First Nations Child & Family Caring Society

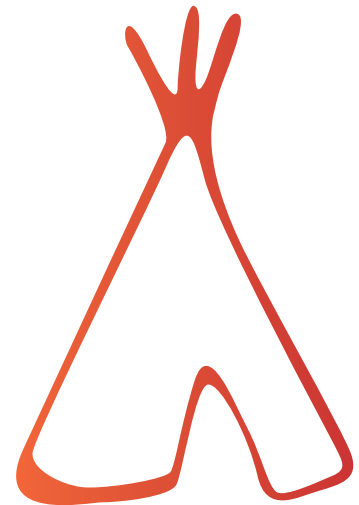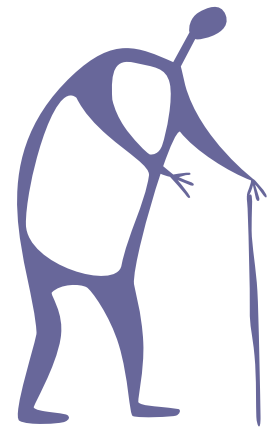# First Peoples
Child & Family Review

An Interdisciplinary Journal Honouring the Voices, Perspectives, and Knowledges of First Peoples

Contents

Foreword

Paul Gray,[a] Terri Libesman,[a] Brittany Mathews,[b] Madelaine McCracken[b]

a Guest Editors of the First Peoples Child & Family Review
b Coordinating Editors of the First Peoples Child & Family Review

Corresponding author: Paul Gray, paul.gray@uts.edu.au

Volume 18, Issue (1): Special Edition of the *First Peoples Child & Family Review* grew out of a symposium on Indigenous voices in child protection decision-making held in Sydney, Australia, in March 2021. While grossly overrepresented in child protection systems, the experiences and insights of Indigenous families, communities and organisations are often marginalised, or not heard at all, in critical child protection decision-making. The symposium aimed to contribute to creating space for and amplifying the experiences and voices of Indigenous peoples engaged with child protection systems. The NSW/ACT Aboriginal Legal Service, Jumbunna and Law, University of Technology, Sydney (UTS), and the Public Interest Advocacy Centre (PIAC) Australia co-convened the symposium.

Connection with family, community, culture, and country is crucial to the wellbeing and safety of Indigenous children. Yet, Indigenous peoples' expertise on these issues is seldom sought or included in child protection decision-making in Australia. Instead, determinations about the interests and wellbeing of Indigenous children tend to be made according to the values and perspectives of non-Indigenous systems and practitioners. Further, resources to support the wellbeing of Indigenous children are grossly inadequate, perpetuating systemic discrimination. The symposium and this Special Edition engage with the need for Indigenous peoples' control in child protection service design, decision-making, and dispute resolution, including ways for Indigenous peoples' authority and expertise to be embedded in child protection laws, policy, and fully funded service delivery. The articles in this Special Edition, based on the symposium's theme, include contributions from symposium participants and authors more broadly.[1]

Indigenous peoples' families provide ongoing culturally founded care for children removed from their families. This cultural care is grounded in Indigenous peoples' deeply rooted relationships to family, place, and community. Articles across this Special Edition engage with the significance and strength of family relationships while honouring Indigenous families' commitment to their children in the face of structural inequalities and discrimination. The articles identify and discuss

---

1 Articles follow the spelling conventions of the authors' country of residence.

the longstanding racially founded forced removal of Indigenous children and the lack of effective implementation of reforms to address the structural inequalities that drive these removals. The failure to adequately fund early intervention and family support is compounded by discriminatory attitudes of non-Indigenous service systems and providers and the lack of adequate culturally appropriate designed and delivered Indigenous services.

This Special Edition collectively points to the strength of Indigenous families, communities, and organisational voices, and the wilful refusal by child welfare and related government departments to act on the evidence concerning effective self-determining child protection systems.

Through auto-ethnographic research, Stubbs and Rice provide a reflective analysis grounded in Stubbs' experiences as a Wiradjuri Stolen Generations survivor and advocate. The authors discuss the crucial role of self-determination in safeguarding the wellbeing of First Nations children and call for a rights-based reform agenda to address the harmful imposition and intervention of settler systems. Stubbs and Rice argue that contemporary systems continue to inflict harm, noting the disproportionate rates of intervention from settler systems, including child protection, youth detention, adult incarceration, and the relationships between them. At the same time, governments have only selectively responded to these challenges, with little substantive change. Reflecting on this urgent need for change, Stubbs and Rice posit opportunities for advocacy across service provision and innovation, targeted advocacy and improved relationships with settler society organisations and institutions focused on hearing and respecting the voices of First Nations peoples in the care of their children.

Swan and Swan similarly reflect on their experience providing direct and systemic advocacy to improve outcomes for Aboriginal and Torres Strait Islander children, families, and communities through reflective commentary, including the opportunities and challenges of community-based advocacy. They argue that rather than addressing the serious and enduring harms of statutory interventions in the lives of Aboriginal and Torres Strait Islander children and families, contemporary systems perpetuate and compound these traumatic experiences, causing more harm and depriving families of hope. Nevertheless, Swan and Swan see hope in the ongoing resistance of Aboriginal and Torres Strait Islander communities, often under the leadership and effort of Grandmothers and Aunties, identifying strategic opportunities to drive change. This change continues to centre on the right to self-determination and the importance of identity, culture, and connections to the lifelong wellbeing of Aboriginal and Torres Strait Islander children. They argue that addressing these harms requires challenging the frames and evidence that devalue Indigenous ways of being and knowing, ultimately entrenching systemic bias. Instead, they urge that the Government of Australia place decision-making back in the hands of Aboriginal and Torres Strait Islander families, kin, relations, and communities alongside Aboriginal community-controlled services.

Ball and Benoit-Jansson critically review the literature on culturally connected child and family services for Indigenous children, families, and communities in Canada. They identify structural failings within contemporary child and family service systems despite the work of the Truth and

Reconciliation Commission of Canada and its Calls to Action as well as Bill C-92, *An Act respecting First Nations, Inuit and Métis children, youth and families*. These failings include inadequate resourcing and support for culturally appropriate services and ongoing overrepresentation of Indigenous families within child protection services. The article examines the concept of cultural connectedness, including sharing Indigenous relationships and experiences centred in place and across time, and discusses the benefits of culturally relevant and Indigenous-led service provision for children and young people. These include improved education, health, and wellbeing outcomes experienced through cultural connectedness.

Williams and Badry critique the colonial and ableist foundations of the Australian child protection systems for Indigenous children and young people with fetal alcohol spectrum disorder (FASD). The article draws upon a mixed-methods research project with Indigenous kinship/relative and foster carers of Indigenous children and young people with FASD in West Australia. While FASD impacts all cultural groups, the experiences of Indigenous children and young people with FASD and carers weaves with Australia's colonial foundation. Experiences of FASD are contextualised within the broader overrepresentation of Indigenous children and young people with disability in child protection systems, and comparatively with the relative lack of support for carers in Australia compared with North America. The authors identify connection to family, culture, and community as essential for the social and emotional wellbeing of Indigenous children and young people with FASD and carers, and call for the decolonisation of FASD in Aboriginal communities with Aboriginal-led approaches and solutions. However, due to a lack of holistic support and preventative services for children and carers, there are instead adverse impacts on the health and wellbeing of children and young people with FASD, carers and their families. Williams and Badry make a crucial contribution to the limited research on Indigenous kinship carers and even more limited research on raising children with neurodevelopmental conditions such as FASD.

Libesman and Gray's article evaluates the enduring colonial mindset in child protection reform processes. The cycle of child protection review and reform is marked by acknowledgment of past harms while simultaneously failing to implement recurring recommendations concerning self-determination, accountability, and government assumption of responsibility for intergenerational harms. Governments' failure to implement child protection reform while reproducing the same damaging child protection outcomes is examined through the lens of a recent inquiry into the New South Wales (NSW) child protection system and the NSW Government's response to it. The article argues that colonial governments refuse to understand or implement principles of self-determination and related effective child protection services to First Nations communities. Without families' and communities' values within child protection systems, they cannot serve to strengthen or be trusted by communities. The lack of institutional and individual accountability to First Nations families for what is often experienced as capricious and racist child protection decision-making deepens the absence of trust in communities. The article argues that the legitimacy and effectiveness of child

protection services to First Nations communities are bound to the implementation of properly funded and First Nations–designed and –led child protection services within a self-determining legal and policy framework.

De La Sablonnière-Griffin, Collin-Vézina, Esposito, and Dion's article presents an analysis of longitudinal data in child protection interventions by a non-Indigenous agency for children living in a First Nations community in Quebec. The authors make an important contribution to child protection research by focusing on an under-researched area, the provision of post-investigation support, which aims to keep children safe with their parents and family. The analysis sheds light on how First Nations children receiving child protection intervention live in situations where their needs persist over time and how current service levels do not appear to respond adequately to their situations or contexts. The article contributes to a growing body of evidence supporting the need for First Nations–controlled and properly funded services geared towards First Nations children's wellbeing.

This Special Edition presents evidence regarding the need to overhaul colonial child protection frameworks in Australia and Canada. Colonial values persist in discriminatory funding, laws and practices, albeit in different forms across time. However, despite ongoing inequity, Indigenous children's organisations and families draw on their rich cultural stories and values to support children and families, and resist harmful intervention and discriminatory failures, at both structural and individual levels to support Indigenous children's welfare and wellbeing.

In good spirit,
Paul Gray, Terri Libesman, Brittany Mathews, and Madelaine McCracken
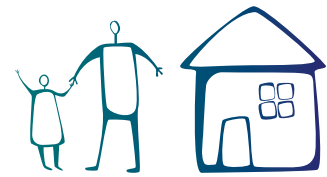
First Nations Voices in Child Protection Decision Making: Changing the Frame

Aunty Glendra Stubbs[a] and Elizabeth Rice[b]

a Jumbunna Institute, University of Technology (UTS), Sydney, Australia
b Sydney, Australia

Corresponding author: Elizabeth Rice, erice@comcen.com.au

Abstract

First Nations children in Australia remain vastly over-represented in the child protection (CP) and out-of-home care (OOHC) systems, and in juvenile detention and adult incarceration systems. To change this, we need to tackle the problem at the source; by maintaining our efforts for the implementation of First Nations rights, so that self-determination and cultural safety are embedded into the child protection system from a family's first contact and by constantly identifying opportunities in the current system to keep our children safe. Using policy and research literature, this paper identifies the principal barrier to change as the continuing failure of settler governance to recognise the fundamental importance of First Nations rights, including the need to embed self-determination and a specific, First Nations cultural framework into the child protection system.

The article also offers personal reflections on the essential role of self-determination in keeping our children safe, drawing on Aunty Glendra Stubbs' experiences in community-based advocacy and support of families for nearly three decades. Her reflections are linked to the literature and First Nations advocacy that support the findings and opportunities for change proposed in this paper.

Keywords: *First Nations, Australia, child protection, rights, self-determination, safety*

Author Biographies

Aunty Glendra Stubbs: A recognized intellectual and strategic leader, Aunty Glendra's insights have significantly informed several inquiries. As Chief Executive Officer (CEO) of the Link-Up New South Wales (NSW) Aboriginal Corporation [Link-Up (NSW)], she led an organization supporting Aboriginal peoples separated from their families and communities. Aunty Glendra Stubbs has held formal leadership positions in community-based healing and reconnection services, systems and

individual advocacy, and in the education of practitioners, services, magistrates, lawmakers, and other stakeholders within child protection and related systems.

Elizabeth Rice has three decades of experience in public policy at local and state government levels, including Commonwealth/State relations and multi-agency activities. Her involvement in Stolen Generations issues, including Stolen Wages, began in the early 1990s through work projects, where she met Aunty Glendra. From Aunty Glendra and Link-Up (NSW) she started to learn how far-reaching the effects of historic child removals were, how they continue to impact First Nations families, communities and Nations, and how current child protection practice risks creating new stolen generations. Like many settler Australians, she is still learning.

Author Notes

The use of "I" refers to Aunty Glendra Stubbs. The use of "we," except in the introduction to the paper, refers to Aunty Glendra Stubbs and the First Nations of Australia.

In the context of this article, the term "First Nations" refers to Aboriginal and Torres Strait Islander Peoples in Australia. Where no qualifier is needed, it is used alone to reinforce the reality that Australia was and is a land of many Nations, and to avoid atomizing First Nations life into individual, rather than inter-connected, areas. On occasion, the terms "Aboriginal," "Aboriginal and Torres Strait Islander," and "Indigenous" are used, reflecting the language of the documents being quoted or discussed.

The term "Stolen Generations" refers to First Nations children in Australia who were forcibly separated from their families through [assimilationist] government policies from the mid-1800s to the 1970s (Healing Foundation, 2020). The harms this caused, including inter-generational trauma, are documented in *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (*Bringing Them Home [*BTH*]*; Human Rights and Equal Opportunity Commission [HREOC], 1997). *Bringing Them Home* (HREOC, 1997) was tabled in the Australian Parliament on May, *26* 1997. It "revealed the shocking extent of the forced separation of Aboriginal children from their families and communities, and the lifelong impacts of these separations on the Stolen Generations themselves, on their families and communities, and on their descendants" (Rule & Rice, 2015, p. 14). Many First Nations families and communities fear that current child protection policies, although ostensibly based on child welfare rather than assimilation, are creating new stolen generations.

The term "Australian Government" refers to the national government of Australia. This government is also referred to as the Commonwealth, the Commonwealth of Australia, the Commonwealth Government or the Federal Government.

The term "Australian governments" refers to all the governments in Australia collectively (at Commonwealth, State/Territory and Local Government levels).

The term "national policy," as used in this paper, refers to decisions made collaboratively through the (former) Council of Australian Governments (COAG) comprised of the leaders of the Australian, State and Territory Governments, and the President of the Australian Local Government Association.

The Aboriginal and Torres Strait Islander Commission (ATSIC) was established under the Aboriginal and Torres Strait Islander Commission Act (1989) (Cth). ATSIC had a legislative mandate as an alternative voice on policy to government, one that better reflected the perspectives and interests of Aboriginal people (Behrendt, 2005). The abolition of ATSIC by the Australian Government in 2005 is one of the reasons the Uluru Statement from the Heart (First Nations National Constitutional Convention & Central Land Council (Australia) [FNNCC&CLC (Aust)], 2017) calls for a First Nations Voice to the Australian Parliament to be enshrined in the Australian Constitution, rather than solely in legislation. The Uluru Statement from the Heart (FNNCC&CLC (Aust), 2017) is the largest and most recent consensus statement from First Nations across Australia about what matters to them most, and what is required to achieve it: "a voice to parliament, treaty, and truth-telling" (FNNCC&CLC (Aust), 2017, p. 2).

Authors' Acknowledgements

First Nations Voices in Child Protection Decision Making: Changing the Frame

> Our children are aliened from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future. (Uluru Statement from the Heart, FNNCC&CLC (Aust), 2017, p. 1)

This paper examines the crucial role of self-determination in ensuring the well-being of First Nations children and young people in Australia. It argues that the current child protection system poses a considerable and ongoing threat to the children's well-being, and to the well-being of their families and communities. The paper also advocates that these threats can be overcome only if child protection decision-making, from the earliest point of contact with a child and family, is grounded in cultural expertise. Achieving this structural and cultural orientation requires a change to the framework within which decisions about First Nations children are made, so that they are founded on First Nations knowledge and experience. Embedding First Nations rights into all aspects of the child protection system, including support services, is the most secure way to achieve this change.

The first part of the paper notes the colonial foundations of government interventions in First Nations family life, and the harms they have caused. It argues that current settler governance, with its embedded resistance to First Nations rights, continues to threaten the wellbeing of First Nations children, families and communities. This is demonstrated through the increasing over-representation of First Nations children in child protection and out-of-home care (Stubbs & Rice, 2017). The paper extends its analysis of threats to include the related over-representation of First Nations young people in juvenile detention and First Nations adults in the prison system. It then demonstrates that although Australian governments regularly inquire and report into over-representation in these areas, they fail to act on recommendations, particularly those that involve recognition and implementation of self-determination. The failure to recognize First Nations rights in relation to the well-being of First Nations children and young people is thus part of a broader, general pattern of failure to recognise First Nations rights.

The second part of the paper focuses on aspects of culture that, from the experience of first author Aunty Glendra Stubbs (Wiradjuri), are not well understood or implemented in child-protection decision-making. Aunty Glendra then shares some of her experiences in advocating for the rights of First Nations children, young people, and families, giving examples of everyday advocacy for change that support formal advocacy campaigns for structural reform.

Both parts of the paper draw on the extensive experience of Aunty Glendra as a descendant of the Stolen Generations and as an advocate for change for both adult survivors and children who experience separation from their families, communities, and culture today. Elizabeth Rice (second author) shares Aunty Glendra's commitment to change. At Aunty Glendra's invitation, she has worked alongside her on First Nations advocacy for over 20 years, emphasizing the need to hear and heed First Nations voices. As co-authors, we have made the decision not to formalize Aunty Glendra's observations and reflections. Therefore, this article is partially auto-ethnographic in its reflective analysis.

The remainder of our observations are based on socio-legal sources, including findings from public inquiries, particularly the landmark *Bringing Them Home* (BTH) report (Human Rights and Equal Opportunity Commission [HREOC], 1997), and the more recent *Family Is Culture* (FIC) report (Davis, 2019), as well as public monitoring data, where available. These sources support Aunty Glendra's analysis of Australian governments' escalating failures for First Nations children, families, and communities.

Interventions and Consequences

Brief History

Settler government interventions in the family lives of First Nations are longstanding, justified by flawed, self-serving beliefs that the best interests of First Nations children lay in their assimilation into settler society, requiring the disruption of First Nations families and cultures. The extent of

these interventions and their consequences, including their enormous and ongoing intergenerational impacts, are extensively described in the BTH report which covered the years 1910–1970 (HREOC, 1997). They are also prevalent across ongoing support for Stolen Generations survivors and child protection advocacy. By the end of Aunty Glendra's time as CEO, Link-Up New South Wales (NSW) was seeing third and fourth generations of family removals – perpetuating harms despite apparent changes to policy and practice ostensibly intended to address harmful historic practices. The harm caused by these interventions is devastating not just to First Nations children and young people, but also to their families and communities. Without family and community, children cannot thrive, and without children, communities cannot thrive.

Continuing Separations – Child Protection and Incarceration

There is ample evidence that settler governance, with its embedded, colonial assumptions, still threatens the everyday lives and futures of First Nations children, families, and communities. This is found in national statistics for child protection, out-of-home care, youth detention, adult imprisonment and deaths in custody, which demonstrates an extraordinary rate of First Nations Australians' over-representation compared with settler Australians (Australian Institute of Health and Welfare [AIHW], 2021a). In many cases, the gap in rates is widening.

The numbers of First Nations children experiencing child protection interventions in Australia are increasing, as are the rates at which they "enter" these systems, compared with settler children. An even more disturbing finding is that the gaps between these rates are widening. For example, in 2019/20, Australian governments intervened in First Nations families at a far greater rate than in settler families. First Nations children received child protection services at a rate nearly eight times higher than settler children, and were subject of *care and protection orders* at 10 times the rate of settler children (AIHW, 2021a). Between 2016 and 2020, the rate for First Nations children in child protection services and subject to care and protection orders increased, while the rate for settler children decreased slightly (child protection services) or remained stable (order) (AIHW, 2021a). Thus, the gap in the rates between the two groups has widened. Data about out-of-home care is equally alarming. In 2019/20, First Nations children were *admitted* to out-of-home care "at … 10 times the rate for non-Indigenous children," with First Nations children growing up in out-of-home care[1] at 11 times the rate of non-Indigenous children (AIHW, 2021a, p. 50). The gap grew larger in both indicators between 2016/17 and 2019/20, with the rate increasing for First Nations children while the rate for settler children remained stable (AIHW, 2021a). These figures demonstrate entrenched systemic racism, with First Nations children disproportionately targeted by these systems, particularly at greater levels of intervention.

---

1   This total excludes children who were on guardianship orders or adopted.

Outcomes in youth detention are even worse. On an average night in the June quarter of 2020, First Nations children (10–17 years) were 17 times more likely to be in youth detention than settler children (AIHW, 2021b). Unlike child protection, this gap appears to have narrowed from an astounding 25 times the rate of non-Indigenous children in 2016 (AIHW, 2021b), but still represents an alarming difference between detention rates for First Nations and settler youth.

Similarly, recent reporting regarding adult incarceration notes that "almost 2 in 5 (38%) adult prison *entrants* [emphasis added] were Indigenous," even though First Nations comprise only 3.2% of the adult population of Australia (AIHW, 2019, p. 212). In terms of the *total prison population*, the 2019/20 crude rate of imprisonment of First Nations adults nationally was 15.3 times greater than for settler adults. The adjusted rate, taking account of age-profile differences in the two groups, was 11.7 times greater (Steering Committee for the Review of Government Service Provision [SCRGSP], 2021). The First Nations population has a younger age profile than the non-Indigenous population, which contributes to higher crude imprisonment rates. The adjusted rate, a common statistical measure, could nevertheless disguise the implications for the First Nations of their age distribution. According to SCRGSP (2020), "[t]his [imprisonment] ratio has not changed much in the last eight years" (p. 4.139).

The difference between the likelihood of a First Nations adult dying in prison compared with a settler adult is a direct reflection of the extraordinary rates at which First Nations adults are imprisoned. This finding of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) in 1991 "remains true today" (Doherty & Bricknell, 2020, p. 4). Specifically, "Indigenous people are […] nearly 10 times more likely to die in prison custody than non-Indigenous people" (Senate Legal and Constitutional Affairs Legislation Committee, 2021, p. 68). The Australian Institute of Criminology (AIC) has confirmed that "there have been 517 deaths in custody" since RCIADIC (AIC, 2022).

The impact of these disproportionate rates of state intervention and control are not contained within each category of intervention, but interrelated. For example, the FIC report noted the role of *care criminalisation,* "the process whereby children placed in [out-of-home care] are more likely to be involved in the juvenile justice system by virtue of their [out-of-home care] status" (Davis, 2019, p. 230). Research has identified some of these factors:

> Factors specific to the care experience, such as accumulated trauma, placement instability, separation from siblings and significant others, police interactions and the removal process itself, shaped children's trajectory through the justice system. Criminalising practices operating within the [out-of-home care] system escalated children's exposure to the [criminal justice system] for offences that would not have led to police involvement if these offences had occurred at home. The two factors – being in [out-of-home care] and offending – then exacerbated each other. (McFarlane, 2017, p. 424)

The Australian Law Reform Commission (ALRC) extends the effect to adult incarceration, noting that "the link between out-of-home care, juvenile justice and adult incarceration … has been shown in many studies and reports," which it linked to "the normalisation of incarceration in many Aboriginal families, and in particular those where children had been removed, or have been in juvenile detention" (ALRC, 2018, p. 486).

> This is supported by the work of Chen et al. (2005), which noted the link between youth detention and adult imprisonment. That study (as cited in ALRC, 2018) indicated that:
>
> > 90% of Aboriginal and Torres Strait Islander youths who appeared in a children's court went on to appear in an adult court within eight years – with 36% of these receiving a prison sentence later in life. (p. 486)

The statistics above illustrate the strong, serious links between child removals, criminal justice system involvement, and deaths in custody. These links have been noted before in Australian Government reports in 1991 (Johnston, 1991) and 1997 (HREOC, 1997). This again highlights significant downstream harms to children and communities arising from disproportionate child protection intervention, and the need for significant structural reform to address these entrenched inequalities and their lifelong implications. As the BTH report made clear, recognition for the right to self-determination is central to the structural reforms that are needed (HREOC, 1997).

Australian Governments and Self-Determination

Australian governments have been slow to recognize self-determination. This is evident from the failure to persist with the 1992 *National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal Peoples and Torres Strait Islanders* (Council of Australian Governments [COAG], 1992) as well as Australia's opposition in 2007 to the adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* (*UNDRIP;* UN General Assembly, 2007). Even when Australia did eventually endorse the Declaration it nevertheless continued to fail to embed its provisions into domestic law, policy, and practice (Australian Human Rights Commission, 2021). This reluctance to recognize and enable self-determination is also reflected in government decision-making regarding both child protection legislation and its operation, *and* its failure to adequately address "those structural drivers and barriers that lead children and families to encounter the child protection system" such as poor access to safe and stable housing, poverty, exposure to family violence, drug and alcohol misuse, mental ill-health, and barriers to accessing supports (Liddle et al., 2021, p. 14 & pp. 65–93).

Rather, Australian governments have selectively responded to these continuing structural and systemic threats to First Nations lives. Some responses have been made by individual jurisdictions, some by collaborative government action. Some have focused on structural factors (under the broad umbrella of First Nations "disadvantage"), some on over-representation, and

others on shared decision-making. At times, government attempts to address First Nations inequities have taken the form of inquiries and reports or national agreements.

While these initiatives have appeared to offer promise, they have delivered little substantive change, as the statistics outlined above attest. Many were not implemented, or were short-lived. Many of the initiatives that were pursued focused on how settler governments might more "effectively" administer child protection systems and exercise their authority over First Nations children and families, rather than self-determination. Reflecting on this pattern of performative inaction, Gray (2021) argued that "government reforms have been characterised by efforts to redeem the moral positioning of harmful systems of intervention, including through a cycle of reviews and inquiries, while responding in ways that retain and reinforce their authority to continue to intervene in the lives of First Nations children and families" (pp. 472–473). For example, the *National Commitment* (1992), probably the closest that national policy had come at that time to embracing First Nations self-determination, disappeared from COAG's agenda after a change in government at the Commonwealth level. Later the Australian Government also abolished the statutory Aboriginal and Torres Strait Islander Commission (*ATSIC Act,* 2005), which pre-dated the *National Commitment*, but was to have had a key role in its implementation.

The Closing the Gap (CTG*)* framework has had a longer life. The language of "closing the gap" first appeared in COAG's deliberations in July 2006 (COAG, 2006) and, after three years of various national reform initiatives, a *National Integrated Strategy for Closing the Gap in Indigenous Disadvantage* (CTG; COAG, 2009) was finalized. This strategy, like many others, seemed to be based on the belief that if only governments could "do it better," improved results would follow. While its name drew on the name of the community campaign (Close the Gap), the CTG strategy did not adopt the human rights approach which was, and remains, central to this campaign (Close the Gap Campaign Steering Committee [CGCSC], 2021). Even this flagship national strategy has had poor results. As the latest CTG report notes, only "two of the continuing targets are on track" (National Indigenous Australians Agency, 2020, p. 11).

Another missed opportunity at national level has been the failure to implement Recommendations 43a–54 of the BTH report, which modelled a framework for a national, First Nations, community-based child well-being system (HREOC, 1997). Twenty-five years later this has yet to become a reality. Responses at State/Territory level have also failed to implement these recommendations. For example, despite the comprehensive reforms outlined by the recent FIC report (Davis, 2019), the government response has been deeply unsatisfactory, including delaying key legislative changes until at least 2024 (Gray, 2022). This again highlights the lack of urgency from settler governments to commit to fundamental reforms. In our view, this is grounded in an unwillingness to relinquish control over First Nations families and their exercise of child protection authority, despite challenges to the legitimacy of this authority (Libesman and Gray, in press).

Results of (In)Actions

Government responses to serious and continuing threats to First Nations well-being have failed, with inequality persisting. Rates of over-representation have increased, with the gaps between First Nations and settler outcomes widening. In most cases, government responses show little integration of key factors necessary in any approach to reduce over-representation, embrace First Nations self-determination, and address fundamental causes of child protection involvement.

The Australian Government's approaches remain largely based on a combination of promises from governments to "do it better" and rhetorical invocations of self-determination. This rhetoric of self-determination is used with a variety of meanings, most of which, in practice, do not usually match the intention of *UNDRIP* or the views of First Nations peoples (Davis, 2019). However, the "refreshed" CTG process, which resulted in the current *National Agreement on Closing the Gap* (COAG, 2020), provides some hope for the future. This process was initiated by a group of First Nations organizations after COAG announced it would be updating CTG. These organisations, which developed into the Coalition of Peaks, came together "as an act of self-determination to be formal partners with Australian governments on Closing the Gap (Coalition of Peaks, 2020a). In doing so, First Nations organizations sought to change the nature of their relationship with governments to improve recognition of self-determination and First Nations decision making in policy and practice.

One of the group's achievements is the introduction of a new CTG target, Target 12: "By 2031, reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent" (COAG, 2020, p. 34). Another achievement is their partnership agreement with Australian governments on *Closing the Gap* (COAG, 2019), through which they are joint signatories to the current CTG agreement (COAG, 2020). This partnership agreement "sets out how the Council of Australian Governments and the Coalition of Peaks work and share decisions together on the design, implementation and monitoring of Closing the Gap strategies and policies" and commits to "three yearly Aboriginal and Torres Strait Islander led-reviews on *Closing the Gap*" (Coalition of Peaks, 2020b). However, these promising developments exist, as the annual report of Close the Gap (the community campaign) notes, alongside "the continued political inaction on the Uluru Statement from the Heart and the Voice to Parliament, youth incarceration and cultural heritage protections have highlighted important roadblocks to achieving the social equity" needed for First Nations wellbeing (Lowitja Institute, 2021, p. 11). As such, there is understandable caution about their long-term implementation and action, and therefore the outcomes they achieve for First Nations children, families, and communities.

Given generally poor results from settler governments and their ongoing difficulty in embracing the single factor most likely to create better outcomes, self-determination, we need to stay focused on all three elements that cause and sustain this insupportable state of affairs. This includes the structural factors that drive entry into the child-protection system in the first place, the legislative, policy, and practice factors that influence rates of entry and retention in that system, and the continued interference by settler governments in First Nations affairs.

Finally, we need agreement about the meaning of critical terms. Even when governments use the term self-determination there is no consistency in its meaning, as Davis (2019) identified in the context of child protection and out-of-home care. This lead to the recommendation to work with First Nations stakeholders 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" (Davis, 2019, p. xi). Another term with varying interpretations is "the best interests of the child." As *General Committee Comment No. 11* (United Nations Committee on the Rights of the Child 2009) indicates, these interests need to be understood through a cultural framework (Articles 30 and 31). The next section provides some practical examples of why and how a First Nations cultural framework is essential to the well-being of our children, families, and communities.

Self-Determination, Culture, and Child Protection

Much of my work in advocacy and education has focused on emphasizing the important role of culture, particularly in child protection systems. Cultural ignorance or blindness can skew decision-making – to the detriment of children and their best interests. Recognizing this has been a particular challenge for child protection with the dominant settler view on the best interests of First Nations children grounded in fundamental differences in culture and world view. Failure to address this challenge has caused, and is still causing, significant harms, as demonstrated in the outcomes data and reports discussed earlier in this paper, and in the many First Nations contributions to public debate on self-determination (General Purpose Standing Committee (GPSC) No. 2, 2016).

All people have an inalienable right to live according to their culture (UN General Assembly, 2007, Articles 3, 5, 8, 11–12, 14-16, 31–32, 36). Respecting this right requires a nuanced understanding of cultural difference as, even when cultures share a value, that value can be expressed in significantly different ways, which need to be interpreted accurately. Cindy Blackstock (2008), who is a member of the Gitxsan Nation in Canada, has written succinctly on these differences as they relate to First Nations and Western societies generally, identifying their implications for service delivery. These resonate with the Australian experience. Some of the differences Cindy Blackstock (2008) highlights are:

i. First Nations cultures are more likely to value ancestral knowledge.
ii. Their concept of time reaches backwards and forwards – and they think of impacts on seven generations of children to come.
iii. They place more emphasis on connectedness with the natural world.
iv. They have more emphasis on the whole person and the interconnections between all aspects of well-being.
v. They believe that your place in the world is special to the extent that you "live in a good way and pass along the information and values necessary to sustain your group across time" (Blackstock, 2008, p. 3).
vi. They operate as communities rather than just collections of individuals focussing on current generations.

These types of differences in cultures, let alone our rights to our own cultures, mean that we need a very good fit between these world views and the decisions made about how to ensure the well-being of our children, families, and communities. This is true for First Nations in Australia as elsewhere and must be respected if we are to act in a First Nations child's best interests, which must be understood through the framework of the child's specific culture.

There is not just one First Nations culture. We are many Nations with many cultures. A one-size-fits-all approach to legislation, policies, programs, and practices is doomed to fail. We know the protocols around decision-making in, and between, our Nations, and know that we cannot speak for another Nation. In our policy-making, we respect these protocols and are skilled in applying them to reforms designed to overcome problems created by settler governance. For example, Recommendations 43a-54 of the BTH *report* (HREOC, 1997) provided a blueprint for First Nations self-determination in the areas of our children and young people's well-being across Australia that respected local community autonomy and governance in terms of process and implementation.

Twenty-five years on, these recommendations have been almost entirely ignored by Australian governments, while rates of intervention in First Nations family life have increased markedly. Yet other people are still making decisions for us and about us, without expert cultural knowledge of our diverse communities and Nations. This diversity of cultures is not abstract, but shapes the lived experiences of individuals, reflecting their specific Country, language, and kin relationships (Tighe, 2021).

Similarly, Beaufils (2021) notes that a child or young person who is removed from their family confronts a sudden change in family life. For First Nations children, a significant part of that change is the separation from the everyday expression of culture that defines who they are and how they live. This is critical as "cultural identity is not just an add-on to the best interests of the child," but is at the heart of how our children grow up to be First Nations people (Bamblett & Lewis, 2006, p.44). Failure to understand the importance of cultural identity will undermine attempts to maintain First Nations children's culture. These attempts, often in the form of cultural plans, commonly include attendance at broader intermittent community events. While such efforts are welcome, participating in these events is only one small part of cultural identity. Decision-makers need to recognize that these public activities are an external reflection of the *lived* everyday culture of First Nations families and communities. This is what is fundamental, as culture is caught, not just taught. It is embedded in everything we do every day, and our children and young people need to be embedded in that life every day as well.

Cultural Expertise in Decision-Making is Essential

In its preamble, *UNDRIP* (UN General Assembly, 2007) recognizes "*in particular* the right of Indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child" (p. 3). Neither responsibility nor authority is shared at present, and outcomes are not improving. To reverse these poor results, governments need our cultural expertise.

Our expertise is multi-faceted, covering all the areas that need to be part of shared decision-making and shared responsibility. For example:

    i.   We are the experts on our diverse Nations and their cultures.

    ii.   We are the experts on the ways settler systems have affected, and continue to affect, our Nations and cultures.

    iii. We are the experts on the changes today's governments need to make to ensure self-determination for First Nations peoples.

    iv. We are the experts on how our Nations can adapt to settler systems, without sacrificing the integrity of our own Nations and cultures.

These capabilities have been demonstrated in First Nations contributions to government-initiated reports and strategies, including the BTH (HREOC, 1997) and FIC (Davis, 2019) reports, the CTG Strategy (COAG, 2009) and the refreshed *National Agreement on closing the gap* (COAG, 2020), and in First Nations-initiated campaigns such as Close the Gap and Family Matters, which generate their own reports and frameworks (CGCSC, 2022; Liddle et al., 2021; Secretariat of National Aboriginal and Islander Child Care (SNAICC), 2016), and the *Uluru Statement from the Heart* (FNNCC&CLC (Aust), 2017).

