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Actioning children's rights in out-of-home care in NSW: A focus on the right of family connection

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Abstract

In Australia, children's rights are incorporated in standards that must be met by institutions and organisations that care for, educate and/or provide services to children and young people. Organisations that provide out-of-home care (OOHC) must also meet rights-based standards to receive and maintain accreditation by state and territory bodies with statutory parental authority. As OOHC casework practitioners, we regard upholding or, better, actioning rights as the core basis and moral justification of casework with and for children and young people in OOHC. At the same time, we are aware of and witness the painful and ongoing legacy of statutory casework practice and its negative impacts on the rights of children, young people and their families. The genesis of this commentary was an invitation to the lead author to present at the *Children, Trauma and the Law* conference in 2023. The purpose of the presentation was to highlight for a non-caseworker audience the relational dynamics and time involved when actioning, or giving effect to, the rights of children and young people in OOHC. The presentation drew on the author's experience of casework practice in government and non-government OOHC organisations in NSW and provided three examples of rights-based casework practice. In this commentary, we develop the rights-based themes of that presentation. We describe a national consensus that the rights of children and young people in OOHC must be prioritised. We also set out key aspects of the most important reviews of OOHC in NSW in the last two decades and return to the three casework practice examples in the original presentation. In our view, the national consensus and these reviews have shaped contemporary casework practice in NSW for the better. In particular, the attention and efforts of OOHC organisations and their caseworkers are now more attuned to a right of family connection and the impacts of family separation. This brings a more empathetic and historically informed perspective to OOHC casework practice and, in so doing, a stronger focus on the rights of children, young people and families who are in contact with the child protection system, and its twin, the OOHC sector.

Keywords:

Aboriginal children, casework, child rights, family connection, out-of-home care, young mothers.

Rights-based OOHC casework practice in context

The authors of this commentary have been OOHC caseworkers and are currently employed in roles that directly support casework practice within a non-Indigenous, non-government, not-for-profit OOHC organisation based in northern New South Wales, with operations in Queensland and the Northern Territory. We note that the views and opinions expressed in this commentary are our own, and do not represent those of the organisation we work for. For simplicity, we will refer to ourselves as caseworkers, rather than former caseworkers. We will also refer to not-for-profit, charitable non-government organisations that provide OOHC services, such as the organisation we work for, as funded service providers (FSPs). This points to the fact that although non-government organisations are often given responsibility for the care of children and young people in OOHC in NSW, the NSW state government not only funds all OOHC services, but it also plays a decisive role in setting policy. And like other state and territory governments in Australia, the NSW state government also stipulates many of the ways that OOHC is provided via its contracting arrangements with FSPs. However, broader influences also shape OOHC casework practice.

The fifty-four articles of the United Nations Conventions on the Rights of Children (UNCRC; United Nations, 1989) set out a comprehensive range of human rights that include distinctive rights to care and protection. In brief, the UNCRC asserts the dignity of children, their care, safety, development and educational needs, and their needs for familial, social and cultural inclusion, connection and recognition. The Australian Government ratified the UNCRC in 1990. The articles set out in the UNCRC are incorporated in The National Principles for Child Safe Organisations (Australian Human Rights Commission, 2018). These principles have been endorsed by all state and territory governments (Purtell et al., 2023). At state and territory levels, the rights of children and young people are also incorporated in accreditation standards that must be met by organisations that provide out-of-home care (OOHC). Note that the Northern Territory is an exception, it does not have a statutory body that accredits OOHC service provider organisations.

Federal, state and territory governments and the Australian community learned from the Royal Commission into Institutional Responses to Child Sexual Abuse (Child Abuse Royal Commission) that children are seriously harmed, and their rights are egregiously compromised, when they are not given a voice, when there is inadequate governance within organisations, and when there is a lack of oversight of individuals with responsibility for their care (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017). The findings and recommendations of the Child Abuse Royal Commission have delivered a much-needed focus on the cultures of organisations that provide services to children, as either safe or unsafe. In turn, there is now a standing obligation to monitor the safety of children, not only by monitoring their parents and families, but by monitoring the quality of professional work that is undertaken with, and on behalf of, children. In our view, quality casework practice is rights-based practice that

safeguards the safety, wellbeing and interests of children and young people. Or to put it another way, prioritising child rights that safeguards children and young people.

