

Section 2.

Out-of-home care in Australia: A contextual framework

In Section 2, contextual issues are described including the structure and types of out-of-home care and procedure for placement. In addition, specific Aboriginal and Torres Strait Islander contextual issues are described including, self determination in the context of child welfare, the Aboriginal and Torres Strait Islander Child Placement Principle, and the purpose and role of the Aboriginal Child and Islander Child Care Agencies.

The placement of children into out-of-home care

Structure of out-of-home care

Because state and territory governments are responsible for out-of-home care, jurisdictions differ in the way the services are provided. In some jurisdictions there is a reliance solely on non-government organisations to provide services and in other jurisdictions there is a mix of government and non-government service providers.

It is difficult to separate out-of-home care issues from the “hard end” of child protection. Policies and practices, as well as organisational cultures regarding the investigation of child protection cases within state and territory departments responsible for child protection influence the size and nature of the out-of-home care population, and the approach of government to the support of both children and carers. For a current review of the child protection systems, including a description of the departments responsible for the protection of children, the legislation under which they operate, the grounds for intervention, and a description of the intake, investigation, and case management process, see Bromfield and Higgins (2005).

Types of out-of-home care

In the second Senate Report on the inquiry into children in institutional or out-of-home care, the different types of out-of-home care were defined as follows:

Home-based care – where placement is in the home of a carer who is reimbursed for expenses in caring for the child. The three categories of home-based care are:

foster care – where care is provided in the private home of a substitute family which receives payment that is intended to cover the child’s living expenses;

kinship care – where the caregiver is a family member or a person with a pre-existing relationship with the child;

other home-based care – care in private homes that does not fit into the above categories.

Residential care – where placement is in a residential building whose purpose is to provide placement for children and where there are paid staff. This includes facilities where there is rostered staff, where there is a live-in carer and where staff is off-site (for example, a lead tenant or supported residence arrangement).

Family group homes – where placement is in a residential building which is owned by the jurisdiction and which typically run like family homes, have a limited number of children and are cared for around the clock by resident or substitute parents.

Independent living – where children are living independently, such as those in private boarding arrangements.

Other – where the placement type does not fit into the above categories or is unknown
(Australian Government Department of Senate Community Affairs Committee 2005, p. 78).

Out-of-home care can be either formally or informally arranged. Informal care refers to arrangements made without intervention by statutory authorities or courts; and formal care occurs following a child protection intervention (either by voluntary agreement or care and protection court order). Unless otherwise specified care arrangements described in this report refer to formal placements. Most children (varying between 78 per cent and 100 per cent across the eight jurisdictions) in formal out-of-home care in Australia are on care and protection orders (AIHW 2005). The extent to which each type of care is used and the availability and supports for each of these types of out-of-home care depends on the policy and funding arrangements within each jurisdiction.

Procedural framework for home based care

In order to identify areas that have influenced the increased need for carers, it is useful to outline the processes through which care and protection of children is provided. All states and territories in Australia administer similar programs for children in out-of-home care. Placements in out-of-home care are managed either by statutory authorities (that is, government welfare departments) or by non-government welfare agencies. Broadly, the characteristics of formal foster care situations are:

- the children and young people who are formally in substitute care are generally the subject of a Care Application to the Children’s Court;
- carers are selected, assessed and trained (pre-service and ongoing);
- the state or territory has some legal responsibility to ensure the child or young person has a case plan (that is, reasons for being in care, identified needs, care objectives, implementation timeframes) that reflects the needs of the child and is resourced, implemented and reviewed;
- carers receive a tax-free allowance and have access to contingency funds to meet costs associated with the child or young person’s case plan; and
- carers have access to ongoing support from services overseeing their placement (NSW Community Services Commission 2000).

