



# Safeguarding the rights of Aboriginal children in the child protection system

PERFORMANCE AUDIT | 06 JUNE 2024

NEW SOUTH WALES AUDITOR-GENERAL'S REPORT

# THE ROLE OF THE AUDITOR-GENERAL

The roles and responsibilities of the Auditor-General and the Audit Office, are set out in the *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

We conduct financial or 'attest' audits of state public sector and local government entities' financial statements. We also audit the Consolidated State Financial Statements, a consolidation of all state public sector agencies' financial statements.

Financial audits are designed to add credibility to financial statements, enhancing their value to end-users. Also, the existence of such audits provides a constant stimulus to entities to ensure sound financial management.

Following a financial audit the Audit Office issues a variety of reports to entities and reports periodically to Parliament. In combination, these reports give opinions on the truth and fairness of financial statements, and comment on entity internal controls and governance, and compliance with certain laws, regulations and government directives. They may comment on financial prudence, probity and waste, and recommend operational improvements.

We also conduct performance audits. These examine whether an entity is carrying out its activities effectively and doing so economically and efficiently and in compliance with relevant laws. Audits may cover all or parts of an entity's operations, or consider particular issues across a number of entities.

As well as financial and performance audits, the Auditor-General carries out special reviews, compliance engagements and audits requested under section 27B(3) of the *Government Sector Audit Act 1983*, and section 421E of the *Local Government Act 1993*.

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#### Cover image

Title: Gurragirra Ngurambang – Happy at home

Artist: Molly Wattle Boney

Original piece procured for this Audit Office of New South Wales report.

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Further information available on 'Information on cover artwork' page of this report.



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In accordance with section 38EC of the *Government Sector Audit Act 1983*, I present a report titled '**Safeguarding the rights of Aboriginal children in the child protection system**'.

A handwritten signature in blue ink, reading 'Bola Oyetunji'.

**Bola Oyetunji**

Auditor-General for New South Wales  
6 June 2024



## RECONCILIATION COMMITMENT STATEMENT

We pay our respects and recognise Aboriginal peoples as the traditional custodians of the land in New South Wales.

We honour and acknowledge the traditional owners of the land on which our office is located, the Gadigal people of the Eora Nation, and the traditional owners of the lands on which our staff live and work.

We recognise and pay our respect to Aboriginal ancestors who cared for, defended and walked, this land for over 65,000 years.

We acknowledge Aboriginal Elders who have fought tirelessly for the rights of all First Nations peoples. We acknowledge the Aboriginal leaders, organisations and families who continue this today.

We thank you for your patience, time, and participation in this audit.

## INFORMATION ON COVER ARTWORK



### ABOUT THE ARTWORK

Name of painting: Girragirra Ngurambang – Happy at home

Created by: Molly Wattle Boney. Original piece procured for this Audit Office of New South Wales report.

Description of painting: A sunny day at home. I'm happy because all my family are here. My cousins run around the yard with my dog while I pick fresh chillies from the veggie patch. My little brother is dancing on the trampoline while mum watches from the clothesline where she's hanging all our wet swimmers. We might go to the beach again later.

### ABOUT THE ARTIST

Molly Wattle Boney is a young Wiradjuri, Gamilaroi, Ngati Kahungunu artist whose love of colour, line, and composition springs naturally from her curiosity about the natural world. Molly's intuitive style has developed predominantly through experimentation and observation. Her preferred medium for telling her story is acrylics. Storytelling and painting combined have given Molly a platform to express her love for the narrative. Movement, colour, and the joy of life are recurring themes in Molly's vibrant artworks.

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## **Section one**

Safeguarding the rights of  
Aboriginal children in the  
child protection system

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# Executive summary

In this report, the term Aboriginal people is used to describe Aboriginal and Torres Strait Islander peoples. The Audit Office of NSW acknowledges the diversity of traditional Nations and Aboriginal language groups across the state of New South Wales.

The Department of Communities and Justice (DCJ) is responsible for the administration of the child protection system in NSW.

Aboriginal children and their families' rights in the child protection system are contained in the *Children and Young Persons (Care and Protection) Act 1998* and the United Nations Conventions on the Rights of the Child and the Declaration on the Rights of Indigenous Peoples. These rights are also binding on DCJ funded non-government organisations (NGOs) through the administration of service contracts.

In 2022–23, DCJ spent \$3.1 billion on child protection and out of home care services. This includes \$1.9 billion on out of home care services, \$800 million on child protection services and \$405 million on early and intensive family preservation services.

DCJ subcontracts various early intervention, prevention programs and out of home care services to NGOs. However, DCJ is responsible, as system steward, for the effectiveness of the entire child protection system.

This audit assessed whether DCJ and five of its funded NGOs are effectively safeguarding the rights of Aboriginal children in the child protection system. The audit period was June 2018 to June 2023 (five years). In this report, children and young people under 18 are described together as children.

We addressed the audit objective by answering three questions:

1. Does DCJ and its funded non-government organisations have established governance and accountability arrangements to understand and track performance in safeguarding the rights of Aboriginal children in the child protection system?
2. Does DCJ and its funded non-government organisations have effective policies, practices, systems, and resources to support and enable staff to safeguard the rights of Aboriginal children in the child protection system?
3. Does DCJ and its funded non-government organisations have effective monitoring and quality assurance systems to ensure that the outcomes for Aboriginal children in the child protection system are consistent with their legislative rights and their human rights?

This audit was conducted concurrently with the Oversight of the child protection system performance audit.

## Conclusion

**The Department of Communities and Justice (DCJ) is not effectively safeguarding the rights of Aboriginal children in contact with the child protection system, as required in the *Children and Young Persons (Care and Protection) Act 1998*, the United Nations Convention on the Rights of the Child and the Declaration on the Rights of Indigenous Peoples.**

Aboriginal children are over-represented in the child protection system. Approximately 6,500 Aboriginal children were in out of home care as at 30 June 2023, making up 45% of the out of home care population. By comparison, around seven per cent of children in NSW are Aboriginal. Aboriginal children are three times more likely than non-Aboriginal children to be reported at risk of significant harm and four times more likely to be allocated to a community service centre for a caseworker to undertake a face-to-face safety assessment. One in eight Aboriginal children seen by caseworkers enters out of home care.

In 1998, NSW Parliament passed legislation establishing the Aboriginal and Torres Strait Islander Principles (the Principles). The Principles set out safeguards for Aboriginal children and their families in the child protection and out of home care system. DCJ has not embedded the Principles in its governance and accountability arrangements or operationalised them into its policies and processes. Therefore, DCJ cannot demonstrate its compliance with the Principles.

DCJ uses Structured Decision-Making tools to assist caseworkers to make critical casework decisions. External reviews conducted in 2017 and 2019 raised concerns that the tools were susceptible to caseworker bias in relation to Aboriginal families. Both reviews recommended the NSW Government independently examine the use of the Structured Decision-Making tools. The NSW Government agreed to do this, but an independent review has never been conducted.

While DCJ has identified that the use of the tools has resulted in a disproportionate number of Aboriginal children being unnecessarily taken into care, it has not collected information about how many children have been impacted or taken steps to remediate where this may have occurred. The tools continue to be used, exposing DCJ to increased risk, including the possibility that it wrongly intervenes for Aboriginal families.

Successive independent reports have called for reform of the child protection system to improve outcomes for Aboriginal children and families. DCJ has not made substantive progress in reforming the system to meet the recommendations of past reviews and lacks effective governance arrangements to support this.

Out of home care services are primarily delivered through contracting non-government organisations (NGOs). DCJ has not ensured that NGOs are implementing effective safeguards for Aboriginal children and their families and does not hold NGOs accountable for compliance with safeguards for Aboriginal children and families.

## 1. Key findings

### **DCJ has not established governance and accountability mechanisms to ensure compliance with statutory safeguards for Aboriginal children and their families**

Safeguards for Aboriginal people are set out in sections 11 to 13 of the *Children and Young Persons (Care and Protection) Act 1998*. These safeguards are known as the Aboriginal and Torres Strait Islander Principles (the Principles) and are aimed at preventing Aboriginal children entering out of home care by placing an onus on DCJ to keep Aboriginal children within their own family, community and culture wherever possible. Where this is not possible, it affords their families and extended kinship networks the right to decide where to place the child. For Aboriginal children who are in out of home care, the Principles provide for the right to remain connected to kin, Country and culture.

DCJ has not established effective governance arrangements with related accountabilities to ensure compliance with the Principles across the child protection and out of home care system. DCJ holds districts accountable against administrative activity only. There are no performance and accountability measures, and none that relate specifically to Aboriginal children. DCJ does not report on, or monitor, compliance with the Principles, nor has it established any targets or measures aligned to the Principles. Consequently, there is limited accountability to deliver improved outcomes for Aboriginal children, their families and communities.



### **DCJ has not operationalised safeguards afforded to Aboriginal children, which has led to system wide non-compliance**

DCJ is responsible for implementing the Principles as set out in sections 11 to 14 of the *Children and Young Persons (Care and Protection) Act 1998*. This includes rights to self-determination, prevention, participation, partnership and connection. The Principles create a legislative obligation for DCJ to achieve improved outcomes for Aboriginal people.

DCJ has not operationalised the Principles in day-to-day casework practice. As a consequence, DCJ is unable to collect associated data, which would allow it to monitor and report on the statewide application of, and compliance with, the Principles.

### **DCJ has made negligible progress in implementing key strategies, independent recommendations and reforms designed to improve outcomes for Aboriginal children and their families**

In the period reviewed by this audit, DCJ was responsible for the implementation of two major strategies to reduce the number of Aboriginal children in out of home care:

- Aboriginal Outcomes Strategy – Target 2: reduce the long-term and continued over-representation of Aboriginal children in out of home care 2017–2021—developed by DCJ.
- Closing the Gap 2021 – Target 12: reduce the number of Aboriginal children in out of home care by 45% by 2031. This is a Australian Government initiative aimed at achieving better outcomes for Aboriginal people, to which the NSW Government is a signatory.

In February 2023, the NSW Ombudsman published its review of the Aboriginal Outcomes Strategy. The Ombudsman found DCJ did not reach the target and ‘effectively abandoned’ the strategy.

In November 2021, DCJ established a temporary Deputy Secretary position to lead the Transforming Aboriginal Outcomes unit. The Transforming Aboriginal Outcomes unit is responsible for DCJ’s implementation of projects to achieve Closing the Gap targets, including Target 12.

The Deputy Secretary (Transforming Aboriginal Outcomes) does not have decision-making powers over policy, commissioning of DCJ funded services or operational decisions. Although senior DCJ executives meet regularly, meetings are not used to drive the structural reform needed to achieve Target 12. DCJ is not on track to achieve Target 12.

DCJ districts make significant child protection decisions that would likely contribute to achieving Target 12, including whether Aboriginal children enter out of home care and whether Aboriginal children currently in out of home care are restored to their families. However, there are no targets, measures or data to hold districts accountable to demonstrate progress in these key areas.

Insufficient governance and accountability arrangements have contributed to DCJ’s failure to effectively implement over 200 recommendations from independent inquiries. Amongst these inquiries is the 2019 Family is Culture report, which is the only Aboriginal led review on the experiences of Aboriginal children and their families who encounter child protection and out of home care in NSW. In four years, DCJ completed only 12 of the 105 recommendations from this review for which it is responsible.

### **DCJ continues to use Structured Decision-Making tools that it knows disproportionately impact Aboriginal children and their families**

DCJ relies on a series of Structured Decision-Making tools to operationalise its legislative obligations to investigate and assess risk of significant harm reports made about children. The Structured Decision-Making tools assist DCJ staff to make significant child protection decisions.

The tools were procured from a United States provider in 2011. The provider strongly recommended that DCJ review the tools every two to five years to ensure they are relevant to local factors. Two external reviews (2017 and 2019) raised concerns about the Structured Decision-Making tools being susceptible to caseworker bias in relation to Aboriginal families. Both recommended the NSW Government undertake an independent review of the Structured Decision-Making tools. The NSW Government accepted the recommendations. However, an independent review has never been undertaken.

In 2021, DCJ commenced an internal review of the Structured Decision-Making tools. The review included AbSec, the peak Aboriginal children's organisation in NSW. However, in 2022 AbSec, withdrew its membership on the Structured Decision-Making review citing lack of co-design process. AbSec has since separately requested DCJ abandon the Structured Decision-Making tools.

In February 2024, the Secretary announced that DCJ will work in formal partnership with AbSec and the Aboriginal Legal Service to design, implement and evaluate a new approach to child protection assessment and decision-making. DCJ's latest effort to address the documented bias in the Structured Decision-Making tools does not include an independent review.

DCJ is aware the tools result in disproportionate numbers of Aboriginal children being unnecessarily taken into care. In 2023, during a DCJ Executive Governance Group meeting, DCJ executives discussed the messaging of revised Structured Decision-Making tools to 'consider the likelihood of civil claims against the department'. DCJ has not collected information about how many children have been impacted. Nor has it sought to address the consequences of its past use, which have potentially impacted Aboriginal children and their families assessed as being at suspected Risk of Significant Harm since the tools became operational in 2011.

DCJ has highlighted its obligation in the apology to the Stolen Generations to ensure its processes 'make things better and not worse' for Aboriginal children and their families. DCJ continues to use the Structured Decision-Making tools while the new approach is developed.

### **DCJ does not have effective quality assurance and monitoring frameworks to safeguard the rights of Aboriginal children**

DCJ has inadequate quality assurance over the child protection system to ensure the rights of Aboriginal children are safeguarded including all processes and casework decisions up to the point where a child is removed. DCJ has not developed criteria to assess quality of casework decisions at this crucial stage. There is also no process to ensure casework decisions are compliant with relevant legislation and policies. Consequently, DCJ does not know whether it is complying with its own policies or legislative obligations.

For example, DCJ has no quality assurance or monitoring over its use of emergency removal powers. There are times where a child is at immediate risk of significant harm and emergency removal is unavoidable. However, emergency removal powers bypass legislative safeguards for Aboriginal children and their families. The expectation, from DCJ and the community, is that emergency removal of children should be used sparingly. On average between 2018–19 to 2022–23, 65% of removals of Aboriginal children were performed under emergency powers.

While DCJ has some quality assurance processes for the delivery of out of home care services, these do not ensure safeguards for Aboriginal children. For example, DCJ has no mechanisms or related data capture to ensure every Aboriginal child's connection to their Country, family and extended kinship systems are maintained.

### **DCJ has not effectively addressed the therapeutic and healing needs of Aboriginal families**

In 2013, the NSW Government released its Aboriginal Affairs plan: Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE). In OCHRE, the NSW Government committed to 'work with Aboriginal communities, policy practitioners and service providers to advance the dialogue in NSW about trauma and healing and to begin developing responses informed by evidence of good practice'.

DCJ has recognised in its formal apology to the Stolen Generations that as the agency responsible for administering child protection legislation in NSW, it inherits the legacy of the injustices of past practices of forced removals of Aboriginal children by the Aboriginal Protectorate Board. DCJ has also accepted a responsibility to work with Aboriginal communities to focus on the healing needs of Aboriginal children and their families who encounter child protection.

DCJ has not identified the therapeutic and healing needs of Aboriginal families nor worked with Aboriginal stakeholders or service providers to design and deliver holistic therapeutic and healing supports that meet the needs of Aboriginal families.

DCJ has not conducted any work to assess the cultural appropriateness of its current suite of funded programs designed to keep children with their families and cannot demonstrate they are effective for Aboriginal children and families.

**DCJ, as system steward, has not operationalised safeguards for Aboriginal children and their families. As a result, non-government organisations cannot demonstrate compliance with safeguards for the rights of Aboriginal children**

The audited non-government organisations similarly did not have governance, policies, practices and quality assurance systems to ensure safeguards for Aboriginal children in out of home care.

These organisations were unable to demonstrate compliance with contractual arrangements with DCJ or their obligations under sections 11 to 13 (the Aboriginal and Torres Strait Islander Principles) of the *Children and Young Persons (Care and Protection) Act 1998*.

## 2. Recommendations

As this report notes, recommendations of prior reviews and inquiries into the child protection system in NSW remain unaddressed. This audit does reiterate prior recommendations, but we note DCJ retains an ongoing obligation to systematically address, acquit and report on each of them transparently.

**By June 2025, the Department of Communities and Justice should:**

1. Establish governance arrangements that provide oversight of the safeguards for Aboriginal children and families in the child protection system. Support these arrangements with relevant data to demonstrate and drive compliance in relation to each of the areas as set out in the Principles:
  - self-determination
  - prevention
  - removals
  - placement and consultation
  - connection
  - transition of Aboriginal children from non-Aboriginal Controlled Community Organisations to Aboriginal Controlled Community Organisations
  - targeted early intervention and restoration.

2. Establish an accountability framework for outcomes of Aboriginal children and their families in the child protection system and embed this clearly and transparently within its operating structure. The framework should at a minimum:
  - assign relevant roles with responsibilities and measurable targets to safeguard the rights of Aboriginal children and families
  - outline processes to address non-compliance and ineffective delivery of outcomes for Aboriginal children and families.
3. Operationalise safeguards for Aboriginal children and their families in casework mandates within DCJ and contracted non-government organisations to ensure consistency across the child and family sector.
4. Establish targets and measures using outcomes focussed data that provide clear accountability for DCJ districts and contracted non-government organisations to safeguard Aboriginal children and families in the child protection system.
5. Fulfil the NSW Government's Aboriginal Affairs Plan, Opportunity, Choice, Healing, Responsibility and Empowerment (OCHRE) commitment to work with Aboriginal organisations to develop a healing framework to be used across the child protection sector for Aboriginal children and families.
6. Commission and support relevant Aboriginal organisations to develop 'best practice' holistic family preservation models based on Aboriginal ways of healing, with a view to having this inform recommissioning in 2025 consistent with the Principles in the *Children and Young Persons (Care and Protection) Act 1998* of self-determination and participation.
7. Fulfil its commitment to commission an independent review of the Structured Decision-Making tools, including identifying the number of Aboriginal children unnecessarily taken into statutory care because of their use.
8. Develop and implement a child protection quality assurance framework to ensure compliance with safeguards for Aboriginal children and their families up to and including the point a child is removed. DCJ should start with prevention to reduce the number of Aboriginal children entering care, wherever possible, and focus on healing to address the complex trauma experienced by Aboriginal families.
9. Develop and implement a quality assurance process for districts and non-government organisations providing out of home care to hold them accountable for safeguards for Aboriginal children and their families.

# 1. Introduction

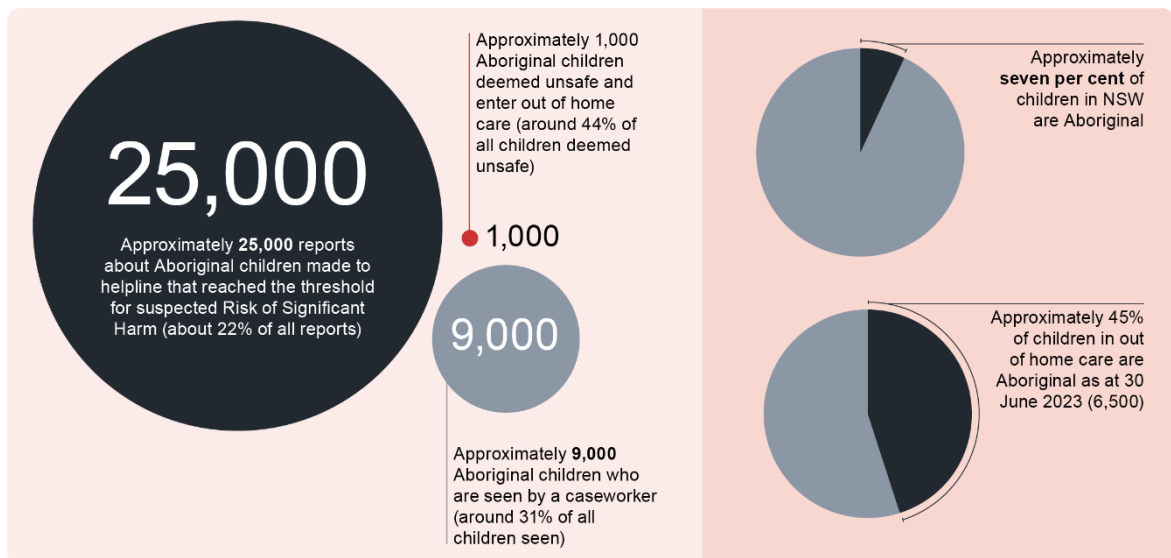
The child protection system aims to protect children and young people from the risks of abuse, neglect and harm. This report refers to several parts of the child protection system including:

- **Helpline:** DCJ receives and triages reports about children suspected to be at risk of significant harm
- **Investigation of reports (mostly performed at community service centres):** DCJ determines if reports meet the suspected risk of significant harm threshold and the subsequent assessment and investigation of suspected risk of significant harm reports
- **Case work:** where risk of significant harm has been substantiated, DCJ provides and procures services to prevent a child's entry into the child protection system
- **Entry into care decisions:** DCJ determines when a child enters out of home care
- **Out of home care services:** where a child cannot safely remain at home, DCJ or a contract service provider, place the child in foster care, kinship care, temporary care arrangements or residential care.

