

Tuesday, 4 July 2023

SNAICC – National Voice for Children
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Re: Youth Justice and Wellbeing Reforms across Australia

Dear Commissioner,

Thank you for the opportunity to make a submission on youth justice and wellbeing reform across Australia. SNAICC is the national non-government peak body for Aboriginal and Torres Strait Islander children. We work for the fulfilment of the rights of our children, to ensure their safety, development, and well-being. Our work comprises policy, advocacy, and sector development. SNAICC also works with non-Indigenous services and alongside Commonwealth and State Governments to improve how agencies design and deliver supports and services for Aboriginal and Torres Strait Islander children and families.

Youth justice and child wellbeing reform is particularly important for Aboriginal and Torres Strait Islander children because of their overrepresentation in youth justice and child protection systems. Overrepresentation is driven by systemic racism and discrimination within government institutions and service systems such as over policing, over surveillance and conscious and unconscious bias in decision-making across both the child protection and youth justice systems. In addition, more than half of young people (or 53%) aged 10 and over under youth justice supervision, during 2020–21 had received a child protection service in the 5 years from 1 July 2016 to 30 June 2021.¹ This highlights the need to address both the social determinants of health and wellbeing that lead to system interventions as well as to reform the child protection system.

Overrepresentation is also a result of inequities across the social determinants of health and wellbeing. Governments have an obligation to provide equitable access to universal services like health, education and housing that support children and families to thrive. Currently Aboriginal and Torres Strait Islander children and families do not have equitable access to these services because of barriers like a lack of culturally safe service providers.

¹ AIHW (2022) Young people under youth justice supervision and their interaction with the child protection system 2020–21, AIHW, Australian Government, accessed 2 December 2022.

Aboriginal Community Controlled Organisations (ACCOs) deliver culturally safe and wrap around supports for families and are places for cultural and community connection and care. The culturally responsive and holistic way that ACCOs provide services make them best placed to meet the needs of children and families and provide early support that prevents contact with tertiary systems. However, ACCOs are chronically underfunded, leaving Aboriginal and Torres Strait Islander children and families without the supports they need. Funding challenges extend further than just the amount of money provided to ACCOs for service delivery. Competitive grant and tender processes disadvantage ACCOs, especially smaller ACCOs, because larger non-Indigenous organisations have the advantage of economies of scale that can mean lower costs but not culturally safe or responsive services. The funding that is allocated to ACCOs is delivered under strict programmatic guidelines, meaning that funding can only be used under pre-determined activities and timeframes. In most cases these guidelines do not cover the type of support that ACCOs know are most useful and effective. ACCOs are doing some of the most impactful work for children and families unfunded.²

Not having access to the same level of services and supports as other children and families create vulnerabilities for Aboriginal and Torres Strait Islander children that make them more at risk of encountering child protection and youth justice systems. These systems have been designed by Governments that have excluded Aboriginal and Torres Strait Islander people from decision making, resulting in child protection and youth justice systems that do not uphold the rights or meet the needs of our children and families.

Investment in community led responses is needed to address overrepresentation in tertiary systems and improve the wellbeing outcomes of Aboriginal and Torres Strait Islander children. The Family Matters Roadmap, developed by SNAICC and Aboriginal and Torres Strait Islander leaders from across the country, proposes four inter-related building blocks underpinned by evidence, ethics and human rights detailing the systemic changes needed to achieve this aim:

1. All families enjoy access to quality, culturally safe, universal, and targeted services necessary for Aboriginal and Torres Strait Islander children to thrive.
2. Aboriginal and Torres Strait Islander people and organisations participate in and have control over decisions that affect their children.
3. Law, policy and practice in child and family welfare are culturally safe and responsive.
4. Governments and services are accountable to Aboriginal and Torres Strait Islander people.

² SNAICC 2022, 'Stronger ACCOs, Stronger Families Final Report'. Retrieved from: [SNAICC-Stronger-ACCOs-Stronger-Families-report-2022.pdf](#)

In considering and responding to the questions SNAICC has drawn from relevant sections from our upcoming submission to the Inquiry into Australia's Human Rights Framework. Additionally, attached is the Family Matters Report 2022 that provides a national overview on efforts and progress to address overrepresentation of Aboriginal and Torres Strait Islander children and young people in out-of-home care.

