



SNAICC
National Voice for our Children

SNAICC Submission to the Australian Human Rights
Commission Report to the UN Committee on the Rights
of the Child

June 2018

About SNAICC

SNAICC – National Voice for our Children (Aboriginal and Torres Strait Islander Corporation) is the national non-governmental peak body for Aboriginal and Torres Strait Islander children.

SNAICC works for the fulfilment of the rights of our children, in particular to ensure their safety, development and well-being.

The SNAICC vision is an Australian society in which the rights of Aboriginal and Torres Strait Islander children, young people and families are protected; our communities are empowered to determine their own futures; and our cultural identity is valued.

SNAICC was formally established in 1981 and today represents a core membership of Aboriginal and Torres Strait Islander community-controlled organisations providing child and family welfare and early childhood education and care services.

SNAICC advocates for the rights and needs of Aboriginal and Torres Strait Islander children and families, and provides resources and training to support the capacity of communities and organisations working with our families.

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Introduction

SNAICC- National Voice for Our Children (SNAICC) welcomes this opportunity to contribute to the Australian Human Rights Commission's Report to the UN Committee on the Rights of the Child (Committee). SNAICC's submission focuses on the key human rights issues facing Aboriginal and Torres Strait Islander children as well as Australia's progress in implementation of the UN Convention on the Rights of the Child (Convention). In particular, this submission identifies significant failures to progress key recommendation made by the Committee in 2012.

Aboriginal and Torres Strait Islander children were consistently highlighted throughout the Committee's Concluding Observations as disproportionately impacted by infringements of human rights. The Committee recommended action across several key areas, underpinned by greater Aboriginal and Torres Strait Islander participation in policy development and service delivery. We note with deep concern that since the Committee's last review of Australia in 2012, far too little has been done to progress the rights of Aboriginal and Torres Strait Islander children. This lack of progress reflects in worsening outcomes for children across a range of wellbeing and developmental domains, including soaring rates of over-representation in Australia's child protection systems.

Our submission is informed by the Family Matters campaign, a national initiative led by SNAICC and leading child and family service and representative organisations across the country to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care (OOHC). The Family Matters Roadmap outlines four evidence-based responses to address over-representation and ensure the full implementation of the human rights of our children. The priorities for change are:

- All families enjoy access to quality, culturally-safe, universal and targeted services necessary for Aboriginal and Torres Strait Islander children to thrive;
- Aboriginal and Torres Strait Islander people and organisations participate in and have control over decisions that affect their children;
- Law, policy and practice in child and family welfare are culturally safe and responsive; and
- Governments and services are accountable to Aboriginal and Torres Strait Islander people.¹

This submission provides a response to the priority areas identified by the Committee in 2012 as they relate to the rights of Aboriginal and Torres Strait Islander children. We consider the government's progress in implementation of the Convention and set out a series of recommendations to guide meaningful implementation of the rights of our children.

Human rights issues facing Aboriginal and Torres Strait Islander children

1. The over-representation of Aboriginal and Torres Strait Islander children in out-of-home care

Key human rights provisions: *General principles Non-discrimination (art. 2); Best interest of the child (art. 3); Family environment and alternative care Parents' common responsibilities, assistance to parents and the provision of childcare services (art. 18); Special protection measures Children belonging to a minority or an Indigenous group (art. 30)*

In its 2012 Concluding Observations, the Committee noted that Aboriginal and Torres Strait Islander children continued to experience "serious and widespread discrimination" including over-representation in the OOHC system.² Regrettably, this over-representation has increased since the Committee's last review. In 2016-17, Aboriginal and Torres Strait children were 10 times as likely as other children to be living in OOHC.³ Applying a theoretical model it is predicted from current trends



that the population of Aboriginal and Torres Strait Islander children in care will more than triple in size by 2036.⁴

