



Strengthening accountability for Aboriginal and Torres Strait Islander families

Our model for strengthening
accountability in New South Wales

August 2025



Jumbunna
Institute for Indigenous
Education and Research



Acknowledgement of Country

AbSec and Jumbunna acknowledge the Gadigal and Wangal People of the Eora Nation, the land on which we work, and pay respect to Elders past, present and emerging. We acknowledge the Elders, leaders and advocates within our sector and pay our respects to them as knowledge holders within this space and every space.

AbSec and Jumbunna acknowledge the Stolen Generations who never came home and the ongoing impact of government policy and practice on Aboriginal and Torres Strait Islander children, young people and families.

This report has been prepared by the Jumbunna Research Child Protection Hub. We acknowledge and pay our respects to the Cadigal peoples, and their ongoing custodianship of Country, including the place of the UTS campus.

Aboriginal and Torres Strait Islander readers are warned that the following study report may contain images of deceased persons.



AbSec is the peak organisation advocating for the rights, safety, and wellbeing of Aboriginal and Torres Strait Islander children, young people, families, and communities in New South Wales.

As an Aboriginal-led organisation, we champion self-determination and work towards a child and family system that is culturally safe, community-driven, and responsive to the needs of Aboriginal and Torres Strait Islander peoples.

AbSec leads policy reform, strengthens the capacity of Aboriginal Community-Controlled Organisations (ACCOs), and ensures that Aboriginal and Torres Strait Islander children and young people remain connected to family, community, and culture. We are a key member of the NSW Coalition of Aboriginal Peak Organisations (NSW CAPO) and the primary organisation responsible for Target 12 under Closing the Gap.

Through advocacy, research, and sector leadership, AbSec works to address the disproportionate representation of Aboriginal children in out-of-home care and promote holistic, community-led approaches to child and family wellbeing. Our commitment is to ensuring that Aboriginal and Torres Strait Islander children and young people grow up strong in culture, identity, and connection.

Our vision is that all Aboriginal and Torres Strait Islander children and young people are looked after in safe, thriving Aboriginal and Torres Strait Islander families and communities, raised strong in spirit and identity, with every opportunity for lifelong wellbeing and connection to culture, and surrounded by holistic supports.

In working towards this vision, we are guided by these principles:

- Acknowledging and respecting the diversity and knowledge of Aboriginal and Torres Strait Islander communities.
- Acting with professionalism and integrity in striving for quality, culturally responsive services and supports for Aboriginal and Torres Strait Islander families and communities.
- Underpinning the rights of Aboriginal and Torres Strait Islander people to develop our own processes and systems for our communities, particularly in meeting the needs of our children, young people, families and carers.
- Being holistic, integrated and solutions-focused through Aboriginal and Torres Strait Islander control in delivering outcomes for Aboriginal and Torres Strait Islander children, young people, families and communities.
- Committing to a future that empowers Aboriginal and Torres Strait Islander families and communities, representing our communities, and the agencies there to serve them, with transparency and drive.

The Research Unit at the Jumbunna Institute for Indigenous Education and Research (Jumbunna) at the University of Technology Sydney is an interdisciplinary team of scholars and practitioners, working toward a common principle that our work is driven by Aboriginal and Torres Strait Islander people, and contributes to their strength, self-determination, sustainability and wellbeing. Our work includes a longstanding focus on systems that continue to disproportionately remove Aboriginal and Torres Strait Islander children from their families, specifically the child protection and juvenile justice systems. This includes direct advocacy alongside Aboriginal families seeking justice in the face of systems, policies and practices that demonstrably harm our children, our families and our communities. We stand with Aboriginal communities seeking the transformation of these systems, and the logics on which they are based, in the interests of Aboriginal children, families and communities.

Thank you to our contributors

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Glossary of acronyms

AbSec	Aboriginal Child, Family and Community Care State Secretariat
ACCO	Aboriginal Community-Controlled Organisation
ACMP	Aboriginal Case Management Policy
ANZCCG	Australian Human Rights Commission and Australian and New Zealand Children's Commissioners and Guardians
DCJ	NSW Department of Communities and Justice
FIC	Family is Culture
OCG	Office of the Children's Guardian
OOHC	Out-of-home care
QSR	Quality Service Review
ROSH	Risk of significant harm
UNCRC	United Nations Convention on the Rights of the Child
UNDRIP	United Nations Declaration on the Rights of Indigenous People
WWWC	Working with Children Checks

Executive summary

Aboriginal and Torres Strait Islander children and young people in New South Wales continue to experience poorer outcomes across a range of areas, including particularly in the child protection system. Numerous reviews have urged strengthened mechanisms for accountability as a critical component for safeguarding the rights and interests of Aboriginal and Torres Strait Islander children and young people, especially those focused on the child protection system. Further, the current New South Wales Government has identified “rebuilding system accountability and oversight”¹ as a key area for reform as part of stabilising the child protection system, which is “inefficient, unsustainable, and failing to deliver on its mandate to promote the safety and wellbeing of children”.²

Building on this consensus about the need for greater accountability, this paper seeks to explore the nature and structure of accountability that will serve the rights, interests and wellbeing of Aboriginal and Torres Strait Islander children and young people, both within the child protection system, and more broadly. It draws on the foundations for reform identified by the *Family is Culture Review Report 2019: Independent Review of Aboriginal Children and Young People in OOHC (FIC, 2019)*, in particular Recommendation 9, which calls for the establishment of a new, specialised New South Wales Child Protection Commission, and the commitments made by all Australian governments through *Safe and Supported: National Framework for Protecting Australia’s Children 2021–2031*, to establish and strengthen accountability and oversight roles focused on promoting the rights and interests of Aboriginal and Torres Strait Islander children. The paper outlines how these complementary statutory roles stand to contribute meaningfully to shared aims of improved accountability, and increased confidence for Aboriginal and Torres Strait Islander communities and the broader public, particularly with respect to the statutory child protection system. In doing so, they play an essential role in the relationship between government systems and the people they serve, and promote fulfilment of our collective responsibility to our children.

“

“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”.³

– Megan Davis, 2019

First, this paper considers the evidence of reviews, such as the *FIC Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW* (2019), which have emphasised that mechanisms for accountability in child protection are vastly inadequate for all children. These reviews have also identified strengthened accountability as essential to improving outcomes and addressing the over-representation of Aboriginal and Torres Strait Islander children and young people within the child protection system. Further, it reflects on related commitments through the *National Agreement on Closing the Gap* and *Safe and Supported: National Framework for Protecting Australia’s Children (2021–2031)*, to actively strengthen accountability of government systems to Aboriginal and Torres Strait Islander communities, including particularly the rights and wellbeing

¹ NSW Department of Communities and Justice. (2025, February). *Reform plan: Transforming the out-of-home care system in NSW*, p.3.

² Audit Office of New South Wales. (2024, June 6). *Oversight of the child protection system: Performance audit*, p.2.

³ Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, p. XVI. NSW Department of Communities and Justice.

of children and young people. These reports agreed that increased transparency and public accountability is a central pillar for improving outcomes for Aboriginal and Torres Strait Islander children and young people, both in child protection and across intersecting systems such as youth justice, housing, education, disability and health. These findings are considered in the context of the multidimensional nature of public accountability structures and how these function to promote change. In doing so, we note that few—if any—of these are presently oriented in a way that represents the interests and perspectives of Aboriginal and Torres Strait Islander communities. This is the case despite the over-representation of Aboriginal and Torres Strait Islander children evident across all systems, and particularly child protection, where their over-representation increases through every stage of intervention.



“Over the next 10 years (from 2024 to 2034), the population of Aboriginal and Torres Strait Islander children in OOH and on TPPROs [Third party parental responsibility orders] is expected to increase by 38 percent based on the current trend, while the population of non-Indigenous children is expected to increase by just 5 percent during the same period.”⁴

– SNAICC – National Voice for our Children, 2024

Within this context, this paper presents two complementary accountability mechanisms to address these dual shortcomings:

1. a New South Wales Child Protection Commission, to improve oversight and coordinated regulation of the child protection system for all children, and
2. a New South Wales Commissioner for Aboriginal Children and Young People, with a mandate to promote and protect the rights of Aboriginal and Torres Strait Islander children and young people.

These mechanisms will offer significant specialisation in critical areas, while allowing coordination of functions in the interests of Aboriginal and Torres Strait Islander children and young people. Importantly, they would:

- Enable greater inclusion of Aboriginal and Torres Strait Islander communities in accountability mechanisms for systems that disproportionately affect their children.
- Address key structural deficiencies that characterise all current mechanisms for accountability.

These independent statutory bodies are not a panacea for the deep structural and political challenges through which these inequities are produced and re-produced. Rather, they offer a critical first step in transforming governments and systems to better represent Aboriginal and Torres Strait Islander people, and enhance accountability to Aboriginal and Torres Strait Islander communities.

⁴ SNAICC – National Voice for our Children. (2024). *Family Matters: Strong communities. Strong culture. Stronger children.* Family Matters Campaign, p.53.

Recommendations

1 Establish a New South Wales Child Protection Commission

As part of current reforms, we recommend that the NSW Government, in partnership with Aboriginal, Torres Strait Islander and other relevant communities, implement *FIC* Recommendation 9, to establish a new NSW Child Protection Commission, consolidating currently fragmented and limited regulatory and oversight functions.

This should include:

- A legislative mandate with roles, functions and powers necessary for the delivery of those functions.
- Empowered Commissioners, including at least one Aboriginal Commissioner, to exercise those functions.
- Adequate resourcing to deliver on their mandate, including re-allocation of existing resources where functions already exist (for example, OOHHC accreditation, child death reviews etc), and additional resources for new functions (including qualitative case file review, systemic inquiries and review of individual matters).

2 Establish a New South Wales Commissioner for Aboriginal Children and Young People

The NSW Government should establish an additional independent NSW Commissioner for Aboriginal Children and Young People, to fulfill the need for further oversight and rights-based advocacy for Aboriginal and Torres Strait Islander children beyond the child protection system. This role would support the work of the NSW Child Protection Commission, and the National Aboriginal and Torres Strait Islander Child Protection Commissioner. It could also inquire into other individual and systemic matters relevant to the rights of Aboriginal and Torres Strait Islander children, and provide independent advice and recommendations to NSW Parliament and the public on these matters. This could also extend—but would not be limited to— interrelated areas of youth justice, education, and connection to community and Country.

Introduction

Accountability of government systems is a key foundation of good governance. However, for Aboriginal and Torres Strait Islander communities, accountability mechanisms have often been used as an element of colonial control, justifying harmful policies and practices that undermine the rights and interests of Aboriginal and Torres Strait Islander children, families and communities. This has particularly been the case for systems that intervene in Aboriginal and Torres Strait Islander families, whether they are the policies that characterised the Stolen Generations, or those of contemporary child protection systems. Both systems perpetuate those same logics, and exhibit historical continuity across generations.

These are impositions that Aboriginal and Torres Strait Islander communities have long resisted, demanding greater control over these systems. This has included advocating for improved transparency and accountability for the harms they inflict, and the inequitable outcomes they impose on Aboriginal and Torres Strait Islander children and young people. The need for improved accountability, particularly in child protection systems, has been reinforced by numerous reviews, and in the advocacy of Aboriginal and Torres Strait Islander communities, including the National Agreement on Closing the Gap. However, action from government to establish robust accountability mechanisms, and to orient these mechanisms to the expectations and aspirations of Aboriginal and Torres Strait Islander communities, has not been forthcoming.



Image credit: ashishk75

With renewed commitments from government to strengthen accountability of the child protection system, there is a unique opportunity for action; one that must be seized if worsening disparities affecting Aboriginal and Torres Strait Islander children and young people are to be addressed. However, this action must reflect a clear understanding of why existing structures continue to fail Aboriginal and Torres Strait Islander children and communities, and establish new mechanisms on firmer foundations.