Foster carers have responsibility to care for children when they are placed in out-of-home care. In most Australian jurisdictions, most foster carers have a direct relationship with a child and family welfare agency through the recruitment, assessment, training and support mechanisms of the agency (Victorian Department of Human Services 2003). Although the department has responsibility for the development of the child’s case plan, in most states carers may not have direct contact with the department. For example, in Victoria, the process of becoming a foster carer involves four key steps:

Pre-referral - Members of the public interested in caring will contact the department, an agency, or the state Foster Carer Association. This may be unprompted or in response to a recruitment campaign.

Referral - The individual is referred to a local agency or the department (depending on who has been delegated the responsibilities, which then provide

the individual information materials about becoming a carer. The potential carer may also attend an information session. A worker may visit the potential carer to provide information and to make a preliminary assessment about the individual or family's suitability.

Assessment and training - If the individual wants to become a carer, a process of assessment and pre-service training takes place. An assessment of prospective carers typically includes taking a family history (including criminal and child protection histories), and then assessing family interactions, parenting skills and motivation to provide care. Training provides an opportunity to learn about parenting a wide range of children and young people. Assessment and training can take a number of months.

Placement - Following the placement of a child, the carer provides for the physical needs of the child and consistency in care that will enhance the child's self-esteem and self-identify and guide social behaviour. This is guided by the case plan. The agency provides ongoing training and agency care workers visit the carers at home to provide ongoing support (Victorian Department of Human Services 2003).

Out-of-home care in Australia: Indigenous specific contextual issues

Care of children within Aboriginal Communities

There is no one Aboriginal or Torres Strait Islander child rearing practice, however, it is evident that the concept of family differs from that of non-Indigenous culture. According to Yeo (2003), Aboriginal culture is characterised by principles of reciprocity and obligation that arise as a consequence of kinship and communal life. In mainstream culture, the emphasis is on individuality and immediate family, whereas in Aboriginal communities the emphasis is on affiliations with the extended family, community or local descent group. Aboriginal concepts of family and child rearing practices reflect this emphasis on kinship. Aboriginal children generally grow up in close relationship with their community and the role of parent does not equate to the Anglo-European notion of an individual who assumes the role of primary care giver. Children may be cared for by different women interchangeably and often will be brought up by women who are not their birth mothers (Malin, Campbell and Agius 1996).

Atkinson and Swain (1999) argued that despite the trauma following colonisation, traditional patterns of parenting continue in the contemporary Aboriginal community. The external family is the site in which resistance to assimilation is maintained and identity is nurtured.

Principles of self determination

Current approaches in Indigenous child and family welfare have a basis in a broad shift in government legislation and policy that occurred the 1970s. The policy shift was based on the principle that Aboriginal and Torres Strait Islander people should have a right to self-government and management of all their political, economic and social affairs (Lock 1997). This shift toward what is broadly defined as self-determination occurred as a response to the increased civic activism of Indigenous people in Australia and internationally, and to the government realisation of the

failure of the policies of assimilation to address the many problems facing Indigenous people (HREOC 1997).

Most initial government developments toward self-determination occurred at a federal level (Lock 1997). Self-determination was a key component in federal decisions to provide a referendum for voting rights in 1966 and approaches to land-rights legislation during the 1970s. It also underpinned the development of specific legislation covering Indigenous councils and associations such as the National Aboriginal Consultative Committee and later the Aboriginal and Torres Strait Islander Commission (ATSIC). Under the tenets of self-determination, the Commonwealth government also incorporated and funded a number of community-based Indigenous organisations, both for the conduct of Indigenous community affairs and for the delivery of government-funded services to Indigenous communities (Sanders 2002).

Self determination and welfare efforts to include the needs of Indigenous families and children

Indigenous Australians view the right to participate in their children's welfare as a key tenet of self-determination (Lock 1997). As such, Indigenous groups continue to lobby for legislation and organisational structures that provide more attention to the special needs of Indigenous children. In response to the over-representation of Aboriginal and Torres Strait Islander families and children in welfare and the legacy of trauma resulting from past policies in this area, state and territory welfare departments recognise the need for Aboriginal and Torres Strait Islander communities to exercise greater control over their children's welfare. While a number of initiatives have been implemented, the central principle underpinning Aboriginal and Torres Strait Islander child welfare provision since 1970 has been the recognition of the Aboriginal and Torres Strait Islander Child Placement Principle (generally abbreviated to the Aboriginal Child Placement Principle).

