



Principle Focus

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

Queensland
Family & Child
Commission



About this Paper

This paper has been prepared under section 9 of the *Family and Child Commission Act 2014*.

The Queensland Family and Child Commission (QFCC) is a statutory authority of the Queensland Government. Established in 2014, the QFCC provides oversight of the family and child support system, with an aim to bring children's rights to life. Through awareness, advocacy and accountability, we seek to give practical effect to the rights of all children and young people in Queensland.



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CONTENTS

4	Acknowledgement
5	Foreword from the Commissioner
6	Executive Summary
8	Introduction
9	The rights of the child
10	Disproportionate representation of Aboriginal and Torres Strait Islander children
14	Drivers and impacts of disproportionate representation
16	ATSICPP as a safeguard for the rights of Aboriginal and Torres Strait Islander children
18	Active efforts
19	Independent oversight and accountability to monitor reform initiatives
19	Conclusion
20	Appendix 1
21	Appendix 2
25	Appendix 3



ACKNOWLEDGEMENT

The Queensland Family and Child Commission (QFCC) acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies on which we walk, live and work. We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to their Elders past, present and emerging.

The QFCC respects the enduring spiritual relationship Aboriginal and Torres Strait Islander peoples have with the land, sea and sky. As the first sovereign peoples of this nation, Aboriginal and Torres Strait Islander cultures and customs have always nurtured and continue to nurture this land.

The QFCC recognises that these lands have raised generations of strong, thriving Aboriginal and Torres Strait Islander children for more than 60,000 years. We are committed to continually recognising the power and wisdom of Aboriginal and Torres Strait Islander families and their cultures and the important role they play within our community.

ACKNOWLEDGEMENT OF CHILD RIGHTS

The QFCC acknowledges the special rights of children which are recorded in the *United Nations Convention on the Rights of the Child (UNCRC)*, guided by its four principles: the right of all children to survival and development; respect of the best interests of the child as a primary consideration in all decisions relating to children; the right of all children to express their views freely on all matters affecting them; and the right of all children to enjoy all rights of the UNCRC without discrimination of any kind.

FOREWORD FROM THE COMMISSIONER



Queensland has committed to a significant, generational reform agenda to eliminate the over-representation of First Nations children and young people in the child protection system. Achieving this goal also requires much action outside “the system” to enable First Nations children and young people to equitably enjoy all their rights.

The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) must be preserved on the journey from legislation to practice to deliver meaningful change in the lives of children and their families. The Queensland Family and Child Commission is committed to ensuring this occurs by promoting accountability across the systems that interact in the lives of children and will pursue this under our oversight responsibilities.

In my capacity as Commissioner, I will continue to focus on the goal of eliminating over-representation and fiercely advocate for the rights of our children. Over our forward program of work, the QFCC will deliver greater transparency of the outcomes of reform efforts and cultivate opportunities to acknowledge both progress and success.

We are committed to the same goal and will work in partnership with all involved to achieve much needed, transformational change, in the interests of Aboriginal and Torres Strait Islander children, families and communities.

A handwritten signature in black ink, which appears to read 'Natalie Lewis'.

Natalie Lewis
Commissioner



Executive Summary

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.



Introduction

Between 1910 and 1970, government policy aimed at assimilation enabled forcible removal of Aboriginal and Torres Strait Islander children from their families.

There have been many discussions and initiatives developed to address the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care, such as the *Bringing Them Home* report⁵ and the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP).

In 2018, the Queensland Government embedded the five elements of the ATSICPP in legislation:

- prevention
- participation
- placement
- partnership
- connection

Further information on the ATSICPP can be found in Appendix 1.

The enduring intention of the ATSICPP has been to preserve Aboriginal and Torres Strait Islander human rights across all elements of the child protection system via an explicit recognition of the vital role that Aboriginal and Torres Strait Islander children, families, communities and their cultures play in decisions about the safety and wellbeing of children.

Despite the ATSICPP being implemented into legislation more than three years ago, Aboriginal and Torres Strait Islander children in Queensland are being removed from their parents and placed in out-of-home care at rates almost nine times greater than non-Indigenous children.⁶

In this paper, the QFCC presents data and evidence about the experience of children in out-of-home care. This information acts as a baseline measure to monitor inequity and identify whether the ATSICPP is being optimally implemented to achieve its two intended outcomes:

- 1 adequately safeguards Aboriginal and Torres Strait Islander children's rights
- 2 contributes to a reduction in the over-representation of Aboriginal and Torres Strait Islander children across the entire child protection continuum.

The data and evidence have informed the QFCC's position on aspects of the child protection system, as it applies to Aboriginal and Torres Strait Islander children and their rights. This is part of the QFCC's equity-based agenda, which employs a rights-based approach to its oversight functions.

The QFCC will continue to monitor and review the ATSICPP implementation as part of its *Principle Focus* program.

⁵ 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].

⁶ See appendix 2 figure 1 for full data analysis.

“All children should be able to fully enjoy their rights.”

The rights of the child

The QFCC is committed to bringing children’s rights to life by raising awareness, advocating, and promoting accountability for the rights of children and young people in Queensland. We will advocate for systemic change where children and young people experience inequity, vulnerability and marginalisation in Queensland.

Children need to be viewed as rights holders for the ATSICPP to preserve Aboriginal and Torres Strait Islander human rights across all elements of the child protection system. Central to this is explicit recognition of the integral role Aboriginal and Torres Strait Islander children’s families, communities and culture plays in decisions about their safety and wellbeing.

Historically, child protection has been dominated by a welfare approach, which characterises children as passive recipients in need of assistance rather than as active citizens with rights.

This welfare approach perceives children, particularly Aboriginal and Torres Strait Islander children, as victims in need of rescuing. This approach has manifestly failed Aboriginal and Torres Strait Islander children, their families and communities.

A rights-based approach is the foundation of the QFCC’s *Principle Focus* program of work, which will test systemic actions against the inherent rights prescribed in the legislative commitment of the ATSICPP and more broadly contained in the UNCRC.

