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**The Kinship Conundrum:  
The Impact of Aboriginal  
Self-Determination on  
Indigenous Child Protection**

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THE CENTRE FOR  
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# **The Kinship Conundrum: The Impact of Aboriginal Self-Determination on Indigenous Child Protection**

Jeremy Sammut



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*Any errors are the author's responsibility.*



## Executive Summary

Of the 40,624 Australian children in Out-of Home Care (OOHC) in 2012-13, almost half (47.7%) were in kinship care, meaning they lived with relatives or, in the case of some Indigenous children, with members of their local Indigenous community or other Indigenous people. Since 2000-01, the number of children in kinship care has grown at more than twice the rate of the number of children in foster and residential care, driven by a number of factors including increased demand for care, shortages of foster carers, and cost pressures. Kinship care is also a 'cheaper' option involving lower spending on initial screening, training and follow-up supervision and support.

The use of kinship care for children in need of state care and protection has important national implications due to concerns about the quality of kinship placements for some (perhaps many) Indigenous children.

State and territory child protection authorities have tried to conscientiously practise the Aboriginal and Torres Strait Islander Child Placement Principle (ACPP). The ACPP requires an Indigenous child, where possible, to be placed with extended family members, the Indigenous child's community, or with other Indigenous people in order to maintain continuous contact with Indigenous culture—language, ceremonies and traditions including spiritual connection to traditional lands—and to thereby preserve the child's Indigenous cultural identity. In 2012-13, more than two-thirds of the almost 14,000 Indigenous children in care in Australia were classified as living in 'culturally appropriate' placements; the majority, more than 50% of all Indigenous children in care, were placed in kinship care with either Indigenous or non-Indigenous relatives/kin.

The good intention behind efforts to comply with the ACPP is to overcome the legacy of the 'Stolen

Generations' child removal policies and practices, which prior to the 1980s saw thousands of Aboriginal children separated from their families with the aim of assimilating them into mainstream Australian society and preventing them from maintaining connections with traditional culture, kin and identity. Despite the commitment to avoid repeating the errors of the past mistreatment, high birth rates and high adult mortality and the social problems in some Indigenous communities mean that Australian child protection authorities are struggling to provide culturally appropriate care for a large proportion of increasing numbers of Indigenous children due to the inability to find sufficient number of safe and suitable kinship placements. Hence the overall proportions of Indigenous children in 'kinship' compared to 'foster' and 'residential' placements have remained stable since the early 2000s.

Yet it should not be assumed on this basis that child welfare concerns always outweigh cultural considerations, and that all of the significant numbers of kinship placements that occur are actually safe and suitable. It is well-documented that as a result of the practice of the ACPP, Indigenous children sometimes receive a lesser standard of care, and can be placed into unsafe situations that fail to meet basic standards and into which non-Indigenous children would not be placed. In practice, the ACPP means that 'culture' takes priority over the basic welfare and best interests of children.

Ideally, and if it was realistic and could be reconciled with child safety, every Indigenous child who cannot live safely with their parents would be placed in kinship care to maintain contact with kin and culture. The reality, though, is that a separatist Indigenous child protection regime risks perpetuating intergenerational Indigenous disadvantage by denying Indigenous children the

nurturing family environment that all children need to thrive. The kinship conundrum—that the practice of the ACPP to prevent a ‘new Stolen Generation’ will keep open the gaps in social outcomes between the most disadvantaged Indigenous Australians and other Australians—must be unravelled to advance the wellbeing of all Indigenous children. The unravelling begins with reviewing the rationale for the ACPP and subjecting it to the same national scrutiny that has been applied in recent times to other aspects of Indigenous policy.

Two of the major findings of the review undertaken in this report are that:

1. The common assumption (fostered by the annual commemoration of National Sorry Day) that the ACPP was developed in response to the 1997 Human Rights and Equal Opportunity Commission’s (HREOC) *Bringing them home* report is a misconception that overlooks the wider context. The ACPP was first embedded in Australian child welfare legislation in the 1980s with the aim of righting the wrongs of past assimilationist child removal policies. However, its development was also a result of the politicisation of the Stolen Generations issue which was taken up as an important part of the Aboriginal rights movement of the 1970s. The ACCP needs to be understood as a product of the policy settings of the 1970s, which were designed to achieve Aboriginal self-determination—political, legal, social and cultural—in all areas of Indigenous policy, including child protection.

2. Since the early 2000s, the policy failures of the era of Aboriginal self-determination have been recognised by a range of commentators, experts, the media and policymakers across the political spectrum, and the re-evaluation of the post-1970s period in Indigenous affairs has stimulated a revolution in many aspects of Indigenous policy. The separatist policies that made some Indigenous communities bywords for welfare dependence and related social dysfunction have been marginalised and superseded by the mainstreaming of Indigenous policy in health, education, employment and economic development. But Indigenous child protection policy remains untouched by the revolution and is stuck in the 1970s. Separatist thinking remains influential and continues to inform Indigenous-specific child welfare policy and practice.

For all its good intentions, the ACPP is an example of what the anthropologist Peter Sutton has called the “politics of suffering”: the political goal of Aboriginal self-determination, including the right to recover and retain traditional culture and identity, is taking precedence over basic considerations of human welfare, especially the welfare of children. For the suffering of Indigenous children to end, the politics must be taken out of Indigenous child protection. The politics can be set aside by recognising that the ACPP is outdated not only compared to contemporary Indigenous policy, but also to modern definitions of Aboriginality that have developed in line with the changing character of the Indigenous population and have superseded the idea that the retention of culture alone is the source of Aboriginal identity.

Recent growth in the Indigenous population suggests that Aboriginality is no longer essentially determined by either racial or cultural characteristics per se, and that Aboriginality is increasingly becoming an ethnic identity based on self-identification, contemporary recognition, and family history and descent. The 21% increase in the number of Indigenous Australians since 2006, recorded by the 2011 Australian census, appears to have been driven by changes in identification by people living in urban areas who often have little contact with traditional culture, and many of whom are integrated with mainstream Australian society to the point that in relation to major social welfare indicators they are indistinguishable from their non-Indigenous peers. The status of this group of Indigenous Australians shows that integration is fundamentally different to assimilation and can be achieved without loss of identity.

Yet the continued practice of the ACPP means many children, especially those in the most disadvantaged remote homeland communities, live in circumstances that deny them the same right to access the full freedoms, benefits and opportunities of Australian citizenship enjoyed by other Indigenous and non-Indigenous Australians. Unless Indigenous child protection policies are revised, another generation of Indigenous children may be lost.

The question we face is how the nation can best address the legacy of past mistreatment of Indigenous people while moving forward to a truly Reconciled Australia. After two centuries of separatist experiments stretching from the Aboriginal missions of the nineteenth century through to the doctrine of Aboriginal self-determination in the 1970s, the aim of Indigenous policy in the twenty-first century should be to normalise the lives of Indigenous people—end ‘special treatment’ and discrimination, and give all Indigenous Australians the same opportunities as other Australians, regardless of race. The mainstreaming revolution in Indigenous policy should therefore be extended to Indigenous child protection policy, and Aboriginal exceptionalism—typified by the recent decision to exclude Aboriginal children from the NSW government’s pro-adoption child protection reforms and instead persist with the ACPP and Aboriginal-controlled foster and kinship services—must cease. Indigenous and non-Indigenous children should be treated the same, including by using adoption (or permanent guardianship) on a non-discriminatory basis for Indigenous children who cannot live safely with their parents or with kin.

Nothing in this report suggests that questions of culture and identity are unimportant and should be ignored as part of Indigenous child protection; part of the legacy of the Stolen Generations is understanding the devastating impact of past practices on the cultural identity of Indigenous people who experienced loss, confusion, and isolation as a result of separation from their families. To the contrary, the aim of this report is to promote new ways of reconciling cultural identity and child welfare, such as through the creation of Aboriginal-controlled, culturally appropriate, cultural support and education programs for Indigenous children and their new families who are adopted or are in permanent care.





## Introduction: Out-of-Home Care Placement Patterns

Of the 40,624 children in government-funded Out of Home Care (OOHC) in Australia in 2012-13, the vast majority lived in either home-based foster care placements (42.4%) or in kinship care placements (47.7%), meaning they lived with relatives or, in the case of some Indigenous children, with members of their local Indigenous community or other Indigenous people. Since 2000-01, the number of children in kinship care (179.4%) has grown much faster than the still substantial growth in the number of children in residential care (86.3%) and foster care (82.8%). (Figure 1)

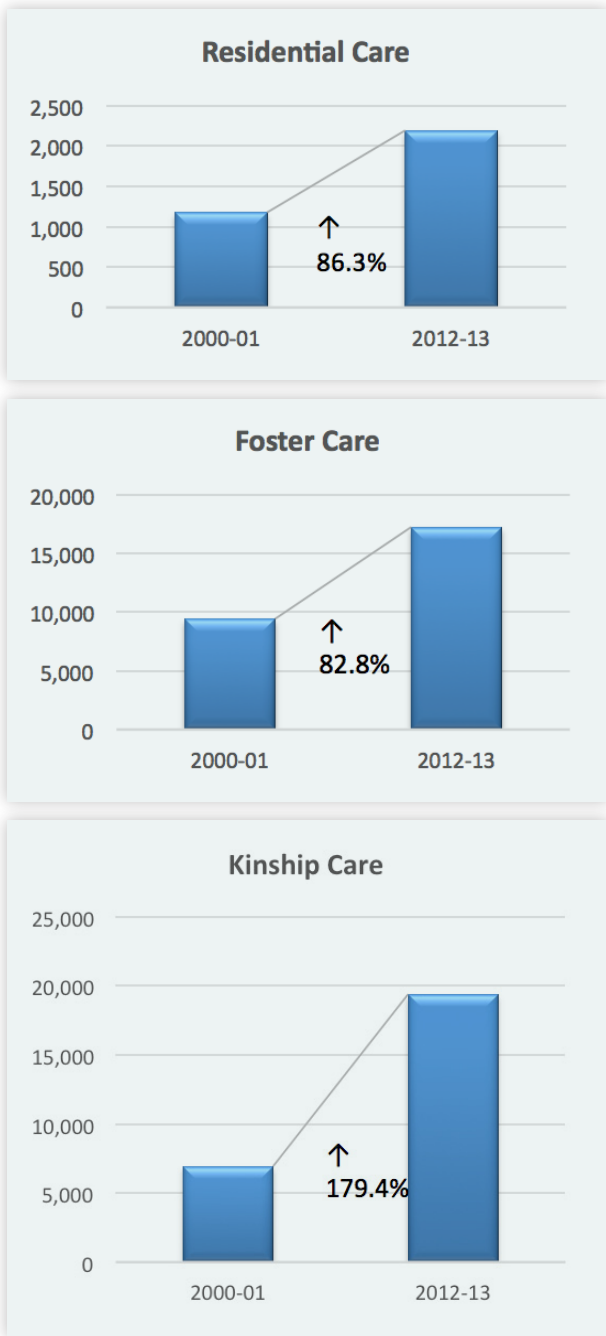
The available statistics<sup>1</sup> reveal some important trends. Across Australia, more than 2100 children were in residential care in 2012-13 compared to just less than 1200 in 2000-01. As a result of de-institutionalisation (the closure of large-scale children's homes and orphanages in the 1980s and 1990s) the residential care population hit a record low of less than 1000 in 2004-05. Since then, the residential care population has more than doubled.<sup>2</sup>

Greater use of residential care placement is alarming because it reflects the increasing number of children in care who have 'high needs'—serious abuse and neglect-related developmental, behavioural, and psychological problems. High needs children require residential care because they cannot safely go home or live in a normal foster family due to having been severely damaged and disturbed by exposure to maltreatment at home and instability in care resulting from the flawed

family preservation policies and practices employed by Australian child protection authorities.<sup>3</sup> (Box 1)

Of equal concern, however, is the parallel and, in fact, more pronounced trend towards kinship care placements. This report analyses changing patterns of OOHC placements to raise awareness of the national implications of the greater use of kinship care for children in need of state care and protection. These implications arise especially due to concerns about the safety of kinship care for Indigenous children, and are particularly significant given the bi-partisan commitment to Closing the Gap in social outcomes between the most disadvantaged Indigenous Australians and other Australians. In all Australian states and territories, kinship and other forms of 'culturally appropriate' out-of-home care are the preferred placement options for Indigenous children. This is a product of the separatist Indigenous child protection regimes that operate in all jurisdictions, which are a legacy not only of well-meaning efforts to right the wrongs of past child removal practices associated with the Stolen Generations, but are also an important legacy of the political movement for Aboriginal self-determination that developed in the 1970s. By examining the origins and impact of Indigenous exceptionalism in Australian child protection policy and practice, this report draws attention to the role that treating Indigenous children differently to non-Indigenous children—in the name of preserving traditional culture and identity—plays in perpetuating Indigenous disadvantage.

**Figure 1: Children in OOHC by placement type**



Source: Productivity Commission, *Report on Government Services 2014*, Table 15A.19

This report therefore deals with an extremely sensitive topic—the question of how the nation should deal with the legacy of the Stolen Generations as it seeks to achieve Reconciliation between Indigenous and non-Indigenous Australians. Part of that legacy, and part of Reconciliation, is understanding the devastating impact

of past child removal practices on Indigenous people, especially the impact on the cultural identity of the members of the Stolen Generations who experienced loss, confusion, and isolation as a result of separation from their families. Recognition of the failings of the past and of the importance of cultural identity means that, ideally, every Indigenous child who cannot live safely with their parents would be placed in kinship care with either close relatives or other members of their community to maintain contact with kin and culture. For the reasons explained herein, such placements are not always realistic because they cannot be reconciled with child welfare. Worse, however, is that in some cases, kinship placements that are far from safe, suitable and conducive to child wellbeing and development still proceed due to the well-meaning desire to prevent a ‘new Stolen Generation’.

We need to be aware that the nation’s efforts to address the specific legacy of the Stolen Generation threatens to undermine the overarching objective of Reconciliation, which is to eradicate the shameful disadvantages and abject poverty that too many Indigenous Australians, particularly children, have long suffered and still continue to suffer. All Australians of good will endorse Reconciliation. However, the problems that cause and contribute to Indigenous disadvantage are as complex as the solutions; this is largely due to the need to revise well-intentioned separatist policies that have had unintended consequences and have unintentionally but nevertheless materially contributed to Indigenous suffering. This has been the lesson taught by the volumes of analysis, criticism and commentary that has appeared in the last decade and a half or so that has re-evaluated the separatist policies of the post-1970 era of self-determination. The effect of this literature has been to generate a revolution in Indigenous affairs—a revolution that has seen the policies of Indigenous self-determination marginalised and replaced with new initiatives designed to mainstream Indigenous health, education, and employment services. The purpose of this report is to contribute to this literature by focusing attention on the relatively neglected subject of Indigenous child protection policies, in the belief that critical and constructive analysis of this sensitive subject is essential to advance the wellbeing of the most disadvantaged Indigenous Australians. Nothing in this report suggests that questions of culture and identity are unimportant and should be ignored as part of Indigenous child protection. To the contrary, the aim of this report is to promote new ways of reconciling cultural identity and child welfare for Indigenous children in need of state care and protection, such as through the creation of Aboriginal-controlled, culturally appropriate cultural support and education programs for Indigenous children who are adopted or are in permanent care and their new families.

## Box 1: A primer on Australia's Child Protection Crisis<sup>†</sup>

- An apparent paradox lies at the heart of the crisis in Australia's child protection system: the rising number of children in care, the growing length of time spent in care, the multiple occasions of care that many children experience, and the increasingly 'high needs' of the care population are unintended consequences of the family preservation-based child protection policies and practices that, in theory, are meant to prevent child abuse and avoid the removal of children into care.
- Since the 1970s, the official policy adopted by Australian child protection authorities has been predicated on the idea that, wherever possible, children suffering abuse and neglect should be kept with their families; and when "temporary" removal into care is required, all efforts should be made to reunite children with their families. By supplanting the traditional approach to child protection (the timely rescue of abused and neglected children via removal into state care), the over-emphasis placed on family preservation has enfeebled the community response to child maltreatment.<sup>4</sup>
- Family preservation means state and territory child protection services only remove children from unsafe homes as a "last resort", and only after extensive social service interventions to assist parents to address the social and personal problems that impede proper parenting.<sup>5</sup> Well-intentioned social services are designed to help struggling parents adequately care for children. But these services, which aim to build personal capacity and family resilience, struggle to overcome entrenched behavioural problems in the underclass of families with the most serious problems (drug and alcohol abuse, family violence, and mental illness).<sup>6</sup>
- The overarching flaw with family preservation is "under-responding" to child maltreatment.<sup>7</sup> Everything possible by way of provision of support services is done to keep even highly dysfunctional families together, with parents given virtually limitless opportunities to address their problems. Child removal is relegated to a last and reluctant resort, even when abusive and neglectful parents are demonstrably unfit. The same families end up being reported multiple times mostly by mandatory reporters (health, education, police and other professionals obliged by law to report suspected abuse and neglect), who make numerous re-reports in an attempt to prompt action to address unresolved safety and welfare concerns.<sup>8</sup>
- The over-emphasis on family preservation means that statutory intervention often occurs, if at all, too late. Action is only taken after a child has been damaged by prolonged exposure to neglect and abuse, often with lifelong consequences. (The consequences of child abuse include crime, prostitution, drug and alcohol abuse, homelessness, mental illness, imprisonment, unemployment, and welfare dependence).<sup>9</sup> Many children are further damaged by unstable living arrangements when care placements break down because of high needs children's personal and behavioural problems, and when they are repeatedly taken into and out of foster care after reunifications break down because of recurring parental problems and child maltreatment. The difficulties associated with caring for high needs children, and the heartbreak of seeing children returned to unsafe homes, both contribute to high drop-out rates among foster carers and to difficulties recruiting new carers.<sup>10</sup>
- Recent inquiries into state and territory child protection systems have established that between one-quarter and more than one-half of all child safety reports received each year are re-reports.<sup>10</sup> A large proportion of children are also the subject of a substantiated finding of abuse or neglect and then to a re-substantiation within three months and/or 12 months. The percentage of children subject to a re-substantiation in 2011-12 (latest year available) is 50.3% in ACT, 28.8% in Queensland, 26.7% in South Australia, 24.8% in Northern Territory, 24.5% in NSW, 23.2% in Tasmania, 15.5% in Western Australia, and 11.8% in Victoria.<sup>12</sup> In 2012-13, the nationwide percentage of children who exited 'out-of-home' care after 12 months or more in care with three or more placements was 51.4%. This is almost double the percentage (26.8%) in 2001-02 (the first year for which data are available).<sup>13</sup> These figures show that too little, too late, is being done to remove children—and that once they are removed, out-of-home care is too unstable.
- An alternative strategy for breaking the cycle of abuse, neglect and instability, and for providing children with safe and stable homes, is for child protection services to intervene decisively in families in which parental capacity is severely impaired. More timely statutory action is needed to permanently remove children from unsafe homes by taking legal action to terminate parental rights and free children for adoption by suitable (properly screened and vetted) families. This policy prescription is controversial due to the perceived association with historic wrongs and the harm done to parents and children in the past. Whether by consent or by court order, adoption is officially taboo in child protection circles, because permanently removing children even from abusive and neglectful parents is somehow considered akin to the discredited forced adoption practices involving unwed mothers in the 1950s and 1960s, and the forced removal of members of the Stolen Generations of Indigenous children. Given the harm past practices did to parents, children and families, the conventional wisdom is that children are almost always better off with their natural parents so all efforts should be made to keep and restore children to the family home.<sup>14</sup>
- This misguided thinking has swung the pendulum too far towards family preservation and preserving parental rights at the expense of intervention in the best interests of children. This explains why legal action is almost never taken by child protection authorities to free children for adoption, even for children who languish in foster care with little prospect of ever safely being returned home. Thus in 2012-13, there were only 210 local adoptions in Australia,<sup>15</sup> despite more than 40,000 children being in government-funded care placements, and despite almost 28,000 of these children having been in government-funded care placements continuously for more than two years.<sup>16</sup>
- Other countries, including the United States and Britain, also have flawed child protection histories marked by mistreatment of children, parents and families. Yet the benefits of adoption, compared to the well-known, highly damaging experiences of many children in care as outlined above, are still recognised in these countries today. Hence, Australia is the outlier internationally in terms of rejecting adoption. In the United States, for example, more than 50,000 children are adopted from care each year. If Australian children in care were adopted at the same rate as in the United States, there would be around 5,000 adoptions nationally each year.<sup>17</sup>

<sup>†</sup> The information in this Box is drawn from my series of reports on Australia's child protection crisis published by the CIS since 2009. For supporting evidence and additional references, please see these reports as listed in the footnotes.

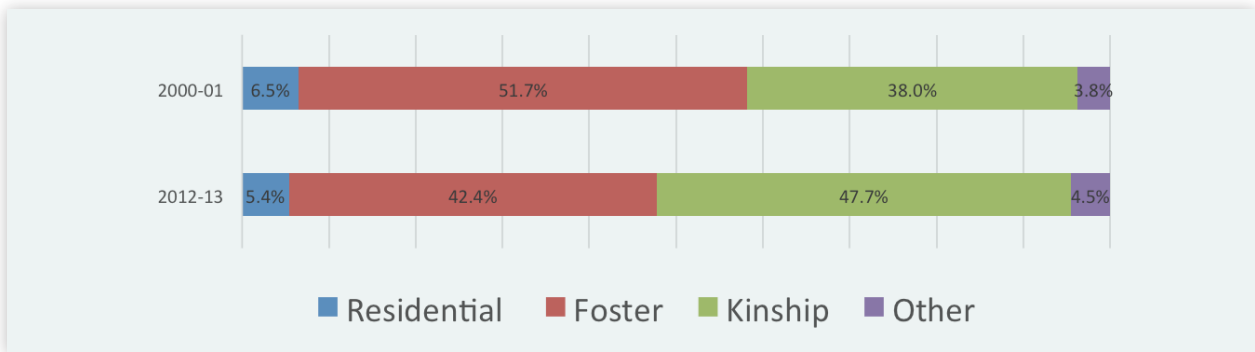
## Expansion of Kinship Care

The increased prevalence of kinship care in Australia, at the expense of foster care, is demonstrated by changes in the proportion of different types of placements. This data also reveals that the expansion of kinship care is the more significant trend compared to growth in residential care.