Aboriginal Child Placement Principle

Adopted in legislation in some form in all state and territories, the Aboriginal Child Placement Principle (ACPP or the Principle) outlines the preferred order of placement for an Aboriginal and Torres Strait Islander child who has been removed from their birth family. This order of preference is that any Indigenous child removed from his or her family be placed with:

- 1) the child's extended family;
- 2) the child's Indigenous community;
- 3) other Indigenous people.

Only if an appropriate placement cannot be found from the three groups can an Aboriginal child be placed with a non-Indigenous carer. The Principle has a number of important consequences for Indigenous communities. The Principle provides an important acknowledgement that previous policies caused suffering to Indigenous people and reflects the right of Indigenous people to raise their children and retain them in their communities (Lock 1997). The instrumental aspect of the Principle is that it operates in such a way that the best interests of the Indigenous child are linked to the best interests of the community (Lynch 2001; Ralph 1997). In ensuring Aboriginal and Torres Strait Islander children remain in their communities, the

Principle recognises that Indigenous children in need of placement outside their families are better off being cared for by Indigenous people within their own communities. Placements that are consistent with the Principle help Indigenous children to maintain a sense of identity and provide a source of learning and support that can only come from their own families and communities (Walker 1993). This equips Indigenous children to cope with racism and other difficulties for Indigenous children in integrating into non-Indigenous society (Lock 1997).

The Principle also recognises the right of Indigenous communities to retain their social and cultural heritage and customs (Lynch 2001; Ralph 1997). Lock (1997) also highlighted that the forcible removal of children can extinguish the link between the child and their land. In such circumstances, it is less likely that Aboriginal and Torres Strait Islander people will be able to claim native title under common law.

Aboriginal Child and Islander Child Care Agencies

One of the key means on enabling self-determination in Aboriginal and Torres Strait Islander child welfare was the formation of Aboriginal and Islander Child Care Agencies (AICCAs), which have played a leading advocacy and service provision role since the 1970s to assist Aboriginal and Torres Strait Islander people with parenting, family support or dealing with child protection issues and authorities (Stanley, Tomison and Pocock 2003). The specific responsibilities of each agency in child protection varies between states and territories, according to the capacity of the organisation, the level of demand, and support the organisation receives from funding bodies (Queensland Crime and Misconduct Commission 2004). AICCAs typically provide community and family input into state and territory welfare departments in decisions regarding the welfare of the children, the primary focus of which is on the placement of Indigenous children who have been removed from home by authorities. The implementation of the Aboriginal Child Placement Principle is therefore closely linked to the operation of the agencies and a number of states and territories have developed legislation or policy for the consultation of AICCAs in decisions regarding the placement of Aboriginal and Torres Strait Islander children in out-of-home care. Additional functions of these agencies can also include:

- provision of assistance to prevent possible disintegration of Aboriginal and Torres Strait Islander families;
- monitoring and ensuring contact between children in out-of-home care and their families;
- recruiting, training and supporting culturally appropriate foster carers for Aboriginal and Torres Strait Islander children; and
- offering advice and support for Indigenous families requiring assistance, in particular in regards to children (Ah Kee and Tilbury 1999).

At a national level, the Secretariat for National Aboriginal and Islander Child Care (SNAICC) was formed in 1981. SNAICC is a national non-government peak body for Aboriginal and Islander Child Care Agencies in Australia representing the interests of Aboriginal and Torres Strait Islander children and families. Until recently, the funding of AICCAs came from three sources: the Commonwealth, state and territory governments and (preceding its disbandment) ATSIC.