This must reflect the relationship between Aboriginal and Torres Strait Islander communities and the State, and orient accountability to the distinct, but also shared interests of these stakeholders. These include commitments to responsible governance that is effective and efficient in its use of resources, as we negotiate “agreed ways that Aboriginal and Torres Strait Islander people and their communities can have control over their own lives and have a collective say in the future wellbeing of their children and young people”.⁵ This is consistent with our acknowledged right to self-determination, and government commitments to Treaty.⁶

Ultimately, both the NSW Government, and Aboriginal and Torres Strait Islander communities, share a commitment to systems and policies that are more accountable to our communities, and that safeguard our children's futures. This paper focuses on an opportunity to strengthen—and more effectively orient—accountability mechanisms to fulfil these shared goals through the establishment of two new, complementary statutory bodies; a NSW Child Protection Commission, and a NSW Commissioner for Aboriginal Children and Young People.

Through their complementary roles and functions, these bodies present an opportunity to contribute to current and ongoing reforms to the child protection system, and other policy areas, in ways that better foster the circumstances in which Aboriginal and Torres Strait Islander children might thrive. If properly implemented, with a clearer understanding of the nature and role of accountability to both Aboriginal and Torres Strait Islander communities, and the broader public, these bodies will also be well positioned for future systems, where services are delivered by ACCOs (rather than NSW government agencies) and where significant decisions about Aboriginal children's lives are made by Aboriginal and Torres Strait Islander communities.

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“Inequities at earlier stages of life affect outcomes at later stages”.⁷

– Australian Institute of Health and Welfare, 2025

⁵ Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, p. XVIII. NSW Department of Communities and Justice.

⁶ Harris, D. (2024) 'Commissioners appointed to lead consultation with Aboriginal people on agreement making', Ministerial Media Release, NSW Minister for Aboriginal Affairs and Treaty, 24 September 2024.

⁷ Australian Institute of Health and Welfare. (2025). *Closing the Gap targets: key findings and implications*. AIHW.

Background

Self-determination and public accountability: A dual imperative

The *Family is Culture (FIC) Report* identified the twin issues of self-determination and public accountability as central to efforts to address the persistent over-representation of Aboriginal and Torres Strait Islander children in the statutory child protection system. The *FIC Report* clearly framed the nature of public accountability and oversight as referring to “the means by which the voting public can assess the ‘fairness, effectiveness and efficiency of governance’”.⁸ This offers a safeguard against ‘corruption, nepotism, abuse of power, and other inappropriate behaviour’.⁸ This framing emphasises the significant authority entrusted to governments by their citizens, and the important roles of transparency and independent scrutiny to ensure that these powers are exercised responsibly and consistently with the values and expectations of the community. Further, the *FIC Report* noted two critical components of accountability: transparent examination of performance, and that there are consequences for poor performance.

Consistent with this, the *FIC Report* considered the multi-dimensional nature of public accountability within the NSW child protection system, including:

- Processes for complaints handling regarding decisions of government agencies.
- Regulatory oversight to ensure compliance with established standards.
- Judicial oversight providing a check on government power and adherence to the legislative framework.
- Public advocacy offered by individuals and through the media.

That is, accountability is multifaceted, with different mechanisms as well as different consequences for non-compliance. Regulatory breaches may result in adverse actions or loss of authorisation; legislative breaches may result in judicial orders (or other remedies); and public advocacy or media scrutiny may have political implications for governments, applying pressure to address shortcomings.

In reviewing these accountability mechanisms present within the NSW child protection system, the *FIC Report* concluded that, “while there are some existing oversight mechanisms in place...they are deficient and unsatisfactory”⁹, lacking “effectiveness, transparency, independent oversight and coordination”.¹⁰

This lack of accountability has significant implications for the lives of children and young people subject to child protection intervention. The *Tune Review* (2017) found that “despite recurrent efforts to improve outcomes for children and young people in out-of-home care (OOHC) and vulnerable families, long term outcomes remain poor”,¹¹ and ‘particularly poor’¹² for Aboriginal and Torres Strait Islander children. The *Tune Review* (2017) further noted the lifelong and intergenerational impacts observed across domains, with significant human and financial costs.

^{8, 9, 10} Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, p.94. NSW Department of Communities and Justice.

¹¹ Tune (2017) *Independent Review of Out Of Home Care in New South Wales – Final Report*, p.18.

¹² Tune (2017) *Independent Review of Out Of Home Care in New South Wales – Final Report*, p.19.

Data on disproportionate intervention in Aboriginal families

Building on this evidence, the *FIC Report* presented data developed by Dr Kathleen Falster and Dr Mark Hanly as part of the *Seeding Success* study. The study found high rates of surveillance and intervention by the child protection system in the lives of Aboriginal children and families, including:

- Almost 1 in 2 Aboriginal children who lived in NSW and entered kindergarten in 2009 and 2012 were screened-in at risk of significant harm (ROSH) by the age of 5
- Almost 1 in 3 of these children experiencing a child protection response beyond a ROSH report before their fifth birthday.
- Almost 1 in 10 Aboriginal children in NSW, who entered kindergarten in 2012, were subject to a ROSH report before they were born.
- Compared with their same-aged non-Aboriginal peers, Aboriginal children were approximately 8 times more likely to enter care by the age of 5 (i.e. ~8 percent vs ~1 percent).
- Compared with their same-aged non-Aboriginal peers, Aboriginal children were almost four times more likely to be screened-in as ROSH at least once by age 5 (i.e. 45 percent vs 12 percent)¹³.



Figure: Bring Them Home, Keep Them Home infographic, from Newton et al (2024)

More detailed analysis as part of the *Bring them Home, Keep them Home* study, examined the “the scale and timing of first-time child protection contacts from pregnancy to age 13, among NSW Aboriginal Children born 2006 – 2018”¹⁴.

These findings emphasise the critical importance of improved independent monitoring of the child protection system, promoting transparency and accountability of its performance, and particularly the importance of this accountability being oriented to Aboriginal and Torres Strait Islander communities. This is crucial given the unparalleled rate of surveillance of Aboriginal families, and intervention in their lives, perpetuating cycles of harm.

The *FIC Report* made numerous recommendations for reform that would “greatly improve the entire system by reducing secrecy, improving transparency, encouraging compliance with legislation and policy, stimulating discussion and reform, and enhancing access to justice”.¹⁵

¹³ Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, p.94. NSW Department of Communities and Justice.

¹⁴ Newton, B. J., et al (2024). *NSW Child E-Cohort infographic: Bring Them Home Keep Them Home project [Infographic]*. UNSW Sydney.

¹⁵ Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, p. 94. NSW Department of Communities and Justice.

Government response to FIC recommendations: Too little, too late

The NSW Government's formal response to these recommendations claimed to include a focus on "strengthening oversight and enhancing accountability for Aboriginal children in care"¹⁶, through the consolidation of some functions within the existing Office of the Children's Guardian (Reportable Conduct and Official Community Visitor Schemes), and the creation of a new 'Deputy Children's Guardian for Aboriginal Children and Young People'.¹⁷

AbSec—while supporting the proposal for greater Aboriginal and Torres Strait Islander leadership in oversight and accountability system—identified that "these commitments fall short in providing the comprehensive oversight envisioned by an independent NSW Child Protection Commission."¹⁸

In short, consolidating some functions and including Aboriginal and Torres Strait Islander leadership within existing accountability structures did not address the findings of the *FIC Report*; that these existing structures were not adequate, in scope or function, to provide the necessary oversight and accountability of the child protection system. Rather, these initiatives represent the very ritualism that the FIC Report diagnosed. That is, providing the appearance of compliance while doing little to address the foundations central to their mandate to safeguard children.

In the absence of decisive action to strengthen accountability in response to the *FIC Report* by governments, subsequent reviews, including the NSW Audit Office, and the *2024 System Review into Out-of-Home Care*, have reiterated the inadequacies of current accountability structures, and confirmed the need to move beyond a ritualistic culture of compliance within a system that the *FIC Report* argued had lost sight of its mandate to serve the rights and interests of children and young people. The most recent of these reviews, completed in late 2024, found that the "out-of-home care system requires effective structures to ensure accountability, coordination, capability and oversight across multiple agencies and actors", and urged "rigorous accountability measures, improved oversight, and a strong shared authorising environment".¹⁹

"The child protection system "has in many ways, 'lost sight' of the actual goal of protecting children in its day-to-day operation".²⁰

– Megan Davis, 2019

The NSW Government has acknowledged the critical need for transformational structural change of the child protection system and has signalled a significant appetite for reform. This has included acknowledging that the current system "is inefficient, ineffective and unsustainable",²¹ and "does not consistently deliver positive outcomes for children and young people."²² Its recently released *Reform Plan: transforming the out-of-home care system in NSW*, includes "improving oversight and accountability" as one of eight key reform directions to achieve the NSW Government's vision of a "world class out-of-home care system that enables children to thrive in supportive, stable environments and sees recovery and restoration for more children and families."²³ This reform plan includes three phases: first, stabilising a system in crisis to improve baseline quality and financial controls, before moving towards rebuilding system foundations, and finally, investing for outcomes. While these steps make sense, it is important to consider the

^{16, 17} NSW Government (2020) *NSW Government response to the Family is Culture Report*.

¹⁸ AbSec (2020) 'NSW Government deliver unremarkable response to the Family is Culture Review', Media Release, Thursday 9 July 2020.

¹⁹ NSW Department of Communities and Justice. (2024). *System review into out-of-home care: Final report to the NSW Government*, p. 39.

²⁰ Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, p. XXXI. NSW Department of Communities and Justice.

²¹ Audit Office of New South Wales. (2024). *Oversight of the child protection system: Performance audit*, p.2.

^{22, 23} NSW Department of Communities and Justice. (2025, February). *Reform plan: Transforming the out-of-home care system in NSW*, p.4.

implications from the standpoint of Aboriginal and Torres Strait Islander communities, and the nature of system transformation that must occur to address over-representation. In this initial phase, it is essential that efforts for system stabilisation do not reinforce the deep structural challenges that reproduce the systemic disparities experienced by Aboriginal and Torres Strait Islander communities. Likewise, while greater financial controls have value, these risk perpetuating dynamics that constrain Aboriginal and Torres Strait Islander community solutions in favour of top-down, government-imposed approaches that have repeatedly delivered poorer outcomes for Aboriginal and Torres Strait Islander children and families. AbSec and the wider sector are deeply concerned that this is precisely how the NSW Government is operating by mandating highly prescriptive, unworkable contract variations mid-contract to providers of the *Permanency Support Program* in 2025. As a result, some ACCOs will stop providing these services to Aboriginal and Torres Strait Islander children and young people.

Embedding Aboriginal and Torres Strait Islander voices in oversight structures

To ensure that much needed reform efforts appropriately meet the needs of Aboriginal and Torres Strait Islander children and young people, and do not further entrench systemic inequities, system stabilisation needs to be positioned on fundamentally different logics, and a different relationship between Aboriginal and Torres Strait Islander communities and the NSW Government. This includes recognising the limitations of existing accountability structures. Stabilisation can include the establishment of improved accountability structures, that better incorporate and represent Aboriginal and Torres Strait Islander communities, as well as providing focused oversight on Aboriginal children's experiences which would support efforts to identify the reasons for the disproportionate intervention in their lives. This approach will offer direct pathways to elevate Aboriginal voices, expectations and aspirations for the future of Aboriginal and Torres Strait Islander children, into legislative and judicial processes. This will contribute to improved system performance, as demonstrated through improved outcomes for Aboriginal and Torres Strait Islander children and young people.

In addition to the limited effective accountability of the child protection system, there is also inadequate accountability more broadly of the systems and structures that affect the lives of Aboriginal and Torres Strait Islander children and young people. As with the historical continuity that characterises contemporary child protection systems, the lack of structures to promote accountability that are aligned to the rights and interests of Aboriginal and Torres Strait Islander children and young people again reflects the long use of government policy to dominate and control Aboriginal and Torres Strait Islander futures within the State.²⁴ The past and enduring impacts of these systems are demonstrated through the inequities inflicted upon Aboriginal children by state systems that undermine their futures. Aboriginal and Torres Strait Islander children and young people are expected to thrive within systems that offer them poorer educational and health outcomes and increased contacts with child protection and police.

