



HUMAN
RIGHTS
WATCH

“All I Know Is I Want Them Home”

Disproportionate Removal of Aboriginal Children
from Families in Western Australia

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Terms

Aboriginal people, Indigenous people, and First Nations: The first peoples of Australia. The Australian government defines an Aboriginal person as someone who “is of Aboriginal descent; identifies as an Aboriginal person; and is accepted as an Aboriginal person by the community in which he or she lives. Aboriginal people comprise diverse Aboriginal nations, each with their own language and traditions and have historically lived on mainland Australia, Tasmania or on many of the continent's offshore islands.” Indigenous or First Nations is a broader term that generally refers to both Aboriginal peoples and Torres Strait Islander peoples. Indigenous peoples is also a term recognized internationally, including in the UN Declaration on the Rights of Indigenous Peoples. Torres Strait Islander peoples come from the islands of the Torres Strait and are of Melanesian origin with their own distinct identity, history, and cultural traditions. This report has sometimes also used the term Indigenous or First Nations, particularly when referring to national data that includes Torres Strait Islander peoples.

Out-of-home care: Overnight care for children under 18 years old who do not live with their biological families, usually because they have been removed from them by the Department of Communities. Out-of-home care can include foster care, kinship (family) care, and residential group homes that are properties where multiple children live and are staffed by social workers.

Department of Communities: The Western Australian government department responsible for child protection, housing, and responses to family and domestic violence. Prior to 2017, Western Australian child protection was its own separate department named Department of Child Protection. Similarly, housing operated as its own department named the Housing Authority. This report also refers to the Department of Communities as the “department” or “child protection authorities.”

Child: Refers in this report (together with the words “boy” or “girl”) to anyone under the age of 18. The Convention on the Rights of the Child states that under the convention, “A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

Summary

It's a struggle to get up every day.... I'm just trying to take it one day at a time and not try and think about the long term and all the things I'm going to miss out on because obviously that doesn't help and just overwhelms me.

I'm going to miss those first words, the first roll over, everything, they're going to stop me from that first-time normal experience. You go from being a mum and getting used to doing bottles and feeding times ... to completely nothing.

— Briana L. (pseudonym), a 36-year-old Aboriginal woman from Perth, Western Australia, whose three-month old son was removed from her care

In March 2024, Briana L. received an email from Western Australia's child protection authorities informing her they were planning to remove her only child, 3-month-old "Mica," from her care.

The email came less than a week after the domestic violence refuge where Briana had lived since Mica's birth evicted them. Child protection workers said they were taking Mica from Briana's care due to her unstable housing situation, Briana told Human Rights Watch. Days after the email, child protection authorities from the Western Australian Department of Communities took Mica away.

"They never had an issue with my parenting until I didn't have a roof over my head," she said. "Just because someone's homeless we shouldn't be taking the child off them. You should be offering them more help if anything."

In Australia's state of Western Australia, the Department of Communities is the government agency responsible for child protection. It is also the lead agency responsible for responding to family and domestic violence and providing both public and emergency housing.

Yet when Briana had sought help from the department after her violent ex-partner forced her from their home during her pregnancy, she found their response to be completely inadequate.

Initially, the department funded a few days of temporary motel accommodation for her and then found her a place at a refuge located more than 90 minutes away via public transportation. At the time, Briana was more than six-months pregnant, did not have a car, and the refuge's location was far from her support network. It would make access to prenatal appointments difficult and would put her at a financial burden because of the extra travel costs. For these reasons, she declined the offer. Her department case worker told her the only option remaining was to provide her with a tent.

“Whilst we will not pay for further motel accommodation, we will provide you a tent, but you need to find your own tent site,” the case worker wrote in a text message seen by Human Rights Watch. “[P]roviding you a tent is the only option as you have refused to accept refuge accommodation.”

Briana rejected the tent offer and eventually convinced the department to continue paying for the motel until her son's birth. After he was born, she accepted an offer at a domestic violence refuge in a different location. She said the refuge evicted her because of a dispute with staff who allegedly ignored her complaints about an ant infestation in her unit.

After this eviction, in March 2024, the department removed Mica from her care. Briana said one of the reasons the department gave to justify removing Mica was that she had once turned down a placement at a refuge because it was unsuitable for her needs.

The Department of Communities moved Mica to a placement with general foster carers, after initially placing him in the care of Briana's brother. She was allowed only supervised visits with him at the department office. Briana was fighting the finalization of a protection order that would grant the department parental responsibility for up to two years. At the same time, she was still seeking long-term housing and alternating between hotel stays, caravan parks, and staying with friends. Despite being on the public housing wait list, she was informed by department officials it could take up to four years for a suitable property to become available in her area.

Briana described feeling treated “like a number” by the department case workers. She said they were unable to answer her questions about when she might be reunited with her son. “They haven't given me any options as such, they just removed him,” she said. “So they haven't even given me the opportunity to rectify things.”

Out-of-home care refers to the system of state removals of children from their parents' care to live with foster carers, kinship (relative) carers, or in group homes—properties staffed by social workers where multiple children live. In Western Australia, Aboriginal children are more than 20 times more likely to be living in out-of-home care than non-Indigenous children.

The number of Aboriginal children in out-of-home care in Western Australia has skyrocketed over the past two decades. In 2003, there were 570 Aboriginal children in out-of-home care, comprising about 35 percent of the total children in care. By 2023, this number had risen to 3,068 Aboriginal children, constituting 59 percent of all children in out-of-home care. Despite Aboriginal children making up only about 7 percent of Western Australia's total child population, they now represent a majority in the state's care system. Western Australia has the highest rate of overrepresentation of Aboriginal children in out-of-home care of any state or territory in Australia.

This report examines the circumstances of Aboriginal children removed from their parents by the Department of Communities in Western Australia to be placed in out-of-home care. Human Rights Watch, working with the local organization National Suicide Prevention and Trauma Recovery Project, interviewed 33 Aboriginal parents from whom the department had removed more than 100 children (the average parent interviewed had three children removed); four Aboriginal children who had been removed from their parents; three Aboriginal young adults who were removed from their parents as children; and 13 grandparents whose grandchildren had been removed from their adult children's care. Some of the grandparents, children, and young people interviewed were from the same families as the parents interviewed. Human Rights Watch also interviewed two Aboriginal mothers whom the Department of Communities investigated but whose children they did not remove.

In Western Australia, child protection is governed by the Children and Community Services Act. Under the act, the Department of Communities, as the child protection authority, has the power to remove children from their families where they are deemed to have experienced harm or be likely to experience harm because of physical abuse, sexual abuse, emotional abuse, and/or neglect. The act defines emotional abuse as psychological abuse and/or being exposed to family violence.

The Department of Communities' data shows that allegations of "exposure to family violence" followed by neglect is the most common reason why the department substantiates harm in investigations into Aboriginal families. Human Rights Watch research found a similar trend among the people it interviewed with domestic violence as the most common reason parents cited when asked why the department had removed their children. Homelessness and neglect were also commonly cited. Homelessness is not listed in Western Australian law as a form of abuse or neglect that can deem a child needs protection. However, Human Rights Watch found some of the department's policy documents on neglect seemed to conflate homelessness (a symptom of poverty) with neglect.

Parents interviewed by Human Rights Watch commonly identified multiple factors leading to child removals. The most cited factors among the parents interviewed were domestic violence, followed by substance-use allegations. Others stated their homelessness, neglect allegations, their own incarceration, food insecurity, or physical violence allegations. A couple of parents referred to their children not attending school or their failing to provide medical care as reasons.

Despite the state's legislation and policy claiming removals should only occur when it is in "best interests" of children to protect them from harm, parents contended the Department of Communities unjustifiably removed their children and punished them for situations beyond their control, such as homelessness or being a victim of domestic violence, instead of providing them with the support to care for their children.

In several cases that Human Rights Watch documented, mothers facing domestic violence received an inadequate response from authorities, who failed to protect them from violence and then exacerbated their trauma by removing their children.

Human Rights Watch found that there was inadequate housing for domestic violence survivors. Some women described a "victim-blaming" approach from the Department of Communities' case workers and did not report domestic violence to authorities because of fears the department would remove their children. In some cases, women reported they avoided seeking medical assistance after incidents of domestic violence because they were fearful of their children being removed. While the safety of children needs to be the priority, the department's current approach is having a perverse impact in that some

women stay in insecure housing or violent relationships because of fears their children will be removed.

Many parents told Human Rights Watch that the Department of Communities gave them insufficient or inappropriate support before removing children from their care. These accounts highlight systemic issues exacerbated by inadequate resourcing for family support. In the year 2022-2023, less than 5 percent of the government's total child protection budget was allocated to family support services.¹ Western Australia spends the lowest proportion of its child protection budget on family supports of any Australian state or territory.

Despite Western Australia being a wealthy state with a A\$3.2 billion budget surplus (US\$2 billion) and Gross State Product per capita in 2022-23 of A\$157,390 (US\$98,060) which is 62 percent above Australia's GDP per capita of A\$97,435 (US\$60,710), there is a shortage of public housing. Those on the public housing waitlist on average face 2.5 years wait time to be housed. Except for New South Wales, the Western Australian state government spends the least of any state or territory on homelessness services, when expenditure is calculated per person in the residential population.

Responses to domestic violence are also inadequate, with women reporting difficulty accessing emergency accommodation. Some of the women interviewed by Human Rights Watch reported being evicted from domestic violence shelters with nowhere else to go after disagreements with shelter staff. Australian Institute of Health and Welfare data shows there were at least 657 victims of family violence in Western Australia in 2022-2023 whose needs for accommodation went unmet. In the same period, there were 1,251 recorded cases of women and children who had been impacted by family violence and were also facing persistent homelessness.

In the cases that Human Rights Watch documented, it was most common for the department to place children removed from their parents with extended family members; general foster care was the second most common placement type. The department had also placed a small number of children in residential group homes.

¹ The year 2022-2023 refers to the fiscal year between July 1, 2022 to July 1, 2023.

In most of the cases examined by Human Rights Watch, the Department of Communities did not reunite children with their parents following removal. Of the 114 children that were removed from their parents interviewed by Human Rights Watch, only about 18 were reunited. In some cases, children became so desperate to leave care and reunite with their parents that they resorted to running away from their care placements to return to their parents.

Separating children from their families has well-documented damaging impacts, including long-term emotional and psychological consequences. For example, a 2018 Telethon Kids Institute report commissioned by Western Australia's Department of Communities found that Western Australian young people who had spent time in out-of-home care had poorer outcomes than young people who had experienced maltreatment but did not enter care in most areas of physical health, mental health, and education. The report said Aboriginal children in out-of-home care were twice as likely to have poor outcomes compared to non-Aboriginal children.

The United Nations Committee on the Rights of the Child, the body of independent experts that monitors countries' compliance with the Convention on the Rights of the Child, which Australia has ratified, has said that when states consider "best interests" of Indigenous children, this should include consideration of their cultural rights and their need to exercise such rights collectively with members of their group. The Indigenous community should be consulted and given an opportunity to participate in the process on how the best interests of Indigenous children in general can be decided in a culturally sensitive way. The committee has said maintaining the best interests of the child and the integrity of Indigenous families and communities should be primary considerations in development, social services, health, and education programs affecting Indigenous children.

While the stated aim of Australia's child protection system is to protect children from harm, children can be abused in the out-of-home care system by foster carers, family carers, or other children at residential group homes. Human Rights Watch has documented cases in which children had experienced sexual, physical, and emotional abuse in out-of-home care.

Children in out-of-home care are also over-represented in Western Australia's criminal justice system. Research commissioned by the Department of Communities found that

young people who were transferred to out-of-home care were more likely to have adverse outcomes compared to young people who had experienced maltreatment but did not enter care. The study found that Aboriginal children with child protection involvement were even more likely to have poorer outcomes.

Western Australia has failed to address harms caused by the legacy of the “Stolen Generations”—a period up until the 1970s when government officials intentionally targeted Aboriginal children for removals as part of racist policies designed to “absorb” Aboriginal people into the white population. In Western Australia, Stolen Generations survivors were never provided redress. Many of the families interviewed by Human Rights Watch who faced contemporary child removals were descendants of Stolen Generations survivors. For these families, ongoing child removals were particularly devastating.

The Convention on the Rights of the Child affirms the child’s right “as far as possible, to know and be cared for by his or her parents.” The Committee on the Rights of the Child has emphasized that parental separations should be “a last resort measure,” such as when necessary to ensure a child’s safety, advocating for less intrusive measures whenever feasible. Less intrusive measures can include connecting families with culturally appropriate support, or in cases where there are more serious concerns, full-time childcare or family-supported accommodation.