## 1.1 Aboriginal children in child protection and out of home care

As shown in Exhibit 1, Aboriginal children are over-represented in the NSW child protection system.

**Exhibit 1: Over-representation of Aboriginal children in the NSW child protection system, 2022–23**



Source: AONSW analysis based on data provided by DCJ, 2023.

## 1.2 Previous reports and reviews

There have been 12 major reviews and reports into child protection in NSW in the last decade. These include reports issued by Parliamentary committees, the NSW Auditor-General, the NSW Ombudsman, the Office of the Children’s Guardian and other independent experts. These reviews made over 200 recommendations to the NSW Government and the Department of Communities and Justice on child protection matters.

Two were Aboriginal specific reports: the 2016 NSW Parliament report on Reparations for the Stolen Generations and the 2019 Family is Culture report.

### **2016 NSW Parliament report – Reparations for the Stolen Generations in New South Wales**

The Reparations for the Stolen Generations in New South Wales inquiry was established to examine the NSW Government’s response to the 1996 Bringing them home report on the Stolen Generations. The 2016 NSW Parliament report contemplated whether trends in NSW child protection, constituted a ‘second Stolen Generation’. To avoid this outcome, the report recommended investing more significantly in early intervention and prevention activities.

### **2019 Family is Culture report**

The Family Is Culture report examined the implementation of the Aboriginal and Torres Strait Islander Principles in practice, grounding its observations and findings in a detailed case review of 1,044 Aboriginal children who entered out of home care in the 2015–16 financial year.

The Family is Culture report made 126 systemic recommendations to government ranging from first contact with the child protection system to after care support, alongside 3,018 recommendations relating to individual children’s cases.

The NSW Government accepted all 3,018 individual recommendations and 121 systemic recommendations from the Family is Culture report. DCJ is responsible for implementation of 105 of the systemic recommendations as well as the individual recommendations.

## 1.3 Legislation and policy

### ***Children and Young Persons (Care and Protection) Act 1998***

The *Children and Young Persons (Care and Protection) Act 1998* governs how the Department of Communities and Justice (DCJ) responds to concerns for the safety, welfare or well-being of children in NSW. The Act sets out how DCJ needs to respond to initial reports about risks to children, investigates those concerns and sets out the powers DCJ uses to remove children from their families.

### **The Aboriginal and Torres Strait Islander Principles**

Sections 11 to 14 of the Act set out the Aboriginal and Torres Strait Islander Principles (referred to in this report as the Principles).

In November 2022, Parliament passed legislation inserting s12A into the *Children and Young Persons (Care and Protection) Act 1998*. A response to the 2019 Family is Culture report, this amendment enshrined the widely recognised elements of Prevention, Partnership, Placement, Participation and Connection into the Aboriginal and Torres Strait Islander Principles.

Sections 11 to 12A of the *Children and Young Persons (Care and Protection) Act 1998* set out Aboriginal children and their families rights to:

- self-determination: Aboriginal people are to participate in the care and protection of their children with as much self-determination as is possible (s11)
- participation in decision-making: Aboriginal families, kinship groups, representative organisations and communities are to be given the opportunity, by means approved by the Minister, to participate in decisions made concerning the placement of their children and in other significant decisions made under this Act that concern their children (s12)
- prevention: a child has a right to be brought up within the child's own family, community and culture (s12A(2)(a))
- partnership: Aboriginal community representatives should participate in the design and delivery of services for children and in individual decisions about children (s12A(2)(b))
- connection: a child has a right to be supported to maintain connections to family, community, culture and country (s12A(2)(e)).

Section 13 of the *Children and Young Persons (Care and Protection) Act 1998* contains the preferred placement hierarchy. It provides that:

- an Aboriginal child who needs to be placed in out of home care is to be placed in accordance with this hierarchy (s13):
  - a) a member of the child's extended family or kinship group, or
  - b) a member of the Aboriginal community to which the child belongs, or
  - c) a member of some other Aboriginal family residing in the vicinity of the child's usual place of residence, or
  - d) a suitable person approved by the Secretary after consultation with members of the child's extended family or kinship group and such Aboriginal organisations as are appropriate to the child.

Section 14 contains record making, retention and access requirements for Aboriginal children and families. This audit did not focus on this section of the *Children and Young Persons (Care and Protection) Act 1998*.

## Active Efforts

The NSW Government introduced legislation to respond to some of the recommendations by the Family is Culture report. In November 2022, NSW Parliament passed the Family is Culture amendments to the *Children and Young Persons (Care and Protection) Act 1998*. The active efforts provision (s9A) formally came into force from November 2023. Active efforts requires the Secretary of DCJ to demonstrate action to prevent children entering care; or where a child has entered out of home care, efforts to restore or place a child with family, kin or community.

This audit is for a period of five years July 2018 to June 2023. As the legislation only recently came into effect the audit has not assessed active efforts.

## Aboriginal Case Management Policy

The 2019 Aboriginal Case Management Policy was developed to operationalise the requirements set out in the Principles. It comprises an overarching policy document and a related set of more specific Practice Guidelines. The Aboriginal Case Management Policy applies to both DCJ and its funded non-government organisations.

## Permanency Case Management Policy

DCJ contracts with non-government organisations and itself to provide out of home care services for children who have been removed from their family. The Permanency Case Management Policy and related guidelines set out:

- roles and responsibilities of DCJ and non-government organisations providing out of home care services
- how providers deliver out of home care to achieve safety, permanency and wellbeing for children.

Importantly, the Permanency Case Management Policy and related guidelines set out expectations for case management transfer between DCJ and non-government organisations when placing children in out of home care. The guidelines cover the information that DCJ must provide non-government organisations to decide whether to accept case management responsibility for a child.

### 1.4 Major commitments

Over the course of the five-year review period, DCJ has been and continues to be, responsible for several major commitments in relation to Aboriginal children and their families:

- Aboriginal Outcomes Strategy (AOS), 2017–2021 – Target 2 to reduce the long-term and continued over-representation of Aboriginal children in out of home care, developed by DCJ.
- Closing the Gap 2021–2031 – Target 12: reduce the number of Aboriginal children in out of home care by 45% by 2031. An Australian Government initiative aimed at achieving better outcomes for Aboriginal people. The NSW Government is a signatory to Closing the Gap and DCJ is the responsible agency for Target 12.

### 1.5 United Nations Instruments

#### **The United Nations Conventions on the Rights of the Child, 1990**

The United Nations General Assembly adopted the United Nations Convention on the Rights of the Child (the Convention) in November 1989. Australia ratified the Convention in September 1990. The Convention sets out a universally accepted set of rights for children.

#### **The United Nations Declaration on the Rights of Indigenous Peoples, 2007**

The United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) was adopted by the United Nations General Assembly in September 2007. Australia endorsed the Declaration in 2009. The Declaration 'establishes a universal framework of minimum standards for the survival, dignity and well-being of the Indigenous peoples... and it elaborates on existing human rights standards and fundamental freedoms as they apply to Indigenous peoples'.

### 1.6 Roles in the Department of Communities and Justice

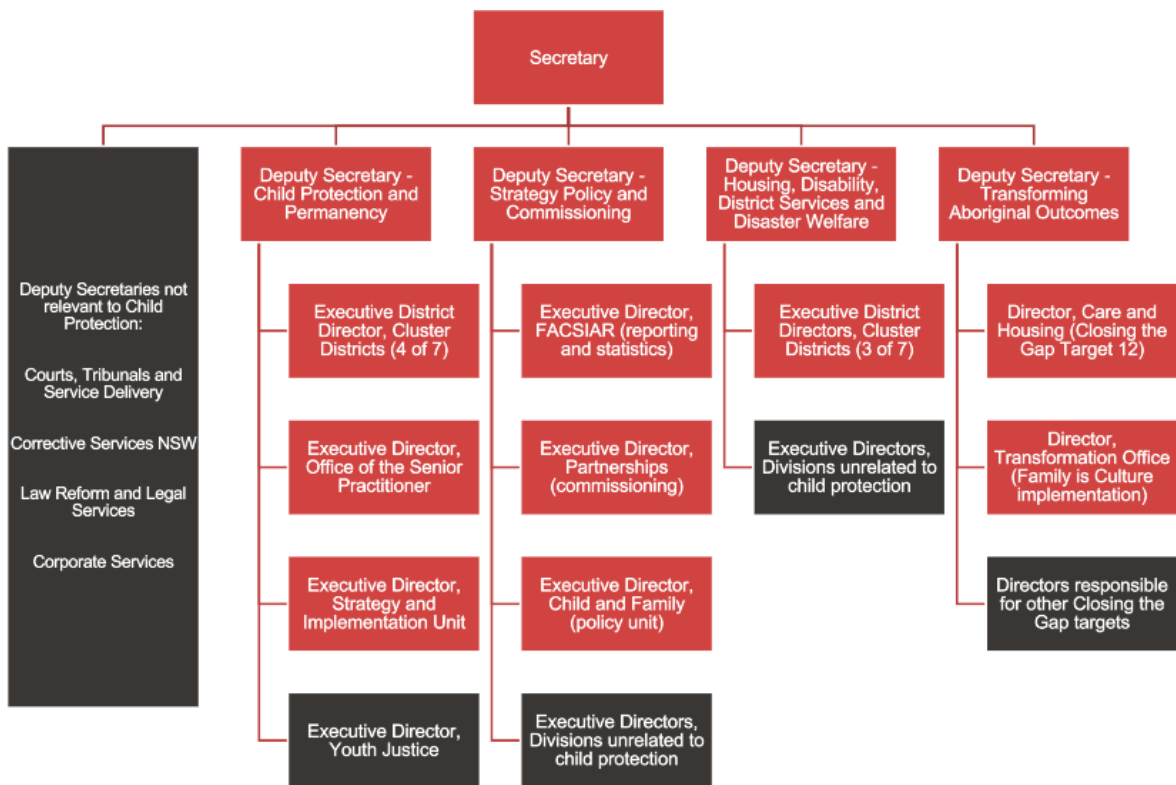
DCJ is responsible for the administration of the child protection system in NSW. Sections 15 to 19 of the *Children and Young Persons (Care and Protection) Act 1998* specifies the roles of the Minister and the Secretary.



Many parts of DCJ contribute to administration of the child protection system. DCJ is both a service provider and steward of the child protection system. For example:

- the Deputy Secretary (Child Protection and Permanency, District and Youth Justice Services) oversees the operational arm of the child protection system as well as the Office of the Senior Practitioner, responsible for practice leadership
- the Deputy Secretary (Strategy, Policy and Commissioning) coordinates the commissioning of child protection and out of home care services and develops policy for the child protection system
- the Deputy Secretary (Transforming Aboriginal Outcomes) is responsible for the implementation of NSW’s commitments in the National Agreement to Close the Gap including Target 12 which relates to reducing the number of Aboriginal children in out of home care
- Executive District Directors are responsible for the seven cluster districts
- Directors, Community Services are responsible for the 16 districts and the 80 community service centres responsible for day-to-day case work across the 16 districts.

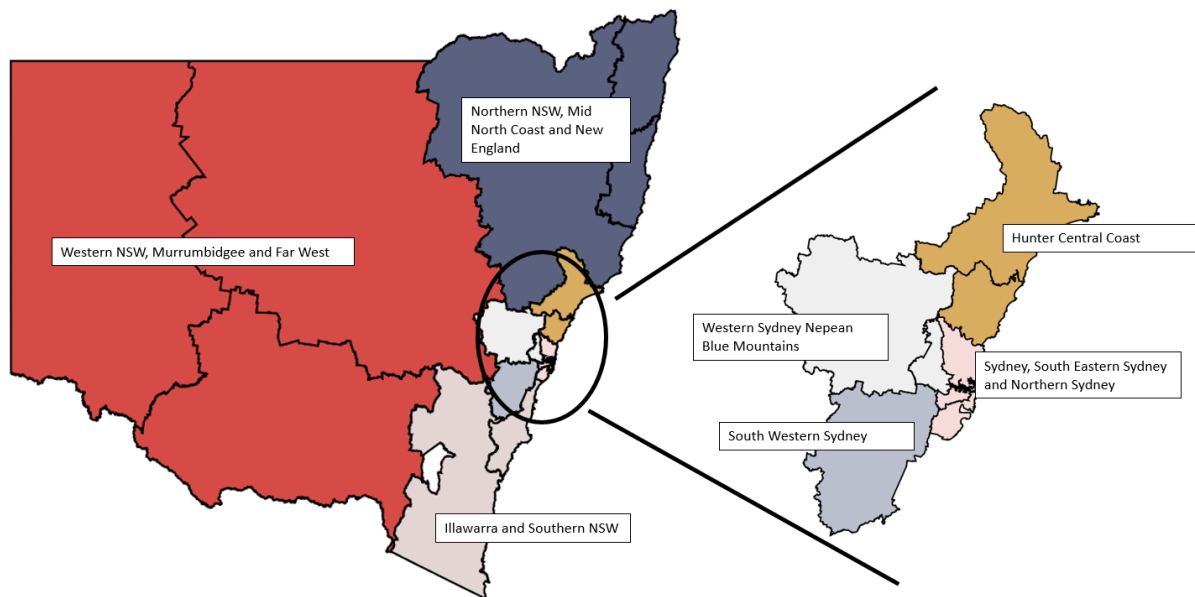
**Exhibit 2: the Department of Communities and Justice organisation structure relevant for child protection (as at June 2023)**



Source: AONSW based on data supplied by DCJ, 2023.

Until May 2023, the Deputy Secretary (Housing, Disability, District Services and Disaster Welfare) was also responsible for operational child protection. However, this has recently been consolidated into the role of the Deputy Secretary (Child Protection and Permanency, District and Youth Justice Services). In early 2024, the Deputy Secretary (Housing, Disability, District Services and Disaster Welfare) role was abolished and all Executive District Directors reported directly to the Deputy Secretary (Child Protection and Permanency, District and Youth Justice Services).

### Exhibit 3: DCJ administrative districts and cluster districts



Source: AONSW based on data supplied by DCJ.

## 1.7 About this audit

The objective of this audit was to assess whether the rights of Aboriginal children in the NSW child protection system are effectively safeguarded.

In making this assessment, the audit examined whether:

- there are established governance and accountability arrangements to understand and track performance in safeguarding the rights of Aboriginal children and young people in the child protection system
- there are effective policies, practices, systems and resources to support and enable staff to safeguard the rights of Aboriginal children and young people in the child protection system
- there are effective monitoring and quality assurance systems to ensure that the outcomes for Aboriginal children and young people in the child protection system are consistent with their legislative rights and their human rights.

The five non-government organisations selected for inclusion in this audit, including two Aboriginal Community Controlled Organisations (ACCOs), were:

- Barnardos Australia
- Burrun Dalai Aboriginal Corporation (ACCO)
- KARI Ltd (ACCO)
- Life Without Barriers
- Wesley Community Services Limited.

The selection of these organisations was informed by the following criteria:

- a diversity of locations: ensuring that the selected NGOs operated in metropolitan, regional, and remote locations
- a high volume of funding: ensuring that the selected NGOs operated with a high volume of funding in comparison to other NGOs.
- a high number of children in out of home care: ensuring that the selected NGOs accounted for a large proportion of children. Collectively, the five selected NGOs provide over 2,600 foster care places, or one-third of the total contracted foster care places in 2021–22. Foster care is a type of out of home care arrangement.
- larger Aboriginal-specific organisations: KARI Ltd and Burrun Dalai Aboriginal Corporation are larger than many of the other ACCOs providing similar services. Collectively, they provided foster care to 751 children in 2021–22, approximately 20% of the total number of Aboriginal children in foster care during that year.

Follow-the-dollar provisions are retrospective and allow the Auditor-General to audit activities of related relevant entities that were carried out before commencement of the amending legislation.

As part of this audit, the audit team undertook the following activities:




- visits to community service centres in six of the 16 DCJ administrative districts to observe child protection operations and conduct meetings with child protection personnel from DCJ and selected NGOs
- meetings with central policy and operations staff of both DCJ and selected NGOs
- assessments of documents and data from DCJ and NGOs
- engagement with Aboriginal stakeholders.

Activities in the child protection system range from universal services to targeted interventions in the lives of children and their families, including assumption of parental rights by the Minister for Families and Communities. Exhibit 4 shows the scope of this audit against that range of activities.

#### Exhibit 4: Child protection continuum of care and audit scope

Continuum of Care	Stage/service	Included in this audit
Targeted Earlier Intervention	Targeted Earlier Intervention	!
Targeted Earlier Intervention	Family preservation (non Risk of Significant Harm)	!
Child Protection	Risk of Significant Harm report	—
Child Protection	Triage stage	✓
Child Protection	Casework stage	✓
Child Protection	Family preservation (Risk of Significant Harm) (Safe with a plan, referral to family preservation)	✓
Out of Home Care	Entry to Out of Home Care	✓
Out of Home Care	Out of Home Care	—
Out of Home Care	Exit Out of Home Care	!
After Care	After Care	!

<b>Key</b>		<b>In scope</b>		<b>Partially in scope</b>		<b>Out of scope</b>
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## 2. Governance and accountability arrangements

### **DCJ is not monitoring or reporting on safeguards for the rights of Aboriginal children**

Decisions and actions that affect families and children in contact with the child protection system are often made within the context of complex circumstances. They are also deeply impactful on children and their families and can have lifelong implications in areas such as mental health and wellbeing, social inclusion and the likelihood for descendants to also be in contact with the child protection system. Legislative safeguards exist to ensure that the rights of children are paramount.

DCJ governance arrangements are not informed by, and do not reflect, legislative safeguards for the rights of Aboriginal children. Such safeguards include the Convention on the Rights of the Child or the Declaration on the Rights of Indigenous Peoples and the Aboriginal and Torres Strait Islander Principles (the Principles) contained in sections 11 to 13 of the *Children and Young Persons (Care and Protection) Act 1998*.

DCJ has not established mechanisms to:

- address the reasons, including those arising from its own process deficiencies, that Aboriginal children are disproportionately reported at suspected Risk of Significant Harm, seen by caseworkers and enter statutory out of home care
- assess and hold its funded non-government organisations (NGO) accountable for the quality and outcomes of family preservation services that aim to prevent Aboriginal children entering out of home care
- hold departmental districts and NGOs accountable for outcomes for Aboriginal children in out of home care.

Department districts are instead held accountable against nine key performance indicators at Quarterly Business Review Meetings. The performance indicators reflect activity in the child protection and out of home care system. None are disaggregated by Aboriginality, and no indicators require districts to demonstrate casework outcomes for Aboriginal children and families.

### **DCJ has not developed effective accountability mechanisms for its staff to safeguard the rights of Aboriginal children in the child protection system**

DCJ does not have formal accountability mechanisms for any of its staff to safeguard the rights of Aboriginal children. Because of this, DCJ does not have a framework to address staff non-compliance with safeguards for Aboriginal children and their families.

DCJ does not collect data to demonstrate adherence to the Principles or consistently collect feedback from the Aboriginal community to understand its performance. Without Aboriginal outcomes focused data and feedback from Aboriginal stakeholders, DCJ cannot understand its performance or hold its staff accountable for complying with the Principles.

DCJ advises that it plans to introduce a new performance framework that will require senior executives to demonstrate their performance with respect to Aboriginal children in the child protection system. DCJ has not nominated when the framework will come into effect.

## **DCJ has made negligible progress in implementing key recommendations, strategies and reforms designed to improve outcomes for Aboriginal children and their families**

DCJ has not delivered on any Aboriginal specific child protection reform strategy and made negligible progress in implementing key recommendations from the Family is Culture report.

Exhibit 5 identifies major Aboriginal specific reforms to address longstanding issues that impact Aboriginal children and their families. These reviews attempted to reorient the system toward preventing children from entering care and focused on improving outcomes for Aboriginal children in contact with the child protection and out of home care system.

### **Exhibit 5: Major Aboriginal specific reforms**

#### **The Aboriginal Outcomes Strategy 2017–2021, Target 2: reduce the long-term and continued over-representation of Aboriginal children in out of home care**

In February 2023, the NSW Ombudsman reported ‘DCJ effectively abandoned the [Aboriginal Outcomes Strategy] at some point, without either reporting on what it had or had not achieved and without announcing it had been abandoned’. DCJ in reply to the NSW Ombudsman’s report noted that a machinery of government change in 2019 had impeded continuity of the Aboriginal Outcomes Strategy and that without clear governance, projects to address the over-representation of Aboriginal children in out of home care ‘continued but were disconnected from each other’.

#### **Family is Culture report 2019: recommendation implementation**

The Family is Culture report is the first Aboriginal led review on the experiences of Aboriginal children, young people and their families in the child protection system. The report made 126 systemic recommendations to the NSW Government in addition to over 3,000 recommendations based on individual case studies developed to inform the report.