For example, in NSW, recent data shows that:

- In education, "school exclusion is one of the greatest predictors of involvement with the justice system"²⁵, yet 25 percent of students in NSW on short or long-term suspension are Aboriginal and Torres Strait Islander. This cohort represents just 8% of overall student enrolments²⁶, and "these figures increase dramatically at the intersection of schooling and OOHC".²⁷
- In housing, "23 percent of the 130,000 First Nations people living in over-crowded housing live in NSW"²⁸, yet research shows that overcrowded and insecure housing environments contribute to educational disruption and increase the risk of child protection intervention.²⁹

²⁴ Libesman, T., Ellinghaus, K., & Gray, P. (2022). *Colonial law and its control of Aboriginal and Torres Strait Islander families*. In P. Cane, L. Ford, & M. McMillan (Eds.), *The Cambridge legal History of Australia* (pp. 433–455). Cambridge University Press; Nakata, S. 'The infantilisation of indigenous Australians: A problem for democracy.' (2018) Griffith REVIEW, 60, 104–116.

²⁵ Thomas, A (2025). *School exclusion and youth justice*. [Lecture]. Aboriginal Sydney Now. University of Technology Sydney.

²⁶ Keynes, M, et al., (2024, May 13). *School exclusion: What this heartbreaking work tells us*. EduResearch Matters.

²⁷ Thomas, A (2025). *School exclusion and youth justice*. [Lecture]. Aboriginal Sydney Now. University of Technology Sydney.

²⁸, ²⁹ Australian Institute of Health and Welfare. (2025). *Closing the Gap targets: key findings and implications*, p.9. AIHW.

- In child protection, 55 percent of the young people who died from suicide in NSW in 2020–2021, were from families with a child protection history; 2 in 3 had reported risks that were related to the young person’s mental health, self-harm or risk of suicide.³⁰
- In health, financial stress has been exposed as the most important predictor of suicide amongst First Nations people, and having run out of food is the key predictor for family violence³¹, yet exposure to family violence is a key risk factor for child protection involvement.³²
- In youth justice, changes to bail laws in NSW in 2024 have disproportionately affected Aboriginal and Torres Strait Islander children, with this cohort “making up 85–90 percent of the children refused bail”³³, even though the evidence shows that “early contact with the youth justice system is a determinant of recidivism”.³⁴ Mostly, the remanding of these children to detention are for minor offences, where if found guilty, there would be no custodial sentence.

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“For Indigenous young people who died by suicide in NSW in 2020–2021, school-related issues were notably higher compared to non-Indigenous young people:

- Learning challenges (92 percent of Indigenous vs 41 percent of non-Indigenous).
- School disengagement (83 percent of Indigenous vs 30 percent of non-Indigenous).
- Suspended/expelled from school (58 percent of Indigenous vs 24 percent of non-Indigenous).”³⁵

- New South Wales Ombudsman, 2023

Intersections of system involvement and outcomes

There is, of course, overlap between these cohorts. Aboriginal and Torres Strait Islander children and young people in OOHC—like the OOHC population more generally—continue to experience poorer outcomes across a range of domains.³⁶ That includes particularly the challenge of ‘care criminalisation’ discussed by the *FIC Report*, noting the unique drivers of justice system involvement for children in OOHC. These persistent disparities across systems emphasise the need for a greater focus on the experiences of Aboriginal and Torres Strait Islander children across various systems, including particularly the child protection system.

³⁰ NSW Ombudsman. (2023). *Biennial report of the deaths of children in New South Wales: 2020 and 2021*, p. 9. NSW Child Death Review Team.

³¹ Australian Institute of Health and Welfare. (2025). *Closing the Gap targets: key findings and implications*, p.15. AIHW.

³² Lawrie, A. (2024). *Holding on to Our Future: Final Report of the Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle in the removal and placement of Aboriginal children*.

³³ Aboriginal Legal Service (NSW/ACT). (2025). *NSW bail laws report card: Fail – More children in jail. No drop in crime*, p.1.

³⁴ Public Interest Advocacy Centre. (n.d.). *Diversion, early intervention and support: Transforming juvenile justice*.

³⁵ NSW Ombudsman. (2023). *Biennial report of the deaths of children in New South Wales: 2020 and 2021*, p. 99. NSW Child Death Review Team.

³⁶ Tune (2017) *Independent Review of Out Of Home Care in New South Wales – Final Report*.

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“In NSW, 62 percent of all young people under youth justice supervision in 2022–23 had interacted with the child protection system in the last 10 years.³⁷ Nationally 74 percent of young people had not offended before being placed in out-of-home care”.³⁸

– Sentencing Advisory Council, 2020

These inequities are not new, and while there is some level of transparency about the challenges, they are often presented and understood in ways that locate the deficit within Aboriginal and Torres Strait Islander communities, and not in the systems of government themselves. These systems exercise considerable authority over the lives of Aboriginal and Torres Strait Islander children, families and communities.

They are also structured in ways that limit the likelihood of meaningful consequences for violating the rights of Aboriginal and Torres Strait Islander children individually or collectively, or that offer remedies or access to justice for children affected. Aboriginal and Torres Strait Islander communities are often reliant on public advocacy, as demonstrated through the work of Grandmothers Against Removals NSW, whose efforts proved effective in elevating the issue within the broader public consciousness, leading to the *FIC* review. However, this example also shows the limitations of this kind of accountability, with the *FIC Report*’s recommendations adding to the long list of presently unimplemented recommendations made in the interests of Aboriginal children, families and communities. The *FIC Report* explicitly positioned itself within the “well-trodden reform landscape that is littered with comprehensive and often unimplemented recommendations for reform”,³⁹ emphasising the need for substantive action in response to the experiences of Aboriginal and Torres Strait Islander children and families raised through the review.



Image credit: snaicc.org.au

The NSW Government has committed to “establishing advocacy and accountability roles... to amplify the voices of Aboriginal and Torres Strait Islander children and young people, drive systemic reforms to support their rights and wellbeing, and hold governments and services accountable”,⁴⁰ as part of *Safe and Supported: National Framework for Protecting Australia’s*

³⁷ Australian Institute of Health and Welfare (AIHW). (2024). *Young people under youth justice supervision and their interaction with the child protection system 2022–23*, p.10. AIHW, Canberra.

³⁸ Sentencing Advisory Council, (2020), as cited in Australian Institute of Health and Welfare. (2024). *Young people under youth justice supervision and their interaction with the child protection system 2022–23*, p.1. AIHW.

³⁹ Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, p. XXX. NSW Department of Communities and Justice.

⁴⁰ Department of Social Services. (2023). *Safe and Supported: First Action Plan 2023–2026*, p.42. Australian Government.

Children 2021–2031. This national call reflects longstanding concerns raised by Aboriginal and Torres Strait Islander communities, and by various human rights bodies, to promote and protect the rights of Aboriginal and Torres Strait Islander children and young people; rights that are too readily breached within current systems, with limited transparency or remedy. The logic of this action within *Safe and Supported* extends beyond child protection systems to enshrine international best practice approaches in safeguarding the rights of Aboriginal and Torres Strait Islander children and young people, including the development of agreed minimum requirements for effective oversight and accountability, and jurisdictional action plans to enliven those standards for the benefit of Aboriginal and Torres Strait Islander children and young people.⁴¹

“

“We perpetuated an ingrained way of thinking, passed down over two centuries and more, and it was the belief that we knew better than our Indigenous peoples. We don’t.”⁴²

– The Honourable Scott Morrison AC, 30th Prime Minister of Australia (2018–2022)

Reorienting accountability structures towards Aboriginal and Torres Strait Islander communities

There is a clear consensus about the need for greater accountability, both of the child protection system, and the considerable authority it exercises on behalf of the people of NSW. This extends to the rights and interests of Aboriginal and Torres Strait Islander children and young people, given longstanding concerns about structural inequities and the need to better safeguard their rights in systems, policies and practices that affect their lives. The nature of these accountability structures are critical to their success, noting particularly the need to address persistent limitations where mechanisms are directed away from Aboriginal and Torres Strait Islander communities, despite disproportionately affecting their lives and futures. This undermines reform efforts intended to address these inequities. Improving accountability to Aboriginal communities presents an opportunity to better orient systems to their needs, contributing to more equitable systems that safeguard the rights of Aboriginal and Torres Strait Islander children and young people. Establishing independent, empowered statutory oversight and accountability mechanisms aligned to Aboriginal and Torres Strait Islander communities, represents a critical step towards this new future.

This paper focuses specifically on two complementary bodies to address these identified shortcomings; a New South Wales Child Protection Commission, to provide better regulation and oversight of the child protection system, from end to end, and a NSW Commissioner for Aboriginal Children and Young People to protect and promote the rights of Aboriginal and Torres Strait Islander children in NSW. These bodies provide an opportunity to transform the troubled child protection system, and address system inequities affecting Aboriginal and Torres Strait Islander children and young people more generally. However, this is not intended to minimise the important role of additional mechanisms, both within child protection systems, and more generally, in achieving better outcomes for Aboriginal and Torres Strait Islander children and young people. Rather, we have focused on these aspects as immediately actionable reforms that can act as a catalyst for future systems change.

As such, this paper recommends immediate action to establish a specialised NSW Child Protection Commission, in fulfilment of FIC Recommendation 9, alongside a broad-spectrum New South Wales Commissioner for Aboriginal Children and Young People complementing the narrow focus of the NSW Child Protection Commission, with a mandate to promote and protect the rights of Aboriginal and Torres Strait Islander children and young people more generally.

⁴¹ Department of Social Services. (2023). *Safe and Supported: First Action Plan 2023–2026*, p.42. Australian Government.

⁴² Jumbunna Institute for Indigenous Education and Research. (2025). *Independent Indigenous Review of the Closing the Gap National Agreement*. Commissioned by the Coalition of Peaks. University of Technology Sydney. Released 20 June 2025.

Together, these roles serve to:

- Achieve increased accountability of the NSW Child Protection System for all children and young people.
- Achieve increased accountability specifically with respect to the rights and interests of Aboriginal and Torres Strait Islander children and young people across all the systems including Child Protection, Youth Justice, Housing, Education, Disability and Health.
- Appropriately focus accountability structures on identified areas of need, provide role clarity, and maximise collective impact.

Increased accountability and enhanced collective impact will contribute to longer term system and practice improvement. This includes likely significant social and economic benefits, given existing evidence of increased lifelong costs associated with the current child protection system.⁴³ This will cover the initial cost of establishing these roles but also ensure a more streamlined system around the ultimate goal of prevention and restoration. This is a much needed change from the current resource intensive alternative of OOHC which is damaging to children's wellbeing and yet remains "immune from the very obligations it enforces on families."⁴⁴ In this way, these relatively marginal costs should be considered as an essential investment for good governance and continuous system improvement.

Aligning reform with national and legislative commitments

The proposed mechanisms are also consistent with the NSW Government's commitment through *Safe and Supported: National Framework for Protecting Australia's Children 2021-2031* for the progressive transfer of authority for child protection decisions to Aboriginal and Torres Strait Islander communities. Arguably, this principle is already present within the legislative framework, which notes "that Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young persons with as much self-determination as possible", and empowers the Minister to "negotiate and agree with Aboriginal and Torres Strait Islander people to the implementation of programs and strategies that promote self-determination"⁴⁵ although the *FIC Report* found these provisions and principles to not be adequately implemented, emphasising the need for stronger forms of self-determination.⁴⁶ These oversight mechanisms, oriented to promoting accountability to Aboriginal and Torres Strait Islander communities regarding decisions affecting their children, can provide critical transparency of decisions taken by Aboriginal and Torres Strait Islander community-based processes, in precisely the same way that existing independent mechanisms promote transparency and accountability of executive government agencies and their decisions.

