YOOROOK JUSTICE COMMISSION

Submission on Systemic Injustice in the Victorian Child Protection System

by
The Supporting Aboriginal and Torres Strait Islander Families to Stay Together from the Start (SAFeST Start) Coalition

5 December 2022

Authored by:
Dr Jacynta Krakouer, Professor Catherine Chamberlain, Dr Tatiana Corrales and Associate Professor Melissa O'Donnell for the SAFeST Start Coalition

With research assistance provided by Melissa Savaglio from the Monash University Health and Social Care Unit

We – Dr Jacynta Krakouer, Professor Catherine Chamberlain, Dr Tatiana Corrales and Associate Professor Melissa O'Donnell – provide herewith a summary of the issues that we would be able to address were we required to give evidence. We have also attached a copy of an article led by Professor Catherine Chamberlain that we published in a peer-reviewed academic journal, *The Australian Journal of Social Issues*, in January 2022.[1]

First, we declare that we – the SAFeST Start Coalition – are a coalition of Aboriginal and/or Torres Strait Islander and non-Indigenous researchers, health professionals and community members, which has been formed in response to emergent concerns about child protection service practices and policies in the perinatal period, during National Health and Medical Research Council (NHMRC) funded research to improve support for Aboriginal and Torres Strait Islander parents experiencing complex trauma – the *Healing the Past by Nurturing the Future* project. This group operates under the advocacy umbrella of the SNAICC Family Matters Campaign and has subsequently received some funding from the Medical Research Future Fund as part of the *Replanting the Birthing Trees* project.

Within this submission, we bring together a perspective that draws on contemporary research and frontline practice that comes into contact with child protection in Victoria during the perinatal period. This submission outlines our responses to key issues being considered by the Yoorrook Justice Commission, including:

- The connection between colonisation and contemporary systemic injustice experienced by Aboriginal and Torres Strait Islander in the child protection system.
- Rates of Aboriginal and/or Torres Strait Islander infant removal and placement in out-of-home care in Victoria, specifically relating to infants (aged under 1).
- Case studies which demonstrate systemic injustice during the perinatal period within the child protection system.
- Examples of good practice that should be adopted or expanded to address systemic injustice. And,
- Identification of critical recommendations which have not been accepted or properly implemented.

We position ourselves here for the purpose of providing expert evidence to the Yoorrook Justice Commission.

Dr Jacynta Krakouer is a Mineng Noongar woman and Postdoctoral Research Fellow in the Health and Social Care Unit, School of Public Health and Preventive Medicine, Monash University. She previously worked as an Associate Lecturer in the Department of Social Work at The University of Melbourne. Jacynta grew up in Naarm and continues to live and work in Naarm. She has a Doctor of Philosophy from the Department of Social Work at The University of Melbourne, conferred on 31 October 2022. Her thesis focused on the issue of cultural connection for First Nations children and young people in out-of-home care in Victoria. Her research spans child protection and out-of-home care practice, policy and systems, predominantly in relation to Aboriginal and Torres Strait Islander peoples, with a recent focus

---

[1] Chamberlain, C., Gray, P., Bennet, D., Elliott, A., Jackomos, M., Krakouer, J., ... Langton, M. (2022). Supporting Aboriginal and Torres Strait Islander Families to Stay Together from the Start (SAFeST Start): Urgent call to action to address crisis in infant removals. Australian Journal of Social Issues, 57, 252– 273. Available from: https://doi.org/10.1002/ajs4.200

on supports made available to pregnant women at risk of child protection involvement during pregnancy. Jacynta is a qualified social worker who has previously practiced as an early intervention/family support caseworker and foster care caseworker at the Victorian Aboriginal Child Care Agency. She also worked as residential care worker for OnCall throughout different agencies in Naarm, and had recent involvement with the out-of-home care system as a respite carer for the Department of Families, Fairness and Housing (DFFH) (although was registered under the banner of a 'kinship carer' by the DFFH, despite not being kin to the Aboriginal young person for whom respite care was provided). Jacynta is a member of the Aboriginal and Torres Strait Islander Leadership Group for the SAFeST Start Coalition, and leads this stream of work as part of the Replanting the Birthing Trees project. She is also a Director of the Board at First People's Health and Wellbeing, an Aboriginal Community-Controlled Health Organisation with clinics based in Thomastown and Frankston.

Professor Catherine Chamberlain is a Palawa Trawlwoolway woman (Tasmania), National Health and Medical Research Council (NHMRC) Career Development Fellow and Head of the Indigenous Health Equity Unit in the Melbourne School of Population and Global Health at The University of Melbourne. A Registered Midwife and Public Health researcher, her research focus is on perinatal opportunities to improve health equity. She currently leads two large multi-disciplinary projects: (1) Healing the Past by Nurturing the Future – involving co-design, development, implementation and evaluation of perinatal awareness, recognition, assessment and support strategies for Aboriginal and Torres Strait Islander parents experiencing complex trauma; and (2) Replanting the Birthing Trees, which aims to transform cycles of intergenerational trauma to intergenerational cycles of nurturing and recovery. Professor Chamberlain is Editor-In-Chief of the inaugural First Nations Health and Wellbeing – The Lowitja Journal; and sit on numerous advisory committees, including Department of Health/SNAICC Connected Beginnings and Thyrve, NHMRC Principal Committee Indigenous Caucus and Women in Science, and the Scientific committee for the Victorian Council on Obstetric and Paediatric Morbidity and Mortality. Professor Catherine Chamberlain lives and works in Naarm on Wurundjeri Country.

Dr Tatiana Corrales is a non-Indigenous, settler woman of Portuguese and Angolan heritage, and Research Fellow in the Health and Social Care Unit at Monash University. With an educational background in psychology and criminology, Tatiana has a PhD in Forensic Psychology and previously worked as an academic in the Criminology program at Deakin University, and in Department of Social Work at The University of Melbourne. Tatiana has extensive experience in the areas of criminal justice and child and family welfare accumulated over close to 10 years working as a researcher in academic and non-academic settings in Victoria. Previously the Principal Researcher at Anglicare Victoria, a large, Victorian-based community child and family welfare organisation, she led several projects with vulnerable populations, including young people leaving the out-of-home care system. She has also undertaken research across Victorian prisons, with a focus on violent and sexual offender rehabilitation programs. She is research active in the areas of child protection, child and family welfare, and the criminal justice system. Tatiana's current research is centred on the health and social care needs of women who are pregnant or give birth in prison, and the factors that influence maternal and professional judgements about capacity to change among women at the intersection of criminal justice and child protection. Tatiana lives and works in Naarm on Bunurong and Wadawurrung Country.

Associate Professor Melissa O'Donnell is a non-Indigenous, settler woman of Italian and Irish heritage. She is a researcher and Deputy Director at the Australian Centre for Child Protection, the University of South Australia. Melissa has a Masters Degree in Psychology, a PhD in Paediatrics and Child Health, and has contributed to child protection research over the last 15 years. Her research has provided knowledge on the child, family and community factors associated with child protection involvement, the outcomes for children in care, and improved understanding of points of early intervention and targeted support. A recipient of an Australian Research Council (ARC) Discovery research grant specifically relating to unborn reporting and infant removals by child protection, Melissa is recognised internationally as an expert in this field, having worked on this multidisciplinary research project relating to unborn reporting and infant removals over the past several years. Melissa has successfully collaborated with government agencies to inform policy and practice to improve outcomes for children through prevention and early intervention. Her work has contributed to national and state policy and practice including the National Child Protection Framework and the development of the first Youth Health Policy for Western Australia. Melissa lives and works in Boorloo (Perth) on Whadjuk Nyungar/Noongar boodja (Country) in Western Australia.

Background

Around the time of British invasion, there is considerable evidence that Aboriginal and Torres Strait Islander children were healthier than children in Europe at the time. This state of wellbeing did not occur by accident. Rather, understandings of wellbeing centred on connectedness and relational development was fostered through cultural practices and systems from before birth and continued until after death. However, violence associated with invasion and continuing colonisation has left a legacy of intergenerational trauma with concurrent oppression, suppression and deliberate destruction of Aboriginal and Torres Strait Islander family and community life, governance structures, knowledge systems and practices that have underpinned physical, social and emotional wellbeing of children and families for millennia.

Our concerns focus on *how* the safety and nurturing of children is best achieved, and the harm and barriers created to achieving these goals[2] from a Child Protection System that is rooted in a legacy of colonialism, capitalism, racism, ableism and classism, and thus, continues to operate on a logic that does not appear to share Aboriginal and Torres Strait Islander peoples' values with how best to ensure that Aboriginal and Torres Strait Islander children grow up healthy, happy, safe and connected to their families, communities, Countries and cultures in accordance with notions of Aboriginal relationality (see Aunty/Dr Mary Graham's work on Aboriginal relationality for further information about this concept).[3]

---

[2] Chamberlain, C., Gray, P., Herrman, H., Mensah, F., Andrews, S., Krakouer, J. et al. (2022). Community views on 'Can perinatal services safely identify Aboriginal and Torres Strait Islander parents experiencing complex trauma?'. *Child Abuse Review*, e2760. https://doi.org/10.1002/car.2760

[3] Graham, M. (2014). Aboriginal notions of relationality and positionalism: A reply to Weber. *Global Discourse*, *4*(1), 17–22. https://doi.org/10.1080/23269995.2014.895931

Connection between colonisation and contemporary systemic injustice

It is well-established that Aboriginal and Torres Strait Islander babies, children and young people are overrepresented in Australian child protection and out-of-home care (OOHC) systems, and that this overrepresentation has been growing across all Australian jurisdictions over, at least, the past two decades, including Victoria.[4] Less well-established however, is the connection between past State intervention into Aboriginal and Torres Strait Islander family life and current statutory child protection involvement in the Australian context. International evidence from Aotearoa New Zealand, another settler-colonial state with some shared features of colonisation may provide insight into this issue.

Following the infamous Hawkes Bay case[5] in which a Māori baby was unjustly the subject of an attempted child protection 'uplift' (removal), the Waitangi Tribunal established an Urgent Oranga Tamariki Inquiry (Aotearoa New Zealand's statutory child protection authority) explaining and responding to causes of Māori disparities in the child protection system. Keddell and Cleaver[6] provided extensive evidence to the Waitangi Tribunal in this matter, explaining causes of Māori overrepresentation in Aotearoa New Zealand's child protection system:

> *"Both national and international research frames disparities experienced by Indigenous, and in some countries, particular ethnic minorities, as related to the 'risk-bias' or 'need-bias' debate. This framing asks the question: are disparities in child protection system contact caused by heighted needs amongst some populations, or biases in the systems that responded to them? …*
>
> *In most countries, including ours [Aotearoa New Zealand], the answer is essentially both, and to state is it one and not the other tends to reduce the scope of responses and leads to finger pointing and disavowals of responsibility. As Detlaff notes in the US context: 'Despite the body of evidence that exists, those who contend that 'disproportionate need' is the primary contributing factor to disproportionality have*

[4] 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. https://doi.org/10.1080/0312407X.2018.1454485; Davis, M. (2019). *Family is culture: Independent review into Aboriginal and Torres Strait Islander children and young people in out-of-home care in New South Wales*. Available at: https://www.familyisculture.nsw.gov.au/; Tilbury, C. (2009). The over-representation of Indigenous children in the Australian child welfare system. *International Journal of Social Welfare, 18*, 57–64. https://doi.org/10.1111/j.1468-2397.2008.00577.x; Valentine, B., & Gray, M. (2006). Keeping them home: Aboriginal out-of-home care in Australia. *Families in Society: The Journal of Contemporary Social Services*, *87*(4), 537–545. http://doi.org/10.1606/1044-3894.3569

[5] Keddell, E., Fitzmaurice, L., Cleaver, K., & Exeter, D. (2022). A fight for legitimacy: reflections on child protection reform, the reduction of baby removals, and child protection decision-making in Aotearoa New Zealand. *Kōtuitui: New Zealand Journal of Social Sciences Online*, *17*(3), 378-404. https://doi.org/10.1080/1177083X.2021.2012490; Oranga Tamariki – Ministry for Children. (2019). *Practice Review: Professional Practice Group – Practice Review into the Hastings Case.* Available from: https://www.orangatamariki.govt.nz/about-us/news/hawkes-bay-practice-review/

[6] Keddell, E., & Cleaver, K. (2020). *In the Waitangi Tribunal Wai2915 in the matter of The Treaty of Waitangi Act 1975 and in the matter of The Urgent Oranga Tamariki Inquiry – Joint Brief of Evidence of Emily Keddell and Kerri Cleaver, dated 7 October 2020.* Available at: https://ourarchive.otago.ac.nz/bitstream/handle/10523/10603/SKM_C250i20100711080-1.pdf?sequence=1

largely discounted the role of racism or racial bias in child welfare systems and have emphasized the role of poverty and related risks… These arguments that frame 'disproportionate need' as the predominant contributing factor have led many in child welfare systems to believe that the causes of disproportionately occur largely outside their systems, and as a result, racial disproportionately is to be expected and no action is needed to address it'.

