



# KEEPING ABORIGINAL CHILDREN CONNECTED TO CULTURE

Whether the legislative provisions currently in place in SA ensure that Indigenous Children are kept with Indigenous family members and that the Stolen Generation never happens again.

Connecting Foster and Kinship Carers  
Anita Chaplin

## Acknowledgement of Country

*Ngadlu tampinhi, ngadlu Kurna yartangka tikanthi.* We all acknowledge that we are living on Kurna Land.

I would like to acknowledge with respect the Aboriginal and Torres Strait Islander peoples as the traditional custodians of lands, waterways and skies across Australia. I acknowledge that this land always was and always will be Aboriginal land. This report was researched and written on Kurna land, and I thank elders past, present and emerging for their leadership in community and their traditional custodianship. I also thank the First Nations people who gave their time and insights to help inform this report. This report aims to respect the rich diversity of all Aboriginal and Torres Strait Islander communities and cultures. As this paper is focused on South Australia, this paper will generally refer to Aboriginal communities and acknowledges that this means many different and diverse groups. We should all celebrate the unique aspects of each group and support them to cultivate their culture.

This report looks into the past, present and future around the Child Protection system, and looks into the Stolen Generation and how to prevent it from happening again in the future. I acknowledge the trauma of the Stolen Generations and acknowledge Aboriginal and Torres Strait Islander voices in support and guidance as we struggle towards reconciliation. I acknowledge the work that the Aboriginal community do in supporting us in learning about culture, and thank you for your work in caring for the country we live on. I hope that the collation of voices in this report can aid in lifting and listening to Aboriginal communities around the Child Protection system, and that we can work to keep Indigenous children with Indigenous communities, surrounded by their culture so they can thrive.

## Acknowledgements

I would like to thank Jacquie Nevin and Fiona Endacott from CF&KC-SA for their support and direction with my research to ensure that it focuses in on Carer's rights and has their voice represented in this report. I also thank the numerous community organisations, who I have consulted with, or read their reports, to inform this research. Thank you to Shaun Bott from KWY, Aboriginal Foster Carer and Chair of Aboriginal Family Support Services (AFSS) Donna Henry, Georgina Johnson, Lauren Binns and the team at Martinhi, and the members of the DCP Aboriginal Practice Directorate; Rosalie Eames, Annette Groat, Cherylee Cooper and Jillian Bovoro.

Thank you all for giving your time and thoughts on this incredibly important topic. It has been so insightful to hear your perspectives and I hope that this is heard throughout this report. As the Aboriginal and Torres Strait Islander Child Placement Principles are based on being community led and community consultation is at the heart of it, this report aims to be led by these consultations.

**“You have to listen to Aboriginal people’s voices”**

Aboriginal Foster Carer

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## 1. Introduction

*“For many Aboriginal children, being removed from the family home also means loss and disconnection from their local community, from their culture and land. This sense of loss of identity and culture, dispossession and separation from local community is the same as those experienced by the Stolen Generations.”* – Aunt Sue Blacklock, Chair of Winangay Resources and the Australian Centre for Child Protection’s Ambassador for children<sup>1</sup>.

In Australia’s child protection sector, the historical policies relating to the removal of Aboriginal and Torres Strait Islander children created the Stolen Generation, which was an intense loss of culture and intergenerational trauma. Since the late 20th century, many moves have been made to ensure that child protection services are culturally and trauma informed, but the statistics and cases of today demonstrate that this is not the case. Whilst Aboriginal and Torres Strait Islander children and young people only make up a small percentage of the population, they are increasingly overrepresented in out of home care with around a third of the children in care being from First Nation’s communities. This report attempts to look at this incredibly important issue through the lens of foster and kinship carers, mapping what is currently happening, and identifying possible solutions from Aboriginal led spaces whilst being culturally informed.

### Methodology

In writing this report the voices of Australia’s first nation’s people has been emphasised. The report was created by a literature review, reading of cases, and interviewing Aboriginal people who have experienced the child protection system in South Australia. The literature review primarily composed of articles written by Aboriginal organisations and people. As stated by many Aboriginal and Torres Strait Islander scholars, reporting on findings produced by non-Aboriginal and Torres Strait Islander researchers reinforces the oppression of the voices of Aboriginal and Torres Strait Islander people.<sup>2</sup> This report aims to raise the voices of Aboriginal and Torres Strait Islander people and bring to light the struggles faced within the child protection system.

