

# **SNAICC SUBMISSION ON THE REVIEW OF THE NATIONAL AGREEMENT ON CLOSING THE GAP DRAFT REPORT**

October 2023

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## About SNAICC

SNAICC is the national non-government peak body for Aboriginal and Torres Strait Islander children. We work for the fulfilment of the rights of our children, to ensure their safety, development, and well-being.

SNAICC has a dynamic membership of Aboriginal and Torres Strait Islander community-based child care agencies, Multi-functional Aboriginal Children's Services, crèches, long day care child care services, pre-schools, early childhood education services, early childhood support organisations, family support services, foster care agencies, family reunification services, family group homes, services for young people at risk, community groups and voluntary associations, government agencies and individual supporters.

Since 1981, SNAICC has been a passionate national voice representing the interests of Aboriginal and Torres Strait Islander children and families. SNAICC champions the principles of community control and self-determination as the means for sustained improvements for children and families, which has been at the heart of SNAICC's work — whether on child protection and wellbeing or early childhood education and development. Today, SNAICC is the national peak body for Aboriginal and Torres Strait Islander children and the sector supporting these children. Our work comprises policy, advocacy, and sector development. We also work with non-Indigenous services alongside Commonwealth and State Governments to improve how agencies design and deliver supports and services for Aboriginal and Torres Strait Islander children and families.

As the national peak body for Aboriginal and Torres Strait Islander children, SNAICC consults with its member organisations and Aboriginal and Torres Strait Islander leaders to ensure the experiences, needs and aspirations of our leaders, our sector and ultimately, our children and families are the foundation for our submissions and recommendations.

## Self-Determination

SNAICC advocates for the full enactment of self-determination in all legislation, policies, and strategies. Self-determination describes the right of Aboriginal and Torres Strait Islander peoples to autonomy and self-governance.<sup>1</sup> The United Nations Expert Mechanism on the Rights of

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<sup>1</sup> SNAICC 2022, 'The Family Matters Report 2022: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care'. Retrieved from: <https://www.familymatters.org.au/wp-content/uploads/2022/11/20221123-Family-Matters-Report-2022-1.pdf> pg. 90.

Indigenous People under UNDRIP connects the capacity of Indigenous peoples to meet their children's needs with their ability to exercise self-determination<sup>2</sup>.

The Commonwealth Government has taken important steps towards recognising the rights of Aboriginal and Torres Strait Islander peoples to self-determination in matters relating to children. The *Safe and Supported, National Framework for Protecting Australia's Children 2021-2031* commits to progressive systems transformation that has Aboriginal and Torres Strait Islander self-determination at its centre and defines self-determination as:

*a collective right of Aboriginal and Torres Strait Islander peoples to determine and control their own destiny. It is a right of Aboriginal and Torres Strait Islander peoples to exercise autonomy in their own affairs and to maintain and strengthen distinct political, legal, economic, social and cultural institutions.*<sup>3</sup>

For too long, governments have decided what works and what doesn't for Aboriginal and Torres Strait Islander people and communities without delivering meaningful and tangible positive change for our children and families. Enacting self-determination is critical to designing and implementing effective policies that achieve better outcomes for Aboriginal and Torres Strait Islander children.

## Introduction

SNAICC welcomes the opportunity to respond to the *Review of the National Agreement on Closing the Gap Draft Report* (the Draft Report) prepared by the Productivity Commission. SNAICC thanks the Commissioners for their engagement with SNAICC to date and their robust analysis of both the strengths and areas for improvement under the National Agreement on Closing the Gap (the National Agreement).

As a peak body, SNAICC has a unique understanding of the National Agreement in practice. SNAICC was one of more than 50 Aboriginal and Torres Strait Islander community-controlled peak bodies involved in negotiating the National Agreement and is currently one of the Deputy Lead Conveners of the Coalition of Peaks. SNAICC is also engaged in policy and program development and advocacy to improve outcomes for Aboriginal and Torres Strait Islander children, families, and communities. A core part of this work is engaging with governments as they deliver – or do not deliver – on the commitments they made under the National Agreement.

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<sup>2</sup> United Nations Human Rights Council 2021, 'Rights of the Indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples'. Retrieved from: [G2121979.pdf \(un.org\)](#), pg. 2

<sup>3</sup> Department of Social Services 2021, 'Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031 (the National Framework)'. Retrieved from: [https://www.dss.gov.au/sites/default/files/documents/12\\_2021/dess5016-national-framework-protecting-childrenaccessible.pdf](https://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf), pg. 51.

The purpose of SNAICC's submission is to highlight and reiterate key points in response to the Draft Report with a focus on the Report's recommendations and information requests 1, 2 and 11. These information requests have been selected as the focus areas for SNAICC's submission due to the unique insights we can bring as co-chair of the Early Childhood Care and Development Policy Partnership, member of the Justice Policy Partnership, partner in the Safe and Supported Framework, community partner for the Connected Beginnings initiative and due to our ongoing research, sector support and advocacy for children and families.

## **General comments**

SNAICC has experienced a positive shift in the policy landscape since the introduction of the National Agreement. Priority Reforms 1 and 2 in particular have provided critical advocacy levers for SNAICC to engage in shared decision-making and drive investment into the community-controlled sector. The National Agreement has been a critical piece of the environment for progressing significant work, like the *Stronger ACCOs*, *Stronger Families Stage 1 Report* (attached), the increased role of ACCOs in leading the Connected Beginnings initiative in their communities, the establishment of a children and families peak body in South Australia and the agreement for a first dedicated national child protection action plan for Aboriginal and Torres Strait Islander children, amongst other achievements. However, there is significantly more work to be done and all Governments need to come to the table with more resourcing and commitment to true shared decision-making.

SNAICC agrees with the key findings of the Draft Report, namely that governments are not adequately delivering on the commitments made under the National Agreement. Most notably, SNAICC is experiencing an inconsistent application of the four Priority Reform Areas across departments, agencies and levels of government. SNAICC agrees that stronger accountability is needed, particularly around government decision-making on issues impacting Aboriginal and Torres Strait Islander children and families.