DCJ released progress updates on the implementation of the recommendations in November 2020, May and November 2021 and February 2024.

In four years, only 12 of the 105 systemic recommendations accepted by the NSW Government and for which DCJ is responsible have been implemented. DCJ reports that it has implemented all individual recommendations about the cohort of Aboriginal children identified during the Family is Culture report.

#### **Implementing the Aboriginal Case Management Policy**

In 2018, DCJ commissioned AbSec to design the Aboriginal Case Management Policy, to translate the Aboriginal and Torres Strait Islander Principles into practice. Published in 2019, the Aboriginal Case Management Policy is yet to be implemented anywhere in the state.

#### **Transition of case management of Aboriginal children to Aboriginal Community Controlled Organisations**

In 2012, the NSW Government committed to transferring case management of all Aboriginal children and young people in out of home care to Aboriginal Community Controlled Organisations (ACCOs) within ten years. DCJ did not achieve this.

However, in September 2022 DCJ inserted an obligation into the Service Level Agreements of NGOs to the transition of Aboriginal children in out of home care to ACCOs. Currently, ACCOs manage approximately 20% of Aboriginal children in out of home care.

In the 2022–23 financial year, DCJ recorded 25 transfers of case management responsibility for Aboriginal children and young people from non-ACCOs to ACCOs across the entire sector. At 30 June 2023, there were 6,563 Aboriginal children in out of home care. Around half of these children were case managed by DCJ. To achieve the renewed commitment, DCJ will need to oversee the transfer of almost 500 Aboriginal children each year. In July 2023, DCJ estimated that at the current pace it will take 57 years to transition the case management of Aboriginal children to ACCOs.

**DCJ's organisational structure and governance arrangements are not enabling the system reform needed to meet the NSW Government's commitment to Closing the Gap Target 12**

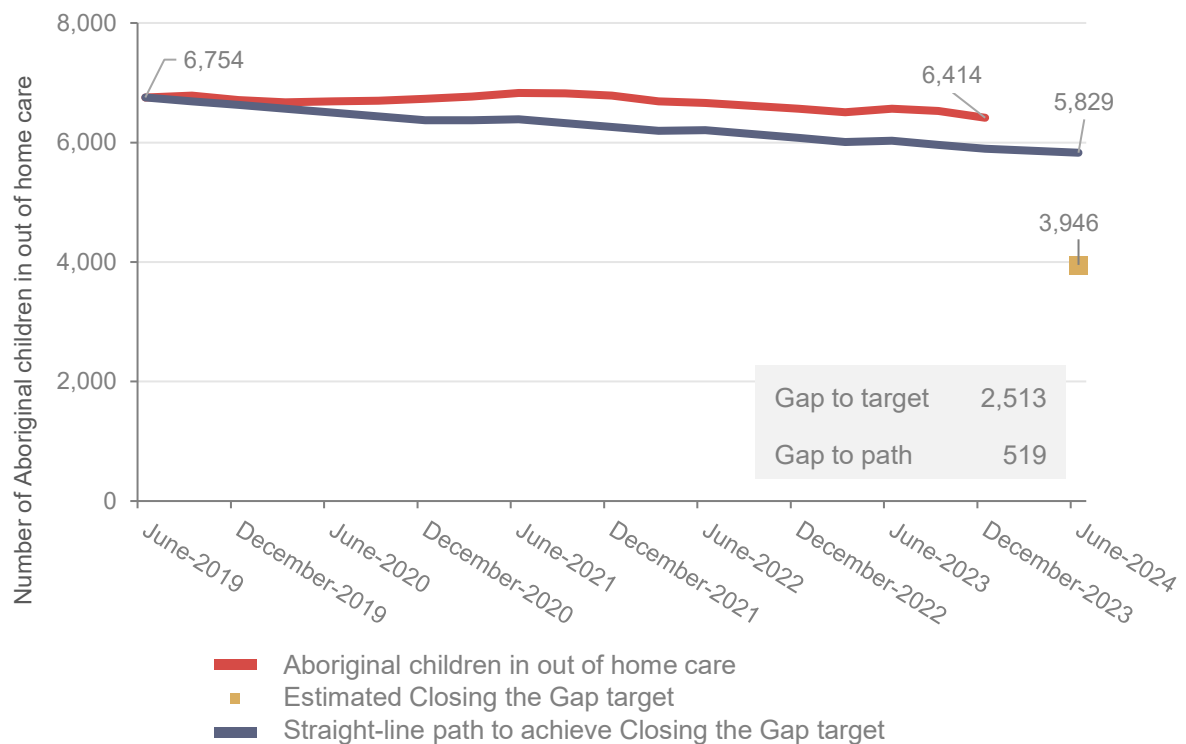
The NSW Government is a signatory to the National Agreement on Closing the Gap 2021-2031. The objective of the Agreement 'is to overcome the entrenched inequality faced by Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians'. The agreement commits the NSW Government to 'mobilise all avenues and opportunities available, to meet the objectives'.

DCJ established a temporary Deputy Secretary Transforming Aboriginal Outcomes (TAO) role and associated unit in November 2021 to lead its Closing the Gap targets, which includes Target 12 (to reduce the proportion of Aboriginal children in out of home care by 45% by 2031). The TAO unit does not have decision-making powers over policy, commissioning of DCJ funded services or operational decisions. Instead DCJ has nominated a series of 18 disparate projects to achieve Target 12, which are monitored by TAO.

DCJ districts make significant child protection decisions that would likely contribute to achieving Target 12, including whether Aboriginal children enter out of home care and whether Aboriginal children currently in out of home care are restored to their families. However, there are no targets, measures or data to hold districts accountable to demonstrate progress in these key areas which would likely contribute to achieving Target 12.

Although senior executives meet regularly, the meetings are not used to drive the structural reform needed to achieve Target 12. DCJ is not on track to achieve Target 12.

**Exhibit 6: Progress towards Closing the Gap target 12 (to reduce the proportion of Aboriginal children in out of home care by 45% by 2031), as at December 2023**



# Estimated Closing the Gap target is calculated by applying the Closing the Gap rate of 33.1 per 1,000 Aboriginal children in out of home care in NSW by 2031 to the Australian Bureau of Statistics Aboriginal population projection.

^ The straight line path to achieve Closing the Gap target is calculated by applying the Closing the Gap path to the target rate (the linear projection from baseline 60.2 in June 2019 to the Closing the Gap target 33.1 by 2033) to the Australian Bureau of Statistics Aboriginal population projection.

Source: DCJ, April 2024.

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## 3. Pathways to removal

Aboriginal children are over-represented in the child protection system. Approximately 6,500 Aboriginal children were in out of home care as at 30 June 2023, making up 45% of the out of home care population. By comparison, around seven per cent of children in NSW are Aboriginal. Aboriginal children are three times more likely than non-Aboriginal children to be reported at risk of significant harm and four times more likely to be allocated to a community service centre for a caseworker to undertake a face-to-face safety assessment. One in eight Aboriginal children seen by caseworkers enters out of home care.

### 3.1 Accurately identifying an Aboriginal child in the child protection system

To effectively safeguard the rights of Aboriginal children in the child protection system, children first need to be accurately identified by DCJ. The *Children and Young Persons (Care and Protection) Act 1998* establishes a requirement upon the DCJ Secretary to proactively ensure this happens.

#### Exhibit 7: The right, identification

**The right:** If the Secretary has reason to believe that a child or young person who is the subject of a report may be an Aboriginal or Torres Strait Islander, the Secretary is to make such inquiries as are reasonable in the circumstances to determine whether the child or young person is in fact an Aboriginal or Torres Strait Islander (s32 *Children and Young Persons (Care and Protection) Act 1998*).

Source: s32 *Children and Young Persons (Care and Protection) Act 1998*.

#### DCJ did not respond promptly to new legal guidance on identifying Aboriginal children

The early identification of children as Aboriginal by DCJ is vital to ensure safeguards come into effect immediately upon contact with the child protection system.

In May 2020, the NSW Supreme Court provided binding guidance to DCJ on identifying Aboriginal children. The Supreme Court guidance clarified that it does not have to be proved that a child or young person is descended from someone who meets the three part definition of Aboriginal person relied on for the purpose of the *Aboriginal Land Rights Act 1983*. Instead, it is enough to show that a child or young person is descended from people who lived in Australia before British colonisation.

DCJ did not issue practice guidance to caseworkers until April 2021, over a year after the Supreme Court decision.

DCJ did not retrospectively examine whether Aboriginal children were misidentified in the one year it took to develop and align the casework guidance with the NSW Supreme Court decision.

#### DCJ guidance to staff does not address known barriers to identifying a child as Aboriginal

Past reviews and reports have identified barriers to accurately identifying as an Aboriginal person. However, DCJ casework guidance does not identify these barriers and articulate the practical steps caseworkers can take to mitigate them.

Some of the leading barriers to accurately identifying as an Aboriginal person are:

- reluctance to self-identify due to the history of Aboriginal child removal
- parents not wishing to identify as Aboriginal
- parents disengaged from culture
- willingness to identify as an Aboriginal person varies with age, gender and geographic location
- caseworkers not comfortable asking families about their heritage and culture.

DCJ guidance encourages caseworkers to take a curious stand and to proactively identify every family's cultural background. However, the guidance lacked practical steps for how a caseworker might:

- demonstrate that they have discussed a child's cultural background and lived experience with the child and their family
- demonstrate comprehensive family finding efforts
- have a respectful conversation with families that do not wish to identify as Aboriginal.

### **DCJ does not monitor the timing, quality or effectiveness of efforts to accurately identify Aboriginal children**

The point at which Aboriginal children are identified is also important. The Family is Culture report found significant delays in correctly identifying an Aboriginal child for a small number of the cases it reviewed. Aboriginal stakeholders told the audit team during fieldwork that they were concerned about the quality of DCJ practice in this area. Concerningly, the audit team was told of instances where Aboriginal children were not identified until adoption orders were being sought.

DCJ does not collect data on the timing, quality or effectiveness of efforts to accurately identify Aboriginal children. DCJ does not routinely interrogate its case management system, ChildStory, for information that will help to understand when Aboriginal children are identified. Consequently, DCJ is unable to understand whether this practice varies between districts.

### **DCJ does not monitor or interrogate departmental districts' de-identification of children and young people**

In addition to accurately identifying Aboriginal children in the child protection system as early as possible, stakeholders also raised concerns about DCJ practices of de-identifying children after they are initially recorded as Aboriginal in ChildStory. In 2019, the Family is Culture report could not determine the extent of this issue and recommended that DCJ collect and publish information about the number of children who are de-identified as Aboriginal and the reasons for this on an annual basis (recommendation 79).

DCJ accepted and progressed this recommendation by restricting the level of authorisation required to change the Aboriginal identification value within ChildStory to Executive District Director in July 2020. DCJ can now view how many Aboriginal children have been de-identified in that time (see Exhibit 8). However, DCJ still lacks other information to monitor de-identification practices such as when de-identification occurred and the reasons why.



**Exhibit 8: De-identification of Aboriginal children by districts in NSW between 1 July 2020 and 30 June 2023**

Cluster district	Number of Aboriginal children de-identified
Hunter and Central Coast Districts	31
Illawarra Shoalhaven and Southern NSW Districts	40
Mid North Coast, Northern NSW & New England Districts	65
Murrumbidgee, Far West and Western NSW Districts	33
South Western Sydney Districts	20
Statewide Services District	15
Sydney, South Eastern Sydney and Northern Sydney Districts	24
<b>Total</b>	<b>228</b>

Source: DCJ, 2023.

During fieldwork the audit team observed different practices to support de-identification of Aboriginal children. Most districts relied on local Aboriginal units to help decide whether a child was incorrectly identified as an Aboriginal child. However, other districts relied on external services such as Link-Up or the NSW Crown Solicitors Office. Link-Up is an Aboriginal Community Controlled Organisation established to assist people of the Stolen Generations connect with their family and culture. The NSW Crown Solicitors Office provides a fee-for-service arrangement to undertake family finding. One DCJ district reported spending over \$9,000 on legal advice from the Crown Solicitors office to invalidate a family’s claim of Aboriginality.

DCJ does not provide guidelines on when caseworkers should use these services to assist in supporting decisions to de-identify Aboriginal children or the cultural appropriateness of such services. DCJ does not collect data on the number of referrals made to external services for the purpose of identifying or de-identifying Aboriginal children in the child protection system.

**In 2024, DCJ plans to issue a new policy on Aboriginal identification and de-identification**

In 2019, the Family is Culture report recommended that DCJ develop a policy on Aboriginal identification and de-identification. DCJ advises that it plans to issue a new policy in 2024 to address this recommendation. DCJ has not indicated whether it intends to conduct an audit to identify any historical misidentifications or de-identifications in ChildStory.

### 3.2 Structured Decision-Making tools

**Exhibit 9: The right, free from discrimination**

**The right:** Aboriginal children and their families have a right to be free from direct and indirect forms of discrimination. Indirect discrimination is when a rule or policy applies to everyone but has the effect of disadvantaging some people. Employers have a legal responsibility to take all reasonable steps to prevent discrimination on these grounds. Employers can also be liable for the discriminatory acts of their employees. This is called vicarious liability. (Sections 9 and 10 of the *Racial Discrimination Act 1975 (Cth)*)

**The right:** Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity. (Article 2 – Declaration on the Rights of Indigenous Peoples)

**The right:** Least intrusive intervention: in deciding what action it is necessary to take (whether by legal or administrative process) to protect a child or young person from harm, the course to be followed must be the least intrusive intervention, consistent with the paramount concern to protect the child or young person from harm and promote the child or young person’s development. (Section 9(c) of the *Children and Young Persons (Care and Protection) Act 1998*)

**The right:** States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. (Article 19 – Declaration on the Rights of Indigenous Peoples).

Source: NSW and Commonwealth Legislation, Declaration on the Rights of Indigenous Peoples.

DCJ uses a suite of Structured Decision-Making tools to operationalise its legislative obligation to investigate and assess suspected child abuse and neglect concerns, as set out in section 30 of *the Children and Young Persons (Care and Protection) Act 1998*. The Mandatory Reporter Decision-Making Tool and Restoration Assessment Tool are outside the scope of this audit.

Exhibit 10 shows the Structured Decision-Making tools in scope for this audit, and where in the casework continuum they are used to make significant child protection decisions.

**Exhibit 10: Structured Decision-Making tools used to support child protection decision-making (within the scope of this audit)**

Tool	Phase	About
<b>Screening and Response Priority Tool</b>	Helpline	Used at the Helpline to assess whether information reported meets the threshold for the child being at suspected risk of significant harm
<b>Safety assessment</b>	Casework	Used by caseworkers to assess whether a child is in danger. If the child is determined safe, the case is closed following a safety assessment except for reports where the only danger identified is a child at risk due to their own behaviour or a prenatal report where the only child in the home is unborn. If the child is determined safe with a plan caseworkers will develop a safety plan with the family. If the child is determined to be unsafe caseworkers must determine if the risk is serious and immediate and warrants the removal of the child.
<b>Risk assessment and re-assessment</b>	Casework	Caseworkers are required to undertake a risk assessment within 30 days of completing a safety assessment to determine the risk level to the child – low, medium, high, very high. A risk rating of low and medium will result in the case being closed. However, a risk rating of high or very high, supports but does not determine the statutory threshold to determine whether the child is at immediate risk of serious harm (the legal threshold required to remove a child from their family).  Within 90 days of visiting the family, caseworkers must undertake a risk re-assessment to determine whether the risk level has reduced or not.

Source: DCJ.

**Structured Decision-Making tools are susceptible to biases affecting Aboriginal children and their families**

**Screening and Response Priority Tool**

DCJ receives reports of child protection concerns through the Helpline. Helpline staff assess the report using the Screening and Response Priority Tool to decide whether the child is at suspected risk of significant harm as defined in section 23 of the *Children and Young Persons (Care and Protection) Act 1998*. If the child is determined to be at suspected risk of significant harm, the report will be screened in and allocated a response time by the local Community Service Centre – 24 hours, three days or ten days.

A determination of suspected risk of significant harm is a significant decision in the child protection continuum because it triggers a process that may lead to statutory intervention by DCJ.

The Screening and Response Priority Tool manual details Aboriginal cultural considerations for DCJ staff to consider when making determinations about suspected risk of significant harm for an Aboriginal child. At the outset of the Screening and Response Priority Tool manual, it warns DCJ staff to consider when assessing the alleged type and extent of harm, that reports made by Aboriginal people, 'may frequently be more serious and urgent than they initially appear'.

Caseworkers can have regard to Aboriginal cultural considerations in the Screening and Response Priority Tool manual. For example, the manual outlines that in rural and remote communities, access to medical, dental and mental health services may be very limited due to the remote or isolated location. Therefore, caseworkers should question whether the Aboriginal child's 'medical needs are endangered as a result of inadequate parent/carer action or because of limited services'. However, there is no further guidance for DCJ staff if the child is allegedly at risk due to limited services.

Audit Office consultations in regional and remote NSW revealed limited service provision was an issue in several communities. DCJ staff noted that limited service provision was one of the contributing factors to Aboriginal children entering out of home care in that region. Exhibit 11 provides a case study of limited service provision in one remote Aboriginal community in NSW.

### **Exhibit 11: Limited service provision in a remote Aboriginal community in NSW**

The audit team visited one remote Aboriginal community where DCJ staff and local Aboriginal leaders confirmed three Aboriginal families generated the most risk of significant harm reports received by the local community service centre.

The historic effects of intergenerational child removals and trauma resulting from systemic inequity is the reason Aboriginal children and their families currently involved in child protection are the third and fourth generation at risk of experiencing child removal. The reasons for the removal of children have included violence in the home, alcohol and drug misuse and mental health concerns.

To address these issues, Aboriginal stakeholders and DCJ staff reported the community needs more 'local and permanent services'. While there are many service providers that operate in the broader district, these services do not cover the community on a permanent basis. Local community members report that the services that are based locally are not tailored to address local Aboriginal community needs.

Aboriginal stakeholders reported that there are no Aboriginal led psychological or healing services to address generational trauma that exists in the community. There are also significant distances to travel for some services. For example, the closest residential rehabilitation service to address alcohol and drug misuse is up to a four hour drive away. Such service limitations are barriers to addressing complex issues that may have led to a child protection intervention by DCJ.

A published report brought the issue of limited service provision in this community to DCJ's attention more than ten years ago.

Source: AONSW fieldwork.

### **Safety assessment**

DCJ data shows that Aboriginal children are 'increasingly screened in at the Helpline as being at risk of significant harm'. As shown in Exhibit 1, around 25,000 reports were made to the Helpline about Aboriginal children that reached the threshold for suspected risk of significant harm in the 2022–23 financial year, or 22% of all children who reached this threshold.

Where the Helpline has determined a child is at suspected risk of significant harm and allocated a response, the local community service centre will determine if the matter is allocated for a safety assessment. A safety assessment is undertaken by caseworkers to determine whether the child is in immediate danger of serious harm and whether protective interventions can be used to mitigate the dangers.

DCJ data shows community service centres are more likely to allocate Aboriginal children for a safety assessment. Exhibit 1 shows that about 9,000 Aboriginal children were seen by a caseworker in 2022–23, or 31% of children seen by caseworkers.

The outcome of the safety assessment can be:

- Safe – no risks to the child. Caseworker interventions cease and the case is closed.
- Safe with a plan – risks are present but child can remain in the house with a safety plan. The safety plan is developed with the family to address the concerns raised in the risk of significant harm report.
- Unsafe – one or more dangers are present, and removal is the only protective intervention possible. The caseworker determines that the child cannot be safely kept in the home even after considering a complete range of interventions.

Although the safety assessment is a formal tool and the related Safety and Risk Assessment manual aims to mitigate the risk of caseworker bias, the tool remains subjective to caseworker opinions about the safety of the child. The Family is Culture report noted concerns about caseworker 'reliability' and 'validity' in determining a child's safety status. The Family is Culture report presented several case examples where the Aboriginal child was deemed unsafe in circumstances where other considerations were not given adequate weight by caseworkers:

Case 131, [DCJ] conducted a full safety assessment of an Aboriginal mother (without the support or assistance of family members) and assumed care of her new baby less than 24 hours after she had given birth via caesarean section.

Case 99, there were nine reports made about the child prior to his birth. However, no steps were taken to work with the child's parents at this critical time and a caseworker was only assigned to the case after the child's birth. [DCJ] informed the child's family that they would be consulted before the child was taken into care. This did not happen. The child was assumed into care at the hospital despite [DCJ] being informed by the child's grandmother that this did not need to happen as there were family members willing and available to care for him.

In the twelve months to March 2023, DCJ data shows that 44% of children (700) who received an unsafe safety assessment outcome were Aboriginal children. In those twelve months, Aboriginal children comprised 47% of all children who entered care (1,019). DCJ advises that the difference in entries and safety assessment is due to carrying out orders for children who have self restored, exits from juvenile justice into out of home care and data errors.

