



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

February 2023

Acknowledgement

We acknowledge the traditional lands of the Kurna people and acknowledge the Kurna people as the custodians of the Adelaide region and the Greater Adelaide Plains, and also acknowledge the traditional custodians of lands beyond Adelaide and the Adelaide Plains. We pay our respects to Elders past and present.

We acknowledge and pay our respects to the cultural authority of Aboriginal and Torres Strait Islander communities, organisations and colleagues and recognise the cultural expertise that they represent.

We underscore the importance of Aboriginal-led responses to address the needs and rights of children, and for the embedding and realisation of the Aboriginal and Torres Strait Islander Child Placement Principle in legislation and practise.

About SACOSS

The South Australian Council of Social Service (SACOSS) is the peak non-government representative body for health and community services in South Australia, and has a vision of justice, opportunity and shared wealth for all South Australians.

Our mission is to be a powerful and representative voice that leads and supports our community to take actions that achieve our vision, and to hold to account governments, businesses, and communities for actions that disadvantage vulnerable South Australians.

SACOSS aims to influence public policy in a way that promotes fair and just access to the goods and services required to live a decent life. We undertake research to help inform community service practice, advocacy and campaigning. We have 75 years' experience of social and economic policy and advocacy work that addresses issues impacting people experiencing poverty and disadvantage.

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Introduction and context

This submission is in response to the Inquiry to consider ways in which Aboriginal and Torres Strait Islander children can stay connected and safe in their families and communities, and the role of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) in further enabling this.

SACOSS believes that Aboriginal organisations, communities, families and children are best-placed to lead the conversation about the implementation of the ATSICPP and that their expertise must be listened to. Our submission therefore offers a collection of reflections and an indication of our willingness to lend support to the interests being guided by Aboriginal and family-led initiatives.

At the outset, SACOSS would like to acknowledge the work of *Child and Family Focus SA* (CAFFSA) as the South Australian peak body and industry association for child safety and child protection, and its important role in facilitating community and organisational consultations and discussions about the ATSICPP. We wish to lend our support to CAFFSA's submission to the Inquiry, in particular, its inclusion of the direct voices of those affected by the removal and placement of Aboriginal and Torres Strait Islander children.

The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) was first developed more than forty years ago, in the late 1970s, in response to the continued discrimination faced by Aboriginal and Torres Strait Islander children and families encountering child protection systems across Australia.¹ The ATSICPP centres on five elements: prevention, partnership, participation, placement and connection², and aims to keep children connected to their families, communities and cultures. Integral to this is the participation of Aboriginal and Torres Strait Islander people in making decisions about their children's care and protection.

¹ SNAICC, (2022), *The Family Matters Report - Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia*. p. 53

² <https://www.snaicc.org.au/the-aboriginal-and-torres-strait-islander-child-placement-principle-a-guide-to-support-implementation/>

While the ATSICPP has been established as a central guiding principle across the child protection system and has been embedded in legislation, policy and practise, its application has been uneven and at times disregarded.³

This Inquiry has been established in the context of the ever-increasing over-representation of Aboriginal children and young people in out-of-home care, despite espoused commitments to the ATSICPP as reflected in: targets set out in the *National Agreement on Closing the Gap*; the Australian Government's Department of Social Services *Safe and Supported: The National Framework for Protecting Children 2021–2031*⁴; the Placement Principle being legislated in section 12 of the *Children and Young People (Safety) Act 2017* and the associated current Review of this Act ; and the formulation of the Principle by the Secretariat for National Aboriginal and Islander Child Care (SNAICC) in its *Family Matters Campaign* which has been adopted by the South Australian Government as part of its *Safe and Well Strategy*.

The *National Agreement on Closing the Gap* includes Target 12, which aims to reduce the rate of the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent by 2031⁵. Subsequently, the Australian Government's Department of Social Services' *Safe and Supported: The National Framework for Protecting Children 2021–2031*⁶ included a focus on addressing the over-representation of Aboriginal and Torres Strait Islander children and young people in child protection systems. At a state level, South Australia's 2021 child protection *Safe and Well Plan* emphasises culture and connection to community as 'important protective factors in the health and wellbeing of families, children and young people. Keeping Aboriginal children and young people connected and safe in their community is one of the best ways we can reduce their disproportionate vulnerability.'⁷ A key directive in this Plan is the implementation of the ATSICPP.

³ Arney, F. Iannos, M. Chong, A. McDougall, S. and Parkinson, S. (2015) *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations*, CFCA Paper No. 34, Melbourne.

⁴ https://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf

⁵ <https://www.closingthegap.gov.au/national-agreement/targets>

⁶ https://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf

⁷ Government of South Australia (2021) *Safe and well: Supporting families, protecting children* https://www.childprotection.sa.gov.au/_data/assets/pdf_file/0011/126497/19-070-Safe-and-Well-State-Reform_final.pdf p 15.