### History of Child Protection policies and the Stolen Generation

Tens of thousands of Indigenous children were forcibly removed from their families and communities by historical policies focusing on exclusion, marginalisation, segregation, and conditional inclusion, leading to the Stolen Generations.<sup>3</sup> Children were not allowed to practice their own language or culture, but instead were forced to speak English and were frequently abused.<sup>4</sup> The Stolen Generations continue to impact Aboriginal and Torres Strait Islander communities as they grieve the loss of their language and culture which was suppressed and torn from them. Many of the parents of the Aboriginal children in care today are children or grandchildren of the Stolen Generations, demonstrating that these past policies have intergenerational impacts.<sup>5</sup>

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<sup>1</sup> Blacklock, S. quoted in Ketchel, M. (2014) ‘Empowering Indigenous communities to prevent child abuse and neglect’, The Conversations. Available at: <https://theconversation.com/empowering-indigenous-communities-to-prevent-child-abuse-and-neglect-32875>. (Accessed 19/8/2021).

<sup>2</sup> Gilroy, J. (2010). History of Aboriginal people with disability in NSW [Series of two parts]: Part 1: How are Aboriginal people with disability positioned and represented in the NSW disability services sector? [Paper in special edition: Aboriginal People with Disability. Gilroy, John (ed)]. Interaction, 24(1), 6-29.

<sup>3</sup> Human Rights and Equal Opportunity Commission. (1997). Bringing them home: National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families. Retrieved from <https://www.humanrights.gov.au>

<sup>4</sup> Reynolds, H. (1996). Dispossession: Black Australians and white invaders. Crows Nest, NSW: Allen & Unwin

<sup>5</sup> Bamblett, M., & Lewis, P. (2006). A vision for Koorie children and families: Embedding rights, embedding culture. Just Policy: A Journal of Australian Social Policy, 41, 42–46

Despite these past policies and attempts to quash Aboriginal and Torres Strait Islander culture, many survivors of the Stolen Generations have returned to country and family to reconnect with their culture. As stated in the article “We Live and Breathe Through Culture”,<sup>6</sup> Indigenous identity and culture could not be erased, even in the face of attempted cultural genocide. In response to the Stolen Generations and struggles with child protection services, Aboriginal community leaders developed the *Aboriginal and Torres Strait Islander Child Placement Principle ‘The Principle’*<sup>7</sup> in the 1980s. The principle upholds the rights of the child’s family and community to have some control and influence over decisions about their children. This prioritises placement with Indigenous family or community members when they enter care. The principle was developed in recognition of the devastating effects of the ongoing policies and practices of separation and removal of Aboriginal and Torres Strait Islander children from their families, communities, and culture.

Looking to the out of home care sector today, there has been significant efforts to increase cultural supports in out of home care, however, the reality for Aboriginal and Torres Strait Islander people, stated by NSW Deputy Children’s guardian Mr Weston is that the removal of children has continued, it is just in another form under child protection.<sup>8</sup> The ongoing removal of children from families into care often with non-Indigenous foster carers amounts to a continuation of the Stolen Generations according to Weston. There is significant concern that the children who are in out of home care now, are being disconnected from their culture and families, taken out of their kinship structures and having their identities challenged.

The child protection system in Australia is informed by the United Nations Convention on the Rights of the Child 1989, and the United Nations Declaration on the Rights of Indigenous Peoples 2007. This includes the rights of the child, their right to culture and family contact and the importance of self-determination for Indigenous peoples in having a say in what impacts their lives. Child protection policies need to reflect these principles of the rights of First Nations children to connect to their culture and reduce the overrepresentation of Aboriginal and Torres Strait Islander children in care.

### Where we are today

As it stands today, Aboriginal children make up a third of children and young people in out of home care in South Australia, despite constituting less than five percent of the total population of children and young people in South Australia.<sup>9</sup> A report from the Guardian for Children and Young People Penny Wright, from June 2020, stated that one in 11 Aboriginal children were in state care in South Australia.<sup>10</sup> This report also showed the proportion increased over 2% from the previous five years. Further, this report demonstrated that less than a third of Aboriginal and Torres Strait Islander

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<sup>6</sup> Krakouer, J., Wise, S., & Connolly, M. (2018) “We Live and Breathe Through Culture”: Conceptualising Cultural Connection for Indigenous Australian Children in Out-of-home Care, *Australian Social Work*, 71:3, 265-276

<sup>7</sup> Rosslyn, A. (2013). Prepared for difference? Exploring child protection practice with Aboriginal and Torres Strait Islander families in rural Australia. Doctor of Philosophy, Griffith University.

<sup>8</sup> Weston, R. quoted in Archibald-Binge, A. (2020) ‘The stolen generations era ended, but not the removal of kids’: new role to protect Indigenous children’. *The Sydney Morning Herald*. Available at: <https://www.smh.com.au/national/nsw/the-stolen-generations-era-ended-but-not-the-removal-of-kids-new-role-to-protect-indigenous-children-20201028-p569db.html>.