### **Risk assessment**

A risk assessment is completed following a safety assessment, in all circumstances, including where the outcome is safe and unsafe, except for reports where the only risk identified to the child is due to their own behaviour or a prenatal report where the only child in the household is unborn.

The risk assessment tool is used by caseworkers to assess whether a case should remain open or closed. It does this by predicting the likelihood of future caseworker face-to-face assessment within the next 18 months.

If the risk assessment outcome is low or medium the child is not at immediate risk of serious harm and the case is closed. However, where risk is determined to be high or very high, the child may be determined to be at immediate risk of serious harm. For families to be considered high or very high they must get an 8+ abuse score or 9+ neglect score.

Factors that increase the risk level of families include:

- four or more children (even if a child is unborn, they are counted) in a household raises the risk level by one risk point
- a child in the household who is under two years old raises the risk level by one risk point
- the parent has their own history of abuse and/or neglect as a child raises the risk level by one risk point
- prior reports to the Helpline – three or more screened in risk of significant harm reports raises the risk level by three risk points.

Risk is also increased:

- where a parent has or had a history of mental health (one point)
- where a parent has or had a history of alcohol abuse (one point)
- where a parent has or had a history of drug use (one point).

Points are assigned even where the parent has resolved their mental health issues and/or been sober for a period.

These risk determinants affect Aboriginal families disproportionately. For example, Aboriginal families have historically, and continue to, experience oversurveillance and over reporting at the Helpline. Aboriginal households are more than twice as likely as other families to have four or more dependent children. Aboriginal people also experience poorer mental health and more drug and alcohol misuse due to current and historical stressors such as removal of their child, their own removal as a child, incarceration, death of family members, discrimination and unemployment.

In the event a caseworker is not satisfied with the risk level assigned to a family by the risk assessment tool they can elect to raise the risk result by one level. For example, from medium to high or high to very high. If the risk assessment generates a risk level of high or very high, the child may be deemed to be in need of care and protection which is the threshold for DCJ statutory intervention.

DCJ does not collect, analyse or monitor data on their caseworker's discretionary use of elevating the risk assessment level.

**DCJ is aware the Structured Decision-Making tools adversely impact Aboriginal communities, yet it continues to use them — exposing the NSW Government to risk**

Reliable safety and risk assessment practice is critical to an effective child protection system.

In 2011, when DCJ procured the Structured Decision-Making tools from a United States-based non-profit social research organisation, the vendor recommended that DCJ review the Structured Decision-Making tools every two to five years to ensure they remained relevant to local factors. DCJ did not review the Structured Decision-Making tools until ten years later in 2021.

DCJ has known since at least March 2017 that the suite of Structured Decision-Making tools were susceptible to caseworker bias. That is when the Legislative Council's General Purpose Standing Committee No 2 reported risks to objectivity within the Structured Decision-Making tools and recommended that:

the NSW Government commission an independent review of the Department of Family and Community Services' screening and assessment tools and processes, to identify how they can be improved to enhance objectivity within child protection assessments.

In September 2017, the NSW Government supported the Parliamentary committee's recommendation noting a review of 'child protection intake, assessment and referral processes' would be undertaken as part of Their Futures Matter. Their Futures Matter was a four year whole of government reform intended to place vulnerable children and families at the heart of services and direct investment to where funding and programs deliver the greatest social and economic benefits. No review of the Structured Decision-Making tools was conducted.

In October 2019, similar issues were again raised about the objectivity, reliability and validity of the suite of Structured Decision-Making tools in the Family is Culture report. The Family is Culture report also recommended:

[DCJ] ... commission an independent review of its Structured Decision-Making tools and processes to identify how they can be improved to enhance objectivity within child protection assessments. This review should be undertaken in partnership with Aboriginal community and stakeholders to ensure that it examines the cultural adequacy of current risk and safety paradigms and tools.

The NSW Government accepted this recommendation.

In 2019, the Secretary of DCJ appeared before the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability and was questioned about the Structured Decision-Making tools and their susceptibility to caseworker bias towards minority groups.

In November 2021, DCJ senior executives received data highlighting concerning trends around the over-representation of Aboriginal children at all stages of the child protection continuum. The data provided corresponded with DCJ use of Structured Decision-Making tools and is presented in Exhibit 12.

**Exhibit 12: Aboriginal over-representation trends and Structured Decision-Making tools**

Structured Decision-Making tool used by DCJ staff	Trends observed by DCJ
Screening and Response Priority Tool	Aboriginal children are increasingly screened in at the Helpline as meeting suspected risk of significant harm.
Safety assessment	Aboriginal children are more likely to be allocated for a safety assessment and almost twice as likely to be assessed as unsafe.
Risk assessment and Risk re-assessment	Eighty-one per cent of Aboriginal children seen are assessed at high or very high risk, in comparison to 59% of non-Aboriginal children.

Source: DCJ, November 2021.

The data concluded that for Aboriginal children who have had their cases closed, 62% are re-reported within 12 months compared with 45% for non-Aboriginal children.

In 2021, DCJ commenced an internal review of the Structured Decision-Making tools. The purpose of the review was to improve consistency and quality of assessments and decision-making for children where concerns have been raised about their safety. DCJ advised that the revised tools were expected to be implemented progressively from the first half of 2024.

AbSec, the peak body for Aboriginal Community Controlled Organisations operating in the out of home care sector, was a partner in the review. However, AbSec withdrew its membership in 2022. AbSec, Aboriginal leaders and stakeholders have called for DCJ to stop using the Structured Decision-Making tools and redesign the system for assessing children, with a focus on keeping families together.

In February 2024, the Secretary announced that DCJ will work in formal partnership with AbSec and the Aboriginal Legal Service to design, implement and evaluate a new approach to child protection assessment and decision-making. DCJ's latest effort to address the documented bias in the Structured Decision-Making tools does not include an independent review. Nor does it include remediation to address the consequences of its past use, which have potentially impacted Aboriginal children and their families assessed as being at suspected Risk of Significant Harm since the tools became operational in 2011.

DCJ has identified that use of the tools has resulted in a disproportionate number of Aboriginal children being unnecessarily taken into care but has not collected information about how many children and their families have been impacted. DCJ has not taken steps to remediate where this has occurred. In March 2023 at the Executive Governance Group, DCJ executives discussed the messaging of revised Structured Decision-Making tools to 'consider the likelihood of civil claims against the department'.

DCJ has highlighted its obligation in the formal apology to the Stolen Generations to ensure its processes 'make things better and not worse' for Aboriginal children and their families. DCJ continue to use the Structured Decision-Making tools, while the new approach is being developed. By continuing to use the Structured Decision-Making tools, DCJ is exposed to increased risk including the possibility that it wrongly intervenes for Aboriginal children and their families.

**Aboriginal families do not have access to an independent body that can review and remediate decisions made by DCJ using the Structured Decision-Making tools**

Access to review of government decisions is a key component of administrative law. However, avenues for review of decisions made using the Structured Decision-Making tools is absent.

It is not within the Children's Court remit to review caseworker decisions made using Structured Decision-Making tools. Section 245 of the *Children and Young Persons (Care and Protection) Act 1998* sets out the kinds of decisions made under the Act that may be reviewed by the NSW Civil and Administrative Tribunal (NCAT). However, this section does not permit the NCAT to hear matters about the use of Structured Decision-Making tools.

Families can pursue complaints about Structured Decision-Making tools through DCJ and the NSW Ombudsman. DCJ received 421 complaints from Aboriginal people between 2018 and 2022. DCJ does not consistently record the number of complaints made about Structured Decision-Making tools. Past reports have found that DCJ complaint mechanisms are not accessible or transparent for Aboriginal families and complaint outcomes are limited.

The NSW Ombudsman received 846 complaints from Aboriginal people about DCJ child protection services between 2018 and 2022. The NSW Ombudsman advised this number may be higher because it is not always known if a complainant or the person subject to a complaint is Aboriginal. The NSW Ombudsman reported that they do not have the ability to identify whether complaints have ever been made about DCJ Structured Decision-Making tools without case-by-case analysis.

Complaints about the use of Structured Decision-Making tools may be looked at by the NSW Ombudsman in a variety of ways including via formal investigation. However, the NSW Ombudsman reported very few complaints are formally investigated and recommendations are not binding on DCJ. However, if DCJ decides that it will not take action in relation to NSW Ombudsman recommendations, the complainant could make an application for the decision to be reviewed by NCAT.

The NSW Ombudsman reported that it has not investigated a complaint about Structured Decision-Making, nor is it aware of any NCAT review in relation to Structured Decision-Making tools.

### 3.3 Self-determination in practice

#### Exhibit 13: The right, self-determination

**The right:** Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young persons with as much self-determination as is possible. The Minister may negotiate and agree with Aboriginal and Torres Strait Islander people to the implementation of programs and strategies that promote self-determination. (Section 11 of *the Children and Young Persons (Care and Protection) Act 1998*).

**The right:** Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities are to be given the opportunity, by means approved by the Minister, to participate in decisions made concerning the placement of their children and young persons and in other significant decisions made under this Act that concern their children and young persons. (Section 12 *Children and Young Persons (Care and Protection) Act 1998*).

**The right:** Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. (Article 3 Declaration on the Rights of Indigenous Peoples).

**The right:** Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions. (Article 18 Declaration on the Rights of Indigenous Peoples).

**The right:** Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions. (Article 23 Declaration on the Rights of Indigenous Peoples).

Source: NSW Legislation, Declaration on the Rights of Indigenous Peoples.

#### DCJ has not operationalised self-determination for Aboriginal families in day-to-day casework

Although the *Children and Young Persons (Care and Protection) Act 1998* confers the right of self-determination on Aboriginal people, it only extends this right to Aboriginal people's participation in child protection decisions.

Aboriginal people continue to advocate for decision-making powers aligned to the UN Declaration on the Rights of Indigenous Peoples in matters affecting their children. The tension between self-determination in the *Children and Young Persons (Care and Protection) Act 1998* and Aboriginal people's interpretation of the right, has led to confusion over how such a right should be operationalised in day-to-day casework by DCJ.

Submissions to the Family is Culture report advocated for a strengthened version of self-determination in child protection. The Family is Culture report found 'the concept of 'self-determination' recognised in the *Children and Young Persons (Care and Protection) Act 1998*, which in the absence of a definition of self-determination by the NSW Government, reflects a vague and indeterminate rendering of the right' for Aboriginal people. The Family is Culture report further found 'the right to self-determination is not currently applied in the Aboriginal child protection system in NSW', which was a 'core contributor to the Aboriginal child protection crisis in NSW'.



Subsequently, the Family is Culture report recommended:

- Recommendation 6: the Department of Communities and Justice should engage Aboriginal stakeholders in the child protection sector, including AbSec and other relevant peak bodies, to develop an agreed understanding on the right to 'self-determination' for Aboriginal peoples in the NSW statutory child protection system, including any legislative and policy change
- Recommendation 7: the Department of Communities and Justice should, in partnership with Aboriginal stakeholders and communities, undertake a systemic review of all policies that refer to self-determination, to consider how they might be revised to be consistent with the right to self-determination
- Recommendation 8: the NSW Government should, in partnership with Aboriginal stakeholders and communities, review the Aboriginal and Torres Strait Islander Principles of the *Children and Young Persons (Care and Protection) Act 1998* (currently sections 11 to 14), with the view to strengthening the provisions consistent with the right to self-determination.

The NSW Government accepted the recommendations. Recommendation 8 will be considered as part of the four yearly legislative review of the *Children and Young Persons (Care and Protection) Act 1998*, which commences in 2024.

DCJ stated Recommendations 6 and 7 would be fulfilled by its implementation of the 2019 Aboriginal Case Management Policy and related Practice Guidance. The Aboriginal Case Management Policy and related Practice Guidance seeks to operationalise the elements of the Principles, including self-determination. However, to date this policy has not been implemented anywhere in the state.

### **Family Group Conferencing does not give effect to Aboriginal people's right to self-determination in day-to-day casework**

DCJ has not operationalised self-determination. This was evident during the audit team's fieldwork when caseworkers were inconsistent in their response to how Aboriginal families were afforded self-determination in day-to-day casework practice. Some caseworkers pointed to Family Group Conferences as forums where Aboriginal families might exercise their right to self-determination.

Family Group Conferences are a type of Alternative Dispute Resolution that is available to DCJ. They can be used at the point of considering removing children and placing them in out of home care or to facilitate discussion about significant child protection decisions throughout the child protection continuum. They are to be held four weeks after a family has come to DCJ's attention. However, on average families waited seven weeks.

DCJ uses mandates to translate its legislative responsibilities into casework practice. DCJ's Family Group Conference mandate does not refer to sections 11 or 12 of the *Children and Young Persons (Care and Protection) Act 1998*, which sets out Aboriginal family's rights to self-determination. The mandate also does not clarify if Family Group Conferences discharge DCJs legislative obligation in relation to self-determination for Aboriginal families and communities.

In theory, Family Group Conferences permit Aboriginal families to participate in discussion around safety for their children. However, in practice, caseworkers arrive to a conference with a 'bottom line' for child safety. A bottom line is a list of non-negotiables the family must demonstrate to keep their child safe, devised by DCJ caseworkers prior to the conference.

In 2019, DCJ commissioned the Research Centre for Children and Families, at The University of Sydney, to undertake an evaluation of the Family Group Conference program. DCJ staff and independent facilitators who participated in the review acknowledged that conferences are driven by DCJ caseworkers and with that comes 'formal and rigid procedures...based on western values and ways of working'.

The report further noted situations where families develop a plan at the Family Group Conference 'only to have it rejected by DCJ'. The result was that families were 'left feeling that the [conference] was not done in good faith and that DCJ was only ticking a box rather than genuinely inviting them to make decisions about what was best for their child'. The report stated that consequently, 'there was little or no buy-in from family for the plan that was eventually agreed to with DCJ'. Family Group Conference facilitators also noted the negative effects on families when DCJ 'rejects' their plan.

While a Family Group Conference meets statutory requirements in relation to offering families an avenue of Alternative Dispute Resolution, it does not align with Aboriginal stakeholders' views of self-determination.

DCJ's failure to operationalise self-determination has led to caseworker confusion about the purpose of Family Group Conferences for Aboriginal families.

### **DCJ has not operationalised self-determination for Aboriginal communities to collectively make child protection decisions about their children**

There have been several attempts, outlined in Exhibit 14, by DCJ to operationalise self-determination for Aboriginal people collectively in relation to significant child protection decisions affecting their children. To date, none are functional and Aboriginal people involved in the processes have reported negative experiences, citing DCJ's lack of governance and accountability.

#### **Exhibit 14: DCJ attempts to operationalise self-determination for Aboriginal communities**

##### **The Guiding Principles for Strengthening the Participation of Local Aboriginal Community in Child Protection Decision-making (the Guiding Principles)**

In 2017, the Legislative Council General Purpose Standing Committee No 2 report on Child Protection recommended the 'NSW Government work with Aboriginal communities and organisations to provide a far greater degree of Aboriginal self-determination in decisions on supporting families, child protection and child removals'. The NSW Government accepted the recommendation and noted that the implementation of the Guiding Principles for Strengthening the Participation of Local Aboriginal Community in Child Protection Decision-making (the Guiding Principles) would achieve this goal.

The Guiding Principles were developed by Grandmothers Against Removal NSW, the NSW Ombudsman and DCJ in August 2015. It was intended to be a guide and used by Aboriginal communities and regional DCJ offices across NSW to establish Local Aboriginal Advisory Groups.

The Guiding Principles envisaged that Aboriginal communities would form their own governance structures (called Local Aboriginal Groups) to:

- ensure Aboriginal community participation in decision-making regarding the care and protection of Aboriginal children, as required under the *Children and Young Persons (Care and Protection) Act 1998*
- support Aboriginal families and reduce the number of forced removals of Aboriginal children from their immediate and extended families
- improve the access by Aboriginal people to local services and supports, and where required, interagency cooperation
- develop pathways of family restoration for Aboriginal children currently in out of home care.

DCJ established a related governance structure including a statewide Advisory Group called the Guiding Principles Yarning Circle to oversee the implementation of the Guiding Principles. Membership consisted of representatives from Grandmothers Against Removal NSW, AbSec and DCJ executive representatives.

Despite the continued and significant personal efforts by the Grandmothers Against Removal NSW, eight years on, no Local Aboriginal Groups are functional and the Guiding Principles Yarning Circle is no longer operational. The Guiding Principles were never embedded into caseworker practice, guidance and policy.

### **Bourke and Brewarrina Protocols, 2016**

In October 2014, DCJ's Western District began discussions with representatives from Maranguka (the operational arm of the Bourke Aboriginal Community Working Party) and the Bourke Tribal Council to design a protocol specifically aimed to 'facilitate community participation and responsibility in decision-making for Aboriginal children and young people requiring placement in out of home care'.

In-principle endorsement of the protocol was given by DCJ on 5 November 2014 at a meeting with members of Maranguka and the Bourke Tribal Council. In doing so, DCJ recognised 'the fundamental Aboriginal placement principle that Aboriginal children and young people should live within their extended Aboriginal family, kinship group and/or community'. The protocol aimed to 'facilitate greater Aboriginal community involvement...to achieve better outcomes for Aboriginal children and young people'.

In 2014, a similar protocol was developed with the Brewarrina Aboriginal Community Working Party.

To date, the protocols remain in draft and have not been actioned. Representatives from the Aboriginal Working Parties are frustrated by DCJ's lack of effort to operationalise their legislative responsibilities under the Principles.

### **Aboriginal Community Controlled Mechanisms**

The latest iteration of child protection decision-making for Aboriginal peoples is the establishment of Aboriginal Community Controlled Mechanisms. Aboriginal Community Controlled Mechanisms are one component of the Aboriginal Case Management Policy that DCJ and the sector have prioritised for delivery. A pilot was established in the Shoalhaven in 2023. DCJ expects the Aboriginal Community Controlled Mechanisms to be operational, statewide, by 2027, eight years after DCJ's endorsement.

The overall success of Aboriginal Community Controlled Mechanisms is contingent on the Information given to their members and how DCJ operationalises the aim of the mechanism to 'oversee decision-making processes affecting Aboriginal children, their families and communities'.

Source: AONSW research.

### **DCJ has not identified whether it is able to release child protection information to a child's extended kinship system and to Aboriginal peoples collectively without parental consent**

Aboriginal leaders told us that DCJ will not provide data or share information about individual children and their families with extended family or with Aboriginal Community Controlled Organisations without parental consent due to privacy.

Caseworkers told us that not being able to disclose the child's, or their family's, details put Aboriginal children at risk of being placed outside their extended kinship systems. One Aboriginal caseworker interviewed saw this risk become reality, when her niece did not give consent to disclose the children's entry into out of home care. The children were subsequently placed off Country, with non-Aboriginal carers.

When the audit team raised this issue with senior DCJ staff, they advised caseworkers can share details with extended family where the parents did not provide consent. However, they confirmed legal advice had not been settled and this position had not been disseminated to caseworkers.

Aboriginal stakeholders argued that the best interests of the child, and their right to be brought up in their own family, outweighs privacy considerations of parents. They further questioned the effectiveness of Aboriginal Community Controlled Mechanisms or similar in instances where this information is not made available to them to inform decision-making.

### **DCJ's approach to commissioning does not facilitate a self-determining holistic model of service delivery for Aboriginal people**

DCJ funds child protection and out of home care services in NSW on a participation basis. That is, DCJ determines the mix of services required and contracts providers, including Aboriginal Community Controlled Organisations, to deliver specified services.

In May 2022, DCJ and AbSec began 'a partnership with Aboriginal stakeholders to co-design a culturally informed Aboriginal Family Preservation Framework with a view to roll it out to Aboriginal service providers in readiness for recommissioning in July 2025'. Aboriginal stakeholders involved in the recommissioning have been vocal about providing holistic services and interventions across DCJ's program areas of targeted early intervention, family preservation and out of home care.

However, DCJ cannot facilitate this because each of the individual program areas has its own funding stream and program guidelines.

In late 2022, DCJ commissioned a project on Aboriginal Led Commissioning. Although the approach is in its infancy, an important aspect moving forward will be the right of AbSec and Aboriginal communities to lead this work and for agencies to facilitate flexible funding and program guidelines.

**DCJ does not provide commensurate funding to Aboriginal Community Controlled Organisations to address the over-representation of Aboriginal children entering and in out of home care**

In 2019, the Family is Culture report noted that 'if family preservation and restoration are genuinely the priorities of the NSW Government, this should be reflected in funding allocations.' The report stated that 'adequate allocation of funding to the levers that will promote Aboriginal families staying or returning together will reduce the numbers of Aboriginal children in [out of home care] in NSW.' The Family is Culture report made the following recommendation:

The NSW Government should review funding allocations to ensure that these reflect the NSW Government legislative and policy position to prioritise restoration and family preservation. This funding should prioritise the restoration programs that are successfully delivered by Aboriginal Community Controlled Organisations and funding should be commensurate with the overrepresentation of Aboriginal children in the out-of-home care system.