## Draft recommendations

SNAICC supports all recommendations in the Draft Report and understands the focus of these recommendations is to improve how governments understand, value and embed the National Agreement in their work.

An ongoing challenge is ensuring transparency and accountability of the implementation and effectiveness of these recommendations moving forward. As these are predominantly internally focused recommendations, the onus is on government to ensure the actions and the impact of these actions are communicated effectively outside of their governments. This runs the risk of becoming another ‘tick box’ for the public sector similar to the current Closing the Gap internal reporting, where existing actions are reframed or retrofitted to the National Agreement. For change and reform to be successful, governments must commit to understanding the National Agreement – particularly the Priority Reform Areas – and implementing these from the outset of their work.

Below SNAICC has outlined some additional matters that the Productivity Commission may wish to consider in the development of its final report.

<b>Draft Recommendation</b>	<b>Additional considerations</b>
<p>Recommendation 1: Appointing an Organisation to lead data development under the Agreement</p>	<p>SNAICC agrees that the current disconnected approach to progressing Priority Reform 4 is not working effectively.</p> <p>SNAICC supports a centralised approach to coordinating this work with the following components:</p> <ul style="list-style-type: none"> <li>• Aboriginal and Torres Strait Islander leadership in the design, governance and operation in line with Priority Reform One</li> <li>• The organisation must have appropriate authority and standing to direct or compel government action across jurisdictions</li> <li>• The organisation should have a specific mandate to engage the Coalition of Peaks in shared decision-making</li> <li>• The organisation must connect with existing initiatives and Aboriginal and Torres Strait Islander community-controlled organisations that are progressing data development. SNAICC is working with an Expert Advisory Panel to design a national Centre for Excellence in Aboriginal and Torres Strait Islander Child and Family Support, which will be a community-controlled body that will progress evidence development. This builds on existing initiatives in the Aboriginal and Torres Strait Islander community-controlled child and family sector such as the Queensland Centre for Excellence, established by the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP).</li> </ul>



<p>Recommendation 2: Designating a senior leader or leadership group to jurisdiction wide change</p>	<p>SNAICC is supportive of internal government action to promote and embed changes to public sector systems and culture and values a jurisdiction-wide approach to this work. SNAICC is aware that similar internal initiatives already exist in a number of jurisdictions. Challenges with these models include:</p> <ul style="list-style-type: none"> <li>- Senior Executives often delegate this responsibility to others in their department, losing the seniority and influence the action is intended to create.</li> <li>- Cross-agency working groups are often established to progress initiatives which are then also delegated down to less senior and less influential team members.</li> <li>- The conversations/meetings themselves are seen as markers of success rather than the outcomes of what has been achieved.</li> <li>- The individual Senior Leader or leadership group often has no authority to compel other agencies to act, relying on individual department decision-making. This undermines the intent of a jurisdiction-wide approach.</li> </ul> <p>To overcome these challenges, SNAICC suggests that the approach in each jurisdiction be co-designed with the relevant Aboriginal and Torres Strait Islander peak bodies or community service leads to ensure transparency and effective implementation. This approach will also ensure, through the Coalition of Peaks, that jurisdictions are approaching the implementation of this recommendation consistently.</p> <p>SNAICC also suggests that the success of this recommendation relies on the leader or leadership group having sufficient seniority and influence across the relevant jurisdiction. In the Australian Government context, SNAICC would expect that this position be, at minimum, Deputy Secretary level within a central agency such as the Department of Prime Minister and Cabinet.</p>
<p>Recommendation 3: Embed responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people into public sector employment requirements</p>	<p>SNAICC is supportive of this as an internal action across the public sector. It is critical that these are co-designed with Aboriginal and Torres Strait Islander people both within and external to the public sector.</p> <p>There should also be capacity for Aboriginal and Torres Strait Islander people to be involved in independently assessing whether public sector CEOs, executives and employees have demonstrated that they have effectively taken steps to:</p> <ul style="list-style-type: none"> <li>- Improve their cultural capability</li> <li>- Develop relationships with Aboriginal and Torres Strait Islander people</li> <li>- Identify and eliminate institutional racism</li> <li>- Support the principles outlined in the National Agreement.</li> </ul>

<p>Recommendation 4: Central agencies leading changes to Cabinet, Budget, funding and contracting processes</p>	<p>SNAICC strongly supports this recommendation and believes it has the potential make significant change across the public sector culture and decision-making.</p> <p>Governments must engage with the relevant Aboriginal and Torres Strait Islander peak bodies and lead service providers in designing new approaches to Cabinet, Budget, funding and contracting arrangements to ensure that these processes do not inadvertently perpetuate discriminatory or exclusionary practices.</p> <p>In relation to funding and contracting arrangements, SNAICC refers to the Productivity Commission to its recommendations in the <i>Stronger ACCOs</i>, <i>Stronger Families Report</i> (Attachment A) on the funding of children and family support services.</p>
<p>Recommendation 5: Include a statement on Closing the Gap in government agencies' annual reports</p>	<p>While SNAICC supports this recommendation, it notes that current Closing the Gap reporting has not demonstrated any significant improvements in public sector culture, valuing of the National Agreement or outcomes for Aboriginal and Torres Strait Islander people.</p> <p>When done well, reporting such as this can improve transparency and accountability of government actions. When done badly it becomes another public relations exercise for governments where information can be picked and chosen to portray a particular narrative.</p> <p>For this recommendation to be effective, the reporting format should be co-designed with Aboriginal and Torres Strait Islander peak bodies and lead service organisations within the jurisdiction and should be consistent from year to year.</p>
<p>Recommendation 6: Publish all the documents developed under the Agreement</p>	<p>SNAICC strongly supports this recommendation and the goal of improved transparency in relation to activities related to the National Agreement.</p>



## Information requests

### Information request 1: Effectiveness of policy partnerships

SNAICC is well placed to provide additional insights on the effectiveness of policy partnerships as the Coalition of Peaks co-chair of the Early Childhood Care and Development Policy Partnership (ECCDPP). In addition to this, SNAICC CEO, Catherine Liddle is a member of the Justice Policy Partnership (JPP).