However, we are not just experts on system design. We also have "on the ground" knowledge of our communities and how they work. That means we are also experts on how legislation, policy, programs, and practices affect our peoples, whether proposals relate to First Nations specifically or are designed for the population. Our expertise is particularly valuable here, as we can identify specific, but often unrecognized impacts of "whole-of-population" proposals on First Nations lives. As Mohamed (Lowitja Institute, 2021) recently expressed it: "Governments are not the solution, we are the solutions to governments" (p. 44). First Nations expertise is therefore central to shaping both systems and practice approaches to drive improved outcomes for children, families, and communities.

Culture and Care Proceedings

All the issues discussed so far influence the interim and final decisions made by courts in care proceedings. Two critical issues affecting the outcomes of these proceedings are: who is believed and why. Statistics from the NSW Children's Court illustrate this point, with the then-President of the NSW Children's Court acknowledging that:

> At that initial stage the allocation of parental responsibility tends to be about 99 per cent, and at the establishment phase, probably about 90 per cent of the children who have been reviewed and removed are found to be in need of care and protection. (GPSC No. 2, 2017, p. 72)

In other words, by the time care proceedings commence it is usually too late for the family to retain care of their children.

This is one of the many flow-on effects of all the issues already outlined in this paper: the failure to recognise and act on First Nations rights; the failure to recognize and respect the importance of cultural differences between First Nations and settler societies, including different ways of parenting and being a family, and different forms of social and community organization; and the failure to value First Nations expertise. Further, the Aboriginal community-led advocacy group Grandmothers Against Removals provide evidence of how many of these issues, from systemic racism to lack of understanding of how the local family culture works, can influence the decisions that lead to care proceedings (GPSC No. 2, 2016, pp. 28–41). This evidence also provides an example of what Davis (2019) refers to as "the importance of Aboriginal activism, especially Aboriginal grandmothers, as an informal regulator in the child protection system" (p. xii). These highlight two of the major changes that are needed in the child protection system. The first is that from the earliest point of contact with a child and family, decision-making must be culturally expert. The second is that independent legal assessment of the child protection authority's allegations must be made before care proceedings commence.

Davis (2019) recognised these key ideas and made several recommendations about reforming the NSW Children's Court, including that all care proceedings are heard by specialist magistrates and establishment of a dedicated court list for care proceedings involving First Nations children. Critically, the recommendations on those matters are preceded by one recommendation which aims to reform what happens before child protection proceedings are even commenced. It states:

> The NSW Government should establish an independent statutory agency to make decisions about the commencement of child protection proceedings (including decisions about what orders are to be sought in the proceedings), and to conduct litigation on behalf of the Secretary of the Department of Communities and Justice in the Children's Court of NSW care and protection jurisdiction. (Davis, 2019, Recommendation 122)

Despite the urgency of reducing the over-representation of our children in child protection and out-of-home care, this recommendation is one of the many legislative reforms that has not yet been accepted for early implementation (NSW Department of Communities and Justice, 2020; 2022). However, without these changes it is unlikely that legal systems will achieve different child protection outcomes for First Nations children and families.

Reflections on Advocacy

To change systems characterized by a lack of recognition of self-determination and cultural understanding, augmented by poor results, we need to work on two fronts. We need to maintain our efforts for structural reform so that we can change systems fundamentally, and we need to continue our efforts to improve the application of systems affecting First Nations children and families

today. On national issues, we need to continue to campaign for action to integrate the provisions of *UNDRIP* into domestic law, policy, and practice, and for the need for a constitutionally enshrined First Nations Voice to Parliament. On State/Territory issues we need to keep campaigning for change to, or repeal of, unjust legislation or policies. This includes the 2018 legislative amendments in NSW that streamline the process from removal to "permanent care" (including adoption and guardianship), which will disproportionately affect First Nations children and families (Legislation Review Committee, 2018; Longbottom et al., 2019). These efforts across many fronts continue to be led by First Nations communities and advocates.

We cannot wait until settler governments embrace structural reform. We need to identify, and seize upon, the opportunities that present themselves through current government initiatives as well as through the contacts we make with decision-makers and service providers at all levels of settler governance. In other words, we can simultaneously campaign for structural reform *and* push systems incrementally towards more just approaches, and better outcomes, through relationships with key decision makers. In the rest of this section, we will focus on these approaches.

Operational Influence

Operational influence is a critical aspect of our First Nations rights advocacy, as even when legislation is changed, practice can undermine its intent. Care proceedings are a case in point. Although legislation was eventually passed in all Australian jurisdictions to ensure that the removal of First Nations children from their families and communities was no longer race-based, in practice our children are still removed at a rate far exceeding that of settler children. Another example of poor implementation is the Aboriginal Child Placement Principle which is embedded to some extent in legislation in all jurisdictions in Australia (Arney et al., 2015; Hunter et al., 2020; Libesman, 2008). Davis (2019) cites "the application of the Aboriginal Child Placement Principle (ACPP)" as a "stark example" of ritualism in the out-of-home care system (p. 25), where "the outward appearance of compliance – formal participation in a system of regulation – shields a culture of non-compliance" (p. xiv).

Service Innovation

Another way in which we can change the implementation of either legislation or policy is by identifying gaps in services and advocating for funding for them to be operated by First Nations services. For example, the Link-Up (NSW) Family Link service owes its origins to Link-Up's awareness of a gap in knowledge about finding kin for a First Nations child entering out-of-home care. Link-Up advocated for the funding of a service that would fulfill the requirements of the Aboriginal Child Placement Principle, arguing that it could provide an effective service by drawing on its existing expertise in reuniting families separated by former welfare interventions. This advocacy was successful and Link-Up's Family Link service now provides "kinship, family contact and cultural information" linking children at risk of entering, or already in, out-of-home care "to families, country, and community, ensuring a sense of social, emotional, and physical well-being" (Link-Up [NSW], 2022).

Relationships with Settler Society and Services

Relationships are crucial to all types of advocacies. Over the decades, I have had many opportunities to build relationships with both decision-makers and service providers. At times this has taken the form of less-visible advocacy to people who have the administrative discretion to implement changes in practice. In other instances, it has involved serving on state and national bodies that are governmental and non-governmental, either as a representative of my organization or as a person capable of advocating for our peoples' interests. This has given me the opportunity to highlight issues relevant to our peoples and organizations, and to point out the specific, and possibly unrecognized, impacts on First Nations Australians arising from proposals that were seemingly culturally neutral from a settler-governance perspective.

The relationships formed through these activities, as well as my engagement with other service providers, also provided the basis for partnerships with other organizations. This included settler organizations whose aims were compatible with ours and could support the realisation of our aspirations for children and families. In one such example, our organisation partnered with two settler organizations to transfer service delivery to First Nations leadership after three years of joint operation. These types of relationships have also provided opportunities to educate child protection workers, magistrates, and others who needed to understand more about our cultures, including our forms of family and community organisation and the protocols surrounding them, to the extent that these can be shared with non-First Nations people. Workplace education represents a valuable opportunity to help settlers and their organizations understand why respecting First Nations family and community culture and systems is essential to working effectively with First Nations clients. This is essential to overcoming the valid distrust of First Nations people of both government and non-government services, who have been complicit in historic and ongoing intrusions in the lives of First Nations children, families, and communities. This mistrust goes *deep* because of the enormous impacts these intrusions have had, and are still having, on First Nations children, families, and communities, and it goes *wide* as many types of authorities were involved in the separations. This deep and wide mistrust will remain until First Nations people are confident that they can trust both a particular representative of the authorities/service provider and the organisation(s) they come from. That this is still a current issue is illustrated throughout the FIC report (Davis, 2019). Without this understanding, settler services and staff can unknowingly create and perpetuate circumstances which prevent First Nations people from taking even the first steps to engage with services, come forward to inquiries, or challenge failures in process.

Beyond service provision, these relationships are essential in supporting broader change to the foundations of the relationship between First Nations and settler society. As recent research demonstrates, many settlers walk with us in our efforts to have our rights recognized. Deem et al. (2021) report on the results of a survey involving a representative sample of Australians which found support for a constitutionally-enshrined First Nations Voice to Parliament, with 51.3% in

favour, 27.9% undecided, and 20.8% opposed. A recent report by the UNSW Indigenous Law Centre indicates even stronger support (Larkin et al., 2021), with 90% of the submissions to the Indigenous Voice co-design process believing the Voice "should be constitutionally-enshrined in line with the *Uluru Statement from the Heart*" (Larkin et al., 2021).

Engaging settler society requires that settlers understand First Nations systems and protocols. Not all settlers understand that First Nations Australia comprises many, many Nations, and that each Nation recognizes its own members and has diplomatic protocols for how to engage with First Nations people from other Nations, and with other non-members of the Nation. These protocols include entry to the Nation's country, which is formalised in the Welcome to Country (Australian Institute of Aboriginal and Torres Strait Islander Studies, 2022).

This protocol includes the responsibility of ensuring, before the welcome is given, that it is safe to allow the non-members to enter the Nation. This is not so different from the position in continental Europe, which also has many Nations. As many Australians are aware, each of these European Nations has its own protocols about entry into the Nation, including restrictions on entry, and everyone must satisfy those entry requirements before they will be permitted to enter the Nation's territory. Settler Australians will also be aware that a European Nation will not tolerate another Nation's making unilateral decisions for it or affecting its sovereignty. First Nations seek the same understanding of the diversity of their nations and politics.

Again, not all settlers are aware of the extent to which the community is the foundation of First Nations society, or of the way that loss, grief, and trauma caused by the separation of First Nations children from their families and Country has affected, and continues to affect, not just the individuals and their families, but whole communities and generations. A useful comparison here may be found in the devastating and often very lengthy droughts that affect some parts of Australia. These droughts affect everyone in the area. The financial difficulties facing individual farmers and their families, and the resulting impacts on their social and emotional wellbeing, together with the significant impacts on the local economy, affect the whole community (Edwards, Gray, & Hunter, 2008; Kiem & Austin, 2013; Sartore et al., 2008).

In other circumstances, opportunities for engagement with settler society can arise from the simple act of providing support to a First Nations person in a formal situation. A recent example is a Coroner's Court hearing, at which a First Nations person was addressing the Court about the death of her father, who had died in palliative care in prison because he had been refused permission to return to Country to die. The Magistrate accepted cultural advice and made recommendations for change for those in prison requiring palliative care, including First Nations people (Coroners Court of New South Wales, 2021, pp. 56–59). These are just some examples of the daily challenges we face and how individual and collective advocacy can help mitigate the effects of these challenges. They do not replace the need to continue to advocate for structural reform in accordance with *UNDRIP*, but they do provide valuable opportunities to keep our children safer within current systems.

Conclusion

First Nations have long-established systems for governing their own societies that have served them well for many thousands of years. Settler governance has failed to recognise these systems, along with the knowledge, skills, and experience which formed and continue to sustain them. Instead, it has overlooked and intervened in First Nations systems. These interventions continue. Persistent inequities in child protection are the end result of a long chain of interventionist legislation, policy, programs, services, and practices that are based on settler assumptions about how First Nations should live or do live. These interventions have profound impacts on our families, on our communities, and on our Nations.

These impacts are compounded by the way that settler governments interpret both the problems and their solutions. Poorer outcomes and inequalities are understood as problems within First Nations families and communities, rather than as a predictable result of contemporary child protection systems themselves, and therefore "solutions" are usually framed by governments as requiring "improved" settler administration rather than structural reform. This frame can be used both to disguise the root causes of First Nations over-representation in the intervention systems and to reinforce a particular stereotype of First Nations peoples. This allows settler governments to marginalize First Nations rights while paying lip-service to them through the rhetoric of self-determination. It can also be used to polarize public debate into rights-based approaches versus practical measures, as though they are incompatible alternatives.

First Nations constantly advocate for the changes that are needed to overcome these "problems" and ensure the well-being of our children, families, and communities, but even when our voices are heard they are often not heeded. None of the tragedies resulting from over-representation are necessary, and they can be stopped at the source if settler governments respect our rights, heed our voices, and trust our expertise.

References

Aboriginal and Torres Strait Islander Commission Amendment Act. (2005) (Cth). http://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/num_act/aatsicaa2005558/

Arney, F., Iannos, M., Chong, A., McDougall, S., & Parkinson, S. (2015). *Enhancing the implementation of the Aboriginal and Torres Strait Islander child placement principle: Policy and practice considerations*. Child Family Community Australia information exchange. https://aifs.gov.au/cfca/publications/enhancing-implementation-aboriginal-and-torres-strait-islander-child

Australian Human Rights Commission. (2021). *Implementing UNDRIP, Australia's third UPR | 2021*. [PowerPoint Presentation]. https://humanrights.gov.au/sites/default/files/2020-10/implementing_undrip_-_australias_third_upr_2021.pdf

Australian Institute of Aboriginal and Torres Strait Islander Studies. (2022, May 25). *Welcome to Country*. https://aiatsis.gov.au/explore/welcome-country

Australian Institute of Criminology. (2022). *Deaths in custody in Australia*. Australian Government. Retrieved September 16, 2022, from https://www.aic.gov.au/statistics/deaths-custody-australia

Australian Institute of Health and Welfare. (2019, September). *Australia's welfare: Snapshots 2019*. Australian Government. https://www.aihw.gov.au/getmedia/82f724a3-c82a-412f-bb7b-5424fcfe1a4e/Australias-welfare-snapshots-2019.pdf.aspx

Australian Institute of Health and Welfare. (2021a). *Child protection Australia 2019–20*. Australian Government. www.doi.org/10.25816/g208-rp81

Australian Institute of Health and Welfare. (2021b). *Youth detention population in Australia 2020*. Australian Government. https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2020/contents/data-visualisation/number-of-young-people-in-detention

Australian Law Reform Commission. (2018). *Pathways to justice – Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples* (ALRC Report 133). Australian Government. https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/

Bamblett, M. & Lewis, P. (2006). A vision for Koorie children and families: Embedding rights, embedding culture. *Just Policy: A Journal of Australian Social Policy, 41,* 42–46.

Beaufils, J. (2021, February 11). *Family life and voice in out-of-home care: Who is being listened to?* [Symposium presentation abstract]. Virtual Symposium on Aboriginal voices in care proceedings: Perspectives from practice and research. Aboriginal Legal Service NSW/ACT Ltd, the Jumbunna Institute, UTS Law, and the Public Interest Advocacy Centre.

Behrendt, L. (2005). The abolition of ATSIC – Implications for democracy. *Democratic Audit of Australia*. https://library.bsl.org.au/jspui/bitstream/1/679/1/200511_behrendt_atsic.pdf

Blackstock, C. (2008). *Rooting mental health in an Aboriginal world view: Inspired by many hands one dream*. The Provincial Centre of Excellence for Child and Youth Mental Health at CHEO. https://docplayer.net/36709690-Cindy-blackstock-rooting-mental-health-in-an-aboriginal-world-view-inspired-by-many-hands-one-dream-prepared-for-october-2008.html

Chen, S., Matruglio, T., Weatherburn, D., & Hua, J. (2005). The transition from juvenile to adult criminal careers. *Crime and Justice Bulletin*, *86*, 1–12. NSW Bureau of Crime Statistics and Research. https://www.bocsar.nsw.gov.au/Publications/CJB/cjb86.pdf

Close the Gap Campaign Steering Committee. (2021, March 18). *Close the gap: Indigenous health campaign*. https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/close-gap-indigenous-health

Close the Gap Campaign Steering Committee. (2022, March 17). *Transforming power: Voices for generational change/Close the gap campaign report 2022*. https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/close-gap-2022

Coalition of Peaks (2020a). *Our story*. https://coalitionofpeaks.org.au/our-story/

Coalition of Peaks (2020b). *The partnership agreement*. https://coalitionofpeaks.org.au/the-partnership-agreement/

Coroners Court of New South Wales. (2021). *Inquest into the death of Ivan Goolagong*. NSW Government. https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2021/Inquest_into_the_death_of_Ivan_Goolagong.pdf

Council of Australian Governments. (1992, December 7). *National commitment to improved outcomes in the delivery of programs and services for Aboriginal peoples and Torres Strait Islanders*. https://webarchive.nla.gov.au/awa/20050614074322/http://www.alga.asn.au/policy/indigenous/nationalCommitment.php

Council of Australian Governments. (2006, July 14). *Meeting communiqué*. https://webarchive.nla.gov.au/awa/20060819042434/http://coag.gov.au/meetings/140706/index.htm

Council of Australian Governments. (2009, July 2). *Meeting communiqué*. https://web.archive.org.au/awa/20210121025841mp_/https://www.coag.gov.au/sites/default/files/communique/2009-07-02.pdf

Council of Australian Governments. (2019). *Partnership agreement on closing the gap 2019–2029*. Commonwealth of Australia, Department of the Prime Minister and Cabinet. https://www.coag.gov.au/sites/default/files/agreements/partnership-agreement-closing-the-gap_2.pdf

Council of Australian Governments. (2020). *National agreement on closing the gap*. Commonwealth of Australia, Department of the Prime Minister and Cabinet. https://www.closingthegap.gov.au/sites/default/files/2021-05/ctg-national-agreement_apr-21.pdf

Davis, M. (2019). *Family is culture: Final report, independent review into Aboriginal out-of-home care in NSW*. NSW Government. https://familyisculture.nsw.gov.au/__data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf

Deem, J., Brown, A., & Bird, S. (2021, April 21). *Most Australians support First Nations voice to parliament: Survey*. The Conversation. https://theconversation.com/most-australians-support-first-nations-voice-to-parliament-survey-157964

Doherty, L., & Bricknell, S. (2020). *Deaths in custody in Australia 2018–19* (Statistical report No. 31). Australian Institute of Criminology. https://doi.org/10.52922/sr04909

Edwards, B., Gray, M., & Hunter, B. (2008). *Social and economic impacts of drought on farm families and rural communities*. Australian Institute of Family Studies. https://www.pc.gov.au/inquiries/completed/drought/submissions/sub092.pdf

First Nations National Constitutional Convention & Central Land Council (Australia), issuing body. (2017). *Uluru: Statement from the heart*. http://nla.gov.au/nla.obj-484035616

General Purpose Standing Committee No. 2, Legislative Council of NSW. (2016, August 16). *Inquiry into child protection* (pp. 28–41). Evidence, Hansard, Corrected Proof. Parliament of NSW. https://www.parliament.nsw.gov.au/lcdocs/transcripts/1978/Transcript%20-%2016%20August%202016%20-%20Corrected.pdf

General Purpose Standing Committee No. 2, Legislative Council of NSW. (2017, March 16). *Child protection: Report No. 46*. Parliament of NSW. https://www.parliament.nsw.gov.au/lcdocs/inquiries/2396/Final%20report%20-%20Child%20protection.pdf

Gray, P. (2021). First Nations reimagining of child welfare key to addressing ongoing disparities. *Australian Bar Review, 50*(3), 466–475. https://search.informit.org/doi/10.3316/agispt.20211109056545

Gray, P. (2022, May 6). *Opinion: A generation after Bringing Them Home, child protection systems are failing Aboriginal families*. National Indigenous Television. https://www.sbs.com.au/nitv/article/2022/05/26/opinion-generation-after-bringing-them-home-child-protection-systems-are-failing

Healing Foundation. (2020). *Who are the Stolen Generations*? https://healingfoundation.org.au/who-are-the-stolen-generations

Human Rights and Equal Opportunity Commission. (1997). *Bringing them home: Report of the national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families*. Commonwealth of Australia. https://humanrights.gov.au/our-work/bringing-them-home-report-1997

Hunter, S-A., Burton, J., Blacklaws, G., Soltysik, A., Mastroianni, A., Young, J., Jones, M., Jayakody, N., Bhathal, A., Krakouer, J., Tan, W., Parolini, A., Tilbury, C., Shlonsky, A., Cackett, J. & Hull, D. (2020). *The family matters report 2020: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander Children in out-of-home care in Australia*. Secretariat of the National Aboriginal and Islander Child Care [SNAICC]. https://www.familymatters.org.au/wp-content/uploads/2020/11/FamilyMattersReport2020_LR.pdf

Johnston, E. (1991). *Royal Commission into Aboriginal Deaths in Custody, National Report* (Vol. 1). Australian Government Publishing Service. http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/1.html

Kiem, S., & Austin, E. (2013). Drought and the future of rural communities: Opportunities and challenges for climate change adaptation in regional Victoria, Australia. *Global Environmental Change, 23*(5), 1307–1316. https://doi.org/10.1016/j.gloenvcha.2013.06.003

Larkin, D., Buxton-Namisnyk, E., & Appleby, G. (2021). *What did the public say about the government's Indigenous voice co-design process?* UNSW Indigenous Law Centre. https://www.indigenous.unsw.edu.au/what-did-public-say-about-governments-indigenous-voice-co-design-process

Legislation Review Committee. (2018, November 13). *Legislation Review Digest. 64* (56). Parliament of NSW. https://www.parliament.nsw.gov.au/ladocs/digests/631/Digest%2064%20-%2013%20November%202018.pdf

Libesman, T. (2008). A human rights framework for contemporary Aboriginal and Torres Strait Islander children's wellbeing. *Australian Indigenous Law Review, 12*, 68–75. http://www.austlii.edu.au/au/journals/AUIndigLawRw/2008/10.html

Libesman, T. & Gray, P. (in press). Self-determination, public accountability, and rituals of reform in First Peoples child welfare. *First Peoples Child & Family Review*.

Liddle, C., Gray, P., Burton, J., Prideaux, C., Solomon, N., Cackett, J., Jones, M., Bhathal, A., Corrales, T., Parolini, A., Tan, W. W., and Tilbury, C. (2021) *The Family Matters Report 2021,* SNAICC – National Voice for our Children, Melbourne, Australia. https://www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf

Link-Up (NSW) Aboriginal Corporation. (2022). *Family link.* https://www.linkupnsw.org.au/program/family-link/

Longbottom, M., McGlade, H., Langton, M., & Clapham, K. (2019). Indigenous Australian children and the impact of adoption legislation in New South Wales. *The Lancet: Correspondence. 393*(10180), 1499–1500. https://doi.org/10.1016/S0140-6736(19)30252-1

Lowitja Institute. (2021). *Close the gap report – 2021 – Leadership and legacy through crises: Keeping our mob safe.* https://www.lowitja.org.au/page/services/resources/Cultural-and-social-determinants/culture-for-health-and-wellbeing/close-the-gap-report-2021

McFarlane, K. (2017). Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system. *Australian and New Zealand Journal of Criminology, 51*(3), 412–433. https://doi.org/10.1177/0004865817723956

NSW Department of Communities and Justice. (2020, November 25). *Family is culture response – Progress report*. NSW Government. https://www.facs.nsw.gov.au/download?file=796639

NSW Department of Communities and Justice. (2022, May 6). *Family is culture legislative review discussion paper*. NSW Government. https://www.facs.nsw.gov.au/families/out-of-home-care/nsw-response-to-the-family-is-culture-review/family-is-culture-legislative-review-discussion-paper

National Indigenous Australians Agency. (2020). *Closing the gap report 2020*. Commonwealth of Australia, Department of the Prime Minister and Cabinet. https://ctgreport.niaa.gov.au/sites/default/files/pdf/closing-the-gap-report-2020.pdf

Rule, J. & Rice, E. (2015). *Bringing them home: Scorecard report 2015*. National Sorry Day Committee. https://www.doi.org/10.13140/RG.2.2.34358.50242

Sartore, G.-M., Kelly, B., Stain, H., G Albrecht, G., & Higginbotham, N. (2008). Control, uncertainty, and expectations for the future: A qualitative study of the impact of drought on a rural Australian community. *Rural and Remote Health, 8*(3), 950. https://doi.org/10.22605/RRH950

Senate Legal and Constitutional Affairs Legislation Committee. (2021, May 25). *Budget estimates* (p. 68). (Hansard, Proof). Parliament of Australia. https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/d7fe7de5-3631-428a-ac35-cb326f3a8de6/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2021_05_25_8782_Official.pdf

Secretariat of National Aboriginal and Islander Child Care [SNAICC]. (2016). *The family matters roadmap*. Family Matters. https://www.familymatters.org.au/the-way-forward/

Steering Committee for the Review of Government Service Provision. (2020). *Overcoming Indigenous disadvantage: Key indicators 2020*. Productivity Commission. https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2020

Steering Committee for the Review of Government Service Provision. (2021). *Report on government services 2021* (Part C, Section 8). Productivity Commission. https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/justice/corrective-services

Stubbs, G. & Rice, E. (2017, September 26–27). *Decolonizing family intervention systems* [Paper presentation]. Decolonizing Settler Cities Conference, Curtin University, Perth, Australia.

Tighe, S. (2021, 11 February). *The cultural care of Aboriginal children and young people.* [Symposium presentation abstract]. Virtual symposium on Aboriginal voices in care proceedings: Perspectives from practice and research. Aboriginal Legal Service NSW/ACT Ltd, the Jumbunna Institute, UTS Law, and the Public Interest Advocacy Centre.

UN General Assembly. (2007). *United Nations Declaration on the Rights of Indigenous Peoples.* https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html

United Nations Committee on the Rights of the Child. (2009). *General committee comment No. 11: Indigenous children and their rights under the Convention.* https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f11&Lang=en
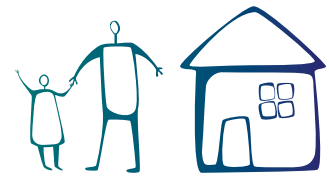
Demanding Change of Colonial Child Protection Systems Through Good Trouble: A Community-Based Commentary of Resistance and Advocacy

Debra Swan and Jen Swan

Grandmother's Against Removals, New South Wales (GMAR NSW) Australia

Corresponding author: Debra Swan, dswan@awabakal.org

Abstract

Aboriginal and Torres Strait Islander communities, led particularly by Grandmothers and Aunties, have persistently challenged statutory child protection systems and the harms they inflict on our children, families, and communities. Reflecting on our own experiences advocating for Aboriginal families and communities at the practice and systems level, this paper explores a reflective commentary approach concerning opportunities and challenges of community-based advocacy toward substantive sustained change. We note how the voices, experiences, and expertise of Aboriginal and Torres Strait Islander people continue to be marginalised or ignored by non-Indigenous authorities, colonial systems, and practice. Despite the apologies and promises of successive governments, contemporary systems continue to reflect "past" approaches. In this context, we honour the strong women who have, and continue, to stand up for their children, families, and communities, further rallying for ongoing resistance and reform.

Keywords: *First Nations, child protection, self-determination, advocacy, systemic change*

Introduction

The statutory child protection system continues to disproportionately target Aboriginal and Torres Strait Islander families, compounding past harms in Australia. While such systems present themselves as making informed decisions based on the expertise of social workers and other professionals in the best interests of children, outcomes for Aboriginal and Torres Strait Islander children remain poor (Tune, 2018). Aboriginal and Torres Strait Islander people continue to challenge these systems in efforts to safeguard the rights and interests of their children.

Grandmother groups have held an important leadership role in local and systems advocacy, reflecting their cultural role within their families and communities. This paper outlines some of our insights arising from our experience advocating on behalf of Aboriginal families and communities, challenging child protection systems' perspectives about the needs of our children and families.

Making Good Trouble

"Do not get lost in a sea of despair. Be hopeful, be optimistic. Our struggle is not the struggle of a day, a week, a month, or a year, it is the struggle of a lifetime. Never, ever be afraid to make some noise and get in good trouble, necessary trouble."

—(Lewis, 2018)

Unfair and harmful statutory interventions have been imposed by settler colonial governments in Australia on the lives of Aboriginal children and families for generations. The intergenerational impacts of these traumas play a significant role in the experiences of Aboriginal families today, with serious implications for their wellbeing, and for the wellbeing of subsequent generations. However, we want to draw close attention to inquiries calling for major structural change; change that Megan Davis (2019) confronts. The recent *Family is Culture* review, conducted in part due to sustained advocacy from Aboriginal communities and particularly Grandmothers, including us, outlined the "well-trodden reform landscape… littered with comprehensive and often unimplemented recommendations for reform" (Davis, 2019, p. 9). In particular, and despite being over 20 years old, the landmark report *Bringing Them Home*: *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* created by the Human Rights and Equal Opportunity Commission (HREOC, 1997), remains a critical touchstone for child protection reform in Australia and is central to our ongoing advocacy. While numerous state and national inquiries and reviews have explored similar themes in the years since, the consistency of the findings serve to reiterate the lack of progress by governments and system administrators in responding to the needs of Aboriginal and Torres Strait Islander families.

This adds to the anger and frustration of Aboriginal communities where it joins with entrenched and rational fears of child welfare intervention. These issues compound to reduce the likelihood that Aboriginal families will seek help when it is needed, engage with services when they are offered, or develop necessary helpful relationships with statutory agencies when interventions begin. The added trauma from unfair processes that families are subjected to, including their experience of arbitrary decision making and removals, further compounds the reluctance of families to seek help when it is needed. Davis' (2019) *Family is Culture* review outlined numerous examples of inadequate practice in their comprehensive file review.

As found in *Family is Culture*, there are unnecessary examples of unnecessary separations, often in the context of failure to provide basic supports, family members being overlooked as placement options, and failure to consider or work towards restoration of children to their family (Davis,

2019). Broader family and community networks of support are not effectively engaged and utilised to prevent removal or enable children to go home in a safe and timely way. Such love and support could warmly embrace children and families during periods of crisis. Far from promoting healing, contemporary systems continue to compound trauma experienced by our families and communities, sapping away their energy and hope for the future. The tunnel created by contemporary child protection systems is so long and so dark that many begin to doubt there is light at the other end.

Our communities have continued to resist by raising our voices to challenge these oppressive systems. We have worked both within and outside of these systems – toward change. Change stirred from public action – marching in the streets, picketing the offices of child protection authorities, and calling out ministers and executives – as well as direct engagement – attending meetings with families, advocating directly on their behalf, and participating in reviews and working groups. At the same time, we have continued working with and supporting Aboriginal communities to engage locally, *good trouble*. But this has been a long and exhausting struggle; the struggle of a lifetime. This ongoing struggle has placed considerable strain on Grandmothers and Aunties, many of whom have their own long histories working against these oppressive systems and policies and who may be re-traumatised in standing against such systems again.

While our efforts initially targeted the statutory child protection agency directly, this has since broadened across systems, seeking strategic opportunities to make change. It was the advocacy and activism of Grandmothers that finally forced the government to commission the Aboriginal-led review, *Family is Culture* (Davis, 2019). This review laid bare the "ritualism" of contemporary systems and their continuity with oppressive past policies and practices of forced removal, and the adverse experiences of too many Aboriginal children, families, and communities. More recently, attention has similarly turned to court systems, who must take a stronger stance to hold statutory agencies to account for their practices and the decisions that they impose on Aboriginal and Torres Strait Islander children and families (Davis, 2019; Libesman et al., in press). We have similarly challenged services that work with Aboriginal children, parents, and families to do better to support and advocate for our families as well as contribute to necessary systems change to improve outcomes for Aboriginal children and families. Central to this advocacy is the importance of recognising the knowledge and expertise of our families and communities by addressing the challenges they face.

What contemporary systems need to hear

Too often, the voices and expertise of Aboriginal and Torres Strait Islander people are marginalised by colonial systems where authority for decision making is positioned outside of our communities. Like the policies and approaches that statutory child protection agencies and governments have apologised for, contemporary systems continue to impose non-Indigenous decision making based on non-Indigenous perspectives. This ignores the mountains of evidence about the harms of this approach. In our public activism, Grandmothers and Aunties have repeatedly insisted that "sorry"

means "you don't do it again." Yet governments seem insistent that persisting with broken systems grounded on faulty assumptions will eventually, and perhaps even miraculously, start to achieve the radically different outcomes for Aboriginal children and families.

Our communities have continued to call out contemporary child protection systems as fundamentally broken and biased, pointing to spiralling cycles of intervention as well as increased risk of interactions with criminal justice systems. Communities have continued to push for genuine recognition of our right to self-determination and the transformational potential of this recognition for child protection systems and practices. The importance of this principle has been a cornerstone of every review over more than 20 years, including the recent *Family is Culture* (Davis, 2019) review. The review described recognition of self-determination as one of two foundational reforms with the most potential for addressing the over-representation of Aboriginal children and families in the child protection system (Davis, 2019).

However, governments continue to drag their feet when it comes to understanding and enshrining this right to self-determination in child protection systems. In the meantime, our children and families need our support to stand against these inadequate systems and hold them to account in the ways we can. Our children and families cannot wait for them. Working alongside families, we have challenged child protection practices in agencies and through court processes, focusing on bringing the expertise of our families and communities to the forefront of child protection decision making.

We have endeavoured to educate systems on the importance of cultural identity and connection to Country for the lifelong wellbeing of our children. We have emphasised that connection to culture is more than knowledge about our people, but a deep sense of self and belonging that comes from immersion in a community that claims you and shares values, stories, and history. This immersion celebrates community-based ways of being and seeing in the world and of knowing your place within it. It is this deep sense of connectedness that has been targeted by colonialism and continues to be undervalued and undermined in contemporary systems, despite government rhetoric to the contrary.

Aboriginal families and communities must drive decision making about our children. Aboriginal families, and particularly Grandmothers and Aunties, hold authority in our community for the wellbeing of our children. However, they are too often marginalised or excluded from decision making processes, and particularly court processes, which hold to Western perceptions of the nuclear family as the basis for engagement. Extensive engagement with family networks is critical for Aboriginal families, however this must be carefully supported to ensure families are safe in engaging with oppressive systems, and that their voices are heard and respected.

Aboriginal community-controlled organisations have a role to play in elevating family voices, maintaining and strengthening connections, and reconnecting children and families to community and culture. Aboriginal community-controlled organisations often have extensive knowledge of the families in their communities, their stories, and their relationships across place and time

(Commission for Children and Young People, 2016; Hermeston, 2021; Krakouer et al., 2018). Through these networks, family members can be found and mobilised to support children and families. The networks also serve to share knowledge, provide culturally-grounded services and supports, and contribute to that sense of belonging that we all need.

At the same time, we challenge the theory and evidence constantly used to justify our dispossession and disconnection. Western conceptualisations of family and attachment, and the devaluing of culture and connectedness, continue to take centre stage in decision making processes. These constructs only tell part of the story and are biased against our collected knowledge caring for children and Country for thousands of generations. Western constructs fail to recognise that "attachment" extends beyond "primary" caregivers, and includes relationships to not only family, but kin, community, and Country. Further, these broader relationships and mutual obligations and responsibilities all contribute to the sense of security and belonging that is presented as a focus of child protection systems. By challenging these assumptions, our advocacy seeks to address the subtle and often unconscious or unstated beliefs about children and families, their relationships, and their role in our society, which unfairly bias these systems against us. However the impact of these biases is clear through the evidence of their disproportionate and debilitating impact on our children, families, and communities.

Our engagement with these systems is not intended to "redeem" them, validate them, or to become complicit in their oppression of our communities in any way. Rather our engagement reflects our commitment to every child, even as we continue our struggle against these systems that have and continue to inflict such profound harm. Deprived of these connections that ground them and make them strong, our children suffer. Deprived of their children, who connect them and give meaning and purpose, families and communities suffer. This is a fundamental truth of these colonial systems, and we ought to be elevating our voices within and outside of them. We cannot let history repeat itself and passively perpetuate disconnection. We, therefore, challenge the terrible inevitability of repetition, not just by calling for things to be different, but seeking to demonstrate in the ways that we can, how things might be different, and the difference this makes for children and young people.