What does the evidence tell us about progress?

Despite the guidelines and directives provided by the ATSICPP, the suite of legislative and policy frameworks, and the stated objective of reducing the number of Aboriginal children being placed in out-of-home care, the implementation of the Placement Principle has had limited impact. This is highlighted in the Terms of Reference for this Inquiry, as set out by the South Australia Commissioner for Aboriginal Children and Young People:⁸

- Aboriginal children are now, and have historically been, over-represented as a group of those in Out-of-Home-Care in South Australia;
- At present, only about three in ten Aboriginal children who are removed are placed with Aboriginal family or kin;
- Reunification of Aboriginal children with their family or kin has declined in South Australia and, in comparison with other jurisdictions, South Australia has the lowest rate of reunification of Aboriginal children;
- The aspirations reflected in the five pillars of the Aboriginal and Torres Strait Islander Child Placement Principle are not being fulfilled nor applied to all decisions affecting Aboriginal children;
- Notwithstanding the legislating of part of the Aboriginal and Torres Strait Islander Child Placement Principle in s 12 of the *Children and Young People (Safety) Act 2017*, the rate of children being placed with Aboriginal family or kin has been decreasing.

In 2021, the growth in the number of Aboriginal children and young people living in residential care (15.9% increase on the previous year) was double the rate of growth for the total child population in South Australia.⁹ Without a meaningful response and significant change, it is predicted that by 2031 as many as 140 in every 1000 Aboriginal children in South Australia may be in State care.¹⁰

⁸ Commissioner for Aboriginal Children and Young People, Inquiry – Terms of Reference
<https://cacyp.com.au/wp-content/uploads/2022/06/ATSICPP-Inquiry-Terms-of-Reference.pdf>

⁹ <https://gcyp.sa.gov.au/2022/11/21/advocacy-requests-for-children-and-young-people-living-in-state-care-at-all-time-high/>

¹⁰ Commissioner for Aboriginal Children and Young People (website) – *What the statistics show*:
<https://cacyp.com.au/inquiry/>, citing the South Australia Guardian for Children and Young People, (2020) *Snapshot of SA Aboriginal Children and Young People in Care and/or Detention*, drawing on the Report of Government Services.

While past estimates in 2015 suggest that the Principle was fully applied in as few as 13% of child protection cases involving the placement of Aboriginal and Torres Strait Islander children,¹¹ more recent data does indicate an improvement. In 2021, the proportion of Aboriginal children placed with Aboriginal relatives or kin in South Australia was 31.2%.¹²

However, measuring compliance with the ATSICPP using indicators such as these, tends to obscure a much more complex reality that does not necessarily reflect the proper application of the Principle in practice, either for the child's first or subsequent placements. Behind this data, a number of placement decisions are made that are not in accordance with the Principle. Aboriginal organisations and families may be consulted about placement decision-making on a once-off basis or as a 'tick-box' statutory exercise or not at all.¹³

Both the data and the lack of compliance in applying the Principle point to ongoing challenges in ensuring the best possible outcomes for Aboriginal families and children that interact with the child protection system. It is therefore critical that the systemic barriers that serve to undermine the full realisation of the ATSICPP are examined and reduced, so that Aboriginal children can remain safe and connected with their family, community and culture.

Challenges and barriers to realizing the ATSICPP

In practice, there are a number of obstacles to fully realizing all the pillars of the ATSICPP. Drawing on the consultations undertaken by CAFFSA with Elders, kinship and foster carers, some of these barriers include: the application of overly strict and culturally insensitive eligibility criteria and procedures for becoming a carer, the lack of support for re-unification, and the lack of adequate attention to the timing and involvement of Family Group Conferences.

¹¹ Arney, F. Iannos, M. Chong, A. McDougall, S. and Parkinson, S. (2015) *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations*, CFCA Paper No. 34, Melbourne.

¹² Australian Institute of Health and Welfare (2022) Data Tables: Aboriginal and Torres Strait Islander Child Placement Principle indicators at <https://www.aihw.gov.au/reports/child-protection/atsicpp-indicators/data>

¹³ Arney, F. Iannos, M. Chong, A. McDougall, S. and Parkinson, S. (2015) *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: Policy and practice considerations*, CFCA Paper No. 34, Melbourne.