SNAICC also suggests that throughout the project the Australian Human Rights Commission considers and refers to the significant work that has been undertaken by previous inquiries and Royal Commissions. These reports provide extensive detail on the factors contributing to children's involvement in youth justice systems, the drivers of the overrepresentation of Aboriginal and Torres Strait Islander children and young people in these systems and the pathways forward to address these challenges. Below is a list of some resources the Australian Human Rights Commission may wish to consider.

Existing resources:

- [Royal Commission into Aboriginal Deaths in Custody](#)
- [Royal Commission into the Protection and Detention of Children in the Northern Territory](#)
- [Pathways to Justice Report](#) – Australian Law Reform Commission
- [Bringing them Home Report](#) – Australian Human Rights Commission
- [Position Paper on the Use of Spit Hoods and Restraint Chairs on Children](#) – Office of the Children's Commissioner
- [Working Paper on the Implementation of the Royal Commission into Aboriginal Deaths in Custody](#) – Australian National University
- [The Link Between Child Maltreatment and Adolescent Offending](#) - Australian Institute of Family Studies
- [The State of the Incarceration Nation: A briefing to Australia's members of Parliament](#) – Justice Reform Initiative
- [Family is Culture Review Report](#)
- [Changing the Sentence](#) – Queensland Family & Child Commission
- [Yarning for Change: Listen to My Voice](#) – Queensland Family & Child Commission
- [Wirkara Kulpa](#) – Victorian Aboriginal Justice Agreement
- [Ngaga-Dji](#) – Koorie Youth Council

Please note, this is not an exhaustive list but an illustration of the extensive work that has been undertaken because of decades of advocacy from Aboriginal and Torres Strait Islander communities.

Below are sections from SNAICC's upcoming submission to the Inquiry into Australia's Human Rights Framework that are also relevant to this project.

SNAICC appreciates the opportunity to make a submission to this project and hopes that Aboriginal and Torres Strait Islander children remain centred in any work on youth justice and child wellbeing reform. If you would like to discuss this submission in more detail, please contact [REDACTED], Manager, Policy Partnership Secretariat by email to [REDACTED].

Warm regards,

Catherine Liddle

CEO

Att:

The Family Matters Report 2022

Stronger ACCOs, Stronger Families Final Report

What are the drivers of overrepresentation and poor wellbeing outcomes?

Even when there are policies and legislation in place designed to improve life outcomes or protect children's rights, Aboriginal and Torres Strait Islander children rarely enjoy these equitably. We need only to look at the shocking rates of overrepresentation in the child protection and youth justice systems as evidence of the systemic and institutional neglect of Aboriginal and Torres Strait Islander children's rights and wellbeing at both federal and state/territory levels.

As reported in the 2022 Family Matters Report, at 30 June 2021 there were 22,297 Aboriginal and Torres Strait Islander children in out-of-home care.³ Aboriginal and Torres Strait Islander children were 10.4 times more likely to be in out-of-home care than non-Indigenous children. Aboriginal and Torres Strait Islander children are overrepresented at every stage of the child protection system, including notifications, investigations, substantiations, removal into out-of-home care, permanent removal, and adoption. This has been an increasing trend in every jurisdiction for the last 10 years. Notably, the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care has continued to increase at a higher rate than the overrepresentation of Aboriginal and Torres Strait Islander children in cases of substantiated child neglect or abuse. In most jurisdictions, the rates of overrepresentation compound at successive steps in the child protection system.⁴

As with the child protection system, Aboriginal and Torres Strait Islander children and young people are overrepresented in the youth justice system at every stage, compounding at each stage. The drivers of overrepresentation are the same as for child protection, namely upstream disadvantage experienced by families and communities and systemic racism and discrimination. There is also an overrepresentation of Aboriginal and Torres Strait Islander children and young people with disability in youth justice systems and a significant association between time in out-of-home care and contact with the justice system.

Recent work from the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) highlights key concerns in Queensland that are applicable across all jurisdictions in youth justice. These concerns include the overrepresentation of Aboriginal and Torres Strait Islander children and young people in detention, the significant impact of intergenerational trauma from forced removal of children from families and communities, limited provision of early support for children and families and systemic failures and inadequate investment in community led solution and ACCOs.⁵

³ SNAICC 2022, 'The Family Matters Report 2022', pg. 11.