Similarly, in the longer term, additional mechanisms could form part of this re-orientation of oversight and accountability structures with respect to systems, policies and practices intended to improve outcomes experienced by Aboriginal and Torres Strait Islander children and young people. The recent establishment of a NSW Office for Youth and consolidation of resources under the Advocate for Children and Young People represents an important step to improve the participation and representation of young people, currently excluded from direct political representation, in policies that affect them. However, consideration of the unique political status of Aboriginal and Torres Strait Islander peoples—and therefore Aboriginal and Torres Strait Islander children and young people—could further ensure that these mechanisms do not recreate the structures that have marginalised Aboriginal and Torres Strait Islander voices, and thereby perpetuate the disparate outcomes that characterise current policies.

Likewise, the role of the judiciary in government accountability remains an area that warrants further attention. Aboriginal and Torres Strait Islander advocates have consistently raised

⁴³ Tune (2017) *Independent Review of Out Of Home Care in New South Wales – Final Report*.

⁴⁴ Blacklock, C (2015), as cited in Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, p. 226. NSW Department of Communities and Justice.

⁴⁵ s.11 NSW Children and Young Persons (Care and Protection) Act 1998.

⁴⁶ Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*.

concerns about the administration of ‘justice’ regarding Aboriginal and Torres Strait Islander young people, including coercive policing systems like child protection and youth justice. In child protection, this includes community concerns that judicial officers, like statutory departments, exercise their authority in ways that understand the rights and interests of Aboriginal and Torres Strait Islander children in a manner akin to past assimilationist policies. For example, research has found that judicial officers in the Children’s Court have limited familiarity with the Aboriginal and Torres Strait Islander Child Placement Principles outlined in the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*. The effect of this is that limited consideration is given to provisions that are desperately valued by Aboriginal communities, and have been a site of significant activism and advocacy. For example, the *Family Matters* report demonstrated that the proportion of Aboriginal and Torres Strait Islander children placed with Aboriginal family members “remains unacceptably low”⁴⁷, and there is scant data about their enjoyment of cultural connections that underpin identity and resilience, in decisions made through current legal processes. Similarly, research regarding the implementation of Section 12 of the *Children and Young Person’s (Care and Protection) Act 1998 (NSW)*, which provides for the participation of First Nations families, kinship groups, communities and community organisations in all significant child protection decision-making, identified “routine breaches of legislation and policy” at all stages of child protection intervention in First Nations families’ lives.⁴⁸

Aboriginal and Torres Strait Islander communities remain concerned that recent provisions related to active efforts, again the result of determined Aboriginal and Torres Strait Islander-led advocacy, have been interpreted narrowly and as such have not adequately shifted child protection practice to ensure that removal is utilised as an option of last resort as intended. At the same time, independent legal representatives advocate on behalf of Aboriginal and Torres Strait Islander children, but are not required to demonstrate an understanding of the distinct rights and interests of Aboriginal and Torres Strait Islander children, or the expectations of their communities. This represents a significant risk to adequate and informed advocacy in the legal setting.⁴⁹

Redefining justice: Aboriginal and Torres Strait Islander-led oversight and structural change

For Aboriginal and Torres Strait Islander communities, these judicial processes continue to be structures of colonial incursion and harm, that remain cloaked in unearned notions of impartiality and justice. Calls within the *FIC Report* to appoint Aboriginal and Torres Strait Islander judicial officers into the Children’s Court have received no response or action.⁵⁰ Meanwhile, the Court has focused its efforts on participatory models which, while including positive steps to be more inclusive of Aboriginal and Torres Strait Islander community perspectives, simply reproduce the problems of colonialism through the retention of decision-making authority. A renewed approach, that better considers the relationship between the State and Aboriginal and Torres Strait Islander peoples as distinct polities, and multifaceted accountability provides an opportunity for structural transformation. This includes systems that are better equipped to represent the plurality of Australian society, addressing, rather than reinforcing, the colonial harms that underpin persistent disparities. This centres the notion of such systems as reflecting the collective interest of a given polity in their children, who represent and are essential for the future survival of that polity.

We recommend the implementation of additional changes to enable transparency and public accountability, including those proposed by the *FIC review* in relation to the judiciary. These include the need for greater transparency of judicial processes and the independent management of court matters, and of accreditation processes for independent legal representatives of Aboriginal and Torres Strait Islander children. The development of such accreditation must be administered by Aboriginal people themselves, alongside the transfer of the Family Group Conferencing (FGC) to Aboriginal community control. Such changes that will re-orient existing structures for the accountability of FGC facilitators from the Department of Communities and Justice, to Aboriginal and Torres Strait Islander communities themselves.

⁴⁷ SNAICC – National Voice for our Children. (2023). *Family Matters report 2023: Strong communities. Strong culture. Stronger children*, p.27.

⁴⁸ Libesman, T. & Gray, P. (2023). *Self-Determination, Public Accountability, and Rituals of Reform in First Peoples Child Welfare*. First Peoples Child & Family Review, 18(1), 81–96, p. 86.

⁴⁹ Libesman, T., Gray, P., and Gray, K. (2024) ‘The Shackles of Terra Nullius in Child Protection ‘Reforms’, in Watson, N., and Douglas, H. (eds) *Legal Education Through an Indigenous Lens: Decolonising the Law School*, Routledge, London.

Models to strengthen accountability

In the next section, we will consider the models that have been proposed to strengthen accountability in child protection, and for Aboriginal and Torres Strait Islander children—and young people more broadly—through the *FIC Report*, and *Safe and Supported*. We will consider:

- The respective intent of each model.
- The proposed scope and mandate.
- The requisite powers and functions.
- How adequate accountability mechanisms may be established in NSW.

These models are largely complementary, and we urge the establishment of both to accelerate efforts to promote system accountability and improve outcomes for Aboriginal and Torres Strait Islander children and young people in NSW, contributing to efforts to address persistent inequalities identified through the National Agreement on Closing the Gap.

Their implementation will:

- Address existing limitations of regulatory and accountability mechanisms as identified by the *FIC Report*.
- Promote specialisation and role clarity with respect to the regulation, accountability and oversight that appropriately distinguishes between the child protection system and the child safe standards regime for all children.

It does this in a way that simultaneously integrates the Priority Reforms from the National Agreement on Closing the Gap, and their underlying intent to transform government in ways that better represents Aboriginal peoples and promotes the rights and interests of Aboriginal and Torres Strait Islander children and young people. Doing so would move towards positioning NSW as a national leader in these areas; areas in which they currently lag behind.

Proposed accountability models

Legislated and independent mechanisms, such as a NSW Child Protection Commission and a NSW Commissioner for Aboriginal Children and Young People, are fundamental for addressing the persistent inequities affecting Aboriginal and Torres Strait Islander children and young people. This includes the over-representation of Aboriginal and Torres Strait Islander children and young people within the child protection and youth justice systems, poorer educational and health outcomes, as well as elevating the cross-cutting needs of Aboriginal and Torres Strait Islander children and young people with disability, who continue to experience compounding harms across all of these systems.

Appropriately empowered independent mechanisms provide a critical lens for public transparency and accountability, as well as recommendations for system and practice improvements. Such measures promote improved outcomes that benefit children and young people, and therefore our society as a whole. Importantly, their ongoing nature provides continuity over time, and may help to intervene in the costly cycle of reviews that have to date proven ineffective in creating the necessary structural change. Further, their structural accountabilities to the Parliament, Aboriginal and Torres Strait Islander communities, and the wider public, provide an important re-orientation of accountability mechanisms to promote government accountability that reflects the diverse polities affected.

Through various mechanisms, and over many decades, Aboriginal and Torres Strait Islander communities in NSW have called for greater accountability of systems affecting the lives of Aboriginal and Torres Strait Islander people in NSW, and particularly those affecting our children and young people. This advocacy has sought to realign public policy to the rights and interests of Aboriginal and Torres Strait Islander children, in response to the overwhelming evidence of past and ongoing policy failures to properly safeguard their futures. Recently, two particular models have been clearly articulated. In 2019, the Aboriginal and Torres Strait Islander-led independent review of the over-representation of Aboriginal and Torres Strait Islander children and young people in OOHC, *FIC*, called for the establishment of the NSW Child Protection Commission, with a clear focus and mandate for the child protection system.

Similarly, improved accountability was identified as a primary goal of *Safe and Supported: National Framework for Protecting Australia's Children* and is reflected in Action 7 of the *Aboriginal and Torres Strait Islander First Action Plan*, which calls for the development of minimum requirements for such mechanisms, and their establishment in every jurisdiction. It is important to note that where there is agreement of the minimum requirements between governments and communities at a jurisdictional level, then each jurisdiction has the opportunity to install these mechanisms of its own volition without deferring to other states or awaiting national agreement, as has been achieved by various jurisdictional governments including South Australia and the Australian Capital Territory. Here, we outline those models, before considering their potential benefit as part of improved accountability structures in NSW.

⁵¹ AbSec & Aboriginal Legal Service (NSW/ACT). (2024). *Family is Culture Report Card – Five Years On: Community Report Card*, October 2024, p.27.

Proposed NSW Child Protection Commission

The *FIC Report* found that “existing bodies and mechanisms for oversight and accountability remain sparse, deficient, uncoordinated, and unsatisfactory.”⁵¹ The report provides a broad overview of existing oversight bodies and accountability mechanisms in NSW (see Chapter 8).⁵² This includes complaints handling processes within DCJ, independent statutory bodies including the NSW Ombudsman (oversight of government agencies), the OCG (OOHC accreditation and monitoring, Working with Children Checks (WWCCs) and Child Safe Standards), the judiciary, and public advocacy and scrutiny (ie. through the media). It recommended the establishment of a new independent oversight body, the NSW Child Protection Commission. The Commission will have a specific focus on the child protection system, including consolidation of relevant functions, as well as additional new functions, providing a specialised body with clear responsibilities that span the entirety of the child protection system. Whilst previous governments have responded in part to the findings of the *FIC Report* by consolidating some functions in the OCG, this has not adequately addressed the various and significant shortcomings identified by the report itself, or the various inquiries and reviews that preceded it.

This has included the need for greater oversight across the entirety of the child protection system, assisting with system transformation that better promotes prevention and family preservation. Similarly, while there have been some efforts to appoint a senior Aboriginal/Torres Strait Islander officer within these structures, such as a previous Deputy Guardian, or proposed Aboriginal Assistant Guardian, the inclusion of these positions alone cannot facilitate the scope of change required. Further, while such approaches may imbue these roles with Aboriginal and Torres Strait Islander perspectives, they nonetheless perpetuate the structural deficiency of making Aboriginal perspectives subject to non-Indigenous judgement and authority through principal officers. Such positions should be directly aligned to their primary stakeholders: Aboriginal and Torres Strait Islander children, families and communities. The *FIC Report* recommended that the NSW Child Protection Commission have the following functions:

- a. Handling complaints about those involved in the operation of the child protection system (including matters before the Court where hearing of the complaint will not interfere with the administration of justice).
- b. Oversight and coordination of the Official Community Visitors Scheme.
- c. Management of the ‘reviewable deaths’ scheme where the death is a child in OOHC, or a child whose death is or may be due to abuse or neglect.
- d. The accreditation and monitoring of OOHC providers (noting that for-profit providers should be excluded).
- e. The reviewing of the circumstances of an individual child or group of children in OOHC (including the power to apply to the Court for the rescission or variation of orders).
- f. Monitoring the implementation of the Aboriginal Case Management Policy (ACMP).
- g. Conducting inquiries into systemic issues in the child protection system, either on its own motion, or at the request of the NSW Government (although not mandated to take such direction).
- h. Conducting the proposed qualitative case file review program.
- i. Monitoring the implementation of the Joint Protocol.
- j. Oversight, monitoring and reporting about the operation of Alternative Dispute Resolution processes.

⁵² Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, Chapter 8, Accountability and Oversight. NSW Department of Communities and Justice.