### Early Childhood Care and Development Policy Partnership (ECCDPP)

The ECCDPP was established in November 2022, and has now held four meetings and agreed a 12-month workplan with six (6) early priorities that will inform the Partnership's recommendations to Joint Council and 3-year strategic plan. The establishment phase of the ECCDPP has been a strong demonstration of genuine shared decision-making in practice.

#### Funding arrangements

Through a grant agreement, the Commonwealth Department of Education has provided adequate funding to SNAICC to deliver co-chair and co-secretariat arrangements for the ECCDPP. The grant provides funding for:

- core staffing capacity within SNAICC for the delivery of co-secretariat functions,
- additional staffing capacity across ECCDPP related policy areas,
- supporting Aboriginal and Torres Strait Islander members to attend (e.g. travel, accommodation, sitting fees)
- broader member engagement to allow for broad information gathering on key topics
- capacity building and staff development
- communications and promotions,
- software and licensing, and
- dedicated research activities that built the Aboriginal and Torres Strait Islander early childhood care and development evidence base.

The research fund sits wholly within SNAICC and can be used at SNAICC's discretion, subject to internal governance arrangements, as long as the research aligns with the objectives of the ECCDPP. This enables SNAICC to take forward the priorities of members and communities through Aboriginal-led research. Capacity building funding has enabled SNAICC to support its policy, research, and advocacy functions across various Closing the Gap activities which may otherwise not have been able to be prioritised within current funding and resourcing constraints.

SNAICC suggests that the approach taken by Commonwealth Department of Education to fund the Policy Partnership is as an example of best practice in resourcing Policy Partnerships and other shared decision-making mechanisms. This is based not only on the amount of funding received, but the specific investment in supporting the policy and research functions of SNAICC that enable genuine collaboration and shared decision-making.

#### Shared decision-making at all stages

In the delivery of the ECCDPP, SNAICC's experience as co-chair and co-secretariat has been that the Commonwealth Department of Education co-chair and secretariat team are committed to both outcomes and shared decision-making and to making relevant adjustments to ensure this is embedded at all stages of Partnership processes.

There is a strong working relationship between co-chairs and co-secretariat, which results in high quality secretariat support for all parties to the ECCD to fully engage in shared decision-making processes. Across the co-secretariat administrative and policy workload is split evenly, ensuring that both parties have equal input into agenda setting, priority identification, paper development and decision-making. The structure of the grant funding and the strong working relationships allow for robust discussions on these issues and a more even balance of power between co-chairs and the co-secretariat teams.

The co-secretariats, with guidance and approval from co-chairs, jointly manage meeting preparation and delivery including logistical arrangements – choosing meeting locations and dates, booking venues, organising member dinners, setting the agenda, developing meeting papers, developing records of meeting and communiques, progressing out of session work and developing work plans, annual reports and strategic plans. This is done in a genuinely collaborative way with both parties being aware of and responsive to the needs and priorities of both government and Aboriginal and Torres Strait Islander members of the ECCDPP.

This strong foundation of collaboration and shared decision-making at the secretariat level sets a strong foundation for the operations of the ECCDPP, and has enabled the development of key documents that meet the government's need for governance and record-keeping while also centring key principles of shared decision-making. These include:

- Agreement to Implement
- ECCDPP Operating Protocols
- Year 1 Workplan
- ECCDPP Probity Plan (under development)

SNAICC also provides bespoke support to the Coalition of Peaks and Aboriginal and Torres Strait Islander independent members of the ECCDPP to engage effectively in Partnership discussions and decision-making. This includes logistical arrangements such as travel and accommodation as well as policy support such as individual and group pre-briefs and de-briefs on key policy issues and agenda items, annotated agendas and talking points for meetings, support to lead and/or participate in working groups and out of session work.

Despite strong supporting mechanisms, Aboriginal and Torres Strait Islander parties continue to be impacted by the broader under resourcing of ACCOs and the significant demand on leaders' time and expertise across the various advisory and working groups under the National Agreement at Commonwealth and state and territory levels. For all members, this work is in addition to their responsibilities in their substantive roles.

#### Embedding accountability

The ECCDPP provides a strong example of how policy partnerships keep governments and the Coalition of Peaks accountable to Aboriginal and Torres Strait Islander communities. All parties are accountable to communities through the shared objective of improving outcomes for Aboriginal children under closing the gap targets 2, 3, 4, 12 and 13. Annual workplans, annual reporting and the ECCDPP 3 year strategic plan will act as public facing accountability mechanisms where the ECCDPP needs to report on and be transparent about how resourcing for the ECCDPP has been used to progress towards outcomes 2, 3, 4, 12 and 13. ECCDPP parties are accountable to one another during quarterly meetings and the shared secretariat are accountable to their responsibility to progress in and out of session work for the ECCD through co-chairs and quarterly meetings.

One of the key challenges SNAICC has experienced in previous forums for policy reform is buck passing between the states, territories, and the Commonwealth. Within the ECCDPP, the risk of responsibility shifting is lessened by having all levels of government participate and by the strong operational foundation set by the co-chairs and co-secretariats. The ECCDPP further mitigates this risk through its government member and partner arrangements. To ensure coverage from relevant portfolios across education, child protection and family services, each government member is requested to invite an additional representative as a partner to attend meetings. The intent of this additional attendance is to support cross-portfolio engagement with policy areas relevant to the matters discussed. What this means in practice is that every jurisdiction has a member of the ECCDPP that can be a representative of either their relevant child protection or early years department and a partner from the other portfolio area. This does not mean that

jurisdictions have two voices within the ECCDPP, jurisdictions are expected to be cross-briefing and come prepared to present a single jurisdictional position for consensus decision-making.

### Early actions

During the establishment phase, the ECCDPP has also undertaken tangible actions to build the evidence base relating to best practice for Aboriginal and Torres Strait Islander children's participation in early childhood education and care (ECEC).