The UNCRC is the most complete human rights treaty in that it contains all the civil, political, economic, social and cultural human rights of children. The central understanding contained in UNCRC is children are holders of rights and their rights cover all aspects of their lives.⁷

The centrepiece of rights-based child protection reforms is self-determination.⁸ The importance of self-determination within a child protection context as it relates to the implementation of the ATSICPP is captured in the following statement:

*The right to self-determination is not about the state working with our people, in partnership. It is about finding agreed ways that Aboriginal [and Torres Strait Islander] people and their communities can have control over their own lives and have a collective say in the future wellbeing of their children and young people.*⁹

The UNCRC underpins the QFCC’s delivery of its statutory obligations to monitor and review systems responsible for delivering services to children and families.¹⁰

The QFCC is committed to effectively applying the following four general principles of the UNCRC in its work:¹¹

- non-discrimination
- devotion to the best interests of the child
- the right to life, survival and development
- respect for the views of the child.

These general principles are compatible with, and complementary to, the rights outlined and protected in the *Queensland Human Rights Act 2019*, which includes the necessity to ensure that rights are interpreted and applied in ways that are culturally relevant.¹²

The QFCC accepts that several human rights principles are necessary pre-conditions to any effective implementation of the ATSICPP:¹³

- children’s rights are universal – all rights are equally held by all children
- children’s rights are indivisible and interdependent – the denial of one right weakens other rights
- inalienable – these rights cannot be taken away or given up.

⁷ Rädda Barnen (Society). (2002). *Child Rights Programming: How to Apply Rights-based Approaches in Programming*, a Handbook for the International Save the Children Alliance Members. Save the Children Sweden.

⁸ The State of Queensland (Department of Communities, Child Safety and Disability Services) 2017. *Our Way* (p 4).

⁹ Family is Culture (2019). Sydney (p.18).

¹⁰ Queensland Family and Child Commission (2021). Strategic Plan 2020-2024. HPCM: D21/1281

¹¹ Four principles of the Convention on the Rights of the Child. Downloaded from <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child>

¹² Human Rights Act, 2019 s.28 (1) (2)(d) and (3).

¹³ Ibid

Disproportionate representation of Aboriginal and Torres Strait Islander children

Aboriginal and Torres Strait Islander children have historically been over-represented in the child protection system, with disparity growing in correlation with more intrusive intervention.

In recognition of this situation, the terms of reference in the Queensland Child Protection Commission of Inquiry (2013) requested that specific strategies be developed to reduce over-representation, particularly in out-of-home care.¹⁴

As at 30 June 2020, Aboriginal and Torres Strait Islander children comprise

44.3% of all children in out-of-home care, but only

8.2% of the Queensland population aged 0 to 17 years.¹⁵

The data shows that the level of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care has become increasingly disproportionate despite significant reform efforts, including the ATSICPP being enacted in legislation.

The QFCC is deeply concerned that despite repeated efforts at reform, the continuing use of out-of-home care as the primary mechanism for protecting children continues to disproportionately and adversely impact Aboriginal and Torres Strait Islander children, their families and communities. These disparities endure, at a systemic level, because of pervasive and persistent inequity across social determinants and a lack of structural reform. At an individual, familial and community level, the disparity is sustained by the actions and inactions of duty bearers and through the inconsistent interpretation and application of the ATSICPP in child protection legislation, policy, processes, programs and practice.

Aboriginal and Torres Strait Islander children in Queensland are more likely to enter out-of-home care than non-Indigenous children.

In Queensland,

9.9 in every 1,000

Aboriginal and Torres Strait Islander children aged 0 to 17 years entered out-of-home care in 2017-18, rising to a rate of

12.6 in every 1,000 children by 2018-19.

The rate of entry for Aboriginal and Torres Strait Islander children compared to non-Indigenous children became disproportionately worse, rising from

7.6

8.4

times more likely to be admitted to out-of-home care during this period.

This clearly shows a widening gap between Aboriginal and Torres Strait Islander children and non-Indigenous children entering out-of-home care.

¹⁴ Carmody, T. (2013). The Queensland child protection commission of inquiry—Chapter 7: Addressing Aboriginal and Torres Strait Islander over-representation.
¹⁵ Steering Committee for the Review of Commonwealth and State Service Provision 2021. T 16A.41: Queensland population aged 0-17 as at June 30, 2020.

Further, the number of Aboriginal and Torres Strait Islander children admitted to out-of-home care increased from

1,208 children in 2018-19 to
1,428 children in 2019-20

an **increase of 18.2%** between these periods.¹⁶

The data demonstrates the failure of actions taken to reduce entries to care by diverting children to a more culturally responsive secondary service system.¹⁷ Reducing demand on the statutory system by diverting families to services and supports to address their needs is sound policy. However, many of the reforms have not delivered the intended benefits of reducing demand on the tertiary system¹⁸ nor provided timely, quality support to keep Aboriginal and Torres Strait Islander children safe and families together.¹⁹ This disproportionate rate of involvement with the tertiary system is attributed to inconsistency in approaches used by government staff and mandatory reporters to divert families to secondary support systems, comparatively lower rates of engagement of those referred, and inequity in access to quality and culturally affirming support services for Aboriginal and Torres Strait Islander families.

The QFCC is extremely concerned that continued growth in the number of Aboriginal and Torres Strait Islander children entering out-of-home care indicates serious problems at the screening and intake decision points of the child protection system in Queensland. A comprehensive independent review of the decision-making tools and practices used to open statutory cases and admit children to out-of-home care is urgently required.

The QFCC takes the position that this data indicates a substantial systemic failure to implement the ATSCPP to a standard that safeguards the rights of Aboriginal and Torres Strait Islander children. We are concerned about evidence

indicating disparity in the exercise of discretion to divert families to support, with a focus on family preservation and inequity in the availability, and accessibility of quality, culturally safe and affirming support services.²⁰ We are concerned about the long-term, flow-on consequences of increasing entries to care, given this means the level of over-representation in out-of-home care is set to increase significantly for many years into the future.

Finally, the length of time children spend in out-of-home care is a major driver of its prevalence and, consequently, of over-representation.

Aboriginal and Torres Strait Islander children exiting out-of-home care after five or more years comprised

22%
of all exits
in 2018-19

24%
of all exits
in 2019-20

Aboriginal and Torres Strait Islander children exiting with less than two years in out-of-home care increased from

53%
of all children
exiting in 2018-19

55%
of all exits
in 2019-20

By contrast, the percentage of children exiting out-of-home care after two to five years decreased from

26%
of all exits
in 2018-19

21%
of all exits
in 2019-20

¹⁶ Appendix 2 Figure 3

¹⁷ Carmody, T. (2013). The Queensland child protection commission of inquiry.—Chapter 7: Addressing Aboriginal and Torres Strait Islander over-representation.