⁴ Ibid

⁵ Queensland Aboriginal and Torres Strait Islander Child Protection Peak Limited 2023, 'Youth Justice: Position Paper'. Retrieved from: https://coe.qatsicpp.com.au/wp-content/uploads/2023/05/CoE-YJ-Position-Paper_2023.pdf pg. 2.

Aboriginal and Torres Strait Islander children and young people commonly experience significant breaches of their rights in youth justice systems. The Northern Territory Royal Commission into the Protection and Detention of Children looked at how children are treated in detention and welfare systems. Numerous breaches of children's rights are highlighted in the findings including children and young people being subjected to verbal abuse and racist comments and denied water, food, and the use of toilets.⁶

What needs to change?

Universal and targeted services

The Australian Government is responsible for supporting early intervention and prevention of contact with tertiary systems for Aboriginal and Torres Strait Islander children. The responsibility for social determinants of health and wellbeing, which are the drivers of contact with justice and child protection systems sit with the Australian Government. The sectors relevant to these social determinants include housing, health, education, early years education and care, domestic and family violence response, income support, food security, land rights and environmental health. The Australian Government has a responsibility to play both its direct role in the systems it has carriage of (e.g., income support, early years education and care) and an indirect role in working with the states and territories to invest in upstream supports to prevent downstream harms that cause children and families to have contact with tertiary systems.⁷

To enable Aboriginal and Torres Strait Islander children to fully enjoy all their rights, they and their families must have equitable access to the universal service systems that ensure their health and wellbeing and support them to thrive. Since the early 1970s, Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs) have been providing culturally responsive and holistic health and wellbeing services to children and families. ACCOs deliver culturally safe and wrap around supports for families and are places for cultural and community connection and care. The culturally appropriate and holistic way that ACCOs provide services make them best placed to meet the needs of children and families and provide early support that prevents contact with tertiary systems. Aboriginal and Torres Strait Islander families experience discrimination, culturally inappropriate care, and fear of forced removals in non-Indigenous services. Despite this, ACCOs continue to receive far less funding for these services nationally than non-Indigenous organisations.⁸ Without appropriate funding to ACCOs Aboriginal and Torres Strait Islander children and families

⁶ Australian Government 2017, 'Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory Final Report'. Retrieved from: [Findings and Recommendations \(royalcommission.gov.au\)](https://royalcommission.gov.au/Findings-and-Recommendations), pg. 3.

⁷ Save the Children, 54 Reasons & dandolopartners 2023, 'Putting children first: A rights respecting approach to youth justice in Australia'. Retrieved from: [Putting-children-first-A-rights-respecting-approach-to-youth-justice-in-Australia-April-23.pdf.aspx \(savethechildren.org.au\)](https://www.savethechildren.org.au/Australia-April-23.pdf.aspx) pg. 67.

⁸ SNAICC 2022, 'Stronger ACCOs, Stronger Families Final Report'. Retrieved from: [SNAICC-Stronger-ACCOs-Stronger-Families-report-2022.pdf](https://www.snaicc.org.au/Stronger-ACCOs-Stronger-Families-report-2022.pdf), pg. 13.

will continue to have restricted access to the universal services that are fundamental to full enjoyment of their rights. The Australian Government can support the rights of children to access universal services by appropriately funding ACCOs.

In addition to universal services Aboriginal and Torres Strait Islander children need access to dedicated legal supports provided by ACCOs. There are not enough pathways for people to bring claims of breaches of rights to the courts. This is also true in jurisdictions without current human rights legislation. Rights without pathways for redress are not protected. People must be able to bring claims against Governments and other entities when their rights have been breached. Importantly for all people but especially Aboriginal and Torres Strait Islander children, consideration needs to be given to the accessibility of redress pathways. This includes removing financial or geographic barriers, ensuring that pathways are easy to understand, that children and young people know about them, and that the process is culturally safe through measures like providing funding to Aboriginal and Torres Strait Islander legal services to assist claimants.

