a recognised entity for the child; and*

*(b) ensuring the decision pravides for the optimal retention of the child's relotionships with parents, siblings and other people of significance under Aboriginal tradition or Island custom.*

*(6) If the chief executive decides there is na appropriate person mentioned in subsection (4)(a) to (d) in whose care the child may be placed, the chief executive must give praper consideration to placing the child, in order of priority, with—*

*(a) a person who lives near the child's family; or*

*(c) a person who lives near the child's community or language group.*

*(7) Before placing the child in the care of a family member or other person who is nat an Aboriginal person or Torres Strait Islander, the chief executive must give proper consideration to whether the person is committed to—*

*(a) facilitating contact between the child and the child's parents and other family members, subject to any limitations on the contact under section 87; and*

*(b) helping the child to maintain contact with the child's community or languoge group; and*

*(c) helping the child to maintain a connection with the child's Aboriginal or Torres Strait Islander culture; and*

*(d) preserving and enhancing the child's sense af Abariginal or Torres Strait Islander identity.*

***88 Chief executive to provide contact between Aboriginal or Torres Strait Islander child and child's community or language group***

*(1) This section applies if the child is an Aboriginal or a Torres Strait Islander child.*

*(2) The chief executive must pravide opportunity for contact, as often as is appropriate in the circumstances, between the child and appropriate members of the child's community or language group.*

***122 Statement of standards***

*(1) The chief executive must take reasonable steps to ensure a child placed in care under section 82(1) is cared for in a way that meets the following standards (the **statement of standards**)—*

*(a) the child's dignity and rights will be respected at all times;*

*(b) the child's needs for physical care will be met, including adequate food, clothing and shelter;*

*(c) the child will receive emotional care that allows him or her to experience being cared about and valued and that contributes to the child's positive self-regard;*

*(d) the child's needs relating to his or her culture and ethnic grouping will be met;*

*(e) the child's material needs relating to his or her schooling, physical and mental stimulation, recreation and general living will be met;*

*(f) the child will receive educotion, training or employment opportunities relevant to the child's age and ability;*

*(g) the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour;*

*(h) the child will receive dental, medical and therapeutic services necessary to meet his or her needs;*

*(i) the child will be given the opportunity to participate in positive social and recreational activities appropriate to his or her developmental level and age;*

*(j) the child will be encouraged to maintain family and other significant personal relationships;*

*(k) if the child has a disability—the child will receive care and help appropriate to the child's special needs.*

A comprehensive Cultural Support Plan must:

a. Draw upon a culturally appropriate assessment process determining the child's holistic cultural needs.

b. Draw upon a comprehensive identification process gathering accurate information of the Child's Aboriginal and/or Torres Strait Islander family, community and cultural connections.

c. Establish a collaborative/co-developed document representative of the child's holistic cultural needs and the family, community and cultural groups key guidance and commitment. (This should include immediate and kinship family, significant Elders, clan and moiety groups, language and community groups.)

d. Establish key individuals, groups and services committed to ensuring the cultural retention and enhancement of the child's cultural belonging and identity.

e. Establish regular weekly, monthly and annual activities ensuring active participation in family, community, cultural groups as well as generic Aboriginal and Torres Strait Islander culture. This requires a balance between activities supporting a child's unique cultural belonging to their immediate family/cultural groups and generic cultural activities which allow to child/young person to actively express their Aboriginality.

f. Draw on a comprehensive and resourced contact plan with immediate, extended families and cultural groups to ensure the child's identity, cultural connection and belonging are persevered and enhanced whilst subject to out of home care.

g. Draw on a comprehensive resource summary. This must outline the formal approval for personal, services, resources and financial assistance required to preserve and enhance the child's cultural identity.

h. Draw on a comprehensive monitoring and review cycle. This must include monitoring of implementation during ongoing intervention cycles finalised by a formal review in the development of a new case plan.

## 5. Influencing Factors Impeding Implementation

ATSILS conducted a review and held internal and external Rights of the Child - Child Protection Community workshops in Cairns, Mt Isa, Townsville, Rockhampton, Sunshine Coast, Logan and Toowoomba in 2011. The aims of these review and workshops were to provide proficient community and stakeholder legal education regarding the *Queensland Child Protection Act* 1999 and the *Commission for Children and Young People Act 2000* – as well as facilitating an inclusive community consultation and development process with Queensland Aboriginal and Torres Strait Islander child protection professionals. The community/stakeholder workshops identified a range of influencing factors impeding the successful implementation of Cultural Support Plans aimed at ensuring a child's cultural preservation and enhancement. In particular:

a) In 2009 enhancements to the Department of Communities –Child Safety Services Information Client Management System (ICMS) established an environment where a Child Safety Officer's completion of an Aboriginal or Torres Strait Islander child's identification field results in the automatic procreation of a Cultural Support Plan within the case plan template. ATSILS recognises that this ICMS development promotes the creation of Cultural Support Plans however ATSILS draws the Commissioner's attention to the fact that current performance data is represented by a significant proportion of Cultural Support Plans with limited to no quality case management information or actions.

ATSILS questions the authenticity of the current publicly reported data on Cultural Support Plan performance. Consultations with the State-wide non-government child protection agencies provided advice and information indicating majority of plans are incomplete and fail to meet children's cultural retention needs. The consultation findings are further evidenced by an ATSILS internal review of child protection case files demonstrating a large percentage of cultural support plans with no information recorded under the Cultural Support Plans' five information headings.[12]

b) The Aboriginal and Torres Strait Islander Kinship Reconnection project (2010) commissioned by the Placements for Aboriginal and Torres Strait Islander working group conducted a sample audit of 28 children. The audit confirms ATSILS' concerns relating to the effectiveness of Cultural Support planning with only 7 children benefiting from a Completed Cultural Support Plan and 6 receiving a partial plan.[13] More concerning, 50% of children audited did not benefit from any form of Cultural Support planning.[14] The audit conducted quality assurance of Cultural Support Plans and constructively evaluated each plan. If the key findings of the Kinship Care Reconnection report sample data are projected into the current 3017 Aboriginal and Torres Strait Islander children in out of home care, 1508 children would have no cultural support plan, 697 children would have a partial cultural support plan and only 811 would have a completed cultural support plan!

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[12] Aboriginal & Torres Strait Islander Legal Service (Qld), *Rights of the Child-Child Protection report.(2011)*.
[13] Paul Testro, *Report on the Aboriginal and Torres Strait Islander Kinship Re-connection Project. Peak Care (2010) at* http://cpp.comverj.com/wp-content/uploads/2010/09/Kinship-Reconnect-Project-FinalReport-22-06-10.pdf.
[14] Ibid.

c) The current Structured Decision Making (SDM) tools, particularly the Child Strengths and Needs SDM tool is an inadequate assessment of Aboriginal and Torres Strait Islander children's spiritual, emotional, mental, physical and cultural holistic needs. Current supportive practice resources that offer Child Safety Officers cultural guidance are not integrated into the SDM assessment process and are not ICMS mandatory fields. ATSILS suggests that an enhanced assessment processes will result in assessments representative of the unique needs of children required for enduring and meaningful cultural retention and identity preservation.

d) Minimal identification of a child's Aboriginal and Torres Strait Islander status – in particular, a lack of comprehensive identification of connections and belonging within immediate family, extended families, clan, moiety, language and community groups.

e) Minimal engagement of immediate family, extended family, significant community and cultural persons impact the cultural support plan co-development process. This minimal engagement is restricting the input of knowledge and commitment from the broader family, community, cultural language groups. There are a number of key stakeholders internal and external within the child protection systems who have important roles to fulfil. However there is a lack of coordination within the child protection phases and clarification of duties and responsibilities.

It is evident that cultural support planning requires collaboration between Department of Communities Child Safety Officers, Child Safety Support Officers, Recognised Entity and Family Support services to actively gather information and co-develop cultural retention strategies at the initial phase of investigation and assessment. This process must be further enhanced throughout the ongoing intervention phase, and a comprehensive draft must be tabled at the family group or case plan review meeting. The family group or case plan review meeting is time limited and often emotional charged as stakeholders discuss a range of sensitive child protection topics it is not a conducive forum for development, rather the appropriate forum for finalisation and stakeholder approval of a Cultural Support Plan.

The Recognised Entity and Aboriginal or Torres Strait Islander Child Safety Support Officer is restricted in the level of cultural support plan specific engagement,

preparation, development and implementation. The Recognised Entity model is limited to participation and consultation in decision making by way of the Department of Communities - Child Safety which ultimately hinders the independence of the model. Furthermore the constraining model limits worker's cultural engagement with family, kin and community which could allow for comprehensive development of a Cultural Support Plan.

The Aboriginal and Torres Strait Islander Child Safety Support Officer (identified position) lacks a comprehensive position distribution detailing the role's cultural engagement and development responsibilities. Additionally a fundamental flaw is the managerial discretion which often results in the role being utilised for core child protection activities at the expense of cultural development beneficial to children and young people.

Cultural practice is fundamental to ensuring the preservation and enhancement of Aboriginal and Torres Strait Islander children's cultural identity whilst in out of home care. The Department of Communities holds responsibility for supporting and affording the appropriate resources to Aboriginal and Torres Strait Islander professionals to adequately meet the children's and family's needs and negotiate Cultural Support Plans responsive to the detrimental impacts of out of home care and which are reflective of individual circumstances.

f) The Commission's Community Visitors Program data 2009 to 2010 indicate that one quarter of Aboriginal and Torres Strait Islander children in out of home care had no contact with their parents, and almost half of Aboriginal and Torres Strait Islander children had no contact with their traditional language or tribal group in the year.[15] This data alerts ATSILS to the paucity of content and ineffective implementation of Cultural Support Plans which could result in detrimental disconnection from a child or young person's family, language and community group.

g) Queensland's Create Foundation, a peak voice for children in out of home care additionally confirms inconsistencies with Cultural Support Plan performance data

[15] Commission for Children and Young People and Child Guardian, *Special Needs of Aboriginal and Torres Strait Islander Children (2010) at* http://www.ccypcg.qld.gov.au/pdf/publications/reports/child_guardian_report_09-10/special-needs-of-Aboriginal-and-Torres-Strait-Islander-children.pdf.

and children or young people's experiences. In particular the Create Foundation's "Be heard" report outlines:

- Only 8% of children in care feel they know enough about their family story;
- Only 5 % report knowing of their Cultural Support Plan; and
- Anecdotally communicated their experiences as being one of non-connection to their culture. [16]

ATSILS acknowledges feedback collected by the Commission's Community visitor program, with 98.5 % of children in out of home care reporting satisfaction with their carers, and 87.3% reporting satisfaction with the Department in relation to cultural activities and linkages.[17] Consideration must be given to age of children providing this feedback and the possible influence of gratuities compliance. There is inconsistent evidence in relation to children in out of home care experience of cultural preservation and enhancement. Reported figures might indicate positive immediate care environments; nevertheless the longer term holistic benefits achieved through Aboriginal and Torres Strait Islander children's belonging, connection and participation within their cultural relationships are of grave community concern.

h) The Queensland Aboriginal and Torres Strait Islander Child Protection Peak "Losing Ground Report" - a report on adherence to the Aboriginal and Torres Strait Islander Child Placement Principle in Queensland, clearly identifies that well-resourced Cultural Support Plans are fundamental to children's cultural preservation and enhanced identity.[18] Cultural Support Plans are beneficial for all Aboriginal or Torres Strait Islander children in out of home care particularly for children placed outside the preferred hierarchy of the Child Placement Principle. The report acknowledges the rates of 37% over- representation further compounds the lack of adherence to the

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[16] Create Foundation, *Issues for Children and Young People in Care Overview.*(2011).

[17] Commission for Children and Young People and Child Guardian, *Special Needs of Aboriginal and Torres Strait Islander Children (2010) at* http://www.ccypcg.qld.gov.au/pdf/publications/reports/child_guardian_report_09-10/special-needs-of-Aboriginal-and-Torres-Strait-Islander-children.pdf.

[18] Queensland Aboriginal and Torres Strait Islander Child protection Peak. above n 1.

Aboriginal and Torres Strait Islander Child Placement Principle with 1241 children in out of home care placed outside the preferred hierarchy.[19]

i) The Department of Communities (Child Safety) and (Youth Justice) require strengthening and more comprehensive collaborative case management where facilitating services to children subject to dual orders. Collaborative case management must ensure:

- Integrated Information systems to ensure collaborative assessment, planning, implementation, monitoring and recordkeeping review in dual orders; and
- Aboriginal and Torres Strait Islander children on dual orders receive adequate cultural preservation to ensure justice restoration and respond to a child's long term holistic needs.

"The Bringing Them Home Report" (of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families), made significant correlation to people's child removal experiences and subsequent contact with the criminal justice system.[20]

As of the 30 June 2010:

- The rate of Aboriginal and Torres Strait Islander young people subject to supervised youth justice orders was 27.8 per 1,000 young people aged 10–16 years.

- This was more than 13 times the rate for non-Indigenous young people, which was 2.0 per 1,000 young people.

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[19] Ibid.

[20] Human Rights and Equal Opportunity Commission, *Bringing them Home -Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) at http://www.hreoc.gov.au/social_justice/bth_report/index.html.

- Aboriginal and Torres Strait Islander young people were also strongly over-represented, making up 53.0% of those spending time in detention.[21]

It is concerning that the Department of Communities has delivered only two recent data cross-matching exercises in 2009 and 2010 to examine the overlap between the Child Safety and Youth Justice systems and failed to explore a Aboriginal, Torres Strait Islander and Non-Indigenous children data comparison. As at 30 June 2010, 63 per cent of children and young people in the youth justice system were known to the child protection system.[22] ATSILS is concerned high percentages of Aboriginal and Torres Strait Islander children in out of home care are additionally overrepresented in the Youth Justice system.

j) There are overwhelming indications that a percentage of "completed" Cultural Support Plans are generic based plans developed directly from other sources rather than a process of individual assessment and engagement. Although children benefit from generic cultural events the purported essence of Cultural Support Plans are to embed meaningful direct participation with family, community and cultural groups to achieve a sense of belonging to country and cultural heritage within the child's identity.[23]

k) The current Departmental Case Plan ICMS form containing the Cultural Support Plan fields is designed for the 6 month case management cycle. These fields must support the immediate ongoing intervention activities targeting preservation and enhancement during the future 6 months of case management. Currently no stand-alone Cultural Support Plan document exists demonstrating and recording the child's Aboriginal or Torres Strait Islander cultural identity and meeting the holistic wellbeing needs unique to out of home care.[24]

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[21] Commission for Children and Young People and Child Guardian, *Child Guardian: Consultation Report Youth Justice System report* (20110 at http://www.ccypcg.qld.gov.au/resources/publications/childGuardian/Child-Guardian_Consultation-Report-Youth-Justice-System.html.

[22] Department of Communities, 2010. *2009 -2010 Child Protection Partnership report,* downloaded from http://www.communities.qld.gov.au/childsafety/about-us/our-performance/resources-and-publications/2009-2010-child-protection-partnerships-report

[23] Aboriginal & Torres Strait Islander Legal Service (Qld), *above n 20..*

[24] Ibid.

l) There is minimal comprehensive integration/coordination of core legislation and procedural requirements. It is evident the legislated intention of ensuring children's cultural identity is preserved and enhanced could be strengthened within a child's Cultural Support Plan by referencing legislated authority and integrating core Aboriginal and Torres Strait Islander child protection practices.

Overwhelming indications are that children would benefit from direct consideration and referencing of requirements outlined the *Child Protection Act 1999,* in particular sections:

- 5C Additional principles for Aboriginal and Torres Strait Islander children;
- 6 Recognised entities and decisions about Aboriginal and Torres Strait Islander children;
- 51B What is a case plan;
- 83 Additional provisions for placing Aboriginal and Torres Strait Islander children in care;
- 88 Chief Executive to provide contact between Aboriginal or Torres Strait Islander child and the child's community or language group; and
- 122 Standards of Care.[25] [26]

m) In 2010 a reallocation of the designated *"Aboriginal and Torres Strait Islander Child Protection Community Controlled Sector Funding"* resulted in a reduction in the State's 32 Recognised Entity services to 11 regional service delivery hubs. The reform positively allowed an investment into early intervention and intensive family support services, however, a perceived unintended outcome was the reduced capacity of Recognised Entity service to adequately respond to Cultural perseveration and enhancement actions. This reduced capacity, is contradictory to the *Departmental*

[25] Ibid.
[26] *Queensland Child Protection Act 1999* reprinted as in force on 1 January 2012 reprint No. 7c.

*Implementation Blueprint for Crime and Misconduct 2004 Inquiry into Abuse in Foster Care* recommendations. The blueprint required funding reflective of the proportion of Aboriginal and Torres Strait Islander children in out of home care which presently should be a 37.6 million investment to address over - representation and provide quality secondary, early intervention and statutory services.[27]

n) There is no designated Cultural Support Plan funding allocated within local Child Safety Service Centre budgets resulting in an environment where there are limited resources and support services available to support the comprehensive implementation of children's Cultural Support Plans and retention activities.

o) There is an environment restrictive of cultural safety and competence leading to lack of comprehensive development, implementation and monitoring of cultural support plans.[28] Departmental employees must adequately demonstrate an understanding of cultural awareness, cultural sensitivity and cultural safety within their workplace and performance to ensure suitable child protection practices are accessible to Aboriginal and Torres Strait Islander families.

## 6. Recommendations

**Recommendation 1**

The Queensland Commission for Children, Young People and Child Guardian conduct a quality assurance audit of children in out of home care's Cultural Support Plans. The audit should analyse the quality and effectiveness of Plans by measuring the preservation and enhancement of children's holistic cultural needs.

A separate cultural support plan audit should be in addition to the Aboriginal and Torres Strait Islander Child Placement Principle audit to ensure precise prominence. The audit should determine adherence to Aboriginal or Torres Strait Islander children's legal rights as required in *Child Protection Act 1999 and Child Protection Regulations 2000.*

[27] Department of Communities, *Blueprint for implementing the recommendations of the January 2004 Crime and Misconduct Commission report* (2004) at http://www.communities.qld.gov.au/childsafety/about-us/publications/blueprint-for-implementing-the-cmc-report-recommendations.
[28] Aboriginal & Torres Strait Islander Legal Service(Qld), *above n 20.*

**Recommendation 2**

The Commission for Children, Young People, and Child Guardian, Department of Communities (Child Safety), Children Research Centre and relevant stakeholders collaboratively develop a culturally-specific structured decision-making tool to assess Aboriginal and Torres Strait Islander children's spiritual, cultural, emotional, mental, and physical needs to inform responsive holistic intervention.

The culturally specific Structured Decision Making tool should be implemented within the Department of Communities (Child Safety) Information Client Management System. The assessment must support key cultural considerations and practices relating to proficient development of cultural retention actions. An example of culturally sensitive assessment process is the Winangay Resources kinship carer assessment tool.[29] [30]

**Recommendation 3**

The Commission for Children, Young People and Child Guardian, Department of Communities (Child Safety) and the relevant stakeholders to develop methods/tools which strengthen and record the identification of a child's immediate family, extended kin, cultural, language and community groups in the duration of Investigation and Assessment and Ongoing Intervention phases.

For example: currently in the Brisbane region the Family Decision Making Meeting led by the Indigenous Family and Child Support Service (IFACSS) is responsive to cultural requirements outlined throughout the Aboriginal and Torres Strait Islander Placement Principle. At the earlier stages of intervention, the Recognised Entity worker and Aboriginal and Torres Strait Islander Child Safety Support Officer engage the family in placement decision making by facilitating kinship placement options.

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[29] Winangay Resources, *Winangay Kinship Carer Assessment Tool, presentation by Paula Hayden at Aboriginal and Torres Strait Islander Legal Service (2011).*

[30] Winangay Resources, *Winangay Aboriginal Resources Stronger Ways with Aboriginal children and families.* (2012) at http://winangay.com/.

**Recommendation 4**

The Commission for Children, Young People and Child Guardian, Department of Communities (Child Safety) and the relevant stakeholders must develop and implement enhanced Aboriginal and Torres Strait Islander engagement processes. In particular, methods at the investigation and assessment and ongoing Intervention phases that actively facilitate the child, immediate and kin family members, community, cultural language and moiety groups active co-development of Cultural Support Plans.

The Commission for Children, Young People and Child Guardian, Department of Communities and relevant stakeholders should explore international and national Indigenous best practice engagement models. For example: the Victorian Model of Aboriginal Family Decision Making within the Family group meeting structure.[31] [32]

**Recommendation 5**

The Commission for Children, Young People and Child Guardian, Department of Communities and relevant stakeholders collaboratively develop a culturally appropriate Cultural Support Plan template and guidance aimed at supporting the long term spiritual, cultural, emotional, mental, and physical holistic needs of Aboriginal or Torres Strait Islander children in care.

The culturally appropriate stand-alone Cultural Support Plan template should support cultural retention and preservation action within the 6 month statutory case plan, whilst being available to the child, family and kin to ensure ultimate facilitation of cultural connection and knowledge.

[31] Victorian Aboriginal Child care Agency, QATSICPP Ltd agency visit Muriel Bamblett interview conducted by William Hayward & EJ Garrett (2010).

[32] Victorian Aboriginal Child care Agency, *DHUM DJIRRI - Aboriginal Family Decision Making (2012) at* http://www.vacca.org/FAQRetrieve.aspx?ID=39909.

**Recommendation 6**

The Commission for Children, Young People and Child Guardian to review and consider the original Departmental implementation blueprint for the Crime and Misconduct Commission 2004 Inquiry into Abuse in Foster Care.

In particular the Commissioner to review the original CMC Aboriginal and Torres Strait Islander Community Controlled funding recommendations aligned with rates of over - representation in comparison to current reduced Aboriginal and Torres Strait Islander regional service delivery hubs and the unintended implications on quality outcomes for Aboriginal and Torres Strait Islander children and young people.

**Recommendation 7**

The Commission for Children, Young People and Child Guardian, Department of Communities and relevant stakeholders collaboratively develop a Cultural Support Plan implementation framework.

The implementation framework should clarify key roles of Child Safety Officers, Child Safety Support Officers and Non-government agencies such as Recognised Entity and Linkup services. The framework should consider the allocation of designated Cultural Support Plan funding for each Child Safety Service Centre based on Aboriginal and Torres Strait Islander representation.

The Commission for Children, Young People and Child Guardian, Department of Communities and relevant stakeholders to consider international and national intensive cultural support models with allocated cultural support officers and resourcing to ensure the ultimate cultural retention and preservation. For example: in Victoria – Victoria Aboriginal Child Care Agency Koorie Cultural Placement and Support Program, and in New South Wales KARI Aboriginal out of Home Care service – Cultural Liaison Officer. [33] [34] [35]

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[33] Victorian Aboriginal Child care Agency, above n 39.

[34] Victorian Aboriginal Child care Agency, *Koorie Cultural Support* (2012) at http://www.vacca.org/FAQRetrieve.aspx?ID=39919.

[35] KARI Aboriginal Resources, SNAICC National Conference 'For Our Children, Local strengths, national Challenges' – Out of Home Care; Culturally appropriate Aboriginal Case Management in Out Of Home Care (OOHC) Presented by Chris Laurie and Casey Walpole (2010) at http://www.kari.com.au/resources/SNAICC%20Presentation%20Handout.pdf.

**Recommendation 8**

The Commission for Children, Young People and Child Guardian, Department of Communities Child Safety and Youth Justice services develop a comprehensive collaborative case management approach for Children and Young people on **dual orders**.

In particular collaborative case management promoting cultural preservation and enhancement as a tool to address root causes of offending and promote justice restoration. The collaborative case management approach should include cooperative planning, implementation and record keeping between Youth Justice and Child Safety services to ensure consistent and responsive cultural outcomes for children on dual orders.

The Commission to collect and report a data comparison of Aboriginal, Torres Strait Islander and Non – Indigenous children and young people subject to dual youth justice and child protection orders.

## 7. Conclusion

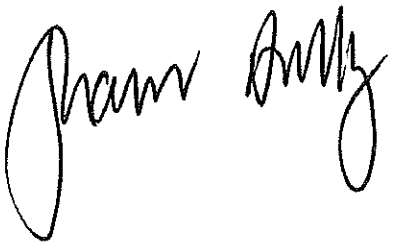
ATSILS cannot emphasise enough the importance of Aboriginal and Torres Strait Islander children and families receiving competent and consistent child protection services. ATSILS recommends the implementation of these strategies targeting the detrimental impact of cultural identity erosion whilst in out of home care. ATSILS considers it vitally important that the cultural rights of Aboriginal and Torres Strait Islander children in out of home care are upheld - particularly their legal right to proficient identity preservation and enhancement through meaningful connection with family, kin, cultural, language and community groups.

It is essential the public, (specifically families with children in out of home care) have full confidence in the Department of Communities Child Safety's cultural retention strategies. Furthermore those strategies must ensure the communities' respect and trust is preserved through consistency in developing, implementation and monitoring of Cultural Support Plans.

As to the holistic cultural needs of the 3,017 Aboriginal and Torres Strait Islander children in care, it is essential that such is met through quality Cultural Support Plans in the immediate future.

I thank you for your careful consideration of this submission and for affording us an opportunity to have input. I also take this opportunity to acknowledge the invaluable assistance provided to me by two of my Brisbane staff members in an earlier draft: Mr William Hayward (Law and Justice Advocacy Development Officer) and Ms Jenifer Ekanayake (Director of Family Law).

Yours faithfully,



Shane Duffy
Chief Executive Officer

# Protecting Children is Everyone's Business

## National Framework for Protecting Australia's Children 2009–2020

*An initiative of the Council of Australian Governments*

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# Foreword

*Australia's children deserve a safe, healthy and happy childhood.*

Our children must be able to grow up nourished and supported in loving and caring environments. They must have time to be children with all the wonder, happiness and innocence that childhood should bring.

Over recent years the reported levels of child neglect and abuse in Australia have increased at an alarming rate. Child abuse and neglect has become an issue of national concern. Meanwhile, statutory child protection systems are struggling under the load.

Protecting children is everyone's responsibility. Parents, communities, governments and business all have a role to play.

Australia needs a shared agenda for change, with national leadership and a common goal.

All Australian governments have endorsed the first *National Framework for Protecting Australia's Children 2009-2020* and are committed to implementing the initial actions it contains. It is a long-term, national approach to help protect all Australian children.

The National Framework represents an unprecedented level of collaboration between Australian, State and Territory governments and non-government organisations to protect children. Placing children's interests firmly at the centre of everything we do.

Reducing child abuse and neglect is not an easy task and it will take time. The National Framework provides the foundation for national reform.

Endorsed at the Council of Australian Governments meeting on 30 April 2009 by:

The Hon Kevin Rudd MP, Prime Minister of Australia

The Hon Nathan Rees MP, Premier of New South Wales

The Hon John Brumby MP, Premier of Victoria

The Hon Anna Bligh MP, Premier of Queensland

The Hon Mike Rann MP, Premier of South Australia

The Hon Colin Barnett MLA, Premier of Western Australia

The Hon David Bartlett MP, Premier of Tasmania

The Hon Paul Henderson MLA, Chief Minister of the Northern Territory

Jon Stanhope MLA, Chief Minister of the Australian Capital Territory

# Why we need to work together to protect Australia's children

All children[1] have the right to be safe and to receive loving care and support. Children also have a right to receive the services they need to enable them to succeed in life. Parents have the primary responsibility for raising their children, and ensuring that these rights are upheld.

We recognise that the best way to protect children is to prevent child abuse and neglect from occurring in the first place. To do this, we need to build capacity and strength in our families and communities, across the nation.

The vast majority of parents - supported by the community and the broad range of government supports and services available to all families - have the capacity to raise happy and healthy children. But some families need more help. And in some cases, statutory child protection responses will be required.

The investment by governments and the non-government sector into family support and child protection services is significant, yet our separate efforts still fail many children and young people (Steering Committee for the Review of Government Service Provision 2009).[2] We need a unified approach that recognises that the protection of children is not simply a matter for the statutory child protection systems.

*Protecting children is everyone's responsibility.*

Families, communities, governments, business and services all have a role. And we need to work together.

## What is the problem?

In 2007-08, there were 55,120 reports of child abuse and neglect substantiated by child protection services.

For the first time since national data collection there was a reduction in child abuse substantiations from the previous year (2006-07). This is a promising indication that substantial increases in family support may be effective at preventing child abuse and neglect. Data in future years will tell us if this trend continues.

Despite this, the rate has more than doubled over the past 10 years and the number of children subject to child abuse and neglect remains unacceptably high. Indigenous children also remain significantly over-represented. Indigenous children are six times more likely to be the subject of a substantiation than other children (AIHW 2009).

1 Australia is a signatory to the United Nations Convention on the Rights of the Child. In the Convention, the term 'child' is defined as anyone under the age of 18 years. This National Framework follows that definition.

2 The estimated total recurrent expenditure on child protection and out-of-home care services was $2 billion in 2007–08, an increase of 13.5 per cent on the previous financial year.

Some of the increases over time are a result of changing social values and better knowledge about the safety and wellbeing of children. Child protection services were originally established in response to serious physical abuse. Now, in response to changing community expectations, they address physical abuse, sexual abuse, emotional abuse, neglect and domestic violence. These changes have been a major driver of increased demand on child protection services (Bromfield & Holzer 2008).

Emotional abuse and neglect are now the most commonly substantiated types of child maltreatment, followed by physical abuse (AIHW 2009). However, research shows that many children experience sexual abuse, and that it is often undetected or not reported to authorities (ABS 2006; Morrison 2007).

As a community we have been shocked and concerned to hear of children who were not identified or adequately protected by welfare systems – for some, their suffering was not known until after their deaths. Systems and procedures such as mandatory reporting requirements have been developed to try to better identify those children who have experienced or are at-risk of abuse or neglect. For many people concerned about a child or family, their first (and perhaps only) response is to make a report to child protection services (Bromfield & Holzer 2008).

Substantial numbers of children and their families now come to the attention of child protection services. In 2007-08, there were 317,526 reports to child protection services in Australia. The vast majority of these reports were not substantiated – meaning the report was assessed and a child protection response was *not* required at that time. In these cases, other forms of support would have been a more appropriate response.

The numbers of children being removed from their parents has also more than doubled over the past decade. At 30 June 2008, there were 31,166 young people in out-of-home care (AIHW 2009). Children in out-of-home care experience significantly poorer long-term outcomes, particularly where the child did not experience stable care placements (Cashmore & Paxman 2006). Each year in a small number of terrible cases, children die as a result of child abuse and/or neglect. The exact numbers are difficult to ascertain due to reporting limitations.

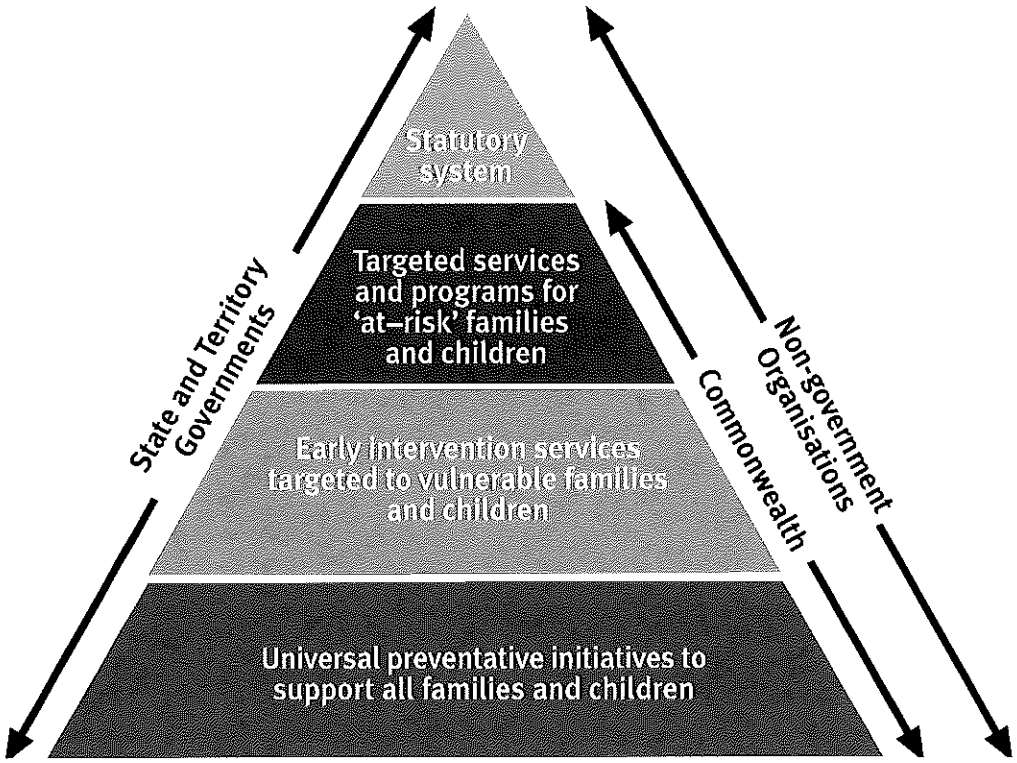
## What needs to change?

Australia needs to move from seeing 'protecting children' merely as a response to abuse and neglect to one of promoting the safety and wellbeing of children. Leading researchers and practitioners – both in Australia and overseas – have suggested that applying a public health model to care and protection will deliver better outcomes for our children and young people and their families (Holzer 2007; O'Donnell, Scott, & Stanley 2008; Scott 2006; ARACY 2007). The components of such a system are illustrated in Figure 1.

Under a public health model, priority is placed on having universal supports available for all families (for example, health and education). More intensive (secondary) prevention interventions are provided to those families that need additional assistance with a focus on early intervention. Tertiary child protection services are a last resort, and the least desirable option for families and governments.

**Just as a health system is more than hospitals so a system for the protection of children is more than a statutory child protection service.**

**Figure 1 – A system for protecting children**




In reality, Australia's child welfare service systems more closely resemble an hourglass than a pyramid. As demands on child protection services have grown, the size of child protection services have grown to meet that demand. Child protection services cannot provide a response to all vulnerable children and their families.

A public health model offers a different approach with a greater emphasis on assisting families early enough to prevent abuse and neglect occurring. It seeks to involve other professionals, families and the wider community – enhancing the variety of systems that can be used to protect children and recognising that protecting children is everyone's responsibility (Higgins & Katz 2008).

Ultimately, the aim of a public health approach is to reduce the occurrence of child abuse and neglect and to provide the most appropriate response to vulnerable families and those in which abuse or neglect has already occurred.

# A national approach for protecting Australia's children

Australia needs a shared agenda for change, with national leadership and a common goal.

Recognising that the safety and wellbeing of children is the responsibility of all levels of government, the Australian Government has led the development of the National Framework, working closely with States and Territories.

Similar challenges are being faced across the nation. State and Territory governments currently spend in excess of $2 billion annually on child protection alone, with average annual increases of more than 12 per cent.

State and Territory governments are currently implementing reforms to their statutory child protection systems - all focused on early intervention. But for these reforms to be truly effective, they need to be coordinated with Australian Government programs, policies and payments - a large part of the early intervention response.

The National Framework will deliver a more integrated response but does not change the responsibilities of governments. States and Territories retain responsibility for statutory child protection, as the Australian Government retains responsibility for providing income support payments. The National Framework also recognises the significant existing efforts and reforms which are being undertaken by governments across Australia in protecting children and supporting families. A summary of existing effort and reforms underway in each State and Territory is at **Appendix A**.

It does however, involve a commitment from all parties to focus our own efforts on protecting children to, and work together better in areas of shared responsibility. It also involves a commitment to better link the many supports and services we provide – avoiding duplication, coordinating planning and implementation and better sharing of information and innovation. Naturally, the span of activity required to support these outcomes means that new efforts will build on and link with existing initiatives to achieve the best possible outcomes.

A National Framework provides an opportunity to drive improvements across all systems and all jurisdictions. National leadership will provide the momentum for key national projects – such as data, research, information sharing and national consistency in critical areas. A National Framework also provides a mechanism for engaging the non-government sector and the broader community on a national level.

# National Framework for Protecting Australia's Children

The *National Framework for Protecting Australia's Children 2009-2020* consists of high-level and supporting outcomes, strategies to be delivered through a series of three-year action plans and indicators of change that can be used to monitor the success of the National Framework.

The actions and strategies that governments and others will agree to take under this National Framework are all aimed to achieve the following high-level outcome:

*Australia's children and young people are safe and well.*

As a measure of this outcome, governments and the non-government sector have set the following target:

*A substantial and sustained reduction in child abuse and neglect in Australia over time.*[3]

To demonstrate progress towards achieving the target the following measures have been identified:

- Trends in key national indicators of children's health, development and wellbeing
- Trends in hospital admissions and emergency department visits for neglect and injuries to children under three years
- Trends in substantiated child protection cases
- Trends in the number of children in out-of-home care.

## Supporting outcomes, strategies and indicators of change

The six supporting outcomes are:

1. Children live in safe and supportive families and communities
2. Children and families access adequate support to promote safety and intervene early
3. Risk factors for child abuse and neglect are addressed
4. Children who have been abused or neglected receive the support and care they need for their safety and wellbeing
5. Indigenous children are supported and safe in their families and communities
6. Child sexual abuse and exploitation is prevented and survivors receive adequate support.

The supporting outcomes and strategies help to focus effort and actions under the National Framework in order to reach the high-level outcome. Indicators of change are provided to measure the extent to which governments and non-government organisations are achieving the

3 It is acknowledged that measuring a reduction in child abuse and neglect is difficult, as Australia currently does not have robust data on incidence/prevalence. Even if such data existed, it may not be sensitive to change over a short period.

supporting outcomes. Given the inherent difficulties in isolating the impact of specific actions on broader social outcomes, a broad suite of indicators have been identified which, when viewed collectively, will be reported annually and provide a basis for measuring progress over the life (12 years) of the National Framework.

## Principles to guide our actions

Children have a right to be safe, valued and cared for. As a signatory to the United Nations Convention on the Rights of the Child, Australia has a responsibility to protect children, provide the services necessary for them to develop and achieve positive outcomes, and enable them to participate in the wider community.

In line with Australia's obligations as a signatory to the UN Convention, the National Framework is underpinned by the following principles:

- All children have a right to grow up in an environment free from neglect and abuse. Their best interests are paramount in all decisions affecting them.
- Children and their families have a right to participate in decisions affecting them.
- Improving the safety and wellbeing of children is a national priority.
- The safety and wellbeing of children is primarily the responsibility of their families, who should be supported by their communities and governments.
- Australian society values, supports and works in partnership with parents, families and others in fulfilling their caring responsibilities for children.
- Children's rights are upheld by systems and institutions.
- Policies and interventions are evidence based.

The National Framework also recognises the importance of promoting the wellbeing of Aboriginal and Torres Strait Islander children, young people and families across all outcome areas.

## Everyone has a role to play

Under the *National Framework for Protecting Australia's Children*, protecting children is everyone's responsibility. Some of the key groups and their involvement in the National Framework are described below.

**Parents and families** care for and protect their children and engage in decision making that has an impact on them and their children.

**Children and young people** participate in decisions affecting them.

**Communities** support and protect all their members, and support families to raise their children, particularly vulnerable families.

**Non-government organisations** deliver services (including on behalf of governments), contribute to the development of policy, programs and the evidence base and actively promote child safety, protection, rights and wellbeing.

The **business and corporate sector** supports parents to raise their children through family-friendly policies. They may also support programs and initiatives to directly assist children and families, including direct financial assistance, pro bono activities of their staff and professional support to community organisations.

**Local governments** deliver a range of services to vulnerable families, including youth and family centres and local infrastructure, and play a pivotal role in engaging vulnerable children and their families in those services.

**State and Territory governments** deliver a range of universal services and early intervention initiatives to prevent child abuse and neglect, and fund and coordinate many services by the non-government sector. They are responsible for the statutory child protection systems, including the support provided to children and young people in out-of-home care. Other responsibilities include:

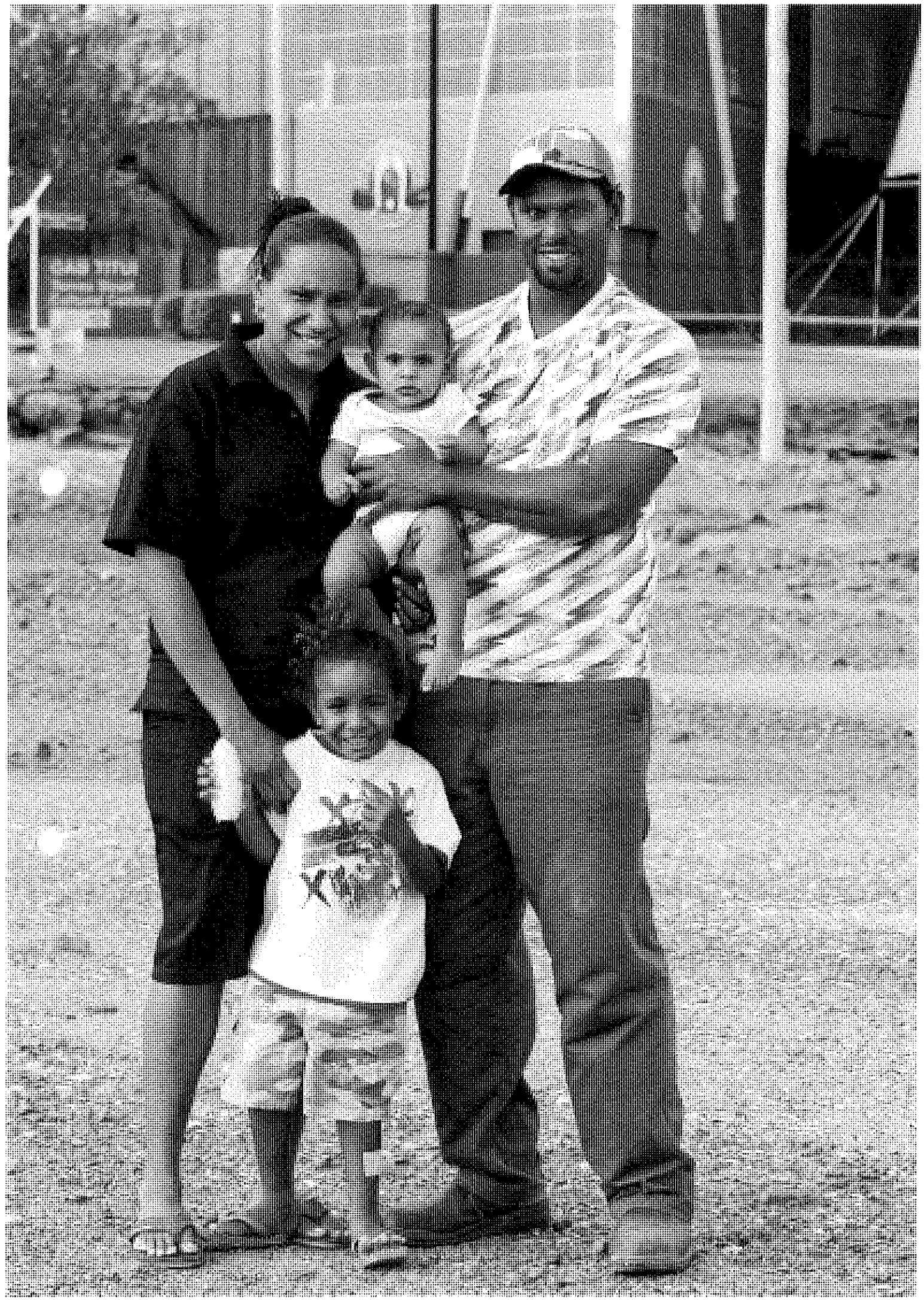
- providing therapeutic and support services for families, children and young people at-risk of abuse or neglect
- conducting research into child protection
- delivering health and education services, including maternal and child health services, schools, and specialist services for at-risk children and young people and their families
- providing police and justice systems, including court services to hear child/youth care and protection matters.

The **Australian Government** delivers universal support and services to help families raise their children, along with a range of targeted early intervention services to families and children. [4]

The foundation of the Australian Government's support is the provision of income and family support payments to provide both a broad social safety net and specifically support families in their parenting role. This includes pensions, family payments, childcare benefit and tax rebates. The Australian Government provides a range of services available for all Australian families such as Medicare, employment services, child and parenting support services, family relationship services and the family law system. In addition, the Australian Government provides support for key services through the States and Territories such as hospitals, schools, housing and disability services.

The Australian Government also offers more targeted services for vulnerable individuals and families, including mental health, substance abuse, intensive parenting services, intensive employment assistance, and allowances for young people leaving care to help with the transition to independent living. The Australian Government also funds and delivers a range of services for families at higher risk of disadvantage including those in Indigenous communities.

4 Families include foster, grandparent and kinship families



## Supporting outcome 1:
## Children live in safe and supportive families and communities

*Communities are child-friendly. Families care for children, value their wellbeing and participation and are supported in their caring role.*

Reducing vulnerability of families and protecting children from abuse and neglect begins with developing a shared understanding of, and responsibility for, tackling the problem of child abuse and neglect.

Businesses and the broader community can play a part in supporting families through child and family-friendly policies and practices. It is important to educate and engage the community to influence attitudes and beliefs about abuse and neglect but also more broadly about children and their needs. Informing communities about parenting and children's development can also promote understanding about the ways in which community members can better support families.

Upholding children's right to participate in decisions that affect them is a key signal of valuing and supporting children. In the context of child welfare, this is particularly relevant in judicial proceedings in care and protection, juvenile justice and family court matters, and in child protection and out-of-home care services.

## Supporting outcome 1

| Strategies | Initial 3-year actions | Delivery | Indicators of change |
|---|---|---|---|
| 1.1 Strengthen the capacity of families to support children | Continue to establish and support family and children's centres such as:<br>- Child and Family Centres (ACT)<br>- Early Years Service Centres (QLD)<br>- Children's Centres (SA)<br>- 30 Child and Family Centres (TAS)<br>- Early Learning and Care Centres (WA)<br>- 46 Children's Services Hubs (VIC) | Ongoing<br>States & Territories | • Community attitudes towards and value of children (TBD, survey)<br>• Children's perception of their value within the community (TBD, survey)<br>• Measure of children's and young people's participation in administrative and judicial proceedings that affect them (TBD) |
| | Combine and refocus community programs within the Department of Families, Housing, Community Services and Indigenous Affairs to enhance support for families and parenting | 2009-10<br>Commonwealth | |
| | Continue to improve family support services such as:<br>- bringing together secondary services consistent with WA's *Strategic Framework for Supporting Individuals and Families At-risk* | Ongoing<br>All jurisdictions | |
| 1.2 Educate and engage the community about child abuse and neglect and strategies for protecting children | Support community organisations to deliver cost-effective, community-based initiatives, including information and awareness campaigns, for example funding for National Child Protection Week and a survey of community attitudes to protecting children | Ongoing<br>Commonwealth with NAPCAN | |
| 1.3 Develop and implement effective mechanisms for involving children and young people in decisions affecting their lives | Explore the potential role for a National Children's Commissioner including the relationship with State and Territory Children's Commissioners | Advice to Government in late 2009<br>Commonwealth in consultation with States & Territories | |
| | Identify and implement approaches through the *Supporting Children After Separation* Program, to assist children from separating families to deal with issues arising from the breakdown of their parents' relationship and to participate in decisions that affect them | Ongoing<br>Commonwealth | |
| | Finalise, print and distribute an information booklet for children entering foster care | 2009<br>Commonwealth with the Australian Childhood Foundation | |
| | Continue to improve the experience of court processes for children, such as:<br>- Victoria's work with court stakeholders to improve practices and processes in state and federal jurisdictions involved with children<br>- NSW's legislative amendments to encourage alternative dispute resolution and the roll-out of the Magellan project<br>- WA's trialling of court diversion conferencing | Ongoing<br>States & Territories | |
| | Support participation of children in decision making such as:<br>- Models developed by the SA Guardian for Children and Young Persons | Ongoing<br>States & Territories | |

## Supporting outcome 2:
## Children and families access adequate support to promote safety and intervene early

*All children and families receive appropriate support and services to create the conditions for safety and care. When required, early intervention and specialist services are available to meet additional needs of vulnerable families, to ensure children's safety and wellbeing.*

The basic assumption of a public health approach to protecting children is that by providing the right services at the right time vulnerable families can be supported, child abuse and neglect can be prevented, and the effects of trauma and harm can be reduced.

Providing the right supports at the right time will also ultimately reduce demand on State and Territory child protection systems, allowing them to improve their capacity to perform specific statutory functions and better support children at-risk.

National and international research shows that:

- families have strengths that can be built upon to keep children safe and well
- families may require advice and support, particularly in times of change
- provision of services early in a child's life and/or early in the life of a problem can improve long-term outcomes for children and reduce negative impacts
- a focus on early intervention and prevention is more cost-effective in the long term than responding to crises, or treating the impacts of abuse and neglect (Stronger Families Learning Exchange 2002).

Disadvantage and vulnerability can be concentrated in particular communities. Evidence from Australia (such as implications from the national evaluation of the *Stronger Families and Community Strategy*) suggests that area-based interventions can have positive impacts on vulnerable children and families. Effective elements include:

- an explicit focus on the coordination and collaboration of services by one organisation that is given responsibility and resources to be a leader in this area in the community
- increased service provision and capacity to work with families previously disengaged from early childhood services and those from groups traditionally considered 'hard to reach'.