We have mentioned that state governments play a decisive role in the delivery of services to children and young people in OOHC. However, they do not do so in isolation from other influences. There is currently a national consensus that the rights of children and young people in OOHC must be prioritised for their safety and their wellbeing.

This is a consensus with many contributors, including (but not limited to):

- Australia's ratification of the UNCRC in 1990;
- The National Principles for Child Safe Organisations (Australian Human Rights Commission, 2018) developed in response to the Child Abuse Royal Commission, which commenced in 2012 and released its final report in 2017 (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017);
- The first iteration of Safe and Supported: A National Framework for Protecting Australia's Children 2011–2020, followed by a second iteration for the period 2021–2031 (Department of Social Services, 2021);
- Reforms to OOHC by Australian states and territories;
- National and state-based peak bodies, e.g. The National Voice for our Children (SNAICC), NSW Child, Family and Community Peak Aboriginal Corporation (AbSec), Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP), and others; and
- A growing body of academic research and grey literature that has:
 - Increasingly sought to privilege the voices of children and young people in OOHC and the voices of care leavers in accordance with their right to be consulted and listened to;
 - Investigated the impacts of trauma, violence and colonisation on children and their families; and
 - Introduced and advocated for the use of evidence-based practices when working with children and families.

At this point in time, the national consensus is clear that the rights of children in OOHC must be actioned or given concrete effect. This places a clear obligation on those of us who work with children and young people. To begin with, children and young people must be informed of their rights, and their views, wishes and opinions about matters that concern them must be sought and listened to. This is stated in Article 12 of the UNCRC (Falch-Eriksen & Toros, 2023) and in NSW is also stated in the first standard of 23 NSW Child Safe Standards for Permanent Care (Office of the Children's Guardian, 2015). When it is not possible to act on a child's specific views, wishes and opinions, the reasons for this should be carefully explained to them (Purtell et al., 2023). And correlatively, failing to provide opportunities for children and young people to speak and failing to listen is a 'breach of their rights' (Falch-Eriksen & Toros, 2023: p. 51).

This foundation of rights-based casework must pervade all aspects of what is essentially a relational, person-centered practice. As such, although rights-based standards provide a benchmark that

must be met by caseworkers, actioning rights must be integrated into the practical ways that caseworkers, and others in direct child-facing roles, relate to, speak with, speak about, write about and make decisions with and for children and young people. Children's rights must also be integrated into other aspects of OOHC practice, and this is often complex. To illustrate, we briefly discuss the examples of working with families, inter-organisation advocacy and the impacts of family separation in this section. We return to these examples in later sections of this commentary.

The rights of children are an interconnected set of rights that include the right to family connection, which is a right that most children and their families can take for granted. However, the statutory context of OOHC largely, and of necessity, prioritises the safety of children and young people. This can mean that contact between children and their families is restricted when there are ongoing concerns regarding the safety of children and young people. For this reason, actioning a child's right to family connection is not always straightforward. However, this can never mean that the right of family connection is overlooked or de-prioritised by caseworkers and their organisations. In our view, the child protection and OOHC sector has been slow to learn this. For the purposes of this commentary, our use of the term 'connection' means to remain in touch with and have a meaningful relationship, irrespective of whether this involves living together. We use the term 'reunification' when referring to instances of a child returning to their family's care from OOHC.

As we have mentioned, children's safety and wellbeing are put at risk when their rights are not well-understood and not actively prioritised by those with responsibility for their care and wellbeing. In the past, which includes the recent past, this was not well-understood, nor was the importance of family connection. As we will describe in the following section, reviews of OOHC in NSW have clearly shown that caseworkers and their government and non-government organisations have often failed to prioritise family connection. For many children and young people, once they have been removed from their families, their right of continued family connection and/or reunification with their families has been overlooked. This has done great harm.