Nationally, the proportion of children in residential care has fallen by 0.9% since 2000-01 to 5.4% of all children in care in 2012-13. (Figure 2) There has also been a significant decrease in the proportion of foster care

placements, which have fallen by 9.3% nationally since 2000-01. At the same time, the proportion of children in kinship care has increased by 9.7% and has become the leading placement option. More than half of the total number of children in care were in foster care in 2000-01, whereas currently just less than half are in kinship care, up from 38% in 2000-01. [In the United States, by comparison, 27% of the total out of home care population was in kinship placements in 2012, up slightly from 24% in 2002.<sup>18]</sup>

**Figure 2: Proportion of all children in OOH by placement type and year**

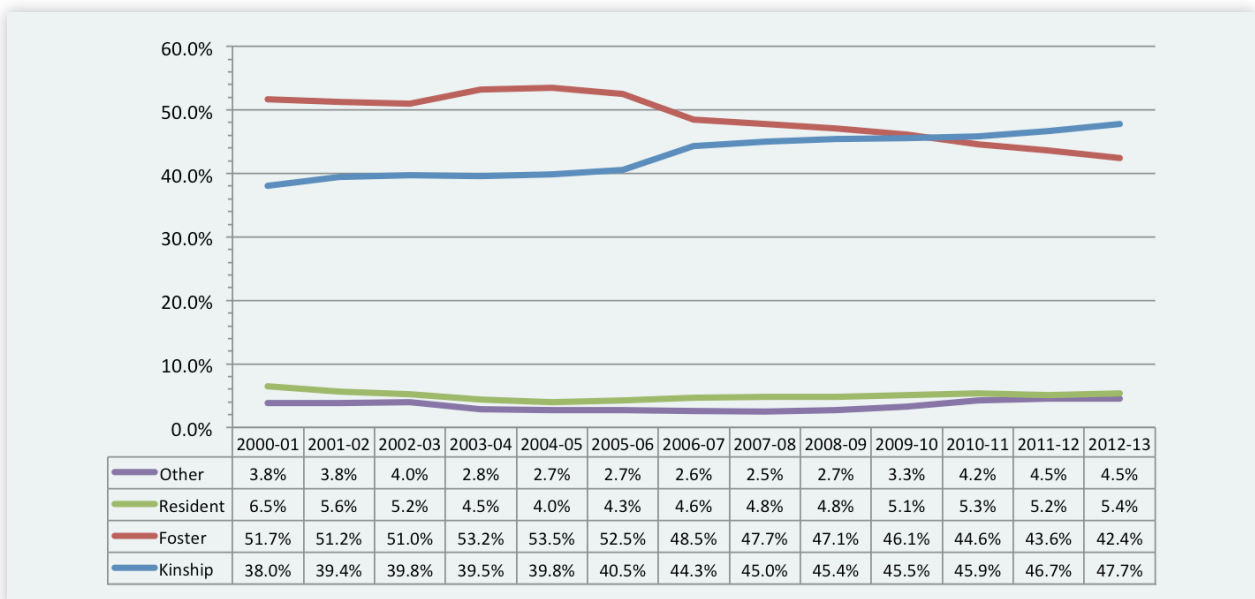


Source: Productivity Commission, *Report on Government Services 2014*, Table 15A.19

Foster care has been squeezed on both sides by increased use of residential care (since the mid-2000s) and strong growth in use of kinship placements. (Figure 3) The shift from foster care to kinship care has occurred in most states and territories. In 2000-01 in Victoria, 56.6% of total number of children in care were in foster

placements. By 2012-13, this proportion had fallen to 31.6% with kinship placements increasing from 27% to almost 50%. In South Australia, foster care fell from 83% of all placements in 2000-01 to 41.4% in 2012-13, with kinship care rising from 12.5% to 44.7%. A similar pattern is evident in Queensland, Western Australia,

**Figure 3: Proportion of all children in OOH by placement type (as a % of all children in OOH) 2000-2013**



Source: Productivity Commission, *Report on Government Services 2014*, Table 15A.19

and the ACT, with large falls in foster placements and significant growth in kinship placements. Tasmania bucked the national trend by recording increases in foster care placements and a fall in kinship placements. So did NSW, but off a high base, with foster care placements increasing slightly and the proportion of kinship placements holding steady at around 55% over the period. (Appendix A)

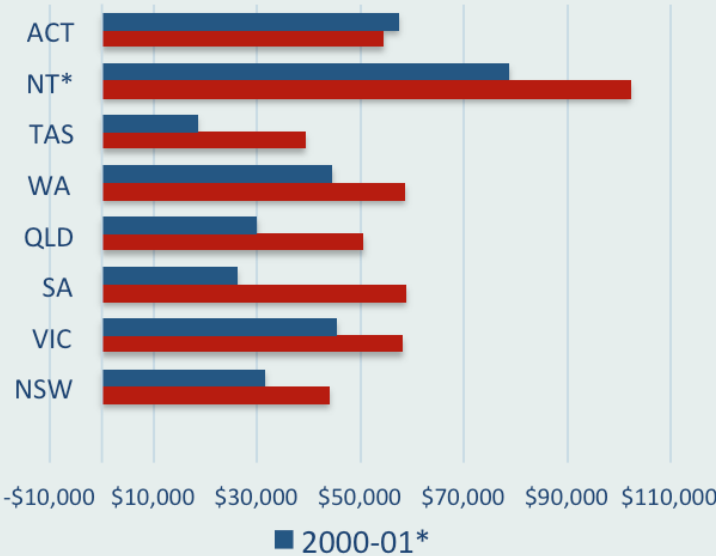
The likely explanations for the decline in foster care and increase in kinship care include increased demand

for out-of-home care; shortages of foster carers; the unsuitability of many high needs children for foster placement; the belief children benefit from placement with their extended family or within their local community; and the financial constraints on state and territory governments that have used kinship care as a 'cheaper' option involving less spending on assessment, supervision, and support.<sup>19</sup> The financial data that is publicly available suggests that greater prevalence of kinship care may be having an impact on the overall cost of the OOH system. (Box 2)

**Box 2: 'Cheaper' option**

- Since 2000-01, except for a small decline in the ACT (-5%), real OOH spending per child has increased in all states and territories, ranging from increases of more than 100% in South Australia and Tasmania, 68.5% in Queensland, around 40% in NSW, and just above and below 30% in Western Australia and Victoria respectively. (Figure 4)

**Figure 4: Real (adjusted for inflation) recurrent OOH expenditure per child (2000-13)**

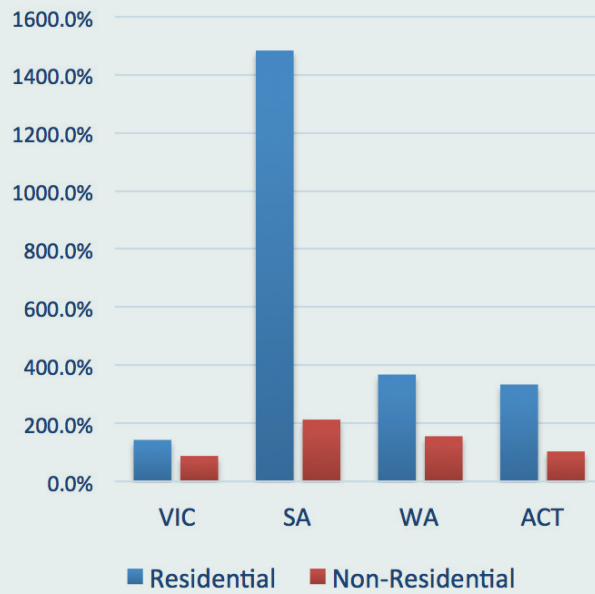


\* Data not available for the Northern Territory for 2000-01. Data from 2009-10 has been used instead to compare to 2012-13.

Source: Productivity Commission, Report on Government Services 2014, Table 15A.3

- Not all states and territories report OOH expenditure by placement type. In the states and territories that do report, the rise in real costs has grown far faster for residential care compared to (still substantial) increases in the real cost of non-residential care. (Figure 5)

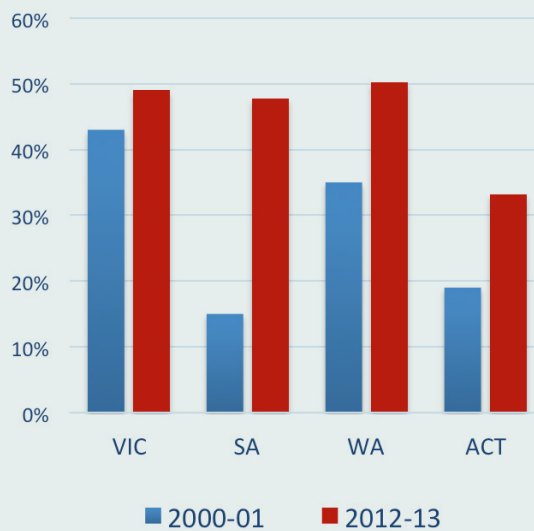
**Figure 5: Percentage increase of real (adjusted for inflation) recurrent OOHC expenditure by Residential and Non-Residential Care (2000-13)**



Source: Productivity Commission, Report on Government Services 2014, Table 15A.3

- Over the period, residential care has also consumed an increasing percentage of total OOHC expenditure in all jurisdictions for which data is available. (Figure 6)

**Figure 6: % OOHC expenditure by Residential Care as proportion (2000-13)**



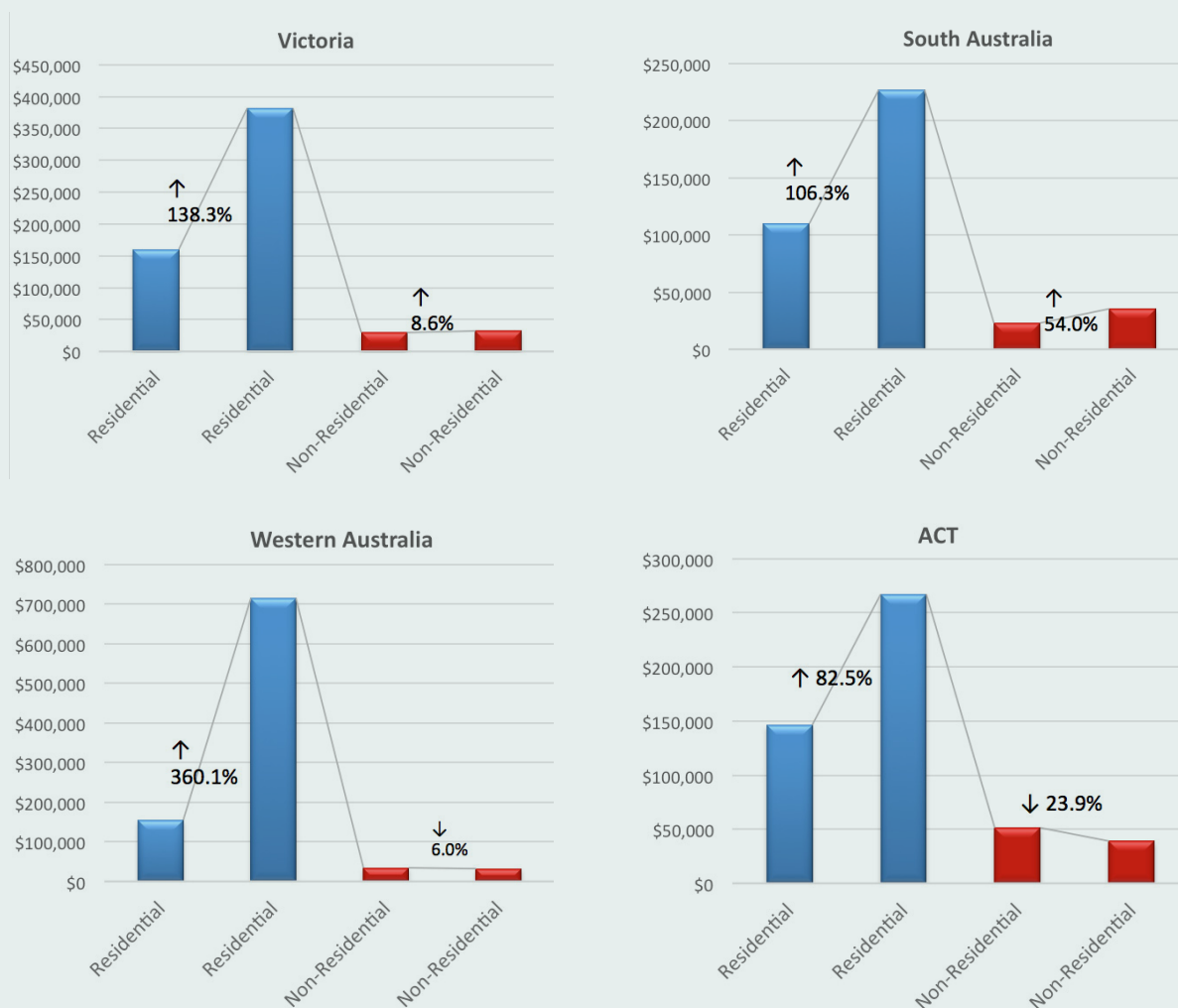
Source: Productivity Commission, Report on Government Services 2014, Table 15A.3

- This reflects the fact that average real expenditure per child on residential care has increased at a much faster rate than average real expenditure per child on non-residential care. (Figure 7)
- The cost of residential care has increased disproportionately, reflecting the complex needs of the residential population requiring specialist services, and despite many thousands more children residing in non-residential



care. However, smaller non-residential expenditure growth since 2000-01 coincides with the growth in use of kinship care, which is generally recognised to be a less-costly alternative to foster care. Foster and kinship carers both receive an allowance to partially offset the cost of caring for children. Both types of carers may also receive additional loadings based on the assessed high needs of children. However, the overall cost of kinship care is lower than for foster care because kin carers tend to receive less initial screening, training and less follow-up supervision and support services.<sup>21</sup>

**Figure 7: Average real (adjusted for inflation) expenditure per child for residential and non-residential placements (2000-13) by State/Territory**



Source: Productivity Commission, Report on Government Services 2014, Table 15A.3

The expansion of kinship care might appear to be a positive development and a win-win situation for both governments and for children and their families. Without the expansion of kinship care, the OOH system would have very likely collapsed due to overwhelming demand and cost pressures created by the more than doubling of the care population since 2000-01.<sup>20</sup> Governments appear to be sustaining the OOH system and lowering the cost of care by utilising the 'least intrusive' form of intervention; by placing children with relatives, which in theory reduces the trauma of parental separation and maintains family ties, including contact with birth parents.<sup>22</sup> In the case of Indigenous children, placement with kin or with members of their local communities or other Indigenous carers, may also ensure continuing contact with their family heritage and with traditional culture.<sup>23</sup>

However, this apparent silver lining to the otherwise dire child protection story in Australia may conceal a dark cloud if quality of care is being compromised by the shift towards less-costly but inadequately assessed, supervised and supported kinship placements. This has important ramifications, especially with respect to the protection of Indigenous children and the national issue of addressing Indigenous disadvantage, due to concerns about the suitability of kinship placements for some (perhaps many) Indigenous children, and the institutional and ideological factors—Indigenous-specific child welfare policies and practices—that influence decisions to place Indigenous children in kinship placements that are sometimes far from safe and suitable.

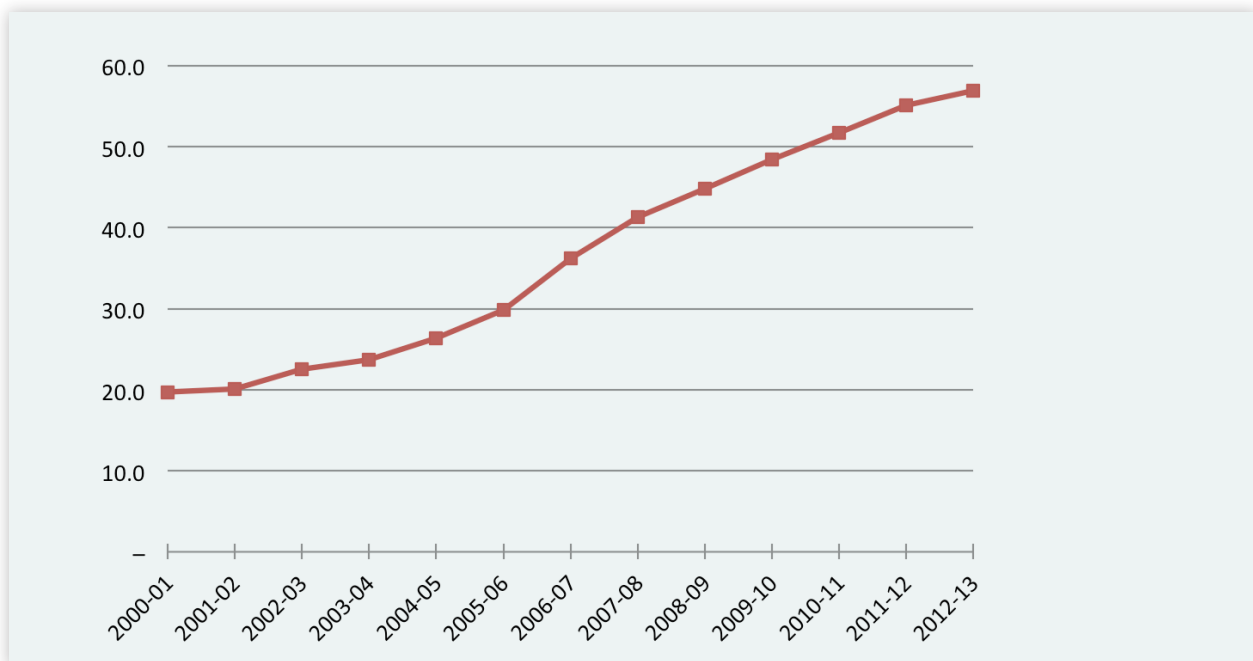
## Aboriginal Child Placement Principle

Between 2000-01 and 2012-13, the number of Indigenous children in care increased from 20 per 1000 population to 57 per 1000 population. (Figure 8) Indigenous children were significantly over-represented in out-of-home care in 2012-13 at more than 10 times the rate of non-Indigenous children (5.3 per 1000 population). In 2000-01, by comparison, Indigenous children were a little more than six times over-represented in care compared to non-Indigenous children (3.1 per 1000 population). Indigenous children have also disproportionately accounted for growth in the number of children in out-of-home care. Since 2000-01, the number of Indigenous children in care has increased by 241.6% compared to 86.7% for non-Indigenous children.<sup>24</sup> Of total children in care in 2012-13, more than one third (13,914) were Indigenous. This compares to 4146 Indigenous children in care out of a total care population of 19,783 (21%) in 2000-01.<sup>25</sup>

The increasing number and increasing over-representation of Indigenous children in care reflects the fact that Indigenous children are “almost 8 times more likely than non-Indigenous children to be subject of substantiated reports of harm/risk of harm.”<sup>26</sup> This reflects the high levels of dysfunction that exist in the most disadvantaged metropolitan, rural, and remote

Indigenous communities, in which welfare dependence, in combination with associated problems including drug and alcohol abuse and domestic and community violence, has led (as Noel Pearson has argued) to the breakdown of social norms surrounding work and family, and has eroded personal responsibility, particularly in relation to the care of children.<sup>27\*</sup> The elevated levels of social dysfunction in disadvantaged Indigenous families and communities mean the systemic problems in Australian child protection—the delayed removal of children from and repeated reunion of children with abusive and neglectful parents in the name of family preservation—can have an even more devastating impact on the wellbeing of Indigenous children. In addition, moreover, the impact on Indigenous child welfare is aggravated by Indigenous-specific child welfare policies and practices that amount to affording different treatment and providing different levels of protection for Indigenous compared to non-Indigenous children. This is to say that: while Indigenous and non-Indigenous families and communities with child protection concerns suffer from similar social problems and dysfunction; while Indigenous and non-Indigenous kinship carers face similar challenges that compromise the quality of care for children; and while both Indigenous and non-Indigenous children are liable to be placed in kinship

**Figure 8: Indigenous children in OOHC per 1,000 population**



Source: Productivity Commission, *Report on Government Services 2014*, Table 15A.18

\* In the words of the Wood Special Commission of Inquiry into Child Protection Services in New South Wales (2008, .736): “The reason for this state of affairs is likely to be the cumulative effects of poor health, drug and alcohol abuse, gambling, pornography, unemployment, discrimination, poor education, housing and the general disempowerment of their parents and communities which has led to family and other violence and then on to sexual abuse of men and women and, finally, of children.”



care by child protection authorities because the 'cheaper' option relieves pressure on over-stretched OOHC systems, Indigenous-specific child welfare policies and practices can create an additional barrier to securing the best interests of some Indigenous children and, in practice, can create an additional layer of Indigenous suffering and disadvantage.

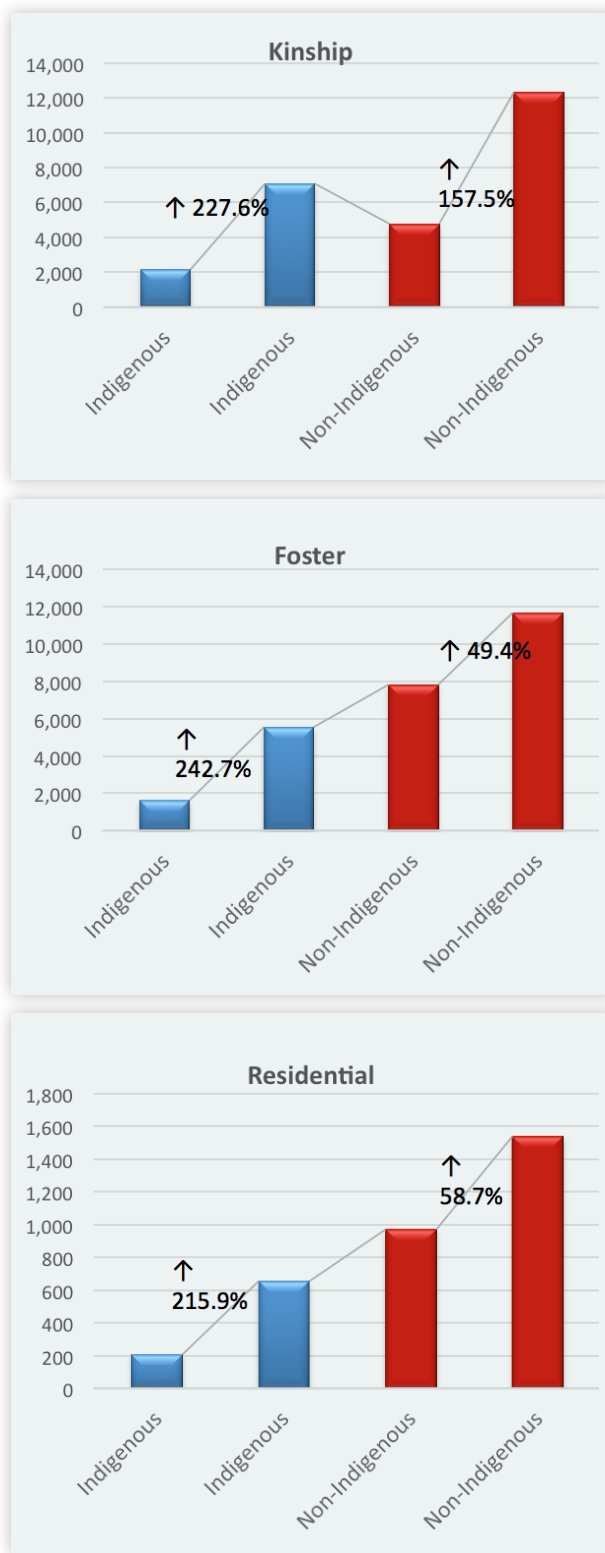
The majority of Indigenous children in care are in some form of kinship care. This is consistent with the Aboriginal and Torres Strait Islander Child Placement Principle (ACPP), which is a nationally-agreed policy included in child welfare legislation in all states and territories. In accordance with the ACPP, child protection authorities seek, where possible, to place Indigenous children with extended family members, the Indigenous child's community, or with other Indigenous people in order to maintain contact with Indigenous culture—language, ceremonies and traditions including spiritual connection to traditional lands—and to thereby preserve the child's Indigenous cultural identity. In 2012-13, more than two-thirds of Indigenous children in care in Australia were classified as living in 'culturally appropriate' placements: 38.1% were placed with Indigenous relatives/kin; 14.4% were placed with non-Indigenous relatives/kin; and 16.3% were placed in Indigenous foster and residential care.<sup>28</sup>

The growth in the total number of children in kinship care reflects the impact of Indigenous-specific child protection policies designed to cater for the needs of Indigenous children, families and communities. In response to the escalating crisis in Indigenous child welfare, Australian child protection authorities have endeavoured to conscientiously practice the ACPP by seeking to place Indigenous children with 'kin' where possible. However, despite these efforts, there has been no success in terms of changing the overall distribution of placements for Indigenous children. Hence, while increasing numbers of Indigenous children are receiving kinship care, it has proven difficult to provide kinship care for all Indigenous children requiring out-of-home care.