The Partnership has commissioned a systematic evidence review of the optimal number of hours and other considerations like quality and service availability for ECEC that create the best outcomes for Aboriginal and Torres Strait Islander children. This research will be provided to the Productivity Commission Inquiry into ECEC to ensure that the needs of Aboriginal and Torres Strait Islander children are adequately considered and reflected in the draft report and recommendations.

Another key example of where the ECCDPP has already been able to move action in policy areas that have previously been difficult to create change is in funding for ACCO ECEC services, a case study is provided below.

#### **CASE STUDY: ACCO ECEC funding model project**

Throughout its work as a Peak Body, SNAICC heard repeatedly from the ACCO ECEC sector that current funding approaches for ACCO ECEC services do not enable them to provide the high quality services their communities want and need. The sector raised these concerns through consultations on the Early Childhood Care and Development Sector Strengthening plan and the National Aboriginal and Torres Strait Islander Early Childhood Strategy as well as through SNAICC Early Years Support network. While commissioned by the ECCDPP, this research was originally designed and proposed by SNAICC in consultation with Aboriginal and Torres Strait Islander early years service providers.

Funding for ECEC services is complex and crosses both Commonwealth and state/territory responsibility. The result is a fragmented funding environment that does not support holistic and integrated early years services for children and families. SNAICC has advocated for funding reform in ECEC but given the significant nature of the reform required it had been difficult to gain buy-in across relevant governments.

The need for a new funding model for ACCOs delivering ECEC and integrated early years services was adopted by the ECCDPP as one of its six Year 1 priorities and is being progressed through a dedicated research project. The research project will include the design of new funding model options for ACCO delivered integrated early years services.

The project was commissioned by the Department of Education on behalf of the ECCDPP, and the work is being led by SNAICC with support from Deloitte Access Economics. This is a potentially transformational piece of work that will lay the foundation to completely reconfigure the funding landscape for ACCO integrated early years services, creating an environment where Aboriginal and Torres Strait Islander children and families have the supports they need, when they want and need them.

This priority has been able to gain traction due to bringing jurisdictions together through a shared decision-making mechanism. Using this mechanism to agree research and policy priorities and commit to a tangible course of action is a clear demonstration of the value of shared decision-making mechanisms such as the ECCDPP.

While the ECCDPP is showing strong early signs of success, it should be noted that it has not yet submitted its first recommendations to Joint Council. SNAICC notes that the JPP has had difficulty progressing agreed recommendations to Joint Council within its processes, largely due to a lack of consensus across government and Aboriginal and Torres Strait Islander members on the scope and remit of the recommendations. The ECCDPP has taken a number of lessons from the experience of JPP and will adjust its approach to ensure consensus building occurs both with ECCDPP members and across governments more broadly. The process of submitting its first recommendations to Joint Council, and the subsequent action taken to implement these recommendations, will be the true indicator of the ECCDPP's success and its ability to drive the change needed to improve outcomes for Aboriginal and Torres Strait Islander children.

The ECCDPP will be looking to the Productivity Commission's findings to inform its annual report and three-year strategic plan and take action to respond to the recommendations.

### Building a culture of shared decision-making

Outside of the ECCDPP itself, the Partnership is helping to create a culture of shared decision-making through the Commonwealth Department of Education and within some areas of other Commonwealth Government Departments. While the application of shared decision-making principles is variable across government units, branches and departments, SNAICC is seeing a notable difference in attitudes and willingness to engage in shared decision-making in areas that come into contact with the ECCDPP and/or the Commonwealth Department of Education co-secretariat. While not the main purpose or intent of the Policy Partnerships, role modelling of good practice and informal influencing is a valuable secondary impact.

### Other shared decision-making mechanisms

Governments cannot only rely on Policy Partnerships to embed shared decision-making and joined up approaches to meeting the Closing the Gap outcomes. Formal partnerships and shared decision-making must be embedded in all aspects of government policy across all content areas.

An example of shared decision-making in the child and family wellbeing sector is the governance structure of *Safe and Supported: The National Framework for Protecting Australia's Children 2021-2031* (Safe and Supported). Safe and Supported is the first national plan for protecting children that includes a dedicated Aboriginal and Torres Strait Islander Action Plan (the Action Plan). The Action plan was negotiated between all governments and the Aboriginal and Torres Strait Islander Leadership Group (the Leadership Group) through a shared decision-making model that was made possible by the National Agreement and the willingness of Commonwealth, State and Territory governments to adjust ways of working to better align with Priority Reform 1.

Safe and Supported is the first national policy framework negotiated under the terms of the National Agreement. Through a shared decision-making approach, the Framework and Action Plans have included strong commitments for Aboriginal and Torres Strait Islander children and families, an outcome that could not have otherwise been achieved.

All Safe and Supported governance bodies operate under a Partnership Agreement (to be finalised in late 2023), which is guided by the Strong Partnership and Shared Decision-Making elements in the Closing the Gap Agreement. In alignment with Priority Reform 1, governments must engage in this type of agreement for all policy decisions that impact Aboriginal and Torres Strait Islander people.