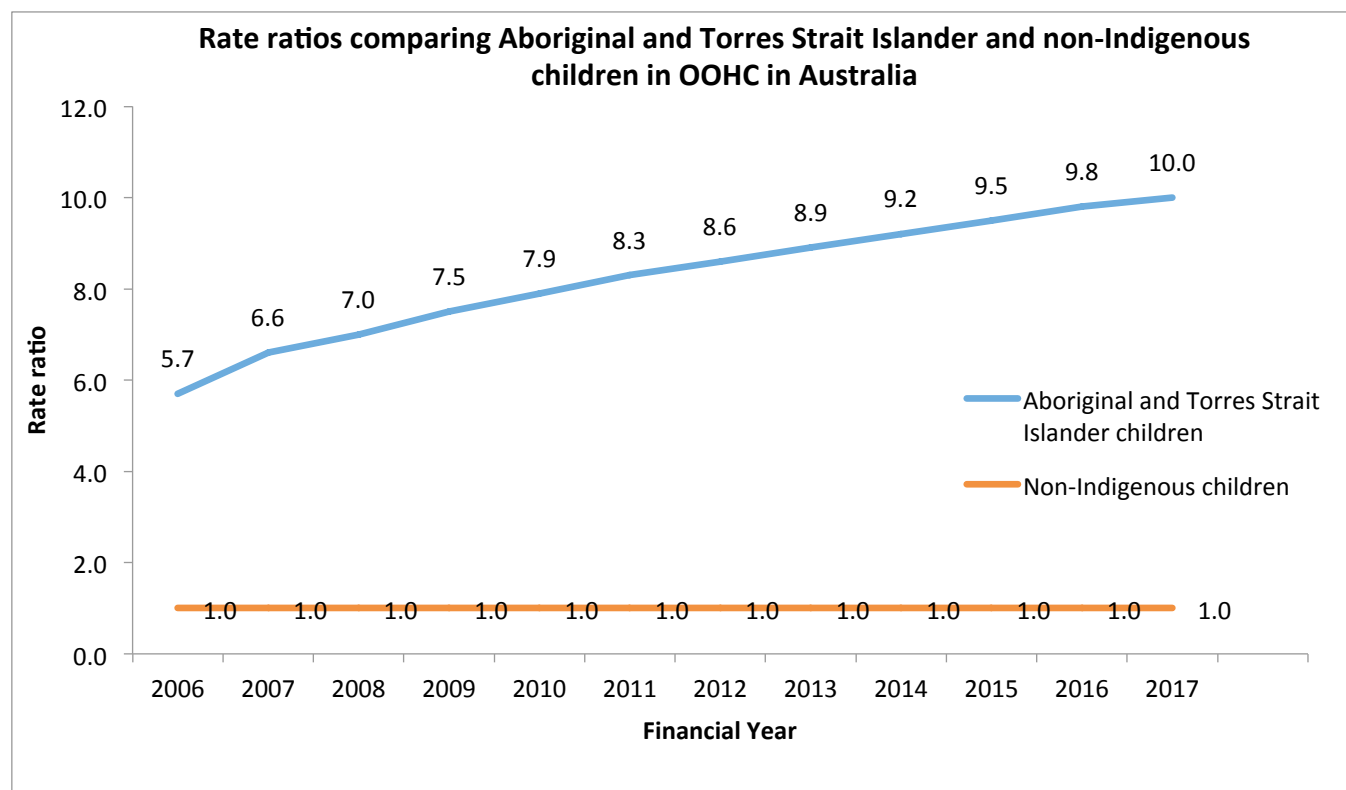


Figure 1 Over-representation of Aboriginal and Torres Strait Islander children in out-of-home care⁵

Through the *National Framework for Protecting Australia’s Children 2009-2020 (National Framework)*, the Commonwealth plays a key leadership role in ensuring that the rights of children are implemented across jurisdictions.⁶ The National Framework clearly articulates that redressing the over-representation of Aboriginal and Torres Strait Islander children in care requires a focus on preventing abuse, neglect and removal of children through early intervention, intensive family support and healing services. Consistent with the National Framework, the Committee reiterated that the Australian Government should focus on prevention and intensive support services and give preference to family-based care.⁷ Enacting the *best interests* principle set out in the Convention requires that Australia provide Aboriginal and Torres Strait Islander children with services and supports that ensure their health and well-being.⁸ The Convention also affirms the right of children to be brought up in the family environment (article 18(2)) and Australia’s responsibility to ensure that services to support parents are in place. In this regard, the Committee called upon Australia to establish and fund preventative measures, including family supports, to reduce the number of children in OOHC.⁹

Contrary to the evidence-base and its own policy position, as well as its international human rights obligations, Australia continues to invest disproportionately in the tertiary system.¹⁰ In 2015-16, only 17 per cent of overall real expenditure in child protection funding was invested in support services for children and their families, amounting to less than \$800 million as compared to \$4 billion or 83 per cent in investigation, court orders and OOHC services.¹¹

Despite the recommendations of the Committee in 2012, the Australian Government’s flagship initiative to redress disparities and improve outcomes for Aboriginal and Torres Strait Islander

peoples, “Closing the Gap”, continues to omit any targets to address the over-representation of children in OOHC or to provide support to families. A review of this initiative, currently in progress, presents an overdue opportunity for this long-standing omission to be corrected.