Conclusion

Despite the apologies and promises of governments, contemporary child protection systems share many features with their predecessors that devastated our families and communities with the forced removal of our children. The impact of that disconnection continues to be felt by many in our communities. Worse still, this dispossession and disconnection is exacerbated by the ongoing imposition of those colonial systems. Systems that we know do not, and perhaps cannot, truly safeguard the best interests of Aboriginal and Torres Strait Islander children. Our communities continue to resist, with Grandmothers and Aunties leading the way, who are committed to our children. We honour those strong women who stand for their communities, and all those who stand

with them in calling for change in these systems and practice; to centre Aboriginal perspectives and expertise in decision making and recognise the inherent authority of our communities to raise our children and shape our futures. In the face of ongoing oppression and injustice of colonial systems obstinate to change, we continue to organise, to support, to advocate, and to resist. Achieving the necessary changes demands the sustained effort of our communities and allies, working both within and outside systems, to fundamentally reform them, rather than accept passive commitments to change. It demands that we all make noise and get in good trouble.

References

Commission for Children and Young People. (2016). *Always was, always will be Koori children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria.* https://ccyp.vic.gov.au/assets/Publications-inquiries/always-was-always-will-be-koori-children-inquiry-report-oct16.pdf

Davis, M. (2019). *Family is culture review report – Independent review of Aboriginal children and young people in OOHC.* Department of Communities and Justice (NSW). https://www.familyisculture.nsw.gov.au/__data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf

Hermeston, W. A. (2021). *Safe, protected… connected? The best interests of Aboriginal children and permanency planning in the NSW care and protection system* [Doctoral dissertation, University of Technology Sydney]. OPUS. http://hdl.handle.net/10453/161122

Human Rights and Equal Opportunity Commission. (1997). *Bringing them home: Report of the national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families.* https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf

Krakouer, J., Wise, S., & Connolly, M. (2018). "We live and breathe through culture": Conceptualising cultural connection for Indigenous Australian children in out-of-home care', *Australian Social Work, 71*(3), 1–12. https://doi.org/10.1080/0312407X.2018.1454485

Lewis, J. [@repjohnlewis]. (2018, June 28), *Do not get lost in a sea of despair* [Tweet]. Twitter. https://twitter.com/repjohnlewis/status/1011991303599607808?lang=en

Libesman, T., Hermeston, W. A., & Chandler, E. (in press). *Aboriginal participation in child protection decision making in NSW.* Law and Justice Foundation.

Tune, D. (2018). *Independent review of out of home care in New South Wales: Final report.* https://www.acwa.asn.au/wp-content/uploads/2018/06/TUNE-REPORT-indepth-review-out-of-home-care-in-nsw.pdf
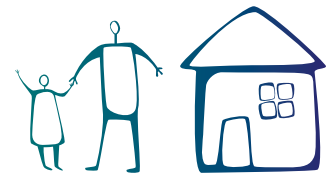
Promoting Cultural Connectedness Through Indigenous-led Child and Family Services: A Critical Review with a Focus on Canada

Jessica Ball and Annika Benoit-Jansson

School of Child and Youth Care, University of Victoria

Corresponding author: Jessica Ball, jball@uvic.ca

Abstract

There is consensus that quality services to Indigenous children and families involve the transmission, preservation, and promotion of First Nations, Métis, and Inuit cultural connections and must be delivered within specific First Nations, Métis, and Inuit cultural frameworks led by Indigenous people. This view is expressed across research and service reports, in the Truth and Reconciliation Commission of Canada's 2015 Report and Calls to Action, and in the Government of Canada's newly enacted An Act Respecting First Nations, Inuit and Métis children, youth and families (2019). This article reviews support for this viewpoint, drawing from primarily Indigenous scholarship and illustrated with reference to Indigenous-led services across Canada.

Keywords: *cultural connectedness, cultural identity, child and family services, community self-determination, customary care, Indigenous child welfare, An Act Respecting First Nations, Inuit and Métis children, youth and families, Bill C-92.*

Introduction

In 2015, the Truth and Reconciliation Commission of Canada (TRC) released 94 Calls to Action (TRC, 2015b). The first five Calls to Action deal specifically with child welfare, with the goal to reduce the overrepresentation of Indigenous children in government care. In the fourth Call to Action, the TRC

> call[s] upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that...[a]ffirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies (TRC, 2015b, p. 1).

This call is echoed in academic and service reports, including those reviewed throughout this article, with a consensus that quality services to Indigenous children and families means that they are

delivered within a specifically Indigenous cultural framework. Yet, this rarely happens in Canada due to structural inequities, insufficient funding for the quantity and quality of services needed, and lack of authority, human resource capacity, and physical infrastructure, especially in rural communities (Royal Commission on Aboriginal Peoples (RCAP), 1996a; TRC, 2015a). The federal government's newest instrument to promote facilitation of cultural connectedness as an essential feature of child and family services for Indigenous children and families is *An Act respecting First Nations, Inuit and Métis children, youth and families* (2019) (henceforth referred to as Bill C-92). As its stated intention, Bill C-92 "affirms the rights of First Nations, Inuit, and Métis peoples to exercise jurisdiction over child and family services" (Government of Canada, 2021b).

This article reviews theory and research evidence supporting the pivotal argument that services that are Indigenous-led and delivered within Indigenous cultural frameworks can effectively foster cultural connectedness and positive Indigenous identity. The first section provides descriptions of key features of Indigenous cultures and knowledges and how they are transmitted, preserved, and promoted through cultural connectedness. The second section explains why culturally based child and family services are important for Indigenous children and their communities as a whole. The third section provides examples of community-based and culturally adapted child and family service programs and initiatives, followed by a discussion section.

Context

Many First Nations, Métis, Inuit, and urban Indigenous communities are working tirelessly to ensure the wellbeing of their children and families. Yet, Indigenous families face pervasive systemic barriers to achieving quality of life comparable to the rest of the Canadian population. These barriers contribute to well-known disparities in health, wellness, and achievement outcomes for Indigenous children (Ball, 2008; Boulet & Badets, 2017; Eni, 2009; Government of Canada, 2019; Greenwood et al., 2018; Inuit Tapiriit Kanatami (ITK), 2016), and over-representation of Indigenous children and youth in government care (Fallon et al., 2021; Sinha et al., 2011; Statistics Canada, 2018). These disparities "are a direct result of colonial policies and practices that included forced relocation, loss of lands, creation of the reserve system, banning of Indigenous languages and cultural practices, and creation of the residential school system" (Government of Canada, 2019, para. 10; TRC 2015a). Legacies of these colonial policies and practices remain entrenched in Canadian society and institutions today, leading to "persisten[t]... harm of systemic racism and discrimination that Indigenous people face on a daily basis" (Government of Canada, 2021a, web). These barriers are systemic in nature and therefore overcoming them requires systems-level change, including legislation that reconceptualizes the way child and family services are provided to Indigenous families. Authority must be returned to Indigenous communities to conceptualize and deliver services, and adequate financial and technical resources must be provided to enable this change.

Countless sources describe how mainstream child and family services fail to meet this standard for Indigenous children (Caldwell & Sinha, 2020; de Leeuw & Greenwood, 2017). The British Columbia (BC) Representative for Children and Youth recently reported that Indigenous children in BC are 18 times more likely to be removed from their families than non-Indigenous children (Charlesworth, 2021). In a recent youth-led study, Indigenous youth expressed anger and frustration about the perceived injustice of being removed from their homes, families, communities, and cultures. Many youth participants described the child and family service system as a continuation of residential schools and a form of forced assimilation (Navia et al., 2018). Some participants portrayed their own child welfare apprehensions as "being taken without warning under false pretenses" and "a form of kidnapping by the state" (Navia et al., 2018, p. 44).

A 2019 independent review of child and family services for Inuit in Newfoundland and Labrador investigated why 15% of children in government care are Inuit, when only 1.8% of the population is Inuit (Kavanagh, 2019). In addition to chronic under-funding of child and family services, the review found that the service delivery model failed to incorporate Inuit knowledge and culture, to promote cultural connectedness for children in care, to demonstrate a goal to support Inuit families, and to prioritize prevention and building community capacity over child apprehensions (Kavanagh, 2019). The author emphasized that "[they] heard again and again that people perceive[d] more resources going into sending children away from their communities than in keeping them close to home or with circles of people that know and care about them" (Kavanagh, 2019, p. ix).

While Bill C-92 is limited, it is a legal framework affirming the rights of First Nations, Inuit, and Métis peoples to exercise authority over child and family services and to embed cultural connectedness within child welfare services and policies. Below we explore the notion of cultural connectedness and how this concept is a cornerstone of quality, Indigenous-led child and family service models. We focus especially on the signifiers of culture, cultural competence, and cultural connection that are typically less visually tangible than specific artifacts or practices. These include abstract and community-embodied attitudes, meanings, memories, and values transmitted in day-to-day interactions where Indigenous children, their families, and communities live and transmit their cultures (Ball & Simpkins, 2004; Little Bear, 2000.)

Method

To conduct our review, we examined peer-reviewed scholarly literature and non-formally disseminated reports (e.g., on organization websites), using key words searches (e.g., "Indigenous," "culture," "child and family services") in a wide range of databases. While primarily drawing on Canadian sources, we also examined literature from the United States, Australia, and Aotearoa/New Zealand, as those countries have similar challenges with ongoing colonization as in Canada and similar disproportionately high numbers of Indigenous children in government care. We reviewed sources in English from 1996 to 2021, and prioritized Indigenous scholars and sources. We also

discussed cultural connectedness and Bill C-92 with Indigenous scholars, Indigenous policy leaders, and Indigenous child and family service practitioners in Canada. These were informal interactions and did not constitute a research project per se. While we strongly uphold the principles of ownership, control, access and possession (OCAP) as ethical guidelines in research (Schnarch, 2004), no new data collection from individuals or communities was undertaken for this critical review.

In addition, our social positioning is integral to understanding how we as scholars approach our work and understand our topic.

Jessica Ball: I am a white settler living and working on the unceded territory of the W̱SÁNEĆ peoples. For three decades I have engaged with First Nations across Canada in partnerships involving community-based training in child and youth care (Ball & Pence, 2006) and research projects requested by First Nations to support their community capacity aspirations (see www.ecdip.org). These experiences have heightened my awareness of how I have been protected from many structural inequities and social exclusions due to my positionality as a white, middle-class, cis-gendered woman who has often taken the rights associated with Canadian citizenship for granted. Reflecting on my privileged status has exposed the deeply colonial worldview in which I was incubated throughout my education. My community-engaged scholarship has demanded vigilance against unexcavated assumptions and a willingness to turn the world on its head in order to view it from the perspective of those whose marginalization is manufactured through persistent colonial laws, policies, and practices. This stance motivated my interest in supporting the federal government's Bill C-92 during its proposal stage by serving as an expert witness in the federal government's defence of Bill C-92 against contestation by the Government of Quebec and by joining with Indigenous colleagues to prepare this review. The Assembly of First Nations and First Nations Child and Family Caring Society were supportive of the federal government's defence of the Bill, while recognizing its limitations.

Annika Benoit-Jansson: I am a Mi'kmaw, French, and Swedish woman, from Nujio'qoniik, Ktaqumkuk (Bay St. George, Newfoundland). I was honoured to spend the majority of my life on the unceded territories of the Lekwungen and W̱SÁNEĆ peoples (Victoria, BC). I have been drawn to the topic of Indigenous child protection after spending years working in youth suicide prevention and as a family support worker at a semi-delegated Aboriginal child and family service agency. I was amazed by the resilience of children and families. Yet, watching children being raised by a myriad of systems without meaningful cultural and family connections, even when individual practitioners may have had good intentions, cemented my belief in the need for systemic and structural changes. Today, I am grateful to live with my two young children and my partner in the Tla-o-qui-aht First Nations' community of Ty-Histanis on the west coast of Vancouver Island. Being a part of this community has deepened my perspectives and led me to pursue a master's degree in child and youth care at the University of Victoria, focusing on familial, community, and cultural connections for children, youth, and families.

Findings

Indigenous Cultures

A central rationale for Indigenous self-determination in matters concerning Indigenous child and family services is that effective services must sustain and enhance Indigenous belonging and identity in children and their family members (LaBoucane-Benson et al., 2017). There is significant diversity among First Nations, Métis, and Inuit cultures in remote, rural, and urban communities. While a pan-Indigenous approach to cultural connectedness would not be meaningful, many Indigenous organizations and scholars agree on general dimensions of Indigenous cultures and processes for promoting cultural connectedness (LaBoucane-Benson et al., 2017; McIvor et al., 2009; Ullrich, 2019).

As Indigenous scholars have summarized, Indigenous cultures arise from Indigenous philosophies, knowledges, and languages, and are closely connected to relationships with the land, water, sky, and spirituality (Little Bear, 2000). Cultural connectedness is engendered through participation in the everyday life of the community. Indigenous cultures are rooted in Indigenous knowledges, which are place-based, social, and relational (Michell et al., 2008). Each culture encompasses "a complete knowledge system with its own concepts of epistemology, philosophy, and scientific and logical validity" (Battiste & Youngblood Henderson, 2000, p. 41). Indigenous knowledges can be conceived as "a way of life, an experience-based relationship with family, spirits, animals, plants, and the land, an understanding and wisdom gained through generations of observation and teaching" (Emery, 2000, p. 37). Indigenous knowledges are typically emergent and specific to particular First Nations, Métis, and Inuit communities and individuals. Thus, codifying Indigenous knowledge into policy and law for non-Indigenous institutions (e.g., schools, government organizations) and service agencies, which often favour uniform policies and practices, can be challenging and lead to misrepresentations (Battiste & Youngblood Henderson, 2000). Indigenous knowledges are local, ancient, socially and relationally transmitted, and "cannot be compartmentalized and cannot be separated from the people who hold [them]. [They are] rooted in the spiritual health, culture, and language of the people. It is a way of life" (Emery, 2000, p. 27). Like all cultures, Indigenous cultures are dynamic; earlier ideas and practices are continually adapted as families and communities respond to ongoing experiences, new concepts and technologies, emerging needs, goals, resources, and opportunities (Dei, 2000).

Indigenous knowledges are embodied in Indigenous languages (Little Bear, 2000), which communicate the cosmology, values, and structures of Indigenous cultures (Makokis et al., 2010; Peltier, 2009) and are transmitted through families and communities (McIvor et al., 2009; RCAP, 1996a). Canada's Task Force on Aboriginal Languages and Cultures (2015) asserts that language is one of the most tangible symbols of culture and group identity, connecting people with their past and grounding their social, emotional, and spiritual vitality. Thus, "[e]xposure to language and culture in everyday interactions tells children who they are and how to construct their learning" (Rinehart, 2000, p. 136).

Indigenous philosophies and the practices they inform emphasize the interconnectedness among people past, present, and future, and the inseparability of the child from extended family, community, and the broader natural and spiritual worlds. Cree/Métis psychologist Couture (2011) summarizes two key points of Indigenous philosophies: "...one is that everything is alive, and two is that we're all related" (p. 83).

Defining Indigenous Communities

Indigenous communities exist in many forms across Canada, including in urban, peri-urban, and rural settings, as well as in First Nations communities on reserve in rural and urban settings, in settlements (for Métis) and in the north (for Inuit). While it can seem simple to categorize these settings separately, "[f]rom a policy perspective, it is crucial that we recognize that the urban Aboriginal population in Canada is not distinct from the 'nonurban.' They are interconnected in terms of mobility, culture and politics" (Graham & Peters, 2002, p. iii).

The 2016 Canadian census revealed the rapid growth of Indigenous peoples in metropolitan areas (Bennett, 2015), but also their high rates of mobility. Describing Indigenous peoples as either rural or urban fails to capture their lived geography (Bennett, 2015). However, because many Indigenous peoples spend considerable time in metropolitan areas, cultural connection through community activities and services is critical to sustaining positive Indigenous identities and belonging. For example, many young children and their family members rely on the Aboriginal Head Start in Urban and Northern Communities program in order to practice and transmit their cultures (Ball, 2012; Mashford-Pringle, 2012; Public Health Agency of Canada, 2017). Similarly, urban Indigenous peoples of all ages often rely on organizations like Aboriginal Friendship Centres to remain connected to their Indigenous identities, communities, and cultures (Neale, 2016).

Transmission, Preservation, and Promotion of Indigenous Cultures

Across rural, northern, and metropolitan contexts, Indigenous cultures are transmitted though participation with families and communities in cultural traditions and norms of collective caregiving (Bennett, 2015). Children raised in their family and within their cultural community are routinely socialized to embody their culture through processes such as hearing and speaking Indigenous languages, learning on the land, having multigenerational relationships of care, teaching and learning, and participating in culturally significant livelihood activities (e.g., ceremonies, art, storytelling) (Ball & Simpkins, 2004; Battiste & Youngblood Henderson, 2000).

The implicit nature of forming a cultural identity and belonging points to the necessity of Indigenous-led child and family services. Outsiders, however well-informed, are not likely able to provide the more intuitive, gestural, and embodied knowledge conveyed by service providers and caregivers who are a part of the community and culture. Creating an authentic cultural framework around Indigenous child and family services goes far beyond the use of a few Indigenous language

phrases, artwork in an office space, or taking children to cultural events, although these can contribute to cultural awareness. A cultural framework is "not a thing or a possession, but rather the name for a series of relations that are always shifting" (Valverde, 2003, p. 221).

In 2013, Cree lawyer and former BC Representative of Children and Youth, Judge Turpel-Lafond reported that cultural plans of care for Indigenous children in foster care were usually incomplete; when they were completed, they were typically limited to the child or youth attending a potlatch or cultural ceremony (Turpel-Lafond, 2013). Turpel-Lafond emphasized that "cultural planning for Indigenous children and youth in care should be much more comprehensive and meaningful" (p. 54) and requires extensive, ongoing interactions with their Indigenous community to maintain cultural connection and build a strong, positive Indigenous identity. In a report by the BC Representative for Children and Families, Charlesworth (2021) found similar challenges persist in BC child welfare, adding that Indigenous children's rights to cultural connections and belonging tend to be overshadowed by Euro-Western ideas of permanency (e.g., adoption), often leading to lifelong negative consequences.

Cultural Connectedness

Cultural connectedness refers to an individual's alliance with a culture as an aspect of one's identity and sense of belonging. According to Indigenous health researcher Reading and her colleague Wien (2009), Indigenous cultural connectedness includes, but is not limited to, interactions with Indigenous kin, knowledge of an Indigenous language, spirituality, and environmental stewardship. Inupiaq scholar Ullrich (2019) describes five areas of connectedness to provide a framework by which culture is transmitted, preserved and promoted, described subsequently.

Intergenerational Connectedness. Intergenerational connectedness includes learning history from Indigenous perspectives, participating in ceremonies, and learning songs and language, each embedded within distinct cultures, communities, and land (Ullrich, 2019). Storytelling is similarly a function of intergenerational connectedness. Anishinaabe scholars Peltier (2009) and Simpson (2008) describe how Elders pass knowledge and teachings to younger generations. Simpson (2008) explains that intergenerational storytelling, often depicting experiences on the land, has sustained Indigenous cultures and communities for generations, and will continue to carry them into the future. Elders may also engage as mentors to younger cultural knowledge-holders, teachers, and community leaders (RCAP, 1996c).

Family Connectedness. Family connectedness involves relationships with immediate and extended family, community members, and relationships to the land of one's family of origin (Ullrich, 2019). Examples of Indigenous practices that enhance family connectedness are kinship care and customary adoption. Kinship care refers to the practice of extended family and community members caring for children until parents are able to assume or resume their role as primary caregiver (First Nations Child & Family Caring Society (FNCFCS), 2019). Customary adoption refers to "a complex institution

by which a variety of alternative parenting arrangements, permanent or temporary, may be put in place to address the needs of children and families in Aboriginal communities" (Trerise, 2011, p. 2). These practices are grounded in Indigenous traditions of caregiving that emphasize building a strong web of relationships around a child, rather than severing relationships or transferring custody outside the family (Baldassi, 2006; Carrière & Richardson, 2009; de Finney & di Tomasso, 2015).

Community Connectedness. A child's sense of belonging to their community is critical to a positive Indigenous identity. It is enriched through the sharing of cultural values, social norms, support and guidance, celebrations, ceremonies, language, and gatherings (Ullrich, 2019). Métis researcher Richardson (2012) describes how many culturally grounded Indigenous ceremonies: "(1) promote a sense of connection, belonging and community, (2) acknowledge a particular life phase or accomplishment, (3) assign a challenge or task to be overcome, and (4) invoke … the spirit of life to infuse the group with wisdom and love" (p. 69). Culturally based, community ceremonies and celebrations are important in child and family services, including customary adoptions, rites of passage (e.g., 'aging' out, puberty), 'coming-home' celebrations, baby-welcoming and naming (Bennett, 2015; de Finney & di Tomasso, 2015; Johnson et al., 2015). These ceremonies acknowledge children and families' changes and growth, while reinforcing community and cultural connections for subsequent stages of development (de Finney & di Tomasso, 2015; Richardson, 2012; Ullrich, 2019).

Environmental Connectedness. Connection to land is fundamental within Indigenous cultures and knowledges (ITK, 2014; Little Bear, 2000, 2009; Makokis et al., 2010; McIvor et al., 2009; Michell et al., 2008; Ullrich, 2019). Scholars and Indigenous leaders highlight the profound importance of connecting Indigenous children and youth with the land, in both urban and rural settings (Hatala et al., 2019; Fleming & Ledogar, 2008; Lines & Jardine, 2019; Ritchie et al., 2015). Land-based activities are often paired with stories connected to the particular geography and place-based knowledge of each Indigenous community (Little Bear, 2009; Liebenberg et al., 2015; Sable et al., 2012; Simpson, 2014).

Spiritual Connectedness. Spiritual connectedness is woven into cultural learning and "natural laws, knowledge, set roles and day-to-day activities" (Ullrich, 2019, p. 125). Spirit and culture "can be observed and experienced through art, names, beauty, dance, songs, music, history, foods, clothing, home structures, games, transportation, science, education, hairstyles, tattoos, subsistence lifestyle, and language" (Ullrich, 2019, p. 125). Spiritual connectedness goes beyond particular practices to encompass the life force or spirit of a child as interconnected with the wellbeing of the entire family, community, and land (Ullrich, 2019).

Cultural Connectedness as a Determinant of Indigenous Wellness and Identity

Social determinants of Indigenous health have been conceived by Indigenous scholars as somewhat distinct from those of Euro-Western conceptualizations (McIvor et al., 2009; Reading & Wien, 2009).

Indigenous worldviews hold that a child's wellness is a function of the wellness of the child's family and community, and vice versa (LaBoucane-Benson et al., 2017). Indigenous conceptualizations of health and wellness include the spiritual, mental, physical, and emotional wellness of all family members who are embedded within an ecological system that includes their cultural community, relationship with the land, and broader economic, political, and social systems (McCormick, 2009; Richmond et al., 2007; RCAP, 1996b; Reading & Wien, 2009). An outcome study of a community-led, land-based, culturally informed program that embodies this understanding found sustained positive impacts. The Makimautiksat Youth Camp in Nunavut enhanced youths' overall wellness and resilience and sustained connection to Inuit culture and land-based activities and relationships with peers and other community members (Healey et al., 2016; Mearns & Healey, 2015).

Indigenous scholars and community service agencies emphasize how child and family services that promote cultural connectedness help children and youth to consolidate positive Indigenous identities (Carrière, 2008; de Finney & di Tomasso, 2015; John, 2016; Quinn, 2020). This link was confirmed in research about First Nations adoption and kinship care by Métis scholar Carrière (2005, 2008). In contrast, lack of cultural connectedness is particularly deleterious. Indigenous adult adoptees who were raised by non-Indigenous families without connection to their families, communities, or cultures of origin reported a profound, often lifelong, sense of loss (Carrière and Richardson, 2009).

Connections to Indigenous cultures and languages are strong protective factors that promote resilience and serve as buffers that mitigate negative impacts of historical and continuing injustices affecting Indigenous peoples (Auger, 2016; Chandler & Lalonde, 2008; ITK, 2014; McIvor et al., 2009). Building and strengthening Indigenous children's cultural connectedness also revitalizes Indigenous communities.

In a study examining links between language and mental/social health, Hallett et al. (2007) found that First Nations communities with higher levels of Indigenous language knowledge experienced rates of suicide risk and completed suicide that were well below the provincial averages for both Indigenous and non-Indigenous youth, while those with lower Indigenous language knowledge had more than six times the number of suicides. Youth suicide was non-existent in communities where at least half the members reported a conversational knowledge of their own traditional language.

Another example of the protective effect of cultural connectedness was found in a study conducted with Indigenous youth who use illicit substances. Among these youth, knowledge of their Indigenous culture and language was strongly associated with their resilience (Pearce et al., 2015). A study completed by Njeze et al. (2020) shows similar results, linking cultural connectedness to the resilience of Indigenous children and youth and shows that "[a] strong cultural identity as a child and adolescent leads to improved outcomes in education, employment, and health and wellness in adulthood" (p. 148).

It is not only children who benefit from cultural connectedness. Indigenous scholars emphasize that children are the heart of communities (Anderson & Ball, 2020). As communities strengthen their capacity to care for children, adults can become stronger and more open to re-engaging in relationships with Elders. Elders stimulate curiosity, confidence, and pride in Indigenous cultures and become supporters and resources for community practitioners who can transmit culture and language to children. As children become engaged with and proud to know their culture and language of origin, they in turn motivate their parents, continuing the cycle, which gains in strength and velocity over time.

In the foregoing, our examples from research and practice illustrate the benefits of Indigenous-led services that facilitate cultural connectedness. In the next section, we provide examples of Indigenous-led service models that aim for cultural connectedness as a goal across all programs for children and families.

Promoting and Preserving Indigenous Cultures Through Child and Family Services

Indigenous leaders agree that quality child and family services are culturally appropriate, holistic, governed by and accountable to Indigenous parents and communities, compliant with regulations developed or accepted by Indigenous administrative bodies to ensure children's wellness and safety, involve Elders, show respect and provide opportunities for staff to develop their skills, and use research to document, apply and develop Indigenous knowledges (BC Aboriginal Child Care Society & Assembly of First Nations, 2005; Greenwood et al., 2007; Greenwood & Shawana, 2003; Preston et al., 2012).

Despite inadequate government funding and persistent structural inequities, the examples of Indigenous-led child and family service organizations described in this section are based on an understanding of the need to facilitate cultural connectedness. These are only a few examples; across Canada, many Indigenous-led agencies are re-imagining how to structure services to secure children's connection to their cultural communities. Both because of the lack of comparative effectiveness research examining the outcomes of various approaches to Indigenous-led child and family services, and because each community's needs, goals, and resources are somewhat unique, we eschew the concept of 'best practices.' However, the concept of wise or promising practices (Wesley-Esquimaux et al., 2010) applies to these examples. They provide a snapshot into diverse legislative and community-grounded ways that Indigenous organizations are working to ensure cultural connectedness for those involved in the child welfare system. Beyond emphasizing cultural and community connections, recurrent and overlapping themes include: (a) a focus on prevention and community-building; (b) strengths-based practices that empower families; and (c) culturally based and community-grounded frameworks.

Kina Gbezhgomi Child & Family Services

Kina Gbezhgomi Child & Family Services is an "Anishinabek Agency serving Anishinabek people" (Kina Gbezhgomi, 2019, p. 5), that delivers services to seven First Nations on Manitoulin Island in Ontario and to First Nations people living in Sudbury. With a vision to "honour and support [their] family's and community's inherent authority to care for their children based on unity, traditions, values, beliefs and customs," Kina Gbezhgoma strives for their "services [to] ensure children are protected and stay connected with their culture, language and community while strengthening family and community relationships" (Kina Gbezhgomi, 2021). The agency developed in 1981 in response to high numbers of children removed from their First Nation and placed in government care. The agency is overseen by an Elder's Advisory Council. Each community that Kina Gbezhgomi serves has its own specific protocol agreement with the agency that articulates how the agency and community can best work together to serve children and families (Kina Gbezhgomi, 2019).

Principles developed collaboratively with participating First Nations are used across all services, including that prevention and child welfare services use cultural traditions and practices that strengthen cultural identity and connectedness for children and their families (Kina Gbezhgomi, 2021). Kina Gbezhgomi hosts culture and knowledge camps for children, youth, and families, and culture days, workshops, and celebrations for community members. They prioritize the health of the entire community and family in order to keep children healthy and strongly connected to their culture, with a high likelihood of being able to remain in their community.

Splatsin First Nation

In 1980, the Splatsin First Nation passed a by-law that asserted community control over their own child welfare services (Splatsin, 2020). The by-law contends that "there is no resource that is more vital to the continued existence and integrity of the Indian Band than our children" (Splatsin, 2020, p. 19). Chief Christian of the Splatsin Nation describes how the by-law initiative enabled the community to adopt a culturally informed, community-based approach to their own child welfare, and resulted in less than 5% of their children being taken into government care (Christian, 2010). He states, "Splatsin Nation represents a unique example of a community that was able to reclaim the right and responsibility of child welfare, providing a successful example of a Nation that has found a way to support children and families outside of harmful governmental policies" (Christian, 2010, p. 12). The federal government subsequently disallowed similar by-laws by other communities (Walkem, 2015).

Inuuqatigiit Centre for Inuit Children, Youth and Families

The large population of Inuit children and families living in Ottawa can feel connected to an Inuit community through participation in a variety of Inuit-led cultural activities offered at the Inuuqatigiit Centre for Inuit Children, Youth and Families (ICICYF) (2020a), where Inuit languages

and dialects are often used (ITK, 2018). The Inuuqatigiit Centre weaves Qaujimajatuqangit (Inuit traditional knowledge) throughout their wrap-around services, which include:

> [l]icensed childcare, Head Start, kindergarten, Early On Centre, after-school programs, student support, youth programs, healing circles, individual support and counselling, court accompaniment, advocacy with child welfare, police, education, systems navigation, referrals, mental health programming, cultural community events, [and] on the land culture camps (ICICYF, 2020b, para. 2).

Families involved "have reportedly fewer child apprehensions, less disruption to children who have been apprehended from their families, [...] greater consideration for Inuit culture in apprehensions [and] improved relationships between child welfare authorities and urban Inuit families (Scott, 2013, p. 26).

The Native Child and Family Services of Toronto

The Native Child and Family Services of Toronto (NCFST) was established as a child welfare organization in 2004 and was the first off-reserve children's aid society serving an urban Indigenous population (NCFST, n.d.). Working within an Indigenous cultural framework, NCFST provides child welfare services in addition to an extensive array of prevention services that include pre-natal programs, a community kitchen, mental health and addictions support, child-care, family violence prevention, and much more (NCFST, 2020). NCFST draws from many cultural traditions representing the diversity of Indigenous peoples in the urban setting and includes respected community Elders as team members (NCFST, 2020). The agency emphasizes cultural connections, the development of positive Indigenous identities, and community strengthening through cultural activities. Using NCFST not only as a site of child welfare and social services but also of cultural connection and programming effectively reduces the stigma attached to being involved with child protection services (Scott, 2013). Services are offered with the understanding that healing and restoring communities and families is foundational to the health and wellness of individuals. The community-based, community-strengthening, culturally grounded approach is seen as the key to the success of NCFST (Scott, 2013).

Nisichawayasihk Cree Nation Family and Community Wellness Centre

The Nisichawayasihk Cree Nation Family and Community Wellness Centre (NCNFCWC), established in 2001, is based in Nelson House, Manitoba, and provides wholistic wellness programs through public health, child and family services, early childhood education, mental health supports, and other community programming (NCNFCWC, n.d.-a.). Innovative programming aims to reduce high numbers of children being taken into care. For example, the Intervention and Removal of Parent program aims to reduce trauma typically experienced by children during apprehensions (NCNFCWC, n.d.-c). When a child is considered at risk, the parents instead of the children, are removed from the

home. The child(ren) remains in the home, with extended family members or practitioners employed by the wellness center moving in to care for them (NCNFCWC, n.d.-c). Parents receive numerous practical and social supports, including counselling and programs to connect to Indigenous traditions and culture. The land-based Rediscovery of Families Program supports parents and children to build on their own strengths and work towards reunification (NCNFCWC, n.d.-c). Through the program, "[t]he family is introduced to traditional practices and living on the land while being supported by counsellors and guidance of [their] Ketiyatisak [old people in the community]" (NCNFCWC, n.d.-c, p. 14). Through these Indigenous-led child and family services, the NCNFCWC has significantly reduced the number of children in care (NCNFCWC, n.d.-b). In 2016, the program received national media attention for being at risk of losing funding due to having an insufficient number of children in care (Kavanaugh, 2016).

Akwe:go Urban Aboriginal Children's Program

For over three decades, the Ontario Federation of Indigenous Friendship Centres (OFIFC) has offered the Akwe:go Program, which immerses children aged 7 to 12 years in Indigenous cultural knowledge and provides social, emotional, and other supports to participating children and their families (OFIFC, n.d.). The program is currently the focus of a 20-year longitudinal study. Findings to date suggest correlations between culturally based programming and resilience, a significant increase in children's sense of belonging and pride in their Indigenous identity, participation in First Nations cultural practices and languages outside of the program, use of First Nations medicines and food, and increased self-esteem (Maracle, et al., 2014; OFIFC, 2020).

Legislated and Draft Child and Family Services Laws

Several Indigenous communities are drafting legislation regarding child and family services. All available examples prioritize connections to community and culture for Indigenous children and families. For instance, the Huu-ay-aht First Nation *Bringing our Children Home Report* is built around a primary goal "to keep children safe, healthy, and connected to Huu-ay-aht's home, culture and values" (Huu-ay-aht First Nations Government, 2021). Huu-ay-aht children and youth living both on and off reserve, many of whom have previous experience with child welfare, have expressed their "deep and strong desire to maintain connections with their families and the Huu-ay-aht community and culture" (Hwitsum et al., 2017).

Cowessess First Nation signed the first agreement with the Government of Canada under *Bill C-92* in July 2021. The Cowessess Miyo Pimatisowin Act states that: "[…] cultural continuity is essential to the well-being of a child, a family and the Cowessess First Nation" (Cowessess First Nation, 2021, p. 16). However, as Dangerfield (2021) notes, while funding to develop services is mentioned in Bill C-92, there is a concerning lack of commitment. In another example, the Anishinabek Nation (2019) Draft Child Well-being Law similarly states, "Where there is a reference in this Law to the best

interests of a child/youth, all relevant factors must be taken into consideration in determining the best interests of a child/youth... with a recognition that traditions, culture, values and language must be respected in making that determination" (p. 8). Similarly, the Assembly of Manitoba Chiefs (2019) has advanced a *Bringing our Children Home Act* that states:

> We are reclaiming our collective sovereignty and jurisdiction for the care and protection of our children in every way in order to ensure we safeguard their well-being, provide them with a cultural shield according to our respective Anishinaabeg, Anishinininwak, Dakota Oyate, Denesuline, and Nehethowuk/Inninwak identity, culture, traditions, values, customs and languages (p. 3).