Poverty experienced by many Indigenous people reflects successive Australian governments’ failure to uphold the right to an adequate standard of living for all people without discrimination, to the maximum of its available resources, as required by the International Covenant on Economic, Social and Cultural Rights, which Australia ratified in 1975. Poverty should be treated as a state failure, as opposed to a failure of an individual that justifies child removal. The Committee on the Rights of the Child has said that poverty alone cannot justify separating children from their families. States are obligated to provide adequate support to parents to strengthen their capacity to care for their children before considering removal. Economic reasons cannot be a justification for family separations.

Human Rights Watch’s findings corroborate what First Nations communities have long stated: many Aboriginal children are being removed from their families because of a system that focuses more on policing families than providing them with needed support. Many of this report’s recommendations echo those made by previous government

inquiries and reports, indicating past failed efforts to implement the reforms needed to end systemic discrimination within the out-of-home care system. In partnership with the Aboriginal advocacy organization National Suicide Prevention and Trauma Recovery Project, Human Rights Watch conducted this research to promote the voices of First Nations people, bring greater attention to the unacceptably high rates of Aboriginal child removals in Australia, and frame the issue in terms of Australia's international legal obligations.

Human Rights Watch's recommendations focus on ensuring families have access to adequate support early, including access to legal representation, in accordance with their rights.

First Nations people should also be central to decision-making as reforms are made to end the overrepresentation of Aboriginal children in the Department of Communities' child removals.

The UN Declaration on the Rights of Indigenous Peoples, which Australia endorsed in 2009, affirms the right of Indigenous peoples to self-determination and to participate in "decision-making matters which would affect their rights, through representatives chosen by themselves" and "maintain and develop their own indigenous decision-making institutions."

"When we give the right supports to the children and the families, they [thrive]," said an Aboriginal nongovernmental organization worker. "[Y]ou see them out in the community and they're doing really good, and they're connected back into their families and their culture, and that's what we want."

Recommendations

To the Western Australian Government

- Enact legislation to introduce a child protection notification referral system, similar to the existing Aboriginal Custody Notification System, to automatically refer families to culturally safe, free legal advice as soon as they have any form of contact with the child protection system.
- In cases that would not present a safety risk, allow the parents' legal representatives to appear at Children's Court hearings that are currently held *ex parte*—without the presence of the parents—to determine whether a warrant will be issued to remove a child. If a spontaneous decision needs to be made in relation to warrants and a hearing is held *ex parte*, at the first hearing after the warrant has been issued, permit the parents or their legal counsel to argue for the return of the child on an interim basis.
- To ensure the best interests of the child are a primary consideration, enact legislation providing a right to legal representation for parents experiencing child removal.
- Establish a redress scheme for Western Australian Stolen Generations survivors, in consultation with Indigenous peoples, and informed by reparations programs already established in New South Wales, Victoria, South Australia, Tasmania, and the Federal scheme for survivors from the Territories.
- Legislate a Western Australian human rights act with strong protections for children and cultural rights, and implementing key human rights enumerated in the United Nations Declaration on the Rights of Indigenous Peoples.
- Establish an independent monitoring mechanism of the Western Australian out-of-home care system that allows children, their parents, and civil society organizations to make individual complaints. The monitoring mechanism should be empowered by law to visit care settings in a culturally safe and appropriate manner, to undertake investigations into any alleged situation of violation of children's rights in those settings based on a complaint or on its own initiative.
- Create a position of Western Australian commissioner for Aboriginal children and young people. The Commissioner must not report to another position and should be independent from government. The commissioner should also be empowered to

- initiate inquiries, receive and determine individual complaints against both public and private institutions and individuals from or relating to Aboriginal children and young people, including children in out-of-home care.
- Continue to invest in and provide resources for Aboriginal community-controlled organizations (ACCOs) to deliver child protection services.
 - Continue to expand the scope and reach of ACCO involvement in child protection decision-making and service delivery, building on initiatives including the Aboriginal Representatives Organisations program. Involve people with lived experience of out-of-home care wherever possible.
 - Establish a family reunification taskforce to review placements of Indigenous children in out-of-home care, identify barriers to reunions, and steps the department can take to reunite families. This taskforce should include lived experience advocates.
 - Transfer statutory responsibility for providing child protection services (including case planning and case management) to Aboriginal and Torres Strait Islander children to ACCOs, in line with the UN Declaration on the Rights of Indigenous Peoples, and ensure appropriate resourcing.
 - Strengthen compliance with the legislated Aboriginal and Torres Strait Islander Child Placement Principle by introducing a reviewable and enforceable legislative requirement for authorities to make “active efforts” that work to keep children connected to family, culture, community, and country. This follows similar active efforts legislation in other states and territories.
 - Enact legislation abolishing no-grounds evictions—evictions that can occur without reason.
 - Enact legislation banning evictions of children and their guardians from public housing if it would result in the children becoming homeless.
 - Prioritize a child’s right to know and be cared for by their parents. Ensure that a child shall not be separated from their parent against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.
 - Prohibit separation of children from birth families because of poverty and financial reasons.
 - Provide a formal commitment to implement the West Australian roadmap to reduce the overrepresentation of Aboriginal children in out-of-home care.

- Fund First Nations run and led birthing services with access to community and health care supports, such as the existing Waminda South Coast Women’s Health and Welfare Aboriginal Corporation in New South Wales.

To the Western Australian Department of Communities

- Increase rollout of culturally sensitive and holistic programs that are intended to support parents in preventing removal of a child.
- Support and strengthen birth families of children currently placed in institutions or foster care with the aim of reuniting the child with their birth family.
- Update Department of Communities’ policy, including the case worker manual, to remove unstable housing or homelessness from the department’s definition of “neglect.” The department policy should be explicit that circumstances relating to poverty should not justify child removal and where a family is facing homelessness, the onus is on the department to provide accommodation, not remove children from their parent’s care.
- Update the Department of Communities’ case worker manual to remove directions that case workers should consider “intaking” a case where families repeatedly present for financial support.
- Update the Department of Communities’ policy on provision of bail undertakings for children in its care to state the department should always support bail.
- Work with Western Australian police to develop a “care not custody” protocol similar to those in other states, to ensure children in out-of-home care are not subject to unnecessary policing.
- Revoke the Department of Communities “three strikes” eviction policy.
- End the use of “fixed-term” public housing tenancies by the department.
- Update the Department of Communities’ policy for child protection teams responding to families facing evictions from its public housing properties. Rather than a policy stating accommodation is not the responsibility of child protection workers, it should state that the department’s housing and child protection teams should work together to ensure adequate accommodation for families.
- Change department policies on responding to victims of domestic violence, ensuring that victims are supported with their children. Support should include accommodation and refuges funded by the department. Policies should take into account the complex reasons why women remain in violent relationships including

lack of access to safe accommodation, as opposed to considering this a “failure” of victim-survivors to protect their children.

- Ensure that domestic violence refuges funded by the department have policies prohibiting evicting women and their children into homelessness. When for whatever reason a woman and her children are no longer able to stay at a refuge, the refuge should work with the department to find them alternative accommodation.
- Fund refuges and shelters for family and domestic violence victims in rural and remote locations of Western Australia, with a commitment for the department to jointly operate with local-led family and domestic violence services.
- Provide financial supports for parents of children in out-of-home care to support visitations.
- Work with ACCOs and lived experience advocates to identify children currently in care who may be able to be reunified with their families, and identify current barriers to reunification.
- Make cultural competence and anti-racism trainings mandatory for all Department of Communities staff, building upon the existing Aboriginal Cultural Capability Reform Program (ACCRP). Training should include the history of the Stolen Generations. Adopt mechanisms to ensure effectiveness of the training.
- Ensure the Aboriginal and Torres Strait Islander Child Placement Principle is fully incorporated into departmental policy and practice and that compliance with the principle is monitored.
- Establish a family reunification taskforce to review placements of Indigenous children in out-of-home care, and identify barriers to reunions and steps the department can take to reunite families. This taskforce should include lived experience advocates.
- Provide an ongoing vehicle for funding grassroots, lived-experience advocates to support families.
- Ensure families are given fair due process to respond to any allegations made against them that have an impact in any child protection assessment made by the department.
- Release monthly data on the number of Aboriginal children taken into care, including via removals that occur without warrants, and data indicators of the wellbeing of children in care including data relating to incidents of harm (disaggregated by type of incident). Indicators on wellbeing should align with the

National Out-of-Home Care Standards and Aboriginal social and emotional wellbeing. How data is collected and published should be determined by an Indigenous data sovereignty partnership or mechanism.

- When children self-place back with their parents, provide support to the parents that acknowledge changed housing and other needs.

To the Australian Federal Government

- Implement Action 4 of the Safe and Supported: The National Framework for Protecting Australia's Children 2021-2031 as soon as possible. The lived experience mechanism should be actively involved in co-designing out-of-home care policies across Australia.
- Raise the rate of social security payments, including parenting and single parenting payments, to ensure they can cover an adequate standard of living.

To Australia's International Partners and Concerned Governments

- Publicly and privately urge Australian state and territory governments to take urgent steps to reduce the overrepresentation of Aboriginal children in out-of-home care.
- Press Australia to be compliant with the UN Guidelines for Alternative Care.

Methodology

Human Rights Watch partnered with the Aboriginal advocacy organization National Suicide Prevention and Trauma Recovery Project for this report.

In Western Australia, Human Rights Watch and the National Suicide Prevention and Trauma Recovery Project interviewed 33 Aboriginal parents from whom the Department of Communities had removed a total of at least 114 children; 7 Aboriginal children and young people who had been removed from their parents; and 13 grandparents (12 of whom were Aboriginal, and one was non-Indigenous, but whose adult child was Aboriginal) whose grandchildren had been removed from their adult children's care. Human Rights Watch also interviewed 2 Aboriginal mothers whom the Department of Communities investigated but did not remove their children.

Some of the children, young people, and grandparents interviewed were from the same families as the parents interviewed. Many of the interviewees had been supported by the National Suicide Prevention and Trauma Recovery Project. Human Rights Watch also met with a former social worker, lawyers who had represented families who had their children removed, and workers from nongovernmental organizations, including Aboriginal community organizations and housing advocates.

Interviews were conducted from November 2022 to December 2024 by an Aboriginal consultant from the National Suicide Prevention and Trauma Recovery Project and two Human Rights Watch researchers. In addition to the consultant, five Indigenous women who work with the National Suicide Prevention and Trauma Recovery Project also assisted with the interviews. No compensation was paid for the interviews. All interviews were conducted in English.

When possible, Human Rights Watch reviewed court documentation relating to removals to verify interviewee accounts. Human Rights Watch also viewed some written communication between child protection workers and families that the families provided.

All names of interviewees in this report are pseudonyms. Under Western Australian law, children in the care of the state cannot be identified. One Stolen Generations survivor has been identified by his full name, as his case did not relate to a current child in care.

Human Rights Watch reviewed both federal government and Western Australian government policy documents, data from the Australian Institute of Health and Welfare, and reports from Aboriginal and Torres Strait Islander nongovernment organizations, including the Family Matters annual report.

Human Rights Watch wrote to the Western Australian Department of Communities on February 10, 2025, with questions relating to its findings, but did not receive a response.

Background

Harmful Legacy of the “Stolen Generations”

The forced removal of Aboriginal children from their families is deeply embedded in Australia’s colonial history. From the arrival of British colonizers in Western Australia in the mid-1800s, colonial authorities introduced laws and policies that enabled government officials to forcibly remove Aboriginal children from their families with the goal of assimilating them into the white population. The 1905 Aborigines Act established the position of chief protector—a public servant who was made the legal guardian of every Aboriginal child under the age of 16.²

Race-based laws and policies that provided legal cover for the state to forcibly remove Indigenous children from their families continued in Western Australia and other Australian states and territories until the 1970s.³

Removals were underpinned by a racist ideology that saw Aboriginal and Torres Strait Islander culture as inferior and needing “civilization.”⁴ Government officials placed children in foster homes, internment camps, or religious institutions where they were often subject to physical and sexual abuse and forced labor. Government officials who ran some institutions referred to children by using numbers instead of names.⁵

² Human Rights and Equal Opportunity Commission, “Bringing them home. 8. The Laws – Western Australia,” 1997, <https://humanrights.gov.au/our-work/projects/8-laws-western-australia-bringing-then-home-1997#:~:text=1900s-,Aborigines%20Act%201905,the%20age%20of%2016%20years.>

³ Human Rights and Equal Opportunity Commission, “Bringing Them Home,” 1997, p. 217, https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf.

⁴ *Ibid.*, p. 95.

⁵ Healing Foundation, “Bringing them home: 20 years on” (2017), <https://healingfoundation.org.au/app/uploads/2017/05/Bringing-Them-Home-20-years-on-FINAL-SCREEN-1.pdf>.