To redress the over-representation of Aboriginal and Torres Strait Islander children in OOHC, SNAICC recommends:

- **In the context of the Closing the Gap ‘Refresh’ process, the development of a National Comprehensive Aboriginal and Torres Strait Islander Children’s Strategy which includes generational targets to eliminate over-representation and sub-targets that address the drivers of child protection intervention;**
- **Increased investment in early intervention to support families and prevent children being placed in care in the first place; and**
- **Development and publication of data to better measure the situation of, causes and responses to over-representation of Aboriginal and Torres Strait Islander children in OOHC.**

2. Aboriginal and Torres Strait Islander participation and decision-making in child protection

Key human rights provisions: General principles *Non-discrimination (art. 2), Best interest of the children (art. 3), Respect for the views of the child (art. 12); Family environment and alternative care* *Separation from parents (art. 9)*

The comprehensive alignment of legislation, policy and practice with Aboriginal and Torres Strait Islander rights to self-determination and participation in issues affecting them is extremely lacking in Australia. In this regard, the Committee urged Australia to “ensure the effective and meaningful participation of Aboriginal and Torres Strait Islander persons in the policy formulation, decision-making, and implementation processes affecting them.”¹²

Representative participation in decisions about children

Genuine participation of Aboriginal and Torres Strait Islander peoples in decision-making requires representative consultation with Aboriginal and Torres Strait Islander peoples through their own institutions and procedures. A review of Australian legislation shows that only the state of Queensland has a legislated requirement to include Aboriginal and Torres Strait Islander agencies in all significant decisions for Aboriginal and Torres Strait Islander children, while the state of Victoria enacts similar requirements through a combination of legislation and policy. However, even in these states implementation of requirements for participation remains poor. In 2016 the Victorian Commission for Children and Young People undertook a review that found that Aboriginal Child Specialist Advice and Support Service (ACSASS) was only involved in 50 per cent of cases and that the advice of ACSASS was only recorded in the case files of 29 per cent of Aboriginal and Torres Strait Islander children.¹³

A significant and positive step toward recognising the right of Aboriginal and Torres Strait Islander communities to self-determination in child protection matters has been Victoria’s 2017 commitment to implementing Section 18 – the exercise of Departmental functions and powers by ACCOs in relation to Aboriginal children on protection orders under the Victorian Aboriginal Child Care Agency’s Aboriginal Children in Aboriginal Care program.¹⁴¹⁵ Evaluation of the pilot of this initiative in 2015 found that it had significant positive impacts on the realisation of children’s rights, including 46 per cent of children in the trial being returned to the safe care of their Aboriginal families and communities.¹⁶

Participation of Aboriginal and Torres Strait Islander children and families

The Committee noted with concern that there continues to be a lack of meaningful policies and systems for ensuring children's participation and input into matters concerning them across Australia.¹⁷ Meaningful participation for children is dependent upon choice in the manner of participation, access to information, and the availability of an appropriate advocate.¹⁸ It is essential that models for child participation are underpinned by legislation and policy, in addition to appropriate resourcing, that ensure fulsome consideration of a child's views in all decisions related to his or her care.

The development and implementation of mechanisms for ensuring the meaningful participation of children in decision-making is a key component of the National Framework.¹⁹ All state and territories contain legislative provisions that at least enable and encourage the consideration of children's views in child protection decision-making, where appropriate. Mechanisms for individual complaints regarding OOHC and child protection also exist in all jurisdictions, either through state and territory children's commissioners or guardians, or through the Ombudsman.²⁰

Representation for Aboriginal and Torres Strait Islander children involved in child protection systems is a crucial component of upholding the rights to participation and culture guaranteed to Aboriginal and Torres Strait Islander children under the Convention. There are variations between states and territories in relation to the availability of and legal requirements for independent legal representation for children in court proceedings.²¹ In Victoria, for example, all children aged 10 or more are required to have direct legal representation unless the court determines the child is not mature enough to provide instructions.²² Notably, in 2015-16, Aboriginal and Torres Strait Islander children aged 10 and under made up 20 per cent of all applications for protection orders in Victoria, suggesting that they are significantly impacted by the need for children under 10 to demonstrate 'exceptional circumstances' for representation in Children's Court.²³ The Legal Aid Review also noted that access to legal representation for Aboriginal and Torres Strait Islander children is particularly important, given systemic failures to safeguard their cultural identity and connection.²⁴

Community visitor programs have been promoted as a best practice model for independently monitoring the rights of children and facilitating access to legal and advocacy services for vulnerable communities.²⁵ However, there are currently only two visitor programs operating in Australia (Queensland and Tasmania) that support children in OOHC.²⁶ A review of the community visitor program by the Queensland Family & Child Commission found that 81 per cent of young people who accessed the service found it helpful.²⁷ While extension of the community visitor model may be a pathway for promoting the meaningful participation of Aboriginal and Torres Strait Islander children in OOHC, consideration must be given to ensure that mechanisms are culturally appropriate. A major barrier to participation for our children in child protection decision-making processes is the continued gap in legislated, resourced and defined roles for Aboriginal and Torres Strait Islander agencies to provide culturally appropriate support to children to participate.²⁸

We also highlight the rights of families to be involved in the decisions that are made about children at all stages of child protection decision-making. This must extend beyond consultation to genuine participation that aims to obtain the informed consent or agreement of children and families.²⁹ Models of Family Group Conferencing and Family-Led Decision-Making originated in New Zealand and are partly aimed at ensuring that child protection services are involving Indigenous families and community members in decision-making through culturally adapted and appropriate processes for identifying solutions to family issues and finding safe care options for children. Research indicates that family group conferencing models tend to keep children at home or with their kin, and reinforce their connections to family and community.³⁰ To date, only Victoria has implemented a statewide culturally specific model of AFLDM delivered in partnership with Aboriginal agencies, and a recent

review in that state found it was only made available in 23.4 per cent of relevant cases.³¹ In Queensland, a model has been trialed and legislative amendments that take effect in 2018 will see a new requirement for Independent Aboriginal and Torres Strait Islander entities to facilitate family participation in decision-making. Across most of the country there remain enormous gaps in the use of family participatory models of practice.