## Supporting outcome 2

| Strategies | Initial 3-year actions | Delivery | Indicators of change |
|---|---|---|---|
| 2.1 Implement an integrated approach to service design, planning and delivery for children and families across the lifecycle and spectrum of need | Expand the *Communities for Children* program to:<br>- realign existing sites to enhance integration and target the most disadvantaged communities<br>- establish new demonstration sites to test models of integrated service delivery and provide more intensive assistance to children at-risk | Realign existing sites 2009-10<br>New sites established by July 2010<br>Commonwealth in partnership with States & Territories and NGOs | • Proportion of pregnant women who receive perinatal care (TBD)<br>• Number of at-risk children and families accessing support services (TBD)<br>• Rate per 100,000 babies born with low birth weight<br>• Proportion of communities with improved measures against the Australian Early Development Index<br>• Proportion of disadvantaged 3 year olds in early childhood education<br>• Proportion of children aged 4 to 14 years with mental health problems<br>• Rate of child protection notifications |
| | Implement integrated and co-located child and family service models including:<br>- 35 Indigenous Child and Family Centres (Commonwealth)<br>- *Brighter Futures* early intervention program (NSW)<br>- SCAN multi-agency teams (QLD)<br>- integrated child and family case management system (SA)<br>- coordination service for pregnant women and their families (ACT)<br>- Best Beginnings program (WA)<br>- 6 multidisciplinary Autism Early Learning and Care Centres (Commonwealth)<br>- Child and Family Services Alliances (VIC) | Ongoing<br>All jurisdictions and NGOs | |
| 2.2 Develop new information sharing provisions between Commonwealth agencies, State and Territory agencies and NGOs dealing with vulnerable families | Develop a nationally consistent approach to working with children checks and child safe organisations across jurisdictions | In place by December 2009<br>All jurisdictions | |
| | Extend the national protocol for sharing information on children at-risk to other Commonwealth agencies starting with Medicare Australia and the Child Support Agency | 2009-10<br>Commonwealth in partnership with States & Territories | |
| | Investigate options for improving information sharing between NGOs and government agencies in secondary prevention through the *Common Approach to Assessment, Referral and Support Taskforce* (see 3.5) | Options by December 2009<br>Commonwealth and ARACY in partnership with States & Territories and NGOs | |
| 2.3 Ensure consistency of support and services for all children and families | Implement a national approach to early childhood education and care including:<br>- universal access to quality early childhood education and care in the year prior to schooling by 2013<br>- National Quality Framework for Early Childhood Education and Care and the Early Years Learning Framework<br>- National Early Years Workforce Strategy | Ongoing<br>Through the COAG Early Childhood Agenda | |

## Supporting outcome 2 continued

| Strategies | Initial 3-year actions | Delivery | Indicators of change |
|---|---|---|---|
| | Support the development of quality assurance processes for registered community based child and family services; and out-of-home care services, such as the Victorian model | States & Territories | |
| | Enhance national consistency in child and family health services through:<br>- progressing the development of a national framework for child and family health services through the Australian Health Ministers' Conference<br>- the healthy kids check through the MBS for 4 year olds to help ensure children are healthy and ready for school | 2009-11<br>All jurisdictions | |
| | Implement the National Perinatal Depression Plan including a national universal screening program | Commonwealth | |
| | Increase funding for disadvantaged schools with a focus on improving student wellbeing | Ongoing<br>Through the Low SES School Communities National Partnership | |
| 2.4 Enhance services and supports for children and families to target the most vulnerable and protect children 'at-risk' | Refocus services under the Commonwealth's Family Support Program to target vulnerable families and children at-risk | From 2009-10<br>Commonwealth | |
| | Expand and/or target State and Territory family support programs for vulnerable families and children at-risk such as:<br>- Victoria's continued roll-out of *Child FIRST*<br>- NSW's *Keep Them Safe* initiatives including new Child Wellbeing Units and expanding *Brighter Futures*. | Ongoing<br>States & Territories | |
| | Evaluate income management trials in WA, NT and Cape York | 2009-10<br>Commonwealth in consultation with relevant jurisdictions | |
| | Comprehensive evaluation of family law reforms designed to strengthen family relationships, including:<br>- research into the characteristics of shared care parenting arrangements that work in the best interests of the child<br>- research on the impact of family violence on relationship breakdown | Findings by end of 2009<br>Commonwealth | |
| | Expand access to mental health programs for children including:<br>- funding for Headspace (the National Youth Mental Health Foundation)<br>- the ongoing implementation of *KidsMatters* and *MindMatters* | 2009-10 to 2012-13<br>Commonwealth | |

## Supporting outcome 2 continued

| Strategies | Initiatives | Delivery | Indicators of progress |
|---|---|---|---|
| 1.5 Provide priority access to services for children who are at serious risk of abuse and neglect | Enhance access to childcare services for children at serious risk of harm by increasing awareness and availability of services and supports in the childcare sector, organisations working with vulnerable children and child protection agencies | From July 2009<br>Commonwealth | |
| | Develop alternative pathways for children who are at serious risk and those at lower risk, including:<br>- establishment of Child Wellbeing Units in a range of NSW government agencies<br>- establishment of regional intake and referral services in NSW<br>- introduction of Gateway services to provide single entry points in TAS<br>- availability of Child FIRST community intake centres in 24 locations across Victoria | Ongoing<br>States & Territories | |

## Supporting outcome 3:
## Risk factors for child abuse and neglect are addressed

*Major parental risk factors that are associated with child abuse and neglect are addressed in individuals and reduced in communities. A particular focus is sustained on key risk factors of mental health, domestic violence and drug and alcohol abuse.*

Key to preventing child abuse and neglect is addressing the known risk factors. Many of the factors that research has shown to be associated with abuse and neglect are behaviours or characteristics of parents, which can then be the target of both population-based strategies and specific interventions.

The problems most commonly associated with the occurrence of child abuse and neglect and identified in families involved with child protection services are:

- domestic violence
- parental alcohol and drug abuse
- parental mental health problems.

Often, families in which parents experience these problems face broader challenges of exclusion and disadvantage (Allen Consulting Group 2003; Leek, Seneque & Ward 2004; Wood 2008). Other known risk factors for abuse and neglect include:

- poverty and social isolation
- unstable family accommodation and homelessness
- poor child and maternal health
- childhood disability, mental health and/or behavioural problems
- young people disconnected from their families, schools and communities
- past experiences of trauma (Fleming, Mullen, & Bammer 1997; Frederick & Goddard 2007; National Child Protection Clearinghouse 2008).

Many families also experience more than one of these risk factors (Jeffreys, Hirte, Rogers & Wilson 2009; Wood 2008).

Adult treatment or support services – particularly those addressing domestic violence, substance misuse and mental health issues, as well as housing, gambling, disability, employment and income support services – need to be more child-focused, and responsive to the needs of families (Scott 2009).

These factors can also be the longer-term outcomes for children who have suffered abuse and neglect, contributing to intergenerational cycles of disadvantage. Disadvantage can be concentrated in neighbourhoods or geographic areas. Efforts to build and strengthen communities and address economic and social disadvantage are important elements in an overall approach to ensuring children's safety and wellbeing.

## Supporting outcome 3

| Strategies | Initial 3-year actions | Delivery | Indicators of change |
|---|---|---|---|
| 3.1 Enhance alcohol and substance abuse initiatives to provide additional support to families | Implement the *National Binge Drinking Strategy* | Ongoing<br>Commonwealth | • Rate per 1,000 children living in households where there is adult abuse of alcohol and/ or other drugs (TBD, previous survey)<br>• Rate per 1,000 children accessing assistance through homelessness services (accompanied & unaccompanied)<br>• Number of children living in jobless families (TBD)<br>• Rate per 1,000 children living in households where family violence occurs (TBD)<br>• Proportion of parents with a mental illness who are accessing mental health services (TBD) |
| | Redesign the *Strengthening Families Program* to implement a more focused model incorporating parenting support for vulnerable families where children are at-risk of harm | Ongoing<br>Commonwealth | |
| | Implement community based healthy lifestyle interventions in disadvantaged communities including addressing alcohol abuse | Ongoing<br>Commonwealth to lead through the COAG National Preventative Health Partnership | |
| 3.2 Enhance programs which reduce family violence | Progress priority actions in areas of Commonwealth responsibility in *Time for Action:The National Plan for Australia to reduce Violence against Women and their Children, 2009-2021* from the National Council to Reduce Violence against Women and their Children | From May 2009<br>Commonwealth through COAG | |
| | Expand models of integrated support to enable women and children experiencing domestic and family violence to remain at home safely | 2009 onwards<br>Through the National Partnership on Homelessness | |
| 3.3 Increase services and support for people with mental illness | Develop a *National Suicide Prevention Strategy* | Commonwealth | |
| | Further roll out the *Personal Helpers and Mentors Program* with a focus on disadvantaged communities and vulnerable groups | 2009 – 2011<br>Commonwealth | |
| | Enhance support for children or parents with disabilities, such as:<br>- evolve therapeutic and behaviour support services to support specialist disability assessments with complex needs (QLD)<br>- develop a Statement of Principles for working with children with a disability and their families (VIC)<br>- implement a new assessment tool for Carer Payment (child) to support more carers of children with disabilities (Commonwealth)<br>- measures to support early intervention for children with autism (Commonwealth)<br>- develop safeguards for children including strengthening availability of disability support services for children and their families (NSW) | Ongoing<br>All jurisdictions | |

## Supporting outcome 3 continued

| Strategies | Initial 3-year actions | Delivery | Indicators of change |
|---|---|---|---|
| 3.4 Expand housing and homelessness services for families and children at-risk | Increase availability of affordable and social housing through the:<br>- National Affordable Housing Agreement<br>- Investment in social housing under the Nation Building Economic Stimulus Plan | By December 2010<br>Commonwealth in partnership with States & Territories | |
| | Targeted support to assist children and families who are homeless including:<br>- additional services for up to 2,250 families at-risk of homelessness through the *HOME Advice Program*<br>- additional specialist support to children who are homeless including closer links between homelessness and child protection services<br>- early intervention and prevention services for up to an additional 9,000 young people aged 12 to 18 years at-risk of homelessness to remain connected with families (where appropriate), education, training and employment | Ongoing<br>Through the National Partnership on Homelessness | |
| 3.5 Increase capacity and capability of:<br>- adult focused services to identify and respond to the needs of children at-risk<br>- child-focused services to identify and respond to the needs of vulnerable families<br>- the broader system to identify children at-risk | Establish professional development resources on the risk factors for, and impacts of, child abuse and neglect to be provided to child and adult focused services and professions (including joint training across professional groups and organisations) | Training resources to be developed by December 2010<br>Commonwealth to lead in partnership with States & Territories and NGOs | |
| | Convene an expert taskforce to develop options for shared tools and approaches for assessment and referral across services and professional groups to better identify children at-risk of harm: the *Common Approach to Assessment, Referral and Support Taskforce* | Establish Taskforce May 2009, with options by end of 2009<br>Commonwealth and ARACY in partnership with States & Territories and NGOs | |
| | Support the development and distribution of a resources guide to schools and early childhood services about responding to the needs of traumatised children | 2009<br>Commonwealth with the Australian Childhood Foundation | |
| | Build on and extend initiatives to support the workforce, such as WA's *Foster Care Team Development* initiatives | Ongoing<br>States & Territories | |

## Supporting outcome 4:

## Children who have been abused or neglected receive the support and care they need for their safety and wellbeing

*Children and young people who have been abused (or are at-risk of abuse) receive timely, appropriate, high-quality child protection and other support services to secure their safety and promote their long-term wellbeing.*

Efforts to reduce the occurrence of child abuse and neglect are important. It is equally important that those children who have experienced abuse and neglect are provided high-quality services and interventions, as they are among the most vulnerable in our community.

To secure children's safety and wellbeing in the short and long term they need high-quality child protection services that are evidence based, child-focused, attend to children's developmental needs and help children to overcome the effects of trauma, abuse and neglect (Bromfield 2008). There is a need for further research and evaluation to ensure that services and interventions provided actually work to improve outcomes for children and families (Bromfield & Arney 2008).

Out-of-home care is viewed as an intervention of last resort, and the preference is always for children to be reunited with their natural parents if possible. Many children can be safely reunited with their families when their families receive appropriate supports and interventions. Research highlights the need for children to have stable and secure placements, whether that be with their natural parents or in out-of-home care. The quality of relationships with carers is also critical. A sense of security, stability, continuity and social support are strong predictors of better outcomes for young people's long-term outcomes after leaving care (Cashmore & Paxman 2006).

Young people leaving care are at great risk of experiencing negative life outcomes (Bromfield & Osborn 2007). Care leavers can be better supported if they are equipped with improved employment and independent living skills and more social and emotional skills while in care, and the state continues to act as a 'good' parent in the first few years after they leave care (Cashmore & Paxman 1996; Maunders, Liddell, Liddell, & Green 1999; Mendes & Moslehuddin 2006).

While the need for foster carers has been rising, there has been some evidence of decreasing numbers of individuals willing to foster (McHugh 2002; Siminski, Chalmers & McHugh 2005). The attraction and retention of an appropriately skilled and qualified workforce – including statutory and non-government service workers, as well as voluntary carers – is a high priority.

## Supporting outcome 4

| Strategies | Initial 3-year actions | Delivery | Indicators of change |
|---|---|---|---|
| 4.1 Enhance access to appropriate support services for recovery where abuse or neglect has occurred | Target the *Personal Helpers and Mentors Program* where appropriate for people who have experienced abuse or neglect | 2009-10<br>Commonwealth | • Proportion of investigations finalised by time taken to complete investigation<br>• Proportion of children on guardianship and custody orders achieving national reading and numeracy benchmarks<br>• School retention rates (Years 10 & 12) of young people in out-of-home care or under guardianship (TBD)<br>• Retention rate of foster carers and child protection workers (TBD)<br>• Number of out-of-home carers, by type of carer |
| | Support community-based recovery programs for people who have experienced abuse or neglect such as, Adults Surviving child Abuse (ASCA) therapy programs for survivors of childhood abuse | 2009<br>Commonwealth | |
| 4.2 Support grandparent, foster and kinship carers to provide safe and stable care | Provide specialist supported playgroups for grandparent and kinship carers to enhance peer support and provide developmental opportunities | 2009-10<br>Commonwealth | |
| | Continue to explore options through CDSMAC working group for improving financial and non-financial support to grandparent, kinship and foster carers such as:<br>- SA's *Time for Kids* grandparent respite and support<br>- WA's *Foster Care Partnership Policy,* centred on the child | 2009-10<br>All jurisdictions | |
| | Increase the focus of support and services available for grandparent and kinship carers through Indigenous Child and Family Centres | From 2009-10<br>Commonwealth | |
| | Support programs for grandparent, kinship and foster carers, such as:<br>- Victoria's implementation of the new *Kinship Care* program model<br>- NSW's initiatives to better support carers including providing a resource manual to carers; and establishing Regional Foster Care Advisory Groups<br>- QLD's *Foster and Kinship Carer Strategy* includes a support line, caring allowance, flexible respite options and training | Ongoing<br>States & Territories | |
| | Continue to explore options through the Australian Health Ministers' Conference in relation to the healthcare needs of children entering and in out-of-home care | Report by end of 2009<br>All jurisdictions | |
| | Enhanced support for grandparent and kinship carers as a specified target group under the *Communities for Children* program | 2009-10<br>Commonwealth | |

## Supporting outcome 4 continued

| Strategies | Initial 3-year actions | Delivery | Indicators of change |
|---|---|---|---|
| 4.3 Improve support for young people leaving care | Increase support through NGOs for young people leaving care to establish their independence | Ongoing from July 2009<br>Commonwealth in partnership with NGOs | |
| | Continue and improve State and Territory initiatives targeting young people as they leave care, such as:<br>- NT's *Leaving Care* options package<br>- ACT's *Time to Fly* leaving care kit | Ongoing<br>States & Territories | |
| | Implement policy of 'no exits into homelessness' from statutory care | Ongoing<br>Through the National Partnership on Homelessness | |
| 4.4 Support enhanced national consistency and continuous improvement in child protection services | Develop and introduce ambitious National Standards for Out-of-home Care which:<br>- focus on key areas that directly impact on the outcomes and experiences of children and young people in out-of-home care<br>- allow for mutual recognition of existing State and Territory quality assurance standards and processes that meet the requirements of the National Standards<br>- include the development of an agreed evidence tool to verify, review and monitor progress against agreed national standards | To CDSMC for approval by June 2010<br>Commonwealth, States & Territories in collaboration | |
| | Support child protection services to maintain continuous improvement, such as:<br>- SA's reshaping of the child protection system towards relationship based practice<br>- TAS's reform of out-of-home care services<br>- ACT's development of out-of-home care standards<br>- WA's child protection and family support reforms<br>- VIC's *Every Child Every Chance* reforms | Ongoing<br>States & Territories | |
| | Support the Australian New Zealand Child Death Review Committee to develop more consistent data to help better understand the circumstances of child deaths and how these could be prevented | By 2010<br>Commonwealth to lead in partnership with States & Territories | |
| | Improve our understanding of children in the child protection and care system by:<br>- developing and implementing a system for the collection and analysis of confidential unit record data across homelessness, juvenile justice and child protection records<br>- reviewing existing data definitions for child protection to improve national reporting | By 2011<br>Commonwealth to lead in partnership with States & Territories | |
| | Support a National Research Agenda for Child Protection | 2009-10 to 2013-14<br>Commonwealth to lead in partnership with States & Territories | |

## Supporting outcome 5:

## Indigenous children are supported and safe in their families and communities

*Indigenous children are supported and safe in strong, thriving families and communities to reduce the over-representation of Indigenous children in child protection systems. For those Indigenous children in child protection systems, culturally appropriate care and support is provided to enhance their wellbeing.*

Preventing child abuse and neglect and improving responses to those children who have experienced maltreatment are priorities for all Australian children. However, those who are particularly disadvantaged require additional responses. Aboriginal and Torres Strait Islander children are significantly over-represented in all parts of the child protection system.

Indigenous communities experience intergenerational cycles of adversity and trauma, leading to entrenched social problems including poverty, high levels of violence, psychological distress, destructive behaviours, and individual, family and community dysfunction. These problems are also associated with heightened rates of abuse and neglect (Atkinson 2002; Berlyn & Bromfield 2009; Robertson 2000). Addressing Indigenous disadvantage is critical to addressing the factors that put Aboriginal and Torres Strait Islander children at-risk of abuse and neglect.

Child abuse and neglect can be prevented by addressing disadvantage (for example, overcrowded and inadequate housing); recognising and promoting family, community and cultural strengths that protect children; and developing community-wide strategies to address specific risk factors where they occur in high concentration, such as alcohol misuse and family violence. It is critical that approaches to address Indigenous disadvantage and the underlying causes of abuse and neglect are holistic and culturally sensitive, and empower families and communities to develop and take responsibility for community-identified solutions (Aboriginal Child Sexual Assault Taskforce 2006; Anderson & Wild 2007; Atkinson 2002; Gordon, Hallahan & Henry 2002; Robertson 2000; Silburn, et al. 2006).

The best interests and safety of a child are paramount. Where Aboriginal and Torres Strait Islander children cannot remain safely in the care of their parents or community, timely and culturally appropriate responses for their care, protection and nurture are needed.

Maintaining connection to family, community and culture is essential within a framework that respects the physical, mental and emotional security of the child. This is particularly important in light of the historical experiences that Aboriginal families have had with child protection agencies.

In order to provide culturally appropriate responses, strategies developed under the National Framework need to be based on partnerships between Indigenous families and communities, and between Indigenous agencies, mainstream service providers and governments. Strategies should build on existing strengths, match expectations with appropriate supports, and recognise the importance of Indigenous-led and managed solutions (Higgins 2005).

## Supporting outcome 5

| Strategies | Initial 3-year actions | Delivery | Indicators of change |
|---|---|---|---|
| 5.1 Expand access to Indigenous and mainstream services for families and children | Expand Indigenous Parenting Support Services to additional sites | Commence 2009-10 Complete by 2011<br>Commonwealth | • Rate per 1,000 Indigenous children with substantiated cases compared to other children<br>• Rate per 1,000 Indigenous children in out-of-home care compared with other children<br>• Proportion of Indigenous children placed in accordance with the Indigenous Child Placement Principles<br>• Proportion of Indigenous 3 to 4 year olds participating in quality early childhood education, development and child care services<br>• Rate of hospitalisations for injury and poisoning for Indigenous children aged 0 to 4 years<br>• Ratio of Indigenous out-of-home care placement through mainstream or Indigenous services |
| | Link 35 Indigenous Child and Family Centres with the range of family and community programs for at-risk children<br>Improve access to child and maternal health services for Indigenous families | By 2011<br>Through COAG Indigenous Early Childhood Development Partnership | |
| | Support SNAICC to develop resources and materials to support and promote child and family services within Indigenous communities | Over 3 years to 2011<br>Commonwealth | |
| | Continue to focus new activities in the *Indigenous Family Violence Partnership Program* and *Indigenous Family Violence Regional Activities Program* on child protection issues | Ongoing<br>Commonwealth | |
| 5.2 Promote the development of safe and strong Indigenous communities | Ongoing support and strengthening of the Northern Territory Emergency Response including:<br>- the Family Support Package which provides Remote Aboriginal Family and Community workers, Mobile Child Protection Team and 22 safe houses in the Northern Territory<br>- law and order measures including specialist AFP officers in the child abuse taskforce as part of additional AFP positions | Ongoing<br>Commonwealth | |
| | Continued support for Indigenous community building activities, such as:<br>- the *Aboriginal Life Story Book* to provide Aboriginal children and young people with opportunities to explore their culture and develop a sense of connectedness to family, kin and community (NSW)<br>- Child Wise's *Speak Up* project targeting Indigenous communities (Commonwealth)<br>- supporting SNAICC to run workshops in Indigenous community organisations (Commonwealth)<br>- Continue services and support for families in Cape York (Commonwealth) | Ongoing<br>All jurisdictions | |

## Supporting outcome 5 continued

| Strategies | Initial 3-year actions | Delivery | Indicators of change |
|---|---|---|---|
| 5.3 Ensure that Indigenous children receive culturally appropriate protection services and care | Develop and expand the Indigenous child protection and welfare workforce, including:<br>- fostering Aboriginal controlled services to deliver support to Aboriginal families (NT) | Ongoing<br>States & Territories | |
| | Improve child protection service delivery for Indigenous families and children:<br>- working with Aboriginal organisations to increase capacity and play an enhanced role in out-of-home care and other service options (NSW & SA)<br>- integrating Indigenous perspectives in the learning agenda to build capacity of organisations (WA)<br>- implementing initiatives to improve safety and wellbeing of Aboriginal children in the child protection system (WA)<br>- planning, with Aboriginal organisations, the transfer of some or all guardianship responsibilities for Aboriginal children (VIC)<br>- ensuring the involvement of authorised Aboriginal agencies in all decisions about placements for Aboriginal children (VIC)<br>- implementing strategies under *Keep Them Safe* including working with Aboriginal communities to develop capacity of services (NSW)<br>- establishing Safe Houses within remote Aboriginal and Torres Strait Islander communities (QLD)<br>- providing Indigenous Alcohol Diversion Program to provide treatment for parents of children at-risk (QLD) | Ongoing<br>States & Territories | |
| | Strengthen the application of, and compliance with, the Aboriginal and Torres Strait Islander Child Placement Principle | Ongoing<br>States & Territories | |

## Supporting outcome 6:

## Child sexual abuse and exploitation is prevented and survivors receive adequate support

*Children are protected from all forms of sexual exploitation and abuse through targeted prevention strategies, and survivors are supported by the community, and through specific therapeutic and legal responses.*

Strategies and services designed to support vulnerable families are important in preventing maltreatment – especially neglect, emotional and physical abuse. However, child sexual abuse may require a different response.

Perpetrators may come from inside or outside the family. Sexual abuse can also occur in a range of settings, including the family home, friendship networks, schools, churches, community organisations, and online. Legal responses to sexual abuse require the involvement of police and criminal justice processes alongside child protection services; family law processes may also be underway (Higgins 2007).

It is estimated that fewer than 30 per cent of all sexual assaults on children are reported and that the reporting rate is even lower for Aboriginal and Torres Strait Islander children (Stanley, Tomison & Pocock 2003). Sexual abuse specific strategies are needed both to increase detection of child sexual abuse and to prevent child sexual abuse across a range of settings.

The vast majority of child sexual abuse perpetrators are family members or someone well known to the child or young person (Healey 2003). There is also increased reporting of children and young people with sexually abusive behaviours and of sibling sexual abuse (Neave, Friedman, Langan, & Little 2004). Risk factors for child sexual abuse are exposure to family violence, other types of abuse and neglect, pornography, highly sexualised environments and inadequate supervision (Boyd & Bromfield 2006; Irenyi, Bromfield, Beyer & Higgins 2006).

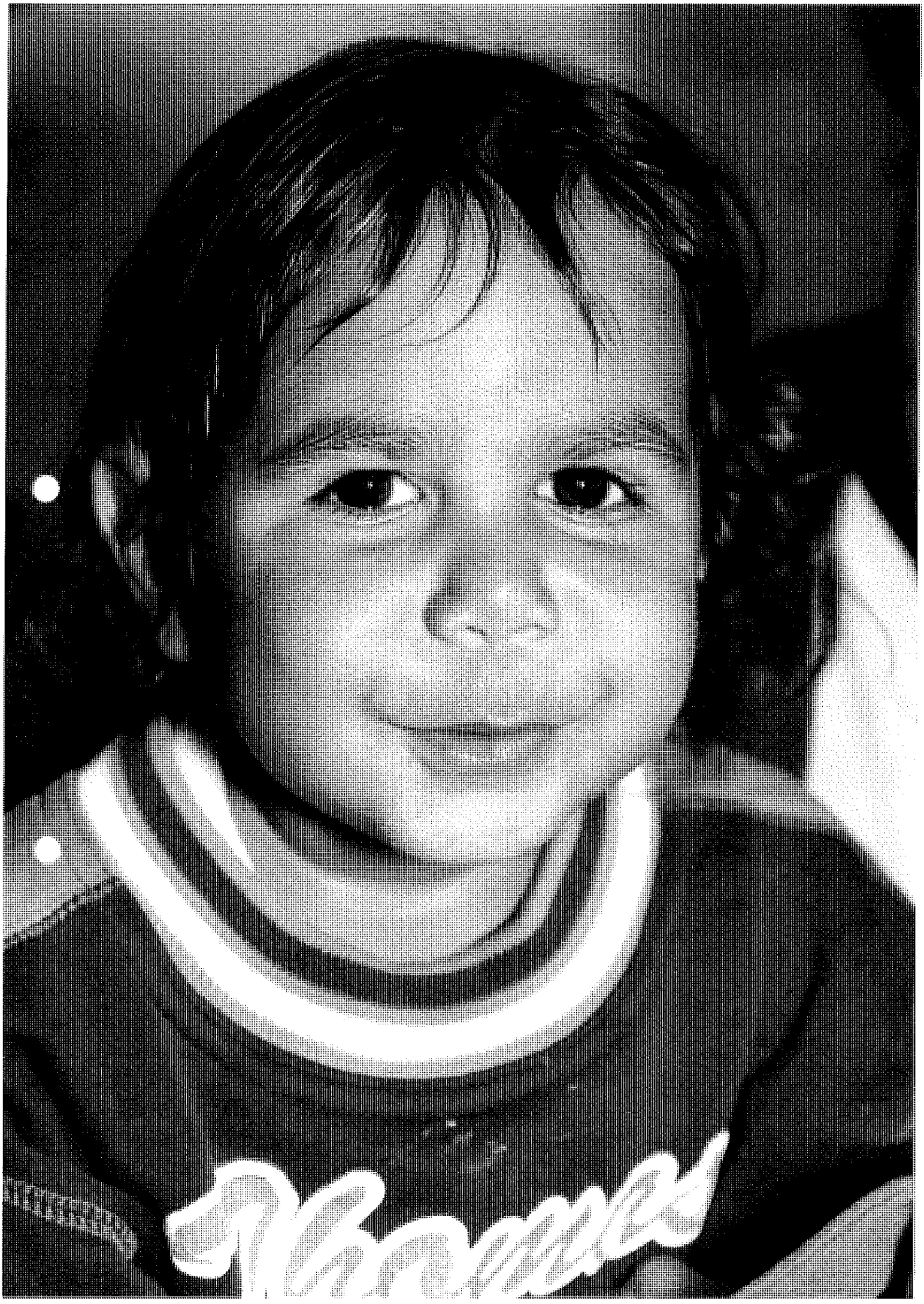
Raising awareness and knowledge in children and the broader community about risks can foster protective behaviours and may help to increase detection of abuse. The importance of educating young people about healthy relationships is increasingly being recognised. Raising awareness about the role of the internet as a mechanism for the sexual abuse or exploitation of children and young people is also a central focus. Organisations, businesses and institutions can also play an important role in protecting children through the development of policies and procedures to create child-safe organisations (Boyd & Bromfield 2006; Irenyi et al. 2006).

## Supporting outcome 6

| Strategies | Initial 3-year actions | Delivery | Indicators of change |
|---|---|---|---|
| 6.1 Raise awareness of child sexual exploitation and abuse, including online exploitation | Implement cyber-safety initiatives including:<br>- education and filtering including search warning mechanisms (Commonwealth)<br>- *Who's Chatting to Your Kids* information produced by police (QLD) | Ongoing<br>All jurisdictions | • Rate per 100,000 children aged 0–4, 5–9, 10–14, and 15–19 reported with sexually transmitted diseases<br>• Number of individuals and organisations prosecuted for sexually exploiting children (TBD)<br>• Number and rate of children with substantiations related to sexual abuse |
| | Increase support for community-based strategies to raise awareness in children, families and the community about child sexual abuse, such as Braveheart's White Balloon Day | May–July 2009<br>Commonwealth | |
| | Continue to introduce strategies to prevent sexual exploitation, such as:<br>- through a new statutory pathway, intervene earlier with young people who exhibit sexually abusive behaviour to help prevent ongoing and more serious sexual offences (VIC)<br>- Interagency Plan to tackle Child Sexual Assault in Aboriginal Communities (NSW) | Ongoing<br>States & Territories | |
| 6.2 Enhance prevention strategies for child sexual abuse | Implement a national framework for inter-jurisdictional exchange of criminal history for people working with children | Trial to conclude December 2009 with Implementation to follow<br>Through the COAG Exchange of Criminal History Information About People Working with Children Project Implementation Committee | |
| | Investigate best practice therapeutic programs for children displaying sexually abusive behaviours, such as:<br>- collaboration between government agencies and therapeutic treatment service providers to build a state-wide therapeutic treatment service system to implement the relevant provisions of the *Children, Youth and Families Act 2005* (VIC)<br>- *New Street* program for adolescents aged 10-17 years who display sexually abusive behaviours (NSW) | From July 2009<br>States & Territories with Commonwealth support for research | |

## Supporting outcome 6 continued

| Strategies | Initial 5 year actions | Delivery | Indicators of change |
|---|---|---|---|
| 6.3 Strengthen law enforcement and judicial processes in response to child sexual abuse and exploitation | Extend work in the detection, investigation and prosecution of online sexual exploitation | By 2011-12<br>Commonwealth | |
| 6.4 Ensure survivors of sexual abuse have access to effective treatment and appropriate support | Support workshops for adult survivors of sexual abuse, parents and spouses | 2009<br>Commonwealth with Heartfelt House | |
| | Review service delivery options and approaches for survivors to align with best practice such as WAs expanded network of Child Sexual Abuse Therapeutic Services | Ongoing<br>States & Territories | |


Anna

# Implementing the National Framework

The National Framework is a 12-year overarching strategic framework for reform (2009-2012), supported by rolling three-year action plans identifying specific actions, responsibilities and timeframes for implementation.

The task of ensuring the safety and wellbeing of all Australian children is a long and difficult one. The action plans provide a staged approach to achieving the necessary reforms identified within the National Framework. They also allow governments to address current and emerging priorities, as resources permit. The Australian, State and Territory governments and non-government agencies are committed to working together to develop actions under these triennial plans, implementing key actions and reporting on progress.

## Governance arrangements

A focus on broader early intervention and prevention across a range of areas which impact on the safety and wellbeing of children requires a move away from the traditional 'single agency' approach for the ongoing management and monitoring of the National Framework. The National Framework will require integrated governance arrangements that cut across government boundaries and include the non-government sector in order to plan and implement actions.

The *Community and Disability Services Ministers' Conference* is responsible for the implementation of the National Framework. It will report annually to the Council of Australian Governments on progress on the first years, action plan and provide further action plans for consideration.

In addition, a *Ministerial Forum on Protecting Australia's Children* will be convened to bring together Ministers with responsibilities under the National Framework. This Ministerial Forum, hosted by the *Community and Disability Services Ministers' Conference*, will also invite contributions from non-government representatives, such as State and Territory Children's Commissioners and children and young people.

The *Community and Disability Services Ministers' Conference* will continue to be supported by the officials' forum - the *Community and Disability Services Ministers' Advisory Committee* (CDSMAC) to manage the National Framework.

A tripartite *National Framework Advisory Committee* will be established to advise on the operation of the National Framework. This tripartite Committee will comprise CDSMAC officials with nominees from other sectors (such as health, education and justice) and non-government representatives (such as leading academics, practitioners and peak organisations). Children and young people are critical stakeholders who will need to be involved in this Committee through a relevant representative organisation.

Supporting the formal governance mechanisms will be a series of working groups, with members drawn from government and non-government organisations as appropriate. They will be asked to assist with the development and implementation of specific action areas or items.

## Implementation Plan

With the release of the National Framework the Australian, State and Territory governments will work together to develop an Implementation Plan. The Implementation Plan will focus on the actions agreed to for the first three years and will outline their scope, resourcing and timing.

The Implementation Plan will be developed within three months and considered by the *Community and Disability Services Ministerial Advisory Committee* at its August meeting.

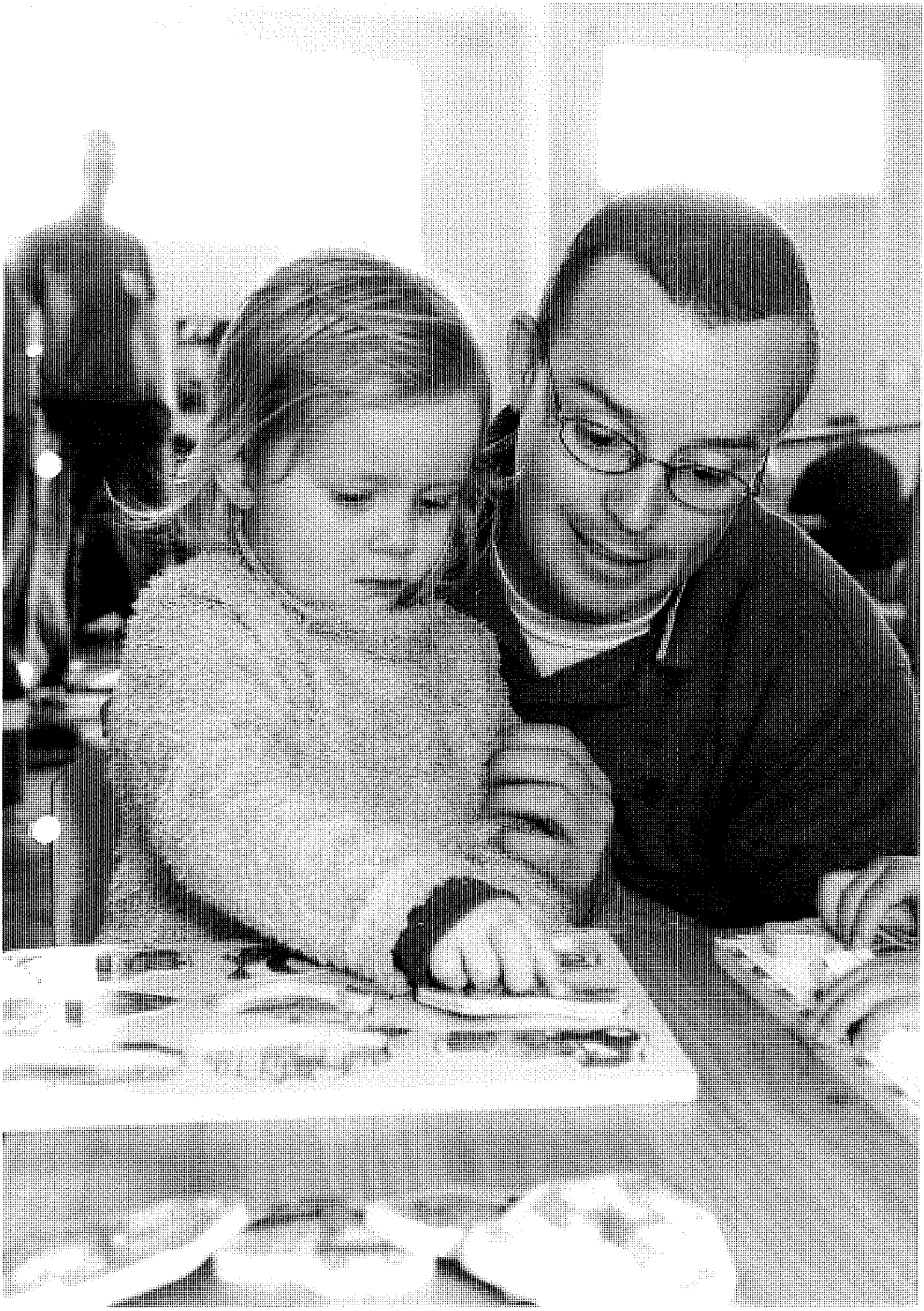
The Implementation Plan will be a key tool in measuring progress of the National Framework. All jurisdictions and stakeholders will be able to monitor progress against activities and milestones outlined in the Implementation Plan. A set of performance indicators will be developed as part of the Implementation Plan, providing another opportunity to monitor progress and outcomes. Reporting processes for the National Framework will provide an opportunity to streamline existing reporting processes to ensure greater levels of transparency.

As part of the Implementation Plan the options for a periodic information symposium will be explored.

## Evaluation

At the conclusion of the first three year period (2012) the *Community and Disability Services Ministers' Conference* will seek an evaluation of the National Framework. Central to this evaluation will be the collection and analysis of data against the outputs and performance indicators identified in the Implementation Plan, as well as the progress and performance against each of the attached State and Territory action items.

The evaluation process will also draw from data collected and analysed in associated portfolio areas, such as early childhood, housing and health.



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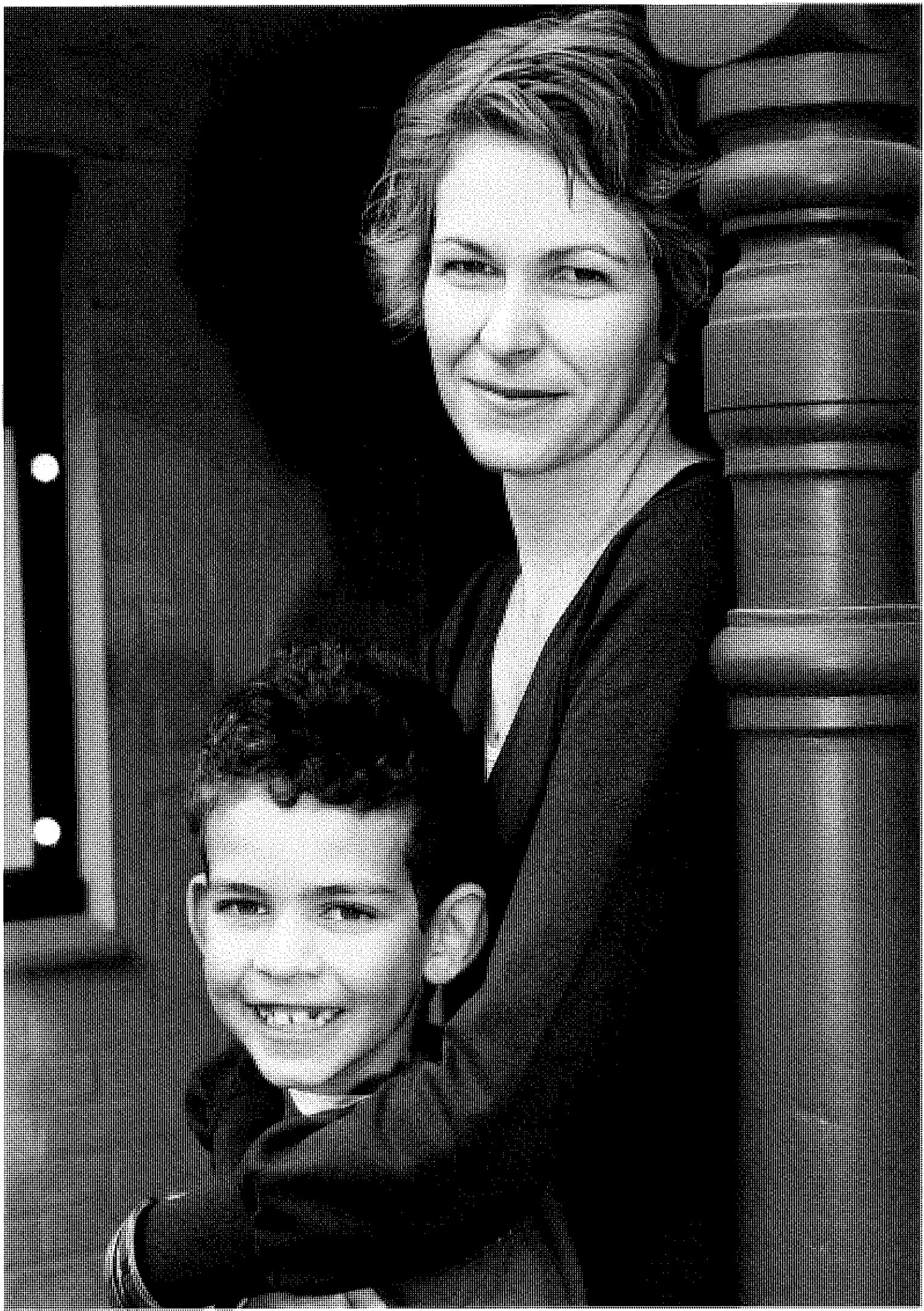


# Appendix A
## Current initiatives and reforms

The process followed by child protection agencies to deal with concerns about children involves:

- receiving reports of concern from mandated reporters or members of the public (notifications)
- gathering information to determine if an investigation is necessary and conducting an assessment of the risk to the child and the needs of the child
- determining whether the report is substantiated (i.e. the child has been abused/neglected or is at-risk of harm)
- determining whether the safety concerns for the child can be dealt with through referral to a family support service, or whether the risk is so high that the child must be removed from the family and placed in care.

These actions are defined in legislation and policy. Certain legislative principles are common to all:

- The child's best interests are paramount. Interests of the parent/s or carers cannot override this principle; nor can the Aboriginal placement principle.
- The Aboriginal placement principle requires that Aboriginal or Torres Strait Islander children who are removed from home will be placed with their own family, community or other Indigenous carer. This is achieved in 74 per cent of placements nationally.

In the last decade all State and Territory care and protection systems have undergone major reviews. In most, but not all case, reviews have been triggered by revelations of severe abuse and/or death of children in State care. There are a number of reforms which are common to all systems:

- the safety and wellbeing of children is a shared community responsibility
- collaborative interagency partnerships and, in some instances, priority service to children and young people in the care and protection system
- expanded role for non-government providers of family support and out-of-home care services
- strengthened requirements for the recruitment and training of foster and kinship carers
- charters of rights for children and young people in care
- children and families empowered to participate in decision making
- Children's Commissioner and/or Children's Guardian positions created to advocate for children within systems, monitor the performance of child protection agencies and, in some cases, monitor the performance of the out-of-home care system
- significantly increased investments in services available to vulnerable families and children at-risk
- specific services for Aboriginal and Torres Strait Islander clients established

- new service delivery models established so many children at-risk can be diverted from statutory intervention. [5]

Today, while many of the challenges have been tackled. A number remain, these include:

- reducing the incidence of abuse and neglect of children and young people across Australia
- working with Indigenous communities to address the complex causes of child abuse and neglect [6]
- recruiting/retaining people with specialised skills demanded in government, non-government and carer workforces
- providing more therapeutic residential facilities for severely affected children and young people who require intensive, sustained interventions
- building local evidence of the extent of child abuse and neglect within Australia and what works to prevent it - for both Indigenous and non-Indigenous populations
- developing service standards so that any child or young person entering the child protection system, or care, receives quality care
- removing barriers to improved information sharing and comparable national data collections
- creating a strong and responsive network of services (universal, secondary and tertiary) that are accessible, inclusive and non-stigmatising
- improving the care options available and increasing the stability of placements
- building capacity in families, communities and services
- providing much more support in the transition to independent living for young people leaving care at age 18.

**The *National Framework for Protecting Australia's Children* will align with existing initiatives and reforms. Some of the current Australian, State and Territory key reforms and initiatives are described. Further mapping and alignment will take part throughout the life of the National Framework.**

5 Victoria led the way for other jurisdictions in this regard, when its research showed that 1 in 5 Victorian children would be reported to child protection authorities if the trends in notifications of recent years were allowed to continue (ChildFIRST program in Victoria).

6 In this context, it should be noted that neglect is by far the biggest causal factor for involvement in the child protection system for all children.

## AUSTRALIAN CAPITAL TERRITORY

### Agency functions

The functions of the ACT Department of Disability, Housing and Community Services cover care and protection of children at-risk of harm, youth justice, early intervention services, out-of-home care services, Indigenous policy and programs, adoption, children's services, therapy services for children, disability services, women's policy, disaster recovery, multicultural policy and public housing (including services to homeless people).

Care and protection services are delivered from a centralised location which operates intake, assessment using a differential response model, substantiation and referral functions. Two regional Child and Family Centres offer midwifery baby health clinics, targeted playgroups, parenting skills development programs, and case management for vulnerable families. Outposted child protection officers, located in the two Child and Family Centres, work collaboratively with the government and non-government sector to provide early intervention services. The Department funds a number of home care agencies and sets standards and regulates their operations.

The Office for Children, Youth and Family Support (OCYFS) and the non-government sector provide an Integrated Family Support Project (IFSP). The IFSP is a joint initiative between the ACT Government, Australian Government and the non-government sector across the ACT targeting children under 8 years and their families who have multiple and emerging difficulties. The aim of the project is to divert families from the statutory system and prevent re-entry using a case coordination framework.

### Major recent and planned reforms

- Children's Plan Services
  - Early Intervention and Prevention Unit established
  - Established new Child and Family Centres to provide universal and targeted services
  - Established the Indigenous Integrated Service Delivery Program
  - In partnership with SIDS and Kids, developed easy to read messages and pamphlets on 'safe sleeping' have been developed
  - Therapy ACT
- Service development for children by
  - Establishing Early Learning Centres and Child and Family Centres
  - Child Protection Reform
  - Established the IMPACT Program to provide a coordinated service for pregnant women, their partners and their children under two years of age
  - Established the Integrated Family Support Project for families at-risk of entering the statutory system
  - Reformed Child Protection legislation
  - Reforming Out-of-home Care Program including a new framework which articulates contemporary service models

- Information exchange and established Care Teams.
- New Out-of-home Care Standards developed.
- A 'Time to Fly' leaving care kit developed
- Legislative requirements for day care planning
- Child Protection Protocols in cooperation with other government agencies

- *Sharing Responsibility: A Framework for Service Collaboration for the Care, Protection and Wellbeing of Children and Young People in the ACT* outlines the responsibilities of the ACT Government and its approach to working together for the care and protection of children and young people in the Territory.
  - Supervision Framework with Supervision Standards developed to support clinical staff in their roles as practitioners
- A compliance framework that will include the development of a compliance auditing and quality assurance process with the developmentof compliance monitoring tools and applications
  - A newly developed and implemented Case Management Framework to provide more integrated and collaborative responses within the government and non-government sector
  - The development of a Neglect Policy to better support staff in identifying and dealing with this form of abuse
  - Establish a vulnerable Families Project focussing on care co-ordination, referral pathways and information exchange
- Protocols for the Interstate Transfer of Care and Protection Orders Protocol
- A complex case review panel to provide a forum for care and protection caseworkers to present and discuss cases with significant complexity with a panel of professionals.

### Reforms since 2000

A review of child protection services in the ACT in 2004 led to the Government adopting and implementing a 3 year reform program from August 2004, in which the primary goals were:

- to improve the quality standards for care and protection services and immediately expand services targeted at children and young people most at-risk of entering the care and protection system
- to develop a continuum of early intervention and prevention services from birth to 18 years.

Practical measures to achieve these goals have included:

- DHCS' second wave of overseas recruits to Care and Protection positions was undertaken in 2008 resulting in a full complement of staff being achieved in Care and Protection Services
- strengthening accountability measures including the development of a complementary auditing and quality assurance process
- establishing new and better partnerships between government and non-government agencies
- expanding community education and awareness of child safety and wellbeing

- improving training for foster carers
- developing specific responses to meet needs of Aboriginal and Torres Strait Islander children, including establishing a specific functional unit with the department
- establishing the Office of Commissioner for Children and Young People and promoting the participation of children and young people in decision making
- exchange of staff between ACT Health and DHCS
- introducing an interagency agreement for service provision to clients with high level, complex needs
- reviewing *Children and Young People legislation* in 2005 and again in 2008. The first review introduced the concept of child or young person at-risk of abuse and neglect; clarified who mandatory reporters are; protection and release of information; principles to safeguard culture and community connections for Indigenous children and young people. The second review led to the development of the new *Children and Young People Act 2008* and introduced significant reform to the law relating to children and young people in the ACT, particularly in the areas of care and protection including in-utero reporting, youth justice, the regulation of childcare services and employment.

### Reforms for the future

- Legislation provides for new OOHC standards – these are currently being developed.
- Continuing with work to improve interactions between care and protection and the legal system, including the Court
- Case Management Framework supporting improved work practices
- Common Assessment Framework is being piloted and will provide a common method of assessment that can be used across all agencies
- Compliance Framework for the *Children and Young People Act 2008* is currently being developed.

## NEW SOUTH WALES

### Agency functions

The NSW Department of Community Services (DoCS) functions cover care and protection of children at-risk of harm, early intervention services, out-of-home care services, adoption, children's services, disaster recovery, and services to homeless people. DoCS' services are available through 7 regional offices and 86 community services centres across the state.

### Major recent and planned reforms

Following the Special Commission of Inquiry into Child Protection Services in NSW, the NSW Government response, *Keep Them Safe: a shared approach to child wellbeing 2009-2014* was released on 3 March 2009. *Keep Them Safe* is a five-year action plan that aims to build a stronger, more effective child protection system in NSW.

A key objective of *Keep Them Safe* is to create an integrated system that supports vulnerable children, young people and their families. This includes the establishment of new reporting and referral arrangements to allow families to access appropriate services from government agencies and non-government services without having to come in contact with the statutory child protection system. The establishment of alternative service pathways is a similar approach to that adopted by some other jurisdictions, including Victoria.

Key reforms contained within the NSW Government action plan include:

- Establishing Child Wellbeing Units in NSW Health, NSW Police, the Departments of Education and Training, Housing, Ageing, Disability and Home Care and Juvenile Justice, to advise mandatory reporters within these agencies on the new statutory reporting threshold of "risk of significant harm" and to assist in responding to matters which do not meet this criteria
- Expanded services and a focus on prevention and early intervention, including:
  - expanding the *Brighter Futures* early intervention program to support vulnerable families with children aged 0-8 by providing access to a range of services, including quality child care, case management, parenting program and home visiting. Consideration will also be given to extending *Brighter Futures* to 9-14 year olds, including priority access for Aboriginal children and their families, following examination of the evidence base
  - extending intensive family preservation services to support families whose children are at-risk of entering out-of-home care
  - continuing to trial Sustained Health Home Visiting, with further expansion to be considered in 2010, which employs specialist child and family health nurses to work intensively with high needs families in pregnancy and during the first two years of a child's life
  - employing additional Home School Liaison Officers to work with families where there are concerns about non-attendance at school
- A new partnership with, and an enhanced role for, the non-government sector, including:
  - funding NGOs and/or local councils to establish new Regional Intake and Referral services. These organisations will work with the Child Wellbeing Units to improve access to services for children and families. Three initial Regional Intake and Referral services will be established in 2009

- enhancing the role of the NGO sector in the delivery of OOHC and the Brighter Futures early intervention program
- investing in capacity building and reform of funding arrangements. In particular, the Government will work with Aboriginal communities and organisations to support communities to address the unacceptable overrepresentation of Aboriginal children and young people in the child protection system. Priority work will be undertaken with Aboriginal organisations to build their capacity to play an enhanced role in the provision of out-of-home care and other services.