A.O. Neville, who was the Western Australia chief protector from 1915 to 1936, wrongly believed Aboriginal peoples were a dying race.⁶ He thought First Nations children who were of mixed heritage or lighter skin should be “absorbed” into the white population.⁷

The number of Aboriginal children that government officials forcibly removed across Australia is not known, but it has been estimated that government officials took at least 1 in 10 and as many as 1 in 3 Indigenous children in the period from 1910 to 1970.⁸ The children removed during this period are referred to as the “Stolen Generations.”

In 1997, the then-Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission) held a national inquiry into the Stolen Generations and published the “Bringing Them Home” report.⁹ The commission found that the principle aim of the government policy of removing Indigenous children had been to “eliminate Indigenous cultures as distinct entities”¹⁰ and “could properly be labelled ‘genocidal.’”¹¹ It described the removals as a “level of systematic racism that amounts to a gross violation of [the children’s] human rights.” The commission noted that policies to “absorb” and “assimilate” Aboriginal children “persisted until the early 1970s” and “continues to influence public attitudes and some official practices today.” The commission emphasized that the racially discriminatory policies had continued long after Australia had adopted international legal standards to eliminate racial discrimination:

[W]ithin a few years of the end of the Second World War, Australia, together with many other nations, had pledged itself to standards of conduct which required all governments to discontinue immediately a key element of the assimilation policy, namely the wholesale removal of Indigenous children

⁶ Human Rights and Equal Opportunity Commission, 1997, “Bringing Them Home: Chapter 2,” <https://humanrights.gov.au/our-work/projects/bringing-them-home-chapter-2>.

⁷ Human Rights and Equal Opportunity Commission, “Bringing Them Home” (1997), https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf, accessed November 26, 2024, p. 24.

⁸ Human Rights and Equal Opportunity Commission, 1997, “Bringing Them Home,” https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf, p.31.

⁹ Human Rights and Equal Opportunity Commission, “Bringing Them Home” (1997), https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf, accessed November 26, 2024.

¹⁰ *Ibid*, p. 237.

¹¹ *Ibid*, pp. 230-231.

from Indigenous care and their transfer to non-Indigenous institutions and families. The United Nations Charter of 1945, the Universal Declaration of Human Rights of 1948 and the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 all imposed obligations on Australia relating to the elimination of racial discrimination. Genocide was declared to be a crime against humanity by a United Nations Resolution of 1946, followed by the adoption of a Convention in 1948.¹²

The commission found that, “[t]he Australian practice of Indigenous child removal involved both systematic racial discrimination and genocide as defined by international law. Yet it continued to be practiced as official policy long after being clearly prohibited by treaties to which Australia had voluntarily subscribed.”¹³

Following the release of the “Bringing Them Home” report in May 1997, the Western Australian government was the first Australian parliament to issue an apology for past policies, passing a motion two days after the report’s release that acknowledged the “hurt and distress” caused to Aboriginal families.¹⁴

In 2008, Australia’s then-Prime Minister Kevin Rudd made a national apology to the Stolen Generations, acknowledging “the laws and policies of successive parliaments and governments” had resulted in the forcible removal of Aboriginal and Torres Strait Islander children from their families and “inflicted profound grief, suffering and loss on these our fellow Australians.”¹⁵

Failure to Provide Redress for Past Racist Laws and Policies

The “Bringing Them Home” report triggered apologies to the Stolen Generations, but many of its recommendations remain unimplemented. This includes the recommendation to provide reparations to all who suffered because of forcible removals.

¹² *Ibid.*, pp. 230-231.

¹³ *Ibid.*, p. 231.

¹⁴ The Hansard of the Legislative Assembly of the Parliament of Western Australia, May 28, 1997, [https://www.parliament.wa.gov.au/Hansard/hansard187oto1995.nsf/83cc4ce93b5d4e0b48257b33001cfef6/3B51558D54EA683648258435001EEBCD/\\$File/19970528_Assembly.pdf](https://www.parliament.wa.gov.au/Hansard/hansard187oto1995.nsf/83cc4ce93b5d4e0b48257b33001cfef6/3B51558D54EA683648258435001EEBCD/$File/19970528_Assembly.pdf), accessed November 7, 2024, p.3.

¹⁵ Australian Parliament House, “Apology to Australia’s Indigenous peoples,” https://www.aph.gov.au/Visit_Parliament/Art/Icons/Apology_to_Australias_Indigenous_Peoples.

Western Australia had the highest rate of removals during the Stolen Generations, and currently, more than half of its Aboriginal population are descendants from those removed.¹⁶ As of 2018, approximately 4,900 survivors were estimated to be living in the state. Despite this, the Western Australian government has never introduced a redress program for survivors. Western Australia is a notably wealthy state and in May 2024 the state government announced a A\$3.2 billion (US\$2.0 billion) budget operating surplus.¹⁷ Queensland is the only other state or territory besides Western Australia without a redress program.¹⁸

Research shows Stolen Generations survivors and their descendants experience poorer health and social outcomes compared to Indigenous Australians who had not been removed from their families.¹⁹

A 2018 report from the Australian Institute of Health and Welfare and The Healing Foundation, covering the years 2014-2015, found that Stolen Generations survivors were more likely to have low levels of trust in the general community and to report poor mental health.²⁰ A third of Stolen Generations survivors indicated they had trouble accessing services.²¹ The Healing Foundation warned of the intergenerational impact of the traumas:

If people don't have an opportunity to heal from trauma, it continues to impact on the way they think and behave, which can lead to a range of negative outcomes including poor health, violence and substance abuse. This in turn leads to a vicious cycle of social and economic disadvantage.

¹⁶ Australian Institute of Health and Welfare, "Aboriginal and Torres Strait Islander Stolen Generations aged 50 and over: updated analyses for 2018-19" (2017), <https://cdn.healingfoundation.org.au/app/uploads/2021/05/18121806/AIHW-Report-FINAL-May-2021.pdf>.

¹⁷ Western Australian Government, WA Budget Media Release, May 10, 2024, <https://www.wa.gov.au/government/announcements/2024-25-state-budget-0#:~:text=The%202024%2D25%20Budget%20reflects,surplus%20forecast%20for%202024%2D25>, accessed December 16, 2024.

¹⁸ In 2021, the federal government announced a program for survivors who were removed from their families in the Northern Territory, Australian Capital Territory, or the Jervis Bay Territory before these areas achieved self-government. Tasmania had a program from 2007 to 2008, South Australia ran a program from 2016 to 2018, New South Wales offered a program from 2017, which closed its applications in March 2024, and Victoria announced a program in 2022 that will run until 2027.

¹⁹ Australian Institute of Health and Welfare, "Aboriginal and Torres Strait Islander Stolen Generations aged 50 and over," (November 2018), <https://cdn.healingfoundation.org.au/app/uploads/2018/11/18122200/Aboriginal-and-Torres-Strait-Islander-Stolen-Generations-aged-50-and-over.pdf>, accessed November 2, 2024.

²⁰ *Ibid.*, p. 7.

²¹ *Ibid.*

Unknowingly, the trauma is often passed down to the next generation and then the next, which creates a ripple effect within families and communities.²²

Several Stolen Generations survivors told Human Rights Watch that their own children and, in some cases, grandchildren had also been removed from their families and taken into care by Western Australian authorities.

Alice M., whose five grandsons the Department of Communities removed from her care, said her family had experienced about six generations of removals:

They failed my mum first, taken her off Nan [grandmother]. Mum was 6 months old, all she knew was [life at a mission] and she left there when she was 13 and they made her be like a governor's kind of thing, a house cleaner. And made her a slave, may as well say, in one house first, doing all the cleaning and cooking and all that. She was a 13-year-old kid.

Then she had me when she was 15 and I was taken. The minute I was born I was whisked out of the room. And then all of that intergenerational trauma has just kept carrying on. My kids were taken too because I had issues that I didn't understand, and I hit the drink.

I feel like I'm tired. I don't want to cry. I feel like I've been fighting my whole life. I want a life. I want to have it easy for a little while. I want to take a break. I want to have everything I need. I want to just sit back and say, "Yeah, I'm happy. This is life." Not be like constantly thinking, "Who are you? Why are you? Where are you? What are you?" Why they keep persecuting my kids and now my grannies? They're perpetuating the crap because the next generation will still be going, getting taken.²³

²² The Healing Foundation, "Stolen Generation Demographic Report Factsheet," June 2018, https://healingfoundation.org.au/app/uploads/2018/09/Stolen_Generation_Demographic_Report_Factsheet_Jun2018_V7.pdf, accessed November 2, 2024, p. 4.

²³ Human Rights Watch interview with Alice M., February 20, 2023, Perth.

She said that while no amount of money would “make up” for what the family had experienced, financial compensation could mean she could provide housing stability for her family.²⁴ At the time of her interview, she was facing an eviction from her rental property.

Tony Hansen, co-chair of Yokai, an Aboriginal organization in Western Australia, and a Stolen Generations survivor, said that compensation was crucial for survivors, many of whom faced severe economic hardship:

In some people’s cases the money is so important because they have nothing. They have limited resources, some of these people don’t even have a home and they’re the most disadvantaged people in our community.... We had a [state budget] surplus that was A\$4.7 billion last year [US\$2.9 billion] ... and the state government of [Western Australia] is still not coming to the party to look at what compensation packages might be.

One of our elders passed away two years ago—she said, “They’re waiting for us all to die.” Sadly, she’s gone, she’ll never see [compensation].²⁵

Unaddressed Trauma

State governments in Australia have not adequately addressed the intergenerational trauma endured by members of Indigenous communities. The Australian Institute of Health and Welfare in its report “Intergenerational trauma and mental health,” concluded that:

The ripple effects of colonisation are ever-present in the legacy of unresolved trauma that has been transmitted and reproduced in successive generations of Aboriginal and Torres Strait Islander communities.... This legacy can be traced through the violent dispossession of Aboriginal and Torres Strait Islander peoples from Country; the forcible removal of children

²⁴ Ibid.

²⁵ Human Rights Watch interview with Tony Hansen, April 3, 2024, Perth.

from families during the Stolen Generations; and contemporary institutions such as the health, welfare and juvenile justice systems.²⁶

Governments at state and federal levels have repeatedly failed to adequately address and end the systemic racism that is reflected in this ongoing trauma.

Megan Krakouer, an activist and Noongar woman who assisted Human Rights Watch on this report said:

There's so much unaddressed trauma with a lot of our people, a lot of our people, they have so much trauma in the sense of somebody has passed away or someone's been killed, or there's another person that's in jail. There's just so much trauma and heartache with a lot of our families, and sometimes the trauma is invalidated.²⁷

Aboriginal elder Brian Butler, in his 2021 book *Sorry and Beyond*, emphasized the role child removals have had in the ongoing cycle of intergenerational trauma endured by Indigenous communities:

For 200 years, Indigenous children have been removed from their families. The devastation this has caused will not be answered in a couple of decades. We need to develop healing initiatives for the next 20 to 30 years, and the Indigenous community needs to set the lead.

There is a long and traumatic history to be overcome. We were placed in missions and reserves, denied our traditional diet and forced to eat foods which have given us obesity, high blood pressure and diabetes. I know communities where the adults' health is so bad that they have no hope of bringing up healthy children. The removal policies have left us with broken families and communities. Depression and meaninglessness have created

²⁶ Australian Institute of Health and Welfare, "Intergenerational trauma and mental health," <https://www.indigenousmhspc.gov.au/getattachment/6f0fb3ba-11fb-40d2-8e29-62f506c3f80d/intergenerational-trauma-and-mental-health.pdf?v=1599>, 2023, accessed November 25, 2021, p. 2.

²⁷ Human Rights Watch interview with Megan Krakouer, November 19, 2024, Perth.

chronic problems such as alcoholism. And Aboriginal and Islander children are [dying by] suicide at five times the rate of those in the mainstream population.²⁸

Butler wrote that many non-Indigenous Australians still held racist attitudes towards Aboriginal culture:

Forty years ago Australia transformed itself from a monocultural society into a multicultural society, but this approach has not yet encompassed Aboriginal Australians. Non-Indigenous Australians still tend to believe that Indigenous culture has little to offer a child in comparison with Western culture—the mindset that created the Stolen Generations.²⁹

Many of the families interviewed by Human Rights Watch appeared to have endured profound trauma. Some were descendants of Stolen Generations survivors, while others had themselves experienced the trauma of out-of-home care. In addition to these personal histories, many had witnessed the devastating impact of suicide and incarceration within their extended families.

Despite the profound trauma these families had experienced, some said that staff from the Department of Communities lacked basic understanding and sensitivity toward the intergenerational pain and trauma they carried and failed to provide them with adequate support.