Another important development in the participation of Aboriginal and Torres Strait Islander families in judicial proceedings has been the establishment of Marra-Ngala Ganbu, the Koori Hearing Day in Victoria's Children's Court Family Division, in 2016. Marra-Ngala Ganbu is intended to improve outcomes for Aboriginal and Torres Strait Islander children, through increased participation of Aboriginal and Torres Strait Islander families and communities, respect for cultural identity and decision-making processes, and consistency of representation in child protection proceedings.³²

Participation in policy design and oversight of implementation

As well as participation in individual case decisions, genuine participation further requires that Aboriginal and Torres Strait Islander peoples, through their representatives, are able to participate in policy development, service design and oversight of the systems and services that impact on the safety and well-being of children. In particular, the Committee recommended that Australia establish an Aboriginal and Torres Strait Islander Children's Commissioner role nationally or in each state and territory.³³ To date, only Victoria has established such a role. The Queensland Family and Child Commission also has an identified Aboriginal and Torres Strait Islander position for a Commissioner but without a dedicated remit to address the rights of Aboriginal and Torres Strait Islander children. At this time only three states provide significant resources for Aboriginal and Torres Strait Islander children's peak bodies or leading service organisation to participate in policy and program design.

The necessity of Commonwealth leadership in ensuring that Aboriginal and Torres Strait Islander communities are involved in all aspects of child protection decision-making is clear. SNAICC recommends:

- **That an Aboriginal and Torres Strait Islander Children's Commissioner role is established nationally and in each state and territory with a mandate to provide oversight and undertake independent investigations to ensure Aboriginal and Torres Strait Islander children's rights are protected and prioritised;**
- **That all Australian governments provide resources to Aboriginal and Torres Strait Islander peak bodies or lead agencies for children to enable their participation in the design of policy and support for its implementation;**
- **The establishment of mechanisms and enactment of legislation in each jurisdiction to enable Aboriginal and Torres Strait Islander community-controlled agencies, families and children to participate in all decisions relating to the care of Aboriginal and Torres Strait Islander children; and**
- **All governments commit to the prioritisation of Aboriginal and Torres Strait Islander community controlled services to provide early intervention, preventative and out-of-home care services for families and children. This involves prioritising investment in service delivered by community controlled organisations, through investment targets that align with need and "Aboriginal and Torres Strait Islander First" procurement policies for services to Aboriginal and Torres Strait Islander families.**

3. Protecting the cultural and identity rights of Aboriginal and Torres Strait Islander children

Key human rights provisions: **Civil rights and freedoms** *Preservation of identity (art. 8); Education, leisure and cultural activities* *Cultural rights of children belonging to Indigenous and minority groups (art. 30); Family environment and alternative care* *Separation from parents (art. 9)*

The Committee expressed concern that the OOHC system does not “adequately facilitate the preservation of [Aboriginal and Torres Strait Islander children’s] cultural and linguistic identity” and called upon Australia to “ensure full respect for the rights of Aboriginal and Torres Strait Islander children to their identity, name, culture, language and family relationships.”³⁴

The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) is a key mechanism in Australian law and policy for protecting the cultural and identity rights of our children by ensuring that they are embedded in child welfare policy and practice.³⁵ The ATSICPP was founded on an intent of systemic change to counter embedded racism that caused the Stolen Generations. Its elements span prevention of entry to OOHC, reunification of children with their families, ensuring culturally connected placements, and enabling the participation of Aboriginal and Torres Strait Islander families and communities in child protection decision-making. In 2012, the Committee reaffirmed its 2005 recommendation for Australia to fully implement the ATSICPP and improve its collaboration with Aboriginal and Torres Strait Islander communities to locate suitable carers.³⁶

Despite the Committee’s calls, the rates of Aboriginal and Torres Strait Islander children in alternative care who are placed with their extended family and kin continue to drop alarmingly. Nationally, between 2007 and 2017, the proportion of Aboriginal and Torres Strait Islander children who were placed with family, kin or other Aboriginal and Torres Strait Islander carers dropped from 75 to 67 per cent.^{37/38} In the same time period, the rate of placement with Aboriginal and Torres Strait Islander carers exclusively fell from 65 to 50 per cent.^{39/40}