However, as the Assembly of Manitoba Chiefs (2019) and others have emphasized, there is no federal funding commitment for Indigenous communities to begin the process of developing laws, including engagement, ratification, and implementation. To create enduring change, there must be legislated guarantees of funding. Without this, Bill C-92 is at risk of becoming more "hollow words" (Wilyman, 2020). As well, federal, provincial, territorial, and Indigenous governments must work toward successful partnership, as not all parties were included in developing the new legislation. There is a particular need to resolve jurisdictional ambiguities; it is not clear to whom Bill C-92 applies (e.g., does it apply to First Nations children living off reserve?)

Discussion and Conclusion

As one part of a necessarily multi-faceted solution to the overrepresentation of Indigenous children in care, providing child and family services within each community's self-defined cultural framework can promote Indigenous children and families' cultural connectedness, positive cultural identity, and capacity to contribute to the resurgence of Indigenous communities in Canada. To succeed, Indigenous communities must have authority over child and family services to ensure that these are culturally safe, relevant to their particular cultures, circumstances, and histories, and prioritize keeping children within circles of care in their own communities (Metallic, 2018). Indigenous leaders, scholars, and organizations call for child and family services that: (a) are designed and delivered within an Indigenous cultural frame; (b) promote cultural connection and Indigenous identity; (c) act preventively by strengthening community capacity; and (d) grant Indigenous peoples authority to manage their own child and family welfare programs (Kavanagh, 2019). These aspirations are illustrated by the foregoing examples of Indigenous child and family service organizations. As Ullrich's (2019) framework suggests, maintaining cultural connectedness goes far beyond a simple checkbox of cultural activities. The examples demonstrate the multiple, ongoing relational ways that communities and organizations are keeping children and families culturally connected while also providing practical supports to address issues stemming from socio-economic conditions and intergenerational trauma.

Cultural and community connectedness are primary considerations in Bill C-92 with regards to assessing what is in the best interest of an Indigenous child. In principle, Bill C-92 provides a legal framework for courts to no longer view "culture [a]s a secondary consideration that may be defeated by a more paramount principle" (Matarieh, 2020, p. 29). Yet, it remains to be seen how courts will interpret this legislation and ideas about "best interest" (Forester, 2020). Further, as previously noted, funding and technical support must be committed to enable communities to begin developing their own laws and planning their own child and family services and approaches (Dangerfield, 2021). Doubts about funding are well-founded in light of the Canadian Human Rights Tribunal's (CHRT) 2016 ruling against the Canadian federal government for chronic and systematic underfunding of services for First Nations children (FNCFCS, 2021). The CHRT has since had to issue 19 additional orders, at the time of writing, due to the federal government's non-compliance in addressing the problem and compensating children and families (Olijnyk, 2021).

Research over two decades has investigated the overrepresentation of Indigenous children in care (e.g., Blackstock et al., 2004; Sinha et al., 2011; Sinha et al., 2013; Trocmé et al., 2003; TRC, 2015a). Yet, we found few studies documenting the process and outcomes of Indigenous-led, culturally based solutions. While non-formal reports indicate that Indigenous organizations are trying to conduct their own evaluations, a funding stream for the evaluation of Indigenous child and family services is needed. In their review of Indigenous child protection literature over 25 years, Sinha et al. (2021) emphasize the critical need not only for more research, but also "[t]he investment of sustained public resources in Canada to synthesize, summarize, and publicly disseminate findings from existing research related to Indigenous child welfare involvement" (p. 22) in a centralized, Indigenous-led process that brings together both the non-formal and published, peer-reviewed literature, in a cohesive, accessible (e.g., no paywall) forum.

Given the abundant evidence of the ongoing failure of non-Indigenous child and family services to reduce the numbers of Indigenous children in government care, the lack of rigorous evaluations of Indigenous-led child and family services should not be a barrier to shifting authority and funding to those Indigenous communities that have the political will and community capacity to lead their own services. As the foregoing discussion highlights, there are many First Nations, Métis, and Inuit organizations across Canada that have the political will and community capacity to turn child welfare practice on its head, to go from extracting children from communities to reinforcing cultural connectedness and circles of care for children within their own communities. Local, Indigenous-led child and families services, grounded in cultural values and forms of interaction can preserve and enhance positive Indigenous identity and sense of belonging, which are critical for Indigenous children, families, and communities to survive and thrive.

References

An Act respecting First Nations, Inuit and Métis children, youth and families, S.C. c. 24 (2019). https://laws.justice.gc.ca/eng/acts/F-11.73/page-1.html

Anderson, K., & Ball, J. (2020). Foundations: First Nations and Metis Families. In G. Starblanket & D. Long (Eds.), *Visions of the heart: Issues involving Indigenous Peoples in Canada* (5th ed.) (pp. 142–164). Oxford University Press.

Anishinabek Nation. (2019). *Anishinabek Nation Draft Child Well-being Law*. http://www.anishinabek.ca/wp-content/uploads/2019/01/Anishinabek-Nation-Child-Wellbeing-Law-revised-January-2019.pdf

Assembly of Manitoba Chiefs. (2019). *Bringing our children home act*. https://manitobachiefs.com/timeline-of-bringing-our-children-home-act/

Auger, M. D. (2016). Cultural continuity as a determinant of Indigenous Peoples' health: A metasynthesis of qualitative research in Canada and the United States. *The International Indigenous Policy Journal, 7*(4), article 3. https://ir.lib.uwo.ca/iipj/vol7/iss4/3

Ball, J. (2008). Promoting equity and dignity for Aboriginal children in Canada. *IRPP Choices, 14*(7), 1–34.

Ball, J. (2012). Identity and knowledge in Indigenous young children's experiences in Canada. *Childhood Education, 88*(5), 286–291.

Ball, J., & Pence, A. (2006). *Supporting Indigenous children's development*. UBC Press.

Ball, J. & Simpkins, M. (2004). The community within the child: Integration of Indigenous knowledge into First Nations child-care process and practice. *American Indian Quarterly, 28*(3/4), 480–498.

Baldassi, C. L. (2006). The legal status of Aboriginal customary adoption across Canada: Comparisons, contrasts and convergences. *UBC Law Review, 39*(1), 63–100.

Battiste M., & Youngblood Henderson, J. S. (2000). *Protecting Indigenous knowledge and heritage: A global challenge*. Purich Publishing.

BC Aboriginal Child Care Society, & Assembly of First Nations. (2005). *Elements of quality childcare from the perspectives of Aboriginal Peoples in British Columbia*. https://www.acc-society.bc.ca/wp-content/uploads/2018/06/QualityStatement-short-final.pdf

Bennett, K. V. (2015). Cultural permanence for Indigenous children and youth: Reflections from a delegated Aboriginal agency in British Columbia. *First Peoples Child & Family Review, 10*(1), 99–115. https://fpcfr.com/index.php/FPCFR/article/view/243

Blackstock, C., Trocmé, N., & Bennett, M. (2004). Child maltreatment investigations among Aboriginal and non-Aboriginal families in Canada. *Violence Against Women, 10*(8), 901–916. https://doi.org/10.1177/1077801204266312

Boulet, V., & Badets, N. (2017). *Early motherhood among off-reserve First Nations, Métis and Inuit women.* Statistics Canada. https://www150.statcan.gc.ca/n1/pub/75-006-x/2017001/article/54877-eng.htm

Caldwell, J., & Sinha, V. (2020). (Re)conceptualizing neglect: Considering the overrepresentation of indigenous children in child welfare systems in Canada. *Child Indicators Research, 13*(2), 481–512.

Carrière, J. (2005). Connectedness and health for First Nation adoptees. *Paediatrics & Child Health, 10*(9), 545–548.

Carrière, J. (2008). Maintaining identities: The soul work of adoption and Aboriginal children. *Pimatisiwin: A Journal of Aboriginal and Indigenous Community Health, 6*(1), 61–80.

Carrière, J., & Richardson, C. (2009). From longing to belonging: Attachment theory, connectedness, and Indigenous children in Canada. In S. McKay, D. Fuchs, & I. Brown (Eds.), *Passion for action in child and family services: Voices from the prairies* (pp. 49–67). Canadian Plains Research Center.

Chandler, M. J., & Lalonde, C. E. (2008). Cultural continuity as a moderator of suicide risk among Canada's First Nations. In L. Kirmayer, & G. Valaskakis, (Eds.), *Healing traditions: the mental health of Aboriginal peoples in Canada* (pp. 221–248). University of British Columbia Press.

Charlesworth, J. (2021). *Skye's legacy: A focus on belonging.* BC Representative for Children and Youth. https://rcybc.ca/wp-content/uploads/2021/06/RCY_Skyes-Legacy_Revised Final 21 June-2021.pdf

Christian, W. (2010). Voice of a leader: If you truly believe children are our future – the future is now! *First People's Child and Family Review, 5*(1), 10–14.

Couture, J. (2011). The role of Native Elders: Emergent issues. In R. Couture & V. McGowan (Eds.), *Visions of the heart: Canadian Aboriginal issues* (pp. 77–96). Oxford University Press Canada.

Cowessess First Nation. (2021). *Cowessess First Nation Miyo Pimatisowin Act.* https://www.cowessessfn.com/wp-content/uploads/2021/01/Cowessess-First-Nation-Miyo-Pimatisowin-Act.pdf

Dangerfield, K. (2021, July 6). Cowessess First Nation becomes 1st to control its child welfare system. Here's how it works. *Global News.* https://globalnews.ca/news/8005532/cowessess-first-nation-child-welfare-law/

de Finney, S., & di Tomasso, L. (2015). Creating places of belonging: Expanding notions of permanency with Indigenous youth in care. *First Peoples Child & Family Review*, *10*(1), 63–85. https://fpcfr.com/index.php/FPCFR/article/view/246

de Leeuw, S., & Greenwood, M. (2017). Turning a new page: Cultural safety, critical creative literary interventions, truth and reconciliation, and the crisis of child welfare. *AlterNative: An International Journal of Indigenous Peoples, 13*(3), 142–151. 10.1177/1177180117714155

Dei, G. (2000). Rethinking the role of Indigenous knowledges in the academy. *International Journal of Inclusive Education, 4*(2), 111–132. https://doi.org/10.1080/136031100284849

Eni, R. (2009). Health disparities in Canada: A focus on First Nations children. In, *Canadian supplement to the state of the world's children 2009: Aboriginal children's health: Leaving no child behind* (pp. 10–20). Canadian UNICEF Committee. https://www.unicef.ca/sites/default/files/imce_uploads/DISCOVER/OUR%20WORK/ADVOCACY/DOMESTIC/POLICY%20ADVOCACY/DOCS/Leaving%20no%20child%20behind%2009.pdf

Emery, A. (2000). *Guidelines: Integrating Indigenous knowledge in project planning and implementation.* The International Labour Organization, The World Bank, The Canadian International Development Agency, & KIVU Nature Inc. http://www.kivu.com/wp-content/uploads/2012/01/Partnership-Guidelines.pdf

Fallon, B., Lefebvre, R., Trocmé, N., Richard, K., Hélie, S., Montgomery, H. M., Bennett, M., Joh-Carnella, N., Saint-Girons, M., Filippelli, J., MacLaurin, B., Black, T., Esposito, T., King, B., Collin-Vézina, D., Dallaire, R., Levi, J., Orr, M., Petti, T, ... & Soop, S. (2021). *Denouncing the continued overrepresentation of First Nations children in Canadian child welfare: Findings from the First Nations/Canadian Incidence Study of Reported Child Abuse and Neglect-2019.* Assembly of First Nations. https://cwrp.ca/publications/denouncing-continued-overrepresentation-first-nations-children-canadian-child-welfare

First Nations Child & Family Caring Society (FNCFCS). (2019). *Touchstones of hope for Indigenous children, youth and families: Reconciliation in child welfare: A how-to Guide.* https://fncaringsociety.com/sites/default/files/how-to_guide_-_reconciliation_in_child_welfare_2019.pdf

First Nations Child & Family Caring Society (FNCFCS). (2021). *CHRT orders.* https://fncaringsociety.com/chrt-orders

Fleming, J., & Ledogar, R. J. (2008). Resilience and indigenous spirituality: A literature review. *Pimatisiwin, 6*(2), 47–64.

Forester, B. (2020, January 1). Federal Indigenous child welfare Bill C-92 kicks in – now what? *APTN National News.* https://www.aptnnews.ca/national-news/federal-indigenous-child-welfare-bill-c-92-kicks-in/

Government of Canada. (2019). *Inequalities in infant mortality in Canada.* https://www.canada.ca/en/public-health/services/publications/science-research-data/inequalities-infant-mortality-infographic.html

Government of Canada. (2021a). *Backgrounder: United Nations Declaration on the Rights of Indigenous Peoples Act.* https://www.justice.gc.ca/eng/declaration/about-apropos.html

Government of Canada. (2021b). *Reducing the number of Indigenous children in care.* https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851?wbdisable=true

Graham, K. A., & Peters, E. (2002). *Aboriginal communities and urban sustainability: Discussion paper F-27.* Canadian Policy Research Network. http://www.urbancenter.utoronto.ca/pdfs/elibrary/CPRNUrban.pdf

Greenwood, M., de Leeuw, S., & Fraser, T. (2007). Aboriginal children and early childhood development and education in Canada. *Canadian Journal of Native Education, 30*(1), 5–18.

Greenwood, M., de Leeuw, S., & Lindsay, N. (2018). Challenges in health equity for Indigenous peoples in Canada. *The Lancet, 391*(10131), 1645–1648. https://doi.org/10.1016/S0140-6736(18)30177-6

Greenwood, M., & Shawana, P. (2003). Whispered gently through time: First Nations quality childcare. *Native Social Work Journal, 4*(1), 51–83.

Hallett, D., Chandler, M. J., & Lalonde, C. E. (2007). Aboriginal language knowledge and youth suicide. *Cognitive Development, 22*(3), 392–399. https://doi.org/10.1016/j.cogdev.3007.02.001

Hatala, A. R., Morton, D., Njeze, C., Bird-Naytowhow, K., Pearl, T. (2019). Re-imagining miyo-wicehtowin: Human-nature relations, land-making, and wellness among indigenous youth in a Canadian urban context. *Social Science & Medicine, 230*, 122–130.

Healey, G., Noah, J., & Mearns, C. (2016). The eight ujarait (rocks) model: Supporting Inuit adolescent mental health with an intervention model based on Inuit knowledge and ways of knowing. *International Journal of Indigenous Health, 11*(1), 92–110.

Huu-ay-aht First Nations Government. (2021). *Social services project evaluation 2020: Safe, healthy and connected, bringing Huu-ay-aht children home.* Huu-ay-aht First Nation. https://huuayaht.org/wp-content/uploads/2021/10/Huu-ay-aht-SSP-Evaluation-Report-2021_emailable.pdf

Hwitsum, L., Baird, K., Blank, M., & Giltrow, M. (2017). *Huu-ay-aht First Nations social services project: Safe, healthy and connected, bringing Huu-ay-aht children home*. Huu-ay-aht First Nation. https://huuayaht.org/wp-content/uploads/2017/08/hfn-social-services-panel-recommendations_final.pdf

Inuit Tapiriit Kanatami (ITK). (2014). *Social determinants of Inuit health in Canada*. https://www.itk.ca/wp-content/uploads/2016/07/ITK_Social_Determinants_Report.pdf

Inuit Tapiriit Kanatami (ITK). (2016). *National Inuit suicide prevention strategy*. https://www.itk.ca/national-inuit-suicide-prevention-strategy/

Inuit Tapiriit Kanatami (ITK). (2018). *Inuit statistical profile 2018*. https://www.itk.ca/2018-inuit-statistical-profile-3/

Inuuqatigiit Centre of Inuit Children, Youth and Families (ICICYF). (2020a). *Home*. http://inuuqatigiit.ca/

Inuuqatigiit Centre for Inuit Children, Youth and Families (ICICYF). (2020b). *Inuit Well-Being: GBV Project*. http://inuuqatigiit.ca/status-of-women/project-3/

John, E. (2016). *Indigenous resilience, connectedness and re-unification – from root causes to root solutions: Final Report*. BC Ministry of Children and Family Development. http://fns.bc.ca/wp-content/uploads/2017/01/Final-Report-of-Grand-Chief-Ed-John-re-Indig-Child-Welfare-in-BC-November-2016.pdf

Johnson, H., Russell, G., Dennis, D., Musgrave, M., Wells, F., Russell Sr., H., Haldane, S., Reece, V., Sampson, W., Tait, G., Wells Sr., G., Stewart, B., Dudoward, S., Henry, B., Hayward, R., Ryan, M., de Finney, S., & Bennett, K. V. (2015). Na Gan Ts'i'stk Grandmothers' Group of Lax kw'alaams. *First Peoples Child & Family Review, 10*(1), 116–123. https://fpcfr.com/index.php/FPCFR/article/view/258

Kavanagh, J. L. (2019). *A long wait for change: Independent review of child protection services to Inuit children in Newfoundland and Labrador*. Office of the Child and Youth Advocate: Newfoundland and Labrador. https://www.childandyouthadvocate.nl.ca/files/InuitReviewExecutiveSummaryEnglish.pdf

Kavanaugh, S. (2016, Oct. 25). 'Victim of its own success': Program that reduces kids in CFS care faces cuts. *CBC News*. https://www.cbc.ca/news/canada/manitoba/nelson-house-program-kids-cfs-care-cuts-1.3821199

Kina Gbezhgomi. (2019). *Kina Gbezhgomi Child and Family Services 28th AGM Report*. https://www.kgcfs.org/wp-content/uploads/2019/09/28-AGM-RPT_Final-Version.pdf

Kina Gbezhgomi. (2021). *About KGCFS*. https://www.kgcfs.org/about-kgfs/

LaBoucane-Benson, P., Sherren, N., Yerichuk, D. (2017). Trauma, Child Development, Healing and Resilience: A review of literature with focus on Aboriginal peoples and communities. *PolicyWise for Children & Families*. Edmonton, Alberta. https://alignab.ca/wp-content/uploads/2017/11/Trauma-Child-Development-Healing-and-Resilience-A-Review-of-Literature-with-Focus-on-Indigenous-Peoples-and-Communities.pdf

Liebenberg, L., Ikeda, J., & Wood, M. (2015). "It's just part of my culture": Understanding language and land in the resilience processes of Aboriginal youth. In L. C. Theron, L. Liebenberg, & M. Ungar (Eds.), *Cross-cultural advancements in positive psychology: Vol. 11. Youth resilience and culture: Commonalities and complexities* (pp. 105–116). Springer Science + Business Media. https://doi.org/10.1007/978-94-017-9415-2_8

Lines, L., & Jardine, C. G. (2019). Connection to the land as a youth-identified social determinant of Indigenous Peoples' health. *BMC Public Health, 19(*176), 1–13. https://doi.org/10.1186/s12889-018-6383-8

Little Bear, L. (2000). Jagged worldviews colliding. In M. Battiste (Ed.), *Reclaiming Indigenous voice and vision (*pp. 77–85). UBC Press.

Little Bear, L. (2009). *Naturalizing Indigenous knowledge: Synthesis paper*. University of Saskatchewan, Aboriginal Education Research Centre & First Nations and Adult Higher Education Consortium. https://www.afn.ca/uploads/files/education/21._2009_july_ccl-alkc_leroy_littlebear_naturalizing_indigenous_knowledge-report.pdf

Makokis, L., Shirt, M., Chisan, S., Mageau, A., & Steinhauer, D. (2010). *mâmawi-nehiyaw iyinikahiwewin*. Blue Quills First Nations College. http://www.bluequills.ca/wp-content/uploads/2017/03/BQ_SSHRC_2010_final_report.pdf

Maracle, S., Smolewski, M., Hayward, C., Kretschmer, L., Anderson, K., & Matta, C. (2014). *Akwe:go wholistic longitudinal study (AWLS): Phase I baseline report*. Ontario Federation of Indigenous Friendship Centres. https://4aplj539nvh042etqt14p3kr-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/AkweGo-Wholistic-Longitudinal-Study-Phase-1-2014.pdf

Mashford-Pringle, A. (2012). Early learning for Aboriginal children: Past, present and future and an exploration of the Aboriginal Head Start Urban and Northern Communities Program in Ontario. *First Peoples Child & Family Review, 7*(1), 127–140. https://fpcfr.com/index.php/FPCFR/article/view/123

Matarieh, Y. (2020). *Weighing Indigeneity: Culture and the Indigenous child's best interests under bill C-92*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3768775&download=yes

McCormick, R. (2009). Aboriginal approaches to counseling. In L. J. Kirmayer & G. G. Valaskakis (Eds.), *Healing traditions: The mental health of Aboriginal peoples in Canada* (pp. 337–354). UBC press.

McIvor, O., Napoleon, A., & Dickie, K. (2009). Language and culture as protective factors for at-risk communities. *Journal of Aboriginal Health, 5*(1), 6–25. http://www.ecdip.org/docs/pdf/McIvor_Napoleon%202009.pdf

Mearns, C., & Healey, G. (2015). *Makimautiksat Youth Camp: Program Evaluation 2010-2015.* Qaujigairtiit Health Research Centre. https://www.qhrc.ca/wp-content/uploads/2019/09/makimautiksat_evaluation_2010-2015_-_feb_2015.pdf

Metallic, N. W. (2018). A human right to self-government over First Nations child and family services and beyond: Implications of the Caring Society case. *Journal of Law and Social Policy, 28*, 4–41.

Michell, H., Vizina, Y., Augustus, C., & Sawyer, J. (2008). *Learning Indigenous science from place: Research study examining Indigenous-based science perspectives in Saskatchewan First nations and Métis community contexts.* Aboriginal Education Research Centre. https://aerc.usask.ca/downloads/Learning-Indigenous-Science-From-Place.pdf

Native Child and Family Services of Toronto (NCFST). (2020). *Annual report 2019-2020.* https://nativechild.org/2019-2020-annual-report/

Native Child and Family Services of Toronto (NCFST). (n.d.) *About us.* https://nativechild.org/about-us/

Navia, D., Henderson, R. I., & Charger, L. F. (2018). Uncovering colonial legacies: Voices of Indigenous youth on child welfare (dis)placements. *Anthropology and Education Quarterly, 49*(2), 146–164. 10.1111/aeq.12245

Neale, K. (2016). *"It's something that runs through your blood": urban indigenous identity-making and the Victoria Native Friendship Centre* [master's thesis, University of Victoria]. https://dspace.library.uvic.ca/handle/1828/7499

Nisichawayasihk Cree Nation Family and Community Wellness Centre (NCNFCWC). (n.d.a). *A holistic approach to community wellness.* https://www.ncnwellness.ca

Nisichawayasihk Cree Nation Family and Community Wellness Centre (NCNFCWC). (n.d.b). *Child and family services.* https://www.ncnwellness.ca/programs-services/child-and-family-services/

Nisichawayasihk Cree Nation Family and Community Wellness Centre (NCNFCWC). (n.d.c). *Intervention and removal of parent program: A community approach to reducing the trauma of child apprehension.* https://www.ncnwellness.ca/wp-content/uploads/Removalofparent_brochure.pdf

Njeze, C., Bird-Naytowhow, K., Pearl, T., & Hatala, A. R. (2020). Intersectionality of resilience: A strengths-based case study approach with Indigenous youth in an urban Canadian context. *Qualitative Health Research*, *30*(13), 2001–2018. https://doi.org/10.1177/1049732320940702

Olijnyk, Z. (2021, July 29). Reality of residential schools was always there for us to see: Cindy Blackstock. *Canadian Lawyer*. https://www.canadianlawyermag.com/practice-areas/indigenous/reality-of-residential-schools-was-always-there-for-us-to-see-cindy-blackstock/358528

Ontario Federation of Indigenous Friendship Centers (OFIFC). (n.d.). *Akwe:go*. https://ofifc.org/program/akwego/

Ontario Federation of Indigenous Friendship Centres (OFIFC). (2020). *Akwe:go wholistic longitudinal study (AWLS): Phase II*. Ontario Federation of Indigenous Friendship Centres. https://4aplj539nvh042etqt14p3kr-wpengine.netdna-ssl.com/wp-content/uploads/2020/03/AkweGo-Wholistic-Longitudinal-Study-Phase-II-2018.pdf

Pearce, M. E., Jongbloed, K. A., Richardson, C. G., Henderson, E. W., Pooyak, S. D., Oviedo-Joekes, E., Christian, W. M., Schechter, M. T., & Spittal, P. M. (2015). The Cedar Project: Resilience in the face of HIV vulnerability within a cohort study involving young Indigenous people who use drugs in three Canadian cities. *BMC Public Health, 15*(1), 1095. https://doi.org/10.1186/s12889-015-2417-7

Peltier, S. (2009). *First Nations English dialects in young children: Assessment issues and supportive interventions*. Canadian Language and Literacy Research Network. https://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=FE7E87F2973EF826E367061435A1EECB?doi=10.1.1.625.7946&rep=rep1&type=pdf

Preston, J. P., Cottrell, M., Pelletier, T. R., & Pearce, J. V. (2012). Aboriginal early childhood in Canada: Issues of context. *Journal of Early Childhood Research, 10*(1), 3–18.

Public Health Agency of Canada. (2017). *Evaluation of the Aboriginal Head Start in Urban and Northern Communities program: 2011–2012 to 2015–2016*. Office of Audit and Evaluation, Health Canada, & Public Health Agency of Canada. https://www.canada.ca/en/public-health/corporate/transparency/corporate-management-reporting/evaluation/2011-2012-2015-2016-aboriginal-head-start-urban-and-northern-communities-program.html

Quinn, A. (2020). Nurturing identity among Indigenous youth in care. *Child & Youth Services, 41*(1), 83–104. https://doi.org/10.1080/0145935X.2019.1656063

Reading, C., & Wien, F. (2009). *Health inequalities and social determinants of Aboriginal People's health*. National Collaborating Centre for Aboriginal Health. https://www.nccih.ca/docs/determinants/RPT-HealthInequalities-Reading-Wien-EN.pdf

Richardson, C. (2012). Witnessing life transitions with ritual and ceremony in family therapy: Three examples from a Métis therapist. *Journal of Systemic Therapies, 31*(3), 68–78.

Richmond, C., Ross, N., & Bernier, J. (2007). Exploring Indigenous concepts of health: The dimensions of Métis and Inuit Health. *Aboriginal Policy Research Consortium International, 4,* 3–16. https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1329&context=aprci

Rinehart, N. M. (2000). Native American perspectives: Connected to one another and to the greater universe. In L. Diaz Soto (Ed.), *The politics of early childhood education* (pp. 135–142). Peter Lang.

Ritchie, S. D., Wabano, M. J., Corbiere, R. G., Restoule, B. M., Russell, K. C., & Young, N. L. (2015). Connecting to the good life through outdoor adventure leadership experiences designed for indigenous youth. *Journal of Adventure Education and Outdoor Learning, 15*(4), 350–370.

Royal Commission on Aboriginal Peoples (RCAP). (1996a). *Highlights from the report of the Royal Commission on Aboriginal Peoples.* Government of Canada. https://www.rcaanc-cirnac.gc.ca/eng/1100100014597/1572547985018

Royal Commission on Aboriginal Peoples (RCAP). (1996b). *Volume 3: Gathering strength.* Government of Canada. http://data2.archives.ca/e/e448/e011188230-03.pdf

Royal Commission on Aboriginal Peoples (RCAP). (1996c). *Volume 4: Perspectives and realities.* Government of Canada. https://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/royal-commission-aboriginal-peoples/Pages/final-report.aspx

Sable, S., Francis, B., & Lewis, R. (2012). *The language of this land, Mi'kma'ki.* Cape Breton University Press.

Scott, K. (2013). *Strengthening urban Aboriginal families: Exploring promising practices.* National Collaborating Centre for Aboriginal Health. https://www.nccih.ca/495/Strengthening_Urban_Aboriginal_Families___Exploring_promising_practices.nccah?id=87

Simpson, L. B. (2008). Our elder brothers: The lifeblood of resurgence. In L. B. Simpson (Ed.), *Lighting the eighth fire: The liberation, resurgence, and protection of Indigenous nations* (pp. 73–87). Arbeiter Ring Publishing.

Simpson, L. B. (2014). Land as pedagogy: Nishnaabeg intelligence and rebellious transformation. *Decolonization: Indigeneity, Education & Society, 3*(3), 1–25.

Sinha, V., Caldwell, J., Paul, L., & Fumaneri, P. R. (2021). A review of literature on the involvement of children from Indigenous communities in Anglo child welfare systems: 1973-2018. *The International Indigenous Policy Journal, 12*(1), 1–43. https://www.erudit.org/en/journals/iipj/2021-v12-n1-iipj05870/1076961ar/

Sinha, V., Trocmé, N., Fallon, B., MacLaurin, B., Fast, E., Prokop, S. T., & Richard, K. (2011). *Kiskisik awasisak: Remember the children. Understanding the overrepresentation of First Nations children in the child welfare system*. Assembly of First Nations. https://cwrp.ca/sites/default/files/publications/en/FNCIS-2008_March2012_RevisedFinal.pdf

Sinha, V., Trocmé, N., Fallon, B., & MacLaurin, B. (2013). Understanding the investigation-stage overrepresentation of First Nations children in the child welfare system: An analysis of the First Nations component of the Canadian Incidence Study of Reported Child Abuse and Neglect 2008. *Child Abuse & Neglect, 37*(10), 821-831. https://doi.org/10.1016/j.chiabu.2012.11.010

Schnarch, B. (2004). Ownership, control, access, and possession (OCAP) or self-determination applied to research: A critical analysis of contemporary First Nations research and some options for First Nations communities. *International Journal of Indigenous Health, 1*(1), 80–95.

Splatsin. (2020). *Splatsin Stsmamlt Services*. https://www.splatsin.ca/departments/splatsin-stsmamlt-services

Statistics Canada. (2018). *First Nations people, Métis and Inuit in Canada: Diverse and growing populations*. https://www150.statcan.gc.ca/n1/pub/89-659-x/89-659-x2018001-eng.htm

Task Force on Aboriginal Languages and Cultures. (2005). *Towards a new beginning: A foundational report for a strategy to revitalize First Nation, Inuit, and Métis languages and cultures*. Department of Canadian Heritage, Aboriginal Affairs Branch. https://www.afn.ca/uploads/files/education2/towardanewbeginning.pdf

Trerise, V. (2011). *Aboriginal children and the dishonour of the Crown: Human rights, "best interests," and customary adoption* [Master's Thesis, University of British Columbia]. https://circle.ubc.ca/handle/2429/36291

Trocmé, N. M., Tourigny, M., MacLaurin, B., & Fallon, B. (2003). Major findings from the Canadian incidence study of reported child abuse and neglect. *Child Abuse & Neglect, 27*(12), 1427–1439. https://doi.org/10.1016/j.chiabu.2003.07.003

Truth and Reconciliation Commission of Canada. (2015a). *Honouring the truth, reconciling for the future: Summary of the final report of the Truth and Reconciliation Commission of Canada*. https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive_Summary_English_Web.pdf

Truth and Reconciliation Commission of Canada. (2015b). *Truth and Reconciliation Commission of Canada: Calls to action*. https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Calls_to_Action_English2.pdf

Turpel-Lafond, M. E. (2013). *Much more than paperwork: Proper planning essential to better lives for B.C.'s children in care: A representative's audit on plans of care.* British Columbia Representative for Children and Youth. https://rcybc.ca/wp-content/uploads/2019/05/much_more_than.pdf

Ullrich, J. S. (2019). For the love of our children: An Indigenous connectedness framework. *AlterNative: An International Journal of Indigenous Peoples*, *15*, 121–130.

Valverde, M. (2003). *Law's dream of a common knowledge.* Oxford University Press.

Walkem, A. (2015). *Wrapping our ways around them: Aboriginal communities and the child, family and community service act (CFCSA) guidebook.* ShchEma-mee.tkt Project. https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Documents_deposes_a_la_Commission/P-282.pdf

Wesley-Esquimaux, C., & Caillou, B. (2010). *Best practices in Aboriginal community development: A literature review and wise practices approach.* The Banff Center. http://communities4families.ca/wp-content/uploads/2014/08/Aboriginal-Community-Development.pdf

Wilyman, K. (2020, June 22). *A nation of hollow words: An Act Respecting First Nations, Inuit and Métis Children, Youth and Families.* Law Society of Saskatchewan. https://www.lawsociety.sk.ca/uncategorized/a-nation-of-hollow-words-an-act-respecting-first-nations-inuit-and-metis-children-youth-and-families/

Aboriginal Kinship Carers and Children with Fetal Alcohol Spectrum Disorder in Western Australia: Advancing Knowledge from an Indigenous and Disability Lens

Robyn Williams[a] and Dorothy E. Badry[b]

a Curtin University
b University of Calgary

Corresponding authors: Robyn Williams, Robyn.Williams@curtin.edu.au;
Dorothy E. Badry, badry@ucalgary.ca

Abstract

Children and youth with fetal alcohol spectrum disorder (FASD) have limited access to assessment, diagnostic, and treatment resources – a distinct disadvantage in meeting their care needs in Australia. Limited knowledge exists on the intersection of FASD, Indigeneity, racism, trauma, and child welfare involvement. Notably, the lack of support for children with FASD increases the risk of adverse outcomes, including incarceration, homelessness, mental health problems, and early mortality. Children with FASD are often cared for in the child protection system by kinship carers, many without a diagnosis or the benefits of FASD informed care. Rarely considered is the Australian response to FASD or the Aboriginal worldview on disability. Qualitative research was utilized to conduct semi-structured interviews with six carers of Indigenous children with FASD–three foster carers and three relative or kinship carers. Seven core themes identified by carers included: FASD awareness, caregiver health, advocacy for the child, mothers of the children with FASD, loss and grief experienced by the carer, social costs, and children in child protection care. Carers identified that limited resources existed to address the disabilities and care needs of children, including training and respite. Financial disparity exists with relative carers receiving less income than foster carers. Carers demonstrated advocacy, resiliency, and resourcefulness in providing care. A lack of knowledge of FASD and core resources in child welfare services were identified as major challenges in providing care. This research examined the caregiving experiences of foster and Aboriginal kinship carers, caring for children with FASD in child protection.

Keywords: *FASD, child welfare, Australia, foster care, Indigenous, Aboriginal, kinship care, colonization, disability*

Introduction

Indigenous people experience rates of disabilities at 2.7 times higher than non-Indigenous Australians and are more likely to experience higher rates of informal caring due to family and cultural obligations (Fitts & Soldatic, 2020). This is an important premise to explore the challenges of fetal alcohol spectrum disorder (FASD) within the Aboriginal and Torres Strait Islander community in Australia. This research provides a contextual framework for the Australian Indigenous experience of FASD and the positioning of Aboriginal kinship carers (also known as relative carers) raising children with FASD in Western Australia, who are the focus of this research. There is limited research on Aboriginal kinship carers in Australia, and their systemic challenges in raising children with neurodevelopmental conditions such as FASD (McRae et al., 2019; Williams & Badry, 2020). The history of colonization and the removal of children through the Stolen Generations has deeply contributed to the disparities experienced by Aboriginal and Torres Strait Islander children and their families. Similar parallels exist between Canada and the Residential Schools, and Australia and the Stolen Generations–historically both governments engaged in the systematic removal of Indigenous children from their families. In contemporary times, the removal of Indigenous children from their families continues and as noted by Blackstock (2007), has morphed into the child protection system. The Australian response to FASD in contrast to Canada is still relatively new, and notably limited resources and infrastructure exist to respond to the needs of children and families engaged with the child welfare system (Reid, 2018).