OOHC caseworkers and casework managers do not always agree about matters concerning a child's best interests. This can occur when more than one organisation has case management responsibility for a child or young person. For example, a caseworker in a non-government organisation with responsibility for the day-to-day oversight and coordination of a child's care may not agree with an assessment regarding that child's best interest made by a caseworker or manager within an oversighting government organisation. Resolving disagreements can require advocacy, to ensure a child's rights are prioritised, rather than organisational imperatives and/or inter-personal and inter-organisational dynamics. Here we note that advocacy for child rights has not been an explicitly recognised or strongly encouraged feature of OOHC casework practice.

Along with failures to ensure that family connection is ongoing, the child protection and OOHC sector has had a poor understanding of the impact of family separation, which in and of itself can be traumatising, adding to the early childhood adversity and trauma that children and young people in OOHC have often

faced. In our view, responding appropriately to trauma requires deep empathy for the impacts of abuse, neglect and the removal and separation from family. It also requires empathetic engagement with the individual and socially contextualised histories of children, young people and their families. This is particularly acute for Aboriginal and Torres Strait Islander children and young people and their families, for whom longstanding child removal policies and casework practices have resulted in family separations across generations, negatively impacting cultural parenting practices and disrupting connections to Country (Department of Communities and Justice, 2019; SNAICC, 2024). With respect to the impacts of family separation, once again our sector has been a slow learner.

In this commentary, we use the term 'Aboriginal' when referring to Aboriginal and Torres Strait Islander individuals and their families. This term is more commonly used in the region in which we work, but we intend the term to include Torres Strait Islander peoples who also live and work in our region, and beyond it.

Family connection and healing

In the last two decades, three important reviews have shaped the OOHC service delivery context in NSW and framed a moral agenda for reforming the child protection system and the OOHC sector in this state. From our perspective, three features of these reviews are noteworthy. First, the relatively recent purchaser/contractor–service provider split. This is a split between the NSW Department of Communities and Justice (DCJ) as a government purchaser and contractor of OOHC services and FSPs as providers of those services. We return to the significance of this split in our conclusion. Second, the growing and much needed emphasis on the rights and needs of children and young people in OOHC to be reunified with family or, failing this, to remain strongly connected to them. Third, the growing emphasis on therapeutic work with children, young people and their families to heal from trauma, not least of which is the trauma of family separation. We regard the latter two as crucial aspects of rights-based casework within an FSP.

The 2008 Special Commission of Inquiry into Child Protection Services in NSW undertaken by Justice Wood highlighted very poor outcomes for children and young people during and after OOHC (Wood, 2008). Justice Wood recommended the devolution of significant parts of OOHC service delivery from the then-named NSW Department of Community Services to not-for-profit FSPs, on the grounds that these organisations are better positioned to respond to the needs of children, young people and their families than a centrally controlled government organisation. Justice Wood's findings and recommendations led to OOHC reforms, which were part of the NSW *Keep them Safe* reforms (KTS; New South Wales Government, 2009).

The 2015 Independent Review of Out of Home Care in New South Wales was conducted by David Tune AO. The purpose of the review was to assess the effectiveness of the OOHC component of KTS reforms. Mr Tune found that the NSW child protection system and OOHC service delivery fell a long way short of meeting the needs of children and young people and, in particular, was failing their families. He reported that the system was neither child nor family-focussed, and that in particular, Aboriginal children and

their families were very poorly served (Tune, 2016). This led to reforms known as Their Futures Matter (New South Wales Auditor-General's Report, 2016) .