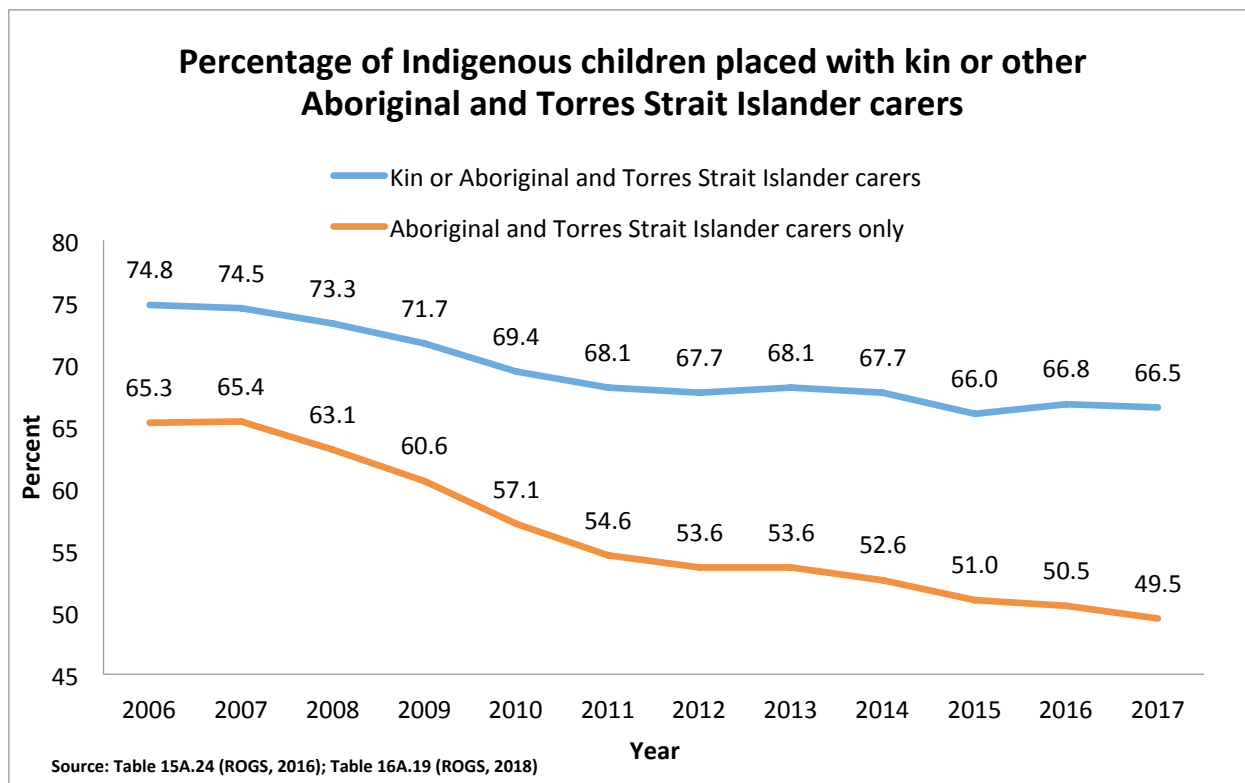


Figure 2 Aboriginal and Torres Strait Islander children placed with kin or other Aboriginal and Torres Strait Islander carers

Although the ATSI CPP is embedded in legislation and policy across all state and territories, there remains inconsistent and ineffective implementation, and common misunderstanding of the Principle across jurisdictions.⁴¹ Practical concerns include failures to identify Aboriginal and Torres Strait Islander children and inadequate efforts to consistently look for placement options in consultation with family and community at each stage of the management of a child’s care arrangements.⁴² To date, only Victoria has undertaken a comprehensive review of the ATSI CPP’s implementation. The 2016 Victorian Commission for Children and Young People’s Inquiry report into compliance with the intent of the ATSI CPP found that there were no matters between January 2013 and December 2014 that achieved full practical compliance with the Principle.⁴³

SNAICC is also concerned that there have been strong trends across Australian jurisdictions to increase the focus on, and expedite timeframes for legal permanency and adoption (that is, the transfer of exclusive parental responsibility to a person, other than the child’s biological parents, until the child is 18 years old).⁴⁴ For example, recently announced reforms in NSW, through the Forever Family program, indicate a move towards adoption as a preferred option for children in OOHC, despite the opposition and concerns of leading child advocacy bodies in the state.⁴⁵ Other measures introduced in some jurisdictions include placing restrictive time limits on achieving reunification with parents and limiting contact of children with their parents, without a concurrent focus on investing in efforts to support families to stay together.⁴⁶ Through adoption and permanent care measures, governments are outsourcing their responsibility to keep kids safe to carers and putting our children at further risk. Adoption and permanent care reforms provide no ongoing support to carers to ensure they can provide a safe and stable home. In a context where compliance with the ATSI CPP is so poor, inflexible legal measures to achieve permanent care will likely serve to sever connections that are fundamental for Aboriginal and Torres Strait Islander children’s preservation of identity.