### Reforms since 2000

The *Children and Young Persons (Care and Protection) Act 1998* was implemented in stages from 2000, and reviewed in 2005-2006.

- *Brighter Futures* early intervention program, introduced in 2002, is a voluntary program providing targeted, tailored support to vulnerable families with children aged under nine years, or who are expecting a child
- *Aboriginal Intensive Family Based Service* is a unique strengths-based service targeting high risk children. The program provided support to 175 children in 2007-08
- *Families NSW* brings relevant government agencies together to provide support to families raising children up to 8 years of age. DoCS provided $5.2 million over four years to roll out the Triple P parenting course to all parents with children 3-8 years. First courses began in September 2008. By 2011, 1200 health, welfare and education professionals will be accredited in use of this program
- *Preschool Investment and Reform Plan* $85 million additional funding for DoCS will provide expansion of the preschool program throughout the children's services sector; 10,500 additional children will attend preschool for two days a week in the year before they start school
- *Aboriginal Maternal and Infant Health Strategy,* jointly funded by DoCS and NSW Health, was implemented across the State. The strategy is aimed at improving the health of Aboriginal mothers and their newborn babies by providing accessible, culturally appropriate maternity care programs for women and their families. Since its introduction in 2000, the strategy has achieved remarkable outcomes such as halving the rate of premature birth and perinatal mortality, improving breast-feeding and increasing access to antenatal care early in pregnancy
- *Collaboration* is promoted through the following interagency plans and processes
  - Joint Investigation Response Teams (JIRT) with DoCS, police and health, who investigate cases of child abuse that may constitute criminal offences. in 2007-08, 3,000 such cases were referred
  - a new policy trialled in 2008 to improve collaboration between DoCS and NSW Health, to support at-risk pregnant women. A joint evaluation is scheduled for 2009. Both agencies have funded statewide expansion of the *NSW Aboriginal Maternal and Infant Health strategy*
  - *NSW Interagency Guidelines for Child Protection Intervention 2006* (first introduced in 1991) were updated and evaluated

- *Interagency Plan To Tackle Child Sexual Assault In Aboriginal Communities 2006-2011* contains 88 actions to prevent child sexual assault in Aboriginal communities and improve the way services are planned, coordinated and delivered to victims and their families, with a budget of more than $52.9 million over four years.

## NORTHERN TERRITORY

### Agency functions

The Department of Health and Families includes the Northern Territory Families and Children's Division (NTFC), the responsible agency in the Northern Territory for child protection, out-of-home care, family and parenting support, support for individuals and families in crisis including those who are homeless or at-risk of homelessness, women's policy, victims of domestic or family violence or sexual assault, youth services including youth diversion services, and adoption. Mandatory reporting is universal in the Northern Territory. This contrasts with all but one other jurisdiction, where only specified categories of employees are required by law to report child abuse.

The *Care and Protection of Children Act 2007* provides the legal framework for care and protection services, screening for child related employment, employment of children, prevention of child deaths and regulation of children's services, and establishes a Child Death Review Committee and the post of Children's Commissioner. The Act requires decisions to be made in the best interests of the child, and describes the considerations that apply in making such a decision. The Act requires children to be treated with respect and to participate in decisions affecting them. Specific provisions relate to the treatment and placement of Aboriginal children. The Act provides for access to support for young people leaving care up to age 25.

### Major recent and planned reforms

- Child Abuse Taskforce including Aboriginal Community Resource workers
- Co-located NTFC child protection workers in Indigenous Targeted Family Support Service organisations
- Mobile Response Teams able to be deployed as needed to relevant communities
- Remote Aboriginal Family and Community Workers
- Structured Decision Making tools and systems
- Secure Care initiatives for high-risk young people
- Linked up for Safe Children initiative to coordinate local solutions across the government and non-government sector using a place-based framework
- Family Group Conferencing with an emphasis on providing a culturally secure approach to developing plans for the wellbeing of children at-risk
- Child Protection research partnership with the Menzies School of Health Research
- A Practice Advisor initiative to support case work practice
- A network of Safe Houses established in key communities

### Reforms since 2000

The child protection system in the NT has undergone significant change since 2003 when the Caring for Our Children reform agenda was announced. Two critical elements of this reform agenda were the introduction of new legislation and the development of different responses to vulnerable children and families through the implementation of a Differential Response Framework.

In 2006 the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse (the Inquiry) was established by the Northern Territory Government. The Inquiry's subsequent report (Anderson & Wild 2007) – the *Little Children are Sacred* report - supported legislative and systemic reforms in the NT as critical child protection measures. Report recommendations focused on the priority action areas including:

- education (getting children to school is vital; at school they are safe) and education campaigns to raise awareness of child sexual abuse and how to respond to it
- reducing alcohol consumption
- improving family support services
- empowering Aboriginal communities
- creating a position of Commissioner for Children and Young People

In response, the NT Government developed a generational plan of action (*Closing the Gap*) to combat Indigenous disadvantage, with funding of $286.43 million over 5 years for initiatives across child protection, family violence, policing, justice, alcohol and drugs, health, housing, education, jobs, and culture. Since 2007, the Australian Government Northern Territory Emergency Response (NTER) and the Northern Territory Government's responses through *Closing the Gap* have contributed to the strength and direction of reforms in the child protection system.

Major provisions of the *Care and Protection of Children Act 2007* (CPCA) were introduced in late 2008. This legislation makes provision for the development of many new initiatives including:

- a Children's Commissioner
- *Working with Children* checks for all people working in child-related employment
- mediation / family group conferencing
- child Safety Review Teams
- leaving Care support

In addition the CPCA provides the legislative basis for increased interagency collaboration in child protection by supporting the sharing of information between agencies and the development of different responses to child protection reports. The NT Differential Response Framework (the Framework) envisages low risk high needs families being referred to support agencies rather than being the subject of forensic child protection investigation. The Framework is being rolled out in a number of NT centres through the funding and establishing of Targeted Family Support Services (TFSS) to respond to the needs of these families.

The development of Aboriginal Child Protection and Family Support Services by Aboriginal agencies is a key focus in the NT's reforms and in particular the Northern Territory Government has focused on supporting Aboriginal agencies to develop TFSSs. Additionally, Remote Aboriginal Family and Community Workers are being based in a number of major remote Aboriginal communities. NTFC is undertaking a place-based approach to the development and delivery of services for families in remote communities and is planning to engage with communities to ensure that new services meet the needs of the community and that NTFC funded services are linked up with services in the areas of child care and health.

Forensic responses have been strengthened through the establishment and ongoing development of co-located NTFC/Police teams, mobile response teams, and increasing resources within child protection offices including stronger risk management and decision making frameworks for child protection and out-of-home care (OOHC) through the introduction of a suite of assessment and decision making tools

More therapeutic responses and a greater range of options for children in OOHC are being developed through the provision of Specialist Care placements, therapeutic services to children in care and the development of secure care options in line with the OOHC Strategic Plan.

## QUEENSLAND

### Agency functions

The Department of Communities includes Child Safety Services, which provides statutory child protection services delivered under the *Child Protection Act 1999*, foster and kinship care and adoption services and has 49 metropolitan and regional Child Safety Service Centres.

The Department of Communities includes Community Services, which has responsibility for delivering early intervention and family support services.

### Major recent and planned reforms

- *One Chance at Childhood* initiative, a specialist program to secure safety and stability for babies and toddlers in the child protection system
- Establishment of Safe Houses in Aboriginal and Torres Strait Islander communities to provide on-community placement and support services for children and families subject to statutory child protection
- Establishment of Therapeutic Residential Services to provide an intensive therapeutic environment to support young people to recover from the impact of physical, psychological and emotional trauma and pain experienced from abuse and neglect
- Suspected Child Abuse and Neglect (SCAN) system to provide a multi-agency response to the protective needs of children within the tertiary child protection system
- Establishment of Early Years Centres providing a 'one-stop-shop' where early childhood education and care, family support and health services are available for families expecting a child or with children aged up to eight years
- Referral for Active Intervention Services for families at-risk of entering statutory child protection services
- Evolve Therapeutic and Behaviour Support Services for children with complex and extreme emotional and behavioural issues

### Reforms since 2000

- The Queensland Government has undertaken significant reform of its tertiary child protection system in recent years. Children in care now have education and health plans and a range of new services to support the wellbeing of children in care.
- Foster carers are supported with increased allowances, enhanced foster carer training, an after hours carer helpline and a carer handbook setting out carer rights and entitlements.
- Referral for Active Intervention services provide intense family support for families of children at-risk of entering out-of-home care.
- Recognised Indigenous entities are funded to provide support and advice about child protection decisions and placements for Aboriginal and Torres Strait Islander children.
- The *Child Safety Practice Manual*, Structured Decision Making tools and the statewide Integrated Client Management System have enhanced the quality of child protection practice and the capacity of child protection staff to manage their cases.

- A range of specialist positions support quality practice, including court coordinators, recordkeeping officers, early childhood experts, family group meeting coordinators and therapeutic and behavioural support professionals.
- The Queensland child protection system is more accountable, overseen by the Commission for Children and Young People and Child Guardian and the external child death case review committee.
- Child protection officers today receive enhanced training, incentives and support to attract and retain staff, particularly in rural and remote areas.

## SOUTH AUSTRALIA

### Agency functions

The South Australia Department for Families and Communities (DFC) is responsible for child protection, family support, out-of-home care, young offenders, adoption, refugee children, support to families in poverty, and disaster recovery. Services are delivered through 18 district centres across three regions.

The safety and wellbeing of children is considered a shared community responsibility. Accordingly, government continues to work towards greater collaboration between government agencies (particularly health, education and police), with the non-government sector and with families.

### Major Recent and Planned Reforms

- New targeted early intervention initiatives
- New family preservation and reunification initiatives;
- A new integrated child and family case management system
- New models for out-of-home care
- Reshaping the child protection system towards relationship based practice
- Children's Centres that bring together health, education, community and family services for families and their children aged 0-8 years
- Whole of government protocol for sharing information where a child is at-risk
- New responses to drug and alcohol related concerns for the care and protection of children
- The *Keeping Them Safe – in Our Care* strategy will continue in 2008-09 with more community based services to support families who are subject to child protection notifications, to stabilise the family situation and enhance parenting capacity, and to develop intensive family preservation services for families with children at high risk of entry to alternative care, and to return those children who are in alternative care to the safe care of their family.

### Reforms since 2000

In 2002, the government commissioned Robyn Layton, QC, to conduct a Review of Child Protection in South Australia.

The Government responded to the recommendations of the *Review* with *Keeping Them Safe: the South Australian Government's child protection reform program.* The reform agenda prioritises children's safety and wellbeing and promotes greater collaboration between government agencies, with the non-government sector and with families. The program included amendments to the *Children's Protection Act 1993* (proclaimed in 2006) that were proclaimed in 2006 that:

- prioritise the care and protection of children as the first consideration in all planning and decision making
- provide a stronger commitment to make sure that children and their families have access to support services
- build community capacity to protect children through the establishment of child safe environments

- establish common standards across all sectors for criminal history checking
- extend mandatory reporting of suspected child abuse
- establish the Office of the Guardian for Children and Young Persons to promote the best interests of children under guardianship of the Minister
- establish the Council for the Care of Children to review the operations of legislation, and report to and advise the Minister on all matters affecting the safety of children
- establish the Child Death and Serious Injury Review Committee to review the circumstances and causes of deaths and serious injuries to children and make recommendations to Government.

In 2005 South Australia established *Rapid Response: Whole of Government Services – a Framework and Action Plan* with the aim of ensuring that children and young people under the guardianship of the Minister for Families and Communities receive the supports and services available to those with strong family networks through priority access to government funded services. Part of the focus of *Rapid Response* is the provision of transition planning from care, including the provision of post Guardianship supports and services.

In 2008 $192 million was committed over four years to the *Keeping Them Safe – In Our Care strategy*. It emphasises early intervention, early years services, whole child within family context, and 'joined up' government responses. Reforms through the *Stronger Families Safer Children* program emphasise strengthening families and keeping them together wherever possible; tackling problems and building capacity in families; providing stable, high-quality care; individualised and integrated care plans; taking better care of children with complex needs; training carers and keeping them informed; better remunerating carers; and helping grandparent carers access services for children.

Policies, procedures, practice frameworks and practice guidelines are undergoing considerable review and development across all aspects of the care and protection process to support the substantial reforms.

Aboriginal-specific initiatives include:

- embedding the Aboriginal Child Placement Principle in legislation and policy
- a dedicated Aboriginal service providing advice and assistance on abuse and neglect of Aboriginal children
- a specialist metropolitan-based team of Aboriginal service providers delivering targeted youth work services
- the *Aboriginal Culture and Identity Program* which supports preservation of family and cultural ties for Aboriginal children and young people who are under the Minister's guardianship.

In April 2008 SA Parliament received the *Children in State Care Commission of Inquiry Report* (the *Mullighan report*) on abuse of children in care from Commissioner The Hon E.P. Mullighan QC. The Government responded initially with services for survivors of abuse and neglect and made compensation available to adult victims. Commissioner Mullighan also investigated allegations of child sexual abuse on the APY lands. The Government is progressing responses to Commissioner Mullighan's recommendations including proposals for legislative reform.

## TASMANIA

### Agency functions

The responsibilities of the Department of Health and Human Services (DHHS) cover a broad range of services including both acute and primary health care as well as mental health and drug and alcohol services, and human services. Human Services comprise Housing Tasmania and Disability, Child, Youth and Family Services, which are delivered through four area offices. As part of a staged reform process commencing in 2009 some human services will be delivered by the non-government sector. Ongoing partnership arrangements between the Department and service providers will ensure that services are coordinated with a client focus and quality assured.

The Tasmanian Government both provides and funds a range of services to ensure that children and families are supported, particularly in the early years. These are delivered through the universal Child Health and Parenting Services (DHHS); the Department of Education (Launching into Learning); and an array of non-government organisations. Tasmania recognises the need to strengthen parenting capacity and family functioning, as well as the importance of early intervention and the need to monitor any potential for cumulative harm in family circumstances that are less than ideal.

As well as this, the *Children, Young Persons and Their Families Act 1997* mandates that all adults have a responsibility to report suspected abuse or neglect of a child; and certain "prescribed persons", such as health sector staff, teachers, people who work with children, must report concerns or face a penalty. The legislation describes the safety and wellbeing of children as a shared community responsibility; has a focus on taking on the viewpoint of the child; and includes principles of the *best interests of the child* and *Aboriginal placement*.

This legislation is complemented by the *Safe at Home* Program, an integrated whole of Government response to family violence in Tasmania. *Safe at Home* is enabled by the provisions of the *Family Violence Act 2004*. In 2008 the Tasmanian Safe at Home Program was the National Winner of the Australian Crime and Prevention Award.

The Tasmanian Commissioner for Children examines legislation, policy and practices that affect the health, welfare, care, protection and development of all children to help ensure they operate in the best interests of the child. Children includes all children and young people under the age of 18 years.

A series of recent reviews revealed a system with limited capacity to respond to the needs of children, young people and families. Services were not reflecting current research findings about early brain development and the need for a focus on prevention and early intervention to alleviate the stress on the tertiary system. As a result, Tasmania wanted to adopt well researched, outcome-focused service models from other jurisdictions.

### Major recent and planned reforms

- Establishing Community Gateway Services to provide a single community entry point in each area which will enable children and families to ask for support (and other professionals to refer them for support) through the Community Gateways without reference to the child protection system.
- Establishing integrated family support services in each of the four areas in Tasmania.
- Establishing 30 child and family centres across Tasmania, with construction on the first eight to begin in 2009.

- Reforming out-of-home care services and disability services including funding to have these services provided by the non-government sector.
- Staged implementation of a new Child Protection Information System (CPIS) from 2008. The new system has given Child Protection Services an increased capacity to manage the entry, allocation and approval of notifications and investigations.
- Integrating local services.
- Introducing the Tasmanian Child Protection Practice Framework based on New Zealand research and practice.

### Reforms since 2000

The primary aims of Tasmania's reforms have been to meet the needs of children, young people and their families; to identify and support children and young people at the highest risk of abuse or neglect; to be culturally responsive and strengths and evidence based; and to build a more responsive system through greater use of non-government family services.

Four regional service centres have been created to replace the centralised intake. Each service centre is required to develop a network of service supports building on existing resources (health services, schools, police etc.). Over time these service centres and networks will integrate with the Community Gateways providing a community intake point for children and young people at-risk. A co-located child protection worker will assist with this process.

The aim of the coordinated children and family services is to:

- focus on early intervention and prevention
- create system capacity to respond to needs of vulnerable families
- monitor cumulative harm
- provide therapeutic services where required
- use coordinated planning for intervention and integrated responses.

Because of the overall focus outlined above, Child Protection Services is able to target the more serious cases of abuse and neglect. Further, in 2008 Child Protection Services adopted a response model which reorientates staff into three teams: intake, response and case management. Intake has been decentralised to each area and intake teams work with senior child protection staff to determine which cases require a child protection response, while the response team is required to conduct an assessment of the risk to children in a way that is timely (completed within four weeks).

A five-year reform plan for out-of-home care services commenced in 2008 and includes:

- providing a greater range of placement options
- improving stability of placement for children and young people in care including the option of transfer of guardianship to an approved stable carer
- improving support to carers
- better coordination and matching of child to carer within the placement process
- a move in the future to recruitment, training and accrediting carers being undertaken by the non-government sector
- the development and implementation of individual care plans for each child or young person in care.

## VICTORIA

### Agency functions

The Victorian Government has a progressive and ambitious reform agenda for Victorian child and family services. Developed in close partnership with Victorian community service organisations, the *Every Child Every Chance* reforms have focused on putting children and young people first, the goal being to ensure that vulnerable children and young people thrive, learn and grow and are respected and valued so that they can become effective adults. The reforms are underpinned by a commitment to best practice. They have been informed by contemporary national and international research and innovative approaches to strengthening vulnerable families, protecting children and young people and promoting vulnerable children's healthy development, safety and wellbeing – learning that has been tailored to Victorian circumstances and needs.

Victoria's approach recognises that all children need capable, nurturing parents and a caring child and family friendly community. The reforms emphasise the importance of supporting parents to play this role. Where parents experience stresses that impact on their care of children, Victoria's first goal is always to work supportively with them to keep families together. If children cannot live safely at home, work is undertaken intensively with their parents to address problems, build resilience and enable a child to return home safely as quickly as possible. Where this is not possible, the goal is to ensure that children experience stable and high-quality alternative care. Victoria's approach recognises that the protection of children cannot be separated from policies and programs to improve children's lives as a whole.

### Major recent and planned reforms

*Enshrining children's best interests at the heart of all decision making*

- The Victorian legislation builds a shared responsibility for protecting children and young people, but also proactively promotes their development and longer term wellbeing. Harm needs to be better understood so as to encompass accumulated harm, as well as acute crisis, or a single serious incident. The new best interests principles provide a common framework for everyone working under the Victorian legislation.

*Building an integrated service system that is more localised, better coordinated and is responsive to family needs*

- The problems facing vulnerable families have become more complex in recent times. Substance abuse and family violence have become the most common characteristics of families in contact with child protection. Where children and young people are at-risk of harm, their families are often grappling with one or more issues from amongst long-term poverty, social exclusion, relationship breakdown, family violence, substance abuse, mental illness or disability. A one-size-fits-all approach will not work. Services need to be tailored to local conditions and needs
- There is no evidence that relying on child protection as the primary service to protect vulnerable children and families makes a sufficient lasting difference. Victoria's approach is based on building a flexible and graduated range of service responses. Major system reform is necessary to bring earlier intervention and child protection sectors together, and link them to early childhood services to form a coordinated system
- From April 2007, Child FIRST (Child and Family Information Referral and Support Teams) were introduced to provide an identifiable entry point to services needed to support children, young

people and families where there are concerns for the wellbeing of a child or young person. Child FIRST is now in place across all of Victoria, covering 24 catchments.

*Reforms to assist Aboriginal children and families*

- The recognition of the positive value of Aboriginal culture is reflected in the Best Interest Principles governing all decision making in Victoria
- The Victorian legislation permits the transfer of gu.ardianship responsibilities from DHS to an Aboriginal Head of an Aboriginal organisation.
- Measures are underway to build the capacity of Aboriginal Community Controlled Organisations to provide child and family welfare services, including out-of-home care, for Aboriginal families.

*Children in out-of-home care – improving children's stability*

- A critical theme of Victoria's reforms is improving vulnerable children and young people's stability in care and wellbeing, recognising scientific knowledge about the lasting impact of early experiences on the development of young children's brains. This is reflected in a focus on stability planning to address how a child will receive continuous, stable care away from home and the use of specified time frames. Despite reducing the number of new entrants into out-of-home care, Victoria's out-of-home care system is faced with a number of new and emerging challenges into the future.

*A new response to children aged 10-15 exhibiting sexually abusive behaviour*

- Recognition of the inability of the criminal justice system to provide a reliable pathway into treatment for young people who exhibit sexually abusive behaviour led to a new legislative basis for providing a therapeutic intervention earlier to help prevent ongoing and more serious sexual offences.

The Victorian reforms have so far contributed to a 7.2 per cent drop in substantiated abuse between 1999-00 and 2006-07 while substantiation rates have risen 143 per cent nationally.

## Reforms since 2000

The continued progress of Victoria's broad reforms includes:

- enshrining children and young people's best interests at the heart of all decision making and service delivery
- encouraging the participation of children, young people and their families in the decision-making processes that affect their lives
- building a more integrated service system across the universal, secondary and tertiary tiers of child, youth and family services – a service system that is localised, better coordinated and that is responsive to family needs
- boosting earlier intervention and prevention through the use of community-based intake, assessment and referral when families first show signs of difficulty, and targeting family support services at the most vulnerable groups and communities
- improving children's stability, especially in the critical early childhood years
- strengthening the cultural responsiveness of services so that community services are inclusive of children and young people from Aboriginal and other cultural backgrounds
- keeping Aboriginal children and young people better connected to their culture and community when in care
- ensuring that all child, youth and family services are accountable and of high quality.

## WESTERN AUSTRALIA

### Agency functions

The Department for Child Protection's mission is to provide for the protection of and care for children and young people, and to support at-risk individuals and families in resolving crises. The Department has the central role in providing for the protection and care of children and young people throughout Western Australia, which is best achieved in partnership with other Government agencies and the community services sector.

Section 21(1)a of the *Children and Community Services Act 2004* describes the functions of the Chief Executive Officer of the Department for Child Protection as including to consider and initiate, or assist in, the provision of social services to children, other individuals, families and communities. Directing and encouraging children and families to engage in social services to best address their problems is one of the primary objects of the legislation.

As part of, and in addition to, its statutory functions, the Department for Child Protection provides core service funding to the community services sector to respond to the issues and challenges faced by vulnerable children, families and individuals. This partnership enables a wide range of services and programs to be delivered throughout the State.

The 2007 Ford Review examined the key functions and systems of the former Department for Community Development, resulting in a significant focus on child protection reform in Western Australia. The Ford Review made 79 recommendations to address deficits in the child protection system, and each has been addressed through a comprehensive reform program.

Following the Ford Review, the following three service areas were defined by the Department for Child Protection:

1. Supporting children and young people in the CEO's care.
2. Protecting children and young people from abuse.
3. Supporting individuals and families at-risk or in crisis.

These areas reflect the priority that the Department has placed on its protection and care responsibilities through the direct provision of tertiary services. It is important to recognise as well that it also has responsibility in supporting individuals and families at-risk or in crisis through the delivery or contracting of secondary services.

The Department works across government and the community services sector to prevent child abuse and neglect. This is achieved through interagency collaboration and promoting joint responsibility with key stakeholders for responding to concerns about children's safety and wellbeing.

### Major recent reforms

The Department is adopting and implementing the *Signs of Safety* framework as the basis of consistent, evidence-based child protection practice across all Departmental child protection services. *Signs of Safety* seeks to create a more constructive culture around child protection organisation and practice. Central to this approach is the use of specific practice tools and processes where child protection and other professionals and family members can engage to address situations of child abuse and neglect.

Child protection practice policy and field worker guidelines are being streamlined and revised to reduce unnecessary processes and be more accessible and relevant for front line practitioners.

On 1 January 2009, mandatory reporting of child sexual abuse by teachers, doctors, nurses, midwives and police officers came into effect.

The Department's Foster Care Partnership was developed in partnership with the Foster Care Association. It encompasses a partnership model and associated practice guidelines. The model is centred first on the child, and second, highlights the critical role of the foster family team in providing daily protection and nurture to the foster child. The third element of the model is the surrounding, encompassing role of the Department care team supporting the foster placement.

The introduction of health and education plans for children in care is underway. All children who enter care will be screened for physical, developmental and educational difficulties. Once their needs have been assessed, a plan to address these needs will be put into place and monitored on a regular basis.

A *Strategic Framework and State Plan for Supporting Individuals and Families At-risk* is being developed, to bring together the significant range of secondary services that the Department and other government agencies directly provide or fund through the community services sector. A framework that spans current and future directions will help to improve the planning and provision of services, and remain responsive to the community's needs.

A family and domestic violence co-location model places Senior Field Workers (Family and Domestic Violence) with the Police Service to improve screening, information sharing and expedite responses.

A range of initiatives to improve the safety and wellbeing of Aboriginal children and young people in the child protection system are being implemented. They include the creation of Consultants' Aboriginal Services to assist caseworkers to work more effectively with Aboriginal families, and integrating Aboriginal perspectives through the Department's learning framework.

Educational resources and guidelines to promote information sharing between as provided for under S23 of the *Children and Community Services Act 2004* are being introduced together with a simple model for local Interagency Child Safety Teams.

## Reforms since 2000

*Organisational arrangements*

- The *Children and Community Services Act 2004* has been enacted.
- A new portfolio advisory structure has been established comprising:
  - Ministerial Advisory Council on Child Protection
  - Child Safety Directors Group (interagency)
  - Community Sector Advisory Group
  - CREATE Advisory Group (young people)
  - Aboriginal Reference Group
- The State Government appointed the first Commissioner for Children and Young People.

*Aboriginal services*

- Initiatives to strengthen responses to Aboriginal families and communities have been implemented, including securing an ongoing commitment to the *Strong Families* interagency case management program, Community Child Protection Workers in remote areas, Youth and Family Engagement Workers and the *Best Beginnings* early childhood intervention program.

- A multi-agency approach to dealing with sexual abuse in remote Aboriginal communities has been implemented.

*Care standards*

- Processes to investigate and respond to allegations of abuse in care have been implemented.
- The *Better Care Better Services* (Standards for Children and Young People in Protection and Care) have been implemented by the newly established Standards Monitoring Unit.

*Interagency developments*

- The *childFIRST* Assessment and Interview Team has been expanded, and provides a joint response between the Department for Child Protection and the WA Police.
- A tripartite protocol has been signed by the Departments of Health, Child Protection and Police regarding the reporting of sexually transmitted infections in children.

*Workforce*

- A comprehensive workforce development plan has been developed to comprising attraction and retention strategies, role and position redesign, and enhanced quality assurance systems.

"Today we honour the Indigenous peoples of this land, the oldest continuing cultures in human history.

We reflect on their past mistreatment.

We reflect in particular on the mistreatment of those who were Stolen Generations - this blemished chapter in our nation's history.

The time has now come for the nation to turn a new page in Australia's history by righting the wrongs of the past and so moving forward with confidence to the future.

We apologise for the laws and policies of successive Parliaments and governments that have inflicted profound grief, suffering and loss on these our fellow Australians.

We apologise especially for the removal of Aboriginal and Torres Strait Islander children from their families, their communities and their country.

For the pain, suffering and hurt of these Stolen Generations, their descendants and for their families left behind, we say sorry.

To the mothers and the fathers, the brothers and the sisters, for the breaking up of families and communities, we say sorry.

And for the indignity and degradation thus inflicted on a proud people and a proud culture, we say sorry.

We the Parliament of Australia respectfully request that this apology be received in the spirit in which it is offered as part of the healing of the nation.

For the future we take heart; resolving that this new page in the history of our great continent can now be written.

We today take this first step by acknowledging the past and laying claim to a future that embraces all Australians.

A future where this Parliament resolves that the injustices of the past must never, never happen again.

A future where we harness the determination of all Australians, Indigenous and non-Indigenous, to close the gap that lies between us in life expectancy, educational achievement and economic opportunity.

A future where we embrace the possibility of new solutions to enduring problems where old approaches have failed.

A future based on mutual respect, mutual resolve and mutual responsibility.

A future where all Australians, whatever their origins, are truly equal partners, with equal opportunities and with an equal stake in shaping the next chapter in the history of this great country, Australia."

Cont.

# Losing Ground

## A report on adherence to the Aboriginal and Torres Strait Islander Child Placement Principle in Queensland

September 2011

Foreword

The Child Placement Principle has a very special meaning to the Aboriginal Torres Strait Islander community. It was a community initiative born out of pioneering grassroots action by the newly formed Aboriginal and Islander Child Care Agencies (AICCA) movement in the 1970s. Long before the Apology, it was an acknowledgment that serious harm can be caused to children by separation from their families, communities and culture. It was a protection against the continuation of the devastation caused to the Stolen Generations and the whole community. In the 1970s this was fresh in recent memory. As the various states and territories accepted it into policy and eventually in legislation (in Queensland it has been part of legislation for over a decade) it was an encouraging sign that the days of Aboriginal and Torres Strait Islander children growing up without fully knowing their country, community and identity were coming to an end.

In 2007, QATSICPP produced a report on the Child Placement Principle. Now in 2011, in developing this second report on the Child Placement Principle, QATSICPP hopes to again shine a light on this important an area of departmental intervention.

Sadly, the most recent departmental data (March 2011) indicates that over 1,337 Aboriginal and Torres Strait Islander children are currently growing up without their family, community and culture. Our community's lived experience tells us this is not acceptable, research supports this, our state legislation spells out that it should not occur... and yet it does and the rate of deterioration is accelerating virtually unchecked. 1,337 children and their families are paying a terrible price for this failure. The whole community will continue to pay this for years to come.

We have decided not to make a new set of recommendations in this report. Rather we ask that the recommendations of the original report as well as the unimplemented recommendations of the many significant reports there have been, be reconsidered and implemented. We want the findings of this report to be an urgent call to respond to this situation – to ensure that 1,337 children and young people are immediately connected in a meaningful way to their family, community, country and culture and that no new children are lose vital connections in this way. We know this is possible and we want to work in partnership with all key stakeholders to see that it is done.

Elizabeth Adams
Chairperson
Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd

## INTRODUCTION

Aboriginal and Torres Strait Islander children deserve the same life chances as all other Australian children. The current focus on closing the gap for Aboriginal and Torres Strait Islander people, if successful, should ensure a more hopeful future for Aboriginal and Torres Strait Islander children and young people and ensure they have these chances. Until that happens these children will continue to endure many disadvantages in comparison to other children.

This is most evident in the child protection system where Aboriginal and Torres Strait Islander children and young people are over-represented across all measures. Ongoing and concerted efforts to address overrepresentation in the child protection system and more widely to close the gap across health, education, housing and other factors will be the primary way to ensure the best outcomes for Aboriginal and Torres Strait Islander children and young people.

However, there will always be a need for a child protection system to ensure the safety and well being of the most vulnerable children and young people whether Indigenous or non-indigenous. While there are Aboriginal and Torres Strait Islander children and young people in Care, they will need special protection to ensure actions taken to ensure their safety do not cause greater harm through loss of contact with family, culture, community and country. Therefore while it is crucial to work actively to close the gap in child protection, it is equally important to ensure that the Child Placement Principle is implemented and that each child and young person in Care has the opportunity to grow up knowing their family, community and culture.

## BACKGROUND

The Child Placement Principle was originally developed in the 1970s by the Aboriginal and Torres Strait Islander community as the safeguard for children removed from their families and placed in statutory care. It was developed in response to the forced removal of children known as the Stolen Generations, the negative impact of which continues to be felt years later. Over time, the Child Placement Principle has become widely accepted across Australia and has now been introduced into Child Protection legislation in every state. It continues to be a significant foundation principle governing the treatment of Aboriginal and Torres Strait Islander children and young people in Care.

In 2007, the Queensland Aboriginal and Torres Strait Islander Child Protection Partnership (which later became the Queensland Aboriginal and Torres Strait Islander Child Protection Peak - QATSICPP) presented a concept paper to the then Minister for Child Safety Desley Boyle. (See Attachment 1 for background on the development of the Peak Body) The report outlined concerns about the deteriorating levels of adherence to the Child Placement Principle in Queensland. This report set out the legislative and policy background of the Child Placement Principle, mapped statistical evidence and identified issues of concern. It also set out a raft of possible solutions to address these concerns.

This current report now provides a summary of actions taken since the first report, describes the current situation through data analysis and a summary of policy initiatives and suggest future directions.

**THE INITIAL PATHWAY DOCUMENT**

The report - *" Pathway to Achieving Adherence to the Aboriginal and Torres Strait Islander Child Placement Principle in Queensland - Concept Paper and Report to the Minister for Child Safety"* provided an examination of departmental practice in 2007, in relation to the removal of Aboriginal and Torres Strait Islander children from their families and the extent to which, once removed, they were enabled to maintain contact with their families and communities. It identified that this would continue to be a major issue facing both government and the community in relation to Aboriginal and Torres Strait Islander child protection.

The initial Pathways report marked the tenth anniversary of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families. This Inquiry resulted in the Bringing Them Home report, which was tabled in Federal Parliament in May 1997. This report documented the impact of child removal policies on individuals, their families and communities. It examined the contemporary legacies of these policies in the social disruption and continuing disadvantage experienced by Aboriginal and Torres Strait Islander Australians to this day. While it is acknowledged there are many differences between the original Stolen Generations, there are also many parallels in the ongoing disadvantage and poor outcomes that result from the displacement and disconnection that occurs when a child is separated from his or her family and community.

The Pathway report noted that since the Crime and Misconduct Commission reforms, improvements for the general population had occurred. However, for Aboriginal and Torres Strait Islander children there continued to be deterioration across all key indicators. While it was acknowledged that considerable funding has been injected into the system, the question remained as to what outcomes this had produced for Aboriginal and Torres Strait Islander children, their families and communities.

Of particular concern were the increasing levels of over-representation and the plummeting levels of adherence to the Child Placement Principle. The report also highlighted the need to have a broad understanding of the Child Placement Principle as governing all aspects of intervention rather than the narrow placement hierarchy, which is how it is commonly viewed. For example, the best way to ensure a child remains connected to family is to ensure early intervention services are available so that children, who can remain safely at home, can do so. Another example would be to engage with family from the start of intervention in a way that ensures that all possible kinship placement options are clear and available.

The following solutions were proposed to address the concerns raised in the report:

- A Joint Policy Statement and Statement of Commitment which would represent a mutual understanding of core principles and required action;
- Commitment to ongoing targeted funding specifically aimed at reducing over-representation and increasing adherence to the Child Placement Principle;
- This funding would have at its core - holistic Child Placement Principle Services in each zone, linked to AICCAs/REs involving:
    - Family Group Conferencing and Linkup type services to locate and work with extended family to decide the best placement for children;
    - Comprehensive assessments including education/health/counseling etc;
    - Reconnect services to address the backlog of children not with family;
    - Well resourced cultural support plans for all children; and
    - Innovative placement programs which allow time to make the best family placement and ongoing support for kinship carers
- Ongoing comprehensive reviews of the implementation of the Principle including resources and plans on how to address identified issues;

- A joint project focusing on developing strategies to address overrepresentation for implementation by both government and Aboriginal and Torres Strait Islander Child Protection services ; and
- Ongoing implementation of the recommendations of the Bringing Them Home Report.

## DEVELOPMENTS SINCE THE FIRST PATHWAYS DOCUMENT

### Current Data

To enable an assessment of progress since the first report, data relating to overrepresentation and adherence to the Child Placement Principle can be examined. It should be noted that this data is provided by the Department of Communities. There is a strong likelihood that this data overstates the current level of adherence to the Child Placement Principle. For example, there are various ways in which a child could be listed as being placed in adherence to the Child Placement Principle while not growing up connected to their own family or community. For example, Indigenous Residential Care placements are considered to be in adherence. There has also been some evidence of unrelated, non-indigenous foster carers being renamed kinship carers because of the length of their placement. If this is the case, it would result in further underestimation of the problem.

The most transparent reporting would include analysis of children placed in the different levels of placement hierarchy. Unfortunately this type of information is not currently available.

### Overrepresentation

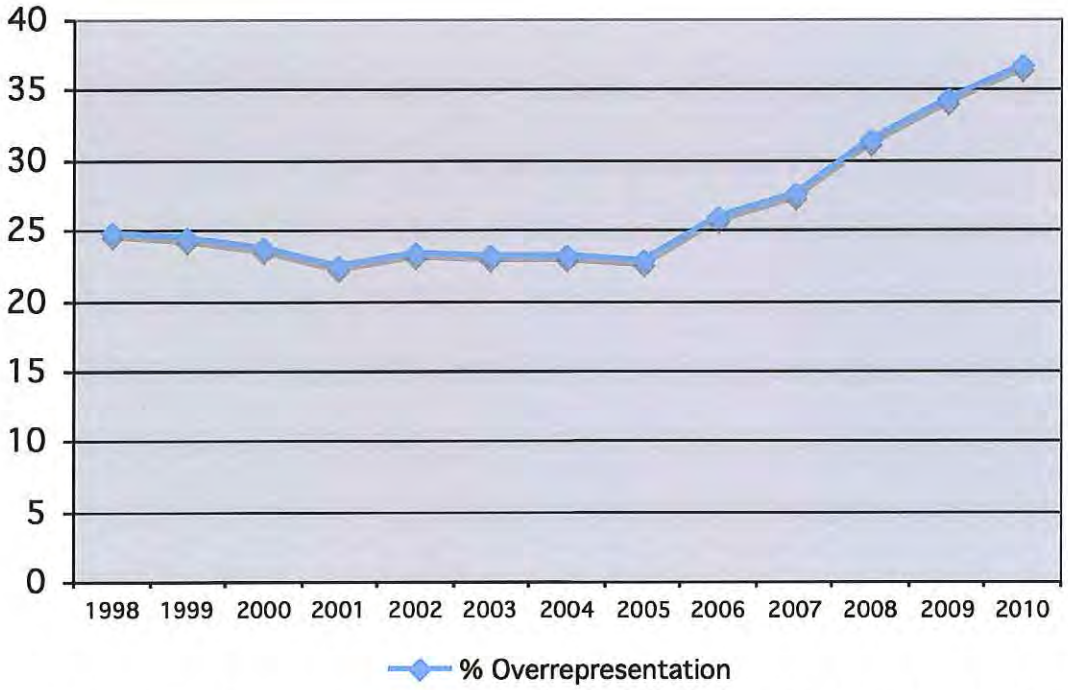
Overrepresentation has risen markedly since the Pathway report from 27.5% at the time of the report's release to the current figure of 36.7%. Actual numbers of Aboriginal and Torres Strait Islander children in Care has risen from 1,690 in 2007 to the recent 2010 data of 2,969 children. This is an increase of 76% while the rate rise for the total population was only 31% (6,156 to 8,090).

**Figure 1* Percentage of children subject to finalised protective orders who are Aboriginal and Torres Strait Islander**

| Year | Percentage |
|---|---|
| 1998 | 24.8% |
| 1999 | 24.4% |
| 2000 | 23.7% |
| 2001 | 22.5% |
| 2002 | 23.4% |
| 2003 | 23.2% |
| 2004 | 23.2% |
| 2005 | 22.9% |
| 2006 | 25.9% |
| **2007** | **27.5%** |
| **2008** | **31.5%** |
| **2009** | **34.3%** |
| **2010** | **36.7%** |

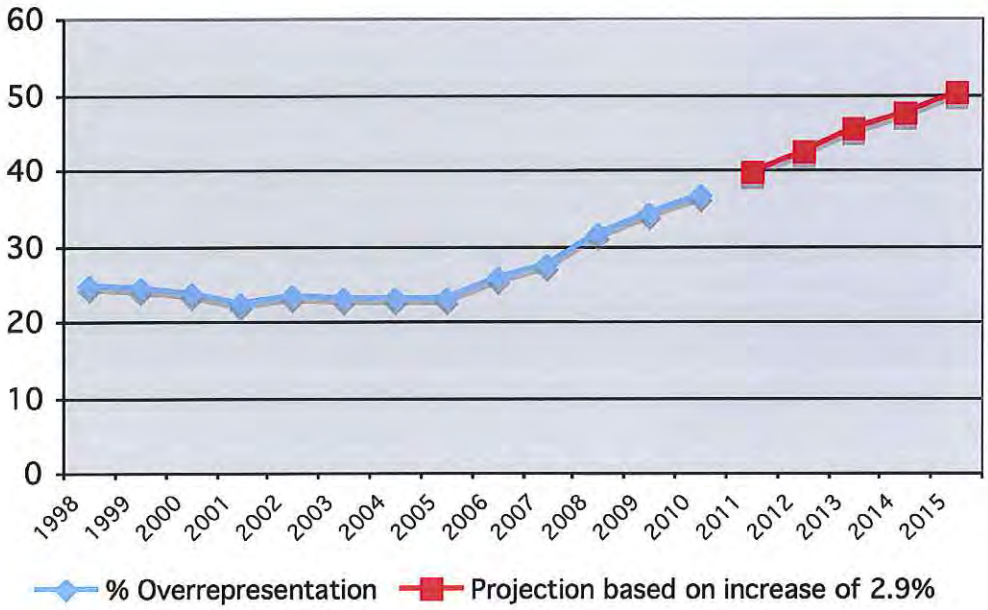
***Figure 1 from 2007 report with years 2007 – 2010 added**

**Figure 2 Graph of percentage increase in overrepresentation of Aboriginal and Torres Strait Islander children in Care in Queensland over last 13 years**




A dramatic increase in overrepresentation occurred around 2005 at the time that the reforms that resulted from the recommendations of the CMC Inquiry were being implemented. This sudden increase has continued unabated since that time. This follows a general trend of much greater deterioration for Aboriginal and Torres Strait Islander children as compared to the general population since the CMC Inquiry. If it continues at this rate, Aboriginal and Torres Strait Islander children will make up half of the child protection population as early as 2015.

**Figure 3**
**Graph of percentage increase in overrepresentation of Aboriginal and Torres Strait Islander children in Care in Queensland with projection based on average annual increase over previous five years**



**Adherence to the Child Placement Principle**

Adherence to the Child Placement Principle has followed a similar pattern to overrepresentation with ongoing decline and accelerating deterioration after 2005. In the four years since the original report was written, the number of children who were not placed with family or community rose from 566 to 1,241. The percentage adherence figures have dropped from 61.2% at June 2007 to 53.8% in June 2010. Extrapolating this growth, at the current rate of change, the number of children not placed in adherence to the Child Placement Principle could be over 2,000 by 2015.

In addition, the Child Guardian Report (2007 – 08) reported that family contact was at a very low level. Only 20% of cased indicated the child had regular contact with their mother, 6% with their father and 6.5% with at least one siblings. This was another indication that the intention of the Child Placement Principle, that of preserving a child's connection to family, community and culture, is currently not being adequately implemented.

**Figure 4 Graph of changes in numbers of Aboriginal and Torres Strait Island children in Out of Home Care and numbers not placed with family or community 2001 - 2010**

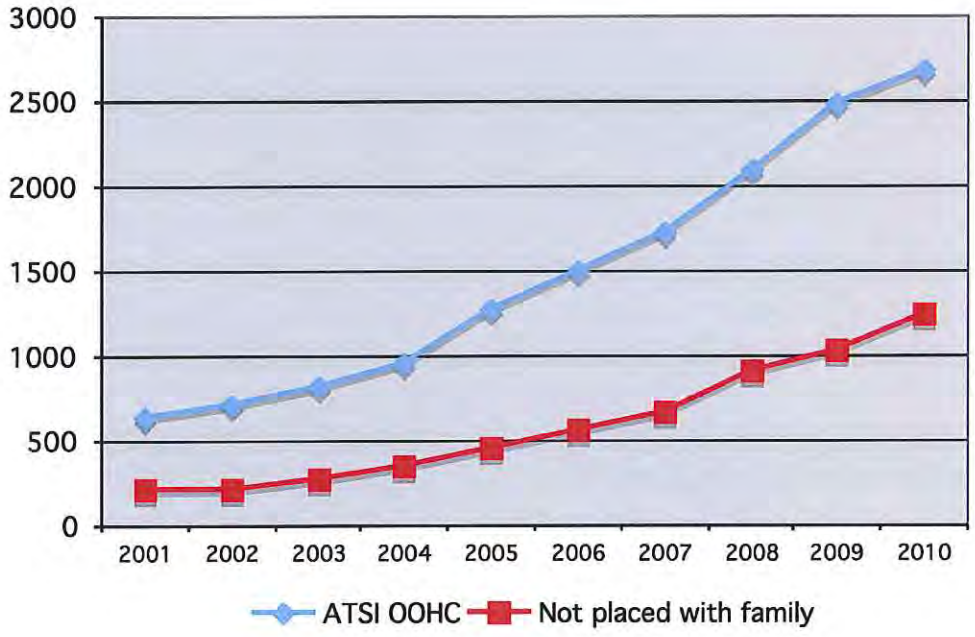
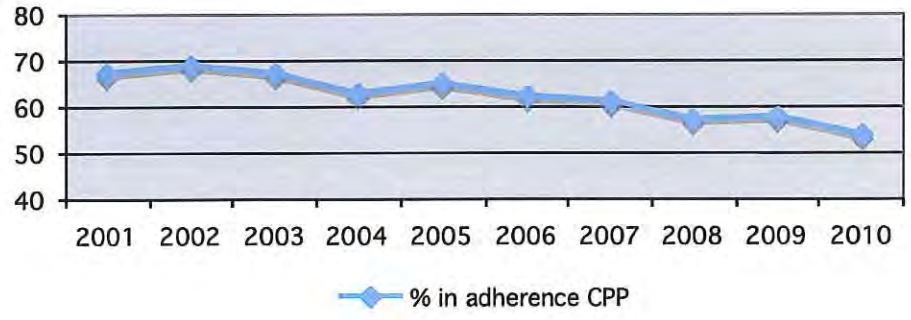



**Figure 5 Graph of changes in percentage adherence to Child Placement Principle 2001 - 2010**



Because many children are in long term care, the impact of current practise may be masked by a large cohort remaining in same type of placement from year to year. To get a clearer idea of this current impact - the changes in numbers have been examined. While it is acknowledged there is fluidity in placements, this approach allows analysis of broad trends.

**Figure 6 Adherence to CPP of annual net increase**

| | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|
| ATSI OOHC | 1667 | 1915 | 2216 | 2720 | 2969 |
| Annual increase in OOHC | | 248 | 301 | 504 | 249 |
| Not placed CPP | 566 | 669 | 903 | 1036 | 1241 |
| Annual increase in non CPP | | 103 | 234 | 266 | 205 |
| % Net Increase not adhering to CPP | | 42% | 78% | 53% | 82% |
| % adherence to CPP of annual net increase | | 58% | 22% | 47% | 18% |

**Figure 7 Adherence to CPP of increase since Pathways report**

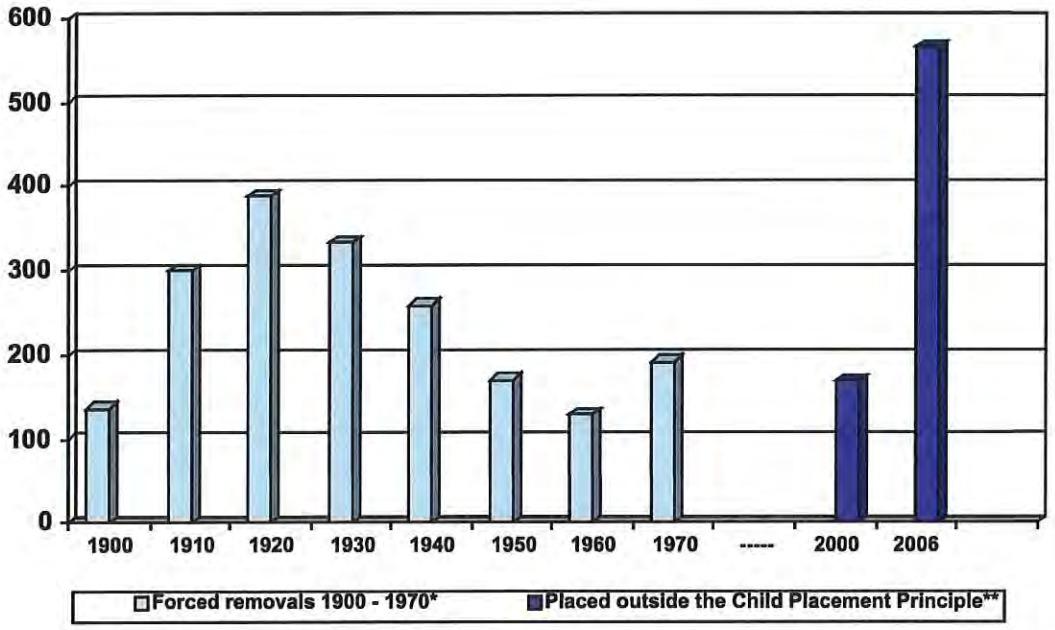
| | 2006 | 2010 |
|---|---|---|
| ATSI OOHC | 1667 | 2969 |
| Increase in OOHC | | 1190 |
| Not placed CPP | 566 | 1241 |
| Increase in non CPP | | 675 |
| % Net Increase not adhering to CPP | | 57% |
| % adherence to CPP of increase over four years | | 43% |

This analysis indicates much lower levels of adherence in new cases, with an average in the changes over the four years since the Pathways document of 43%. The most recent annual figure for the increase from 2009 to 2010 is only 18% adherence. (249 children in Out of Home Care from 2009 of which 205 were not placed with family or community). The most recent quarterly data for March 2011 shows the adherence to CPP of the changes in the first nine months of the 2010/11 year is only 15% (124 more children in out of home care, of which 105 were not placed in accordance with CPP). These figures represent a speeding up in the deterioration which is of extreme concern.