Gloria W., a Stolen Generations survivor who had been supporting her adult daughter in meetings with the department following the removal of her grandson, recalled an incident when a caseworker dismissed the legacy of the Stolen Generations.³⁰ Gloria said the worker had told her “That’s all been said sorry for,” when she raised the Stolen Generations. She added:

²⁸ Brian Butler and John Bond, *Sorry and Beyond* (Canberra: Aboriginal Studies Press, 2021), pp. 175-176.

²⁹ *Ibid.*

³⁰ Human Rights Watch phone interview with Gloria W., November 11, 2024.

I hate dealing with this department, and I tell them, I tell them, I hate dealing with you people because I'm a part of the Stolen Generation. And do you know what it's like? Do you know what it's like for me to sit here and talk to you people in my house at this table.... Why did the government "say sorry" when they're still taking our kids?³¹

Indigenous Children Overrepresented in Removals by Numbers

While the 1997 "Bringing Them Home" report was largely focused on the legacy of the Stolen Generations, it also acknowledged the disproportionate numbers of Aboriginal and Torres Strait Islander children removed from their families through modern child protection systems. Since then, the number of First Nations children removed from their parents and rate of overrepresentation has skyrocketed both in Western Australia and nationally.

In 1997 in Western Australia, there were 310 Indigenous children living in out-of-home care—about 28 percent of all children in care.³² In 2023, this figure climbed to 3,068 Aboriginal children—59 percent of all children in care. Aboriginal children only make up about 7 percent of Western Australia's total child population.³³

Aboriginal children in Western Australia are more than 20 times more likely to live in out-of-home care than non-Indigenous children.³⁴

Reports from the Secretariat of National Aboriginal and Islander Child Care (SNAICC), a nongovernmental organization representing First Nations children and their families, have highlighted that Western Australia has the highest rate of overrepresentation of Indigenous children in care compared to other states and territories and yet the lowest proportion of state government expenditure on family support and "intensive family support."³⁵

³¹ Ibid.

³² Australian Institute of Health and Welfare, "Child protection Australia 1997–98" (1998). <https://www.aihw.gov.au/getmedia/6b7d7035-db81-4de9-ade2-2166e385ffef/cpa97-8.pdf?v=20230605171502&inline=true>, p. 38.

³³ Commissioner for Children and Young People Western Australia, "Profile of Children and Young People 2024," p. 5 (Aboriginal children aged 0-17: 46,000) and p. 6 (Western Australian population aged 0-17: 644,468), <https://www.cyp.wa.gov.au/media/5179/ccyp9274-profile-report-24-web.pdf>.

³⁴ SNAICC, "The Family Matter Report 2024," <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>, accessed January 30, 2025, p.18.

³⁵ SNAICC - National Voice for Our Children. (2023). "Family matters: Report 2023 - Report card." <https://www.snaicc.org.au/wp-content/uploads/2023/11/Family-Matters-Report-2023-report-card.pdf>.

In 2020, the Joint Council on Closing the Gap—a coalition made up of representatives from Australian state and territory governments and Aboriginal and Torres Strait Islander organizations—announced a new national target to reduce the overrepresentation of Indigenous children in out-of-home care by 45 percent by 2031. The 2023 report “Closing the Gap,” however, found the target was “not on track” to be met, and overrepresentation was “worsening.”

The Western Australian government had publicized that it had partnered with SNAICC to facilitate a community-led process to develop a 10-year roadmap to reduce the number of Aboriginal children in care.³⁶ The government had said that SNAICC presented a draft roadmap and draft action plan to the government for consideration and finalization in September 2023 and that it would be finalized in 2024 as the government response to National Agreement on Closing the Gap.³⁷ In March 2024, then Child Protection Minister Sabine Winton described the roadmap as part of the government’s commitment to “shared decision making with Aboriginal people.”³⁸ However, as of March 2025, the government has yet to provide an update on the roadmap’s finalization. In its 2024 annual “Family Matters” report, SNAICC wrote: “More than a year after WA [Western Australia’s] 10-year Roadmap to address overrepresentation was completed through state-wide community design, government has not responded nor committed to implementation”³⁹ The Department of Communities’ chief practitioner for child protection,⁴⁰ Amber Fabry, conceded the current number of Aboriginal children in out-of-home care was “unacceptably high by international standards.”⁴¹ In a report released in January 2024, she wrote:

³⁶ Western Australian Government, “10 Year Roadmap Project to Reduce the Number of Aboriginal Children in Care,” January 4, 2024, <https://www.wa.gov.au/organisation/department-of-communities/10-year-roadmap-project-reduce-the-number-of-aboriginal-children-care>, accessed February 1, 2025.

³⁷ Ibid.

³⁸ Western Australian Government, “Partnership with Aboriginal Leadership launched,” <https://www.wagov.pipeline.preproduction.digital.wa.gov.au/government/media-statements/Cook%20Labor%20Government/Partnership-Agreement-with-Aboriginal-Leadership-Group-launched-20240309>, accessed March 2, 2025.

³⁹ SNAICC, “Family Matters 2024,” <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>, accessed February 1, 2025, p. 13.

⁴⁰ The chief practitioner is a position within the Department of Communities who leads the specialist child protection unit.

⁴¹ Amber Fabry, “The WA Department of Communities Churchill Fellowship: To explore systems and approaches to prevent the removal of children from families,” January 2024, <https://churchilltrust.my.salesforce-sites.com/api/services/apexrest/v1/image/?Id=069RF00005wagAYAQ&forceDownload=Yes>, accessed November 1, 2024, p.8.

The continuing rise in the number of Aboriginal children in care is particularly stark, with over 750 [per] 10,000 Aboriginal children in care. This is unacceptably high by international standards. There is an urgent need for change to systems and approaches so that more Aboriginal children can remain living safely at home, on country.⁴²

System of Child Protection in Western Australia

In Australia, the states and territories have statutory responsibility for child protection. In the state of Western Australia, child protection is the responsibility of the state’s Department of Communities. The department’s child protection workers are given wide powers under Western Australia’s Children and Community Services Act as “authorized officers” to investigate families and remove children where they suspect harm is taking place or is likely to take place.⁴³

Child removals typically follow an investigation prompted by a report to the Department of Communities regarding a child’s welfare. These reports can be made anonymously, and the department operates a dedicated hotline for reporting. The most common sources of reports are police (35 percent), school personnel (15 percent), social workers (12 percent), family (10 percent), and medical/health personnel (8 percent).⁴⁴

In instances in which an individual or family repeatedly requests financial assistance from the Department of Communities, this can also trigger the department to launch an investigation. The department’s case work manual directs workers to “intake” cases—that is, to create a formal record and consider whether there could be child safety concerns—if a family presents on multiple occasions within a short time requesting financial assistance. Moreover, the manual instructs case workers that “where an assessment is not undertaken, the rationale for the decision **must** be recorded and approved by a designated

⁴² Ibid.

⁴³ Children and Community Services Act 2004, https://www.legislation.wa.gov.au/legislation/statutes.nsf/RedirectURL?OpenAgent&query=mrdoc_263.docx, accessed October 27, 2024, p. 91.

⁴⁴ Australian Institute of Health and Welfare, Child protection Australia 2022–23, July 18, 2024, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-insights/data>, accessed December 16, 2024, Table S3.2.

senior officer,” and “at every subsequent contact by the family, you **must** review the decision to undertake an assessment” (emphasis in original).⁴⁵

The purpose of the Department of Communities’ child safety investigations is to determine whether the child has suffered actual significant harm or is likely to suffer significant harm as a result of abuse or neglect; the parent or parents’ capacity to protect their child from harm; and whether the child is in need of protection.⁴⁶

Under the Children and Community Services Act, a child is deemed in need of protection if they have suffered or are likely to suffer harm because of physical abuse, sexual abuse, emotional abuse, or neglect.

“Neglect” is defined by the Children and Community Services Act as failing to provide, arrange, or allow the provision of either adequate care for the child; or effective medical, therapeutic, or remedial treatment for the child.

While the law does not define “adequate care,” the Department of Communities’ “neglect policy” describes neglect as an “omission of care.” It defines “omission of care” as a situation where children do not “receive adequate food or shelter, medical treatment, supervision, care, or nurturance to the extent that their development is harmed, or they are injured.”⁴⁷

The department can also start investigations of pregnant women if they have concerns about the wellbeing of their “unborn children.”

During their investigations, Department of Communities workers can search documentation it holds on the family, which might include previous reports and

⁴⁵ Department of Communities, “*Casework practice manual: Neglect*,” <https://www.wa.gov.au/organisation/departments-of-communities/casework-practice-manual#article/2214-neglect>, accessed October 10, 2024.

⁴⁶ Department of Communities, “Casework practice manual: conducting a child safety investigation,” <https://www.wa.gov.au/organisation/departments-of-communities/casework-practice-manual#article/224-conducting-a-child-safety-investigation>, accessed December 20, 2024.

⁴⁷ Western Australian Government. (2021). *Neglect policy*. <https://www.wa.gov.au/system/files/2021-11/Neglect-Policy.pdf>, accessed August 23, 2024, p. 2.

information about other family members. They can also search family and domestic violence reports from police, which will include criminal history.⁴⁸

Child safety investigations must be completed within 30 days and evidence can include verbal statements, medical evidence, photographic evidence, observations from case workers, information from other agencies, hearsay evidence that has been corroborated, or witness to harm.⁴⁹

During the investigation, the parents must be notified and given a chance to respond to allegations. The child involved should also be seen or interviewed.⁵⁰

Under the Children and Community Services Act, child protection workers are empowered to see a child at their school, hospital, or place where a childcare service is provided without informing the child's parents if the worker believes on "reasonable grounds" that it is in the child's best interest or that the investigation will be jeopardized if the parents were to know in advance about the access to the child.⁵¹

Child protection workers may contact the child's school, general practitioner, and any other services involved with them. The worker may also make home visits to observe the child's environment.⁵²

Outcomes resulting from child safety investigations are dependent on whether the child protection worker substantiates harm or forms a view that a child needs protection. Responses can include no further action, referring families to social supports or intensive family supports, placing children under supervision orders in which they generally remain living with their parents but are closely monitored by the Department of Communities, or removing a child from their parents and placing them in out-of-home care.

⁴⁸ Department of Communities, "Casework practice manual: conducting a child safety investigation," <https://www.wa.gov.au/organisation/department-of-communities/casework-practice-manual#article/224-conducting-a-child-safety-investigation>, accessed December 20, 2024.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Children and Community Services Act 2004, https://www.legislation.wa.gov.au/legislation/statutes.nsf/RedirectURL?OpenAgent&query=mrdoc_263.docx, accessed October 27, 2024, p. 43.

⁵² Ibid.

“Out-of-home care” refers to where the department removes children from their parents’ or guardians’ homes to live in foster care, kinship care, or group homes. Usually, children living in out-of-home care are under the legal guardianship of the Department of Communities. Out-of-home care refers to the current living situation of a child, whereas removals refer to the process in which a child is taken from their parents by the department.

Laws and Policies on Child Protection in Western Australia

The Children and Community Services Act is the main legislation governing Western Australia’s child protection system.⁵³

Among the powers granted to child protection workers under the act is the ability to remove children without a warrant if they have reasonable grounds to suspect there is an “immediate and substantial” risk to the child.⁵⁴

Child protection officers can apply to the Western Australian Children’s Court for a warrant to remove a child if they are unable to find the child, believe that leaving the child at the place where the child is living poses an unacceptable risk to the child’s wellbeing, or believe that if the child’s parent becomes aware of a proposed protection application they will move the child to a different place and the officer will be unable to find the child.⁵⁵ In such cases, the hearing takes place without parents’ presence.⁵⁶ Concerns about this process have been voiced by the UN Expert Mechanism on the Rights of Indigenous Peoples, which highlighted in 2024 the problematic nature of hearings that exclude parents.⁵⁷ The expert emphasized that the initial hearing focuses solely on whether the warrant should be issued, based solely on written submissions from the department.⁵⁸ That parents do not get an opportunity to appear at hearings where warrants to remove a

⁵³ Children and Community Services Act 2004, https://www.legislation.wa.gov.au/legislation/statutes.nsf/RedirectURL?OpenAgent&query=mrdoc_263.docx, accessed October 27, 2024.

⁵⁴ Ibid, p. 47.

⁵⁵ Ibid, p. 46.

⁵⁶ Children’s Court of Western Australia, “First Steps in Care and Protection Proceedings,” May 28, 2024, https://www.childrencourt.wa.gov.au/P/provisional_protection_and_care.aspx, accessed November 1, 2024.

⁵⁷ United Nations Expert Mechanism on the Rights of Indigenous Peoples, “Country Engagement Mission Australia,” April 2024, <https://www.ohchr.org/sites/default/files/documents/issues/indigenouspeoples/emrip/countryengagement/EMRI-Technical-advisory-note-April-2024.pdf>, accessed October 10, 2024, pp. 10-11.

