

Principle Focus

A child-rights approach to systemic accountability for the safety and wellbeing of Queensland's First Nations children



The disproportionate representation of Aboriginal and Torres Strait Islander children and young people is a pervasive feature of statutory child protection systems across all jurisdictions in Australia.

It is perhaps our greatest challenge and contemporary injustice. The *Bringing Them Home Report* in 1997 delivered clear and compelling lessons, yet many of the recommendations remain unimplemented. It is therefore unsurprising that we see Aboriginal children removed at a higher rate today than at any other time in history, and that their disconnection from kin, country and culture continues, this time without the excuse of not knowing better.

The over-representation of our children in statutory systems is as much an indicator of the failure to achieve equity for Aboriginal and Torres Strait Islander people across broader social and economic policy as it is of the performance of a single department.

Addressing over-representation is a stated priority of the Department of Children, Youth Justice and Multicultural Affairs (DCYJMA), and the Queensland Government more broadly. The launch of the generational *Our Way Strategy* in 2017 and the significant reform agenda pursued under subsequent *Changing Tracks* action plans have been well supported, generating a sense of cautious optimism in stakeholders and a renewed commitment to collaboration in the interests of our children and young people.

Nationally, all jurisdictions committed to uphold the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) (prevention, partnership, placement, participation and connection) under the Fourth Action Plan of the National Framework for Protecting

Australia's Children. The ATSICPP underpins Australian law and policy governing the treatment of children who come into contact with the statutory child protection system. It was developed to protect key human rights of Aboriginal and Torres Strait Islander children, particularly as recognised in the United Nations Convention on the Rights of the Child (UNCRC). In practice, the ATSICPP recognises the rights of Aboriginal and Torres Strait Islander children to be raised in their own culture and the importance and value of their family, extended family, kinship networks, culture and community.

Queensland remains the first and only jurisdiction to enshrine all five elements of the ATSICPP in its child protection legislation and implement it across all system elements in legislation, policy, programs, processes and practice.¹ The ATSICPP is described in Queensland's child protection legislation with the goal to reduce disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system and promote their rights, safety and wellbeing.

The Queensland Family and Child Commission (QFCC) is undertaking a comprehensive program of work to examine the dynamics and drivers of this over-representation across Queensland's child protection system to understand the causes and situational influences. This will involve an in-depth, rights-based analysis of the ATSICPP's implementation across the system², which will provide an opportunity to evaluate the efficacy of the ATSICPP implementation as the means to address over-representation.

¹ SNAICC, 2017, [Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle – A Resource for Legislation, Policy, and Program Development](#)

² Ibid

This paper is the first in a series that will be produced by the QFCC about this issue and builds on decades of independent Aboriginal and Torres Strait Islander-led advocacy, cultural and organisational leadership, research and evidence.^{3,4}

The QFCC is deeply concerned about the disproportionate representation of Aboriginal and Torres Strait Islander children across all points of the Queensland child protection system, including out-of-home care. Publicly available data analysed by the QFCC confirms Queensland's Aboriginal and Torres Strait Islander children continue to be removed from their parents and placed in out-of-home care at rates significantly greater than non-Indigenous children.

This disproportionate representation is a rights issue of the highest magnitude.

In response, the QFCC asserts that:

- ① Children are rights holders. Their rights are inalienable and indivisible. The full enjoyment of their rights should not be limited at the discretion of duty bearers nor subject to constraints or the convenience of responsible parties, the system or its actors.
- ② The disproportionate representation of Aboriginal and Torres Strait Islander children continues to escalate across the continuum of the statutory child protection system.
- ③ The disproportionate rates of Aboriginal and Torres Strait Islander children in out-of-home care and the disparate impacts suggest that the system is discriminatory either in its design or in its application.
- ④ The continuing growth in both representation and outcome disparity demonstrates a failure to address structural inequity.
- ⑤ The ATSICPP is a key legislative and operational safeguard for the rights, including distinct cultural rights, of Aboriginal and Torres Strait Islander children and young people who are involved with, or at risk of entering the statutory child protection system.
- ⑥ Effective operation of the ATSICPP is contingent on active efforts to redress the structural inequity that exists within multiple systems to reduce the disproportionate disadvantage experienced by Aboriginal and Torres Strait Islander children and young people.
- ⑦ The rights of Aboriginal and Torres Strait Islander children are infringed by the inconsistent interpretation and application of the ATSICPP across Queensland, the impact of direct and indirect discrimination within the system, and the inherent cultural bias of the systems and people responsible for making decisions regarding the safety and wellbeing of children.
- ⑧ Responsible parties involved in universal and targeted service provision for Aboriginal and Torres Strait Islander children and families and the statutory child protection system must consistently implement the ATSICPP to the standard of active efforts to safeguard the rights of Aboriginal and Torres Strait Islander children and reduce the harm experienced by these children.

³ *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (Australia). (1997). Bringing them home: report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families.* [Sydney]:[Human Rights and Equal Opportunity Commission],

⁴ Dodson, P., Wootten, H., O'Dea, D., Wyvill, L., & Johnston, E. (1991). Royal Commission into Aboriginal deaths in custody.