To draw attention to the scale of the problem, the original report compared the numbers involved in original forced removals to levels of adherence to the Child Placement Principle. It was considered necessary to make this comparison as there was concern that the most common way of reporting by percentage was masking the scale of the problem.

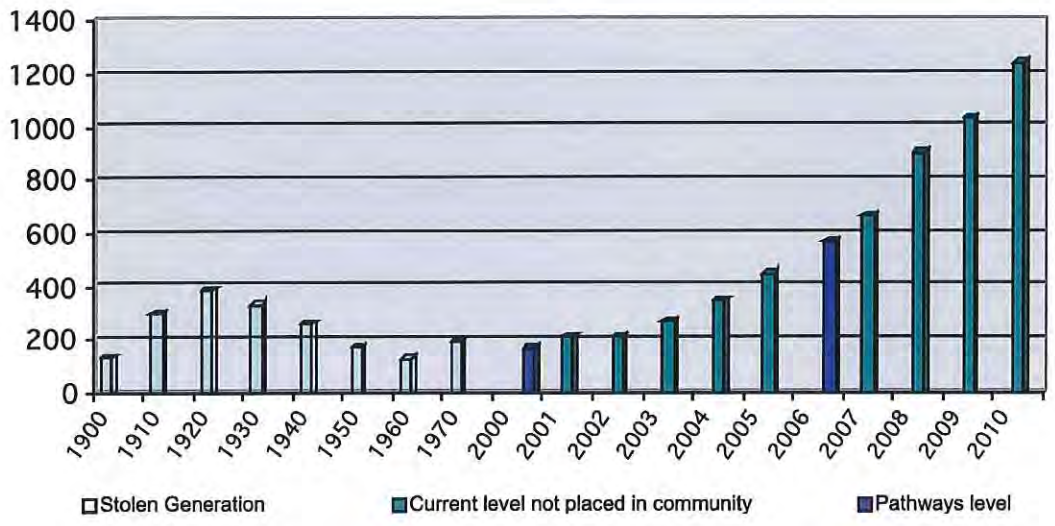
The report was clear that this was not a comparison about the impact of forced removals but rather about the comparisons that can be made about the long term impact of separation from family, community and country. In 2007, there was increasing understanding of this ongoing negative impact and this comparison hoped to draw attention to the current problem as well as the future legacy of social problems that will be caused by failure to adhere to the Child Placement Principle. Unfortunately, those comparisons are even more stark now.

**Figure 8 Original comparison of numbers involved in historic forced removals to current adherence to the Child Placement Principle**




*Calculating Lives: The Numbers and Narratives of Forced Removals in Queensland 1859 - 1972 Mark Copland PhD Thesis Griffith University 2005 **Child Protection Australia (1999 – 2000 and 2005- 06 editions) AIHW ^ Figure 4 from 2007 report and Figure3 in this report

**Figure 9**
**Comparisons of numbers involved in original forced removals to current levels of adherence to the Child Placement Principle**



**Costs of non-adherence to the Child Placement Principle**

The Pathways document highlighted the significant ongoing costs of not adhering to the Child Placement Principle. Every child currently placed in non-indigenous foster care growing up without strong connections to family, community and culture represents a major ongoing cost in many ways. Costs to the individual have been clearly demonstrated in the Bringing Them Home report and includes major physical, emotional, psychological, mental health, spiritual and cultural trauma and loss. This will not only impact on the individual but their family and community for generations to come. Lost contact with family and community also represents loss of connection to land which is a significant spiritual and emotional factor for Aboriginal and Torres Strait Islander people as well as a significant political issue in the resulting loss of land rights.

Costs to the Aboriginal and Torres Strait Islander community are in the ongoing heartache of the disintegration of the family unit, the loss of cherished children and the loss of future leaders and community members.

Costs to the wider Queensland population include the ongoing costs of delivering social services to individuals suffering the impact of social dislocation. This is a widespread impact across many sectors eg health, criminal justice, mental health, substance abuse. In the child protection sector it also includes the impact on future families and the likelihood of multigenerational problems. The costs of building and running future prisons, substance abuse facilities, health, mental health, child protection and juvenile justice services will grow exponentially over time.

The Pathways report highlighted the major ongoing risk of compensation claims especially given that failure to adhere to the Child Placement Principle is in clear non-compliance with Queensland law. The possible compensation bills would be huge.

As the situation deteriorates these costs are blowing out. The projected compensation bill for the 500 children not placed in adherence to the Child Placement Principle in 2007 is a small fraction of the projected costs of today's children or the 2,000 children who will be separated from their families, community culture by 2015 if immediate action is not taken to address this issue.

**Response to initial solutions**

The original Pathways document mapped out the issues in relation to the Child Placement Principle and also proposed solutions. The following summarises the response to each of these solutions:

**Solution One: Joint Policy Statement and Statement of Commitment to the Child Placement Principle**

A Joint Policy Statement and Statement of Commitment which would represent a mutual understanding of core principles and required action.

In 2008 work commenced on this statement in a cooperative manner involving the then Department of Child Safety, the Department of Communities, the Commission for Children and Young People and QATSICPP. However these meetings stalled when first, the Department of Communities withdrew and subsequently the Department of Child Safety declined to sign jointly with the Commission. No further action has occurred in relation to the Joint Policy Statement and Statement of Commitment to the Child Placement Principle since that time.

**Solution Two: Specifically targeted Child Placement Principle Funding**
Commitment to ongoing targeted funding specifically aimed at reducing over-representation and increasing adherence to the Child Placement Principle

There has been no specific allocation for programs to support the adherence to the Child Placement Principle either for government or non-government programs. QATSICPP has continued to lobby for specific services to support better adherence to the Child Placement Principle.

**Solution Three: Regional Holistic CPP Services linked to Aboriginal and Torres Strait Islander child protection services.**

This funding would have at its core - holistic Child Placement Principle Services in each zone, linked to AICCAs/REs involving:

a. Family Group Conferencing and Linkup type services to locate and work with extended family to decide the best placement for children;
b. Comprehensive assessments including education/health/counselling etc;
c. Reconnect services to address the backlog of children not with family;
d. Well resourced cultural support plans for all children; and
e. Innovative placement programs which allow time to make the best family placement and ongoing support for kinship carers

Although there has been recent systems reform with the introduction of new Family Support Services, there has been no improvement in the specific areas recommended. It is hoped that the current focus on kinship care will result in increased funding and expansion of services in the near future.

**Solution Four: Ongoing Reviews**
Ongoing, comprehensive reviews of the implementation of the Principle including resources and plans on how to address identified issues

Despite active lobbying by QATSICPP, there has been only one monitoring report of the Principle to date. See later in this report for specific information about the Commissioner for Children and Young People and Child Guardian's performance in this monitoring role.

**Solution Five: A joint project focussing on overrepresentation**
A joint project focusing on developing strategies to address overrepresentation for implementation by both government and Aboriginal and Torres Strait Islander Child Protection services

In 2010, in response to a number of pressures including the Combined Voices Campaign, the Aboriginal and Torres Strait Islander Child Safety Taskforces released " *Together keeping our children safe and well: our comprehensive plan for promoting the safety and wellbeing of Aboriginal and Torres Strait Islander children and young people and reducing their overrepresentation within Queensland's Child Protection System.*

In response, the Department of Communities - Child Safety Services developed a *Blueprint for implementation strategy - reducing the overrepresentation of Aboriginal and Torres Strait Islander children within Queensland's Child Protection System.*

While QATSICPP welcomes this Blueprint, it remains to be seen if these will have the intended impact. This implementation process needs to be closely monitored to ensure its effectiveness. It should also be noted that this is only one piece of a much

larger picture and that real improvement will not occur until the broader disadvantage facing Aboriginal and Torres Strait Islander people are addressed and the Gap is closed. This will not occur until real and measurable investment across government is achieved.

**Solution Six: The Bringing Them Home Report**
Ongoing implementation of the recommendations of the Bringing Them Home Report

There does not appear to be progress in further implementing these recommendations. Some of the recommendations not implemented include a call for self-determination in child protection, national standards legislation for minimum standards in the treatment for all Indigenous children and that this legislation provide that the initial presumption is that the best interest of the child is to remain within his or her Indigenous family, community and culture. QATSICPP continues to lobby for these recommendations to be implemented.

## ANALYSIS OF CURRENT SITUATION

There does not appear to be any argument that the Child Placement Principle is a core component of an effective child protection system for Aboriginal and Torres Strait Islander children, young people and their families. It is a significant tool to ensure the best outcomes for their children and families. Aboriginal and Torres Strait Islander child protection and family support agencies and the wider Aboriginal and Torres Strait Islander community value it as an important foundational principle. The Queensland Government has valued it to the extent of placing it within Child Protection Legislation. At a National level all State and Territory governments have taken similar action. [1]
However, it is obvious that some major barriers exist to achieving improved adherence to the Child Placement Principle. All parties have declared their commitment to the Principle, it has clear benefits for children and young people and can prevent future disadvantage and therefore large scale welfare spending and compensation claims. So what are the major barriers? The following discussion explores a range of misconceptions or myths and documents the inaccuracies in this thinking. It is hoped this type of analysis may uncover barriers which may be preventing vital improvement in adherence to the Principle.

## BARRIERS TO IMPROVED ADHERENCE

**Myth 1**
**Strict adherence to the Child Placement Principle can place children at risk of further harm.**
The safety of each child is paramount. This is a core foundational principle of the Child Protection Act. Strict adherence to the Child Placement Principle is often seen in some quarters as a barrier to ensuring this safety. It is wrongly believed that trying to keep children in their families may leave them at risk. This view totally disregards the fact that the Child Placement Principle is embedded in Child Protection legislation the primary aim of which is to ensure the safety, protection and wellbeing of children. Placement in adherence to the Child Placement Principle must be a placement that ensures safety, protection and well being. Placements that do not are therefore not in adherence to the Principle in its wider context of the Child Protection Act.

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[1] http://www.snaicc.asn.au/policy-advocacy/dsp-landing-policyarea.cfm?loadref=36&txnid=581&txnctype=article&txncstype

Placements that reflect poor practice or lack of resources should not be used as an argument against adhering to the Child Placement Principle but rather a call for better resourcing and more professional and effective work in locating, placing with and supporting kinship carers.

**Myth 2**

**Higher levels of adherence are not possible because of the demographics of the Aboriginal and Torres Strait Islander community. For example it is a very young population and this results in insufficient carers for the number of children needing care.**

The Pathways document clearly points out that each Aboriginal and Torres Strait Islander child has a much larger pool of "kin" from which to choose kinship carers than non-indigenous children and this negates the logic of this myth. The demographic ratio should be considered however when planning greater levels of support for Aboriginal and Torres Strait Islander kinship carers.

This myth can also be addressed with a comparison with a similar population. New South Wales and Queensland have similar population levels, with the numbers of Aboriginal and Torres Strait Islander children being almost identical. An analysis of the similarities and differences between Queensland and New South Wales may then provide direction for future actions and programs that could improve adherence to the Child Placement Principle. It is of particular value to make this comparison because New South Wales has the highest level of adherence to the Child Placement Principle in Australia.

Of the 70,000 Aboriginal and Torres Strait Islander children in each state, the number of children not placed in adherence to the Child Placement Principle is significantly higher in Queensland – 1,241 as compared to 970 in New South Wales. The difference is even more when percentage adherence is considered as the numbers of children in the system are much higher across the board. Levels of adherences in Queensland is 54% compared to 82% in New South Wales.

It is clear that there are many factors involved in the marked differences in outcomes for these two very similar populations of children. Attachment Two contains a fuller analysis and discussion of this data and can give some pointers as to possible direction for Queensland to improve. However what is clear is that it is possible to achieve much higher levels of adherence to the Child Placement Principle in Queensland. The New South Wales example gives hope that improvement is possible and that levels of adherence of over 80% are achievable and necessary.

**Myth 3**
**With the current economic situation, there is no capacity to provide further resources to address this issue at the present time.**

The budget for the delivery of child protection services has risen dramatically over the last decade. Dramatic increases came after both the Forde Inquiry and the CMC Inquiry and the budget has continued to rise since then. However budget allocations for Aboriginal and Torres Strait Islander services have not risen in the same way. Recent service systems have seen these dollars stretched even further and services forced to provide more services with similar levels of funding, As overrepresentation rises so does pressure on these services while their share of the funding decreases.

**Figure 10 Table of Recurrent Expenditure on Child Protection in Queensland** (rounded to nearest million and adjusted for inflation)

| | 2002-03 | 2003/04 | 2004/05 | 2005/06 | 2006/07 | 2007/08 | 2008/09 | 2009/10 |
|---|---|---|---|---|---|---|---|---|
| **Child Protection Services*** | 105 | 113 | 142 | 161 | 178 | 205 | 225 | 231 |
| **Out of Home Care Services*** | 113 | 132 | 197 | 241 | 292 | 309 | 313 | 334 |
| **Intensive Family Support Services*** | 17 | 17 | 42 | 46 | 57 | 65 | 61 | 61 |
| **Total CP expenditure** | 235 | 262 | 381 | 448 | 527 | 579 | 599 | 626 |
| **Overrepres entation** | 23% | 23% | 23% | 26% | 28% | 32% | 34% | 37% |
| **Notional ATSI share of total CP budget** | 54 | 60 | 88 | 116 | 148 | 185 | 204 | 232 |

While the departmental budget has been growing many workload indicators for the non-indigenous population have been falling or at least stabilising with little growth. In contrast the Aboriginal and Torres Strait Islander figures have been increasing yearly.

**Figure 11 Increases in Notifications over last 5 years**

| Year | ATSI QLD | ATSI QLD As% of 05-06 | Non-ind QLD | Non-ind QLD As% of 05-06 |
|---|---|---|---|---|
| 05-06 | 4,312 | 100% | 29,300 | 100% |
| 06-07 | 5,157 | 120% | 23,354 | 80% |
| 07-08 | 4,896 | 114% | 20,107 | 69% |
| 08-09 | 5,475 | 127% | 17,933 | 61% |
| 09-10 | 5,506 | 128% | 16,379 | 56% |

**Figure 12 Increases in Children under Orders over last 5 years**

| Year | ATSI QLD | ATSI QLD As% of 05-06 | Non-ind QLD | Non-ind QLDAs% of 05-06 |
|---|---|---|---|---|
| 05-06 | 1,667 | 100% | 4,779 | 100% |
| 06-07 | 1,915 | 115% | 4,476 | 94% |
| 07-08 | 2,216 | 133% | 4,824 | 101% |
| 08-09 | 2,720 | 163% | 5,222 | 109% |
| 09-10 | 2,969 | 178% | 5,121 | 107% |

**Figure 13 Increases in Out of Home Care over last 5 years**

| As of 30 June | ATSI QLD | ATSI QLD As% of 2006 | Non-ind QLD | Non-ind QLD As% of 2006 |
|---|---|---|---|---|
| 2006 | 1,496 | 100% | 4,380 | 100% |
| 2007 | 1,749 | 117% | 4,223 | 96% |
| 2008 | 2,085 | 139% | 4,585 | 105% |
| 2009 | 2,481 | 167% | 4,612 | 105% |
| 2010 | 2,686 | 180% | 4,664 | 106% |

With this major increase in funding combined with a decline or lack of growth in the general population and a major growth in the Aboriginal and Torres Strait Islander population, it is difficult to sustain an argument that no money can be found to respond to a vital foundational issue for Aboriginal and Torres Strait Islander children. The question should be, with the current economic situation, how can Queensland afford not to address this crisis before it escalates even further.

**Myth 4**

**Aboriginal and Torres Strait Islander services are already funded sufficiently to provide child protection services and should be held responsible for any deterioration.**

The Blueprint for the implementation of the recommendations of the CMC Inquiry recommended funding for Recognised Entities commence at $4.7M in the first year to be gradually increased until it reached $17.2M in year four (2007/08). The allocated (and publicly announced) funding levels have never been reached and in fact the difference between the amounts allocated/announced and what actually reached the agencies is now close to $30M. Meanwhile the numbers of Aboriginal and Torres Strait Islander children in the system has skyrocketed. Recent reforms have halved the Recognised Entity budget to enable funding of Family Support services within the same 2007 budget levels.

**Figure 14 Proportion of budget specifically allocated to Aboriginal and Torres Strait Islander community controlled services - Recognised Entities**

| | 2005/06 | 2006/07 | 2007/08 | 2008/09 | 2009/10 |
|---|---|---|---|---|---|
| Notional ATSI share of total CP budget | 116 | 148 | 185 | 204 | 232 |
| RE funding (CMC Reform budget allocation in brackets) | 4.1 (9.4M) | 7.8 (15.6M) | 9.8 (17.2M) | 12.4 | 8* |
| ATSI children under orders | 1,667 | 1,915 | 2,216 | 2,720 | 2,969 |
| Notional per order funding measure | $2,460 | $4,070 | $4,422 | $4,560 | $2,700 |

* Half of the original funding has been allocated to Family Support Services

There is currently no measure for understanding work pressures for Aboriginal and Torres Strait Islander community controlled services. To create a way to compare funding over time, annual funding has been divided by number of children under orders for each year. It should be noted that these figures do not represent a real per capita amount or a true measure of actual workload costs as the workload of these services includes providing services in relation to intake, notifications and Out of Home Care. It does give a way of comparing funding levels in the light of major increases in numbers of children and families involved in the system.

The CMC/Blueprint funding level for community controlled agencies of $17.2M was established at a time when the number of children under orders was 1,342. The per order rate would have then been $12,742. If current services were funded in the way the CMC/Blueprint envisaged, the current budget for Aboriginal and Torres Strait Islander community controlled services should be $37.8M (and this figure does not allow for other factors such as cost of living adjustment). In other words, agencies are currently being funded less than half of the level envisaged by the CMC. This erosion in funding must be viewed against the increases in the Aboriginal and Torres Strait Islander child protection population and especially when compared to the Non-Indigenous population.

Through a lack of basic funding combined with the disruption the recent reforms have caused, Aboriginal and Torres Strait Islander agencies are being set up to fail. A greater concern is that a core component of the solution to the lack of adherence to the Child Placement Principle - the community controlled agencies are being severely hampered in achieving the best outcomes for children and their families. Any plan to improve adherence to the Child Placement Principle will not be effective without immediate improvements in funding to these agencies to at least the levels envisaged by the CMC/Blueprint.

**Myth 5**
**There is no real need for the Child Placement Principle – non-indigenous carers can provide good care that meets the cultural needs of Aboriginal and Torres Strait Islander children.**

Lack of understanding of the Child Placement Principle can lead to this conclusion. The problems caused by separation from family and culture cannot be remedied by the most well intentioned non-indigenous carer. Foster care is seen by Aboriginal and Torres Strait Islander people as stranger care and as such is not an accepted child care arrangement for Aboriginal and Torres Strait Islander people whereas kinship care is. The original Pathway document also stressed the importance of the holistic understanding of the best interests of a child to include the whole of life. It is well documented that people growing up without strong attachment to family and community face considerable difficulties in adulthood when kinship ties provide important connection, support, identity and connection to culture.

The Kinship Reconnection Project was a small action research project established in 2008 to improve kinship connections for those children involved in the project and identify practice improvements and models of service delivery to better connect children to their family, community and culture. The report identified that in every case actions could be taken to improve connection to family and community and in some cases these actions could have a major positive impact on children's lives.

The report's 28 recommendations provide a comprehensive analysis of how to improve the cultural connections for Aboriginal and Torres Strait Islander children not placed with family or community. (The report can be found on the QATSICPP website at http://www.qatsicpp.com.au/?page_id=380)

**Myth 6**
**Issues with the Child Placement Principle are not an exclusive Queensland challenge. This is an issue across Australia and as such is being addressed by national programs including the National Framework for Protecting Australia's Children, National Out of Home Care Standards and COAG initiatives.**

The National Framework for Protecting Australia's Children has a family support and standards focus. The Child Placement Principle is seen as a state controlled issue and there does not appear to be awareness at the national level of the problems confronting Queensland.

The Council of Australian Governments (COAG) has signed off on an ambitious commitment to Close The Gap on health outcomes and social disadvantage for Aboriginal and Torres Strait Islander citizens. This commitment takes the form of specific policy areas, specific targets and specific timelines. The commitment is backed up by resource investments that are tied to a number of policy-area Partnership Agreements. Unfortunately, none of the COAG dollars from the Australian Government have Aboriginal and Torres Strait Islander child protection as a target.

**Myth 7**
**The Commission for Children and Young People and the Child Guardian has the power and ability to monitor adherence and is currently adequately undertaking this monitoring role .**

In January 2004, *Protecting Children - the Crimes and Misconduct Commission report of the Inquiry into Abuse of Children in Foster Care* Recommendation 8.4 stated: "That DCS compliance with the Indigenous child placement principle be periodically audited and reported on by the new Child Guardian". The Blueprint for implementing the CMC report recommendations subsequently identified that monitoring adherence of Indigenous Child Placement Principle was a key role for the new Child Guardian and work commenced on amending legislation accordingly.

In 2005, *The Commission for Children and Young People and Child Guardian Act 2000* was subsequently amended to establish the Child Guardian and require her to " monitor compliance by the chief executive (child safety) with the Child Protection Act 1999 section 83." (Section 18 (c))

To date only one report has been produced although the Commission website reported as of August 2011, that the next report will be presented in late 2011. These reports are critical to alert government, the Aboriginal and Torres Strait Islander community and the general public to the serious deterioration that is occurring and to to make valid and effective recommendations that could stem this deterioration. Apart from allowing major deterioration to go unnoticed or addressed, it places unnecessary pressure on the peak body to continue to raise this issue and to take on this monitoring role especially when it is in relation to its own funding body.

The numbers of Aboriginal and Torres Strait Islander children who are not living with their families and communities has increased from 351 in 2004 when the CMC

initially made this recommendation to 1241 in 2010. This clearly indicates a need for annual reporting.

Annual reporting should commence immediately and continue until the deterioration abates and levels of adherence are at least 80%. As the Commission has been unable to produce annual reports that are transparent, accountable and frank and which achieve improved adherence to the Principle, consideration should be given to the immediate transfer of this role to another more effective body. Alternatively consideration should be given to the development of a separate and independent Aboriginal and Torres Strait Islander Children's Commissioner and Guardian.

**Myth 8**
**This problem should already be solved. Many Recommendations from many Inquiries have addresses this issue. If they could not solve this then achieving adherence to the Child Placement Principle is not achievable.**

It is true that a wide range of Inquiries and Reports have touched on this issue of adherence to the Child Placement Principle and have made a great many well considered recommendations. However it is not possible to report on the effectiveness of these recommendations as such a quantity of them remain unimplemented.

Some of these include:

- Royal Commission into Aboriginal Deaths in Custody (1987 – 1991),
- Bringing Them Home Report (1997),
- CMC Inquiry into Abuse in Foster Care (2004),
- QATSICPP's Pathway to Achieving Adherence to the Aboriginal and Torres Strait Islander Child Placement Principle in Queensland (2007),
- Commission for Children and Young People and the Adult Guardian Indigenous Child Placement Principle Audit Report 2008; and
- The Kinship Reconnection Report (2010).

It is unclear why this should be but if government is seeking a way forward, it need only look to the many Inquiries and reports in which is has already invested to find clear solutions.

**SUMMARY**
This report has sought to update the previous report " *Pathway to Achieving Adherence to the Aboriginal and Torres Strait Islander Child Placement Principle in Queensland - Concept Paper and Report to the Minister for Child Safety*" and provide a snapshot of the current levels of adherence to the Child Placement Principle.

This report has established that:

- The gap in child protection outcomes for Aboriginal and Torres Strait Islander children continues to widen at an alarming rate. Overrepresentation is currently 36.7% and rising. At the current rate of increase, by 2015 one in two children in the Queensland child protection system will be Aboriginal or Torres Strait Islander.

- Adherence to the Child Placement Principle continues to plummet and the number of children who are not placed with family or community is now 1,241 as compared to 566 when the original report was written in 2007. The rate of adherence of net annual increases is currently only 15%. At the current rate

and with the projected rate of overrepresentation in 2015 at least one in four children in care will be an Aboriginal and Torres Strait Islander child who is not connected to their family, community or culture.

- Much higher levels of adherence are observed across Australia ( especially in the most comparable state by demographics and size – New South Wales) which would indicate there is room for considerable improvement in Queensland and that this improvement is achievable.

- The Kinship Reconnection project has established that it is possible to improve the level of connection for those children not placed in adherence with the Child Placement Principle.

- Funding levels for Aboriginal and Torres Strait Islander services have not increased in the past five years despite major increases to both the departmental budget and the number of Aboriginal and Torres Strait Islander children in the system.

- The current low level of monitoring is insufficient to impact on this deterioration. The Child Guardian has not fulfilled the spirit of the monitoring role. Monitoring needs to be annual and conducted in a transparent and effective manner that achieves positive change. Serious consideration should be given to the creation of an Aboriginal and Torres Strait Islander Commissioner for Children and Young People and Child Guardian.

- The recommendations of a wide range of significant reports provide a way forward. This update therefore has not made specific recommendations other than that previous recommendations should be implemented.

## CONCLUSION

This report has highlighted the urgent need for ongoing and concerted efforts towards full adherence to the Child Placement Principle and to other measures to enhance the wellbeing and life chances of Aboriginal and Torres Strait Islander children and young people and their families and communities. It is hoped that the next report about the Child Placement Principle will be able to show the outcome of a real commitment to change through a major improvement in adherence to the Child Placement Principle and improved monitoring of this important issue.

**Attachment One**

**Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd**

The Queensland Aboriginal and Torres Strait Islander Child Protection Partnership was formed in May 2004 in response to the release of the report by the Crime and Misconduct (CMC) inquiry, "Protecting Children: An Inquiry into Abuse of Children in Foster Care". The inquiry highlighted that the rights, needs and interests of Aboriginal and Torres Strait Islander children and young people their families and communities are promoted and effectively represented to Governments and the broader community.

One of the outcomes sought from the CMC Inquiry was the development of a sustainable network of Aboriginal and Torres Strait Islander child and family services across Queensland. The Network be supported and represented by a peak body.

In August 2008, the Partnership registered as a Public Company limited not having share capital and officially launched in November 2008 unde the new name of Queensland Aboriginal and Torres Strait Islander Child Protection Peak and started operating as a independent Peak Body on 1 January 2009.

QATSICPP plays a vital role in providing community agencies a collective voice to Governments in relation to the safety, health and overall wellbeing of Aboriginal and Torres Strait Islander children and young people. As such it has a key role in lobbying for the best practice in relation to the Child Placement Principle.

QATSICPP has been a key driver in the development of the the Combined Voices Campaign which commenced in 2009. It is an independent coalition of state-wide human services, peak organisations, individuals and networks in Queensland that exists to raise public and political awareness of the need for systemic reform to improve outcomes for Aboriginal and Torres Strait Islander at risk children and families and to promote positive programs that achieve sustainable change for at risk families.

**Attachment Two**

**Queensland compared to New South Wales**

An analysis of the similarities and differences between Queensland and New South Wales may provide direction for future actions and programs that could improve adherence to the Child Placement Principle. It is of value to make this comparison because New South Wales has the highest level of adherence to the Child Placement Principle in Australia. Also New South Wales and Queensland have similar population levels, with the numbers of Aboriginal and Torres Strait Islander child being almost identical.

**Figure a Demographic and Child Protection Data**

| | Queensland | New South Wales |
|---|---|---|
| Total Child Population | 1,086,829 | 1,636,193 |
| Aboriginal and Torres Strait Islander Child Population | 70,069 | 70,721 |
| Substantiations of Aboriginal and Torres Strait Islander Children (actual children)* | 1,780 | 3,707 |
| Substantiations of Aboriginal and Torres Strait Islander Children (per 1,000children)* | 25.6 | 52.6 |
| Substantiation rate ratio Indigenous/non-indigenous | 6.1 | 8.7 |
| Distribution over types of abuse | Physical 26.1%<br>Sexual 3.8%<br>Emotional30.7%<br>Neglect 39.4% | Physical 17.4%<br>Sexual 12.9%<br>Emotional 33.7%<br>Neglect 35.9% |
| Aboriginal and Torres Strait Islander Children on care and protection orders (actual children) | 2,969 | 4,555 |
| Aboriginal and Torres Strait Islander Children in Out of Home Care (per 1,000 children) | 42.4 | 64.4 |
| Aboriginal and Torres Strait Islander Children in Out of Home Care (actual children) | 2,686 | 5,465 |
| Aboriginal and Torres Strait Islander Children in Out of Home Care (per 1,000 children) | 38.3 | 77.3 |
| Aboriginal and Torres Strait Islander Children in Out of Home Care placed with Indigenous relative (actual number) | 571 | 2,802 |
| Aboriginal and Torres Strait Islander Children in Out of Home Care placed with Indigenous relative ( as %) | 21.3% | 51.5% |
| Children not placed in adherence to the Child Placement Principle | 1,241 | 970 |
| Adherence to the Child Placement Principle | 53.8% | 82.2% |

*** AIHW notes that NSW figures for notifications are not comparable with other states**

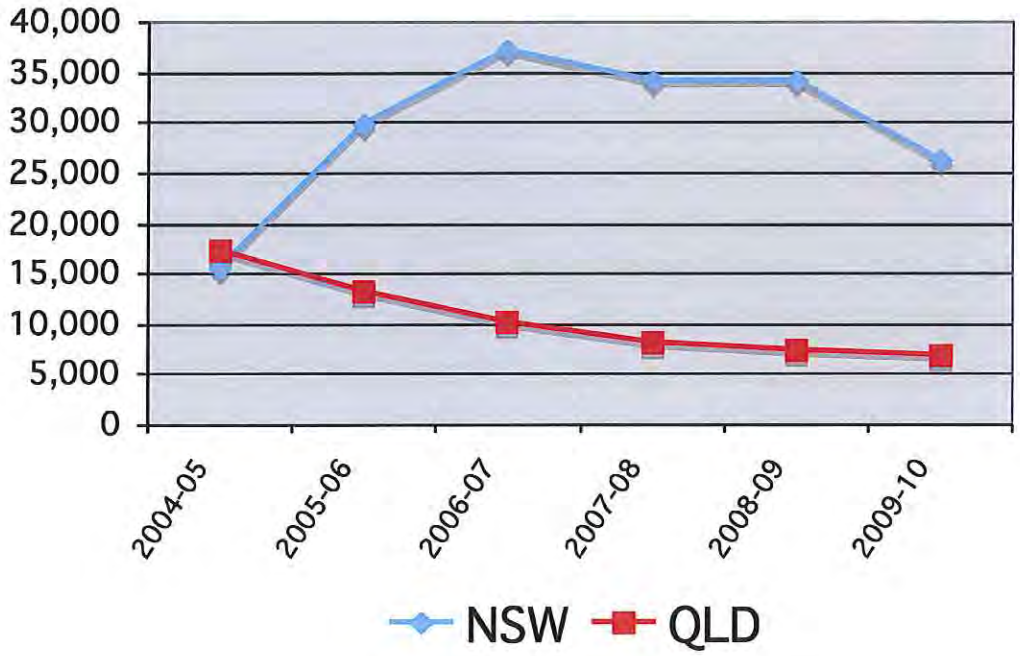
Key observations of the similarities and differences between Queensland and New South Wales as derived from this data include:

- The rate of Substantiation for the total population and the Aboriginal and Torres Strait Islander population is much higher in New South Wales than in Queensland. Positive aspects of a high substantiation rate are that children who need help may be more likely to receive it. Positive aspects of a lower substantiation rate are that less children are brought into the statutory system. Further examination of the context of this issue would be required to draw other conclusions from this difference and its impact on adherence to the Child Placement Principle.
- Overrepresentation of Aboriginal and Torres Strait Islander children in substantiation figures is also higher in New South Wales than in Queensland. In New South Wales, Aboriginal and Torres Strait Islander children are 8.7 times more likely than non-indigenous children to have abuse substantiated as compared to Queensland where it is 6.1 times more likely. In both states this figure is too high.
- The substantiation rate exacerbates the difference in adherence to the Child Placement Principle. In both states of the 70,000 Aboriginal and Torres Strait Islander children, 1,780 on Queensland and 3,707 in New South Wales have a substantiated notification of abuse or neglect. Even with this much higher rate who are in contact with the system., the number of children not placed in adherence to the Child Placement Principle is significantly higher in Queensland – 1,241 as compared to 970.
- While in both states Neglect is the most common type of abuse reported, New South Wales has a much higher rate of sexual abuse reported (12.9% - NSW as compared to 3.8% - QLD). This of concern if there is any chance that the lower levels of substantiation could indicate underreporting in Queensland. Queensland has higher rate of physical abuse reported (17.4% - NSW as compared to 26.1% - QLD).
- The trend continues for care and protection order statistics. 4,555 Aboriginal and Torres Strait Islander children in New South Wales are under orders as compared to 2,969 in Queensland. This equates to per 1,000 children rates of 64.4(NSW) to 42.4 (QLD).
- Similarly there are 5,465 Aboriginal and Torres Strait Islander children in Out of Home Care in New South Wales as compared to 2,686 in Queensland. This equates to per 1,000 children rates of 77.3 (NSW) to 38.3 (QLD)
- New South Wales appears able to cope with this comparatively higher level of children requiring Out of Home Care with a significantly higher use of placement with kin. In New South Wales. 2,802 children are placed with relatives compared to only 571 in Queensland. This equates to 51.5% of Aboriginal and Torres Strait Islander children in New South Wales placed with relatives as compared to 21.3% in Queensland.
- It could be argued that many children brought into the Child Protection system in New South Wales who do not reach Queensland---- for intervention are more easily placed with relatives as they are " less at risk". It would be dangerous to assume this as it could just as easily be argued that the children who have received intervention in New South Wales which resulted in them being placed with relatives may have much better outcomes than children left at risk in the community. This requires much closer examination.
- Whatever this analysis brings out there remains a significant difference in outcomes for children in terms of adherence to the Child Placement Principle. Of the 70,000 Aboriginal and Torres Strait Islander children in each state,

children in Queensland are much less likely to be placed with their family and community.

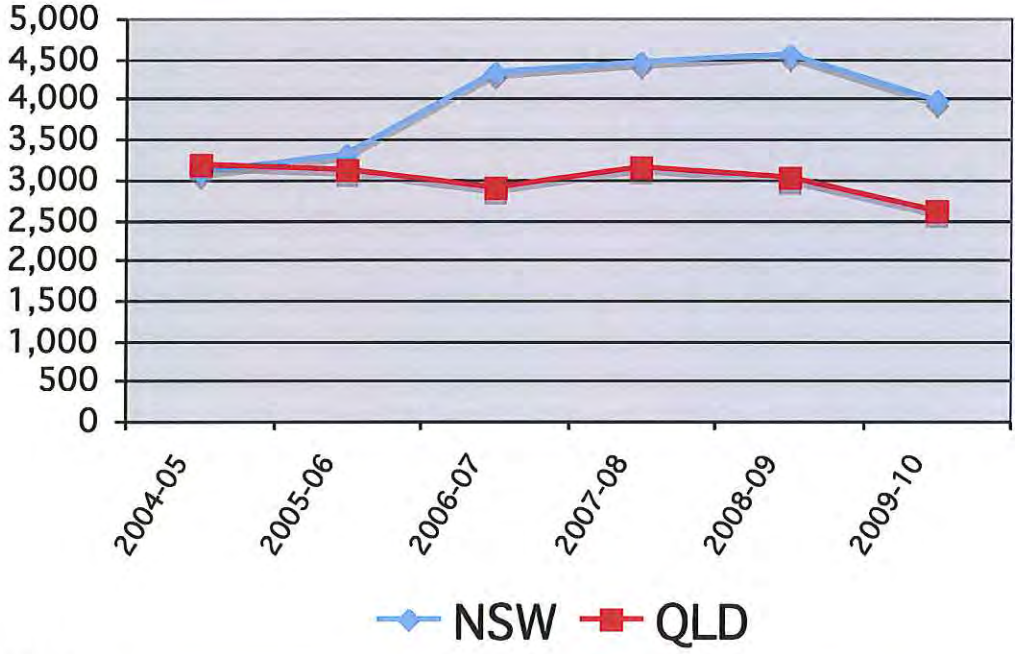
**Trend data**

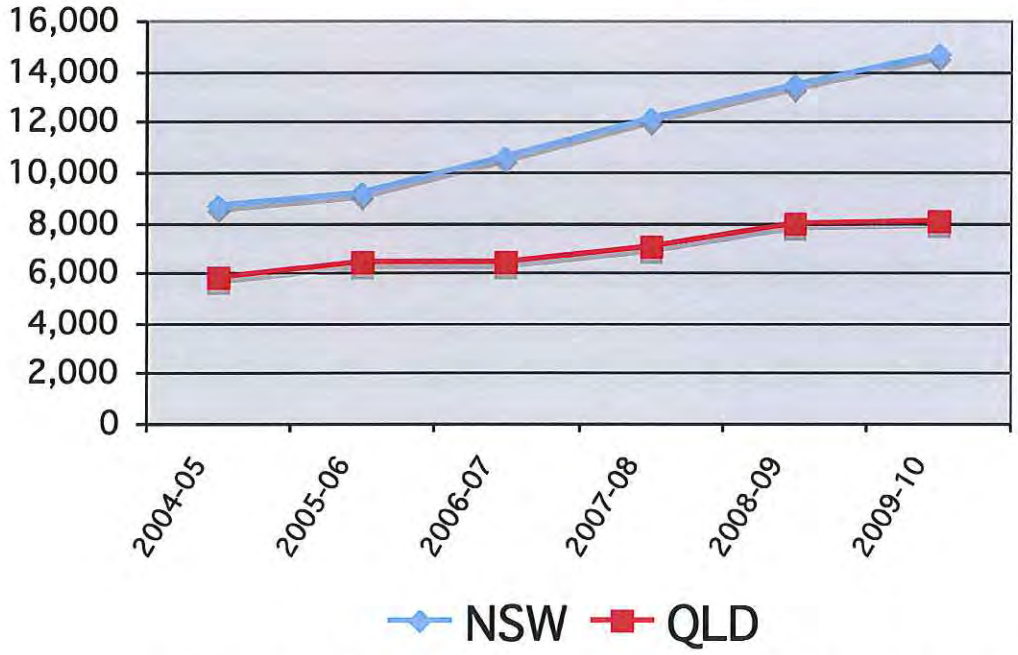
**Figure b Changes in total population substantiations of child abuse and neglect since 2004**




- Trend data which shows changes in substantiations over time shows a marked difference in the way substantiation rates have changed in each state. In New South Wales the rates rose steadily until 2007 when it began to fall. The Queensland rate fell steadily through this same period. This is total population data. It is known in Queensland that the substantiation rates for Aboriginal and Torres Strait Islander children rose steadily over this same period. This has resulted in a widening of the gap of disadvantage for Aboriginal and Torres Strait Islander children in Queensland. It is interesting to note that the decline in levels of adherence occurred for both states soon after major Inquiries ( CMC in Queensland in 2004 and Special Commission of Inquiry into Child Protection Services in NSW in 2008)

**Figure c Changes in total population - children under orders since 2004**




- There are less observable differences between states in the trend graphs for both children under orders and Out of Home Care statistics. This is surprising given the marked differences in the substantiation data

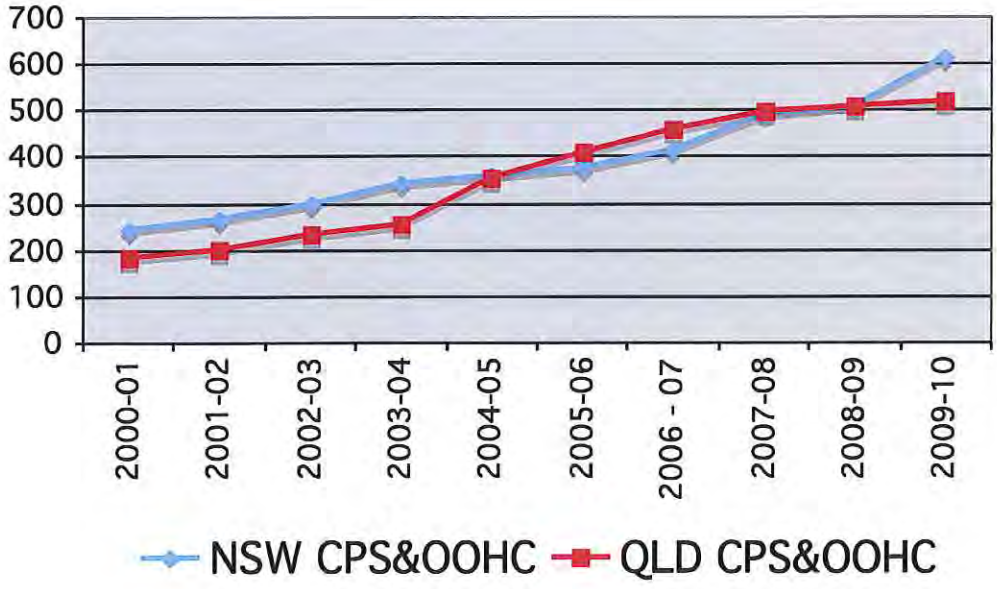
## Comparison of Child Protection Funding

The Report on Government Services 2011 provides a wide range of data about the provision State Governments make for various types of government services. This allows an additional perspective in the comparison of Queensland and New South Wales.

**Figure d Funding data**

| | Queensland | New South Wales |
|---|---|---|
| Total real expenditure - Child Protection Services | $230M | $358M |
| Per child expenditure - Child Protection Services | $212 per child | $219 per child |
| Total expenditure - Out of Home Care | $334M | $642M |
| Per child expenditure - Out of Home Care | $307 per child | $392 per child |
| Total expenditure CPS & OOHC | $1,000M | $565M |
| Per child expenditure - CPS & OOHC | $520 per child | $611 per child |
| Total expenditure - Intensive Family Support | $ 61M | $141M |
| Per child expenditure – Intensive Family Support | $56 per child | $87 per child |

**Figure e Trend funding data - Per child funding of Child Protection Services and Out of Home Care since 2000**

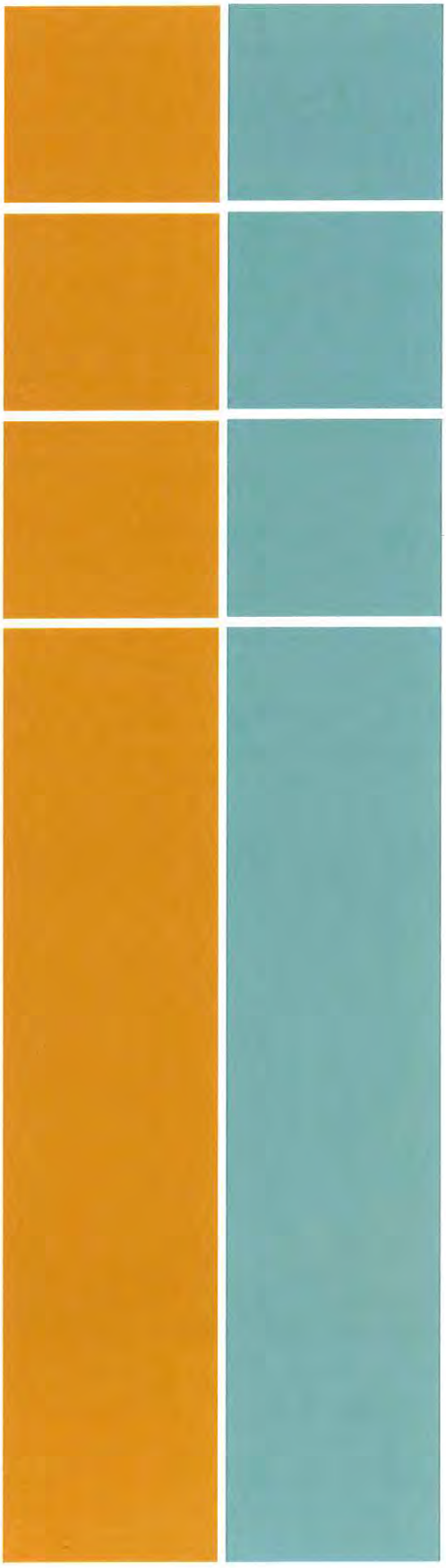


**Summary**

- Queensland and New South Wales spend similar amounts per child on Child Protection Services $219 (NSW) and $212 (QLD).
- However there is a marked difference in expenditure on Out of Home Care. With a 30% greater input by New South Wales $392 (NSW) and $307 (QLD) in the per child expenditure.
- This results in an 18% increase in the overall total expenditure on Child Protection and Out of Home Care - $611 (NSW) and $520 (QLD)
- Expenditure on Intensive Family Support also differs by 55%. $87 (NSW) and $56 (QLD)
- While it is difficult to prove a direct correlation it is likely that the extra investment in Intensive Family Support and Out of Home Care may result in improved outcomes including adherence to the Child Placement Principle.
- This could result from improved support to families both before a child enters care and also in extra resources provided to placements which could see them last longer.
- However levels of funding have fluctuated over last decade. An examination of trends in funding show that Queensland and New South Wales have had comparable levels of funding over recent years. Also recent increases in New South Wales may be yet to have an effect.
- It is likely that the main reason for the marked differences in adherence to the Child Placement Principle lie in policy and practice. Further investigation of these elements could reveal possible strategies to improve adherence in Queensland.

POLICY

MONOGRAPH



# Addressing the Over-Representation of Aboriginal and Torres Strait Islander Children and Families in Queensland's Child Protection System

January 2010

combined voices

Demanding better outcomes for Aboriginal and Torres Strait Islander Children

# ACKNOWLEDGEMENTS

We acknowledge the organisations who have so far added their voice to demand better outcomes for Aboriginal and Torres Strait Islander children:
Queensland Aboriginal and Torres Strait Islander Human Services Coalition (QATSIHSC) ■ Queensland Council of Social Services (QCOSS) ■ Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd (QATSICPP) ■ PeakCare Queensland ■ CREATE Foundation ■ Uniting Care Centre for Social Justice ■ The Queensland Alliance ■ CentaCare Cairns ■ Save the Children ■ Foster Care Queensland ■ Kummara Association Inc ■ Central Queensland Aboriginal and Torres Strait Islander Child Care Agency ■ Kahwun Wooga ATSI Corporation for Community Development ■ RAATSICC ■ Kalwun Aboriginal and Torres Strait Islander Childcare Agency ■ Brisbane Youth Service ■ Brisbane Rape and Incest Survivors Support Centre ■ Community Focus Association Discovery Program ■ Community Care Software ■ Sharon McCallum & Assoc
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***Addressing the Over-Representation of Aboriginal and Torres Strait Islander Children and Families in Queensland's Child Protection System.***

***January 2010***

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## EXECUTIVE SUMMARY

The over-representation of Indigenous children and families has been a long-standing concern in the Australian child welfare system. In Queensland, Indigenous children are three times more likely to be substantiated for harm or risk of harm, and six times more likely to be placed in out-of-home care than other children. Strategies aimed at protecting children have tended to be coercive, rather than voluntary services that effectively engage families and communities. Over time, this situation has worsened. Despite policy rhetoric, in reality strategies to reduce over-representation are clearly inadequate to address the scale and significance of the problem.

The causes of Indigenous over-representation are complex. There are macro-level social factors that increase stresses on parents and the vulnerability of children; and micro-level factors that mean that once in the child welfare system, Indigenous children are less likely to have their needs met and more likely to stay longer in care than other children.

Evidence-based policies and practices to effectively respond to Indigenous over-representation are required. Strategies are required on multiple levels: prevention and early intervention, improved quality of services within the care system. Leadership from government, high-level commitment and resources to reduce racial disparities, and collaboration with Indigenous agencies and communities are all essential.

## INTRODUCTION

Racial disproportionality and disparity is a feature of child welfare systems in many countries. Barth and Needell (1997 p. 2) state "the most basic aspect of measuring performance has to do with describing the population" and that "race is perhaps the most powerful background factor in all our child welfare services research."

Queensland's current approach to ensuring the safety and wellbeing of Aboriginal and Torres Strait Islander children, young people and their families is not working. In fact, the situation is getting worse, with the disparities in outcomes between Indigenous and non-Indigenous children and families getting wider each year. At each decision making point in the statutory child protection system, Aboriginal and Torres Strait Islander children and young people are significantly over-represented. In addition, the level of over-representation increases the further children move into the system. Indigenous families are more likely to receive different and more interventionist treatment from the government than non-Indigenous families. Yet, when compared with other children, the gap is widening when it comes to the health, education, safety and wellbeing of Aboriginal and Torres Strait Islander children.

This paper outlines the international research on racial disproportionality and disparity, and draws out the implications for Australia. It proposes evidence-based strategies for addressing Indigenous over-representation in Queensland.

## DIMENSIONS OF THE PROBLEM: OVER-REPRESENTATION AND DISPARITY DATA

While the over-representation of Indigenous children in the Australian child welfare system is well-known, the specific dimensions of the problem merit detailed examination, not least because the situation seems to be getting worse, not better. Understanding the levels of disproportionality at various decision-making points will advance our understanding of the nature of over-representation, the efficacy of current policies and programs, and the most effective points at which to intervene.

There are two accepted ways of measuring the representation of children from different racial or ethnic groups in the child welfare system. The disproportionality metric indicates the extent to which Indigenous representation in the child welfare system is proportionate to their

representation in the population. It is calculated by dividing the percentage of Indigenous children in, for example, substantiations and out-of-home care by the percentage of Indigenous children in the total child population (0-17 years) (Hill 2006). Disproportionality indicates imbalance (Wells et al. 2008). The disparity rate compares Indigenous with non-Indigenous children, and is the ratio between rates for the two groups. It is calculated by dividing the rate per 10,000 of Indigenous children in, for example, substantiations and out-of-home care, by the rate for non-Indigenous children (Hill 2006). While disproportionality has been used more often, researchers are moving to disparity measures to capture the nature of racial differences in child welfare more accurately and appropriately. According to Hill (2006), because disparity rates can show how black and ethnic minority children are treated compared to white children, disparity is a measure of equity. Disparity indicates systematic unequal treatment (Wells et al. 2008). If children with similar needs were treated equitably, regardless of race or ethnicity, then over- or under- representation would be less of an issue.

Table 1 compares Indigenous disparity in Australia as a whole, Queensland and New Zealand in 2006/07. The situation for Indigenous children in Australia is more inequitable than for Maori children in New Zealand, with the disparity rate considerable lower at both substantiation and placement. The disparity rates for Queensland are better than Australia as a whole, but still worse than New Zealand. Indigenous children are three times more likely to be substantiated for harm or risk of harm, and 6.1 times more likely to be placed in out-of-home care than other children.