The number of Indigenous children placed in kinship care since 2000-01 has grown by 227%. (Figure 9) However, the number of Indigenous children in foster care grew at a faster rate (242.7%), and, in addition, growth in kinship placements was nearly matched by growth in Indigenous children in residential care (215.9%). Because the number of Indigenous children in kinship, foster, and residential care have all grown strongly at similar rates of between 200-250%, this has meant that the overall proportion of Indigenous children in kinship, foster, and residential placements has remained relatively stable, with around 50% of Indigenous children being placed with kin at the beginning and end of the period. (Figure 10)

There has been no significant change in the proportion of Indigenous children in kinship care despite the priority given to ensuring more Indigenous children receive culturally appropriate placements. (Figure 11) The overall growth in total kinship placements is due to a higher proportion and total number of *non-Indigenous* children being placed in kinship care. Furthermore,

**Figure 9: Indigenous and Non-Indigenous children in OOHC by placement type**



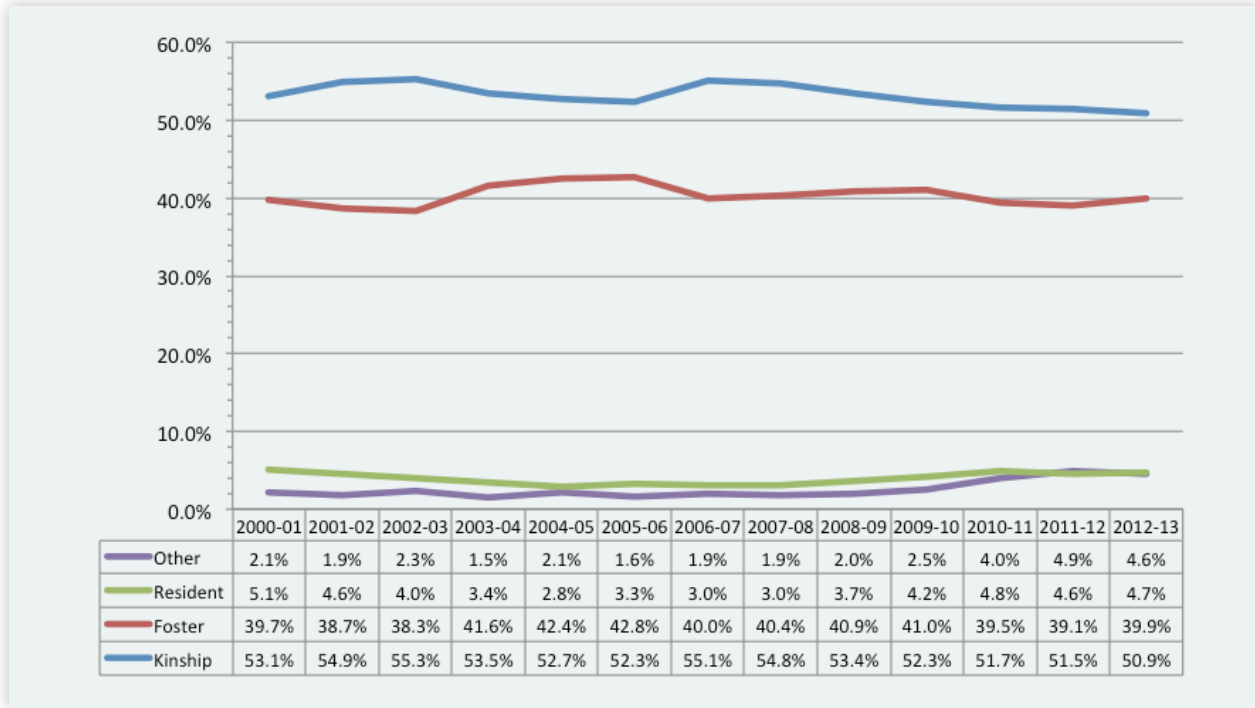
Source: Productivity Commission, *Report on Government Services 2014*, Table 15A.19

the proportion of Indigenous children in kinship care has either fallen or held steady in states that have the largest number of Indigenous children in care—NSW and Queensland. In the state with the next largest Indigenous care population—Western Australia—the proportion of Indigenous children in kinship care has increased but remains less than 60%. Victoria and South

Australia have both recorded substantial increases in the proportion of Indigenous children in kinship care, but off very low bases relative to NSW, Queensland, and Western Australia, and in both of these states approximately 40% of Indigenous children in care are

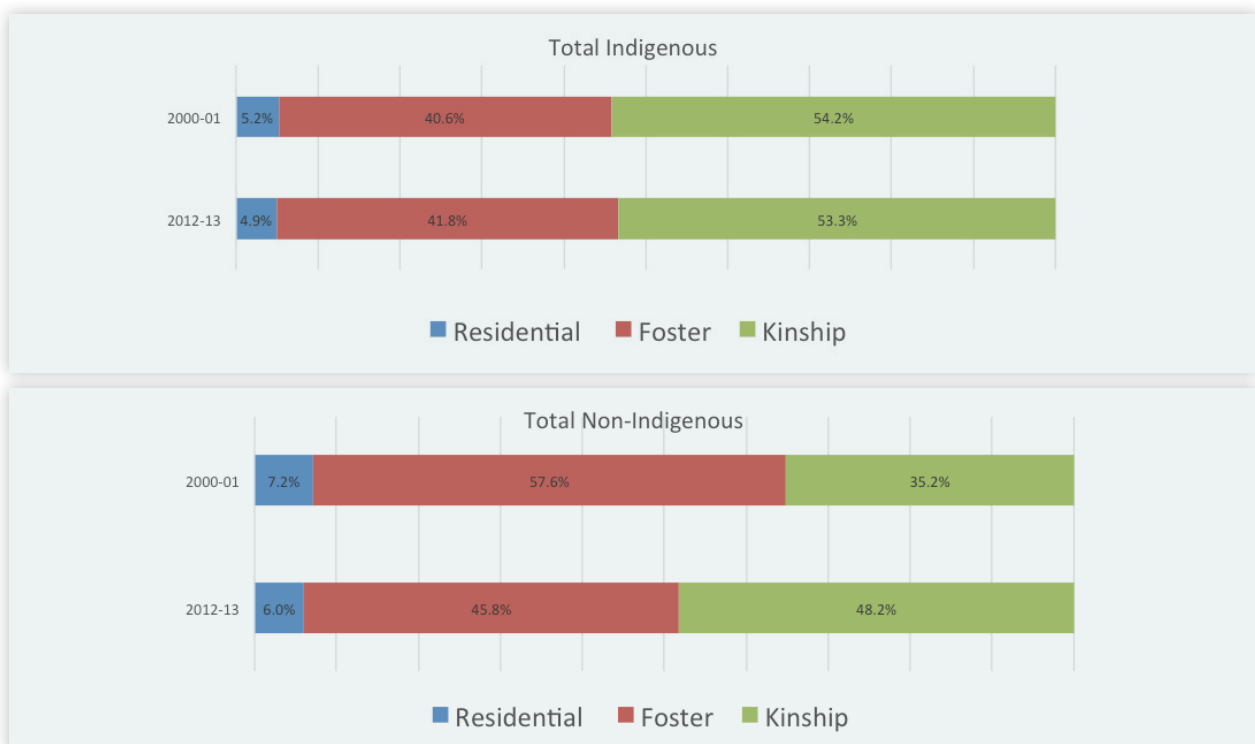
not placed in kinship care. (Appendix B). The stable overall national proportion of Indigenous children across all placement types is a measure of the difficulties child protection authorities face when seeking to place Indigenous children in kinship care.

**Figure 10: Proportion of all Indigenous children by OOHc by placement type (as a % of all children in OOHc) 2000-13**



Source: Productivity Commission, *Report on Government Services 2014*, Table 15A.19

**Figure 11: Proportion of children in OOHc Indigenous and Non-Indigenous**



Source: Productivity Commission, *Report on Government Services 2014*, Table 15A.19

## Despite the Best Intentions

The ACPP is designed to overcome the legacy of historic child removal practices—practices which in earlier times were intended to assimilate Indigenous children into mainstream Australian society and prevent children from maintaining family ties and connections with traditional culture and identity.<sup>29</sup> Despite the commitment to avoiding the errors and mistreatment of the past, many Indigenous children who are removed from their families are not placed in kinship placements and as such do not receive 'culturally appropriate' care despite the priority child protection authorities place on achieving this outcome. This is because the practice of the ACPP appears to contain the seeds of its own failure due to Indigenous demographics and dysfunction in some communities.

The obstacles to placing children in kinship care are most profound in the places with the most serious problems—in some remote 'homeland' communities in jurisdictions such as the Northern Territory. The extraordinary levels of social problems in some of these communities account for, in turn, the rising number of children needing care, the shortage of suitable kinship carers, and thus the resulting inability to place children in accordance with the ACPP. Shortages of suitable carers are accentuated by the demographics of Aboriginal communities. High birth rates and high adult mortality mean that an estimated 70% of the total Aboriginal population in the Northern Territory is aged under 30, leaving fewer adults to care for children. "Quite simply," as the 2010 *Report of the Board of Inquiry into the Child Protection System in the Northern Territory* (Bath report) concluded, "there are fewer and fewer Aboriginal families able to provide substitute care and more and more children likely to require a placement."<sup>30</sup> These factors appear to account for the decline in use of kinship care and increased use of foster care for Aboriginal children in the Northern Territory. Since 2009-10, the number of Aboriginal children in kinship care in the Territory has fallen by 58%; over the same period, the

number of Aboriginal children placed in foster care has increased by 77%.<sup>31</sup>

Clearly, the factors that prevent placing Indigenous children with kin are accentuated by the unique characteristics of the remote Indigenous communities in jurisdictions such as the Northern Territory and Queensland.<sup>32</sup> However, similar obstacles to kinship care are present in Indigenous communities in South-Eastern Australia. The 2012 *Report of Protecting Victoria's Vulnerable Children Inquiry* (Cummins report) found that "there has been little progress in Victoria in improving the percentage of children placed in accordance with ACPP over recent years."<sup>33</sup> In 2010-11, the proportion of Aboriginal children placed in accordance with the principle was approximately 57%, down from 59.5% three years before. Over the previous decade, the proportion had hit a high of more than 65% in 2007-08; but overall the proportion was largely the same in 2010-11 as in the early 2000s.<sup>34</sup>

The failure to improve compliance with the ACPP was partly due to demand. Since 2001-02, the total number of Aboriginal children in OOHC in Victoria increased from slightly fewer than 500 to around 900. The Cummins report attributed the inability to recruit sufficient Aboriginal carers to Aboriginal communities featuring high child-to-adult ratios, making it difficult for additional children to be brought into families. The potential pool of Aboriginal carers was also found to be diminished by the unique challenges in Aboriginal communities: elevated levels of poverty and disadvantage meant that many potential kinship carers were ruled out by personal, social, and financial barriers that compromised their capacity to act as carers.<sup>35</sup> This led Cummins to conclude that due to the "health status of many of the Aboriginal adults and the burden of care-giving and social disadvantage that many already carry, it is highly likely that many Aboriginal children will continue to be placed with non-Aboriginal care givers."<sup>36</sup>

Child protection authorities are clearly struggling to find sufficient numbers of safe and suitable kinship placements with extended families and other local community members for many Indigenous children because of the social problems in some Indigenous communities.<sup>37</sup> Yet it should not be assumed on this basis that child welfare concerns always outweigh cultural considerations, and that all of the significant numbers of kinship placements that do occur are actually safe and suitable. It has been well-documented that as a result of the practice of the ACPP, Indigenous children can be placed into unsafe situations that fail to meet basic standards, and into which non-Indigenous children would not be placed, in order to maintain contact with culture and preserve identity. Unrealistic decisions to place Indigenous and non-Indigenous children in low quality kinship placements are also driven by systemic factors, as described above, relating to the cost of and demand for OOH. However, the ACPP appears to have aggravated the problems associated with kinship care for Indigenous children. For example, the Bath report found that kinship placements for Indigenous children in the Northern Territory had failed to meet basic safety and hygiene standards, and that compliance with the ACPP had justified some “Aboriginal children in care receiving a lesser standard of care than non-Aboriginal children”.<sup>38</sup> The same concerns about the lesser standard of care provided to some Indigenous children as a consequence of the application of the ACPP have been expressed in the findings of other recent official reports in Victoria and Queensland as well (see below).<sup>39</sup>

In addition to the issue of treating Indigenous and non-Indigenous children differently, there are some important unanswered questions about the standards and results of kinship care in general. There is little information available about the quality of kinship care, other than repeat findings in official inquiries and academic literature that assessment, training, support, and supervision is inferior to foster care.<sup>40</sup> The potential for children’s care to be compromised starts with the fact that initial assessment of kinship carers tends to take place after a placement has occurred; by contrast, children are only placed with foster carers after a proper assessment.<sup>41</sup> Less rigorous assessment, training and support is especially concerning, given that child protection authorities are likely to set and forget children once they are placed with relatives. Hence, studies show that children in kinship care tend to “remain longer in care, are reunified with their birth families at slower rates, and are adopted at lower rates.”<sup>42</sup> In the words of a damning 2010 review of the existing literature on kinship care published by the Australian Institute of Family Studies, these systemic failings mean this growing segment of the OOH system “neglects the needs of children and young people placed in kinship care, which stands in opposition to a child-focused approach and serves to further subordinate children, young people and kinship carers who already suffer extreme disadvantage.”<sup>43</sup>

There are also many unanswered questions about the impact of kinship care on children’s welfare and development.<sup>44</sup> Because there is “little substantial research on kinship care in Australia”, and because “the growth in kinship care is not underpinned by strong outcomes focused evidence”, there is “no concrete evidence that this type of care produces better outcomes for children”, and “no conclusive evidence that those in kinship care are more or less well adjusted than those in foster care”; the belief that kinship care is preferable for Indigenous children because it maintains connections with culture and identity is also an assumption that is based, at best, on “limited evidence”.<sup>45</sup> This reflects the fact that “despite the over-representation of Aboriginal children in care and associated threats to family and cultural connections, there is little published research especially on Aboriginal children in kinship care”.<sup>46</sup>

What is known about kinship care is as worrying as what isn’t known. Kinship carers tend to be low income, less educated, older, single women, usually a grandmother or aunt, who commonly find it stressful to cope with the complexities and difficulties of “parenting again”, particularly when raising high needs children with abuse and neglect-related developmental and behavioural problems.<sup>47</sup> Though no data is available, according to a 2014 Senate committee report it is becoming increasingly common for grandparents to accept responsibility for caring for grandchildren, and many grandparent-headed families provide children with the stable and functional homes that their dysfunctional sons and daughters are incapable of providing, usually due to drug and alcohol abuse.<sup>48</sup> Yet, not surprisingly, many grandparents also report that they struggle, given their own financial and health challenges; they also report that training and support are inadequate.<sup>49</sup> These challenges are magnified and are particularly acute for Aboriginal grandmothers and aunties, who “tend to have higher rates of poverty and disadvantage and are more likely to be experiencing poorer health than their non-Aboriginal counterparts”.<sup>50</sup>

It is therefore difficult to not be skeptical about the alleged benefits of kinship care when in Victoria the carers of Aboriginal children are (in the words of the Cummins report) “mostly aged over 50, female and frequently single, and living in poverty with often crowded housing”.<sup>51</sup> It is also unclear how routine calls for additional support services will ever be capable of transforming the living conditions of children in kinship care, given the level of entrenched, intergenerational disadvantage that would need to be overcome in some Aboriginal families and communities.<sup>52</sup> In fact, the focus in the standard policy literature on improving training and support for Indigenous kinship carers is an implicit acknowledgement that, in some cases, complying with the ACPP overrides basic child welfare concerns and placement standards.<sup>53</sup>

## Indigenous Exceptionalism

To reduce the number of children languishing in OOHC and address the systemic problems plaguing the child protection system, in 2013 the NSW Government legislated a sweeping reform program designed to significantly increase the number of children who are adopted from care. This chiefly involves implementing important changes to child protection policy and practice to ensure that adoption is a viable and well-utilised pathway to securing a permanent alternative family for children with little prospect of being able to live safely with their birth parents. This principally entails enforcing new rules regarding timely, realistic decision-making about permanency for children in care. Under the new regime, it will be mandatory for a decision to be made about whether restoration to the parents is feasible within six months of entering care for children under two years of age and within 12 months of entering care for children aged two years and older. Once it is determined that a child cannot safely go home, application will be made in the Supreme Court for an order to legally free them for open adoption by a new family. (Open adoption means adopted children are able to maintain contact with birth-parents and extended family members.)<sup>54</sup>

There is much to recommend the pro-adoption policy developments in NSW, and much for other states and territories to emulate. By challenging the anti-adoption orthodoxy that prevails in Australian child protection, the NSW government has exercised considerable political courage and taken considerable political risks, given the sensitivities surrounding the adoption issue in this country with respect to past practices.<sup>55</sup> Wisely, perhaps, the NSW government decided to proceed carefully with respect to Indigenous children in care. Notwithstanding the range of benefits for children associated with adoption, the government has “acknowledged, however, that adoption is not considered a culturally accepted practice for Aboriginal children”. On this basis, the policy in NSW will be that “decisions on providing such stability, security, and certainty for Aboriginal children in OOHC will only be made in accordance with the Aboriginal Placement Principles”.<sup>56</sup> This will also entail persisting with ‘Aboriginal-controlled’ foster and kinship care services (under the remit of the peak Aboriginal OOHC body, Absec or the Aboriginal Child, Family and Community Care State Secretariat) to ensure care and support for Aboriginal children and their carers is culturally appropriate.<sup>57</sup>

The decision to exclude the 6,172 Indigenous children currently in care in NSW from the new adoption-based child protection laws was based not only on respect for Aboriginal tradition but also based on Indigenous and non-Indigenous community sensitivities regarding the history of the Stolen Generations. Less than a decade after the national apology was issued in 2008 by Prime Minister Kevin Rudd for the child removal policies and practices that saw thousands of Indigenous children separated from their families prior to the 1980s, governments Australia-wide are vulnerable to the emotive charge of repeating the racist errors of the

past if they endorse the use of adoption (or permanent guardianship) for Indigenous children.

The legacy of the Stolen Generations raises understandable, important, and well-intentioned considerations, which must form part of any discussion about child protection policy for Indigenous children. However, we should be concerned if children, be they Indigenous or non-Indigenous, are being consigned to low quality, unsafe kinship placements, particularly if this is due to foster care shortages and because this ‘cheaper’ option is a means of reducing financial strains on the increasingly unaffordable and systemically-flawed child protection system.<sup>58</sup> There is also a crucial additional dimension to this issue: whether the ACPP, in giving priority to contact with culture and maintenance of identity, is denying Indigenous children the safe and nurturing family environments that all children need to thrive. The further question is whether the use of kinship care for reasons of culture and identity is also denying Indigenous children the chance to enjoy the full freedoms, benefits and opportunities of Australian citizenship.

The fact that Indigenous children are over-represented in OOHC reflects the significant gaps that exist in health, education, employment, housing and other indicators of social welfare between the most disadvantaged Indigenous Australians and other Australians. State and territory child protection policy and practice thus has national implications for Indigenous policy, given the bi-partisan national commitment to Closing the Gap in social outcomes.<sup>59</sup> Child protection authorities are justifiably preoccupied with not repeating the Stolen Generations, and hence are committed to try to comply with the ACPP. However, we need to be aware of the risk that Indigenous-specific, culturally appropriate, but poor quality and dangerous kinship placements will perpetuate intergenerational Indigenous disadvantage. Efforts to close the gap are in danger of failing due to the emphasis placed on dealing with Indigenous children under a separatist child protection regime. The gaps in Indigenous children’s welfare and opportunities in life opened up by poor quality kinship care will prove very difficult to close later in life, no matter the quantity of public resources poured into programs designed to address Indigenous disadvantage. Child protection policy failures will not only make closing the gap more difficult, but the persistence of these gaps will perpetuate intergenerational social and family dysfunction, and ensure child welfare remains a major problem for future generations of Indigenous children and families.