<sup>9</sup> Guardian for Children and Young People SA, (2019). Aboriginal children and young people in care and juvenile detention 2017-18. Online. Available at: <https://gcyp.sa.gov.au/2019/05/21/aboriginal-children-and-young-people-in-care-and-juvenile-detention-2017-18/>.

<sup>10</sup> Guardian for Children and Young People SA (2020). Annual Report 2019-2020. Available at: <https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2021/04/GCYP-Annual-Report-2019-20.pdf>.

children were placed with Aboriginal relatives or kin, and that the rate of placement with Aboriginal family and kin has declined overtime.<sup>11</sup>

Tim Ireland, the CEO of AbSec, a leading Aboriginal child protection body in New South Wales states that the policies of the past that led to the Stolen Generation are being played out using a child protection kind of lens.<sup>12</sup> This demonstrates that there is significant concern that if the number of Indigenous children and young people in care continue to rise, and current policies are maintained, similar problems to those surrounding the Stolen Generation are likely to be continued.

### The placement principle

As stated previously, the principle was developed by leaders from Aboriginal communities to respond to the struggles with child protection and mitigate similar issues from the Stolen Generations. In practice, the principle allows community to have input into decisions about where an Aboriginal or Torres Strait Islander child is placed. The principle has been adopted into legislation across Australia, and in SA it is enshrined in the *Children and Young People (Safety) Act 2017*<sup>13</sup> in section 12. These principles are subject to the placement principles and object and principles of the Act.<sup>14</sup> The objects of the principle per s12(2) includes (1) maintaining the connection of Aboriginal and Torres Strait Islander children and young people with their family and culture, (2) enabling communities to participate in the care and protection of their children and young people, (3) reducing the incidence of the removal of Aboriginal and Torres Strait Islander children and young people and (4) acting in partnership with communities and authorities to make decisions about placements under this act<sup>15</sup>.

The principle also sets out a placement hierarchy guideline that if an Aboriginal or Torres Strait Islander child or young person enters care, they should be placed in order of priority with (1) a member of the child or young person's family, (2) a member of their community who has a relationship of responsibility for the child or young person, (3) a member of their community, and (4), a person of Aboriginal or Torres Strait Islander cultural background.<sup>16</sup> The act also states that if a placement in the above hierarchy is unable to be organised or is not in the best interest of the child, the opportunity for continuing contact with their family, community and culture should be given.<sup>17</sup> Importantly, in section 3(c) the Chief Executive of the Court must, where reasonably practicable, consult with and have regard to any submissions of, a recognised Aboriginal or Torres Strait Islander organisation.<sup>18</sup> Additionally, the act states that the safety of the child is paramount and that the implementation of the principle cannot be used to justify the displacement of section 7.<sup>19</sup>

In looking at the Safety Act and the principle itself, its efficacy and whether it is being followed, aspects of the act will be analysed in relation to case studies, testimonies and more.

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<sup>11</sup> Ibid.

<sup>12</sup> Ireland, T. quoted in Fernandes, D. (2018) As more Aboriginal children are removed from families, critics say government risks a second Stolen Generation. *The World*. Available at: <https://theworld.org/stories/2018-10-09/more-aboriginal-children-are-removed-families-critics-say-government-risks-second>.

<sup>13</sup> *Children and Young People (Safety) Act 2017 ('The Act')*.

<sup>14</sup> Ibid, s 11.

<sup>15</sup> Ibid, s 12.

<sup>16</sup> Ibid, s 12(3)(a)(i-iv).

<sup>17</sup> Ibid s 12(3)(b).

<sup>18</sup> Ibid s 12(3)(c).

<sup>19</sup> Ibid s 12(4).

## 2. Analysing the Act

The consensus from a number of interviews conducted in relation to the principle, was that the principle in itself is perfectly fine. The issue is in the implementation; in principle they are excellent to ensure cultural supports in care, in practice they are simply not being followed.

### Placement hierarchy

The principle states that Indigenous children should be placed with Indigenous community, and only be placed with unrelated non-Indigenous carers as a last resort when efforts to find an appropriate placement with an Indigenous caregiver have been unsuccessful.<sup>20</sup> However, the statistics demonstrate that there is a concerning decline in the number of Aboriginal children being placed with Aboriginal carers.<sup>21</sup> Further, there are barriers for Indigenous people to become carers so there are often not enough who align with the department's criteria, and for those that do, they often have many in their care. The reasons behind this are incredibly nuanced and we look at some of the barriers to implementing this part of the principle.

Penny Wright, the South Australian Guardian for Children and Young people in Care notes that the number of Aboriginal children in SA who are fostered by members of their extended family or community has dropped about 10% in the past 10 years.<sup>22</sup> In 2019, 65% of Aboriginal children in care were placed in accordance with the principle, dropping from 74.4% in 2009.<sup>23</sup> This means that fewer Aboriginal children are being placed with people known to them and who share a connection to them and their culture. Wright states that the scale of the decline is linked to the scale of crises of the number of young people needing care, but not the lack of will from Aboriginal people to take on kinship carer roles. Wright states that investment into Aboriginal families that take in children needs to occur with practical things like housing, but also support like ensuring children have access to therapies, services and education support.

