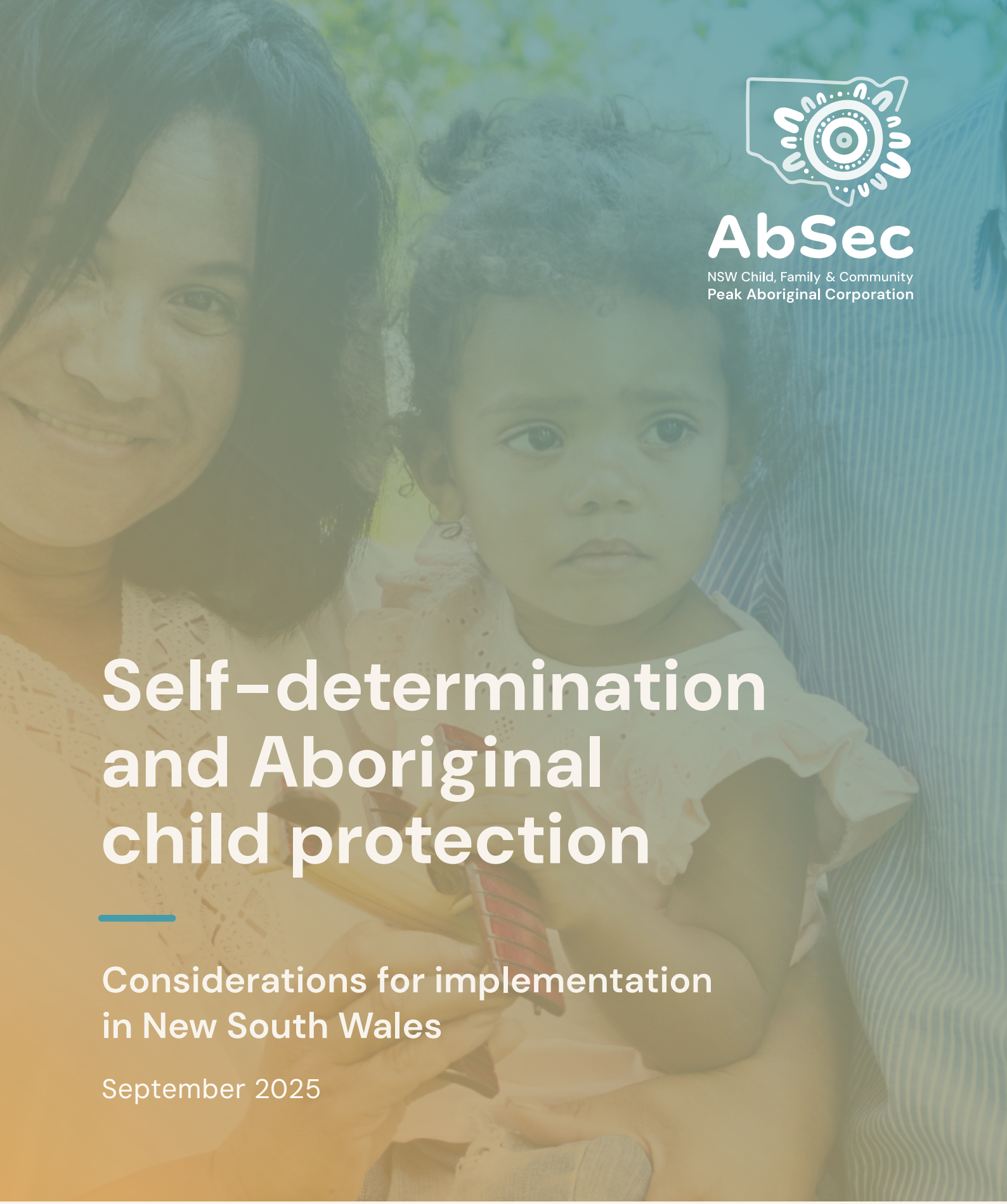

AbSec
NSW Child, Family & Community
Peak Aboriginal Corporation

Self-determination and Aboriginal child protection

Considerations for implementation in New South Wales

September 2025

UTS 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

NSW Child, Family & Community
Peak Aboriginal Corporation

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 (NSW).

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 and Torres Strait Islander children in out-of-home care (OOHC) 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.

Jumbunna
Institute for Indigenous
Education and Research

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

We acknowledge and thank the stakeholders who generously shared their time, insights and experiences. Their contributions have been instrumental in shaping this report.

Jumbunna
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AbSec

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This report arises in the context of the Genealogy Special Issue – Self-Determination in First Peoples Child Protection, and associated International Symposium on Self-determination in Indigenous Child Welfare (2025). The Special Issue is open access, and available at: mdpi.com/journal/genealogy/special_issues/M137AMST55.

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Disclaimers

Executive summary

Aboriginal and Torres Strait Islander peoples continue to demand recognition of their inherent and human rights to self-determination, particularly as it relates to the care and protection of our children. However, governments offer much more limited, and arguably tokenistic gestures which use the language of self-determination but in ways which do not accord with understandings of self-determination in human rights instruments such as the *United Nations Declaration of Indigenous Peoples Rights*. This is despite the clear recommendations of *Bringing Them Home Report* (BTHR), the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander children from their families. This report emphasised that self-determination must go beyond mere consultation or participation and include 'Indigenous decision-making carried through to implementation'.[1] This includes the responsibility to design and administer child and family systems, and to exercise jurisdiction regarding decisions about Aboriginal and Torres Strait Islander children.

The 'historical continuity' of past approaches continues.[2] This includes disproportionate surveillance and intervention in Aboriginal and Torres Strait Islander families and communities, perpetuating harms across generations. Despite evidence that decisions made by Indigenous peoples tend to produce improved outcomes for Indigenous communities,[3] and acknowledgements from governments of the harms of past approaches, the *Family Is Culture Review* report (FIC Review) noted the 'historical continuity' that persists within contemporary child protection systems. This includes the failure to properly enact the principle of self-determination. The FIC Review emphasised the realisation of strong forms of self-determination as a key foundation for addressing the disproportionate removal of Aboriginal and Torres Strait Islander children from their families, alongside the related principle of public accountability.

> "Recognition of the right to self-determination can be viewed on a spectrum from 'strong form' to 'weak form'. Strong form recognition involves autonomous arrangements, which are usually the type of autonomy exercised in countries that recognise Aboriginal sovereignty… The other end of the spectrum is 'weak' form recognition, which is a form of recognition that does not require the state to act… any weak form of self-determination is unlikely to achieve substantive change in respect of Aboriginal policy and program design, including in respect of decision-making."[4]
>
> *- Megan Davis, 2019*

This report seeks to outline the context of self-determination in child protection, honouring the decades of community advocacy, and amplifying the FIC Review's recognition of strong-form self-determination as necessary to see substantial improvement for the futures of our children and communities. It draws on key insights shared through a 2025 international symposium on self-determination in Indigenous child welfare and considers how these might be implemented in New

1. Human Rights and Equal Opportunity Commission (HREOC), 1997, p.276
2. Davis, 2019
3. Cornell, Jorgensen & Kalt, 2002; Cornell and Kalt, 2010
4. Davis, 2019, p.80-81

South Wales (NSW) to enliven the right to self-determination for Aboriginal and Torres Strait Islander peoples. This includes immediate actions to strengthen recognition for self-determination and longer-term initiatives to transform the NSW child protection system from its colonial foundations and framework towards a modern, rights-based approach.

The NSW Government has indicated a significant appetite for reform through a phased approach that seeks to stabilise a system in crisis, rebuilds the foundations for a new approach, and invests for improved outcomes.[5] Consistent with the findings of the FIC Review, this reform agenda must be grounded in the twin principles of self-determination and accountability if it is to avoid repeating the mistakes of prior reform cycles which reinforce colonial authority over our children and fail to recognise that Aboriginal and Torres Strait Islander communities are best placed to provide for the safety, welfare and wellbeing of Aboriginal and Torres Strait Islander children and young people.[6]

Realising strong form self-determination in child protection requires long-term strategic planning, organising, resourcing and action from governments and Aboriginal communities. This long-term vision is critical to properly shaping the current agenda and providing a focal point against which to align both the immediate and long-term actions necessary to improve outcomes for children and families and prompt the beginning of system transformation processes. This is intended to ensure that throughout all phases of reform the distinct rights and interests of Aboriginal and Torres Strait Islander children and young people are properly considered and included in all decisions, and that each step brings us closer to a genuinely transformed system grounded on strong forms of self-determination necessary for substantive change. Without this, present reforms will repeat the mistakes of past cycles, and ultimately fail as past forms have in their intent to address the disproportionate impact on and poorer outcomes experienced by Aboriginal and Torres Strait Islander children, their families, and communities. Importantly, Aboriginal communities and the NSW Government can benefit from the lessons arising in national and international contexts that offer practical examples of how to lay the foundations for and implement reforms which facilitate greater self-determination in child protection.

Immediate actions

1 Immediate action one

AbSec, in representation of communities, assert a clear definition of self-determination and articulate a vision for the design and administration of Aboriginal and Torres Strait Islander child protection approaches in NSW, promoting this vision in current and future cycles of reform towards genuine system transformation for Aboriginal communities.

5. NSW Department of Communities and Justice, 2025, see https://dcj.nsw.gov.au/documents/service-providers/out-of-home-care-and-permanency-support-program/oohc-resources/OOHC-Reform-Plan.pdf
6. Libesman and Gray, 2023

2

Immediate action two

In partnership with Aboriginal communities across NSW, AbSec and the Minister for Children and Families should enliven Sections 11 and 12 of the NSW Care and Protection Act, which offer a pathway to self-determination (s11) and participation in decisions (s12). This process should draw on international human rights jurisprudence and existing procedural rights. Additionally, there should be routine mandated training for judges to ensure efficient understanding and effective implementation of the Children and Young Persons (Care and Protection) Act 1998, specific to the core sections which apply to Aboriginal and Torres Strait Islander children, families and communities.

3

Immediate action three

AbSec and the Aboriginal Legal Services (NSW/ACT) (ALS) must work in partnership with the Minster of Children and Families to address persistent information sharing and confidentiality limitations. These settings currently prevent the full and effective participation of Aboriginal and Torres Strait Islander families and communities in decisions affecting their children. Agreed frameworks for information sharing, building on Recommendation 2, will unlock self-determination and participatory approaches, better informing decision making processes as well as policy and reform initiatives, including the implementation of the Aboriginal Case Management Policy (ACMP) and Aboriginal Community-Controlled Mechanisms (ACCMs), and the development of new restoration system and practice frameworks intended to improve restoration practice for Aboriginal children and young people.

4

Immediate action four

Aboriginal communities, and their community-controlled organisations such as AbSec and the ALS, develop and implement strengthened processes to increase the likelihood that decision making processes are properly facilitated and informed to safeguard the rights and wellbeing of Aboriginal children. This includes, but is not limited to, accreditation processes for Independent Legal Representatives for Aboriginal and Torres Strait Islander children, assessment and accreditation guidelines for experts reporting on the interests and wellbeing of Aboriginal and Torres Strait Islander children, the ongoing implementation of ACCMs, and the transfer of administration for independent Aboriginal Family Led Decision Making Processes (including Family Group Conferencing) to Aboriginal community control.

5

Immediate action five

The NSW Government should implement policy reforms which require early referrals to legal advice and advocacy so that families and children are better supported in their interactions with child protection authorities, and have a better chance of presenting their case in court, with strengthened Aboriginal-led monitoring, oversight and reporting of the policy's implementation, impact and opportunities for improvement.

Transformational actions

In addition to these immediate actions, this report proposes a range of more intensive, transformational actions intended to structurally enact self-determination. This includes the transfer of authority to Aboriginal and Torres Strait Islander communities for all policy and decision making about our children and young people.

These include:

- Legislative change to better define the relationship between settler state and Aboriginal communities in child protection actions, including recognition of Aboriginal legal frameworks and decision-making processes.
- Proportionate investment directed through Aboriginal commissioning approaches.
- Establishment of Aboriginal governance processes, supported by competent bureaucracies and institutions for the implementation of community-led decisions, as the foundation of self-governing approaches 'by, for and of' Aboriginal communities. This acknowledges the scaffolding for effective and specialised service delivery offered by Aboriginal Community-Controlled Organisations (ACCOs) and Aboriginal peak bodies.
- A social justice package that overcomes the social determinants of child protection involvement for many Aboriginal and Torres Strait Islander families, including particularly Stolen Generations survivors and their descendants.
- Establishing improved accountability mechanisms, consistent with Recommendation 9 of the FIC Review, and commitments within the national *Safe and Supported 10-year Plan*.
- The opportunity presented by national legislation, providing for minimum standards and the transfer of jurisdiction and related functions, as well as enabling targeted investment in general and intensive family support to address the persistent underinvestment in prevention, family preservation and restoration services.