Instead, a both/and approach to disparities is needed in order to have a reasoned strategy to respond to both disproportionate need within some Maori whanau [families] as well as address biases within the systems that respond. Both need and bias, as well as sources of disparities, can be related to patterns of racism, colonisation, and class inequity through history." [7]

In the Australian context, the resonances between historical and contemporary OOHC practices have been highlighted in Davis' independent inquiry into child protection and OOHC systems in New South Wales (NSW), where connections between colonisation and contemporary systemic injustice were drawn.[8] Jacynta Krakouer's recent PhD thesis also extensively outlined the connection between colonisation and continuing child removals of Aboriginal and Torres Strait Islander peoples, with evidence also drawn on specifically in relation to the Victorian context.[9] Extracts from this thesis are repeated here to demonstrate this connection in the Australian and Victorian contexts:

"Aboriginal and Torres Strait Islander children and young people are grossly overrepresented in OOHC (AIHW, 2021a; Bamblett & Lewis, 2007; Cunneen & Libesman, 2000; Hunter et al., 2020; Lewis et al., 2019; Tilbury, 2009; Valentine & Gray, 2006). As of 30 June 2020, Aboriginal and Torres Strait Islander children and young people represented 41% of the OOHC population despite comprising only 8% of the general child population in Australia (AIHW, 2021a; ABS, 2016), sparking growing concerns of a second Stolen Generation. However, First Nations overrepresentation in child protection and OOHC systems is an enduring feature of Australia's history." [10]

Krakouer argues that massacres, frontier violence, segregation and Stolen Generations demonstrate the continuity of intervention into First Nations family life from the past to the present, where First Nations family life has been constructed as a problem to be fixed:

"… Frontier massacre and violence, policies of protectionism, and the Stolen Generations … [evidenced within] Australian government policy and practice, including that within the colonies of New South Wales, Tasmania (TAS), South Australia (SA), Victoria (VIC), Queensland (QLD) and Western Australia prior to 1901, resulted in First Nations childhoods, family life and cultural practices being continually disrupted and viewed as problematic throughout colonisation.

---

[7] Ibid, pp. 7-8

[8] Davis, M. (2019). *Family is culture: Independent review into Aboriginal and Torres Strait Islander children and young people in out-of-home care in New South Wales*. Available at: https://www.familyisculture.nsw.gov.au/

[9] Krakouer, J. (2022). *Journeys of connecting: Understanding cultural connection for First Nations children and young people in out-of-home care in Victoria, Australia* [Unpublished Doctoral thesis, The University of Melbourne]. Minerva Access. http://hdl.handle.net/11343/313798

[10] Ibid, p. 40

Following nearly two centuries of massacre, genocide and forced assimilation as a result of colonisation, sustained change from the 1970s occurred for First Nations peoples in Australia (Broome, 2019; Reynolds, 1996). This change included ground-breaking race-based legislation, policies of self-determination, land rights, and other action that has enabled First Nations voices to be heard by governments (Broome, 2019).

… In First Nations child welfare contexts, significant change also occurred from the early 1970s onwards. This included the establishment of ACCOs that specialise in First Nations child welfare; increasing shifts in funding, clientele and power from governments to ACCOs; major reviews into Aboriginal children in child protection; and the establishment and incorporation of the Aboriginal Child Placement Principle (ACPP) into state and territory legislation or policy (M. Davis, 2019; Dyer, 1980; Libesman, 2014; Lock, 1997; Tilbury, 2013). However, in the midst of this change, there were also unsettling constants: systemic and societal racism, entrenched poverty, and the continued overrepresentation of Aboriginal and Torres Strait Islander children and young people in contemporary child protection and OOHC systems.

The construction of First Nations childhoods, family life and cultures as problematic is an enduring constant in the Australian settler-colonial state (Dunstan et al., 2020). … this problematisation of First Nations childhoods, family life and cultures operationalises itself in First Nations child protection contexts through disproportionate removals of First Nations children from their families." [11]

Krakouer argues that:

"While socioeconomic disadvantage stemming from invasion, and the genocidal policies that accompanied it, is a reality for many First Nations families, … the problem to be solved is not First Nations children and families. Instead, the continual desire for a white Australian future—built on illegitimate claims to sovereignty—has resulted in state and nationhood anxieties that play out by punishing First Nations families that do not conform with white Australian standards. …the problem is the sustained desire for a white Australian future. It is this desire that results in First Nations childhoods, family life and cultures being continually disrupted and viewed as problematic in the modern Australian settler-colonial state." [12]

Krakouer demonstrates the continuity of child protection intervention experienced by First Nations families, including in Victoria, following the 'end' of the Stolen Generations:

"While the records of actual numbers of Aboriginal and Torres Strait Islander children residing in OOHC were limited, reports from various jurisdictions highlighted First Nations overrepresentation in child protection and OOHC systems throughout the 1970s. For example, in QLD, O'Connor (1993) reported that 'from the early 1970s, there was a recognition from the lowest levels in the Department of Children's Services . . .

---

[11] Ibid, pp. 23-24
[12] Ibid, pp. 24-25

that Aboriginal and Torres Strait Islander children were over-represented in state care, and importantly, in institutional care' (p. 17). In northern Queensland institutions, correspondence and submissions written by the Department of Children's Services in the 1970s noted that 'more than 50 per cent of children' were Indigenous (O'Connor, 1993, p. 17). In Victoria, 45% of Aboriginal children were in OOHC in 1977, with this number dropping slightly to 40% in 1980 (VACCA, 2018). A 1977 VACCA memo reported that 90% of Aboriginal children placed in non-Aboriginal foster care homes were later returned to institutional care and subsequently institutionalised, thus indicating that Aboriginal children were not returning home, or receiving good quality care, at this time (VACCA, 2018). Despite the end of official assimilation policies, high numbers of First Nations children were still residing in institutional care throughout the 1970s (J. Roberts, 2008).

Although data were not as readily available as today, there is evidence that First Nations overrepresentation in child protection and OOHC systems was a feature throughout the 1980s and 1990s. In 1997, the Bringing Them Home report found that First Nations children continued to be overrepresented in Australian child protection and OOHC systems (Wilson, 1997). In 1993, there were 2,419 Indigenous children in care out of a total of 12,363 of all children in OOHC: this equates to 19.7% of Indigenous children in OOHC despite Indigenous children only constituting 2.7% of all Australian children at the time (Wilson, 1997). This overrepresentation was even higher in the NT—42.3% of the OOHC population were Indigenous in 1993. Systemic racism was named as one of the reasons for enduring Indigenous overrepresentation in child protection and OOHC systems.

In 1993 in Victoria, overrepresentation was also stark—12% of all children in care were Indigenous. In relation to Victoria, the Bringing Them Home report stated that in 1994–95 Aboriginal children were three times more likely to be notified to the department than other children and as at June 1995 they were five times more likely to be on a protection order. As at 30 June 1994 Aboriginal children were twelve times more likely to be involved with placement and related support services than other children. (Wilson, 1997, p. 386)

These figures do not read too dissimilarly from today's national rates of overrepresentation, in which Aboriginal and Torres Strait Islander children and young people are 8 times more likely to receive child protection services, 10 times more likely to be under a care and protection order, and 11 times more likely to be in OOHC (AIHW, 2021a).

Since 1998, the AIHW has reported national child protection data annually for each financial year. Their first Child Protection Australia report—recording data for the 1996–97 financial year—noted that Aboriginal and Torres Strait Islander children resided in OOHC at the rate of 16.3 per 1,000 compared with 2.5 per 1,000 for all other children (AIHW, 1998). In percentage terms, nearly 20% of children in OOHC in 1997 were Aboriginal and/or Torres Strait Islander. Indeed, the rate of Aboriginal and Torres Strait Islander children residing in OOHC has continued to climb since the late 1990s. Specifically, over the past 14 years, the rate of Aboriginal and Torres Strait Islander

> *children and young people in OOHC in Australia has nearly tripled from 30.1 per 1,000 at 30 June 2006 to 56 per 1,000 at 30 June 2020 (AIHW, 2007, 2021a)."* [13]

Krakouer also demonstrates the link between poverty, colonisation and racism in contemporary Australian child protection systems, highlighting how both 'risk-bias' or 'need-bias' factors are related to, as Keddell and Cleaver word it "…. patterns of racism, colonisation, and class inequity through history"[14] in the Australian context:

> *"The overrepresentation of First Nations children in child protection and OOHC systems is not a crisis unique to Australia. Internationally, Indigenous overrepresentation in child protection and OOHC systems is also evident in Turtle Island/North America (United States of America (USA) and Canada) and Aotearoa/New Zealand (Atwool, 2016; Cram et al., 2015; M. Jones, 2010; Lawler et al., 2012; Trocmé et al., 2004). In the Australian context, non-Indigenous social work scholar Clare Tilbury (2015) attributes Aboriginal and Torres Strait Islander overrepresentation in child protection and OOHC systems to a complex interaction between historical and contemporary macro, micro, individual and systemic factors. She argues that overrepresentation is a consequence of the enduring effects of colonisation—which have resulted in Indigenous socioeconomic disadvantage across multiple measures—coupled with institutional racism, bias and a lack of cultural competence in tertiary-intervention dominated statutory systems (Tilbury, 2015).*
>
> *Settler-colonial theory (Wolfe, 1994, 2006), coupled with theorising on Indigenous childhoods (Faulkner, 2016; S. Nakata, 2018), help me to articulate an alternative explanation for Indigenous overrepresentation in child protection and OOHC systems, which historically contextualises Indigenous experiences of socioeconomic disadvantage. Wolfe (1994, 2006) asserts that while official assimilation policies have ended, the end goal of settler-colonial societies is colonial completion, which requires the elimination of the 'native' via genocide or assimilation. Colonial completion cannot be achieved until an inclusive national identity has been established. Thus, while First Nations peoples continue to assert their own sovereignty (for example, in Australia, through activism such as Invasion Day protests on January 26), nationhood anxiety around illegitimate claims to sovereignty play out (Faulkner, 2016). This nationhood anxiety results in the intensive governance of First Nations childhoods in the Australian context (Faulkner, 2016). Torres Strait Islander political theorist Sana Nakata (2018) has also written about the continuance of paternalistic interventions into Indigenous childhoods and family life, arguing that Australian governments have been unable to move beyond the construction of Aboriginal and Torres Strait Islander peoples as child-like and inferior to non-Indigenous (white) Australians. S. Nakata (2018) contends that these paternalistic interventions often target Aboriginal and Torres Strait Islander peoples during childhood out of a desire to produce future citizens that do not undermine the political legitimacy of the state.*

---

[13] Ibid, pp. 41-42

[14] Keddell, E., & Cleaver, K. (2020). *In the Waitangi Tribunal Wai2915 in the matter of The Treaty of Waitangi Act 1975 and in the matter of The Urgent Oranga Tamariki Inquiry – Joint Brief of Evidence of Emily Keddell and Kerri Cleaver, dated 7 October 2020* (p. 8). Available at:
https://ourarchive.otago.ac.nz/bitstream/handle/10523/10603/SKM_C250i20100711080-1.pdf?sequence=1

While settler-colonial theory and theorising on Indigenous childhoods are contestable, these theories can be used to demonstrate that what is at stake for Indigenous children and young people in child protection and OOHC systems is a matter of individual and collective survival against eliminatory logics. Australian child protection and OOHC systems have operated differently for Indigenous children and families. For example, the first Child Protection Australia report in 1998 noted that the pattern of substantiation differed markedly for Indigenous children compared with non-Indigenous children. Indigenous children were more likely to be the subject of substantiation for neglect, while non-Indigenous children were more likely to be the subject of a physical abuse substantiation (AIHW, 1998). The report stated that some of the factors that contributed to Indigenous overrepresentation were 'high rates of poverty and unemployment among Indigenous families; the high incidence of single-parent families; cultural differences in child-rearing practices; the high incidence of alcoholism; and, lack of access or ability to access appropriate support services' (AIHW, 1998, pp. 18–19). While some of these reasons (such as high incidences of substance use) can result in genuine protective concerns for all children, other reasons (such as poverty and cultural differences in child-rearing practices) unfairly discriminate against, and stigmatise, Indigenous families.

In contemporary contexts, there are other reasons besides systemic racism for enduring First Nations overrepresentation in OOHC, including the legacy of past policies of forced removal, intergenerational effects of previous separations from First Nations family, and a higher likelihood of living in the lowest socioeconomic areas. However, it is important to recognise that these explanatory factors for First Nations overrepresentation in OOHC are historically contextualised by the problematisation of First Nations family life and cultures, where systemic racism is at the root of this continuing problematisation. That is, systemic racism underpins overrepresentation through the problematisation of Indigenous family life, yet simultaneously, there are factors such as socioeconomic deprivation and ongoing trauma that also contribute to, and explain, overrepresentation. For example, in the Bringing Them Home report, other reasons given for overrepresentation were the enduring effects of past forcible removals and socioeconomic deprivation within Indigenous communities (Wilson, 1997). However, this socioeconomic deprivation is a structural outcome of colonisation, which dislocates Indigenous peoples from land and their ability to sustain their livelihoods while also enacting discriminatory policies that prevent employment, commerce or access to earnings. In child protection contexts, socioeconomic deprivation is interrelated with child neglect substantiations.