Further, during interviews conducted with SA organisations as a part of this report, the lack of family scoping for kinship carers within a child's family was brought up several times. There was mention of scoping being done on only one side of the child's family, the dismissal of certain people for unclear reasons such as the house being too small or minor past offences. The case of *WWZ & Anor v The Department for Child Protection*<sup>24</sup> highlights this.

### WWZ & Anor v DCP Case Study

In this case, the tribunal was tasked with deciding whether the Aboriginal child in question, UPQ, was rightfully placed with his paternal uncle AWO instead of non-Indigenous foster carer WWZ. This is a complex case so only some points will be summarised here. Essentially, when UPQ entered care, his siblings had been placed in Aboriginal kinship placements with family, but UPQ was placed in a non-Indigenous placement. There were no clear reasons from the department why UPQ could not also be placed in the same household, and it was inferred this was dismissed when UPQ entered care as this household had six children already.

The case looks at UPQ two years after entering care and he had formed an attachment to interim non-Indigenous carer WWZ. The tribunal was looking at the short-term harm of the disruption of placement with a non-Indigenous carer, versus long term harm from the loss of cultural connection

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<sup>20</sup> The Act (n 13) s 3(b).

<sup>21</sup> Guardian for Children and Young People SA (n 10).

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> [2020] SACAT 111 (*'WWZ & Anor v DCP'*).

that UPQ would experience. The tribunal decided that it was the right decision to place UPQ with his uncle, but it is concerning that this happened so long after UPQ entered care particularly as his two sisters were placed with family at first. In June 2019 at a case conference to decide UPQ's long term placement, there was two contenders WWZ and AWO. The option with AWO had a "logistical issue regarding the size of their home, and it was identified that this would have to be addressed in order for that to be a suitable placement".<sup>25</sup> This came into the most recent decision, of placing UPQ in AWO's care and ultimately AWO would be able to provide a safe, nurturing, stable and secure environment for UPQ. The tribunal also mention that the placement principles are advanced by UPQ's placement with AWO, as he will be able to grow up with two of his four sisters, and provide cultural connection.

However, the tribunal mentioned that the Department did not provide carers and potential carers with sufficient information so they could contribute to decision-making around UPQ's placement. In fact, WWZ stated "we believe that UPQ should have been placed with [AWO] and [WDN] on 10th October 2018 when UPQs sistered entered their care. We think the system failed UPQ and his siblings."<sup>26</sup>

In analysing this case, if DCP were to have followed the principles and made certain actions when UPQ first entered into care, this case would not have come to light. Particularly, the principle needs to be implemented as early as possible and DCP needs to involve carers and potential carers in decision-making about placements. Further, decisions around the placement principle need to have clear evidence behind them and Aboriginal organisations need to be involved at all stages and consultation needs to occur. Importantly, evidence around decisions need to be provided so all parties are aware of all circumstances, and evidence must be gathered before a decision is made.

#### Potential carers ignored or overlooked in family scoping

Mainstream media often reports on the lack of Aboriginal carers for Aboriginal children,<sup>27</sup> and that there is a shortage. However, this is not the case in many situations. As stated in interviews, potential carers are often overlooked in family scoping. For example, only one side of the family scoped, and there is also a barrier with criminal history that when looked at is often minimal. Further, the type of care that is provided by traditional foster and kinship carers is not always how culture and community works for Aboriginal people. This could look like the whole community raising the child, or younger family members already providing kinship.

Further, the attachment theory is a western principle, and there are various differences in Aboriginal child rearing practices that do not align with the departments views and struggle with compliance. For young Aboriginal children, they grow up with many attachments in their life rather than a primary caregiver.

Cultural insight is crucial when scoping for family. As stated in an interview, there was an example from New South Wales when the department was not able to find a safe family member. However, when an Aboriginal led organisation became involved, they were able to find a safe family member to be a kinship member for the child. Having Aboriginal people involved in scoping allows for more opportunity to identify the best placement for an Aboriginal child or young person in care, as some options may not be explored as the cultural sensitivity is missing when the Department is involved.

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<sup>25</sup> *WWZ & Anor v Dcp* (n 24) [42].

<sup>26</sup> *Ibid* [117].

<sup>27</sup> Dias, A. (2017) 'Aboriginal foster parents needed desperately to provide support for NSW Indigenous foster kids', ABC News.