In 2016, the NSW Government responded to Mr Tune's review by commissioning an extensive review of OOHC focusing on Aboriginal children, young people and their families. This review was conducted by Professor Megan Davis. The report from this review, Family is Culture: Independent Review of Aboriginal Children and Young People in Out of Home Care in NSW, was provided to the NSW Government in 2019. The report made 126 recommendations and outlined deep systemic failures that contributed to the high incidence of child removal in Aboriginal families and poor life outcomes for Aboriginal children and young people both during and after OOHC (Department of Communities and Justice, 2019).

In addition to the recommendations and guidance of this report, of key importance for us is the report's description of a culture of 'ritualism' that pervades government and FSP agency work. The Family is Culture report noted that due to the complexity of working with families 'caseworkers take comfort in the rituals of casework, such as safety assessment and risk assessment while losing focus on the goal of child protection, to reunite children with their families' (Department of Communities and Justice, 2019: p. 25).

Casework can be confronting because the stories of children, young people and families that come into contact with the child protection system and the OOHC sector are often difficult to hear and very sad. Caseworkers often meet with families in times of crisis, when emotions are charged, and this can be unsettling. In our view, it is not a point of contention that children and young people should be removed from dangerous situations and should not be maltreated. Our understanding of the term 'ritualism' as it applies to OOHC casework practice, and its organisational contexts, is the exclusive focus on risk of harm at the expense of attending to the complex dynamics at play for a family and for a child as part of that family. This exclusive focus can lead to formulaic responses and reactions, rather than careful and sensitive rights-based casework practice with children, young people and their families.

We now provide three examples of casework practice with children, young people and families from our FSP. The first example illustrates how close attention to the support and healing needs of a mother actioned a right of family connection and reunification for a very young child who had been removed from her care. The second example illustrates how listening and acting on the wishes of children living with foster carers upheld their decisional rights, although it conflicted with their parents' hopes and desires for family connection. The third example illustrates how supporting a very young Aboriginal mother to learn parenting skills upheld her right to receive support as a young person commencing her parenting journey whilst under a care and protection order herself. It also illustrates how support for her, as her due, upheld her child's right to family connection and safety. We have chosen these examples to illustrate a range of ways that actioning the rights of children and young people involves a clear and considered focus on family connection. The children and young people involved in the three examples range in age from

babies to 18 years. We do not include places or names, and we keep our descriptions at a general, illustrative level. With the exception of the third example, we do not disclose cultural and/or family backgrounds. In this case, we do so with the written permission of the young woman concerned, who remains in regular contact with her former caseworker. We also include a short section on working with young Aboriginal women in OOHC to provide additional context for the third example.

A right to re-connection with family

A 2-year-old child who had been removed from parents was jointly case-managed by DCJ and our FSP. DCJ proposed that reunifying the child and mother was unrealistic due to ongoing substance misuse, domestic violence, poor mental health, recent incarceration of one parent and the mother's own extensive abuse history. A court report outlined concerns about the mother's complex abuse history and emphasised her slow progress towards change. This meant it was highly likely a young child would transition from an interim care order to a long-term care order within a short period of time. In this case, a parent's own trauma history was proposed as a reason for considering her as a risky parent.

The child's caseworker did not agree that there was no realistic possibility of reunification. The caseworker and the caseworker's team felt that their views in relation to the mother's efforts and the supports she needed had not been taken into consideration during DCJ's risk assessment phase. They advocated to DCJ that she be given additional time. The caseworker and her team also thought that a mother's trauma history was a compelling reason for providing more time and support, rather than a reason for giving her less time and therefore less support.

The central purpose of the Permanency Support Program (PSP) reform of OOHC in NSW, introduced progressively from 2017 to 2020, was for legal permanency (restoration, guardianship, adoption, long term care) to be achieved within a 2-year time frame. We propose that in this case, adherence to a 2-year time frame would not have allowed sufficient time for healing and family reunification. Here, we note that a review of PSP reforms commissioned by DCJ (Rose et al., 2023) has found failures with respect to timely legal permanency outcomes, either restoration to family, guardianship or adoption. We believe that a close reading of this review strongly indicates that state-wide implementation of the reforms has been uneven, not that the reform itself has been a failure.