In 2019–20, substantiations for neglect for Indigenous children were higher compared with non-Indigenous children (32% and 18%, respectively). Indeed, explanatory factors for contemporary Indigenous overrepresentation include socioeconomic deprivation, homelessness and insecure housing, parental substance use, mental health concerns, and family violence (Liddle et al., 2021), some of which have resonance with reasons reported by the AIHW for overrepresentation in 1998. However, the surveillance of Indigenous families by child protection authorities is still experienced differently compared with non-Indigenous families. This is, in part, due to higher rates of

> *socioeconomic deprivation (along with other drivers of overrepresentation) as well as the ongoing problematisation of Indigenous family life and cultures."* [15]

Krakouer further demonstrates the intersection between poverty and neglect substantiations in contemporary OOHC:

> *"Over the past 10 years, a growing body of international research has drawn linkages between experiences of poverty and neglect substantiations in child protection systems. Research has noted that while not all people who experience poverty harm their children, families living in poverty are more likely to be involved with child protection systems (Ainsworth, 2021; Bradt et al., 2015; Bywaters et al., 2020; Gupta, 2017; Hansen & Ainsworth, 2009; Morris et al., 2018). Poverty also features as particularly prominent in substantiated neglect cases (Ainsworth, 2021; Bywaters et al., 2020; Gupta, 2017).*
>
> *Gupta (2017) argues that contemporary social work interventions in child protection contexts have been influenced by the broader political agenda (neoliberalism), and consequently tend to focus on individual pathology. Parents are blamed for their 'dysfunction', and solutions to child maltreatment cases focus on correcting 'parental pathology' (such as parents obtaining housing or employment, or undertaking parenting courses) (Gupta, 2017; Hansen & Ainsworth, 2009). At this juncture, structural inequality—and other macro factors, such as the economy, the broader political agenda, power and racism—are overlooked by social workers and not addressed in child maltreatment interventions (Ainsworth, 2021; Bradt et al., 2015; Bywaters et al., 2020; Gupta, 2017; Hansen & Ainsworth, 2009; Morris et al., 2018).*
>
> *Indeed, child abuse and neglect is complex. Gupta (2017) acknowledges that 'decision making in cases of neglect is not straightforward, is open to interpretation and is influenced by professionals' values, emotions and organisational contexts' (p. 23). However, at the same time, understandings of child abuse and neglect—as well as children's 'best interests'—are culturally bound and value laden. Underlying all child protection interventions into the private realm of family life are, as Gupta (2017) words it, 'moral judgements about normative parenting' (p. 23). For Indigenous peoples in Australia, constructions of normative parenting are based on a middle-class 'white, Anglo-Christian, nuclear family' (Dunstan et al., 2020, p. 323).*
>
> *Poverty has been an enduring feature of family life for many First Nations peoples since invasion. For the past 5 years, the Family Matters campaign—an Indigenous-led consortium spearheaded by peak Indigenous child and family welfare body, SNAICC—has identified poverty as a root cause underlying Indigenous overrepresentation (Hunter et al., 2020; Lewis et al., 2017, 2018, 2019). Poverty among Indigenous Australians is widely acknowledged. In fact, the Commonwealth of Australia has regularly reported on socioeconomic disparity between Indigenous and non-Indigenous Australians in a range of publications, including the Closing the Gap (Department of the Prime Minister and Cabinet, 2019) and Overcoming Indigenous*

---

[15] Krakouer, J. (2022). *Journeys of connecting: Understanding cultural connection for First Nations children and young people in out-of-home care in Victoria, Australia* [Unpublished Doctoral thesis, The University of Melbourne] (pp. 42-45). Minerva Access. http://hdl.handle.net/11343/313798

Disadvantage reports (Steering Committee for the Review of Government Service Provision [SCRGSP], 2016).

However, poverty is statistically more likely to affect Indigenous peoples living in remote parts of Australia—such as communities in the NT—because of a range of factors, such as employment and education opportunities. In their 2016 Census paper, non-Indigenous researchers at the Centre for Aboriginal Economic Policy Research, Francis Markham and Nicholas Biddle, stated that there is growing income disparity between Indigenous peoples in urban versus remote locations. They articulated the need for urgent policy action to address growing rates of poverty among Indigenous peoples living in very remote locations in Australia (Markham & Biddle, 2016). The income disparity 'gap' is widening for Indigenous peoples living in remote Australia.
Yet, while poverty tends to be more prevalent in very remote parts of Indigenous Australia, so too is the likelihood of living in OOHC. Children living in remote and very remote parts of Australia are more likely to be the subject of a child protection substantiation than are children from urban parts of Australia. In fact, the AIHW (2021a) reported that at 30 June 2020 'the rates for children in remote and very remote areas were more than twice that of those in major cities for children living in out-of-home care' (p. 53). In these areas, the population distribution is largely Indigenous: proportionally, Indigenous Australians constituted 25% of the remote population in 2016 (ABS, 2016).

Children who live in lower socioeconomic areas are also more likely to be the subject of a child protection substantiation in Australia, and this disproportionally affects Indigenous children (AIHW, 2021a). The AIHW (2021a) stated that 'Indigenous children who were the subjects of substantiations were more likely to be from the lowest socioeconomic areas (41%) compared with non-Indigenous children (32%)' (p. 26) in 2019–20. Evidently, Indigeneity, poverty and involvement in child protection systems are interrelated.

Neglect is also one of the most commonly substantiated types of child maltreatment evidenced among Indigenous children who encounter Australian child protection systems. While emotional abuse was the most common type of child maltreatment substantiated for all Australian children in 2019–20, Indigenous children had higher rates of neglect substantiations (32%) than non-Indigenous children (18%) (AIHW, 2021a). Understandings of emotional abuse have shifted over time (Connolly & Morris, 2011; Doyle & Timms, 2014; Fernandez, 2014), with emotional abuse perhaps being previously categorised exclusively under 'neglect' substantiations in past decades. In contrast, neglect substantiations have at their core the persistent inability to provide for a child's basic needs, including the provision of clothing, food and shelter (Doyle & Timms, 2014). However, within many international child protection systems, consideration of parental (or carer) intent is overlooked when determining whether child neglect exists (Gupta, 2017). It is one matter to deliberately withhold food or accommodation from a child when means to procure food are readily available; it is another when the means to obtain food or housing are not available.

In many parts of Australia, both urban and remote, housing is becoming increasingly unaffordable and scarce (Cho et al., 2021; Daley et al., 2018). Cities such as Melbourne and Sydney have precarious and high-priced housing markets where middle-income families and millennials have been reported to struggle with housing (Chau, 2018, 2019; Daley et al., 2018; Wright, 2021). Homelessness and insecure housing are concerning issues in Australia that evidence entrenched structural inequality. However, Indigenous peoples are more likely than non-Indigenous Australians to live in overcrowded homes (SCRGSP, 2020) and are also more likely to experience homelessness (AIHW, 2019; SCRGSP, 2020). While it is culturally appropriate for several generations of family members to live in the same household for Indigenous peoples, stress as a result of overcrowding is also reported among Indigenous peoples (SCRGSP, 2020). In 2016, most (70%) Indigenous peoples who were homeless lived in severely overcrowded homes, while more than half of Indigenous peoples experiencing homelessness lived in very remote areas (AIHW, 2019). Indeed, housing issues are amplified for many Indigenous peoples compared with non-Indigenous Australians.

Child maltreatment is complex, and certainly, there are cases where state intervention is necessary. However, for Aboriginal and Torres Strait Islander peoples, social workers or child protection practitioners do not effectively consider the structural inequalities and broader macro factors that affect a family's ability to support and care for their children. Child protection and OOHC systems—particularly in Western countries, such as Australia—tend to be risk-averse and individually focused (Connolly & Katz, 2019). The strengths of family and culture tend to be overlooked when considered alongside 'risks'. Families are not always viewed within their broader context. Rather than looking to the broader issues impacting a family's circumstances, Gupta (2017) argues that neglect has been constructed as an issue that children need to be rescued from, rather than being supported to thrive in. This is potentially a result of the lopsided investment in tertiary child protection services: only 17% of the nearly A$6 billion spent annually on Australia's child protection and OOHC systems is dedicated to prevention and early intervention supports (Teager et al., 2019). However, Aboriginal and Torres Strait Islander peoples are disproportionately subject to child protection interventions because of neglect, which evidence suggests is interrelated with poverty. It highlights the ways in which child protection systems are experienced differently by Aboriginal and Torres Strait Islander peoples." [16]

Krakouer then describes how systemic racism operates in Australian child protection and OOHC systems:

Understandings of children's 'best interests' are historically and culturally bound, and are therefore subject to interpretation and change. For First Nations peoples, children's 'best interests' have historically been premised on notions of whiteness, thus resulting in the concerted assimilation efforts of the 20th century Stolen Generations. Racism is one of the constants throughout Australia's history, which clearly evidences enduring negative constructions of First Nations peoples as problematic. Racism refers to a belief that one cultural, ethnic or racial group is in some way superior to another cultural, ethnic or racial group (Markwick et al., 2019). Differential treatment, and the

---

[16] Ibid, pp. 45-50

construction of racial superiority and inferiority, are at the core of covert and overt experiences of racism. Furthermore, systems and processes that have differentiated impacts on racial groups, even when unintentional, are structurally racist. Research has found that the belief in racial superiority has been used to defend public instances of racism, thereby perpetuating the superiority/inferiority divide between two racial groups (Markwick et al., 2019).

Contemporary experiences of racism against First Nations peoples are well documented. A quantitative analysis of 2011, 2012 and 2014 Victorian Population Health Surveys noted that in comparison to adults from Anglo-Celtic backgrounds, First Nations peoples in Victoria are seven times more likely to experience racism (Markwick et al., 2019). Racism, power and Indigenous inferiority have been subjects of writing by many First Nations peoples in Australia, such as Chelsea Watego (formerly Bond) (Bond, 2017; Mukandi & Bond, 2019), Aileen Moreton-Robinson (2009, 2015), Amy McQuire (2019b, 2019a) and Nayuka Gorrie (2017).

Discussing the implications of race and racism for health educators in Australia, Munanjahli and South Sea Islander scholar Chelsea Watego has described how racism exists at both interpersonal and structural levels across multiple policy settings, including health and criminal justice systems (Bond, 2017; Bond et al., 2018; Watego et al., 2021). In a 2018 paper, Watego and her colleagues used Charles W. Mills's (1997) concept of the 'Racial Contract' to argue that First Nations peoples are not the intended beneficiaries of wealth and a 'fair-go' for all Australians (Bond et al., 2018). In this paper, they highlight how the law is applied differently to Indigenous peoples in Australia (Bond et al., 2018), where this cannot be attributed to the proposition that First Nations peoples are somehow more 'deviant', 'lawless', 'corrupt' or 'immoral'. That is, despite human rights advances and the application of the Racial Discrimination Act 1975 (Cth), the construction of First Nations peoples as inferior remains ingrained in the Australian psyche. It then operates at a structural level (often subconsciously) and changes the way that systems respond to First Nations families. Indeed, as with the criminal justice system, structural racism operates within Australian child protection and OOHC systems as well.

Within contemporary Australian child protection and OOHC systems, structural racism is most notably evident via the intensive governance and over-surveillance of Indigenous families and childhoods seen during the paternalistic Northern Territory Emergency Intervention (NTER), which commenced in 2008. The NTER was a controversial measure that suspended the Racial Discrimination Act 1975 (Cth) to control, and correct 'dysfunctional', Indigenous family life in the NT (Macoun, 2011). It received both criticism (see Moreton-Robinson, 2009; Watson, 2009) and support (see, for example, Langton, 2008) from First Nations peoples. Regardless of whether the NTER has been an effective policy, it was racially motivated, and it did intensively govern the lives of First Nations children and families via punitive measures such as welfare quarantining and the deployment of the military. It is evidence of contemporary structural racism within Australian child protection systems.

Further evidence of structural racism is highlighted by Cobble Cobble woman and law professor Megan Davis in the Family Is Culture review of the NSW child protection and OOHC systems:

> *"We know the child protection system today has resonance with historical practices because Aboriginal people have said so and we must not only listen but hear what they are saying. Their view is supported by research, cited in this report, and voluminous Commonwealth, state and territory commissions of inquiries, parliamentary inquiries and reviews. Often contemporary casework practice reinforces the memory of the authoritarian state that dominated and subjugated Aboriginal lives during the protection era. It animates real fear. Some Aboriginal people fight the system, many give up for fear or exhaustion, defeated. When police are used for removal, especially riot police, this has historical continuity. When babies are removed at hospitals or a pre-natal risk notification is made because the mother is Aboriginal, this has historical continuity. When siblings or twins are separated in care, this has historical continuity. When families reach out to FACS [child protection] for a carer assessment and are ignored and telephone calls go unreturned, this has historical continuity. When mums and dads are given unrealistic, unachievable goals in order to have their children or grandchildren restored to them, this has historical resonance. Some of the restoration goals are incontrovertibly impossible to be achieved. Some of these practices demonstrate concrete examples of institutional racism. The system is replete with practice that renders our people voiceless and powerless." (M. Davis, 2019, p. xvi)*

Child protection systems render all families voiceless and powerless, often disproportionately targeting low income families: the system engenders fear, mistrust, anxiety and hostility for all subject to child protection intervention. However, structural racism is apparent in the way child protection systems are deployed against First Nations peoples, where Indigeneity is seen as a prima facie risk factor for child protection intervention. As an example, in one Australian study, administrative data retrieved from a child protection authority in QLD were used to examine the factors associated with child protection recurrence: it was found that 'Indigenous status was a stronger predictor of subsequent reports and investigations than a rating of "high risk" on the risk assessment tool' (Jenkins et al., 2018, p. 188). In another study, WA administrative data were analysed using logistic regression 'to determine the factors associated with an increased risk of infant removal' (O'Donnell et al., 2019, p. 90). It was found that Aboriginality accounted for double the risk of infant removals, and that Aboriginal parents who had their infants removed 'were more likely to be living in remote to highly remote areas compared to non-Aboriginal families' (O'Donnell et al., 2019, p. 92).

