



**AbSec**

NSW Child, Family & Community  
Peak Aboriginal Corporation

# Special Rapporteur on the rights of Indigenous Peoples

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Upholding the rights of Aboriginal children,  
young people and families involved with the  
child protection system

**March 2026**

## Acknowledgement of Country

AbSec acknowledges the Traditional Custodians of Country throughout New South Wales and their continuing connections to land, waters, and communities. Our head office is located on the land of the Gadigal People of the Eora Nation, in Redfern, and AbSec operates statewide.

We acknowledge and pay our respects to the Traditional Owners of all lands and waters across New South Wales, honouring Elders past, present, and future. We recognise and respect their enduring connection to Country, their ongoing care for community, and the preservation and practice of their culture for generations uncounted.

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 also acknowledges 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.

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# 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 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.

# Executive Summary

AbSec, 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) and the University of New South Wales welcome the opportunity to contribute to the visit of the United Nations Special Rapporteur on the Rights of Indigenous Peoples.

This submission highlights systemic issues affecting Aboriginal and Torres Strait Islander children and families involved with the child protection and out-of-home (OOHC) care system in New South Wales. Despite decades of policy reform, Aboriginal and Torres Strait Islander children and young people remain significantly over-represented in OOHC. This over-representation reflects the ongoing impact of colonisation, structural inequity, and the continued failure of the government to fully uphold the rights of Aboriginal and Torres Strait Islander children and young people to grow up safe, connected to family, culture, community and Country.

These rights are recognised under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This includes the rights of Indigenous peoples to self-determination (*Article 3*), to maintain their cultural institutions and family relations (Articles 5 and 8), and to exercise authority over matters affecting their children (Article 22). These rights are also reflected in the United Nations Convention on the Rights of the Child (UNCRC).

In Australia, the National Agreement on Closing the Gap and the NSW Closing the Gap Partnership Agreement establish a framework to share decision-making with Aboriginal organisations, strengthening the community-controlled sector, transforming government systems, and supporting Indigenous data sovereignty and governance.

However, progress has been slow. Governments continue to retain decision-making authority over child protection systems, while Aboriginal Community-Controlled Organisations (ACCOs) face barriers in accessing equitable funding, authority and data.

Evidence consistently shows that ACCOs deliver better outcomes for Aboriginal and Torres Strait Islander children, young people and families. Achieving meaningful reform requires structural change that centres Aboriginal self-determination, strengthens the community-controlled sector, and ensures governments are accountable for protecting the rights of Aboriginal and Torres Strait Islander children and young people.

# Introduction & Context

Australia has clear obligations under international human rights frameworks to protect the rights of Indigenous children and families.

Under the United Nations Declaration on the Rights of Indigenous Peoples, Indigenous peoples have the right to self-determination (Article 3) and the right to maintain and strengthen their distinct cultural institutions, including family and kinship systems (Articles 5 and 8). Article 22 further affirms that particular attention must be paid to the rights and needs of Indigenous children.

These rights are reinforced through the United Nations Convention on the Rights of the Child, which recognises the rights of children to identity, culture and family connection.

In New South Wales (NSW), these principles are reflected in the *Children and Young Persons (Care and Protection) Act 1998* (NSW), which embeds the Aboriginal and Torres Strait Islander Principles and recognises the importance of Aboriginal self-determination in child protection.

Despite these commitments, Aboriginal and Torres Strait Islander children and young people remain significantly over-represented in the child protection system. Aboriginal and Torres Strait Islander children and young people comprise nearly half of all children in OOHC in NSW and are ten times more likely to be in OOHC as compared to non-Aboriginal children (*DCJ, Annual statistical report 2024 – 25, DCJ, Aboriginal Led Data Sharing Dashboard, 2024*).

This level of over-representation reflects systemic failures within the child protection system and the ongoing impacts of colonisation, intergenerational trauma and structural inequity. It also reflects the continued failure to implement reforms that place Aboriginal community leadership and cultural authority at the centre of child and family wellbeing.

# Progress Towards Closing the Gap

Closing the Gap Target 12 commits governments to reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in OOHC by 45 per cent by 2031.