⁵⁸ Ibid, p.10-11.

child from their home and place them into care are issued is not specified in the act. It is, however, outlined on the Children’s Court website.⁵⁹

Once the Department of Communities has removed a child from their parents’ care, the department has two days to decide whether they will make plans to safely return the child home or apply to the Children’s Court for a “protection order.”

There are four types of court orders:

- *Supervision orders*: the child usually stays with the parents but with conditions imposed upon the parents, such as regular drug testing. A failure of a condition can result in the child being removed.
- *Protection orders (time limited)*: the child is legally placed in the guardianship of the department who has “parental responsibility” and makes all decisions about where they live, go to school, and whom they see. A care plan will be written by the department case worker in consultation with the family. Such protection orders can last up to two years.
- *Protection orders (until age 18)*: the child is legally under the care of the department until they turn 18. This is considered “long term care” and care plans reflect this.
- *Protection orders (special guardianship)*: parental responsibility is transferred to a third party, but the child is considered in the care of the department.⁶⁰

When the department removes Aboriginal children from their families, it is required to follow the “Aboriginal and Torres Strait Islander Child Placement Principle.” This is a nationwide policy that grew out of activism in the 1970s to curb the rate of First Nations children placed with non-Indigenous carers and stop a repeat of past harmful racist practices of First Nations children placed in institutions or with white families with a goal of eradicating their culture.⁶¹ The intention of the principle is to keep children connected

⁵⁹ Children’s Court of Western Australia, “Provisional Protection and Care,” https://www.childrenscourt.wa.gov.au/P/provisional_protection_and_care.aspx?uid=6498-3073-7-7 , accessed January 31, 2025.

⁶⁰ Legal Aid Western Australia, “Protection Orders- Children’s Court,” <https://www.legalaid.wa.gov.au/find-legal-answers/child-protection/child-protection/protection-orders-childrens-court>, accessed December 20, 2024.

⁶¹ SNAICC, “Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements,” June ,2013, https://www.snaicc.org.au/wp-content/uploads/2013/06/130601_8_ATSICPP-Aims-Core-Elements.pdf, accessed October 25, 2024, p. 2.

with family, community, culture, and country. Western Australia enshrined the “placement priority” for Indigenous children in care in law in 2004⁶² and amended it in 2021.⁶³

Under the 2021 amendment, the order of child placement priority is first, with a member of the child’s family; second, an Aboriginal person in the child’s community in accordance with local customary practice; third, an Aboriginal person in close proximity to the child’s community; fourth, either an Aboriginal person anywhere in Western Australia, or a non-Aboriginal person in close proximity to the child’s community; and fifth, a non-Aboriginal person anywhere in Western Australia.⁶⁴

The 2021 amendment also introduced changes to require that before making placement decisions for Indigenous children in care, the department must consult with Aboriginal members of their family, an Aboriginal and Torres Strait Islander representative organization, and an Aboriginal officer from the department with knowledge of the child, their family, or their community.

The Western Australian government has said the changes are part of its agenda to reduce the overrepresentation of Aboriginal children in care.⁶⁵

According to the Department of Communities’ annual report, in 2023, it placed 64 percent of Aboriginal children in its care in accordance with the Aboriginal and Torres Strait Islander Child Placement Principle, short of its own target of 80 percent placement adherence.⁶⁶

In 2023, of the First Nations children in Western Australia’s out-of-home care system, about 40 percent were living with Indigenous relatives or kin. Including this group, about 60 percent were living with Indigenous relatives or kin, non-Indigenous relatives or kin, or

⁶² Children and Community Services Act 2004, https://www.legislation.wa.gov.au/legislation/statutes.nsf/RedirectURL?OpenAgent&query=mrdoc_263.docx, accessed October 27, 2024, p. 13.

⁶³ Children and Community Services Act 2004, https://www.legislation.wa.gov.au/legislation/statutes.nsf/RedirectURL?OpenAgent&query=mrdoc_47769.docx, p. 17.

⁶⁴ Ibid.

⁶⁵ Government of Western Australia, “Aboriginal Representative Organisations,” https://www.wa.gov.au/system/files/2024-07/aro_faqs.pdf accessed October 27, 2024.

⁶⁶ Government of Western Australia, “Department of Communities Annual Report 2023-2024,” <https://www.wa.gov.au/system/files/2024-10/department-of-communities-annual-report-2023-24.pdf>.

other Indigenous carers.⁶⁷ These rates have declined from 20 years earlier, when in 2003, about 51 percent were living with Indigenous relatives or kin, and the proportion living with Indigenous relatives or kin, non-Indigenous relatives, or other Indigenous carers was 76 percent.⁶⁸

Western Australia does not have a human rights act or charter, despite the introduction of a Human Rights Act being recommended by a Western Australian Government-appointed consultation committee in 2007.⁶⁹ In other states that do have human rights acts, such as Victoria, there have been documented cases in which the human rights act has assisted in legal cases to return Aboriginal children to their families. For example, in one case in Victoria in 2011, the human rights act assisted in returning four Aboriginal children who the state's child protection authorities had placed in out-of-home care with non-Indigenous carers to their grandmother.⁷⁰ The Victorian human rights charter required the court to consider the children's rights including their cultural rights as Aboriginal children.

Government Spending on Family Support, Housing, and Domestic Violence Services

Only a small proportion of the money the Western Australian government spends on child protection is used for family support services. In the year 2022-2023, less than 5 percent of the government's total child protection expenditure was allocated to family support services (the lowest of any state or territory) compared with a national average of 15 percent.⁷¹

⁶⁷ Australian Institute of Health and Welfare, "Data tables: Child protection Australia 2022-23," September 27, 2024, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-insights/data>, accessed October 25, 2024), table S5.12.

⁶⁸ Australian Institute of Health and Welfare, "Child protection Australia 2002-2003," January 22, 2004, <https://www.aihw.gov.au/getmedia/9e70f2a8-f17f-4237-9dfa-daa14b359e04/cpa02-03.pdf?v=20230605171044&inline=true>, accessed October 25, 2024, Table 4.9.

⁶⁹ Report of the Consultation Committee for a Proposed WA Human Rights Act (November 2007) <https://alhr.org.au/wp/wp-content/uploads/2017/03/Annexure-1-WA-Government-Consultation-Committee-for-a-Proposed-WA-Human-Rights-Act-Final-Report-November-2007.pdf>.

⁷⁰ Human Rights Law Centre, "Aboriginal Children Returned to Care of Maternal Grandmother as Court Finds Charter Applies to Child Welfare Proceedings," February 22, 2011, <https://www.hrlc.org.au/human-rights-case-summaries/secretary-to-the-department-of-human-services-v-sanding-2011-vsc-42-22-february-2011>, accessed February 3, 2025.

⁷¹ Australian Government Productivity Commission, "Report on Government Services 2024- Productivity Commission," May 28, 2024, <https://www.pc.gov.au/ongoing/report-on-government-services/2024/community-services/child-protection#:~:text=Total%20recurrent%20expenditure%20on%20family,services%20accounted%20for%2063.1%25%2C%2009>, accessed December 20, 2024) Table 16A.28.

The Department of Communities, as well as being responsible for child protection, is also the government agency with lead responsibility for managing Western Australia’s public housing stock and responding to homelessness, through its “housing” services. It is also the lead agency coordinating strategy and policy direction in the prevention of domestic violence in Western Australia and is meant to play a key role in the operational response to family and domestic violence. Both homelessness and family and domestic violence are key drivers of the Department of Communities’ decisions to remove children from families.

Public housing demand in Western Australia significantly outstrips supply. In the year 2022-2023, housing applicants faced an average wait time of 133 weeks—more than 2.5 years—to be housed by the Department of Communities.⁷² As of March 2024, there were 20,132 applications for public housing on the statewide wait list, representing 35,924 people.⁷³

The Western Australian state government spends the least of any state or territory, except for New South Wales, on homelessness services, where expenditure is calculated per person in the residential population.⁷⁴ In the year 2022-2023, the Western Australian government spent on average A\$39.88 (US\$24.50) on homelessness services per person in the residential population, below the national average of A\$53.15 (US\$32.66).⁷⁵

Australian Institute of Health and Welfare data from homeless services shows there were at least 657 family and domestic violence victims in Western Australia in 2022-2023 whose need for accommodation went unmet.⁷⁶ There were also 321 cases recorded by homelessness services where family and domestic violence victims’ need for family and

⁷² https://www.wa.gov.au/system/files/2023-11/housing_authority_2022_23_annual_report.pdf, p. 273.

⁷³ Parliament of West Australia, “Question Without Notice No. 289 asked in the Legislative Council on 16 April 2024 by Hon Steve Martin,” April 16, 2024, <https://parliament.wa.gov.au/parliament/pquest.nsf/viewLAPQuestByDate/E8CCFC1C30D0313548258B04002764D5?opendocument>.

⁷⁴ Productivity Commission, Report on Government Services, January 2023, <https://www.pc.gov.au/ongoing/report-on-government-services/2023/housing-and-homelessness/homelessness-services>, accessed December 20, 2024, table 19A.1.

⁷⁵ Ibid. In 2021 (the most recent year for which data was available), Western Australia had the lowest rate of homelessness per 10,000 people compared to any other state or territory. However, in 2022-2023, it had the highest average daily number of people whose requests for accommodation from service providers went unmet.

⁷⁶ Australian Institute of Health and Welfare, Family, domestic and sexual violence in Australia: National Plan Outcomes, September 2024, <https://www.aihw.gov.au/getmedia/d69e53ed-234f-4e8f-b23c-of99e6a3c2c4/AIHW-FDSV-NP-SHSC-data-download.xlsx>, accessed December 20, 2024, Table: NP SHSC 2.

domestic violence services went unmet.⁷⁷ In same period, there were 1251 recorded cases of women and children who had been affected.⁷⁸

Research has found that Australia’s current social security payments are inadequate to cover the cost of housing, even when recipients are receiving both rental assistance and social security payments. A 2024 report by the Australian Council of Social Services found that of 410 people they surveyed who were renting privately and receiving income support payments, 94 percent were in housing stress, paying more than 30 percent of their income on rent alone and more than half reported paying more than half of their income in rent.⁷⁹

A report by Western Australian organization Anglicare analyzed the affordability of homes on the private rental market for those dependent on social security or with low incomes. It found that of the 2,989 properties that were available for private rental in Western Australia on March 16, 2024, none would be “affordable” (meaning they required 30 percent or less of household income to be spent on rent) for a single parent dependent on social security payments.⁸⁰

⁷⁷ Ibid, Table: NP SHSC 1.

⁷⁸ Ibid, Table: NP SHSC 3.

⁷⁹ Australian Council of Social Service, Raise the Rate Survey 2024, ” https://www.acoss.org.au/wp-content/uploads/2024/09/ACOSS-COL-Report-Sept-2024_v03.pdf,” accessed February 3, 2025, p.7.

⁸⁰ Anglicare WA, March, 2024, “Anglicare WA Rental Affordability Snapshot,” https://www.anglicarewa.org.au/docs/default-source/advocacy/anglicare-wa-rental-affordability-snapshot-2024_final.pdf?sfvrsn=7331c80a_10, accessed February 3, 2025, p. 13.

Grounds for Child Removals

Under Western Australian law, a child is deemed in need of protection if the department successfully argues to the Children’s Court of Western Australia that a child has suffered or is likely to suffer harm because of physical abuse, sexual abuse, emotional abuse, or neglect.⁸¹ In cases relating to Aboriginal and Torres Strait Islander families, the most common reasons for reports to the Department of Communities are allegations concerning exposure to family and domestic violence, followed by neglect.

Consistent with this, in the cases examined by Human Rights Watch, family and domestic violence was the most common reason parents cited for why the Department of Communities had removed their child, followed by allegations relating to substance use. Others stated their homelessness, neglect allegations, their own incarceration, food insecurity, or physical violence allegations. A couple of parents referred to their children not attending school or failing to provide medical care as reasons.

Of the 33 parents interviewed by Human Rights Watch, at least 25 said the Department of Communities had removed more than one child from their care (the average parent interviewed had three children removed). Of the 114 children the Department of Communities removed from the 33 parents interviewed, the most common placement was family care with at least 55 children placed with carers from their extended family. The Department of Communities placed 35 children with foster carers, 7 in residential group homes, and one child with a disability in a hospice with a nurse. Of the 35 who had been placed with foster carers, at least 20 were with non-Indigenous carers.

Most of the children removed had not been reunited with their parents, with only about 18 children of the 114 reunited. Of the 114 children the Department of Communities had removed, at least 29 were on “18-year orders”—protection orders that state children will be in the care of the department until they turn 18.