Ultimately, structural racism is an enduring feature—not a bug—of Australian child protection and OOHC systems. All of the other causes that are attributed to First Nations overrepresentation in child protection and OOHC—including poverty, family violence and substance abuse—can be explained by structural racism. First Nations overrepresentation in the two most coercive systems of governance—child protection and criminal justice—is not an accident." [17]

---

[17] Ibid, pp. 50-53

First Nations infant removals by child protection

Australian data has consistently shown that Aboriginal and Torres Strait Islander children are more likely to experience child protection involvement and subsequent placement in OOHC.[18] This pattern of overrepresentation in child protection and OOHC systems for Aboriginal and Torres Strait Islander children also exists for babies aged under 1 year old.

In a retrospective population cohort study using national and Western Australian data, O'Donnell, Taplin, Marriott, Lima and Stanley[19] found that Aboriginal infants were seven times more likely to be in receipt of child protection services, eight times more likely to have substantiated notifications, and 10 times more likely to enter OOHC, than non-Aboriginal infants.

The rates of children in OOHC in Victoria reflect the rising rates nationally. The most recent Australian Institute of Health and Welfare (AIHW) child protection data highlights the significant over-representation of Aboriginal and Torres Islander infants in OOHC across Australia. Infants in this context are children under 1 year old, and therefore represent children who have been removed from their families prior to their first birthday. In Victoria, at 30 June 2021, Aboriginal and Torres Strait Islander infants were 24.3 times more likely to be in OOHC than non-Indigenous infants.[20] This same pattern was replicated across all states and territories (with the exception of the Northern Territory, where data were not available). However, the Victorian rate of infants in OOHC was the highest in Australia. Figure 1 shows a comparison of rate ratios between First Nations and non-Indigenous infants (aged under 1) in OOHC at 30 June 2021.
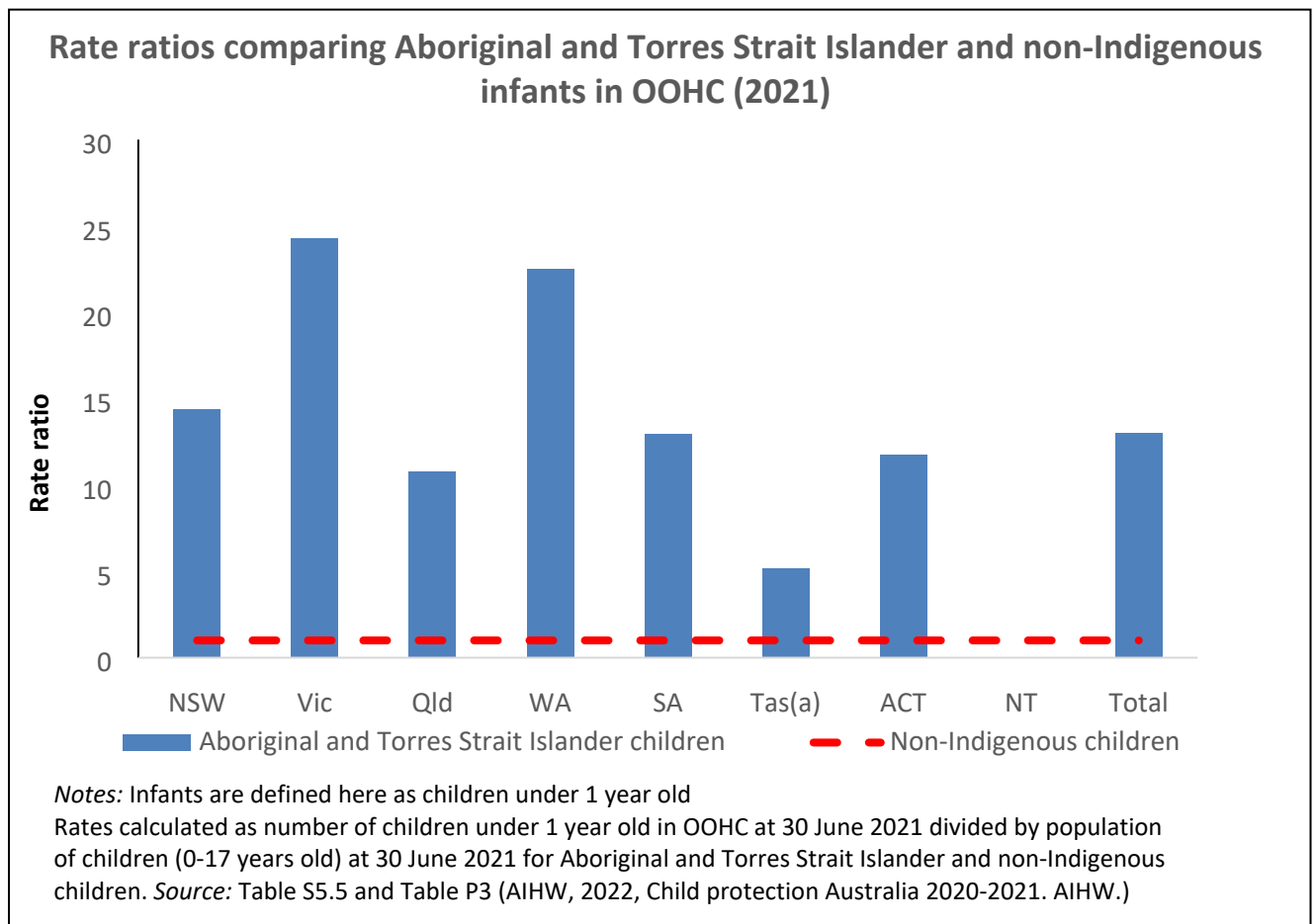
---

[18] Australian Institute of Health and Welfare [AIHW]. (2022). Child protection Australia 2020–2021. AIHW. Available at: https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/about; Australian Institute of Health and Welfare. (2021). *Child protection Australia 2019–2020*. AIHW. Available at: https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2019-20/summary; Australian Institute of Health and Welfare. (2020). *Child protection Australia 2018–2019*. Available at: https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2018-19/summary; Australian Institute of Health and Welfare. (1998). *Child protection Australia 1996–1997*. Available at: https://www.aihw.gov.au/reports/child-protection/child-protection-australia-1996-97/contents/summary; Australian Institute of Health and Welfare. (2007). *Child protection Australia 2005–2006*. https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2005-06/contents/table-of-contents; Australian Institute of Health and Welfare. (2011). *Child protection Australia 2009–2010*. Available at: https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2009-10/contents/table-of-contents; Liddle, C., Gray, P., et al. (2022). *The Family Matters report 2022: Measuring the trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia* (pp. 100-105). Melbourne, VIC: SNAICC – National Voice for Our Children. Available at: https://www.familymatters.org.au/; Liddle, C., Gray, P., et al. (2021). *The Family Matters Report 2021: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia*. SNAICC. Available at: https://www.familymatters.org.au; Hunter, S.-A. et al. (2020). *The Family Matters report 2020: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia*. SNAICC. Available at: https://www.familymatters.org.au

[19] O'Donnell, M., Taplin, S., Marriott, R., Lima, F., & Stanley, F. J. (2019). Infant removals: The need to address the over-representation of Aboriginal infants and community concerns of another 'stolen generation'. *Child Abuse & Neglect*, *90*, 88–98. https://doi.org/10.1016/j.chiabu.2019.01.017

[20] Australian Institute of Health and Welfare [AIHW]. (2022). Child protection Australia 2020–2021. AIHW. Available at: https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/about

Rate ratios comparing Aboriginal and Torres Strait Islander and non-Indigenous infants in OOHC (2021)

Notes: Infants are defined here as children under 1 year old

Rates calculated as number of children under 1 year old in OOHC at 30 June 2021 divided by population of children (0-17 years old) at 30 June 2021 for Aboriginal and Torres Strait Islander and non-Indigenous children. *Source:* Table S5.5 and Table P3 (AIHW, 2022, Child protection Australia 2020-2021. AIHW.)

Figure 1. Rate ratios comparing Aboriginal and Torres Strait Islander and non-Indigenous infants in OOHC at 30 June 2021

Maternal and infant characteristics that influence contact with the child protection system

Consensus is emerging regarding the characteristics of mothers who are subject to prenatal reports and subsequent infant removals, with research highlighting a constellation of well-established risk factors that also reflect risk factors associated with child protection removal in general. Specifically in relation to unborn reporting and infant removals, young age at first birth, own history of OOHC placement, the presence of intellectual disabilities and/or cognitive impairments, substance use, mental health difficulties, psychiatric disorders, family violence and homelessness experienced during pregnancy have been identified as prominent risk factors for prenatal reports and infant removals.[21] Many of these risk factors relate to

---

[21] Broadhurst, K., & Mason, C. (2017). Birth parents and the collateral consequences of court-ordered child removal: Towards a comprehensive framework. *International Journal of Law, Policy and The Family, 31*, 41-59. https://doi.org/10.1093/lawfam/ebw013; Broadhurst, K., Alrouh, B., Mason, C., Ward, H., Holmes, L., Ryan, M., & Bowyer, S. (2018). *Born into care: Newborn babies subject to care proceedings in England*. Nuffield Foundation, London. Available at: https://www.nuffieldfjo.org.uk/app/nuffield/files-module/local/documents/Born%20into%20Care_Final%20Report_10%20Oct%202018.pdf; Taplin, S. (2017). Prenatal reporting to child protection: Characteristics and service responses in one Australian jurisdiction. *Child Abuse & Neglect, 65*, 68-76. https://doi.org/10.1016/j.chiabu.2017.01.007; Wall-Wieler, E., Roos, L. L.,

historical experiences – such as prior mental health history (including past suicide attempts) – and/or the experience of contemporary hardship, such as poverty, which reflects societal inequality, such as homelessness or housing insecurity. These historical factors are factors that people (often women) subject to unborn reporting cannot change. Similarly, inequitable experiences of hardship and poverty are also factors that those subject to unborn reporting cannot change without significant (financial) assistance. Thus, many of the risk factors demonstrated by evidence to be associated with maternal and infant characteristics for unborn reporting and infant removal are historical and static – that is, they are beyond the control of families to alter, no matter how motivated they may be or how many services/supports they are provided.

Race also operates as a factor that cannot be changed, yet has been shown to be associated with increased likelihood of being subjected to unborn reporting and infant removals by child protection. In Australia, Aboriginality of the birth mother and/or child has been shown to be an additional uniquely predictive 'risk factor' for infant removals and entry into OOHC in Australia.[22]

Aboriginality

In a study by O'Donnell et al., it was found that Aboriginal infants were almost two times more likely to be placed in OOHC prior to their first birthday, even after controlling for a range of child, maternal and sociodemographic characteristics.[23] Findings such as these indicate that in Australia being a First Nations person is a unique and independent predictor of infant removal and entry into OOHC. These findings echo those of previous studies.

In a NSW study, Marsh, Browne, Taylor and Davis investigated the characteristics of newborns who were entered into care within the first seven days of life.[24] The study relied on administrative data from NSW and captured an eight-year period from January 2006 to December 2014 during which 1834 newborns were entered into care, on average within three days of birth. It was found that most newborns had a prenatal report (87%) and just over 30% were First Nations newborns. During the study period there was a four-fold increase in the

---

Brownell, M., Nickel, N. C., & Chateau, D. (2018). Predictors of having a first child taken into care at birth: A population-based retrospective cohort study. *Child Abuse & Neglect, 76*, 1-9. https://doi.org/10.1016/j.chiabu.2017.09.033

[22] Bilson, A., Cant, R. L., Harries, M., & Thorpe, D. H. (2017). Accounting for the increase of children in care in Western Australia: What can a client information system tell us? *Child Abuse & Neglect, 72*, 291-300. https://doi.org/10.1016/j.chiabu.2017.08.013; Marsh, C. A., Browne, J., Taylor, J., & Davis, D. (2017). Characteristics and outcomes of newborns who entered into care (EIC) within 7 days of birth in NSW, Australia. *Children & Youth Services Review, 81*, 261-267. https://doi.org/10.1016/j.childyouth.2017.08.005; Davis, M. (2019). *Family is culture: Independent review into Aboriginal and Torres Strait Islander children and young people in out-of-home care in New South Wales*. Available at: https://www.familyisculture.nsw.gov.au/; O'Donnell, M., Taplin, S., Marriott, R., Lima, F., & Stanley, F. J. (2019). Infant removals: The need to address the over-representation of Aboriginal infants and community concerns of another 'stolen generation'. *Child Abuse & Neglect*, *90*, 88–98. https://doi.org/10.1016/j.chiabu.2019.01.017

[23] O'Donnell, M., Taplin, S., Marriott, R., Lima, F., & Stanley, F. J. (2019). Infant removals: The need to address the over-representation of Aboriginal infants and community concerns of another 'stolen generation'. *Child Abuse & Neglect*, *90*, 88–98. https://doi.org/10.1016/j.chiabu.2019.01.017

[24] Marsh, C. A., Browne, J., Taylor, J., & Davis, D. (2017). Characteristics and outcomes of newborns entered who entered into care (EIC) within 7 days of birth in NSW, Australia. *Children & Youth Services Review, 81*, 261-267. https://doi.org/10.1016/j.childyouth.2017.08.005

number of newborns entered into care, from 4% of all infants in 2006 to 15% of all infants in 2014.[25] The proportion of newborns entered into care who had a prenatal report also increased, from 66% to 89%. Consistent with broader trends, Aboriginal newborns were almost twice as likely as their non-Aboriginal counterparts to have a prenatal report. Marsh et al. report that over the study period, only 6.6% of newborns entered into care were restored to their families; a smaller proportion (5%) were adopted.[26] However, newborns with a prenatal report were more likely to be restored and less likely to be adopted. Although these findings are limited by small sample sizes in both conditions (reunification and adoption), they nevertheless provide insights into the complexity of prenatal reporting as a policy aimed at reducing infant entry into OOHC.