The child's caseworker believed that despite apparent slow progress, the child's mother was nonetheless highly motivated to make change and might succeed given additional time and appropriate supports. These supports included therapy for complex trauma, drug rehabilitation and support with developing safe parenting skills during supervised time with her child.

In addition to advocacy for the child's mother, this was also advocacy for the child's right to family re-connection, so long as it is safe to do so. With supports in place and consistent empathetic support from her caseworker and a therapeutic specialist, the child's mother was able to make sufficient changes to demonstrate that she could parent her child safely. For the most part, the changes concerned her circumstances. She needed time and

support to safely leave a coercive partner. She also needed to disassociate herself from almost all of her friends and acquaintances, so that she could reset her life without drugs and alcohol. The decisions to leave her partner and dissociate from friends and associates were her own and, with support, she began the slow process of developing new friendships and social supports. Mother and child are now 3 years post care orders, and both are thriving.

In this case, we believe a fair assessment of the child's mother required careful consideration of her circumstances and her own safety. Securing her child's safety involved supporting her to secure safety for herself. With a narrow focus on child safety, broader circumstantial and social factors that have a negative impact on parents and their ability to provide safe care can be overlooked.

A decisional right of children

A large sibling group on long-term care orders, living with foster carers, have been supported to spend time with their parents to maintain and build connection with them. Connection with parents is usually in children's best interests and we regard such connection as a standing right of children and young people. However, over time each child had decided they no longer wished to see their parents. This decision was and continues to be distressing to the children's parents who feel hurt, demonised and let down by our FSP and the broader child protection system.

In this case, the children's caseworker supported the children's decision and also made consistent efforts to remain in contact with their parents. This has involved frank discussions about the children's reasons for choosing not to see them or have contact with them via other means. This has been difficult for the children's parents to hear and difficult for them to respond to in ways that would allay the children's concerns.

The children's caseworker revisits the issue of family connection with the children on a regular basis in case either individually, or jointly, there is a change of mind. The caseworker and the caseworker's team believe that re-connection will require a shift in perspective by the children's parents and a change in their comportment toward their children, so that the children feel prioritised by them and feel safe in their company. While the caseworker and the caseworker's team fully support the right of children to be connected with family, they believe that in this case, the children's feelings of safety and their decisional rights take priority. However, this does not mean the parents' distress is discounted, nor that efforts to support reconnection have ceased.

In our experience, a period of disconnection between a child and their family can become an unstated, unjustified reason for continued disconnection. This occurs when caseworkers and their organisations cease to prioritise family connection, by failing to keep in touch with families and by failing to seek opportunities for families to address issues that may have led to disconnection in the first place. These failures must be actively resisted.

We now include a short section on working with young Aboriginal women within a non-Indigenous organisation to provide some context for our third and final casework practice example.

Working with young Aboriginal women

Caseworkers within our FSP regularly work with young women who become pregnant prior to leaving care, and at times these are young Aboriginal women. This is unsurprising, as young women in OOHC and/or with recent care experience are more likely than age-related peers to experience pregnancy and become young mothers (Purtell et al., 2019; McDowall, 2020; CREATE, 2022). And, as is well-documented, Aboriginal children and young people are over-represented within OOHC (Lima et al., 2024), and for the most part OOHC is delivered by non-Indigenous organisations. We will return to this issue toward the end of this commentary.

Very often, young Aboriginal women and their families are living with the impacts of child removal and family separation across successive generations. The impacts include the loss of connection to extended kin networks and the loss of cultural knowledge and with this, the loss of an inculcation into cultural parenting and family-raising practices. We note here that mainstream views in OOHC about good parenting and the development needs of children can occlude Aboriginal ways of parenting (Wright et al., 2024).