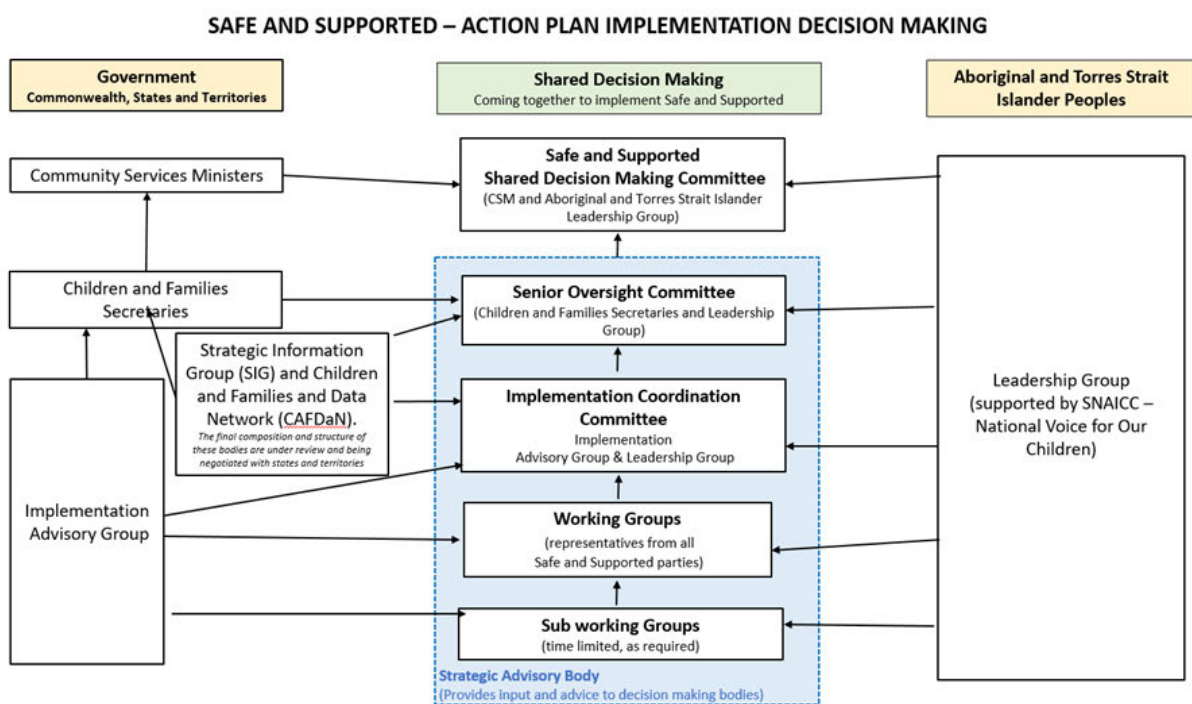


### Aboriginal and Torres Strait Islander Leadership Group

Convened and chaired by SNAICC, the Leadership Group is the main Aboriginal and Torres Strait Islander oversight and shared decision-making body for Safe and Supported. The Leadership Group has equal authority to governments in decision-making for Safe and Supported.

The Leadership Group is appointed through a transparent process independent of governments. The Leadership Group’s members include state and territory peak bodies and nominated representatives for Aboriginal and Torres Strait Islander children and families, Aboriginal and Torres Strait Islander Children’s Commissioners and subject matter experts. The Department of Social Services funds SNAICC to support by the Leadership Group’s engagement in shared decision-making at all levels of Safe and Supported governance.

Leadership Group members co-chair all Safe and Supported governance bodies, from the operational level, to shared decision-making bodies with Secretaries and all child safety Ministers from every state and territory. The diagram below outlines each governance body and its role.



The first action within the Action Plan sets out an agenda to transfer authority in child protection to Aboriginal and Torres Strait Islander communities and organisations across the country, including the transfer of legislative authority in line with both Priority Reforms 1 and 2 of the National Agreement. More on this Action is outlined on page 20 in response to Information Request 2.

## Progressing advocacy initiatives

Having multiple shared decision-making mechanisms in place is critical to amplifying the voices of Aboriginal and Torres Strait Islander people and ensuring government action on community priorities. As outlined above, SNAICC and other Aboriginal and Torres Strait Islander community controlled peak bodies, often experience governments passing responsibility for progressing key initiatives between agencies and forums and delaying important discussions and decisions. The call for the establishment of a National Aboriginal and Torres Strait Islander Children's Commissioner has been an example of this in practice.

A key action in Safe and Supported is to establish Commissioners for Aboriginal and Torres Strait Islander children in every jurisdiction. The Leadership Group identified this action as a critical way to create strong advocacy and accountability for Aboriginal and Torres Strait Islander children and young people's rights. However, despite strong advocacy and negotiation from the Leadership Group, governments did not commit to the establishment of a National Aboriginal and Torres Strait Islander Children's Commissioner. Instead, the Action Plan commits to a delivering on a National Advocate position with the Action Plan stating that "opportunities for a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People will be considered throughout the life of the plan".

Through its work with the sector and community, SNAICC understands the importance of a fully legislated and empowered National Aboriginal and Torres Strait Islander Children's Commissioner (outlined in more detail on page 22 in response to Information Request 11) and has continued to advocate for a government commitment to establish this position.

The establishment of a fully legislated and empowered National Aboriginal and Torres Strait Islander Children's Commissioner was raised by Aboriginal and Torres Strait Islander members of the ECCDPP at the first meeting as one of the key priorities for improving outcomes for Aboriginal and Torres Strait Islander children. This priority was affirmed by the ECCDPP as one of its Year 1 priorities. This commitment in the Policy Partnership provided the authorising environment for the ECCDPP and the Safe and Supported Leadership Group to begin working collaboratively to progress this priority more cohesively across Commonwealth Government Departments and encourage joined up government response and action. This approach improves the transparency of policy discussions and negotiations between governments and Aboriginal and Torres Strait Islander people and allows for open discussions of blockers and barriers to implementing policy reform. Having multiple shared decision-making mechanisms in place

minimises the opportunities for governments to take a ‘one and done’ approach and helps to ensure follow through on the commitments made.

## **Information request 2: Shifting service delivery to Aboriginal community-controlled organisations (ACCOs)**

### **Connected Beginnings**

Connected Beginnings (CB) is an emerging example of good practice in transferring service delivery from mainstream organisations to ACCOs. CB is a grants program jointly funded by the Department of Education and the Department of Health and Aged Care, that aims to integrate local support services to improve access to services for Aboriginal and Torres Strait Islander children and families across a range of sectors. This program provides example of both changes to government operations to benefit Aboriginal and Torres Strait Islander People and communities and effective transition of services to Indigenous community control. CB operates using a ‘backbone’ organisation that receives the grant and then offers support to and works with community and community organisations.

Prior to the Commonwealth Department of Education’s engagement of SNAICC as Community Partner in 2022, the selection process for backbone organisations strongly privileged non-Indigenous organisations, with only 2 ACCOs funded in this role initially. SNAICC has developed and applied a site selection methodology that centres Aboriginal child and family- values which lie at the core of all SNAICC’s work, with the outcome being that CB has been introduced to 10 new sites, all of which have ACCO backbones, and there are now over 20 ACCOs funded as backbone providers across the country.