In a recent Australian study, Collings, Dew, Gordon, Spencer and Dowse also found considerable variation in the way Aboriginal parents with intellectual disability (ID) experienced the child protection system, compared to non-Aboriginal parents with ID.[27] The study involved case file review of 45 cases held by a legal service specialising in advocacy for people with an intellectual disability appearing before the Children's Court in NSW.[28] Of the reviewed case files, 31% involved Aboriginal parents, predominantly mothers, with an intellectual disability. The authors found that at the time of child protection involvement, the children of Aboriginal parents were significantly younger (on average, under one year old) than the children of non-Aboriginal parents. Results also showed variation in primary reasons for child protection involvement and primary reason for removal. Compared to non-Aboriginal parents, Aboriginal parents were more likely to be investigated due to their own OOHC history and for allegations of 'unfit' parenting. Aboriginal parents were also more likely to have a child removed due to continued substance misuse and for non-cooperation with CP investigations.[29] Stark differences in the child protection outcomes of Aboriginal and non-Aboriginal parents were also observed. For example, Aboriginal parents were more likely to be engaged in restoration/reunification proceedings than non-Aboriginal parents (21.4% vs 6.5%), but in both groups none of the applications were successful. Importantly, of the 10 cases where child removal was advocated, 100% of Aboriginal parents had their child removed from their care, compared to 82% of non-Aboriginal parents.[30] The limitations of a small sample size and limited statistical analyses notwithstanding, these findings further reinforce the compound disadvantage experienced by Aboriginal parents with intellectual disabilities in the child protection system.

More recently, Cobble Cobble woman and Professor of Law, Megan Davis, led an independent review into the over-representation of Aboriginal children in the NSW child protection and OOHC systems, finding that in 2016-17, there were 4,540 prenatal 'risk of significant harm'

---

[25] Ibid

[26] Ibid

[27] Collings, S., Dew, A., Gordon, T., Spencer, M., & Dowse, L. (2018). Intersectional disadvantage: Exploring differences between Aboriginal and non-Aboriginal parents with intellectual disability in the New South Wales child protection system. *Journal of Public Child Welfare, 12*(2), 170-183. https://doi.org/10.1080/15548732.2017.1379456

[28] Ibid

[29] Ibid

[30] Ibid

reports.[31] Just under 30% related to Aboriginal children. Moreover, amongst the cohort of Aboriginal children who entered care in 2015-16 (*n*=1,144), 10% were assumed into care shortly after birth, typically within the first two weeks of life. Almost 25% of these infants were either assumed into care at birth or prior to being discharged from hospital. Overall, 18% of the study cohort entered care within the first six months of life.[32]

Davis also reported a range of unethical processes in the assumption of care at birth of Aboriginal newborns.[33] Case file reviews highlighted a lack of engagement and communication with parents, safety assessments and plans that were promised but not undertaken, and protective factors including the presence of other adults who would support the mother being ignored.[34] In some instances, mothers were advised that the child would not be assumed into care only to have that decision reversed without notice. Submissions made to the Inquiry noted a "lack of procedural fairness and transparency" around the assessments of risk and the process of infant removal.[35] Entrenched fear of child removal and suspicion of child protection was thought to be contributing to extreme measures taken by Aboriginal women to avoid contact with child protection services during pregnancy, including instances of unassisted child birth at home.

Systemic factors that target First Nations women

There is a considerable body of research highlighting that risk aversive practices can result in overreliance on historical risk factors, stereotypes regarding child protection involved families (particularly mothers), and increased surveillance of these families.[36] Under these circumstances, child protection intervention not only increases, but becomes swifter and potentially increasingly punitive, resulting in earlier identification of 'risk' and the removal of subsequent children.[37] For example, maternal childhood OOHC placement and previous child removal have been consistently identified as amongst the strongest predictors of infant removals, particularly among substance-using pregnant women and mothers[38] and in the

---

[31] Davis, M. (2019). *Family is culture: Independent review into Aboriginal and Torres Strait Islander children and young people in out-of-home care in New South Wales*. Available at: https://www.familyisculture.nsw.gov.au/
[32] Ibid
[33] Ibid
[34] Ibid
[35] Ibid, p. 194
[36] Broadhurst, K., & Mason, C. (2013). Maternal outcasts: raising the profile of women who are vulnerable to successive, compulsory removals of their children – a plea for preventative action. *Journal of Social Welfare & Family Law, 35*(3), 291-304. https://doi.org/10.1080/09649069.2013.805061; Broadhurst, K., & Mason, C. (2017). Birth parents and the collateral consequences of court-ordered child removal: Towards a comprehensive framework. *International Journal of Law, Policy and The Family, 31*, 41-59. https://doi.org/10.1093/lawfam/ebw013
[37] Broadhurst, K., & Mason, C. (2013). Maternal outcasts: raising the profile of women who are vulnerable to successive, compulsory removals of their children – a plea for preventative action. *Journal of Social Welfare & Family Law, 35*(3), 291-304. https://doi.org/10.1080/09649069.2013.805061; Hinton, T. (2018). *Breaking the cycle: Supporting Tasmania parents to prevent recurrent child removals*. Available at: https://www.socialactionresearchcentre.org.au/research/breaking-the-cycle-supporting-tasmanian-parents-to-prevent-recurrent-child-removals/
[38] Wieler, E., Roos, L. L., Brownell, M., Nickel, N. C., & Chateau, D. (2018). Predictors of having a first child taken into care at birth: A population-based retrospective cohort study. *Child Abuse & Neglect, 76*, 1-9. https://doi.org/10.1016/j.chiabu.2017.09.033

context of recurrent removals.[39] Further, there is emerging evidence that maternal childhood OOHC placement is also a significant risk factor for child removal among first-time mothers.[40]

Delayed service provision during the antenatal period has also been identified as a significant obstacle to effective maternal engagement and consequently, heightened risk of infant removal at or shortly after birth. In Victoria, this is exacerbated by the fact that child protection lacks the statutory authority to commence investigations during the antenatal period. As such, engagement with child protection by 'at risk' pregnant women is voluntary. Where women choose to not engage with child protection, they are at increased risk of having their newborn baby removed at birth as their perceived lack of engagement signals increased risk of harm for the newborn baby. For women who do choose to engage with child protection during the antenatal period, there is a significant shift from a putatively 'collaborative and supportive' approach during their pregnancy, to surveillance and monitoring *in the absence of support* postnatally. This in turn can result in further disengagement.

Evidence of injustice during the perinatal period for First Peoples in the child protection system in Victoria

Despite the mounting evidence highlighting that Aboriginality alone is a risk factor for child protection contact, and subsequent removal, for First Nations families in the perinatal period (pregnancy up to age 1), there has been limited evidence from Victoria regarding the extent of unborn reports to child protection and infant removals in the grey and peer-reviewed academic literature. In part, this is a result of the lack of publicly available data about unborn reporting and child protection involvement during pregnancy in Victoria.

A lack of transparency relating to unborn reporting in Victoria

Under the *Children, Youth and Families Act 2005*, reports of concern about the wellbeing of an unborn baby can be made to the Secretary of the Department of Families, Fairness and Housing. Specifically, within the *Children, Youth and Families Act 2005 – part 3.2.29 Report to Secretary about unborn child* it states:

> *"A person may make a report to the Secretary, before the birth of a child, if the person has a significant concern for the wellbeing of the child after his or her birth."*

These reports cannot be substantiated until after the birth of the child. Support can be received during pregnancy for wellbeing concerns about an unborn baby however, with the

---

[39] Broadhurst, K., Mason, C., Bedston, S., Alrouh, B., Morriss, L., McQuarrie, T., . . . Kershaw, S. (2017). *Vulnerable birth mothers and recurrent care proceedings*. Available at:

https://www.nuffieldfoundation.org/sites/default/files/files/rc-final-summary-report-v1_6.pdf; Hinton, T. (2018). *Breaking the cycle: Supporting Tasmania parents to prevent recurrent child removals*. Available at: https://www.socialactionresearchcentre.org.au/research/breaking-the-cycle-supporting-tasmanian-parents-to-prevent-recurrent-child-removals/

[40] Taplin, S. (2017). Prenatal reporting to child protection: Characteristics and service responses in one Australian jurisdiction. *Child Abuse & Neglect, 65*, 68-76. https://doi.org/10.1016/j.chiabu.2017.01.007; Wall-Wieler, E., Roos, L. L., Brownell, M., Nickel, N. C., & Chateau, D. (2018). Predictors of having a first child taken into care at birth: A population-based retrospective cohort study. *Child Abuse & Neglect, 76*, 1-9. https://doi.org/10.1016/j.chiabu.2017.09.033

Children, Youth and Families Act 2005 – part 3.2.32 Referral to community-based child and family service about unborn child stating:

> "A person who, before the birth of a child, has a significant concern for the wellbeing of the child after his or her birth may refer the matter to a community-based child and family service."

Thus, community-based support – from a relevant child and family service – can be received by Aboriginal and Torres Strait Islander parents (or parents of Aboriginal and/or Torres Strait Islander unborn babies) during pregnancy when an appropriate referral for such services has been made as a result of an unborn report to the Secretary of the Department of Families, Fairness and Housing. This could include, for example, a referral from the Department of Families, Fairness and Housing to the Victorian Aboriginal Child Care Agency (VACCA) for community-based support to be provided to an Aboriginal and/or Torres Strait Islander parent (or a parent of an Aboriginal and/or Torres Strait Islander unborn baby) during pregnancy when an unborn report has been made.

The Department of Families, Fairness and Housing – Child Protection does not have the statutory authority to officially investigate unborn babies (i.e. during pregnancy), and as such, women and families who do engage with child protection during pregnancy do so on a voluntary basis. Similarly, women and families may also engage with a relevant community-based child and family service for support during pregnancy when there are wellbeing concerns about an unborn child (although this may require an external referral before this service is provided).

The publicly available data released annually by the Australian Institute of Health and Welfare (AIHW) about child protection in Australia does not contain figures about the number of unborn reports made to child protection in Victoria. Similarly, there is no publicly available information about the number of unborn children receiving child protection services, or the number of substantiations of notifications of unborn children in Victoria. These numbers are not captured by the AIHW because unborn children are not counted as eligible for child protection services in Victoria, and hence substantiations of notifications do not occur in the unborn period in Victoria.

However, information about the number of reports received about unborn children by child protection in Victoria may be held by the Department of Families, Fairness and Housing (DFFH). While the number of notifications received by child protection in Victoria are not reported by age group by the AIHW, and hence, this data is not publicly available, this data may be held by DFFH. In other words, insight into the numbers of unborn children reported to child protection during pregnancy in Victoria may be available through a data request direct to the Department of Families, Fairness and Housing.

High rates of First Nations infant substantiations and First Nations infants in OOHC in Victoria

Within the most recent AIHW Child protection Australia 2020-2021 report it states that:

> *"Infants (children aged under one) were most likely (17 per 1,000 children) to be the subjects of substantiations."* [41]

This rate is the highest in Victoria – at a rate of 26.4 per 1,000 – higher than all other jurisdictions, excluding the Northern Territory.[42] This reflects the increased likelihood of infants entering OOHC in Victoria, including after birth.

It is concerning that there are very high rates of substantiations of child abuse or neglect for infants (aged under 1) in Victoria. Similarly, there are high rates of infants (aged under 1) in OOHC in Victoria. **At 30 June 2021, the number of Aboriginal and Torres Strait Islander infants aged under 1 in OOHC in Victoria was 61.9 per 1,000, compared to 3.4 per 1,000 for non-Indigenous infants aged under 1 in OOHC in Victoria.**[43] This is a rate 18.2 times higher for Aboriginal and Torres Strait Islander infants compared to non-Indigenous infants. It is also the second highest number per 1,000 of Aboriginal and Torres Strait Islander infants aged under 1 in OOHC (closely behind South Australia (62.7 per 1,000)).[44] However, the rate of Aboriginal and Torres Strait Islander infants in OOHC compared to non-Indigenous infants in OOHC was higher in Victoria (18.2 times higher) compared to South Australia (11.4 times higher).[45]

There are also high rates of Aboriginal and Torres Strait Islander infants admitted to OOHC in Victoria. Throughout the 2020-21 financial year**, the number of Aboriginal and Torres Strait Islander infants aged under 1 admitted to OOHC in Victoria was 109.2 per 1,000, compared to 6.3 per 1,000 for non-Indigenous infants aged under 1** admitted to OOHC in Victoria.[46] This is a rate 17.2 times higher for Aboriginal and Torres Strait Islander infants compared to non-Indigenous infants. The number per 1,000 of Aboriginal and Torres Strait Islander infants aged under 1 admitted to OOHC between 2020-21 is highest in Victoria, as shown below in Table 1:

Table 1. Aboriginal and Torres Strait Islander infants (aged under 1) admitted to out-of-home care by state or territory, 2020-21

Age group (years)	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Total
Number per 1,000									
<1	35.3	109.2	44.4	50.7	87.9	17.9	20.0	30.0	47.3

Source: Adapted from Table S5.1: Children admitted to out-of-home care, by age group, Indigenous status and state or territory, 2020–21, AIHW (2022) Child protection Australia 2021-2021, AIHW. [47]

---

[41] Australian Institute of Health and Welfare [AIHW]. (2022). Child protection Australia 2020–2021. AIHW. Available at: https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/about
[42] Ibid
[43] Ibid
[44] Ibid
[45] Ibid
[46] Ibid
[47] Ibid

These figures tell a partial story about the extent of child protection involvement for Aboriginal and Torres Strait Islander infants (aged under 1) in Victoria, but they do not give insight into child protection involvement during pregnancy. The evidence that does exist in relation to child protection involvement during pregnancy for First Nations peoples comes from the lived experience stories Aboriginal and Torres Strait Islander community members in Victoria hold.