⁸¹ Children and Community Services Act 2004, https://www.legislation.wa.gov.au/legislation/statutes.nsf/RedirectURL?OpenAgent&query=mrdoc_263.docx, accessed October 27, 2024, p. 91.

Human Rights Watch found in cases in which the department had removed children from mothers due to family violence committed by their partners or ex-partners, instead of supporting them to leave domestic violence situations, often the women said they had received inadequate support from government services or government-funded services.

Homelessness and circumstances related to poverty are also factors in the Department of Communities' decisions to remove children. Similarly, in these cases, families often had unmet needs and received inadequate accommodation support from the department.

Inadequate Responses to Victims of Domestic Violence

Family violence is among the most prevalent forms of violence against women in all societies.⁸² Most of the women interviewed by Human Rights Watch said domestic violence committed by partners or ex-partners had played some role in the Department of Communities' decision to remove their children. Many described feeling that they were the ones punished, as opposed to the perpetrators of the violence.

In several of the cases documented by Human Rights Watch, the authorities provided a clearly inadequate response to victims. Authorities failed to keep them safe from violence by failing to provide appropriate housing and then exacerbating their trauma by removing their children. Women described a "victim-blaming" approach from Department of Communities case workers and were scared to report violence to authorities because of fears their children would be removed.

In 2015, the Western Australian government reformed its child protection legislation to classify exposing a child to family and domestic violence as a type of emotional abuse that could prompt intervention actions, such as placing the child in out-of-home care.⁸³ This definition includes situations in which a child sees or hears acts of violence or witnesses physical injuries resulting from such violence.

⁸² UN Committee on the Elimination of Discrimination against Women, General Recommendation No. 19: Violence against Women, A/47/38 (1992), para. 23.

⁸³ Western Australian Government, Children and Community Services Legislation Amendment and Repeal Act 2015, [https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_28100.pdf/\\$FILE/Children%20and%20Community](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_28100.pdf/$FILE/Children%20and%20Community).

Although the introduction of this broadened definition of emotional abuse increased the number of child safety investigations for all children, it disproportionately increased the number of cases involving Aboriginal children in which the Department of Communities determined harm or likelihood of harm has been substantiated, justifying a removal. Children should be shielded from exposure to family violence; however, where incidents of family violence occur, they should not reflexively be used to justify removing children from those who are also victims of family violence, especially when mothers are actively trying to protect their children from abusive situations.

In the year 2022-2023, exposure to family and domestic violence was the most common type of harm the Department of Communities substantiated in child safety investigations relating to Aboriginal children.⁸⁴

The department's implementation of the legislation has been criticized by some civil society organizations for having a counterproductive effect—deterring Aboriginal women from reporting violence. In its 2023 annual report, SNAICC, the national nongovernmental advocacy organization representing Aboriginal children and their families wrote:

[The Department of] Communities has a tendency to use children's exposure to family and domestic violence to justify removal from their families, particularly in Aboriginal families, which also means that Aboriginal women often do not want to report the violence being perpetrated against them and continue to [jeopardize] their own safety to ensure their children stay at home.⁸⁵

Rose B., who had herself been removed from her family as a child, told Human Rights Watch that at times she had avoided going to hospital after being injured from domestic violence because she had been fearful of the department removing her children:

⁸⁴ Western Australian Government, "Child protection activity performance 2022-23," (2023) https://www.wa.gov.au/system/files/2023-10/child_protection_activity_performance_2022_23.pdf, accessed September 1, 2024, p.6.

⁸⁵ SNAICC – National Voice for Our Children, "Family matters report 2023," (2023) <https://www.snaicc.org.au/wp-content/uploads/2024/07/20240731-Family-Matters-Report-2023.pdf>, p. 87.

[I didn't go to hospital] a couple of times because they would get involved ... and then they would try and make me look like I'm the crazy person, like they always do to people, like they done to my mum. So, I thought I'm not going to let them do it to me. No ways.⁸⁶

Another woman, Molly C., described how her five-year-old son was taken from her care after she went to the hospital with injuries from a domestic violence attack committed by her son's father:

Because of the assaults from my second partner, the father of [my son], I went to the hospital and then the hospital got involved in and called [the Department of Communities]. Because my baby ... was with me at the time when I went to hospital and then they came in and took [my son].⁸⁷

Nina T., who had been physically abused by her former partner, described how the Department of Communities removed her three children after a welfare check where she was trying to hide her injuries from the department workers:

They came for a welfare check ... and because I didn't want to open the door because he'd just physically hit me and I had a black eye and a split lip and I didn't want to open the door because I knew something was going to happen. They just said, "Well, we're just going to ring the police so we can come in for a welfare check," and that's how they took them.⁸⁸

Police have also failed to enforce breaches of restraining orders in domestic violence cases. In some cases, victims said their abusive ex-partners had breached restraining orders, but police did not take any action.

Jessie T. said the Department of Communities removed her eight children from her care after she reported domestic violence by her partner against both her and her daughter. "I rang the police a couple of times because the relationship that I was in was very violent

⁸⁶ Human Rights Watch interview with Rose B., June 23, 2023, Perth.

⁸⁷ Human Rights Watch interview with Molly C., April 2, 2023, Perth.

⁸⁸ Human Rights Watch interview with Nina T., February 6, 2023, Perth.

and it was against the kids as well,” she said. “It was also things that happened to [my daughter] and I reported all of that and because I reported all of that they took the kids from me.”⁸⁹ Despite obtaining a family and domestic violence restraining order, Jessie said she had reported the ex-partner to police “38 times” for “15 breaches” of the restraining order, but he was only jailed for eight months after he had kidnapped her in 2007.⁹⁰ She felt that seeking help resulted in her children being taken away. Jessie stressed the need for the Department of Communities to provide support for women as opposed to removing their children: “If women are suffering domestic violence in a relationship and they’re seeking help they should be getting help for the women and the children so that they can stay together.”⁹¹

Jessie’s daughter Rachel T., now 22, told Human Rights Watch she too believed her mother should have been supported as a victim of domestic violence. She said: “She was trying to leave and get help, I think they could have helped her instead of taking us.”⁹²

Lily M. experienced horrific physical and sexual violence from her former partner. The Department of Communities removed six children from her care and placed them with various relatives. She said, “I did try and get away from him and then I put restraining order and everything on him ... I’ve got a restraining order on him. He doesn’t care. Authority does not scare him or his family. And his family would never ring the police for me. They’d let me get a hiding.”⁹³

Lily said that after the department removed her children, she fled to women refuges, but her violent ex-partner continued to stalk her, driving to the refuge where she was staying:

When I stayed in the refuge out at [suburb redacted], he rode a bike from [suburb redacted] all the way to [suburb redacted], and he rode around every street until he found me. And then when I went to [suburb redacted], he stole a car. And he said he had it fueled up and ready to come up there to come and get me. And it is scary because he says that the only way that I can ever

⁸⁹ Human Rights Watch interview with Jessie T., February 5, 2023, Perth.

⁹⁰ Human Rights Watch email correspondence with Jessie T., January 17, 2024.

⁹¹ Human Rights Watch interview with Jessie T., February 5, 2023, Perth.

⁹² Human Rights Watch interview with Rachel T., November 20, 2024, Perth.

⁹³ Human Rights Watch interview with Lily M., February 20, 2023, Perth.

leave him is in a body bag and he'll have to be the one to do it. And he told me that he would hang me and make it look like I hung myself.⁹⁴

Lily said she had done everything she could do to try and escape the partner. This included relinquishing her public housing property. The Department of Communities assured her if she did so, she would be able to transfer to another property, but this did not happen, and she was left without housing. She said:

[The department] told me if I give my house up, I can do a transfer, and they'll be able to help me get a new house, which never happened. To the point that I had nowhere else to live, nowhere else to go. I had to go back to him. They never gave me any options. All the options [they did give], they didn't help. They didn't try and get me in no refuge before, even when I said that... I'm on their [housing] waiting list.

At the time of the interview with Human Rights Watch, the ex-partner had recently been released from jail. Lily said upon his release he coerced her into seeing him with violent threats, and on one occasion stabbed her three times in the legs with a screwdriver.

Lily said all she wanted was to have her children back in her care and to escape her ex's abuse, but she felt unsupported by the Department of Communities. She said the Department of Communities case workers had not listened when she explained why she had seen her ex-partner following his release from jail. This should have been an alert to the officials that her partner was violating the restraining order. Instead, she said she felt "painted in the same brush" as her violent ex. Lily said:

They were looking at me like they didn't really care what I said. They just wanted to hear that I was with [the ex-partner], and that was it. I keep asking [the Department of Communities] to help me because I tell them all the time, "I don't want to be with him. It's not what I want. I don't want him. I want my kids. And I know I can't have my kids and have him in my life." ... And even though I was still trying to do good and everything, and I told

⁹⁴ Ibid.

them that, I said, “I can’t outrun him and he’s going to find me.” And then he does, he hunts me all the time.⁹⁵

In cases of family violence, police have a responsibility to keep safe all members of the family, especially children. But in many of the cases Human Rights Watch documented, the response from the Department of Communities was to separate children from their mothers in an effort to “protect” them, making the experience of domestic violence even more traumatizing and isolating for women who themselves are survivors.

Human Rights Watch reviewed court documents of two incidents when the Department of Communities—rather than providing support for the mother or obtaining a restraining order on the child’s behalf—used the absence of a restraining order as evidence that a mother had not done enough to protect her children from violence, thus justifying a removal.⁹⁶

The UN special rapporteur on violence against women has also criticized the Australian government for having an “excessive and inappropriately punitive and judgmental approach towards Aboriginal victims/survivors of family violence that blames victims for exposing their children to violence, rather than supporting them to safely care for their children and live free from violence.”⁹⁷

Australia’s international treaty obligations require that the government take measures to prevent and address family violence. This includes providing adequate protection and support to victims or those at risk of violence such as accommodation and refuges, counselling, and other support services; investigations and prosecution with appropriate civil and criminal penalties for the perpetrators of such violence; compensation to survivors; and rehabilitation programs for perpetrators of domestic violence.⁹⁸

⁹⁵ Ibid.

⁹⁶ In an affidavit filed as evidence against one mother by the department to take her 11-year-old daughter into care, it referred to her allegedly filing for a restraining order but then not appearing at the court hearing, so the application was dismissed. In another case heard at the WA Supreme Court in February 2024, the department used a mother’s alleged failure to previously advise department officers she would take steps to obtain a family violence restraining order but then did not, as evidence to justify the removal of the mother’s newborn baby.

⁹⁷ UN General Assembly, “Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Australia,” A/HRC/38/47/Add.1, 17 April, 2018, <https://documents.un.org/doc/undoc/gen/g18/106/17/pdf/g1810617.pdf?OpenElement>, accessed 2 September, 2014, para. 46.

⁹⁸ Ibid, para. 24.

Deficient Social Housing Policies

The Western Australian government's failure to uphold Aboriginal people's right to housing has contributed to the overrepresentation of First Nations children removed from their parents. Although Aboriginal people represent just 3.3 percent of the Western Australian population, they constitute approximately 35 percent of Western Australia's homeless population.⁹⁹ The Department of Communities should assist families to find appropriate housing per its responsibilities as a state department with the designated role of addressing homelessness and in alignment with state's obligations to uphold everyone's right to housing. However, many families interviewed by Human Rights Watch described how inadequate support by the department during housing emergencies and weak protections for social housing tenants resulted in their children's removal, and how the lack of sufficient social housing prolonged family separations.

Western Australia's former minister for child protection, Sabine Winton, had told the state parliament that the Department of Communities does not consider homelessness a form of abuse or neglect warranting child removal.¹⁰⁰ However, this contradicts the experiences of some of the families that Human Rights Watch interviewed. At least six of the parents interviewed said homelessness had been a factor contributing to the Department of Communities' decision to remove children from their care. At least 14 were also on the public housing waitlist and were either homeless or living in some form of temporary accommodation, including staying with family in overcrowded properties. Another two described themselves as homeless but were not on the housing waitlist. Human Rights Watch also viewed department documentation that cited homelessness as one of their reasons for child safety concerns and removals.

⁹⁹ In 2021, the total population of homeless people in Western Australia was 3,378. Shelter WA, "New census data shows WA rough sleeping has doubled in five years and is the worst in Australia," March 23, 2023, <https://www.shelterwa.org.au/new-census-data-shows-wa-rough-sleeping-has-doubled-in-five-years-and-is-the-worst-in-australia/#:~:text=Aboriginal%20and%20Torres%20Strait%20Islander%20Homelessness,-The%20number%20of&text=By%20comparison%20the%20number%20increased,per%20cent%20of%20the%20population> accessed August 28, 2024.