The non-Indigenous parts of our society are only part way along a journey of learning the meaning and acknowledging the impacts of child removal and family separation for Aboriginal people. In 2008 there was a formal apology by the Prime Minister on behalf of the nation (Parliament of Australia, 2008). This was a significant step. However, learning how to do things differently is a specific obligation for those of us who work within a sector that has direct causal involvement in historical and ongoing child removals and family separations. As Megan Davis's Family is Culture report highlighted, the negative impact upon Aboriginal families, communities and their cultures of successive child removal across generations is the great shame of the NSW child protection and OOHC sector (Department of Communities and Justice, 2019). We are also aware that Aboriginal people in significant leadership positions do not believe the sector has changed (Brennan, 2024; SNAICC, 2024). There is a clear need to listen more and to do things differently and we are aware that non-Indigenous workers, like us, and our non-Indigenous organisations are on notice.

Our general approach of taking care and providing support when working with young women as they approach and enter parenthood is heightened when we are working with a young Aboriginal woman. We are acutely aware of a distinctive responsibility to support a young Aboriginal woman's access to her culture and her family as she takes these steps. The two key frameworks guiding our work with Aboriginal and Torres Strait Islander children, young people and their families are SNAICC's Aboriginal and Torres Strait Islander Placement Principle: A Guide to Support and Implementation (SNAICC, 2015) and DCJ's Aboriginal Case Management Policy (Department of Communities and Justice, 2018). There is also small team of local Aboriginal workers within our FSP who provide advice to caseworkers. This team provides cultural mentoring and outreach to families and kin, and several members of the team are skilled family group conferences facilitators. These conferences are supportive forums for culturally appropriate consultation with families. In these forums, Aboriginal family members come together to discuss and offer support options.

Our experience suggests, and research shows, that the right to exercise choice about matters that concern a young person cannot be a single or infrequent event (Purtell et al., 2023). As workers, we must ensure that our practice is open and flexible and that we do not make assumptions about what a young person wants or what is in their best interests without direct input from them. For example, the supports provided by the Aboriginal team within our FSP are available to a young Aboriginal woman if and when she wants them. Our obligation as caseworkers is to ensure that we do far more than ask or offer cultural support alternatives on one or two occasions.

The following example describes working with a young Aboriginal woman.

A young mother's right to support

A young Aboriginal woman living in residential care with a baby was one of many in her family to grow up in OOHC, and thus without their own mother, father and extended kin network. The young woman had a strong desire to parent her own child and had a clear view of the impact of child removal in her own case and that of other members of her family. She was committed to ensuring her own child would grow up in her care, not in OOHC. While strongly committed to this young woman's goal – for her sake and for the sake of her baby – the young woman's caseworker could see that some of her behaviours and attitudes presented safety risks and that she was reluctant to receive advice from others about safety.

Our FSP rostered a small and consistent team of workers to minimise the number of people the young woman would need to interact with. Even so, the young woman felt there were too many people involved in her life. From her perspective, too many people were telling her what to do and how she should do it. In the early months of her baby's life, the young woman experienced some strong emotions, making it hard for her to remain focused on her baby's needs and hard for her to listen to supportive, well-meant advice. Frank conversations about certain risks posed to her baby's safety were needed and were not well-received. Several Risk of Serious Harm (ROSH) reports were submitted in the baby's early months, because the risks were significant and her caseworker was a mandatory reporter. Whilst submitting these reports, the young woman's caseworker also fiercely advocated to DCJ for time, so the young woman could develop parenting skills and have access to therapeutic and practical supports. Her caseworker believed this was her due, or right, given her own and her family's circumstances and the young woman's strongly stated desire that her child grow up with her, not in OOHC.

The young woman's caseworker and our FSP went to considerable lengths to provide comprehensive therapeutic supports, to find secure housing and child care so the young woman could have time out and to provide practical support and advice during her transition from residential care to living independently. These therapeutic and practical supports were difficult to access because our current child protection system is not geared to support young parents in OOHC (Gill et al., 2020). In the region in which we work, there are no specialised supports for young parents with care experience, nor specialised services for young Aboriginal mothers with care experience. Although there is practice experience within our organisation, there is no specialised training for this work.