Case Studies about unborn reporting and child protection involvement with First Nations unborn babies and infants

We have heard countless stories from Aboriginal and/or Torres Strait Islander community members in Victoria detailing grave concerns about child protection involvement during pregnancy for Aboriginal and/or Torres Strait Islander unborn babies.

We provide some of this evidence here, in the form of case studies, for consideration for the Yoorrook Justice Commission, confidentially, to protect the anonymity of those who spoke to us for this submission. We request that none of these stories are published publicly, but rather, are kept solely for the purposes of the Yoorrook Justice Commission's inquiry into child protection in Victoria. Identifying information within these stories have been redacted to protect the confidentiality of those who agreed to provide their oral evidence for the purposes of inclusion in this submission.

32

33

y

NUT.0001.0040.0510_R

_____

Frontline practitioner concerns and suggestions about Aboriginal and Torres Strait Islander unborn reporting and infant removals practices and processes in Victoria

The following quotes from various frontline practitioners have been pieced together to highlight additional concerns and suggestions held by those working with Aboriginal and Torres Strait Islander pregnant mothers, families and babies at risk of or involved with child protection during the perinatal period. These de-identified quotes are provided as evidence here, and are solely for the purposes of the Yoorrook Justice Commission to inform its work. To protect the anonymity of those who spoke to us for this submission, these quotes are not

to be made available or public for external use by anyone outside of the Yoorrook Justice Commission. We request that none of these quotes are published publicly, but rather, are kept solely for the purposes of the Yoorrook Justice Commission's inquiry into child protection in Victoria. Identifying information within these stories have been redacted to protect the confidentiality of those who agreed to provide their oral evidence for the purposes of inclusion in this submission.

[Content redacted]

Evidence of injustice for First Peoples in criminal justice and child protection systems

This section has been written by Dr Tatiana Corrales, with some content provided from previous submissions and reports (including a co-authored piece with Dr Jacynta Krakouer, Dr Paul Gray and James Beaufils for the 2022 SNAICC Family Matters report).[49]

[49] Krakouer, J., Corrales, T., Gray, P., & Beaufils, J. (2022). "Infant removals, criminalisation and incarceration: a problem underpinned by carceral logic for Aboriginal and Torres Strait Islander peoples", in C. Liddle, P. Gray et al. (2022). *The Family Matters report 2022: Measuring the trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia* (pp. 100-105). Melbourne, VIC: SNAICC – National Voice for Our Children. Available at: https://www.familymatters.org.au/

Use of restraints on pregnant women and on women who have just given birth (Victoria)

Extensive evidence in relation to the use of restraints on pregnant women and on women who have just given birth in Victoria has been previously provided by Dr Tatiana Corrales in a submission to the *Inquiry into the Impacts of Maternal Incarceration on Children*.[50]

Across Australia, women are disproportionately more likely to be convicted for non-violent offences and to serve shorter sentences than men (Australian Bureau of Statistics, 2021). However, following a significant reform to the bail system in Victoria in 2018 the number of unsentenced women in prison has exploded. The changes to the *Bail Act 1997 (Victoria)* have had a disproportionate impact on women, particularly First Nations women. In 2021, over half of women in prison were unsentenced. Among First Nations women, this figure rose to 89.2%.[51]

It is estimated that 50% of women have primary caring responsibilities for at least one child.[52] In Victoria, 21% of women on remand, and 25% of sentenced women reported being the primary carer of their children at reception into prison.[53] In 2019, 80% of First Nations women in prison across Australia reported being mothers, and 54% reported being the primary carer for a dependent child. Further, an estimated 2% of First Nations women in prison are pregnant.[54]

While motherhood is now generally recognised as an important factor in 'gender-responsive' approaches and programming within the Australian carceral system, there remains an absence of basic information about this issue. This includes information on the prevalence of pregnancy and childbirth in prison, the prevalence of statutory child removal through the child protection system, or basic maternal and neonatal outcomes such as the rates of live births, stillbirths, miscarriages, and terminations. There is also a near absence of information on the services and supports that are provided to pregnant women and new mothers in prison, including supports to effectively identify and address postnatal depression and psychosis, to assist women to deal with the trauma of a carceral pregnancy, or the grief and loss following separation from a newborn child or infant.

---

[50] Corrales, T. (2022). Maternal incarceration during pregnancy or short after birth: Impacts on women and their children. *Submission to the Inquiry into Children Affected by Parental Incarceration, Legislative Council Legal and Social Issues Committee. Parliament of Victoria.* Available at: https://new.parliament.vic.gov.au/4ad9e6/contentassets/cca05b10de5f464dad79b75d4129ca8b/submission-documents/016-tatiana-corrales_redacted.pdf

[51] Human Rights Law Centre. (2021). *Reimagining and fixing Victoria's broken criminal legal system: Submission to the Legal and Social Issues Committee's Inquiry into Victoria's Criminal Justice System,* HRLC. Available at: https://www.hrlc.org.au/submissions/2021/9/22/time-to-reimagine-victorias-criminal-legal-system-and-end-mass-imprisonment

[52] Australian Institute of Health and Welfare. (2020) *The health and welfare of women in Australia's prisons.* Available at: https://www.aihw.gov.au/reports/prisoners/health-and-welfare-of-women-in-prison/formats

[53] Department of Justice and Community Safety. (2019). *Women in the Victorian prison system*. Available at: https://www.ics.act.gov.au/__data/assets/pdf_file/0011/1311878/women_in_prison2019.pdf; Walker, S., Sutherland, P., & Millsteed, M. (2019). *Characteristics and offending of women in prison in Victoria, 2012-2018*. Available at: https://www.crimestatistics.vic.gov

[54] Anthony, T., Sentance, G., & Behrendt, L. (2021) '"We're not being treated like mothers": Listening to the stories of First Nations mothers in prison', *Laws*, *10*(3), 74. https://doi.org/10.3390/laws10030074

Coercive, unethical and inhumane practices in Victorian prisons among pregnant and postpartum women

The use of shackles and other forms of restraints on incarcerated women who are pregnant, in childbirth or following birth, is strictly prohibited in the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (*Bangkok Rules*).[55] While Australia has endorsed these rules, there are no legally enforceable mechanisms to ensure compliance. As such, 'endorsement' of this and other human rights protocols by the Australia government is tokenistic at best. This is evident in the fact that no Australian state or territory explicitly prohibits the use of restraints during pregnancy, childbirth or during the post-partum recovery period.

For example, at the federal level, guideline 3.1.16 in the *Guiding Principles for Corrections in Australia*[56] states that restraints should not be used on people receiving medical treatment, including pregnancy, "*unless there is a significant risk of harm to self or others and/or significant risk of escape*" (p. 16). Victorian policy is less clear. The recently updated Commissioner's Requirements for the Living with Mum Program[57] specifies that the use of restraints on pregnant women and postnatal mothers requires the approval of the prison General Manager and can only occur under 'exceptional circumstances' (p. 39). This is the only reference to the use of restraints on pregnant women, and there are no references to the use of restraints during childbirth. However, the Standards for the Management of Women Prisoners in Victoria[58] stipulates that "women prisoners who are six or more months pregnant are not restrained during escorts, unless exceptional circumstance apply" (p. 40). Consistent with federal guidelines, Section 15.2.2 of the Victorian policy further stipulates that the use of restraints:

> "must be the least restrictive type appropriate to the circumstances, having regard to the security and risk status of the prisoner and noting any medical conditions…including whether the prisoner is known to be pregnant."[59]

In recent interviews with prison staff at the Dame Phyllis Frost Centre – the maximum-security women's prison in Victoria – Corrales (unpublished) found that the use of restraints on pregnant women and on women who had given birth was common practice. Participants highlighted that the use of restraints needs to be viewed against the need to ensure the safety of custodial staff attending the birth, hospital staff, other patients, and the women themselves.

Further, while the use of chemical agents on pregnant women is prohibited, there are no references in publicly available policy or operational documents to any limitations or

---

[55] United Nations Office on Drugs and Crime. (2011). *The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offender (the Bangkok Rules).* Available at: https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

[56] Corrective Services Administrators' Council. (2018). *Guiding Principles for Corrections in Australia*. Available at: https://www.corrections.vic.gov.au/guiding-principles-for-corrections-in-australia

[57] Corrections Victoria Commission. (2021). *Commissioner's Requirements: Living with Mum Program*. Available at: https://www.corrections.vic.gov.au/commissioners-requirements-part-3

[58] Corrections Victoria. (2014). *Standards for the Management of Women Prisoners in Victoria.* Available at: https://www.corrections.vic.gov.au/standards-for-the-management-of-women-prisoners-in-victoria

[59] Ibid*,* p. 42

prohibitions on strip searchers, nor on the use of solitary confinement where women are pregnant, have recently given birth or have children in their care.[60] An independent review by the Victorian Ombudsman of Victoria's maximum-security women's prison identified that the use of force and restraints on pregnant women was commonplace and occurred at a higher incidence than other prisons in Victoria. Pregnant women were also found to be subjected to strip searchers following attendance at external medical appointments.[61]

Researchers have also highlighted issues with the provision of adequate or appropriate services to criminalised women who are pregnant, nursing or who have recently given birth. Within the Victorian criminal legal system, services to support women in prison – including individuals with unique needs, such as pregnant women and new mothers – are inadequately funded.[62] Underfunding of services and an increasing prison population is perceived to result in long wait lists and 'rationing' access to services, based on correctional officers' determination of what constitutes a 'serious' medical condition and/or medical need.[63]

Access to appropriate health and social care is fundamentally compromised for First Nations women. As Kendall et al. argue the provision of healthcare within Australian prisons is grounded in colonial Western conceptualisation that are culturally unsafe.[64] Consequently, the physical, spiritual, social, and emotional wellbeing of First Nations women is not only neglected, but actively harmed through the carceral system. In the context of healthcare, this results in First Nations women's needs being ignored, minimised, and/or misdiagnosed.[65]

Lack of access to mother and baby units in prison

This section includes information included in the 2022 Family Matters report published by SNAICC – National Voice for Our Children from a section entitled 'Infant removals, criminalisation and incarceration: a problem underpinned by carceral logic for Aboriginal and Torres Strait Islander peoples'[66] written by Dr Jacynta Krakouer, Dr Tatiana Corrales, Dr Paul

---

[60] Ibid

[61] Victorian Ombudsman. (2017). *Implementing OPCAT in Victoria: Report and inspection of the Dame Phyllis Frost Centre*. Available at: https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/implementing-opcat-in-victoria-report-and-inspection-of-dame-phyllis-frost-centre/

[62] Franich, G., Sandy, L., & Stone, U. (2021) '"It's not designed for women at all": Exploring service providers' perspectives of working in the Victorian criminal justice system', *Current Issues in Criminal Justice,* 33(2), 211-227. https://doi.org/10.1080/10345329.2020.1837713

[63] Crissman, B., Smith, C., Ransley, J., & Allard, T. (2017), 'Women's health in Queensland prisons: An analysis of stakeholder perspectives', *International Journal of Offender Therapy and Comparative Criminology* 61(5), 582-603. https://doi.org/10.1177/0306624X15598960; Franich, G., Sandy, L., & Stone, U. (2021) '"It's not designed for women at all": Exploring service providers' perspectives of working in the Victorian criminal justice system', *Current Issues in Criminal Justice,* 33(2), 211-227. https://doi.org/10.1080/10345329.2020.1837713

[64] Kendall, S., Lighton, S., Sherwood, J., Baldry, E., & Sullivan, E. A. (2020). Incarcerated Aboriginal women's experiences of accessing healthcare and the limitations of the 'equal treatment' principle. *International Journal of Equity in Health,* 19, 48.