While governments have acknowledged the scale of the challenge, progress remains slow and uneven. The Productivity Commission report (*Commission, Closing the Gap Annual Data Compilation Report 2025*) stated that NSW is making progress on Target 12 – to reduce the rate of over-representation of Aboriginal and Torres Strait Islander children (0–17 years old) in out-of-home care. However, more recent data suggests, the situation is deteriorating for Aboriginal and Torres Strait Islander children.

In NSW, Aboriginal and Torres Strait Islander children and young people are 10 times more likely to be in OOHC than non-Indigenous children (*DCJ, Aboriginal Led Data Sharing Dashboard 2024*). Rates of restoring Aboriginal and Torres Strait Islander children and young people that were removed by the NSW Government to their families has been two percent for the last three years, lowest across the nation (*DCJ, Annual statistical report 2024 – 25, SNAICC, Family Matters 2025*). This points to systemic failures to prioritise family preservation, restoration and cultural connection.

Australian governments need to commit to transformation through scaled up investment in Aboriginal community-led solutions and through embedding self-determination in the design and delivery of programs that prioritise Aboriginal and Torres Strait Islander children and young people's connection to family, culture and Country.

The National Agreement on Closing the Gap identifies four Priority Reforms necessary to achieve systemic change:

- shared decision-making with Aboriginal organisations
- building the community-controlled sector
- transforming government institutions
- shared access to data and information at a regional level.

Evidence to date shows limited progress in implementing these reforms across the child protection system.

## Implementation of Priority Reforms Under Target 12 of Closing the Gap

The Priority Reforms are the key pillars of the National Agreement on Closing the Gap. The Priority Reforms were developed and agreed upon by governments and Aboriginal and Torres Strait Islander peoples. Each Priority reform represents new ways of working with Aboriginal and Torres Strait Islander people – how decisions are made, who holds power, who is accountable and how information is produced and shared. These signify work towards partnerships grounded in respect, self-determination and cultural strength (*Jumbunna Institute for Indigenous Education and Research 2025*).



Figure 1: Image sourced from *Closing the Gap Independent Aboriginal and Torres Strait Islander led review, 2025*

## Priority Reform 1: Formal Partnerships and Shared Decision Making

This Priority Reform is about genuine partnerships between government and Aboriginal and Torres Strait Islander peoples to share decision making on policies and programs impacting their lives. Despite this commitment, multiple reviews have found that governments continue to retain control over key policy and funding decisions affecting families. Many of these partnership forums operate in an advisory capacity rather than providing equal decision-making authority to Aboriginal communities and organisations (*Jumbunna Institute for Indigenous Education and Research 2025*).

### 1.1 Working in genuine partnership towards Target 12

Although the National and State Closing the Gap partnership agreements aim to embed shared decision making and transform the way government implements policies, governments have failed to genuinely partner with peak bodies and ACCOs which provide culturally safe services to Aboriginal and Torres Strait Islander children, young people and families (*SNAICC, Family Matters 2025*).

In NSW, the Department of Communities and Justice (DCJ) continues to operate as the system steward, funder and service provider. This concentrates decision-making power within government and limits the authority of ACCOs and communities in shaping policies and services affecting their children.

The recent NSW Out-of-Home Care Strategy (*DCJ, NSW OOHC Strategy 2026*) references the role of ACCOs in delivering culturally appropriate services to Aboriginal and Torres Strait Islander children and young people. However, it has not embedded shared governance or decision-making authority by ACCOs within the child protection system. It should do so as well as, more explicitly align with the UNDRIP principles of self-determination and participation in decision-making.

## Priority Reform 2: Building the Community-Controlled Sector

This Priority Reform commits governments to strengthening and expanding the ACCO sector to deliver services that are led and governed by Aboriginal and Torres Strait Islander communities.

ACCOs play a critical role in supporting children and families through culturally grounded, community-led services that strengthen identity, connection to culture and community. Their approach embeds self-determination, recognised under UNDRIP, which emphasises the right of Indigenous peoples to autonomy in matters affecting their communities.

Strengthening the ACCO sector is a critical lever to addressing structural barriers driving the over-representation of Aboriginal and Torres Strait Islander children in OOHC.