We also need to face the realities of the current situation. Growth in the number of Indigenous children taken into care combined with the inability to place all children in culturally appropriate placements has led to claims that a “new Stolen Generation” is being created.<sup>60</sup> The parallels drawn with the Stolen Generations are inappropriate: the issue is not the removal of children based on race but based on demonstrable



family and community dysfunction. The politically-charged assertion to the contrary overlooks the well-founded child safety concerns and assorted obstacles to use of kinship care which drive decisions to remove children from their families and to not place children in accordance with the ACPP. The Indigenous community representatives and organisations who claim racism is driving Indigenous child removals need to be held to account for the results of the exceptionalist approach they endorse, which threatens to further encourage child protection authorities to keep abused and neglected children with their parents or place children in unsuitable kinship placements to maintain connections to Indigenous culture.<sup>61</sup> Both the chairman, Nyunggai Warren Mundine, and the deputy chair, Ngairé Brown, of the Prime Minister's Indigenous Advisory Council have flagged precisely these concerns with current policy, legislation and practices that lead to Indigenous children being left in unsafe and damaging situations in the care of parents who fail to fulfill their parental responsibilities.<sup>62</sup> The Northern Territory Indigenous Minister, Bess Price, and the Indigenous academic and commentator, Anthony Dillon, have also spoken out about the devastating consequences of placing abused and neglected children in shocking environments with Indigenous kinship carers in accordance with the ACPP.<sup>63</sup>

As is well-documented, part of the national response to the Stolen Generations has been the reluctance by child protection authorities to remove Indigenous children and take them into care for their own protection.<sup>64</sup> This implies that despite the over-representation of Indigenous children in the OOH system, child protection authorities are under-responding to the child welfare crisis in Indigenous communities. The second well-documented response to the Stolen Generations has been to try to ensure compliance with the ACPP when Indigenous children are taken into care. Kinship

care has been used as the preferred placement option to mitigate concerns about a 'new Stolen Generation' while seeking to reconcile child welfare with preserving culture and identity. But in practice, the determination to keep Indigenous children with kin in low quality placements in dysfunctional communities has meant the use of kinship placements that are not in the best interest of children.<sup>65</sup> In the worst cases, the results of separatist child protection practice have been catastrophic, and have allowed abusers, particularly the perpetrators of child sexual abuse, to continue to abuse children.<sup>66</sup> In his 2011 book, *Aboriginal Self-Determination*, Gary Johns detailed a distressing example from Queensland of what the Northern Territory Bath report called the "lesser standard of care"<sup>67</sup> received by some Aboriginal children:

Witness the social worker disciplined for failing to protect a 10-year old Aboriginal child repeatedly raped at Aurukun in 2005. Her defence was that such children should be reunited and returned to the community for the sake of their 'cultural, emotional and spiritual identity.'<sup>68</sup>

The social worker had returned the girl to the community from a white foster family because of fears that her actions to protect the victim would attract the Stolen Generations label.<sup>69</sup> As Johns concluded, because the ACPP deals with Aboriginal children under a separatist child protection regime, it creates an obvious double standard and is a form of reverse racism with regard to the treatment of Indigenous and non-Indigenous children and families: "the bias in current practices against foster care and the intensely ideological desire to have Aboriginal children stay with their families is causing death and mayhem".<sup>70</sup>

## Unravelling the Conundrum

Competing objectives that are all but impossible to reconcile cloud the issue of kinship for Indigenous children. The kinship conundrum—that the practice of the ACPP to prevent a ‘new Stolen Generation’ will keep open the gaps between the most disadvantaged Indigenous Australians and other Australians—must be unravelled to advance the best interests of Indigenous children. Unravelling the conundrum requires reviewing the rationale for the ACPP, and subjecting Indigenous child protection policy to the same national scrutiny that has been applied in recent times to other areas of Indigenous policy.<sup>71</sup>

The major finding of the review undertaken in this report is, firstly, to point out that the ACPP was not developed simply to prevent a repeat of the Stolen Generation as is commonly assumed. This assumption promotes the well-intentioned sentiment that the purpose of the ACPP is to right the wrongs of past mistreatment to which national attention was drawn in 1997 by the Human Rights and Equal Opportunity Commission’s (HEROC) *Bringing them home* report on National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children (‘Stolen Generations Report’). This assumption is fostered by the annual commemoration of National Sorry Day on 26 May—the anniversary of the tabling of the *Bringing them home* report in federal parliament. In reality, however, the ACPP was formulated prior to the national discussion of the past Indigenous child removal practices sparked by *Bringing them home*. First embedded in Australian child welfare legislation in the 1980s, the ACPP was indeed intended to address the legacy of decades of assimilationist child removal policies; however, its development was also a result of the politicisation of the Stolen Generations issue that was taken up as an important part of the Aboriginal rights movement of the 1970s. This is to say that ACPP needs to be understood as a product of a wider political context, and as a product of the policy settings of the 1970s that were pre-occupied with the pursuit of Aboriginal self-determination in all areas of Indigenous policy, including child protection. The policy thinking of the 1970s continues to inspire separatist Indigenous child protection thinking and practice today.

The second finding, therefore, is that while much has changed in Indigenous policy since the 1970s, and especially in the last decade and half, relatively little has changed in relation to Indigenous child protection. Separatist Indigenous child protection policies mean that we are practising a form of 1970s-style separatist policy that is now widely acknowledged in other areas of Indigenous policy to be a major contributor to the cause of Indigenous welfare and social outcome gaps. Nevertheless, the ACPP continues to be applied to drive process and evaluate outcomes even though it advances the outdated political objective of Aboriginal self-determination at the expense of the welfare and best

interests of Indigenous children. The overall finding, therefore, is that Indigenous politics, in combination with understandable concerns about preventing a repeat of the Stolen Generations, distorts Indigenous child protection policy in ways that are harmful to children and creates social gaps because current policies, such as the ACPP, put political considerations ahead of child welfare.

The following analysis also demonstrates how Indigenous politics distorts the policy debate about Indigenous child protection to the point that the realities on the ground are overlooked or obscured. The current debate is therefore insufficiently cognisant of the reality that with respect to the ACPP: (1) kinship care is harmful for some (perhaps many) Indigenous children; and (2) increasing the use of kinship care is impossible to do safely, as the data showing a stable proportion of Indigenous children in kinship placements strongly suggests. But instead of accepting and dealing with the fact that it is increasingly difficult to reconcile the commitment to maintaining contact with kin and culture with child welfare in the context of the worsening child welfare crisis in Indigenous communities, the debate is dominated by restatements of the political positions assumed in the 1970s and 1990s (as is illustrated by the exclusion of Indigenous children from the NSW adoption reforms). This includes the cultural relativism that dominates the standard literature on Indigenous child protection. The separatist or culturally appropriate child protection practice that is informed and recommended by this literature encourages caseworkers to ‘respect’ cultural differences between mainstream and permissive Indigenous family practices such as lack of adequate parental care and inadequate parental supervision at the price of minimising the threat to child welfare when children are either not removed from unsafe environments or are placed in substandard kinship care.

What the following analysis further shows is that the politics of Indigenous child protection are preventing Indigenous child protection policy from being updated in line not only with contemporary developments in Indigenous policy, but also with modern definitions of Aboriginality that have superseded the idea that retention of culture alone is the source of Aboriginal identity. This is to say; that the ACPP is based on what has become an outdated understanding of the relationship between Aboriginal culture and Aboriginal identity. Appreciating this is crucial. Recognising that the culturally appropriate framework currently applied to Indigenous child protection is a hangover from the Aboriginal politics of the 1970s and is based on an outdated definition of Aboriginality, opens the way forward to resolving the kinship conundrum in the best interests of Indigenous children.



## Origins of Aboriginal Self-determination

The 1997 *Bringing them home* report detailed the harmful impact of past child removal practices on Indigenous individuals, families, and communities.<sup>72</sup> The national attention that has since been focused on the Stolen Generations has intensified the commitment to the practice of the ACPP, which has been reinvented as a national commitment to avoiding repeating the perceived errors of the past that denied Aboriginal children contact with kin and culture. This has made it more difficult to question the merits of the ACPP as a child protection strategy. However, it is important to note that the focus on ensuring Aboriginal children receive culturally appropriate care placements predates the prominence attained by the Stolen Generations in the late-1990s. The “common belief” that Indigenous children should be placed with kin did not simply develop in response to the national recognition of the errors of past practices associated with the Stolen Generations.<sup>73</sup>

Instead, the ACPP was formulated 20 years earlier and formed an important part of the political agenda of the Aboriginal rights movement that pursued the goal of ‘Aboriginal self-determination’—the principle that Aboriginal advancement required the separate development of Aboriginal people on their own traditional lands, under their own political, legal and social organisations, and according to their own cultural and spiritual values.<sup>74</sup> The ACPP was first proposed by the Commonwealth Department of Aboriginal Affairs in the late 1970s, and its implementation was agreed to by all states and territories in 1986.<sup>75</sup> The decision to officially deal with Aboriginal children under a separatist child protection policy regime reflected the major

themes of the Aboriginal self-determination movement, which dominated Indigenous politics and policy until the early-2000s.

The principle of Aboriginal self-determination was inspired by the post-WWII national liberation movements in Asia, South America, and Africa, whereby formerly colonised peoples attained the right to govern themselves.<sup>76</sup> The dawning of a new age of Aboriginal political consciousness from the late-1960s essentially cast aside the principle underpinning the successful 1967 constitutional referendum that saw Aboriginal people included in the Australian census and authorised the Commonwealth to create laws for the benefit of Aboriginal people. That principle—that Aboriginal Australians should have equal rights with other Australian citizens—was superseded by the goal of self-determination and the principle that Aborigines should have separate rights and separate political, legal and social service regimes to other Australians, including the special right to recover and retain traditional culture and identity.<sup>77</sup>

No different to other post-colonial nationalist movements, Indigenous Australians were thought to require their own politico-legal-social institutions to protect and promote their distinctive culture. The institutional structure that developed chiefly took the form of ‘Aboriginal-controlled’ organisations responsible for delivery of ‘culturally-appropriate’, taxpayer-funded health, education and other services to Aboriginal communities. This was the beginning of the so-called ‘Aboriginal industry’, which was mainly staffed by an urban-based, professional class of Indigenous and non-



Indigenous politicians and bureaucrats, whose main function was to provide services for the fraction of the Aboriginal people who lived in remote communities. The granting of Land Rights (communal ownership of traditional lands) to Aboriginal people created proxy 'states' over which Aboriginal organisations exercised quasi-'sovereignty'. This homeland movement began with the Aboriginal Land Councils responsible for the local government of Aboriginal communities in the 1200 homeland settlements across Australia which, in theory, allowed Aboriginal people to live traditional hunter and gatherer lifestyles and maintain their cultural and spiritual connection to their ancestral lands. This was the so-called Coombsian model, named after the chief architect of the separatist policies first implemented by the Whitlam Government in the 1970s, Dr H.C. 'Nugget' Coombs, the former Governor of the Reserve Bank of Australia. For Aboriginal self-determination to have full political and cultural coherence, Aboriginal people, on the homelands at least, not only needed separate local government and property rights, but also needed to live under separate culture-based law and have separate culture-based schooling. The common denominator of Indigenous policy hereby became the attaining of political, legal and social institutional autonomy as a means of recovering, maintaining and preserving traditional culture.<sup>78</sup>

The principle of Aboriginal self-determination exerted such strong influence over the formation of Indigenous policy that the formulation of the ACPP was as much a matter of ending cultural domination and validating the principles that inspired the separatist agenda as it was a matter of child welfare, avoiding past mistakes and addressing past mistreatment. For Indigenous political movements in post-colonial nations including the Aboriginal self-determination movement in Australia—the restoration of traditional culture by all means possible, including the care of children, became the definitive political objective because the goal was to reverse the subordinate position and inferior status that colonial invasion and its concomitant oppression of Indigenous society had entailed.<sup>79</sup> Hence, the belief that Indigenous children required 'culturally appropriate' care, which came into vogue in the 1970s, was an international phenomenon among the "First Nations" in the United States, Canada, New Zealand, and Australia. Under the Aboriginal mission system that operated from the middle of the nineteenth century until the late 1960s, Aborigines had been subjected to a range of paternalistic controls that had sought to suppress traditional culture. Repudiating past child removal practices became a rallying point for political awareness. For when cast in post-colonial terms, these practices were presented as the leading edge of policies that had aimed to assimilate Aboriginal populations into the 'white' mainstream, as Aboriginal children who were removed from their families had been encouraged to reject their Aboriginality and Aboriginal culture.<sup>80</sup> The way child protection policy was taken up as part of a much wider agenda of Aboriginal self-determination is evident in what can be considered

the founding text of the Stolen Generations issue: Peter Read's 1981 report, *The Stolen Generations: The removal of Aboriginal children in New South Wales 1883 to 1969*, published by the NSW Department of Aboriginal Affairs. The politicisation of the Stolen Generations was typified by Read's claim that past child removal practices had sought to "breed out" the Aboriginal race and was a "story of attempted genocide" by 'White Australia', with the aim being to assimilate Aboriginal people and eradicate all traces of the Aboriginal culture assumed to be inferior. The theme of "cultural genocide"—which would perpetually feature in advocacy surrounding the Stolen Generations—was a powerful means of raising Aboriginal political awareness and a powerful argument for self-determination.<sup>81</sup>

The politicisation of the memory of assimilationist policies and practices reinforced the extent to which the recovery of lost culture became central to Aboriginal political consciousness, and hence the principle of self-determination came to directly inform the logic of the ACPP. It followed that Aboriginal culture and Aboriginal identity were held to be synonymous, and because child removal practices were one of the ways traditional culture was suppressed and Aborigines were assimilated into the mainstream, it was decreed in the name of self-determination that Aboriginal children must have continuous contact with culture to maintain their unique cultural identity.\*\* Hence, by the early 1980s the right of Aboriginal people to look after Aboriginal children and sustain Aboriginal culture had become a highly symbolic and crucially important means by which the right to Aboriginal self-determination was advanced. Acknowledgement of the Aboriginal right to self-determination came to be expressed, in part, by official recognition of this communal right. The political objective of the movement for self-determination—that the advancement of Aboriginal culture required a separate institutional structure—was accepted and authenticated when the states and territories agreed to practise the ACPP in the mid-1980s. State legislation giving effect to the ACPP also gave official recognition and privileged status to Aboriginal organisations granted the right to formal "community consultation" and participation in placement decisions concerning Aboriginal children.<sup>82</sup> Hence, the NSW Children and Young Persons (Care and Protection) Act, for example, includes "Aboriginal specific principles" that expressly incorporate the language and intent of Aboriginal self-determination. The Act (in the words of the 2007 Wood Special Commission of Inquiry into Child Protection Services in NSW) thus declares that:

Aboriginal people are to participate in the care and protection of their children and young persons "with as much self-determination as is possible" and the Minister may negotiate and agree with Aboriginal people to the implementation of programs and strategies that promote self-determination.<sup>83</sup>

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\*\* In the lexicon of Indigenous affairs, the use of the term 'culture' across a range of policy areas has a politicised meaning (hence the scare quote) and is virtually interchangeable with self-determination.

## 'Culturally appropriate' – Bringing them home and "leaving them there"

The *Bringing them home* report focused attention on past practices not only by cataloguing the devastating impact child removals had on the members of the Stolen Generations and their families. The report—picking up the politicised themes of Peter Read's *Stolen Generations* report—also controversially argued that racism had motivated the removal of Aboriginal children from their families, and had formed part of a genocidal policy of forced assimilation of so-called 'half caste' children into the white community.<sup>84</sup> In the wake of the divisive debate generated by the High Court's Mabo decision and the subsequent Native Title legislation, the *Bringing them home* report represented a further upping of the political stakes surrounding Indigenous affairs as its claims about genocide renewed the moral force of the separatist agenda. This reflected the politics of the report's co-author, HREOC Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Dodson, who had been a leading figure in Aboriginal politics since the 1970s and a prominent activist for Aboriginal self-determination. The intensely political nature and purpose of the *Bringing them home* report stemmed from the way that drawing national attention to the Stolen Generations provided a powerful means of re-politicising the issue and advancing the cause of Aboriginal self-determination through discussion of Indigenous child protection policy.

An important feature of *Bringing them home*, therefore, was the policy recommendations it made regarding the contemporary over-representation of Aboriginal children in OOHIC and the need to reduce the number of Aboriginal child removals to prevent a repeat of the racist policies that had led to the Stolen Generations. The essence of these recommendations was that then-current child protection practices were as abhorrent as past practices because it was claimed that decisions to remove Aboriginal children were based on an inherently racist view of Aboriginal culture. *Bringing them home* thus concluded that while the laws and language surrounding child protection had changed, attitudes towards Aboriginal children and families remained "overwhelmingly one of cultural domination and inappropriate and ineffective servicing".<sup>85</sup> At the heart of these attitudes paternalistic at best, racist at worst was a conflict between Western (that is mainstream Australian) and Aboriginal cultural values regarding children and families. Child protection case workers were accused of failing to understand and respect Aboriginal family practices such as lax parental supervision, encouraging children to be independent and self-reliant, and the involvement of extended kin networks in rearing children. Because these practices differed from the Western view of the 'normal' nuclear family, 'abnormal' Aboriginal customs were incorrectly labeled as neglectful and seen as pathological, dysfunctional and indicative of problems with the family, raising child protection concerns.<sup>86</sup>

Even at the time, this analysis of "cultural bias" accounting for the over-representation of Aboriginal children in the OOHIC system glossed over the reality of social and

family dysfunction in some Aboriginal communities.<sup>87</sup> The sort of culturally determined parenting practices described above may have been suitable in the social conditions of the past, but the conditions that gave rise to them no longer existed and these practices were no longer functioning well in the present. The defence of traditional culture to downplay the impact on child wellbeing minimised the raft of genuine child protection concerns that accounted for the over-representation of Aboriginal children in care, especially the fact that the most common form of maltreatment experienced by Aboriginal children is chronic parental neglect of basic needs including "adequate food, shelter, clothing, supervision, hygiene or medical attention."<sup>88</sup>

What was significant about *Bringing them home* was the way the principles of Aboriginal self-determination in relation to child protection were applied in a culturally relativist manner. What the report suggested was that a different standard of 'culturally appropriate' decision-making should apply to Aboriginal children. The emphasis placed on cultural respect and awareness, and the use of culture to explain the uniqueness of family life in Aboriginal communities, encouraged cultural practices and cultural differences to be used to explain away problems in Aboriginal families, lest case workers be accused of making culturally racist judgments. This essentially demanded that the reality of dysfunction be overlooked, and culture take precedence over child welfare. In addition to underplaying child welfare concerns, *Bringing them home* further politicised Indigenous child protection and the Stolen Generations issue by applying the standard separatist analysis of the supposed problem and solution. Hence the 'solution' proposed was more self-determination: 'culturally-appropriate' and 'Aboriginal-controlled' child and family welfare services to overcome the persistence of "cultural domination".<sup>89</sup>

The *Bringing them home* analysis has lasting and ongoing implications for Indigenous child protection—the question of 'culture' remains pivotal to what is and isn't done to protect Indigenous children. This explanation for the over-representation of Aboriginal children in care has entered the literature and lexicon of Australian child protection practice. Distilling the findings of the body of research into culturally appropriate Indigenous child protection practice that has grown out of *Bringing them home*, the 2007 Wood report asserted that:

It could be difficult for caseworkers and others, with an understanding that values the nuclear family above other conceptualisations of the 'family', to have any insight into the different kind of information that may be required for them to assess the safety of an Aboriginal child, or the appropriateness of the potential options available within the family and community to meet the care and protection needs of the child.<sup>90</sup>

Therefore:

Caseworkers raised in Anglo-Celtic society may find it difficult to understand and reflect in casework...the complexity of Aboriginal family and kinship relationship that are important for a child, and for making decisions about where the child should live, if he or she cannot live with parents.<sup>91</sup>

The Wood report quoted with approval a 2004 Victorian Department of Human Services report, *Protecting Children*, which listed as one of 10 "priorities for children's well-being and safety in Victoria" the need to ensure "the system as a whole is inclusive of Indigenous cultures and values".<sup>92</sup> The stress placed on creating an inclusive system explicitly made 'culture' (and the underlying politics of Aboriginal self-determination, since Aboriginal-control of services was the chief means of achieving inclusiveness) the priority, not child welfare. This priority, along with the separatist rationale for culturally appropriate child protection policy, was also explicitly set out in another report cited by Wood, commissioned by the Secretariat of National Aboriginal and Islander Child Care and the Victorian Department of Human Services, which boldly stated that:

*An individualistic approach that focuses on the child's needs* (emphasis added) without proper consideration of their parent/s' and communities' circumstances has been criticised by Indigenous groups in Canada, New Zealand, and Australia as failing to take into account Indigenous understandings of family and children.<sup>93</sup>

When this culturally appropriate rationale is added to concerns about stealing Aboriginal children, 'culture' becomes a powerful justification for lack of action in Aboriginal child welfare cases by child protection authorities. It encourages under-responding to the protective needs of Aboriginal children out of fear of being judgemental, or culturally insensitive, at best, and racist, at worst, which can lead to Aboriginal children being left in circumstances from which non-Aboriginal children would be removed. The policy and practice advice in the standard literature on Indigenous child protection does indeed therefore amount to subjecting Indigenous children to double standards and reverse racism in the name of respecting culture. It is also calculated to raise fears about a 'new Stolen Generation' in order to make child protection authorities reluctant to intervene in dysfunctional and dangerous Indigenous families.<sup>94</sup> This is a very powerful deterrent for child protection authorities because of the role (white) social workers played in past child removal practices. The desire to apologise and make amends for social workers' involvement in the Stolen Generations is a key factor that explains why the profession was so quick to endorse the ACPP and why it continues to support the practice of the ACPP today.<sup>95</sup>

It appears, however, that the commitment to culturally appropriate child protection practice has been somewhat

overwhelmed by events on the ground, due to the escalating child welfare crisis in Indigenous communities in recent years, and measured by the increasing number of Indigenous children in care. Nevertheless, the same policy advice contained in *Bringing them home* is being redeployed to explain the worsening over-representation of Indigenous children in care and to promote non-intervention in Indigenous family and community dysfunction. Following the 'Stop Stealing Our Children' rally held prior to the G20 meeting in Brisbane in November 2014, an activist representing the Brisbane Aboriginal Sovereign Embassy told the ABC:

How we parent is different and that needs to be acknowledged. We want control of the care and protection of our families, our children and our communities...We want solid ground to stand on, to raise our children in our cultural way. They need to acknowledge... that we have wisdom and knowledge to rear our children in the best way possible and they need to leave them alone and leave them there.<sup>96</sup>

This statement—this analysis of the way cultural bias or racism is allegedly driving Indigenous child removals, and the promotion of self-determination and 'culture' as the solution to child welfare problems—is virtually identical in form and content to the major themes of *Bringing them home*.<sup>97</sup> The influence of *Bringing them home* is also evident not only in official literature such as the Wood report and in the recommendations of similar recent public inquiries into child protection (see below), but also in other opinion-shaping commentary and analysis. Writing in *The Guardian* newspaper in March 2014, the Australian filmmaker and activist John Pilger accused Australian child protection authorities of perpetrating a repeat of the "infamous Stolen Generation of the last century". Drawing attention to the fact that five times the number of Aboriginal children are in state care today compared to in the mid-1990s, Pilger argued that "assimilation remains Australian government policy in all but name", and was based on an "official "attitude" in Australia that regarded Aboriginal people as "morally deficient"."<sup>98</sup>

The explosive claims that racist policy and genocidal intent explain the overrepresentation of Indigenous children is a theme that also features in the commentary on Indigenous child protection of Paddy Gibson, Senior Researcher at Jumbunna Indigenous House of Learning at the University of Technology, Sydney. Based on the fact that the number of Indigenous children currently in care is greater than at any time during the Stolen Generations period, Gibson endorses the view that this represents a "new Stolen Generation", driven by a return to what is essentially the assimilation policy of earlier eras.<sup>99</sup> Gibson has acknowledged that child removals are driven by the reality that many Aboriginal communities "suffer developing world living conditions". But his analysis basically updates the *Bringing them home* account of paternalistic attitudes framing Aboriginal culture as a child welfare problem, while (contradictorily) calling for greater government

investment in “community-development”. This is code for Aboriginal-controlled social services, and as such is a call to double down on the failed policies of Aboriginal self-determination.<sup>100</sup>

According to Gibson, “the triumphant politics of assimilation have exacerbated the drive to remove Aboriginal children”.<sup>101</sup> This is to claim that growth in Indigenous child removals is a result of the policy shift in recent times away from the separatist agenda and towards mainstreaming of health, education and other

services for Indigenous communities. This is to play politics with children, given the genuine child welfare concerns that exist in Indigenous communities. The heated, politicised claims about racism driving removals also ignore the reality that child protection policy is principally driven by the opposite of assimilation due to the commitment to the ACPP. Moreover, it ignores and aggravates the way that Aboriginal politics, in the guise of ‘respecting culture’, gets in the way of properly protecting children.<sup>102</sup>

'Culturally appropriate' child protection policies are a legacy of the separatist agenda of the Aboriginal self-determination movement in vogue in the 1970s. Over the following decades, the dream of self-determination has turned into a nightmare. The dream that Aborigines would live in ancient ways and enjoy culturally-rich lives on their traditional lands was exposed by the dire social conditions among Aboriginal people, especially those people who lived in the homelands. A return to hunting and gathering had never been realistic, and geographic isolation from mainstream economic opportunities meant reliance on government transfer payments and other public funding for governance and social services was the only means of sustaining these communities. The result was that homeland communities became bywords for near universal welfare dependence, and this initiated the downward spiral into personal, family and social dysfunction associated with a slew of related social problems including alcohol and drug abuse, gambling, domestic and communal violence, and the maltreatment and sexual abuse of women and children. Living on traditional lands did not mean living traditional lives. If traditional culture survived the maelstrom, its practice has been found to be often intermittent at best, and frequently distorted into a supposedly customary sanction for violence and abuse against women and children.<sup>103</sup>

Over the last decade and a half, the dismal truth about the abyss of Aboriginal self-determination has been recognised by a range of commentators, experts, the media and policymakers across the political spectrum, and the re-evaluation of the post-1970s period in Indigenous affairs has stimulated a revolution in Indigenous policy. Since the early-2000s, the separatist policies that had dominated Indigenous affairs have been marginalised, at the federal level at least, as failed experiments, and have been superseded by the policies of mainstreaming Aboriginal communities, with a view towards full engagement with educational and employment opportunities. The policy shift away from the self-determination model was most definitely signaled by two pivotal events: the Howard government's abolition of the peak Aboriginal-controlled organisation, the Aboriginal and Torres Strait Islander Commission, in 2005, and its Northern Territory Emergency Intervention into Homeland Communities in 2007 (which the Rudd-Gillard Labor governments subsequently continued). Yet at the state level, child protection policy has remained untouched by the revolution, and separatist thinking and policies such as the ACPP, which is no longer accepted in other areas of Indigenous policy, remain influential. This is partly because health, education, and employment are areas of both federal and state government responsibility; this has generated much greater scrutiny of these policy areas at the national level than has been the case, hitherto, for Indigenous child protection, which has largely remained a state political issue and responsibility.