The NSW Government accepted the recommendation.

However, in 2023 – four years after the Family is Culture report – Aboriginal Community Controlled Organisations received 13% of all funding for child and family programs, while Aboriginal children made up 42% of children and young people on interim care orders. In the same year, Aboriginal Community Controlled Organisations received 14% of all funding for Out of Home Care and Permanency Support Program services while 45% of children in out of home care were Aboriginal.

DCJ's 2024 Family is Culture progress report notes that this recommendation is on hold.

**DCJ's Aboriginal Knowledge Circle lacked sufficient decision-making authority for Aboriginal members to reform the child protection system aligned to the Family is Culture report recommendations**

In response to the Family is Culture report, the then Minister for Families and Communities established an Aboriginal Knowledge Circle in 2020 to provide advice on the implementation of the Family is Culture report recommendations. The Minister stated that he did not want the Aboriginal Knowledge Circles to be a 'talk fest' but wanted to place Aboriginal people 'at the heart' of the NSW Government's response. Members of the Aboriginal Knowledge Circles reported they did not have the influence needed to reform the child protection system aligned to the Family is Culture report recommendations.

DCJ reports the Aboriginal Knowledge Circles have ceased operating. In August 2023, following a two day forum with Aboriginal leaders, the current Minister for Families and Communities Services established another Aboriginal advisory panel – the Ministerial Aboriginal Partnership Group.

## 3.4 Prevention: a healing approach to child protection

### Exhibit 15: The rights, healing

**The right:** Prevention of any Aboriginal child or young person being assumed into statutory care. Recognising that a child or young person has a right to be brought up within the child's or young person's own family, community and culture. (Section 12A(2)(a) *Children and Young Persons (Care and Protection) Act 1998*).

**The right:** providing, or arranging for the provision of, support services for the child or young person and his or her family appropriate assistance is rendered to parents and other persons responsible for children and young persons in the performance of their child rearing responsibilities in order to promote a safe and nurturing environment. The Secretary, on determining that a child or young person is at risk of significant harm, to offer support services to the family of the child or young person before seeking care orders. (Section 8(a) and (c), Section 34(2)(a) *Children and Young Persons (Care and Protection) Act 1998*).

**The right:** States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children. (Article 18(2) Convention on the Rights of the Child).

**The right:** States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need, provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing. (Article 27(3) Convention on the Rights of the Child).

**The right:** to safeguard a child or young person, DCJ can request priority access to government funded services. The Secretary may request a government funded agency or organisation to provide services to the child or young person or to his or her family and request prioritised access to services. (Section 17 and 18 of the *Children and Young Persons (Care and Protection) Act 1998*).

**The right:** offering alternative dispute resolution processes to the family of the child or young person prior to removal. The Secretary, on determining that a child or young person is at risk of significant harm, to offer alternative dispute resolution to the family of the child or young person before seeking care orders. (Section (s34(2)(a1), Section 37(1A) *Children and Young Persons (Care and Protection) Act 1998*).

**The right:** Indigenous people have the right to not have their children forcibly removed. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group. (Article 7(2) Convention on the Rights of Indigenous Peoples).

Source: NSW Legislation and UN Declaration of on the Rights of Indigenous Peoples, UN Declaration on the Rights of the Child.

### **DCJ has not operationalised section 12A of the *Children and Young Persons (Care and Protection) Act 1998* to prevent Aboriginal children entering statutory care, in day-to-day casework**

Prevention is one of the five elements of the Aboriginal and Torres Strait Islander Children and Young Persons Principle described in section 12A of the *Children and Young Persons (Care and Protection) Act 1998*. Prevention recognises that Aboriginal children and young people have the right to be brought up within their own family, community and culture wherever possible. While the element of prevention was explicitly inserted into the *Children and Young Persons (Care and Protection) Act 1998* in 2022, it has long been recognised by Aboriginal peak organisations and leaders as part of the Aboriginal and Torres Strait Islander Children and Young Persons Principles.

Although section 9(2)(C) of the *Children and Young Persons (Care and Protection) Act 1998* states that DCJ intervention must be 'the least intrusive' intervention, Aboriginal leaders called for the specific insertion of prevention in the Principles due to the continuing disproportionate removal of Aboriginal children from their families.

Aboriginal stakeholders stated that prevention is achieved through the provision of culturally appropriate and relevant services for Aboriginal children and their families to address risk of significant harm concerns.

The *Children and Young Persons (Care and Protection) Act 1998* contains provisions for DCJ to procure support services for children and their families:

- Section 8(a) and (c) set out the principles that appropriate assistance is rendered to parents and other persons responsible for children and young persons in the performance of their child rearing responsibilities in order to promote a safe and nurturing environment
- Section 34(2)(a) requires the Secretary, on determining that a child or young person is at risk of significant harm, to offer support services to the family of the child or young person before seeking care orders.

However, DCJ has not operationalised these provisions nor monitored usage.

DCJ mandates and practice guidelines which describe legal and regulatory requirements for caseworkers do not describe how to give effect to prevention in everyday case work or explicitly set out thresholds to satisfy this legislative requirement. During fieldwork, DCJ staff and caseworkers were unable to articulate what casework action satisfies the principle of prevention in the administration of the child protection system.

The Family is Culture report recognised 'a significant gap between law and practice' in child protection. The report recommended the NSW Government amend the *Children and Young Persons (Care and Protection) Act 1998* to require DCJ to take active efforts to prevent Aboriginal children from entering statutory care.

The NSW Government accepted this recommendation and on 15 November 2023, active efforts came into force in the *Children and Young Persons (Care and Protection) Act 1998*. Active efforts requires DCJ caseworkers to demonstrate casework that addresses Risk of Significant Harm concerns by facilitating or assisting families to access support services and other resources.

DCJ has to date failed to operationalise prevention in day-to-day casework practice.

### **DCJ does not effectively capture and analyse data about the removal of Aboriginal children to inform system improvement**

To address the over-representation of Aboriginal children entering out of home care, DCJ needs to understand the circumstances leading to removals. The only available data produced by DCJ is the draft Aboriginal over-representation dashboard. It provides a high level picture of the circumstances of Aboriginal children who come to the attention of DCJ.

However, DCJ has not analysed its data to understand what is leading to this outcome. For example, one of the metrics used is, 'Aboriginal children and young people by safety assessment'. A Safety Assessment contributes to decisions about the level of statutory casework intervention by DCJ, including potentially removing the child. There is no analysis about the themes around why these children were deemed unsafe, what was done to divert them from the child protection system or where system and casework improvements could be made to prevent their entry into out of home care. Another metric presented is 'Children and young people entering out of home care'. There is no analysis about the children who entered out of home care without an unsafe safety assessment or their circumstances.

To understand the over-representation of Aboriginal children entering statutory care, DCJ should report on the following (with related data dashboards):

- analysis about the historical and contemporary reasons for Aboriginal entries into out of home care, broken down by district and community service centre
- district profiles that capture the reasons for removals and map related culturally appropriate service systems and availability (including Aboriginal Community Controlled Organisations)
- analysis about where entries into out of home care occurred due to a lack of services, or availability of services
- where there was an absence of DCJ funded services, evidence of DCJ action to forge partnerships and referral pathways with relevant organisations
- evidence and tracking where section 17 and 18 of the *Children and Young Persons (Care and Protection) Act 1998* was used by the Secretary (or delegate), to request a government funded agency or organisation to provide services to the child or young person and their family and, where needed, prioritised access and agency responses.

DCJ could use this type of analysis to facilitate discussions and decision-making with Aboriginal stakeholders to identify system improvements.

### **DCJ has not developed an Aboriginal Healing Framework**

In 2013, the NSW Government released its Aboriginal Affairs plan: Opportunity, Choice, Healing, Responsibility, Empowerment (OCHRE). It was the first time the NSW Government recognised healing and intergenerational trauma in its Aboriginal Affairs Plan. It was also a first by any state government in Australia. Eleven years later, in 2024, DCJ does not have an Aboriginal healing framework that informs its child protection casework practice.

OCHRE recognised the legacy of colonisation and the consequences of successive government policies on Aboriginal people:

This history of trauma is often expressed in high levels of disadvantage, depression, substance abuse and anti-social behaviour. Treating these symptoms of trauma alone will not heal communities, yet this has largely been the emphasis of governments' efforts to date.

In OCHRE, the NSW Government committed to 'work with Aboriginal communities, policy practitioners and service providers to advance the dialogue in NSW about trauma and healing and to begin developing responses informed by evidence of good practice'.

The NSW Ombudsman has produced a series of reports on Aboriginal Affairs plans in the last decade or so aligned to their legislative requirement to monitor and report on OCHRE. In 2012 and again in 2019, the NSW Ombudsman recommended the NSW Government develop a healing framework to provide 'a strong, coordinated focus for moving forward and, among other things, clarify how government agencies will incorporate a healing informed approach to carrying out their everyday business'.

DCJ has not developed an Aboriginal healing framework.

### **DCJ's family preservation services do not align with Aboriginal healing values and models**

The range of current family preservation services, even those currently delivered by Aboriginal Community Controlled Organisations, have been designed by DCJ or overseas providers without input from Aboriginal stakeholders or consideration of the cultural effectiveness and appropriateness for Aboriginal families.

Aboriginal stakeholders report being frustrated by the imposition of programs and tools by DCJ. Stakeholders report that the programs are in direct contravention to their rights of self-determination.

## Exhibit 16: Challenges adapting family preservation programs to local conditions

Functional Family Therapy – Child Welfare (FFT-CW) and Multisystemic Therapy for Child Abuse and Neglect (MST-CAN) are two family preservation programs that were developed overseas and licenced for use in NSW on the condition that fidelity to the model is maintained. FFT-CW provides family therapy where there has been substantiated physical abuse and/or neglect of a child. MST-CAN provides therapeutic family treatment where there has been substantiated physical abuse and/or neglect of a child or young person.

An evaluation of FFT-CW and MST-CAN programs in 2018 found one in four Aboriginal families withdrew early from the programs. The evaluation found inadequate adaptation of the models and implementation issues as barriers for uptake by Aboriginal families. One of the Aboriginal service providers who withdrew from delivering FFT-CW cited 'rigidity of the program guidelines' as to why the 'approach was not working for Aboriginal families'.

Source: AONSW research.

Aboriginal Family Preservation providers must adhere to DCJ contract guidelines, which precludes them from exploring and implementing Aboriginal led ways of healing such as traditional Aboriginal healing practices and holistic models of care.

### **DCJ cannot demonstrate the effectiveness of family preservation services to prevent the over-representation of Aboriginal children entering statutory care**

DCJ does not collect data to demonstrate outcomes for Aboriginal families engaged in its funded family preservation services. The audit team asked DCJ to provide data about the number of Aboriginal children referred to family preservation services, their re-reported Risk of Significant Harm rate to the Helpline and their subsequent entry into statutory care. This data was not available.

### **DCJ does not have systems to identify and support families who have experienced intergenerational removals**

Children who have been in out of home care are more than ten times more likely to need out of home care for their own child compared to the general population. This statistic may be higher for Aboriginal people. The Family is Culture report found that of the 1,144 Aboriginal children who entered out of home care in NSW between 1 July 2015 and 30 June 2016, one-quarter of mothers of children in the cohort had previously been in an out of home care arrangement themselves as a child. The report suggested that child removals had intergenerational dimensions.

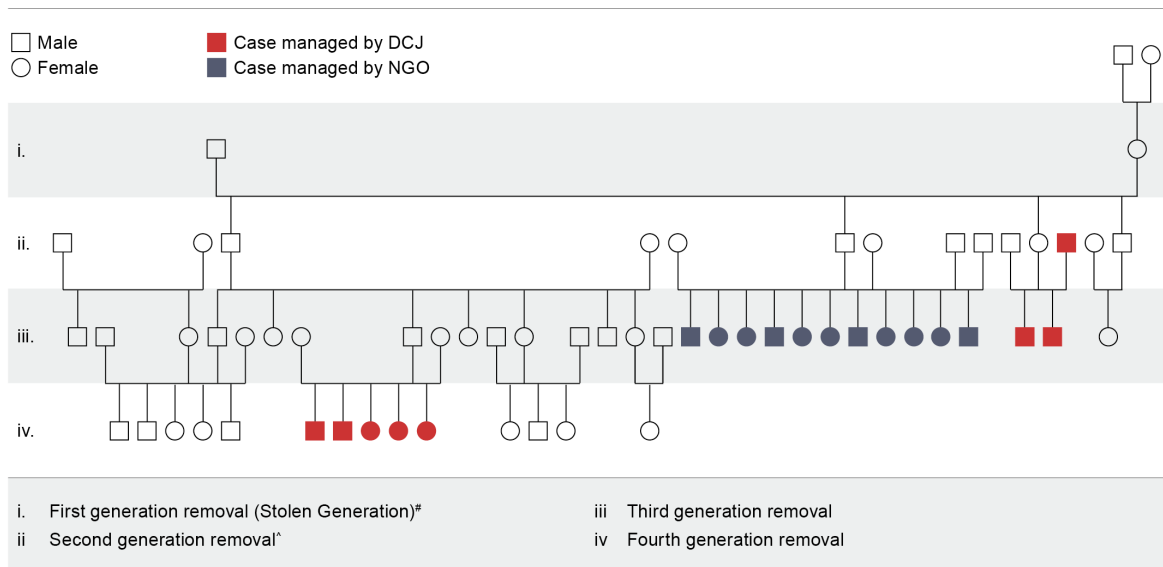
DCJ does not routinely identify and support families who have experienced intergenerational removals. DCJ does not capture data about how prevalent intergenerational removal is across the child protection system. DCJ has not developed policy, casework guidance or identified relevant and culturally appropriate services to remediate the legacy of past practices and interactions.

It is common that several generations of Aboriginal children within one family have experienced removal to the child protection system. Often siblings within one family are being case managed across multiple out of home care agencies.

Exhibit 17 provides a case study of an Aboriginal family whose case was reviewed during the audit. Identifying details have been changed to protect the privacy of those affected. The family has experienced four generations of child removals. Although DCJ developed the genogram in Exhibit 17, it was not aware that the first generation (great-grandparent) is part of the Stolen Generation. Several independent and public sources confirm this. Two of the children in the second generation were not identified in DCJ's system as being removed into out of home care, yet sources confirmed this. The great-grandparent, who was part of the Stolen Generation currently has 18 grand-children and great-grandchildren in out of home care.



## Exhibit 17: Four generations of removal



# DCJ did not have the first generation of removal recorded in ChildStory as Stolen Generation. However, this person is a publicly identified member of the Stolen Generation.

^ DCJ do not have records in ChildStory for children in the second generation. However, independent sources confirmed two of the four children were removed in this generation.

Source: DCJ, 2024.

Exhibit 17 also shows that the children who are currently in out of home care are case managed by both DCJ and non-government organisations. This is common. It is unclear how DCJ manage extended kinship contact and connections when multiple Aboriginal children from the same family are case managed across DCJ and potentially several non-government organisations. One Aboriginal stakeholder reported not knowing the names or whereabouts of their great-nieces and nephews who are currently in out of home care and off Country.

Caseworkers are aware of the likelihood that Aboriginal children and young people who come into care are children of parents who DCJ has also removed. However, there is no requirement for caseworkers to factor intergenerational removals into casework approaches or supports provided to the family.

### DCJ does not commission or create partnerships with culturally appropriate therapeutic services for Aboriginal families presenting with complex trauma

Despite the Aboriginal Affairs plan, OCHRE, committing the NSW Government to tackle trauma in Aboriginal communities by addressing its underlying causes, DCJ casework practice focuses solely on addressing the behaviours reported to the Helpline. DCJ staff confirmed that in most cases these behaviours are an indication of more complex trauma.

DCJ confirmed that in most cases the child is not the problem. In many cases, parents need intensive therapeutic interventions and time to heal. Some of the trauma Aboriginal parents have experienced is significant and many families are unable to address them in timeframes set by DCJ. DCJ's casework timeframes do not allow for holistic and intensive interventions.

DCJ has not developed partnerships with services to support Aboriginal families with complex trauma, nor commissioned any Aboriginal led services in this space.

### Alternative Dispute Resolution processes are not available to approximately 50% of Aboriginal families

DCJ is required by legislation to offer Alternative Dispute Resolution to families before applying to the Children's Court for a court order to remove a child. Alternative Dispute Resolution for Aboriginal people is mostly delivered by DCJ in the form of Family Group Conferencing or similar forms of family led decision-making.

Over half of all Aboriginal children placed into out of home care each year are removed by DCJ using emergency powers (s43 and 44 of the *Children and Young Persons (Care and Protection) Act 1998*). When DCJ uses emergency removal powers this bypasses the requirement for an Alternative Dispute Resolution.

DCJ does not routinely collect and analyse data about the effectiveness of Alternative Dispute Resolution preventing statutory entries into care for Aboriginal children. However, a 2022 DCJ commissioned evaluation of Family Group Conferencing was unable to find a correlation between the conferences and the risk of removal for Aboriginal families. Aboriginal participants in the evaluation believed the Family Group Conferences process was at times 'used to justify removing children from Kin'.

### 3.5 Removal of an Aboriginal child into statutory out of home care and their subsequent placement

The Family is Culture report found:

having a child removed is a life-changing and traumatic event that has adverse ramifications for children and families for generations. It is likely the most intrusive action the state can take into peoples' and families' lives.

The *Children and Young Persons (Care and Protection) Act 1998* states that any intervention for a child identified at risk of significant harm must be the 'least intrusive'. The *Children and Young Persons (Care and Protection) Act 1998* sets out the legislative provisions in which a child can be removed from their parent/s:

- section 43 – where the Secretary determines the child is at immediate risk of harm and an apprehended violence order would not be sufficient to protect the child
- section 44 – where the Secretary assumes the care of a child or young person in hospital or other premises
- section 48 – application to the Children's Court. The Children's Court will then make a determination if the evidence presented by DCJ is sufficient to warrant the removal of the child from their parent/s
- section 233 – where the Secretary or a police officer may apply to a Magistrate or a Children's Court Magistrate, registrar of the Local Court, or an employee of the Attorney General's Department authorised by the Attorney General as an authorised officer for a search warrant to remove a child, if the Secretary or police officer has reasonable grounds for believing that there is in any premises a child or young person at risk of serious harm
- section 151 – the making of a temporary care arrangement, where the parent/s consent to the child being temporarily cared for by an authorised carer (up to 90–180 days).

The use of section 43 and 44 of the *Children and Young Persons (Care and Protection) Act 1998* emergency removals does not require DCJ to seek consent from the Children's Court prior to the removal. DCJ caseworkers are required to make a care application in respect to that child or young person in the Children's Court within three working days of the removal. It is rare for the Children's Court to disagree with a DCJ decision to remove a child from their family. The Family is Culture report noted that the Children's Court agreed with DCJ in approximately 99% of cases at initial hearing for interim orders and 90% of cases at subsequent hearings to determine placement.

## Exhibit 18: The rights, removal

**The right:** Prevention of any Aboriginal child or young person being assumed into statutory care.

Recognising that a child or young person has a right to be brought up within the child's or young person's own family, community and culture. (Section 12A(2)(a) *Children and Young Persons (Care and Protection) Act 1998*).

**The right:** making active efforts to prevent the child or young person from entering out of home care.

Active efforts must be timely, and practicable, thorough and purposeful, and aimed at addressing the grounds on which the child or young person is considered to be in need of care and protection, and conducted, to the greatest extent possible, in partnership with the child or young person and the family, kin and community of the child or young person, and culturally appropriate (Section 9A *Children and Young Persons (Care and Protection) Act 1998*).

**The right:** Where an Aboriginal child is assumed into statutory care, they have the right to be placed with extended family or kin.

Where this is not possible a placement in accordance with the placement hierarchy. (Section 13 *Children and Young Persons (Care and Protection) Act 1998*).

**The right:** offering alternative dispute resolution processes to the family of the child or young person prior to removal.

The Secretary, on determining that a child or young person is at risk of significant harm, to offer alternative dispute resolution to the family of the child or young person before seeking care orders. (Section (s34(2)(a1), Section 37(1A) *Children and Young Persons (Care and Protection) Act 1998*).

Source: *Children and Young Persons (Care and Protection) Act 1998*.

### DCJ uses emergency powers in over half of all removals for Aboriginal children but does not analyse why this is happening and cannot justify its extensive use

There are times where emergency removal of a child is unavoidable. The *Children and Young Persons (Care and Protection) Act 1998* provides for emergency removal where the child is at immediate risk of serious harm (sections 43 and 44 of the *Children and Young Persons (Care and Protection) Act 1998*). The expectation, from DCJ and the community, is that emergency removal of children should be used sparingly. However, DCJ data in Exhibit 19 shows that on average between 2018–19 to 2022–23, 65% of removals of Aboriginal children were performed under emergency powers.