¹⁸ QFCC (2019)

¹⁹ SNAICC, (2021). Review of the Queensland ATSCPP implementation efforts over the reporting period 1 May 2019 – 30 April 2020.

²⁰ Ibid – 'Aboriginal and Torres Strait Islander Family Wellbeing Services inadequately funded to meet demand, based on number of eligible families.'

The data suggests that if a child is in out-of-home care for more than two years, they are increasingly likely to stay in out-of-home care for more than five years. An increase in the length of time a child is in out-of-home care—even slight increases—can have significant effects on the rate of children in care each year, given a longer duration results in children contributing to the yearly count more times. A child in care for five years has the same influence on the overall count as five children who each spend one year in care. Put another way, a five per cent increase in the average length of time children spend in care equates to a five per cent increase in the count of children in care at the end of each financial year.

This data indicates a cumulative effect on systemic capacity and capability that result from decisions and responses that place future strain on the system's ability to reduce Aboriginal and Torres Strait Islander children overrepresentation.

These findings show the disproportionate representation of Aboriginal and Torres Strait Islander children in out-of-home care is being supported by two key trends.

Firstly, the annual number of children entering out-of-home care exceeds the number of children exiting. Secondly, over-representation is a result of the increased length of time Aboriginal and Torres Strait Islander children are spending in out-of-home care. This trend raises significant concerns as reducing durations in care is not quickly achieved due to the ongoing influence of past decisions. Past decisions resulting in children entering means the system is effectively waiting for those children to pass through the system and transition to adulthood. These findings indicate that over-representation, even with appropriate responses taken today, will likely continue to rise for some time.

Reducing the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care will require:

- exits to exceed entries
- a reduction in the duration of time children spend in care
- a short-term focus on reunification to increase exits from out-of-home care
- a long-term focus on reunification to reduce duration of time in out-of-home care.

As part of this, we must understand more deeply the intersectional circumstances coinciding with children who spend increasing durations of time in care. For instance, the QFCC may explore the impact, if any, that reforms intended to reduce duration in care have had on Aboriginal and Torres Strait Islander children's equitable enjoyment of all rights, not just within child protection, but within the existing service array, as well as the cultural constructs, governance, educational, economic and social determinants that affect their contact with the child protection system.

The policy intent of the Carmody recommendations to reduce drift in care by limiting the use of consecutive short-term orders or subsequent permanency reforms²¹ (at a national and state level) is sound.

Refer to Appendix 2 for the full data analysis.

²¹ Carmody, T. (2013). The Queensland child protection commission of inquiry.

“Beyond good intentions, mainstream policy shifts often result in disparate, adverse outcomes for First Nations children and young people.”

The imposition of conditions and time limits is likely to disproportionately affect Aboriginal and Torres Strait Islander families who face additional barriers to reunification due to a lack of resources, unavailable or inaccessible services, and barriers to culturally based kinship care placements. Similarly, implementation of reforms of this nature may be particularly harmful to children and young people who are impacted by parental incarceration, a circumstance that data shows also disproportionately impacts Aboriginal and Torres Strait Islander children and families.

The 2021 SNAICC *Review of the Queensland ATSCIPP implementation over the reporting period 1 May 2019 - 30 April 2020* stated that ‘the percentage of Aboriginal and Torres Strait Islander children placed with kin or other Aboriginal and Torres Strait Islander carers has steadily decreased since 2006.’²² This review also found there was a 7.4 per cent drop in placements with kin or Aboriginal and Torres Strait Islander carers between 2018 and 2019.²³ These are important findings as they highlight that the increasing duration of time that children are in out-of-home care affects Aboriginal and Torres Strait Islander children’s cultural connections.

Against the backdrop of hazardous good intentions to achieve self-determination,²⁴ cladded mainstream policy shifts continue to realise significant—often adverse—outcomes for Aboriginal and Torres Strait Islander children. The consequences of the contemporary approach to child protection in Queensland is evidenced in the disproportionate representation and disparate outcomes for Aboriginal and Torres Strait Islander children and young people. The benefits intended are less often realised or reflected in the lived experience of Aboriginal and Torres Strait Islander peoples.

The QFCC will continue to identify and challenge the systemic issues that produce this inequity. The QFCC is committed to raising awareness of the issues that impact upon the rights and wellbeing of Aboriginal and Torres Strait Islander children and young people, advocating for change and promoting the accountability of systems that interact with, or impact the lives of, children and young people.

²² SNAICC (2021, p.17). Review of the Queensland ATSCIPP implementation efforts over the reporting period 1 May 2019 - 30 April 2020.

²³ The drop in placements was calculated based on Table 16A.21 of the 2019-20 Report on Government Services, where the percentage of Aboriginal and Torres Strait Islander children placed with relatives/kin or other carers dropped from 55.4% at 30 June 2018 to 48.1% at 30 June 2020. The change in the national definition of out-of-home care which occurred between these periods may have contributed to the observed difference.

²⁴ The State of Queensland (Department of Communities, Child Safety and Disability Services) 2017. Our Way Strategy.

Drivers and impacts of disproportionate representation

Contrary to reports the proportion of Aboriginal and Torres Strait Islander children in care has stabilised,²⁵ findings demonstrate that Aboriginal and Torres Strait Islander disproportionate representation in out-of-home care continues to rise.²⁶

Any systemic interventions that have inequitable effects, impacts or outcomes are discriminatory, regardless of their motivations or intention.²⁷

Aboriginal and Torres Strait Islander children are removed from their parents and placed in out-of-home care at rates 8.9 times greater than non-Indigenous children.²⁸

As such, the magnitude of the disproportionate representation of Aboriginal and Torres Strait Islander children in out-of-home care suggests the system is discriminatory in either design or application.

The disproportionate representation of Aboriginal and Torres Strait Islander children in out-of-home care is often falsely attributed to the idea that Aboriginal and Torres Strait Islander children are more vulnerable, have parents who are less able or willing to parent, or are part of communities that are inherently unsafe. This is untrue. Rather, system characteristics often affect the equity of services and outcomes for different cohorts of children.