The lead author presents this research from an insider perspective as a Noongar woman from Western Australia, with a lived family experience of the Stolen Generations on the maternal side of the family, and the experience of supporting family members with FASD (Williams, 2018). The Noongar nation consist of 14 clans and the country of the Noongar people includes the city of Perth and the South West region in Western Australia. Noongar nation includes approximately 30,000 members and is the biggest Aboriginal nation in Australia (Scrine et al., 2020). Despite the onslaught of colonization, Aboriginal culture and Aboriginal families have survived and play a fundamental role in continuing to protect, nurture, and support vulnerable family members with diagnosed and undiagnosed disabilities in the family, albeit, with none to limited access to relevant services (Luke et al., 2022). The findings of this study reflect research completed on FASD in an urban setting in Western Australia.

The catalyst for this study was a community request made to the lead researcher by an Aboriginal family and Aunty who agreed to take on the care of her two nephews, both with undiagnosed and unrecognized FASD. The family requested this research be undertaken to explore the experience of caring for children with prenatal alcohol exposure. This request by one Aunty marked the beginning point of our journey into FASD in Western Australia in Noongar country. The core question driving this research was: *What are the experiences of caregivers of Aboriginal children with FASD in Western Australia?* Fetal alcohol spectrum disorder (FASD) refers to a range of disabling

conditions that affect individuals over their lifespan as a result of prenatal alcohol exposure. FASD is the leading cause of developmental disability in Canada and is a lifelong neurodevelopmental disability which includes a range of cognitive and developmental disabilities, behavioural challenges, learning problems, and the risk of being placed in child protective services care (Canada FASD Research Network, n.d.; Flannigan et al., 2022). According to the Foundation for Alcohol Research & Education, FASD is a leading cause of non-genetic disabilities in Australia (FARE, 2022). The focus of this research is on the experiences of Aboriginal kinship carers and foster carers looking after Aboriginal children with FASD in Western Australia in child welfare care. In particular, this paper will discuss some of the systemic disparities impacting on Aboriginal kinship carers. As authors we assert that FASD is certainly not only an Indigenous issue, but an issue across all populations. It is important to note that FASD is a complex issue, and it is the voice of participants in this research who raised concerns about inequities in the care and support of Aboriginal children with this disability involved in the child welfare system. The experience of an ongoing lack of resources and appropriate services including FASD-informed care are deeply related to colonization.

The term Aboriginal is commonly used to refer to Indigenous people in Australia, but at times the terms Aboriginal and Indigenous are used interchangeably in this paper and respectfully includes Torres Strait Islander children.

Australian Context

It is important to situate this research in the broader context of the experiences of individuals with FASD in relation to key systems including child welfare and justice. The Coroner's Court of Western Australia conducted an inquest to review the deaths of 13 Aboriginal youth suicide victims in the Kimberly Region from 2012-2015 (Fogliani, 2019). It was noted that while none of the young people had a diagnosis of FASD, it was considered to be a serious concern given "almost all the children and young persons grew up in homes marred by the effects of high levels of alcohol abuse" (p. 9). Further, FASD was identified on 42 pages of the report, primarily by key expert witnesses. In fact, the first recommendation in the report calls for universal screening for FASD "during infant health assessments and upon entering into the child protection system or justice system for the first time" (p. 268) and the first six of 42 recommendations focus on FASD due to the identified significance of alcohol harms. The Banksia Hill Detention Centre study of 99 incarcerated youth in Western Australia identified a prevalence rate of 36% who had FASD, of which 47% or 34 youth were Aboriginal, identifying "the highest reported prevalence of FASD in a youth justice setting worldwide" (Bower et al., p. 7). Fitts and Soldatic (2020) report that Indigenous populations have higher rates of disability in comparison to the general population in settler colonial countries including Canada, New Zealand, Australia and the United States and that Australian Indigenous populations report the highest rates of disabilities amongst these countries (United Nations Department of Economic and Social Affairs, 2015).

Aboriginal Worldview of Disability

Whilst there is limited literature on Indigenous experiences of disability, the key threads emerging include connections to colonization, racism, contrasting worldviews on disability, and the low engagement in services (Eades, 2018; Ferdinand, et al, 2021; Ravindran et al., 2016). Colonization has contributed to increased rates of disability amongst Aboriginal people (Collings et al., 2018). Prior to colonization, Australian Indigenous people, similar to Indigenous peoples in the United States, had no word in their language for the term disability (Lovern & Locust, 2013; Ferdinand et al., 2021). The Indigenous worldview of disability is about acceptance of diversity and embracing the whole person, recognizing the strengths that difference brings to the community (Ravindran et al., 2016; Lovern & Locust, 2013). Western disability definitions are typically based on the medical model of disability that is generally void of understanding relevant factors including culture, history, power relationships, and socioeconomic status (Ariotti, 1999). FASD is a critical topic that requires a more nuanced and broader conversation in the interest of decolonizing FASD as a disability. There is disparity in access to support services experienced by all Indigenous populations across the lifespan (DiGiacomo, 2017) and low engagement of Aboriginal people with disability services is reflective of the lack of culturally safe supports and services (Ferdinand et al., 2021; Green et al., 2018; Ravindran et al., 2016;). Ferdinand et al. (2021) also note that disability prevalence tends to be higher for Indigenous people in Australia, Canada, and New Zealand, and recognizes the Indigenous worldview, which is vastly different from a western paradigm, is often not incorporated into service delivery. The experiences of Indigenous people with disabilities have been largely neglected by disability studies (King et al., 2014), emphasizing the urgency in decolonizing disability.

Aboriginal Kinship Carers

To date there has been limited research on Aboriginal kinship care in Australia (Kiraly et al., 2014; Kiraly & Humphreys, 2013). Qu et al. (2016) report that major differences exist in socio-demographic characteristics of foster and relative/kinship carers. It is noted that approximately one fifth of relative/kinship carers were 65 years or older, more likely to be Aboriginal or Torres Strait Islander, and often were grandparents. Other characteristics noted were that relative/kinships carers faced financial hardships and 28% reported as having low household income (less than $30,000). Most relative/kinship carers were asked to care for children by child welfare and reported receiving limited information about the child prior to placement. Foster carers tended to access support services for children at a much higher rate than relative/kinship cares (70% vs. 40%), and kinship carers had lower rates of access to respite care, disability support, transport and after-hours emergency/crisis services and less contact with the support worker on a regular basis (Qu et al., 2018). Green et al. (2018) report in qualitative research with 19 relative carers of Aboriginal children with disabilities that carers experience lower socioeconomic status, face discrimination, and are mostly female.

The Victoria Auditor General's Office (VAGO) released an audit on Kinship Care in June 2022 that highlights systemic failures in the child protection system in supporting kinship or relative carers.

It was found that 96% of Aboriginal kinship carers in comparison to foster carers had received the lowest level of care allowance whilst raising Aboriginal children (p. 35). Notably, most kinship carers were great-grandmothers and grandmothers whose average age was 54 years (VAGO, 2022). The key role of the auditor general is to act as independent office of the Victorian, Australian parliament and conducts both financial and performance audits to review compliance with public legislation. In this case VAGO audited compliance in the Kinship Care system (VAGO, n.d.) The gap widens and the disparities are amplified when Indigenous children who are already over-represented in child protection do not receive services to effectively support their disability and financial supports for their families. The lack of recognition of FASD for children in care contributes to the stacking on of disparities for Aboriginal children. Examples provided by participants in this research included a lack of support, funding, and disability-informed care (Williams, 2018).

The Importance of Connection to Culture for Aboriginal Children

In Australia, the Aboriginal kinship system is based on an extended family structure and is one of the fundamental strengths of Aboriginal culture that includes the cultural obligations of caring for family members (Williams & Badry, 2020). As such, Indigenous children will likely have attachment bonds with more than one adult (Krakouer et al., 2018; Secretariat of National Aboriginal and Islander Child Care [SNAICC], 2011). The extended family structure includes aunties, uncles, grandparents, as well as older brothers, sisters, and cousins who collectively contribute to the raising of Aboriginal children (Dudgeon et al., 2017). A recent qualitative study in Noongar country involving over 51 Elders described the multiple strengths of the extended family structure and the principle of having additional family members to provide guidance and support during childhood (Scrine et al., 2020). Connection to culture, kinship, identity, and land is the basis for positive emotional and social well-being for Aboriginal children (Dudgeon et al., 2017). The mental and physical health of Indigenous people is enhanced when they maintain connections to culture (Dockery, 2010). Krakouer et al. (2018) assert that whilst placement stability is important for Aboriginal children, equally is the connection to culture. A large longitudinal study of over 1,687 Indigenous children and families found connection to healthy and successful development of Aboriginal children must be grounded in their own culture (Colquhoun & Dockery, 2012). They noted that knowledge of kinship relationships, family stories, and protocols are identified as important rites of passage for the transition into adulthood for Aboriginal adolescents.

Despite attempted cultural genocide, the kinship structure adapted during the decades of the Stolen Generations and Aboriginal children who were not blood related were "adopted" into the kinship system (Williams, 2018; Maushart, 1993). Maushart (1993) describes in her interviews with survivors of the infamous Moore River Settlement the rich stories of survival and cultural adaptation; including culture going underground to survive and the adoption of non-blood Aboriginal children. In a similar fashion, through oral storytelling, the lead author William's own mother, who was removed as a child in the 1950s and placed in the Carnarvon Mission, would fondly recall her bonds

and relationships with her childhood mission brothers and sisters that would last her lifetime (M. Williams, personal communication, March 2017). The past decade has also seen the emerging evidence of culture as intervention and is an important contribution to psychosocial interventions for Aboriginal children and adults (Gatwiri et al., 2021; Scrine et al., 2020; Williams & Badry, 2020).

Intersection of FASD and Systematic Racism for Indigenous Kinship Carers and Families

The intersection of FASD, Indigeneity, racism, trauma, and child welfare is rarely considered despite the over representation of Indigenous children in child protection (Lewis et al, 2019; Tilbury, 2009) and justice settings (Bower et al. 2018; Williams & Badry, 2020). Indigenous Australians experience higher rates of remand in prisons in comparison to non-Indigenous people and it is well documented that the criminal justice system is not therapeutic for people with disabilities (Baldry, 2018; Hollinsworth, 2013; Kairuz et al., 2021). In the past decade, Australian research has identified the often-tragic consequences of criminalization of people with mental and cognitive disabilities who are overrepresented in the incarceration system (Sotiri, McGee & Baldry 2012). Gatwiri et al., (2021) assert the over representation of Aboriginal children in care is not accidental and is the result of ongoing historical and contemporary structural inequities. The lack of political will in Australia to change this trajectory has contributed to ongoing structural inequalities impacting on the Aboriginal community (Gatwiri et al., 2021). In a similar fashion, de Finney et al. (2011) argue that the "problematizing" of minority groups is required to understand the over representation of Aboriginal children.

Aboriginal people with FASD face unparalleled levels of stigma, poverty, discrimination and racism (Hollinsworth, 2013). The linkage between colonization and the disproportionate access to disability services has been reported by Hollinsworth (2013). Luke et al. (2022) identify that Indigenous people receive less access to services than non-Indigenous populations. Notably, there is lower engagement in mainstream services by Aboriginal women, and Aboriginal people with disabilities avoid mainstream services due to feeling judged and reported racist treatment (Eades et al., 2020). King et al. (2014) state: "The interplay between Indigeneity, disability, and colonisation [sic] is complex and multifaceted and is constantly evolving" (p. 748). The intersection of racism, poverty, and intergenerational trauma adds complexity to the experience of Aboriginal people with FASD in Australia (Hollinsworth, 2013; Luke et al., 2022; Williams & Badry, 2020). Under the legacy of mistrust and the fear of child apprehension, many Aboriginal women often attend prenatal services late in pregnancy and are likely placing at risk their health and the health of their unborn child (Gibberd et al., 2019; Simpson et al., 2020). While countries such as Canada and the USA have recognized the importance of long-term mother mentoring relationships to address complex trauma and maternal health concerns related to substance use disorders, similar initiatives do not exist in Australia (Reid, 2018).

Child Protection

Australia has a dark history in the treatment of Aboriginal children and families, resulting in the crisis of over-representation of Aboriginal children in care (Krakouer et al., 2018). Child protection legislation is the responsibility of each state and territory in Australia (Krakouer et al., 2018). The 1950s saw the commencement of Aboriginal children being placed with non-Aboriginal families (Choo, 2016; Haebich, 2000) It is only from the 1970s that Aboriginal family placements were even considered for Aboriginal children in care. Another recent development was the implementation of the Aboriginal child placement principle to support placement within the extended family and connection to their cultural identity (Krakouer et al., 2018). However, there is little monitoring and compliance of this principle in most jurisdictions, except for Queensland (McDowall, 2016). The lack of compliance by child protection is disturbingly high, with the rate of Aboriginal children not being placed within kinship placements as high as 65% in the Northern Territory (McDowall, 2016).

Western Australia has the highest rates of Aboriginal children in out of home care, a figure that has tripled in the past decade contributing to chronic under detection and under estimation of the number of Aboriginal children with disabilities in care (Davis, 2019). Another crucial gap in child protection in Australia for all children with FASD is the lack of FASD-informed case management for children and families in relation to best practice and interventions. Running parallel is the under resourcing of intensive family interventions and support for Aboriginal children with undiagnosed disabilities. In a recent study of 103 Aboriginal children in care in Victoria, 46% of children were identified with developmental delay, including 36% with speech delay (Shmerling et al., 2020). The study further highlighted the need for the Aboriginal Community Controlled Organizations to be adequately resourced to provide services for Aboriginal children and families. Burd (2016) indicates that the risk of mortality in FASD is higher for children with FASD, their siblings, and a marker for increased risk of death to the mother.

Barriers to early intervention support includes lack of adequate resourcing and lack of service availability, particularly Aboriginal designed and led services. Gatwiri et al. (2021) assert that the under resourcing for Aboriginal families is intentional. Western Australia lags behind all other states in Australia and has provided the lowest allocation towards intensive family support services (Lewis et al., 2019). "In 2017-18 only 17% of overall child protection funding was invested in support services for children and their families, while 83% was invested in child protection services" (Family Matters, 2019, p. 3). In Western Australia, the Family Matters Report (Hunter et al. 2020) warns that without culturally secure intervention programmes and intensive case management support led by Aboriginal agencies, the rates of Aboriginal children in care are likely to double by 2029. Aboriginal Community Controlled Organization agencies are best placed to work with Aboriginal families at risk (Shmerling et al., 2020). Led by the Aboriginal Community Controlled Organizations sector, Aboriginal communities continue to show leadership in the protection of our children and the response to FASD, as demonstrated by our Aboriginal elders, including Dr. Lorian Hayes and the late Dr. Jan Hammill; Fitzroy Crossing Community and the Derbarl Yerrigan Health Service in Western Australia (Williams, 2018).

Rationale for the Research

This research was driven by concerns of the Aboriginal community in Western Australia regarding the needs of children living with prenatal alcohol exposure. This research was one facet of a mixed methods study in Western Australia that included 180 Aboriginal participants who completed detailed surveys that explored awareness, knowledge, and critical issues about FASD (Williams, 2018). In the qualitative aspect of this research, interviews were conducted and took place in an urban setting with six families providing care to children with FASD, whose narratives are the focus of this paper. Children removed from parental care are generally placed in either foster care or often in relative care situations, which is particularly true for Aboriginal children (Libesman, 2014). All children in this study were in the care of the child protection system, and the majority came into care as infants.

Methods

Interviews were conducted with six participants who were recruited through purposeful and snowball sampling. This research was underpinned by Indigenous methodology and cultural protocols were observed for conducting research with Aboriginal families in Australia. Qualitative interviews were analyzed using NVivo computer software and themes were generated using thematic analysis (Braun & Clarke, 2006; 2020). This study purposefully selected three foster carers and three relative carers, to explore any differences between the groups. It is the narratives of the six families who participated in this research that have contributed to a deeper understanding of the care and support needs of children and youth with FASD in Western Australia. Interviews were conducted using semi-structured questions and yarning. Yarning is recognized as a culturally appropriate and safe research method in working with Aboriginal families (Bessarab & Ng'andu, 2010).

This research was one facet of a mixed methods study in Western Australia that included 180 Aboriginal participants who completed a survey with the interviewer. This is considered to be the largest consultation with Aboriginal people on FASD (Williams, 2018). In adhering to Indigenous methodology, protocols in Noongar country included getting permission from a respected Aboriginal elder at each site prior to commencing research. The researcher was also guided by local Aboriginal community members to ensure cultural safety for participants in the research process (Williams, 2018). This research was also conducted in partnership with Derbarl Yerrigan Health Service (DYHS), a leading Aboriginal health service, located in Perth, Western Australia. As part of reciprocity, FASD training was provided at each of the sites of DYHS; attended by both clinical and allied health staff. Key principles underpinning this research included Indigenous methodology, a commitment to community-based research, the adherence to Indigenous protocols, and honouring the principle of reciprocity (Wilson, 2001; 2008).

Introducing the Participants

The participants included families located in Western Australia, primarily in Perth and a rural town in the South West region. Three of the families were Aboriginal relative carers and three were foster carers (non-Aboriginal) for the Department of Child Protection. In total, the families cared for nine Aboriginal children, eight males and one female child. Three of the families were raising siblings with FASD. None of the nine children were raised by their biological parents with seven of the children apprehended from their parent at birth and placed in both foster and relative care. Two of the children had serious health problems including heart conditions and severe cognitive impairments impacting the behaviours of the children and requiring intensive support by the caregivers. All carers were of a mature age and had extensive experience in raising children. However, for all families this was their first experience in raising children with FASD. All carers raised their children without the benefit of FASD-informed services, interventions, or support.

Aboriginal Kinship Carers in This Study

All kinship carers were related to the children they were raising, including aunties, uncles and grandparents. Two of the kinship carers were asked to take on the care of their children as infants. Two kinship carers were single parents and the last was a two-parent home. All kinship carers were either themselves part of the Stolen Generations or was a direct descendant of the Stolen Generations. Two of the kinship carers homes had at least one member of the household who had serious pre-existing chronic health conditions. All homes were impacted by early mortality of key family members, further limiting their support within extended family structures. Kinship carers advised their chronic health conditions escalated during the years of caring for their children; caring in one placement ended abruptly due to the deteriorating health of both carers. Indigenous people from colonized countries experience worse health outcomes and shorter life expectancy than the non-Indigenous population (Harfield et al., 2015).

Aboriginal kinship carers experienced further loss and grief with the early deaths of key family members, highlighting the poor social health determinants impacting on Aboriginal families. The impact of FASD on the health of caregivers is identified as a key concern in this research. One of the Aboriginal grandfathers who had raised two grandsons from birth with FASD, passed away in his early 50s, leaving his wife and family to raise two young brothers. In another family, two closely related uncles to another child passed away at a similar age. The early deaths of close family members coincided with their children entering early adolescence and had a traumatic impact on the children and their families. Generationally, cultural obligations and protocols exist within Aboriginal families who often extend the natural level of caring to grandchildren and children within their extended family, and increasingly on a full-time basis. Hamill (2001) aptly identified this phenomenon within the Aboriginal community as "Granny Burnout".

Findings

Interviews were conducted with six families and using thematic analysis (Braun & Clarke, 2006), several core themes were identified that are reported in this paper. Interviews were analyzed using NVivo qualitative software and codes generated. The core themes identified included FASD awareness, caregiver health, advocacy for the child, mothers of the child, loss and grief experienced by the caregiver and the social costs of FASD . Pseudonyms are used in the reporting of the results. It was noted that there was considerable burden on Aboriginal kinship carers who faced many challenges raising children with disabilities that were often undiagnosed.

Themes

FASD Awareness

It was recognized by carers that trying to access services in relation to assessment and diagnosis and trying to find support was a major challenge. In the voice of one carer trying to find a path to getting a diagnosis it was stated:

> They didn't even know it was called FASD at the time... they realized that there was some problem with the child's development inside the womb because she was consuming alcohol... The wait time, we got a referral sent off, to the only pediatrician in Perth, which was a year and a half wait time. It was very much [about] us opening up Pandora's box, people weren't prepared to talk about it, they weren't prepared to name it up. (Kinship carer)

Caregiver Health

Caring for the children had a profound impact on the health of carers, including neglecting their own health. Early mortality of key family members also had a devastating impact on two of the relative carer families. In the voice of one carer:

> I had them for four and a half years, so they left halfway through 2011. I got sick, seriously and honestly, you have to put this in, that I got burnt out, the impact on my family and my health, everything else. I hit brick walls everywhere; nobody wanted to talk to me, no doctors, and no services no anybody. (Kinship carer)

> I think my raising Gary, my health is really my stress, because I just keep on going, I don't have time to go to the doctors, but I think it's just my own mental wellbeing with Gary, it's just stress. (Kinship carer)

Advocacy for the Child

All carers shared the importance of the need for constant advocacy their child, as this was often the only way to gain access to support and interventions for their child. Carers stated:

> I would be saying jump up and down as loud as you can for the child. (Foster carer)

> Get onto every single service that you can, that's Aboriginal and non-Aboriginal, especially the ones that claim to help people with disabilities, because this is a real disability, no matter what anybody says, no matter what box you try and put it into. (Foster carer)

Mothers of the Children with FASD

Carers expressed empathy and concern for the biological mothers and shared that the lives of these mothers had been marked by violence, homelessness, alcoholism, and undiagnosed mental health conditions; several mothers were suspected to have undiagnosed FASD. The birth mothers included both Aboriginal and non-Aboriginal women. The Aboriginal women had been removed as part of the Stolen Generations. Carers stated:

> Because his mum had FASD as well, we told him when his mum used to come over to our house, she'd only have two or three cans and she'd be charged up. That's why we say to him don't drink more than two cans, you don't even need to drink, but he does because everybody else is. (Kinship carer)

> She had three of them. There was Gary, John, and Rose… Aunty Joan got John, and little Rose who has got fetal alcohol and she's in care as well. We used to beg her not to drink when she was pregnant, but she didn't understand what we were saying. (Kinship carer)

> Mum is really not well at the moment as she is doing herself damage with drugs and alcohol. Mum is supposed to take medication, and sometimes she goes off, she is really not good. (Foster carer)

Loss and Grief Experienced by the Caregiver

The carers shared feelings of loss and grief in relation to the daily adversity confronting the children, particularly as they became older and realized their own struggles in comparison to other children. Loss and grief were further compounded by the lack of services for their children and the early deaths of key family members. Carers stated:

> This younger one would say I'm not good at anything, what am I good at, what are my qualities Aunty? (Kinship carer)

> The agreement was that when Gary was 12 or 13, his Uncles take him on, and could look after their nephew, my two cousins passed away, so I was left with raising Gary. (Kinship carer)

Social Costs of FASD

The social costs of FASD were identified by the carers and offered insight into the ongoing social and financial costs made by the carers and also to the wider community when children with FASD are not supported. In the voice of one carer:

> People with disabilities, why do these kids not get those same entitlements? Why are they forced onto families who can't cope? Why have they not been made a part of a disability safety net? That catches them, and looks after them, and cares for them. (Foster carer)

Children in Care – Department of Child Protection (DCP)

All the children in this study were in the care system and the majority came into care as infants. Both foster carers and kinship carers shared the challenges of trying to navigate the child protection system, particularly as they had no awareness of FASD at the time of placement. Nor were the carers provided with FASD training during the placement. This likely placed the child and all carers at a disadvantage from the start in terms of accessing ongoing support for their child, and most of the families were not provided with access to respite care. A core protective factor for children with FASD includes having a stable placement (Streissguth & Kanter, 1997). In the voice of one carer:

> I got Gary when he was six months old, and when he was two and a half, I got a guardianship order on him. So therefore, the department stepped out, and I've had him by myself since then. I wouldn't have applied for a guardianship order, they talked me into doing it because he was such a sick baby and they thought he was going to die. (Kinship carer)

In the current study, remarkably seven of the nine children remained in the one home from birth. These seven children did not develop adverse challenges of early onset of mental health or engagement in the criminal justice system, highlighting the benefits of stable care. In contrast, the two siblings who had not experienced stable placements experienced adverse challenges in early adolescence including mental distress and were self-harming, began using alcohol, and had contact with the criminal justice system.

Discussion

The findings and themes identified in this study provide insight into the experiences of both kinship and foster carers raising Aboriginal children with FASD. At the initial stage of the placement of children, all carers generally had no knowledge or awareness of FASD, placing them at a disadvantage in their initial dealings with the child protection system and the ability to advocate for the best therapeutic plan for their children. The lack of FASD awareness by health and social services heightened caring responsibilities of their child and resulted in under-resourced placements. Additionally, kinship carers are less likely to receive support from social services than non-relative carers (Mann-Johnson & Kikulwe, 2018). The lack of support from health and social services

heightened the stress of caregivers and at times contributed to experiences of trauma, loss, and grief for caregivers and for the child. It is well established that children with FASD are overrepresented in child protection and criminal justice system in Australia and globally (Blagg et al., 2020; Bower et al., 2018; Lewis et al., 2019; Tilbury, 2009; Williams & Badry, 2020;).

While considerable research on FASD has now been undertaken in Australia (Williams, 2018; Chamberlain et al., 2017; Bower et al., 2018; Symons et al., 2018; Elliott, 2015; Fitzpatrick et al., 2012) this has yet to translate into proper access to FASD diagnosis, interventions, and service delivery. The historical context of trauma, racism, and poor social health determinants requires that interventions on FASD for the Aboriginal community must be decolonized and led by the Aboriginal community (Gonzales et al., 2021). Further, Australian infrastructure to effectively address neurodevelopmental conditions such as FASD are basically non-existent. As Reid (2018) states, "FASD is not recognized as a disability within the current Australian health and education system, meaning that children and their families do not receive additional supports" (p. 829). In addition, Elliot (2015) asserts that the majority of children with FASD in Australia have a sibling with FASD, and that we continue to miss the chance of prevention of FASD within the same family. In the current research, three of the six families were caring for siblings with FASD. Watkins et al. (2013) and Shelton et al. (2018) identify the need to engage in prevention work and noted intervention is critical to prevent further cases of FASD in the same family. Researchers in Canada indicate there are maternal as well as societal factors that contribute to the risk of giving birth to a child with FASD and that alcohol use during pregnancy is related to complex psychosocial histories (Treit et al., 2016). Notably, there are limited supports for vulnerable women with complex early trauma histories who may themselves have a history of being raised in the child protection system.

Conclusion

In Australia, the failure to respond to FASD in a meaningful way underscores the gaps and disparities in responding to Aboriginal children living with a lifelong disability. FASD has been referred to as an invisible disability, however, in Australia it has become the most overlooked disability in child protection. A lack of diagnosis and FASD-informed case management in the child welfare system represents a distinct disadvantage to children, their families, and carers. Duty of care in relation to children with FASD in the child protection system would assume that children would receive timely access to assessment, diagnosis, intervention, and the provision of FASD-informed care. Whilst this study is based in Australia, the parallels of colonization are globally comparable for Indigenous communities and families. Colonization has contributed to the poor social and health determinants of Indigenous populations and the over representation of Indigenous children and adults in child protection and justice settings.

This paper presented key findings on the challenges experienced by both kinship and foster carers raising Aboriginal children with FASD in Western Australia. This study identified the essential need

to implement best practice across child protection settings in collaboration with health, criminal justice, and education. The needs emerging from this study include the urgency of addressing FASD within the Aboriginal community and the child protection system in Western Australia and all of Australia. This study supports the call to decolonize FASD interventions for Aboriginal families, and to engage in Aboriginal led approaches and solutions. This research further highlights the need to approach and consider FASD from a relational perspective that provides equitable resources to kinship carers. The disparity in service provision and supports to kinship carers as noted by VAGO (2022), underscores the findings of Williams (2018) in interviews with kinship and foster carers. Children with FASD have the right for their disability to be recognized, diagnosed, and to be provided with disability supports across the lifespan. The child protection system has a duty of care to ensure that all children in the system with disabilities receive supports and interventions appropriate to their developmental needs and disabilities. Creating infrastructure and models of service delivery to respond to FASD in key systems such as child protection and allied health care systems would provide a foundation for an Australian FASD model of care that includes children, families, communities, and the caregiver network.

Ethics

Ethical approval was received from the Western Australia Aboriginal Health Ethics Committee and Curtin University. Ethical consent was also obtained from the Department of Child Protection in Western Australia. As this research was undertaken in country towns in Western Australia, cultural protocols were observed and respected local elders were consulted. Each elder was provided information about the study and the opportunity to review survey and research questions.

Audience

The paper is intended for a wide audience of key human service sectors including child welfare, foster care, justice, health, education, Aboriginal health, and the overall community.

References

Ariotti, L. (1999). Social construction of an Angu disability. *Australian Journal of Rural Health*, *7*(4), 216–222. https://doi.org/10.1111/j.1440-1584.1999.tb00460.x

Baldry, D. E. (2018). Rights of persons with disability not to be criminalised. In *Human Rights and Incarceration* (pp. 53–77). Palgrave Macmillan, Cham. https://doi.org/10.1007/978-3-319-95399-1_3

Bessarab, D., & Ng'andu, B. (2010). Yarning about yarning as a legitimate method in Indigenous research. *International Journal of Critical Indigenous Studies*,*3*(1), 37–50. https://doi.org/10.5204/ijcis.v3i1.57

Blackstock, C. (2007). Residential schools: Did they really close or just morph into child welfare? *Indigenous Law Journal, 6(1)*, 71–78. https://jps.library.utoronto.ca/index.php/ilj/article/view/27665

Blagg, H., Tulich, T., Williams, R., Mutch, R., May, S. E., Badry, D. E., & Stewart, M. (2020). *Decolonising justice for Aboriginal youth with fetal alcohol spectrum disorders.* Routledge. https://doi.org/10.4324/9780429325526

Bower, C., Watkins, R. E., Mutch, R. C., Marriott, R., Freeman, J., Kippin, N. R., Safe, B., Pestell, C., Cheung, C. S. C., Shield, H., Tarratt, L., Springall, A., Taylor, J., Walker, N., Argiro, E., Leitão, S., Hamilton, S., Condon, C., Passmore, H. M., & Giglia, R. (2018). Fetal alcohol spectrum disorder and youth justice: A prevalence study among young people sentenced to detention in Western Australia. *BMJ Open, 8*(2), e019605–e019605. https://doi.org/10.1136/bmjopen-2017-019605.

Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology, 3*(2), 77–101. https://doi.org/10.1191/1478088706qp063oa

Braun, V., & Clarke, V. (2020). One size fits all? What counts as quality practice in (reflexive) thematic analysis? *Qualitative Research in Psychology, 18*(3), 328–352. https://doi.org/10.1080/14780887.2020.1769238

Burd, L. (2016). Fetal alcohol spectrum disorder: Complexity from comorbidity. *The Lancet (British Edition), 387*(10022), 926–927. https://doi.org/10.1016/S0140-6736(15)01346-X

Canada FASD Research Network. (n.d.). *What is FASD.* Canada FASD Research Network. Retrieved April 10, 2022, from https://canfasd.ca/what-is-fasd/

Chamberlain, K., Reid, N., Warner, J., Shelton, D., & Dawe, S. (2017). A qualitative evaluation of caregivers' experiences, understanding and outcomes following diagnosis of FASD. *Research in Developmental Disabilities, 63*, 99–106. https://doi.org/10.1016/j.ridd.2016.06.007

Choo, C. (2016). The health of Aboriginal children in Western Australia 1829–1960. In J. Boulton (Ed.), *Aboriginal children, history and health* (pp. 102–116). Routledge. https://doi.org/10.4324/9781315666501

Collings, S., Dew, A., Gordon, T., Spencer, M., & Dowse, L. (2018). Intersectional disadvantage: Exploring differences between Aboriginal and non-Aboriginal parents with intellectual disability in the New South Wales Child Protection System. *Journal of Public Child Welfare, 12*(2), 170–189. https://doi.org/10.1080/15548732.2017.1379456

Colquhoun, S., & Dockery, A. M. (2012). *The link between Indigenous culture and wellbeing: Qualitative evidence for Australian Aboriginal peoples* (CLMR Discussion Paper Series 2012/1). Centre for Labour Market Research, Curtin Business School.

Davis, M. (2019). *Family is culture final report: Independent review in Aboriginal out-of home care in NSW*. Department of Communities and Justice, NSW Government.

de Finney, S., Dean, M., Loiselle, E., & Saraceno, J. (2011). All children are equal, but some are more equal than others: Minoritization, structural inequities, and social justice praxis in residential care. *International Journal of Child, Youth & Family Studies, 2*(3/4), 361–384. https://doi.org/10.18357/ijcyfs23/420117756

DiGiacomo, M., Green, A., Delaney, P., Delaney, J., Patradoon-Ho, P., Davidson, P. M., & Abbott, P. (2017). Experiences and needs of carers of Aboriginal children with a disability: A qualitative study. *BMC Family Practice, 18*(1), 96–96. https://doi.org/10.1186/s12875-017-0668-3

Dockery, A. M. (2010). Culture and wellbeing: The case of Indigenous Australians. *Social Indicators Research, 99*(2), 315–332. https://doi.org/10.1007/s11205-010-9582-y

Dudgeon, P., Bray, A., D'costa, B., & Walker, R. (2017). Decolonising psychology: Validating social and emotional wellbeing. *Australian Psychologist, 52*(4), 316–325. https://doi.org/10.1111/ap.12294

Eades, A., Hackett, M. L., Liu, H., Brown, A., Coffin, J., & Cass, A. (2020). Qualitative study of psychosocial factors impacting on Aboriginal women's management of chronic disease. *International Journal for Equity in Health, 19*(1), 1–8. https://doi.org/10.1186/s12939-019-1110-3

Elliott, E. J. (2015). Fetal alcohol spectrum disorders in Australia--the future is prevention. *Public Health Research & Practice, 25*(2), e2521516. https://doi.org/10.17061/phrp2521516

Family Matters. (2019). *The family matters report: Key findings brief*. Family Matters. https://www.familymatters.org.au/the-family-matters-report-2019/

Ferdinand, A., Massey, L., Cullen, J., Temple, J., Meiselbach, K., Paradies, Y., Baynam, G., Savarirayan, R., & Kelaher, M. (2021). Culturally competent communication in Indigenous disability assessment: A qualitative study. *International Journal for Equity in Health, 20*(1). https://doi.org/10.1186/s12939-021-01402-9

Fitzpatrick, J. P., Elliott, E. J., Latimer, J., Carter, M., Oscar, J., Ferreira, M., Olson, H., Lucas, B., Doney, R., Salter, C., Peadon, E., Hawkes, G., & Hand, M. (2012). The Lililwan Project: Study protocol for a population-based active case ascertainment study of the prevalence of fetal alcohol spectrum disorders (FASD) in remote Australian Aboriginal communities. *BMJ Open, 2*(3), e000968. https://doi.org/10.1136/bmjopen-2012-000968

Fitts, M. S., & Soldatic, K. (2020). Who's caring for whom? Disabled Indigenous carers experiences of Australia's infrastructures of social protection. *Journal of Family Studies, 28*(2), 477–492. https://doi.org/10.1080/13229400.2020.1734478

Flannigan, K., Pei, J., McLachlan, K., Harding, K., Mela, M., Cook, J., Badry, D. E., & McFarlane, A. (2022). Responding to the unique complexities of fetal alcohol spectrum disorder. *Frontiers in Psychology*, *12*, 778471. https://doi.org/10.3389/fpsyg.2021.778471

Fogliani, R. V. C. (2019). *Inquest into the deaths of: Thirteen children and young persons in the Kimberley region, Western Australia*. Coroner's Court of Western Australia.