**Table 1: Indigenous disparity: ratio between Indigenous and non-Indigenous rates of substantiated maltreatment and placement in out-of-home care 2006-2007**

| | Rate per 10,000 substantiations for non-Indigenous children | Rate per 10,000 substantiations for Indigenous children | Disparity rate substantiated cases | Rate per 10,000 in care for non-Indigenous children | Rate per 10,000 in care for Indigenous children | Disparity rate out-of-home care |
|---|---|---|---|---|---|---|
| Australia | 58 | 318 | 5.4 | 44 | 361 | 8.3 |
| Queensland | 69 | 203 | 3.0 | 45 | 275 | 6.1 |
| New Zealand | 92 | 251 | 2.7 | 35 | 93 | 2.7 |

*Source: Tilbury & Thoburn (in press)*

Table 2 focuses on the Queensland situation, detailing the disproportionality at key points in the child protection process. The level of disparity *increases* after statutory intervention.

Aboriginal and Torres Strait Islander children comprise 6.3% of children aged 0 to 17 years in Queensland. This has increased from 4.3% in 2002. Queensland's Indigenous children are disproportionately represented in the child welfare system as a whole, as well as at various decision points within the system. At each point - notification, substantiation, child protection order and placement - the situation has worsened for Aboriginal and Torres Strait Islander children between 2001-02 and 2006-07.

**Table 2: Rates per 1000 for Indigenous and non-Indigenous children at various points in the child welfare process, Queensland, 2001-2002 and 2006-2007**

| | *Indigenous children (per 1000)* | | *Non-Indigenous children (per 1000)* | |
|---|---|---|---|---|
| | *2001-02* | *2006-07* | *2001-02* | *2006-07* |
| Children subject to notification | 25.9 | 56.7 | 20.6 | 22.5 |
| Child substantiated for abuse or neglect | 13.8 | 19.4 | 7.5 | 6.5 |
| Children subject to child protection order | 15.1 | 27.0 | 3.3 | 4.7 |
| Children placed in out-of-home care | 12.2 | 27.5 | 2.9 | 4.5 |

*Source: Rates calculated data from Report on Government Services 2005 (Table 15A.25); Report on Government Services 2008 (Table 15A.30), Child Protection Australia 2001-02 (Tables 3.10, 4.8 and A1.3), Child Protection Australia 2006-07 (Tables 3.10, 4.8 and A1.3), Child Protection Queensland: 2004 Child Protection System 'Baseline' Performance Report and Child Protection Queensland 2006-07 Performance Report*

Indigenous children experience longer stays in out-of-home care, receive less comprehensive services, have irregular contact with family while in out-of-home care, are less likely to be reunified than other children and are less likely to receive voluntary interventions such as Intervention with Parental Agreement. Further, once removed from their families, many Aboriginal and Torres Strait Islander children are not supported to maintain their connections with family, community and culture.

Adherence to the Aboriginal and Torres Strait Islander Child Placement Principle has been declining. In 2001/02 (AIHW 2003), 69% of children were placed in accordance with the Child Placement Principle. This declined to 61.2% in 2006/07 (AIHW 2008). By analysing Community Visitor's reports of visits with Indigenous children placed in out-of-home care in April and May 2007, the Child Guardian's report on compliance with the Child Placement Principle (Commission for Children and Young People and Child Guardian 2009) states that:

- 20% had regular contact with their mother
- 6% had regular contact with their father;
- 6.5% had regular contact with at least one sibling
- 13% had regular contact with extended family.

The report also noted that children and young people would like more family contact.

Disparity between Indigenous and non-Indigenous children is evident in every departmental zone, and tends to be more pronounced in urban areas – see Table 3.

**Table 3 Disparity rates, Queensland Dept Child Safety zones, 2005-06**

| Zone | Disparity at substantiation | Disparity in long term CP orders |
|---|---|---|
| Brisbane North and Sunshine Coast | 3.3 | 6.5 |
| Brisbane South and Gold Coast | 2.6 | 6.6 |
| Central Zone | 1.7 | 3.8 |
| Far Northern Zone | 1.3 | 3.9 |
| Ipswich and Western Zone | 1.4 | 3.3 |
| Logan and Brisbane West | 2.4 | 3.3 |
| Northern Zone | 2.1 | 4.5 |
| Queensland | 2.3 | 4.1 |

In 2005/06 overall, Indigenous children were 2.3 times more likely to be substantiated and 4.1 times more likely to be on a long-term child protection order than other children. Examining disparity at both substantiation and on orders shows how Indigenous representation can be affected by decisions made after notification. In all zones, the level of over-representation increases significantly between these two decision points. Disparity was greatest in Brisbane North and Brisbane South at both decision points. Disparity at substantiation varied between zones, with a range from 1.3 to 3.3. Disparity at orders ranged from 3.3 to 6.6 between zones.

## THE EVIDENCE BASE - WHY OVER-REPRESENTATION EXISTS AND CONTINUES

What explanations are there for this over-representation? Over-representation of Aboriginal and Torres Strait Islander children in the Queensland child protection system is not dissimilar to the situation in other Australian jurisdictions, for Indigenous peoples in Canada, the United States and New Zealand, or for black or other minority groups in countries such as England. A range of macro level factors have been identified as creating and perpetuating over-representation and disproportional representation in child welfare systems across the world.

It is generally agreed that the causes of over-representation are both general, affecting the quality of life of Indigenous peoples on a broad range of indices, and specific to the child welfare system.

### *System or macro level factors*

The social and economic impacts of colonisation - land dispossession, forced removal to prescribed areas, regulation of family life, separation of children from their families, unpaid labour, institutional care and racism - are advanced as the underpinning reason for the over-representation of Indigenous peoples in welfare systems.

There have been mixed results from research efforts to disentangle the effects of race from the influences of poverty and hardship. Some studies examining disproportional representation have found that economic factors (poverty and receipt of welfare payments) are more statistically significant than race in determining child welfare involvement, but the interaction with other factors such as family structure, parental substance abuse and mental ill-health is less clear (Hill 2006; Miller 2008). However it has been pointed out that poverty and associated problems are not race neutral (Needell, Brookhart & Lee 2003). In the case of Indigenous people, disadvantaged living conditions are a consequence of colonisation. That is, the process of colonisation produced alienation, marginalisation, disempowerment, welfare dependency, deprived neighbourhoods and communities, and intergenerational poor parenting, and these conditions adversely impact upon children's well-being (Bamblett & Lewis 2007; Blackstock, Trocme and Bennett 2004; Blackstock & Trocme 2005).

To some extent the debate about causation highlights different perspectives on understanding causation and the extent to which both direct causes (the stated reasons for a child entering the care system, such as parental substance misuse or incarceration) and indirect causes and cumulative effects (the reasons behind high rates of substance abuse and incarceration for Indigenous people) are being investigated. Taking into account only direct or immediate causes misses effects that operate over time, or cumulative disadvantage. For example, there may be discrimination across generations, whereby discrimination against one generation can negatively affect health, work opportunities or wealth accumulation to diminish opportunities in later generations; and it can operate across domains, such as living in a depressed neighbourhood which lessens a person's chance of a job and good healthcare (Panel on Methods for Assessing Discrimination 2004).

Compared to non-Indigenous Australians, Aboriginal and Torres Strait Islander children and adults have lower health outcomes, lower level of educational attainment and participation, a higher rate of imprisonment and a higher level of homelessness which reflects generations of disadvantage, or cumulative disadvantage, whereby Indigenous families and communities are more vulnerable to state intervention and child welfare policies that rely more on child removal than family support (Roberts 2002). Clearly, disadvantage needs to be addressed through culturally appropriate supports, practical assistance and therapeutic services so that children are less likely to be at risk of harm.

It follows that reports to authorities about at-risk Aboriginal and Torres Strait Islander children and substantiation rates could be higher than for non-Indigenous children. In turn, the rates of entry to the family support and child protection systems are affected. Placement away from family due to related issues in the child's family and community could also be attributed to disadvantage. A lack of available and/or culturally competent formal supports could also impact on Indigenous childrens' contact with the child protection system.

### *Micro level factors*

Higher rates of Indigenous children in contact with the child welfare system have also been attributed to a range of micro factors. These include bias and inconsistencies in decisions made by the reporter (for example, police, nurses or teachers) and those assessing reports about children at risk of harm (Lemon et al 2005). Differences in child-rearing such as more laissez-faire supervision or the involvement of the extended family may be viewed as deficits (Earle & Cross 2001). Institutional racism or system biases such as a lack of cross-cultural competence, culturally inappropriate or inaccessible service delivery; Indigenous families being less likely to have legal representation or advocacy in decisions on removal and placement; and discriminatory practices of child welfare workers (Hines, Lemon, Wyatt & Merdinger 2004) also impact on the rates of Indigenous children at different decision making points.

The stressful and sometimes chaotic nature of child welfare agency practice is another factor identified as contributing to over-representation of Indigenous children (Lemon et al 2005). To avoid the situation worsening, strong, consistent and committed leadership is needed to lead a culturally competent workforce.

It has also been asserted that for Aboriginal and Torres Strait Islander children and young people, decisions about 'the best interests of the child' in placement or reunification have

minimised the importance of the child's cultural identity to their well-being (Bamblett & Lewis 2007), which has an impact on rates of placement and length of time in care.

In terms of exiting care, it has been argued that the lower levels of support provided to often more stable placements with kinship carers means that Indigenous children have lower reunification rates (Hill 2006; see Wulczyn 2003 in relation to African American children).

In summary, whatever the exact combination of factors causing and perpetuating the over-representation of Aboriginal and Torres Strait Islander children and young people in the Queensland child protection system, there is a clear case for responding to both macro and micro level factors. Clearly, as it is for all children, the objective should be for Indigenous children to only enter the child protection system if they need to. The system and related support and therapeutic services should be accessible and equitable, and last only as long as needed.

The child welfare system cannot rely upon poverty and racism being eliminated as the means to reduce racial disparity amongst those needing to come into care. Policy needs to take account of these social circumstances, so that the child welfare system ameliorates rather than exacerbates disparities (Needell et al. 2003). Clearly child welfare administrators cannot control all aspects of racial inequalities, but they can design services appropriate to the needs of the diverse populations served and control inappropriate disparities within the more coercive parts of the child welfare system. If the assumption is that racial disproportionality and disparity is a consequence of broader inequalities, for which the child welfare system is not responsible, then:

> *... From this point of view, the child welfare system is simply playing the best hand it can for its clients, given a deck that is stacked against certain clients before they even come in contact with the system ... does the extent to which some racial or ethnic groups in our society suffer disproportionately from family breakdown and poverty really justify the fact that they are thereby more likely to have their children taken away from them? Do child welfare researchers, policymakers, and practitioners believe that it is ethically acceptable to be involved in "improving" the efficacy of a system that takes these children without simultaneously being involved in remedying the problems that bring the children to the system?* (Courtney, Barth, Duerr Berrick, Brooks, Needell, & Park 1996, p. 135)

## EVIDENCE BASED STRATEGIES TO ADDRESS OVER-REPRESENTATION

Clearly government action is required to remedy this situation. It is not the fact of government intervention that is problematic, but the nature of the intervention. The standard government strategies to develop more effective and culturally sensitive responses to improve the welfare of Indigenous children in Australia, in the main, have not achieved desired outcomes.

A review of strategies to address racial disproportionality in the USA found that states had most success when they made a strong commitment to racial equity, undertook ongoing monitoring of racial differences in quality and outcome, developed agency collaborations, improved and expanded service provision, and worked in partnership with communities (Casey-CSSP Alliance for Racial Equity 2006). Strategies must aim to reduce the number of children entering the formal child protection system; improve the quality of care for children in the system; and aim to increase the number of exits from the system through effective work on family reunification.

### Entry factors

*Reduce entry to the child protection system through accessible and culturally appropriate prevention and early intervention responses for all Aboriginal and Torres Strait Islander children and families.*

Research has established the link between high levels of socio-economic disadvantage and related problems, and the over-representation of minority racial groups in the child welfare system (Trocme et al. 2004). These systemic conditions need to be dealt with, as well as parental factors, if child abuse and neglect are to be reduced. It is important to develop strategies that go further than improving the quality of services provided after referral, and to also tackle public policy responses that privilege child removal over family preservation (Hill 2006). It is not acceptable that at any given time, about 3 per cent of Australian Indigenous children are in out-of-home care. If the same placement rates were occurring across the whole population it is unlikely this situation would be accepted by government and the community – alternatives to removal and placement would be found.

Instead of relying on removing children from their families, the focus should be shifted to improving family functioning and relationships.Children and young people should only enter

the child protection system if it is needed and should only be placed in out-of-home care if they need to be cared for away from their parents. Macro level factors impacting on housing, drug and alcohol abuse, family violence, health and mental health issues that affect the capacity of parents to adequately care for their children must be identified and comprehensively addressed before children come to the attention of authorities or certainly in the early stages to mitigate more intrusive interventions.

Prevention and early intervention initiatives must respond to the type of harm Aboriginal and Torres Strait Islander children are more likely to be substantiated for. Systemic conditions relating to socio-economic disadvantage need to be dealt with, as well as parental factors, if child abuse and neglect are to be reduced.

Alternatives that would impact on the number and rate of Aboriginal and Torres Strait Islander children entering or further entering the child protection system include:

- non-stigmatising, preventative family support programs
- family preservation programs
- intensive supports to parents and extended families to address underlying issues
- more voluntary and non-stigmatising family support and kinship placement
- community development initiatives to improve living conditions at the 'place' level
- collaboration with housing, health, child care and income support system
- working in partnership with communities to encourage families to be more actively involved in planning and delivering services.

This commitment to prevention and early intervention will require significant investment to ensure the required spread, equity and adequacy of responses where they are needed across Queensland. Quite simply, there are not enough preventative services available and without sustained commitment and high level leadership to building up a system that responds to housing, drug and alcohol, family violence, health and mental health issues, Indigenous children will continue to come in contact with and enter the system at a higher rate than non-Indigenous children.

### In-care factors - quality of the care system

*Significantly improve responses for Aboriginal and Torres Strait Islander children and young people who are in the system*

Aboriginal and Torres Strait islander children's experience of the child protection system is different, and more intrusive, than for other children. Any bias or inconsistency in decision making must be examined and eliminated. There needs to be ongoing monitoring of racial differences in service quality and outcomes for Indigenous children.

A core component of all work with Aboriginal and Torres Strait Islander children and families is the Aboriginal and Torres Strait Islander Child Placement Principle. Although often presented as simply being about with whom a child is placed, the Child Placement Principle is about maintaining family and cultural links. The Child Placement Principle is not just about where and with whom a child is placed. It is also about decision making and including family members and Indigenous community agencies. Planning for maintaining family, community and cultural connections must occur regardless of where and with whom a child is placed.

Taking the time to work with family to indentify kin for full-time or shared care, supporting frequent family contact with parents for children placed with kinship carers, and working to reunify children and families, especially children placed with kinship carers, are actions that would ensure Indigenous children maintain their family and community connections while in care and exit the system in a timely manner.

Other strategies to improve Aboriginal and Torres Strait Islander children's experience of the child protection system include:

- working in partnership with Indigenous child protection agencies and 'recognised entities'
- reviewing Indigenous input to key decisions eg. placement, when completing Structured Decision Making tools, family group conferences and 'One Chance at Childhood'
- closely monitoring service delivery to Indigenous families at the local level (responsibility at a regional level to monitor and report on entry to care, placements with siblings, and decisions about orders and long-term care)
- increase the use of voluntary intervention for Indigenous families
- ensure timely case decision-making to prevent drift in care.

High-level leadership and government commitment to reducing over-representation is required if change is to occur. More trained Indigenous staff are needed to make Indigenous agencies a viable reality, and to enhance the cultural competence of statutory agencies.

However necessary these micro-level strategies are, bolder action is necessary in order to tackle Indigenous disproportionality in child welfare.

### Collaboration, community authority and responsibility

*Invest in Aboriginal and Torres Strait Islander community controlled child protection services*

It is not equitable to provide Indigenous communities with the same level or types of services as others, when their needs are so much greater and the pattern of their involvement with the child welfare system can be markedly different. The question of who is best placed to deliver family support and child protection services to Aboriginal and Torres Strait Islander children and families in Queensland has been subject to a shift in policy and practice whereby mainstream agencies are increasingly approved for funding to provide services to Indigenous families. Across Queensland, only a small number of community controlled agencies are funded to provide these services. So, not only are there too few culturally competent services where Indigenous families need them, there can be a mis-match with the level and type of service needed to meet the different pattern of involvement of Aboriginal children and families with the child welfare system.

Canada has taken a different approach. Provincial governments have taken steps to devolve child welfare powers and functions to Indigenous agencies. While this has mainly occurred for on-reserve children and families, in the province of Manitoba Indigenous child and family agencies have been given authority to provide services province-wide (Hudson & McKenzie 2003).

Better outcomes for Indigenous children and families, and indeed any target group, are best achieved when the target population has a voice in the delivery of services, and when organisations work in partnership with the communities they serve. Incorporating Indigenous values, knowledge and cultural practices when developing service models is also critical (Libesman 2004). The provision of comprehensive and integrated services for Indigenous children and families can be achieved by expanding the functions of Indigenous child protection services to encompass prevention, early intervention for at-risk families, and statutory intervention. Government action is required to enhance the infrastructure and capacity of these agencies.

## CONCLUSION

A substantial change in direction is required, but not a return to the paternalism of the past. There needs to be less, not more, coercive government intervention into Indigenous family life. Evidence presented here shows that government has not been effective to date in protecting Aboriginal and Torres Strait islander children or strengthening family functioning. Alternative policies and programs would focus on children's quality of life and family living conditions, community development, and genuine collaboration with community controlled services and communities. Strategies and progress should be closely monitored at regional level.

In that way, the macro and micro level factors causing and perpetuating the over-representation of Aboriginal and Torres Strait Islander children and young people in the Queensland child protection system will be reduced in equitable, holistic and culturally competent ways. Indigenous children will only enter the child protection system if they need to and contact with the system and related support and therapeutic services will be responsive and meeting each child's individual needs, particularly those relating to culture and family, and last only as long as necessary.

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## EXECUTIVE SUMMARY

These key findings are from articles released as the comprehensive series The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples.

### Aboriginal and Torres Strait Islander peoples (Updated 22/05/2012)

- The Aboriginal and Torres Strait Islander population comprises around 2.5% of the Australian population and is relatively young.
- Aboriginal and Torres Strait Islander Australians have lower life expectancy than non-Indigenous Australians.
- Aboriginal and Torres Strait Islander language and culture is being maintained.
- Socioeconomic outcomes for Aboriginal and Torres Strait Islander Australians continue to improve, but remain below those for non-Indigenous Australians.

### Torres Strait Islander people (Updated 17/02/2011)

- Torres Strait Islander people comprise 0.3% of the total Australian population and 10% of the total Aboriginal and Torres Strait Islander population.
- Many health and welfare outcomes for Torres Strait Islander people were similar to those for all Aboriginal and Torres Strait Islander people.

### Education (Updated 22/05/2012)

- Educational attainment among Aboriginal and Torres Strait Islander Australians continues to improve.
- Higher levels of educational attainment are associated with better health outcomes.

### Social and Emotional Wellbeing (Updated 29/10/2010)

- Most Aboriginal and Torres Strait Islander adults reported being happy.
- Around one third of adults reported high/very high levels of psychological distress.
- Many Aboriginal and Torres Strait Islander people experienced discrimination.
- Around one in twelve Aboriginal and Torres Strait Islander adults have personally experienced removal from their natural family.

**Adult health** (Updated 28/05/2010)

- Aboriginal and Torres Strait Islander Australians have poorer self-assessed health and were more likely to report higher levels of psychological distress than non-Indigenous Australians.
- Latest results show a decline in Aboriginal and Torres Strait Islander smoking rates, while alcohol consumption remains steady.

**Mothers' and children's health** (Updated 28/05/2010)

- There are a number of positive findings in relation to maternal health and factors affecting childhood development, including high rates of breastfeeding and physical activity among Aboriginal and Torres Strait Islander children.

**Disability** (Updated 17/02/2011)

- Half of all Aboriginal and Torres Strait Islander people aged 15 years and over had a disability or long-term health condition.
- Disability was associated with poorer health and welfare outcomes for Aboriginal and Torres Strait Islander people.

**Housing circumstances** (Updated 29/10/2010)

- Most Aboriginal and Torres Strait Islander adults lived in rented housing, however, the proportion living in homes being purchased has increased.
- Fewer Aboriginal and Torres Strait Islander people lived in housing with major structural problems, but overcrowding rates remain similar.
- Aboriginal and Torres Strait Islander adults living in housing with structural problems were more likely to report high/very high levels of psychological distress.

**Access to health and community services** (Updated 29/10/2010)

- The majority of Aboriginal and Torres Strait Islander households could locally access a range of medical and hospital services when needed.
- Nationally, just over one-quarter of Aboriginal and Torres Strait Islander adults reported problems accessing one or more health services.
- Community services and facilities that were less likely to be locally available when needed included emergency services, police stations and school bus services.
- Parents/carers of around one in seven Aboriginal and Torres Strait Islander children needed (more) formal child care.

## ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES — DEMOGRAPHIC, SOCIAL AND ECONOMIC CHARACTERISTICS

**The Aboriginal and Torres Strait Islander population comprises around 2.5% of the**

**Australian population and is relatively young:**

- At June 30 2006, the estimated resident Aboriginal and Torres Strait Islander population was 517,000 people, or 2.5% of the total Australian population.
- In 2006, the Aboriginal and Torres Strait Islander population had a median age of 21.0 years compared with 37.0 years for the non-Indigenous population.
- In 2010, the total fertility rate of Aboriginal and Torres Strait Islander females was estimated to be 2.57 babies per woman, compared with 1.89 babies per woman for all women in Australia.
- At June 2006, most Aboriginal and Torres Strait Islander people lived in non-remote areas with an estimated 32% of people living in major cities, 43% in regional areas, and 25% in remote areas.

**Aboriginal and Torres Strait Islander Australians have lower life expectancy than non-Indigenous Australians:**

- At the national level for 2005–2007, the gap between Aboriginal and Torres Strait Islander and non-Indigenous life expectancy was 11.5 years for males and 9.7 years for females.
- Life expectancy at birth for Aboriginal and Torres Strait Islander males is estimated to be 67.2 years, compared with 78.7 years for non-Indigenous males.
- Life expectancy at birth for Aboriginal and Torres Strait Islander females is estimated to be 72.9 years, compared with 82.6 years for non-Indigenous females.

**Aboriginal and Torres Strait Islander language and culture is being maintained:**

- In 2008, 19% of Aboriginal and Torres Strait Islander people aged 15 years and over (adults) and 13% of Aboriginal and Torres Strait Islander children (aged 3–14 years) spoke an Aboriginal or Torres Strait Islander language.
- More Aboriginal and Torres Strait Islander people are identifying with a clan, tribal or language group, 62% in 2008 up from 54% in 2002.
- 70% of Aboriginal and Torres Strait Islander children (aged 3–14 years) and 63% of adults (15 years or over) were involved in cultural events, ceremonies or organisations in 2008.

**Socioeconomic outcomes for Aboriginal and Torres Strait Islander Australians continue to improve, but remain below those for non-Indigenous Australians:**

- More Aboriginal and Torres Strait Islander people completed Year 12 — 22% of people aged 15 years and over in 2008, up from 18% in 2002.
- More Aboriginal and Torres Strait Islander people completed non-school qualifications — 40% of people aged 25–64 years in 2008, up from 32% in 2002.
- The unemployment rate for Aboriginal and Torres Strait Islander Australians fell from 23% in 2002 to 17% in 2008, but remained more than three times higher than the rate for non-Indigenous Australians (5% in 2008).

**The Torres Strait Islander population comprises 0.3% of the total Australian population and 10% of the total Aboriginal and Torres Strait Islander population:**

- At June 30 2006, the estimated resident Torres Strait Islander population was 53,300 people, or 0.3% of the total Australian population.
- Torres Strait Islander people comprised 10% of the total Aboriginal and Torres Strait Islander population nationally, and 23% of all Aboriginal and Torres Strait Islander people in Queensland.
- Nationally, more Torres Strait Islander adults spoke an Australian Indigenous language than all Aboriginal and Torres Strait Islander adults (31% compared with 19%).
- Torres Strait Islander people were more likely than all Aboriginal and Torres Strait Islander people to be participating in the labour force (73% compared with 65%) and to be employed (64% compared with 54%) in 2008.
- Many other health and welfare outcomes for Torres Strait Islander people were similar to those for all Aboriginal and Torres Strait Islander people.

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## EDUCATION

**Educational attainment among Aboriginal and Torres Strait Islander Australians continues to improve:**

- Apparent school retention rates for Aboriginal and Torres Strait Islander full-time students from Year 7/8 to Year 12 increased from 36% in 2001 to 49% in 2011.
- Nationally, the proportion of Aboriginal and Torres Strait Islander people aged 15 years and over completing Year 12 increased from 18% in 2002 to 22% in 2008. The rate of Year 12 completion has also improved in all states and territories.
- More Aboriginal and Torres Strait Islander people are completing non-school qualifications, 40% of 25–64 year olds in 2008, up from 32% in 2002.
- More Aboriginal and Torres Strait Islander young people were fully engaged in work and/or study in 2008. Just over half (54%) of young people aged 15–24 years were either working full-time, studying full-time, or both working and studying; up from 47% in 2002.

**Higher levels of educational attainment are associated with better health outcomes:**

- In 2008, 59% of Aboriginal and Torres Strait Islander people aged 15-34 years who had completed Year 12 reported excellent/very good self-assessed health compared with 49% of those who had left school early (Year 9 or below). For those aged 35 years and over, the rates were 43% and 25% respectively.
- The likelihood of smoking also decreased with higher levels of schooling, 34% of Aboriginal and Torres Strait Islander people aged 15–34 years who had completed Year 12 were current daily smokers compared with 68% of those who had left school early. For those aged 35 years and over, the rates were 36% and 48% respectively.

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## SOCIAL AND EMOTIONAL WELLBEING

**Most Aboriginal and Torres Strait Islander adults reported being happy:**

- In 2008, 72% of Aboriginal and Torres Strait Islander people aged 15 years and over (adults) reported being a happy person all or most of the time, with rates higher among adults living in remote areas (78%) than non-remote areas (71%).

**Around one-third of Aboriginal and Torres Strait Islander adults reported high/very high levels of psychological distress:**

- 31% of Aboriginal and Torres Strait Islander people aged 15 years and over reported high/very high levels of psychological distress. Rates were particularly high among those with a disability or long-term health condition, those who had been victims of violence, or who had experienced discrimination.

**Many Aboriginal and Torres Strait Islander people experienced discrimination:**

- More than one-quarter (27%) of Aboriginal and Torres Strait Islander people aged 15 years and over had experienced discrimination in the last 12 months.
- One in ten (11%) Aboriginal and Torres Strait Islander children aged 4–14 years reported being bullied at school because of their Indigenous origin.

**Around one in twelve Aboriginal and Torres Strait Islander adults have personally experienced removal from their natural family:**

- In 2008, 8% (26,900 people) of Aboriginal and Torres Strait Islander people aged 15 years and over had been personally removed from their natural family, consistent with the rate reported in 2002 (also 8%).
- Of those who had experienced removal from their natural family, 35% assessed their health as fair or poor and 39% experienced high or very high levels of psychological distress, compared with 21% and 30% of those not removed.

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## ADULT HEALTH

**Aboriginal and Torres Strait Islander Australians have poorer self-assessed health and were more likely to report higher levels of psychological distress than non-Indigenous Australians:**

- In 2008, 44% of Aboriginal and Torres Strait Islander people aged 15 years and over reported excellent/very good health and 22% reported fair/poor health.
- Aboriginal and Torres Strait Islander people were twice as likely as non-Indigenous people to report fair/poor health. This gap has remained unchanged since 2002.
- While nearly one-third of Aboriginal and Torres Strait Islander people aged 18 years and over had experienced high/very high levels of psychological distress, this was more than twice the rate for non-Indigenous people.

**Both tobacco smoking and excessive alcohol consumption are major health risk factors. Latest results show a decline in Indigenous smoking rates, while alcohol consumption remains steady:**

- Between 2002 and 2008, the proportion of Aboriginal and Torres Strait Islander current daily smokers fell from 49% to 45%, representing the first significant decline in smoking rates since 1994. However, Aboriginal and Torres Strait Islander people remained twice as likely as non-Indigenous people to be current daily smokers.
- Around one in six Aboriginal and Torres Strait Islander people aged 15 years and over (17%) drank alcohol at chronic risky/high risk levels, similar to the rate reported in 2002 (15%).

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## MOTHERS' AND CHILDREN'S HEALTH

**There are a number of positive findings in relation to maternal health and factors affecting childhood development including high rates of breastfeeding and physical activity among Aboriginal and Torres Strait Islander children:**

- In 2008, the majority of birth-mothers of Aboriginal and Torres Strait Islander children aged 0–3 years (87%) had regular check-ups while pregnant (at least one every two months).
- According to the 2008 National Aboriginal and Torres Strait Islander Social Survey, three-quarters (76%) of Aboriginal and Torres Strait Islander children aged 0–3 years had been breastfed.
- 74% of Aboriginal and Torres Strait Islander children aged 4–14 years were physically active for at least 60 minutes everyday, though the proportion was higher for those who lived in remote areas (84%).
- The proportion of children aged 0–14 years who lived in a household where members usually smoked inside the house decreased from 29% in 2004–05, to 21% in 2008.
- Most Aboriginal and Torres Strait Islander children aged 0–14 years brushed their teeth at least once a day (71%). However, 25% of children aged 10–14 years had a tooth or teeth filled because of dental decay and 20% of children aged 5–9 years had experienced dental decay.
- Eye or sight problems and ear or hearing problems were experienced by 7% and 9% of children aged 0–14 years respectively in 2008.

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## DISABILITY

**Half of all Aboriginal and Torres Strait Islander people aged 15 years and over had a disability or long-term health condition:**

- Nationally, 50% of Aboriginal and Torres Strait Islander people aged 15 years and over had a disability or long-term health condition in 2008. Around one in twelve

(8%) had a profound/severe core activity limitation.
- In non-remote areas, Aboriginal and Torres Strait Islander adults were one and a half times as likely as non-Indigenous adults to have a disability or long-term health condition, and more than twice as likely to have a profound/severe core activity limitation.

**Disability was associated with poorer health and welfare outcomes for Aboriginal and Torres Strait Islander people:**

- Aboriginal and Torres Strait Islander people with a disability were more than four times as likely as those without a disability to rate their health as fair/poor.
- Half (50%) of all people with a disability or long-term health condition were receiving a government pension or allowance as their principal source of income in 2008.
- 36% of people with a disability had problems accessing services, such as doctors, hospitals or employment services, compared with 24% of those without a disability.

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## HOUSING CIRCUMSTANCES

**Most Aboriginal and Torres Strait Islander people aged 15 years and over (adults) lived in rented housing, however the proportion living in homes being purchased is increasing:**

- In 2008, the majority of Aboriginal and Torres Strait Islander adults lived in housing that was rented (69%).
- More Aboriginal and Torres Strait Islander adults were living in housing that was being purchased in 2008 (20%) than in 2002 (17%).

**Fewer Aboriginal and Torres Strait Islander people lived in housing with major structural problems, but overcrowding rates remain similar:**

- While 26% of all Aboriginal and Torres Strait Islander households were living in dwellings with major structural problems in 2008, this has reduced significantly since 2002 (34%).
- In remote areas, the rate declined from 50% to 34% (of households) between 2002 and 2008.
- One-quarter (25%) of all Aboriginal and Torres Strait Islander adults lived in overcrowded housing in 2008 — this has not changed since 2002.

**Aboriginal and Torres Strait Islander adults living in dwellings with major structural problems were more likely to report high or very high levels of psychological distress compared with those who did not (37% compared with 28%).**

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## ACCESS TO HEALTH AND COMMUNITY SERVICES

**The majority of Aboriginal and Torres Strait Islander households could locally access a range of medical and hospital services when needed:**

- 62% of households could access Aboriginal health care services in 2008
- 74% of households could access hospitals (63% in remote areas)
- 82% of households could access health/medical clinics (69% in remote areas).

**Nationally, just over one-quarter (26%) of Aboriginal and Torres Strait Islander people aged 15 years and over reported problems accessing health services such as long waiting times and cost:**

- Dentists, doctors and hospitals were the health services where people were most likely to experience problems (by 20%, 10% and 7% of people respectively).

**Beyond health services, there were similar levels of availability of community facilities and services to Aboriginal and Torres Strait Islander households nationally. Services and facilities that were less likely to be locally available when needed included:**

- emergency services — not available for 20% of households
- police stations — not available for 17% of households
- school bus service — not available for 17% of households nationally and 39% of households in remote areas.

**Parents/carers of around one in seven (14%) Aboriginal and Torres Strait Islander children aged 0–12 years needed (more) formal child care:**

- In remote areas, unavailability of child care was the most common reason for not using more formal care (40% of children needing more care). In non-remote areas, it was cost (31%).

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This page last updated 21 May 2012

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**Table S.6: Children subject to a substantiation, by most serious harm type and Indigenous status, Queensland**

| Most serious harm type | 2006–07 | | | 2007–08 | | | 2008–09 | | | 2009–10 | | | 2010–11 | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Indigenous | Non-Indigenous [a] | Total | Indigenous | Non-Indigenous [a] | Total | Indigenous | Non-Indigenous [a] | Total | Indigenous | Non-Indigenous [a] | Total | Indigenous | Non-Indigenous [a] | Total |
| Physical | 421 | 1,653 | 2,074 | 486 | 1,550 | 2,036 | 510 | 1,185 | 1,695 | 464 | 900 | 1,364 | 370 | 917 | 1,287 |
| Sexual | 84 | 507 | 591 | 79 | 497 | 576 | 86 | 385 | 471 | 67 | 315 | 382 | 86 | 284 | 370 |
| Emotional | 683 | 3,274 | 3,957 | 477 | 2,225 | 2,702 | 494 | 2,016 | 2,510 | 547 | 1,965 | 2,512 | 643 | 1,739 | 2,382 |
| Neglect | 548 | 1,675 | 2,223 | 580 | 1,437 | 2,017 | 663 | 1,289 | 1,952 | 702 | 1,258 | 1,960 | 632 | 1,270 | 1,902 |
| **Total** | **1,736** | **7,109** | **8,845** | **1,622** | **5,709** | **7,331** | **1,753** | **4,875** | **6,628** | **1,780** | **4,438** | **6,218** | **1,731** | **4,210** | **5,941** |

Source: Department of Communities

Notes

1. The substantiations data time series has been affected by a combination of legislation, practice and recording changes which can be found in the table notes.
2. Counts the number of individual children subject to a notification during the reference period, where an assessment has been finalised and the investigation outcome was recorded as substantiated within two months of the end of the reference period.
3. Refers to the substantiated harm type assessed as being most serious, according to their first substantiation during the period.
4. If a child is subject to more than one substantiation in the period, the child is counted only once.

(a) Includes non-Indigenous children and those whose Indigenous status is unknown or not stated.

Refer to the glossary for definitions of data items contained in this table.
Refer to the table notes for definitions and changes to data over time.

# POLICY STATEMENT

| | |
|---|---|
| **Title:** | Working with Aboriginal and Torres Strait Islander children, families and communities |
| **Policy No.** | CPD610-1 |

**Policy Statement:**

The Department of Communities (Child Safety Services) recognises the detrimental and lasting effects of past government policies on the lives of Aboriginal and Torres Strait Islander families and communities. Child Safety Services is committed to working collaboratively with families, communities and all of its partners to build on existing Aboriginal and Torres Strait Islander families' strengths so their children can reach their full potential.

**Principles:**

- The safety, wellbeing and best interests of a child are paramount and all interactions with a child will be respectful.
- Every Aboriginal and Torres Strait Islander child has a right to be safe and to live in a stable, secure and culturally appropriate placement.
- Aboriginal and Torres Strait Islander families have the primary responsibility for the upbringing, protection and development of their children and the preferred way of ensuring a child's wellbeing is through the support of the child's family.
- Extended family relationships are the core of Aboriginal and Torres Strait Islander kinship systems. These kinship systems, of grandparents, aunts, uncles, siblings and members of the community, will guide and support children through their lives.
- Aboriginal and Torres Strait Islander children have an inherent right to know their own family and culture and to stay connected with their family, community, culture and spirituality.
- Maintaining an Aboriginal and Torres Strait Islander child's contact or involvement with family, community and culture, is critical and will be supported by and reflected in departmental case plans, cultural support plans and case documentation.
- Recognised Entities must be given an opportunity to participate in decision-making processes about an Aboriginal or Torres Strait Islander child in accordance with *Child Protection Act 1999*, Sections 6 and 83(2) and (5)(a).

**Objectives:**

The objective of this policy is to ensure that Child Safety Services staff decisions and actions result in the delivery of respectful, culturally appropriate, effective and timely services to all Aboriginal and Torres Strait Islander children and families. Through the delivery of such services, the department will help build on the existing strengths of Aboriginal and Torres Strait Islander families and

communities with the aim of reducing the overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system.

## Scope:

This policy, and associated procedures, guide the decisions and actions of Child Safety Services staff when working with Aboriginal and Torres Strait Islander children, families and communities.

## Roles and Responsibilities:

When fulfilling their roles and responsibilities as mandated in legislation and supported by policy, procedures and practice resources, Child Safety Services staff must ensure that the decisions made and services delivered:

- build on Aboriginal and Torres Strait Islander families' strengths and recognise the significance of extended family and kinship care in raising Aboriginal and Torres Strait Islander children
- divert families, wherever possible, away from the statutory child protection system to appropriate community based early intervention and family support services
- are respectful of and sensitive to the Aboriginal and Torres Strait Islander people's culture and traditions and preserve and enhance the children's sense of identity and their connections with family and community
- enable the participation of children, when age and developmentally appropriate, families and communities in planning and decision-making processes
- are tailored to each child's protective and care needs and take into consideration the relevant resources within their family and community and
- are planned for and provided in collaboration with the Recognised Entity.

To enact these roles and responsibilities, Child Safety Services staff will:

- develop an understanding of kinship systems and community histories and dynamics
- build relationships with Aboriginal and Torres Strait Islander families and communities based upon respectful communication and culturally appropriate professional connections
- identify key stakeholders within communities and work in partnership with significant community members and Aboriginal and Torres Strait Islander service providers and
- work collaboratively with local government and non-government agencies to provide planned, co-ordinated services to children and families.

Child Safety Services staff must also ensure that, when recording information about their decisions and actions:

- the information is clear
- the language used is culturally sensitive
- there is no information recorded about family or community members that is not directly relevant to the decision or intervention and
- the information recorded complies with recording requirements outlined in departmental policy, procedures and practice resources.

**Authority:**

*Child Protection Act 1999, Sections 6, 7(1)(o), 51(E), (L) and (W), 70(4), 83, 159 (K) and (L) and 187*

**Delegations:**

Director-General

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| | |
|---|---|
| **Records File No.:** | CHS/18668 |
| **Date of approval:** | 4 November 2010 |
| **Date of operation:** | 8 November 2010 |
| **Date to be reviewed:** | 4 November 2013 |

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| | |
|---|---|
| **Office:** | Communities, Child Safety, Youth and Families |
| **Help Contact:** | Child Protection Development – 3235 9411 |

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**Links:**

**Related departmental policies:**

Aboriginal and Torres Strait Islander Child Placement Principle (609)

**Related legislation or standard:**

*Child Protection Act 1999*

United Nations Convention on the Rights of the Child (UNCRC)

**Related Government guidelines:**

Child Safety Practice Manual

Practice Paper: Working with Aboriginal and Torres Strait Islander people

Practice resource: The Child Placement Principle

Practice resource: Working with the Recognised Entity

Practice resource: Developing a cultural support plan for an Aboriginal or Torres Strait Islander child

Practice resource: Legislative provisions in relation to Aboriginal and Torres Strait Islander children and collaboration with Recognised Entities

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Linda A Apelt

Director-General

**The Secretariat of National Aboriginal and Islander Child Care (SNAICC)** Website
http://www.snaicc.asn.au/policy-advocacy/dsp-landing-policyarea.cfm?loadref=36&txnid=566&txnctype=article&txncstype=

Queensland Child Protection policy - Combined Voices

Date: 24 Jan 2011

Combined Voices has forwarded the following report of their campaign to shift child protection policy for Queensland Aboriginal and Torres Strait children and families; to acknowledge what has been gained through the Combined Voices and to indicate what more needs to be done.

Individuals and organisations can join Combined Voices through their website

Queensland Combined Voices encourages services and peaks in all other states and territories to take up a similar campaign, to come together on behalf of our children.

**Combined Voices write:**

Great start 2010: bigger things needed in 2011

Combined Voices was successful in its campaign to shift child protection policy for Aboriginal and Torres Strait Islander children and families in Queensland.

The shift was not as great as we wanted, but it was in the right direction and it has been of great significance.

With the support of QCOSS, the Queensland Aboriginal and Torres Strait islander Human Services Coalition, PeakCare, the CREATE Foundation, and the Aboriginal and Torres Strait islander Child Protection Peak (QATSICPP), Combined Voices was able for the first time to reach agreement with the State Minister, Hon Phil Reeves, MP, to go beyond the narrow, regulatory constraints of Recognised Entities.

As a result, Queensland now has 11 regional lead agencies implementing family support services, as well as 11 restructured regional lead agency Recognised Entities.

This policy change is the first phase in moving Queensland's child protection policies onto the front foot. For years child protection policies have been on the back foot, concentrating on responding to children and their families when they come into care through 'notification' or a 'child concern' report. This has meant that Recognised Entities have been confined to dealing with a strictly limited check-list of processes clustered around the courts and operational controls exercised by the Department of Communities (Child Safety).

The Combined Voices campaign aimed to change this, pointing out that continuation of this policy was doing nothing to slow and stop the ever-increasing numbers of Aboriginal and Torres Strait Islander children coming into 'care'. Their proportion of all children in care under the State Government's reactive policy grew to more than 38 per cent of all children in care.

Building on the 2007-08 / 2008-09 evidence-based data and research of QATSICPP's Policy Officer, Julie Bray, Combined Voices was able to mount a compelling campaign to convince the Minister and some of his senior departmental staff that a circuit breaker was needed in the form of family support and intervention.

We would like to thank everyone involved and associated with Combined Voices. Queensland has not been a progressive state historically when it comes to Aboriginal and Torres Strait Islander affairs, so the 2010 breakthrough is a real achievement.

A partial success

The result was not all that we wanted as it came at a cost:

Funding of the new regional Indigenous Family Support Services came out of the standard annual funding for Recognised Entities. That is, of the $16M annual recurrent allocation, $8M was allocated for the 11 regional Family Support Centres, and $8M for Recognised Entities. The number of Recognised Entities was cut back from 31 to 11, servicing a larger area with less staff and funding.

The value of the new Indigenous Family Support services is restricted by confining their clients to families with children who have been referred by Child Safety. This means that the Indigenous Family Support service providers cannot get on the front foot to stop families coming into the child protection system by doing genuinely preventive work.

Remedying these two deficiencies will be the next phase of work for the Combined Voices campaign in 2011.

On 2 December 2010 Minister Phil Reeves endorsed Together keeping our children safe and well, a comprehensive plan for promoting the safety and wellbeing of Aboriginal and Torres Strait Islander children and young people and reducing their over-representation within Queensland's child protection system. We trust this will soon be publicly released and placed on the Department of Communities website.

Early in 2011 we will be re-convening the Combined Voices steering committee to discuss this report, and to plan our ongoing campaign for reforms to the State's child protection system as it affects Aboriginal and Torres Strait Islander families. We can all be encouraged and strengthened by the achievements of 2010 to go forward together in 2011.

Thank you all.

Dianne Harvey, Chief executive officer, QATSICPP

Gail Slocombe, Executive Director, PeakCare Queensland

Lucas Moore, State Coordinator, CREATE Foundation, Queensland

Garth Morgan, Executive Officer, QATSIHSC

For Combined Voices 22 December 2010

Queensland Government

Department of Communities, Child Safety and Disability Services



# Referral for Active Intervention

Referral for Active Intervention (RAI) services are funded by the Department of Communities and provide intensive family support for children, young people and their families who may be at risk of entering the child protection system.

There a number of referral pathways into a RAI Service:

- Child Safety Services
- referrals from Department of Education and Training (DET) and Queensland Health
- referrals from other government and non-government agencies and self-referrals, where service capacity allows.

To make a referral to a RAI service the following criteria must be met:

- there is a child unborn to 18 years of age
- the family has medium (2-3 current concerns) to high (4 or more current concerns) complex needs
- the family would benefit from access to intensive and specialist support services
- the child and family have had involvement with, or are at risk of progressing into the statutory child protection system
- the child is not currently in need of child protection.

## What services are provided?

RAI services provide a broad range of intensive support services to children, young people and their families, a can also make referrals to specialist targeted services.

The following are just some of the supports that families might access from a RAI service:

- family counselling, family therapy and mediation
- family household management skills
- parenting skills development
- individual counselling and child based therapies
- links to specialist services and supports such as mental health services and domestic violence counselling.

## Review and evaluation reports

- Referral for Active Intervention Six Month Review (PDF, 577 KB) (RTF, 2.1 MB)
- Referral for Active Intervention 18 Month Evaluation Report (PDF, 1.2 MB) (RTF, 9.5 MB)
- Referral for Active Intervention Three Year Evaluation Report (PDF, 434 KB) (RTF, 1.3 MB)

Last reviewed 7 March 2011
Last modified 10 August 2012

Queensland Government

Department of Communities, Child Safety and Disability Services



# Helping Out Families

The Helping Out Families initiative is aimed at strengthening services in the community to respond more effectively and earlier to families who are in need of support.

The initiative includes the establishment of new services, as well as providing additional funding to existing organisations that support children, young people and their families.

## How will it work?

A key component of the initiative is the new Family Support Alliance service.

The Family Support Alliance service is a local non-government organisation that will receive referrals from Child Safety Services and engage with families to identify their strengths, needs and level of support they require.

The Family Support Alliance service will then refer families (with their consent) to the most appropriate service/s based on their identified needs.

These services form part of an Alliance of services who will work together to ensure that families receive the support they need.

## What is the role of the Family Support Alliance service?

Three Family Support Alliance services have been established in:

- Eagleby/Nerang/Beenleigh
- Logan

Gold Coast (31 January 2011).

The Family Support Alliance services work in collaboration with other service providers under a shared practice framework to ensure consistency in identifying and responding to the needs of referred children, young people and their families.

Participation with the Family Support Alliance service is voluntary. Referred families will be contacted to provide their consent to participate before the Family Support Alliance service will engage with them to identify their needs and refer them to the most appropriate service/s.

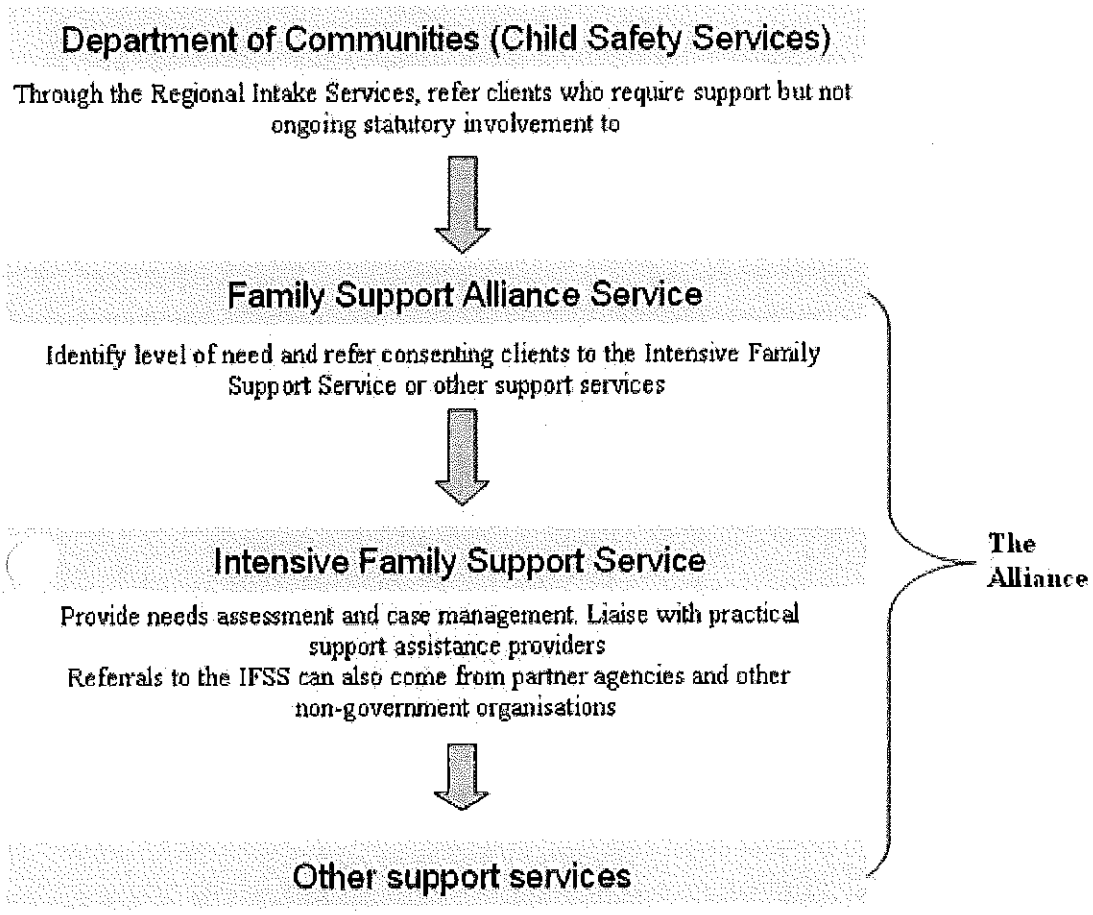
## What is the role of the Intensive Family Support services?

If the family has more than one need they would like assistance with, they may be referred to a non-government organisation called the Intensive Family Support Service.

The Intensive Family Support services will operate in three locations and receive referrals from Family Support Alliance services, Department of Education and Training, Queensland Health, Queensland Police Service and other non-government agencies.

The Intensive Family Support services will provide the following types of support:

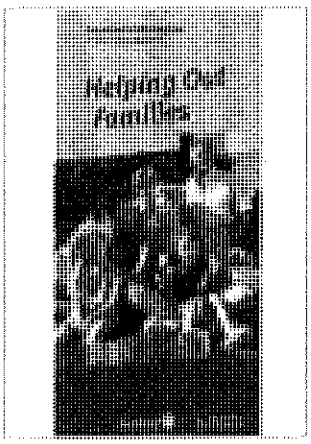
- practical in-home support, such as assistance with parenting, home management, budgeting, meal preparation and life management skills
- individual and family counselling
- referrals for families to specialist services, when required.