[65] Ibid

[66] Krakouer, J., Corrales, T., Gray, P., & Beaufils, J. (2022). "Infant removals, criminalisation and incarceration: a problem underpinned by carceral logic for Aboriginal and Torres Strait Islander peoples", in C. Liddle, P. Gray et al. (2022). *The Family Matters report 2022: Measuring the trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia* (pp. 100-105). Melbourne, VIC: SNAICC – National Voice for Our Children. Available at: https://www.familymatters.org.au/

Gray and James Beaufils. We have extracted relevant information from this section and included it below:

> *"Although limited, research and inquiries have highlighted issues concerning Aboriginal and Torres Strait Islander women's access to Mother and Baby Units in prison. For example, Walker et al. (2019) investigated the policies and practices informing the use of Mother and Baby Units in five Australian jurisdictions. They found that core admission criteria across these jurisdictions included a range of factors that would seem to exclude a considerable proportion of women. For example, women need to demonstrate that they can care for their children which is assessed via the presence of mental health or physical challenges. Women also need to have legal custody of their children. Those classified as high risk/high security, on remand or serving short sentences are also commonly denied access to these programs (Walker et al., 2019). This is particularly problematic in the current context, where the impact of COVID-19 has resulted in significant backlogs and delays for court hearings. Anecdotally, it has been reported that some women have been on remand for nearly two years and that the time served on remand may be longer than the sentenced time. Thus, exclusion from Mother and Baby Units due to women being on remand can result in broken mother-baby attachments.*
>
> *Importantly, Aboriginal and Torres Strait Islander women were found to be routinely excluded from these programs. As Walker et al. (2019) state:*
>
> > *"We found that for Aboriginal women, keeping their baby is much harder, because of the stigma arising from their disadvantage and from simply being Aboriginal, in a society that stigmatizes Aboriginal peoples. Of the five Aboriginal women in our study, three were allowed to keep their babies in prison and two were not. Despite the small overall sample size, it is worth noting that, although they were not the only participants with a history of child welfare services involvement, these were the only women in our sample who had not been allowed to keep their children." (p. 5)*
>
> *Walker et al.'s findings are consistent with the findings of the Victorian Ombudsman's (2017) investigation into the preparedness of Victoria's maximum-security women's prison to implement the Optional Protocol on the Convention Against Torture (OPCAT). The Victorian Ombudsman's (2017) inquiry found that "no Aboriginal women have been accepted into the prison's Mothers and Children program in the past few years (p. 13). In fact, of the 12 Aboriginal and Torres Strait Islander women who applied to the Mother and Children's program between 2015 and 2017, none were accepted. Eight applications did not proceed as women were released, transferred to another prison, or withdrew their application. Four applications were denied as they were not perceived to be in the child's 'best interests'. It is not clear whether the situation has improved since the Ombudsman's report, as data on the Mother and Baby units in Victoria's prisons are not publicly available.*
>
> *One case study presented in the Davis (2019) Family is Culture review (p. 385), outlined how arbitrary practice decisions can undermine access to these programs, and can also*

be misrepresented to existing oversight mechanisms (such as Courts) to make such decisions seem justified. In this example, a pregnant Aboriginal woman in prison sought access to a Mother and Baby program that would have enabled her to care for her baby while incarcerated. Despite this application, child protection authorities removed her baby soon after birth on the basis of historic concerns, and without having undertaken a safety and risk assessment prior to the baby's birth. By removing the child, the mother was no longer eligible to access the Mother and Baby program. In describing this outcome, Davis (2019 p. 385) wrote:

> *"In the care application, [DCJ] informed the Children's Court that [mum] had been denied access to the Mother and Baby program. [DCJ] did not inform the Court that she had been denied access because [DCJ] had assumed her child into care. This omission made it appear as though [the] baby did not have a parent available to care for her (as the baby's father was also in prison), when in fact, [mum] was willing and able to care for her newborn in a safe, supervised environment."*

None of the published guidelines on Mother and Baby Units include maternal Aboriginal and Torres Strait Islander status as an explicit exclusion criterion. This leaves a very real possibility that systemic and structural racism, rather than any real 'risk' posed by Aboriginal and Torres Strait Islander women is at play in Aboriginal and Torres Strait Islander women's exclusion from Mother and Baby Unit programs." (pp. 102-103) [67]

Concluding remarks: Incarceration focus

Incarceration is not an appropriate response to the intersectional needs of criminalised women.[68] This is particularly salient when women are pregnant or have recently given birth. The psychological, physical, and emotional demands of pregnancy, childbirth and early motherhood cannot be adequately met within a system designed with the explicit focus of managing and controlling risk. Despite the apparent endorsement of the *Bangkok Rules* by Australian governments – federal, state and territory – pregnant women, nursing mothers and mothers with newborn babies or infants continue to be routinely subjected to be routinely subjected to strip searchers and the use of restraints under the guise of 'risk management'. This speaks to a systemic disregard for criminalised people's basic human rights. Recent cases in Victoria and in the United Kingdom (UK), involving the death of an

---

[67] Krakouer, J., Corrales, T., Gray, P., & Beaufils, J. (2022). "Infant removals, criminalisation and incarceration: a problem underpinned by carceral logic for Aboriginal and Torres Strait Islander peoples", in C. Liddle, P. Gray et al. (2022). *The Family Matters report 2022: Measuring the trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia* (pp. 100-105). Melbourne, VIC: SNAICC – National Voice for Our Children. Available at: https://www.familymatters.org.au/

[68] Segrave, M., & Carlton, B. (2010). Women, trauma, criminalisation and imprisonment. *Current Issues in Criminal Justice, 22*(2), 287-305. https://doi.org/10.1080/10345329.2010.12035887

infant[69] and a woman being left to give birth to her stillborn child unassisted in her cell[70] highlight that prisons are structurally unsafe for pregnant women.

In Victoria, the Living with Mum program requirements by the Corrections Victoria Commission[71] provide some, albeit limited guidance on the provision of health care to pregnant women and women with children in prison. However, it is unclear what enforcement or compliance mechanisms exist to ensure these guidelines are met. For example, there is no publicly available information, and no research, investigating what happens when a failure to provide adequate and necessary health care to women who are pregnant, give birth or undergo their post-partum recovery period in prison results in 'poor' outcomes, including infant deaths[3].

Despite provisions within the United Nations *Bangkok Rules* to ensure that pregnant women have access to appropriate antenatal care that is equivalent to the care provided to women in the general community,[72] there is no compulsion on the carceral system to ensure the quality and timeliness of this antenatal care. As such, prisons have the discretion on which service providers to contract, how often women are allowed to attend antenatal appoints, and the circumstances under which antenatal care is or is not provided. These decisions are framed within the discourse of risk management, security, and good order. Put simply, the carceral system has the authority to decide the conditions and circumstances under which pregnant women and women who are actively in labour, can or cannot access appropriate healthcare. This situation is compounded within an organisational structure that places responsibility for the identification of *health needs* on correctional officers who lack the necessary training. Anecdotally, criminalised women report being denied access to medical care due to correctional officers' assumptions that they were 'faking' their symptoms for attention, or that their symptoms were not severe enough to justify calling an ambulance.[73]

Examples of good practice and critical recommendations which have not been accepted or properly implemented and demonstrate key issues

A number of recommendations have been made over the years to create change with Australian child protection and out-of-home care systems, including Victoria, and to address the increasing rates of Aboriginal and Torres Strait Islander overrepresentation across these

---

[69] Silva, N. (2021). Vigil held to remember women who did in Melbourne prison, *NITV News,* 10 December. https://www.sbs.com.au

[70] Abbott, L. (2021) 'HMP Bronzefield stillbirth proves prison is not safe for pregnant women', 28 September. https://www.theconversation.com

[71] Corrections Victoria Commission. (2021). *Commissioner's Requirements: Living with Mum Program*. Available at: https://www.corrections.vic.gov.au/commissioners-requirements-part-3

[72] United Nations Office on Drugs and Crime. (2011). *The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offender (the Bangkok Rules).* Available at: https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

[73] Silva, N. (2021). Vigil held to remember women who did in Melbourne prison, *NITV News,* 10 December. https://www.sbs.com.au

systems. These include recommendations within the *Bringing Them Home* report[74], which have yet to be actioned; recommendations with the Family is Culture review by Megan Davis[75], which although related to the NSW context, have similarities with the Victorian context; recommendations made within the SNAICC – National Voice for Our Children annual Family Matters reports[76]; and recommendations made within numerous reports published by the Victorian Commission for Children and Young People, including the *Always Was, Always Will Be Koori Children* (Taskforce 1000) inquiry[77]. These recommendations will not be repeated here. Importantly though, as Krakouer states in her PhD:

> "The numbers of Aboriginal children removed from their parents have been increasing since the end of the assimilation era (M. Davis, 2019). This is the case despite regular inquiries and reports that have sought to examine how child protection and OOHC systems function, as well as their effects on Aboriginal and Torres Strait Islander children. In 2017, the Royal Commission into Institutional Responses to Child Sexual Abuse observed that since 1990, there were 'no fewer than six national and at least 18 state or territory inquiries into the effectiveness of child protection systems that included a focus on the treatment of children in out-of-home care' (McClellan, 2017, p. 32). The Davis *Family is Culture* report cites an Allen Consulting paper in 2015 that identified 'at least 25 Ombudsman inquiries, Auditor-General inquiries, commissions of inquiry, judicial reviews, parliamentary inquires and Royal Commissions into various aspects of child protection practice and policy across the eight jurisdictions' (Allen Consulting, *Measuring Progress Under the National Framework: Evaluation of Progress Under the National Framework for Protecting Australia's Children*, 2015, p. 35, as cited in M. Davis, 2019, p. 8) This is all to say that child protection and OOHC systems are a site of regular (what Davis describes as 'ritualistic') bureaucratic review and analysis. While policy is not just developed following inquiries and reviews, the number of inquiries and reports that have examined Australian child protection and OOHC systems are evidence of government awareness of the dysfunction that exists within these systems."[78]

Thus, while Australian government have long been aware of the problems inherent in Australian child protection and OOHC systems, problems persist. Often, recommendations made to effect change within child protection systems tend to fall into one or both of two

---

[74] Wilson, R. (1997). *Bringing them home: National inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*. Commonwealth of Australia: Human Rights and Equal Opportunity Commission. Available at: https://humanrights.gov.au/our-work/bringing-them-home-report-1997

[75] Davis, M. (2019). *Family is culture: Independent review into Aboriginal and Torres Strait Islander children and young people in out-of-home care in New South Wales*. Available at: https://www.familyisculture.nsw.gov.au/

[76] Liddle, C., Gray, P., et al. (2022). *The Family Matters report 2022: Measuring the trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia* (pp. 100-105). Melbourne, VIC: SNAICC – National Voice for Our Children. Available at: https://www.familymatters.org.au/

[77] Commission for Children and Young People (Victoria). (2016). *"Always was, always will be Koori children": Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*. Available at: https://ccyp.vic.gov.au/upholding-childrens-rights/systemic-inquiries/always-was-always-will-be-koori-children/

[78] Krakouer, J. (2022). *Journeys of connecting: Understanding cultural connection for First Nations children and young people in out-of-home care in Victoria, Australia* [Unpublished Doctoral thesis, The University of Melbourne] (pp. 55-56). Minerva Access. http://hdl.handle.net/11343/313798

camps: (1) recommendations designed to effect broader system level change, such as increasing Indigenous self-determination, including delegated authority to Aboriginal peoples, including Aboriginal Community-Controlled Organisations (ACCOs) such as VACCA; and (2) recommendations designed to effect practice-level change at the level of direct practice, such as training designed to improve the cultural competency of Child Protection practitioners.

The reasons as to why critical recommendations have not been properly implemented (or implemented at all) relate to the complexity of child protection systems, and the function of child protection systems which are politically, historically, morally, socially and culturally grounded. The underlying logic of child protection systems are difficult to shift, no matter how well intentioned the actions of individual practitioners or the investments made in reform agendas by government. As previously stated at the beginning of this submission, the underlying logic of child protection systems in Australia operate differently for Aboriginal and Torres Strait Islander peoples, and are rooted in colonialism and racism. Significant structural transformation is needed to effect change within these systems, which requires attention to the politics and logic of child protection systems for Aboriginal and Torres Strait Islander people. Black legal scholar, Dorothy Roberts, makes this point poignantly in relation to the United States (U.S) context where the disproportionately of Black children shares similarity with the Australian context:

> "Scholars who deal with Black children in the child welfare system tend to focus on social work practice—how children should be treated—rather than the politics of child protection—how political relationships affect which children become involved in the system. Their primary goal is to make services more sensitive to the needs and culture of Black families, not to question the fundamental conflict between the child welfare system and the integrity of the Black family and community." [79]

While we offer examples of good practice and recommendations below in this submission, it is important to state up-front that micro-level practice recommendations must be accompanied by attention to the logic of child protection systems. While good practice within child protection systems can prevent children from being removed in the first place, we must nevertheless be cognisant to the harm that child protection systems have continued to perpetuate against Aboriginal and Torres Strait Islander peoples while investments in preventive measures – such as poverty alleviation strategies – continue to lag.