In addition, SNAICC and the Commonwealth Department of Education have jointly developed the Kids Come First: Framework to Facilitate the Culturally Safe Transition of Connected Beginnings Leadership and Backbone Functions from non-Indigenous Organisations to Aboriginal Community Controlled Organisations (Aboriginal Leadership Transition Framework). Critically the Leadership Transition Framework was developed in partnership with ACCOs and non-Indigenous backbone organisations who are aware of the implications of transition for self-

determination and supportive of transitioning backbone functions to ACCOs.<sup>4</sup> The Commonwealth has committed to transition backbone functions to ACCOs with the agreement of the community.<sup>5</sup>

The decision on whether to transition backbone organisation to an ACCO or other community led organisation is the decision of the local community.<sup>6</sup> If a community decides that transition should happen, the incoming backbone organisation is still subject to selection criteria:

- “Connection to schools, early years services and health services, or ability to build these connections;
- Aboriginal and Torres Strait Islander community endorsement to lead the project;
- Relationship and willingness to work with Aboriginal Community Controlled Health Service or Aboriginal Medical Service (who are likely to be the health partner for the project); and
- Organisational ability and capacity to deliver and manage the project, including cultural appropriateness and responsiveness.”<sup>7</sup>

Responsibility and accountability for a successful transition are shared by the Commonwealth Department of Education, SNAICC and both the current and prospective backbone organisations.

Application of the Aboriginal Leadership Transition Framework has generated useful learnings for all sectors and programs on transition and the CB program compels all CB sites that are not ACCO led to apply the framework. Organisations are encouraged and supported to use the framework in preparation for transition even, and perhaps especially, in circumstances where the existing contract with the non-Indigenous organisation will not expire for some time.

The Commonwealth Department of Education actively supports transition through a process where four months prior to a contract expiring the backbone organisation is asked to re-submit their budget and Community Action Plan. The Community Action Plan includes partnership with ACCOs, Elders, Community Leaders and Traditional Owners and a plan for Aboriginal and Torres Strait Islander employment. The duration of funding is based on this application and negotiated

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<sup>4</sup> Commonwealth Department of Education & SNAICC – National Voice for our Children, 2023, Kids Come First: Framework to facilitate the culturally safe transition of Connected Beginnings leadership and backbone functions from non-Indigenous organisations to Aboriginal community controlled organisations. Retrieved from: <https://www.education.gov.au/early-childhood/resources/acco-leadership-transition-framework>

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid. p8

with each community. Any contract variation then resources the organisation for transition and existing activities and using the Leadership Transition Framework is a contractual requirement. The remaining 14 non-Indigenous backbone organisations will be undertaking their transition process by June 2025. The full Leadership Transition Framework is provided in Attachment B.

The process for transitioning is bespoke and community led in every CB community. This ensures that the incoming ACCO and community, inclusive of cultural authority, are fully prepared and have ownership of both the transition and program activities. This type of supported transition is a strong emerging example of good practice in transitioning services to ACCOs. It demonstrates that by putting community and cultural leadership at the center, compelling organisations to plan for transition through contract requirements and investing in transition, services can be quickly and effectively transitioned to ACCOs from non-Indigenous organisations. The ACCO and community led approach to transition that is outlined in the Aboriginal Leadership Transition Framework is critical to the success of this approach.

## Funding reform

Alongside efforts to transition funding for services, Governments need to dedicate resources to transforming the way that services are contracted, funded, delivered, reported against, and evaluated. SNAICC reported on this extensively in the *Stronger ACCOs, Stronger Families* report (Attachment A) that made six primary and 14 sub-recommendations for government to reform approaches to funding and increase the number of ACCOs delivering children and family support services.

The structure of Government funding is a well-known barrier to holistic service delivery for ACCOs. Findings from the *Stronger ACCOs, Stronger Families* report included the limitations of top-down approaches where funding programs are driven and designed by Government determined problems and priorities and then progress is evaluated through the same government framing. Funding silos reduce flexibility and impede ACCOs' ability to deliver services that work best for Aboriginal and Torres Strait Islander children and families. Current approaches to funding disadvantage ACCOs in competitive grant and tender processes, where they must compete with larger non-Indigenous services.

*The Stronger ACCOs, Stronger Families* report makes recommendations for government to fundamentally change its approach to funding through embedding community-led decision-making at every stage of funding development and allocation, prioritising ACCOs as providers of children and family services (e.g., making a proportion of funding only available to ACCOs), investing and



growing ACCOs through core functions funding, reducing administrative burdens across the system (e.g., funding application processes and duplicative/ ineffective reporting requirements), increasing investment in ACCO-led research and evaluation and building government capacity to understand and work more effectively with the community controlled sector. Transitioning services, while important, will not address the fundamental misalignment between government approaches to funding services and the needs and aspirations of communities and the ACCOs that serve them.

## Transfer of service delivery and authority for child protection to ACCOs

ACCOs are recognised as the preferred providers of support for Aboriginal and Torres Strait Islander children and families experiencing challenges and vulnerability, who may be at risk of child protection involvement. Some jurisdictions have recognised this, and made commitments to transfer resources and service provision for Aboriginal and Torres Strait Islander children and families involved with child protection to ACCOs. While these commitments have been effective at prompting increased action, there have been several gaps in implementation which have meant these commitments have not been achieved. For example, NSW committed to 30% of all funding for targeted early intervention (TEI) to be directed towards ACCOs by 30 June 2021. As at 30 June 2021, less than 15% of this funding is provided directly to ACCOs.<sup>8</sup>

Similarly, the Victorian Government committed under the *Roadmap for Reform: Strong Families, Safe Children*, to transfer case management for all Aboriginal children to ACCOs, which was reaffirmed in the *Wungurilwil Gapgapduir: Aboriginal Children and Families Agreement* as a commitment by July 2021. However, as reported in the *Yoorrook for Justice* report, at the end of 2022 only 47% of Aboriginal children in out-of-home care were supported by an ACCO.<sup>9</sup>

Under Action 1 of the Safe and Supported Aboriginal and Torres Strait Islander Action Plan (the Action Plan), all governments have committed to support Aboriginal and Torres Strait Islander people to have control over the future wellbeing of their children, and to determine the services and systems that deliver for their children by transferring authority for child protection to ACCOs.