## Child Safety Services contact information

If you suspect a child is experiencing harm, contact Child Safety Services to report suspected child abuse (http://www.communities.qld.gov.au//childsafety/protecting-children/reporting-child-abuse).

### Download document



Helping Out Families (PDF, 460 KB) (RTF, 24 KB)

Last reviewed 8 March 2011
Last modified 10 August 2012

**WINANGAY**
*Supporting Aboriginal kids, families, communities and organisations*

## Welcome Winangay Resources

Winangay acknowledges and recognizes Aboriginal people as the traditional owners of Australia. We acknowledge and thank the Elders (past and present) for their wisdom and custodianship of this land. Australia, is, was and always will be Aboriginal land.

**We welcome you to Winangay's web pages**

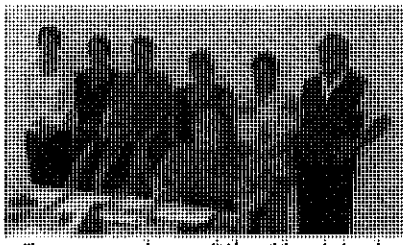
**Stronger ways with Aboriginal Kids and Families**

**WINANGAY Resources** have a new resource to assess and support **Existing Aboriginal Kinship Carers.** This website is designed to ensure people around Australia are aware of this new and innovative resource.

The assessment tool is culturally appropriate, strength based and rests on a strong foundatiou of Australian and international research. It has been developed to assess aud support existing kinship carers. Through a series of interviews it identifies carer strengths, concerns and unmet needs.

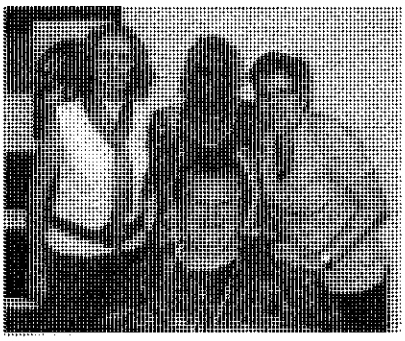
The tool was developed by a small team who were deeply concerned about the number of Aboriginal children in Out-of-Home Care and the lack of support for many kinship carers. The team was headed by Aunty Sue Blacklock and included both Paula Hayden and Gillian Bonser.

The project team worked collaboratively with an Aboriginal industry reference group of OOHC workers, ABSEC, and the NSW Children's Guardian.



Some members of the Aboriginal Reference Group

It also benefitted from the support of a number of key academics (including Dr Marilyn McHugh (UNSW) and Professor and Chair of Child Protection Marianne Berry – from the Australian Centre for Child Protection).



After a validation meeting in Sydney, January 2011From left to right: Professor and Chair of Child Protection Marianne Berry, Aunty Sue Blacklock, Paula Hayden, Seated: Gillian Bonser

### Why was the tool developed?

Kinship care is a culturally appropriate form of care and is part of the Aboriginal way. Many Aboriginal kinship carers have complex needs and face

competing challenges with a lack of adequate support services. Existing assessment tools did not meet Aboriginal kinship carer's needs. Many were designed for foster carers not kinship carers others were not culturally appropriate. This tool has been developed for **existing** carers, a tool for new kinsbip carers is under development.

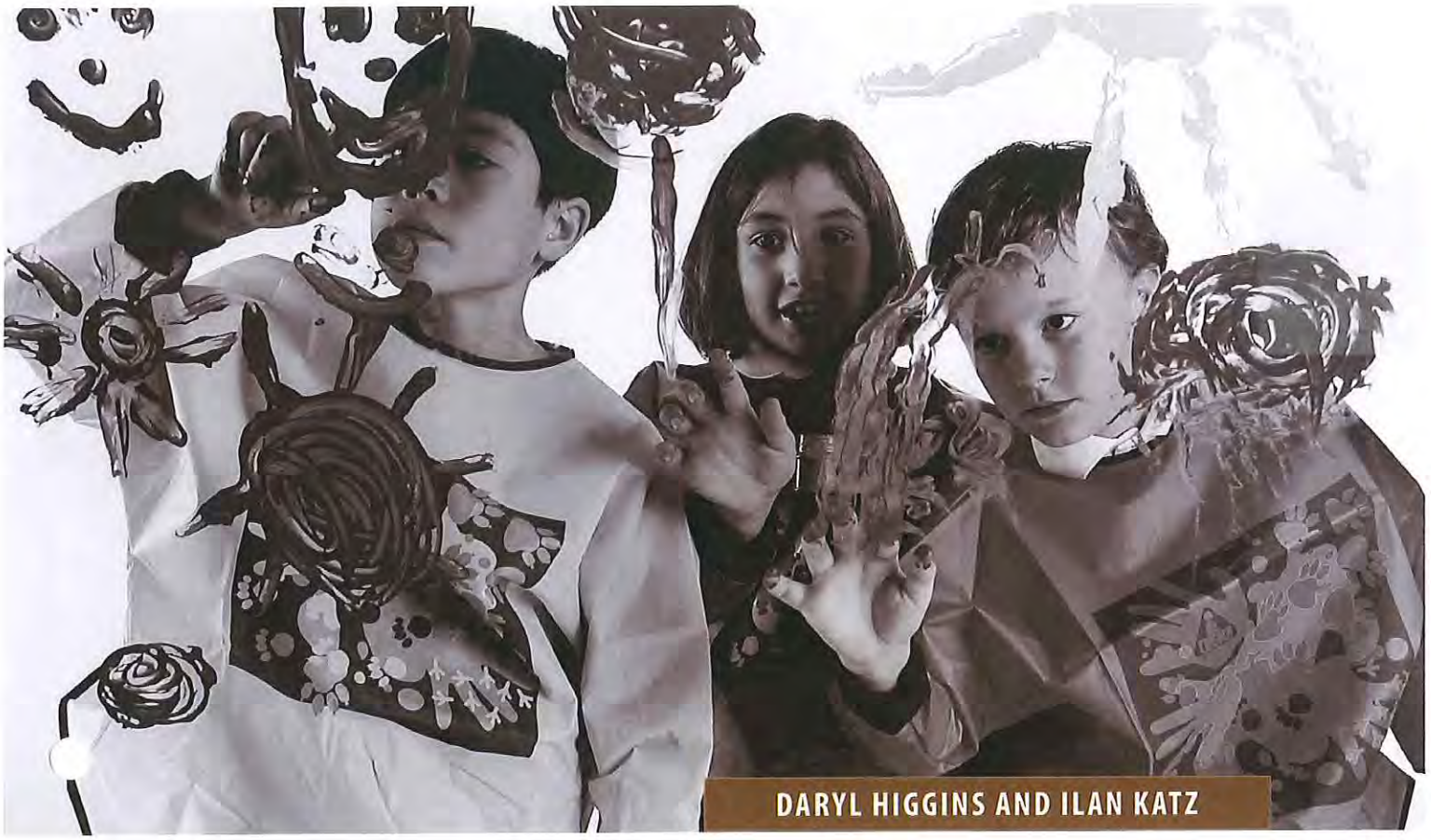
Australian Government
Australian Institute of Health and Welfare
Australian Institute of Family Studies
Closing the gap clearinghouse

# Item details

## Aboriginal child welfare, self-government and the rights of indigenous children: protecting the vulnerable under international law

This book examines the role of international law in assisting Indigenous child welfare reform. It reviews historical and current policies, laws and interventions aimed at Indigenous children in Australia and Canada, both colonial countries with similar legal systems, as part of a broader debate on self-determination, self-government, and human rights. Chapters include: The colonization of Aboriginal children and families; Reforming the Australian and Canadian child welfare systems: sensitization and accommodation; The promise and risks of Aboriginal self-government over Aboriginal child welfare; The right to self-government and protecting the vulnerable: balancing rights under Canadian constitutional law; Indigenous peoples, self-determination and self-government in international law; and Protecting the vulnerable within the framework of self-determination.

**Author(s)**
Harris-Short, Sonia
**Source**
Farnham, England: Ashgate, 2012.
**Document type**
Book
**Subject(s)**
Child welfare, Children, Comparative studies, Government, Intervention, Children's rights, Aboriginal child removal, Law, Self determination, Indigenous Australians, History, Indigenous people
**Location(s)**
Australia;Canada



DARYL HIGGINS AND ILAN KATZ

# Enhancing service systems for protecting children

## *Promoting child wellbeing and child protection reform in Australia*

### *Introduction*

During the past decade there has been a shift, internationally, in child protection policy and practice towards greater recognition of the importance of preventive, family-focused support (see Lonne, Parton, Thomson, & Harries, 2009). This change reflects ongoing efforts to re-conceptualise child protection practice within a broader child welfare orientation. In Australia, the United States (US) and the United Kingdom (UK), policies and programs that focus on the welfare needs of families at an earlier stage of intervention have been introduced. Preventive and early intervention initiatives target vulnerable children and families, and aim to reduce the need for statutory social services intervention and, consequently, child welfare costs. Secondary support programs such as Sure Start (UK), Healthy Families (US), the Stronger Families and Communities Strategy and Brighter Futures (Australia) have been created partly in response to a vast body of literature that affirms the value of early intervention (see, for example, Brookes-Gunn, Berlin, & Fuligni, 2000; Keating & Hertzman, 2000; McCain & Mustard, 2002). Research shows that early intervention can be effective, and that efforts to reduce known risk factors and strengthen protective factors can achieve desirable preventive effects for children and families (Stern, 2002).

Another strand of research has been concerned with developing and improving the child protection system itself. In particular, a range of assessment tools have been developed—some of them are more broadly focused on need (such as the UK Framework for the Assessment of Children in Need and Their Families (Department of Health, 1999) while others are much more focused on risk assessment (such as the Structured Decision Making [SDM] system). These tools have been developed with the aim of better identifying those children who are at risk of being abused (or re-abused) and/or ascertaining the services that will best address the risk (D'Andrade, Austin, & Benton, 2008).

There is also an emerging evidence base for intensive therapeutic interventions such as Intensive Foster Care Treatment and Multisystemic Therapy, which have been developed to help abused and neglected children recover from their experiences (Barber & Delfabbro, 2004).

Despite the increase in preventive services, improvements in knowledge about better "filtering" of cases into the child protection system and improvements in our understanding of which interventions are effective, there has been growing recognition that the basic approach to statutory child protection services in Australia is itself flawed (Scott, 2006).

### *Problems in Australia's statutory child protection system*

As outlined by a number of researchers, practitioners and commentators (e.g., Bromfield & Higgins, 2005; Bromfield & Holzer, 2008a, 2008b; Cashmore, Scott, & Calvert, 2008; O'Donnell, Scott, & Stanley, 2008), there are many challenges facing child protection systems:

- There have been increasing numbers of notifications in most jurisdictions, which places great strain on the system's ability to effectively assess and process them.

- There are relatively few substantiations compared to the number of notifications, resulting in an inefficient use of resources and large numbers of families being unnecessarily drawn into the child protection system.
- Resources are being devoted almost entirely to investigation and assessment, with a concomitant lack of resources for prevention and treatment.
- Families in the statutory child protection system (i.e., families where child abuse or neglect has been substantiated) and families where there is no substantiation but high levels of need receive few or no services to address their needs.
- Higher numbers of children in out-of-home care are displaying increasing levels of behavioural and emotional difficulties, with fewer resources available to meet their needs. In particular, there is an increasing difficulty in recruiting and retaining foster carers.
- There is low morale among practitioners, leading to high levels of staff turnover and significant gaps in services.
- There are inadequate mechanisms for interagency and multidisciplinary work, leading to fragmentation, lack of planning and poor communication.
- There is a lack of trust in the statutory child protection service by clients, the general public, politicians and the media, leading to regular criticism of these services, constant restructures and a risk-averse culture that further undermine their ability to engage in positive work with families.
- Planning and development is being driven by public inquiries, most often arising out of media attention on specific severe incidents, such as child deaths or discovery of a paedophile ring, rather than responding to the real needs of the bulk of vulnerable children. Even some of the inquiries have begun to recognise that child protection systems are too focused on investigation rather than prevention (e.g., the *Little Children are Sacred* report, Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007).
- Timeframes and processes for the investigation of sexual abuse allegations are not consistent with data about the way in which children make disclosures of sexual abuse (e.g., Alaggia & Kirsenbaum, 2005), which may explain in part the decreasing proportion of all reports to statutory child protection services in Australia that relate to sexual abuse. People may choose not to notify when they believe the result will be counterproductive, and child protection workers may instead record the harm type as "emotional abuse" rather than the more difficult to prove "sexual abuse". This creates problems for intersecting systems, such as the Family Court and criminal courts, who rely on child protection or joint police investigations (see Higgins, 2007).
- Many families have been subject to multiple notifications, sometimes for several different types of child maltreatment (chronic maltreatment). Authorities now recognise the cumulative harm from ongoing exposure to lower levels of abuse or neglect, even if a single event does not satisfy the criteria for statutory intervention (Bromfield, Gillingham, & Higgins, 2007).
- Children themselves have little input into decision making about their involvement in the system.

### *Substantiation of child protection cases*

A report by the South Australian Department for Families and Communities (Hirte, Rogers, & Wilson, 2008) describes the results of a longitudinal statistical analysis of their database, in which they looked at contact with the South Australian child protection system in a cohort of children born in 1991. Of the 19,622 live births in 1991, 4,410 (22.5%) had been the subject of at least one child protection notification up to January 2007 (with 13,813 notifications in total having been made regarding these children). But in turn, the concern was substantiated for only 24.9% of these children (or 5.6% of the total birth cohort, i.e., 1,097 children). Other jurisdictions have reported similar figures. For example, in his "Director-General's message" in the *Annual Report 2006/07* for the NSW Department of Community Services (2007), Dr Shepherd stated: "The statistical probability is now that one in every five children in NSW will be reported to DoCS at some point before they turn 18 years of age" (p. 9).

High levels of statutory child protection activity might be justifiable if it could be demonstrated that children actually benefited from their contact with the system. Although many children are rescued from dangerous circumstances, unfortunately there is increasing evidence that involvement in the statutory system can have significant adverse effects on children and families.

The process of investigating allegations of child abuse can be extremely traumatic for children and families, especially if—as is commonly the case—it does not lead to sustained intervention or support for families and children. Currently, less than 1 in 5 notifications (18.9%) to

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child protection departments across Australia are substantiated (Australian Institute of Health and Welfare [AIHW], 2007), with the gap between notifications and substantiations growing each year (in 1999, 23.1% were substantiated, dropping to 18.9% in 2006). The majority of these "unsubstantiated" cases are not malicious referrals, but relate to families with support needs that do not meet child protection criteria. This gap demonstrates the need for new ways of responding to community and professional concerns about children's safety and wellbeing and the need for better supports for families at risk of poor parenting, child abuse or neglect. This is particularly evident in Indigenous communities, with a six-fold over-representation of Indigenous children in the statutory child protection system (AIHW, 2007).

#### *Out-of-home care outcomes*

There is also increasing evidence that children in out-of-home care are often at risk of poor outcomes, and sometimes subject to further abuse. This has undermined confidence in the removal of children from birth families as being a successful protective intervention. The Australian experience—particularly the Stolen Generations, but also the experiences of children transported from the UK and the many enquiries into institutional abuse, the most recent being the Children in State Care Commission of Inquiry by Ted Mullighan, which examined allegations of child sexual abuse in South Australia (Mullighan, 2008)—should make us even more sensitive to the difficulties of out-of-home care as a substitute for family care. However, the alternative to removal—that is, intensive, evidence-based interventions with families over long periods—is seldom offered to families in the statutory child protection system, let alone those families at high risk who are seeking help but are not yet involved in the statutory system (see Lonne et al., 2008).

## Changing the child protection system

An important insight from the research evidence is that effective protection of children must rely on interagency cooperation at all levels. This involves not only multidisciplinary teams "on the ground", but also joint planning and decision making at the local level between different government stakeholders, such as community services, and health and education departments. It is also crucial that government departments at both the Commonwealth and state/territory levels collaborate to provide a range of programs. Increasingly, policy makers are turning towards a whole-of-population "public health" response to child protection, as opposed to a narrowly focused system concerned with investigation and assessment. However, responses also need to be based on community-identified needs, using community engagement models to ensure cultural appropriateness and engagement as well (e.g., see Lonne et al., 2008; O'Donnell et al., 2008; Scott, 2005).

Although there are now many policy makers, researchers and practitioners who are convinced that a public health model should be implemented, there is still considerable debate as to what the model should consist of, and also how Australia should move from the current system to the new one.

Current practice in Australia is to develop early intervention programs within an overarching child protection framework. These programs have some value, and there is an increasing body of research showing that some well-designed and implemented programs can reduce the likelihood of abuse for those families who receive their services (Holzer, Higgins, Bromfield, Richardson, & Higgins, 2006). However, even the most successful early intervention programs can only have a very limited impact on the child protection system as a whole. Research from the UK suggests that significant structural and cultural change is needed; an emerging finding indicates that social workers cannot make significant changes to their practice—that is, move from a forensically focused, investigative-driven "child protection" orientation to a "family support" orientation—without greater clarity in procedural guidance, significant training and support (Spratt, 2001). Cooper, Hetherington, and Katz (2003) identified three principles that should underpin such cultural changes: trust, professional authority and negotiation.

The implications of these findings and of anticipated radical changes for managers and practitioners in Australia are very significant. But how would it be possible to create a system that (a) incorporates a broad, whole-of-population child welfare perspective, (b) is economically efficient, and (c) can make a real and lasting impact on the wellbeing of vulnerable children and families?

Any change to the current systems in Australia requires an analysis of:

- policy and practice within the child protection and statutory intervention field, particularly knowledge of key drivers and trends in the area of child protection, policy, practice and statistics in each jurisdiction;
- the political and social context of systems to prevent child abuse and neglect, including child welfare legislation and policy, especially in relation to child protection; and
- the existing research base in relation to child protection, early intervention and broader child and family welfare systems, particularly family law, mental health, drug and alcohol, homelessness, and other service sectors that are part of the broader network of protecting children and preventing child abuse and neglect.

## Holistic approaches to child protection and child wellbeing

It is important not just to look at the child protection systems in each state and territory in Australia, but also at the wider range of services and supports that form or can be drawn into a holistic approach to the prevention of child abuse and neglect that integrates primary, secondary and tertiary prevention. As outlined in Holzer et al. (2006):

- primary or universal interventions are strategies to reduce risk factors for maltreatment that are targeted at whole communities;
- secondary interventions target families who are "at risk" for child maltreatment; and
- tertiary interventions seek to reduce the long-term implications of maltreatment that has occurred, and prevent recurrence.

Some of the broader social policy contexts around childhood include:

- public health (including mental health, disability, maternal and child health services, etc.);
- housing and homelessness (including refugee resettlement services);
- education;
- domestic violence, juvenile sex offenders, crime prevention and justice system responses;
- drug and alcohol and other adult-focused services;
- Indigenous health and social services;
- child care and early childhood services;
- employment and income security; and
- family law and family relationships services.

These wider social issues and broader service systems intersect with the protection of children and prevention of harm. For example, overcrowding can be a major stressor for families, and for some this can lead to parents feeling hopeless and frustrated. This in turn can lead to abusive or neglectful behaviour towards their children. Without addressing the housing issue, it is unlikely that any work on parenting or family relationships will be successful. Similarly, the connection between child abuse and substance misuse is well known, but many services for adult substance abusers are not child-friendly and therefore parents who misuse substances are dissuaded from accessing them. If drug and alcohol services were able to offer discrete services for parents, many child protection issues could be prevented (Dawe, Harnett, & Frye, 2008).

The challenge for these services is that child protection is not their "core business", and often the families who are at risk of involvement in the statutory child protection system are not high priorities for their services. Only by working together in a multidisciplinary way can these services really come together to protect children.

In May 2008, the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) circulated a discussion paper for consultation, *Australia's Children: Safe and Well—A National Framework for Protecting Australia's Children* (FaHCSIA, 2008). As well as documenting the nature of the current problems in child protection systems, it identifies six key themes that could form part of a national framework:

- a stronger prevention focus;
- better collaboration between services;
- improved responses for children in care and young people leaving care;
- improved responses to Indigenous children;
- attraction and retention of the right workforce; and
- improved child protection systems.

This is a welcome development and offers the opportunity for Australia to become the pioneer for new ways of protecting children and supporting vulnerable families. The discussion paper is particularly to be commended because of the holistic approach it envisages, linking prevention and early intervention with improved systems for child protection and to improvements in the workforce. Nevertheless, the risk still exists that the high level of coordination that is needed for the different initiatives may not eventuate. Such coordination is difficult, as it requires significant funding, cooperation and agreement across the levels of government, as well as with local communities and service delivery organisations. The title of the discussion paper, *Australia's Children: Safe and Well*, also points to the need to look beyond the narrow issues of child protection, but to the broader issues of children's wellbeing.

One of the central planks of policy reform is a solid research base with which to identify and understand current problems and to examine possible solutions. As part of its role in being a central hub for research and information on child protection issues, the National Child Protection Clearinghouse at the Australian Institute of Family Studies has been undertaking a range of projects focusing on national issues, including comparing the various systems, identifying commonalities in approaches, and examining issues regarding the comparability of data (e.g., Bromfield & Higgins, 2005; Bromfield & Holzer, 2008a). The clearinghouse also holds a range of audits identifying the breadth of research and programs in the area that can be drawn on to improve services and systems, including:

- an Australian audit of child abuse and prevention programs (Tomison & Poole, 2000);
- an audit of child protection research (Higgins, Adams, Bromfield, Richardson, & Aldana, 2005);
- an audit of out-of-home care research (Cashmore & Ainsworth, 2004); and
- a systematic review of key findings from the out-of-home care research audit (Bromfield & Osborn, 2007).

Many of the key issues that emerge from these audits and analyses have been summarised by Cashmore, Higgins, Bromfield, and Scott (2006), and developed further in the Issues Paper published by the National Child Protection Clearinghouse, in which a framework for a child protection research agenda was put forward (Bromfield & Arney, 2008).

It is important to also look backwards and see where we have come from. In particular, one of the most formative documents in Australian child abuse prevention history is a strategy put out by the then National Child Protection Council, titled *Preventing Child Abuse: A National Strategy* (Calvert, 1993).

Recognising that the protection of children is not only a statutory activity of state/territory governments, but part of the responsibility of the broader Australian community, it is important to consider ways of enhancing the ability of communities to keep children safe and well. This is of particular importance in Indigenous communities, not only because of the over-representation of Indigenous children in statutory child protection activity, but because of the potential for community-owned and community-led initiatives to support the health, wellbeing and safety of Indigenous children in culturally safe ways (see Higgins, 2005).

In recent years, there has been a number of child protection inquiries in jurisdictions in Australia and overseas. Reports from these inquiries are important because, as well as exposing mistakes, they also influence policy reform and the organisation of services. Howitt (1992) even argued that child protection systems have followed an

evolutionary progression along a path constructed and reconstructed from inquiry report recommendations. These reports highlight the reactive nature of policy development, system design and service provision. Some, such as the Northern Territory's *Little Children are Sacred* report (Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007), paint a stark picture of how far we still have to go in the process of reforming our supports for families, our efforts to prevent abuse, the statutory processes for intervention, and the supports and responses for victims. Some have argued that controversies over the statutory response to sexual abuse in particular—such as in Cleveland in the UK—have failed to deliver better outcomes for victims, and that when compared with estimates of the prevalence of sexual abuse, we are still only uncovering the tip of the iceberg through our current systems (Bacon, 2008).

## Conceptualising systems for protecting children

There have been growing calls for the use of a public health model as a lens with which to critique the various systems, and to provide an opportunity for identifying gaps and opportunities for integration. (For a discussion of the application of a public health approach to child maltreatment prevention programs, see Holzer et al., 2006; Scott, 2006.)

As well as considering child protection in its narrowest sense (i.e., systems that respond to allegations of child abuse and neglect) as the core of the system, such statutory responses need to be considered within the context of broader systems to support vulnerable children and families. This includes programs and systems that are child-focused, family-focused and community-focused (Holzer et al., 2006). In turn, these systems need to be considered in the context of the cultural and economic constraints of the communities in which they operate.

Australia—along with most other English-speaking developed countries—has learned from others' experiences when developing its child protection systems. However, comparison and integrated critiques across service sectors and state/territory jurisdictional boundaries is inherently difficult. Similarly, international literature reviews pose special difficulties when drawing lessons for the Australian context. Countries vary in terms of their social structures, their legislative base, institutional infrastructure, and linguistic and cultural profile. In addition, the organisation of child protection services and welfare orientations vary within and across countries. Despite these differences, there is growing international interest in the comparative analysis of child welfare systems and services (see, for example, Cameron & Freymond, 2006; Gilbert, 1997; Hetherington, 1998; McDonald, Harris, & Wintersteen, 2003). Such comparisons are made easier by what Spratt and Devaney (2008) argued is a "common conceptual language of social work"—a discourse that relates to identifying and meeting the needs of children and families. Spratt and Devaney maintained that this commonality of language enables comparative analysis—a goal considered especially important given that globalising tendencies in the field of economic and social policy are currently challenging services to meet the needs of families with multiple problems who require long-term help.

It is timely that in its discussion paper, FaHCSIA (2008) called for an examination of prevention and early intervention services and how these can integrate with tertiary intervention services to reduce the vulnerability of children. However, acknowledging that there needs to be more service integration and more prevention is not enough. It is vital to conduct research in order to understand why services are currently so fragmented and why so few services are devoted to prevention and early intervention.

Fundamental to bringing about change in the area of children's safety and wellbeing is developing an understanding of the current organisational and systemic issues in child protection systems in Australia, including:

- organisational cultures, climates and values;
- the social contexts of organisations;
- methods and practices involved in bringing about change;
- the effects/problems of partial change (e.g., new policy, resources and staff); and
- issues in implementing policy and procedural changes to practice frameworks and organisational cultures (i.e., changing staff mindsets/mental models).

The emergent literature that uses systems theory and models of systems change to transform human services delivery highlights the complexity of bringing about change (Emshoff et al., 2007). In particular, the more recent theorising indicates that it is important not only to understand the interactions between the different parts of the system and the underlying root causes for the way in which the system behaves (i.e., to understand why it is that the system functions in the way it does, not just to identify how it should change), but to recognise the organic rather than mechanistic nature of complex systems (e.g., Ford, 2007; Foster-Fishman, Nowell, & Yang, 2007). This latter point is particularly important because policy makers often assume that system change fundamentally involves the technical process of implementing the reorganisation of structures, processes and resources. This is, in part, because these are the components of the

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system that are easiest for bureaucrats to change; fundamental cultural change is much more complex, long-term and subjective.

Currently, Australia faces a number of opportunities for organisational culture change within its eight state-based statutory child protection services. One such cultural issue relates to the beliefs and practices in statutory child protection services that are preoccupied with risk management, even where it is identified that such a focus precludes practitioners from engaging with families. For example, critiques of Western child protection practice, emerging largely from UK social work researchers, have used the "risk society" discourse as an explanatory framework for the pre-occupation with "risk" (Cooper et al., 2003; Kemshall, 2002; Parton, 2006; Spratt, 2001), and sociological labour market theory to critique what has been termed the "bureaucratisation" of social work (Howe, 1992). These critiques suggest that a focus on risk management is a defence mechanism and that child protection practice has become a superficial response that is more about throughput and "checklists" than understanding or responding to the complex needs of families.

The shift towards a risk management approach has primarily been attributed to organisational restructuring along principles of economic rationalism (Howe, 1992) and management responses that have seen individual caseworkers as scapegoats for systemic failures (Munro, 1999). However, there is research suggesting that restructuring alone will not turn the tide, as risk management has become a key tenet of practice (Spratt, 2001; Lonne et al., 2008); thus, cultural change is needed within statutory services to bring the focus back to the strengths and needs of families (Bromfield & Holzer, 2008b).

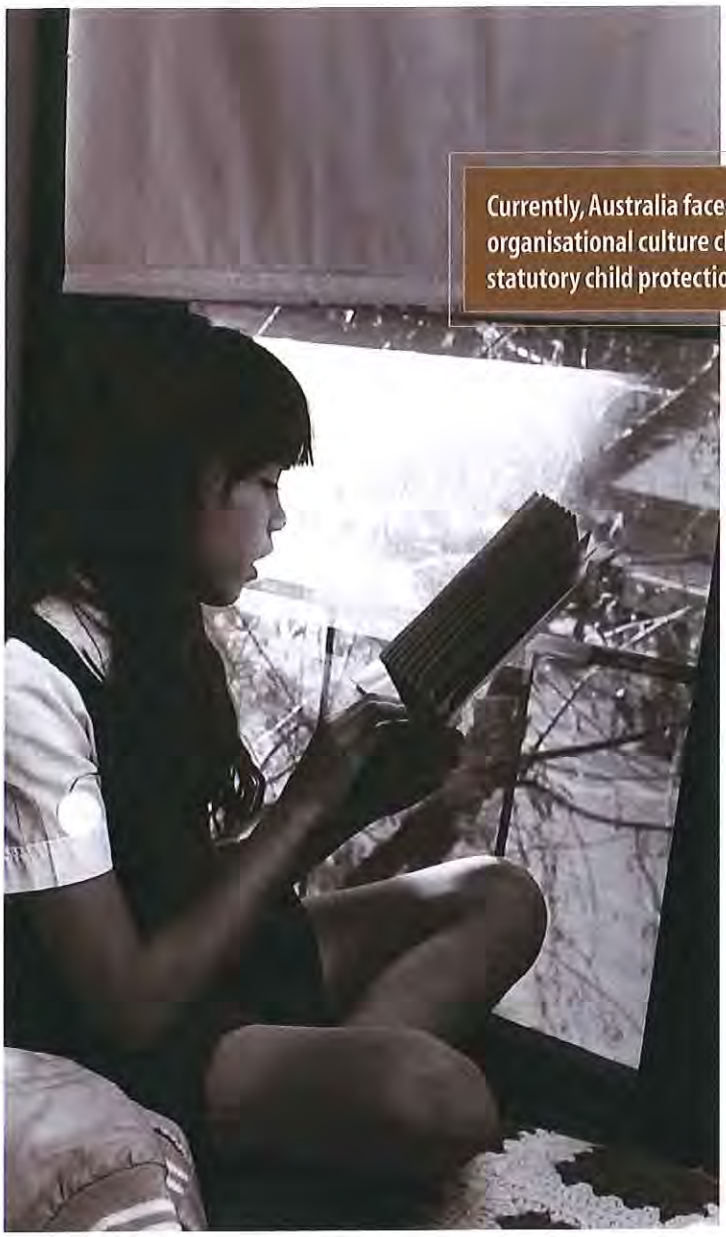
Spratt's (2001) research suggests that a change in cognitive framing—at the micro level of the social worker—is required for an authentic and enacted shift in practice. However, comprehensive change will have to be undertaken on a number of different levels, including:

- legal changes (e.g., to state laws describing the grounds for intervention and which govern the nature of the statutory response);
- structural changes to state and Commonwealth child welfare/community services and other human services departments, and to the relationships between government and NGOs;
- policy changes (e.g., thresholds and mechanisms for reporting, data sharing protocols, etc.);
- practice guidance; and
- workforce development, including changes to training, recruitment and retention.

Although it is now well recognised that any new system needs to be underpinned by a significant cultural change, the processes by which this can occur will be complex and challenging. Most people who enter the "helping" professions do so in order to support and assist children and families; they are not motivated by a desire to undertake risk assessments and investigations. Thus, a move to a more supportive and less forensic culture within child protection systems should resonate with the ethos of those working in the system. However, the basic drivers of the system tend to push practitioners, managers and policy makers towards increasingly risk-averse and bureaucratised processes. This development is caused by a number of factors. Perhaps the most important of these drivers is the consistently negative media attention directed towards child protection and community service departments, either for being over-zealous or for not intervening in serious cases (the so-called "damned if they do, and damned if they don't" syndrome). This attention from the media often leads to the appointment of commissions of inquiry that, in the past, have tended to recommend ever tighter regulation and more highly bureaucratic responses to child abuse. Unfortunately, the fact that the systems that have developed have been based largely on examinations of unusual and severe cases has had a distorting effect on both the structure and the culture of the system.

The complexity of these issues is illustrated by the example of one of the key structural components of the current child protection system in most English-speaking countries—mandatory reporting. Although every state and territory in Australia (as well as the US and Canada) has some form of mandatory reporting, the specifics of who is mandated to report, what is reported, how the reporting takes place and the consequences of reporting differ between states and territories (Higgins, Bromfield, & Richardson, 2007). Many current commentators believe that mandatory reporting, although historically a valid policy, has lost its usefulness to the child protection system and has become counterproductive (Lonne et al., 2008). Melton (2005), for example, pointed out that the policy was developed when it was believed that child abuse was very rare. Now that it is recognised that child maltreatment is a common phenomenon, mandatory reporting is no longer serving its purpose because it merely inundates the statutory child protection system with inappropriate referrals. Melton argued further that the mandatory reporting rules in most states in the US simply differentiate between "abuse" and "non-abuse", and take no cognisance of children's wider needs or their views. On the other hand, Mathews and Bross (2008) argued strongly that mandatory reporting is necessary and is justified on practical, ethical and cost-effectiveness grounds. They acknowledged that a large number of children are not helped by the current system, but argued that this is because of inappropriate procedures, poor practice and inadequate resources to cope with the children who are reported, rather than the reporting itself. This debate highlights the complex combination of policies, structures, processes, laws, resources and behaviours that make up the current system, and the challenges to any attempt to improve or reformulate it. Changing only one aspect of the system (e.g., modifying or repealing the mandatory reporting laws) will only have a marginal impact on the system as a whole.

One of the difficulties with the child protection system is that it covers such a wide range of behaviours and situations; much wider than any public health program. While still being holistic, the system must also be able to deal with (and help to prevent) a diverse range of situations, including young babies who are being neglected by their parents, teenagers being sexually abused by sports coaches, parents suffering from acute stress due to job loss, families in chronic poverty and chaos, and so on. This makes it very difficult to develop reliable prevention, assessment and intervention methodologies for the whole spectrum of child abuse and neglect, let alone a comprehensive and holistic system of child welfare and family support.



**Currently, Australia faces a number of opportunities for organisational culture change within its eight state-based statutory child protection services.**

In addition to cultural, structural and process changes, there needs to be a significant injection of resources into services for children and families at all levels of need. Without this investment it is unlikely that structural or even cultural changes will have much effect. Of course, some savings will ultimately be made by diverting resources from protection to prevention, but this may take some time, and these shifts of resources are unlikely to fully fund the range of programs needed to significantly raise the wellbeing of children and families. Another important element to fundamental change is that it will need to be driven by strong political support. Because of the media attention being given to child protection, it is vital that large-scale reforms to the system have the full support not only of professionals and policy makers, but politicians across jurisdictions must also be committed to the change. Without political drive and leadership, it will be nearly impossible to make significant changes to the operation of the system. Politicians must expect and prepare for the media to blame them and their reforms for any unfortunate child deaths or other serious incidents that occur while reforms are underway.

Ultimately all these changes need to lead to a different type of engagement between front line caseworkers and the children and families who come into contact with the child protection/child welfare systems. Therefore, systems change strategies for identifying and changing cognitive frameworks are needed, including discourse processes (such as critical reflection, examination, discussion) that engage staff in ongoing opportunities to recognise and change their mindsets.

## Conclusion

While there is need for and significant benefits to be gained from such systems change, it is important to recognise the potential disruption that structural change can bring to organisations, and the costs of fundamental change (e.g., losing valuable expertise and human capital). Many of the child protection systems around the world have been subject to significant structural changes, causing much pain and disruption without necessarily achieving significant improvements in services. Thus, we agree with Lonne et al. (2008) that the process of change needs to be incremental rather than revolutionary, and that it should involve consultation and deliberation along the way but should not lose focus from the ultimate goal.

It is therefore important that those involved in changing the child protection system in Australia should have a clear vision of what the future system should be like, but equally that they should learn the lessons from other countries about the issues to do with the process of change, in particular the barriers and facilitating factors for systemic cultural change. It is equally important that politicians—and ultimately the public—are committed to these changes.

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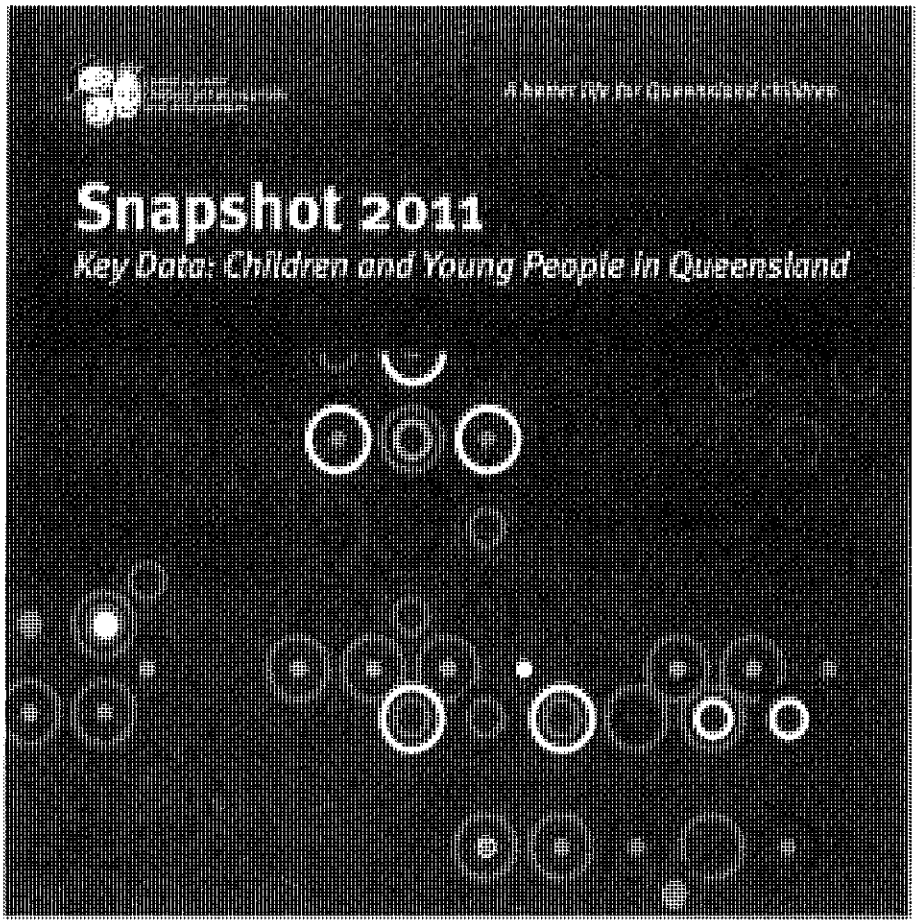

A better life for Queensland children
Snapshot 2011
Key Data: Children and Young People in Queensland

## Commissioner's introduction

The Commission is continuing its work to promote and protect the rights and interests of children and young people in Queensland. In 2011-12, the Commission will specifically focus on:

- strengthening targeted and early intervention support for families, children and young people in order to address risk factors and potentially prevent children and young people entering the child protection system
- advocating for stronger supports for young people transitioning from the child protection system
- directly engaging with children and young people to hear their views of issues that affect their safety and wellbeing
- advocating for the removal of 17 year olds from adult correctional facilities and treating them in accordance with the provisions of the *Youth Justice Act 1992*, and
- advocating for improved outcomes for Aboriginal and Torres Strait Islander children and young people, particularly in the areas of child protection, health and education.

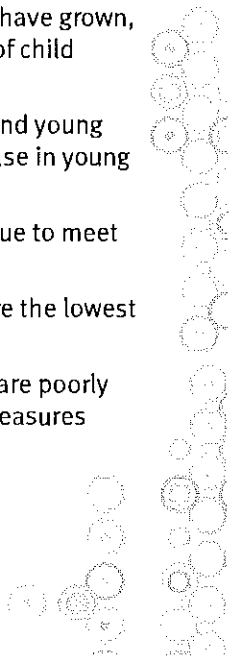
Elizabeth Fraser
**Commissioner for Children and Young People and Child Guardian**

## Summary

*Snapshot 2011: Children and Young People in Queensland* identifies key trends and current issues that affect the health, safety and wellbeing of Queensland's children and young people.

The key findings from *Snapshot 2011* include:

- the numbers of children coming to the attention of the Department of Communities (Child Safety Services) have grown, although there have been declines in the numbers of child protection notifications and substantiations
- there has been a growth in the number of children and young people in out-of-home care, with a significant increase in young people living in residential care
- the majority of students in Years 3, 5, 7 and 9 continue to meet the minimum standards in reading and numeracy
- the rates of sexual offences against young people are the lowest recorded in eight years, and
- Indigenous children and young people continue to fare poorly on a range of safety, health, education and social measures compared to Queensland averages.



## Demographics

At June 2010, there was an estimated ***1,088,000 children and young people*** aged 0–17 years in Queensland, making up almost one-quarter (24.1%) of the state's population.

- 604,300 children were aged 0–9 years.
- 483,700 young people were aged 10–17 years.

***Aboriginal and Torres Strait Islander*** children and young people aged 0–17 years made up 44.2% of the Indigenous population at June 2009, as compared to 23.6% of the non-Indigenous population:

- 39,200 Indigenous children were aged 0–9 years
- 30,000 Indigenous young people were aged 10–17 years
- 6.5% of all children and young people aged 0–17 years in Queensland were Indigenous, although Indigenous people made up only 3.6% of the total population.

In 2006, 7.2% of Queensland children and young people aged 0–17 years were ***born overseas*** and a similar proportion (6.9%) spoke a language other than English at home:

- New Zealand was the most common overseas birthplace (31.4% of all Queensland children and young people born overseas)
- 7.4% of Aboriginal and Torres Strait Islander children spoke an Australian Indigenous language as their main language at home.

### *Families*

- In 2007, the large majority (79.2%) of Queensland families with children aged under 17 years included two parents.
- 70.9% of families with children aged under 17 years were intact couple families.
- 20.5% of families with children under 17 years were in lone parent families.
- Of the 224,000 children aged under 17 years with a natural parent living elsewhere, around one-half (50.9%) saw their non-resident parent less than once per month, including 39.5% who saw them less than every six months or never.

## Health risk factors

In 2006-07, only a small proportion of babies in Queensland were ***breastfed exclusively*** for the recommended six months (9.5% at five months). While exclusive breastfeeding was relatively uncommon, large proportions of children received some breast milk at two (53.1%) and five (41.4%) months.

The current national ***immunisation*** targets are to have 95.0% of children fully vaccinated at 12 months, 2 years and 5 years of age. In 2010:

- 92.1% of children were fully vaccinated at 12 months of age
- 92.4% of children were fully vaccinated at 2 years of age
- the proportion of children fully vaccinated at 5 years of age was 89.6% up from 81.4% in 2008.

The National Secondary Students ***Diet and Activity*** Survey 2009-10 showed:

- only 15.0% of students in Years 8 to 11 met the minimum daily physical activity requirements every day
- male students (21.8%) were considerably more likely to meet the requirements than female students (8.3%)
- a higher proportion of students in rural areas (17.8%) met the requirements compared to those in metropolitan areas (13.7%).

### *Alcohol and drug use*

- Since 1998, the rate of illicit drug use for 14–17 year olds has generally declined; although there was a slight increase from 2007 (10.2% for males, 15.3% for females) to 2010 (13.3% for males, 15.7% for females).
- A considerable minority (11.2% of males, 8.6% of females) of young people aged 16–17 years were classified as risky or high risk drinkers in 2010.
- 17.6% of young people aged 12–17 years had smoked in the preceding year; however, the proportions of committed smokers were much lower for both males and females.

### *Sexual behaviour*

- More than one-half (56.1%) of Year 12 students in 2008 reported having experienced sexual intercourse, up from 46.8% in 2002.
- A considerable gender gap was evident in the proportions of Year 12 students reporting being sexually active (61.7% for females, 44.4% for males).
- The proportions of young people practicing unsafe sex continue to decline, with the rates of both males and females reporting using no contraception considerably lower in 2008 (0.2% of males and 0.2% of females) than in 2002 (8.8% of males and 9.9% of females).

## Health conditions

In 2009, 7.1% of Queensland babies were born with a ***low birth weight*** and 8.8% were born ***prematurely*** before 37 weeks gestation.

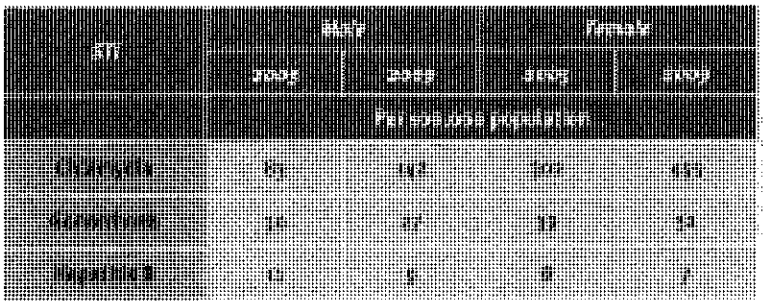
The rate of new cases of Type 1 diabetes reported in children in Queensland remained stable in 2008 (23.2 children per 100,000 population in Queensland) and was similar to the Australian rate (22.8 per 100,000 population in Australia).

In 2007-08, 14.4% of children and young people in Australia aged 0–14 years experienced ***mental health and behavioural problems***, the most common being behavioural and emotional problems with usual onset in childhood/adolescence (5.9%).

Factors that influence the ***mental health*** of children and young people include:

- physical health and development
- social and psychological development
- the quality and consistency of relationship with parents
- genetic factors
- social norms that influence child rearing, and
- social disadvantage, including access to resources.

The rates of diagnoses of some ***sexually transmitted infections*** (STIs) have declined over the past five years; however, improved screening has seen the overall rates of diagnoses of Chlamydia steadily increase for young people.



The leading injury-related cause of ***hospitalisation*** for the majority of 0–14 year olds in 2009-10 was a fall. For 15–19 year olds, transport incidents were the leading cause (604 per 100,000 young people).

## Health conditions

## Early childhood

***Early childhood*** is a critically important stage in a child's development. Parents and carers play an integral role in this stage through participation in informal learning activities.

Most children aged 0–8 years have a parent or carer who is actively involved in ***informal learning activities***, such as telling stories, reading books, playing music, singing songs and playing sport or other games.

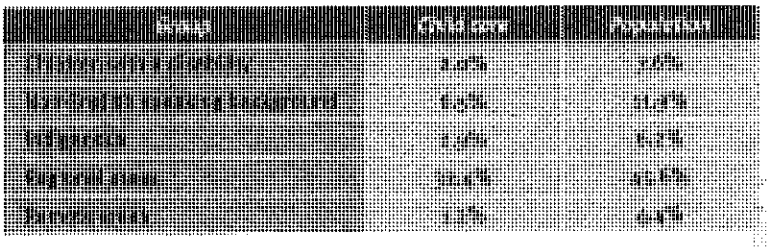
### *Child care*

- Around 300,000 children in Queensland aged 0–12 years had regular child care arrangements in 2008 (41.6% of children aged 0–12 years).
- Research shows that quality child care has strong developmental benefits for vulnerable children, such as those in out-of-home care.

### *Government approved child care*

- More than one-quarter (28.8%) of children aged 0–12 years were cared for in a government approved child care service in 2010.
- There were moderate declines in the average hours per week children spent in government approved child care services between 2008 and 2010.

- Government approved child care services were less likely to be accessed by several demographic groups:



The Preparatory Year of schooling ***(Prep)***, a non-compulsory early education program which enhances early learning and assists children to transition to Year 1, is universally available for children in Queensland. In 2010, there were an estimated 58,359 Prep students enrolled in schools across Queensland.

The first national rollout of the ***Australian Early Development Index*** in 2009 indicated the majority of Queensland children were making progress in adapting to their first year of formal schooling. However, significant proportions of children were developmentally vulnerable or at risk in at least one area, including social competence (29.2%), emotional maturity (28.5%), language and cognitive skills (39.0%) or communication skills (27.4%).

## Education

The new ***National Curriculum*** for all school students is currently being phased in. The curricula for English, mathematics, science and history have been endorsed for Prep to Year 10 and are to be implemented in 2012-13.

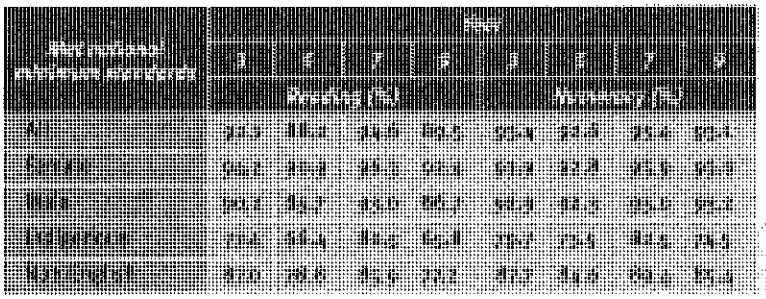
In 2010, there were 731,617 full-time and part-time ***students*** enrolled in 1,702 schools across Queensland.

The ***rate of full-time enrolments*** for male students increased in 2010 and approached parity with the rate for females, particularly for students aged 15–17 years. The rate for Indigenous students, however, remained lower than that of their non-Indigenous peers.

Queensland's Year 12 ***retention rate*** was 82.5% in 2010. The rate was higher for female students (86.0%), but lower for male (79.2%) and Indigenous (62.3%) students.

The National Assessment Program was introduced in 2008 for all Year 3, 5, 7 and 9 students in Australia. As part of this program, ***national minimum standards*** in reading, writing and numeracy were established.

Results for Queensland students in 2010 were:



Compared with 2009, greater proportions of Year 3 and 7 students in Queensland met both the ***reading and numeracy standards*** in 2010.

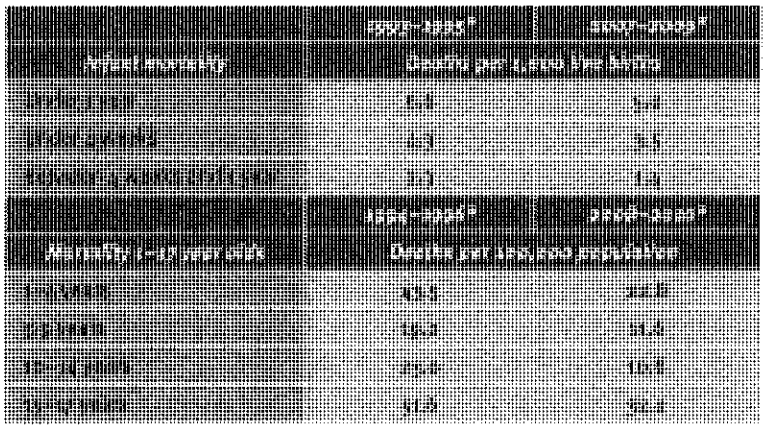
The majority of students across Years 3, 5, 7 and 9 met the minimum standards in reading and numeracy. Across all year levels and both subject areas, females were most likely to reach the benchmark. ***Indigenous*** students and students from ***non-English speaking backgrounds*** were less likely to reach the benchmark.