DCJ does not collect or analyse data on the reasons for its use of emergency removal powers. Instead DCJ collects information on primary reported issues. But these may be different than the reasons leading to the use of emergency removal powers and this information is not used by DCJ to monitor the appropriateness or effectiveness of its use of these powers.

Many Aboriginal leaders and communities have raised concerns with DCJ's use of the powers in circumstances where an application for care orders under section 48 of the *Children and Young Persons (Care and Protection) Act 1998* may have been more appropriate. In these circumstances, DCJ would apply to the Children's Court for a care application, which allows a Magistrate to scrutinise whether DCJ has discharged its legislative obligations in safeguarding the rights of Aboriginal children, and removal of the Aboriginal child is in fact, the last resort. As Exhibit 19 demonstrates, from 2018–2022 DCJ did not use this section of the Act for the removal of any Aboriginal child.

**Exhibit 19: Aboriginal children, entries into out of home care by section of the *Child and Young Persons (Care and Protection) Act 1998*, (emergency and non emergency), 2018–19 to 2022–23**

Year	2018–19	2019–20	2020–21	2021–22	2022–23
<b>Assumption of Care Responsibility (S44)</b>	425	398	497	422	443
<b>Removal (S43)</b>	185	181	266	218	171
<b>Remove by Warrant (Gen-S233)</b>	30	33	38	17	19
<b>Care Order – Removal of Child by Order of Children’s Court S48</b>	0	0	0	0	0
<b>Temporary Care Arrangement</b>	116	154	139	112	136
<b>Other entries into out of home care</b>	172	186	171	154	258
<b>Total entries into out of home care</b>	<b>928</b>	<b>952</b>	<b>1,111</b>	<b>923</b>	<b>1,027</b>

# DCJ use of emergency removal powers relative to non-emergency power for non-Aboriginal children are at a similar ratio.

^ Other entries into out of home care include instances where a child self-restores with their family and are subsequently returned to an out of home care arrangement, children moving from juvenile justice into an out of home care placement and data errors. DCJ cannot provide the Audit Office of NSW with a summary of these other entries into out of home care.

Source: DCJ, December 2023.

**DCJ continues to rely on emergency removal provisions to remove newborn children**

The Family is Culture report made several findings about DCJ practices removing newborn Aboriginal children from families. In 2019, around ten per cent of Aboriginal children who entered care did so within two weeks of their birth and nearly one fifth of Aboriginal children who entered care, entered before they were six months old. Many of these children were assumed into care via section 44 of the *Children and Young Persons (Care and Protection) Act 1998*. DCJ has reportedly attempted to reduce the use of section 44 assumptions for newborn Aboriginal children from hospitals. However, DCJ advises that section 43 emergency removals for Aboriginal infants has increased. That is, DCJ is still removing Aboriginal infants using emergency provisions, but at a later stage than they were previously.

The Family is Culture report made eight recommendations relating to newborns entering out of home care noting ‘the current system of prenatal reporting, investigations and newborn removals is flawed and is having a significant impact on the number of Aboriginal children entering out of home care. The review noted urgent reform was needed. Only one recommendation, the amendment to remove s106A(1)(a) from the *Child and Young Persons (Care and Protection) Act 1998* has been completed. The recommendation to develop a new policy to guide the removal of newborn Aboriginal children is not expected to be published until 2025.

### **DCJ's use of emergency removal powers avoids independent scrutiny by the Children's Court prior to an Aboriginal child's removal from their family**

DCJ's use of emergency removal powers (section 43 and 44 of the *Children and Young Persons (Care and Protection) Act 1998*) is exempt from examination by the Children's Court regarding whether DCJ complied with the following legislative safeguards, prior to the removal of an Aboriginal child:

- consultation with Aboriginal family members and placement of the child in line with the placement hierarchy (section 13 *Children and Young Persons (Care and Protection) Act 1998*)
- Alternative Dispute Resolution to address risk of significant harm concerns prior to removal of the child (section 34 and 37 *Children and Young Persons (Care and Protection) Act 1998*)
- demonstration of actions taken to prevent the child entering care (section 12A *Children and Young Persons (Care and Protection) Act 1998*).

This lack of independent scrutiny or review, coupled with a lack of self-reported information about the application and use of emergency removal powers by DCJ, creates the risk that unjustified removals are occurring.

From November 2023, Active Efforts provisions of the *Children and Young Persons (Care and Protection) Act 1998* came into force. These provisions introduced additional requirements for caseworkers to demonstrate efforts to avoid entry into out of home care and, where entry into out of home care was unavoidable, demonstrate efforts to seek restoration or placement with kin.

### **DCJ's use of less intrusive Temporary Care Arrangements has remained stable in the last few years**

Temporary Care Arrangements are voluntary agreements entered into between DCJ and parents of a child who is in need of care and protection and provides for the child to live with another person, often another member of the child's family, for a period of up to three months. Temporary Care Arrangements can be extended for another three months. While a significant intervention, a Temporary Care Arrangement is considered by DCJ to be a less intrusive option than care orders for a child in need of care and protection where parents can be supported to make the changes necessary to restore the child to them within the timeframes of the arrangement.

The Family is Culture report encouraged increased consideration and use of this less intrusive intervention. The number of Aboriginal children subject to Temporary Care Arrangements is reported in Exhibit 19. Exhibit 19 shows that the use of Temporary Care Arrangements has remained largely stable since 2018–19. DCJ further report that approximately 12% of Aboriginal children from 2019–20 to 2022–23 that were subject to Temporary Care Arrangement were subsequently removed from their families within 12 months.

### **DCJ does not have appropriate casework guidance or processes to quality assure caseworker decisions to remove a child**

In 2019, the Family is Culture report raised significant concerns about the way removals are carried out by DCJ. Setting out 'instances of insensitive and punitive removal practices', such as involving police unnecessarily in removals and removing babies from their mothers shortly after birth without any warning.

DCJ's casework practice mandate, Removal or assumption of a child, is general in nature and does not provide caseworkers with explicit guidelines outlining appropriate or inappropriate removal practices. For example, the mandate does not provide advice to caseworkers on:

- when they should or should not use emergency powers to remove a child
- when it is appropriate for caseworkers to involve police in a removal
- when and where removals should take place.

Exhibit 20 is a case study that describes the experience of removal for Aboriginal children from their families in different locations across NSW. Information for this case study was sourced from audit observations of DCJ, case file reviews and interviews with Aboriginal stakeholders. Identifying details have been changed to protect the privacy of those affected.

### **Exhibit 20: Removal of Aboriginal children**

A number of Aboriginal children were removed from an Aboriginal early childhood service on a culturally significant day due to risks of homelessness and domestic violence. Other Aboriginal children and staff were present at the time DCJ staff and NSW Police removed the children.

As no emergency foster carers or kinship carers were available, the children spent the night at DCJ offices.

The children and their family were engaged with an Aboriginal community controlled organisation who were providing family preservation services to them. The family had been consistently attending the service.

Before the removal took place, the Aboriginal community controlled organisation advised DCJ about the trauma associated with removing Aboriginal children from their childhood service, with other Aboriginal children present and staff. DCJ did not consider the fear it created amongst other Aboriginal parents that their children could also be removed from their care whilst at the early childhood service.

DCJ did not adhere to the advice from the Aboriginal community controlled organisation to consider an alternative approach that was culturally sensitive and trauma-informed.

Source: AONSW research and analysis.

### **DCJ cannot demonstrate that all possible placement options are considered under the Aboriginal child placement hierarchy for each child**

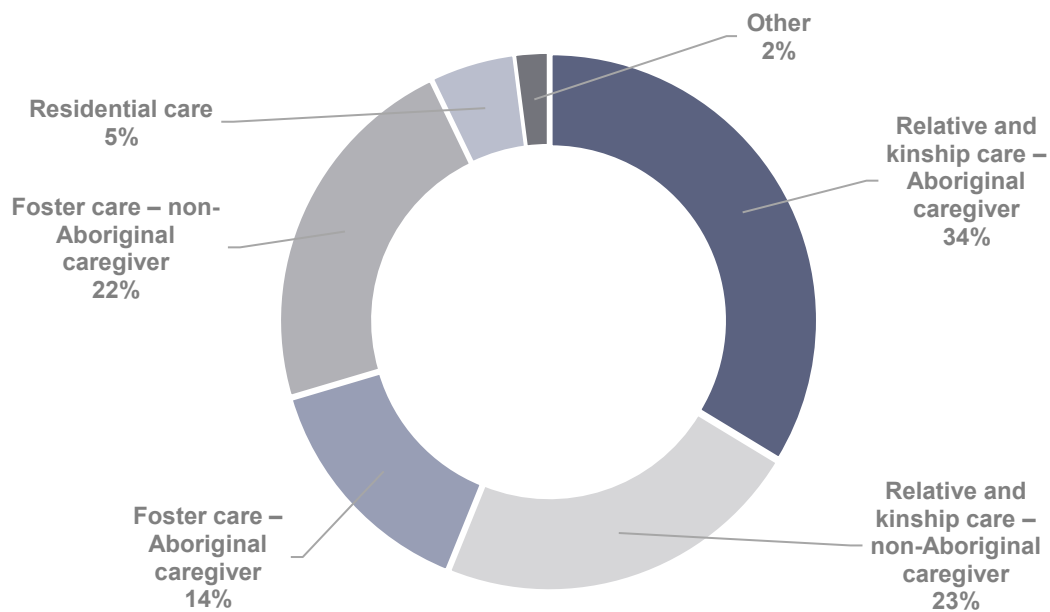
Once an Aboriginal child is removed, section 13 of the *Children and Young Persons (Care and Protection) Act 1998* sets out the order in which DCJ must consider placement options when placing Aboriginal children into out of home care. The intent of the hierarchy is to safeguard an Aboriginal child's connection to their family and culture. A decision about placement options under the hierarchy is separate to a decision on which organisation manages the case of a child in out of home care, including the arrangement and supervision of out of home care

The hierarchy of placement is as follows:

1. a member of the child's or young person's extended family or kinship group
2. a member of the Aboriginal or Torres Strait Islander community to which the child or young person belongs
3. a member of some other Aboriginal or Torres Strait Islander family residing in the vicinity of the child's or young person's usual place of residence
4. a suitable person approved by the Secretary after consultation with the child's or young person's extended family, kinship group or Aboriginal organisation relevant to the child.

Several of the six districts visited by the audit team reported high compliance with the placement hierarchy. Exhibit 21 shows placement outcomes reported for Aboriginal children in out of home care as at 30 June 2023. However, placement of an Aboriginal child at any level in the hierarchy could be considered compliant. DCJ does not document the efforts undertaken by caseworkers to place Aboriginal children in accordance with each step of the hierarchy. As a result, DCJ cannot demonstrate compliance or obtain assurance over these decisions.

**Exhibit 21: Placement outcomes for Aboriginal children in out of home care, as at 30 June 2022–23**



# See Appendix three for 2018–19 to 2022–23 data tables.  
 Source: AONSW analysis based on data supplied by DCJ, May 2024.

**DCJ does not have appropriate casework guidance or processes to ensure the quality of caseworker classification of a kinship placement**

DCJ’s casework practice guidance does not provide caseworkers with a definition or examples of kinship despite a definition in the *Children and Young Persons (Care and Protection) Act 1998*. Due to this lack of guidance, caseworker understanding and application of kinship placements varies considerably across the districts.

DCJ does not have a process in place to ensure kinship placements are culturally appropriate and in line with the definition in the *Children and Young Persons (Care and Protection) Act 1998*.

## 3.6 Connection

### Exhibit 22: The rights, connection

**The right:** to maintain connection to family, community, culture and country. (Section 12A(2)(e) *Children and Young Persons (Care and Protection) Act 1998*).

**The right:** to maintain connection to family, community and culture. If an Aboriginal child is placed with a person who is not within an Aboriginal or Torres Strait Islander family or community, arrangements must be made to ensure that the child or young person has the opportunity for continuing contact with his or her Aboriginal or Torres Strait Islander family, community and culture. (Section 13 of the *Children and Young Persons (Care and Protection) Act 1998*).

**The right:** States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity. (Article 8 Convention on the Rights of the Child).

**The right:** Indigenous peoples and individuals have the right to belong to an Indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. (Article 9 Convention on the Rights of Indigenous Peoples).

**The right:** Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons. States shall take effective measures to ensure that this right is protected. (Article 13 Convention on the Rights of Indigenous Peoples).

Source: NSW legislation, UN Declaration on the Rights of Indigenous Peoples, UN Declaration on the Rights of the Child.

Where it is not safe for an Aboriginal child to remain with their family, it is their right to maintain their connection to kin, Country, culture and community, particularly when they are placed outside their family and extended kinship systems. These connections are integral in developing their sense of identity.

Rather than trying to understand connection across the diverse range of Aboriginal Nations in NSW, DCJ's role is to facilitate and support access to a child's Country, culture, family and community.

#### **DCJ provides ineffective guidance to its staff and non-government organisations to facilitate an Aboriginal child's connection to their Country, culture, kin and community**

The *Children and Young Persons (Care and Protection) Act 1998* requires all Aboriginal children to have a cultural plan.

DCJ procedures, guidance and templates to prepare cultural plans do not provide minimum standards or expectations around key aspects of an Aboriginal child's connection such as:

- frequency of a child's return to their Country
- frequency of a child's connection to their family, extended family and kinship networks
- identifying appropriate persons within the child's community and/or family to grow and nurture the child's identity (for example, if the child is from a Matrilineal Nation, an Aunt or Grandmother with cultural authority to undertake this role).

DCJ has a one size fits all template for developing a cultural plan. The audit team's review of this template, policies, guidance and a sample of Aboriginal children's cultural plans found that the guidance provided to caseworkers in drafting the plans is insufficient.



The audit team's review found:

- incomplete cultural plans
- insensitive and culturally inappropriate information
- insufficient planning for contact with family
- generic information copied from the internet to describe a child's cultural heritage
- limited evidence of consultation with family in developing the cultural plan
- limited evidence of consultation with Aboriginal knowledge holders and cultural experts
- limited evidence of family finding to support children in care
- the needs of Aboriginal children living off Country not addressed.

Section 78(2A) of the *Children and Young Persons (Care and Protection) Act 1998* requires that a cultural plan set out how the child's connection with Aboriginal family, community and identity is maintained and developed. DCJ has no guidance or standards that apply to cultural planning in instances where connection has been severed for an Aboriginal child and their family. A cultural plan in these circumstances, would look different and would instead focus on regenerating the child's connections in consultation with Aboriginal leaders from the child's family and Nation. DCJ's template for developing a cultural plan is limited in its ability to accommodate the needs of Aboriginal children in these circumstances.

The limitations of the template, coupled with the lack of guidance provided to case workers in developing plans, means DCJ does not know how effective cultural plans are in maintaining Aboriginal children's connection to Country, culture, kin and community. The only measure currently is an absence or presence of a cultural plan for an Aboriginal child.

### **DCJ does not know whether funding to non-government organisations is sufficient for cultural planning**

DCJ provides \$4,164 to NGOs at the start of a child's placement and \$493 every year thereafter to support cultural activities for an Aboriginal child placed in out of home care. DCJ has not considered whether the funds are sufficient for providers to facilitate an Aboriginal child's connection to their Country and kin, particularly where children are placed off Country.

NGOs advised the audit team that these amounts are insufficient to ensure the continued connection to culture for children who have been removed from their families. For example, while most Aboriginal community controlled organisations will seek to case manage children located on their Country, they do also accept Aboriginal children who are placed off Country. NGOs further advised that the payment is insufficient to cover the costs of cultural camps for Aboriginal children who are off Country.

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## 4. Quality Assurance

### **DCJ does not have a quality assurance framework in child protection to safeguard the rights of Aboriginal children**

DCJ has no quality assurance framework over systems and processes prior to the removal of a child into out of home care. Without such a framework, DCJ cannot be assured of its compliance with legislative safeguards afforded to Aboriginal children.

In late 2022, DCJ engaged a consultant to examine Aboriginal quality assurance for the child protection system. In July 2023, the consultant report highlighted deficient quality assurance systems and concerns with cultural capacity of staff to support Aboriginal families and children. DCJ has not indicated how or when it plans to address this deficiency.

### **DCJ does not have assurance that out of home care services are safeguarding the rights of every Aboriginal child in out of home care**

The Office of the Children's Guardian accredits out of home care providers, including DCJ and its funded NGOs, to a minimum standard set out in the Child Safe Standards for Permanent Care. As a result, DCJ and NGOs can demonstrate a range of internal quality controls and processes for children in out of home care to support the Office of the Children's Guardian accreditation process.

However, the Office of the Children's Guardian cannot provide qualitative assurance that DCJ and the NGOs have adhered to safeguards for each of the approximately 6,500 Aboriginal children in statutory out of home care at any given time. For example, the Office of the Children's Guardian looks at whether a cultural plan exists for an Aboriginal child, but generally does not provide feedback for agencies to improve cultural plans.

DCJ, as the system steward, has a duty of care to ensure that it, and all NGOs it contracts with, have quality assurance processes to demonstrate compliance with safeguards for every Aboriginal child that is placed in out of home care. DCJ needs to do more than the minimum requirements of Office of the Children's Guardian accreditation to gain assurance, commensurate with the risk of poor compliance and practice set out in this report, that it is adequately safeguarding the rights of every Aboriginal child in out of home care.

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## 5. NGO findings

DCJ contracts NGOs to provide out of home care services through Service Level Agreements, aligned with the Principles in the *Children and Young Persons (Care and Protection) Act 1998*. This audit assessed whether NGOs are effectively safeguarding the rights of Aboriginal children in out of home care.

Five NGOs were selected as auditees for this performance audit. Selection of the providers was based on criteria which included:

- a mix of faith- and non-faith-based entities
- Aboriginal and non-Aboriginal entities
- number of children in care
- funding
- location
- service model.

Collectively, the NGOs selected for this audit were contracted to provide 2,600 foster care places in the 2021–22 financial year. This equated to one third of the total number of contracted foster care places in NSW in 2021–22. The two Aboriginal Community Controlled NGOs selected case managed about 20% of Aboriginal children in out of home care who were contracted out to NGOs.

### 5.1 NGO governance and accountability

#### **NGOs have not implemented the Aboriginal Case Management Policy, contrary to contractual requirements**

In 2019, DCJ introduced the Aboriginal Case Management Policy and associated Practice Guidance. The Aboriginal Case Management Policy aims to operationalise the Aboriginal and Torres Strait Islander Principles (sections 11 to 13 *Children and Young Persons (Care and Protection) Act 1998*). Implementing the Aboriginal Case Management Policy is a requirement in out of home care contracts for NGOs. However, no NGO audited had implemented the Aboriginal Case Management Policy. DCJ does not seek to hold NGOs accountable for this in contract meetings.

#### **The NGOs do not have governance arrangements and accountability processes to safeguard the rights of Aboriginal children**

NGOs do not have governance structures and accountability frameworks to assure the effectiveness of their compliance with the Principles. Some NGOs examine elements of the Principles such as placement in line with the placement hierarchy, placement breakdowns and the presence or absence of cultural plans. However, NGOs do not have systems to demonstrate their efforts to place in line with the placement hierarchy and do not have minimum standards against which to demonstrate the quality of cultural plans.

Outcomes achieved for Aboriginal children in out of home care are not internally identified and measured, nor publicly reported by NGO providers.

#### **Non-Aboriginal NGOs reviewed have only recently developed plans to progress the case management transfer of Aboriginal children to Aboriginal NGOs**

In 2012, the NSW Government committed to ensuring all Aboriginal children in out of home care are case managed by an Aboriginal Community Controlled Organisation (ACCO). Since this time, DCJ has required NGOs to transfer case management of Aboriginal children to an ACCO if the carer agreed.

Between July 2022 and February 2023 only one of the non-Aboriginal NGOs selected for this audit transferred Aboriginal children to an ACCO (a total of three children transferred). The remaining two non-Aboriginal NGOs in the audit did not transfer any children to ACCOs in the last completed financial year.

In September 2022 DCJ inserted an obligation into the Service Level Agreements of NGOs to transition of Aboriginal children in out of home care to ACCOs. The Service Level Agreements required all NGOs to develop and submit a transition plan to DCJ. All ACCOs were required to submit plans on how they could increase the scale of their operations to receive case management responsibility for more Aboriginal children.

The transition of Aboriginal children to ACCOs is significantly behind schedule. Aboriginal stakeholders have reported this has put significant financial pressure on them having to invest in systems and infrastructure to accommodate the case management of more Aboriginal children. The management of the transition, including the financial risks for both ACCOs and non-ACCOs, is addressed in further detail in the Oversight of the child protection system audit.

No NGO audited publicly reports data on the transfer of case management for Aboriginal children.