- k. The provision of information, education and training to stakeholders and the community about the operation of the child protection system.⁵³

The NSW Child Protection Commission would be established as an independent statutory body with a clear mandate and authority to independently exercise its responsibilities.⁵⁴ Some of these functions are new requirements based on the extensive research that produced the *FIC Report* whilst others currently sit within the remits of the NSW OCG or the NSW Ombudsman. However, a key finding of the *FIC Report* was that “existing bodies and mechanisms are insufficient and ineffective in practice”, concluding that “the child protection system lacks adequate transparency and effective oversight”.⁵⁵ The *FIC Report* suggested that functions with a broader remit beyond child protection, such as the reportable conduct scheme, should be retained by the OCG, whereas the oversight and monitoring of functions related specifically to the operation of the child protection system would be assumed by the new Commission. Both the NSW Ombudsman and the OCG would retain their broader complementary functions such as complaints handling, oversight of the child safe standards, and administration of WWCCs. The Commission then, would consolidate regulatory and oversight functions specifically about child protection and OOHC within a single, specialised statutory body. For example, the OCG would remain responsible for oversight of the child safe standards across a range of child-focused entities (eg. sports clubs, youth clubs, etc), while the Ombudsman continues to provide broad oversight of government agencies in line with its mandate.

The NSW Child Protection Commission would not have a principal commissioner but would be led by an executive team with at least one Aboriginal/Torres Strait Islander Commissioner, who would be supported by an Aboriginal Advisory Board. We propose that within this model, the Aboriginal Child Protection Commissioner (or Commissioners) would have a specific mandate to safeguard and promote the rights, interests and wellbeing of Aboriginal and Torres Strait Islander children, and be responsible for managing their own budget, aligned to the proportion of children represented within their specific scope of influence. All Commissioners would be expected to collaborate in the interests of all children within the child protection system, and those at risk of entering the system, to achieve optimal outcomes across the lifespan.



“Early life child protection contacts represent opportunities to redesign the child and family wellbeing system, centred around early health and social support services for children and families to prevent escalating child protection contacts and interventions and promote better child outcomes”.⁵⁶

– NSW Department of Communities and Justice, n.d.

The implementation of this model would provide a laser focus on each stage of child protection contact, and enhanced monitoring of the implementation of policy and practice. This would ensure greater accountability of the child protection system, and meeting the shared expectations of Aboriginal and Torres Strait Islander, and non-Indigenous people of NSW for transparent government. This approach would also provide a clear mechanism of oversight to Aboriginal and Torres Strait Islander communities whose children continue to be overrepresented across the child protection system.

^{53, 54} Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, Chapter 8, Accountability and Oversight. NSW Department of Communities and Justice.

⁵⁵ Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, p.106. NSW Department of Communities and Justice.

⁵⁶ NSW Department of Communities and Justice. (n.d.). *Bring Them Home, Keep Them Home: The scale and timing of first-time child protection contacts among NSW Aboriginal children born 2006–2018, Summary of key messages and implications* (1). NSW Child E-Cohort Project.

While it would likely be undesirable and impractical to equip the NSW Child Protection Commission with the capacity to monitor or review all cases of children in contact with the child protection system, it would oversee certain functions and more closely monitor others. For example, “monitoring the implementation of the Aboriginal Case Management Policy (ACMP)”⁵⁷ might include requests for documentation to be reviewed according to a set of devised metrics with feedback then provided for improvement. Additionally, the proposed qualitative case file review program, based on the Quality Service Review (QSR) system in the United States, could seek to randomly review a minimum sample (eg. 5 percent) of cases by a team of dedicated reviewers whose findings would “identify common trends across case practice or systemic issues that are facilitating or hindering implementation of best practice.”⁵⁸ In this way, the NSW Child Protection Commission model provides oversight and monitoring for all children across the breadth of the child protection system to identify specific issues and recognise best practice as a catalyst for driving ongoing systemic reform.

Proposed NSW Commissioner for Aboriginal Children and Young People

The *Safe and Supported: National Framework for Protecting Australia’s Children: 2021–2031* and the corresponding *Safe and Supported Aboriginal and Torres Strait Islander First Action Plan: 2023–2026* include actions for improved accountability, in much broader terms than those outlined by the *FIC Report*. This includes through the establishment of a NSW Commissioner for Aboriginal Children and Young People a role, as mentioned above, that has been successfully implemented in other jurisdictions. The Commissioner would have a legislated responsibility to provide broad-spectrum oversight with a mandate to promote and protect the rights and interests of Aboriginal and Torres Strait Islander children and young people and be “underpinned by strong legislation that aligns with the international gold standard for rights-based accountability and oversight.”⁵⁹ Unlike the NSW Child Protection Commission above, this role would have a broad mandate, extending to all systems including youth justice, housing, education, disability and health as “a champion, voice and facilitator”⁶⁰ for Aboriginal and Torres Strait Islander children and young people. The Commissioner would ensure their rights, as expressed in key human rights instruments such as the United Nations Convention on the Rights of the Child (UNCRC), are upheld.

The need to champion the rights of Aboriginal and Torres Strait Islander children and young people and for Aboriginal and Torres Strait Islander-led oversight across systems is witnessed in various spaces. Most notably, this is seen at the intersection between child protection and youth justice. However, the often-overlooked nexus of school related issues and youth suicide and the correlation between health related issues and poorer outcomes at school⁶¹ where Aboriginal and Torres Strait Islander children are also disproportionately affected requires urgent action and accountability to the Aboriginal and Torres Strait Islander families and communities whose children are seemingly invisible to the intersecting systems that contribute to their deaths and disadvantage.

⁵⁷ Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, p. 127. NSW Department of Communities and Justice.

⁵⁸ Womack, B (2017) as cited in 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*. NSW Government.

⁵⁹ Family Matters Campaign. (2024). *Family Matters report 2024: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care*, p.3. SNAICC – National Voice for our Children. <https://www.familymatters.org.au/the-family-matters-report-2024>

⁶⁰ Family Matters. (2023). *Family Matters Report 2023: Strong communities. Strong culture. Stronger children*, p. 3. SNAICC – National Voice for our Children.

⁶¹ Australian Institute of Health and Welfare. (2025). *Closing the Gap targets: Key findings and implications* (Catalogue No. IHW 294). AIHW, p.188.

Within the *Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan 2023–2026*, the establishment of rights-based roles includes the development and agreement of a set of national Minimum Requirements that outline the foundational principles and expectations for these roles. While the Minimum Requirements are still under-development, examples from other jurisdictions suggest that the most highly regarded models are those better aligned to the internationally recognised Paris Principles⁶². As identified above, national consistency does not need to be achieved prior to the establishment of such a role but can—and should—be part of the necessary and continuous pursuit of best practice. Key elements include:

- A clear mandate and legal authority that ensures its independence and autonomy from other parties (such as government and non-government organisations), including powers of inquiry and investigation.
- Engagement with stakeholders, including government, non-government organisations, experts and the broader community, to protect and promote human rights.
- Co-operation with other human rights bodies.
- The opportunity to influence systems, policies and practice, including the ability to make recommendations and relevant follow up actions regarding the response to recommendations.
- Clear, transparent and participatory appointment processes, with a pre-determined criteria.
- Funding and infrastructure necessary to carry out their job effectively.

These models also tend to have the following broad responsibilities such as:

- Providing advice or recommendations on the promotion and protection of human rights, including legislation and policy.
- Inquiring into matters where there has been a violation of human rights, whether including individual and systemic circumstances.
- Publishing reports (for instance, annual reports or reports from inquiries) including tabling with legislature.
- Cooperating with other human rights bodies, including international human rights systems.
- Raising public awareness about human rights issues.



Image credit: CiderTeak

Such a role could be rapidly established in NSW, drawing particularly on exemplars in other jurisdictions, with models in the Australian Capital Territory and South Australia currently setting the benchmark nationally. This could inform the local development of the NSW Commissioner for Aboriginal Children and Young People's legislation, shared appointment processes, and establishment planning. Even in the absence of national agreement on the Minimum Requirements of these roles, jurisdictions can move forward on strengthening accountability mechanisms, particularly where there is agreement on core requirements between governments and Aboriginal and Torres Strait Islander communities.

As noted above, there would be an expectation, including through statute, for independent officers like the NSW Commissioner for Aboriginal Children and Young People, to consider and take notice of the actions of other similar bodies, coordinating action and minimising the inefficient use of resources through unnecessary duplication. This might include active or passive partnerships between two or more officers, according to their mandates. As NSW is home to the largest Aboriginal and Torres Strait Islander population in Australia,⁶³ the absence of a NSW Commissioner for Aboriginal Children and Young People means the omission of a voice at the table representing Aboriginal and Torres Strait Islander children and young people in the State. Given the enormity of the challenges for Aboriginal and Torres Strait Islander children and young people, a NSW Commissioner for Aboriginal Children and Young People would be a community-facing role that addresses a critical accountability gap. The Commissioner will be responsive to the expectations and aspirations of Aboriginal and Torres Strait Islander communities and serve as a guiding force to champion human rights. They would listen and give a voice to Aboriginal and Torres Strait Islander children and young people, their families and communities and be an advocate for evidence-based, community-led solutions.

Aboriginal Children's Commissioners in jurisdictions across Australia have a strong record of impact for children and families. The tenure of Australia's first jurisdictional Commissioner for Aboriginal Children and Young People, Andrew Jackomos PSM, in Victoria commenced in 2013 and resulted in the prompt announcement of Taskforce 1000 in response to the over-representation of Victorian Aboriginal and Torres Strait Islander children and young people in OOHC. The flow on effects of the Taskforce 1000 Report were significant not only in Victoria, but across Australia. More recently, former Commissioner April Lawrie in South Australia undertook an in-depth review of the child protection system and the application of the Aboriginal Child Placement Principles, outlining a roadmap for change. This reform agenda continues to be overseen by Commissioner April Lawrie's successor, Commissioner Dale Agius. These roles are underpinned by Article 12 of the UNCRC ensuring children's rights to express their views and have them given credence, and the inherent right to family connection and cultural identity as stated in Article 9 of the *United Nations Declaration on the Rights of Indigenous People* (UNDRIP). In this way, the NSW Commissioner for Aboriginal Children and Young People model offers a culturally specific independent body with a legislative mandate to "stand up for [the] rights and interests [of Aboriginal youth] and hold governments and organisations to account."⁶⁴







⁶³ Australian Bureau of Statistics. (2022, July 1). *New South Wales: Aboriginal and Torres Strait Islander population summary*.













⁶⁴ Family Matters. (2023). *Family Matters Report 2023: Strong communities. Strong culture. Stronger children*, p. 3. SNAICC – National Voice for our Children.







Proposed scope, mandate, and authority









This section seeks to consider the specific scope, mandate, functions and powers proposed across models, and their contribution to strengthened accountability mechanisms. By and large many of the proposed functions and powers, and implementation of the Paris Principles, are applicable to both models. However, the nature of their implementation differ, based on the overarching scope and mandate of the roles, with implications for the capacity, focus and specialisation of each possible mechanism. These functions are therefore seen as complementary, allowing important specialisation that responds to the two core needs identified above; seamless and strengthened oversight and regulation of the child protection system for all children, and mechanisms that promote and protect the rights of Aboriginal and Torres Strait Islander children and young people, both within and beyond the child protection system. Ultimately, we encourage the establishment of both models, given their complementary functions, and the significant and urgent need for accountability.

The table below outlines the key principles, functions and powers of each model with an indication of their alignment in each proposed model, as well as an explanation of any differences.