The proportion of Year 12 completers eligible to receive an ***Overall Position*** score continues to decrease, from 72.7% in 2003 to 58.9% in 2010.

The number and rate of short (one to five days) and long (six to 20 days) ***school suspensions*** increased in 2009-10. Short suspensions were most commonly applied for physical (32.8%) and verbal (23.2%) misconduct.

## Child deaths

While there has been some fluctuation from year to year, the general trend over the past 15 years has been of ***declining child mortality rates*** across all age groups.

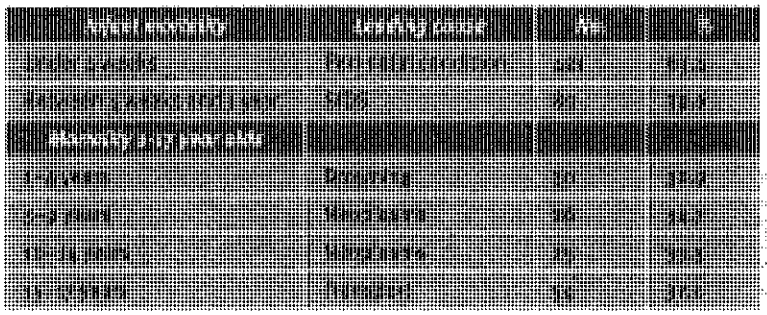


* *rate averaged over 3 years*

***SIDS*** mortality rates are considerably lower than 15 years ago, decreasing from 1.05 deaths per 1,000 live births in 1993-1995 to 0.37 deaths in 2007-2009. Recorded deaths from SIDS made up 7.1% of all infant deaths in Queensland in 2007-2009.

### *Causes of death*

The leading causes of death by age group in 2008-2010 were:



***External causes of death***, such as drowning, transport incidents and suicide, accounted for more than one-half (55.9%) of all deaths of children and young people aged 1–17 years in Queensland in 2008-2010. Transport-related deaths were the leading cause of death among 15–17 year olds and the second leading cause for 1–4, 5–9 and 10–14 year olds.

Males generally experience ***higher mortality rates*** compared with females, particularly in relation to transport incidents, drowning and suicide.

Deaths caused by ***suicide*** for females have remained relatively stable, while suicides for males have fluctuated somewhat over time. The male suicide rate has been greater than the rate for females for the entire period 1994-2010.

## Child deaths

## Child protection

Some ***measures of child protection activity*** continued to decrease in 2009-10:

- 21,885 notifications of harm of children (down from 23,408 in 2008-09)
- 6,922 cases of substantiated harm of children (down from 7,315 in 2008-09)
- 4,287 children were in need of protection (down from 4,397 in 2008-09).

The overall numbers of ***intakes*** have steadily risen from 70,126 (28,511 notifications and 41,615 child concern reports) in 2006-07 to 101,365 (21,885 notifications and 79,471 child concern reports) in 2009-10. The growth in intakes was predominantly in ***child concern reports.***

The proportion of children engaged in ***ongoing intervention*** has also been trending upwards, increasing by 38.0% over the past three years.

While substantiations declined in 2009-10, this decline was greatest for ***non-Indigenous*** children, meaning a further widening of the over-representation of ***Indigenous*** children in this area.

***Substantiations*** are considerably more common among children aged four years and under (7.8 per 1,000 in 2009-10) than children of other ages, for example 15–17 year olds at a rate of 2.2 per 1,000.

***Referral for Active Intervention (RAI)*** services are funded by the Department of Communities and provide family support for children and families assessed as having medium to high complex needs and at risk of entering the child protection system. An evaluation of RAI released in 2010 showed:

- 1,428 families received support through RAI in 2008-09
- the average engagement duration was 5.5 months
- the frequency of contact with the child protection system was reduced for families across all of the RAI locations
- the families with the highest proportion of presenting factors and functioning challenges at entry to RAI showed the greatest degree of improvement.

The Department of Communities' ***Helping Out Families*** provides intensive case management services to children and families at risk of entering the statutory child protection system. The initiative is being trialled in three locations and will be evaluated in 2014.

## Out-of-home care

On 30 June 2010, 7,809 Queensland children aged 0–17 years were ***living away from home***, an increase from 7,590 at 30 June 2009:

- 56.3% were in foster care (compared to 56.3% in 2009)
- 30.6% were with relatives or kin (compared to 31.3% in 2009)
- 7.3% were in residential care (compared to 5.8% in 2009)
- 5.9% were in other care (compared to 6.5% in 2009).

***Indigenous*** children had a rate (41.5 per 1,000) of living in out-of-home care that was over eight times greater than the rate for non-Indigenous children (4.9 per 1,000) at 30 June 2010.

Despite an expanding out-of-home care population, ***Matters of Concern***, which represent potential harm of a child in their placement, have decreased from a peak of 892 in 2008-09 to 794 in 2009-10.

The Commission's ***Views of Children and Young People in Foster Care 2010*** and ***Views of Young People in Residential Care 2009*** showed most respondents:

- are happy in their care situation
- feel safe and well treated in their current placement
- are highly satisfied with their current carers

However, ***issues of concern*** identified include:

- a substantial proportion (36.6%) of children and young people worried about things most or all of the time and 44.5% worried a lot
- just under one-third (30.8%) indicated that permission is not often or never given in time to undertake activities and 46.8% felt that the types of activities for which permission is required are unreasonable, and
- while young people felt listened to by their carers, almost one-half (47.3%) indicated they rarely or never have a say in what happens to them.

Children and young people in out-of-home care are consistently less likely to meet ***minimum academic benchmarks*** than their peers across all year levels and subject areas tested under the National Assessment Program – Literacy and Numeracy.

### *Leaving care*

- 78.0% of children who exited care in 2009-10 had had three or fewer placements.
- 18.0% had had between four and six placements or between seven and nine placements (4.0%).
- A very small group of 13 children experienced ten or more placements prior to exiting care.
- Less than one-half (47.8%) of young people in care at 30 June 2010 aged 15 years and older participated in the development of a transition from care plan.

## Criminal justice system

### *Victims of crime*

- In 2009-10, there were 9,619 offences committed against victims aged 0–17 years, equating to a rate of 8.9 per 1,000.
- Rates of assault and sexual offences against victims aged 0–17 years were both higher in 2009-10 than in 2000-01; however, the rate of sexual offences in 2009-10 was lower than in any year since 2002-03.
- In 2009-10, males aged up to 17 years were more likely to be victims of offences such as assault, where as females were more likely to be victims of sexual offences.

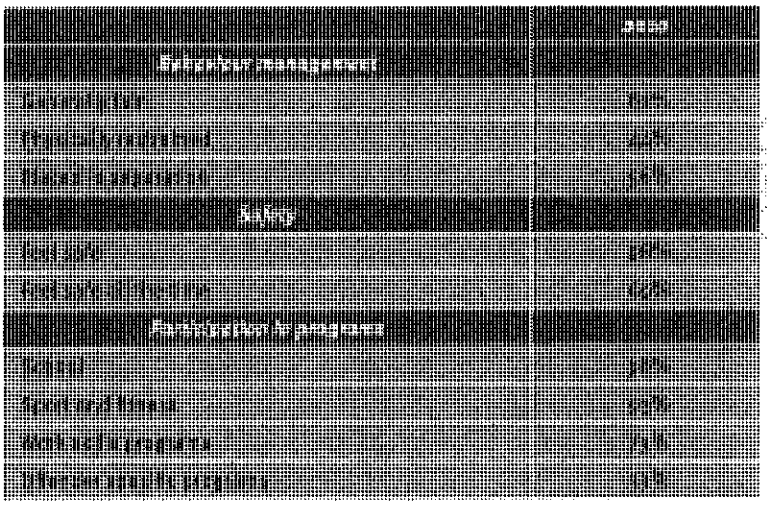
### *Youth offending*

- Property offences were the most commonly committed offences by young people aged 10–17 years in 2009-10.
- Offences against the person and other offences have remained stable with rates for 2009-10 of 9.5 per 1,000 and 32.6 per 1,000, respectively.
- Males and Indigenous youth were more likely to offend across all offence types.

In ***youth detention*** in Queensland in 2009-10:

- 843 young people aged between 10–16 years had been detained
- a small proportion (24.3%) of those detained were sentenced to a period of detention as opposed to being held on remand
- males were more likely to be detained, making up 84.1% of those spending time in detention.

As reported in the Commission's report ***Views of Young People in Detention Centres 2011,*** young people in detention reported the following views and experiences in relation to feeling safe, participation in programs and behaviour management:



There were ***35 seventeen year olds (32 males, 3 females) in adult prisons*** in Queensland at 30 June 2010. Queensland is the only state or territory that detains 17 year olds in prison.

The Commission continues to advocate to remove 17 year olds from adult correctional facilities and treat them in accordance with the provisions of the *Youth Justice Act 1992*.

## Criminal justice

## Indigenous disadvantage

***Aboriginal and Torres Strait Islander children and young people*** in Queensland continue to experience poor health, educational and social outcomes and are over-represented in the child protection and youth justice systems.

***Safety, health, education and social outcomes for many remain poor*** compared with Queensland averages.

| Outcome | Year | Indigenous | Non-Indigenous |
|---|---|---|---|
| [illegible] | [illegible][a] | [illegible] | [illegible] |
| [illegible] | [illegible][b] | [illegible] | [illegible][c] |
| [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] |
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| [illegible] | [illegible] | [illegible] | [illegible] |
| [illegible] | [illegible] | [illegible] | [illegible] |

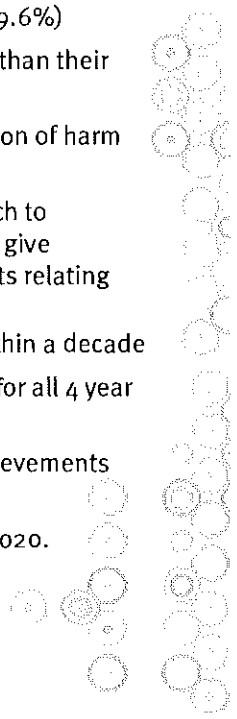
[a] *per 1,000 live births*
[b] *per 100,000 population*
[c] *per 1,000 population*
[g] *general Queensland rate*
[d] *at 30 June 2010*
[e] *met national minimum standards*
[f] *rate averaged over 3 years*

In addition, Indigenous children and young people:

- have a mortality rate due to SIDS that is 6.8 times the rate of non-Indigenous infants
- are up to five times more likely to die from suicide than non-Indigenous youth
- have significantly lower immunisation rates at 5 years of age (78.8%) compared with non-Indigenous children (89.6%)
- have lower school participation and retention rates than their non-Indigenous peers
- are 4.7 times more likely to be subject to a notification of harm than their non-Indigenous counterparts.

The Australian Government's ***Closing the Gap*** approach to Indigenous disadvantage identifies specific targets to give Indigenous Australians access to opportunities. Targets relating to children and young people are to:

- halve the gap in mortality rates for 0–5 year olds within a decade
- ensure access to quality early childhood education for all 4 year olds in remote communities within five years
- halve the gap in reading, writing and numeracy achievements for Indigenous children within a decade
- halve the gap in Indigenous Year 12 attainment by 2020.



**Indigenous**

## Future directions

In 2011–12, the Commission will:

- Promote the use of its unique data to inform policy and practice development and improve outcomes for children and young people.
- Engage with vulnerable children and young people by:
  - continuing Community Visitor visits to children and young people in foster and residential care and detention centres
  - receiving, investigating and resolving complaints made by or on behalf of young people in the child protection and youth justice systems, and
  - surveying young people on their views of living in foster and residential care and detention centres.
- Report on the wellbeing of children and young people through the Commission's key reports, including:
  - *Snapshot*
  - *Child Guardian Report — Child Protection System*
  - *Views of Children and Young People in Foster Care*
  - *Views of Young People in Residential Care*
  - *Views of Young People in Detention Centres*
  - *Deaths of Children and Young People Annual Report, and*
  - *Child Guardian Report — Youth Justice System.*

- Work with key stakeholders to develop a leaving care study.
- Promote strategies to reduce child deaths, for example, through the Commission's Keeping Country Kids Safe and Reducing Youth Suicide in Queensland initiatives, and progressing work to establish national benchmarks for risks associated with child deaths.
- Undertake follow-up advocacy to influence action on removing 17 year olds from adult correctional facilities and treating them in accordance with the provisions of the *Youth Justice Act 1992*.
- Work in partnership with other agencies and regulated service providers to maintain safe service environments for children by administering the blue card system.
- Advocate for improved outcomes for Aboriginal and Torres Strait Islander children and young people and release the Indigenous Child Placement Principle Audit Report 2010.
- Work collaboratively with external service providers to obtain further data to enhance the Commission's ability to monitor the provision of quality services to children and young people in Queensland.

Further information on issues, trends, and data limitations, together with full references, can be found in *Snapshot 2011: Children and Young People in Queensland.*

commission for
children and young people
and child guardian

This publication and the full report are available on the Commission's website at www.ccypcg.qld.gov.au

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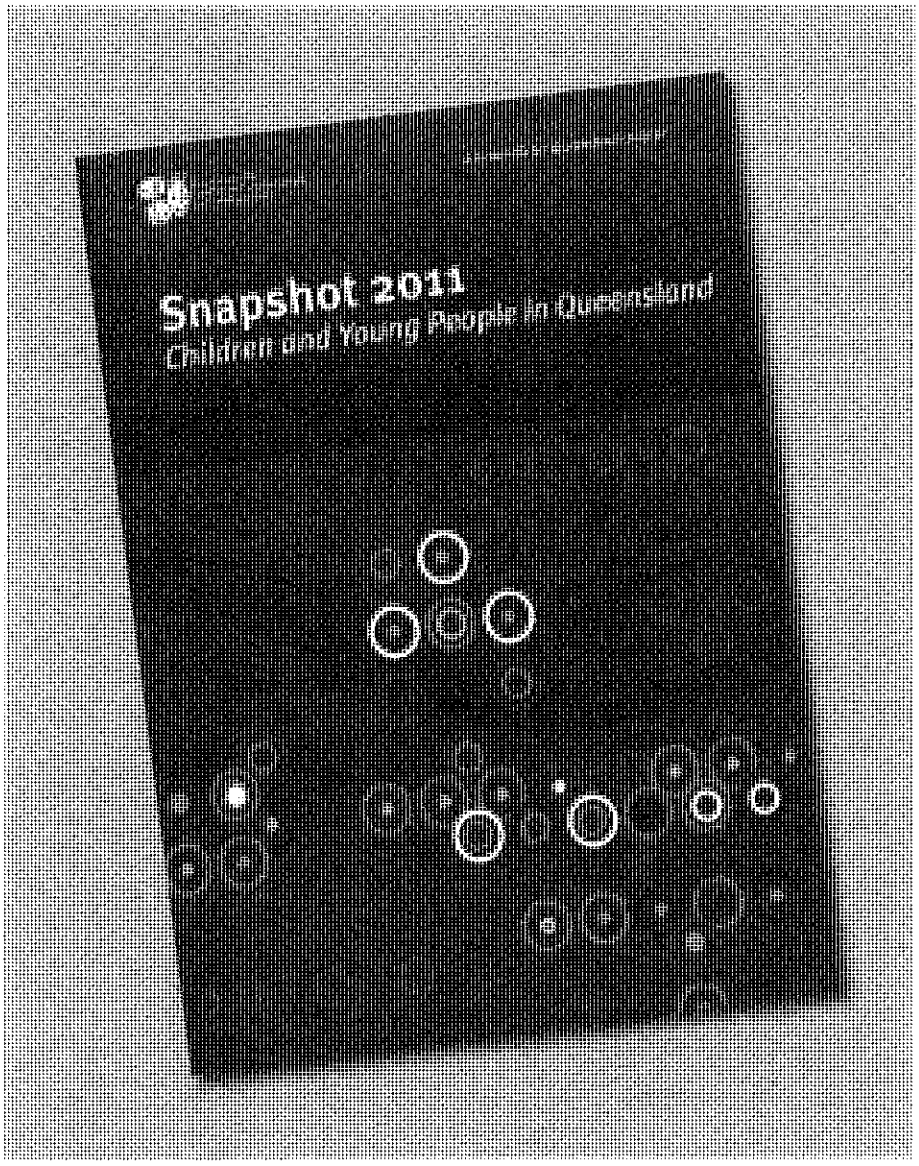
Snapshot 2011
Children and Young People in Queensland

For more information about the Commission
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(07) 3213 4700
or 1800 688 275
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www.ccypcg.qld.gov.au
Email:
info@ccypcg.qld.gov.au

**Table S.1Q: Substantiations and children subject to a substantiation, by Indigenous status, Queensland**

| Measure | Year ending 30 June 2011 | Year ending 30 September 2011 | Year ending 31 December 2011 | Year ending 31 March 2012 |
|---|---|---|---|---|
| Substantiations | | | | |
| Indigenous | 1,972 | 2,087 | 2,074 | 2,125 |
| Non-Indigenous [a] | 4,626 | 4,759 | 5,088 | 5,329 |
| **Total** | **6,598** | **6,846** | **7,162** | **7,454** |
| Children subject to a substantiation [b] | | | | |
| Indigenous | 1,731 | 1,831 | 1,815 | 1,864 |
| Non-Indigenous [a] | 4,210 | 4,311 | 4,568 | 4,833 |
| **Total** | **5,941** | **6,142** | **6,383** | **6,697** |

Source: Department of Communities, Child Safety and Disability Services

Notes:

1. Counts notifications recorded during the reference period, where an assessment has been finalised and the investigation outcome was recorded as substantiated within two months after the end of the reference period.

(a) Includes non-Indigenous children and those whose Indigenous status is unknown or not stated.
(b) If a child is subject to more than one substantiation in the period, the child is counted only once.

Refer to the glossary for definitions of data items contained in this table.
Refer to the table notes for definitions and changes to data over time.

**Table ST.1Q: Children subject to short-term child protection orders, by Indigenous status, Queensland**

| Indigenous status | 30 June 2011 | 30 September 2011 | 31 December 2011 | 31 March 2012 |
|---|---|---|---|---|
| Indigenous | 1,659 | 1,704 | 1,735 | 1,727 |
| Non-Indigenous [(a)] | 2,409 | 2,409 | 2,372 | 2,403 |
| **Total** | **4,068** | **4,113** | **4,107** | **4,130** |

Source: Department of Communities, Child Safety and Disability Services

Notes:

(a) Includes non-Indigenous children and those whose Indigenous status is unknown or not stated.

Refer to the glossary for definitions of data items contained in this table.

Refer to the table notes for definitions and changes to data over time.

**Table OI.1: Children subject to ongoing intervention, by ongoing intervention type and Indigenous status, Queensland**

| Ongoing intervention type | Indigenous status | 30 June 2008 | 30 June 2009 | 30 June 2010 | 30 June 2011 |
|---|---|---|---|---|---|
| Intervention with Parental Agreement | Indigenous | 460 | 949 | 905 | 744 |
| | Non-Indigenous [a] | 1,030 | 1,872 | 1,675 | 1,212 |
| | **Total** | **1,490** | **2,821** | **2,580** | **1,956** |
| Child Protection Order | Indigenous | 2,185 | 2,657 | 2,933 | 3,147 |
| | Non-Indigenous [a] | 4,757 | 5,169 | 5,093 | 5,224 |
| | **Total** | **6,942** | **7,826** | **8,026** | **8,371** |
| **Total** | Indigenous | 2,596 | 3,606 | 3,838 | 3,891 |
| | Non-Indigenous [a] | 5,667 | 7,041 | 6,768 | 6,436 |
| | **Total** [b] | **8,263** | **10,647** | **10,606** | **10,327** |

Source: Department of Communities

Notes:

1. Includes children subject to intervention with parental agreement or a child protection order. If a child is subject to both intervention with parental agreement and a child protection order (such as an order directing a parent's actions), they are counted only once as a child protection order.
2. Prior to 2010-11 reporting, an audit and cleansing of intervention with parental agreement records in the Integrated Client Management System (ICMS) took place. This included closing down historical records where a child was no longer subject to intervention with parental agreement. As a result, data reported for 30 June 2011 and onwards is not comparable to previous years.

(a) Includes non-Indigenous children and those whose Indigenous status is unknown or not stated.

(b) In 2008, a child subject to both intervention with parental agreement and a child protection order was counted in both categories, but counted only once in the total.

Refer to the glossary for definitions of data items contained in this table.
Refer to the table notes for definitions and changes to data over time.

**Table LA.2Q: Children living away from home, by primary placement and Indigenous status, Queensland**

| Indigenous status/Primary placement | 30 June 2011 | 30 September 2011 | 31 December 2011 | 31 March 2012 |
|---|---|---|---|---|
| **Indigenous children** | | | | |
| Home-based care [(a)] | 2,605 | 2,639 | 2,738 | 2,772 |
| Residential care services | 245 | 242 | 248 | 252 |
| Other [(b)] | 202 | 215 | 209 | 195 |
| **Total Indigenous children** | **3,052** | **3,096** | **3,195** | **3,219** |
| **Non-Indigenous children [(c)]** | | | | |
| Home-based care [(a)] | 4,378 | 4,357 | 4,396 | 4,467 |
| Residential care services | 374 | 405 | 398 | 417 |
| Other [(b)] | 259 | 258 | 245 | 264 |
| **Total non-Indigenous children** | **5,011** | **5,020** | **5,039** | **5,148** |
| **All children** | | | | |
| Home-based care [(a)] | 6,983 | 6,996 | 7,134 | 7,239 |
| Residential care services | 619 | 647 | 646 | 669 |
| Other [(b)] | 461 | 473 | 454 | 459 |
| **Total all children** | **8,063** | **8,116** | **8,234** | **8,367** |

Source: Department of Communities, Child Safety and Disability Services

Notes:

(a) Home-based care includes placements with a foster carer, kinship carer or a provisionally approved carer.

(b) Other includes hospitals, Queensland youth detention centres and all other locations.

(c) Includes non-Indigenous children and those whose Indigenous status is unknown or not stated.

Refer to the glossary for definitions of data items contained in this table.

Refer to the table notes for definitions and changes to data over time.

**Table LT.1Q: Children subject to long-term child protection orders, by Indigenous status, Queensland**

| Indigenous status | 30 June 2011 | 30 September 2011 | 31 December 2011 | 31 March 2012 |
|---|---|---|---|---|
| Indigenous | 1,488 | 1,510 | 1,558 | 1,611 |
| Non-Indigenous [(a)] | 2,815 | 2,855 | 2,886 | 2,937 |
| **Total** | **4,303** | **4,365** | **4,444** | **4,548** |

Source: Department of Communities, Child Safety and Disability Services

Notes:

(a) Includes non-Indigenous children and those whose Indigenous status is unknown or not stated.

Refer to the glossary for definitions of data items contained in this table.

Refer to the table notes for definitions and changes to data over time.

E)

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# Transitions and Turning Points: Examining the Links between Child Maltreatment and Juvenile Offending

Anna Stewart

School of Criminology and Criminal Justice

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# Background to the research

- 2000 Criminological Research Council Grant
  - examining the links between child maltreatment and juvenile offending (DoF data)
- 2003 Criminological Research Council Grant
  - including police cautioning (QPS data)
- 2006-2008???? Australian Research Council Linkage grant with DoC, LAQ and OESR
  - linking juvenile and adult offending

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# Birth Cohort Study

- 1983 and 1984 birth cohorts
- All children had left the juvenile justice system
  - turned 10 in 1993 and 1994
  - turned 17 in 2000 and 2001
- Maltreatment
  - Child protection records (DoF)
    - notifications
    - substantiations and 'at risk'
- Offending
  - Cautioning records (QPS)
  - Juvenile Court records (DoF)
- Longitudinal design
  - Advantages
  - Disadvantages

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# Research Questions

- How many Queensland children born in 1983 and 1984 are maltreated and how many offend?
- Of maltreated children what proportion go on to offend?
- Of young offenders what proportion were maltreated?
- Can we predict offending from the maltreatment history?
- How many distinctive child maltreatment trajectories can be identified?
- Is there a relationship between these trajectories and offending as a juvenile?

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# Queensland Birth Cohorts (1983 and 1984)

- 82,100 births (52% male, 48% female)
- 100,600 17 year olds (51% male, 49% female)
- 4,500 Indigenous 17 year olds (4.4% of population)

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# Child Protection Records

- 9% of children born in 1983 and 1984 received at least one child protection notification (9,541)
  - 8% of non-Indigenous males
  - 9% of non-Indigenous females
  - 23% of Indigenous males
  - 25% of Indigenous females
  - max notifications was 33

- 5% of children received an outcome of substantiated or 'at risk' (5,849)
  - 5% of non-Indigenous males
  - 5% of non-Indigenous females
  - 16% of Indigenous males
  - 17% of Indigenous females
  - max substantiated was 18
  - 62% of notified children had at least one outcome of substantiated or at risk

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# Offending Records

- 15% of young people born in 1983 and 1984 received a police caution (14,730)
  - 20% of males
  - 10% of females
- 6% of young children born in 1983 and 1984 had at least one finalised appearance for an offence (5,235)
  - 7% of non-Indigenous males
  - 2% of non-Indigenous females
  - 39% of Indigenous males
  - 13% of Indigenous females
  - max finalised appearances was 31
  - 8% of appearances outcome not guilty
- a total of 17% of Queensland children have come to the attention of the police for offending (caution and court)
  - 24% of males
  - 11% of females

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# Of children who are maltreated what percentage appear in the juvenile justice system (caution or court)?

- 27% of children with substantiated maltreatment offend
  - of maltreated Indigenous males 54% offend
  - of maltreated Indigenous females 29% offend
  - of maltreated non-Indigenous males 23% offend
  - of maltreated non-Indigenous females 9% offend
- 21% children with only unsubstantiated notifications offended
- 16% children no contact with child protection system offended

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# Of young people who offend (caution or court) what percentage have been maltreated?

- of young people cautioned 7% have been maltreated
  - 9% girls
  - 6% boys
- of young people in court 20% have been maltreated
  - 37% indigenous girls
  - 23% Indigenous boys
  - 26% non-Indigenous girls
  - 16% non-Indigenous boys

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# Summary of findings

- There is a relationship between maltreatment and offending
  - maltreated children are more likely to appear in the JJ system than children for whom there is no evidence of maltreatment
  - however, the majority of maltreated children do not offend
- What is it about the maltreatment experience the increases the likelihood of offending?

# Developmental or Life Course Criminology

- development of offending and antisocial behaviour
- the timing of risk factors
- developmental effects of life events

- focus on the differential impact of life experiences at different times of the developmental timeline
  - not just the presence of risk factors
  - relationship between risk and protective factors
  - life phases and transitions

# Trajectory analysis

- Land and Nagin (1993) developed Semiparametric Group Based Method (SPGM) statistical technique
- Used within criminology to identify distinctive clusters of offending patterns over time
- For example
  - Farrington et. al. (1987)
    - 'Frequents' and 'Occasionals'
  - Moffitt et. al. (1993)
    - 'Life course persistent' and 'adolescent-limited' offenders
- Group together 'similar' trajectories of offending
- Identify offender subgroups from the data rather than imposing ex ante definitions

# Research Questions

- Can we predict offending from a child's maltreatment history?
- How many distinctive child maltreatment trajectories can be identified?
- Is there a relationship between these trajectories and offending as a juvenile?

# Can we predict offending from a child's maltreatment history?

- Yes – the maltreatment experiences of maltreated children who offend are different from those who do not offend
- Predictive factors
  - age of final maltreatment
  - number of maltreatment incidents
  - experience of neglect and physical abuse
- Not predictive factors
  - age of first maltreatment
  - experience of sexual and emotional abuse

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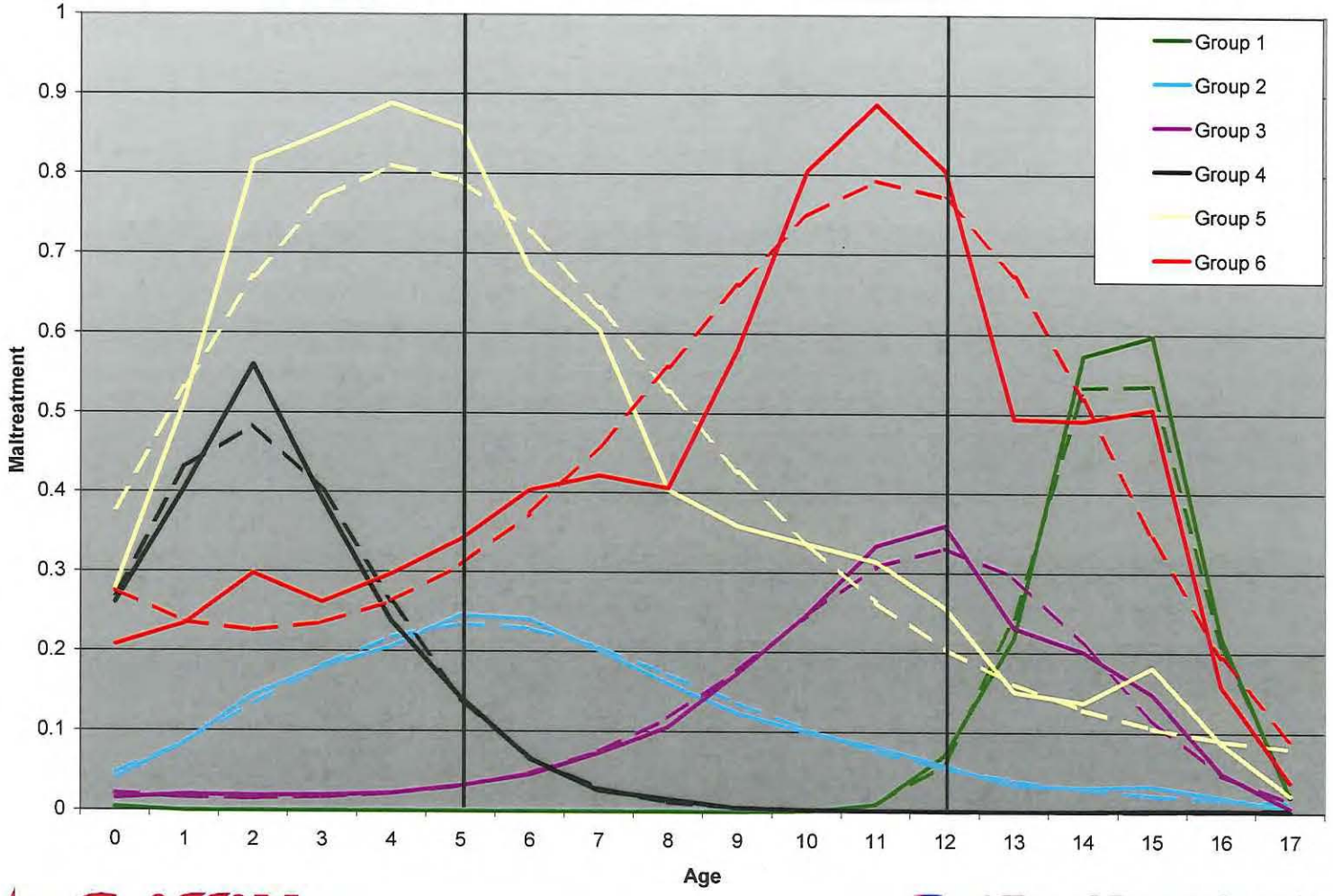
# Trajectory analysis

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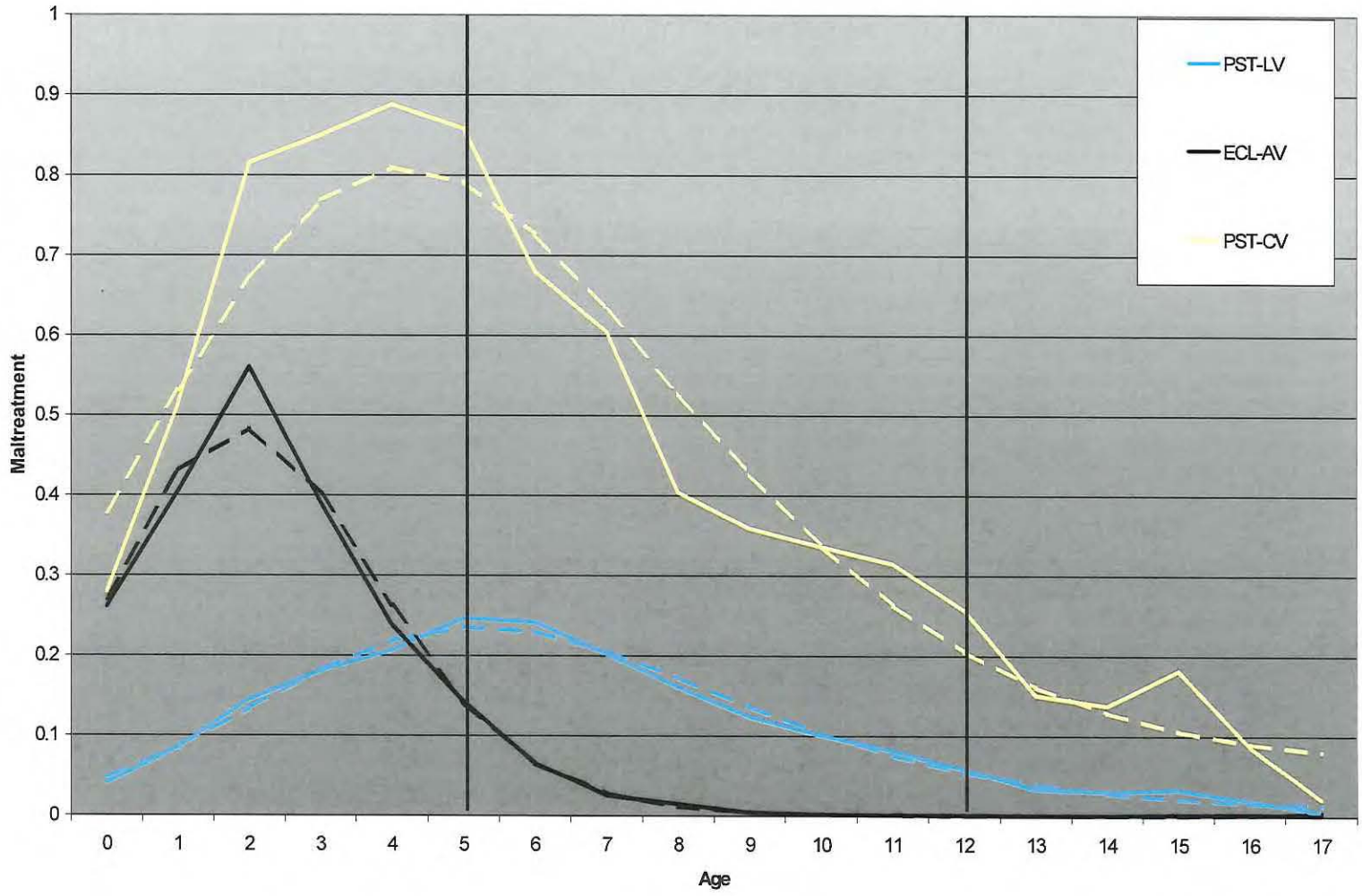
# Early peaking groups

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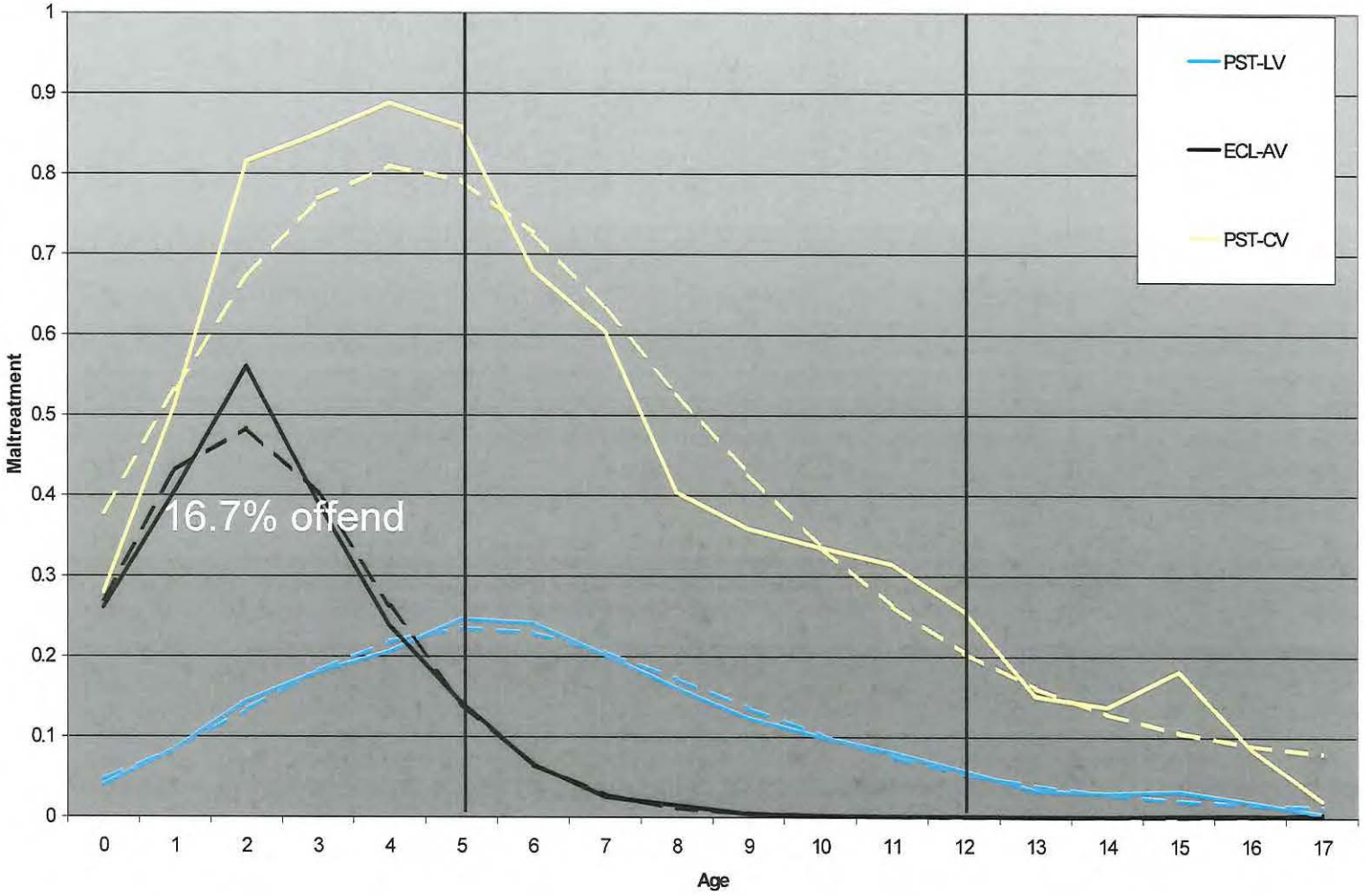
# Early peaking groups

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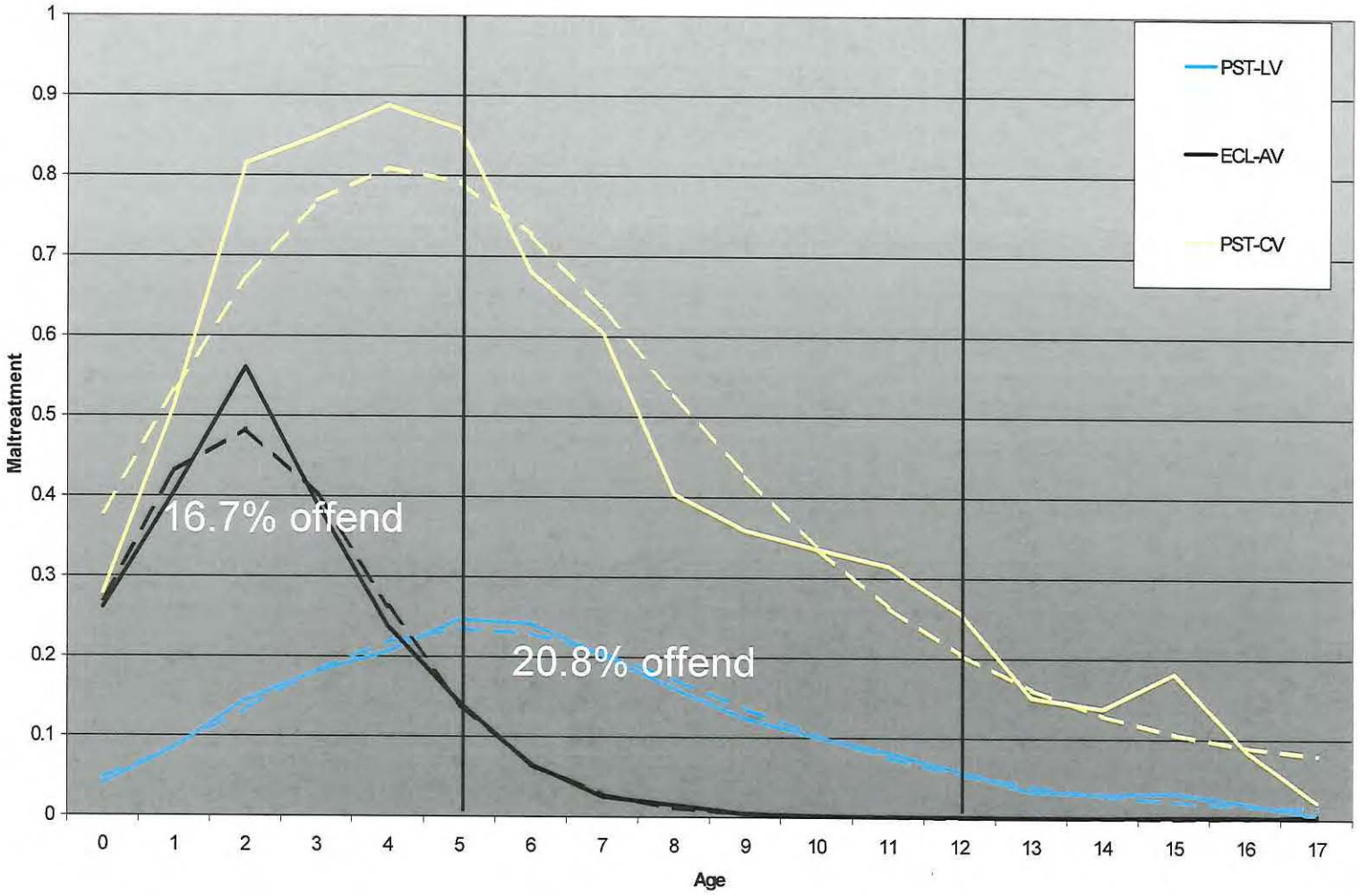


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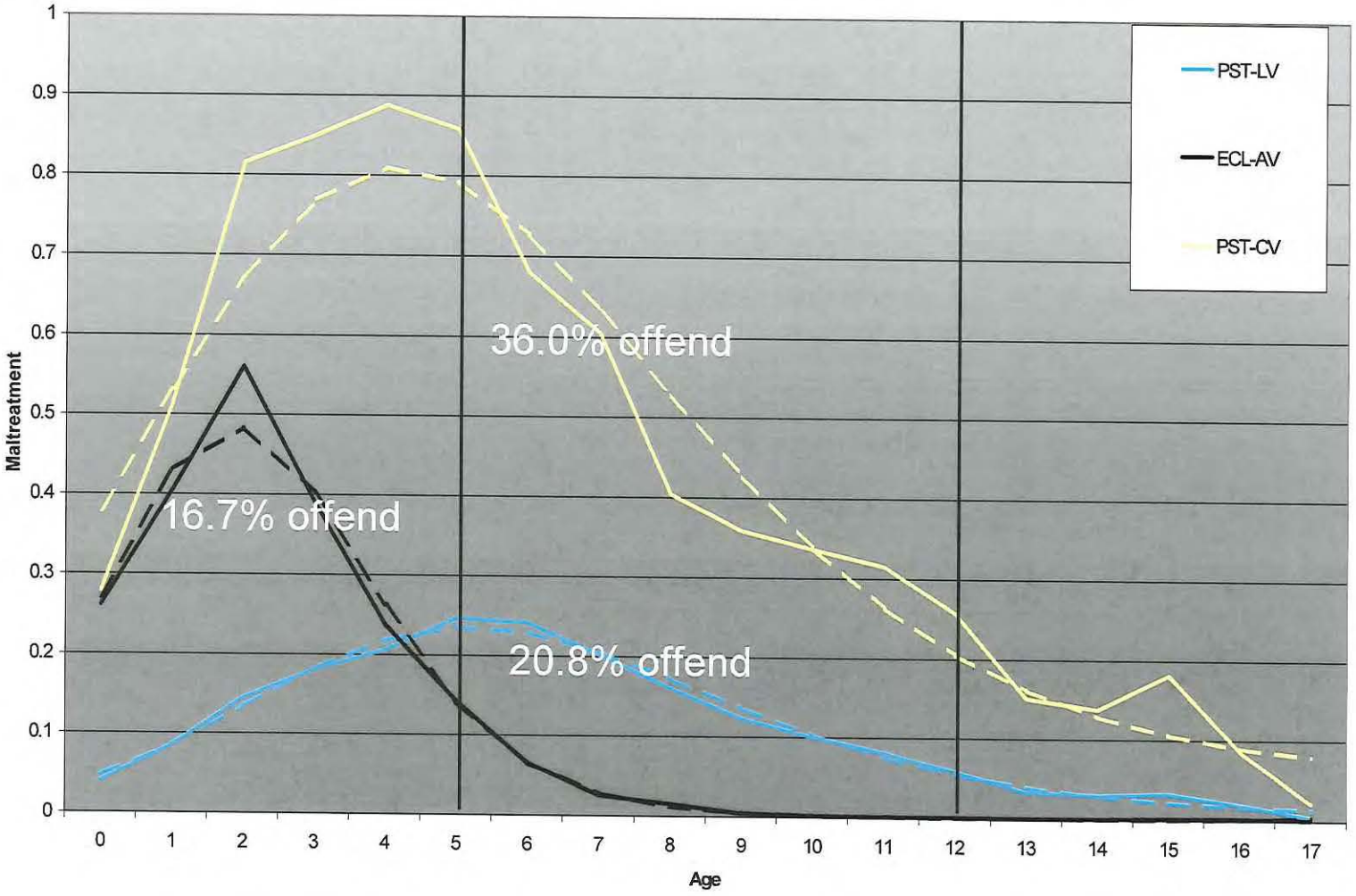
# Early peaking groups

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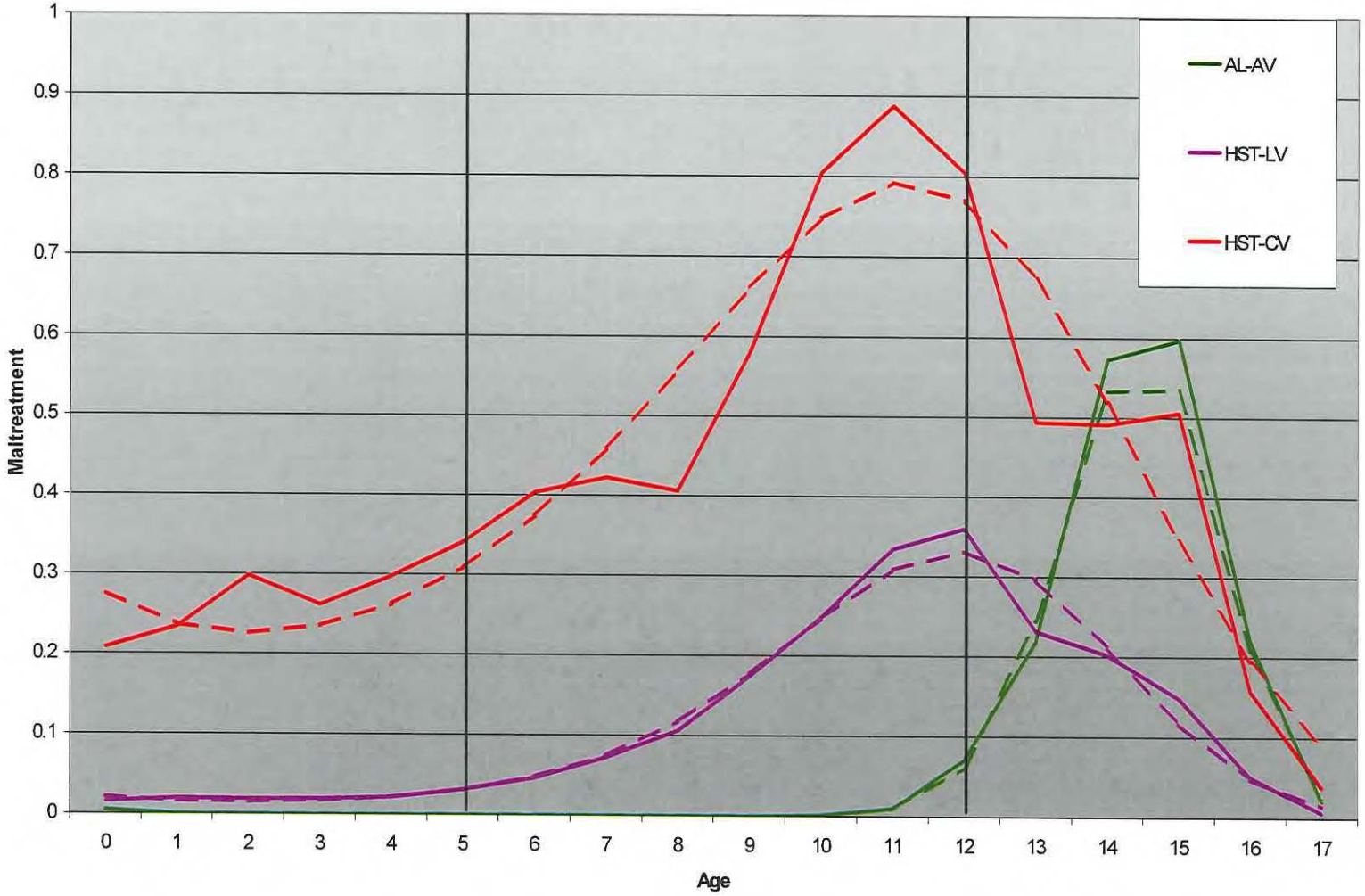
# Late peaking groups