There is variability in the prevalence or influence of particular characteristics, in different locations, at different points in time. Factors at the organisational level—including organisational culture and infrastructure, resource availability,²⁹ institutional racism,³⁰ and the cultural responsiveness to the community served—can impact the frequency and quality of service provision, which in turn shapes case outcomes for children from over-represented and marginalised groups.³¹

Cultural and racial bias influences decision-making by mandated reporters, practitioners, and other service providers and can compromise outcomes for Aboriginal and Torres Strait Islander children and young people in contact with the child protection system.

Further, seeking assistance or support in relation to experiences of vulnerability, at times of crisis (episodic) or to address ongoing needs increases the visibility of Aboriginal and Torres Strait Islander families to mandated reporters, a phenomenon referred to as surveillance bias. This is a significant issue. Put simply, if a parent believes they will expose their children to the child protection system by asking for help, they are less likely to do so. This also reinforces the belief that the broader social service system is more likely to harm or punish than help

25 Queensland Government (2020). Changing Tracks: an action plan for Aboriginal and Torres Strait Islander children and families 2020-2022. Retrieved from <https://www.cyjma.qld.gov.au/resources/campaign/supporting-families/changing-tracks-action-plan.pdf>

26 See appendix 2, figure 1

27 Commonwealth of Australia (2010). Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice. Purdie, Dudgeon and Walker (Eds). P. 82.

28 See appendix 2, figure 1.

29 Carmody, T. (2013). The Queensland child protection commission of inquiry—Chapter 7: Addressing Aboriginal and Torres Strait Islander over-representation.

30 CTG 2020.

31 SNAICC (2020) Review of the ATSI CPP implementation efforts over the reporting period 1 May 2019 – 30 April 2020

Aboriginal and Torres Strait Islander people. This fear is real for many marginalised people and founded in the lived experience of Aboriginal and Torres Strait Islander peoples since colonisation.

With disproportionality evident at every significant decision-making point along the child protection continuum, implicit bias (unconscious attitudes and beliefs) and explicit bias (overt acts of discrimination and prejudice) impact Aboriginal and Torres Strait Islander families during intake, investigation and assessment, substantiation, and ongoing intervention.

In addition, systemic inequity is regularly experienced in ways that are intersectional.³² Priority national reform has named the need for government to *‘challenge’ unconscious bias that results in decisions based on stereotypes*, not only in child protection but in early childhood, housing, health, education and disability.³³ For this reason, the QFCC aims to clarify the experience of Aboriginal and Torres Strait Islander children who are involved in the child protection continuum against the cross-sectoral policy intent to improve outcomes in early childhood,³⁴ education,³⁵ housing,³⁶ and health equity and the related social determinants of health.³⁷ Understanding and leveraging these interrelationships and dependencies will create the optimal conditions to implement the ATSICPP, uphold children’s rights and eliminate overrepresentation.

Until there are consistent standards of demonstrated cultural responsiveness, subjectivity and bias will continue to influence decision-making. The QFCC remains concerned that cultural bias of individuals is reinforced rather than mitigated through use of particular actuarial tools in the Queensland child protection system. If there is knowledge and evidence of the discriminatory impact of such tools, they should cease to be used.

The Family Participation Program, Aboriginal and Torres Strait Islander Family Led Decision Making model and initiatives such as the Early Intervention Panel present an opportunity to mitigate bias through discourse and the active participation of those impacted by decisions.

32 Ahmed S. A phenomenology of whiteness. *Feminist Theory*. 2007;8(2):149-168. doi:10.1177/1464700107078139

33 CTG (2020). <https://www.closingthegap.gov.au/priority-reforms>

34 The Australian Government (National Indigenous Australians Agency) 2020. https://www.snaicc.org.au/wp-content/uploads/2021/04/NATSI-EarlyChildhoodStrategy_Framework-April2021.pdf

35 State of Queensland (Department of Education) 2018

36 State of Queensland (Department of Housing & Public Works) 2019.

37 CTG (2020). <https://www.closingthegap.gov.au/closing-gap-targets-and-outcomes>

The ATSI CPP as a safeguard for the rights of Aboriginal and Torres Strait Islander children

The ATSI CPP is a key legislative framework for safeguarding the rights, including distinct cultural rights, of Aboriginal and Torres Strait Islander children and young people involved in or at risk of entering the child protection system.

Unfortunately, inconsistent interpretation and poor implementation is a risk to the success of Aboriginal and Torres Strait Islander-focussed policies and programs.³⁸

Application of the ATSI CPP at all decision-making points is critical to ensuring the immediate and long-term safety and wellbeing of Aboriginal and Torres Strait Islander children and young people.

Without proper implementation of the ATSI CPP, the child protection system will continue to compromise the inalienable rights of Aboriginal and Torres Strait Islander children and young people in Queensland.

The QFCC asserts that to effectively address the disproportionate representation of Aboriginal and Torres Strait Islander children in out-of-home care through the implementation of the ATSI CPP, the child protection system must undergo a radical paradigm shift that accepts the status of children as rights holders and facilitates all children to fully enjoy their rights.

The Queensland Government's commitment to implement systemic reform must be enacted through their legislative accountability for the ATSI CPP to give practical effect to Aboriginal and Torres Strait Islander peoples' right to enjoy, maintain, control, protect and develop their kinship ties.³⁹

In relation to child protection, this means public entities, including service providers have an inherent accountability to ensure Aboriginal and Torres Strait Islander peoples are not subjected to forced assimilation or the destruction of their culture.⁴⁰

However, data shows that less than half of Aboriginal and Torres Strait Islander children removed from their parents are placed within the child or young person's cultural kinship structure, through active involvement of the family in decision-making.⁴¹

Aboriginal and Torres Strait Islander children are more likely to be placed with carers who have no familial or cultural connection to them. The evidence clearly shows Aboriginal and Torres Strait Islander children are increasingly more likely to spend longer periods in out-of-home care with non Indigenous, non-relative carers or in residential care placements. This has dire consequences for Aboriginal and Torres Strait Islander children's cultural rights, given systemic interventions more often result in the removal of children from their kinship and cultural connections.

Refer to Appendix 3 for the full data analysis.