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<sup>8</sup> AbSec & Aboriginal Legal Service NSW/ACT (2023) *Family Is Culture: Community Report Card 2023*, available at: <https://rebrand.ly/FICReport>

<sup>9</sup> Yoorrook Justice Commission (2023) *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems*, available at: <https://yoorrookforjustice.org.au/>



This work is already occurring in some jurisdictions. The examples below provide examples of transferring service delivery from mainstream organisations to ACCOs. While these examples are not necessarily best practice in their current form (see Ch. 3.1 in SNAICC (2022) *Family Matters Report*), they represent a culmination of sustained and significant advocacy from the community-controlled sector, and the implementation challenges predominantly stem from the reluctance of governments to engage in genuine shared decision-making and transfer of authority to the community-controlled sector.

In Victoria, implementation of delegated authority began a decade ago, with the implementation of an 'as if' pilot run by the Victorian Aboriginal Child Care Agency in 2013, and another pilot run by the Bendigo and District Aboriginal Cooperative in 2016. These pilots were successful in achieving reunifications and strengthening children's connections to their communities and cultures. Following the success of these pilots, the Aboriginal Children in Aboriginal Care (ACAC) program was developed. The first official delegations under the legislation did not occur until 2017.

Currently, under the program, the Department can authorise an ACCO to assume responsibility for decision-making in relation to child protection case management for an Aboriginal and Torres Strait Islander children or young person. Section 18 of the *Children, Youth and Families Act 2005* enables the Secretary of the Department of Families, Fairness and Housing to authorise the principal officer of an Aboriginal agency to undertake specified functions and powers in relation to a Children's Court protection order for an Aboriginal child or young person.

The functions and powers that may be delegated are limited to those that relate to protective intervention; receiving and investigating reports; and care and protection orders. Delegations thus far are made once a protection order for an Aboriginal child or young person has been made by the Children's Court. In that case, an approved ACCO may be authorised to take on responsibility for the child's case management and case plan. Victoria is moving to expand the program, and delegate authority in investigations of child protection notifications. This is happening at a pace in line with the needs of ACCOs in Victoria.

The recent *Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-Determination and Other Matters) Bill 2023* enables the ACAC investigations pilot to progress by broadening the authorisation process under section 18 of the *Children, Youth and Families Act 2005*, and allows Aboriginal agencies authorised under section 18 to access to the child protection Client Relationship Information System (CRIS).

The Bill embeds Aboriginal self-determination in the legislative framework for children and family services, by introducing a Statement of Recognition and principles for all decision makers involved with Aboriginal children and their families in the child protection system.

In Queensland, the Department of Child Safety, Seniors and Disability Services may delegate decision making authority to the CEO of an ACCO. Under the Queensland Child Protection Act, the chief executive may delegate 1 or more of their functions or powers under the Act. It is up to the department to decide what powers are delegated and when, in partnership with the ACCO who is to exercise authority. Currently, authority is being delegated regarding case management, including sections that authorise decisions about whether contact with different members of a child’s family, community or language group is “appropriate” or “in the child’s best interests”

Delegated authority is currently available in a small number of early adopter locations, and will expand to other locations over time, based on the learnings from these early adopters. Two early-adopter sites located in Rockhampton and the Sunshine Coast were identified to implement this new legislation, each choosing to exercise differing delegations.

QATSICPP has taken a leading role in the implementation of delegated authority and has developed a blueprint for implementing delegated authority in Queensland at the practice level and are driving the collection and analysis of data to understand the nature of implementation and support refinements to the approach. QATSICCP has also [released a report](#) capturing the story of implementation in Queensland. This report is a highly relevant snapshot of key enablers and barriers to success.

Under the authorising environment of the Safe and Supported Framework and the National Agreement, the Aboriginal and Torres Strait Islander Leadership Group will build on these successes and learnings in implementing Action 1 of the Action Plan. Key considerations for the Aboriginal and Torres Strait Islander Leadership group will include embedding self-determination as a central tenet of this work, developing a shared definition of transfer of authority, creating a best practice and critical elements framework, identifying how to facilitate effective local decision-making and creating shared accountability mechanisms between ACCOs and governments.

### **Information request 11: Sector-specific accountability mechanisms**

SNAICC strongly supports the use of sector-specific accountability mechanisms for upholding the rights of Aboriginal and Torres Strait Islander children and ensuring governments remain accountable for delivering on their commitments under the National Agreement.

Even when there are policies and legislation in place designed to improve life outcomes or protect children's rights, Aboriginal and Torres Strait Islander children rarely equitably benefit from these. We need only to look at the shocking rates of overrepresentation in the child protection and youth justice systems as evidence of the systemic and institutional neglect of Aboriginal and Torres Strait Islander children's rights and wellbeing at both federal and state/territory levels.

As reported in the 2022 Family Matters Report, at 30 June 2021 there were 22,297 Aboriginal and Torres Strait Islander children in out-of-home care. Aboriginal and Torres Strait Islander children were 10.4 times more likely to be in out-of-home care than non-Indigenous children.<sup>10</sup> Aboriginal and Torres Strait Islander children are overrepresented at every stage of the child protection system, including notifications, investigations, substantiations, removal into out-of-home care, permanent removal, and adoption. This has been an increasing trend in every jurisdiction for the last 10 years.

Aboriginal and Torres Strait Islander children and young people are also overrepresented in the youth justice system at every stage, compounding at each stage. The drivers of overrepresentation are the same as for child protection, namely upstream disadvantage experienced by families and communities, systemic racism and discrimination, pre-existing health conditions (including neurodisability mental health issues) and trauma experiences.<sup>11</sup> There is also an overrepresentation of Aboriginal and Torres Strait Islander children and young people with disability in youth justice systems and a significant association between time in out-of-home care and contact with the justice system.