In the Family is Culture review report, there were many instances reported where Indigenous family members approached the department and were turned away as potential placement options. For example, in one case,<sup>28</sup> several family members approached the department and requested to be assessed to care for the children after the children were removed, including two of the children's aunts, a maternal family member and the children's great aunt. The caseworkers determined that these options were not appropriate but they did not record any reasons for these decisions.

Further, in another case,<sup>29</sup> a newborn child was removed and placed with a non-Aboriginal carer for six months before being moved into a placement with an Aboriginal carer. The child's Aboriginal grandmother was not assessed due to her children being incarcerated, despite her being an authorised carer for another grandchild at the time of the decision. As stated in the report, failure to assess the child's grandmother deprived the child of the opportunity of being raised by family<sup>30</sup>.

From these examples, it demonstrates there is the community around these children, but they are being turned away as potential options as carers for the children. Whether its differences in child rearing practices, a criminal history, or no reasons given at all, Aboriginal kinship carers are not being involved in deciding supports for Aboriginal children.

#### Lack of culturally appropriate carer assessment

The processes for assessing Aboriginal carers are generally not culturally informed, but there are new tools available which are culturally appropriate. A study by the Australian Institute of Family Studies found that standard carer assessment procedures are problematic as they do not account for cultural differences in child rearing practices and do not effectively determine a carer's suitability to care for an Aboriginal child.<sup>31</sup> The Winangay Resources Inc highlighted that existing assessment tools highlight the fact the carer is not already known to the child. In response to this, the Winangay Kinship Carer Assessment Tool was created which can be used for Aboriginal and non-Aboriginal people who have been identified as prospective carers for an Aboriginal child. The tool was originally developed with an Aboriginal Reference Group and in consultation with Aboriginal Elders, community members, carers, OOHC providers, FACS workers, and key Aboriginal organisations.<sup>32</sup> This tool has been tried and tested and both Aboriginal and non-Aboriginal practitioners found the tool to be culturally appropriate, collaborative and innovative. The tool should be used widely to allow for culturally informed assessment of potential carers.

#### Safety of the child is paramount

The safety of the child or young person always comes paramount to any placement decision, as per section 7 of the Act<sup>33</sup>. However, it appears that sometimes this can be used to absolve the Department of any responsibility in relation to the suitability of placements.

A case study that demonstrates this is a recent Ombudsman complaint around the decision to remove an Aboriginal child from the kinship care of his Aboriginal grandmother. In this scenario, the Department did not consult with a recognised Aboriginal organisation because securing the child's safety was a priority for the Department. However, when the child was removed from the care of his grandmother, he was placed into residential care which compromised his safety. During his time in residential care, the Department was advised of concerns and failed to do anything which resulted in

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<sup>28</sup> Davis, M. (2019) Family is Culture, Review Report. Sydney. Case 50.

<sup>29</sup> Ibid, Case 209

<sup>30</sup> Ibid, see generally.

<sup>31</sup> Legislative Council General Purpose Standing Committee No 2 Child Protection (2017) 96,

<sup>32</sup> Winangay, Final Report to FaHCSIA on the Aboriginal kinship assessment tools project (December 2011) 2

<sup>33</sup> The Act (n 13) s 7.

the child absconding from the residential care unit and befriending an older man with whom he consumed alcohol and took drugs with. This is concerning as safety was the main concern for this child to be placed into residential care, which ignored the Aboriginal Placement Principles, and then ultimately placed him in a situation which further compromised his safety. The department did note that once the child was placed in residential care a consultation request was forwarded to Aboriginal Family Support Services (AFSS), albeit after placement decisions had been made. The department also consulted with a Principal Aboriginal Consultant as an immediate measure prior to consulting with AFSS. However, this was after the placement decision had been made and the child's safety was put at risk. The Ombudsman made note that within section 12(3)(c) of the Act, the department must consult with a recognised Aboriginal and Torres Strait Islander organisation *where reasonably practicable*. This is a concern, as the Department noted it was due to the utmost safety of the child that consultation did not occur until later, and from the circumstances that played out, the safety of the child was at risk due to being in residential care. This is also against the principle, as residential care is not mentioned within the placement hierarchy and the child was removed from kinship care with his grandmother.

This Ombudsman complaint outlines that whilst safety is paramount, it appears that safety is used to justify the displacement of the principle. In this case it resulted in the significant harm to the child in question, and also further outlines the importance of Aboriginal people being heard in placement decisions for Aboriginal children, as this did not happen in this case until too late.