There is no additional funding by government to source or develop training, and no funding for the additional time it takes to work with and provide adequate supports for a young mother as she develops parenting skills and confidence.

Over time, the young woman developed a sound understanding of child safety risk and was able to demonstrate her parenting skills. Workers could then step back and give the young woman the 'space' she yearned for. Key factors in the young woman's success were a secure home, a fair and caring assessment of the impact of her early life history and receiving care and support by workers. We regard this support as a necessary 'stand-in' but not a replacement for what could have been in place for the young woman if her family context and history were different.

In our experience, young women in OOHC or with recent care experience rarely have an effective informal support network. We are aware that young women in OOHC or with recent care experience often receive scant celebration of their new status as a parent and receive scant acknowledgement of the legitimacy of their parenting choice (Purtell et al., 2021, 2022; AIFS, 2022). In our view, this is a failure to fully grasp the significance of starting a family for a young person for whom family connection and support has either been absent or precarious (Purtell et al., 2021, 2022).

In this case, the baby's right to protection was secured while also upholding the young woman's right to care, housing security and the time she needed to develop parenting skills while maturing as a young person. Maintaining a strong focus on the young woman's right to care and comprehensive support also secured the baby's right to remain with family. Barker and co-authors proposed that effective support of a young parent with care experience requires supporting parent and child as a 'dyad' by adopting a 'two-generation approach' (Barker et al., 2015: p. 15). We note this is difficult to achieve within a child protection system and OOHC sector that is often more focussed on risk to children, rather than on prevention and support to families. This requires a major shift from a 'risk and react' approach in child protection and OOHC practice, to a coordinated, preventative and supportive approach to child and family wellbeing (Higgins et al., 2024).

The young woman directed the extent to which she wanted involvement and input from her family, and she wished to minimise the number of people in her support team and thus involved in her life. She chose to remain with her non-Indigenous caseworker because they had an established relationship. And she chose not to work with an Aboriginal mentor during her pregnancy or as she was caring for her small baby. Once she no longer needed support from our FSP, and DCJ no longer had concerns about the safety of her child, she chose to move away from our region to another part of regional NSW to be closer to some of her family.

The outcome in this case, and others like it, is particularly significant when there is a long history of child removal and family separation. In the young woman's case, a cycle of child removal and family separation was broken. The young woman's family history and her care experience are strong predictors of ongoing family separation, as evidenced by increasing removals of children from Aboriginal families. The most recent Closing the Gap Report

details that nationally, in 2022, the rate of Aboriginal and Torres Strait Islander children aged 0–17 years in OOHC was 56.8 per 1000 children in the population, which is an increase from 54.2 per 1000 children in 2019, the baseline year. This worsening result means the national target of a 'reduction in the rate of out-of-home care by 45% is off track' (Productivity Commission, 2023a: p. 25).

The removal of children from Aboriginal families must be strictly limited and the current increasing trend of child removals must be reversed (Australian Institute of Health and Welfare, 2024; Productivity Commission, 2023b; SNAICC, 2023, 2024). This requires system and sector changes, one of which we will briefly discuss below. As caseworkers within the current NSW OOHC sector, our contribution to limiting child removal must be enacted on a case-by-case basis. In each case, there is a compelling imperative to support a young mother with care experience, and father if involved, to retain the care of their child. While prioritising child safety is crucial, it must go hand in hand with prioritising family connection. In each case, working with a young mother with care experience requires retaining a clear view of her and her child's rights as entwined. The rights, safety and wellbeing of one is directly connected to the rights, safety and wellbeing of the other.

Conclusion

As caseworkers in an FSP, we often work with young people as they transition to parenthood. We witness the impacts of multi-generational contact with the child protection system and OOHC sector and the failures and/or limitations of government policies and programs of support, and of FSP implementation. We believe that while government-led reform in NSW (following from Justice Wood's review (Wood, 2008), Mr Tune's review (Tune, 2016) and Professor Megan Davis's review (Department of Communities and Justice, 2019)) has produced a stronger focus on the rights of children and young people in OOHC and, in particular, the right of family connection, there is clearly more work to be done.