38 Dillon, M. C. (2020), *Evaluation and review as drivers of reform in the Indigenous policy domain*, Policy Insights Paper No. 2/2020, Centre for Aboriginal Economic Policy Research, Australian National University <https://doi.org/10.25911/5ee359f29a190>

39 SNAICC, 2017, *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle – A Resource for Legislation, Policy, and Program Development*

40 Human Rights Act, 2019 s.28 (3).

41 See appendix 2, figure 5

Many systemic factors prevent children being placed with kin and within culture. Processes of identification, assessment, approval and support of Aboriginal and Torres Strait Islander kin as carers require attention and meaningful reform. The DCYJMA is continuing to work with Aboriginal and Torres Strait Islander stakeholders to address practice-based, procedural and regulatory issues to significantly increase the rate of family and culturally based placements for Aboriginal and Torres Strait Islander children. The QFCC is encouraged by this commitment and will continue to monitor the outcomes of this collective effort.

In the current environment, where most Aboriginal and Torres Strait Islander children in statutory care are placed with non-relative, non-Indigenous carers or in residential care, consistent, high-quality, cultural support planning processes to preserve or restore familial and cultural connections must be in place. It is critically important to facilitate consistent, quality contact with siblings, family members and relationships with people and places of cultural significance for each child.

Appropriate focus on connection increases the opportunity for family restoration and the likelihood for safe reunification. Future work will assist in establishing the extent to which cultural continuity is being actively facilitated, but on the evidence available, the QFCC is concerned about the potential to deprioritise these processes in the context of system demand and resource constraints. This concern is compounded by the continued absence of reunification data, which could more transparently demonstrate whether efforts have been made to reconnect children and young people with their birth parents or kin.

More broadly, children's participation in decision-making is both an inalienable right as well as a transformative mechanism that empowers children to influence families, communities and institutions. The QFCC remains deeply concerned about reports which indicate implementation of the participation element of the ATSICPP continues to be constrained by accessibility, departmental referral practices and the under-resourcing of culturally safe services.

Active efforts

Effective operation of the ATSICPP is contingent on active efforts to redress the structural inequity that exists within systems to reduce the disproportionate disadvantage experienced by Aboriginal and Torres Strait Islander people.

In 2018, Australian community services ministers agreed to a national priority to implement active efforts to ensure compliance with all five elements of the ATSIPP. In this context, active efforts refer to purposeful, thorough and timely efforts that are supported by legislation and policy and enable the safety and wellbeing of Aboriginal and Torres Strait Islander children.⁴²

For the QFCC, ensuring the indivisibility, inalienability and universality of children's rights is paramount. Until responsible parties routinely and consistently implement the ATSICPP to the standard of active efforts – it is unsafe and untrue to suggest that the ATSICPP operates as an effective safeguard for the rights of Aboriginal and Torres Strait Islander children.

As a remedy to this situation the QFCC supports commitments made by the community services ministers to implement active efforts as the requisite standards obliged upon the state and the broader child and family support services to further safeguard the rights of Aboriginal and Torres Strait Islander children.⁴³ The QFCC will work in partnership with Queensland Aboriginal and Torres Strait Islander Child Protection Peak to develop an agreed framework to support future phases of the QFCC's rights-based analysis of the implementation of the ATSICPP in out-of-home care.

The data signposts a lack of consistent implementation of the ATSICPP to the standard of active efforts. The reasons why the effective implementation of legislative intent fails is nuanced.⁴⁴ Previous child protection reviews have highlighted the importance of how the

A significant part of the QFCC's monitoring and review of the implementation of the ATSICPP will be to highlight where outward appearances of compliance to the ATSICPP hides by a culture of non-compliance.

*Regulatory framework—the laws and policies that govern a bureaucracy—often compete with, or are neutralised by, the dominant culture of a department.*⁴⁵

⁴² SNAICC (2019) The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation.

⁴³ SNAICC (2019) The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation.

⁴⁴ Sanders (2018). Deep structures in Australian Indigenous affairs: Federalism, competing principles, high moralism and a remote focus. CAEPR.

⁴⁵ Family is Culture (2019). Independent review of Aboriginal children in OOH.

Independent oversight and accountability to monitor reform initiatives

Over-representation requires independent oversight and accountability to monitor the efficacy of reform initiatives and progress towards eliminating over-representation.

To this end, the QFCC will enact the full extent of its statutory oversight functions to hold responsible parties, involved in the out-of-home care system, accountable to ensure the ATSICPP is routinely and consistently implemented to the standard of active efforts.

To enable the effective implementation of the ATSICPP, the QFCC will continue to raise awareness of, and advocate for, the systemic adoption of a rights-based approach. The next steps towards this aim will include efforts to engage the voice of young people, our sector partners and the community to inform QFCC's priority reviews, the establishment of a review framework of active efforts, and the development of a dashboard to support our monitoring efforts.



Conclusion

The data outlined in this paper shows clearly that the implementation of the ATSICPP is not on track to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care.

Further, the magnitude of the disproportionate representation of Aboriginal and Torres Strait Islander children in out-of-home care suggests the system is discriminatory in both its design and application. This discrimination causes significant harm to individuals, families and communities by infringing on their rights.

As demonstrated by the initial data analysis, the implementation of the ATSICPP is far more problematic than simply not being on track. The situation is, in fact, worsening, despite being amid a generational reform of the child protection system intended to reduce over-representation.

The rising trend in the prevalence of Aboriginal and Torres Strait Islander children being removed from family and culture remains likely to stay in place for the foreseeable future unless there is a significant and concerted focus on implementation of the ATSICPP to the standard of active efforts.

The QFCC contends that the disproportionate representation of Aboriginal and Torres Strait Islander children in out-of-home care is the most confounding challenge facing the Queensland child protection system. Accordingly, systemic oversight of the drivers and dynamics of over-representation and ongoing monitoring of relevant data will be appropriately prioritised across the QFCC's forward program of work. We are committed to promoting systemic accountability for the rights, safety and wellbeing of Aboriginal and Torres Strait Islander children and young people. Our work will be undertaken in a spirit of shared commitment to systemic improvement and to the full and equitable enjoyment of rights by all children and young people in Queensland.