### 2.1 Opportunities for growth in New South Wales

#### Current Funding and Commissioning Arrangements

Evidence from the [AbSec State of the ACCO Sector Census Interim Report](#) highlights ongoing challenges for ACCOs in accessing equitable and sustainable funding to deliver services for Aboriginal and Torres Strait Islander children and families involved with the child protection system. Funding remains disproportionately skewed towards mainstream systems across all parts of the child protection system from prevention through to OOHC, with ACCOs receiving only 10% of total funding over the last three years (*AbSec 2025*).

Additionally, short term contracting, restrictive funding models and program specifications limit the ability of ACCOs to respond flexibly and in a culturally responsive manner to the needs of the community. The Family Matters Report 2025 notes that governments continue to invest heavily in mainstream systems despite evidence that ACCOs produce better outcomes for Aboriginal and Torres Strait Islander children and families (*SNAICC, Family Matters 2025*).

#### Transfer of Services and Case Management

A key component of Priority Reform 2 is the transfer of case management of Aboriginal children in OOHC to ACCOs. However, currently just over one in five Aboriginal children in OOHC in NSW have an ACCO provide case management (*DCJ, Aboriginal Led Data Sharing Dashboard 2024*). Where transfer of case management to ACCOs does occur, this often takes six months or more highlighting the need for a robust monitoring and auditing process (*AbSec 2025*).

The independent review of Closing the Gap found that governments have been reluctant to devolve authority and resources to Aboriginal organisations, resulting in reforms that are largely controlled by government systems (*Jumbunna Institute for Indigenous Education and Research 2025*).

There is a real opportunity for government to move from promises to implementation. That is, to prioritise funding and shift service delivery to ACCOs with significant urgency to evidence commitments under Closing the Gap and in alignment with principles recognised in the UNDRIP

(Article 39 – Right of Indigenous Peoples to financial assistance from states to enjoy the rights contained in the Declaration).

### Priority Reform 3: Transforming Government Organisations

Priority Reform 3 of the National Agreement on Closing the Gap requires governments to transform the way they operate so that systems and institutions are culturally safe, accountable and responsive to the needs and rights of Aboriginal and Torres Strait Islander peoples. Transforming government organisations requires structural changes to decision-making, funding arrangements, workforce capability and accountability mechanisms.

The recent review of progress against the National Agreement on Closing the Gap by the Productivity Commission (2024) found that governments across Australia have not fully grasped the scale of transformation required for their systems and ways of working under Priority Reform Three (*Commission, Review of the National Agreement on Closing the Gap 2024*). Structural transformation which includes the transfer of authority, resources and decision-making power with ACCOs and communities remains limited.

The independent review found government systems expect ACCOs to implement reforms without corresponding transformation within government agencies themselves (*Jumbunna Institute for Indigenous Education and Research 2025*).

#### 3.1 Progressing self-determination through delegated authority

Both the National Agreement on Closing the Gap and Safe and Supported – The National Framework for Protecting Australia’s Children 2021–2031 (*Aboriginal and Torres Strait Islander First Action Plan*) commit governments to delegate authority and decision-making to Aboriginal and Torres Strait Islander organisations and communities (*National Agreement on Closing the Gap 2020, DSS 2022*). These commitments align with Article 18 of UNDRIP that recognise that Aboriginal communities must have control over decisions affecting the wellbeing of their children and families.

While some jurisdictions such as in Queensland, Tasmania and Victoria have progressed delegated authority frameworks in some form following legislative reform, there are no similar structural reforms in NSW. This represents an opportunity for the NSW Government to act as a steward for the right to self-determination, as well as to make tangible progress on Closing the Gap.

#### 3.2 Cultural capability and compliance with Aboriginal and Torres Strait Islander child placement principles

The Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPP) set out safeguards for Aboriginal children and their families in the child protection and OOHC system. As per the NSW Audit Office report, DCJ has not embedded the Principles in its governance and accountability arrangements, or operationalised the Principles into its policies and processes. Therefore, DCJ cannot demonstrate consistency with the Principles through the available data (*Audit Office of NSW 2024*).