Model functions and powers	<i>Family is Culture</i>	<i>Safe and Supported</i>	Comparison
Recommendation.	<i>FIC</i> Recommendation 9: Establish a new, independent NSW Child Protection Commission to provide focused and transparent oversight of the Child Protection system, with specified regulatory and oversight functions.	Aboriginal and Torres Strait Islander First Action Plan Action 7: Establish advocacy and accountability roles in all jurisdictions to amplify the voices of Aboriginal and Torres Strait Islander children and young people, drive systemic reforms to support their rights and wellbeing, and hold governments and services accountable.	Similar intent to establish strengthened accountability of government systems, with a particular focus on Aboriginal statutory officers, and accountability to Aboriginal and Torres Strait Islander communities. The roles however differ in focus and mandate (see below).
Scope of Mandate	Specialised focus on the child protection system for all children, including associated systems regarding the experiences of children in the child protection system.	Clear mandate on the holistic rights of Aboriginal and Torres Strait Islander children, implicating all areas of government policy, and the enjoyment of rights of all Aboriginal and Torres Strait Islander children in NSW.	Significant difference in model scope and focus, in particular the consideration of all children within a specific governmental system, and a focus on Aboriginal and Torres Strait Islander children and their experiences generally.
Legislative mandate to deliver on their role.			Both models would be independent from government with a clear legislated mandate confirming their specific remit.
Responsibility to engage with relevant stakeholders including government, non-government organisations, experts and the broader community, to deliver on their mandate			Both models would include an expectation for statutory officers to engage with relevant stakeholders, however the scope of these stakeholders would be considerably different, given the differing scope and mandate.
Expectation to engage specifically with Aboriginal and Torres Strait Islander children, families and communities.			Both models are proposed to include a designated Aboriginal and Torres Strait Islander commissioner, with a distinct mandate to engage with Aboriginal communities. The <i>FIC</i> model specifically calls for an Aboriginal Advisory Board, appointed from the community. Such features are compatible with rights based models as well, but tend to function as an exercise of the independent authority of the statutory officer.

Model functions and powers	FIC	S & S	Comparison
Clear mandate for information sharing, including appropriate powers to compel information from relevant organisations, including governments.			The ability to request and receive information about systems, policies and practices, and the experiences of children and families, is essential to delivering on the mandate of either role.
Cooperation with other human rights bodies, including international human rights systems.			Cooperation with other advocacy bodies would be expected of both, including with each other. The positioning of a number of regulatory and advocacy functions with the Child Protection Commission is intended to support better coordination across functions focused on the child protection system.
The expectation to provide advice to government and other bodies regarding systems, policies and practice, including the ability to make recommendations and review actions made in response.			A core function of both roles is to provide actionable advice to governments and other stakeholders, in line with their differing scope and mandate.
Regulatory functions such as accreditation, reviewable deaths, community visitors program etc.			Only the NSW Children's Commission would include specific regulatory functions.
Undertake systemic inquiries on their own initiative.			<p>Undertaking systemic reviews and inquiries on matters of concern is a key function of both proposed models, aligned with their differing scope and mandate. Some models have included receiving requests from a relevant Minister to inquire on a specific issue. However, this option should not infringe on the principle of statutory independence. That is, it should remain the discretion of the independent statutory officer if they accept any such request.</p> <p>Consistent with the principles above, both roles would be expected to take notice of the work of other similar institutions or roles, minimising unnecessary duplication.</p>
Raise public awareness about matters associated with their scope and mandate.			Contributing to public awareness and discourses is a core function of any such oversight role, and it is expected that both the NSW Children's Commission and the NSW Commissioner for Aboriginal Children and Young People would contribute to public dialogue and raise awareness about issues within their complementary scope and mandate.

Model functions and powers	FIC	S & S	Comparison
Monitoring implementation of policies, practices and reforms.			<p>Consistent with the functions for systemic review, the scope of both roles would include monitoring and review of various initiatives, programs and reforms. The FIC Recommendation noted specific functions where there is a particularly need for review, including implementation of the Aboriginal Case Management Policy, the Joint Protocol, and Alternative Dispute Resolution processes.</p> <p>However, it is likely that its scope would not be limited to these policies, but would include all relevant policies and practices within the scope of their mandate. While these particular functions are best suited to the NSW Child Protection Commission, the underlying function and associated powers is a critical aspect of oversight, and should be implemented regardless of the model selected.</p>
Undertake reviews of individual matters within the scope of their mandate.			<p>Individual reviews are a consistent proposed function of both models. Individual matters can serve as an insight into broader systemic or practice issues that may warrant review, or provide an opportunity to raise issues on egregious or anomalous matters.</p> <p>However, the NSW Children's Commission is proposed to have a particular mandate to make applications to the Children's Court to vary or rescind orders – a likely useful function that could contribute to improved outcomes for children, including increased consideration of restoration. ;a priority where NSW performs badly compared to the rest of the country, with only 4% of children on long-term orders having restoration as a case plan goal' (the source for this is the IPART, Out-of-home care costs and pricing, Draft Report, March 2025).</p> <p>Consistent with the principles above, both roles would be expected to take notice of the work of other similar institutions or roles, minimising unnecessary duplication.</p>
Undertake the proposed qualitative file review process.			<p>The qualitative file review process is a recommended function arising from the FIC review. Its intent is to provide intensive review of matters, providing independent quality assurance and recommendations for policy and practice improvement, including staff training. This is a proposal with high potential for positive impact in the lives of children, and should be urgently implemented. While it is best suited to the NSW Child Protection Commission, it could also be implemented within the NSW Commissioner for Aboriginal Children and Young People role. Importantly, its implementation must be independent from the Government department.</p>

Model functions and powers	FIC	S & S	Comparison
Clear, transparent and participatory appointment processes, with a predetermined criteria.			While not specifically flagged for the NSW Child Protection Commission, it is expected that this was a feature of the model, given the insistence on transparency and public accountability. Both models therefore are compatible with, and would be strengthened by, transparent appointment processes that specifically involve Aboriginal communities in the appointment of Aboriginal commissioners, promoting community confidence in the individual(s) entrusted with this important role.
Funding and infrastructure necessary to carry out their job effectively.			It is essential for the impact of any such role that it is adequately resourced to deliver on its scope and mandate. The specific regulatory functions of the NSW Child Protection Commission means that this model will require greater resourcing. However, many of these functions are already funded and positioned elsewhere. The consolidation of regulatory functions related to child protection, and the complementary nature of the roles, suggest considerable impact for children for only limited additional resources.
Transparently publish reports (for instance, annual reports or reports from inquiries), including tabling with Parliament.			<p>This is a core function of any such role, ensuring that there is public accountability for their role, and that the community is informed about systems, policies and practices that impact the lives of their children. It is likely that both roles would table reports to the same parliamentary committee.</p> <p>In some models, reports are provided to governments prior to their tabling. Importantly, while governments may provide feedback about any report, this should not infringe on the independence and clear mandate of the role, or cause the report to not be published.</p>
Training, Capacity Building, and Culturally Responsive Practice.			Along with awareness raising, such statutory officers have an important role informing and building the capacity of the systems and stakeholders for which they provide oversight.

Two complementary models: Regulatory oversight vs. rights-based advocacy

The main distinction between the two models is that one is focused on the exercise of state authority with respect to children and families, and the outcomes achieved, whilst the other is a broader role focused on promoting the rights and interests of Aboriginal children specifically, including but not limited to the function of child protection systems. The first model would be responsible for a range of regulatory functions, many of which already exist in legislation but are failing to provide adequate impact, as well as specific new functions as outlined in the *FIC Report*. This proposed NSW Child Protection Commission would therefore strengthen oversight for all children affected by the NSW child protection system, through regulation and oversight of all parts of the system, and include a particular focus on Aboriginal children through an Aboriginal Commissioner.

In contrast, the NSW Commissioner for Aboriginal Children and Young People would be a rights-based model with a specific focus on Aboriginal and Torres Strait Islander children and young people with scope across all intersecting systems rather than a remit focused on the child protection system. In other words, the Commission would focus on improving outcomes for all children and young people affected by the child protection system whilst the Commissioner's lens would spotlight change needed for Aboriginal children in contact.

Together these complementary roles will:

- Increase accountability for efforts to address persistent disparities across all government systems.
- Provide a dedicated focus on the child protection system which has a significant impact on the lives of many Aboriginal and Torres Strait Islander children.
- Promote accountability of other systems and the outcomes achieved for Aboriginal and Torres Strait Islander children.
- Offer a mandate to work together at the intersection of the child protection system with other systems.

Put simply, the NSW Commissioner for Aboriginal Children and Young People will provide oversight of the whole puzzle, while the NSW Child Protection Commission, and its Aboriginal Child Protection Commissioner, fits the child protection pieces together.

Operationalising the Commission

Consistent with the functions outlined in Recommendation 9 of FIC, the NSW Child Protection Commission will function as a “one-stop-shop” for the oversight and monitoring of the child protection system in NSW.⁶⁵ This body will deliver essential regulatory functions, including accreditation of OOHC providers, monitoring of key policies, and qualitative review of practice, as well as conduct systemic inquiries and review of individual matters and offer recommendations for systems and practice improvement. The Commission will also ensure a clear mandate for oversight prior to the OOHC system, helping to restructure the system towards prevention and early intervention; a longstanding challenge for the current system. For example, O'Donnell, et al., (2019) found “there is a lack of quantitative research that examines the processes whereby reports of concerns about child maltreatment are made and those reports are substantiated. While previous research has identified an over-representation of Aboriginal and Torres Strait Islander infants in the child protection system in Australia, the literature has been limited in examining the point at which disparities between Aboriginal and Torres Strait Islander, and non-Aboriginal children occur.”⁶⁶ Greater oversight and public transparency focused earlier in the system will help address these challenges, and increase the level of information available to the public, and to researchers,

⁶⁵ Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, p.127, NSW Department of Communities and Justice.

⁶⁶ O'Donnell et al., (2019), as cited in Australian Institute of Health and Welfare. (2025). *Closing the Gap targets: Key findings and implications* (Catalogue No. IHW 294), p. 493. AIHW.

providing additional opportunities for structural and practice improvements. The NSW Child Protection Commission will be highly specialised and impactful for child protection systems, but more limited in its role regarding other systems where disparities for Aboriginal and Torres Strait Islander children and young people persist.

Systemic gaps beyond child protection

This gap would be addressed by the rights-based mandate of the NSW Commissioner for Aboriginal Children and Young People with a broader scope across government systems. The Commissioner would engage with stakeholders specific to Aboriginal and Torres Strait Islander youth, actively consulting with young people and promoting their participation in matters that affect their lives and enjoyment of their rights. Their broad mandate would include the opportunity for own-motion systemic inquiries into matters related to Aboriginal and Torres Strait Islander children across systems such as youth justice, education, health, and disability, informed by its engagement and advocacy in individual matters. They would collaborate widely with other Human Rights bodies domestically and internationally. They would provide input generated by NSW Aboriginal and Torres Strait Islander youth to inform discussions with the National and other jurisdictional Aboriginal Children's Commissioners as well as the Australian Human Rights Commission and Australian and New Zealand Children's Commissioners and Guardians (ANZCCG). Consistent with their mandate, the Commissioner would promote the recognition and ratification of, and compliance with, relevant international human rights instruments and engage in international collaboration with Indigenous communities to ensure the dissemination of international knowledge in the domestic sphere.

While the rights mandate would include the child protection system, the requirement to take notice of the action of other bodies would ensure complementarity, rather than duplication, with any initiatives of the proposed NSW Child Protection Commission. Given the mismatch in perspectives between non-Indigenous systems, and the expectations and aspirations of Aboriginal and Torres Strait Islander communities with respect to the needs of their children, and the distrust this engenders, duplication is perhaps more likely if current accountability structures continue unchanged. This is because the NSW Child Protection Commission would include at least one Aboriginal commissioner with an independent mandate to act for Aboriginal and Torres Strait Islander children, supported by an Aboriginal and Torres Strait Islander Advisory Group representing Aboriginal communities, while current regulators like the OCG lack Aboriginal and Torres Strait Islander leadership, and have only proposed a more limited secondary role for Aboriginal representation, such as the Deputy Guardian role implemented in the NSW Government's initial response to the *FIC Report*. In the absence of structures that improve accountability to Aboriginal communities, and empower Aboriginal and Torres Strait Islander office holders entrusted by the community to protect and promote the interests of Aboriginal and Torres Strait Islander children, it is likely that an Aboriginal Children's Commissioner would face significant community pressure to maintain a strong focus on the child protection, including the actions of other regulators. This would be a deeply problematic and inefficient structure that should be avoided.