The lack of a move away from the principle of self-determination is demonstrated by the findings and

recommendations of recent official inquiries into child protection in Victoria and Queensland. The Cummins report in Victoria lamented that despite the recognition of the traumatic experiences of the Stolen Generations, the number of Aboriginal children in care remained "unacceptably high".<sup>104</sup> While it was accepted that over-representation in care reflected the entrenched disadvantage and dysfunction in many Aboriginal families, the Cummins report endorsed taking a "holistic view" of the needs of Aboriginal communities and thus concluded that "outcomes for vulnerable Aboriginal children and families will only improve once practical gains in Aboriginal self-determination about children and families are achieved".<sup>105</sup>

The recommendations made by the Cummins report therefore included advising that "culturally competent approaches to family and statutory child protection services for Aboriginal children and young people should be expanded".<sup>106</sup> It also recommended delegating full responsibility for the provision of out-of-home care for Aboriginal children to Aboriginal communities, on the basis that "such a plan will enhance self-determination and provide a practical means for strengthening the cultural links for vulnerable Aboriginal children".<sup>107</sup>

The prioritisation of culture and self-determination by the Cummins report satisfied the political principle of Aboriginal self-determination; it also served the interests of Aboriginal-controlled organisations that stood to benefit by way of taxpayer-funding for 'culturally-appropriate' services. This also alleviated community anxieties about the potential for current child removal practices to repeat the history of the Stolen Generations. But the Cummins report paid only passing attention to the best interest of Aboriginal children, and was silent about the impact on child welfare of culturally appropriate child protection practices. This flew in the face of the major reservations about kinship care that were flagged by no less than the peak Aboriginal OOH body, the Victorian Aboriginal Child Care Agency (VACCA):

...it was never the intent of the ACPP to place children with members of their family or community who presented a danger to them. If we do not protect Aboriginal children from abuse, the legacy will be a new generation of adults/parents who view abuse as normative rather than unacceptable and harmful.<sup>108</sup>

The 2013 Queensland Child Protection Commission of Inquiry (Carmody report) appears at a glance to have taken a different approach to the Cummins report. The Carmody report implicitly acknowledged that culturally appropriate policy and practice was compromising child welfare when it stated that "efforts to reduce over-representation should not result in a different standard of protection being afforded Aboriginal and Torres Strait Islander children than afforded non-Indigenous children."<sup>109</sup> Yet rather than take this insight through to its logical conclusion—that different standards should not apply for Indigenous children—the Carmody report



emulated the Cummins report by focusing on the alleged need for an even more culturally appropriate child protection regime.

This began with endorsing the view that, notwithstanding the social dysfunction in Indigenous communities, the over-representation of Indigenous children was attributable to “misperceptions about child-rearing practices in Aboriginal families...lead[ing] to incorrect assumptions about children’s protective needs in some circumstances”.<sup>110</sup> This analysis of the problem led directly to the major recommendation: because “keeping children out of the system is made more difficult by departmental officers having a poor understanding of Aboriginal and Torres Strait Islander cultural and family practices”, Carmody recommended that Aboriginal-controlled organisations have (as per the “self-determination” principles of the *Child Protection Act 1999*) a “more meaningful role in the delivery of statutory child protection practice”.<sup>111</sup> What was envisaged was not just greater consultation about the care and protection of Indigenous children but a delegation of “responsibility for statutory practice over time” to Aboriginal-controlled agencies that were “familiar with local circumstances and have the requisite cultural competence”.<sup>112</sup>

The Carmody report noted that the proportion of Indigenous children in care who were placed in accordance with the ACPP was just over 50%, down from 64% in 2006. It also noted competing views on kinship care, whereby some stakeholders felt the ACPP was not given due importance in making decisions about placements for Indigenous children, while other stakeholders felt it was given too much weight. At face value, the principle endorsed by the Carmody report was that “the child’s overall best interests should always be paramount”.<sup>113</sup> Yet the message sent on the key issue—whether child

welfare or culture should take precedence in making decisions about kinship placements—was mixed, at best. The Carmody report not only recommended that Aboriginal-controlled organisations have input into identification and assessment of potential care, it also stressed that “all reasonable efforts should be made to exhaust potential kinship carers for children”.<sup>114</sup>

“Reasonable efforts” amounted to recommending an approach that gave priority to compliance with the ACPP above considerations of child welfare. Hence, Carmody recommended the use of a special assessment tool for Indigenous carers that employed “a conversational ‘yarning’ style to assess key areas of carer competency, and visual cards to identify competency in each of the core areas...enabling potential kinship carers to participate fully in the assessment process”. The justification for employing a simplified, less rigorous form of assessment was not just to overcome the evident illiteracy of potential kinship carers. There was also the need to “make the process less confronting” because:

some adults can be reluctant to seek approval as kinship carers because they find the assessment process intimidating. Many have reported feeling that their own ability to care for their children has been put under the spotlight during the process.<sup>115</sup>

The emphasis the Carmody report appeared to place on children’s best interest was dubious; its highly questionable recommendations can actually be read as an official warrant for minimising threats to Indigenous child welfare and for Indigenous children being afforded a “different standard of protection” in the name of respecting culture.

That 'culturally appropriate' child protection may mean a lesser standard of care for some Indigenous children makes the ACPP, for all its good intentions, an example of what the anthropologist Peter Sutton has termed the "politics of suffering". Based on decades of professional observation of Aboriginal politics in Aboriginal communities, Sutton's analysis of the root error of Indigenous policy is that the political objective of self-determination—including the right to recover and retain culture as the source of Aboriginal identity—has too often taken precedence over basic considerations of human welfare, particularly the well-being and best interests of children.<sup>116</sup>

Having worked in Cape York Peninsula since the 1970s and having witnessed first-hand the decline in living conditions in the homeland community of Aurukun, Sutton's reassessment of the political project of Aboriginal self-determination led him to conclude in his 2009 book, *The Politics of Suffering*, that Indigenous policy has been marred by a profound confusion of means and ends. The priority given to self-determination and, importantly, the influence of cultural relativism—defined as a reluctance to criticise traditional cultural practices judged against modern or mainstream values—meant that the failure of self-determination, measured by the social dysfunction in Aboriginal communities, did not register either politically or in terms of policy for far too long. But worse, and more consequentially, was the way the resulting suffering in Aboriginal communities was further politicised, and practical problems—health, safety, and child welfare—were perpetually reduced to the standard political claim that Aboriginal problems require "empowering" Aborigines to deliver Aboriginal solutions. Hence, the solution perpetually proposed for the problem caused by the separatist agenda (at least until the early-2000s) was for more of the same: more self-determination through Aboriginal-controlled agencies. Pulling no punches at vested interests, Sutton asserted that the main beneficiaries of the politicisation of Aboriginal suffering were the politicians, bureaucrats and service providers employed at taxpayers' expense in various arms of the 'Aboriginal industry'.<sup>117</sup>

Like other reassessments of the era of self-determination including those of Noel Pearson, Helen Hughes and Gary Johns, Sutton faced up to the fact that the seeds of the social deterioration in Aboriginal communities were planted by the separatist policies implemented in the 1970s. However, Sutton's analysis went further, and examined the "interplay" between policy and culture. The massive policy failures of the post-1970 period in his view had been compounded by the interaction with cultural factors—by the legacy of Aboriginal traditions, practices, and habits accumulated over time and passed down through the generations, particularly concerning the raising of children. The problems in Aurukun and other similar homeland communities could not be blamed on colonial oppression, lack of self-determination and the suppression of Aboriginal culture,

Sutton argued, because in these communities with the worst problems, Aboriginal people had continued to live closest to a traditional manner and on their traditional lands. "Community dysfunction", as Sutton put it, "[was] at its greatest in those places where history and the colonisation process had been the most recent, and therefore the kindest".<sup>118</sup> In these communities, in fact, the problems caused by separatist policy had been compounded by failure to integrate with the modern, mainstream cultural norms of 'First World', Australian society.

Sutton's diagnosis of 'culture-as-problem' and cause of suffering sets the orthodox paradigm of Indigenous policy and politics on its head. Attributing Aboriginal disadvantage to the significant role played by traditional culture means that the overemphasis on the maintenance of traditional culture in the name of self-determination is misguided, overlooks the human costs, and is positively harmful to some Aboriginal people. Some aspects of Aboriginal culture are in fact a means of perpetuating, not relieving, Aboriginal disadvantage, because they perpetuate the traditional practices that cause much contemporary suffering, especially among Aboriginal women and children. Sutton maintained, for example, that high levels of inter-personal violence in Aboriginal communities (particularly against women and children) reflected not only social dysfunction in Aboriginal communities that had stemmed from welfare dependence and especially from the chronic abuse of alcohol, but also from cultural traits deeply embedded in traditional culture—such as violent ways of resolving conflict which Aboriginal men tend to be socialised into from early childhood.<sup>119</sup>

It followed that these and other traditional practices and aspects of Aboriginal culture that had harmful consequences—including hygiene and sanitation habits suited to a hunter gatherer lifestyle but unsuitable for sedentary settlement—needed to be modernised by integration with the mainstream if Aboriginal wellbeing was to be advanced. Again refusing to pull punches, Sutton declared that:

Culturally transmitted behaviour and attitudes are at the centre of the huge differences between Indigenous and non-Indigenous health outcomes...If people want a typically modern health profile they need to adopt a typically modern set of health practices.<sup>120</sup>

Sutton thus counseled against the simplistic cultural relativism that had plagued Indigenous policy: all that could be called customary was not good just because it was traditional, as this risked overlooking the negative consequences of these practices.<sup>121</sup> His own politically incorrect assessment of the welfare deficits attributable to Aboriginal culture extended to blunt criticism of neglectful Aboriginal parenting practices, which he

described as a “customary permissiveness in the raising of children that at times includes a casualness about their health”.<sup>122</sup>

This is to say that culturally-embedded permissive Aboriginal parenting practices are relevant to the neglect of children’s most fundamental needs, and play an important role in accounting for common child welfare problems, such as the chronic malnourishment of underweight younger children in some Aboriginal communities. Parental permissiveness is also relevant to one of the most distressing problems in Indigenous communities—epidemic levels of child sexual abuse. Various inquiries into child sexual abuse in Indigenous communities in a number of states and territories have found that “sexual abuse of Indigenous children was common, widespread and grossly under-reported”.<sup>123</sup>

Child sexual assault is a crime of opportunity that depends on offenders having unsupervised access to children; inadequate parental supervision of children has hence been found to be the leading cause of child sexual abuse.<sup>124</sup> This directly contradicts the often-expressed notion, per the doctrine of self-determination, that “engaging in traditional cultural practices and reclaiming a sense of cultural identity is the key to alleviating Aboriginal disadvantage”.<sup>125</sup> This is also to say that Aboriginal parental neglect, however culturally-determined it is, is anything but benign with regards to the care of children. This underlines how potentially harmful to child welfare are culturally appropriate child protection practices, especially efforts to “exhaust potential kinship carers” in order to comply with the ACPP.



The continuing priority given to 'culture' over child welfare considerations in Indigenous child protection is inconsistent with the shift away from self-determination towards mainstreaming in Indigenous policy as the way to close the gap between the most disadvantaged Indigenous Australians and other Australians. Moreover, the priority given to compliance with the ACPP has also become outdated and been superseded by modern definitions of Aboriginality that have developed in line with the changing character of the Indigenous population, and are based less on connection to culture and more on ethnicity and identification.

The number of Australians identifying as Indigenous is rapidly growing, with the latest Australian census recording a remarkable 21% increase. In 2006, 455,028 people identified as Indigenous; by 2011, the number had increased to 548,400,<sup>126</sup> and "the changes appear to have been driven by changes in self-identification in urban areas".<sup>127</sup> The fastest-growing part of the Aboriginal population lives in urban areas. In 2011, 35 per cent of Indigenous people in Australia lived in Major Cities, up from 31% in 2006. The Inner Regional population held steady (22%), while the proportion living in Outer Regional (22%) and Remote/Very Remote (21%) fell by 2% and 3% respectively.<sup>128</sup> The highest regional increases in the Indigenous population between 2006 and 2011 occurred in the more urban regions—the ACT (44%), Victoria excluding Melbourne (41%), Melbourne (41%), Brisbane (40%), Adelaide (38%), and Sydney-Wollongong (37%).<sup>129</sup>

The growth in the Indigenous population suggests that the modern definition of Aboriginality is no longer essentially based on either race or culture per se, and instead is increasingly becoming an ethnic identity based on self-identification, contemporary recognition, and family history and descent from an Aboriginal ancestor.<sup>130</sup> The official three-part definition of Aboriginal identity used by the Commonwealth for legal and administrative purposes is based on (1) ancestry, (2) self-identification, and (3) acceptance by the Indigenous community in which they live.<sup>131</sup> This modern definition of Aboriginality is a product of and reflects high rates of Indigenous intermarriage: in 2006, 52% of Indigenous men and 55% of Indigenous women were partnered (married or lived with) with a non-Indigenous spouse, with rates of intermarriage highest in capital cities in south-eastern Australia.<sup>132</sup> The overall proportion of mixed couples (one Indigenous and one non-Indigenous partner or spouse) as a proportion of all Indigenous couples (where at least one partner is Indigenous) was 71.5%.<sup>133</sup> This is also significant in accounting for the growth in the Indigenous population because the Australian Bureau of Statistics and other government organisations "commonly treat all children of intermarriage as Indigenous Australians".<sup>134</sup> Modern Aboriginal identity is also a product of and reflects the overall distribution of the Indigenous population or, more accurately, is a product of and reflects the social status of the approximately three-quarters of

all Indigenous Australians who reside in major cities and regional towns.<sup>135</sup> Those who are working within this group of urban Indigenous Australians tend to be thoroughly integrated with mainstream society to the point that in relation to education, employment, housing and other social welfare indicators their status is similar to their non-Indigenous peers, but without "resulting in a diminution of Indigenous identification".<sup>136</sup>

The significance of these statistics and the changing character of the Aboriginal population they illustrate is two-fold and interrelated with regards to the "construction of Aboriginal identity."<sup>137</sup> Firstly, this means that modern Aboriginal identity is no longer based on biological racial identity or on being culturally Aboriginal in the traditional sense, as in having continuous contact with Aboriginal culture and traditional lands. Nevertheless, a person can still identify as Aboriginal based on pride in one's background, similar as Sara Hudson has argued to the sense of identity that is generated through connection to ancestry, traditions and culture among other ethnic groups in multicultural societies.<sup>138</sup> Secondly, the factors that have made a person successful in mainstream society—principally education and employment—do not make this person less Aboriginal because modern Aboriginal identity is different to race and culture.

The changing character of the Indigenous population and the evolving definition of Aboriginality provides an opportunity to move the debate about identity beyond the fraught and politically-charged controversy over the meaning of integration with the mainstream. In the past, integration has tended to be portrayed as synonymous with the assimilation, paternalism, and cultural genocide policies of earlier eras in order to promote the political cause of self-determination. Yet it is clearly now possible for people to fully integrate with mainstream Australian society while preserving their Aboriginal status and identity. According to one account, modern Aboriginal identity is about breaking of the "stereotype" that labels those who "go barefoot" as true Aborigines.<sup>139</sup> In *Am I Black Enough For You?*, the author Anita Heiss maintained that her story was not about "the so-called 'real Aborigine'" but was instead "a story about *not* being from the desert, not speaking my traditional language and not wearing ochre". Although she was "not very good at playing the clap sticks either, and I *loathe* sleeping outdoors", Heiss argued that this made her no less an Aborigine for defying the expectation "to be all-knowing of Aboriginal culture as well as able to articulate my predefined, exotic and somehow tangible relationship with the land".<sup>140</sup>

As the work of Gary Johns, Peter Sutton, and Helen Hughes and Mark Hughes have separately suggested, the link between traditional culture and identity now has far less coherence as a source of Aboriginality due to the realities of contemporary Indigenous Australia, and the claiming of Aboriginal identity by those with virtually no contact with traditional culture.<sup>141</sup> No matter how distant or non-existent the connection with culture,

Aboriginal identity is recognised and accepted within both Indigenous and non-Indigenous communities. As importantly, integration with the mainstream is no barrier to modern Aboriginal identity, belonging, and recognition. This has profoundly important implications for Indigenous child protection policy and practice, since it alleviates concerns about loss of cultural identity that inhibit changes to current practices associated with the ACPP and kinship care.

The idea that Aboriginality depended on contact with culture made sense in the 1970s as political strategy, as a way of advancing the political objective of self-determination. However, the separatist agenda has now been discredited and superseded. The idea that the advancement of Indigenous people lies in mainstreaming Indigenous policy is largely accepted with respect to education, health, employment, and economic development. Yet the same shift in thinking and practice has not occurred in relation to Indigenous child protection policy. The rationale for the ACPP remains the otherwise outdated definition of Aboriginal identity, predicated on the belief that children must be placed with kin to have continuous contact with culture in order to maintain and preserve their Aboriginality. The ACPP is therefore indeed a relic of a different age of separatist Indigenous policy.

The continuation of separatist child protection policies means that some Indigenous children, especially those who live in the most disadvantaged remote communities, will end up being raised in circumstances that deny them the chance to access the full rights and opportunities of Australian citizenship enjoyed by other Indigenous and non-Indigenous children. The alternative approach is to mainstream the child protection and OOH arrangements for Indigenous children, in recognition that this does not mean loss of identity. This should

include ending all forms of Aboriginal exceptionalism in child protection. Indigenous and non-Indigenous children should be treated the same, including the use on a non-discriminatory basis of open adoption (or permanent guardianship) to provide Indigenous children who cannot live safely with their parents or kin with a safe and nurturing adoptive family. The mainstreaming of Indigenous child protection would make it harder to sustain the residual political justification for the institutional legacy of the era of Aboriginal self-determination, because changes to Indigenous child protection would chiefly involve recognition of the unsuitability of kinship care and likely removal of more children from the homelands. This would bring the long term future of these communities into question. In the long run, this would threaten the future of much of the Aboriginal industry, which would lose both its reason for existence and rationale for its call on public funding.

The continued practice of the ACPP means that Indigenous politics is still taking priority over the welfare and best interests of Indigenous children. This makes Indigenous child protection the most pressing instance the nation faces today of the persistence of the politics of Indigenous suffering. The beneficiaries of separatist child protection include those Indigenous Australians employed in delivering Aboriginal-controlled services to homeland communities, who are largely urban-based, well-educated, and fully integrated into mainstream society. Ironically, this group of well-off Indigenous Australians stands to benefit from vulnerable Indigenous children being denied the chance to integrate in the way they and their own children have. It is doubly ironic that this will be done in the name of ensuring children maintain their Aboriginal identity through contact with kin and culture, a definition of Aboriginality that these elites have deemed irrelevant with respect to their own and their children's Aboriginal identity.<sup>142</sup>



## Conclusion: On Not Losing Another Generation; and on Reconciling Culture and Child Welfare

Forms of self-determination and 'special treatment' have a long history in Indigenous policy stretching from the formation of the Aboriginal missions in the nineteenth century and extending through to the ascendancy of Aboriginal self-determination in the 1970s. What unites these otherwise different social experiments is that all were predicated on the notion that Aborigines needed to be treated differently and protected from the mainstream. As Helen Hughes described the similarities in her landmark 2007 expose on the dire social conditions of the homeland communities, *Lands of Shame*:

Aborigines and Torres Strait Islander have been discriminated against by being treated differently for more than 200 years. It is not true that various policies have been tried and have failed. Policies have always been discriminatory, treating Aborigines and Torres Strait Islanders differently from other Australians. Sadly the most damaging discrimination in Australia's history has been the exceptionalism of the last 30 years that was intended to make up for past mistreatment. It has widened the gap between Indigenous and mainstream Australians in critical respects.<sup>143</sup>

To this can be added that we are conducting a different version of the same separatist experiment in the form of kinship care for Indigenous children, which is making it more difficult to close the gaps between disadvantaged Indigenous and other Australians.