Permanence for Aboriginal and Torres Strait Islander children is identified by a broader

communal sense of belonging; a stable sense of identity; where they are from, and their place in relation to family, mob, community, land and culture.

Protecting the cultural and identity rights of Aboriginal and Torres Strait Islander children requires that all governments work collaboratively alongside Aboriginal and Torres Strait Islander representatives to implement the ATSI CPP. SNAICC recommends:

- **Nationally consistent standards for implementation of all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle and linked jurisdictional reporting requirements through the National Forum for Protecting Australia's Child;**
- **Increased investments in reunification services to ensure children are not spending longer in OOHC than is necessary and in support services for families once children are returned;**
- **Increased efforts to connect Aboriginal and Torres Strait Islander children in OOHC to family and culture, through cultural support planning, family finding, return to country, and kinship care support programs;**
- **Child protection legislation, policy and practice guidelines and decision-making are reviewed (periodically) to ensure effective and differential recognition of the unique rights of Aboriginal and Torres Strait Islander children to safe and stable connections to kin, culture and community; and**
- **Reform of permanency planning measures across all jurisdictions towards a focus on holistic stability of care, ensuring adequate mechanisms to strengthen families and to protect children's right to family and culture.⁴⁷ An immediate moratorium on permanent orders for Aboriginal and Torres Strait Islander children is needed until current high risk and harmful approaches are remedied.**

4. The quality and coverage of Early Childhood Education and Care

Key human rights provisions: Education, leisure, and cultural activities *Right to education* (art. 28); *Cultural rights of children belonging to Indigenous and minority groups* (art. 30); **General principles** *Right to life, survival and development* (art. 6)

In 2012, the Committee recommended that Australia “further improve the quality and coverage of its early childhood care and education”.⁴⁸ In 2016, Aboriginal and Torres Strait Islander children were only half as likely to access early childhood education and care (ECEC) as non-Indigenous children.⁴⁹ In 2014 the Productivity Commission identified a 15,000 place gap in early learning places for Aboriginal and Torres Strait Islander children, and since that time there has been no significant change in our children's representation in government approved child care.⁵⁰ The under-representation of Aboriginal and Torres Strait Islander children in ECEC is particularly concerning given that the 2015 Australian Early Development Census identified that our children are over 2.6 times more likely to be vulnerable on 2 or more domains in comparison to non-Indigenous children.⁵¹

The UN Special Rapporteur on the Rights of Indigenous Peoples reiterated the Committee's 2012 concerns over access to and the quality of ECEC during her visit to Australia in 2017. The Special Rapporteur noted the declining involvement of Aboriginal and Torres Strait Islander communities over the past decade in ECEC program development and delivery.⁵² The Special Rapporteur called upon Australia to strengthen community-led education initiatives, through meaningful consultation, financial support and collaboration. In addition, the Special Rapporteur recommended that Australia “implement school curricula that are culturally sensitive...and apply a trauma-informed approach that...supports parents and families to improve student attendance”.⁵³



In March 2017 the Commonwealth government introduced sweeping changes to Australia's childcare system under the Jobs for Families Child Care Package (Package) that are set to commence in July 2018. These reforms have deeply concerning implications for vulnerable families and children. Analysis conducted by SNAICC, in partnership with Deloitte Access Economics, demonstrates that these changes will result in less access for Aboriginal and Torres Strait Islander families to ECEC.⁵⁴

The Package abolishes the Budget Based Funding (BBF) program that is designed to fund ECEC services in areas where a user pays model is not viable. Approximately 80 per cent of services funded through the BBF program are for Aboriginal and Torres Strait Islander children.⁵⁵

The changes introduce an activity test that decreases the minimum subsidised hours of childcare available for some families on low incomes where either parent does not meet work or study requirements to just 12 hours per week, restricting access for children experiencing vulnerability who stand to benefit most from vital early learning.

An essential component to closing the gap in outcomes between Aboriginal and Torres Strait Islander and non-Indigenous children is a fully funded ECEC system that recognises the importance of integrated responses to the needs of vulnerable families. Service integration places the child in the context of family and community, ensuring that early years services are connected to the range of family services that contribute to a safe, positive and supportive development environment for children. In the Package, there is a lack of any apparent strategy to close the 15,000 early learning place gap for Aboriginal and Torres Strait Islander children, nor do the reforms have a coherent, long-term strategy for engaging Aboriginal and Torres Strait Islander families and addressing their broader support needs early in their children's lives.

Ultimately, the Jobs for Families Child Care Package conflicts with Aboriginal and Torres Strait Islander service provision principles. The Package is weighted toward supporting working families at the expense of facilitating access to community-based services for vulnerable children.⁵⁶ Aboriginal and Torres Strait Islander ECEC services have a different purpose; they support the wellbeing of the most vulnerable children and families in the community and prioritise access for our children who are not accessing, or are unlikely to access mainstream services.