Differences in cultural understanding is also a barrier to the implementation of the principle of the hierarchy, as there are differences in beliefs among Indigenous and non-Indigenous service providers.<sup>34</sup> It was found that Indigenous agencies believed that family, community and cultural connection was fundamental for Indigenous children in care, whereas non-Indigenous agencies view cultural connection as just one of many needs. As stated in an interview conducted for this report, Aboriginal kinship carers have obligations to keep Aboriginal children connected, conduct sorry business, ceremonial, birthday and traditional practices, as well as connection with siblings, country, family and culture, alongside health needs. For Aboriginal people, being strong in culture is crucial as it gives them freedom, independence, and the strength to face the world. This difference in understanding may result in the principle being given less priority in non-Indigenous agencies during placement decisions.

### Consulting with an Aboriginal organisation

The Act states that prior to making a decision about the placement of a child, an Aboriginal organisation must be consulted.<sup>35</sup> Community led decision making is extremely important in upholding and adhering to these principles, as where there is greater involvement in decision making, there is less adversarial relationships between families and services. Strategies involve collaboration with Aboriginal organisations and individuals in relation to the principle, focusing on family and community responsibility for raising children and mobilising community and family resources for caring for children.

In the case discussed previously of WWZ and Anor v DCP, the Principal Aboriginal Consultant was not consulted in relation to all decision making, particularly early decision making. The tribunal stated that the decision not to call the PAC was unsatisfactory. Further, when consultation is taken place,

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<sup>34</sup> Baidawi, S., Mendes, P., & Saunders, B. J. (2017). The complexities of cultural support planning for Indigenous children in and leaving out-of-home care: The views of service providers in Victoria, Australia. *Child & Family Social Work*, 22(2), 731–740. doi:10.1111/cfs.12289; Mendes, P., Saunders, B., & Baidawi, S. (2016).

<sup>35</sup> The Act (n 13) s 12(3)(c).

this is often a 'tick box' rather than something meaningful. As stated in an interview, in South Australia, AFSS is consulted before any child removal, and they give recommendations. However, these recommendations do not always translate to action.

Further, Aboriginal elder and Ngadjuri woman Pat Waria-Read, was placed into care when she was young and knows first-hand what it feels like to be separated from family. She states that far, far more Aboriginal staff need to be in the system, available both to support the children who are in the system, and also to help support the non-Aboriginal staff to understand. She stated that there needs to be a lot of work done in skilling up Aboriginal people and encouraging so they feel safe to work in the department.<sup>36</sup> As stated in an interview, if Aboriginal families feel safe to come in and have the ability to raise their hand for early intervention, this will prevent many child removals in the long term. Organisations and workers involved in child protection need to work to ensure places are safe so Aboriginal people can ask for support when they need it, rather than having to step in during crisis.

### Limitations of the Act

Whilst the principle is enshrined in the legislation, this does not encompass the wholistic way that Aboriginal children experience cultural connection. The principle is only one way of noting Indigenous children and young peoples' connection to culture, as cultural connection for Indigenous Australians is a feeling, a sense of knowing who you are and where you come from.<sup>37</sup> The principle does not reflect the children's feeling of cultural connection, as it is interrelated with how people think about their needs and relationships and ultimately their wellbeing. Australia is a land of many mobs, clans, tribes and nations and what unites each from diverse mobs is how they view family and kin. Connection to culture must be strengthened holistically by ensuring ongoing connection to family, land and community.<sup>38</sup>

Further, the act does not state anything around supports to prevent a child from entering care, with no outline around early intervention and responding to child abuse and neglect, and engaging families in service design and delivery. If this was to be enshrined in the legislation, it would represent a significant change, from a 'power over' to 'power sharing' relationship<sup>39</sup>. This is also a clear focus on the professional development of Aboriginal and non-Aboriginal workers to undertake this work in a culturally safe and evidence-based way. Aboriginal communities are very capable of identifying solutions to supporting their children, but they must be given appropriate support and resources to do so and operate in a system that focuses on preventing harm.<sup>40</sup>

Connecting to culture is an aspect of life that supports Aboriginal children's wellbeing, and it cannot be tokenistic. As mention in an interview, culture and connection needs to have substance, connecting to community rather than learning generic dot painting. Aboriginal children should be taught to look to their community and learn their individual art and storylines as there are many

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<sup>36</sup> Australian Institute of Family Studies, 'Enhancing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principles', (Web Page), <<https://aifs.gov.au/cfca/publications/enhancing-implementation-aboriginal-and-torres-strait-islander-child>>.

<sup>37</sup> Bamblett, M., Frederico, M., Harrison, J., Jackson, A., & Lewis, P. (2012). "Not one size fits all" Understanding the social and emotional wellbeing of Aboriginal children. Bundoora: La Trobe University.

<sup>38</sup> Mudrooroo. (1995). *Us mob: History, culture, struggle: An introduction to Indigenous Australia*. Sydney, NSW: Angus & Robertson

<sup>39</sup> Ketchel, M (n 1)

<sup>40</sup> Ibid.

various First Nations communities which are all unique. Aboriginal children should be supported individually to learn their personal connection as it is different for all.