As we have noted, entry to OOHC is not declining. This indicates a large and often unmet need for services and supports for families so that they remain connected, and children and young people live safely in their own homes, rather than entering OOHC. In addition, the rate of children in OOHC who are reunified with family is not increasing, despite some targeted efforts (Rose et al., 2023). In our view, there should be far more early intervention aimed at preventing contact with the child protection system and OOHC sector in the first place (Higgins et al., 2024; Stevens & Gahan, 2024). This requires a shift in funding priorities and a shift in performance metrics and reporting. However, this cannot involve drawing funds away from children and young people who are currently, or soon to be, in OOHC.

Actioning children's rights requires extensive and creative work to secure services and supports. FSPs are often under-resourced and under-staffed, as are the organisations we turn to when sourcing additional supports for children, young people and families. As caseworkers, we spend considerable time and effort competing for access to services and supports, and this competition is with organisations with a similar goal of meeting the needs of children, young people and families. While government contractors may view the existence of a competitive environment as a driver of

increased operational efficiencies, we believe that competing for services and supports consumes time that could be better spent working directly with children, young people and their families. The casework we have described is slow work. Although efficiencies may be gained around the edges of casework, rights-based casework practice with children, young people and their families is complex and takes time. We believe this needs to be better understood.

Actioning children's rights also requires advocacy, both inside and outside the combined child protection system and OOHC sector. The first and third casework example described advocacy within the system and sector, where FSP caseworkers and their managers advocated to the responsible government organisation, DCJ. This is internal advocacy. In these cases, this was advocacy for more time to source and provide access to support and services in a significantly under-resourced context, both our own OOHC context and the broader human services context. We believe this advocacy is essential and would not be possible were it not for the split, mentioned above, between DCJ oversight and the distributed, community-based FSP service delivery that has occurred post Justice Wood's Special Commission of Inquiry (Wood, 2008).

A further and necessary extension of this government and service provider split is the transition of the case management of Aboriginal children and young people from government and non-Indigenous organisations, like our FSP, to Aboriginal Community Controlled Organisations (ACCOs) as urged in the Family is Culture report (Department of Communities and Justice, 2019), by SNAICC and by Aboriginal community leaders. This advocacy is ongoing, and it is clearly necessary (SNAICC, 2024).

We believe that rights-based casework practice is essential. We know that child rights in general, and the right of family connection in particular, have often been neglected and overlooked in child protection and OOHC casework practice, and this must continue to change. But we also hope that our society finds better ways to support children, young people and their families – particularly Aboriginal children, young people and families – so that contact with the child protection system and entry to OOHC can be minimised. While we are committed to improving OOHC practice and ensuring our practice actions child rights, we are not committed to the ongoing existence or worse, the growth, of OOHC in NSW and nationally.

Author positionality statement

We are non-Indigenous workers within a non-Indigenous-led system with a disproportionate representation of Aboriginal children and young people. We have also assumed an authorial position to propose our view of the primacy of child rights, discuss the drivers of improvements in OOHC casework practice in NSW and describe the current government/non-government organisation service delivery context of OOHC in NSW. Neither our professional position, as non-Indigenous workers within a non-Indigenous system, nor our authorial position describing 'improvements' when arguably a substantial system overhaul is needed, are straightforward or comfortable. We do not believe they should be.

Although we have worked with Aboriginal children, young people and their families – and will continue to do so when asked by our government partner organisation (DCJ), or preferably as requested by Aboriginal families or local Aboriginal organisations – we fully support, and view as necessary, the transition to Aboriginal Community Controlled Organisations, noted above. We do believe reform is underway and, we hope, more will follow. If the reforms are successful, our professional position *should* (in both the moral

and practical senses of this term) disappear, and along with this, the authorial position and perspective from which we currently write.

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