Below is a summary of the data regarding compliance with ATSCPP by DCJ (ALDS):

Years	Prevention (likely to enter OOHC)	Partnership (funding to ACCOs)	Placement (placed with Aboriginal caregivers)	Participation (have a cultural support plan)	Connection (restored to their parents)
2024-25	9.2	10%	na	na	2%
2023-24	10	10%	47%	77%	2%
2022-23	13	11%	47%	79%	2%
2021-22	12	9%	47%	75%	2%

*Table 1: Prevention indicates the number of times Aboriginal and Torres Strait Islander children and young people are likely to enter OOHC as compared to non-Aboriginal children*

The NSW Government has made limited progress in transforming systems to be culturally safe and community-led. Centralised control, inconsistent implementation of the ATSCPP, and lack of independent accountability undermine self-determination of Aboriginal and Torres Strait Islander peoples. Without urgent structural reform, meaningful progress toward Target 12 will remain out of reach.

#### Priority Reform 4: Shared Access to Data and Information at a Regional Level

This Priority Reform focuses on ensuring Aboriginal and Torres Strait Islander peoples have access to timely, relevant and disaggregated data to support community decision-making and monitor government performance. The National Agreement on Closing the Gap involves governments committing to share data with Aboriginal and Torres Strait Islander communities and organisations, and to support Indigenous data governance.

Despite this commitment, data regarding Aboriginal and Torres Strait Islander children in the child protection system is largely held and controlled by government agencies, with limited mechanisms for Aboriginal and Torres Strait Islander communities and ACCOs to meaningfully access or utilise this information to inform local decision-making. While some initiatives such as an Aboriginal-led data sharing dashboard and other Indigenous data projects have emerged, these efforts remain very limited in scope and have not transformed how data is shared or governed across the system.

##### 4.1 Access to transparent and disaggregated data

Access to transparent and accessible data is essential to enable Aboriginal communities and ACCOs to monitor outcomes and hold the government accountable for commitments under Closing the Gap. However, current data systems are fragmented, outdated and difficult to access.

Several reports highlight that progress towards this reform has been uneven and governments

continue to control key child protection data sets, limiting ACCOs and communities to analyse trends and design community-led responses (*SNAICC, Family Matters 2025*). Data systems need to embed Indigenous data sovereignty and Indigenous data governance in every aspect of the data process.



**“To make data collection truly useful and relevant for Aboriginal and Torres Strait Islander people, governments must embed the principles of Indigenous Data Sovereignty – not just reference them in documents.”**

*(Survey response – Independent review of Closing the Gap)*

## 4.2 Building data capability in Aboriginal communities and ACCOs

This reform requires governments to support Aboriginal and Torres Strait Islander communities and ACCOs to build the capability and infrastructure needed to collect, manage and analyse data. However, the NSW Government has not invested in ACCOs to enable them to develop their own methods for assessing progress on what matters to Aboriginal and Torres Strait Islander families and communities, including collection, analyses and reporting and wider systems for Indigenous data governance within the child protection system. ACCOs lack the resources and funding to develop internal data capability, despite increasing expectations on reporting and accountability (*AbSec 2025*). Indigenous data sovereignty must be supported through long term investment in community-controlled data systems and governance arrangements as per the needs and capacity across regions and organisations. (*SNAICC, Family Matters 2025*).

Without equitable access, investment, and support for community-led data governance, access to data and information remains a barrier rather than a tool for reform. Aligning with UNDRIP, governments must respect the right of Aboriginal and Torres Strait Islander peoples to control information affecting their communities (Articles 18, 31), ensuring data empowers self-determination and accountability.

## Enhancing Independent Accountability & Oversight

The Family is Culture report found that “existing bodies and mechanisms for oversight and accountability remain sparse, deficient, uncoordinated, and unsatisfactory” (*Family is Culture Report Card – Five Years On: Community Report Card 2024*), a finding that has been reinforced in other inquiry reports. For instance, the Audit Office concluded that “DCJ does not have formal accountability mechanisms for any of its staff to safeguard the rights of Aboriginal and Torres Strait Islander children (*Audit Office of NSW 2024*), and the DCJ System Review into OOHC found “the out-of-home care system requires effective structures to ensure accountability, coordination, capability and oversight across multiple agencies and actors” (*DCJ, System review into out-of-home-care 2024*). These successive reports highlight the urgent need for increased accountability and oversight in line with the NSW Government’s commitment under Closing the Gap Priority Reform.