Introduction

Since creation, Aboriginal and Torres Strait Islander communities have been raising and caring for our children. Our kids grow strong in culture, nurtured through connections to family, kin and Country, that provides for identity and belonging. Our communities have an inherent right, and cultural obligation, to raise our children. As for all peoples, our children represent the future of our nation, who will inherit, but also renew, our societies, and continue our obligations for Country. From the first days of invasion and colonisation by the British, Aboriginal and Torres Strait Islander families and communities have been targets of violence, oppression and dispossession through policies and practices focused on assuring colonial authority and colonial futures, rather than Aboriginal and Torres Strait Islander futures.[7] This has included policies for the forced removal of Aboriginal and Torres Strait Islander children from their families, intended to sever their connection to culture and identity.[8] However, Aboriginal and Torres Strait Islander communities have continuously resisted colonisation, advocating for recognition of our sovereignty, our right to freely determine our political status, and to pursue our social, cultural and economic development. At the heart of this advocacy is ensuring our children grow up thriving in their connections with Country, culture, family and community, as these connections define and scaffold their individual and collective identity, belonging and wellbeing.

Self-determination is a central component in Aboriginal and Torres Strait Islander advocacy for child protection transformation and to resisting settler-colonial regimes of violent intervention into the lives of our families and communities. Political advocacy for recognition of the right to self-determination in child protection has been an ongoing feature of the relationship between non-Indigenous governments and Aboriginal and Torres Strait Islander peoples, most prominently through the landmark *Bringing Them Home Report* (BTHR) in 1997. As BTHR evidenced, Aboriginal and Torres Strait Islanders aspiration for self-determination in child protection is and should be considered multi-faceted; as it covers various historic and current socio-political contextual factors that affect the day to day lives of Aboriginal and Torres Strait Islander peoples.

Self-determination responds to the ongoing harms associated with colonialism, exposing how the colonial project continues to assert and legitimise colonial authority and logics, including surveillance, intervention and control of Aboriginal and Torres Strait Islander children, families and communities. As former Prime Minister Scott Morrison observed, Australian governments have *"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"* and insisting that efforts to address persistent disparities must start by approaching systems and policies from the perspectives of Aboriginal and Torres Strait Islander peoples.[9] International evidence makes clear that recognition of Indigenous self-determination is an important tool and policy setting for improving outcomes for Indigenous people; indeed, it has been described as *"the only strategy that has worked"*. [10]

Ultimately, the priority given to the principle of self-determination within contemporary child protection systems and cycles of reform reflect how the challenge of persistent and worsening disparities affecting Aboriginal and Torres Strait Islander children and families is understood, and therefore the types of remedies or solutions that are considered. Put simply, these perspectives inform whether reforms are guided by a belief that these inequities can be addressed by

7. Libesman, Gray and Ellinghaus, 2022; Nakata, 2018
8. Turnbull-Roberts et al., 2022
9. Commonwealth Government, 2020
10. Cornell and Kalt, 2010, p.15

governments exercising their authority over Aboriginal communities in different, 'more effective' ways, or if the exercise of this external authority is itself a contributor to these inequities, and requires a fundamentally different approach – one that starts from the perspectives of Aboriginal and Torres Strait Islander communities, and that offers new structural, systemic and practical solutions. In this way transforming the legal and social systems that comprise child protection systems, and the cultural frameworks that underpin them.

Advancing self-determination is foundational to the empowerment of our communities, with evidence demonstrating strong links between self-determination and improved outcomes for Indigenous peoples.[11] Primarily, self-determination in child protection is reflective of our inherent human rights, as Aboriginal and Torres Strait Islander peoples, to freely determine and be in control of our own lives and the futures of the generations to come.[12]

Almost three decades since the BTHR, and with unwavering advocacy from our communities, self-determination in child protection remains an outstanding issue. In NSW, provisions related to self-determination for Aboriginal communities have featured within the *Children and Young Persons (Care and Protection) Act 1998*, for more than two decades. However, recent reviews such as the 2019 FIC Review have found that these provisions have no real meaning or application within child protection systems.[13] The FIC Review made clear that such inclusions constitute a 'weak' form of self-determination that does not require any particular action from the state, reflecting *"a vague and indeterminate rendering of the right"*.[14]

This superficial positioning of self-determination in legislation and policy rhetoric, without meaningful action or implementation, can be characterised as 'settler moves to innocence'; strategies that seek redemption for contemporary systems while retaining power and privilege over Indigenous peoples.[15] In doing so, settler-colonial child protection systems seek to distance themselves from the acknowledged harms of 'past policies', while perpetuating the same logics and systems, and reinforcing the very exercise of settler-colonial intervention in the lives of Aboriginal and Torres Strait Islander children, families and communities that characterised those 'past policies'.[16] That is, these ineffective reforms serve to obfuscate, rather than address, the 'historical continuity' that characterise contemporary child protection systems, and reinforce explanations that problematise and pathologise Aboriginal and Torres Strait Islander parents, families and communities. By doing so, they further entrench non-Indigenous interventions in the lives of Aboriginal and Torres Strait Islander children, families and communities.

The FIC Review made clear that the transfer of authority is essential for substantive change. The FIC Review emphasises the need for 'strong' forms of self-determination that enable 'autonomous arrangements' in which Aboriginal communities design and administer systems for the care and protection of their children.[17]

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11. Cornell, Jorgensen & Kalt, 2002
12. United Nations Declaration on the Rights of Indigenous Peoples, Article 3
13. Davis, 2019; Liebesman, 2015
14. Davis, 2019, p. 81
15. Tuck & Yang, 2012
16. Libesman, Gray, P. & Gray, K., 2024
17. Davis, 2019

Professor Davis emphasised:

> "The right to self-determination is not about the state working with our people, in partnership. It is about finding agreed ways that Aboriginal 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. As the Uluru Statement from the Heart implores: When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country."[18]
>
> *- Professor Megan Davis, 2019*

This paper seeks to explore ways that self-determination for Aboriginal communities might be realised within NSW. First, the paper examines the context of self-determination including its present discourses in child protection in Australia and internationally. The paper then considers specifically claims about self-determination in NSW, drawing particularly on the FIC Review, whose recommendations remain mostly unimplemented by the NSW Government.[19] Finally, we outline a proposed framework and actionable steps towards the realisation of stronger forms of self-determination in child protection for Aboriginal communities in NSW.

18. Davis, 2019, p. XVIII
19. AbSec, 2024

Self-determination and Indigenous child welfare

Rights context

Globally, self-determination is understood as a foundational human right for all peoples in determining their own futures. In 1966, the policy of self-determination was formally established in the United Nations Charter, the *International Covenant on Civil and Political Rights* and the *International Covenant of Economic, Social and Cultural Rights* which states;

> "All peoples have the right of self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development."[20]
>
> *- United Nations, 1966, Article 1*

Indigenous peoples, including Aboriginal and Torres Strait Islander peoples, have continued to resist colonial oppression and control by insisting on their right to self-determination and self-governance, including the right to raise their children in culture and with community. Shortly following this global recognition of self-determination, the Australian political landscape saw the 1972 conception of the *Self-Determination Policy* in Aboriginal Affairs. This policy aspired to advance Aboriginal and Torres Strait Islander self-determination at federal and state levels across Australia. Whilst this political shift saw some change to the treatment and inclusion of Aboriginal and Torres Strait Islander peoples in broader political discourse, its practical implementation remained limited and positioned wholly within non-Indigenous governmental structures. This is particularly the case in child protection systems and practice, which continue to be characterised by non-Indigenous legislation, policy and practice approaches that intervene in and make decisions about Aboriginal and Torres Strait Islander children and families.

In 2007, the United Nations endorsed the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). UNDRIP provides a framework that considers the application of other international instruments on civil and political rights in the context of Indigenous peoples, underpinned by the inherent and collective right to self-determination. Despite initial resistance alongside other similar former British colonies built on the dispossession of Indigenous peoples, Australian became a signatory of UNDRIP in 2009. This established obligations to uphold the rights enshrined in the UNDRIP including promoting self-determination for Aboriginal and Torres Strait Islander peoples.[21] As with other similar international instruments like the UN Convention on the Rights of the Child, UNDRIP broadly informs child protection policy and practice across Australia. However, there continues to remain a gap in its policy aspirations to its implications in practice and outcomes for Aboriginal and Torres Strait Islander peoples. In particular, application of UNDRIP in Australian child protection systems tend to be on an individualised basis, considering the participation of children and families in individual matters, or by including Aboriginal organisations in the delivery of government services. This is different to grappling with the collective nature of the rights of Indigenous peoples, including Indigenous children.

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20. United Nations, 1966, Article 1
21. Parliament of Australia, 2023

Australian policy context

Bringing Them Home Report (BTHR)

The landmark 1997 BTHR was pivotal in documenting the violent harms and trauma inflicted on Aboriginal and Torres Strait Islander children and families through the forcible removal of Aboriginal and Torres Strait Islander children. The BTHR extensively highlighted the colonial and assimilatory underpinnings of Australia's 'child protection' and the intergenerational harms this system continues to impose on Aboriginal and Torres Strait Islander children, families and communities. The BTHR also detailed several opportunities to transform child protection and youth justice systems, grounded on the principle of self-determination. As the authors noted:

> "Our principal finding is that self-determination for Indigenous peoples provides the key to reversing the over-representation of Indigenous children in the child welfare and juvenile justice systems of the States and Territories and to eliminating unjustified removals of Indigenous children from their families and communities."[22]
>
> *- Australian Human Rights Commission, 1997*

The BTHR clarified the principle of self-determination, consistent with the 'strong' forms that the FIC Review would reiterate two decades later. Specifically, the BTHR emphasised that self-determination went beyond mere consultation or participation in decisions by Australian governments, or in the delivery of government services, but referred to the right of Indigenous peoples to autonomy and self-governance.

> "Self-determination requires more than consultation because consultation alone does not confer any decision-making authority or control over outcomes. Self-determination also requires more than participation in service delivery because in a participation model the nature of the service and the ways in which the service is provided have not been determined by Indigenous peoples. Inherent in the right of self-determination is Indigenous decision-making carried through into implementation."[23]
>
> *- Australian Human Rights Commission, 1997*

The BTHR further asserted that *"to respect the right of self-determination, governments should confine their roles largely to providing financial and other resource support for the implementation of Indigenous programs and policies"*[24]; programs and policies freely adopted by Aboriginal peoples

22. HREOC, 1997, p.15
23. HREOC, 1997, p.276
24. HREOC, 1997, p.227

themselves, according to their own processes, rather than those adopted or imposed by Australian governments about or for Aboriginal and Torres Strait Islander people. Without adequate funding, promises of self-determination remain hollow and unimplemented. As the BTHR noted:

> "There must be sufficient funding and other resources to ensure that services can respond promptly to demands in ways which ensure realisation of the right of self-determination, which are culturally appropriate and which ensure equality of access for all. Services must be adequately resourced so that they can be flexible enough to take into account the many and diverse ways in which the removal policies have affected individuals, families and communities."[25]
>
> *- Australian Human Rights Commission, 1997*

BTHR provided 54 recommendations for Governments to implement. Of particular relevance to contemporary child protection systems, Recommendation 43(a-c) specifically referred to self-determination, and included a recommendation for national legislation to be developed between Australian governments and Aboriginal representative and advocacy organisations that would provide a framework for the realisation of self-determination for Aboriginal and Torres Strait Islander peoples at the community and regional levels. Such a framework would provide principles for agreement making with Australian governments that includes adequate funding to meet the needs of their children and families, the opportunity to transfer legal jurisdiction in relation to child welfare and other critical community functions, as well as a 'social justice package' intended to *"address the social and economic disadvantages that underlie contemporary removal of Indigenous children and young people"*. [26] BTHR further emphasised the importance of human rights protections within the child protection system as part of a comprehensive accountability framework.[27] While these recommendations provided a blueprint for structural reform, Australian governments have not comprehensively implemented the recommendations in the decades since, even as reviews revealed that cycles of reforms continued to fail to address these growing disparities.[28]

National Agreement on Closing the Gap

The *National Agreement on Closing the Gap* (the National Agreement), established in 2020, proposed a partnership approach to address entrenched inequities experienced by Aboriginal and Torres Strait Islander communities. The previous 2008 Closing the Gap strategies undermined Aboriginal communities' right to self-determination and instead, reinforced the presumed authority of non-Indigenous governments over Aboriginal and Torres Strait Islander peoples and privileged non-Indigenous explanations of, and solutions to, observed disparities. The National Agreement proposes a new approach, consistent with longstanding aspirations for self-determination, and was developed in partnership with the Coalition of Peaks[29] with the intention to empower Aboriginal and Torres Strait Islander communities in leading policy and to drive solutions on issues facing their communities.