Application of the Aboriginal Child Placement Principle

All Australian states and territories have endorsed the Aboriginal Child Placement Principle in policy or legislation. However, data collected each year by the AIHW from community services departments in each state and territory indicate that a large proportion of Aboriginal and Torres Strait Islander children are being placed with non-Indigenous families. Table 1 displays the proportion of Indigenous children in out-of-home care who were placed in accordance with the Principle (that is, they were placed with a related or non-related Indigenous caregiver, a non-Indigenous relative, or in Indigenous residential care) (AIHW 2005). As can be seen, in 2003 compliance with the ACPP varied significantly across the states and territories, ranging from 17 per cent in Tasmania* to 87 per cent of placements in New South Wales. In total, 894 Indigenous children were *not* placed in the care of relatives or an Indigenous person. This represented approximately 21 per cent of Indigenous children in care.

Table 1: Proportion of Aboriginal and Torres Strait Islander children in out-of-home care placed in accordance with ACPP by state and territory at 2001-04 (AIHW 2005).

	Per cent children placed in accordance with ACPP		
	2002	2003	2004
ACT	74	56	60
NSW ¹	88	87	N/A
NT	74	67	69
QLD	69	67	63
SA	72	65	78
TAS	45	17	40
VIC	55	60	62
WA	80	82	81

Note. ¹ NSW was unable to provide data for 2003-4 due to the ongoing implementation of a new data system.

Current problems in the application of the Aboriginal Child Placement Principle

Given the importance of the Aboriginal Child Placement Principle for Aboriginal and Torres Strait Islander communities and children, it is apparent that the proportion of Indigenous children placed in non-Indigenous care is too high (NSW Community Services Commission 2000). A number of factors have been identified in hindering the effective implementation of the ACPP (Lock 1997). These are: the identification of Aboriginal and Torres Strait Islander children; requests from the biological family for their child to be placed with a non-Indigenous family; lack of consultation with Indigenous organisations; conflict between best interests of the Aboriginal and Torres Strait Islander child and the best interests of the Aboriginal and Torres Strait Islander community; and a shortage of Indigenous carers.

Identification of Aboriginal and Torres Strait Islander children. There are a number of inherent difficulties in the process of identifying an Indigenous child. Without knowledge of a child's Indigenous status, welfare agencies cannot bring the Principle into effect. Legal definitions of "Aboriginality" are based on descent or self-

* The Tasmanian data most probably reflect the small size of the Indigenous population, and may reflect issues associated to the identification of Indigenous status in that state (AIHW 2005).

identification and community recognition, which are subjective concepts and complicated when the child is young or their background is unknown. There can also be inadequate investigation of a child's cultural background.

Requests to be placed with non-Indigenous family. Indigenous parents or an Indigenous child can request to be placed with a non-Indigenous family. This is often the case when children have one non-Indigenous parent; or where there is conflict between families or "factions" within a community; or because of the small size of the Indigenous community, the family wants to maintain privacy.

Lack of consultation with Aboriginal and Torres Strait Islander organisations. Consultation between the state and territory departments and Aboriginal and Torres Strait Islander communities is required to assist in finding the most suitable carers. The level of consultation between state welfare departments and AICCAs or other Indigenous representatives has been inadequate in some areas of Australia.

Conflict between best interests of the Aboriginal and Torres Strait Islander child and the best interests of the Aboriginal and Torres Strait Islander community. Although recognising the fundamental links between culture and identity and the importance of family and community to the meaningful existence of Indigenous children, Lynch (2001) has drawn attention to the potential conflicts between the best interests of an Indigenous child and the best interests of the Indigenous community. In addition, in order to comply with the ACPP an Indigenous child can be placed with another Indigenous family in a district far from home, effectively removing their local culture and environment and disconnecting the child from their land (Lock 1997).

Shortage of Aboriginal and Torres Strait Islander foster carers. Implementation of the ACPP is hindered by a shortage of Aboriginal and Torres Strait Islander foster carers. This highlights problems in recruitment and retention of Indigenous carers as well as areas such as assessment, training and support.