Foundation for Alcohol Research and Education (FARE). (2022). *Fetal alcohol spectrum disorder*. Retrieved July 8, 2022, from https://fare.org.au/policy/fasd/

Gatwiri, K., McPherson, L., Parmenter, N., Cameron, N., & Rotumah, D. (2021). Indigenous children and young people in residential care: A systematic scoping review. *Trauma, Violence, & Abuse*, *22*(4), 829–842. https://doi.org/10.1177/1524838019881707

Gibberd, A. J., Simpson, J. M., Jones, J., Williams, R., Stanley, F., & Eades, S. J. (2019). A large proportion of poor birth outcomes among Aboriginal Western Australians are attributable to smoking, alcohol and substance misuse, and assault. *BMC Pregnancy and Childbirth*, *19*(110). https://doi.org./10.1186/s12884-019-2252-4

Gonzales, K. L., Jacob, M. M., Mercier, A., Heater, H., Nall Goes Behind, L., Joseph, J., & Kuerschner, S. (2021). An Indigenous framework of the cycle of fetal alcohol spectrum disorder risk and prevention across the generations: Historical trauma, harm and healing. *Ethnicity & Health*, *26*(2), 280-298. https://doi.org/10.1080/13557858.2018.1495320

Green, A., Abbott, P., Davidson, P. M., Delaney, P., Delaney, J., Patradoon-Ho, P., & DiGiacomo, M. (2018). Interacting with providers: An intersectional exploration of the experiences of carers of Aboriginal children with a disability. *Qualitative Health Research*, *28*(12), 1923–1932. https://doi.org/10.1177/1049732318793416

Hammill, J. (2001). Granny rights: Combatting the granny burnout syndrome among Australian Indigenous communities. *Development (Society for International Development)*, *44*(2), 69–74. https://doi.org/10.1057/palgrave.development.1110240

Harfield, S., Davy, C., Kite, E., McArthur, A., Munn, Z., Brown, N., & Brown, A. (2015). Characteristics of Indigenous primary health care models of service delivery: A scoping review protocol. *JBI Evidence Synthesis*, *13*(11), 43-51. https://doi.org/10.11124/jbisrir-2015-2474

Haebich, A. (2000). *Broken circles: Fragmenting Indigenous families, 1800-2000*. Fremantle Press.

Hollinsworth, D. (2013). Decolonizing Indigenous disability in Australia. *Disability & Society*, *28*(5), 601–615. https://doi.org/10.1080/09687599.2012.717879

Hunter, S. A., Burton, J., Blacklaws, G., Soltysik, A., Mastroianni, A., Young, J., Jones, M., Jayakody, N., Bhathal, A., Krakouer, J., Wei, W.T., Parolini, A., Tilbury, C., & Shlonsky, A. (2020). *The family matters report 2020: Measuring trends to turn the tide of Aboriginal and Torres Strait Islander children in out-of-home care in Australia.* Family Matters. https://www.familymatters.org.au/the-family-matters-report-2020/

Kairuz, C. A., Casanelia, L. M., Bennett-Brook, K., Coombes, J., & Yadav, U. N. (2021). Impact of racism and discrimination on physical and mental health among Aboriginal and Torres Strait Islander peoples living in Australia: A systematic scoping review. *BMC Public Health*, *21*, 1302. https://doi.org/10.1186/s12889-021-11363-x

King, J., Brough, M., & Knox, M. (2014). Negotiating disability and colonisation: The lived experience of Indigenous Australians with a disability. *Disability & Society, 29*(5), 738–750. https://doi.org/10.1080/09687599.2013.864257

Kiraly, M., & Humphreys, C. (2013). Family contact for children in kinship care: A literature review. *Australian Social Work*, *66*(3), 358–374. https://doi.org/10.1080/0312407X.2013.812129

Kiraly, M., James, J., & Humphreys, C. (2014). 'It's a family responsibility': Family and cultural connection for Aboriginal children in kinship care. *Children Australia*, *40*(1), 23–32. https://doi.org/10.1017/cha.2014.36

Krakouer, J., Wise, S., & Connolly, M. (2018). "We live and breathe through culture": Conceptualising cultural connection for Indigenous Australian children in out-of-home care. *Australian Social Work*, *71*(3), 265–276. https://doi.org/10.1080/0312407X.2018.1454485

Lovern, L. L., & Locust, C. (2013). *Native American communities on health and disability: Borderland dialogues.* Palgrave Macmillan. https://doi.org/10.1057/9781137312020

Lewis, N., Weston, R., Burton, J., Young, J., Jayakody, N., Mastroianni, A., Wei, W.T., Parolini, A., Shlonsky, A., & Tilbury, C. (2019). *The family matters report 2019: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia.* Family Matters. https://www.familymatters.org.au/the-family-matters-report-2019/

Luke, C. R., Benfer, K., Mick-Ramsamy, L., Ware, R. S., Reid, N., Bos, A. F., Bosanquet, M., & Boyd, R. N. (2022). Early detection of Australian Aboriginal and Torres Strait Islander infants at high risk of adverse neurodevelopmental outcomes at 12 months corrected age: LEAP-CP prospective cohort study protocol. *BMJ Open*, *12*(1), e053646. https://doi.org/10.1136/bmjopen-2021-053646

Libesman, T. (2014). *Decolonising Indigenous child welfare: Comparative perspectives.* Routledge. https://doi.org/10.4324/9781315889566

Mann-Johnson, J., & Kikulwe, D. (2018). Exploring decolonization through kinship care assessments. In D. E. Badry, D. Kikulwe, M. Bennet, D. Fuchs & H. M. Montgomery (Eds.), *Imagining child welfare in the spirit of reconciliation: Voices from the Prairies*. (pp. 45–68). University of Regina Press.

Maushart, S. (1993). *Sort of a place like home: Remembering the Moore River Native Settlement*. Fremantle Arts Centre Press.

McDowall, J. J. (2016). Connection to culture by Indigenous children and young people in out-of-home care in Australia. *Communities, Children and Families Australia*, *10*(1), 5–26.

McRae, T., Adams, E., Clifton, E., Fitzpatrick, J., Bruce, K., Councillor, J., Pearson, G., & Walker, R. (2019). Overcoming the challenges of caring for a child with foetal alcohol spectrum disorder: A Pilbara community perspective. *Rural and Remote Health*, *19*(4), 5206. https://doi.org/10.22605/RRH5206

Qu, L., Lahausse, J., & Carson, R. (2018). *Working together to care for kids. A survey of foster and relative/kinship carers*. Australian Institute of Family Studies.

Ravindran, S., Brentnall, J., & Gilroy, J. (2017). Conceptualising disability: A critical comparison between Indigenous people in Australia and New South Wales disability service agencies. *Australian Journal of Social Issues*, *52*(4), 367–387. https://doi.org/10.3316/ielapa.326498313392901

Reid, N. (2018). Fetal alcohol spectrum disorder in Australia: What is the current state of affairs? *Drug and Alcohol Review*, *37*(7), 827–830. https://doi.org/10.1111/dar.12855

Scrine, C., Farrant, B., Michie, C., Shepherd, C., & Wright, M. (2020). Raising strong, solid Koolunga: Values and beliefs about early child development among Perth's Aboriginal community. *Children Australia*, *45*(1), 40-47. https://doi.org/10.1017/cha.2020.7

Shelton, D., Reid, N., Till, H., Butel, F., & Moritz, K. (2018). Responding to fetal alcohol spectrum disorder in Australia. *Journal of Paediatrics and Child Health,* *54*(10), 1121–1126. https://doi.org/10.1111/jpc.14152

Shmerling, E., Creati, M., Belfrage, M., & Hedges, S. (2020). The health needs of Aboriginal and Torres Strait Islander children in out-of-home care. *Journal of Paediatrics and Child Health*, *56*(3), 384–388. https://doi.org/10.1111/jpc.14624

Secretariat of National Aboriginal and Islander Child Care (SNAICC). (2011). *Growing up our way: Aboriginal and Torres Strait Islander child rearing practices matrix*. Secretariat of National Aboriginal and Islander Child Care.

Simpson, N., Wepa, D., & Bria, K. (2020). Improving antenatal engagement for Aboriginal women in Australia: A scoping review. *Midwifery*, *91*, 102825. https://doi.org/10.1016/j.midw.2020.102825

Sotiri, M., McGee, P., & and Baldry, E. (2012). *No end in sight: The imprisonment and indefinite detention of Indigenous people with a cognitive impairment*. University of NSW.

Streissguth, A. P., & Kanter, J. (1997). *The challenge of fetal alcohol syndrome: Overcoming secondary disabilities*. University of Washington Press.

Symons, M., Pedruzzi, R. A., Bruce, K., & Milne, E. (2018). A systematic review of prevention interventions to reduce prenatal alcohol exposure and fetal alcohol spectrum disorder in Indigenous communities. *BMC Public Health*, *18*(1), 1227. https://doi.org/10.1186/s12889-018-6139-5.

Tilbury, C. (2009). The over-representation of Indigenous children in the Australian child welfare system. *International Journal of Social Welfare, 18*, 57–64. https://doi.org/10.1111/j.1468-2397.2008.00577.x

Treit, S., Zhou, D., Chudley, A. E., Andrew, G., Rasmussen, C., Nikkel, S. M., Samdup, D., Hanlon-Dearman, A., Loock, C., & Beaulieu, C. (2016). Relationships between head circumference, brain volume and cognition in children with prenatal alcohol exposure. *PloS One*, *11*(2), e0150370. https://doi.org/10.1371/journal.pone.0150370

United Nations Department of Economic and Social Affairs (UNDESA). (2015). *State of the world's Indigenous peoples: Indigenous peoples' access to health services*. United Nations Department of Economic and Social Affairs.

Victoria Auditor General's Office (VAGO). (June 2022). *Kinship care: Independent reasonable assurance report to Parliament*. Victorian Government Printer.

Victoria Auditor General's Office (VAGO). (n.d.). *Our role*. Retrieved July 8, 2022, from https://www.audit.vic.gov.au/our-role

Watkins, R. E., Elliott, E. J., Halliday, J., O'Leary, C. M., D'Antoine, H., Russell, E., Hayes, L., Peadon, E., Wilkins, A., Jones, H. M., McKenzie, A., Miers, S., Burns, L., Mutch, R. C., Payne, J. M., Fitzpatrick, J. P., Carter, M., Latimer, J., & Bower, C. (2013). A modified Delphi study of screening for fetal alcohol spectrum disorders in Australia. *BMC Pediatrics*, *13*(1), 1–12. https://doi.org/10.1186/1471-2431-13-13.

Williams, R., & Badry, D. E. (2020). A decolonizing and human rights approach to FASD training, knowledge and case practice for justice involved youth in correctional contexts. In H. Blagg, T. Tulich, R. Williams, R. Mutch, S. E. May, D. E. Badry, & M. Stewart. *Decolonising justice for Aboriginal youth with fetal alcohol spectrum disorders* (pp. 111–133). Routledge. https://doi.org/10.4324/9780429325526

Williams, R. (2018). *Understanding fetal alcohol spectrum disorder (FASD) through the stories of Noongar families and how can this inform policy and service delivery* [Doctoral dissertation, Curtin University]. espace.

Wilson, S. (2001). What is Indigenous research methodology? *Canadian Journal of Native Education, 25*(1), 175–179. https://ojs.library.ubc.ca/index.php/CJNE/article/view/196968

Wilson, S. (2008). *Research is ceremony: Indigenous research methods.* Fernwood Publishing.

Self-Determination, Public Accountability, and Rituals of Reform in First Peoples Child Welfare

Terri Libesman[a] and Paul Gray[b]

a Law Faculty, University of Technology Sydney
b Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney

Corresponding author: Terri Libesman, teresa.libesman@uts.edu.au

Abstract

First Peoples continue to face intergenerational harms as a result of settler systems of intervention in the lives of their families, including the forced removal of children. First Peoples resistance includes advocacy for systemic change, in particular, focused on foundations of greater accountability in child welfare systems, and recognition of First Peoples' right to self-determination. However, achieving these necessary structural changes remains a pressing challenge.

Using the example of the recent Aboriginal-led review of child welfare in New South Wales (NSW), Australia, 'Family is Culture', this paper explores the cycle of inquiry and response, and the repeated failures to enable self-determination or strengthen public accountability and oversight. Drawing on concepts including legitimacy and the rule of law, we conceptualise this pattern of reviews as a ritual of redemption by settler child – welfare systems, distancing themselves from 'past' wrongs while refusing to address the harmful foundations of these systems, thereby perpetuating the violence imposed on First Peoples children, families and communities. This contrasts with First Peoples' frameworks for child welfare reform, which must be urgently realised in order to establish such systems on more just and effective foundations.

Keywords: *child welfare, self-determination, accountability, legitimacy*

Introduction

First Peoples,[1] facing intergenerational and ongoing harms through the removal of their children from their families, communities and countries, have responded with calls to stop the cycles of settler-state intervention and violence and for the recognition of their rights to care for and ensure the well-being of their babies, children and youth. Across jurisdictions, there are a number of common threads to this advocacy including the need for structural reform that recognises the inherent jurisdiction of First Peoples in the well-being of their children and families and the transfer of authority to First Peoples within a human rights framework. At the same time, there is recognition of the responsibility of settler states for creating the conditions which underpin the disproportionate need for child welfare support, as they have failed to respond effectively to address these harms and their ongoing impacts on First Peoples children, families and communities.

States have responded to First Peoples' advocacy and demands for accountability of child welfare systems and recognition of self-determination with cycles of inquiries and reviews. Such reviews often shine a light on failings and recommend foundational reforms. However, state parties frequently treat this process as an accomplishment of accountability in itself, and claim righteousness with acknowledgment of *past* wrongs, while refusing to action critical structural reforms to safeguard the rights of First Peoples, their children and families. Instead, state actions to 'improve' child welfare do little to address the structural foundations of settler-state violence targeting First Peoples' families, perpetuating cycles of intervention and further entrenching settler authority over First Peoples' children, families and communities.

Drawing on the example of a recent comprehensive First Peoples-led Review of child welfare in NSW Australia, we analyse how this cycle of review and response inflicts ongoing harm and perpetuates state violence against First Peoples children, families and communities. We conceptualise this cycle, which is characteristic of a pattern of settler-state response to First Peoples' child welfare and policy more broadly, nationally and internationally, as a failure to grapple with two foundational issues: namely the denial of meaningful forms of self-determination and accountability. We argue that these two concepts are not only connected to, but critical for, the effectiveness of child welfare systems in caring for Aboriginal children and communities' safety and well-being. Colonial child welfare systems continue to lack relevance and legitimacy for Aboriginal communities. For child welfare laws and practices to support Aboriginal families, and to be supported by families and communities, they need to be perceived as legitimate and meaningful to those communities. Authorization of the laws, culture and ways in which families grow up children is necessary for Aboriginal child welfare systems to be relevant, effective, accountable and legitimate.

---

1   The authors acknowledge the distinct and diverse population of First Peoples internationally. We have chosen to use the term Aboriginal to refer to the numerous distinct peoples in the area now known as New South Wales, given this is the language adopted by those peoples for collective advocacy regarding the recognition and enjoyment of common rights and interests. We have chosen to use the term First Peoples in the international context.

The Cycle of Review and Response

The Family is Culture review (the Review) examined the circumstances of all Aboriginal and Torres Strait Islander children entering out-of-home care in NSW in 2015-16, in an effort to identify the causes of the "high and increasing rates of Aboriginal and Torres Strait Islander Children and Young People in Out of Home Care in NSW" (Davis, 2019, p. XI). It placed these efforts in the context of an ongoing cycle of inquiries followed by a failure of governments to act to implement recommended reforms, citing numerous state and national processes that had explored similar issues, as well as inadequate action from governments in response – circumstances that are familiar to First Peoples internationally (Blackstock, 2019; Davis, 2019; Kaiwai et al., 2020; Libesman & Cripps, 2017; Royal Commission on Aboriginal Peoples, 1996; Truth and Reconciliation Commission of Canada, 2015; Wood, 2008).

The Review found widespread non-compliance with legislation, policy, and practice intended to safeguard the rights and interests of Aboriginal children and families, findings that resonate with many national and international reviews with respect to colonial child welfare systems' failures towards First Peoples. Davis (2019) outlined that NSW child protection and out-of-home care systems and practices were characterised by: 'rituals' of compliance that masked a widespread culture of non-compliance; including the forced removal of children without adequate justification or proper completion of a risk assessment; the removal of newborns from hospital or soon after without engagement with family and community; family members being overlooked as potential carers resulting in placements outside the family and community; limited ongoing contact with siblings, family, community and culture while in out-of-home care; and the presentation of misleading information to the Children's Court. The Review also noted 'rituals' of engagement with Aboriginal families and communities, but little action taken to deviate from standard practices, and poor application of the spirit and intent of the Aboriginal Child Placement Principle, despite its prominent place in legislation and policy. These failings of systems and practice contributed to the over-representation of Aboriginal children in out-of-home care in poor experiences and care outcomes.

The Review's recommendations provided a clear reform agenda for child welfare systems and practice; one that is consistent with First Peoples' approaches internationally (First Nations Child and Family Caring Society, 2019; Kaiwai et al., 2020; SNAICC, 2016). In particular, the reform agenda was grounded on two key principles: self-determination and public accountability. The Review concluded that, if adequately implemented, these two areas "will go a significant way to addressing the entrenched problem of the over-representation of Aboriginal children in the statutory child protection system" (Davis, 2019, p. XXXII).

The government's response to these findings and recommendations was for many Aboriginal communities disappointing, though not surprising. Rather than engaging openly with the Review's findings and committing to urgent structural reforms according to the recommendations, the government's response sought to recontextualise them as historical, and focused instead on the pre-

existing state-led reform agenda. The government argued that "many recommendations are currently being addressed by reforms through the Department of Communities and Justice (DCJ)" (NSW Government, 2020, p.2), and offered limited further commitments related to the Review's findings, while delaying others in deference to the government's own reform agenda (NSW Government, 2020). In short, it represents a commitment to 'stay the course', rather than responding to the serious issues identified by the Review, and particularly, an unwillingness to engage with the need for self-determination and accountability to Aboriginal communities.

This follows a pattern of inquiries since the report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander children from their Families, *Bringing Them Home* (Human Rights and Equal Opportunity Commission, 1997), which have repeatedly found a broken child protection system in need of a complete overhaul, followed by a failure to partner with Aboriginal communities to implement the necessary reforms (Davis, 2019). This occurs in the context of a long history in which Aboriginal peoples have endured the arbitrary removal of their children by settler authorities since colonisation (HREOC, 1997; Libesman et al., 2022; Swain, 2013). Similar experiences are echoed by other First Peoples. For example, a recent Māori-led review of child protection systems noted both the historic and ongoing intervention in their families and communities by the state, as well as state inaction to address these structural challenges, concluding that current systems and practices "are never appropriate for the long-term wellbeing of Māori" (Kaiwai et al., 2020, p. 74). Whilst the efficacy of Bill C-92, *An Act respecting First Nations, Inuit and Métis children, youth and families* (2019) is yet to be tested, the legislation was drafted after consultation with Canadian First Peoples by Indigenous Services Canada and the Department of Justice rather than jointly with First Peoples. Further, it does not provide funding commitments to enable effective implementation including the development, resourcing and evaluation of diverse existing and developing options for Canadian First Peoples to assume jurisdiction with respect to child welfare, and is being implemented at a time that the Canadian federal government persists in contesting the findings of the Canadian Human Rights Tribunal regarding the failure to equitably fund services for First Nations children and families (Blackstock, 2019). The exercise of state powers under legislation to remove children and intervene in First Peoples family life is built therefore on an ongoing history of violence and deficit of trust. Grounding the reform agenda on foundations of self-determination and public accountability aims to address this deficit of trust, providing an opportunity for reimagining child welfare systems and respecting the diversity of First Peoples within nation states and internationally. However, as the example of Family is Culture demonstrates, governments repeatedly fail to seize the opportunity for transformational reform, and perhaps more disturbingly, present many of the identified shortcomings as supposed solutions.

The Foundations for Reform

Self-Determination

The principle that Aboriginal communities have the collective right to determine their political status and their social, economic and cultural future has long been a key theme of relevant reviews, as well as the advocacy of First Peoples. This positioning reflects both relevant international human rights frameworks such as the United Nations Declaration on the Rights of Indigenous Peoples, but also its status as a key evidence-based policy setting in improving outcomes for Indigenous peoples (Cornell & Kalt, 1998; Dudgeon et al., 2016; Harris-Short, 2012; Libesman, 2014). The Review emphasised the contrast between Aboriginal community expectations of a strong form of self-determination, and the government's existing passive approaches to self-determination, concluding that strong forms of self-determination are needed to achieve substantive changes in systems and practice (Davis, 2019).

The Review was clear, echoing previous inquiries including *Bringing Them Home,* that consultation with, and participation of, Aboriginal families and communities is not sufficient in upholding the right to self-determination. 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. Despite this clear analysis, the government's response remained focused on processes of consultation and participation, as well as persisting with the inaccurate use of the term 'self-determination' that was criticised by the Review for "creating unrealistic expectations about what the state will permit in terms of autonomous arrangement" (Davis, 2019, p. 85). For example, the government's initial response to the Review only referred to the key issue of self-determination on one occasion, suggesting that participatory processes of alternative dispute resolution and Family Group Conferences "encourage greater self-determination" (NSW Government, 2020, p.5), although these processes are determined and administered by settler governments, thereby diminishing the concept of self-determination from one of autonomous governance of First Peoples to the mere participation of individuals. This misrepresentation of the principle of self-determination is particularly egregious – conflating it with consultation and participation while simultaneously exercising authority over Aboriginal peoples by controlling the means of that participation, and avoiding scrutiny for the way such systems perpetuate settler-colonialism through the continued exercise of power *over* Aboriginal children and families.

Further, while the Review positioned self-determination as a key structural reform, it is noteworthy that the government failed to engage with Aboriginal communities and their representatives in shaping its Response. This approach contrasts with the recommendations of the Review, and broader government policy to work *with* rather than doing *to* Aboriginal communities (NSW Department of Aboriginal Affairs, 2013).

Diminishing the principle of self-determination in these ways severely limits its intent in enabling First Peoples to shape and administer the systems for the safety and wellbeing of their children, while reinforcing settler authority and intervention in the lives of First Peoples children, families and communities. It co-opts the language of self-determination while failing to engage with its meaning and intent, and the opportunity it represents to transform child protection systems by and for First Peoples.

Accountability

Child protection legislation enables interference with the most intimate and fundamental of common law and human rights, namely the rights of parents to look after their children and for children to grow up in their families and culture. The gravitas of such intervention demands accountability. The rule of law – a foundational common law constitutional principle – requires that powers exercised by government and other officials be accountable (Harlow, 2014). The Review identified that "in order for an agency to be accountable to the public, it is essential for it to be transparent so that its performance can be discussed and analysed, and for there to be sanctions for poor performance" (Davis, 2019, p. 95). Yet, this Review, and numerous prior reviews, found child protection systems and practice, both within the department and in non-government out-of-home care (OOHC), are not accountable (Davis, 2019; Truth and Reconciliation Commission, 2015; Wood, 2008)

The Review argued for significant structural reform, including the establishment of a new independent oversight body, to address failings in public accountability (Davis, 2019). This oversight body would have broad powers of oversight, review, and complaints handling with legislated transparency and reporting requirements that reflected the significant powers of child protection systems, the unique responsibility of the state and non-government agencies to children in OOHC, and the need for a specialised focus to ensure accountability and public confidence. In particular, the oversight body would include an Aboriginal Commissioner and advisory mechanism, promoting engagement with and accountability to Aboriginal communities.

Contrasting with these recommendations, the government pursued a significantly more limited commitment to public accountability, consolidating additional functions with an existing regulator whose oversight of out-of-home care providers was severely critiqued by the Review, but did little to extend the transparency and accountability with respect to the government's exercise of statutory authority. Given the routine breaches of legislation and policy identified in child protection practice by the Review, greater accountability of the statutory agency is essential. Further, the government took no action, and committed no additional investment, to strengthening transparency of the Children's Court or providing greater access to legal advocacy, despite their importance in promoting accountability. This is particularly critical given the chronic underfunding of Aboriginal Legal Services and other community legal services, as well as recent reductions in funding to this critical sector (McDonald & Daniels, 2019).

Finally, the Review's recommendation for greater transparency through the publication of regulatory compliance inspection reports and their presentation to Parliament, along with annual summaries and research outcomes, have been deferred, with the regulator committing to provide options as part of the planned review of the standards commencing in 2020 (NSW Office of the Children's Guardian, 2020). The failure to urgently address the need for significantly greater transparency in the monitoring of the out-of-home care system is deeply concerning, particularly in light of media reporting exposing violence, abuse and deprivation experienced by young people in out of home care (Scott, 2016). Similarly, the Review's recommendation to prohibit for-profit service providers given the risk of the potential conflict between the financial interests of such providers and the needs of children in out-of-home care has likewise been deferred (NSW Government, 2020; Office of the Children's Guardian, 2020). If the public is to have confidence in the sector, and the safety and wellbeing of children removed from their families in their name, it is critical that there is transparency from the regulator, and appropriate oversight of this role by parliamentary representatives. Aboriginal community mistrust of child protection systems is deepened by the lack of transparency of systems and oversight by Aboriginal community representatives.

Given these failures to address the significant gaps in transparency and oversight necessary for accountability across the child protection system, the appointment of an Aboriginal Deputy Children's Guardian remains too limited in its focus and function to gain the confidence of the Aboriginal community with respect to the role it is intended to serve. To be clear, greater scrutiny of the circumstances of Aboriginal children in out-of-home care is a positive step. However, the need for effective oversight and mechanisms for recourse is much broader given the challenge presented by non-compliance and routine breaches of the rights and interests of Aboriginal children and families identified by the Review. Such oversight must ensure that the rights of Aboriginal children are upheld from the first involvement of the child protection system and focus scrutiny on the exercise of authority by child welfare authorities throughout, rather than trying to seek redress for the harms inflicted by the statutory system after it has run its course. Simply put, appointing First Peoples officers within an inadequate regulatory framework does not address the significant flaws in the framework. In the absence of legislative, policy and cultural change to strengthen transparency and oversight, and therefore accountability, across the child protection system, such appointments will have only limited impact on safeguarding the rights and interests of First Peoples children in out-of-home care.

Implementing the Review's vision of a one-stop-shop for the effective monitoring and oversight of the child protection system, as well as promoting greater transparency of the regulatory body and Courts, must be prioritised. This includes empowering and resourcing the regulator to respond to complaints regarding breaches in the exercise of statutory power and improving access to advocacy, providing opportunities for recourse where breaches occur, and including clear mechanisms to promote accountability in the eyes of Aboriginal communities. The government's

response offers merely the facade of reform while doing little to address the critical oversight and accountability issues identified by the Review. In particular, the government's response does little to ensure scrutiny where it is most needed to address the concerns of Aboriginal communities – the government's own exercise of statutory authority to intervene in the lives of Aboriginal children, families and communities. Through such approaches, governments continue to exercise significant powers *over* First Peoples' families and communities, while avoiding scrutiny and accountability for those actions, and the harms they continue to cause.

Reconceptualising the Recommendations and Response

It is perhaps of little surprise that the government's Response, falling significantly short of the overhaul urged by the Review, has been criticised as inadequate by Aboriginal stakeholders (NSW Child, Family and Community Peak Aboriginal Corporation [AbSec], 2020; Aboriginal Legal Service NSW/ACT, 2020). As noted above, the current review represents only the latest example of a long-standing pattern of inquiry and inaction from governments in addressing the systemic racism that characterises settler-colonial child welfare systems. The landmark *Bringing Them Home Report* made recommendations for significant reform of contemporary child protection systems, including greater recognition of Aboriginal self-determination, with recommendations for the transfer of laws and their adjudication to Aboriginal communities, however many of these recommendations including those with respect to self-determination were never implemented (Anderson & Tilton, 2017). This issue was anticipated by the current Review, noting the cynicism of Aboriginal community members regarding the process of review which rarely results in the changes needed (Davis, 2019). It is likely that many in the Aboriginal community already fear that the government's Response to the Review, and in particular the narrow focus of reform that reinforces existing systems and authority, represents another missed opportunity for change.

This cycle of review, recommendations and response that fails to address the enduring issues that contribute to over-representation and poor outcomes for those subject to the system, reflect the 'ritual' of listening to First Peoples but failing to "hear" or act on what communities are saying. This is demonstrated in the lack of engagement in the development of the Response, the failure to engage with the Review's key themes, and the narrow response that creates the illusion of action but fails to address the crucial issues identified through the Review.

Through this cycle of acknowledging the harm and inadequacies of "past" practices, and committing to a series of reforms that fail to substantially alter the underlying structures or power dynamics, settler-colonial societies and institutions seek redemption while refusing to relinquish illegitimate power, and even reinforcing it (Tuck & Yang, 2012). These actions ultimately defend and perpetuate settler-colonialism and create barriers for the recognition of Indigenous peoples' sovereignty and futurity (Tuck & Yang, 2012). The rhetoric of reform masks the enduring power imbalances between

the settler-colonial state and First Peoples as well as the refusal to implement reforms that would shift this imbalance, contributing to distrust of statutory child protection systems.

A useful framework through which to consider this pattern is that of legitimacy. Legitimacy refers to the right to exercise power, and is relevant in considerations of the use of statutory child protection powers particularly given the significant and long-lasting impacts on individuals and communities (Cook, 2020). In brief, legitimacy in the exercise of state power requires that the power be exercised in accordance with defined rules, that reflect shared beliefs and values, and that operate with the consent of the broader community (Tankebe, 2013).

Tankebe (2013) challenges an apparent dichotomy between legitimacy and effectiveness, arguing that the perception that power is exercised effectively and to the benefit of the community is a key precondition of its legitimacy which requires being able to demonstrate that the outcomes achieved justify the exercise of significant power. Further, there are benefits associated with legitimacy, such as increased engagement and cooperation from communities, while "dull compulsion" refers to the process whereby the illegitimate exercise of power is "accepted" as a result of fear, powerlessness or pragmatism, including withdrawal from such systems (2013). This withdrawal and lack of cooperation with statutory systems are noted throughout the Review's report (Davis, 2019). However, rather than framing this as the "acceptance" of the exercise of illegitimate power, this act of withdrawal may be better thought of as strategies of resistance, particularly where the exercise of authority is supported by the use of force (Richardson, 2016; Wade, 1997). Aboriginal communities continue to resist the ongoing removal of their children by statutory authorities through multiple strategies, including advocacy and protest such as those that led to this Review (Davis, 2019).

Through the lens of legitimacy, strong forms of self-determination include key mechanisms to establish laws that reflect the values of the community they serve and operate with their consent (Libesman, 2014). Robust measures of oversight and accountability serve to give communities confidence that systems operate according to those laws, including policy, practice and adjudication, and deliver outcomes that justify the exercise of those powers. This is closely associated with the rule of law, which provides protection and recourse against the abuse of power (Krygier, 2009; Thompson, 1997). For exercises of power to be accountable there needs to be public scrutiny that is transparent, control with respect to how powers are exercised, and recourse when powers are abused (Fuller, 1969; Waldron, 2011). Echoing similar inquiries internationally, the Review found these to be lacking in the NSW child protection system (Davis, 2019).

Similarly, the rule of law is not only a mode of exercising political power but also a mode of association (Krygier & Czarnota, 1999; Stromseth et al., 2006). As Krygier (2009) observes, for the rule of law to be operative, laws must count. It requires not just laws and institutions for administering those laws, but fidelity to those laws; this is a core commitment and responsibility to the people, principles and values – the relationships which underpin those institutions. The rule of law requires reciprocal relations of trust between those who exercise power and those who

are subject to it. The Review made recommendations with respect to accountability to help build institutions that can help to foster fidelity and trust. The NSW government's response, rather than addressing the failure of the rule of law for Aboriginal peoples, further entrenches those flaws. It responds disingenuously to the report's findings and recommendations. The rituals of review and rhetoric of rights continue a long colonial tradition of governments asserting Aboriginal peoples' equality before the law whilst in practice denying their most foundational rights (Behrendt et al., 2019; Manderson, 2008). The NSW Government's response sits squarely in this ignoble tradition.

From this perspective, the findings of the Review can be considered as emphasising the lack of legitimacy in the current systems that exercise statutory powers over Aboriginal children and families. The Review found that the defined rules, outlined in legislation and policy, are routinely ignored without meaningful oversight or consequence, and that the framework for intervention is not consistent with the values of Aboriginal communities, and does not meaningfully operate with their consent. Further, the Review's recommendations can be thought of as belonging to two key categories – those focused on establishing and demonstrating legitimacy, including the key structural reforms of self-determination and public accountability as well as proposed legislative change, and those focused on promoting legitimacy indirectly via the effective achievement of community outcomes, such as proportionate, needs-based investment in family supports, access to advocacy services, data collection and use, and casework policy and practice.

Through this paradigm, the government's response, and the broader pattern of government responses in Indigenous child welfare, demonstrates a fundamental misunderstanding of the relationship between effectiveness and legitimacy outlined by Tankebe (2013). Specifically, governments prioritise efforts to improve effectiveness, while ignoring the need to establish legitimacy through greater self-determination, empowered independent oversight of the exercise of statutory power, and the implementation of key legislative safeguards in the care and protection of Indigenous children. In doing so, governments undermine the efforts to improve the effectiveness of child protection systems for Indigenous children, and further entrench illegitimate and harmful systems grounded in settler-colonial violence and racism.

First Peoples across various jurisdictions have not only resisted the ongoing harmful impacts of settler state child welfare systems and practices, but have also articulated the foundations for a new approach and reform agenda for addressing these structural shortcomings. While differing in language and form across jurisdictions, these frameworks share many common features (First Nations Child and Family Caring Society, 2019; Kaiwai et al., 2020; SNAICC,2016). First, they are grounded in First Peoples' self-determination and autonomy. Second, they emphasise the importance of culture, grounding both systems and practice in the cultural values and perspectives of the communities they represent and serve. Third, they reinforce the need for healing and early intervention to support families and communities in their sacred caregiving responsibilities, and call for holistic, community-based and responsive child and family supports rather than systems

predicated on removal. Finally, First Peoples' approaches consistently demand oversight by First Peoples' communities, providing transparency and community confidence that such systems are oriented toward and delivering on the best interests of their children. In short, First Peoples' frameworks seek to address the problem of legitimacy, recognising First Peoples' inalienable right to determine the systems and processes to promote their children's wellbeing, and the resources to put them into practice.

It is notable that some jurisdictions in Australia, namely Victoria and Queensland, are exploring the transfer of decision- making authority normally invested in settler child protection authorities to Aboriginal communities through 'delegated authority' (Liddle et al., 2021). Such models are welcome insofar as they enable Aboriginal communities to make decisions that significantly affect the lives of their children, families and communities, in ways that are aligned to community values, perspectives and expectations, and accountable to communities for the outcomes achieved. In some cases, they have been complemented by formal recognition of cultural models of care (see *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Bill 2020*, 2020.