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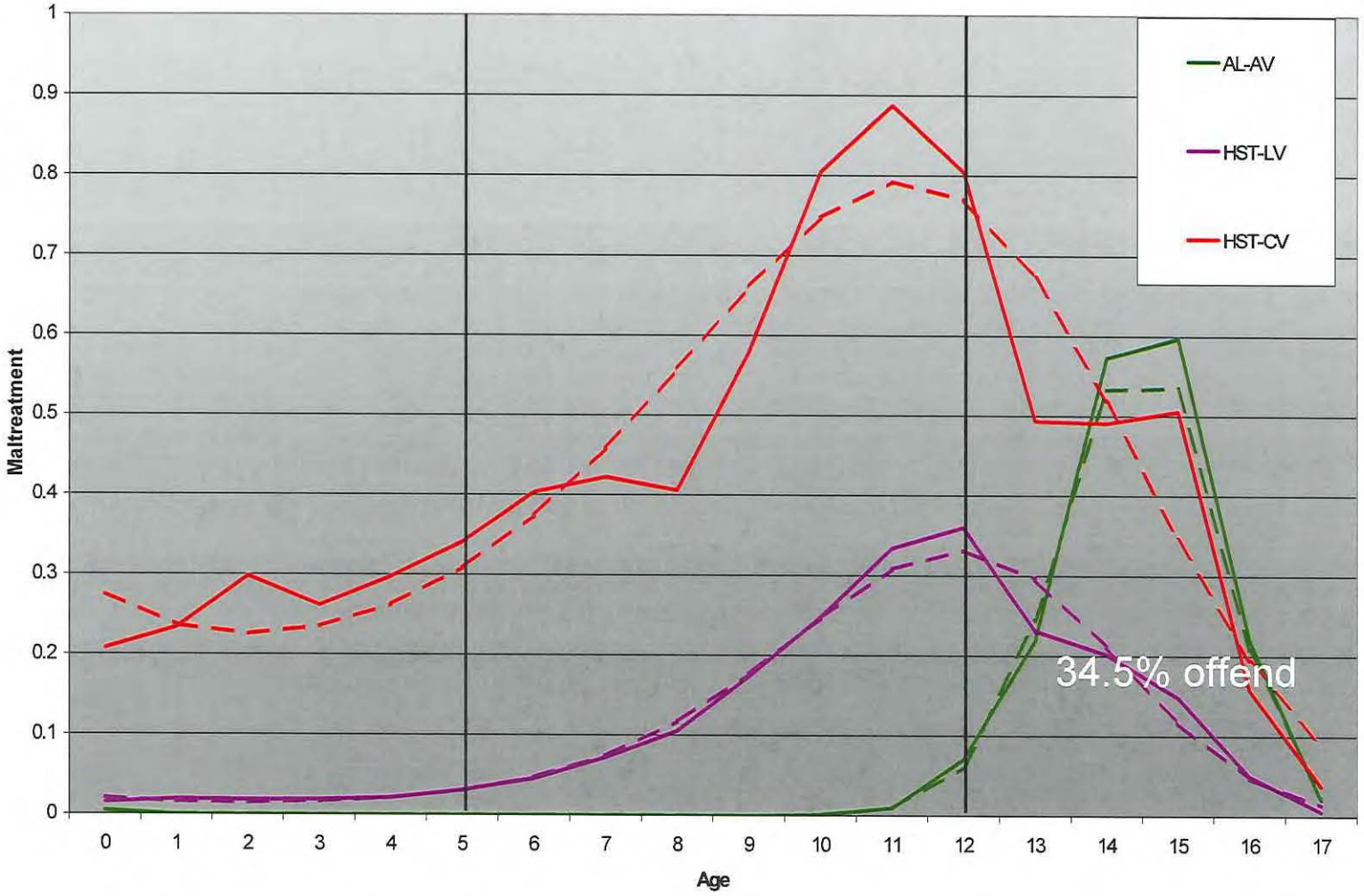
# Late peaking groups

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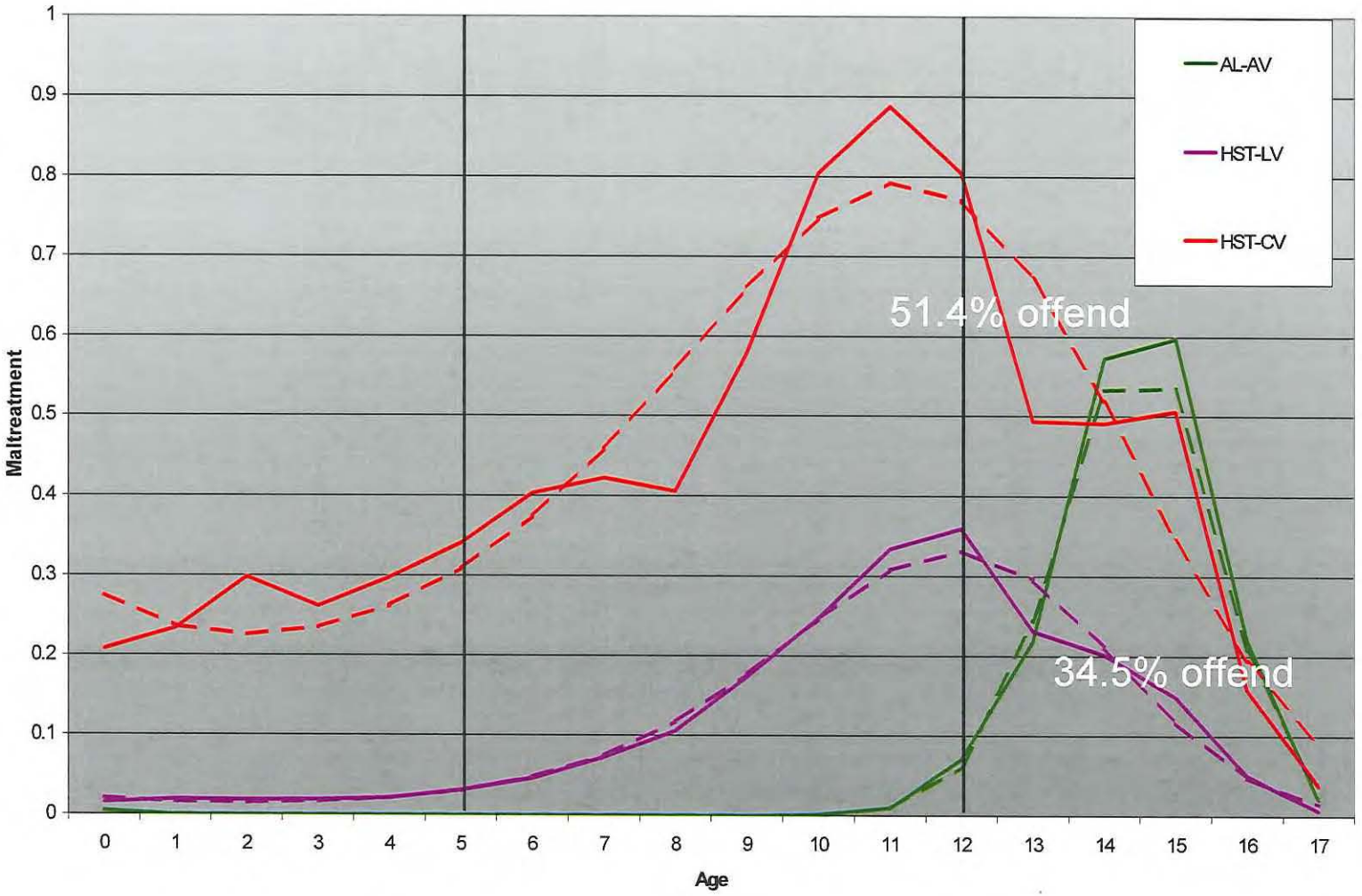


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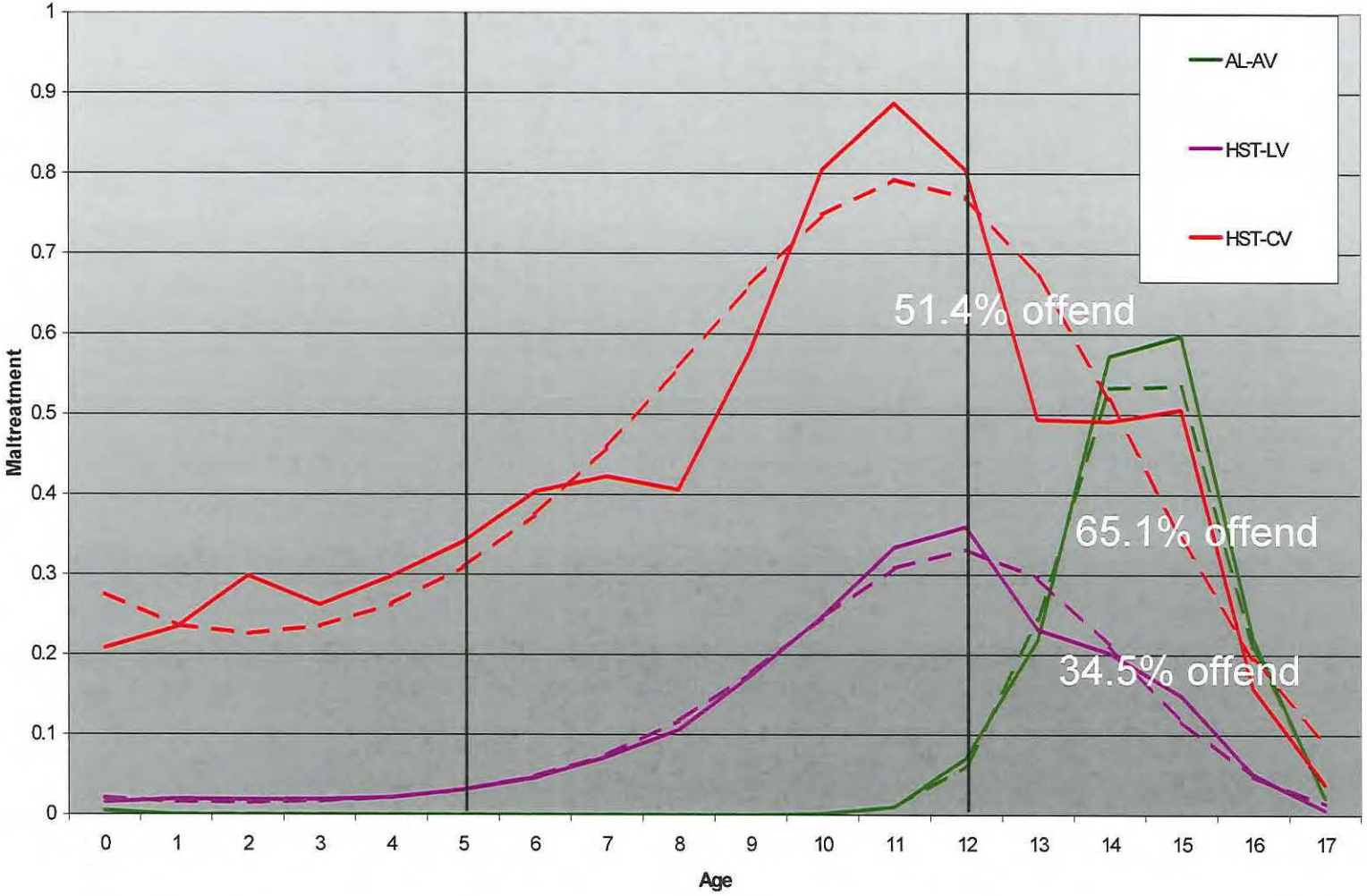


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# Summary of high offending trajectories

- Adolescent limited – Acute Victimisation (65.1% offend)
  - 11% of maltreated children
  - little or no evidence of maltreatment in early years
  - females over represented
  - indigenous children under represented
    - most indigenous males offended
  - first maltreatment investigation
    - Emotional or physical
    - Notifier - family member, police or school teacher
    - Blended families
    - Perpetrator resided with the child
    - More likely to be place away from home
- High School Transition – Chronic victimisation (51% offend)
  - 4.4% of maltreated children
  - Indigenous children over represented (25%)
    - Almost all indigenous children offended
  - Maltreated in childhood but peaking at 11 years
  - First maltreatment investigation
    - Physical abuse or neglect

# What does it all mean?

- maltreated children are more likely to offend
  - if maltreated when they are older
  - if suffer chronic maltreatment
- transitions and turning points
  - transitions are life changing events
    - going to school (preschool to early school age)
    - going to high school (adolescence)
  - turning points are when the transitions are not negotiated

- maltreatment is a significant risk factor for not negotiating a transition
- need to take maltreatment in adolescence and repeat maltreatment seriously
- offending is only one negative life outcome

- why does maltreatment peak at the transitions?
  - is it increased/changed surveillance?
  - family stress at transitions?
- why does maltreatment in older children lead to offending?
  - more likely to come into contact with police?
  - more likely to leave/be kicked out of home?
- how can we use this understanding of the impact of the transition to mitigate the effects of maltreatment?
  - school based programs?
  - early intervention programs?
  - parenting programs?

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# Practice Frameworks: Conceptual Maps to Guide Interventions in Child Welfare

Marie Connolly

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## Summary

This paper discusses the development of a practice framework for child welfare in New Zealand. A practice framework is defined as a conceptual map that brings together, in an accessible design, an agency's approach to social work practice with children and families. Designed as a tool for practitioners, the New Zealand practice framework integrates three perspectives: child-centred; family-led and culturally responsive; and strengths and evidence-based. The practice framework establishes a vision for New Zealand child welfare work that is grounded in the realities of practice, supported by research and embedded in a set of principles and values that are essential to the work. As a concept, it provides a clear understanding of what underpins the work, and how this informs our interventions with children and families. As a tool for practitioners, it provides a theoretically informed intervention logic and a set of triggers to support best practice.

**Keywords:** practice frameworks, practice models, evidence-based practice

## Introduction

Many factors have the potential to shape practice in child welfare. Countries develop differing approaches to supporting children and families, both with respect to overall service orientation, and with respect to the ways in which child abuse and neglect notifications are responded to (Connolly, 2004). Within the professional sphere, practice is influenced by such things as the worker's organizational structure and mandate, access to resources, law, theoretical cultures

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and professional knowledge (Hetherington, 2002). Practice can also be shaped by the personal sphere, as personal identity, culture and background play a role in influencing the way we think about what we do (Connolly, 2003). It could be argued that recent calls for evidence-based practice reflect a commitment to developing more independently informed strategies for working with children and families. The issues, however, are not without controversy, as the debate surrounding the value of evidence-based praetice persists, and at times becomes polarized (Trotter, 2004).

There is no doubt, however, that organizations attempt to shape practice in a variety of ways. For example, the Assessment Framework introduced in the UK provides a systematic approach to analyzing information about children and families. The framework has a number of dimensions that are explored during an assessment relating to the child's developmental needs; the ability of caregivers to respond to those needs; and the impact of external factors on the parent's abilities and the child's wellbeing (Department of Health, 2000). Recent research suggests that the Assessment Framework is, indeed, influencing the way in which families are responded to (Cleaver and Walker, 2004). Accurate information gathered in actuarial and clinical assessments provide important pieces of the jigsaw needed to make sound social work judgements in childcare and protection. Actuarial approaches comprise empirically validated instruments that identify the risks of future care-giver behaviours that are likely to result in harm to a child. Important work is also being undertaken to integrate these assessment models into broader frameworks designed to improve case management. For example, Shlonsky and Wagner's (2005) 'structured decision-making' approach provides a further step in the integration of assessment tools, clinical assessment and evidence-based practice. Their work provides a conceptual framework within which 'actuarial models function in concert with the contextual clinical assessment necessary to plan service interventions' which then provide the 'decision aids employed in the service of evidence-based practice' (Shlonsky and Wagner, 2005, pp. 421–2, 425).

These are important developments that will influence and strengthen practice with children and families in child welfare. This work also raises questions about the ways in which broader philosophical and theoretical beliefs also impact on practice—and how these too can be captured within frameworks that integrate practice philosophy, evidence-based interventions and desired outcomes for children. Influenced by these ideas and the need to develop a child welfare practice intervention logic, this paper discusses the development of a new practice framework designed to guide child welfare practice in New Zealand. The articulation of the links between practice philosophy and theory, practice interventions and outcomes presents challenges for child welfare organizations. Nevertheless, it could be argued that such frameworks not only provide a fuller understanding of what informs the work, but also have the potential to trigger best practice.

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## The New Zealand child welfare practice framework

There is a contemporary tendency to use models, paradigms and frameworks for practice interchangeably. However, in developing the New Zealand practice framework, it was considered important to clarify its relationship with other care and protection processes and to delineate it from, for example, processes of assessment, intake and investigation. The New Zealand practice framework provides the philosophies, theories and principles that guide the work and provides best practice triggers for the way in which these other processes are undertaken. Hence, it establishes the foundation stones for practice, influencing interventions and outcomes (Figure 1).

Essentially, outcomes have been identified broadly: to secure safety; to promote stability of care; and to restore or improve well-being. A practice framework as defined here is a conceptual map that brings together, in an accessible design, the organization's approach to social work practice. It links the foundational philosophical and theoretical underpinnings with the practice interventions used to support desired outcomes.

A number of factors influenced the building of the framework. It was considered important that it be a useful and readily accessible tool for practitioners, regardless of experience or qualification. It needed to be ambitious, providing both higher-level principles and triggers for best practice that emerge from these principles. It was considered important for the framework to be both evidence-based and built upon best practice initiatives within and outside New Zealand. It was also based on a set of broad assumptions. The first is that social work is a values-based profession (Ronnau, 2001). Social work is rooted in a core set of values that give purpose, meaning and direction to the work (Hepworth and Larsen, 1993). Principles of non-discrimination, democracy and human rights, service user participation and integrity are important values that resonate in codes of practice internationally. It was considered important that these principles and values be visible within the practice framework and that it professionally engage social workers who work with children and families. Secondly, statutory systems of child welfare develop in response to unique

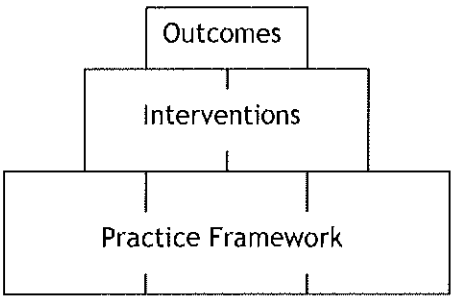


**Figure 1** The framework as a foundation for practice

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social and cultural conditions (Connolly, 2004). Because of this, the framework needed to resonate with cultural belief systems and be culturally responsive to an increasingly diverse society. Finally, the framework has been developed recognizing that there are often competing interests within childcare and protection work and that no one approach is sufficient to respond adequately to the needs of children and families. Systems of child welfare constantly negotiate the tension between protecting the child and supporting the family (Munro, 2005). This is an uneasy tension to manage and there are dangers in the extremes. An adversarial investigative response may damage the potential for the family to work positively to provide care and safety for the child and may result in a child being removed from home unnecessarily. Alternatively, a response that supports the family without due consideration to the needs of the child can result in practice blind spots and the compromising of child safety. This tension rests at the heart of childcare and protection practice and it was considered important that it be visibly managed within the framework and reflect a broader response capturing both child protection and family support orientations.

## Components of the practice framework

The practice framework weaves together a set of driving principles that are threaded through the phases of the work and linked to our desired outcomes for children and families. The metaphor used to capture this weaving nature of the framework is a *kete* (pronounced kee-teh), representing, in this context, a basket of knowledge, the woven strands making the practice strong (Figure 2).

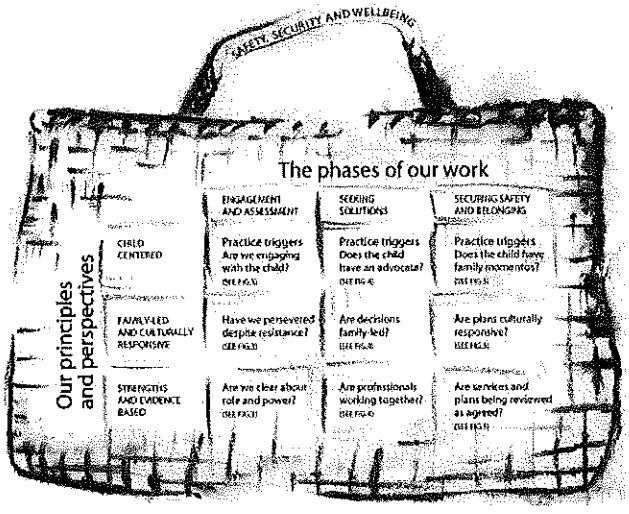


Figure 2 The New Zealand Practice Framework

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Three sets of philosophical perspectives provide the basis for the framework: the child-centred perspective; the family-led and culturally responsive[1] perspective; and the strengths and evidence-based perspective. These perspectives are then woven through the three phases of New Zealand practice: the assessment and engagement phase; the finding solutions phase; and the securing safety and belonging phase. It is interesting to note that prior to the development of the framework, these phases were identified differently, e.g. the 'assessment and engagement' phase was referred to as 'intake and investigation'. The third phase, now referred to as 'securing safety and belonging', was earlier identified as 'service responses'. However, it was considered that the framework offered opportunities to think differently about the way in which children and families are responded to and that it was possible to shape these ideas through language. As with many English-speaking countries (e.g. the UK, USA and Australia), practice in New Zealand has become increasingly forensic and deficit-focused (Connolly, 2004). This child protection orientation has been identified as contrasting with family-centred approaches found in Continental Western Europe, where services are described as strengths-based and working 'in solidarity with parents, as part of a well developed system of welfare offered as a right, voluntarily, and, with resources to support families' (Hill *et al.*, 2002, p. 8). New Zealand is well known internationally for its innovative legal frameworks that place family at the centre of practice decision making. The New Zealand Family Group Conference (FGC) is a legal process that brings together the family, including the extended family, and the professionals in a family-led decision-making forum, and, as a practice innovation, the FGC has now been adopted in many countries as a way of supporting family empowerment. However, despite this strongly family-focused legislative environment, over time, New Zealand practice has become increasingly risk averse. The development of the practice framework was seen as an opportunity to re-establish the family-support orientation, while, at the same time, place it in a practice context that was child-centred and evidence-based. Each phase of the work has now been infused with this flavour of practice and is reinforced through both the perspectives themselves and the emerging practice triggers.

## The framework's perspectives and the ideas that support them

The first strand of the framework—the child-centred perspective—is embedded in a rights-based orientation and is supported by research and literature that inform this perspective. Central to this strand is the work of the United Nations Convention on the Rights of the Child (UNCRC) and the underlying theme of children's entitlement to special care, and the right to provision, protection and participation (Officer of the Commission for Children, 2005), the principles of which underpin child welfare legislation in the UK. Within this context, the welfare and interests of the child are of central importance, as is

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the child's right to preserve his/her own identity, to enjoy his/her own culture, religion and language (Ministry of Social Development, 2002). While one might assume that child protection work is, by definition, child-centred, 'practice tends to operate from an adult point of view, with little reference to childhood cultures and the need for children to be involved in the processes that concern them' (Connolly *et al.*, 2006, p. 60). Research also indicates that children and young people have the capacity to participate in decisions that affect them and the right to be listened to (Littlechild, 2000; Cashmore, 2002). In addition to children's rights, the child-centred strand of the framework reinforces the importance of attachment theory and its application to child abuse and neglect. Social workers need to be familiar with the findings of outcome research with respect to children in care, even though they are at times equivocal. Overall, however, stability of care and attachment has been found to be critical to child well-being (Cassidy and Shaver, 1999; Watson, 2005) and the framework recognizes the need to interlink the fields of attachment and child protection (Bacon and Richardson, 2001; Atwool, 2005; Mennen and O'Keefe, 2005). In essence, the practice framework captures the most relevant research and best practice ideas and uses them to reinforce the child advocacy role for the social worker. However, while the framework clearly supports the paramouncy of the child's needs and interests, it also requires that the worker be concurrently family-focused.

The family-led and culturally responsive strand of the framework reinforces the need to work with family cultures and to support them in their primary role of carers and protectors of their children. In New Zealand practice, the term 'family' is interpreted broadly and includes extended kinship and cultural relationships. The driving principle of family empowerment rests at the heart of the framework and guides practice toward more family-responsive approaches. The need to strengthen families is recognized and also the need to foster practice partnerships, including processes that involve families in decision making. Research supporting participatory practice models indicates that families do respond positively when invited to take the lead (Titcomb and LeCroy, 2003; Burford, 2005), that they develop rich and diverse plans to support the child when given the opportunity (Thoennes, 2003), and that such systems compare favourably in terms of child safety measures (Crampton, 2003; Gunderson *et al.*, 2003). There are also indications that family-led plans have the potential to provide greater stability for the child (Gunderson *et al.*, 2003; Wheeler and Johnson, 2003). Harnessing the collective strengths of the family toward the care and safety of children also supports the notion of building family resilience:

> Research on this aspect of family resilience [family as protective environment] focuses on the ways that parents, often in partnership with other adults in the household or extended kin network, cope with adversity and stress and develop their collective strength to respond to challenges at different points in the family life course (Kalil, 2003, p. 35).

When a worker is able to manage the tension between family support and child protection, research indicates that families not only appreciate this dual

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mandate, but also benefit from it. In this regard, Trotter (2004, p. 55) argues from his research that 'getting the balance right between social control and helping seems to be a very important skill in working with involuntary clients'.

Supporting the cultural context of the family and working with social networks is also central to the practice framework. Because the quality of an individual's support network can impact on professional effectiveness (Sprenkle *et al.*, 1999), McKeown (2000) argues a case for strengthening the informal supports that surround a family. Building alliances with communities and working positively with cultural and social supports require reflexive social work practice in the context of culturally responsive solutions. While this makes demands upon social workers both personally and professionally, it has the potential to strengthen good outcomes for children and families (Webb *et al.*, 2002).

The final strand in the framework relates to strengths and evidence-based practice. The principle of empirically supported practice has a recognized place within New Zealand child welfare. While evidence-based practice inevitably has limitations and cannot provide the whole picture, it provides a critical component to the matrix that strengthens practice overall. Understanding 'what works' in practice increases a worker's skill repertoire and, according to Trotter (2004), makes them more likely to be effective than if they rely selectively on limited sources of knowledge.

Understanding abuse and the dynamics of family violence is of critical importance when undertaking work in child protection. Increasingly, writers are articulating the ways in which domestic violence affects children (Rivett *et al.*, 2006). Research into the connections between child abuse and other forms of family violence is also heightening professional awareness to the needs of vulnerable family members, and to the potential effects that family violence has on children and their development (Jasinski and Williams, 1998). For many years, the safety needs of women with respect to family violence largely remained invisible during child protection investigations, social workers in general failing to address these connections in their response (Kelly, 1994). The need for increased professional awareness of domestic abuse across agency boundaries, along with a more co-ordinated service responses, has been identified as important when working with children and families (Mullender, 1994).

Writers also agree that a co-ordinated response to child and family services provides more effective interventions (Bell, 1999; McIntosh, 2000). Hallett and Birchall (1992) argue that good co-ordination helps to reduce the duplication of services—important in the context of limited resources. Cross-agency relationships are important and do not necessarily occur naturally. They need to be nurtured in the context of clearly articulated roles and responsibilities (Tomison and Stanley, 2001).

The importance of role clarity and relationship building is also reinforced in the context of working with families in child welfare. Trotter's summary of his own and others' research suggests that practice works in the context of role clarity, collaborative problem solving, pro-social modelling and reinforcement, and a sound worker/service user relationship (Trotter, 2004). When workers

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are clear about their role and have open and honest discussions with the family, they have been found to be more effective. In supporting collaborative problem solving, effective workers are able to encourage and support a process of service user agency over plans and decisions relating to their children, while reinforcing pro-social behaviours and modelling positive alternatives. McKeown (2000), in his meta-analysis of 'what works' in practice with vulnerable families, also highlights the importance of the helping alliance. Building worker/service user relationships has the potential to achieve positive outcomes for children and families, and this is particularly so in the context of generating service user hopefulness.

Fundamentally, this research supports strengths-based and resilience-focused approaches. It supports the notion that people do rebound from serious trouble and adversity and grow through dialogue and collaboration (Saleebey, 1992). Increasingly, strengths-based approaches are promoted as effective in the complex areas of statutory child protection work (Jack, 2005). Within the context of resilience discourses, good outcomes for children are achieved through positive parenting, stable family life, strong family and kin networks, community involvement and supportive social networks. The research reinforces the need to connect families to their wider family, social and cultural communities and positions the worker as an advocate for these ideals.

## Integrating the principles and perspectives across the phases of the work

The practice framework aims to both provide the philosophical and theoretical underpinning of the work and also offer best practice triggers within an accessible tool to remind workers of the links between theory and practice. The framework is available to staff in two ways. First, it is available as a poster that sits above the worker's desk (Figure 2). Second, it is intended that it will be available in manual form that enables more detailed discussion of the perspectives, and links the practice triggers to quality assurance practice standards and performance indicators. In this way, the means through which work is monitored and evaluated is directly linked to the practice behaviours that the organization wishes to support, and with the broader aims and principles that provide the foundation of the work. The phases of the work are now provided with more detailed trigger questions.

### The 'engagement and assessment' phase

The engagement and assessment phase of the work begins with notification and corresponds to the investigative phase in many systems of child welfare. Practice triggers, designed to challenge practice, are questions that capture the essence of the ideas presented in the philosophical/theoretical perspectives.

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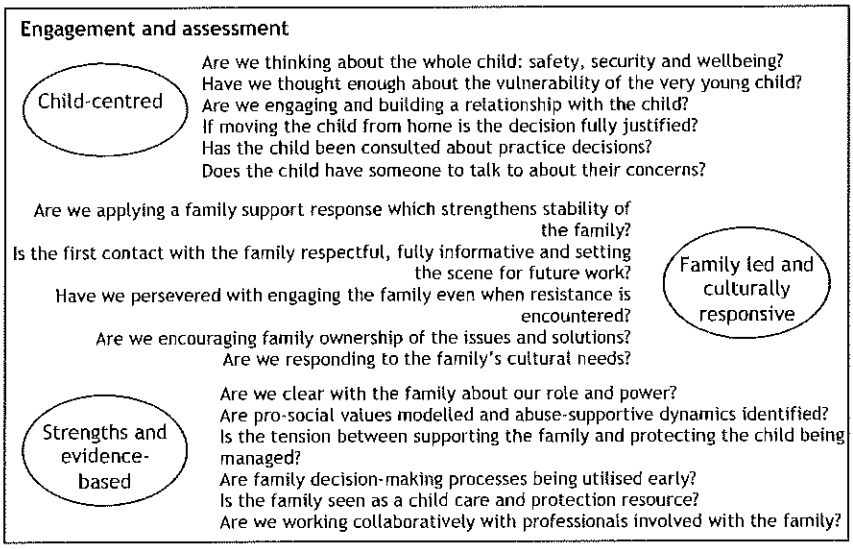


**Figure 3** Engagement and assessment practice triggers

Here, they provide a 'best practice' reminder for social workers within this early phase of the work (Figure 3).

It is also expected that the practice framework, along with the best practice triggers, will be a useful tool for supervisors. The questions dig deeper into practice and provide opportunities to explore the ways in which the perspectives come together to shape and influence the work.

## The 'seeking solutions' phase

This phase of the work begins once the social worker forms a belief that the child is in need of care and/or protection, and work needs to be done toward developing solutions. Within New Zealand, this would typically involve bringing together family, including extended family, in a solution-focused forum—the Family Group Conference (Connolly, 1999).

## The 'securing safety and belonging' phase

Once plans are developed, work commences toward ensuring safety and securing a sense of belonging for the child. This may involve social work support for the family with the child remaining at home, or it may involve a change of placement for the child either with family or with alternative care-givers. Again, the practice triggers reinforce the essential ideas of the philosophical/theoretical perspectives and link this with preferred outcomes (Figure 5).

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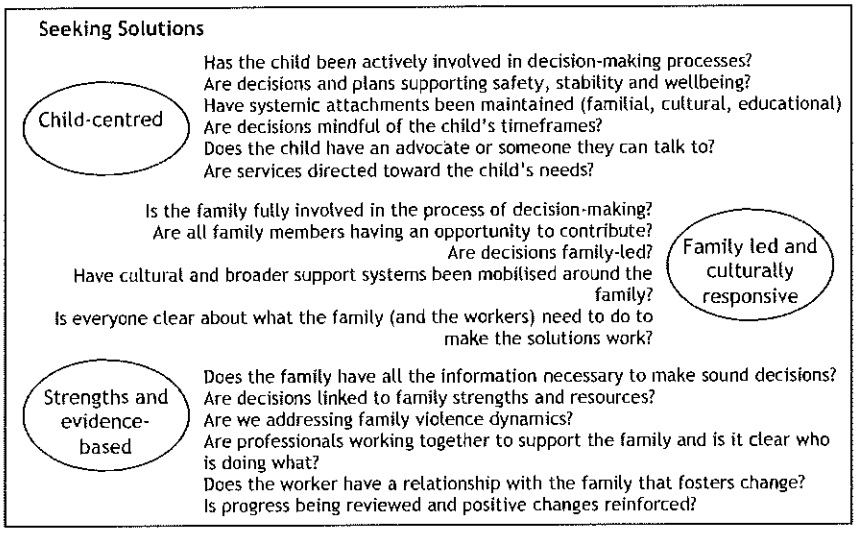


**Figure 4** Seeking solutions practice triggers

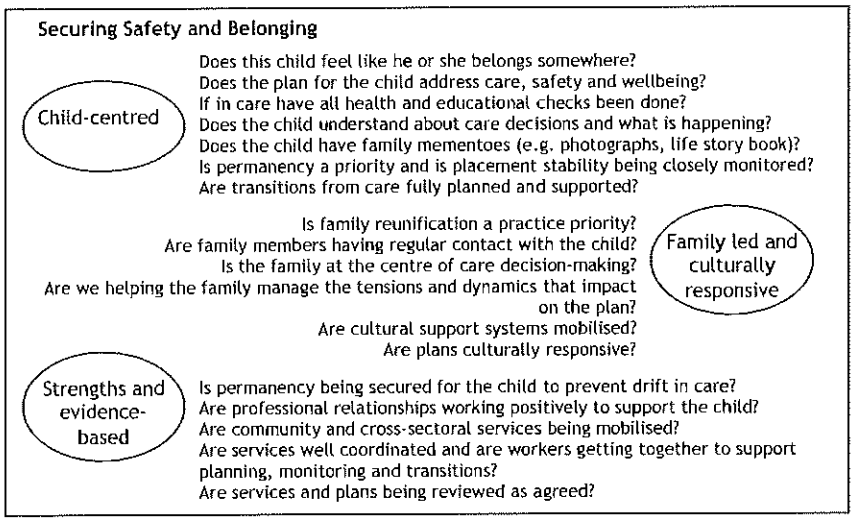


**Figure 5** Securing safety and belonging pratice triggers

As noted earlier, practice triggers are designed to challenge practice. Within each phase, the worker is encouraged to respond to the range of perspectives, reinforcing the importance of maintaining a child focus within a family-based and empirically supported intervention.

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## Conclusion

Practice frameworks, as defined in this paper, provide the means through which theory, research and practice can be interrelated to support positive outcomes for children and families. In developing the framework, the New Zealand child welfare system is refocusing its attention on social work practice and supporting the values, principles and knowledge that are considered important to the work. Social workers have responded positively to the practice framework, demonstrating a commitment to its use within the agency to support front line practice and supervision. Because the framework addresses a range of organizational aims, including the need to better understand the impact of practice on the lives of children, it has received whole-of-agency support from practitioners and managers across the levels of service support and delivery.

The language used in the framework to explain social work processes has been particularly engaging for practitioners. For many, the growing use of business and managerial terminology in child welfare has tended to create a gulf between those in direct practice and those responsible for managing systems of child welfare. In many ways, the language used to describe practice critically shapes the way in which practice is thought about and responded to. Using the language of social work within the practice framework also signals a commitment to the return of social work values within New Zealand child welfare.

The practice framework discussed here establishes a vision for New Zealand child welfare work that is grounded in the realities of practice, supported by research and embedded in a set of principles and values that are important to social work. As a concept, it provides a clear understanding of what is important to the work, and how this informs interventions with children and families. As a tool for practitioners, it provides a theoretically informed intervention logic and a set of triggers to support best practice.

*Accepted: April 2006*

## Note

1 While 'culturally sensitive' is a term commonly used in this context, it does not necessarily capture the desired relational dimension of cultural responsiveness.

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A better life for Queensland children

# Indigenous Child Placement Principle

## *Audit Report 2010/11*

# Child Placement Principle Compliance Assessment Tool

**Every applicable step must be complied with and recorded to fully comply with s83 of the *Child Protection Act 1999***

WHEN CONSIDERING ALL PLACEMENT OPTIONS THE WELFARE AND BEST INTERESTS OF THE CHILD ARE PARAMOUNT

## STEP 1

### Identify the child's Indigenous status (ATSI)

Is the child Indigenous?

✓ Yes: compliance

go to step 1 ▶

✗ No:

[illegible]

## STEP 2

### Involvement of a recognised entity (RE) (Hyp1 and 2)

[illegible]

✓ Yes: compliance

go to step 2 ▶

✗ No:

[illegible]

✓ Yes: compliance

✗ No: non-compliance

## STEP 3

### Hierarchy of placement options (Hyp1 and 2)

[illegible]

✓ Yes: compliance

go to step 3 ▶

✗ No:

[illegible]

✓ Yes: compliance

go to step 3 ▶

✗ No:

[illegible]

✓ Yes: compliance

go to step 3 ▶

✗ No:

[illegible]

✓ Yes: compliance

go to step 3 ▶

✗ No:

[illegible]

✓ Yes: compliance

go to step 3 ▶

✗ No:

[illegible]

✓ Yes: compliance

go to step 4 ▶

## STEP 4

### Proper consideration of placement options (Hyp1)

[illegible]

- The placement option's ability to [illegible]
- The views of the recognised entity?

✓ Yes:

[illegible]

compliance

go to step 4

[illegible] ▶

✓ Yes:

[illegible]

✗ No: non-compliance

## STEP 5

### Assessment of non-Indigenous (non-Indigenous) (Hyp1)

[illegible]

- [illegible]
- [illegible]
- [illegible]
- [illegible]

✓ Yes: compliance

✗ No: non-compliance

[illegible]

compilation for children and young people and child guardian

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# Foreword

The context of child protection for Aboriginal and Torres Strait Islander children and young people has significantly evolved over the past few decades. This shift has taken Queensland from a devastating practice of removal to a necessary recognition of the importance of raising children within their family, community and culture where they are no longer able to remain safely in the care of their biological parents.

The Indigenous Child Placement Principle was embedded in section 83 of the *Child Protection Act 1999* to prescribe a process that must be followed by the Department of Communities when making out-of-home care placement decisions for Aboriginal and Torres Strait Islander children and young people, to help maintain their connection to family, community and culture.

As the Commissioner for Children and Young People, I have been tasked with a legislative responsibility to monitor the Department of Communities' compliance with section 83 of the *Child Protection Act 1999*. This report represents the second audit I have conducted in fulfilling this responsibility.

Compliance with section 83 of the *Child Protection Act 1999* is achieved when a small number of discrete steps are each observed and actioned appropriately in the placement decision making process. These decisions must always represent the best interests of the child concerned.

My inaugural *Indigenous Child Placement Principle Audit Report 2008* made 28 recommendations to the former Department of Child Safety to improve compliance with section 83 of the *Child Protection Act 1999*. Those recommendations were aimed at enhancing departmental policies, procedures and systems to help support child safety officer decision making and record keeping.

My current Indigenous Child Placement Principle Audit 2010/11 has an expanded scope and is comprised of three key components, which together provide a more complete view of the administration of section 83 of the *Child Protection Act 1999*, and what it can achieve for Aboriginal and Torres Strait Islander children and young people in out-of-home care. This has involved auditing:

- the Department of Communities' **mechanisms supporting compliance** with section 83 of the *Child Protection Act 1999* (the policies, procedures and record keeping infrastructure in place), based on a targeted evaluation of implementation of the 28 recommendations made in the inaugural audit
- the Department of Communities' **practice compliance** with section 83 of the *Child Protection Act 1999*, based on an assessment of its electronic records and surveys of the Child Safety Officers and Recognised Entities involved in the 388 placement decisions made in 2008/09 comprising the audit sample, and
- the **outcomes achieved** for children and young people in out-of-home care, based on their reported connection to family, community and culture.

The audit logic being that, if the Department of Communities has sufficient **mechanisms supporting compliance** in place, there will be increased **practice compliance** with section 83 of the *Child Protection Act 1999*, which will in turn lead to better **outcomes achieved** for Aboriginal and Torres Strait Islander children and young people in out-of-home care.

This second audit has demonstrated that compliance with each step required by section 83 of the *Child Protection Act 1999* is quite good. However, when viewed together, complete compliance with all required steps was only achieved in 15% of the sample, an improvement on the findings of the inaugural audit.

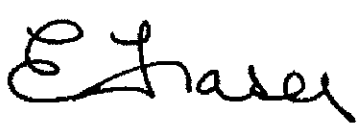
Low compliance can be attributed in part to the Department of Communities' delays in implementing the majority of the inaugural recommendations relating to improved policy, practice and record keeping before the audit sample was extracted. Specifically, nine of the 28 inaugural recommendations are now being implemented. As such, record keeping was again a significant issue impacting on my capacity to adequately assess compliance, with records either not available or not containing sufficient rationale about the placement decision making process. The audit findings are therefore not reflective of the improvement that was anticipated to occur with complete implementation of the inaugural recommendations.

My compliance assessment is also complemented by some very positive findings about the outcomes experienced by Aboriginal and Torres Strait Islander children and young people in out-of-home care, relevant to their connection to family, community and culture. A key finding is that 89% of children and young people were reported as having some level of parental contact, the most common frequency identified as weekly contact (41%).

Those children and young people placed with Indigenous carers reported better outcomes compared to those placed with non-Indigenous carers. A key finding in this regard is that they exhibited more weekly contact with their traditional language/tribal/totem group (41% greater) than those placed with a non-Indigenous carer.

I have received invaluable assistance from an Advisory Committee in this audit. This panel of external experts in child protection and/or Aboriginal and Torres Strait Islander health and wellbeing provided advice to me on key issues relevant to the audit. The Advisory Committee was comprised of representatives from the Queensland Aboriginal and Torres Strait Islander Child Protection Peak Inc, Foster Care Queensland, the Remote Area Aboriginal and Torres Strait Islander Child Care, the Department of Communities and the Indigenous Studies Unit at the University of Queensland. I am grateful for the contribution of these experts, which has provided a transparent mechanism for me to seek advice on specific complex and/or sensitive issues during the audit. I would like to thank the Recognised Entities and Child Safety Officers who completed the online surveys that form part of the audit.

Last, but certainly not least, I offer my sincere thanks to the many Aboriginal and Torres Strait Islander children and young people who gave their time to the Commission's Community Visitors to help increase my understanding of how well their connections to family, community and culture are being maintained while in care. I will do my utmost to make their feedback known and translated into action.



Elizabeth Fraser

**Commissioner for Children and Young People and Child Guardian**

# Executive Summary

The purpose of this report is to detail the findings of the Commission's second audit of compliance with section 83 of the *Child Protection Act 1999* by the Department of Communities. The audit process has explored three key areas, namely:

- the Department of Communities' **mechanisms supporting compliance** with section 83 of the *Child Protection Act 1999* (the policies, procedures and record keeping infrastructure in place), based on a targeted evaluation of implementation of the 28 recommendations made in the inaugural audit to enhance these elements
- the Department of Communities' **practice compliance** with section 83 of the *Child Protection Act 1999*, based on an assessment of its electronic records and surveys of the Child Safety Officers and Recognised Entities involved in the 388 placement decisions made in 2008/09 comprising the audit sample, and
- the **outcomes achieved** for children and young people in out-of-home care relevant to their maintained connection to family, community and culture as a result of the Department of Communities' efforts to comply with section 83 of the *Child Protection Act 1999*.

Each component of the audit was informed and guided by an Advisory Committee comprised of experts in child protection and/or Aboriginal and Torres Strait Islander health and wellbeing.

Overall, the audit findings indicate that there is a need for the Department of Communities to continue to strengthen the **mechanisms supporting compliance.** Doing so will assist Child Safety Officers in their **practice compliance** with section 83 of the *Child Protection Act 1999*. In turn, this will likely contribute to better **outcomes achieved** for Aboriginal and Torres Strait Islander children and young people in out-of-home care (in relation to their connection to family, community and culture).

The Commission has made 10 new recommendations to address areas requiring improvement, in addition to the nine recommendations that are currently being implemented from the inaugural audit.

**Part A – The Department of Communities' mechanisms supporting compliance with section 83 of the *Child Protection Act 1999***

Part A of this report monitors the Department of Communities' mechanisms supporting compliance with section 83 of the *Child Protection Act 1999* (the policies, procedures and record keeping infrastructure in place), based on a targeted evaluation of implementation of the 28 recommendations made in the inaugural Indigenous Child Placement Principle Audit Report 2009 which identified the need to enhance these elements.

Overall, the Department of Communities has implemented 19 of the 28 inaugural recommendations intended to enhance the mechanisms supporting compliance with section 83 of the *Child Protection Act 1999*.

In summary, of the 19 recommendations implemented to date:

- 15 recommendations related to improving guidance in the Department of Communities' policies and procedures to support compliance

- three recommendations were aimed at enhancing the Department of Communities' record keeping practices in its Integrated Client Management System (ICMS) to support compliance, and
- one recommendation related to the Department of Communities considering the creation of specialist positions to assist in placements for Aboriginal and Torres Strait Islander children and young people.

New recommendations are currently being implemented with a planned implementation timeframe of March/April 2012. Of these:

- eight relate to enhancing the Department of Communities' record keeping practices in its ICMS to support compliance, and
- one relates to the Department of Communities rolling out comprehensive training for Child Safety Officers (following the implementation of all of the Commission's inaugural recommendations).

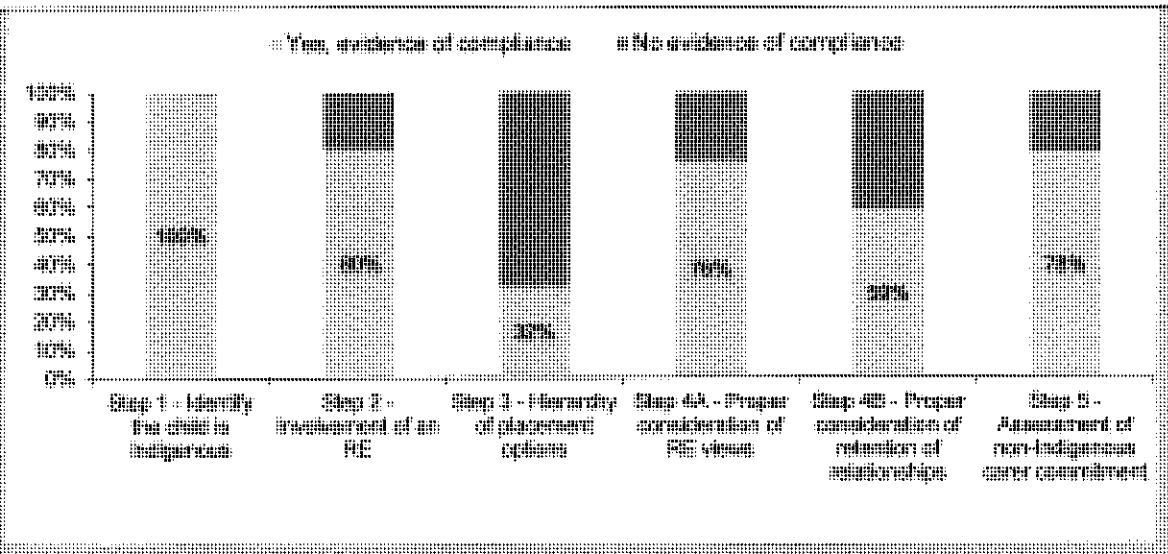
The Commission will monitor the Department of Communities' implementation of the remaining nine recommendations in accordance with the nominated timeframes.

**Part B – Department of Communities' practice compliance with section 83 of the *Child Protection Act 1999***

Part B of this report monitors the Department of Communities' practice compliance with section 83 of the *Child Protection Act 1999*. This assessment is based on a triangulation of data from its electronic records and surveys of the Child Safety Officers and Recognised Entities involved in the 388 placement decisions made for Aboriginal and Torres Strait Islander children and young people in 2009/10 which comprise the audit sample.

Analysis of these three information sources revealed that there has been an improvement in the Department of Communities' practice compliance with section 83 of the *Child Protection Act 1999* since the inaugural audit in 2008 (15% compliance across all required steps this audit compared to no record of complete compliance in the 2008 audit).

Where evidence was available to make an assessment against the Compliance Assessment Tool, the Department of Communities' compliance with most of the individual steps required by section 83 of the *Child Protection Act 1999* was identified as positive.




However, complete compliance with all required steps of the Compliance Assessment Tool was not as strong and was established for 58 (or 15%) of the 388 placement decisions comprising the audit sample. This finding suggests that while compliance with each step of the Compliance Assessment Tool is good when viewed in isolation, Child Safety Officers need to improve compliance with all necessary steps.

Low overall compliance can be attributed in part to delays in the Department of Communities implementing the recommendations of the inaugural (2008) audit.

Once the suite of inaugural recommendations are implemented in their entirety, Child Safety Officers will be provided with both increased mechanisms for support and better record keeping opportunities which would enhance practice compliance with section 83 of the *Child Protection Act 1999*.

**Part C – Outcomes achieved as a result of the Department of Communities' efforts to comply with section 83 of the *Child Protection Act 1999***

Part C of the report monitors the outcomes achieved for Aboriginal and Torres Strait Islander children and young people in out-of-home care relevant to their connection to family, community and culture as a result of the Department of Communities' efforts to comply with section 83 of the *Child Protection Act 1999*.

This analysis is based on data contained in the Commission's Jigsaw information management system. This data was collected by Commission Community Visitors (CVs) in targeted interactions with 1109 Aboriginal and Torres Strait Islander children and young people in out-of-home care during July 2010.

CV data indicated that overall, Aboriginal and Torres Strait Islander children and young people in out-of-home care are experiencing positive outcomes in regard to their contact with family and community and their opportunity to participate in cultural activities and events. This finding suggests that while technical compliance with section 83 of the *Child Protection Act 1999* remains low, positive outcomes are still being achieved for Aboriginal and Torres