Without access to the necessary funding and supports, ECEC services face reducing their support for children and families experiencing high levels of vulnerability. Access to quality early years education supports a child's successful transition to school and lifelong education. Early investment in strengthening families can provide long-term social and economic benefits by interrupting trajectories that lead to health problems, criminalisation, and child protection intervention. In order to fulfill the right of Aboriginal and Torres Strait Islander children to have equitable access to quality, culturally based ECEC, SNAICC recommends:

- **The Australian Government develop and implement a strategy to address the under-representation of Aboriginal and Torres Strait Islander children in early childhood education and care. The strategy must recognise the unique role of, and provide sustainable funding for, a dedicated Aboriginal and Torres Strait Islander community-controlled early years sector;**
- **Investment in an Aboriginal and Torres Strait Islander specific program of early childhood education and care to strengthen existing community-controlled services and introduce new services to target the 15,000 place participation gap; and**
- **The current Closing the Gap target on early childhood education should be strengthened to encompass early childhood developmental outcomes, rather than the narrow focus on participation in early childhood education, and include outcomes for children from birth to 3 years.**

5. The impacts of family violence upon Aboriginal and Torres Strait Islander children

Key human rights provisions: Violence against children Abuse and neglect (arts.18 and 39);
General principles Non-discrimination (art.2)

In 2012, the Committee expressed its concern at the lack of policy, practice and resources being directed for prevention and responses to family violence.⁵⁷ Although Aboriginal and Torres Strait Islander people are more likely to experience family violence than non-Indigenous people, significant gaps exist in ensuring meaningful responses to family violence within our communities.⁵⁸ The Third Action Plan 2016-2019 of the National Plan to Reduce Violence against Women and their Children 2010-2022 sets out to address the disproportionate rates of Aboriginal and Torres Strait Islander women and children who experience family violence.⁵⁹ SNAICC, in partnership with the National Family Violence Prevention Legal Services Forum (NFVPLS) and the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) has recently raised concerns regarding the level of Aboriginal and Torres Strait Islander participation and leadership in the development of the National Plan.⁶⁰ **We take this opportunity to highlight the critical importance of engaging with our communities in developing long-term solutions for ensuring the safety and well-being of Aboriginal and Torres Strait Islander children and families.**

Aboriginal and Torres Strait Islander children are impacted by indirect and direct exposure to family violence, which can lead to poorer developmental outcomes and negatively impact social and emotional well-being.⁶¹ Family violence is also a key driver of child protection involvement and contributes to the over-representation of our children in OOHC.⁶² A 2016 review of 980 Aboriginal and Torres Strait Islander children in OOHC in Victoria found that 88 per cent had been exposed to family violence.⁶³ SNAICC is concerned that high rates of removal associated with family violence reflect an approach that is solely focused on removing children from situations of violence, rather than addressing the underlying causes of family violence within our communities.

The evidence clearly demonstrates that reducing rates of family violence in our communities will only occur if Aboriginal and Torres Strait Islander organisations are fully resourced to provide a holistic response to family violence.⁶⁴ Although the Committee has called upon the Australian Government to strengthen its prevention efforts, Aboriginal and Torres Strait Islander organisations responding to family violence have continually faced threats to funding sustainability. Ongoing funding insecurity in the family violence service sector directly impacts vulnerable children and families. For example, in their submission to the Senate Inquiry Into Commonwealth Indigenous Advancement Strategy Tendering Processes, NFVPLS noted that funding insecurity impacts upon their capacity to build and maintain relationships of trust with clientele.⁶⁵ This leads to disengagement and makes continuity of care difficult, which further places families at risk.⁶⁶

In 2012 the Committee noted Australia lacks fulsome support services for children who have experienced abuse, and recommended a national system for receiving and responding to instances of abuse.⁶⁷ Despite these calls, and the existence of the National Framework for Protecting Australia's Children 2009 to 2020, we continue to lack a coordinated, whole of government effort to tackle family violence.

In partnership with NFVPLS and NATSILS, SNAICC proposed a series of key recommendations that will empower Aboriginal and Torres Strait Islander communities, in line with our rights to self-determination, to address the loss of cultural cohesion, authority and control underpinning family violence and keep our kids safe in their families, cultures and communities. We recommend:

- **All governments commit to a sustained increase in investment for family violence response and prevention, with a key focus on resourcing needs for Aboriginal and Torres Strait Islander organisations. Funding commitments must ensure national**

coverage of holistic and culturally safe service responses in areas including: family support services, placements with kin for children removed because of violence and culturally safe programs and services to better support non-violent parents (victims/survivors) to safely maintain the care of their children – avoiding child removal and OOHC placements;

- Measures are advanced to enable Aboriginal and Torres Strait Islander community-controlled organisations, women, men, families and children to be empowered as active participants in driving policy and practice change;
- That a formal mechanism be established to support the participation of Aboriginal and Torres Strait Islander leadership under the National Plan to Reduce Violence against Women and their Children 2010-2022, similar to the governance structure of the Third Acton Plan for the National Framework for Protecting Australia’s Children 2009-2020; and
- That a national Aboriginal and Torres Strait Islander child protection notification and referral system be established. The system would provide a nationally consistent mandatory notification and referral system (akin to the Custody Notification System) to refer Aboriginal and Torres Strait Islander families in contact with the child protection system to culturally appropriate supports and services, including independent legal advice, at the earliest possible opportunity.