The inescapable reality is that the separatist Indigenous child protection regime applies double standards to the care and protection of Indigenous children compared to non-Indigenous children. Well-meaning anxieties and

sensitivities about repeating the history of the Stolen Generations encourage policymakers to uphold the link between Aboriginal culture and identity and to seek to comply with the ACPP. The danger, however, is that by seeking to prevent a 'new Stolen Generation', another generation of Indigenous children may be lost. The resulting developmental, educational, and employment gaps will render these children incapable of integration, and leave them trapped in disadvantaged Indigenous communities. Good intentions to recognise and not to repeat past mistakes—the worthy sentiments powerfully and emotionally expressed through the National Sorry Day commemoration—make a bad situation worse by leaving children in harmful environments. It is also arguable that this is also a morally dubious exercise in conscience cleansing on the part of non-Indigenous Australians. The burden of 'white guilt' over the Stolen Generations should not be left to rest on the slender shoulders of children.

The question we face is how best the nation can address the legacy of past mistreatment of Indigenous people while moving forward to a truly Reconciled Australia. After two centuries of failed separatist experiments, I believe the aim of Indigenous policy in the twenty-first century should be to normalise the lives of Indigenous people—end special treatment and discrimination, and give all Indigenous Australians the same opportunities as other Australians regardless of race. Yet while much has changed along these lines in Indigenous policy in recent years, Indigenous child protection policy remains stuck in the 1970s. The ACPP pursues the separatist agenda of Aboriginal self-determination that is largely discredited, while clinging to a definition of Aboriginality that ignores the changing nature of modern Aboriginal identity.

But despite the priority given to culturally appropriate kinship care, the ACPP is failing under the weight of its own contradictions and the inability to reconcile the commitment to this principle with basic standards and child safety. The trend that sees increasing numbers of Indigenous children unable to be placed in kinship care should be welcomed and encouraged as reflecting a belated and overdue recognition of the basic principle that the welfare of Indigenous children should not be compromised. We also need to accept this new reality because the demographic factors that have led to over-supply of children and under-supply of kin carers will intensify in coming decades. The last generation of functional, Mission-educated grandmothers and aunts who have performed the bulk of kinship care are dying out and will not be replaced in the same number by the next generation, whose capabilities have been impaired by the downward spiral into dysfunction in Indigenous communities over the previous 40 years. This means there is simply no alternative to accepting the alternatives to kinship care, and no alternative to extending the mainstreaming revolution to Indigenous child protection. National leadership by the federal government (parallel to that provided in the areas of Indigenous health, education, and employment) will also be needed to hasten political acceptance of mainstreaming and help spur state governments into modernising Indigenous child protection policy as a vital, nationally important means of Closing the Gap.

Policy change tends to occur when reality confronts ideology. This is what has occurred in other areas of Indigenous policy and needs also to occur in Indigenous child protection policy. What should also, therefore, be encouraged and welcomed is the taboo-breaking call of the Northern Territory Chief Minister and first Indigenous state or territory leader, Adam Giles, to break the cycle of Indigenous disadvantage and overcome fears of repeating the Stolen Generations through the use of adoption to care and protect vulnerable Indigenous children.<sup>144</sup> If adoption (and the alternative policy of permanent guardianship<sup>††</sup>) is a culturally unacceptable practice for Aboriginal communities, and Aboriginal children must therefore endure poor quality kinship care that compromises their futures, then perhaps it is time to suggest that this aspect of Aboriginal culture may have outlived its usefulness. It may not be politically correct to discuss how culture might be maladapted and have negative welfare effects. But nor is it racist to do so. Quite clearly, the question of Indigenous culture as it relates to child welfare, parenting, and family life in Indigenous communities is a subject that cannot be ignored and must be openly discussed if child protection policy is to advance the best interests of Indigenous children.

Under a mainstreamed Indigenous child protection regime, the maintenance of children's cultural identity needs to be treated as an important objective. But not at the expense of child welfare. In functional societies, adults are responsible for passing on cultural knowledge to the next generation; culture is not something that children should suffer to acquire—that is a perverse inversion of the proper social order and the generational compact between young and old. This means that culture should have to follow Indigenous children to safety, and not that children's safety and best interests should be compromised for culture's sake. 'Cultural support plans', which are designed to ensure the large minority of Indigenous children who are currently unable to be placed with kin can maintain contact with culture, are already a standard part of child protection practice.<sup>145</sup> The importance of maintaining a child's cultural identity is a standard expectation for overseas adoptions: adoptive parents must acknowledge that children are not blank slates and must say how they will ensure contact with the child's birth culture such as by involvement in traditional cultural and community activities, maintaining links with natural parents and extended families, or by travel to the child's birth country. Integrated Aborigines living in mainstream Australia are surely finding ways to ensure that they and their children maintain their identity through contact with culture.<sup>146</sup> In a revamped non-discriminatory Indigenous child protection system, Aboriginal organisations could play a constructive role in reconciling culture and child welfare through the creation of (formalised, professionalised, and funded) cultural support and education programs. Such programs could form a key part of the provision of culturally appropriate adoption and permanent care services for Indigenous children and their families.<sup>147</sup>

There are no grounds for suggesting that a mainstreamed but culturally appropriate Indigenous child protection regime of this kind would create another Stolen Generation. The majority of Indigenous Australians are integrated into mainstream Australian societies and their lives are proof that integration is possible without the loss of their Aboriginality.<sup>145</sup> Understanding that integration is compatible with modern Aboriginal identity means the longstanding objections to mainstreaming Indigenous child protection policy—'paternalism', 'assimilation', 'cultural genocide'—have lost their validity. We do not need to perpetuate the politics of suffering through child protection policy to preserve Aboriginal identity, and we must not allow this to continue if we are to fulfill the national commitment to Closing the Gap.

For the suffering of Indigenous children to end, the politics must be taken out of Indigenous child protection.

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<sup>††</sup> There is a suggestion that the controversies surrounding adoption from care for both Indigenous and non-Indigenous children can be avoided by granting full guardianship to foster parents until a child turns 18. This is the objective of legislation introducing 'Permanent Care Orders', which passed the Victorian parliament in September, 2014. However, the new Victorian arrangements also have the potential to exclude Aboriginal children by imposing Indigenous-specific restrictions. A permanent care order cannot be made for an Aboriginal child unless: (1) no suitable placement with an Aboriginal family can be found; (2) an Aboriginal agency recommends the order; and (3) the order accords with the ACPP with respect to (a) placing a child with non-Aboriginal families located nearby their natural family and (b) ensuring contact is maintained with the child's community. These additional institutional and ideological hurdles will, arguably, preserve the 'separatist' status quo. In Western Australia, 'Special Guardian Orders' must also 'have regard to the Aboriginal Child Placement Principle.'



## Endnotes

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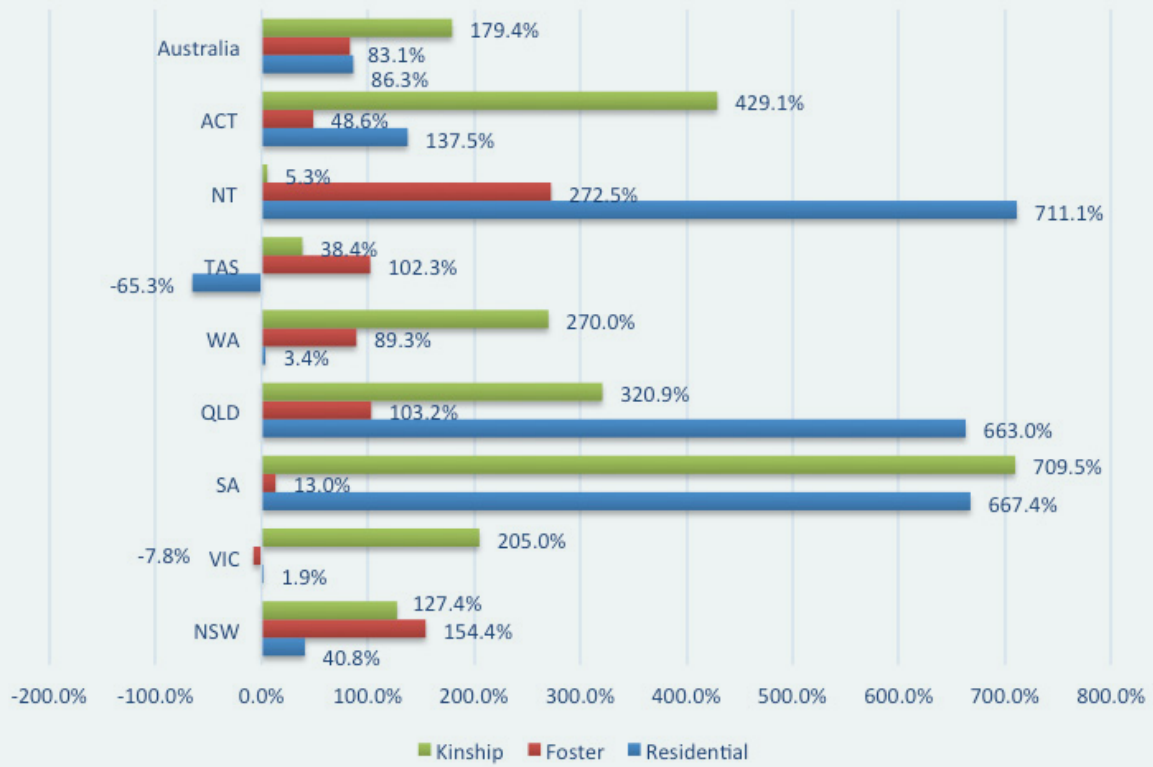


## Appendix A: Children in OOHC by placement type



Source: Productivity Commission, *Report on Government Services 2014*, Table 15A.1

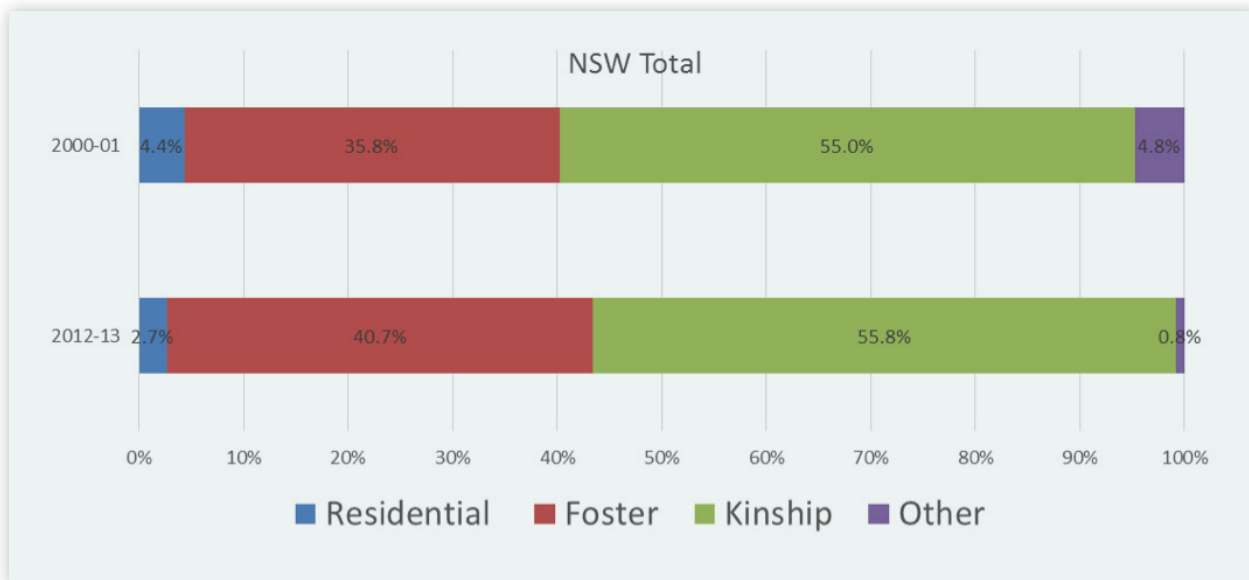
## % change in number of children in OOHC by placement type 2000-13



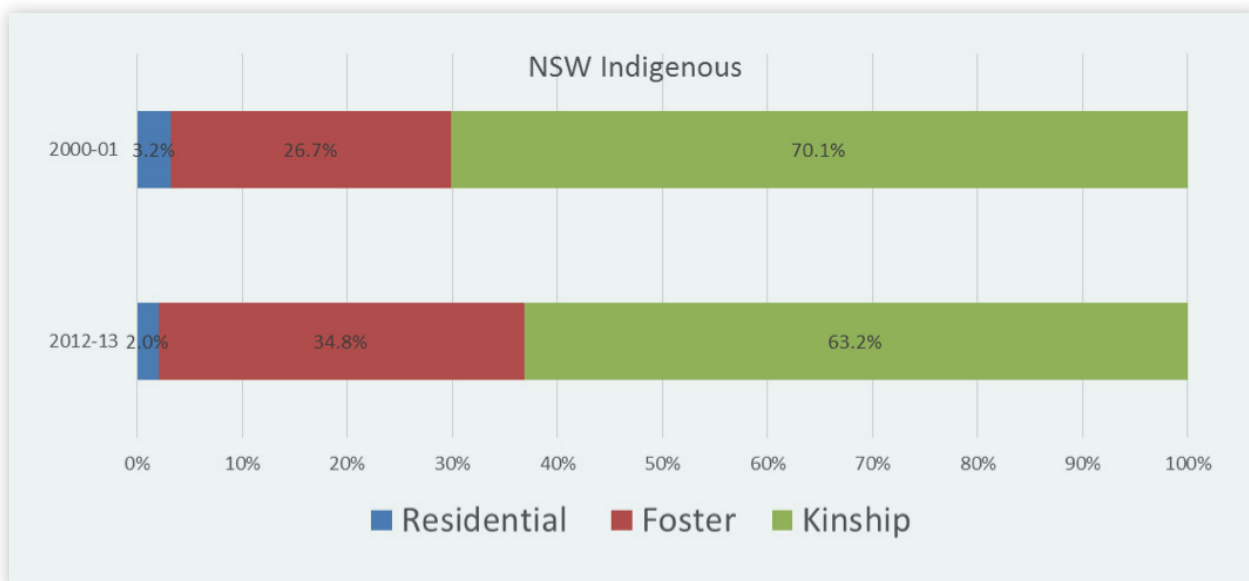
## Appendix B: Proportion of Children in OOHC by State and Territory, and Indigenous and Non-Indigenous status\*

\*For states and territories breakdown by Indigenous and Non-Indigenous, the number of children in "Other" OOHC placement types is not available.

### NSW

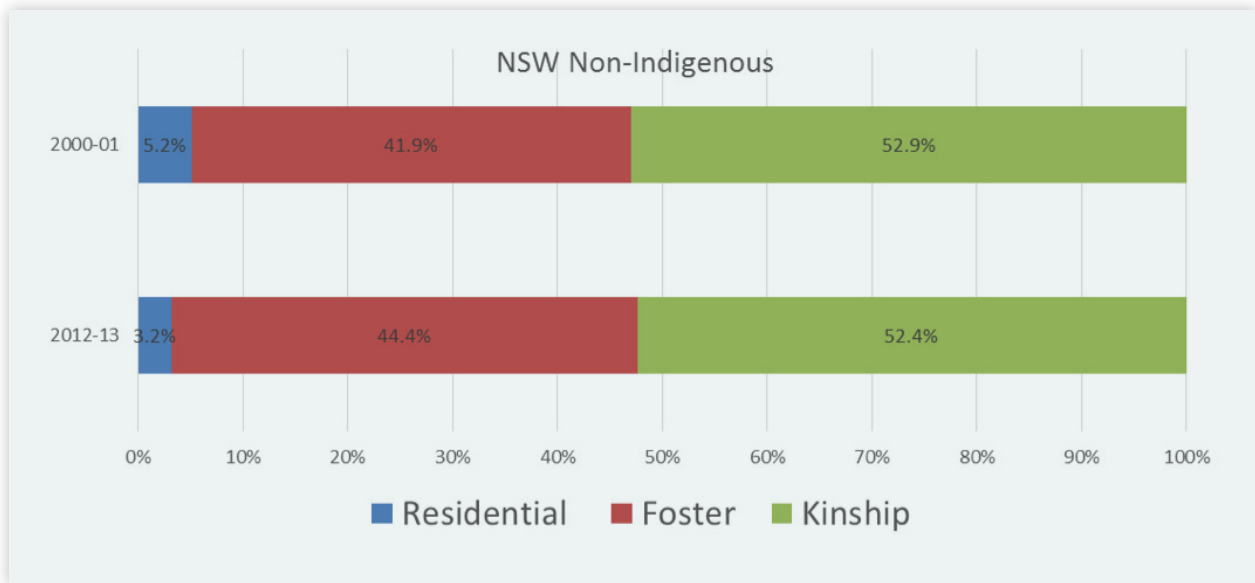


NSW Indigenous	2012-13	2000-01
Total Number	6,172	2,079
Kinship	3900	1458
Foster	2146	555
Residential	126	66

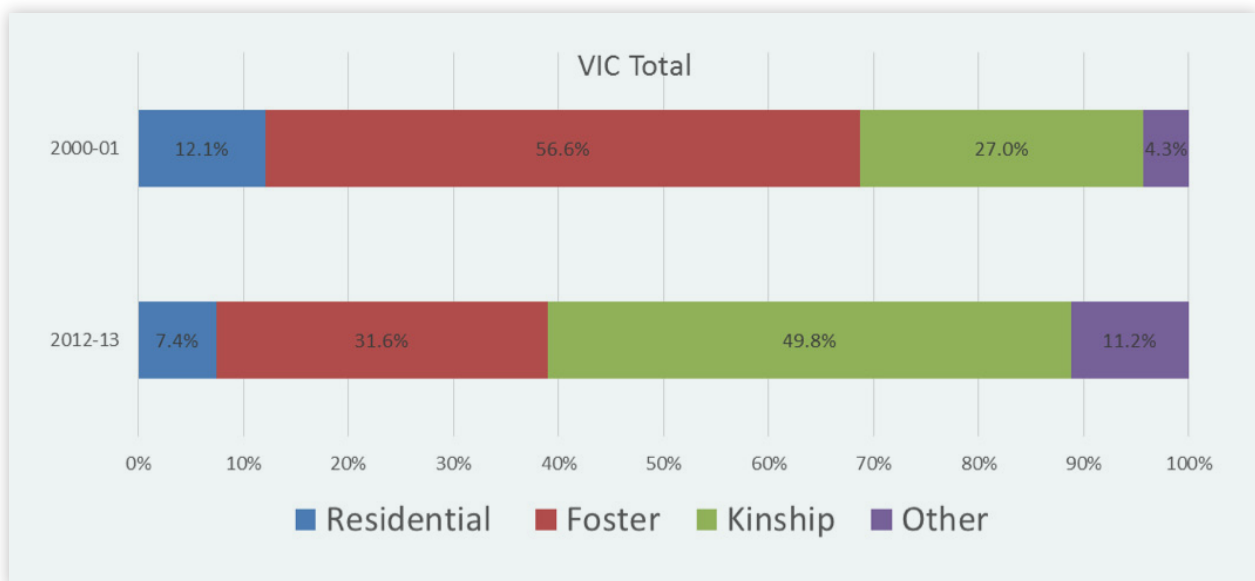


**NSW Non-Indigenous 2012-13 2000-01**

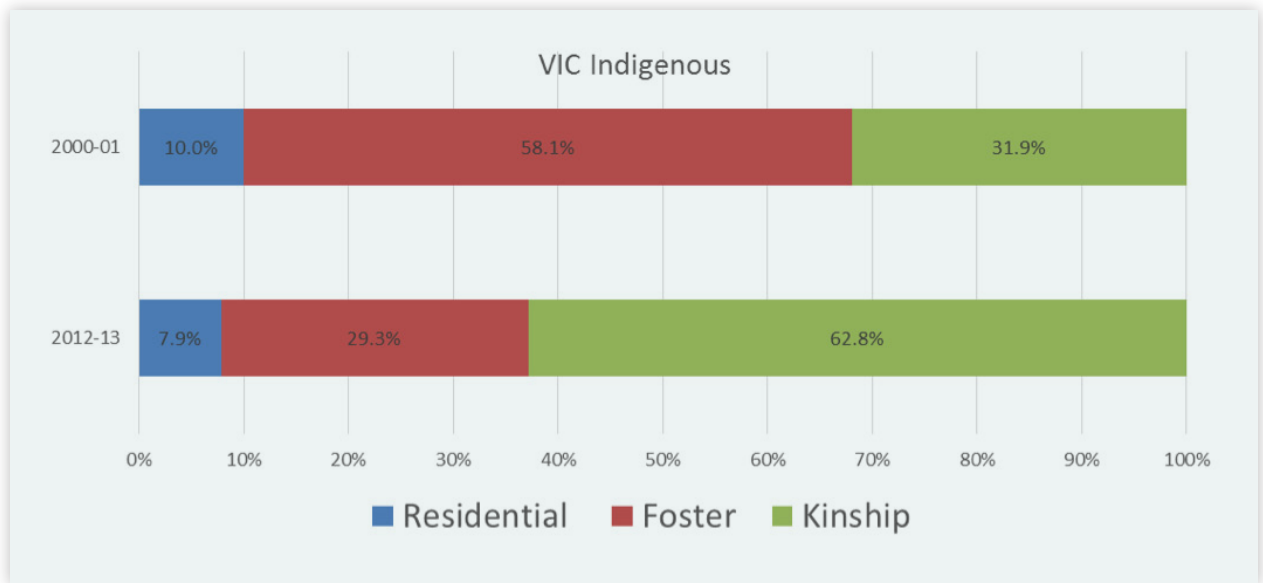
	2012-13	2000-01
Total Number	11,129	5,328
Kinship	5830	2821
Foster	4945	2232
Residential	354	275