Refining existing bodies

Similarly, the establishment of the NSW Child Protection Commission will streamline the broad role of the OCG, which spans specific and critical roles oriented to the experiences of child abuse and neglect in the home, and within non-familial settings; contexts that have very different considerations and implications, and warrant a specialised focus to ensure the safety and wellbeing of children. This will enable greater specialisation for broader child safe initiatives, and complement recent efforts to improve accountability within other child-related areas such as the early childhood sector. Implementing the NSW Commissioner for Aboriginal Children and Young People model alone, without addressing the specific gaps in accountability of the child protection system, would mean that the existing mechanisms for accountability of the child protection system, found to be inadequate in scope and function by the *FIC Report*, will remain largely unchanged with limited focus particularly on the crucial dimension of prevention. This is not consistent with our collective responsibility to children and young people, who have the right

to expect effective public accountability and oversight of these systems that control their lives, ensuring that they are safe, and their immediate and lifelong interests are properly promoted.

Although each model has a clear mandate, their complementary functions means strengthened oversight at the intersection of child protection and other systems, where it is most critical, promoting the best possible outcomes for the Aboriginal and Torres Strait Islander children and young people most affected by these systems. The NSW Child Protection Commission and the NSW Commissioner for Aboriginal Children and Young People would work together to elevate the voices of Aboriginal and Torres Strait Islander children within the child protection system. The NSW Child Protection Commission would monitor front-end systems and share such information with the NSW Commissioner for Aboriginal Children and Young People who will have more focus on raising public awareness and ensuring adherence to human rights principles. Necessary overlaps can be managed through clear reporting pathways across the two models. This could include a core responsibility for both bodies to undertake their independent mandate mindful of the priorities and actions of related entities, and to consider coordination of their functions where beneficial to advancing accountability and the rights and interests of children.

Establishing the position of the NSW Commissioner for Aboriginal Children and Young People does not require changes to other independent bodies, like the OCG. However, the broad scope, and the broad range of rights issues presented for Aboriginal children, will mean less focus specifically on the child protection system as a whole, as attention is also taken on pressing justice, education and wellbeing issues. As noted repeatedly for emphasis, it would also fail to act on repeated calls to improve oversight and accountability of the child protection system itself. The NSW Child Protection Commission model will be a larger change, affecting more stakeholders, but responds directly to the findings of the *FIC Report* which detailed the existing inadequacies in accountability and oversight of the child protection system. This includes the lack of transparency about the 'front end' of the system, which often sets the trajectory of children's and families' experiences and outcomes. While it may be disruptive to existing structures, the transition need not be lengthy or overly complex – many of the functions already exist and are proposed for transfer and consolidation within the newly established commission.

The establishment of additional functions would be akin to the changes proposed in establishing a rights-based oversight body. Importantly, there is an urgent need to establish greater transparency and accountability with respect to these systems and their impact on children and young people's lives, and that a significant risk to children and young people would be further unnecessary delay to address the shortcomings identified by *FIC* and other reports. Such oversight would play a critical role in monitoring current reform planning and implementation and developing future strategy.

Essential attributes of any accountability framework

Regardless of the model adopted, and whether done separately or together, this comprehensive reform package, like any accountability framework, must be independent, have statutory authority, be able to exert systemic and individual influence in a way that is responsive to the rights of children, and the expectations of the broader public that children are safe, well cared for, and supported to thrive. This means that accountability mechanisms must be empowered to provide culturally grounded analysis of decisions being made about Aboriginal and Torres Strait Islander children and be accountable to Aboriginal and Torres Strait Islander communities. It must have direct influence on key policy areas such as the implementation of Active Efforts and the Aboriginal and Torres Strait Islander Child Placement Principle as well as having a mandate to conduct both systemic reviews and qualitative case file reviews. This includes a remit to make an application to the Children's Court for a Section 90 for the rescission or variation of a care order. The scope of focus must be wide enough to include the prevention of care entries and contribute to strategy that refocusses the system from one based on colonial logics to one founded on human rights principles. Importantly, any reform must reach all corners of the State with a commitment to decentralise funding decisions, bringing them closer to Aboriginal and Torres Strait Islander communities. The oversight body should have the power and platform to challenge the harmful public narratives espoused about Aboriginal and Torres Strait Islander children and families.

Costings



“The estimated cost to establish these complementary oversight and accountability mechanisms represents just 1 percent of the Child Protection Package included in the 2025–26 Budget, and less than 0.5 percent of annual child protection expenditure, but are expected to have impacts beyond the child protection system, including youth justice, health and wellbeing, and education.”

The costings for the NSW Child Protection Commission reflect both existing costs, recommended to be transferred from the child protection functions currently undertaken by the Ombudsman and the OCG (discussed above) and new costs. This report has focused on those new costs, and has not considered the potential need for additional investment in these established functions. Costing for these new powers and functions have been devised as follows, using estimated costs to provide an indicative total value for various models implemented together or independently. We also note that consistent with the principle of independence, it is the responsibility of the statutory body to deploy the resources entrusted to it in delivering on its mandate, and will likely reflect the specific priorities of those statutory officers, who will explain those decisions in reporting to the parliament and the public.

Recommendation 9.e: Ability to review the circumstances of an individual child or group of children in OOHC (including the power to apply to the Court for the rescission or variation of orders).

This recommendation includes all children and young people in OOHC. As of June 30, 2024 there were 13,983 children in OOHC in NSW. Reviewing the circumstances of just 2 percent of all children would require close to 300 cases to be assessed and some of these may include applications to the court. Whilst there are many variables in the complexity of cases and the time it would take to review an average case, based on similar projections from Professor Megan Davis regarding the new Qualitative Case File Review, we have estimated that a team of seven staff with a Team Leader is required to look at this amount of cases over the course of a calendar year. One Head of Unit and one administrative assistant would be shared across Recommendations 9 e, g and h, however the total cost has been calculated as part of this function with an estimated new cost of \$1,349,500.

Recommendation 9.f: Monitoring the implementation of the Aboriginal Case Management Policy (ACMP).

As the ACMP relates only to Aboriginal and Torres Strait Islander children, this cohort totalled 6,312 children and young people in OOHC as at 30 June 2024. However, as the ACMP was implemented to guide preventative casework the number of Aboriginal children and young people in contact with the child protection system totals 25,863. To monitor the ACMP by a similar process to the one outlined above will mean that just 2 percent of cases equates to over 500 reviews. As such,

an alternative would be for a smaller team of staff to request documentation and design an appropriate set of metrics to assess adherence to the ACMP, or a combination of both methods. This monitoring mechanism has the scope to improve preventative work, which will eventually provide cost savings that flow through all stages of child protection intervention. The team is costed at \$971,500 comprising 4 staff, with a team leader and administrative support.

Recommendation 9.g: Conducting inquiries into systemic issues in the child protection system, either on its own motion, or at the request of the NSW Government (although not mandated to take such direction).

The remit for the NSW Child Protection Commission as outlined in the *FIC Report* includes conducting systemic inquiries into matters concerning all children and families in contact with the child protection system; not specific to Aboriginal and Torres Strait Islander children and families. An estimate of \$931,500 will cover a team of 2 staff, 1 team leader and administrative support that is shared across some similar functions mentioned above.

Recommendation 9.h: Conducting the proposed qualitative case file review program.

As *FIC* “revealed that lack of compliance with legislation and policy was disturbingly common among child protection workers and the OOHC sector”, the qualitative case file audit is a key feature of monitoring front line service delivery. Based on the successful implementation of this type of review outside of Australia using the Quality Service Review (QSR) system, the *FIC Report* outlined that it would take two reviewers two days to complete one review. Based on this, and the fact that in 2023–2024, 7,900 Aboriginal and Torres Strait Islander children and young people were seen by DCJ offices in NSW a larger team of 8 staff, including 1 team leader is required. The estimated cost for this would be \$1,355,500.

Recommendation 9.i: Monitoring the implementation of the Joint Protocol.

The Joint Protocol was established in 2016 to address the criminalisation of children in OOHC. Whilst it has been praised as a “laudable policy approach”⁶⁷ its implementation is hindered by the high turnover of OOHC staff and monitoring is required not only in terms of the ongoing training offered and accessed by workers but also into “the number and nature of calls by OOHC care staff to the NSW Police Force.”⁶⁸ Such monitoring has been estimated to require a team of 4 staff with 1 team leader for a budget of \$866,500. This cost is based on the team performing an active monitoring role to address the significant disconnect between the worthy ideals of the Joint Protocol and the lack of oversight at a service delivery level, where the internal policies of out-of-home care providers increase police contact for the children and young people in their care. An active role would include quality oversight to understand the experiences of children and young people at the point of crossover between these systems, providing solutions and having the capacity to follow up on the recommendations made by the team to interrupt the current cycle of

⁶⁷ Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, p. 243. NSW Department of Communities and Justice.

⁶⁸ Davis, M. (2019). *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in NSW*, p. 244. NSW Department of Communities and Justice.

review and unimplemented recommendation identified by all the reports mentioned in this paper as an impediment to change. As this function has oversight across systems it could as easily sit within the remit of the NSW Commissioner for Aboriginal Children and Young People, as could other functions which will be discussed below.

Recommendation 9.j: Oversight, monitoring and reporting about the operation of Alternative Dispute Resolution processes.

This function would include oversight of the collection and interpretation of data regarding Family Group Conferencing, especially concerning the number of conferences offered, the number of referrals accepted, the outcome of the conferences and the satisfaction of participants in the conferences. It would also include oversight of any other types of ADRs and the availability of facilitators and appropriate training. A team of 4 staff with 1 team leader would be adequate at a cost of \$866,500.

Recommendation 9.k: The provision of information, education and training to stakeholders and the community about the operation of the child protection system.

This would include a small community based advocacy team to service the whole of NSW. Current cost is estimated at \$351,500.



Image credit: perminovakseniia

Establishment costs

The total new costs to establish the NSW Child Protection Commission to fulfil all of the functions as proposed in the *FIC Report* is estimated at \$8,670,500 per annum.

The costings for the NSW Commissioner for Aboriginal Children and Young People are based on similar roles within other jurisdictions but taking into account the higher population of Aboriginal and Torres Strait Islander children and young people living in NSW. These costings included a youth advisory group, administrative staff, separate policy, advocacy and community engagement teams, and data analysts. The additional cost for the NSW Commissioner for Aboriginal Children and Young People if implemented in conjunction with the NSW Child Protection Commission would be \$4.052 million per annum. If however, the NSW Child Protection Commission was not established immediately alongside the NSW Commissioner for Aboriginal Children and Young People, it would be preferable to incorporate key functions proposed by the *FIC Report* into the Commissioner's remit. These include the review of individual circumstances and the authority to

make applications to the Court to vary or rescind orders (recommendation 9.e), monitoring of the Aboriginal Case Management Policy (9.f) and the Joint Protocol (9.i), and oversight of alternative dispute resolution processes (9.j). In this case, the cost for implementation is estimated around \$8.62 million.

Thus, if either model was established independently the new expenditure would likely be around \$9 million dollars per annum, with the NSW Child Protection Commission also seeing the reallocation of existing expenditure along with those regulatory and complaints functions. If both were to be implemented together it would likely be achievable for just over \$12 million, with a significantly increased scope and mandate for Aboriginal and Torres Strait Islander children and young people. This represents just one percent of the Child Protection Package included in the 2025–26 Budget, and less than 0.5 percent of the \$3 billion spent annually on child protection. It is anticipated that strengthened accountability would contribute to future efficiencies, helping to focus government systems, reduce unnecessary removals, increase restorations, and improve the quality and outcomes for children and young people in the child protection system. However, it should be noted that the complementary mandate extends beyond the child protection system, and would likely contribute to improved youth justice, education, and health and wellbeing outcomes for Aboriginal and Torres Strait Islander children and young people. When these multi-system and lifetime costs are considered, this investment in accountability is revealed as an inexpensive and essential investment in accountability and continuous system improvement to drive future social and economic benefits for the people of NSW, consistent with our shared responsibility to children and young people.