Criteria and procedures for becoming a carer

Based on the consultations conducted by CAFFSA, participants identified that the shortage of Aboriginal kinship and foster carers arises not because people do not want to care for children, but as a result of the eligibility criteria and procedures required to become a carer. A range of factors linked to these hinder Aboriginal people becoming carers. These include, amongst others:

- the requirement that the prospective carer has a spare room for the child, despite data indicating that overcrowding occurs in many Aboriginal households. Making a child have their own room in a home where everyone else is sharing can make the child feel differentially treated and marginalised. There is a need to understand the cultural obligations as well as the norm that children rarely sleep in a room on their own, more so, when others are sharing rooms.
- the criteria of not having a criminal record. Given the disproportionate over-representation of Aboriginal adults in the prison system, many parents and prospective carers have police records. This criterion fails to recognise that many of these records might persist from a long time ago, or that people have the capacity to change for the better and overcome past challenges. The insistence on this criterion significantly affects the number of available, albeit willing, kinship carers.

Problems with Reunification

In light of the challenge of finding available Aboriginal kinship and foster carers, and the reality that South Australia reunifies the third lowest proportion nationally of Aboriginal children with their families (9.9%),¹⁴ there is a need to support families much more comprehensively and in a more culturally appropriate way in order to improve families' chances for reunification. 'Active efforts' need to be made to ensure that the administration that took responsibility for removing children also takes responsibility for providing families with the support they need to resume their care.

Family Group Conferencing

Although there are five pillars in the ATSICPP, only the placement pillar is enshrined in South Australian legislation. In practice, the partnership and participation pillars are not embedded for Aboriginal family and community members. CAFFSA consultations highlighted that Family

¹⁴ Commissioner for Aboriginal Children and Young People, Inquiry – Terms of Reference
<https://cacyp.com.au/wp-content/uploads/2022/06/ATSICPP-Inquiry-Terms-of-Reference.pdf>

Group Conferences should be held far earlier in the process and with extended and cultural family. This would effectively result in the other ATSI CPP pillars being enacted, more especially those of prevention, participation, partnership and connection.

The CAFFSA consultations also affirmed that Family Group Conferences or a form of Aboriginal Family-Led Decision Making should be a requirement before any child is removed. These should occur as early as possible and that both of these provisions should be explicitly enshrined in the legislation.

The need to address structural drivers and determinants

In considering the systemic barriers to implementing the ATSI CPP in its entirety, it is essential that the structural drivers and determinants that contribute to the removal of children are addressed. Given that the number of Aboriginal children in out-of-home-care placements has continued to rise, despite attempted reforms by the SA Department for Child Protection (DCP), SACOSS supports the Family Matters SA Leadership Group in questioning whether the Department's support for Aboriginal families pays sufficient attention to the *drivers and determinants* of families and children's involvement with child protection system. These drivers include poverty, insecure housing, racism and the long-term collective trauma brought about by the impacts of colonisation, dispossession,^{15, 16} and the ongoing inequitable treatment of Aboriginal communities. These drivers are compounded by poor physical and mental health, inequitable education, criminalisation and incarceration, and disconnection from culture and community.

On their own, and in the absence of a more far-reaching response and understanding of what is driving the removal of children, revisions to the legislation or the enforcement of the ATSI CPP are likely to only have a limited impact on the wellbeing of children and young people or on the reduction in the number of children being placed in out-of-home-care (OOHC). However, this view should in no way suggest that the legislation should not be reformed or that the ATSI CPP should not be adhered to, it simply points to the contributory factors that need to also be

¹⁵ SNAICC (2022), *The Family Matters Report - Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia*. p. 71.

¹⁶ Davis, Megan (2019) *Final Report of the Family is Culture: Independent Review into Aboriginal and Torres Strait Islander Children and Young People in Out-of-Home Care in New South Wales*, accessed at https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf

addressed if we are to effectively stem the number of children in out of home care who need placements.

If we are to address the preventable and tragic crisis of 15% of Aboriginal children having had a substantiated child protection report by the age of three years, and 25% having had a substantiated report by the time they are 18 years old,¹⁷ it is critical that active efforts are urgently made across the whole of government to address the socio-economic causes and drivers that increase families' susceptibilities to poverty; financial, physical and psychological stress; and expose children and young people to potential harm.

For children and young people to be safe, well and thrive, they need to be protected from preventable harms. Creating home environments in which children can thrive requires that parents have the wherewithal and supports they need to provide for their children. As highlighted by the CEO of the Queensland Aboriginal and Torres Strait Islander Child Protection Peak, Garth Morgan, "You can't pour from an empty cup", parents need to be supported and we have to recognise that parents themselves are carrying unaddressed trauma'.¹⁸ For children to be safe and secure, they need a stable home, where their parents can manage the pressures of everyday life and are supported to face the challenges of limited income, poor quality housing, and inadequate access to healthcare, mental health, and family and domestic violence support services. All these pressures inevitably compete with and add to the load of parents' capacities to be the best parents they can be. If we are to genuinely make a difference to the lives and wellbeing of children and young people, it is essential that we urgently move to:

- reduce families' exposure to poverty susceptibility by increasing social security payments to above the poverty line, and ensure that working people's wages lift them out of poverty rather than driving them into becoming part of the 'working poor';

¹⁷ Segal, L., Nguyen, H., Mansor, M. M., Gnanamanickam, E., Doidge, J. C., Preen, D. S., Brown, D.S., Person, O., & Armfield, J. M. (2019). Lifetime risk of child protection system involvement in South Australia for Aboriginal and non-Aboriginal children, 1986–2017 using linked administrative data. *Child Abuse & Neglect*, Volume, 97. Substantiated refers to when an assessment is made (following notification) that there is reasonable cause to believe a child had been, was, or was likely to be, abused, neglected or harmed.

¹⁸ ABC Radio National Breakfast. Interview by Patricia Karvalas with Garth Morgan, CEO of Queensland Aboriginal and Torres Strait Islander Child Protection Peak, 27 February 2023. *Failure to address family violence pushes First Nations children into the system*. <https://www.abc.net.au/radionational/programs/breakfast/failure-to-family-violence-first-nations-children-system/102026342>

- provide accessible, affordable, and secure public and social housing, and address the challenges of rental affordability;
- ensure that our public health system focuses on preventive and primary healthcare, and that physical and mental health services are affordable, accessible, culturally safe and appropriate to people's needs;
- ensure that all children and young people have access to quality education and learning environments, to develop positive educational outcomes;
- reduce the incarceration and criminalisation of adults, children and young people. This includes treating incarceration only as a last resort, that the minimum age of criminal responsibility should be raised from ten to at least 14 years of age, and that the rates of incarceration of Aboriginal and Torres Strait Islander young people and adults are reduced by 30 and 15 per cent, respectively, by 2031, in accordance with the National Agreement on Closing the Gap. Given the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system, Aboriginal and Torres Strait Islander children and families are disproportionately impacted by parental incarceration. The number of Aboriginal parents – particularly mothers – in prison directly impacts the number of Aboriginal children in out-of-home care;¹⁹
- address and reform current responses to domestic and family violence in ways that avoid the removal of children as a consequence of women reporting violence.²⁰

Conclusion

SACOSS continues to call for urgent attention to be directed towards addressing the drivers of poverty and socio-economic inequity that are primary contributory causes for the removal of children from their families and communities.

¹⁹ Australian Law Reform Commission (2017). *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Final Report No 133*. Available at https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf, cited in Connolly, H. Commissioner for Children and Young People, South Australia (2022) *Join the Dots: considering the impact of parental incarceration on children and young people*, p. 23. <https://www.ccp.com.au/wp-content/uploads/2022/05/Join-the-Dots-Considering-the-impact-of-parental-incarceration-on-children-and-young-people.pdf>

²⁰ ABC Radio National Breakfast (27 February 2023). Interview by Patricia Karvalas with Garth Morgan, CEO of Queensland Aboriginal and Torres Strait Islander Child Protection Peak. *Failure to address family violence pushes First Nations children into the system*. <https://www.abc.net.au/radionational/programs/breakfast/failure-to-family-violence-first-nations-children-system/102026342>

The current review of the *Children and Young People Safety Act 2017* (CYP SA) provides an opportunity to include changes to this Act that would make it clear that the ATSICPP is the paramount consideration – aligned with the best interests of the child and their safety – in all decision-making involving Aboriginal children and young people. This is to be further enabled by the principle of self-determination and the exercise of legislative authority.

We support the adoption and inclusion of the principle of ‘active efforts’ in legislation and policy, as framed by SNAICC – National Voice for Our Children’s comprehensive resource that describes what active efforts might look like in legislation, such as setting minimum requirements for the provision of family preservation and reunification supports, and providing Aboriginal families with the opportunity to participate in Aboriginal Family-Led Decision-Making, including Family Group Conferencing, amongst others,²¹ in addition to an active whole-of-government effort to address the material conditions and needs of families and children.

This requires that more effort is made to support family-led decision making and Family Group Conferencing, and in ways that ensure that all voices are heard and children and young people and their families can actively participate in finding sustainable solutions based on the primacy of family relationships. It is essential that these forms of engagement are led by families and Aboriginal-led organisations so as to ensure that they are culturally-aligned and safe.

In conclusion, SACOSS respectfully believes that any proposed legislative reforms that impact Aboriginal children and families, should be determined through close consultation with Aboriginal organisations and the Aboriginal community.

²¹ SNAICC (n.d.) *The Aboriginal And Torres Strait Islander Child Placement Principle: A Guide To Support Implementation*, at https://www.snaicc.org.au/wp-content/uploads/2019/06/928_SNAICC-ATSICPP-resource-June2019.pdf