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25. HREOC, 1997, p.15
26. Recommendation 42
27. HREOC, 1997
28. Davis, 2019
29. The Coalition of Peaks refers to a national coalition of more than 80 Aboriginal and Torres Strait Islander community-controlled peak and member organisations across Australia. See https://www.coalitionofpeaks.org.au/our-story

The National Agreement set out 19 national socio-economic targets through which progress can be monitored and evaluated. For the first time, this included child protection, with Target 12 being to 'reduce the over-representation of Aboriginal and Torres Strait Islander children in OOHC by 45 percent by 2031'.[30] Underpinning these targets are Priority Reforms. These are:

- Formal partnership and shared decision making.
- Building the Aboriginal community-controlled sector.
- Transforming government organisations.
- Shared access to data and information.

The inclusion of the Priority Reforms offers a fundamentally different conceptualisation of the policy approach. This approach is more in line with Aboriginal and Torres Strait Islander perspectives that implicate the very exercise of authority by Australian governments over the lives of Aboriginal and Torres Strait Islander communities as central the creation and reproduction of these disparities. From this perspective, rather than Australian governments searching for new policy approaches that might be associated with improved outcomes for Aboriginal and Torres Strait Islander people, the focus is on transforming the exercise of authority in ways that enable Aboriginal and Torres Strait Islander community-led solutions, supported by improved accountability to Aboriginal and Torres Strait Islander communities themselves.

However, this conceptual pivot is not presently reflected in implementation. Recent reviews by the Productivity Commission (2024) and the Jumbunna Institute for Indigenous Education and Research (UTS) (2025) document that governments are failing to enact the necessary changes called for through the Priority Reforms. The key finding is that *"governments are yet to commence any genuine transformative work"*.[31] Without this transformation, initiatives will likely continue to reproduce the same disparities that governments claim they are intended to address.

Importantly, the Productivity Commission's review emphasised that a "paradigm shift" is needed.[32] They call for greater power sharing based on recognition of the right to self-determination, backed by critical Aboriginal and Torres Strait Islander data infrastructure, fundamentally re-thinking the role of governments and strengthening mechanisms for accountability.[33] Likewise, the Aboriginal-led review found that *"self-determination must become a lived principle"* in implementation of the National Agreement. However, this is being *"constrained by colonial systems and ways of working and the inability – or unwillingness – of governments to make space for worldviews that do not mirror their own"*.[34] At the same time, this review encouraged Aboriginal and Torres Strait Islander communities to reflect on how they are currently organised and to strengthen representation and accountability to better reflect Aboriginal and Torres Strait Islander ways of working.

Safe and Supported: The National Framework for Protecting Australia's Children 2021-2031

Safe and Supported: The National Framework for Protecting Australia's Children 2021-2031, is Australia's comprehensive framework for protecting all children and young people. A primary goal of this framework is to address Target 12 of the National Agreement, clearly positioning *Safe and Supported* as a vehicle for shared action across Australian governments in alignment with

30. Coalition of Peaks, 2020
31. Jumbunna Institute for Indigenous Education and Research, 2025, pp.8
32. Productivity Commission, 2024
33. Productivity Commission, 2024
34. Jumbunna Institute for Indigenous Education and Research, 2025, p.160

the National Agreement. *Safe and Supported* includes a distinct 'theory of change' for improving outcomes for Aboriginal and Torres Strait Islander children, families and communities, recognising critical differences in the broader social and political context of Aboriginal and Torres Strait Islander communities that require unique understandings and approaches. This is operationalised through a distinct *Aboriginal and Torres Strait Islander First Action Plan 2023-2026*. The theory of change is a rationale for the Framework's 10-year strategy and provides an outline of the key issues that require addressing, linked to the principles of *Safe and Supported*. The theory of change focuses on the enablers and barriers for achieving change as well as the key actions to drive change. These are linked to interdependent and intersecting focus areas which are considered primary areas that affect the lives of children and young people. The theory of change ultimately provides pathways to achieve the desired outcomes of the Framework at both system and service level and child and family level which are then implemented through the Action Plans.

The *Aboriginal and Torres Strait Islander First Action Plan* is organised into eight action areas to achieve both child and family level outcomes and system level outcomes. This includes Action 1: Delegated Authority, which seeks to *"commit to progressive systems transformation that has First Nations self-determination at its centre."*[35]

In doing so, *Safe and Supported* acknowledges the relationship between self-determination by Aboriginal and Torres Strait Islander peoples and improved outcomes for Aboriginal and Torres Strait Islander children. Further, the scope is understood in broad terms, consistent with the discussion above. This is about placing control regarding the future wellbeing of Aboriginal and Torres Strait Islander children and young people in the hands of their Aboriginal and Torres Strait Islander communities.

35. Commonwealth of Australia, 2022

NSW policy context

Insights from the FIC Review Report

The 2019 FIC Review is the landmark Aboriginal-led review of the NSW child protection system. The FIC Review established that the child protection system and governments continued to fail to implement BTHR recommendations. Since its publication, there has been an increase in the number of Aboriginal and Torres Strait Islander children being removed into NSW OOHC. The FIC Review reiterated and built on the roadmap provided by the BTHR to call for structural reform that is grounded on two key pillars: self-determination; and public accountability and oversight. In defining these pillars, specifically that of self-determination, the FIC Review makes a clear distinction between weak-form and strong-form self-determination in child protection.

The FIC Review offered the conceptualisation of strong-form recognition of self-determination in that it *"involves autonomous arrangements, which are usually the type of autonomy exercised in countries that recognise Aboriginal sovereignty"*.[36] In the context of the FIC Review, strong-form self-determination was considered alongside the original aspirations of the BTHR that *"meaningful self-determination involves the devolution of power from the state to Indigenous peoples (strong form self-determination)."*[37] Therefore, strong-form self-determination in child protection can be understood as Aboriginal and Torres Strait Islander communities exercising governance, autonomy and responsibility over matters that affect children, young people and their families, underpinned by Aboriginal and Torres Strait Islander ways of knowing, being and doing. In this way, strong-form self-determination radically limits all government control/jurisdiction in decision making processes that affect Aboriginal and Torres Strait Islander children.

Despite this clear emphasis on strong forms of self-determination, the NSW government continues to offer poor application. The NSW government provides limited opportunity to achieve substantial change for Aboriginal and Torres Strait Islander children and communities. Rather, the NSW government continues to favour passive 'weak forms' of self-determination. For instance, emphasising the participation of Aboriginal organisations in the delivery of government services; an approach that ultimately retains total governmental authority while arguably outsourcing or deflecting from government responsibilities. Stronger forms of self-determination are critical to achieving improved outcomes for Aboriginal and Torres Strait Islander children.[38] As the FIC Review states, *"The Review notes that any weak form of self-determination is unlikely to achieve substantive change in respect of Aboriginal policy and program design, including in respect of decision-making"*.[39]

Self-determination is included in the current *Children and Young Persons (Care and Protection) Act 1997 (NSW)*, within section 11 which states:

1. It is a principle to be applied in the administration of this Act 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 is possible.

36. Davis, 2019, p.85
37. Davis, 2019, p.85
38. Davis, 2019
39. Davis, 2019, p.81

2. To assist in the implementation of the principle in subsection (1), the Minister may negotiate and agree with Aboriginal and Torres Strait Islander people to the implementation of programs and strategies that promote self-determination.

However, as the broader critique presented through the FIC Review makes clear, this inclusion remains vague.[40] It establishes no clear definition or expectation for action, and has not been meaningfully enacted in more than two decades. This is not consistent with international human rights standards. The FIC Review specifically noted the absence of a clear definition of self-determination, which it found diminishes the opportunity for strong-form self-determination and *"creates unrealistic expectations about what the state will permit in terms of autonomous arrangements"*.[41] Our analysis highlights that the current legislative language persists in supporting a colonial regime in which the State and its agents retain power and control over decisions about Aboriginal and Torres Strait Islander children and families, reinforcing state power to determine Aboriginal and Torres Strait Islanders futures. As a result, the principle of self-determination is misunderstood and entirely undermined.

In contrast, the expectations of Aboriginal and Torres Strait Islander communities have remained clear and consistent. As quoted in BTHR and reiterated in the FIC Review:

> "Self-determination requires more than consultation because consultation alone does not confer any decision-making authority or control over outcomes. Self-determination also requires more than participation in service delivery because in a participation model the nature of the service and the ways in which the service is provided have not been determined by Indigenous peoples. Inherent in the right of self-determination is Indigenous decision-making carried through into implementation." [42]
>
> *- Australian Human Rights Commission, 1997*

In this way, the FIC Review outlines and defines strong-form self-determination, as the legitimate transfer of child protection jurisdiction to Aboriginal governance and cultural authority. As Libesman and colleagues further articulated:

> "The principle of self-determination requires the transfer of decision-making authority to Aboriginal communities themselves, exercised through their own processes and representatives, and the resources to effectively implement these decisions for their children, families and communities." [43]
>
> *- Libesman, Gray, P., & Gray, K., 2024*

One approach in NSW which sought to promote self-determination and encourage transfer of decision-making authority was through the establishment of the ACMP. The ACMP was designed by AbSec through statewide-consultation processes with Aboriginal communities and other stakeholders. The ACMP aspired to transform casework practice through elevating respect for

40. Davis, 2019
41. Davis, 2019, p.85
42. HREOC, 1997, as cited in Davis, 2019, p.91
43. Libesman, Gray, P., & Gray, K., 2024

"case management that values community involvement, including self-determination".[44] However, consistent with its broader critique, the FIC Review noted that *"case management that 'values' self-determination sets an extremely low bar in which power is retained by the state"*, emphasising that *"without appropriate structural recognition"* the implementation of the ACMP is inadequate in terms of realising strong-form self-determination.[45]

One of the central components to bring the benefits of the ACMP into effect is the establishment of Aboriginal Community-Controlled Mechanisms (ACCMs). ACCMs were designed to be a formalised body comprised of respected community members appointed by Aboriginal communities themselves and according to their own processes to provide oversight and to participate in decisions related to casework regarding Aboriginal and Torres Strait Islander child protection matters in their community. This approach was intended to emphasise the importance of authority being structured and exercised in a way that demonstrates cultural match with that of the community served as critical for legitimacy and accountability. ACCMs were designed to offer a mechanism for accountability to Aboriginal communities, whilst also transforming the practice of the NSW Department of Communities and Justice (DCJ), and better informing judicial processes, through offering formal mechanisms for the provision of essential community expertise.

However, despite this commitment, the ACMP has not been meaningfully implemented over the intervening five years. Like the National Agreement on Closing the Gap, DCJ has demonstrated themselves as either unwilling or incapable of understanding and implementing the structural transformation intended through the ACMP and its key elements. Governments' routine failure to adequately invest and resource the implementations of their own policies simply reinforces the continual undermining of self-determination in practice.

One of the most pressing factors that limits the implementation of community-led approaches such as those intended through ACCMs relates to the withholding of important information necessary for effective community involvement in decisions affecting their children and families. Aboriginal and Torres Strait Islander families and communities are often denied access to information about the needs or circumstances of our children and young people. In practice, withholding information from families and communities actively denies a fair chance of equal participation in decision making processes, and undermines effective decision making. This ultimately constrains participation, across the casework continuum. This includes constrained participation in processes designed to support self-determination and participation such as Aboriginal family-led decision making (AFLDM). Limiting access to information about our children and families also serves to preserve the authority of, as well as limit scrutiny of executive agencies by Aboriginal families and communities that are disproportionately subject of their decisions, and for whom outcomes are 'particularly poor'.[46] At the same time, governments hide behind their presumption of privacy but offer no legitimate basis for their own surveillance and intervention in the lives of Aboriginal and Torres Strait Islander children, families and communities. This reflects clearly the colonial foundations that underpin the historical continuity of contemporary systems. Inherent in the right to self-determination is the collective authority to determine the basis about which community interests, such as the shared interest in the safety, welfare and wellbeing of the community's children, interact with expectations of privacy, just as they do within the NSW community more generally. In the interim, Aboriginal community access to and use of such information would be subject to the same protections accorded any similar body that exercises public responsibilities such as child protection services.

44. Davis, 2019, p. 81
45. Davis, 2019, p. 85
46. Tune, 2017

International insights

International Symposium on Indigenous Self-Determination in Child Protection 2025

As UNDRIP is internationally recognised, we acknowledge the global fight by First Nations communities who share a collective interest in advancing self-determination in child protection. First Nations peoples from America, Canada, New Zealand and Australia share many similarities in the experiences of injustice and dispossession imposed by settler governments, including the forced removal of First Nations children from their families, culture and lands. Similarly, each community has their own unique examples of acts of resistance, where innovative strategic planning and community organising continues to assert their right to self-governance, to maintain their distinct languages and cultures, and preserve relationships with their lands and territories.