NSW Child Protection Commission (*Family is Culture* Recommendation 9)

Function	Stat. framework and resources	Target cohort	Est. FTE roles	Est. salary costs	Est. overheads/ operational costs	Total costs
Aboriginal Commissioner	NEW	Aboriginal and Torres Strait Islander	1	300,000	110,000	\$410,000
Non-Aboriginal Commissioner	NEW	All	1	300,000	110,000	\$410,000
Director	NEW	All	1	225,000	87,500	\$312,500
HR, Marketing & Events Team	NEW	All	4	435,000	210,500	\$645,500
Aboriginal Advisory Group (including youth delegates)	NEW	Aboriginal and Torres Strait Islander	6	100,000	100,000	\$200,000
a) Handling complaints about those involved in the operation of the child protection system (including matters before the Court where hearing of the complaint will not interfere with the administration of justice).	Existing	All	-	-	-	Reallocated existing
b) Oversight and coordination of the Official Community Visitors Scheme.	Existing	All	-	-	-	Reallocated existing
c) Management of the 'reviewable deaths' scheme where the death is a child in OOHC, or a child whose death is or may be due to abuse or neglect.	Existing	All	-	-	-	Reallocated existing
d) The accreditation and monitoring of OOHC providers (noting that for-profit providers should be excluded).	Existing	All	-	-	-	Reallocated existing
e) The reviewing of the circumstances of an individual child or group of children in OOHC (including the power to apply to the Court for the rescission or variation of orders).	NEW	All	8	915,000	434,500	\$1,349,500
f) Monitoring the implementation of the Aboriginal Case Management Policy (ACMP).	NEW (Currently self-monitored by DCJ)	Aboriginal and Torres Strait Islander	6	655,000	316,500	\$971,500
g) Conducting inquiries into systemic issues in the child protection system, either on its own motion, or at the request of the NSW Government (although not mandated to take such direction).	Existing in part	All	4	435,000	210,500	\$645,500
h) Conducting the proposed qualitative case file review program.	NEW	Aboriginal and Torres Strait Islander	8	900,000	455,500	\$1,355,500

Function	Stat. framework and resources	Target cohort	Est. FTE roles	Est. salary costs	Est. overheads/ operational costs	Total costs
i) Monitoring the implementation of the Joint Protocol.	NEW (Currently self-monitored by DCJ)	All	5	570,000	296,500	\$866,500
j) Oversight, monitoring and reporting about the operation of Alternative Dispute Resolution processes.	NEW (Currently self-monitored by DCJ)	All, but especially for Aboriginal families	5	570,000	296,500	\$866,500
k) The provision of information, education and training to stakeholders and the community about the operation of the child protection system.	NEW	All	2	305,000	131,500	\$436,500
						Total = \$8,469,500

New South Wales Commissioner for Aboriginal Children and Young People (*Safe and Supported* Action 7)

Core costs – if both models were implemented.

Function	Stat. framework and resources	Est. FTE roles	Est. salary costs	Est. overheads/ operational costs	Total costs
NSW Aboriginal Children's Commissioner	NEW	1	300,000	110,000	\$410,000
Director (or Deputy Commissioner)	NEW	1	225,000	87,500	\$321,500
Aboriginal Youth Advisory Group	NEW	6	120,000	80,000	\$200,000
Admin Staff	NEW	3	330,000	159,000	\$489,000
Policy Advice & Development	NEW	3	390,000	177,000	\$567,000
Advocacy & Leadership	Existing in part	3	390,000	157,500	\$547,500
Community engagement	NEW	3	390,000	177,000	\$567,000
Data & Reporting	NEW	2	270,000		\$391,500
Conducting inquiries into systemic issues in the child protection system, either on its own motion, or at the request of the NSW Government (although not mandated to take such direction).	Existing statutory mandate, no Aboriginal-specific approach	4	435,000	210,500	\$645,500

The provision of information, education and training to stakeholders and the community about the operation of intersecting systems.	NEW (and other intersecting systems)	2	305,000	131,500	\$436,500
					Total = \$4,566,000

New South Wales Commissioner for Aboriginal Children and Young People (*Safe and Supported* Action 7)

Additional costs – if the NSW Commissioner for Aboriginal Children and Young People model was established without a Child Protection Commission.

Function	Stat. framework and resources	Est. FTE roles	Est. salary costs	Est. overheads/operational costs	Total costs
FIC Rec 9e. The reviewing of the circumstances of an individual child or group of children in OOHC (including the power to apply to the Court for the rescission or variation of orders).	NEW	8	915,000	434,500	\$1,349,500
FIC Rec 9f. Monitoring the implementation of the Aboriginal Case Management Policy (ACMP).	NEW (Currently self-monitored by DCJ)	6	655,000	316,500	\$971,500
FIC Rec 9i. Monitoring the implementation of the Joint Protocol.	NEW (Currently self-monitored by DCJ and other agencies)	5	570,000	296,500	\$866,500
FIC Rec 9j. Oversight, monitoring and reporting about the operation of Alternative Dispute Resolution processes.	NEW (Currently self-monitored by DCJ and other agencies)	5	570,000	296,500	\$866,500
					Total = \$4,054,000

Estimated bottom line

\$8,469,500	New estimated annual expenditure to deliver additional functions within a proposed NSW Child Protection Commission.
\$8,620,000	New estimated annual expenditure to deliver functions of the NSW Commissioner for Aboriginal Children and Young People (in the absence of a NSW Child Protection Commission or developing additional child protection functions within existing regulatory bodies).
\$12,390,000	New estimated annual expenditure to deliver all functions through complementary NSW Child Protection Commission and NSW Commissioner for Aboriginal Children and Young People.

Establishment

It is recommended that both these models are established urgently, enabling the benefits of the roles in the implementation of ongoing reforms. Aboriginal and Torres Strait Islander communities have been unanimous in requiring that any model must include community participation in the selection process. Commissioners should “be appointed through a clear and transparent selection process, including community representatives and engagement with Aboriginal and Torres Strait Islander children and young people”⁶⁹ through a “multi-staged recruitment strategy, including attributes and expectations, community representation in process and management of possible conflicts of interest.”⁷⁰

The legislative change required is not only achievable but an integral part of a democratic system that responds to the needs of its citizens. As many features of both models detailed above already exist in NSW legislation, and/or have exemplars in other jurisdictions that have been shown to make a significant positive contribution, either model, or both, can be established relatively quickly with political will.

Key considerations for implementation include:

The NSW Child Protection Commission, and NSW Commissioner for Aboriginal Children and Young People, should be required to report to parliament regarding the adequacy of the legislative powers and authority to deliver on their mandate, and what amendments if any are needed to deliver on their mandate for children and young people, including particularly Aboriginal and Torres Strait Islander children and young people. This report should be delivered in the twelfth month of operation.

The roles should be established consistent with the international principles for the establishment of National Human Rights Institutions, and the Minimum Requirements developed according to Action 7 of the *Aboriginal and Torres Strait Islander First Action Plan* within *Safe and Supported: National Framework for Protecting Australia’s Children 2021–2031*, if these are agreed in a timely fashion. If these are not agreed prior to establishment, alignment with the national Minimum Requirements should be considered as part of the 12-month review.

The NSW Child Protection Commission could be established either through the creation of a standalone Act, or through amendments to the Children and Young Persons (Care and Protection) Act 1998 (NSW), with corresponding amendments to the Children’s Guardian Act 2019 (NSW) and the Ombudsman Act 1974 (NSW).

⁶⁹ Gray, P, et al., (2022), *Co-Designing an Aboriginal and Torres Strait Islander Children’s Commissioner for the ACT*, p.3. Sydney: Jumbunna Institute

⁷⁰ Gray, P, et al., (2022), *Co-Designing an Aboriginal and Torres Strait Islander Children’s Commissioner for the ACT*, p.5. Sydney: Jumbunna Institute

The establishment of a Commissioner for Aboriginal Children in the ACT was achieved through the passing of a new Act whereas in South Australia, the role was created through amendments to the current Act, showing that a similar role in NSW could be legislated through either of these pathways.

Conclusion

There is a critical need for strengthened accountability, both in the child protection system for all children, and for the enjoyment of the rights and interests of Aboriginal and Torres Strait Islander children and young people. The failures of accountability in the child protection system have been repeatedly raised, but with little meaningful actions from governments. Likewise, persistent inequities affecting the lives of Aboriginal and Torres Strait Islander children and the enjoyment of their rights across multiple systems require greater oversight, advocacy, and action. Two complementary accountability mechanisms have been proposed to address these two distinct, but overlapping issues; the proposal for a NSW Child Protection Commission in the *FIC Report* and the commitment for an Aboriginal Children's Commissioner through *Safe and Supported Aboriginal and Torres Strait Islander First Action Plan: 2023–2026*. This paper has sought to describe these models, underpinning principles, and complementary functions, provide justification for their establishment, and offer an estimate of the costs associated with their functions.

The two models offer complementary functions in ways that promote critical specialisation in areas of fundamental child safety. Currently, accountability mechanisms combine regulation and oversight of children experiencing child abuse and neglect at home, and systems that respond to these circumstances, including the OOHC system, with regulation, oversight and implementation of child safety in other settings, such as child care providers, school, or sports clubs. The *FIC Report* urged a specific focus on the child protection system as a unique setting warranting both specialisation in oversight and accountability, as well as the need for greater transparency with the public about the child protection system which intervenes in families on their behalf. Establishing a NSW Child Protection Commission would promote greater role clarity and specialisation in regulation and oversight in consideration of the distinct issues across these settings.

Further, existing accountability mechanisms lack structures that orient accountability to Aboriginal and Torres Strait Islander communities about the experiences and outcomes of Aboriginal children and families. Re-orienting these structures to strengthen accountability to Aboriginal and Torres Strait Islander communities themselves is essential to addressing persistent disparities affecting Aboriginal children and young people. The appointment of Aboriginal and Torres Strait Islander leaders within existing structures is insufficient, particularly when positioned in subordinate roles. Rather, deeper transformation is needed, engaging Aboriginal and Torres Strait Islander communities in the appointment process, investing independent statutory authority, and providing an opportunity for Aboriginal and Torres Strait Islander community participation alongside the role, to promote Aboriginal and Torres Strait Islander community confidence in oversight and accountability structures. Given the significant and persistent inequities imposed by governmental policies upon Aboriginal and Torres Strait Islander children and young people, and the resultant frustration and distrust this creates, such mechanisms are long overdue.

We reiterate that accountability is a foundational principle of good governance, and should be embraced, rather than deflected, by responsible governments. The NSW Government has indicated a commitment to improving accountability within the child protection system—a system that is failing to deliver for children and families. This step is welcomed, but must consider the particular dimensions of accountability with respect to Aboriginal and Torres Strait Islander children, if it is to reform—rather than reproduce—the same structural challenges that have produced, and continue to reproduce, these disparities. This is consistent with the commitment, through the National Agreement on Closing the Gap, to transform governments, and their relationship with Aboriginal communities.

We encourage the NSW Government to implement the strongest possible accountability mechanisms for children that reflects an understanding of the nature of accountability with

respect to Aboriginal and Torres Strait Islander children and young people, to Aboriginal and Torres Strait Islander communities. This is best represented by the complementary functions of the NSW Child Protection Commission, with at least one independently empowered Aboriginal Commissioner and structures for community participation, and NSW Commissioner for Aboriginal Children and Young People, to provide broad-spectrum, rights-focused oversight and advocacy.

Establishing these mechanisms will address the repeatedly identified shortcomings in current accountability structures, and contribute to increased confidence of Aboriginal and Torres Strait Islander communities—and the broader NSW public—in government systems and efforts towards safeguarding the safety and wellbeing of children and addressing inequitable outcomes. Further, it represents a relatively small financial investment, compared to the significant lifetime costs associated with current systems. Crucially, this would send a clear message to the public, to Aboriginal and Torres Strait Islander communities, and—most importantly—to children and young people themselves, that their safety, rights, and wellbeing are always front of mind, and backed by rigorous mechanisms for oversight and accountability.

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