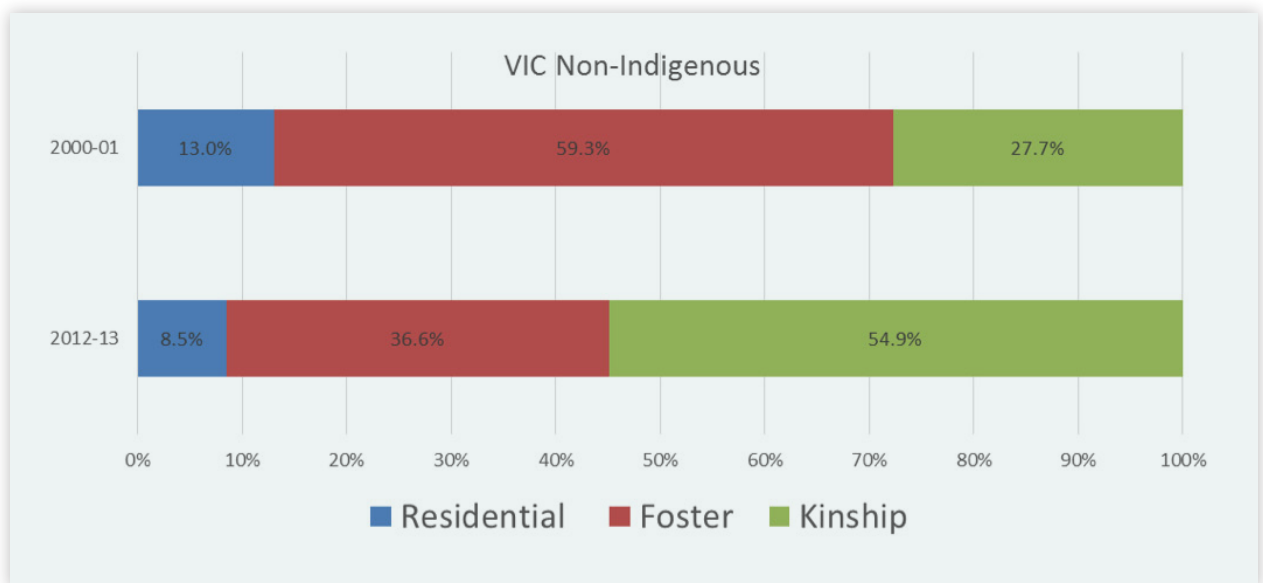
**Victoria**



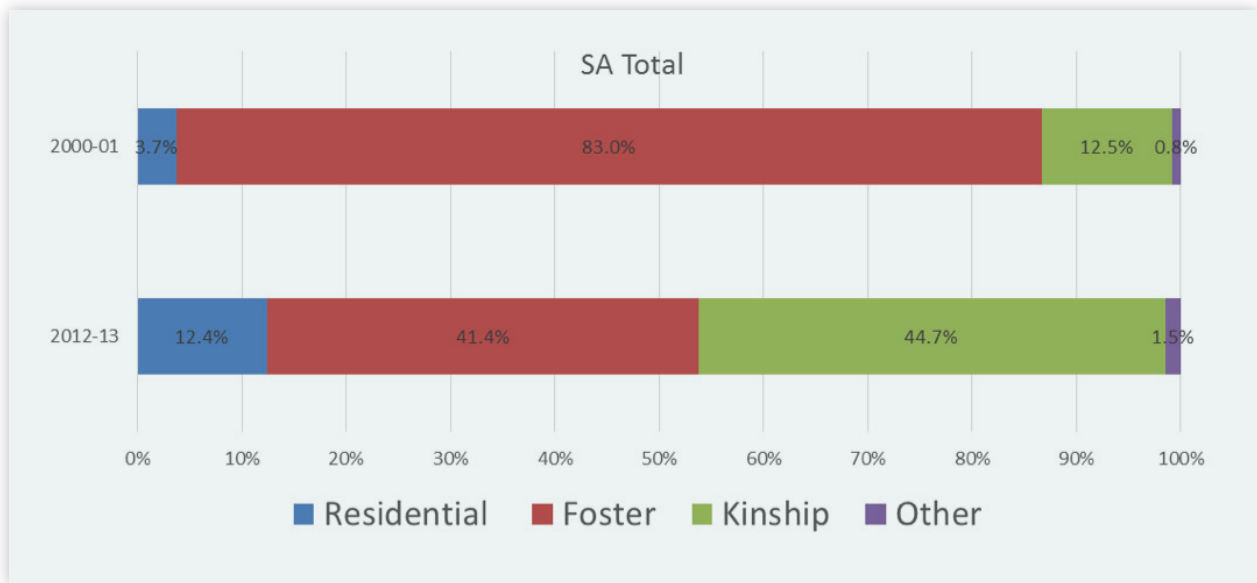
<b>VIC Indigenous</b>	<b>2012-13</b>	<b>2000-01</b>
Total Number	815	442
Kinship	512	141
Foster	239	257
Residential	64	44



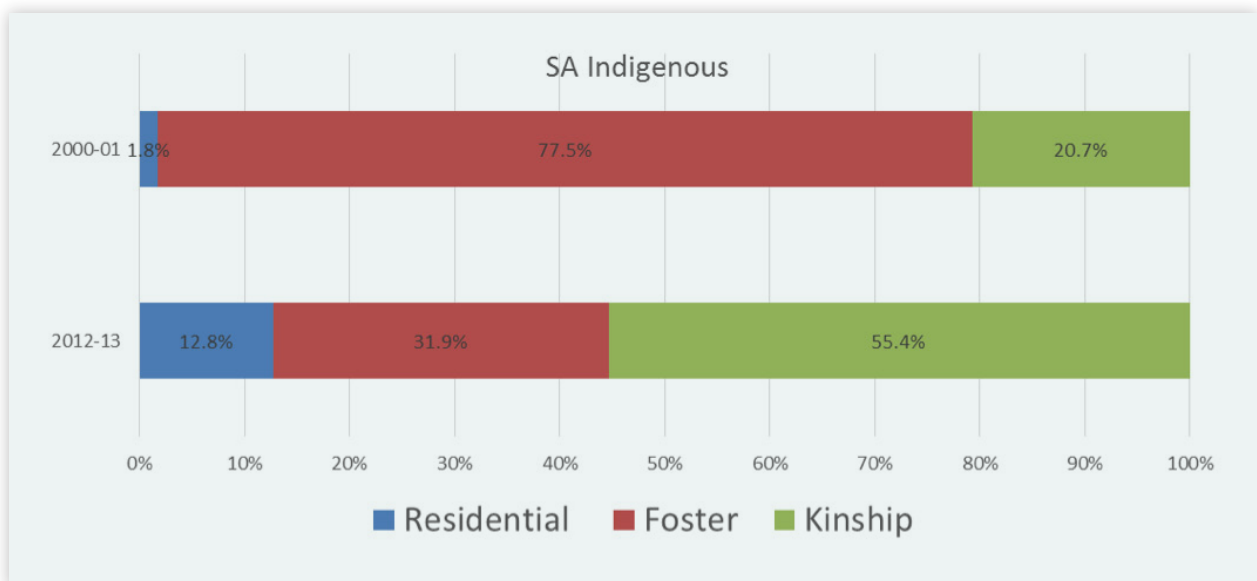
<b>VIC Non-Indigenous</b>	<b>2012-13</b>	<b>2000-01</b>
Total Number	4,879	3,270
Kinship	2678	905
Foster	1786	1939
Residential	415	426



## South Australia

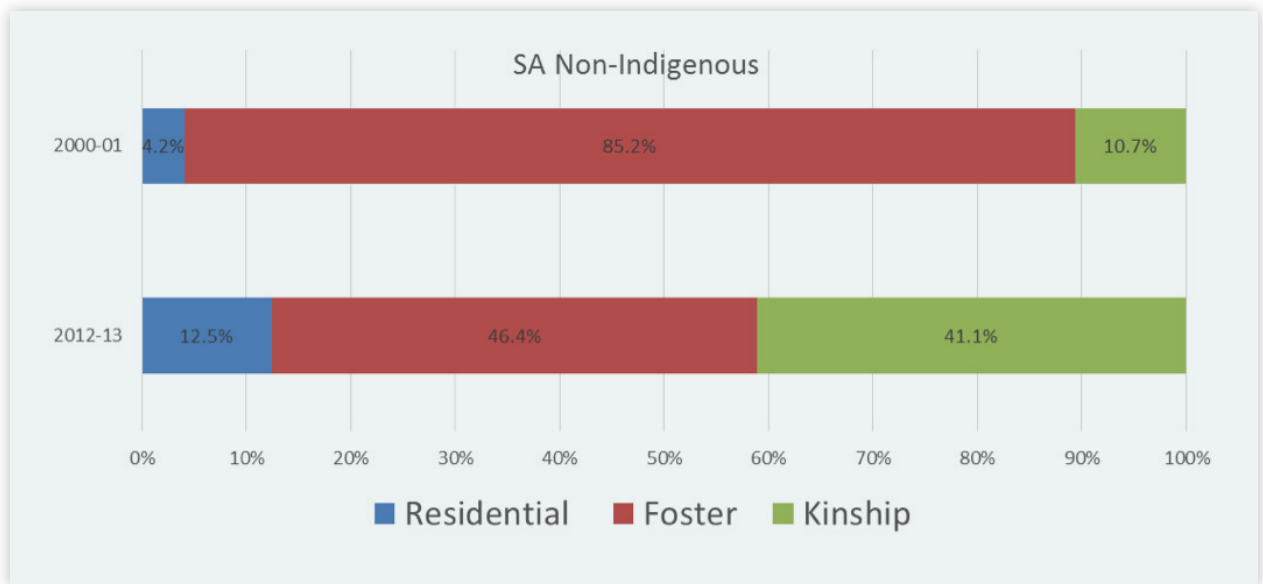


<b>SA Indigenous</b>	<b>2012-13</b>	<b>2000-01</b>
Total Number	784	227
Kinship	434	47
Foster	250	176
Residential	100	4

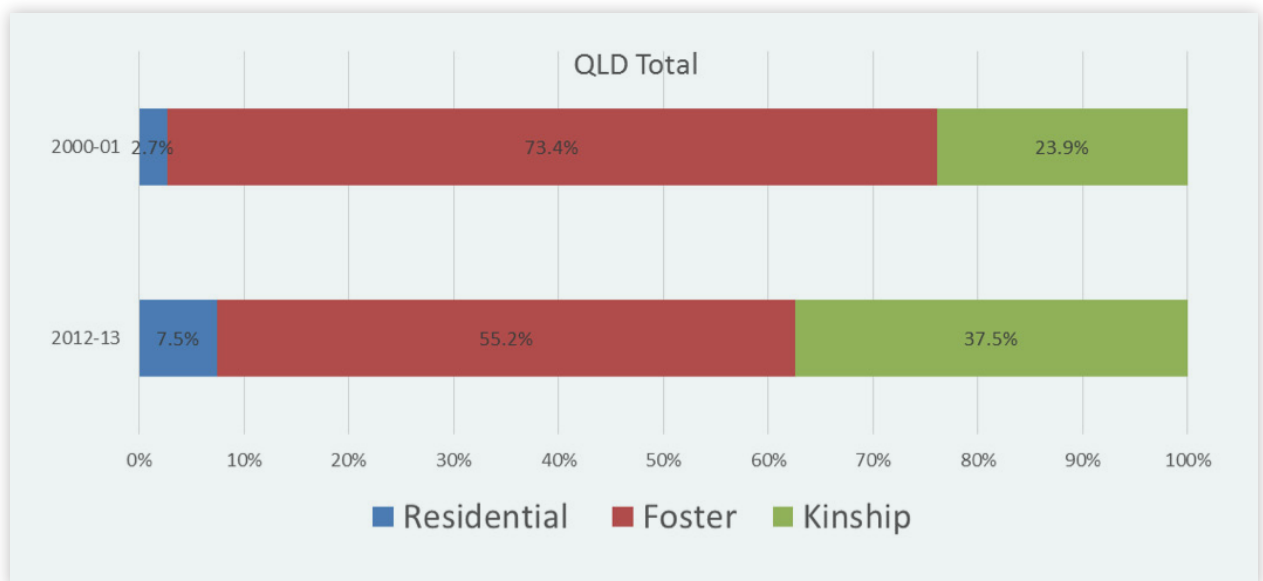




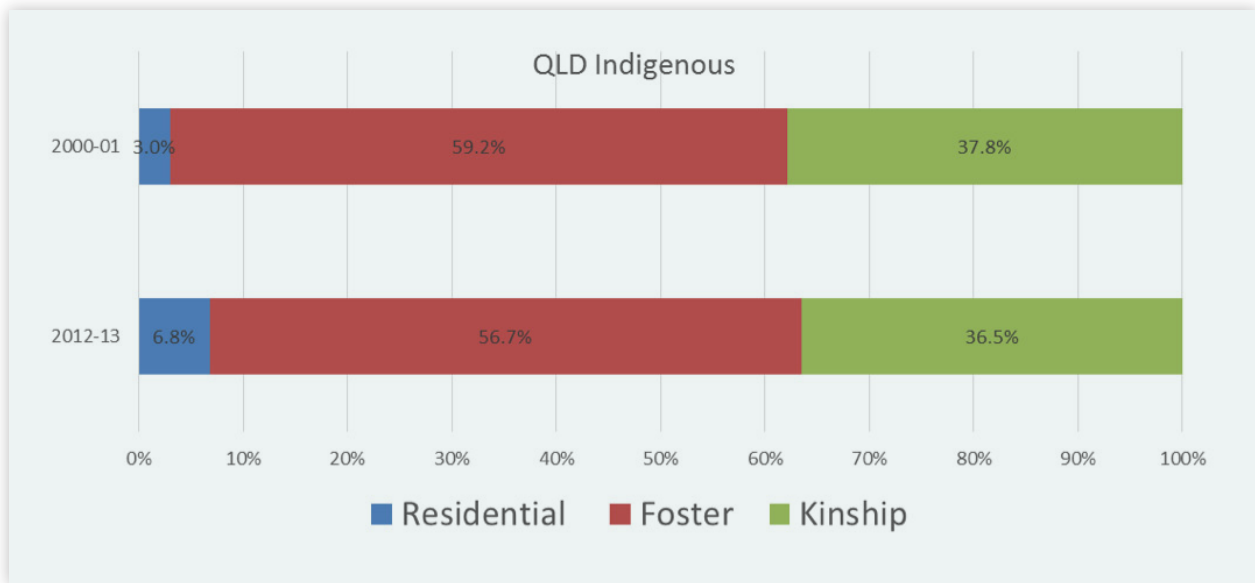
SA Non-Indigenous	2012-13	2000-01
Total Number	1,838	938
Kinship	756	100
Foster	852	799
Residential	230	39



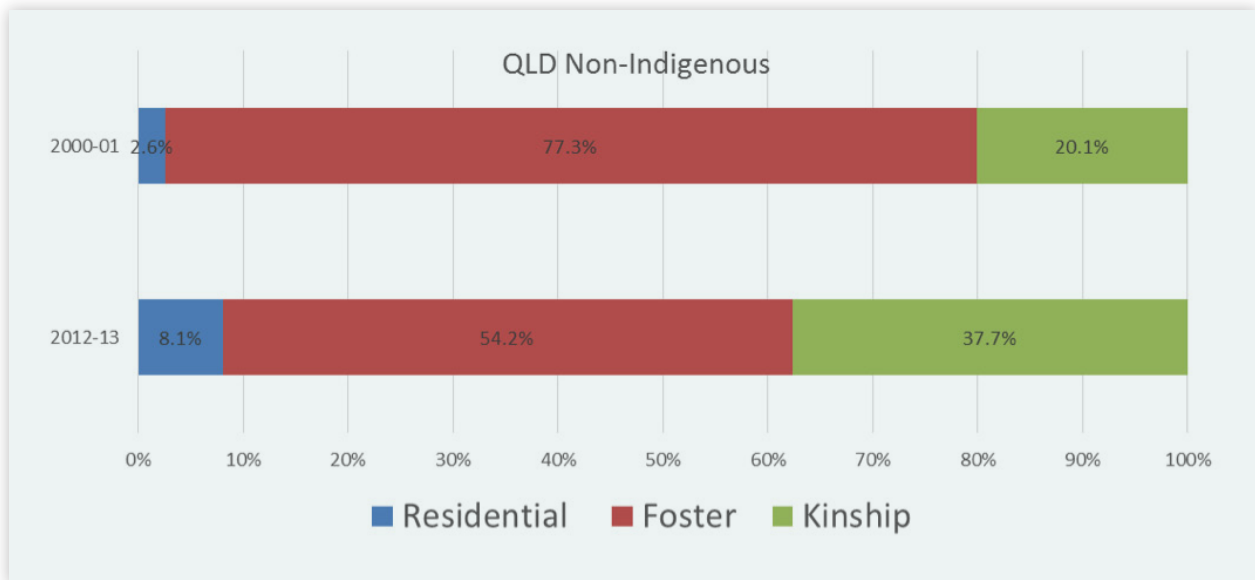
## Queensland



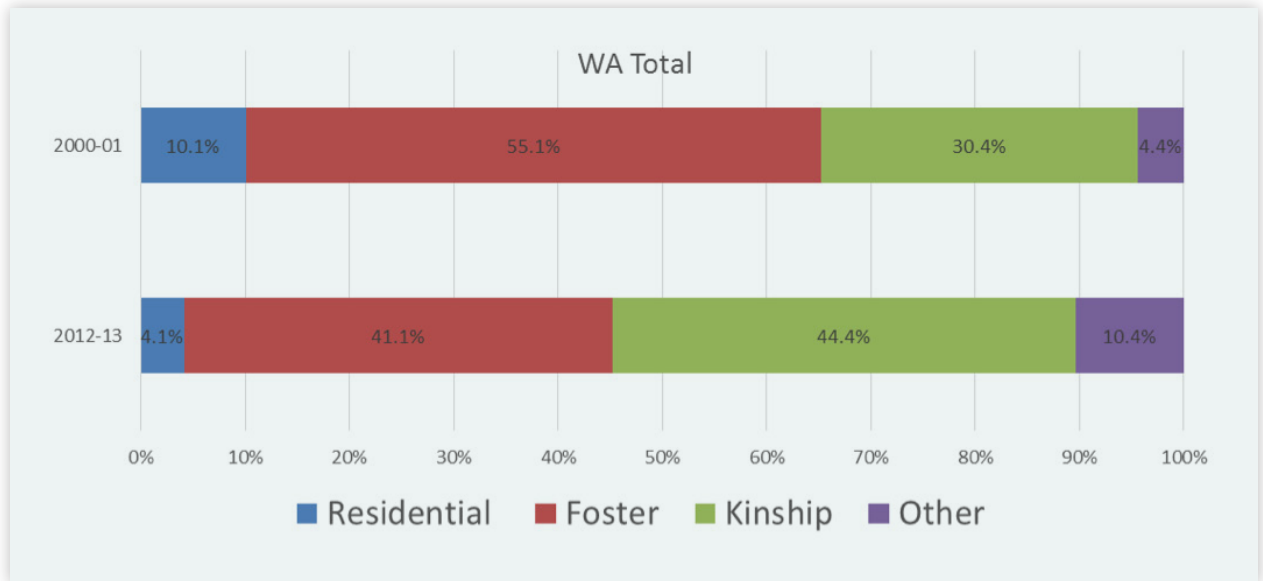
<b>QLD Indigenous</b>	<b>2012-13</b>	<b>2000-01</b>
Total Number	3,195	637
Kinship	1165	241
Foster	1812	377
Residential	218	19



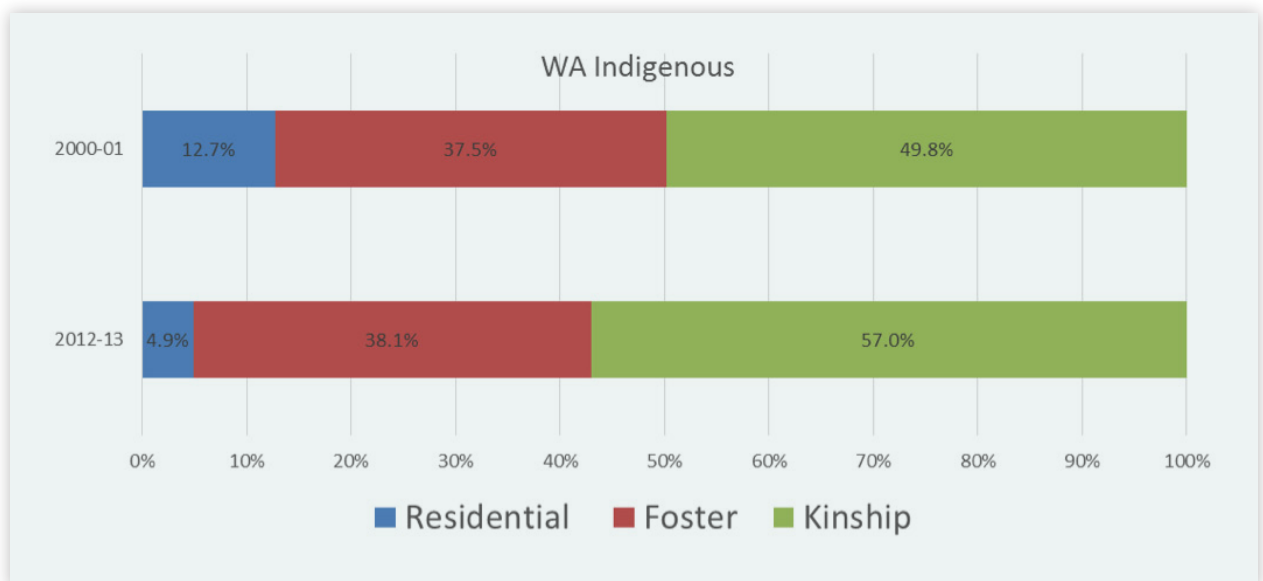
<b>QLD Non-Indigenous</b>	<b>2012-13</b>	<b>2000-01</b>
Total Number	4,942	2,374
Kinship	1862	478
Foster	2680	1834
Residential	400	62