These multifaceted and intertwined experiences were recently explored at the *International Symposium on Indigenous Self-Determination in Child Protection*, hosted on the lands of Gamayngal people of the Dharawal Nation. The symposium heard from a diverse range of First Nations leaders and advocates in child protection from North America and Australia who shared insights into key considerations for advancing self-determination for the collective interest of our children, and the futures of our international communities. These concepts are extensively explored in *The Special Edition of Genealogy on Self Determination in Indigenous Peoples' Child Protection*[47], and the R*eport to Partners* developed through the symposium. These articles explore approaches of Indigenous peoples to enliven the principle of self-determination in the care of their children, centring Indigenous worldviews and offering fundamentally different approaches to express care for children and families.[48]

For the purposes of this paper, we have identified three key issues arising through the symposium discussion for consideration in progressing self-determination in NSW:

1. Children must be recognised and respected as rights holders.

This theme acknowledges that all children must be recognised and respected as holding inherent rights, and the obligation on individuals and communities to protect and promote these rights and interests. Protecting and promoting the rights of Indigenous children has attracted particular attention, given that special measures are often required to properly safeguard full enjoyment of their rights,[49] so often neglected or undermined by States.[50] In the context of child protection systems in former British colonies, First Nations children must be centred as rights-holders with specific, inherent and inalienable rights and interests. Children and young people must be regarded as highly valued members of community, critical for cultural continuity, intergenerational knowledge-sharing and survival. Importantly, children and childhood should be regarded as sacred, recognising our shared

47. See https://www.mdpi.com/journal/genealogy/special_issues/M137AMST55
48. See for example Friedland, 2025; Linjean & Weaver, 2025; Kastelic and Jorgensen, 2025; Rocha Beardall, 2025, Ullrich et al., 2025
49. UN Committee on the Rights of the Children, 2009
50. UNICEF, 2007

responsibility as adults to be accountable to our children. This must ensure that children's rights are considered holistically and relationally, with their care and wellbeing connected to that of their families and communities. In recognising children as rights holders, and the obligation placed on communities to promote full enjoyment of their rights, broader collective claims associated with self-determination are also implicated.

2. First Nations governance in child protection is paramount to achieve change for our communities.

This theme acknowledges the ongoing resistance of our communities to colonial control, emphasising our shared right to determine our own futures, particularly through the care of our children. It recognises that First Nations knowledge and ways of doing and being must be centred in the logics of child protection systems; in the exercise of authority, the design and administration of service systems, and in practice frameworks. This involves the highlighting of the significance of culturally legitimate decision-making, developing strong and transparent accountability measures oriented to Indigenous communities themselves, engaging in holistic, relational and culturally grounded practices, and strengthening collective capacity through intergenerational knowledge sharing, building collective wealth, and promoting wellbeing and cultural continuity. This theme honours community by strongly articulating a collective praxis of responsibility and obligations belonging to First Nations communities towards maintaining and restoring First Nations child safety, protection, rights, and wellbeing. Ultimately, this theme centres the importance of strengthening and rebuilding Indigenous governance via Indigenous ways of Knowing, Being and Doing.

3. Foregrounding legitimacy in decision making processes and frameworks.

This key theme encourages greater examination and understanding of how legitimacy is positioned in child protection decision making processes. This requires reflection on how we utilise various tools (legislative, system and programs administration, judicial and decision making processes, practice frameworks) to achieve goals that centre the rights, interests and wellbeing of children and young people. This theme reflected the need for developing, implementing and engaging in legitimate Indigenous-led decision-making processes by and for Indigenous Nations and communities, embedded with cultural protocols, values and authority. The intersection of settler-colonial and Indigenous frameworks was a key consideration. This included consideration of settler-colonial legal frameworks, which need not be deployed to constrain Indigenous decision making and futures, but can be repositioned as a useful tool in clarifying the relationship between settler-colonial governments and Indigenous peoples as these relate to children and families. Positioned in this way, settler-colonial laws were viewed as capable of constraining instead the harmful imposition of settler-colonial authority to intervene in Indigenous children and families. These had potential to enable and equitably resource Indigenous communities to support and safely look after their children and families consistent with notions of self-governance, including the implementation of Indigenous legal frameworks and institutions; recognition for community decisions; and contribute to the redress of past and ongoing harms, such as through the establishment of a social justice package. For instance, as recommended by the BTHR.

International legislation

The *Indian Child Welfare Act* (ICWA) in the United States of America and *Bill C-92: an Act Respecting First Nations, Inuit and Métis children youth and families* in Canada, were examples of international legislation discussed throughout the symposium. These Acts, while not perfect and still subject to significant negotiation within their jurisdictions, serve to transfer jurisdiction for child protection decision making to Indigenous peoples, enabling Indigenous communities to realise their own administrative and judicial processes to serve their children, families and communities. Australia, Canada and the United States are similar in that child protection systems remain the responsibility of states. These examples show how national legislation can contribute to structural change even where responsibility for child protection is constitutionally positioned with state or provincial governments. In doing so, these provide examples of how legislation can limit and constrain settler colonial power and imposition, whilst pursuing greater opportunities for self-determination for Indigenous communities.

The Indian Child Welfare Act (USA)

In the United States of America, First Nations child protection matters fall under the *Indian Child Welfare Act 1978* (US) (ICWA). The ICWA recognises Tribes as having domestic dependant nation status i.e. being nations with their own laws and as governments within the US Federal system of governance. The ICWA, like C92(CA), includes a two-tiered system for recognising Indian families and Tribes' rights with respect to their children. The ICWA sets minimum standards for Indian child protection matters heard in State courts. The ICWA also recognises Tribal jurisdiction for Indian children who reside on Tribal lands and in certain circumstances Indian children who belong to a Tribe who do not reside on Tribal lands.

Zug (2020) provides a sound summary of ICWA's powers through the following:

> "The Act protects tribal court authority and power by recognizing tribes' exclusive jurisdiction over child custody determinations involving Indian children residing or domiciled within an Indian reservation. It also requires state courts to transfer jurisdiction to the tribal courts in any proceeding for foster care placement or parental rights terminations involving Indian children not domiciled within the reservation. In addition, the Act guarantees tribes or any "Indian custodian of the child" the right to intervene "at any point" in any state court proceeding for the foster care placement or termination of parental rights of an Indian child and it requires states to give full faith and credit to tribal court proceedings." [51]
>
> *- Zug, 2020*

While the ICWA is widely considered, at the time of writing, as the gold standard for transfer or sharing of child protection jurisdiction with Indigenous peoples, the factors which have held back its more comprehensive and effective implementation over the past four decades provide lessons for Canada, Australia, and other jurisdictions which aim to successfully transfer and share child protection responsibilities between the State and Indigenous peoples.

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51. Zug, 2020, P.174

The ICWA aims to keep Indian children safely in their Tribal communities and to preserve the future of Tribes. Some features if the ICWA include:

- The ICWA uniquely has the dual purpose of promoting both the best interests of Indian children and promoting the stability and security of Indian Tribes, communities, and families. The ICWA transfers legislative, administrative, and judicial decision making to Indian Tribes where Indian children are domiciled on reserves and provides a process for the transfer of decision making from State courts to Tribal courts for children who live off reserve. Proceedings in a State court must be transferred to a Tribal court if requested by a parent or Tribe unless there is good cause to not transfer the proceedings. However, this is also limited, in that either parent can veto the transfer of proceedings.
- Litigation has been used by States and private adoption and child protection agencies to attempt to limit the ICWA's scope. For example, numerous US States have established, through litigation, a doctrine called the 'existing family' doctrine which attempts to exclude families who do not have an established cultural connection to their Tribe from the scope of the ICWA. Litigation has also focused on what it means to reside or to be domiciled on a reservation and what constitutes good cause not to transfer proceedings from a State to a Tribal Court. Discussion of this and other litigation is beyond the scope of this paper. When proceedings do take place in state courts, the ICWA makes Indian Tribes automatically a party to proceedings in the State court. This is an interesting provision which could effectively be implemented, with designated Aboriginal and Torres Strait Islander organisations rather than Tribes, having standing in child protection proceedings in NSW. The training and funding issues discussed below would need addressing to make such a reform effective. This could have an enormous impact on:
    - Families' experiences of child protection.
    - Implementation of existing rights under current NSW child protection legislation.
    - The quality of evidence heard in child protection cases.
    - The quality of judicial decision making for Aboriginal and Torres Strait Islander children and families.

There are provisions in the ICWA which require the giving of notice of proceedings to Indian parents, custodians, and Tribes. The failure to effectively implement this provision is discussed below. It indicates that effective law reforms require robust implementation and accountability mechanisms.

The ICWA also compels active rather than reasonable efforts on the part of child protection services to keep Indian families together and to avoid out of home care. The US, and recent NSW experience with 'Active Efforts', demonstrate the need for implementation and accountability mechanisms to ensure that the 'Active Efforts' standard amounts in practice to more than a change of language. The ICWA also includes a placement principle which is similar to that in s13 of the NSW legislation, aimed at placing children within their network of family and kin connections where it is determined that they cannot safely reside with their parents for a time. In this way, preserving and promoting the child's cultural connections.

While the provisions in the ICWA bring great benefit to many Indian children it is clear that there are many lessons to be learned with respect to implementation. The experience of the ICWA demonstrates the importance of not creating administrative, legal, and cost barriers to the effective implementation of the intent of the Act. It also demonstrates the importance of adequate funding free from expenditure requirements which explicitly or implicitly recreate colonial ways of providing child protection services. Indigenous child protection services need to go beyond being delivered by Tribes, and to encompass support for Indigenous legal frameworks reflecting Indigenous ways of looking after children and resolving disputes where they occur. Many Indian child welfare departments have effectively been forced to replicate state child welfare systems because of eligibility requirements for funding and prescriptive requirements with respect to what funds can be used for and how these must be used. This resonates with the experiences of many ACCOs in NSW.

The ICWA experience demonstrates that effective implementation requires resources to train Indigenous children's organisations on how to activate rights contained in the legislation, including

with respect to the relationships between State and Tribal rights. Without this training, rights are not activated and child protection cases which should be heard in Tribal Courts are heard in State Courts – sometimes without Tribal representation.

Compliance with the ICWA is impacted by a lack of knowledge of the provisions of the ICWA by both State Courts and Tribal Courts. Compliance is also impacted sometimes by wilful ignoring of ICWA provisions by State child protection institutions. For example, the ICWA requires that State child welfare courts inform Tribes of child protection proceedings so that they can intervene. However, this often does not occur. Effective implementation of rights requires awareness of the rights and capacity to intervene. For example, with compliance notices when this does not occur. Where notices with respect to hearings related to Indian children are issued by State courts, Tribes need the resources to respond. There is often a lack of resources to do this. Issues with respect to notice are one of the common reasons for litigation which is costly and places a burden on under resourced Tribal agencies.

Without early notice and capacity to respond, Tribes are again locked out of child protection proceedings involving their children. This example demonstrates that enactment of rights, and transfer of jurisdiction, must be accompanied by education for all parties and effective enforcement mechanisms to ensure accountability. Greater cooperation between State and Tribal child protection institutions, including courts will likely lead to better outcomes for children. A learning from the US experience is about the value of setting up structures for formal engagement and cooperation from the outset.

The ICWA provides critical lessons for NSW and Australia regarding the realisation of self-determination in child welfare matters, stretching beyond mere participation in service delivery and decision making, to the authority to develop and administer autonomous and shared jurisdiction. Critically, it emphasises that this is in recognition of two distinct but related and essential interests; the best interests of Indigenous children as Indigenous children, and the stability and security of Indigenous communities or nations. Ultimately, these are both grounded in promoting and preserving Indigenous futures from the recognised threat of colonial interests that intervene in their lives. However, robust implementation and accountability mechanisms are needed, including judicial processes of both Indigenous and settler-colonial nations, to realise these goals in practice. This was reiterated in a recent concurrence by Justice Neil Gorsuch, in Haaland v. Brackeen, 599 U.S. (2023), in which he concluded:

> "Often, Native American Tribes have come to this Court seeking justice only to leave with bowed heads and empty hands. But that is not because this Court has no justice to offer them. Our Constitution reserves for the Tribes a place—an enduring place—in the structure of American life. It promises them sovereignty for as long as they wish to keep it. And it secures that promise by divesting States of authority over Indian affairs and by giving the federal government certain significant (but limited and enumerated) powers aimed at building a lasting peace. In adopting the Indian Child Welfare Act, Congress exercised that lawful authority to secure the right of Indian parents to raise their families as they please; the right of Indian children to grow in their culture; and the right of Indian communities to resist fading into the twilight of history. All of that is in keeping with the Constitution's original design."
>
> *- Justice Neil Gorsuch, 2023*

While the founding of Australia was grounded on the myth of terra nullius, seeking to render invisible Aboriginal and Torres Strait Islander peoples, and Aboriginal and Torres Strait Islander futures, the path to justice requires recognition; recognition not just of our presence and connection to Country, but recognition of our enduring sovereignty, and the right to secure our futures, and our children's futures. This requires shifts in the current legal architecture, sharing jurisdiction and ensuring that Aboriginal and Torres Strait Islander peoples are able to exercise their legitimate authority to

determine our own futures. It also requires recognition of the interdependence of individual and collective interests, with the individual interests of Aboriginal and Torres Strait Islander children best served by the presence of strong Indigenous communities, and the interests of those communities best served when every child is supported to thrive through connections to community, culture and Country.