### NSW Children’s Commission and a NSW Commissioner for Aboriginal and Torres Strait Islander Children and Young People

A NSW Children’s Commission (proposed Child Safety and Wellbeing Commission) and a NSW Commissioner for Aboriginal and Torres Strait Islander children and young people are both mechanisms to strengthen accountability for decisions made about children.

Both would help to keep children safe and promote their rights, interests and wellbeing in accordance with the government’s commitments under the National Agreement on Closing the Gap and Safe and Supported: National Framework for Protecting Australia’s Children 2021–2031.

A NSW Child Safety and Wellbeing Commission would focus solely on the NSW child protection system, but it would do so on behalf of all children – Aboriginal and non-Aboriginal. It would be the first of its kind in the country. Across all peak bodies representing the child and family sector in NSW, there is a commitment to this Commission. The Commission would work to improve outcomes for children and families involved with the NSW child protection system. The Commission’s key functions are proposed to include:

- empowering more families to stay safe and together, and setting and enforcing standards to prevent child removals and restore children to their families wherever possible
- handling complaints about the child protection system
- accreditation and monitoring of OOHC providers
- reviewing the circumstances of children in OOHC, including the power to apply to the NSW Children’s Court to vary or revoke care orders
- conducting inquiries into systemic issues
- making recommendations to improve child protection policy and practice.

A NSW Commissioner for Aboriginal Children and Young People would look at all government systems and services, but specifically on behalf of Aboriginal and Torres Strait Islander Children. A Commissioner’s mandate would cover children not only in the child protection system but also in systems such as health, housing, and education. Many other states and territories in Australia already have dedicated Commissioners for Aboriginal and Torres Strait Islander children and young people.

A Commission and a Commissioner are complementary, and the NSW Government could implement these reforms simultaneously. Together, the establishment of a Commission and Commissioner would support families to stay safe and together and ensure that more is done to bring children home.

Both a Commission and a Commissioner are independent from government, and need to be fully legislated, fully empowered, and fully funded to drive meaningful and lasting change (*UTS Jumbunna 2025*).

## Key Recommendations

### 1. Right to Self-Determination Through Aboriginal-Led Authority

- Delegated authority (as implemented in Victoria, Tasmania and Queensland) can enable ACCOs to make key child protection decisions for Aboriginal and Torres Strait Islander children
- The existing governance structures must embed shared decision-making with ACCOs and communities from design to delivery of child protection policies and programs
- Reforms must align with Priority Reforms one and three ensuring Aboriginal leadership in system reform and implementation.

### 2. Right to Culture Through Investment in Prevention and Community-Controlled Services

- Equitable and sustained funding for ACCOs to deliver prevention, early intervention and family support services
- Accelerate the transfer of case management for Aboriginal children in OOHC to ACCOs with timelines and robust monitoring mechanisms
- Ensure implementation and monitoring of Aboriginal and Torres Strait Islander Child Placement Principles across the system.

### 3. Strengthen Safety and Wellbeing Through Independent Accountability Mechanisms

- Establish an independent NSW Child Safety and Wellbeing Commission and Commissioner to oversee the child protection system, monitor implementation of reforms and promote and protect the rights of Aboriginal and Torres Strait Islander children and young people
- Strengthen system transparency and monitoring, including public reporting on compliance with the Aboriginal and Torres Strait Islander Child Placement Principles and progress toward Target 12.

While governments have committed to reform through the National Agreement on Closing the Gap, progress toward Target 12 remains slow and inconsistent. Achieving meaningful change requires a rights-based transformation of the child protection system, grounded in self-determination, cultural authority and community leadership. ACCOs play a critical role in strengthening families and delivering culturally safe services, yet structural barriers continue to limit their authority and resourcing.

Embedding Aboriginal-led decision making, sustained investment in community-controlled services, and strong independent oversight is essential to ensure that Aboriginal and Torres Strait Islander children grow up safe, connected to culture, and supported within their families and communities. These reforms are necessary to achieve Closing the Gap commitments and to uphold Australia's obligations under international human rights frameworks and protect the rights and wellbeing of Aboriginal and Torres Strait Islander children.

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