¹⁰⁰ Western Australian Parliament, April 18, 2024, "Legislative Questions on Notice [Tabled Paper No. 3182]" [https://parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/4113182c3f72a424ee000a6848258b2c0008981e/\\$file/tp-3182.pdf](https://parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/4113182c3f72a424ee000a6848258b2c0008981e/$file/tp-3182.pdf) accessed August 27, 2024.

Hayley I. cited homelessness and substance use as the justifications the Department of Communities had given for removing her three children from her care and placing them with her mother.¹⁰¹

“There’s a lot of people that are in my situation, I haven’t got a house, you know?” she said. “And that’s the reason why I haven’t got my kids.... If they can help with the housing issue it’d be better.”¹⁰²

Hayley said she was not on the housing waitlist, and she had not received housing support from the department.¹⁰³ Hayley’s mother, Tanya I., said the department had previously blacklisted Hayley from its housing waitlist after her eviction from her former public housing tenancy after child protection officials removed her children. Hayley had amassed a debt of “about \$30,000” she owed to the department for alleged damage to the property.¹⁰⁴

Tanya told Human Rights Watch her daughter was no longer using drugs and she would like to see the three grandchildren returned to their mother’s care, but the barrier was her daughter’s homelessness.¹⁰⁵

The children, ages 15, 14, and 12, had been in Tanya’s care for eight years. “I want the mother to get them back ... She’s been off drugs for a while and is trying there, seriously,” Tanya said. “[The department should] work faster to get them all together and ... provide more support.”¹⁰⁶

The department had also previously placed two of Tanya’s nieces, ages 9 and 16, in her care. According to Tanya’s sister, Rita I., due to homelessness and substance use, Rita had been “living on the streets” when department officials removed her children.¹⁰⁷ Rita told Human Rights Watch she had called the department’s crisis care line asking for accommodation before her children were removed but was told she did not meet criteria for a refuge because

¹⁰¹ Human Rights Watch interview with Hayley I., January 19, 2023, Perth.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Human Rights Watch phone interview with Tanya I., December 18, 2024.

¹⁰⁵ Human Rights Watch interview with Tanya I., January 17, 2023, Perth.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

she was not a domestic violence victim.¹⁰⁸ She urged greater housing support for single mothers: “[They need] housing, you know, for all these single mums out there, where their children are in [department care].”¹⁰⁹ After Rita obtained housing, after spending two years on the public housing wait list, her children were returned to her care.¹¹⁰

Families also criticized the lack of availability of emergency accommodation. Violet B. recounted how she and her granddaughter were left temporarily homeless after the Department of Communities directed them to leave their housing due to safety concerns related to the child’s mother. She said, “They couldn’t even put us in a hotel or give us any accommodation ... we were literally homeless. I kept ringing crisis care, crisis line. And even they couldn’t find us accommodation, not even a refuge.”¹¹¹

The department’s policy on neglect explicitly identifies “inadequate housing or an overcrowded household” as conditions that contribute to neglect and includes inadequate shelter in its definition of “omission of care.” The department’s “10-Year Strategy on Homelessness” also acknowledges that a lack of safe and stable housing is a factor driving Aboriginal children into the child protection system.¹¹²

Data reinforces the link between homelessness and child removals in Western Australia. In 2022, media reports revealed an internal department analysis of 327 children who entered care between 2019 and 2021. This analysis found homelessness was a factor in 37 percent of cases involving Aboriginal children and 17 percent of cases involving non-Aboriginal children.¹¹³ Data released to the West Australian parliament in April 2024 revealed that where Department of Communities officials had removed newborns from their mothers

¹⁰⁸ Human Rights Watch interview with Tanya I., January 17, 2023, Perth.

¹⁰⁹ Ibid.

¹¹⁰ Human Rights Watch phone interview with Tanya I., December 18, 2024.

¹¹¹ Human Rights Watch interview with Violet B., January 16, 2023, Perth.

¹¹² Department of Communities, Western Australia, 2021, “10-year strategy on homelessness: 2021-2031,” <https://www.wa.gov.au/system/files/2021-06/homelessness-strategy-final.pdf>, p. 27, accessed 28 August, 2024.

¹¹³ Hennessy, A, “*Department of Communities in crisis: Children in care being shuffled between different case workers*,” *The West Australian*, February 3, 2022, <https://thewest.com.au/news/child-protection/department-of-communities-in-crisis-children-in-care-being-shuffled-between-different-case-workers-c-5536763>, accessed August 28, 2024.

within seven days of the child’s birth, nearly a third of the cases were mothers experiencing homelessness.¹¹⁴

Much of the Department of Communities’ response to homelessness focuses on temporary accommodation. The department’s child protection casework manual describes financial support for emergency accommodation as a “one-off payment for emergency accommodation” and states that “financial assistance may be provided for one to three nights.”¹¹⁵ It also directs staff to refer families to the accommodation hotline Entrypoint, which is contracted to a nongovernmental provider by the department.

International human rights law recognizes the right to adequate housing. The International Covenant on Economic, Social and Cultural Rights, which Australia ratified in 1975, acknowledges the right to an adequate standard of living including housing and the obligation of states to ensure the progressive realization of this right.¹¹⁶ Despite this, the right to housing is not currently a protected right under Australia’s domestic laws.¹¹⁷

Removals Due to Lack of Emergency Shelter for Domestic Violence Victims

Mothers trying to escape domestic violence by their partners has frequently resulted in homelessness. The Department of Communities’ failure to provide appropriate housing support in such emergency situations resulted in child removals by the very same department.

Briana L., 36, sought help from the department after her abusive ex-partner kicked her out of their home while she was 31 weeks pregnant. The department’s response was notably

¹¹⁴ Of the 71 mothers from whom the Department removed children from between 2023 and March 2024, 23 were homeless. Western Australian Parliament, *Legislative Questions on Notice* [Tabled Paper No. 3182], April 18, 2024, [https://parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/4113182c3f72a424ee000a6848258b2c0008981e/\\$file/tp-3182.pdf](https://parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/4113182c3f72a424ee000a6848258b2c0008981e/$file/tp-3182.pdf) accessed August 27, 2024.

¹¹⁵ Department of Communities, Western Australia, Casework practice manual: Homelessness assistance, including the disruptive behaviour management strategy, <https://www.wa.gov.au/organisation/departments/departments-of-communities/casework-practice-manual#article/131-homelessness-assistance-including-the-disruptive-behaviour-management-strate>, accessed August 28, 2024.

¹¹⁶ International Covenant on Economic, Social and Cultural Rights, December 16, 1996, res 2200A, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>, part 11.

¹¹⁷ Australian Human Rights Commission, “Human rights and Homelessness and housing,” https://humanrights.gov.au/sites/default/files/content/letstalkaboutrights/downloads/HRA_homeless.pdf, accessed February 13, 2025, p.2.

deficient: after initially funding a stay in a motel, the department case worker later offered a tent when Briana declined accommodation at a domestic violence women’s refuge due to its location, which would have hindered her ability to attend neonatal appointments and be near her support system. At the time she was more than six months pregnant, and Perth’s hot summer was approaching.¹¹⁸

In a text message viewed by Human Rights Watch, the case worker stated: “We will not pay for further motel accommodation; we will provide you with a tent, but you need to find your own site.... [P]roviding a tent is the only option as you have refused to accept refuge accommodation.”

Briana initially thought the message was a joke: “They weren’t going to pay for emergency accommodation because they said their funds were limited. I understood that, but my circumstances were more exceptional than those of people losing their homes due to non-payment of rent or similar issues.... I asked them, ‘Would you do this to your daughter?’”¹¹⁹

Briana rejected the tent offer and persuaded the department to continue funding her motel stay. After her son’s birth, she accepted a placement at a refuge that receives department funding, but the refuge evicted her following a dispute over unresolved complaints about an ant infestation. Following this eviction, the department removed her 3-month-old son from her care in March 2024. Briana said her homelessness was the primary reason the department gave to justify her son’s removal:

It was because I’d been terminated from the refuge, and I didn’t have a permanent roof over my head.... I’m still staying in either hotel accommodation, caravan park, whatever it may be. But just because it’s not permanent, why would that stop me from parenting my child?... They never had an issue with my parenting until I didn’t have a roof over my head. On the contrary when I was at the refuge, they said to me that they wanted to close down the [child safety investigation].¹²⁰

¹¹⁸ Human Rights Watch phone interview with Briana L., May 14, 2024.

¹¹⁹ Ibid.

¹²⁰ Ibid

When Human Rights Watch interviewed her, Briana was still separated from her then 5-month-old son, on the waitlist for public housing, and applying for private rentals.

Pippa I., another domestic violence survivor, explained that the Department of Communities had removed four of her children from her care partly because of homelessness, after a domestic violence refuge evicted her. Pippa said, “They removed me from the refuge because another woman accused me of stealing her money. They couldn’t find another refuge for us, so they put me in a motel and decided to take my kids.”¹²¹ Pippa suspected that the theft accusation, which she denies, was racially motivated.

In 2019, the UN special rapporteur on the right to housing, Leilani Farha, highlighted that inadequate housing exacerbates violence against Indigenous women and girls.¹²² The special rapporteur has noted that while access to emergency shelters is a necessary immediate response to housing loss, relying on such shelters long-term fails to meet a state’s human rights obligations.¹²³

Long Waitlist for Public Housing Delays Family Reunification

Many of the families interviewed by Human Rights Watch were seeking longer-term public housing via the department’s housing services but had spent years on the waitlist due to a lack of available public housing. Parents said this often proved a barrier to reuniting with children whom the Department of Communities had removed from their care. Commonly, “safety plans”—plans given to parents by the department to outline steps for reunion—include a requirement for parents to acquire stable housing.

Evie D., 32, whose three children the Department of Communities had removed from her care, described how she started camping outside a government office in an attempt to speed up her housing application after spending two years on the public housing waitlist:

¹²¹ Human Rights Watch interview with Pippa I., January 29, 2023, Perth.

¹²² UN General Assembly, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, A/74/183, July 17, 2019, <https://documents.un.org/doc/undoc/gen/n19/220/89/pdf/n1922089.pdf>, accessed November 26, 2024, para. 47.

¹²³ United Nations Office of the High Commissioner for Human Rights, Special Rapporteur on the right to adequate housing, “Homelessness and human rights,” <https://www.ohchr.org/en/special-procedures/sr-housing/homelessness-and-human-rights>, accessed November 26, 2024.

I ended up staying at the front of the homelessness department in [suburb redacted]. I was on the street sleeping again. So, I made myself get up every day for three months straight.... They kept pushing me away. But I said, “No, I’m here for a reason. I need these people, [the] Department of Housing, to understand that I’m homeless.”¹²⁴

Aboriginal people are more likely to be dependent on public housing in Western Australia, partially because they face discrimination from landlords in the private rental market.¹²⁵ Housing advocates said that where children in out-of-home care “self-placed” with parents—meaning they had run away from care placement to return to their parents—the department would sometimes refuse to allow the children to be listed on public housing applications, even if the child was living with the parent. This put children at further risk of homelessness.

Weak Protections for Tenants in Social Housing Harm Aboriginal Families

Aboriginal people are impacted by discriminatory practices within the public housing system and are overrepresented in public housing evictions, especially due to so-called “no grounds” evictions¹²⁶ and the department’s “three strikes” policy.¹²⁷

Western Australia allows “no grounds” evictions in both its private and public rental markets, allowing a landlord to evict a tenant without reason at any time during a periodic lease with 60-day notice or at the end of a fixed-term lease with 30-day notice.¹²⁸

¹²⁴ Human Rights Watch phone interview with Evie. D, February 12, 2024, Perth.

¹²⁵ Australian Housing and Urban Research Institute. Indigenous Australians face considerable barriers achieving successful housing outcomes, <https://www.ahuri.edu.au/analysis/news/indigenous-australians-face-considerable-barriers-achieving-successful-housing-outcomes>, accessed August 29, 2024.

¹²⁶ National Indigenous Times, “No Grounds Evictions Case Shines Light on Unfair, Unjust Public Housing System,” *National Indigenous Times*, 18 September 2024, <https://nit.com.au/18-09-2024/13779/no-grounds-evictions-case-shines-light-on-unfair-unjust-public-housing-system>, accessed November 26, 2024.

¹²⁷ ABC News, “Public Housing ‘Three Strikes’ Policy Working, Says WA Government,” 26 May 2016, <https://www.abc.net.au/news/2016-05-26/public-housing-three-strikes-policy-working-says-wa-govt/7447858>, accessed November 26, 2024.

¹²⁸ WACOSS, “Explaining No Reason Evictions,” August 2023, <https://www.wacoss.org.au/wp-content/uploads/2023/08/EXPLAINING-NO-REASON-EVICTIONS.pdf>, accessed November 5, 2024, p.4.