C-92: An Act Respecting First Nations, Inuit and Métis Children, Youth and Families (Canada)

In Canada, an *Act respecting First Nations, Inuit and Métis children, youth and families*, also known as Bill C-92, was passed in 2019. This legislation establishes national principles for child protection in relation to First Nations children, including the best interests of the child, cultural continuity and substantive equality. Like ICWA, and as recommended by the BTHR, the Bill also legislates First Nations community jurisdiction over child protection matters. However, First Nations community members and child protection leaders have critiqued Bill C-92 and its limitations; *"While on its face, this bill appears to respond to First Nations calls for the recognition of self-determination in child welfare, a closer look shows fractures in its foundation"*.[52] One of the major critiques is that Bill C-92 does not adequately fund First Nations communities to provide community led child protection programs in light of their own legislation. There are also no guarantees to ongoing funding agreements.[53] This evidences that legislation that clearly defines self-determination in child protection processes is necessary but insufficient; there remain inherent limitations if approached in a legislative silo, rather from holistic transformation of systems and funding alternatives.

C92 is the first Federal legislation regulating child welfare in Canada where, like Australia, child protection falls within the jurisdiction of provinces and territories. The Act aims to recognise, within the context of child protection, Indigenous peoples' human and inherent rights including through implementation of UNDRIP. Like the child protection recommendations from the BTHR, C92 provides a two-tiered system for this recognition; one through minimum standards in provincial and territory legislation, and the second through establishing a process to transfer jurisdiction for Indigenous child protection to First Nations communities. The minimum standards address prevention as well as respecting rights where child protection interventions occur. C92 enables communities to establish their own child protection legislation, executive, and dispute resolution (i.e. court and other judicial processes). These have the same authority as federal Canadian law. As at August 2025, 15 agreements have been made and come into force to cover 17 Indigenous child protection laws.

Similar to recommendations from the BTHR, and applicable to the Australian context, C92 provides for the progressive transfer of different levels of responsibility to Indigenous communities where they are able and interested in assuming this jurisdiction. This allows for staged or incremental sharing of child protection responsibilities in accordance with communities' readiness. This also allows for the development of the institutions and processes necessary for implementation. An interesting feature of C92, which to some degree mitigates against power imbalances between First Nations peoples and colonial governments in negotiations for implementation, is a provision for recognition of the Indigenous child protection law, if after a year of reasonable efforts at negotiating, an agreement between the State and First Nation is not reached.

Where Indigenous and non-Indigenous child protection laws co-exist, experience from Canada and the US demonstrates that dispute resolution processes are needed which place Indigenous legal frameworks on a similar footing to state or provincial laws. This has been a point which has hindered both the implementation of C92 and the ICWA. In both instances, State or Provincial child protection authorities have often ignored or contested Indigenous child protection laws. Some state and provincial courts have sought to narrow the scope of C92 or Tribal court jurisdiction under the ICWA.

52. Blackstock et al., 2020
53. Blackstock et al., 2020

Relatedly, the way some provincial courts interpret the minimum standards under C92 has been problematic. Issues identified include how rights and interests are weighted and how standards such as the best interests of the child and the child placement principle are interpreted. However, C92 provides that wherever possible standards such as the best interests should be interpreted in accordance with the child's Indigenous laws. Two principles which guide C92 are substantive equality and cultural continuity. These principles could be applied in the Australian context.

The establishment of national standards under C92 as applied by territories and provinces has led to litigation contesting what the national standards mean. This litigation draws attention to three issues which may be relevant in the NSW and Australian contexts:

1. The first is the potential to run public interest litigation contesting breaches of key rights which have been enacted but not effectively implemented under existing legislation. For instance, ss11-13 of the NSW Care and Protection Act. This may lead to greater accountability and compliance.
2. The second is that if jurisdiction is transferred or shared with state courts, a dispute resolution mechanism, other than existing colonial courts may be considered. This overcomes colonial courts' bias towards non-Indigenous interpretations. This bias includes how key child protection concepts are interpreted (such as 'best interests'), the evidence gathered and presented, and the language and conceptual frameworks used by judges. This aspect of implementation of C92 illustrates a common issue experienced with NSW and Australian child protection reforms: that transitions from colonial child protection systems requires a concerted and ongoing effort to educate and change attitudes and understandings, which do not automatically transform with law and policy reforms. An alternative court or forum for adjudicating disputes with respect to implementation of legislation like C92, could include Indigenous experts or a mix of Indigenous and non-Indigenous decision makers.
3. The third issue arises from expensive challenges to Indigenous jurisdiction by some provinces.

This experience suggests laying the institutional foundations for self-determination and achieving uptake by state and territories—in ways other than exclusively by compulsion—are factors which are likely to contribute to success of implementation.

These examples provide considerable scope for deliberation in NSW that can transform the positioning and exercise of authority in child protection decision making. For instance, enacting much stronger forms of self-determination for Aboriginal and Torres Strait Islander communities and contributing to better outcomes for children and young people, their families, and communities. Yet, it is also important to understand the identified limitations when considering implementation in an Australian context. Both Acts demonstrate that despite the broad intention of enabling self-determination for communities, these can be ineffective if their relationship to settler colonial legal frameworks is not properly resolved in ways that prevent the renewed assertion of state authority over First Nations, or if not properly resourced to enable *"Indigenous decision making carried through to implementation"*.[54] However, these also represent an important opportunity for the realisation of qualitatively different approaches to child protection systems themselves. This goes beyond realising the right to self-determination for Indigenous peoples, or underpinning improved outcomes for Aboriginal and Torres Strait Islander children disproportionately affected by, and experiencing demonstrably poorer outcomes of, contemporary child protection interventions. While contemporary child protection systems are particularly problematic in their imposition on Aboriginal and Torres Strait Islander children, families and communities, these are ineffective and unsustainable more broadly. Outcomes for all children remain a key issue and subject of considerable governmental focus, with cycles of reform consistently failing to achieve substantive change. Creating an enabling framework for the realisation of Indigenous approaches provides a broader opportunity to explore different logics and build additional evidence for consideration by all communities in enacting their shared duty to their children.

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54. HREOC, 1997, p.276

Opportunities to realise self-determination in NSW

As this paper has identified, realising self-determination is an essential policy setting to achieve improved outcomes for Aboriginal and Torres Strait Islander children, families and communities. Enacting strong-forms of self-determination requires a multifaceted process and a range of intermediate and long-term processes, undertaken by both states and Aboriginal and Torres Strait Islander communities, transforming existing systems and realising community-based institutions and frameworks for the legitimate exercise of authority. We understand that strong-form self-determination requires a considerable amount of time for communities to organise their own ways of working and develop self-governing systems, including their own child protection jurisdictions. There are varying levels of readiness across First Nations in NSW to assume and exercise jurisdiction in child protection matters. In this way, tailored approaches within and across First Nations are required. These initiatives can be informed by experiences nationally and internationally, with careful transitional structures and approaches to ensure that the needs of Aboriginal and Torres Strait Islander children and young people remain paramount throughout this period of considerable structural change.

In consideration of this, we briefly touch on the overarching vision and scope of transformation for the realisation of strong-form self-determination, building on the above insights from Australian and international discourses and experiences. This includes transforming the relationship between Aboriginal communities and the state essential to arrive at those *"agreed ways that Aboriginal 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"*, as described by Professor Davis in the FIC Review Report.[55]

Within Aboriginal and Torres Strait Islander aspirations for self-determination is the desire to move beyond the foundational mythology of terra nullius, which refused to acknowledge the presence of Aboriginal self-governing polities, and towards the normalisation of governmental relationships on a polity-to-polity basis.[56] This is a significant shift from current frameworks that position Aboriginal community participation in contemporary settler-colonial child protection systems on a similar basis as those of non-Indigenous civil society organisations and businesses. However, this conceptualisation reinforces the NSW government as sole system steward. It positions Aboriginal and Torres Strait Islander communities only as potential service providers, not as peoples with inherent rights to self-determination. This limits Aboriginal community decision making to at best participation and consultation within non-Indigenous governed systems. For example, the recent DCJ-led Reform Plan; *Transforming the OOHC system in NSW,*[57] emphasises the position of the Department as system steward, and considering only how to expand Aboriginal-delivered services, while offering no recognition of self-determination as an essential foundation of reform. From this perspective, efforts to 'stabilise' systems without careful consideration of the rights and interests of Aboriginal and Torres Strait Islander children, families and communities will likely further entrench and exacerbate the structural foundations responsible for the disproportionate harms inflicted upon Aboriginal and Torres Strait Islander children, families and communities. While many reviews conclude that there is a pressing need to address inadequate accountability mechanisms,[58] reforms must establish meaningful accountability to Aboriginal and Torres Strait Islander communities, rather than solely to non-Indigenous governments that have designed all care and protection systems since

55. Davis, 2019, p. XVIII
56. Libesman, Gray, P., & Gray, K., 2024
57. Department of Communities and Justice, 2025
58. see the FIC Review 2019, Audit Office NSW, 2024

colonisation. Realising self-determination requires a renewed relationship between Aboriginal and Torres Strait Islander peoples and the state; a similar process that is necessary for commitments of the NSW Government to progress formal treaty negotiations and agreement making in NSW.

This renewed relationship must avoid narrow conceptions and conflations with corporate governance and state regulatory compliance but represent Aboriginal and Torres Strait Islander communities as distinct *"political actors"*.[59] The conceptual basis for such a relationship goes deeper than the question of who delivers services, but to:

- The very nature of the systems in which those services are developed and administered.
- The political and legal frameworks and institutions by which they are governed.
- How they are held accountable to the community on whose behalf they exercise their significant authority.
- What cultural values and worldviews these represent.

These efforts to realise self-determination in child welfare for Aboriginal and Torres Strait Islander communities implicates every aspect of systems and practice. This includes the legal and governmental frameworks that define systems, the bureaucracies and institutions that administer them, the legal and judicial institutions that interpret and apply them to resolve disputes, and the expertise and practice approaches that shape the experiences and outcomes achieved for children, families and communities.

This newly defined relationship is central to advancing self-determination. However, this is also limited by political barriers, and a lack of organisational capacity within existing child protection departments to achieve reform that restores power and authority to Aboriginal and Torres Strait Islander communities. While all governments have committed to empowering Aboriginal and Torres Strait Islander communities in decision making, the roadmap for achieving this goal is significantly less clear. As noted previously, while the NSW Government has committed to working in partnership with Aboriginal and Torres Strait Islander communities and organisations, the NSW Government reform plans offer no indication that self-determination is positioned as a necessary foundation. Rather, reforms are still progressed solely on the terms of the NSW Government. Of particular concern is that this reform agenda may replace the roadmap provided by the FIC Review, and in doing so- again reinforces- settler-colonial mindsets and control. It condemns yet another reform process to set to fail for Aboriginal and Torres Strait Islander children and families. This DCJ led reform approach reflects ritualistic and passive engagement with transforming systems. It reinforces the critical and urgent need for transforming relations between the NSW State and Aboriginal and Torres Strait Islander peoples across NSW.

In recognition of DCJ policy reform, it remains important that the sector is vigilant of the process and approaches our efforts with caution; understanding that our efforts to realise self-determination are not simplyto make settler-colonial systems more responsive, but fundamentally to strive towards a new, transformational approach to the care and protection of Aboriginal and Torres Strait Islander children. This new approach must be determined by and for communities, and as our international First Nations communities have shared, be based on legitimate exercise of authority by community, which requires recognition and agreement making. Critical to this work is recognising that transformation towards self-determination requires a multi-faceted approach which includes interrogating legislation, policy, system administration, data infrastructures and practice. As Māori scholar Fitzmaurice-Brown addresses child protection reform in Aotearoa, through his *Kaupapa Māori legal theory*, *"too often a choice is presented between incremental change and radical transformation. This is a false dichotomy as we can, and must, prioritise both."*[60]

Likewise, we consider that NSW has an opportunity to act on both immediate and long-term opportunities advance self-determination. This acknowledges that action is critically needed to

59. Behrendt et al., 2016
60. Fitzmaurice-Brown, L. 2022, p. 509

support our families and communities now, whilst not losing sight of our efforts to advocate for our future generations to come.