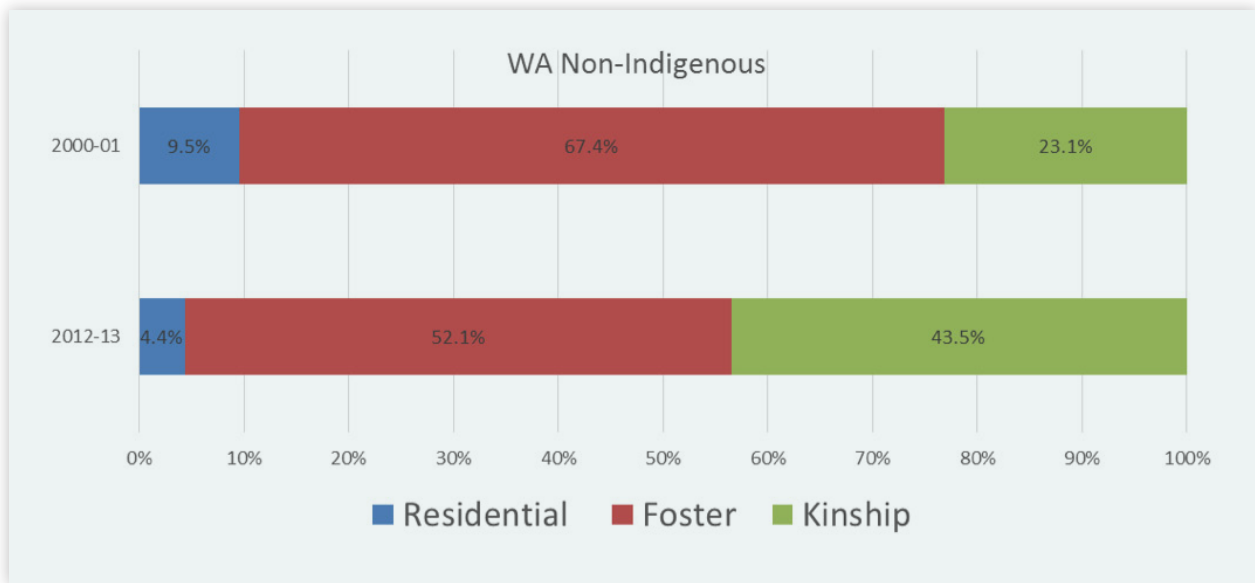
## Western Australia



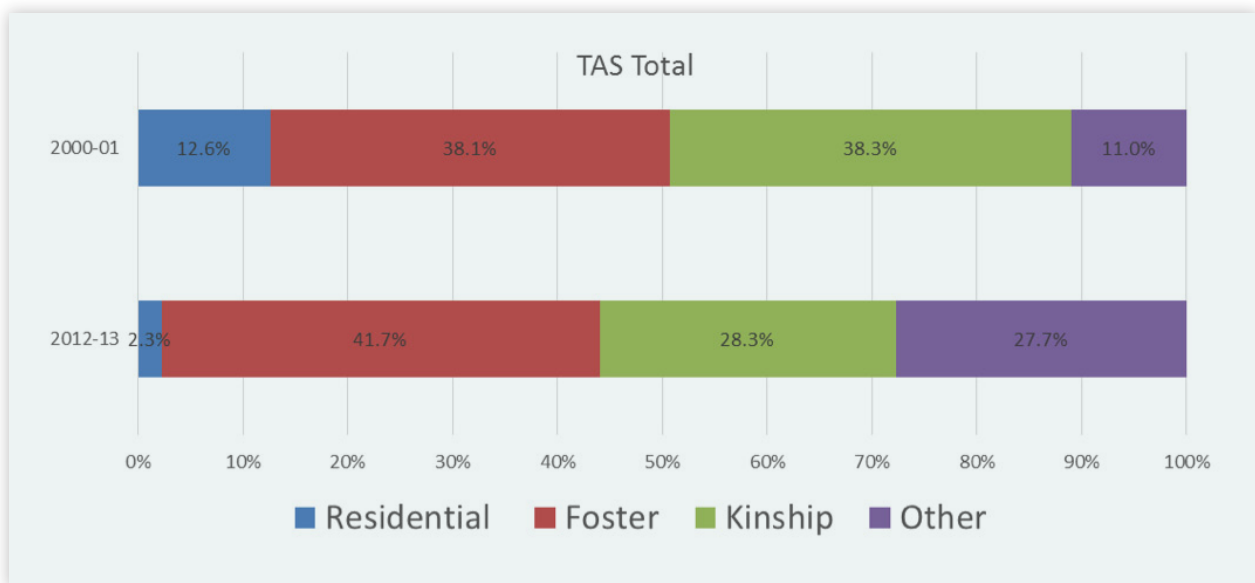
WA Indigenous	2012-13	2000-01
Total Number	1,557	448
Kinship	888	223
Foster	593	168
Residential	76	57



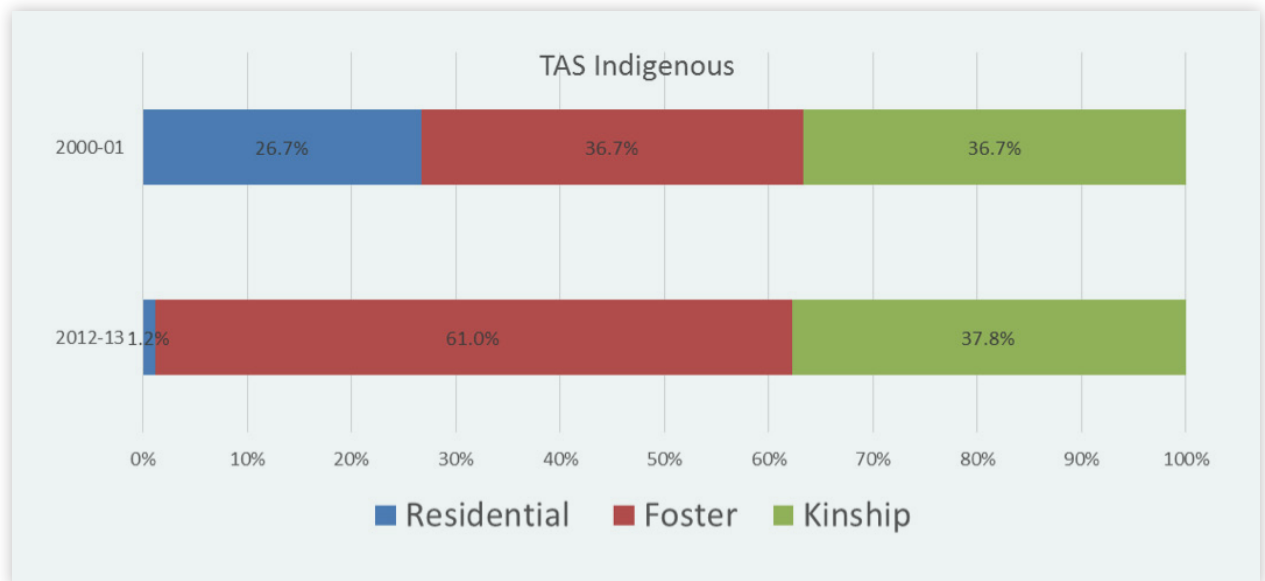
<b>WA Non-Indigenous</b>	<b>2012-13</b>	<b>2000-01</b>
Total Number	1,677	925
Kinship	729	214
Foster	874	623
Residential	74	88



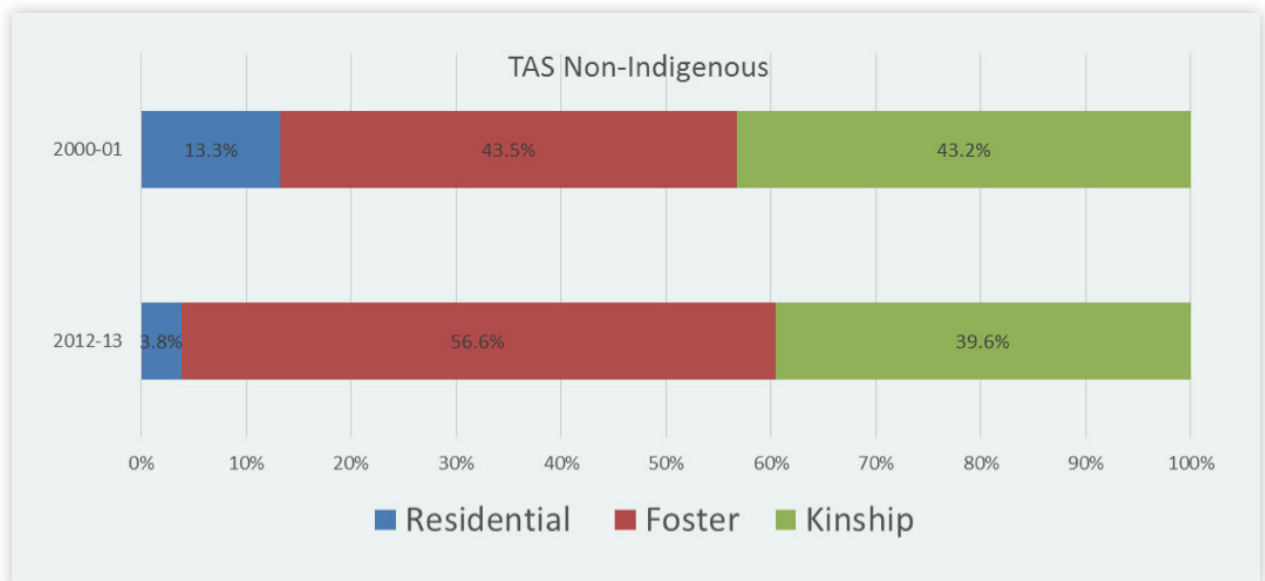
## Tasmania



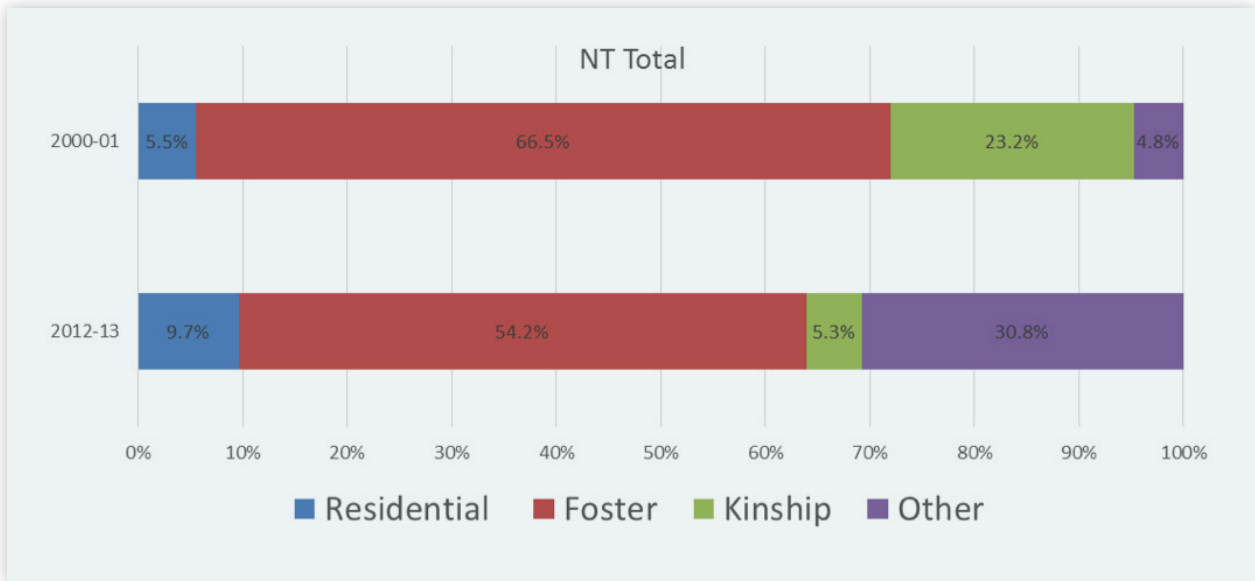
<b>TAS Indigenous</b>	<b>2012-13</b>	<b>2000-01</b>
Total Number	172	30
Kinship	65	11
Foster	105	11
Residential	2	8



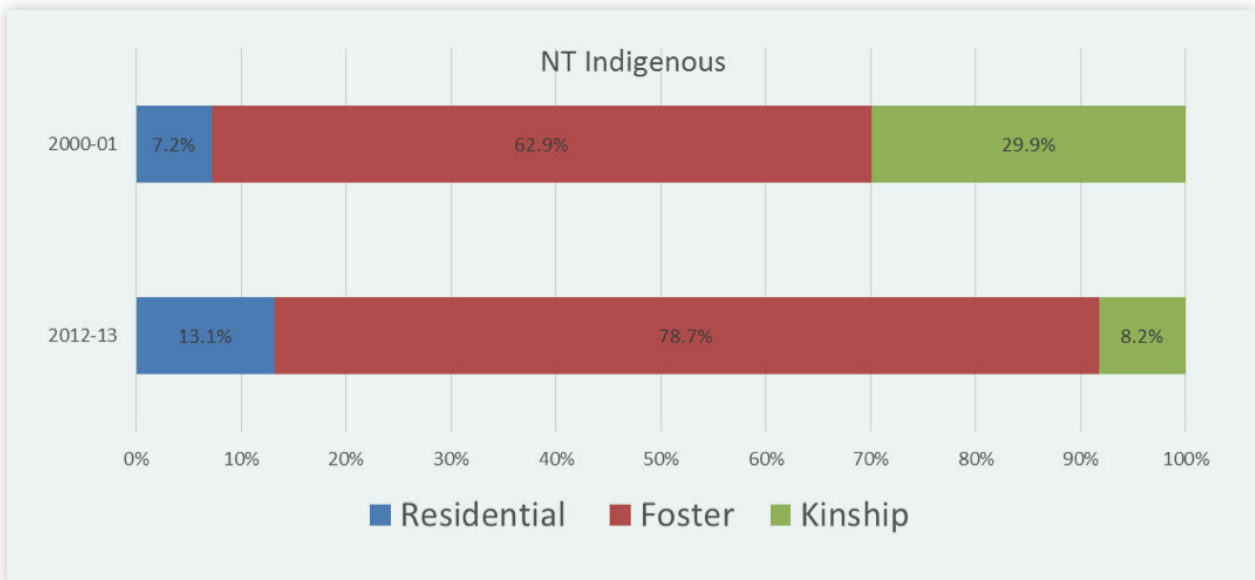
<b>TAS Non-Indigenous</b>	<b>2012-13</b>	<b>2000-01</b>
Total Number	601	481
Kinship	238	208
Foster	340	209
Residential	23	64



## Northern Territory

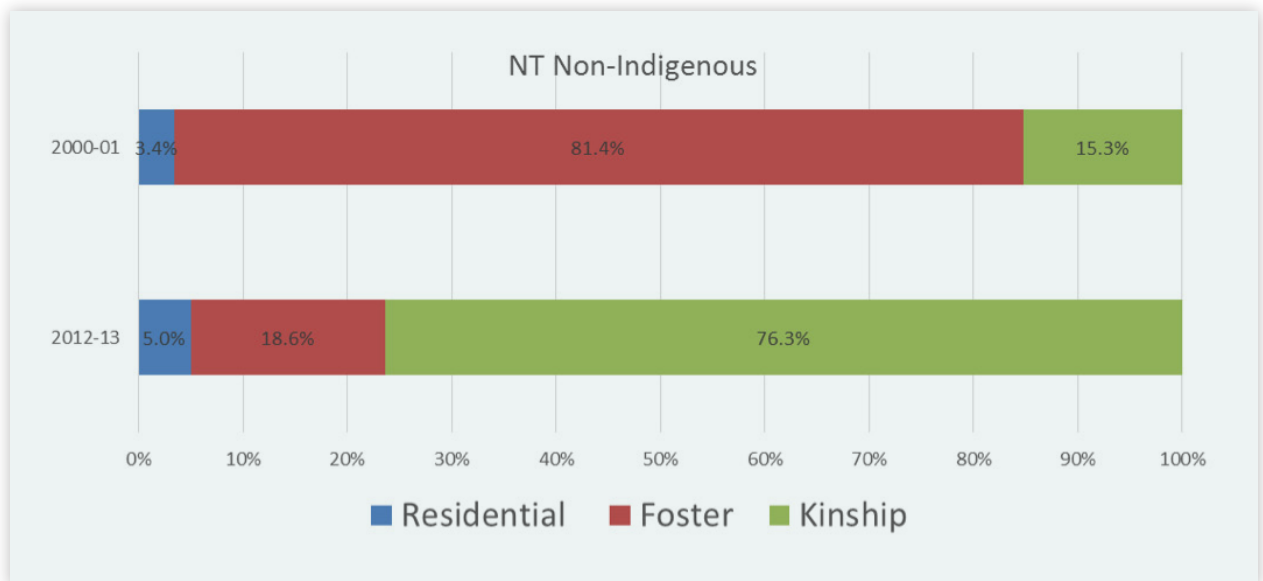


<b>NT Indigenous</b>	<b>2012-13</b>	<b>2000-01</b>
Total Number	450	97
Kinship	37	29
Foster	354	61
Residential	59	7

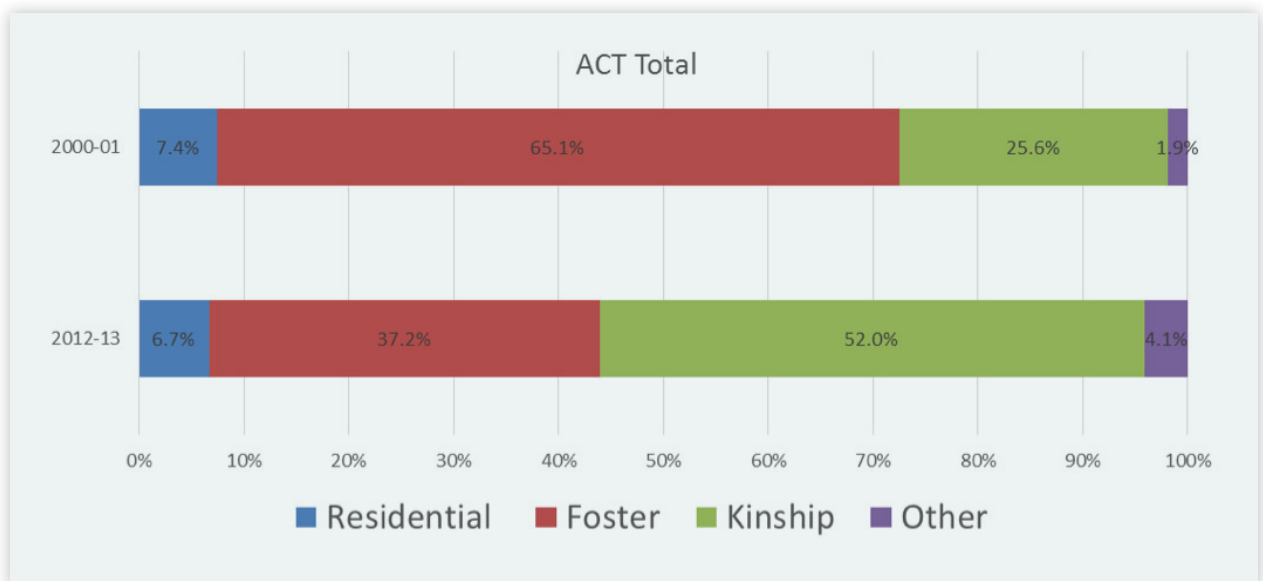




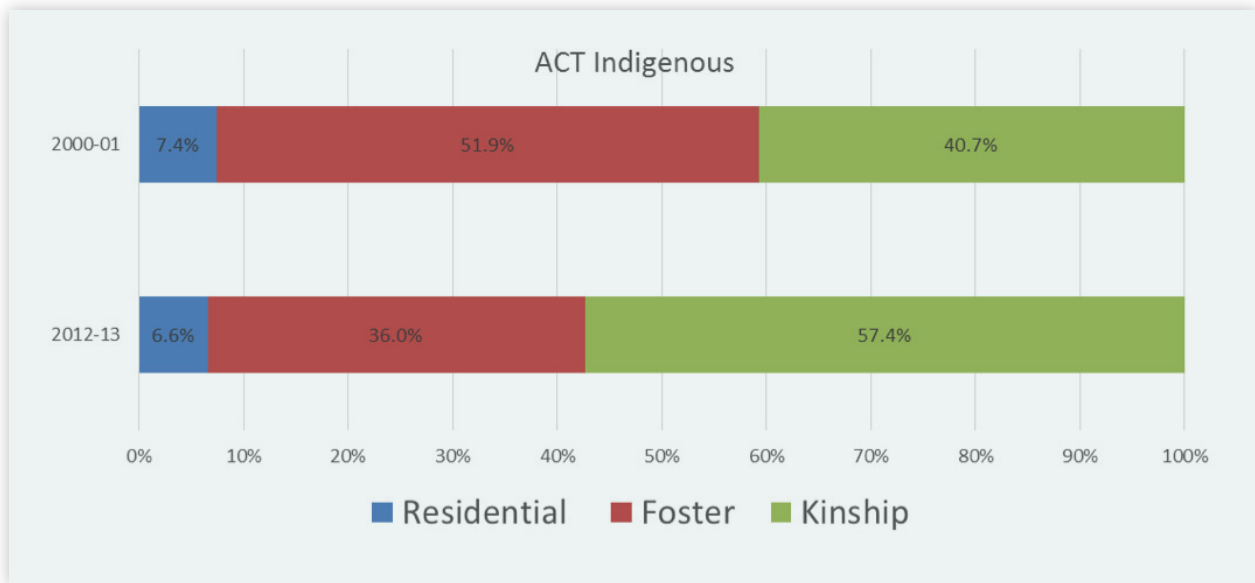
<b>NT Non-Indigenous</b>	<b>2012-13</b>	<b>2000-01</b>
Total Number	279	59
Kinship	213	9
Foster	52	48
Residential	14	2



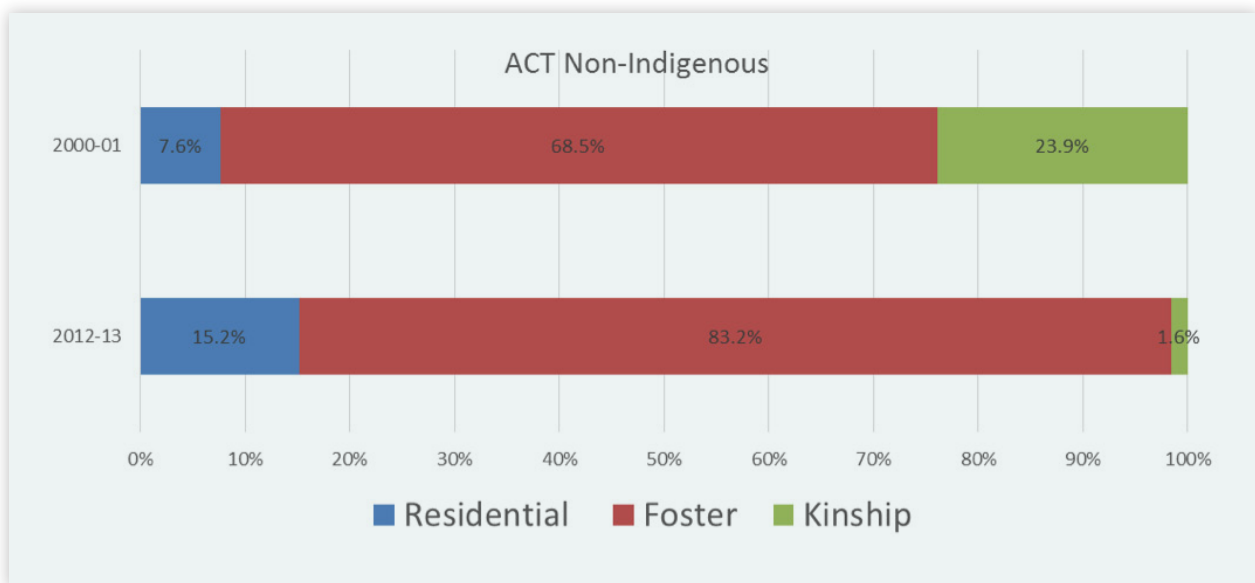
## Australian Capital Territory



<b>ACT Indigenous</b>	<b>2012-13</b>	<b>2000-01</b>
Total Number	136	27
Kinship	78	11
Foster	49	14
Residential	9	2



<b>ACT Non-Indigenous</b>	<b>2012-13</b>	<b>2000-01</b>
Total Number	191	184
Kinship	3	44
Foster	159	126
Residential	29	14





## About the Author

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**Dr Jeremy Sammut** is a Research Fellow at The Centre for Independent Studies. He is the author of numerous reports on the Australian child protection system including *Fatally Flawed* (2009), *The Power and the Responsibility* (2010), *Do Not Damage Disturb* (2011), *The Fraught Politics of Saying Sorry for Forced Adoption* (2013) and *Still Damaging and Disturbing* (2014).