Appendix 1

The ATSICPP - Definition considerations

Language is incredibly important to ensure we preserve the intent of the five elements of the ATSICPP and to safeguard against poor interpretation, which can have catastrophic impacts for children, young people and their families. The QFCC takes the position that the incongruence between Queensland's legislative definitions, and the nationally accepted definitions of the five elements also contributes to the inconsistency or quality of practice across the state. For this reason, the oversight program supports the following nationally accepted definitions of the five elements and will review implementation against the original policy intent.

Prevention

There are short- and long-term wellbeing and economic benefits to investing early in the life of a problem and early in a child's life. For Aboriginal and Torres Strait Islander children, prevention encompasses the right of every child to be raised in their own family and community. This includes equitable access to quality universal, prevention and early intervention services to heal and strengthen families and communities, keeping them together.

Partnership

There must be independent community representatives participating in and jointly making decisions about the safety and wellbeing of Aboriginal and Torres Strait Islander children (including intake, assessment, intervention, placement and care and judicial decision-making). This is broader than community representatives providing cultural advice, information or being consulted. This element also encompasses partnership with Aboriginal and Torres Strait Islander organisations and communities in the design and

delivery of service responses.

Placement

Children who need to be in statutory care must be placed in accordance with the agreed hierarchy of out-of-home care placement options, with decisions underpinned by community and family participation.

Participation

The evidence shows that when children, parents and other family members participate in the decisions that affect their lives, decisions about intervention, placement and care, and orders they are more appropriate and more likely to work. Participation extends to participation by community and cultural leadership in decisions that impact children and families.

Connection

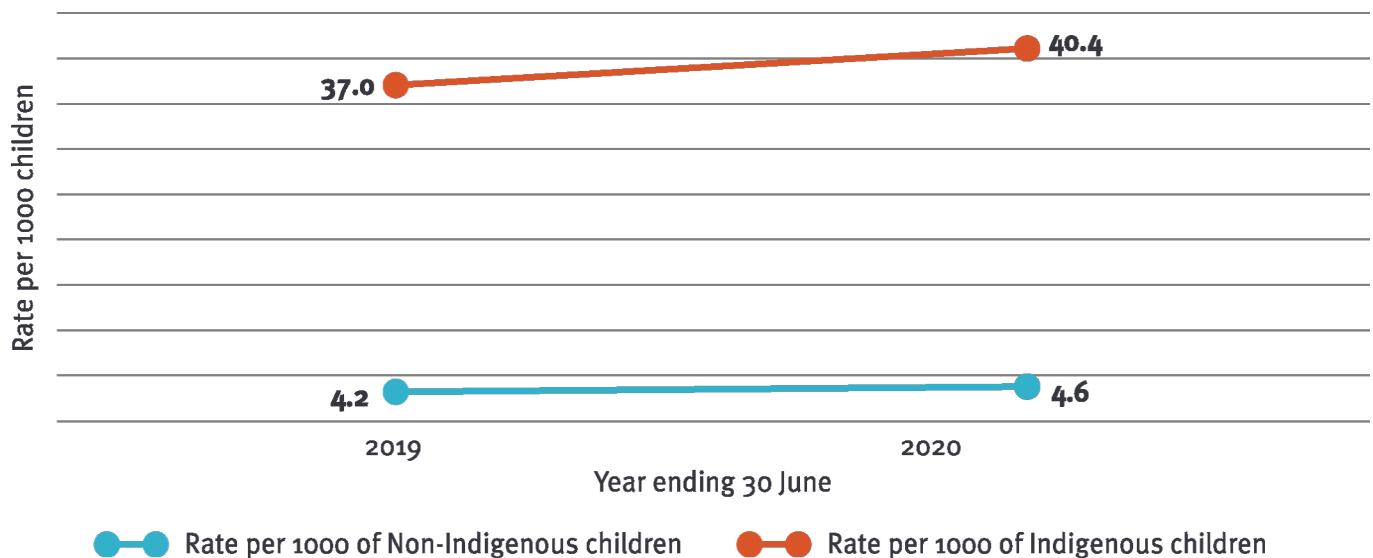
Every effort must be made to support and maintain family, cultural and community connections for Aboriginal and Torres Strait Islander children in out-of-home care. The child's enduring right to connection to kin, country and culture must be a central concern in making decisions about their immediate and long-term wellbeing.

Taking the time to work with family to identify 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 Aboriginal and Torres Strait Islander children maintain their family and community connections while in care and exit the system in a timely manner.



Appendix 2

Figure 1. Rate per 1,000 children in out-of-home care as at 30 June, by Aboriginal and Torres Strait Islander Status, Queensland 2019-2020



Source: Steering Committee for the Review of Commonwealth and State Service Provision 2021. T 16A.2

Figure 1 shows the rate of Aboriginal and Torres Strait Islander children in out-of-home care increased from

37 children per 1,000 Aboriginal and Torres Strait Islander children aged 0 to 17 years in 2019 **40.4** children per 1,000 in 2020.

In comparison, the rate of non-Indigenous children in out-of-home care increased from

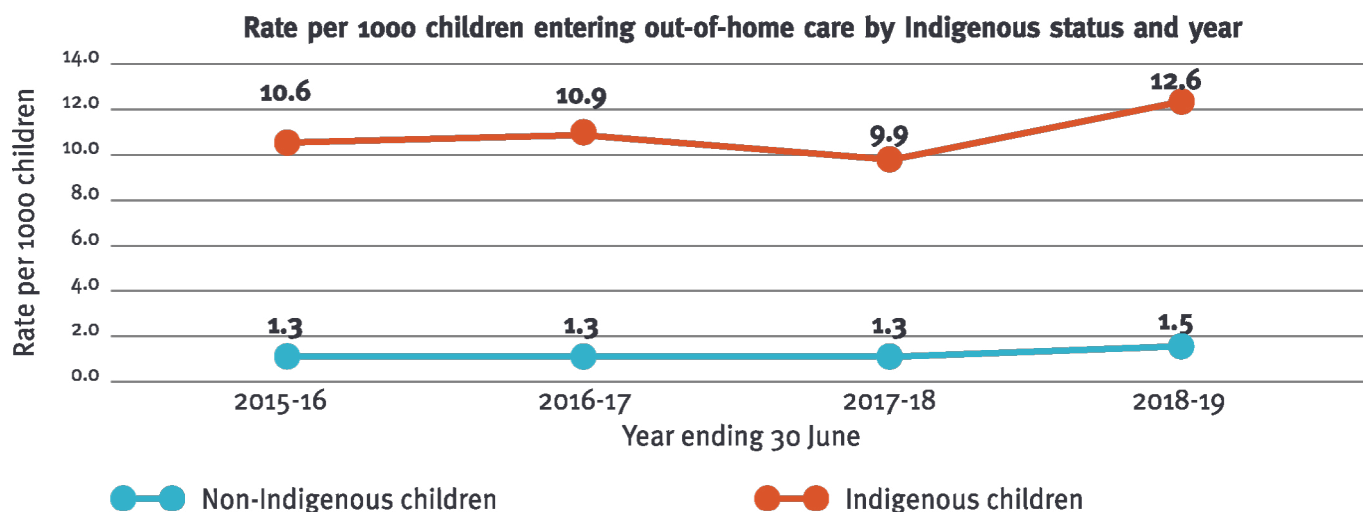
4.2 per 1,000 non-Indigenous children aged 0 to 17 years in 2019. **4.6** children per 1,000 in 2020