As an initial step, we reiterate and extend a key recommendation emerging from the FIC Review, that:

> "The Department of Communities and Justice should engage Aboriginal stakeholders in the child protection sector, including AbSec and other relevant peak bodies, to develop an agreed understanding on the right to 'self-determination' for Aboriginal people in the NSW statutory child protection system, including any legislative and policy change." [61]
>
> – *Professor Megan Davis, 2019*

As the review makes clear, this definition should reflect a 'strong-form' of self-determination, defining the parameters by which Aboriginal and Torres Strait Islander communities can exercise autonomy and self-governance in the care and protection of their children, and in the support offered to families in their child rearing responsibilities. Consistent with this, we offer support for definitions already advanced by Aboriginal and Torres Strait Islander communities, such as through the BTHR, for *"Indigenous decision making carried through to implementation"*[62] and for the development of *"agreed ways that Aboriginal 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."*[63]

We propose the establishment of a shared vision to guide present and future reform efforts to ensure that incremental and more substantial transformative change aligns to the FIC Review's foundational pillars of self-determination and public accountability. This recognises the common but also distinct characteristics of these foundations for Aboriginal and Torres Strait Islander peoples, and non-Indigenous publics or polities. Reflecting on international scholarship and examples, we offer the following broad outline for the consideration of our communities and negotiation of the state. In doing so, we reiterate that the right to self-determination places in each community the right to determine their own approach.

First, we seek to clarify the scope of change associated with self-determination, particularly in the context of reform cycles that have rhetorically invoked self-determination but have been structurally inconsistent with its realisation. In NSW, reforms largely minimise the scope of system design and administration enabled for Aboriginal and Torres Strait Islander communities, focused only on how Aboriginal and Torres Strait Islander communities and their organisations might participate in service delivery, a key issue identified in the FIC Review.[64] This practice creates significant strain and colonial load for Aboriginal and Torres Strait Islander people and community organisations as our service models are jammed into incongruent systems; trying to fit the proverbial square peg into a round hole. However, the principle of self-determination implicates the entirety of the child protection system; the conceptual foundations and frameworks of how communities understand themselves and their obligations to children and families; ideas of authority and appropriate governmental forms; institutional arrangements through which communities pursue their social, cultural and economic futures, including legal frameworks, decisions making structures, and service system components; and the practice philosophies and frameworks that support them. This is reflected in *Figure 1.* The nested nature of these elements, with each layer defining and guiding subsequent levels, emphasises that reforms must start with these higher order issues of system logics, governance and institutional arrangements i.e., setting the foundations for genuine change to realise the full potential of Aboriginal and Torres Strait Islander service models.

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61. Davis, 2019, p. XL
62. HREOC, 1997, p.276
63. Davis, 2019, pp. XVIII
64. Davis, 2019

A vision for self-determination in child welfare should resist the inadvertent replication of contemporary systems, merely replacing non-Indigenous decision makers with Indigenous ones. Rather, systems should reflect broader expressions of the legitimate exercise of authority by Aboriginal and Torres Strait Islander communities, aligned to the values, perspectives and aspirations of that community, and consistent with the collective responsibility of Aboriginal and Torres Strait Islander peoples as distinct and enduring polities to their children and families. This includes systems that reflect the distribution of authority, and conceptualisations of legal relationships and responsibilities consistent with Aboriginal and Torres Strait Islander communities themselves, acknowledging the social, cultural and political diversity of Aboriginal and Torres Strait Islander peoples.

While Aboriginal and Torres Strait Islander communities across NSW often acknowledge distinctions across different language groups, we further acknowledge that distinct polities may be present within language groups and that Aboriginal peoples may wish to organise collectively across language groups in the service of common interests, particularly in interactions with the State. Aboriginal communities may do so through the development of agreements across these functional polities or communities, on their own terms, and quite distinct from any agreements with the settler state. This provides an opportunity to exercise and strengthen agreement making and dispute resolution functions in settings where the distance between perspectives is decidedly smaller, as communities build towards individual and collective (cross-nations) agreements with the state.

Further, we encourage Aboriginal and Torres Strait Islander communities to reflect on culturally grounded legal frameworks that characterise familial and broader communal responsibilities to children and families in their communities, and to consider taking steps to reassert these frameworks. This includes potentially through appropriate codification. Through these frameworks, Aboriginal and Torres Strait Islander communities can define, on their own terms, core definitions including ideas of family and responsibilities regarding the wellbeing of children, concepts for the determination of the best interests of children, how decisions are made or disputes might be resolved, and obligations related to the supports provided to families to meet their care responsibilities. Consistent with Fitzmaurice-Brown, these foundations are intended to realise child protection systems that are *"by, for and of"* Indigenous peoples[65], and implicate representative, executive and judicial functions; functions all currently established and administered by the state, according to their cultural perspectives and institutional arrangements. Examples emerging in other jurisdictions, such as the work of the Victorian Aboriginal Child and Community Agency[66] (VACCA), or in the implementation of the ICWA in the US[67], provide important insights regarding the transfer of authority to and the exercise of that authority by Aboriginal and Torres Strait Islander communities. McDonald and colleagues argue that *"VACCA's Nugel programme is a demonstration of self-determination in action, challenging colonial power structures, reclaiming Aboriginal authority over the lives of children and offering a healing-centred, culturally grounded alternative to child protection systems that have historically caused harm."*[68] In particular, such approaches have intentionally resisted the familiar (il)logics of contemporary Australian child protection systems, grounding themselves on alternate conceptual, policy and practice frameworks that are better suited to the Aboriginal and Torres Strait Islander children and families they serve.

65. Fitzmaurice-Brown, L. 2022
66. McDonald et al., 2025
67. Kastelic and Jorgensen, 2025
68. McDonald et al., 2025

> "In rebuilding a system based on self-determination, the existing child protection logics and tools were rejected to re-develop, re-imagine and re-build the service system from a cultural standpoint. Key concepts such as risk management, safety, belonging, attachment, the centrality of culture and identity and the need for relational, strengths-based practices were critically interrogated and reimagined. Practice elements, including risk assessments, practitioner templates (i.e., court reports) and exercising of authority, were re-envisioned." [69]
>
> *- McDonald et al., 2025*

Consistent with international evidence, we emphasise that effective Indigenous governance, including in child protection, is likely best achieved when Aboriginal and Torres Strait Islander communities are responsible for decision making, and can enact these decisions through effective institutions and competent bureaucracies that exhibit cultural match in the organisation and exercise of authority.[70] As noted above, this includes legislative, executive and judicial functions. Through these processes, Aboriginal and Torres Strait Islander communities will be positioned to:

- Design and administer systems intended to provide for the safety and wellbeing of their children.
- Develop and implement practice frameworks that reflect their responsibilities and the expectations of their communities.
- Ultimately make decisions about their children's futures through their own decision-making structures which provides more direct mechanisms for accountability to Aboriginal and Torres Strait Islander communities who have for too long been subject to, but marginalised, within these systems.

Aboriginal and Torres Strait Islander communities already have strong and competent bureaucracies, developed over the last half century through the Aboriginal community-controlled movement (ACCOs). However, these are somewhat unhelpfully positioned at the intersection of community expectations and often misaligned governmental interests. For example, ACCOs have frequently raised how contractual management processes impose significant administrative burdens and otherwise limit opportunities for innovative service delivery.[71] By aligning the ACCO sector to community representative governance structures, ACCOs could better align service systems and models of care to community values and expectations, improving outcomes for Aboriginal children and families.

69. McDonald et al., 2025
70. Behrendt et al., 2016; Rigney et al., 2022
71. Jumbunna Institute for Indigenous Education and Research, 2025

Foundations

- Understands child and family systems as an expression of the collective interest of a society/polity in the wellbeing of their children.
- Reflects principles of self-determination and accountability as essential foundations for the legitimate exercise of authority.
- Grounded in the values, perspectives and aspirations of communities/polities, positioning culture as a fundamental organising principle underpinning ways of being, knowing and doing.

Governance Processes

- Representative governance structures that match community understandings of the distribution and exercise of authority, through which communities collectively make decisions about their future.
- Agreements with other polities to provide a fair foundation for shared action and resolution of disagreements - includes other Indigenous Nations and non-Indigenous state.

Institutional arrangements

- Legislative arrangements that clearly define responsibilities and expectations in promoting the care and wellbeing of children.
- Competent bureaucracies to implement community decisions regarding how children and families are supported in their community.
- Decision making structures to administer Aboriginal community legal frameworks and resolve disputes.

Practice frameworks

- Practice approaches and models of care grounded in the cultural perspectives of communities, and that outline expectations for how risk is conceptualised and understood, how families are engaged and supported, how children and families are able to participate effectively in decision making.

Accountability frameworks

- Community-led measures and indicators to enable monitoring and evaluation of systems, policies and practice.
- Public reporting mechanisms to ensure transparency and accountability that align to the interests of communities, noting clear distinctions between the interests of Aboriginal and non-Indigenous structures with respect to Aboriginal child and family systems.
- Independent rights-based oversight and monitoring consistent with international best practice (for example Aboriginal and Torres Strait Islander Children's Commissioners grounded in international principles for human rights monitoring institutions (Paris Principles).

Within this approach, ACCOs would also have greater scope to specialise governance structures to their service delivery goals. ACCO boards, freed from the need to simultaneously serve disparate Indigenous and corporate governance functions, can better focus on expertise in child and family service administration, with political representative structures positioned elsewhere. Peak bodies can likewise specialise, with organisations like AbSec offering expertise, innovation, communities of practice and training for community-based service delivery organisations, with which community governance institutions can engage on their own terms. This is not to delegitimise the important role that ACCOs have played, and continue to play, responding to the needs of their communities. However, it invites Aboriginal and Torres Strait Islander communities to reflect on how they might best be organised to exercise self-determination, and to implement principles of effective self-governance, moving beyond current arrangements that limit Aboriginal communities to potential service providers in systems administered by non-Indigenous governments.

By better establishing this distinction between representative governance and accountable service delivery function (that is, between Indigenous governance and corporate governance[72]), both functions are likely to improve. As noted above, such approaches that emphasise Indigenous peoples collectively as decision makers in shaping their own economic, social and cultural development, including the care of their children, is consistent with international human rights frameworks. More importantly, it is associated with better outcomes for Indigenous people and communities, particularly when characterised by fundamental principles of effective self-governance.[73] Efforts to establish Aboriginal community-based judicial processes will likely require more time. However, these could likewise build upon existing initiatives within Children's Court of NSW settings here in NSW and in other jurisdictions that have sought to better include Aboriginal and Torres Strait Islander perspectives. However, the presence of these attempts to better include Aboriginal and Torres Strait Islander voices in non-Indigenous judicial processes should not prevent broader structural change for the full transfer of jurisdiction, consistent with strong forms of self-determination, as reflected through recommendations of the BTHR.

This long-term vision provides important guidance to both current and future reform agendas, ensuring efforts take us closer towards stronger recognition of self-determination and systems that are designed by, and accountable to, Aboriginal and Torres Strait Islander children, families and communities. While interim actions may fall short of strong-forms of self-determination that Aboriginal and Torres Strait Islander communities expect, these actions provide immediate opportunities to improve processes that significantly determine the developmental context of thousands of Aboriginal and Torres Strait Islander children in NSW, while longer term transformations are developed and implemented. Notably, most of these immediate actions require no legislative changes and can be implemented in a timely manner if appropriately backed by political will and resourced administrative action.

72. See Behrendt et al., 2016; Rigney et al., 2022
73. Cornell, Jorgensen & Kalt, 2002; Rigney et al., 2022

Practical steps to realise self-determination in NSW

As we have outlined above, the future and long-term vision of strong form recognition of self-determination in child protection strongly aligns with the longstanding aspirations of Aboriginal and Torres Strait Islander communities to exercise control over their own lives. We recognise that this requires long-term strategic planning, political organisation, resourcing and action from governments and Aboriginal communities. Long term strategic planning could include the exploration of Aboriginal communities administering their own legal systems, with recognition of our Nations as their own distinct polities. This can be supported by legislative change. For example, to establish agreed standards in child protection systems and practice, and to provide a pathway for recognition of Aboriginal and Torres Strait Islander legal frameworks and decision-making structures, similar to those that characterise ICWA and C92, which transfers jurisdiction to Indigenous Nations. NSW are also in a unique position to learn from the critiques and lessons of international reform processes. For instance, recognising the need to complement legislative reform with proportionate, needs-based resource allocation models and with high level accountability structures between Aboriginal peoples and the state. This contrasts with tightly controlled contracting relationships under the stewardship of the Department of Communities and Justice. This funding should consider the delivery of equitable services and address the long-term underinvestment in Aboriginal community-led approaches; so, enabling the development of essential systems, policies, practice frameworks and monitoring and evaluation processes. This is consistent with longer-term proposals offered by AbSec, including the 2018 proposal for the development of Aboriginal community-led commissioning approaches through a specialised commissioning entity.[74]

Accountability can also be transformed, strengthening mechanisms which are repeatedly found as inadequate.[75] Importantly, these efforts should focus on clarifying how systems are held accountable, and to whom, and how these reflect the legitimate interests of those communities. Child protection systems have never been accountable to Aboriginal and Torres Strait Islander communities since colonial establishment. Systems have operated according to the interests of the settler state, including for the displacement and assimilation of Aboriginal and Torres Strait Islander children. As Sana Nakata explains *"controlling the lives of Aboriginal and Torres Strait Islander children has never been just about the lives of Aboiginal and Torres Strait Islanders, it has been about trying to make certain that which can never be certain: the future of the Australian nation"*.[76] The absence of accountability to Aboriginal and Torres Strait Islander communities means that these systems are not structured to safeguard Aboriginal and Torres Strait Islander futures, despite almost half of all children in OOHC being Aboriginal and/or Torres Strait Islander children in NSW.