## 5.2 NGO policy and practice

### **NGOs have not defined self-determination nor set out how, when and if such a right can be exercised for Aboriginal families once their child is in out of home care**

NGOs are required to apply the right to self-determination into casework practice. Self-determination is not defined in the *Children and Young Persons (Care and Protection) Act 1998* and DCJ has not operationalised this concept. Self-determination is not defined in out of home care contracts with NGOs.

To give effect to self-determination, NGO providers must be able to provide Aboriginal families and communities with a definition of self-determination in an out of home care context and where in the casework continuum Aboriginal families can exert such a right. Notwithstanding this gap, NGOs have not individually or collectively determined how they can meaningfully comply with this requirement of the Act.

### **NGO providers have not established therapeutic policies and holistic care models of healing to address complex trauma for each Aboriginal child in their care nor their families, including addressing intergenerational trauma**

NGO providers are required 'to support Children and Young People, and their families to recover from and heal from trauma'. Each NGO's service contract further states that at a minimum, service provision is based on research evidence including having regard to the inter-generational trauma experienced by Aboriginal families.

NGO providers do not have policies setting out best practice models of therapeutic care for Aboriginal children and their families. NGOs described an inability to dedicate financial resources to such a task and noted that 'robust evidence does not currently exist' across the child protection sector. Aboriginal community controlled organisations reported that they were particularly interested in exploring traditional Aboriginal models of healing for children and their families in out of home care but noted insufficient funding for this.

Several NGOs have embedded psychological care into their case management models, employing non-Aboriginal psychiatrists and psychologists. However, this action was taken to fill 'a therapeutic gap', in recognition the providers were finding it difficult to access culturally appropriate therapeutic models in community. Where therapeutic services are delivered, they are largely focussed on addressing a child's behaviours rather than exploring and addressing the underlying causes of these behaviours.

NGOs reported that DCJ does not provide leadership and requisite funding to address the therapeutic needs of Aboriginal children and their families.

### **The quality of cultural plans is inconsistent across NGOs because of the absence of minimum standards and requirements**

DCJ has not established minimum standards or requirements for what a quality cultural plan includes. The audit therefore found inconsistent cultural planning across the five NGOs. The DCJ template is used by some NGOs while others take their own approach. This means that Aboriginal children may receive a different quality of cultural plan depending on which NGO has been assigned case management for the child.

Without an overarching policy that sets clear standards for Aboriginal children's cultural plans, and guarantees commensurate funding, NGO providers cannot effectively demonstrate the growth of an Aboriginal child's identity while in out of home care.

### **NGOs do not have processes to assure themselves that DCJ has complied with the Aboriginal and Torres Strait Islander Principles before accepting case management transfer of Aboriginal children, placing NGOs at risk of inheriting non-compliance**

The Permanency Case Management Policy and guidelines set out the roles and information required of DCJ and NGOs when DCJ elects to transfer case management. The policy and guidelines do not explain the circumstances for when and how NGOs can decline a case based on non-compliance with the Principles. One NGO stated:

NGOs are receivers of referrals from DCJ and placements are based on the information provided by DCJ. We do not make placements with family, kin, or community unless we are provided the information to do so. Without that information, we make placements on the understanding that, if DCJ are asking for a placement, the higher order placement hierarchy considerations have been exhausted.

NGOs reported they do not have formal systems to check DCJ compliance with the Principles prior to accepting case management of an Aboriginal child. This exposes NGOs to risk of inheriting non-compliance with the Principles upon accepting case management of the Aboriginal child from DCJ.

A number of NGOs reported retrospectively addressing DCJ non-compliance with the Principles, particularly in relation to the placement of Aboriginal children with kin.

## **Section two**

### Appendices

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# Appendix one – Response from entities

## Response from the Department of Communities and Justice



Communities and Justice

EAP24/6974

29 May 2024

Mr Bola Oyetunji  
Auditor General NSW  
Audit Office of New South Wales  
Level 19, Darling Park Tower 2,  
201 Sussex Street  
Sydney NSW 2000

Dear Mr Oyetunji

***Performance audit – Safeguarding the rights of Aboriginal children and young people in the child protection system***

Thank you for providing the Department of Communities and Justice (DCJ) with a copy of the final report for the performance audit of the ***Safeguarding the rights of Aboriginal children and young people in the child protection system***.

DCJ has considered the report and accepts or supports in principle all of the recommendations, noting there are resource and timeframe implications for many of the recommendations that will need to be considered by Government. Please find enclosed a detailed response to each recommendation.

DCJ acknowledge that Aboriginal children and families have been, and continue to be, disproportionately impacted by child protection practices. Aboriginal people know what's best for their families and communities and that self-determination means they need to be equal partners in decision-making.

Our commitment to do better for Aboriginal children, families and communities means we need to address long-standing issues and do things differently. The reform strategy under development will aim to transform the child protection and Out-of-Home Care systems to prioritise the safety and wellbeing of Aboriginal children and young people. The audit recommendations will inform and shape these crucial reform efforts.

Finally, I would like to again extend my appreciation to staff within the Audit office for their support throughout this process.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Michael Tidball'.

**Michael Tidball**  
**Secretary**

Department of Communities and Justice  
Postal address: Locked Bag 5000, Parramatta NSW 2124  
W [www.dci.nsw.gov.au](http://www.dci.nsw.gov.au)



New South Wales Auditor-General's Performance Audit Report - Safeguarding the rights of Aboriginal children and young people in the child protection system

Department of Communities and Justice response to key recommendations, May 2024

Timing	Recommendations	DCJ's response	Commentary
By June 2025, the Department of Communities and Justice should:	<p>1. Establish governance arrangements that provide oversight of the safeguards for Aboriginal children and families in the child protection system. Support these arrangements with relevant data to demonstrate and drive compliance in relation to each of the areas as set out in the Principles:</p> <ul style="list-style-type: none"> <li>self-determination</li> <li>prevention</li> <li>removals</li> <li>placement and consultation</li> <li>connection</li> <li>transition of Aboriginal children from non-Aboriginal Controlled Community Organisations to Aboriginal Controlled Community Organisations (ACCOs)</li> <li>targeted early intervention and restoration.</li> </ul>	Accept	<p>The Department of Communities and Justice (DCJ) agrees that strong governance arrangements can provide better oversight of the safeguards for Aboriginal children and families in the child protection system. DCJ acknowledges that Aboriginal people must determine and drive desired outcomes, alongside and in partnership with government.</p> <p>DCJ supported the establishment of the Ministerial Aboriginal Partnership Group by the NSW Government. This Partnership oversees the redesign and reform of the child protection and care system for Aboriginal children and families in line with the National Agreement on Closing the Gap.</p> <p>DCJ has also co-designed an Aboriginal-led data sharing dashboard with Aboriginal stakeholders, which presents District-level data to help Aboriginal communities and stakeholders track local outcomes against the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle. The dashboard is continually being improved.</p>

Timing	Recommendations	DCJ's response	Commentary
	<p>2. Establish an accountability framework for outcomes of Aboriginal children and their families in the child protection system and embed this clearly and transparently within its operating structure. The framework should at a minimum:</p> <ul style="list-style-type: none"> <li>assign relevant roles with responsibilities and measurable targets to safeguard the rights of Aboriginal children and families</li> <li>outline processes to address non-compliance and ineffective delivery of outcomes for Aboriginal children and families.</li> </ul>	Accept	<p>DCJ acknowledges the need for a robust, objective outcomes framework against which clearer accountability for delivering outcomes with and for Aboriginal children and families can be measured.</p> <p>A DCJ-designed Quality Assurance Framework (QAF) for out-of-home care (OOHC) was piloted in NSW over five years across four trial sites to 2022 to track and measure the mental health and wellbeing outcomes of children in OOHC over time. This mechanism enables DCJ to identify where certain supports or interventions may be required for children in OOHC.</p> <p>DCJ acknowledges that further work will be required to develop and implement an outcomes framework that covers the broader child protection system and is accountable in line with our Closing the Gap commitments.</p> <p>Local accountability mechanisms are being strengthened through:</p> <ul style="list-style-type: none"> <li>Safeguarding Decision Making for Aboriginal Children Panels</li> <li>Local Aboriginal Community Controlled Mechanisms (ACCMs) to support family-led decision making and adherence to the SNAICC Aboriginal and Torres Strait Islander Child Placement Principle</li> <li>including Aboriginal community organisation representatives into the Aboriginal Case Management Policy State-wide Implementation Steering Committee in 2024.</li> </ul> <p>DCJ accepts the recommendation and will continue to strengthen accountability mechanisms however notes resourcing and timeframe implications will need to be considered in line with the implementation approach.</p>

Timing	Recommendations	DCJ's response	Commentary
	<p>3. Operationalise safeguards for Aboriginal children and their families in casework mandates within DCJ and contracted non-government organisations to ensure consistency across the child and family sector</p>	Accept	<p>Under section 12A of the <i>Children and Young Persons (Care and Protection) Act 1998</i>, DCJ is required to operationalise the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle (the Principle).</p> <p>DCJ acknowledges that further work is required to ensure that the Principle is embedded in casework policy and practice, effectively implemented across the sector, and continually reviewed and strengthened in consultation with Aboriginal stakeholders.</p> <p>DCJ accepts the recommendation however notes resourcing and timeframe implications will need to be considered in line with the implementation approach.</p>
	<p>4. Establish targets and measures using outcomes-focussed data that provide clear accountability for DCJ districts and contracted non-government organisations to safeguard Aboriginal children and families in the child protection system.</p>	Accept	<p>DCJ recognises the importance of collecting outcomes-focused data, and notes that this links with recommendation 1 of the <i>Oversight of the child protection system report</i> and recommendation 2 above of the <i>Safeguarding the rights of Aboriginal children and young people in the child protection system report</i>. This will be progressed as part of the development of the QAF for OOHC.</p> <p>Relevant targets and measures would be part of the development of an accountability framework and would be developed in partnership with Aboriginal communities.</p> <p>This would build upon existing work under the:</p> <ul style="list-style-type: none"> <li>OOHC Quality Assurance Program which provides DCJ's audit tool to map the presence of individual cultural plans to support cultural continuity and community connections for Aboriginal children and young people in OOHC.</li> <li>QAF pilot to measure wellbeing and outcomes for children in OOHC.</li> </ul>



Timing	Recommendations	DCJ's response	Commentary
			DCJ acknowledges that further work will be required to implement an outcomes and accountability framework that covers the broader child protection system noting resourcing and timeframe implications will need to be considered in line with the implementation approach.
	5. Fulfil the NSW government's Aboriginal Affairs Plan, Opportunity, Choice, Healing, Responsibility and Empowerment (OCHRE) commitment to work with Aboriginal organisations to develop a healing framework to be used across the child protection sector for Aboriginal children and families.	Accept in principle	DCJ supports this recommendation, pending the outcome of current OCHRE commitments to establish a whole-of-government framework. This planned framework aims to incorporate community-identified healing and truth-telling principles into practical ways for government and community to relate. This process will identify key components for a healing framework.  Following cross-agency agreement on the whole-of-government framework, DCJ will explore the development of a healing framework specifically for the child protection sector.
	6. Commission and support relevant Aboriginal organisations to develop 'best practice' holistic family preservation models based on Aboriginal ways of healing, with a view to having this inform re-commissioning in 2025 consistent with the Principles in the Children and Young Person (care and Protection) Act 1998 of self-determination and participation. DCJ should be compelled to produce associated performance of itself and non-government organisations.	Accept	DCJ recognises the importance of Aboriginal-led and delivered family preservation to Aboriginal communities.  DCJ is partnering with AbSec to co-design an Aboriginal Family Preservation (AFP) Framework, which will be delivered by Aboriginal Community Controlled Organisations (ACCOs). The AFP framework will enable ACCO providers to co-design flexible, holistic, and Aboriginal-led family preservation models with their communities.  DCJ is implementing an agile data collection program, 'InfoShare', to improve the quality of data available about families receiving family preservation services.
	7. Fulfil its commitment to commission an independent review of the Structured Decision-Making tools, including identifying the number of children unnecessarily taken into statutory care as a result of their use, and address any outcomes as a priority.	Accept in principle	DCJ agrees that Aboriginal children and families have been, and continue to be, disproportionately impacted by child protection practices, including in the way risk is assessed. While DCJ may exercise legislative emergency powers to remove children at immediate risk of serious harm, removal decisions are overseen by the Children's Court of NSW, and the authority to allocate parental responsibility for a child is vested in the Court.

Timing	Recommendations	DCJ's response	Commentary
			DCJ is already taking action to address the concerns around the use of Structured Decision Making tools, including making imminent changes to the way we assess risk.  DCJ is also working in formal partnership with AbSec and the Aboriginal Legal Service (NSW/ACT) Ltd to design and implement new approaches to child protection assessment and decision-making.  This work is guided by the newly formed Ministerial Aboriginal Partnership Group.
	8. Develop and implement a child protection quality assurance framework to ensure compliance with safeguards for Aboriginal children and their families up to and including the point a child is removed. DCJ should start with prevention to reduce the number of Aboriginal children entering care, wherever possible, and focus on healing to address the complex trauma experienced by Aboriginal families.	Accept	DCJ acknowledges the utility of a specific child protection quality assurance and improvement model for Aboriginal children and young people. This model could include quality assurance across all child protection casework, assessment and decision-making from the first point of contact with a family until case closure or an entry into care decision. It would also incorporate specific indicators and measures for Aboriginal children developed in consultation with Aboriginal stakeholder groups. Please note resourcing and timeframe implications will need to be considered in line with the implementation approach.
	9. Develop and implement a quality assurance process for districts and non-government organisations providing out of home care to hold them accountable against safeguards for Aboriginal children and their families.	Accept	Refer to DCJ's response to recommendation 4.

## Response from Barnardos



Bola Oyetunji  
Auditor-General for New South Wales  
Level 19, Darling Park Tower 2, 201 Sussex Street  
Sydney NSW 2000

Via email c/- [REDACTED]

30 May 2024

Dear Auditor-General,

Barnardos Australia (Barnardos) is pleased to have participated in the Oversight of the Child Protection System and Safeguarding the Rights of Aboriginal Children in the Child Protection System audits led by NSW Audit Office, and opportunity to provide a formal response on each Report. This response refers to the Safeguarding the Rights of Aboriginal Children in the Child Protection System Report (Safeguarding Report). Our response to the Safeguarding Report first and foremost notes that Barnardos is a large non-Aboriginal organisation and as such we profoundly respect and defer to Aboriginal decision making for all Aboriginal children.

Barnardos has been deeply committed to Reconciliation since 31 October 2012 and we continue with ongoing intent to listen, learn, and walk alongside Aboriginal people in all matters concerning Aboriginal children and their families. As a large non-Aboriginal provider of out-of-home care (OOHC) in NSW we are appalled by the gross over-representation of Aboriginal children in care and protection systems throughout Australia, in both reporting and assessment systems as well as in OOHC. Barnardos acknowledges and commends the extensive and detailed work undertaken by the NSW Audit Office team responsible for the current child protection audit Reports, and their willingness to interrogate child protection systems issues for Aboriginal children.

As a non-Aboriginal organisation, Barnardos recognises that we can never provide truly culturally connected care to Aboriginal children. We remain deeply committed to Aboriginal self-determination and sovereignty and because of this commitment, we will continue to actively support and walk alongside Aboriginal Community Controlled Organisations (ACCOs), Aboriginal colleagues and community. We fully and actively support the current NSW OOHC transition of all Aboriginal children to culturally appropriate care with ACCOs and affirm the need for funding to transition to support Aboriginal led solutions for Aboriginal children.

While Barnardos has a relatively small number of Aboriginal children in OOHC when compared with other NSW OOHC providers, with the predominance of our support work with Aboriginal children provided by our Aboriginal employees in culture and community, we express our concern about two current issues.

Firstly, that while predominant emphasis within current NSW transition of Aboriginal children is on transferring Aboriginal children in non-Aboriginal OOHC to ACCOs, Aboriginal children entering care for the first time are still being referred to non-Aboriginal OOHC providers (including Barnardos). While Barnardos has rigorous Aboriginal employee led processes for determining whether or not an Aboriginal child's community has been consulted before we provide an OOHC placement for a child/children referred to us by the Department of Communities and Justice (DCJ), we are very concerned that as long

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as new placements of Aboriginal children continue to be made with non-Aboriginal organisations such as ourselves that the cycle of culturally inappropriate care will continue. Barnardos' commitment to self-determination in relation to Aboriginal children and families impacted by NSW child protection systems and processes is underpinned by ambition to ensure over time that no Aboriginal child entering OOHC is placed by a non-Aboriginal organisation.

Secondly, Barnardos expresses concern at the apparently large number of Aboriginal children in culturally appropriate OOHC kinship placements currently under the supervision of non-Aboriginal organisations (including DCJ). While these OOHC placements are deemed compliant with the Aboriginal Child Placement Principle as the children are in culturally appropriate OOHC, no other clear reason is apparent as to why these children are not currently being prioritised for transfer to ACCOs within the current NSW OOHC transition.

Aboriginal led solutions are critical at all stages of NSW child protection including safeguarding the rights of Aboriginal children. This includes crucial emphasis on Aboriginal led ways to reduce the over-representation of Aboriginal children both reported to NSW statutory child protection and inappropriately placed into OOHC.

In closing we acknowledge the important role of the NSW Audit Office in bringing matters contained in the Safeguarding Report to public attention. We reiterate Barnardos' appreciation for the opportunity to participate and provide feedback as part of the audit process, in addition to our ongoing commitment to delivering strong and positive children's social care outcomes for vulnerable NSW children.

Yours sincerely



Deirdre Cheers  
Chief Executive Officer  
Barnardos Australia

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## Response from Barrun Dalai



31/05/2024

Mr Bola Oyetunji  
Auditor-General for NSW  
Level 19, Darling Park Tower 2  
201 Sussex Street  
Sydney NSW 2000

Dear Mr Bola Oyetunji,

**Oversight of the child protection system audit, conducted concurrently with,  
Safeguarding the rights of Aboriginal Children in the child protection system audit.**

Thank you for the opportunity to respond to the above-mentioned audit reports.

Burrundalai have reviewed the final report, and note the significance of early intervention, self-determination, culture, healing, connection, wellbeing, transition of Aboriginal children to NGO's and flexible funding from DCJ.

Burrundalai acknowledge the need for transformation in the sector to execute sound oversight and safeguarding of our Aboriginal Children. Burrundalai thank the audit team for their engagement and work on such an important audit.

Yours Sincerely

Mykol Paulson  
Chief Executive Officer  
Burrundalai

*Out of Home Care & Family Support Service*

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## Response from KARI



Changing Lives. Keeping Culture.  
[www.kari.org.au](http://www.kari.org.au)

May 2024

### ***Safeguarding the rights of Aboriginal children and the young people in the child protection system***

KARI welcomed the opportunity to participate in the Performance Audit regarding; Safeguarding the rights of Aboriginal children and the young people in the child protection system.

The numbers outlined in this report, laying bare the facts that Aboriginal children make up 47% of children in care while representing just 7% of Children in NSW are truly shocking. While these statistics are well known, they remain and should always remain shocking.

It is clear that the systems within the department hinder meaningful and long-lasting reform being made. This is to the detriment of vulnerable Aboriginal children and young people.

KARI wholeheartedly agree that funding is not commensurate with expectations for meaningful and significant cultural support. More importantly, it is in no way adequate to facilitate the reparative and connection work that is required to make meaningful cultural work possible.

KARI steadfastly believe that Aboriginal community-controlled organisation are best placed to be the custodians of Safeguarding the rights of Aboriginal children and the young people in the child protection system and that extends to any Aboriginal young people, Kin and families in the wider community that have an experience with child protection system. More focus and funding must be directed towards early intervention, Family connection, Kinship placements and community connection more broadly.

Family preservation, starting at pre-natal should be a key focus for keeping families together and breaking a cycle of entry in to care.

KARI would like to see all recommendations as outlined in this report to be adopted in full.

Andrew Luzzi  
Regional PSP Manager  
KARI Limited

#### **Liverpool Office**

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# Response from Life Without Barriers

## LIFE WITHOUT BARRIERS



27 May 2024

Bola Oyetunji  
Auditor-General for New South Wales  
Level 19, Tower 2 Darling Park, 201 Sussex St, Sydney NSW 2000  
CC: Claudia Mig  
Assistant Auditor-General, Performance Audit  
Via: <INSERT>

**RE: AG Ref: R009-170535826-28962**  
**Performance Audits – Child Protection**

Dear Auditor General,

May I first extend our appreciation on behalf of Life Without Barriers for the considerable work undertaken by the Audit Office of NSW and the provision of the final reports titled 'Oversight of the child protection system' and 'Safeguarding the rights of Aboriginal children and young people in the child protection system.' This letter provides you with Life Without Barriers official response to both final reports.

### **Oversight of the Child Protection System Report**

The final report aptly identifies the considerable complexity of the NSW state child protection system in its design, implementation and the opportunities for future improvement. The report signifies the necessity of oversight as a crucial instrument in the safeguarding of children in child protection and one which requires ongoing strengthening. There is a further shift needed however in prioritising responses which address the drivers of child abuse and neglect so we can collectively prevent children and families from entering care in the first place.