This means that in 2020, Aboriginal and Torres Strait Islander children were 8.9 times more likely to be in out-of-home care than non-Indigenous children.

The level of disproportionality for Aboriginal and Torres Strait Islander children in out-of-home care continues to grow at an alarming rate. This is a key indicator that shows performance against the intent to reduce over-representation is worsening, not improving. It raises questions about whether existing strategies purporting to reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care are appropriately aligned to systemic need, are being ineffectively implemented, or are being undermined or overpowered by other policy, procedures and practices within the department.

Appendix 2

Figure 2. Rate per 1,000 children entering out-of-home care and other supported placements, by Aboriginal and Torres Strait Islander status, Queensland 2015-16 to 2019-20



Source: Source: AIHW Table S5.19

Figure 2 shows a comparison of the rates at which Aboriginal and Torres Strait Islander and non-Indigenous children entered out-of-home care and other supported placements for every 1,000 children in the target population aged 0 to 17 years. Between 2015-16 and 2018-19 entry into out-of-home care for non-Indigenous children increased from

1.3 to 1.5 children per 1,000 non-Indigenous children aged 0 to 17 years.

The rate of entry for non-Indigenous children remained relatively flat over time.

This is in stark contrast to the situation for Aboriginal and Torres Strait Islander children: the rate increased from

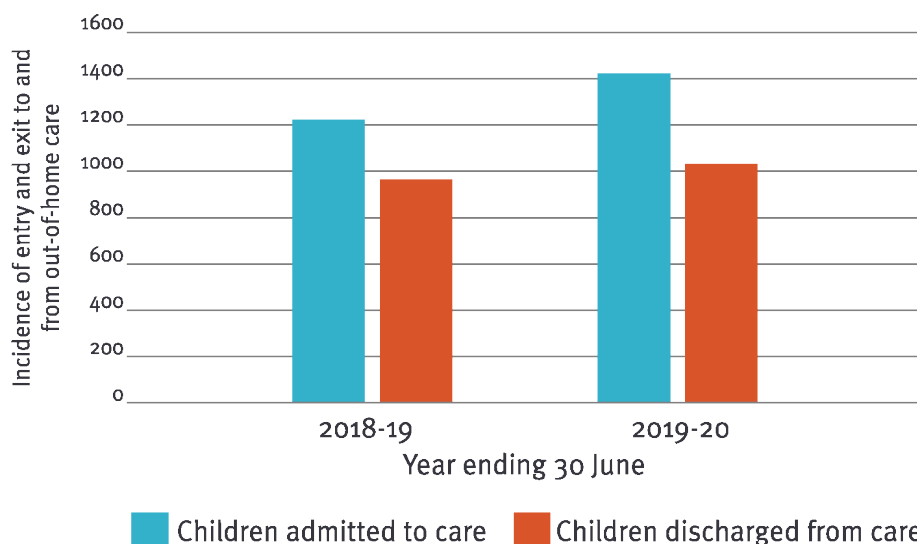
10.6 to 12.6 a significant upward trend over time.

In 2018-19 an Aboriginal and Torres Strait Islander child was 8.4 times more likely to enter out-of-home care in Queensland than a non-Indigenous child; that is, for every non-Indigenous child entering out-of-home care, there were 8.4 Aboriginal and Torres Strait Islander children entering.

The gap is widening between Aboriginal and Torres Strait Islander children and non-Indigenous children entering out-of-home care, contrary to reform intent.

Appendix 2

Figure 3. Number of Aboriginal and Torres Strait Islander children admitted to and discharged from out-of-home care, Queensland 2018-19 to 2019-20



Source: AIHW Table S5.19

Figure 3 compares the number of Aboriginal and Torres Strait Islander children in Queensland admitted to and discharged from out-of-home care between 2018-19 and 2019-20.

The number of children admitted to out-of-home care increased from



This shows actions taken to reduce entries to care have not been effective. The continued growth in entries indicate serious problems at the screening and intake decision points of the child protection system in Queensland and that decision-making to open statutory cases and admit children to out-of-home care should be urgently reviewed.

This data indicates a systemic failure to implement the ATSI CPP to a standard that safeguards the rights of Aboriginal and Torres Strait Islander children and inadequate action to reduce over-representation. The data indicates the level of over-representation in out-of-home care is set to increase for many years into the future.

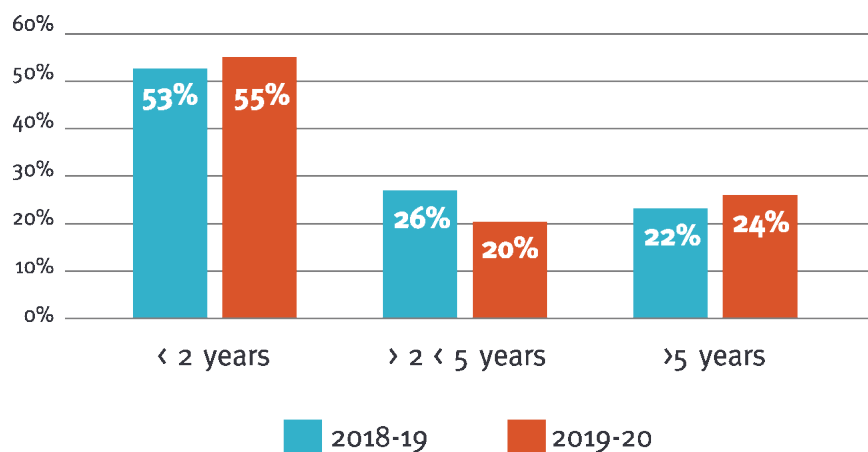
Figure 3 also shows the number of Aboriginal and Torres Strait Islander children discharged from out-of-home care increased from



However, the most significant trend is the number of children entering out-of-home care has consistently exceeded the number of children discharged. The ability of the system to reduce over-representation will require a reversal of this trend so that exits consistently outnumber entries. Several key performance indicators will achieve this, including reducing entries to out-of-home care and increasing the number of timely family reunifications.