)However, there are a number of barriers to their implementation that must be actively addressed in partnership with Aboriginal communities (Queensland Aboriginal and Torres Strait Islander Child Protection Peak, 2021). Further, such 'delegated authority' models fall short of the frameworks outlined by First Peoples by failing to recognise the inherent rights of First Peoples to exercise authority with respect to their children's futures. Instead, the language of 'delegated authority' reinforces settler authority over Aboriginal children and families, without addressing the underlying issues of legitimacy. This delegated notion clearly sets a very precarious footing for the transfer and exercise of such authority; just as the settler state may delegate authority, it may likewise re-assert its authority, terminating the delegation and resuming settler intervention in the lives of Aboriginal children, families and communities. Under such frameworks, First Peoples' communities must constantly demonstrate "appropriate" exercise of this delegated authority to the satisfaction of settler systems, simultaneously reinforcing settler systems while divesting responsibility to First Peoples.

Conclusion

The exercise of power by settler-colonial authorities in the lives of Aboriginal children and families is central to settler-colonialism (Nakata, 2017; Tuck & Yang, 2012). First Peoples have continued to resist this intervention, and advocate for recognition of their political rights as Indigenous peoples including the right to self-determination, as well as greater accountability of governments in their intervention in Indigenous families. In recent decades, a cycle of reviews and inquiries, followed by limited government reform, has emerged. Reviews have emphasised the importance of self-determination and public accountability in addressing the systemic racism that characterises contemporary child welfare systems (Davis, 2019; Kaiwai et al., 2020; Truth and Reconciliation Commission, 2015). Connecting concepts of legitimacy and the rule of law with principles of self-

determination and accountability, this paper has emphasised a persistent failure of governments to grapple with the key structural flaws of these systems in a way that transforms the underlying relationship between settler states and First Peoples, despite stated commitments to change that might achieve better outcomes for Indigenous children, families and communities. Importantly, this lens uses the broader concept of legitimacy in the exercise of state power to suggest that this failure of government is likely to undermine efforts to improve outcomes for First Peoples children and families, perpetuating and exacerbating past harms.

The exercise of statutory authority to intervene in, and even dismember, families, is an extraordinary use of state power. The legitimacy of this use of power is grounded in the trust and confidence of the community that the system operates with integrity, and according to rules and norms reflective of the values of the communities served (Libesman, 2014). In this way, the operation of child welfare systems occupies the intersection of the interests of parents and families and the interest of communities in the wellbeing of children. Statutory child protection systems represent the mechanism by which this collective interest is upheld, ensuring that minimum standards of care, based on the shared expectations and aspirations of a community for their children and understandings of childhood, are extended to all children.

However, rather than grapple with the 'historical continuity' of child welfare systems (Davis, 2019) and the ongoing illegitimate exercise of state power to intervene in the lives of First Peoples children, families and communities inherited from settler-colonial violence, government rhetoric and reform continues to focus on more 'effectively' wielding this power. This is demonstrated in the NSW Government's response to this Review, which focuses on strengthening settler systems while ignoring or minimising the need for structural reform grounded on self-determination and accountability. In doing so, the response reflects and perpetuates the failings identified through the Review. It also demonstrates a fundamental misunderstanding of the relationship between legitimacy and effectiveness. In this, it is emblematic of a broader tension regarding child welfare systems, and the ongoing intervention of settler states in the lives of First Peoples' children, families and communities. A reform agenda focused on addressing the illegitimate exercise of statutory power of current child welfare systems is urgently needed. This can only be achieved through structural change that recognises First Peoples' right to self-determination, enabling First Peoples-led system design, implementation and ongoing administration of child welfare systems grounded by First Peoples' values and perspectives, operating with their consent and oversight. This means not only transferring authority to First Peoples in responding to the needs of their children, families and communities, but adequately resourcing communities commensurate with the need to enable the implementation of community-led solutions.

This issue of the legitimate exercise of authority regarding the safety, welfare and well-being of Aboriginal children goes to the heart of the relationship between First Peoples and the settler state. Nakata has argued for the need for democratic renewal, one that opens a place for Indigenous

children in their nation's future, rather than "being made to feel that they are being pulled between a white future and a black past" (Nakata, 2018, p. 112). Nakata (2018, p. 69) notes that "Aboriginal and Torres Strait Islander Peoples have only ever had their claims to the past legitimised; our claims to the future continue to be denied." Reforming child protection systems is an essential part of this renewal. Given the history of settler-colonial intervention in the lives of Indigenous children and families, and the subsequent impact on the lives of individuals, families, and communities across generations, there can be few domains where structural reform of this relationship is more urgent. This can only be achieved by establishing legitimate systems for the care and protection of Indigenous children, by and for their communities, and in some cases may operate informally within communities, although remaining subject to settler intervention and override. Governments must show significantly greater humility and courage, acting with urgency to enable, through legislation and equitable, needs-based resourcing, child welfare systems to be transformed and reimagined by First Peoples to operate consistent with their values, through First Peoples governance, and with empowered First Peoples oversight and accountability. As Davis (2019, p.85) pointed out, such systems should operate "free from unwarranted state interference," enabling community-based responses and services to support families and address enduring socioeconomic disadvantages that contributes to risks in child protection involvement and intervention. Unless and until these foundations change, such systems wielded by settler states will continue to reflect the colonial violence on which they were founded, rather than the need for reparations and healings that settler governments consistently espouse.

References

Aboriginal Legal Service (NSW/ACT). (2020, July 9). *ALS calls for urgent legislative reform to support Aboriginal children* [Press release]. https://www.alsnswact.org.au/als_calls_for_urgent_legislative_reform_to_support_aboriginal_children

Anderson, P., & Tilton, E. (2017). *Bringing Them Home 20 years on: An action plan for healing*. Healing Foundation.

Behrendt, L., Cunneen, C., Libesman, T., & Watson, N. (2019). *Indigenous Legal Relations in Australia*. Oxford University Press.

Bill C-92, *Act respecting First Nations, Inuit and Métis children, youth and families*, 1st Session, 42nd Parliament, 2019.

Blackstock, C. (2019). Indigenous child welfare legislation: A historical change or another paper tiger? *First Peoples Child and Family Review*, *14*(1), 5–8. https://doi.org/10.7202/1071283ar

Cook, L. (2020). Evidence, accountability and legitimacy: The oversight of child welfare services. *Statistical Journal of the IAOS, 36*(2), 365-373. https://doi.org/10.3233/SJI-190583

Cornell, S. and Kalt, J. (1998). Sovereignty and Nation-Building: The development challenge in Indian Country today. *American Indian Culture and Research Journal, 22*(3), 187–214. https://doi.org/10.17953/aicr.22.3.lv45536553vn7j78

Davis, M. (2019). *Family is Culture Final Report: Independent Review in Aboriginal Out-of Home Care in NSW*. Department of Communities and Justice, NSW Government.

Dudgeon, P., Milroy, J., Calma, T., Luxford, Y., Ring, I., Walker, R., Cox, A., Georgatos, G., & Holland, C. (2016). *Solutions that work: What the evidence and our people tell us – Aboriginal and Torres Strait Islander suicide prevention evaluation project* report. University of Western Australia.

First Nations Child and Family Caring Society. (2019). *Touchstones of Hope for Indigenous Children, Youth and Families: Reconciliation in Child Welfare*. First Nations Child and Family Caring Society.

Fuller, L. (1969). *The Morality of Law*. Yale University Press.

Harlow, C. (2014). Accountability and Constitutional Law. In M. Bovens, R. Goodin, & T . Schillemans (Eds.), *The Oxford Handbook of Public Accountability,* (195–210). Oxford University Press.

Harris-Short, S. (2012). *Aboriginal child welfare, self-governance and the rights of Indigenous children protecting the vulnerable under international law*. Ashgate Publishing Limited.

Human Rights and Equal Opportunity Commission. (1997). *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*. Commonwealth of Australia.

Kaiwai, H., Allport, T., Herd, R., Mane, J., Ford, K., Leahy, H., Varona, G., & Kipa, M. (2020). *Ko Te Wā Whakawhiti – It's time for change: A Māori Inquiry into Oranga Tamariki*. Whānau Ora.

Krygier, M., & Czarnota, A. W. (1999). *The rule of law after communism: Problems and prospects in east-central Europe*. Ashgate.

Krygier, M. (2009). The rule of law: Legality, teleology, and sociology. In G. Palombella, & N. Walker, (Eds.), *Relocating the rule of law* (pp. 45–70). Bloomsbury Publishing. https://doi.org/10.5040/9781472564634.ch-003

Libesman, T. (2014). *Decolonising Indigenous child welfare: Comparative perspectives*. Routledge. https://doi.org/10.4324/9781315889566

Libesman, T., & Cripps, K. (2017). Aboriginal and Torres Strait Islander children's welfare and well-being. In L. Young, & G. Monahan (Eds.), *Children and the Law in Australia* (pp. 307–336). LexisNexis.

Libesman, T., Gray, P., & Ellinghaus, K. (2022). Colonial law and the control of Aboriginal and Torres Strait Islander families. In P. Cane, L. Ford, & M. McMillan. (Eds.), *Cambridge Legal History of Australia* [in press].

Liddle, C., Gray, P., Burton, J., Prideaux, C., Solomon, N., Cackett, J., Jones, M., Bhathal, A., Corrales, T., Parolini, A., Tan, W. W., & Tilbury, C. (2021). *The family matters report 2021: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Trait Island children in out-of-home care in Australia.* Family Matters.

Manderson, D. (2008). Not yet: Aboriginal People and the deferral of the rule of law. *Arena Journal, 29*(30), 219–272. https://search.informit.org/doi/10.3316/ielapa.681569176676729

McDonald, P., & Daniels, S. (2019, August 30). Community legal centres in NSW outraged by funding cuts to early intervention programs. *ABC News*. https://www.abc.net.au/news/2019-08-30/outcry-from-community-legal-centres-in-nsw-over-funding-cuts/11461424

Nakata, S. (2017). The Re-Making of Nation and Indigenous Australian Children. *Australian Journal of Public Administration*, *76*(4), 397–399. https://doi.org/10.1111/1467-8500.12296

Nakata, S. (2018). The infantilisation of Indigenous Australians: A problem for democracy. *Griffith Review, No. 60*. https://www.griffithreview.com/articles/infantilisation-indigenous-australians-problem-for-democracy/

NSW Child, Family and Community Peak Aboriginal Corporation [AbSec]. (2020, July 9). *NSW Government delivers unremarkable response to the Family is Culture Review* [Press release]. https://www.facs.nsw.gov.au/families/out-of-home-care/nsw-response-to-the-family-is-culture-review/nsw-response-to-the-family-is-culture-review

NSW Department of Aboriginal Affairs. (April, 2013). *OCHRE Plan – NSW Government Aboriginal Affairs Strategy*. NSW Government. https://www.aboriginalaffairs.nsw.gov.au/pdfs/OCHRE/AA_OCHRE_final.pdf

NSW Government. (2020). *NSW Government response to the family is culture review report*. NSW Government. https://www.facs.nsw.gov.au/families/out-of-home-care/nsw-response-to-the-family-is-culture-review/nsw-response-to-the-family-is-culture-review

Office of the Children's Guardian. (2020). *Response to the family is culture independent review into Aboriginal children in out-of-home care in NSW*. NSW Government. https://www.opengov.nsw.gov.au/publications/19238

Queensland Aboriginal and Torres Strait Islander Child Protection Peak. (2021, October). *Implementing delegated authority – Capturing our story: Final action research report.* Queensland Aboriginal and Torres Strait Islander Child Protection Peak. http://coe.qatsicpp. com.au/implementing-delegated-authority-capturing-our-story-final-action-research-report-october-2021/

Richardson, C. (2016). Métis-astute social work: Shining the light on some helpful practices. *Journal of Indigenous Social Development, 6*(1), 82–99.

Royal Commission on Aboriginal Peoples. (1996). *Report of the Royal Commission on Aboriginal Peoples.* Minister of Supply and Services Canada.

Scott, E. (2016, November 15). Four Corners: Concerns raised over housing for vulnerable children in Canberra. *ABC News Digital.* https://www.abc.net.au/news/2016-11-15/four-corners-concerns-raised-over- housing-children-canberra/8027742

SNAICC – National Voice for Our Children. (2016). *The Family Matters Roadmap.* Family Matters. https://www.familymatters.org.au/the-way-forward/

Stromseth, J., Wippman, D., & Brooks, R. (2006). *Can might make rights? Building the rule of law after military interventions.* Cambridge University Press.

Swain, S. (2013). "Home are sought for these children": Locating adoption within the Stolen Generations narrative. *American Indian Quarterly*, *37*(1–2), 203–217. https://doi. org/10.1353/aiq.2013.0004

Tankebe, J. (2013). Viewing things differently: The dimensions of public perceptions of police legitimacy. *Criminology, 51*(1), 103-135. https://doi.org/10.1111/j.1745-9125.2012.00291.x

Thompson, E. P. (1997). *Whigs and Hunters.* Penguin.

Truth and Reconciliation Commission of Canada. (2015). *Calls to action.* Truth and Reconciliation Commission of Canada.

Tuck, E., & Yang, K. W. (2012). Decolonization is not a metaphor. *Decolonization: Indigeneity, Education and Society*, *1*(1), 1–40.

Wade, A. (1997). Small acts of living: Everyday resistance to violence and other forms of oppression. *Contemporary Family Therapy 19*(1), 23–39.

Waldron, J. (2011). The rule of law and the importance of procedure. In J. Fleming (Ed.), *Getting to the rule of law* (pp. 3–31). NYU Press. https://doi.org/10.18574/ nyu/9780814728437.003.0001

Wood, J. (2008). *Report of the special commission of inquiry into child protection services in NSW.* Special Commission of Inquiry into Child Protection Services, NSW.
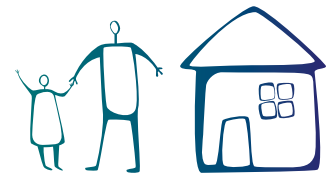
A Longitudinal Study to Better Understand Child Protection Intervention for First Nations Children

Mireille De La Sablonnière-Griffin,[a] Delphine Collin-Vézina,[b] Tonino Esposito,[c] and Jacinthe Dion[d]

a PhD, Department of Health Sciences, Université du Québec à Chicoutimi
b McGill University
c Université de Montréal
d Université de Québec à Chicoutimi

Corresponding author: Mireille De La Sablonnière-Griffin at mireille.de-la-sablonniere-griffin1@uqac.ca

Abstract

This study brings forward new evidence regarding child protection (CP) intervention for First Nations children and contributes to a longitudinal understanding of their trajectories within CP services. It raises questions regarding the persisting, unmet needs of First Nations children, families, and communities by identifying the CP factors associated with a first decision to provide post-investigation intervention and a first decision to close a case following post-investigation intervention among First Nations children. Anonymized administrative data (2002–2014; n = 1340) were used to conduct multivariate analyses, including longitudinal analyses using Cox proportional hazards modeling. Among First Nations children, those who were very young, who were reported for serious risk of neglect, and whose situation included indicators of repeated individual or family contact with CP services were more likely to receive post-investigation intervention. Similarly, those who were very young, provided services for neglect or serious risk of neglect, and whose situation was investigated at least twice before intervention was provided were more likely to have a longer first episode of intervention. The longitudinal analyses also revealed that more than one in two First Nations children (51.7%) receiving post-investigation intervention experienced a placement in out-of-home care during their interaction with CP services. This study contributes to a better understanding of intervention for First Nations children in Canada. It highlights how First Nations children receiving CP intervention live in situations in which their needs persist over time and how current services do not appear able to respond to these situations adequately, supporting the move towards autonomous, Indigenous–led CP services.

Keywords: child protection, First Nations, post-investigation intervention, longitudinal trajectories, neglect

Introduction

First Nations children are overrepresented in child protection (CP) services as compared to non-Indigenous children. The most recent available data indicate that the population rates at different stages of CP services are 3 to 14 times higher for First Nations children living in Canada than for non-Indigenous or White children (Crowe et al., 2021; De La Sablonnière-Griffin et al., 2016; Fallon et al., 2021; Ma, et al., 2019; Sinha et al., 2011). The overrepresentation of Indigenous children occurs across settler nations (Bilson et al., 2015; Rouland et al., 2019; Segal et al., 2019). While various sources documented disparities, the magnitude and trends regarding disparity remain unclear. This is primarily caused by incomplete or poorly populated administrative data and a heavy reliance on cross-sectional data. A longitudinal understanding of CP intervention for First Nations children is required to proceed with changes that will truly benefit Indigenous children, families, and communities in Canada. Australian data show how CP cross-sectional data are a gross underestimation of the number of children who will be investigated by CP before 18 years old. While 5.5% of Indigenous children in Australia experienced a completed investigation in 2005–06 (Tilbury, 2009), 28 to 39% of Indigenous children born between 1990 and 2003 and followed to age 14 to 18 ever experienced the same outcome (Bilson et al., 2015; Segal et al., 2019). In brief, the longitudinal rates were up to seven times higher than cross-sectional rates. The most recent annual rates of First Nations children investigated in Canada are higher than the Australian rate reported above, ranging from 6.4% (De La Sablonnière-Griffin et al., 2016) to 17% (Crowe et al., 2021). While the Indigenous populations and CP systems differ, we can assume that the cross-sectional rates in Canada greatly underestimate the real percentage of children that will experience at least one CP investigation before reaching 18 years of age.

Considering the above, better documenting the longitudinal trajectories of Indigenous children in CP services appears to be of central importance. This type of research would contribute to answering the Truth and Reconciliation Commission's (TRC) Calls to Actions (TRC, 2015). It could uncover challenges still faced in serving Indigenous children, families, and communities, therefore providing pressure to ensure that CP systems remain accountable as changes are implemented. Considering the contemporary developments related to CP in Canada, such as an *Act respecting First Nations, Inuit and Métis children, youth and families*, and considering that the TRC's Calls to Actions were released in 2015, the dearth of research on First Nations children's trajectories in CP services in Canada is deplorable. The current study, by providing a longitudinal analysis of the first provision and first closure of post-investigation CP intervention for First Nations children by a mainstream agency, aims to address the limitations of current research, namely the lack of longitudinal and First Nations–specific (not comparative) CP-related research.

Decision-Making in CP for First Nations Children in Canada

Current research on CP services in Canada and concerning First Nations children has mostly focused on two CP decisions, substantiation, and placement (during or at the conclusion of the investigation). This body of research works towards determining the risk of First Nations children experiencing these decisions compared to non-Indigenous children. Research on substantiation offers two takeaway messages. First, when analyzing all forms of reported maltreatment, the rate of substantiation for First Nations children remains statistically significantly higher than for non-Indigenous children when controlling for characteristics of the report, the child or the household; the higher rate is accounted for by the presence of risk factors for their caregiving figures, including substance abuse, social isolation and caregivers having a history of child maltreatment themselves (Sinha et al., 2013; Trocmé et al., 2004; Trocmé et al., 2006). Second, when considering only neglect cases, the interaction between being First Nations and two risk factors (substance abuse and being a lone caregiver) explains the overrepresentation of First Nations children (Sinha et al., 2013). Research on placement is more equivocal, with early research indicating that risk factors explain the overrepresentation (Trocmé et al., 2004), while more recent research found that the disparity was maintained (Breton et al., 2012; Trocmé et al., 2006). Nonetheless, placement was more likely for all children investigated in agencies in which 20% or more of the investigations involved Indigenous children (Chabot et al., 2013; Fallon et al., 2013; Fallon et al., 2015; Fluke et al., 2010).

Placement is a critical issue for First Nations communities in Canada, as highlighted by the TRC and its Calls to Action (2015). Yet, providing post-investigation intervention in CP includes not only out-of-home care, but also in-home services. Exploring the factors associated with the decision to provide post-investigation intervention in CP among the general population is a slowly emerging field of research in Canada (Jud et al., 2012; Smith et al., 2019) and the US (Jonson-Reid et al., 2017). Globally, provision of post-investigation CP intervention, whether in or out-of-home, aims at preventing future maltreatment and remedying the current maltreatment situation (Capacity Building Center for States, 2018; Trocmé et al., 2019).

Cross-sectional data from Canadian research indicates that between 38% (Ma et al., 2019; Sinha et al., 2011) and 64.5% (Breton et al., 2012) of cases investigated involving First Nations children were transferred to post-investigation intervention, a proportion always higher than for the comparison group (non-Indigenous or White children). Two multilevel (case and agency level) Canadian studies sought to identify factors associated with the decision to provide post-investigation intervention (Jud et al., 2012; Smith et al., 2019). While they did not focus on Indigenous children's experience, they both included an agency-level variable concerning Indigenous children (agencies in which 20% or more of their investigations were about Indigenous children vs. agencies with a lower proportion), and Smith and colleagues (2019) also included Indigenous identity as a case-level variable. None of these variables were found to influence the decision.

Ma, Fallon, Alaggia and Richard (2019), using the same data as Smith and colleagues (2019), explored factors related to this decision among First Nations specifically. This study first documented characteristics of the investigations transferred to post-investigation intervention. Just under half (44.6%) included neglect situations, about three quarters (74.2%) concerned a child that had been previously investigated, and placement occurred in about one-fifth (19.2%) of these cases. An exploratory, tree-based decision model identified 12 decision nodes[1] among investigations concerning First Nations children to predict post-investigation intervention. The characteristics with the greatest influence was low social support for the child's primary caregiver. When the primary caregiver had few social supports, 65% of cases received post-investigation intervention. When the primary caregiver had few social supports, the primary form of maltreatment was not physical abuse, and at least one unsafe housing condition existed or was unknown, 94% of cases were transferred to post-investigation intervention. In contrast, only 15% of cases were provided post-investigation intervention when the primary caregiver had few social supports and the primary maltreatment type was physical abuse or, if following the other path, when the primary caregiver was not noted to have few social supports and alcohol abuse issues, and the child under investigation did not have depressive symptoms.

Closing the CP Case after Post-Investigation Intervention

Research discussing the decision to close CP services has mostly conceptualized the "end" with regards to placement and through a permanency lens (e.g., family reunification, placement until majority, etc.), with virtually no research focusing on children served in-home and/or through short-term placements. The overall lack of sound and accessible longitudinal data on post-investigation intervention likely plays an important role in the absence of such research (Jenkins, 2017; Jonson-Reid et al., 2017; Trocmé et al., 2019). Nevertheless, it is imperative to address the lack of conceptualization and knowledge pertaining to families served by CP services without out-of-home care experiences, as they tend to represent a larger group of families than those who experience placement (Keddell, 2018). Descriptive data over a period of three years following a screened-in report in the province of Quebec highlighted that 56% of First Nations children did not experience a placement, which appears to support this affirmation for the population of interest (De La Sablonnière-Griffin et al., 2016).

The current study pursued two intricately tied objectives, which were to understand the factors associated with a first decision to 1) provide post-investigation CP intervention (in-home, out-of-home care, or both) and 2) close a CP case after post-investigation intervention, among First Nations children.

---

1 A node identifies a characteristic that distinguishes the most between cases transferred to post-investigation services and cases closed at the investigation stage.

Methods

Data Source

Anonymized administrative CP data of Côte-Nord, a northern region in the province of Quebec, have been used. The data configuration was such that the mainstream regional CP organization controlled the access to the data they gathered about First Nations children, which were thus physically possessed by this organization. To ensure a degree of control and in recognition of the ownership of the data by the First Nations, this research was conducted under the guidance of an advisory committee comprised of representatives from the regional CP organization and from the delegated Innu social services agencies. A larger regional consultation mechanism was also used sporadically to validate the research objectives, preliminary results, and interpretations, with delegates from all Innu social services agencies of the region, as not all communities were represented on the advisory committee.

Brief Review of CP Decision-Making and Intervention Process in Quebec, Canada

Alleged situations of child maltreatment are first notified to CP services by diverse reporters (e.g., school personnel, neighbours) and summarily assessed to determine if the situation will be fully investigated or not. Reports that are screened-in are investigated to reach up to two decisions: whether the allegations are substantiated and, if they are, whether the child's safety and development are in danger. When the latter is the case, post-investigation intervention is implemented. Post-investigation intervention is based on court-ordered or voluntary protective measures; it can include home-based intervention and out-of-home care. When the investigation deems the situation unsubstantiated or when the case is substantiated but the security and development of the child are not in danger, the child's family can be referred to public and community resources as needed.

Once a child receives post-investigation intervention, the case is periodically reviewed to determine if the child's safety and development remain in danger. A CP case is closed once the child's safety and development are no longer considered in danger and represent the end of all post-investigation intervention. There are multiple pathways to achieving a situation in which the security and development of the child is no longer in danger, including, but not limited to, parents having taken adequate measures to remedy the situation, reaching 18 years of age, adoption, custodianship, emancipation, and long-term placement.

First Provision of Post-Investigation CP Intervention

First Screened-In Report Cohort

To answer the first objective, we selected First Nations children (aged 0 to 17) living in a First Nations community, and who experienced a first CP report screened-in for investigation between April 1, 2002, and March 31, 2014, in the region under study. Children who were transferred to or from another

region prior to a first screened-in report, as well as children for whom the investigation was not completed by the end of the observation period (September 9, 2014), were not included in this cohort. This cohort totaled 1,340 children. Because the research interest was the first provision of post-investigation intervention, and because not all children who enter post-investigation intervention do so at their first investigation, additional analyses were conducted on a subset comprised of all cases that did not result in post-investigation intervention at the termination of the first investigation. Children who were transferred to or from another region after the conclusion of the first investigation (with no post-investigation intervention provided) but before their first instance of post-investigation intervention in the region under study were excluded (n = 5), resulting in a subset cohort of 720 children for whom no post-investigation intervention was provided following the first investigation.

Dependent Variable. The outcome measured for the first screened-in report cohort is provision of post-investigation CP intervention.

First case closure

First Post-Investigation Intervention Cohort

To answer the second objective, all First Nations children (aged 0–17) who experienced a first provision of post-investigation intervention (with a start date between April 1st, 2002, and March 31st, 2013) from the initial pool of 1340 individuals were included. This subsample comprised a total of 702[2] children. The end date was selected to allow a minimal case file length: the minimal observation length is about one year and five months, specifically from March 31, 2013, to September 9, 2014.

Dependent Variable. The outcome measured for this cohort is case closure. Given that the analyses on this cohort are longitudinal, time was measured in days. For children with a case closure during the observation period, time is calculated between the date of the decision at the investigation stage and the date at case closure. For censored cases, meaning children still receiving post-investigation intervention at the end of the study period, time was calculated between the date of the decision at the investigation stage and September 9, 2014.

Covariates

All the covariates were measured at the entry point into their specific cohort, namely at the decision point of the screening stage for the first screened-in reports cohort, and at the decision point of the investigation stage for the second cohort. They all are dichotomous and, unless otherwise

---

2   This number is lower than the total number of cases that were opened according to the first cohort of children studied. The reason for this difference is that the observation period for provision of post-investigation intervention is shorter with the second cohort. Concretely, for the first objective, this information is the outcome measured and is observed until September 9, 2014, whereas in the second cohort, it is the entry point into the cohort and is observed only until March 31, 2013.

stated, mutually exclusive. The covariates are divided into three groups: characteristics of the child, characteristics of the CP situation, and interactions between the family and CP services.

Characteristics of the child were limited to gender and age. Gender is a nominal variable identifying if the child is a boy or a girl, with being a girl used as the reference category. Age was measured at the date of the decision and consisted of a series of four dichotomous variables (under 2; 2 to 5; 6 to 11; 12 to 17), and for which the 6-to-11 category acted as the reference group. The characteristics of the situation included: the presence of at least one screened-out report prior to the first screened-in report (yes/no [reference category]); the source of referral, a series of seven dichotomous variables (extended family and neighbours [reference category]; police; education [schools and daycare]; CP agencies; professionals from other public services; professionals from private services; and other/unidentified referral sources) and the alleged reasons for reporting the child. The alleged reasons are a series of five dichotomous variables (physical and/or sexual abuse, including serious risk of physical and sexual abuse [reference category]; neglect; serious risk of neglect; psychological maltreatment, including exposure to intimate partner violence; serious behavioural issues that parents are unable to address), which are not mutually exclusive (a child can have up to three alleged reasons). Two variables pertained to the interaction between the family and CP services. Family known to the CP agency (yes/no [reference category]) identified if one or both parents of the child in the cohort were previously identified as parents of another child for whom an investigation was completed before the reception of the first screened-in report of the child under study. The unidentified parent variable (yes/no [reference category]) indicated case files in which only one parent, or no parent at all, were identified.

For the second objective, we also added two variables pertaining to the situation: the number of investigations prior to provision of post-investigation intervention (one [reference category]/two or more); and out-of-home placement during the investigation stage (yes/no [reference category]).

Analytical Framework

Descriptive analyses for the two cohorts of children are presented in Table 1. Logistic regression was used for the first objective. Cox proportional hazards modeling was used for the second objective. This type of analysis models time to the event of interest while taking into consideration the different lengths of observations for each individual under study, in addition to allowing for multiple independent variables. For both objectives, all the independent variables were included in the multivariate models given that no multicollinearity issues were noted.

Table 1
Characteristics of Children in the two Cohorts

Characteristics at cohort entry	First screened-in report		First post-investigation intervention	
	N = 1,340		**N = 702**	
Gender				
Boys	679	(50.7)	359	(51.1)
Age				
0–1	437	(32.6)	221	(31.5)
2–5	375	(27.9)	199	(28.3)
6–11	295	(22.0)	154	(21.9)
12–17	234	(17.5)	128	(18.2)
Source of referral (first screened-in report)				
Family	355	(26.5)	190	(27.1)
Police	252	(18,8)	123	(17.5)
Education	139	(10.4)	59	(8.4)
CP agency	172	(12.8)	89	(12.7)
Professional from other public services	350	(26.1)	195	(27.8)
Professional from private services	55	(4.1)	35	(5.0)
Other/unidentified	17	(1.3)	11	(1.6)
Prior screened-out reports				
Yes	435	(32.5)	231	(32.9)
Reasons for investigation or intervention				
Physical and/or sexual abuse (including serious risk of)	262	(19.6)	69	(9.8)
Neglect	600	(44.8)	350	(49.9)
Serious risk of neglect	583	(43.5)	343	(48.9)
Psychological maltreatment	321	(24.0)	220	(31.3)
Serious behavioural issues	178	(13.3)	111	(15.8)
# of investigations before intervention				
2 or more	—		172	(24.5)
Placement during investigation				
Yes	—		152	(21.7)
Family known to CP agency				
Yes	550	(41.0)	338	(48.1)
Unidentified parent				
Yes	157	(11.7)	78	(11.1)
Intervention following first investigation				
Yes	615	(45.9)	—	
Intervention following 2+ investigations				
Yes	195	(14.6)	—	
Case closure during observation period				
Yes	—		558	(79.5)

Results

First Screened-In Report Cohort

A detailed description of children in each cohort is presented in Table 1. At their first screened-in reports, most First Nations children were below the age of 6 (60.5%). The most frequent source of referral was a family member or someone else from the child's surroundings (26.5%), although a similar proportion of children (26.1%) was reported by a professional from a public service other than the police, the education system, or a CP agency. Just under a third (32.5%) had at least one screened-out report prior to their first screened-in report. Among the alleged grounds for reporting the child, neglect (44.8%) and serious risk of neglect (43.5%) were the most frequent. As up to three reasons could be noted for a single report, the percentages add to more than 100%. Serious behavioural issues was the least frequent alleged reason (13.3%). For 41.0% of the children, their family was known to the CP agency. The security and development of 615 (45.9%) children were considered in danger at the first investigation, resulting in the provision of post-investigation intervention (outcome measured for model 1 in Table 2). Among the 720 children who were not provided post-investigation intervention on their first investigation, 27.1% (n = 195) eventually experienced post-investigation CP intervention following a second, third, or fourth investigation (outcome measured for Model 2 in Table 2).

The results from the first logistic regression model (Model 1, Table 2) indicate the variables associated with a higher or lower likelihood of experiencing the provision of post-investigation intervention based on a first investigation. First Nations children aged under 2 at the decision to screen-in the report were 1.6 times (Odds ratio [OR]: 1.558) more likely to experience post-investigation intervention provision than were children aged 6 to 11. Other variables associated with an increased likelihood of post-investigation intervention included: children with prior screened-out reports (OR: 1.474); those reported by a professional from a public (OR: 1.400) or a private service (OR: 2.544), compared to those reported by the child's family or neighbours; children who were reported for serious behavioural issues (OR: 1.564) or serious risk of neglect (OR: 1.828), compared to those reported for abuse; and those who were from a family known to the CP agency (OR: 1.756). A single variable was associated with a decreased likelihood of post-investigation interventions: having been reported by the police (OR: 0.694). Reversed, this finding indicated that a child reported by their family was 1.44 times more likely to receive post-investigation intervention, compared to a child reported by the police. As reported in Table 2, serious risk of neglect and family known to the CP agency were the most important contributors to this decision according to the Wald statistics (as the value of the Wald statistics increases, so does the contribution of the variable tested).

Table 2

Logistic Regression Models Predicting Post-Investigation Intervention Provision on a First Investigation (Model 1) or on a Higher-Order Investigation (Model 2)

	Model 1				Model 2			
	All first screened-in reports (N = 1,340)				**First screened-in reports with no intervention following a first investigation (N = 720)**			
Characteristics	**B**	**S.D.**	**Wald**	**Exp(B)**	**B**	**S.D.**	**Wald**	**Exp(B)**
Gender								
Boys	0.101	0.116	0.767	1.106	-0.183	0.180	1.031	0.833
Girls (ref.)								
Age								
0–1	0.443	0.176	6.338	1.558*	1.108	0.271	16.783	3.029***
2–5	0.133	0.175	0.578	1.143	0.510	0.271	3.543	1.665
6–11 (ref.)								
12–17	0.242	0.202	1.434	1.273	-0.729	0.355	4.215	0.482*
Prior screened-out reports								
Yes	0.388	0.128	9.195	1.474**	0.029	0.204	0.020	1.030
Source of referral								
Family (ref.)								
Police	-0.365	0.180	4.134	0.694*	-0.125	0.256	0.238	0.883
Education	-0.028	0.221	0.016	0.973	-0.667	0.364	3.366	0.513
CP agency	0.108	0.199	0.293	1.114	-0.460	0.3131	2.159	0.631
Professional from other public services	0.336	0.158	4.512	1.400*	-0.079	0.250	0.101	0.924
Professional from private services	0.934	0.330	7.996	2.544**	-0.084	0.587	0.020	0.919
Other/unidentified	0.419	0.512	0.671	1.521	-0.387	0.859	0.203	0.679
Reasons for investigation								
Abuse (ref.)								
Neglect	0.240	0.126	3.621	1.272	0.066	0.203	0.106	1.068
Serious risk of neglect	0.603	0.126	22.874	1.828***	-0.023	0.198	0.013	0.977
Psychological maltreatment	0.277	0.145	3.637	1.320	0.298	0.226	1.738	1.348
Serious behavioural issues	0.447	0.212	4.450	1.564*	0.920	0.351	6.854	2.509**
Family known to CP agency								
Yes	0.563	0.120	21.901	1.756***	0.764	0.189	16.307	2.146***
Unidentified parent								
Yes	-0.249	0.182	1.880	0.780	0.321	0.263	1.500	1.379

Model 1: [X2 (17, n = 1340) – 111.711, p < 0.000]
Model 2: [X2 (17, n = 720) – 68.893, p < 0.000]
*p < 0.05. **p < 0.01. ***p < 0.001.