6. The over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system

Special protection measures *Administration of juvenile justice (art. 40); Children belonging to a minority or Indigenous group (art. 30); Family environment and alternative care Separation from parents (art. 9); General principles Non-discrimination (art. 2);*

In Australia, extreme levels of social and economic disadvantage experienced by Aboriginal and Torres Strait Islander people remain unaddressed and are driving child protection systems engagement and, in many cases, the subsequent engagement of children with the youth justice system. In 2015-2016, Aboriginal and Torres Strait Islander youth were 16 times as likely as non-Indigenous youth aged 10-16 to have contact with both child protection and youth justice systems.⁶⁸

In 2017, Aboriginal and Torres Strait Islander young people (aged 10-17) made up just over half (53 per cent) of young people in detention on an average night, making them 27 times more likely to be incarcerated than non-Indigenous youth.⁶⁹ The Committee expressed its concern over the significant over-representation of Aboriginal and Torres Strait Islander children and young people in the criminal justice system.⁷⁰ Again, the Committee reaffirmed its call for Australia to increase its minimum age of criminal responsibility and to establish a mechanism for addressing cases of abuse in youth detention centres.⁷¹

Despite calls from the Committee for substantial reform to its youth detention system, we continue to see widespread abuse and violation of the human rights of Aboriginal and Torres Strait Islander youth in detention. The findings of the Royal Commission into the Protection and Detention of Children in the Northern Territory (Royal Commission) demonstrate how the detention system is failing our children. The Royal Commission found that the detention system “failed to comply with basic binding human rights standards in the treatment of children and young people.”⁷²

SNAICC remains deeply concerned that little has been done to address the trajectories leading to youth justice involvement. Without substantial reforms and investments targeted at interrupting the pathways leading to interactions with child protection and youth justice systems, Aboriginal and Torres Strait Islander children will continue to be removed from their families and communities at disproportionate rates. As noted by the Royal Commission:



*The life trajectory of children and young people in care and detention was repeated over and over...Instead of receiving the support those families needed to care for their children we heard of removal from the family and often from the community...As children absconded from places where they did not feel at home or where they felt unsafe and lonely or to be with other children who had become their family, the next step was contact with the criminal justice system and ultimately detention.*⁷³

The over-representation of Aboriginal and Torres Strait Islander adults in the criminal justice system also infringes upon the rights of our children to grow up in their home environments and in their cultures (art.2; art. 30). Disruption to the care and custody of children is a major impact of parental incarceration.⁷⁴ Article 9 of the Convention further sets out the rights of children of incarcerated parents to maintain their relations and have direct contact when it is in the child's best interests.⁷⁵

It is essential that the Australia Government recognise the driving factors of imprisonment and violence within program and policy development, including social and economic disadvantage, family violence and involvement in the child protection system. Through the Change the Record campaign, SNAICC, in partnership with Aboriginal and Torres Strait Islander, human rights and community organisations, are seeking to close the gap in rates of imprisonment by 2040 and cut the disproportionate rates of violence to at least close the gap by 2040 with priority strategies for women and children. SNAICC recognises that fulfilling the right of Aboriginal and Torres Strait Islander children to grow up in their families and communities requires investment in early intervention, prevention, and diversion justice strategies. In alignment with the Change the Record campaign, we recommend:

- **The establishment of a national, holistic and whole of government strategy to address imprisonment and violence rates impacting Aboriginal and Torres Strait Islander people. The strategy should be linked to related areas of COAG reform including the National Framework for Protecting Australia's Children 2009-2020 and the National Plan to Reduce Violence Against Women and their Children 2010-2022.**⁷⁶

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⁵ Children involved with CP measured at 30 June each financial year.

It is important to note that rates for years 2011-2015 were calculated using revised population estimates based on the 2011 Census and should not be compared with rates calculated using populations based on previous Censuses. However, all figures are included to demonstrate the steady increase and disparity between Indigenous and non-Indigenous children across all points on the CP continuum.

Rates for notification and investigation from 2011 to 2015 were taken from ROGS, 2016. The rates were derived from unpublished data from State and Territory Governments.

Rates from 2006 to 2010 were taken from ROGS, 2016. The rates were derived from unpublished AIHW data collected for Child protection Australia.

Source: 2006 data from Chapter 15 Child protection services (ROGS, 2016)

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