Our current child protection system is trying to respond to complex and often long-standing social issues within an historical crisis response model. There is fragmentation in service access across the continuum of health and other government services which cannot be resolved by a child protection system in isolation. Without a whole of government preventative model, families encountering child protection may continue to do so through generations. The system is under pressure from increasing numbers of children and families who are vulnerable and is further challenged by the genuine costs to deliver quality care needed to effectively support children with complex needs and trauma backgrounds.

The level of change needed to continue to improve child protection systems and invest in a focus on early intervention is significant. This is an investment which will strengthen families and prevent entry into care and we believe this must be the focus of child protection reform. Our future models of service require considerable integration of supports including measures to address poverty,

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## LIFE WITHOUT BARRIERS



domestic and family violence prevention and intervention, housing support, alcohol and other drug services, counselling, community supports and addressing childhood maltreatment in all forms.

A system and community involved response in reconsidering how to deal with the dominant cause of entry into care, being child neglect, is long overdue. We welcome the opportunity to contribute to solutions that are cross sector and with community as we recognise child safety is everyone's responsibility.

### **Safeguarding the rights of Aboriginal children and young people in the child protection system.**

First and foremost, Life Without Barriers recognises Aboriginal and Torres Strait Islander children have a right to grow in culture and with kin. Aboriginal people have been clear that returning Aboriginal children to their communities is the most effective positive path forward towards systemic change and this report provides further evidence that mainstream, non-Indigenous organisations are not best placed to support First Nations children. In a system not designed for or by First Nations people and communities, small scale, tinkering improvements will not address the inherent bias and discrimination designed within the system now in how it responds to Aboriginal and Torres Strait Islander communities. The impacts of colonisation resulting in poverty and extreme disadvantage are forces which undeniably impact the natural functioning and effective lore of Aboriginal and Torres Strait Islander communities.

This report offers evidence of the genuine reform needed to enable Aboriginal children to be able to thrive, to be connected to their culture and secure in their identity.

Life Without Barriers believes our combined efforts must be to support ACCOs and facilitate the transfer of necessary funding and care of children to Aboriginal communities whilst recognising that future funding models need to respond to holistic approaches and must be designed and led by First Nations communities.

Thank you for your consideration of our response. We wish to extend our appreciation to the team within the Audit Office of NSW who have worked so hard to deliver these important insights so we may all better serve the children we are collectively responsible for across NSW.

Kind regards

Claire Robbs  
Chief Executive  
Life Without Barriers

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## Response from Wesley Community Services



Mr Bola Oyetunji  
Auditor-General of New South Wales  
Audit Office of NSW  
Level 19, Darling Park Tower 2,  
201 Sussex St, Sydney NSW 2000

28 May 2024

Dear Mr Oyetunji,

### **WESLEY COMMUNITY SERVICES LIMITED – RESPONSE TO PERFORMANCE REPORTS**

Thank you for your letter of 1 May 2024 conveying the final performance reports for the below audits and inviting Wesley Mission to respond:

- 'Oversight of the child protection system'; and
- 'Safeguarding the rights of Aboriginal children and young people in the child protection system'.

We support the work of the Audit Office of NSW in undertaking these performance audits, along with the work of Department of Communities and Justice (DCJ) and out of home care providers (NGOs), including Aboriginal Community Controlled Organisations (ACCO), who seek to operate within an effective and robust child protection and safeguarding system. Wesley Mission is acutely aware that represented in every case within the NSW child protection system is a vulnerable child or young person and family.

We understand that this is a performance audit of DCJ's administration of the child protection system in NSW, and as such we note there are no recommendations directed to the NGOs in either report. Notwithstanding this, we strongly support the recommendations and their intent to improve outcomes for children and families engaged in the sector, and would welcome dialogue with DCJ, where appropriate, on the implementation of the recommendations. To this end Wesley Mission is firmly committed to supporting continuous improvement and sector uplift.

While we recognise performance audit reports are often weighted towards reporting on an exceptions basis, Wesley Mission is of the opinion there are areas of strength, innovation and good practice within the NGO sector. This report provides an opportunity to build on this foundation to achieving greater consistency and performance across the NGOs.

Furthermore, with regard to the Safeguarding the Rights of Aboriginal Children and Young People in the Child Protection Systems report specifically, we support these recommendations, and if willing, a broader whole-of-scheme review to keep aboriginal families out of the system as the main focus, that is led by Aboriginal people and communities. This would ensure that future community sector changes and implementation have safeguards such as the Aboriginal and Torres Strait Islander Principles fully embedded within them.

As a non-Indigenous organisation, Wesley Mission knows that ACCO's are best placed to support Aboriginal children. We strongly back actions to enable ACCO's to support Aboriginal children and families to avoid the necessity for out of home care. If as a last resort, care is needed, similarly ACCO's must case manage Aboriginal children and families in the first instance. For Aboriginal

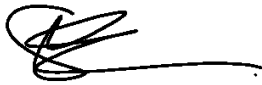


children already in the sector, timely transition of their case management to ACCO's must be a concerted focus. It is also our view that for Aboriginal children in particular, restoration reviews should be completed to maintain cultural and family connection. For any of this to be successful Aboriginal people and communities must be an integral part of the process of design, implementation and oversight.

Wesley Mission believes this is the time for taking courageous action to steer the system towards better outcomes for all children, before they enter and once in out of home care. We owe it to past, current and future generations to do all we can to get this right.

Finally, I would like to take this opportunity to recognise the work of those who operate in the sector (DCJ, NGOs, including staff and carers), without whom many vulnerable children, young people and their families would not receive the support they need.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Stu Cameron', with a long horizontal line extending to the right.

Reverend Stu Cameron  
Chief Executive Officer

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# Appendix two – The Aboriginal and Torres Strait Islander Principles (extract from the *Children and Young Persons (Care and Protection) Act 1998*)

## Part 2 Aboriginal and Torres Strait Islander principles

### **11 Aboriginal and Torres Strait Islander self-determination**

(1) It is a principle to be applied in the administration of this Act that Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young persons with as much self-determination as is possible.

(2) To assist in the implementation of the principle in subsection (1), the Minister may negotiate and agree with Aboriginal and Torres Strait Islander people to the implementation of programs and strategies that promote self-determination.

### **12 Aboriginal and Torres Strait Islander participation in decision-making**

Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities are to be given the opportunity, by means approved by the Minister, to participate in decisions made concerning the placement of their children and young persons and in other significant decisions made under this Act that concern their children and young persons.

### **12A Aboriginal and Torres Strait Islander Children and Young Persons Principle**

(1) This section sets out the Aboriginal and Torres Strait Islander Children and Young Persons Principle, which applies to the administration of this Act in relation to Aboriginal and Torres Strait Islander children and young persons.

(2) The Aboriginal and Torres Strait Islander Children and Young Persons Principle consists of the following 5 elements—

(a) prevention—recognising that a child or young person has a right to be brought up within the child's or young person's own family, community and culture,

(b) partnership—recognising that Aboriginal and Torres Strait Islander community representatives should participate in the design and delivery of services for children and young persons and in individual decisions about children and young persons,

(c) placement—recognising that, if a child is to be placed in out-of-home care, the child's placement is to be in accordance with the placement principles for Aboriginal and Torres Strait Islander children and young persons in section 13,

(d) participation—recognising that a child or young person, and the child's or young person's parents and family members, should participate in decisions about the care and protection of the child or young person,

(e) connection—recognising that a child or young person has a right to be supported to maintain connections to family, community, culture and country.

(3) In making a decision under this Act in relation to a matter involving an Aboriginal or Torres Strait Islander child or young person, a decision maker must apply each of the elements of the Aboriginal and Torres Strait Islander Children and Young Persons Principle that are relevant to the decision being made.

### **13 Aboriginal and Torres Strait Islander Child and Young Person Placement Principles**

(1) The general order for placement Subject to the objects in section 8 and the principles in section 9, an Aboriginal or Torres Strait Islander child or young person who needs to be placed in statutory out-of-home care is to be placed with—

(a) a member of the child's or young person's extended family or kinship group, as recognised by the Aboriginal or Torres Strait Islander community to which the child or young person belongs, or

(b) if it is not practicable for the child or young person to be placed in accordance with paragraph (a) or it would not be in the best interests of the child or young person to be so placed—a member of the Aboriginal or Torres Strait Islander community to which the child or young person belongs, or

(c) if it is not practicable for the child or young person to be placed in accordance with paragraph (a) or (b) or it would not be in the best interests of the child or young person to be so placed—a member of some other Aboriginal or Torres Strait Islander family residing in the vicinity of the child's or young person's usual place of residence, or

(d) if it is not practicable for the child or young person to be placed in accordance with paragraph (a), (b) or (c) or it would be detrimental to the safety, welfare and well-being of the child or young person to be so placed—a suitable person approved by the Secretary after consultation with—

(i) members of the child's or young person's extended family or kinship group, as recognised by the Aboriginal or Torres Strait Islander community to which the child or young person belongs, and

(ii) such Aboriginal or Torres Strait Islander organisations as are appropriate to the child or young person.

Note—

The placement principles set out in this section also apply to the making of guardianship orders in relation to Aboriginal and Torres Strait Islander children and young persons (see section 79A(3)(c)).

(2) Relevance of self-identification and expressed wishes of child or young person In determining where a child or young person is to be placed, account is to be taken of whether the child or young person identifies as an Aboriginal or Torres Strait Islander and the expressed wishes of the child or young person.

(3) Child or young person with parents from different Aboriginal or Torres Strait Islander communities If a child or young person has parents from different Aboriginal or Torres Strait Islander communities, the order for placement established by paragraphs (a), (b), (c) and (d) of subsection (1) applies, but the choice of a member or person referred to in those paragraphs is to be made so that the best interests of the child or young person will be served having regard to the principles of this Act.

(4) Child or young person with one Aboriginal or Torres Strait Islander parent and one non-Aboriginal and Torres Strait Islander parent If a child or young person has one Aboriginal or Torres Strait Islander parent and one non-Aboriginal and Torres Strait Islander parent, the child or young person may be placed with the person with whom the best interests of the child or young person will be served having regard to the principles of this Act.

(5) If a child or young person to whom subsection (4) applies—

(a) is placed with a person who is not within an Aboriginal or Torres Strait Islander family or community, arrangements must be made to ensure that the child or young person has the opportunity for continuing contact with his or her Aboriginal or Torres Strait Islander family, community and culture, or

(b) is placed with a person who is within an Aboriginal or Torres Strait Islander family or community, arrangements must be made to ensure that the child or young person has the opportunity for continuing contact with his or her non-Aboriginal and Torres Strait Islander family, community and culture.

(6) Placement of child or young person in care of person who is not an Aboriginal or Torres Strait Islander The following principles are to determine the choice of a carer if an Aboriginal or Torres Strait Islander child or young person is placed with a carer who is not an Aboriginal or Torres Strait Islander—

(a) Subject to the best interests of the child or young person, a fundamental objective is to be the reunion of the child or young person with his or her family or Aboriginal or Torres Strait Islander community.

(b) Continuing contact must be ensured between the child or young person and his or her Aboriginal or Torres Strait Islander family, community and culture.

These principles are subject to subsection (2).

(7) Exceptions: emergency placements and placements of short duration Subsection (1) does not apply to—

(a) an emergency placement made to protect a child or young person from serious risk of immediate harm, or

(b) a placement for a duration of less than 2 weeks.

(8) Where an emergency placement is made to protect an Aboriginal or Torres Strait Islander child or young person from serious risk of immediate harm, the Secretary must consult with the appropriate Aboriginal or Torres Strait Islander community as soon as practicable after the safety of the child or young person has been secured.

Note—

In the course of any consultation under this Part, the Secretary must have regard to the right of Aboriginal or Torres Strait Islander children and young persons and their families to confidentiality.

**14 Records relating to Aboriginals and Torres Strait Islanders**

(1) All records made within the Department relating to the placement in statutory or supported out-of-home care of Aboriginal and Torres Strait Islander children and young persons are to be kept permanently.

(2) If an Aboriginal or Torres Strait Islander child or young person has been placed in statutory or supported out-of-home care—

(a) the child or young person, and

(b) a birth or adoptive parent of the child or young person, and

(c) a person authorised in writing by the child, young person or parent, is entitled to have access, in accordance with the regulations, to all records kept by the Department that relate to the placement.

(3) (Repealed)

(4) Subsection (2) does not confer a right or entitlement to information that is subject to Chapter 8 of the *Adoption Act 2000*.

(5) The regulations may make provision for or with respect to the keeping of and access to records to which this section applies.

## Appendix three – Data tables

### Exhibit 6 data: Progress towards Closing the Gap target 12 (to reduce the proportion of Aboriginal children in out of home care by 45% by 2031)

Quarter ending	Aboriginal children in out of home care	Estimated Closing the Gap target	Straight-line path to achieve Closing the Gap target
30/06/2019	6,754	3,715	6,754
30/09/2019	6,783	3,715	6,691
31/12/2019	6,710	3,715	6,627
31/03/2020	6,674	3,715	6,564
30/06/2020	6,688	3,753	6,501
30/09/2020	6,698	3,753	6,437
31/12/2020	6,733	3,753	6,374
31/03/2021	6,771	3,753	6,375
30/06/2021	6,829	3,798	6,388
30/09/2021	6,823	3,798	6,324
31/12/2021	6,784	3,798	6,259
31/03/2022	6,689	3,798	6,194
30/06/2022	6,661	3,847	6,208
30/09/2022	6,613	3,847	6,142
31/12/2022	6,563	3,847	6,077
31/03/2023	6,509	3,847	6,011
30/06/2023	6,563	3,901	6,028
30/09/2023	6,530	3,901	5,962
31/12/2023	6,414	3,901	5,895
30/06/2024	n.a.	3,946	5,829

## Exhibit 21 Data: Placement outcomes for Aboriginal children and young people in out of home care, 2018–29 to 2022–23

### Percentage

Placement outcome	2018–19	2019–20	2020–21	2021–22	2022–23
Relative and kinship care – Aboriginal caregiver	35%	35%	34%	34%	33%
Relative and kinship care – non-Aboriginal caregiver	22%	23%	23%	23%	22%
Foster care – Aboriginal caregiver	16%	15%	14%	14%	14%
Foster care – non-Aboriginal caregiver	22%	22%	23%	22%	22%
Residential care	3%	3%	4%	5%	5%
Other	2%	2%	3%	2%	2%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

# Percentages may not sum to 100% due to rounding.

### Numbers

Placement outcome	2018–19	2019–20	2020–21	2021–22	2022–23
Relative and kinship care – Aboriginal caregiver	2,354	2,358	2,312	2,254	2,181
Relative and kinship care – non-Aboriginal caregiver	1,508	1,505	1,565	1,503	1,474
Foster care – Aboriginal caregiver	1,055	989	937	908	896
Foster care – non-Aboriginal caregiver	1,513	1,504	1,568	1,546	1,500
Residential care	214	214	260	311	352
Other	110	118	187	139	160
<b>Total</b>	<b>6,754</b>	<b>6,688</b>	<b>6,829</b>	<b>6,661</b>	<b>6,563</b>

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# Appendix four – About the audit

## Audit objective

This audit assessed whether the rights of Aboriginal children and young people in the child protection system are effectively safeguarded.

## Audit scope and focus

In doing so, the audit focused primarily on the activities of the Department of Communities and Justice that administers the child protection system in NSW. The audit also included five non-government organisations that the Department of Communities and Justice contracts with to provide out of home care services across the State.

## Audit criteria

We addressed the audit objective by answering the following questions:

1. Are there established governance and accountability arrangements to understand and track performance in safeguarding the rights of Aboriginal children and young people in the child protection system?
2. Are there effective policies, practices, systems, and resources to support and enable staff to safeguard the rights of Aboriginal children and young people in the child protection system?
3. Are there effective monitoring and quality assurance systems to ensure that the outcomes for Aboriginal children and young people in the child protection system are consistent with their legislative rights and their human rights?

## Audit exclusions

The audit did not:

- examine the merits of government policy objectives and legislative Principles
- assess the outcomes of decisions made in relation to the placement of individual Aboriginal children
- examine restoration of Aboriginal children to their families
- Examine targeted earlier intervention programs.

## Audit approach

Our procedures included:

1. Interviewing
  - Senior Executives
  - Caseworkers
  - Policy officers
  - Community stakeholders
2. Examining
  - a) Documents
  - b) Data
3. Conducting a case review.

The audit approach was complemented by quality assurance processes within the Audit Office to ensure compliance with professional standards.



## **Audit methodology**

Our performance audit methodology is designed to satisfy Australian Auditing Standard ASAE 3500 Performance Engagements and other professional standards. The standards require the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with requirements specified in the *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

## **Acknowledgement**

We acknowledge the cooperation, constructive support and participation by the five non-government organisations and the Department of Communities and Justice.

## **Audit cost**

The cost of the audit was approximately \$880,000.

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# Appendix five – Performance auditing

## What are performance audits?

Performance audits assess whether the activities of State or local government entities are being carried out effectively, economically, efficiently and in compliance with relevant laws.

The activities examined by a performance audit may include a government program, all or part of an audited entity, or more than one entity. They can also consider particular issues which affect the whole public sector and/or the whole local government sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake audits is set out in the *Government Sector Audit Act 1983* for state government entities, and in the *Local Government Act 1993* for local government entities. This mandate includes audit of non-government sector entities where these entities have received money or other resources, (whether directly or indirectly) from or on behalf of a government entity for a particular purpose (follow-the-dollar).

## Why do we conduct performance audits?

Performance audits provide independent assurance to the NSW Parliament and the public.

Through their recommendations, performance audits seek to improve the value for money the community receives from government services.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, State and local government entities, other interested stakeholders and Audit Office research.

## How are performance audits selected?

When selecting and scoping topics, we aim to choose topics that reflect the interests of parliament in holding the government to account. Performance audits are selected at the discretion of the Auditor-General based on our own research, suggestions from the public, and consultation with parliamentarians, agency heads and key government stakeholders. Our three-year performance audit program is published on the website and is reviewed annually to ensure it continues to address significant issues of interest to parliament, aligns with government priorities, and reflects contemporary thinking on public sector management. Our program is sufficiently flexible to allow us to respond readily to any emerging issues.

## What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team develops an understanding of the audit topic and responsible entities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the audited entity, program or activities are assessed. Criteria may be based on relevant legislation, internal policies and procedures, industry standards, best practice, government targets, benchmarks or published guidelines.

During the fieldwork phase, audit teams will require access to books, records, or any documentation that are deemed necessary in the conduct of the audit, including confidential information which is either Cabinet information within the meaning of the *Government Information (Public Access) Act 2009*, or information that could be subject to a claim of privilege by the State or a public official in a court of law. Confidential information will not be disclosed, unless authorised by the Auditor-General.

At the completion of fieldwork, the audit team meets with management representatives to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with management representatives to check that facts presented in the draft report are accurate and to seek input in developing practical recommendations on areas of improvement.

A final report is then provided to the accountable authority of the audited entity(ies) who will be invited to formally respond to the report. If the audit includes a follow-the-dollar component, the final report will also be provided to the governing body of the relevant entity. The report presented to the NSW Parliament includes any response from the accountable authority of the audited entity. The relevant Minister and the Treasurer are also provided with a copy of the final report for State Government entities. For local government entities, the Secretary of the Department of Planning and Environment, the Minister for Local Government and other responsible Ministers will also be provided with a copy of the report. In performance audits that involve multiple entities, there may be responses from more than one audited entity or from a nominated coordinating entity.

## **Who checks to see if recommendations have been implemented?**

After the report is presented to the NSW Parliament, it is usual for the entity's Audit and Risk Committee / Audit Risk and Improvement Committee to monitor progress with the implementation of recommendations.

In addition, it is the practice of NSW Parliament's Public Accounts Committee to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report received by the NSW Parliament. These reports are available on the NSW Parliament website.

## **Who audits the auditors?**

Our performance audits are subject to internal and external quality reviews against relevant Australian standards.

The Public Accounts Committee appoints an independent reviewer to report on compliance with auditing practices and standards every four years. The reviewer's report is presented to the NSW Parliament and available on its website.

Periodic peer reviews by other Audit Offices test our activities against relevant standards and better practice.

Each audit is subject to internal review prior to its release.

## **Who pays for performance audits?**

No fee is charged to entities for performance audits. Our performance audit services are funded by the NSW Parliament.

## **Further information and copies of reports**

For further information, including copies of performance audit reports and a list of audits currently in-progress, please see our website [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au) or contact us on 9275 7100.

## OUR VISION

Our insights inform and challenge government to improve outcomes for citizens.

## OUR PURPOSE

To help Parliament hold government accountable for its use of public resources.

## OUR VALUES

Pride in purpose

Curious and open-minded

Valuing people

Contagious integrity

Courage (even when it's uncomfortable)

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