The logistic regression model on the subset of cases that did not result in post-investigation intervention following the first investigation is presented in Table 2 (Model 2). These analyses show that three variables, measured at the first screened-in report, increased the likelihood of post-investigation intervention on a second or higher-order investigation: having been under 2 (OR: 3.029), compared to those aged 6 to 11; having been reported for serious behavioural issues (OR: 2.509), compared to those reported for abuse; and coming from a family known to the CP agency (OR: 2.146). One variable, measured at the first screened-in report, was associated with a reduced likelihood of post-investigation intervention: having been aged 12 to 17 (OR: 0.482), compared to those aged 6 to 11 (conversely, children aged 6 to 11 were 2.08 times more likely to eventually experience intervention than those aged 12 to 17). According to the Wald statistics, having been under 2 at the first screened-in report and family known to the CP agency were the most important contributors to this decision.

First Post-Investigation Intervention Cohort

With regards to the cohort with a first provision of post-investigation intervention, the descriptive analyses (Table 1) show little change on most variables. The distribution of reasons for intervention varied slightly from the reasons for investigation, but the main categories remained neglect (49.9%) and serious risk of neglect (48.9%). The smallest category changed: physical and/or sexual abuse, including serious risk of these types of abuse, was the least frequent reason for intervention (9.8%). About a quarter of all cases with post-investigation intervention were transferred after at least two investigations (24.5%), and just over a fifth (21.7%) of children were placed in out-of-home care (including kinship care) during the investigation. A total of 558 children (79.5%) experienced a case closure during the observation period.

The Cox model for the first case closure is presented in Table 3 on the following page. These analyses show that case closure was associated with having been a teenager (Risk ratio [RR]: 1.442; compared to children aged 6 to 11 at the start of post-investigation intervention) and with having been reported by a professional from a private service at the first screened-in report (RR: 1.890; compared to children reported by family). Four variables were associated with longer duration of intervention before closure. Children under 2 at the start of post-investigation intervention (RR: 0.556); reversed, those 6 to 11 at start of intervention were 1.80 times more likely to experience closure compared to those under 2. Children who were provided post-investigation intervention for neglect (RR: 0.804) or serious risk of neglect (RR: 0.779) were less likely to experience closure, compared to those receiving intervention for physical or sexual abuse; put differently, children receiving intervention for abuse were 1.24 (compared to neglect) and 1.28 (serious risk of neglect) times more likely to experience closure. Finally, children experiencing a first post-investigation intervention after at least two investigations (RR: 0.726) were less likely to experience case closure; reversed, those receiving post-investigation intervention following their first investigation were 1.38 times more likely to experience case closure.

Table 3
Cox Model Predicting Case Closure on First Post-Investigation Intervention

Characteristics	B	S.D.	Wald	Exp(B)
Gen				
Boys	-0.032	0.087	0.136	0.969
Girls (ref.)				
Age				
0–1	-0.536	0.139	17.771	0.556***
2–5	-0.227	0.128	3.153	0.797
6–11 (ref.)				
12–17	0.366	0.152	5.823	1.442***
Prior screened-out reports				
Yes	-0.054	0.097	0.315	0.947
Source of referral				
Family (ref.)				
Police	0.027	0.137	0.039	1.027
Education	0.015	0.172	0.008	1.015
CP agency	0.084	0.154	0.299	1.088
Professional from other public services	0.054	0.119	0.208	1.056
Professional from private services	0.637	0.217	8.622	1.890**
Other/unidentified	-0.118	0.349	0.114	0.889
Reasons for intervention				
Abuse (ref.)				
Neglect	-0.218	0.096	5.173	0.804*
Serious risk of neglect	-0.250	0.095	6.938	0.779**
Psychological maltreatment	0.129	0.105	1.487	1.137
Serious behavioural issues	-0.523	0.215	5.941	0.593*
Serious behavioural issues *time	0.001	0.000	5.745	1.001*
# of investigations before intervention				
2 or more	-0.321	0.109	8.702	0.726**
Placement during investigation				
Yes	-0.172	0.110	2.438	0.842
Family known to CP agency				
Yes	-0.174	0.090	3.751	0.840
Unidentified parent				
Yes	-0.094	0.136	0.481	0.910

Model: [X^2 (20, n = 702) – 100.053, p < 0.000]
*p < 0.05. **p < 0.01. ***p < 0.001.

A single variable had a time-varying effect. Having received intervention for serious behavioural issues was initially associated with a decreased prospect of case closure (RR: 0.593, compared to cases involving abuse), but its effects changed over time, meaning that the risk of case closure increased with each passing day. According to the Wald statistics, having been under 2 at the start of post-investigation intervention and entering post-investigation intervention after a minimum of two investigations were the most important contributors to this decision.

Additional descriptive analyses regarding post-investigation intervention are presented in Table 4. The observation length was not equal among all cases, ranging from a minimum of about 17 months to a maximum of about 11 years and 5 months. A small percentage of children (8.4%) were referred to short-term intervention, while the balance of children was almost equally split between voluntary (44.4%) and court-ordered measures (47.4%) at the initiation of the post-investigation services. More cases initially referred to voluntary measures were closed during the observation period (86.2% of 312 cases), than cases referred to courts (69.7% of 333 cases). Among cases still receiving intervention at the end of the observation period, 70.1% had initially been referred to courts. Placement was experienced by about half of the children (51.7%) at any point from their first investigation forward. Placement was highly prevalent in cases with ongoing post-investigation intervention at the end of observation, with 84.7% of children in this group having experienced at least one out-of-home care placement. In terms of case length, most children, among all cases

Table 4

Descriptive Analysis of Cases Receiving Post-Investigation Intervention

Characteristics	All cases with intervention N = 702		Cases closed during observation N = 558		Cases with ongoing intervention at the end of observation N = 144	
Initial orientation						
Short-term intervention	57	(8.1%)	57	(10.2%)		—
Court-ordered measures	333	(47.4%)	232	(41.6%)	101	(70.1%)
Voluntary measures	312	(44.4%)	269	(48.2%)	43	(29.9%)
Placement (from first screened-in report to closure	363	(51.7%)	241	(43.2%)	122	(84.7%)
Case length						
0–365 days	129	(18.4%)	129	(23.1%)		—
366–730 days	266	(37.9.%)	249	(44.6%)	17	(11.8%)
731–1,095 days	137	(19.5%)	94	(16.8%)	43	(29.9%)
1,096 days or more	170	(24.2%)	86	(15.4%)	84	(58.3%)
Age at case closure						
0–5	300	(42.8%)	254	(45.5%)	46	(32.0%)
6–11	223	(31.8%)	145	(26.0%)	78	(54.2%)
12–17	160	(22.8%)	140	(25.0%)	20	(13.9%)
18	19	(2.7%)	19	(3.4%)		—

(37.9%) and among cases closed (44.6%), received intervention from CP services for at least a year, but under two. Cases involving children aged 5 and under were the biggest group for both all cases opened (42.8%) and closed (45.5%), and cases involving school-aged children (6 to 11) represented the majority of cases with ongoing intervention (54.2%). Only a small portion of cases were closed when the child reached 18 years of age (3.4% of all closed cases).

Discussion

The aim of this study was to identify, among First Nations children, the factors associated with a first decision to provide post-investigation CP intervention and a first decision to close the CP case following post-investigation intervention. The results contribute to a better understanding of First Nations children's trajectories within CP services in Canada, as it is one of the first to document and examine factors related to CP decisions and services occurring after the investigation stage. It also supports and extends previous findings regarding the role of neglect and of individual and/or family-level repeated contact with CP services in First Nations children's trajectories.

Children that were more likely to receive post-investigation intervention for the first time were the very young children from families previously known to the CP agency, indicating family-level repeated contact with the CP system. A marker of repeated individual contact, the presence of at least one screened-out report, was also associated with provision of post-investigation intervention at a first investigation. Finally, the presence of serious risk of neglect as grounds for reporting was associated with post-investigation intervention following the first investigation. For some children, serious risk of neglect may serve as an indicator of repeated concerns, as it may relate to previous neglectful behaviours of the parents towards other children. For others, it may be related to the perceived caregivers' capacities. While our study cannot draw firm conclusions, the high prevalence of serious risk of neglect among First Nations children's cases and its association with provision of post-investigation intervention raises questions about how characteristics of First Nations caregivers may be interpreted with regards to assessing future risk to the point of warranting CP intervention. It raises questions about whether these risk factors are weighted differently than in non-Indigenous families, as previous research has shown that some household and parental risk factors were weighted differently when substantiating neglect investigations for First Nations children (Sinha et al., 2013).

Children who were reported by the police on their first screened-in report were less likely to receive post-investigation intervention following their first investigation. Police reports represented a substantial proportion of first screened-in reports (18.8%) for First Nations children, a proportion statistically significantly higher than for the majority group (De La Sablonnière-Griffin, 2020), which is congruent with the Ontarian study (Ma et al., 2019). Combined, these findings raise concerns around a possible visibility bias for First Nations families which may increase the overrepresentation of First Nations children at the investigation stage. A visibility bias refers to the elevated exposure of some groups to public services and mandated reporters, such as the police, because of "structural

issues, such as poverty and violence" (Ma et al., 2019, p.60). The high frequency of police contacts self-reported by Indigenous peoples in Canada (David & Mitchell, 2021) appears to support this possibility. This study identified that Indigenous peoples were more likely to encounter police services for law enforcement issues (being arrested), but also for a host of reasons, including for non-enforcement issues (being a witness of a crime) or behavioural health-related issues (for themselves or their family). Given that police are a source of significantly more reports for First Nations children, but that these reports result in lower likelihood of post-investigation intervention, the exposure of First Nations families to police services may contribute to contact with CP in situations that were not, in fact, CP concerns.

Children entering post-investigation intervention at a very young age (below 2), who were provided services for neglect and/or serious risk of neglect and with repeated individual contact with CP services prior to the intervention (at least two investigations before intervention) were those more prone to a longer first episode of intervention. Situations of neglect under CP services are related to multiple adverse life circumstances, such as a parental history of mental/psychiatric problems and poverty (Mulder et al., 2018). CP agencies have little power to address or effect change regarding these adverse life circumstances (Carlson, 2017; Duva & Metzger, 2010; Morris et al., 2018), which could explain why these cases are less likely to be closed. First Nations families are confronted to many of these adverse life circumstances (Reading & Wien, 2009; Salée, 2006; Viens, 2019), which is likely contributing to longer CP serving time. In addition, the root causes of their adverse life circumstances lie in colonialist and discriminatory policies, both past and contemporary (Bombay et al., 2020; Czyzewski, 2011; Gone et al., 2019; TRC, 2015; Viens, 2019; Wilk et al., 2017), further limiting CP services' capacity to support families in altering their life circumstances. Discriminatory policies included the federal government's underfunding of child and family services for First Nations living in First Nations communities (*First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada*, 2016 CHRT 2). For an extended period, the funding structure concretely deprived First Nations children, families, and communities of resources to offer preventative and support services that could help alleviate situations deemed neglectful or at serious risk of being so (*First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada*, 2016 CHRT 2; Sinha & Kozlowski, 2013).

Finally, the longitudinal descriptive results shed light on what happens to First Nations children during the post-investigation intervention. In this study, about one fifth (21.7%) of children with post-investigation intervention were placed into care during the investigation leading to the post-investigation intervention (Table 1), a finding similar to Ontarian data (19.3%; Ma et al., 2019). However, the descriptive, longitudinal data revealed that placement is far more prevalent among First Nations children receiving post-investigation intervention; when considering all the interactions between the child and CP services, from their first screened-in report to either the closure of their case or the end of data available, more than one in two children (51.7%) ever

experienced placement in out-of-home care during their interaction with CP services. While placement during the investigation stage was not associated with case closure, the sheer magnitude of placement experienced at any point by the First Nations children receiving post-investigation services warrants us to suggest that additional research on placement as it pertains to post-investigation service and case closure be conducted. Analyses including the types and lengths of placements and the moves while in care are needed to better understand how placement influences post-investigation CP intervention, service trajectories and case closure.

Implications for Practice and Policy

We recognize that First Nations living in Quebec aim to rely first and foremost on their own governance of CP services (Awashish et al., 2017) to ensure the well-being of First Nations children. Recent developments in Canada, most notably an *Act respecting First Nations, Inuit and Métis children, youth and families*, signal some support for these endeavours, albeit with important shortcomings regarding the funding component (Blackstock, 2019; Metallic et al., 2019). Reports and calls to action from two recent Quebec-wide Commissions (on relations between public services and the Indigenous population: Viens, 2019; on CP services: Special Commission on the Rights of the Child and Youth Protection [SCRCYP], 2021) also point to the importance of Indigenous-led and -governed CP services. It is, however, likely that concrete change will take time to occur (Paul, 2016).

The results from our study raise the question of whether CP services compensate for a lack of accessible and effective support and prevention services to meet the families' needs. With children involved in CP coming from families already known at an early age and for reasons of serious risk of neglect, and with children receiving intervention for extended periods when neglect or serious risk of neglect are involved, it appears as though the families are not able to access services that would help address the situation. As such, the results from our study illustrate the discriminatory funding practices acknowledged by the Canadian Human Rights Tribunal (*First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada*, 2016 CHRT 2). While some prevention and support services have been put in place since 2009 in First Nations communities in Quebec, underfunding continues and important variations in the services offered occur (FNQLHSSC, 2011). In addition, difficulties in accessing mental health (Collin-Vézina et al., 2011; Lefrançois, 2016) and other public services (Viens, 2019) have been repeatedly noted, potentially compounding issues in First Nations families. First Nations children, families, and communities deserve adequately funded services responding to their needs.

Another issue pertains to CP practices around neglect, and more specifically around serious risk of neglect (Caldwell & Sinha, 2020; De La Sablonnière-Griffin et al., 2016). Serious risk of neglect is a sufficient ground for intervention in the Quebec legislation since 2007, although virtually no research has been conducted to document the situations served under this ground. Neglect is a culturally situated concept, intricately tied to parenting norms and expectations (Hearn, 2011).

Parenting norms and expectations among Indigenous populations are known to be different from, but equally as conducive to healthy development as western practices (Cross et al., 2000; Croteau, 2107; Guay, 2015; Neckoway et al., 2007). Nonetheless, discriminatory actions in the CP system are repeatedly based on misunderstandings of Indigenous worldviews and parenting norms (Grammond, 2018; Guay, 2015; SCRCYP, 2021; Viens, 2019). Instead of trying to redefine what neglect, or by extension serious risk of neglect, implies, Caldwell and Sinha (2020) suggest we redesign our interventions to focus on children's well-being. CP interventions towards situations of neglect are limited as they tend to focus on family-level risk factors, even when it is understood that neglect is not directly caused by parents or caregivers but rather embedded in larger structural issues. Using a child well-being lens would support interventions addressing the various levels involved (e.g., the family, but also the community and larger social structures), while better aligning with Indigenous worldviews, and consequently enabling a move towards culturally safer CP services.

Strengths and Limitations

This study is innovative in studying longitudinally the first trajectory in and out of post-investigation CP intervention for a group of First Nations children. Nonetheless, some limitations must be noted. First, it is possible that children have moved in the region under study during the study period. If these children had previously received CP intervention in another region, it was impossible to know from the data used. Thus, it is possible that the first post-investigation intervention in the study was not a child's first CP intervention.

Second, the group of First Nations children studied was selected according to the data structure, politico-legal criteria regarding funding of First Nations children and family services, and the nature of our partnership. While we wanted to study CP intervention for First Nations children, we could not rely on self-identification given the use of administrative data. We selected children whom the CP workers identified as First Nations (information primarily derived from self-identification) and who resided in a First Nations community (information primarily derived from the address of the family). The residence status was selected for two reasons. The first reason stems from our acknowledgment of the funding discrepancies for children living in First Nations communities. The second reason is based on the nature of our partnership: the partnership was with delegated agencies serving First Nations children living in First Nations communities and did not include organizations representing or supporting First Nations families residing elsewhere. Our results are thus not generalizable to First Nations children residing outside of communities or for whom services are funded through a different mechanism.

Finally, by relying solely on administrative data, this study could not account for some caregivers and household factors identified as playing a role in CP decision-making, such as the family's socio-economic status or substance abuse by a caregiver (Jenkins et al., 2017; Ma et al., 2019; Sinha et al., 2013). An avenue to better understand First Nations children's trajectories in CP services would be

to use a family framework. Henderson and colleagues (2017) illustrated that time to CP intervention was generally longer for the eldest child in a family (according to maternal birth order), leading to consequences such as being older at the time of a first intervention and thus being less likely to gain permanency if placed in out-of-home care. Understanding the eldest child's trajectory and the temporal pattern of CP contacts, decisions, and intervention for siblings in relation to the eldest child's situation would likely provide useful information to better serve First Nations families in contact with CP services.

Conclusion

This study brings forward new evidence regarding CP post-investigation intervention for First Nations children and contributes to a longitudinal understanding of their trajectories within CP services. It raises questions regarding the persisting, unmet needs of First Nations children, families, and communities. First Nations peoples living in Canada comprise a vibrant diversity of peoples; while the paths towards adequate services for First Nations children are likely as diverse as the First Nations themselves, First Nations–led, autonomous, and adequately funded services must be a realistic possibility for all Nations and communities that wish to embark on this path in order to best meet the needs of children and families who come into contact with CP services.

Acknowledgements

Disclaimer

References

An Act respecting First Nations, Inuit and Métis children, youth and families. (2019). S.C. 2019, c. 24. https://laws-lois.justice.gc.ca/eng/acts/f-11.73/index.html

Awashish, W., Collin, M.-N., Ellington, L., & Plamondon-Gomez, P. (2017). *Another step toward self-determination and upholding the rights of First Nations children and families: Consultation process for the reform of the First Nations child and family services (FNCFS) program.* FNQLHSSC. https://files.cssspnql.com/index.php/s/QhxLg6W5JU3ahGL

Bilson, A., Cant, R. L., Harries, M., & Thorpe, D. H. (2015). A longitudinal study of children reported to the child protection department in Western Australia. *The British Journal of Social Work, 45*(3), 771–791. https://doi.org/10.1093/bjsw/bct164

Blackstock, C. (2019). Indigenous child welfare legislation: A historical change or another paper tiger? *First Peoples Child & Family Review, 14*(1), 5–8. https://fpcfr.journals.publicknowledgeproject.org/index.php/FPCFR/article/view/367

Bombay, A., McQuaid, R., Young, J., Sinha, V., Currie, V., Anisman, H., & Matheson, K. (2020). Familial attendance at Indian residential school and subsequent involvement in the child welfare system among Indigenous adults born during the sixties scoop era. *First Peoples Child & Family Review, 15*(1), 62–79. https://doi.org/10.7202/1068363ar

Breton, A., Dufour, S., & Lavergne, C. (2012). Les enfants autochtones en protection de la jeunesse au Québec : leur réalité comparée à celle des autres enfants [Indigenous children under child protection in Quebec: Their reality compared to other children]. *Criminologie, 45*(2), 157–185. https://doi.org/10.7202/1013724ar

Caldwell, J., & Sinha, V. (2020). (Re) Conceptualizing neglect: Considering the overrepresentation of Indigenous children in child welfare systems in Canada. *Child Indicators Research, 13*(2), 1–32. https://doi.org/10.1007/s12187-019-09676-w

Capacity Building Center for States. (2018). *Child protective services: A guide for caseworkers.* Children's Bureau, Administration for Children and Families, U.S. Department of Health and Human Services. https://www.childwelfare.gov/pubs/usermanuals/cps2018/

Carlson, J. (2017). 'What can I do'? Child welfare workers' perceptions of what they can do to address poverty. *Journal of Children and Poverty, 23*(2), 161–176. https://doi.org/10.1080/10796126.2017.1358588

Chabot, M., Fallon, B., Tonmyr, L., MacLaurin, B., Fluke, J., & Blackstock, C. (2013). Exploring alternate specifications to explain agency-level effects in placement decisions regarding Aboriginal children: Further analysis of the Canadian Incidence Study of Reported Child Abuse and Neglect Part B. *Child Abuse & Neglect, 37*(1), 61–76. https://doi.org/10.1016/j.chiabu.2012.10.002

Collin-Vézina, D., De La Sablonnière-Griffin, M., & Dutrisac, C. (2011). *Development of a mental health services organization model among the First Nations of Quebec communities*. FNQLHSSC. https://files.cssspnql.com/index.php/s/Z5xXiBJQVOuOyp9

Cross, T., Earle, K. A., & Simmons, D. (2000). Child abuse and neglect in Indian country: Policy issues. *Families in Society, 81*(1), 49–58. https://doi.org/10.1606/1044-3894.1092

Croteau, K. (2017). État des connaissances sur les enjeux relatifs à l'exercice de la parentalité des mères autochtones en situation de protection de la jeunesse [State of knowledge regarding parenthood of Indigenous mothers in child protection situations]. *Intervention, 145*, 53–62.

Crowe, A., Schiffer, J., with support from, Fallon, B., Houston, E., Black, T., Lefebvre, R., Filippelli, J., Joh-Carnella, N., & Trocmé, N. (2021). *Mashkiwenmi-daa Noojimowin: Let's have strong minds for the healing (First Nations Ontario incidence study of reported child abuse and neglect – 2018)*. Child Welfare Research Portal. https://cwrp.ca/publications/mashkiwenmi-daa-noojimowin-lets-have-strong-minds-healing-first-nations-ontario

Czyzewski, K. (2011). Colonialism as a broader social determinant of health. *International Indigenous Policy Journal, 2*(1), 1–14. https://doi.org/10.18584/iipj.2011.2.1.5

David, J.-D., & Mitchell, M. Contacts with the police and the over-representation of Indigenous peoples in the Canadian criminal justice system. *Canadian Journal of Criminology and Criminal Justice*, e20200004. https://doi.org/10.3138/cjccj.2020-0004

De La Sablonnière-Griffin, M. (2020). *Les trajectoires de services des jeunes des Premières Nations et allochtones desservis par la protection de la jeunesse sur la Côte-Nord: Perspective sur la première récurrence de services* [Doctoral dissertation, McGill University; Child Protection Services' Trajectories of First Nations and non-Indigenous Children in the North Shore region: Perspective on the first service recurrence]. eScholarship@McGill. https://escholarship.mcgill.ca/concern/theses/7d278z878?locale = en

De La Sablonnière-Griffin, M., Sinha, V., Esposito, T., & Trocmé, N. (2016). *Trajectories of First Nations children youth subject to the Youth Protection Act – Component 3: Analysis of maintream youth protection agencies administrative data*. FNQLHSSC. https://files.cssspnql.com/index.php/s/yaTlZtDakBS0pFE

Duva, J., & Metzger, S. (2010). Addressing poverty as a major risk factor in child neglect: Promising policy and practice. *Protecting Children, 25*(1), 63–74.

Fallon, B., Chabot, M., Fluke, J., Blackstock, C., MacLaurin, B., & Tonmyr, L. (2013). Placement decisions and disparities among Aboriginal children: Further analysis of the Canadian incidence study of reported child abuse and neglect part A: Comparisons of the 1998 and 2003 surveys. *Child Abuse & Neglect, 37*(1), 47–60. https://doi.org/10.1016/j.chiabu.2012.10.001

Fallon, B., Chabot, M., Fluke, J., Blackstock, C., Sinha, V., Allan, K., & MacLaurin, B. (2015). Exploring alternate specifications to explain agency-level effects in placement decisions regarding Aboriginal children: Further analysis of the Canadian Incidence Study of Reported Child Abuse and Neglect Part C. *Child Abuse & Neglect, 49*, 97–106. https://doi.org/10.1016/j. chiabu.2015.04.012

Fallon, B., Lefebvre, R., Trocmé, N., Richard, K., Hélie, S., Montgomery, H. M., Bennett, M., Joh-Carnella, N., Saint-Girons, M., Filippelli, J., MacLaurin, B., Black, T., Esposito, T., King, B., Collin-Vézina, D., Dallaire, R., Gray, R., Levi, J., Orr, M., Petti, T., Thomas Prokop, S., & Soop, S. (2021). *Denouncing the continued overrepresentation of First Nations children in Canadian child welfare: Findings from the First Nations/Canadian Incidence Study of Reported Child Abuse and Neglect – 2019*. Ontario: Assembly of First Nations.

First Nations Child and Family Caring Society of Canada et al. v Attorney General of Canada. (2016). CHRT 2. https://www.canlii.org/en/ca/chrt/doc/2016/2016chrt2/2016chrt2.html

First Nations of Quebec and Labrador Health and Social Services Commission [FNQLHSSC]. (2011). Évaluation de l'implantation des services sociaux de première ligne dans quatre communautés des Premières Nations du Québec [Implementation evaluation of the first-line social services pilot project in four Quebec First Nations communities]. FNQLHSSC. https://files.cssspnql. com/index.php/s/rgNpLt8DQakpA0y

Fluke, J., Chabot, M., Fallon, B., MacLaurin, B., & Blackstock, C. (2010). Placement decisions and disparities among Aboriginal groups: An application of the decision making ecology through multi-level analysis. *Child Abuse & Neglect, 34*(1), 57–69. https://doi.org/10.1016/j. chiabu.2009.08.009

Gone, J. P., Hartmann, W. E., Pomerville, A., Wendt, D. C., Klem, S. H., & Burrage, R. L. (2019). The impact of historical trauma on health outcomes for Indigenous populations in the USA and Canada: A systematic review. *American Psychologist, 74*(1), 20–35. https://doi.org/10.1037/ amp0000338

Grammond, S. (2018). Federal legislation on Indigenous child welfare in Canada. *Journal of Law and Social Policy, 28*(1), 132–151. https://digitalcommons.osgoode.yorku.ca/jlsp/vol28/iss1/7

Guay, C. (2015). Les familles autochtones: des réalités sociohistoriques et contemporaines aux pratiques éducatives singulières [Indigenous families: Sociohistorical and contemporary realities and unique educational practices]. *Intervention, 141*, 12–27.

Hearn, J. (2011). Unmet needs in addressing child neglect: Should we go back to the drawing board? *Children and Youth Services Review, 33*(5), 715–722. https://doi.org/10.1016/j. childyouth.2010.11.011

Henderson, G., Jones, C., & Woods, R. (2017). Sibling birth order, use of statutory measures and patterns of placement for children in public care: Implications for international child protection systems and research. *Children and Youth Services Review, 82*, 321–328. https://doi.org/10.1016/j.childyouth.2017.10.001

Jenkins, B. Q. (2017). *A systems approach to reducing child protection recurrence* [Doctoral dissertation, Griffith University]. Griffith University Research Repository. https://doi.org/10.25904/1912/2475

Jenkins, B. Q., Tilbury, C., Mazerolle, P., & Hayes, H. (2017). The complexity of child protection recurrence: The case for a systems approach. *Child Abuse & Neglect, 63*, 162–171. https://doi.org/10.1016/j.chiabu.2016.11.020

Jonson-Reid, M., Drake, B., Kohl, P., Guo, S., Brown, D., McBride, T., Kim, H., & Lewis, E. (2017). What do we really know about usual care child protective services? *Children and Youth Services Review, 82*(Supplement C), 222–229. https://doi.org/10.1016/j.childyouth.2017.09.019

Jud, A., Fallon, B., & Trocmé, N. (2012). Who gets services and who does not? Multi-level approach to the decision for ongoing child welfare or referral to specialized services. *Children and Youth Services Review, 34*(5), 983–988. https://doi.org/10.1016/j.childyouth.2012.01.030

Keddell, E. (2018). The vulnerable child in neoliberal contexts: the construction of children in the Aotearoa New Zealand child protection reforms. *Childhood, 25*(1), 93–108. https://doi.org/10.1177/0907568217727591

Lefrançois, B. (2016). *Report of inquest concerning the deaths of Charles Junior Grégoire-Vollant, Marie-Marthe Grégoire, Alicia Grace Sandy, Céline Michel-Rock & Nadeige Guanish.* Bureau du coroner. https://www.coroner.gouv.qc.ca/fileadmin/Coroners/Rapport_final_-_anglais.pdf

Ma, J., Fallon, B., Alaggia, R., & Richard, K. (2019). First Nations children and disparities in transfers to ongoing child welfare services in Ontario following a child protection investigation. *Children and Youth Services Review, 101*, 207–216. https://doi.org/10.1016/j.childyouth.2019.04.010

Ma, J., Fallon, B., & Richard, K. (2019). The overrepresentation of First Nations children and families involved with child welfare: Findings from the Ontario incidence study of reported child abuse and neglect 2013. *Child Abuse & Neglect, 90*, 52–65. https://doi.org/10.1016/j.chiabu.2019.01.022

Metallic, N., Friedland, H., & Morales, S. (2019). *The promise and pitfalls of C-92: An Act respecting First Nations, Inuit and Métis children, youth and families.* Yellowhead Institute. https://yellowheadinstitute.org/bill-c-92-analysis/#analysis2

Morris, K., Mason, W., Bywaters, P., Featherstone, B., Daniel, B., Brady, G., Bunting, L., Hooper, J., Mirza, N., & Scourfield, J. (2018). Social work, poverty, and child welfare interventions. *Child & Family Social Work, 23*(3), 364–372. https://doi.org/10.1111/cfs.12423

Mulder, T. M., Kuiper, K. C., van der Put, C. E., Stams, G.-J. J. M., & Assink, M. (2018). Risk factors for child neglect: A meta-analytic review. *Child Abuse & Neglect, 77*, 198–210. https://doi.org/10.1016/j.chiabu.2018.01.006

Neckoway, R., Brownlee, K., & Castellan, B. (2007). Is attachment theory consistent with Aboriginal parenting realities? *First Peoples Child & Family Review, 3*(2), 65–74. https://doi.org/10.7202/1069465ar

Paul, J. (2016). Evaluation of child protection in federalist countries: Recommendations for increasing effectiveness and re-establishing self-determination within Indigenous communities. *Journal of Policy Practice, 15*(3), 188–211. https://doi.org/10.1080/15588742.2015.1044685

Reading, C. L., & Wien, F. (2009). *Health inequalities and social determinants of Aboriginal peoples' health.* National Collaborating Centre for Aboriginal Health. https://www.ccnsa-nccah.ca/docs/determinants/RPT-HealthInequalities-Reading-Wien-EN.pdf

Rouland, B., Vaithianathan, R., Wilson, D., & Putnam-Hornstein, E. (2019). Ethnic disparities in childhood prevalence of maltreatment: Evidence from a New Zealand birth cohort. *American Journal of Public Health, 0*(0), e1–e3. https://doi.org/10.2105/ajph.2019.305163

Salée, D. (2006). Quality of life of Aboriginal people in Canada. *IRPP Choices, 12*(6), 1–40. https://irpp.org/wp-content/uploads/assets/research/aboriginal-quality-of-life/quality-of-life-of-aboriginal-people-in-canada/vol12no6.pdf

Segal, L., Nguyen, H., Mansor, M. M., Gnanamanickam, E., Doidge, J. C., Preen, D. B., Brown, D. S., Pearson, O., & Armfield, J. M. (2019). Lifetime risk of child protection system involvement in South Australia for Aboriginal and non-Aboriginal children, 1986–2017 using linked administrative data. *Child Abuse & Neglect, 97*, 104–145. https://doi.org/10.1016/j.chiabu.2019.104145

Sinha, V., Ellenbogen, S., & Trocmé, N. (2013). Substantiating neglect of First Nations and non-Aboriginal children. *Children and Youth Services Review, 35*(12), 2080–2090. https://doi.org/10.1016/j.childyouth.2013.10.007

Sinha, V., & Kozlowski, A. (2013). The structure of Aboriginal child welfare in Canada. *International Indigenous Policy Journal, 4*(2), 1–21. https://doi.org/10.18584/iipj.2013.4.2.2

Sinha, V., Trocmé, N., Fallon, B., MacLaurin, B., Fast, E., Prokop, S. T., & Richard, K. (2011). *Kiskisik Awasisak: Remember the children. Understanding the overrepresentation of First Nations children in the child welfare system.* Assembly of First Nations. https://cwrp.ca/publications/kiskisik-awasisak-remember-children-understanding-overrepresentation-first-nations

Smith, C., Fallon, B., Fluke, J., Mishna, F., & Decker Pierce, B. (2019). Organizational structure and the ongoing service decision: The influence of role specialization and service integration. *Human Service Organizations: Management, Leadership & Governance, 43*(5), 375–391. https://doi.org/10.1080/23303131.2019.1661928

Special Commission on the Rights of the Child and Youth Protection [SCRCYP]. (2021). *Instaurer une société bienveillante pour nos enfants et nos jeunes [Building a caring society for our children and youth]*. Gouvernement du Québec. https://www.csdepj.gouv.qc.ca/fileadmin/ Fichiers_clients/Rapport_final_3_mai_2021/2021_CSDEPJ_Rapport_version_finale_ numerique.pdf

Tilbury, C. (2009). The over-representation of Indigenous children in the Australian child welfare system. *International Journal of Social Welfare, 18*(1), 57–64. https://doi.org/10.1111/j.1468-2397.2008.00577.x

Trocmé, N., Esposito, T., Nutton, J., Rosser, V., & Fallon, B. (2019). Child welfare services in Canada. In L. Merkel-Holguin, J. D. Fluke, & R. D. Krugman (Eds.), *National Systems of Child Protection: Understanding the International Variability and Context for Developing Policy and Practice* (pp. 27–50). Springer International Publishing. https://doi.org/10.1007/978-3-319-93348-1_3

Trocmé, N., Knoke, D., & Blackstock, C. (2004). Pathways to the overrepresentation of Aboriginal children in Canada's child welfare system. *Social Service Review, 78*(4), 577–600. https://doi. org/10.1086/424545

Trocmé, N., MacLaurin, B., Fallon, B., Knoke, D., Pitman, L., & McCormack, M. (2006). *Understanding the overrepresentation of First Nations children in Canada's child welfare system: An analysis of the Canadian incidence study of reported child abuse and neglect (CIS-2003)*. Centre of Excellence for Child Welfare. https://cwrp.ca/fr/publications/ mesnmimk-wasatek-catching-drop-light-understanding-overrepresentation-first-nations

Truth and Reconciliation Commission of Canada [TRC]. (2015). *Honouring the truth, reconciling for the future: Summary of the final report of the Truth and Reconciliation Commission of Canada*. Truth and Reconciliation Commission of Canada. http://www.trc.ca/assets/pdf/ Honouring_the_Truth_Reconciling_for_the_Future_July_23_2015.pdf

Viens, J. (2019). *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress – Final report*. Gouvernement du Québec. https://www.cerp.gouv.qc.ca/fileadmin/Fichiers_clients/Rapport/Final_report.pdf

Wilk, P., Maltby, A., & Cooke, M. (2017, 2017/03/02). Residential schools and the effects on Indigenous health and well-being in Canada – a scoping review. *Public Health Reviews, 38*(8), 1–23. https://doi.org/10.1186/s40985-017-0055-6