This is only a small demonstration of how current government efforts and accountability mechanisms are failing Aboriginal and Torres Strait Islander children. While the National Agreement seeks to address these disparities in life outcomes for Aboriginal and Torres Strait Islander children, the current system does not include sufficient accountability to bring this to life.

SNAICC recommends the establishment of a National Aboriginal and Torres Strait Islander Children's Commissioner, supported by equivalent roles in every jurisdiction as a key

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<sup>10</sup> SNAICC 2022, 'The Family Matters Report 2022', retrieved from: <https://www.familymatters.org.au/wp-content/uploads/2022/11/20221123-Family-Matters-Report-2022-1.pdf> pg. 11.

<sup>11</sup> Office of the Children's Commissioner Northern Territory 2023, 'Use of Spit Hoods and Restraint Chairs on Children Position Paper'. Retrieved from: [https://occ.nt.gov.au/\\_data/assets/pdf\\_file/0011/1240040/OCC-Position-Paper-Use-of-Spit-Hoods-and-Restraint-Chairs-on-Children.pdf](https://occ.nt.gov.au/_data/assets/pdf_file/0011/1240040/OCC-Position-Paper-Use-of-Spit-Hoods-and-Restraint-Chairs-on-Children.pdf)

accountability mechanism for the rights, health, safety and wellbeing of Aboriginal and Torres Strait Islander children.

Government systems and institutions need to be accountable to our children. The establishment of a legislated, fully empowered, and resourced national Aboriginal and Torres Strait Islander Children's Commissioner provides a critical mechanism for increased transparency and accountability and realising Australia's commitments to Aboriginal and Torres Strait Islander peoples. These commitments are made through both international human rights treaties and the National Agreement. Commissioners play a vital role in promoting the rights and interests of Aboriginal and Torres Strait Islander children and young people, providing strong advice on how legislation, policies, processes, programs, and practices can be improved, and providing an avenue for advocacy and support. Aboriginal and Torres Strait Islander children's rights are not being sufficiently protected or prioritised and this is resulting in those rights being systemically breached across the country.

Where we see fully empowered and legislated Commissioners for Aboriginal and Torres Strait Islander children we see increased transparency and elevation of children's voices. For example, in South Australia the Aboriginal Children's Commissioner April Lawrie has recently released a report investigating the removal and Placement of Aboriginal and Torres Strait Islander Children.<sup>12</sup> This kind of dedicated investigation and publication is possible because of the dedicated focus and mandate of Commissioner Lawrie's role. At the federal level there are two commissioner roles that have remits related to Aboriginal and Torres Strait Islander Children, the National Children's Commissioner (NCC) and the Aboriginal and Torres Strait Islander Social Justice Commissioner (SJC). Neither role has the dedicated focus required to provide accountability and oversight for the complexity and magnitude of the systemic discrimination and challenges facing children. The SJC advocates for the recognition of the rights of Aboriginal and Torres Strait Islander people and seeks to promote and uphold these rights. The SJC does not have the resources to address all issues that affect the human rights and wellbeing of Aboriginal and Torres Strait Islander communities, especially those specific to children and young people. The NCC has a responsibility for all Australian children, including Aboriginal and Torres Strait Islander children, but the rights, needs and challenges facing Aboriginal and Torres Strait Islander are unique and require an approach that recognises and prioritises these. The office of the NCC was not designed by or

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<sup>12</sup> Commissioner for Aboriginal Children & Young People, 2023, Preliminary report: The inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle in the Removal and Placement of Aboriginal Children in South Australia. Retrieved from: [https://cacyp.com.au/wp-content/uploads/2023/10/CACYP\\_Preliminary-Report-2023.pdf](https://cacyp.com.au/wp-content/uploads/2023/10/CACYP_Preliminary-Report-2023.pdf)

with Aboriginal and Torres Strait Islander people meaning the function, scope, structure and appointment process for the NCC are not shaped by community priorities or expectations.

Importantly, a National Aboriginal and Torres Strait Islander Children’s Commissioner should be fully empowered through legislation and resourced appropriately to undertake the functions of the office. Children’s rights are the responsibility of all Australian governments, and their rights require protection and monitoring at the state and territory level as well as the federal level. Currently, all states and territories have children’s commissioners for all children, but not all jurisdictions have commissioners for Aboriginal and Torres Strait Islander children or similar advocate/guardian roles.

SNAICC and King & Wood Mallesons prepared an extensive options paper presenting a model for a National Aboriginal and Torres Strait Islander Children’s Commissioner that is consistent with the Paris Principles (the United Nations Principles Relating to the Status of National Human Rights Institutions).<sup>13</sup>

As with any accountability or human rights monitoring mechanism, the effectiveness of Commissioners is dependent on governments acknowledging their obligations under the National Agreement and international Human Rights Treaties and having a genuine commitment to deliver on these obligations.

## Conclusion

SNAICC commends the Productivity Commission on its draft report that highlights key challenges and opportunities that reflect our experience of the National Agreement to date. We have seen some significant changes and gains under the National Agreement such as the changes to the Connected Beginnings Program, the Safe and Supported Aboriginal and Torres Strait Islander Action Plan and the Early Childhood Care and Development Policy Partnership. Each of these gains is the result of significant advocacy by the sector and the policy levers provided by the National Agreement and will contribute to improving Aboriginal and Torres Strait Islander children’s life outcomes. However, SNAICC agrees with the assessment of the Productivity Commission that where there has not been enough progress against the Priority Reforms, this is the direct result of a lack of ambition and commitment from all Australian Governments. What is needed now is for government to redouble their efforts and commitments to the Priority Reforms and to invest in the Coalition of Peaks and the ACCO sector so we can partner

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<sup>13</sup> SNAICC & King & Wood Mallesons 2020, 'Options Paper: Models for a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People'. Retrieved from: [SNAICC-Model-Options-Paper-National-49834698\\_1.pdf](#)



effectively with government to deliver on their commitments to our children, families, and communities.