Commissioner for Aboriginal Children and Young People (SA) April Lawrie states that for the principles to be meaningfully and effectively applied, legislative direction, policy and proper investment are required. She stated that the Nyland Report concluded that under-investment over many years has hindered service provision in terms of early intervention, and that there needs to be a shift in focus from the removal of children to early intervention measures.<sup>41</sup>

Whilst the principle in the legislation is excellent, it is not being followed at crucial areas within many cases. Aboriginal people and communities have the answers to supporting their children to be connected to culture and it is imperative that all people involved in the life of an Aboriginal child or young person in care are led by the voices of the Aboriginal community.

“The answers are in community – it’s about making space and getting out of the way”

Worker from South Australian Aboriginal Community Controlled Organisation

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<sup>41</sup> Lawrie, A. (2020) “South Australia’s Commissioner for Aboriginal Children and Young People Report 2020: Family and Culture is Everything” Online, Available at: <https://cacyp.com.au/wp-content/uploads/2021/09/CACYP04-2020-Report-opt.pdf>.

### 3. What this means for Carers

For kinship and foster carers supporting Aboriginal children in care, there are a number of challenges and barriers that they face. Indigenous families have considerable resilience, skill and commitment to support the connection of Aboriginal children with their community and culture. Limitations such as limited cultural awareness, assessment and support of kinship families are of concern and children may remain at risk until all assessments are culturally aware and strong support is provided.<sup>42</sup>

In the study 'It's a Family Responsibility',<sup>43</sup> they support the view that properly assessed and supported kinship carers can assure the wellbeing of Aboriginal children and support their connection to culture. The paper also says that issues of safety need to be addressed and evidences some difficulties in cultural support planning; in particular indications that some children in non-Indigenous kinship care in Victoria may be growing up without an active connection to their Indigenous family and culture.<sup>44</sup> The consultations in this report highlighted difficulties in assessment and support which are concerning as many Indigenous kinship families are vulnerable. In one study, it was found that generally, kinship carers are older, poorer, in poorer health and have lower levels of education than foster carers and this disadvantage applies greatly to Indigenous carers.<sup>45</sup> Further, as stated in an interview, offending histories are common which prevents certain family members from being able to obtain working with children checks so they are unable to visit the child or young person in care. This presents a struggle due to the overrepresentation of Aboriginal people in the justice system for often insignificant offences which then prevent them from providing crucial support to a young person, or even being allowed to be involved in their lives.

Collaboration with Indigenous services is crucial to providing supports for Indigenous kinship placements, as interventions need to be built on an understanding of the impact of the Stolen Generations. Trust of workers is often lacking, slow to build and can be easily destroyed, and more focus needs to be placed on building these relationships. However, Indigenous services need to be well resourced as they have huge demands on their time.<sup>46</sup>

The literature demonstrates that the child protection system is under pressure to recruit adequate numbers of qualified carers into the system. Cost of living pressures, changes in lifestyle, and relationships between carers and governments have contributed to placement instability, and agencies are struggling to retain existing carers. Carers of Aboriginal and Torres Strait Islander children and young people have constantly and consistently reported that they are in urgent need of additional support to fulfil their caring duties. These supports include financial assistance, respite and childcare, and better engagement with government child protection agency staff. Inadequate levels of support are contributing to carer burnout and placement instability.<sup>47</sup> Continuous support is required and the department needs to work with Aboriginal kinship carers so that they can continue providing this cultural support to young Aboriginal people.

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<sup>42</sup> Kiraly, M., James, J., and Humphreys, C. (2015). 'It's a Family Responsibility': Family and Cultural Connection for Aboriginal Children in Kinship Care. *Children Australia*, 40, pp 23-32

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Boetto, H. (2010). Kinship care: A review of issues. *Family Matters*, 85, 60–67.

<sup>46</sup> Secretariat of National Aboriginal and Islander Child Care (SNAICC). (2004). *Indigenous Parenting Project*. Melbourne: SNAICC.

<sup>47</sup> Kalinin, D, Gilroy, J, Pinckham, S (2018), *The needs of carers of Aboriginal and Torres Strait Islander children and young people in foster care in Australia: A systematic literature review*, July 2018. Macquarie University and The University of Sydney, Sydney: Australia

### Access to cultural awareness training

Cultural awareness training for carers and all workers is crucial so that everyone can understand the importance for a child to connect to their culture. Cultural support plans support children to connect to their networks and education programs, and for carers to access carer support groups and training in the cultural needs of Aboriginal and Torres Strait Islander children. Per the NSW Ombudsman, these plans have enabled children to be socialised into Aboriginal and Torres Strait Islander culture, building a strong cultural identity and connection across their lifespan whilst strengthening and stabilising placements.<sup>48</sup> Cultural support plans also enhance carers' ability, confidence, and understanding to foster and raise Aboriginal and Torres Strait Islander children.<sup>49</sup> However, the implementation of cultural support plans was generally neglected by government agencies and many formal cultural competence programs had not been adapted to the cultural needs of Aboriginal and Torres Strait Islander people.<sup>50</sup> Carers who have an understanding of culture can support an Aboriginal or Torres Strait Islander to connect to culture, build resilience,<sup>51</sup> are aware of their own prejudices can support the child to have a positive future.