Clarifying these interests, and building accountability structures accordingly, is essential to orienting systems to the rights and interests of Aboriginal and Torres Strait Islander children. This is the transformational potential of the FIC Review's roadmap. That is, processes for the monitoring and reporting of outcomes produced for Aboriginal and Torres Strait Islander children, alongside an effective mechanism for Aboriginal and Torres Strait Islander communities to make changes to better secure their children's futures. Again, we are reminded of the BTHR, which emphasised Indigenous decisions carried through to implementation, with governments focused on providing the resources needed to enable Indigenous decision making and implementation. This suggests prioritising Aboriginal and Torres Strait Islander communities in structures of accountability related to decision making, outcomes and approaches, alongside shared interests for the responsible use of these resources.

74. AbSec, 2018a; 2018b
75. Davis 2019; NSW Audit Office, 2024; Department of Communities and Justice, 2024
76. Nakata, 2018, p.115

Consistent with the BTHR, we also encourage the inclusion of a social justice package intended to address the social determinants that contribute to intergenerational child protection and justice system involvement for many Aboriginal and Torres Strait Islander families. Stolen Generations survivors and their descendants should be particularly prioritised in these initiatives, in partnership with Stolen Generations organisations.

Immediate actions

1 Immediate action one

AbSec, in representation of communities, assert a clear definition of self-determination and articulate a vision for the design and administration of Aboriginal and Torres Strait Islander child protection approaches in NSW, promoting this vision in current and future cycles of reform towards genuine system transformation for Aboriginal communities.

The FIC Review concluded that establishing foundations of self-determination and public accountability and oversight would, if properly implemented, *"go a significant way to addressing the entrenched problem of the over-representation of Aboriginal children in the statutory child protection system"*.[77] It recommended that DCJ partner with Aboriginal and Torres Strait Islander stakeholders, including AbSec and other relevant peaks, to *"develop an agreed understanding on the right to 'self-determination' for Aboriginal peoples in the NSW statutory child protection system, including any legislative and policy change"*.[78] Building on this foundation, there should in turn be a systemic review of all relevant policies to revise them, as well as strengthening legislative provisions consistent with the right to self-determination.[79] Yet, there has been no meaningful action on these recommendations in the almost six years since the FIC Review was released. As such, we emphasise this as an urgent action, particularly given the current appetite for reform. There is no evidence that the current proposed reformed agenda meaningfully considers self-determination as a guiding principle. Without these foundations, it is not just possible, but highly likely, that reform efforts will reproduce the structural determinants that contribute to the over-representation of Aboriginal and Torres Strait Islander children in the child protection system. Driving home this point, the FIC Review stated:

> "...no improved child protection system can meet the needs of Aboriginal and Torres Strait Islander children unless 'it is planned, developed, managed, implemented and reviewed by Aboriginal people themselves'." [80]
>
> *- Professor Megan Davis, 2019*

Further, we note the clear and careful analysis offered by the FIC Review that 'strong forms' of self-determination are necessary, moving beyond passive recognition towards autonomous arrangements,

77. Davis, 2019, p. XXXII
78. Davis, 2019, Recommendation 6, p. XL
79. Davis, 2019, see Recommendations 7 and 8
80. Davis, 2019, p. 86

whereby Aboriginal and Torres Strait Islander communities design and administer systems for the care and protection of their children. The community-based literature, including the BTHR and the FIC Review, demonstrate a clear and consistent definition of self-determination, including the transfer of jurisdiction for child welfare matters. This understanding is supported by the international evidence.[81] As such we encourage Aboriginal and Torres Strait Islander communities to extend this understanding to clearly articulate a model to realise self-determination in child welfare. We have offered one such vision, characterised by Indigenous governance structures, likely best aligned to Aboriginal Nation groups, through which decisions are made that fulfil their collective responsibility for children and families, in ways that match community perspectives about how authority is distributed and exercised. These governing structures should be supported by competent bureaucracies and institutional arrangements (including judicial arrangements) and aligned to the long-term aspirations of those communities. These principles reflect those associated with political determinants of wellbeing and Nation (re)building approaches.[82] Aboriginal and Torres Strait Islander communities already exhibit the foundations of these features, including particularly through properly constituted ACCOs. These structures can continue to evolve to better organise authority and provide opportunities for effective specialisation to better meet the needs of their communities. This approach also aligns with aspirations for treaty.

Such a vision represents a long-term endeavour and will continue to evolve through stepwise implementation. However, without the outline of such a vision, applying foundational principles of self-determination and public accountability into the reform agenda, those reforms will be inevitably flawed in terms of their ability to address persistent systemic inequities.

2 Immediate action two

In partnership with Aboriginal communities across NSW, AbSec and the Minister for Children and Families should enliven Sections 11 and 12 of the NSW Children and Young Persons (Care and Protection) Act, which offer a pathway to self-determination (s11) and participation in decisions (s12). This process should draw on international human rights jurisprudence and existing procedural rights. Additionally, there should be routine mandated training for judges to ensure efficient understanding and effective implementation of the Children and Young Persons (Care and Protection) Act 1998, specific to the core sections which apply to Aboriginal and Torres Strait Islander children, families and communities.

Sections 11 and 12 outlines that the Minster has the powers to negotiate and approve the means for Aboriginal and Torres Strait Islander communities and/or organisations to participate as representatives in decisions making processes about their children. As this paper has outlined, governments continue to deploy barriers and roadblocks that constrain how such participation can be achieved and undermine the principles of self-determination in child protection. With specific consideration to sections 11 and 12, we note a substantial barrier is the limited investment, resourcing and integration into Aboriginal and Torres Strait Islander structures, which enable communities to represent themselves. This is further compounded by the present information sharing and confidentiality provisions that continue to constrain full participation of communities, and the limited knowledge of judges that hinders their powers to enliven these provisions.[83]

As such a process should begin in supporting communities to develop these structures, with support and adequate resourcing from the Minister. The role of ACCMs could be mobilised in this

81. Behrendt et al., 2016; Cornell, Jorgensen & Kalt 2002; Cornell & Kalt 2010
82. Rigney et al, 2022
83. Libesman, Gray, P., & Gray, K., 2024

process, with appropriate and proportionate investment from government. By investing into ACCMs, these could realise the original aspirations of ACCMs; that is, ACCMs as a formalised structure that represents a defined Aboriginal community to advocate and participate in decision making processes about their children. By investing and assisting in ACCMs formal mobilisation, this would bring to life section 87 of the Care legislation which recognises *(2A): For subsection (2), if the group affected is an Aboriginal or Torres Strait Islander family or community, the representative or representatives of the group approved by the Court may be a member of a relevant Aboriginal or Torres Strait Islander organisation or entity for the child or young person*. In practice, ACCMs at a minimum should be notified and have resources and standing to appear in court to express the perspectives of Aboriginal and Torres Strait Islander communities and their interest in Aboriginal and Torres Strait Islander children. This requires training of ACCMs with respect to court process, funding for them to appear and awareness raising with judges and legal practitioners about their role. Through this, Aboriginal and Torres Strait Islander community voices (that is, voices authorised by the child's Aboriginal family and community) are present in every case involving an Aboriginal and/or Torres Strait Islander child. This could also include making funding available for independent advocacy and peer support for families currently involved with child protection, as well as exploring further procedural changes to better balance the information provided to the court in support of strong, informed decisions.

Ideally, with the mobilisation and integration of ACCMs as a formally recognised 'representative approved by the court', this would shift the burden off communities into a pre-established and approved structure determined by the Minister. This process would also establish a new set of expectations within Children's Court of NSW proceedings, specifically about what 'evidence' is required and what structures must be included in decisions and filing processes before proceeding with any further decisions. This newly formalised process could add a layer of accountability to DCJ case work, where they are required to demonstrate Active Efforts through engaging and working in partnership with ACCMs.

3 Immediate action three

AbSec and ALS must work in partnership with the Minister of Children and Families to address persistent information sharing and confidentiality limitations. These settings currently prevent the full and effective participation of Aboriginal and Torres Strait Islander families and communities in decisions affecting their children. Agreed frameworks for information sharing, building on Recommendation 2, will unlock self-determination and participatory approaches, better informing decision making processes as well as policy and reform initiatives, including the implementation of the ACMP and ACCMs, and the development of new restoration system and practice frameworks intended to improve restoration outcomes for Aboriginal children and young people.

As addressed above, for Aboriginal and Torres Strait Islander communities to effectively realise self-determination and participate in decision making processes over matters relating to their children and youth, they must have access to the information regarding their children. At present, the Children and Young Persons (Care and Protection) Act 1998, permits inadequate information sharing with communities, which influences how communities can participate in decision making processes. There are several concerns to this issue. Broadly speaking, there are concerns as to what legitimate basis DCJ has on: (a) collecting data about Aboriginal and Torres Strait Islander families; (b) not sharing such data with Aboriginal Torres Strait Islander families; and (c) constraining the right of families, communities, and organisations to access this information when attempting to represent and advocate for their children in accordance to the state based legislation (see sections 11, 12, 87). To ensure the rights and privacy of families, safeguards need development for respectful engagement for any organisation that has access to sensitive information.

Without access to such information, Aboriginal Torres Strait Islander families and communities are deprived of the opportunity to effectively and holistically participate in processes across the

casework continuum, as well as broader structural, policy and practice reforms. Ultimately, through constraining information sharing powers, the NSW government continues to undermine and prevent the realisation of self-determination. ACCMs must be considered as a primary example that could resolve some these concerns relating to information sharing powers, and promote better self-determination.

4 Immediate action four

Aboriginal communities, and their community-controlled organisations such as AbSec and the ALS, develop and implement strengthened processes to increase the likelihood that decision making processes are properly facilitated and informed to safeguard the rights and wellbeing of Aboriginal children. This includes, but is not limited to, accreditation processes for Independent Legal Representatives for Aboriginal and Torres Strait Islander children, assessment and accreditation guidelines for experts reporting on the interests and wellbeing of Aboriginal and Torres Strait Islander children, the ongoing implementation of ACCMs, and the transfer of administration for independent Aboriginal Family Led Decision Making Processes (including Family Group Conferencing) to Aboriginal community control.

Aboriginal communities have identified myriad ways to reform existing approaches within existing systems, through independent action and collaboration and support from non-Indigenous institutions, including DCJ. These can help strengthen decisions for children today. For example, elsewhere we have discussed persistent challenges within legal processes that significantly influence how courts are informed, and therefore how well courts are equipped to make decisions about Aboriginal Torres Strait Islander children.[84] This includes legal representation on behalf of Aboriginal and Torres Strait Islander children. However, there is no process to ensure that Independent Legal Representatives properly understand from the perspective of the child's Aboriginal and/or Torres Strait Islander community, the best interests of Aboriginal and Torres Strait Islander children, and represent those interests accordingly. The ALS could administer a training and accreditation process for Independent Legal Representatives for Aboriginal and Torres Strait Islander children to promote more effective representation that considers their individual and collective rights as Indigenous children. This can be supported by other legal bodies.

Similarly, courts are often informed by 'expert' reports, such as those through the Children's Court of NSW Clinic. However, their expertise and accountability with respect to Aboriginal and Torres Strait Islander children, families and communities is contested. This contrasts with principles in the *Indian Child Welfare Act (US)* that identifies that 'qualified expert witnesses' should be grounded in the prevailing expectations of the child's community for the care and development of children. Given the focus is on properly informing the Court in decisions about children, the Court, and the Children's Court of NSW Clinic, should consider how this might best be promoted for Aboriginal and Torres Strait Islander communities. They should work with Aboriginal and Torres Strait Islander communities and peak organisations to reconsider how expertise might be better defined and applied in ways that centre the perspectives of Aboriginal and Torres Strait Islander communities themselves. This would move them on from the continued imposition of non-Indigenous perspectives that perpetuate present inequities. Beyond the Clinic, we encourage increased coordination with Aboriginal and Torres Strait Islander communities to raise awareness of, and more effectively utilise, existing legal provisions that permit the inclusion of Aboriginal and Torres Strait Islander community voices and perspectives. For instance, to consistently implement those within s.87 in all matters about an Aboriginal and/or Torres Strait Islander child. An Aboriginal-led review of these processes should occur to better understand their current implementation, benefits and challenges.