The current provisions in the Australian Human Rights Commission Position Paper make remedies more accessible and tangible than they currently are, and SNAICC supports the remedy pathways proposed. However, ensuring that Aboriginal and Torres Strait Islander children can access these pathways will require investment in the ACCO legal sector and significant efforts to ensure children, especially those in contact with child protection and youth justice systems, understand their rights and their right to remedies and that the processes are culturally safe to make these pathways as accessible as possible.

Raising the age of criminal responsibility

SNAICC fully supports the recommendations by the Raise the Age campaign to increase the age of criminal responsibility in every jurisdiction to at least 14 years.⁹

What is the role of national reform?

Oversight and accountability

How well governments are doing at state/territory and national levels at implementing and protecting children's rights needs to be monitored and overseen by independent bodies. This strengthens government transparency and accountability, and complaint pathways for the community. It also helps to ensure adequate focus on rights protection for cohorts that are particularly vulnerable to breaches, such as Aboriginal and Torres Strait Islander children. SNAICC recommends the establishment of a National Aboriginal and Torres Strait Islander Children's Commissioner to provide national oversight on Aboriginal and Torres Strait Islander children's rights, supported by equivalent roles in every jurisdiction.

⁹ <https://raisetheage.org.au/>

Government systems and institutions need to be accountable to our children. The establishment of legislated, fully empowered, and resourced national Aboriginal and Torres Strait Islander Children's Commissioner will provide a critical mechanism for increased transparency and accountability. Commissioners play a vital role in promoting the rights and interests of Aboriginal and Torres Strait Islander children and young people, providing strong advice on how legislation, policies, processes, programs, and practices can be improved, and providing an avenue for advocacy and support. Aboriginal and Torres Strait Islander children's rights are not being sufficiently protected or prioritised and this is resulting in those rights being systemically breached across the country.

Importantly, a National Aboriginal and Torres Strait Islander Children's Commissioner should be fully empowered through legislation and resourced appropriately to undertake the functions of the office. Children's rights are the responsibility of all Australian governments, and their rights require protection and monitoring at the state and territory level as well as the federal level. Currently, all states and territories have children's commissioners for all children, but not all jurisdictions have commissioners for Aboriginal and Torres Strait Islander children or similar advocate/guardian roles.

As a group whose rights are regularly breached and not fulfilled, a dedicated Commissioner of Aboriginal and Torres Strait Islander children is an essential mechanism to promote transparency and systemic reform to uphold Aboriginal and Torres Strait Islander children's rights.

National standards

Aboriginal and Torres Strait Islander children and young people often fall through the cracks of the federal system, impacted by 'buck passing' between the federal and state and territory governments, as well as between government departments and agencies. The ability of governments and their departments to avoid responsibility for addressing gaps in service systems results in patchy and siloed service delivery that disproportionately impacts Aboriginal and Torres Strait Islander children because of compounding vulnerabilities.

There are also significant inconsistencies in rights protections for children in areas that fall within the legislative and implementation responsibilities of the states and territories. Child protection and youth justice systems are stand out areas of state and territory responsibility within which Aboriginal and Torres Strait Islander children's rights receive limited and inconsistent protection. Aboriginal and Torres Strait Islander children are hugely over-represented in both of these systems, and are regularly separated from family and cultural connections as a result of government interventions within these tertiary systems. The United Nations Committee on the Rights of the Child has repeatedly expressed its concern at persistent over-representation and called for active measures to address this situation.¹⁰ However, significant progress has not been made to reduce

¹⁰ United Nations Committee on the Rights of the Child cited in SNAICC & National Aboriginal and Torres Strait Islander Legal Services 2015, 'Aboriginal and Torres Strait Islander Child Rights Report Card'. Retrieved from: <https://www.snaicc.org.au/wp-content/uploads/2015/12/02918.pdf>, pg. 3.

over-representation in these systems that regularly impinge on children's rights, highlighting the deficiencies in rights protections across states and territories.

Recommendations 44-53 of the Bringing them Home Report are about national standards legislation for the treatment and upholding the rights of Aboriginal and Torres Strait Islander Children. A nationally consistent approach to upholding the rights of Aboriginal and Torres Strait Islander children would make a significant contribution to preventing children from falling through the gaps in a federated model.