The differences in child rearing practices and general differences in understanding and not knowing the importance of culture for Aboriginal children from non-indigenous carers results in a loss of culture for Aboriginal young people in care. Support for carers to maintain the young persons connection to culture, and growing awareness in the importance of this, is needed to ensure that Aboriginal children in care grow up surrounded by and strong in their culture.

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<sup>48</sup> NSW Ombudsman. (2008). Supporting the carers of Aboriginal Children. A review conducted under section 11 (1) (c) of the Community Services (Complaints, Reviews and Monitoring) Act 1993. Sydney: NSW Ombudsman. Retrieved from [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).

<sup>49</sup> Higgins, D., Bromfield, L., Higgins, J., & Richardson, N. (2007). Supporting carers (Paper 5). Melbourne, Vic.: National Child Protection Clearinghouse, Australian Institute of Family Studies. Retrieved from <https://aifs.gov.au/cfca/publications/supporting-carers>

<sup>50</sup> Kalinin., D et.al (n 46).

<sup>51</sup> Secretariat of National Aboriginal and Islander Child Care (SNAICC). (2008). Foster their Culture: Caring for Aboriginal and Torres Strait Islander children in out-of-home care. Melbourne: SNAICC.

## 4. Where to from here?

Whilst the principles are enshrined in legislation, it is clear there are many barriers to implementation. For carers, they must be properly supported to care for Aboriginal children and young people, including financially and through the provision of supportive services. Further, non-Aboriginal carers must also be supported through the provision of cultural training. A number of recommendations are suggested to support implementation of the principles to allow children to remain connected to culture:

1. Policy and practice revised to focus on cultural connection and building, and preserving relationships with family
2. Cultural competency training for all workers placing Indigenous children in care, training and recruitment of culturally competent carers; increased funding to improve consultation and collaboration between non-Indigenous agencies and Aboriginal Community Controlled Organisations
3. Provide agencies with resources to recruit and retain Aboriginal carers, and ensure that family scoping for kinship carers is researched effectively
4. Provide resources and services to agencies to assist families to address concerns that lead to the use of out of-home care services.
5. Provide equitable funding opportunities for kinship carers. Financial support should be determined by the needs of the child and the carer, not the type of carer.
6. Cultural connection must be viewed as a fundamental need for Indigenous children in care, and it is not something that is adequately measured through exiting performance targets.
7. Best practice with Indigenous children in care needs to ensure that workers and carers are culturally competent and that the fundamental importance of culture is better understood by workers placing children in care
8. Adequate training for carers and positive perception of carers towards their role in housing Aboriginal and Torres Strait Islander children will enhance the stability and quality of out of home care in the child's best interests
9. A solid team of cultural consultants working on supporting connection to culture such as cultural camps that are consistent in a child's life.
10. Awareness on the rights of carers to access support to allow for a continued, supported placement for a child.
11. Training for carers on the importance of culture, and trauma informed ways of working to support children's needs.
12. Support for carers of Aboriginal children to connect with each other to share learnings.
13. Recognising Aboriginal child rearing practices within the child protection system.
14. Workers should be asking lots of questions, being curious and creative with responses rather than following what has already been done in the past.
15. Utilise the Winangay resources to ensure that assessment of potential carers is culturally safe
16. Adhere to an implement the Aboriginal and Torres Strait Islander Child Placement Principles as early as possible and include community in these decisions, listen to their recommendations and consult with Aboriginal Community Controlled Organisations.

## 5. Conclusion

With the number of children in care rising there are serious concerns we are facing a second Stolen Generation. We know from history that culture is critical to healthy development and wellbeing for indigenous children, and this is at risk when they enter out of home care. The principle, created by Aboriginal community leaders, in essence upholds the importance of connection to culture for Aboriginal children in care. However, in practice this is simply not the case as there are barriers to implement, including issues in scoping kinship carers, differences in understanding of importance of culture, and many more. If we improve the implementation of the principle by listening to community and being led by Aboriginal voices, connection to culture in out of home care will help create a more stable, culturally appropriate and supportive placement for Indigenous children in care. By supporting Aboriginal children to connect to culture, and supporting kinship and foster carers to recognise and nurture culture in Aboriginal children, Indigenous children in care will grow strong in their culture.

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