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84. Libesman, Gray, P., and Gray, K., 2024.

This should include:

- Qualitative review of Children's Court of NSW Clinic reports about Aboriginal and/or Torres Strait Islander children and families to understand how they presently construct and represent Aboriginal and/or Torres Strait Islander children and families and their impact.
- The development of guidelines and standards to ensure improved practice.
- Potentially similar community-based accreditation processes for clinicians – in the same way that Independent Legal Representatives might be subject to Aboriginal community-based endorsement.

Family decision making and alternative dispute resolution processes present a critical opportunity to shift trajectories within current system. However, these processes are, again, structurally oriented towards DCJ and non-Indigenous systems, rather than to Aboriginal and Torres Strait Islander communities themselves. For example, DCJ presents Family Group Conferencing (FGC) as a valuable tool to be offered to all families, and to that end maintains a panel of service providers who can be contracted to convene FGCs for Aboriginal and Torres Strait Islander families. While DCJ have focused on providing facilitators who are Aboriginal and/or Torres Strait Islander for Aboriginal and Torres Strait Islander families, DCJ occupy the critical administration and quality assurance roles. This functionally positions accountability of these processes to DCJ, rather than to Aboriginal and Torres Strait Islander families and communities. Similarly, DCJ has implemented Safeguarding Decision Making for Aboriginal Children (SDMAC) panels, internal consultative processes that involve Aboriginal DCJ staff, and sometimes Aboriginal and Torres Strait Islander organisations, in decisions about Aboriginal and Torres Strait Islander children and families. These panels aim to support better decisions to guide casework practice regarding Aboriginal and Torres Strait Islander children and their families, serving in some respects some functions that were proposed for the explicitly external and Aboriginal community-oriented ACCMs. However, again, the positioning of these structures within DCJ reinforce non-Indigenous control and power over decisions about Aboriginal and Torres Strait Islander children and families.

Instead, these processes might be re-positioned within Aboriginal communities themselves, providing direct mechanisms for quality assurance and accountability to Aboriginal and Torres Strait Islander communities themselves. For example, repositioning family decision making facilitator panels to Aboriginal and Torres Strait Islander communities would enable direct feedback, allow Aboriginal and Torres Strait Islander communities to set and administer their own standards, including qualifying and continuous learning expectations for facilitators. It would also allow for greater flexibility, tailoring decision making structures to the present circumstances of families, including the implementation of diverse and innovative Aboriginal family led decision making models. Likewise, SDMAC panels should be positioned more clearly, distinguishing between internal practice quality assurance processes, on the one hand, and mechanisms for the inclusion of Aboriginal and Torres Strait Islander community voices in decisions about their children consistent with existing legislative provisions related to self-determination (s.11) and participation (s.12). This distinction should recognise, at the very least, that the later requires that Aboriginal and Torres Strait Islander communities appoint their own representatives, according to their own processes, as outlined through the ACMP. Shifting these positions promotes the likelihood of implementation in ways that more effectively meet the expectations of Aboriginal and Torres Strait Islander communities, rather than child protection authorities. This shift also centres Aboriginal and Torres Strait Islander knowledges, moving beyond ritualistic government practices whilst improving the accountability and transparency of decision-making processes involving the lives of children and young people. Both actions are in accordance with the original intention of the ACMP.

5 Immediate action five

The NSW Government implement policy reforms which require early referrals to legal advice and advocacy so that families and children are better supported in their interactions with child protection authorities, and have a better chance of presenting their case in court, with strengthened Aboriginal-led monitoring, oversight and reporting of the policy's implementation, impact and opportunities for improvement.

As previously noted, Aboriginal and Torres Strait Islander families are often dealt an unfair hand when it comes to participating in decision making processes that impact the lives of their children and communities. This occurs often with information sharing provisions. A practical solution to assist families engaging with DCJ and the NSW Children's Court of NSW is to implement the requirement of early referrals to legal advice and advocacy. This aligns with the recommendations from the FIC Review which noted the necessity of families to have access/referrals to early legal advice to *"support parents to navigate the system, understand what their rights are, and to request that their caseworker support them with alternatives to removal, or less intrusive options prior to moving directly towards child removal"*.[85] This policy reform aligns with the mandate of Active Efforts and will require DCJ to ensure that Aboriginal and Torres Strait Islander families are referred to legal supports from the first point of contact with the child protection system. Additionally, this action will enable the NSW Children's Court of NSW to hold DCJ accountable to their legislated requirements. For example, requiring that cases cannot be presented to court until families have received an appropriate early referral and have ongoing access to legal supports and advocacy. Importantly, this implementation must be accompanied by an independent Aboriginal-led body to oversee its implementation and to regularly publish reviews of its impacts for families.

Transformative actions

Transformative action is essential to substantive systems change and requires longer development and negotiation across stakeholders. It is important that these initiatives are commenced now to ensure that reforms lead to meaningful structural change, rather than replicating past cycles of ineffective reforms. These actions include legislative change to provide greater recognition of strong form self-determination, as well as the development of Aboriginal legal frameworks to shift the foundations of child and family systems to new logics and conceptual understandings.

Additionally, transformative action could explore transfer of authority, at the rate of community readiness. This may include supporting communities to develop their own frameworks to prepare for the transition, and ideally, further prompting why this transition is necessary in achieving self-determination and devolving power from the state. AbSec is well placed to drive this work, consistent with their responsibility to build community and sector capacity and to build relationships centred around effective systems and practice for the care and wellbeing of Aboriginal and Torres Strait Islander children, families and communities. Delegated authority, as reflected in the *Safe and Support Aboriginal and Torres Strait Islander First Action Plan*, can occupy a transitional step in this process for the transfer of authority. This offers space and resourcing for Aboriginal and Torres Strait Islander communities to exercise this authority, while ensuring that the State remains involved and responsible for the legacy of decisions made that define the current circumstances. This transitional sharing of responsibility through delegated authority frameworks ensures that the interests of children are protected throughout this significant structural change.

85. Davis, 2019, p.167

These efforts should be matched by adequate investment necessary to support the implementation of decisions. We are encouraged by recent commitments from the NSW Government to direct 40 percent of the Family Preservation program funding to ACCOs, as an important step towards needs-based funding through community approaches and to addressing the chronic under-investment in Aboriginal and Torres Strait Islander child and family supports. This principle should be applied across the breadth of the child protection system, and extend beyond service delivery, enabling Aboriginal and Torres Strait Islander communities to drive system design, policy development and practice change. As noted above, this could be delivered through Aboriginal community-led commissioning structures that strengthen the involvement of Aboriginal and Torres Strait Islander communities in investment decisions affecting their communities and offer better coordination and integration of service systems.

Establishing adequate independent oversight of the child protection system, including at least one Aboriginal statutory officer, and rights-based oversight for Aboriginal and Torres Strait Islander children and young people, represents a further critical transformative action. Regardless of where authority is positioned, independent mechanisms for transparency and public accountability for decisions made is a critical feature of good governance. AbSec has provided leadership on this issue for most of the last decade, with the support of the ALS and, more recently, the Family is Culture Advocacy Working Group (FICAWG). As establishment of these important accountability mechanisms progress, consideration must occur about allocation of resources proportionate to the needs of Aboriginal and Torres Strait Islander communities. The process of this might position greater involvement of Aboriginal and Torres Strait Islander community governance that determines the allocation of such funding. For instance, through a more community-based approach rather than the current tender processes that limit outcomes for all communities.

A persistent challenge remains the lack of coordination between Commonwealth and NSW government initiatives to meet the needs of Aboriginal and Torres Strait Islander children, families and communities. This contributes to a fractured and inefficient service system. Consistent with the BTHR, and the broader opportunity presented by national mechanisms including the National Agreement on Closing the Gap and Safe and Supported, it may be timely to consider the potential role of national legislation, like ICWA and C92. Within the Australian context, there are various paths for national legislation like C92. This includes through reliance on s51(26) of the Australian constitution. There are many issues which need attention within a federal system of laws where distinct Indigenous and colonial legal traditions need to co-exist. Legislation enabling this to occur is one necessary element. Importantly, the BTHR found that *"there are no insurmountable constitutional, legal or administrative barriers to transferring or sharing jurisdiction"*.[86] Factors identified at the international symposium, and by commentators on C92, which will influence the effectiveness of C92 include adequate funding and processes for ensuring the compliance of provinces and territories, both with minimum standards and with transfer of jurisdiction. We also know from Australian experience that accountability mechanisms are necessary to ensure implementation of beneficial legislations and provisions within legislation such as those already included in ss 11 – 13 of the *Children and Young Persons (Care and Protection) Act 1998 NSW*, which are routinely breached.

National legislation could establish a common framework for self-determination in child welfare and processes for the transfer of jurisdiction, including recognition of Aboriginal and Torres Strait Islander legal frameworks and decision-making processes, while also unlocking Commonwealth investment in prevention, family preservation and restoration initiatives. This has been a persistent challenge in child protection, with investment in prevention, early support and intensive family support remaining very low (both at national and state levels) and which is significantly overwhelmed by spending on statutory child protection and OOHC. States and territories have generally struggled to shift this overall investment. National legislation could provide an opportunity for Commonwealth contributions specifically for general and intensive family supports, where

86. HREOC, 1997, p.507

jurisdictions meet minimum agreed standards that safeguard basic rights (such as the Aboriginal and Torres Strait Islander Child Placement Principle and the Active Efforts principle) and support the progressive transfer of jurisdiction to Aboriginal and Torres Strait Islander communities. However, the appropriateness of national legislation must first be considered by Aboriginal and Torres Strait Islander peoples, and should only be progressed in full partnership. Governance structures within the National Agreement and Safe and Supported offer an appropriate forum for consideration of such approaches.

As the FIC Review identified, alongside the principle of self-determination, is the importance of transparency and public accountability. The exercise of authority, particularly the authority to intervene in the lives of children and families, must be accompanied by adequate oversight and accountability process. Discussion of the changes to accountability mechanisms are discussed elsewhere (see 'Strengthening accountability for Aboriginal and Torres Strait Islander families, 2025') and are consistent with the recommendations of the FIC Review[87] and actions committed to through *Safe and Supported*. These complementary mechanisms provide for improved accountability of the child protection system, and mechanisms to protect and promote the rights and interests of Aboriginal and Torres Strait Islander children in NSW.

Finally, we reiterate the importance of establishing a social justice package, as initially recommended by the BTHR almost three decades ago. The need for such targeted investment was again raised by the FIC Review. The FIC Review noted that *"meaningful self-determination also recognises that Aboriginal people have been negatively affected by over two centuries of colonisation and require financial and other support to develop and implement services to ameliorate their socioeconomic disadvantage"*.[88] A social justice package aligned to addressing the social determinants of child protection involvement and particularly responding the needs of Stolen Generations survivors and their descendants, would transform the circumstances of families and emphasise prevention, early support and family preservation.

87. See Davis, 2019, specifically Recommendation 9
88. Davis, 2019, p.85

Conclusion

The evidence continues to show longstanding calls for self-determination by Aboriginal and Torres Strait Islander peoples, alongside a routine failure by governments to understand its implications and to realise its potential in systems and practice. This report has provided context for self-determination in child protection, including international insights, honouring the decades of community advocacy and amplifying the *FIC Review*'s recognition of strong form self-determination to see substantial change for the futures of our children and communities. This paper has considered ways to enliven the right to self-determination for Aboriginal and Torres Strait Islander communities across NSW. Most particularly by balancing. immediate actions, while actively addressing a longer-term pursuit of strong-form self-determination that transcends child protection systems and legitimises and resources Aboriginal and Torres Strait Islander jurisdiction over the lives and decision making frameworks that affect our children and young people.

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Glossary of acronyms

AbSec	Aboriginal Child, Family and Community Care State Secretariat
ACCO	Aboriginal Community-Controlled Organisation
ACCM	Aboriginal Community-Controlled Mechanism
ACMP	Aboriginal Case Management Policy
ALS	Aboriginal Legal Service (NSW/ACT)
AFLDM	Aboriginal family-led decision making
BTHR	Bringing Them Home Report
CA	Canada
CtG	Closing the Gap
DCJ	NSW Department of Communities and Justice
FICAWG	Family is Culture Advocacy Working Group
FIC Review	Family is Culture Review Report
FGC	Family Group Conferencing
HREOC	Human Rights and Equal Opportunity Commission
ICWA	Indian Child Welfare Act
NSW	New South Wales
OOHC	Out-of-home care
SDMAC	Safeguarding Decision Making for Aboriginal Children
UNDRIP	United Nations Declaration on the Rights of Indigenous People
US/USA	United States of America
UTS	University of Technology Sydney
VACCA	Victorian Aboriginal Child and Community Agency

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