Examples of good practice by Aboriginal and Torres Strait Islander health organisations

Throughout Australia, there is evidence of excellent community-led practice, driven by Aboriginal Medical Services and Aboriginal Community-Controlled Health Organisations (ACCHOs) when Aboriginal and/or Torres Strait Islander women and families may be, or are, subject to child protection involvement during pregnancy. In Victoria, this includes work undertaken by the ACCHO First Peoples' Health and Wellbeing, especially at its Frankston site where it has been reported anecdotally that one in three pregnant Aboriginal women are

---

[79] Roberts, D. (2002). Shattered bonds: The color of child welfare. Basic Civitas Books. (p. vii)

subject to unborn reporting and/or infant child protection investigations. Holistic support and care, to pregnant women or birthing parents and their families, is provided to ensure that babies arrive safely, in an environment where child protection's concerns about risk have been addressed. This work is possible when there is transparency and clear communication by child protection regarding the specific risk concerns in question, so that action can be taken to address concerns (e.g. obtaining housing) by the time babies are born to prevent child protection removal at or following birth. In Queensland, work undertaken by the Family Care Service team at Mulungu Aboriginal Corporation – Primarily Health Care Service during pregnancy has been preventing Aboriginal and/or Torres Strait Islander babies at risk of removal by Child Safety services (the equivalent of Victoria's child protection service) upon birth.[80] At the 2022 Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) Conference in Meanjin (Brisbane), the team at Mulungu Aboriginal Corporation – Primary Health Care Service highlighted the importance of transparency, collaboration and open communication, providing holistic care to the family (as opposed to seeing the 'risk' in individuals) to support their multifaceted needs (i.e. housing, mental health support, relationship support) prior to the birth of babies to ensure that 'risk' concerns held by Child Safety were addressed.[81] The work and advocacy of Aboriginal and/or Torres Strait Islander health and family support workers were critical to this success, as was the development of safety plans by the Mulungu Aboriginal Corporation – Primarily Health Care Service to showcase evidence of how the risk concerns held by Child Safety were being addressed.[82] However, as child protection services hold the ultimate statutory power to authorise a removal of an newborn upon or shortly following birth, the success of Aboriginal health service-led work is largely dependent on the collaborative, transparent and successful working relationships established by Aboriginal and Torres Strait Islander health services with local child protection authorities, including individual child protection workers.

Recommendations for practice change in relation to unborn reporting and infant removals

Within their paper calling for action and change in relation to Aboriginal and Torres Strait Islander unborn reporting and infant removals by child protection in Australia, Chamberlain et al. made a number of recommendations, aligned specifically to the Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPP).[83] These are outlined below.

---

[80] Mulungu Aboriginal Corporation – Primarily Health Care Service. (2022). *Keeping Families Together in the Unborn Space.* Presentation by the Family Care Service team at the 2022 Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) Conference, 1-2 December, Meanjin (Brisbane), Australia. See https://www.qatsicpp.com.au/blog/2022/11/30/2022-qatsicpp-members-conference-final-program/

[81] Mulungu Aboriginal Corporation – Primarily Health Care Service. (2022). *Keeping Families Together in the Unborn Space.* Presentation by the Family Care Service team at the 2022 Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) Conference, 1-2 December, Meanjin (Brisbane), Australia. See https://www.qatsicpp.com.au/blog/2022/11/30/2022-qatsicpp-members-conference-final-program/

[82] Mulungu Aboriginal Corporation – Primarily Health Care Service. (2022). *Keeping Families Together in the Unborn Space.* Presentation by the Family Care Service team at the 2022 Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) Conference, 1-2 December, Meanjin (Brisbane), Australia. See https://www.qatsicpp.com.au/blog/2022/11/30/2022-qatsicpp-members-conference-final-program/

[83] Chamberlain, C., Gray, P., Bennet, D., Elliott, A., Jackomos, M., Krakouer, J., … Langton, M. (2022). Supporting Aboriginal and Torres Strait Islander Families to Stay Together from the Start (SAFeST Start): Urgent call to action to address crisis in infant removals. Australian Journal of Social Issues, 57, 252– 273. Available from: https://doi.org/10.1002/ajs4.200

1. **"Prevention**

Redesign maternity and neonatal services to ensure all parents have access to culturally responsive, trauma-integrated experienced support during pregnancy, birth and early postpartum (Kildea et al., **2019**). This must include community-led, continuity-of-care models, which studies show can dramatically increase attendance and engagement in antenatal care – and reduce preterm births by 50 per cent (Kildea et al., **2021**). Building trusting relationships between parents and professionals is the key feature of these models, which enables effective two-way communication to enable understanding of complex social and emotional needs, and ability to access skilled therapeutic care and practical support. These culturally responsive models of care should include trauma-integrated approaches, such as:

- Resources to help parents understand and learn about parenting, cultural ways of fostering children's social and emotional well-being, the effects of trauma, practical strategies to help and culturally safe support services available.
- Access to holistic, culturally acceptable support services to foster empowerment and self-care, offer compassionate care and support, build connections, provide parent education and opportunities to develop skills, provide practical assistance and support to develop life skills, reduce isolation and offer a range of healing and therapeutic approaches (Arabena, **2014**; Austin & Arabena, **2021**).
- Education for care providers to build expertise in culturally responsive trauma-integrated care. This includes standard training approaches to develop baseline skills and competencies, and also mentoring and supervision to build expertise and wisdom to enable best practice in supporting parents with complex social and emotional needs (Chamberlain et al., **2016**). Incorporating and relearning Aboriginal and Torres Strait Islander ways of communicating effectively about sensitive issues, including using Dadirri, yarning and story-telling, are critical (Chamberlain et al. **2020**).

2. **Partnership**

Aboriginal and Torres Strait Islander communities must drive the development and implementation of culturally embedded models of care for new and expectant parents, including service design and administration, Aboriginal Family Led Decision Making models (currently being evaluated in NSW and Western Australia) and other supports. Aboriginal Community Controlled Organisations should lead the design and delivery of systems, services and practice. Aboriginal and Torres Strait Islander communities have demonstrated the capacity to lead highly effective crisis responses during the COVID-19 pandemic (Crooks et al., **2020**) and are best placed to lead a comprehensive response to this complex issue (Chamberlain et al., **2016**). Aboriginal and Torres Strait Islander community-led, preventive services and solutions are highly

cost-effective (Harris-Short & Tobin, **2019**). Economic reports on the effectiveness of preventive, community-led services demonstrate significant increased returns on investment for vulnerable Aboriginal and Torres Strait Islander families (SNAICC, **2020**).

3. Placement

Where parents are identified as needing more intensive support, all alternatives to removing the child must be explored. This includes practical, timely and active support to address risks associated with structural inequities and socioeconomic deprivation, such as housing. This could also include enabling access to culturally safe high-quality childcare and other necessary family supports over the perinatal and early childhood period (Sandner & Thomsen, **2018**), such as the Bubup Wilam Aboriginal Child and Family Centre in Melbourne. There is a need for urgent investment in developing and evaluating pilot interventions for culturally safe, high-quality live-in supported parent accommodation, co-designed with communities, which offer safe nurturing healing support. Examples such as the He Korowai Trust (**2021**) in Aotearoa demonstrate that this can be an acceptable strategy to provide full-time live-in support, and research to develop and trial these strategies is urgently needed. Using the unique opportunity to provide full-time live-in support for incarcerated parents to care for their infants is another important strategy to develop and evaluate a pilot programme.

4. Participation

Parents, families and communities must be at the centre of child protection decision making. Discussions and decision making must be transparent and open with the family in the presence of a chosen support person (e.g. Waminda's Program [NSW] and Aboriginal Family Led Decision Making pilot (Western Australian Government, **2021**)), including identification of family or kin to provide care. Under no circumstances should any plans be made with hospital staff for infants to be removed from families' care without discussion and preventive plans being made with the parents and families (Marsh et al., **2019**). An ethical approach demands that parents are entitled to information and opportunity for engagement in support and care and involvement in decisions about the best interests of their child. In every health service providing evidence-based care, it is an expectation that service providers will identify risks, and strategies to mitigate these risks. The prevailing argument supporting the practice of deception around unborn [Child Protection System] (CPS) reports and newborn removals is that informing the parent may increase the risk that they withdraw from or try to leave maternity care (Davis, **2019**). However, deeming parents to be a "flight risk" is not a justifiable rationale supported by evidence (Davis, **2019**, p.189). The risk of flight and trauma is far greater where there is deception (Davis, **2019**). There is no evidence that deceiving parents about plans to forcibly take their baby after birth reduces the risk of parents leaving hospital early. Rather, open, honest, transparent systems of support would allow parents and families to participate in the development of clear and attainable options.

Consideration should be given to essential development and evaluation of a pilot model of care where CPS and perinatal care providers work together under the

leadership of Aboriginal Community Controlled Organisations (The Victorian Aboriginal Children and Young People's Alliance, **2019**) to develop comprehensive support plans and foster accountability, transparency and professional practice in planning support in the presence of a chosen support person (e.g. Aboriginal Family Led Decision Making). These are consistent with a therapeutic justice model of care (Marsh et al., **2019**), which includes expertise and community "wise counsel" to foster access to appropriate support and ensure that complex decision-making processes are transparent. This will help to ensure the best possible decisions are made with members of families, to increase trust in the system and build the evidence base needed for supporting parents with complex social and emotional needs. Further, close connection and intimate knowledge of the family would not be lost.

Any notification should be accompanied by an assessment of needs and a support plan to reduce risk and provide the appropriate level of therapeutic intervention required to promote successful outcomes, whether this be for mental illness, drug use, violence, trauma or disability. The focus during this critical parenting transition should be on the current situation, rather than past concerns (The Victorian Aboriginal Children and Young People's Alliance, **2019**). This is particularly salient for young parents exiting the OOHC system themselves, who frequent express fervent desire for a "fresh start" and "parenting differently" (Chamberlain, Ralph, et al., **2019**). Support services must provide practical strengths-based structural and economic support for parents to achieve these hopes and dreams of having a happy, healthy family.

5. **Connection**

Where infants are removed from their parents by CPS, it is vital to ensure ongoing support for parents and families to strengthen relationships, address identified concerns and enable timely reunification. Culture remains a key feature of well-being and resilience (Gee et al., **2014**). All children have a fundamental right to connect to their family, community and culture (Harris-Short & Tobin, **2019**; Krakouer et al., **2018**; United Nations, **1989**). Strategies may include ensuring parents are provided with keepsakes and ways of promoting bonding with their baby (e.g. photographs, updates, clothes), support to express breastmilk if they choose to do so, and emotional support that includes fostering supportive connections. Contact arrangements need to be established as early as possible to enable connection for children to families. It is important to work holistically with the whole family to ensure that extended family and community supports are available to parents. This may include asking parents for permission to contact extended family members for support purposes, in line with culturally appropriate collective child-rearing practices."[84]

---

[84] Chamberlain, C., Gray, P., Bennet, D., Elliott, A., Jackomos, M., Krakouer, J., … Langton, M. (2022). Supporting Aboriginal and Torres Strait Islander Families to Stay Together from the Start (SAFeST Start): Urgent call to action to address crisis in infant removals. Australian Journal of Social Issues, 57, 252– 273. Available from: https://doi.org/10.1002/ajs4.200

Recently, Trew, Taplin, O'Donnell, Marriott and Broadhurst published evidence on parents' experiences with child protection during pregnancy and post-birth in Australia.[85] This study was not specific to Aboriginal and Torres Strait Islander parents, however four out of the 13 parents interviewed were Aboriginal while 5 of the infants discussed were Aboriginal as well. Within this paper, parents identified a number of recommendations from parents to describe how child protection agencies can improve processes and the supports for parents.[86]

One key recommendation was for the Department to provide greater transparency and clarity about child protection processes, including details about pre-birth meetings and the kinds of supports available for parents.[87] Many parents reported that they did not understand the perinatal child protection processes, including what was required of them to demonstrate that their baby could remain safely in their care. Parents called for the Department to provide transparency around the decision-making processes. For many, the removal was sudden and unexpected, causing great stress.[88]

Parents wanted greater supports targeted at preventing removal, with more services and supports made available to families prior to the decision to remove the children from the parents' care, as one Aboriginal mother explained:

> "… being Aboriginal … there is no support … I think they should help towards improving family and helping family before taking a child away. It should be the absolute last option. We were told that more services, more doors would open up to us once the child got taken into care … [but] because the baby wasn't in care, they couldn't help us. (Bridget)" [89]

Multidisciplinary agency work was highlighted as an important factor in helping several parents to keep their child (ren) in their care. Caseworkers from non-government agencies, advocacy and health workers played a key role in developing safety plans and working with the Department case workers. Parents also offered other specific suggestions to improve child protection removal processes, particularly in relation to infants.[90] These are listed below:

- Improve the ability of caseworkers to collaborate with parents to develop and implement safety plans.
- Improve casework practice with families experiencing family and domestic violence, particularly partnering with mothers
- Provision of greater supports targeted at prevention of removals and trauma informed practice (parents feel the department currently operates on a reactive response action)—provide opportunity to demonstrate capacity and change.

---

[85] Trew, S., Taplin, S., O'Donnell, M., Marriott, R., & Broadhurst, K. (2022). Parents' experiences with child protection during pregnancy and post-birth. *Child & Family Social Work* [Advance publication]. https://doi.org/10.1111/cfs.12984

[86] Ibid

[87] Ibid

[88] Ibid

[89] Ibid

[90] Ibid

- Families experiencing homelessness require support to secure stable housing, particularly mothers escaping domestic violence, who lack family supports, have themselves been in OOHC or are transitioning from prison.
- A supportive process for parents in which infant removal is required (i.e. providing a parent a voice in how removal occurs, options for kinship care arrangements, meeting carers and contact visits scheduled prior to removal).
- The use of independent facilitators at prenatal meetings in WA was supported by parents. Facilitators were reported to play a significant role in ensuring that all parties were heard and were accountable in the decision-making processes.
- An independent office for parent support that provides direction and advocacy for parents during child protection processes and/or removals.

This study also highlighted the lack of voice for parents involved in child protection processes. Trew et al.'s research highlighted that the parents' voice is vital to improving our understanding of child protection processes and their impacts.[91] Only by including the input of parents can improved practice, services and support be realised, thereby increasing the likelihood of improved outcomes for them and their infants.

---

[91] Ibid