Appendix 2

Figure 4. Percentage of Aboriginal and Torres Strait Islander children discharged from out-of-home care, by length of time in care, Queensland 2018-19 to 2019-20



Source: Steering Committee for the Review of Commonwealth and State Service Provision 2021. T 16A.18

Figure 4 shows the length of time Aboriginal and Torres Strait Islander children have been in out-of-home care at time of exit, as a proportion of all exits.

The data demonstrates the proportion of children who exit after five or more years increased from

22% of all exits in 2018-19 to 24% in 2019-20.

A similar pattern can be seen for children exiting with less than two years in out-of-home care, where the percentage of exits increased from

53% of all children exiting in 2018-19 to 55% of all exits in 2019-20.

In contrast, the percentage of children exiting out-of-home care after two to five years decreased from

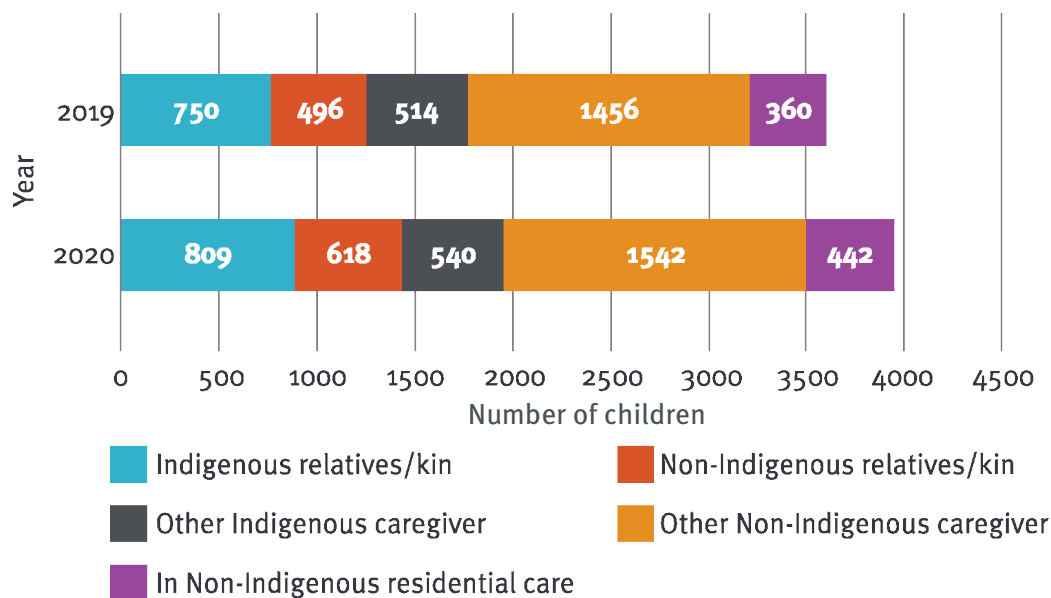
26% of all exits in 2018-19 to 21% in 2019-20.

The data suggests that if a child is not exited prior to being in care for two years, they are increasingly likely to stay in out-of-home care long term. The length of time children spend in out-of-home care is a major driver of prevalence in out-of-home care and consequently of over-representation. The QFCC recognises the need to further investigate the level of participation of Aboriginal and Torres Strait Islander children and families during significant decision-making points in the system. A recent review of the ATSICPP implementation showed that Aboriginal and Torres Strait Islander family-led decision-making is still not offered widely or consistently across all points of child protection continuum. It was further reported that the Family Participation Program has low referrals compared to the number of eligible families.⁴⁶

⁴⁶ SNAICC, (2021). Review of the Queensland ATSICPP implementation efforts over the reporting period 1 May 2019 – 30 April 2020.

Appendix 3

Figure 5. Number of children in out-of-home care, by relationship to carer, by Aboriginal and Torres Strait Islander Status, Queensland 2019 and 2020



Source: Steering Committee for the Review of Commonwealth and State Service Provision 2018-2021. T 16A.22

Figure 5 compares the number of children exiting out-of-home care, by the child's relationship to the carer between 2019 and 2020. In 2019, 1,246 Aboriginal and Torres Strait Islander children were placed in kinship care (Aboriginal and Torres Strait Islander and non-Indigenous) and this increased to 1,427 children in 2020. As a proportion, kinship carer arrangements increased from 34.8 per cent of all out-of-home care placements in 2019 to 36.1 per cent in 2020. A further breakdown of kinship care shows the number of children entering the care of an Aboriginal and Torres Strait Islander kinship carer increased from 750 children in 2019 to 809 children in 2020, an increase of 7.9 per cent. The number of children entering the care of their non-Indigenous kin increased from 496 children in 2019 to 618 children in 2020, an increase of 24.6 per cent during the same time. The rise in kinship care during this period was significantly influenced by the rise of non-Indigenous kinship placements. Some caution should be taken when interpreting kinship placement data given the *Child Protection Act 1999* continues to include 'anyone else who is a person of significance to the child' in the definition of kin.

The data shows approximately one in three Aboriginal and Torres Strait Islander children were placed with members of their own kinship group. This is compared to one in two Aboriginal and Torres Strait Islander children being placed with other non-Indigenous carers including into non-Indigenous residential care.

Figure 5 shows the number of children placed in the care of other non-Indigenous carers increased from



Alarming, the number of children placed in non-Indigenous residential care facilities increased from



The number of children placed with other Aboriginal and Torres Strait Islander carers increased from





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