In each year from 2017 to 2021, Aboriginal people made up more than half of those evicted from public housing properties following the end of fixed-term tenancies.¹²⁹ As of June 30, 2022, Aboriginal people made up about one-quarter of public housing tenancies.¹³⁰

The Department of Communities' "three strikes" policy also drives evictions against Aboriginal people. Introduced in 2011, the policy records "strikes" against public housing tenants for complaints made by neighbors or issues like non-payment of rent. Tenants face eviction after receiving three strikes.¹³¹

Human Rights Watch spoke with at least three families in which Department of Communities removed children after the department's housing arm had previously evicted them from public housing. The Department of Communities removed Ella M.'s six children from her after evicting her from her home under the three strikes policy. Ella, a domestic violence survivor, told Human Rights Watch, "[I] got kicked out, and then my kids were homeless; they got taken off me because we were homeless."¹³²

In April 2024, an Aboriginal mother brought legal action in the WA Supreme Court contending that the Department of Communities had denied her "procedural fairness" in its attempts to evict her on a "no grounds" basis from her public housing. She told media she was seeking to reunite with her children and needed a "safe home" for them.¹³³

The department's child protection case manual instructs that its housing services inform child protection services when they issue a "strike" against families' tenancies.¹³⁴ While

¹²⁹ Western Australian parliament questions, Question On Notice No. 1070, <https://parliament.wa.gov.au/parliament/pquest.nsf/viewLAPQuestByDate/94302DF9D4CoAA4B482588ED0020EDF1?openDocument>, accessed August 2, 2024.

¹³⁰ Western Australian Parliament, "Question Without Notice No. 596 — Public Housing Evictions," Western Australian Parliament, May 18, 2022, <https://www.parliament.wa.gov.au/parliament/pquest.nsf/viewLAPQuestByDate/2F8CF9BABFF0379F482588ED0020D09F?openDocument>, accessed November 26, 2024.

¹³¹ ABC News, December 26, 2013, WA evictions: The stories behind the statistics, <https://www.abc.net.au/news/2013-12-26/wa-evictions-feature/5170316>, accessed August 4, 2024.

¹³² Human Rights Watch interview with Ella M., January 6, 2023, Perth.

¹³³ Zimmerman, J., "Supreme Court battle to end evictions that are forcing children out of their homes and onto the streets," *The West Australian*, April 19, 2024, <https://thewest.com.au/opinion/supreme-court-battle-to-end-evictions-that-are-forcing-children-out-of-their-homes-and-onto-the-streets-c-14306110>, accessed August 4, 2024.

¹³⁴ Department of Communities, "Casework Practice Manual," July 29, 2024, <https://www.wa.gov.au/organisation/departments-of-communities/casework-practice-manual#article/131-homelessness-assistance-including-the-disruptive-behaviour-management-strate>, accessed November 5, 2024.

the manual states that child protection’s role with these families is to assess what support could be provided, in practice this results in greater surveillance by child protection authorities on families living in public housing than on families living in private accommodation. This creates a dynamic whereby there is greater Department of Communities’ scrutiny on lower income families than higher socioeconomic ones, which has a discriminatory effect.

The manual says child protection staff “assess” whether evictions will impact the safety and wellbeing of children. However, the manual goes on to say that information on evictions is not provided by housing services to the child protection teams “for us to take responsibility for the actual or possible accommodation needs of families and children facing eviction.”¹³⁵

The UN Guidelines for Alternative Care state that governments should pursue policies that “ensure support for families in meeting their responsibilities towards the child” and address the root causes of family separations such as adequate housing. It is an abdication of a state’s obligations to mandate that child protection teams are not responsible for accommodation needs of families facing eviction.¹³⁶

The UN Committee on Economic, Social and Cultural Rights, which monitors state compliance with the ICESCR, has stressed the obligation of states to provide alternative accommodation for evicted individuals, especially when they are responsible for children. In a General Comment in 2015, the committee stated:

State obligations with regard to the right to housing should be interpreted together with all other human rights obligations and, in particular, in the context of eviction, with the obligation to provide the family with the widest possible protection.... The obligation of States parties to provide, to the maximum of their available resources, alternative accommodation for evicted persons who need it includes the protection of the family unit,

¹³⁵ Ibid.

¹³⁶ UN Guidelines for the Alternative Care of Children, G.A. Res. 64/142, U.N. Doc. A/RES/64/142 (2010) <https://www.refworld.org/docid/4c3acd162.html>, para. 32.

especially when the persons are responsible for the care and education of dependent children.¹³⁷

Circumstance of Poverty Treated as “Neglect”

Aboriginal children are significantly overrepresented in the Department of Communities’ child safety investigations relating to neglect. In the 12 months to June 2023, the Department of Communities investigated about 5,799 allegations of child neglect; 48 percent of these allegations related to Aboriginal children.¹³⁸ When a case involved an Aboriginal child, the department more frequently determined that harm due to neglect had occurred or was likely to occur as compared to investigations into non-Aboriginal families.¹³⁹ Of the 1,911 neglect investigations related to Aboriginal children that were completed during this time, the department substantiated either harm or likelihood of harm in about 959 (50 percent) of cases.¹⁴⁰ Of the 1,978 neglect cases involving non-Indigenous children, authorities substantiated harm or the likelihood of harm in 775 cases (39 percent).¹⁴¹

Human Rights Watch found that Western Australia’s Department of Communities officials sometimes treated poverty as a form of neglect sufficient to justify child removals. In such cases, children were removed without the department first providing an adequate response to address underlying financial and material poverty or structural disadvantage.

Many families interviewed by Human Rights Watch described trying their best to provide for their children, but they faced increased pressure from child safety investigations instead of receiving support from the Department of Communities. Of the 33 parents interviewed by Human Rights Watch who had children removed by the department, at least 20 were dependent on social security entitlements. The rate of Australia’s social security payments has been criticized by civil society organizations such as the Australian Council

¹³⁷ UN Committee on Economic, Social and Cultural Rights, General Comment No. 7: The Right to Adequate Housing (Art. 11.1): Forced Evictions, UN Doc. E/C.12/1997/4 (1997), <https://documents.un.org/doc/undoc/gen/g17/219/00/pdf/g1721900.pdf>, accessed August 29, 2024, para. 15.4.

¹³⁸ Western Australian Department of Communities, “Child Protection Activity Performance Information 2021–22,” https://www.wa.gov.au/system/files/2023-10/child_protection_activity_performance_2022_23.pdf accessed August 27, 2024, p. 6.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

of Social Service for failing to cover people’s basic needs. A 2024 report by ACOSS surveyed those dependent on social security, including parenting payments, with 64 percent reporting they skipped meals or ate less to get by.¹⁴²

Some parents explained that they thought twice about asking the department for additional financial assistance because it can trigger a child safety assessment. Louise A. alleged that the Department of Communities used the material conditions of her house and the food she had in her home to justify the removal in 2014 of her seven children, all under the age of 14. The Department of Communities removed her children in the aftermath of a sudden death by heart attack of her partner, the children’s father, after which she said she received no services or support:

[The Department of Communities] reckon I neglected them, [that] they were never having food, they went to school hungry.... I had a home, I was sending them to school, they had food. But they reckoned there was no food in the house. Like, the house was a bit wrecked at the time, but yeah ... [Their father] passed away and then all of a sudden they come and took my kids off me.¹⁴³

Ricki E., who also single parents, said her children’s school had sent a report to the Department of Communities accusing her of sending her three children—one of whom has autism and is non-verbal, and another who has a language delay—to school without shoes or being fed. “The school made a complaint saying that the children was coming to school with no shoes on, not getting fed, so ‘neglect,’” she said.

She said she had been offered no services or support from the Department of Communities prior to the removal of her children in 2022, and that she would like to see “children not getting removed from people that care, when ... they could work with families before they removed the children. [It] would be a better solution.”¹⁴⁴

¹⁴² Australian Council of Social Service, *Raise the Rate Survey 2024*,” https://www.acoss.org.au/wp-content/uploads/2024/09/ACOSS-COL-Report-Sept-2024_v03.pdf,” accessed February 3, 2025, p.11.

¹⁴³ Human Rights Watch interview with Louise A., January 22, 2023, Perth.

¹⁴⁴ Human Rights Watch interview with Ricki E., January 6, 2023, Perth.

Conversely, Human Rights Watch identified some cases in which the Department of Communities referred parents to nongovernmental organizations who gave them appropriate support and the department subsequently did not remove the children from their parent's care. For instance, Daisy M., a single mother who was struggling following the death of her own mother, spoke positively about the support she received from the Aboriginal nongovernmental organization to which the Department of Communities referred her. The department investigated her after her sons were absent from school. Instead of having her children taken from her, she was provided with transport and other material assistance by the Aboriginal organization. She told Human Rights Watch the department was closing the child safety investigation against her. She said:

[The Aboriginal organization] tried to work to help me with the boys. They didn't want to take them from me because I just lost my mother. And they supported me as much as they can. [The Aboriginal support worker] helped get furniture for the house, she helped do school packages, [during] Covid-19 time brought masks and stuff around, took [my son] to some of his appointments when he needed it. [The worker] wanted to support [my son] going to school.¹⁴⁵

A senior manager at an Aboriginal nongovernmental organization said that when families got the right support, children flourished, but the Department of Communities was too often removing children as a first option:

Poverty is a big issue in our community and having equity and access to certain things that everyday people take for granted. I know a lot of cases where you have single mums that have got three or four children, and all they need is a little bit of help, and that might mean they go to the department to ask for some help and then the next thing, the department's coming in taking the children.¹⁴⁶

Parents' ability to provide necessities like food, shelter, and medical care is closely tied to their economic conditions. However, these structural or economic conditions can often be

¹⁴⁵ Human Rights Watch interview with Daisy M., February 3, 2023, Perth.

¹⁴⁶ Human Rights Watch Interview with an Aboriginal nongovernment organization employee, April 3, 2024, Perth.

viewed through the prism of neglect. The Department of Communities’ 2021 policy on neglect states:

Some parents may require additional supports to meet the needs of their children due to structural factors outside of their control, which can contribute to disadvantage and neglect. Where a child has or is likely to experience significant harm from neglect, the Department **must** assess the concern and provide an appropriate response, irrespective of whether it is due to inadequate parenting, the impact of structural disadvantage or a combination of both.¹⁴⁷

Aboriginal and Torres Strait Islanders experience higher levels of socioeconomic disadvantage compared with non-Indigenous Australians.¹⁴⁸ The Australian Institute of Health and Welfare estimates that one in three First Nations adults live in households in the bottom 20 percent of incomes nationally¹⁴⁹ and experience less access to affordable or secure housing and are more likely to live in overcrowded conditions or face homelessness.¹⁵⁰

Combined, this means that families with lower incomes, a group in which First Nations people are overrepresented, are therefore more likely to be investigated by the department for “neglect.” Once such an investigation into neglect has commenced, the Department of Communities’ “Neglect Policy” and “Casework Practice Manual” chapter on neglect provide only a limited menu of responses. This puts Aboriginal families at greater risk of unjustified removals.

National data shows a correlation between socioeconomic status and the substantiation of maltreatment in child safety investigations across all types of abuse and neglect.¹⁵¹ In 2022-23, 40 percent of substantiated cases involving Aboriginal children fell into the

¹⁴⁷ Ibid, p. 5 (emphasis in original).

¹⁴⁸ Indigenous Health Promotion Foundation, “*Index of disadvantage. Indigenous Health Promotion Foundation,*” <https://www.indigenoushpf.gov.au/measures/2-09-index-of-disadvantage>, accessed October 10, 2024.

¹⁴⁹ Australian Institute of Health and Welfare, July 2, 2024, “Determinants of health for First Nations people,” <https://www.aihw.gov.au/reports/australias-health/social-determinants-and-indigenous-health>, accessed November 26, 2024.

¹⁵⁰ Ibid.

¹⁵¹ Australian Institute of Health and Welfare, “Child Protection Australia: Insights,” <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-insights/data>, accessed August 27, 2024, Table S3.8.

lowest socio-economic grouping, according to the Index of Relative Socio-Economic Advantage, which assesses material and social resources. For non-Indigenous children with substantiated cases, 31 percent were reported as being in the lowest socioeconomic grouping.¹⁵²

The UN Committee on the Rights of the Child has stated that economic reasons never justify separating a child from their parents. In such circumstances, the state should instead provide support to parents.¹⁵³ Similarly, the UN Guidelines for the Alternative Care of Children state:

Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family.¹⁵⁴

Infant Removals

Human Rights Watch interviewed at least seven parents (six mothers and one father) from whom the department had removed their infant children. This included at least three parents (two mothers and one father) from whom the department had removed their children from the hospital directly after they were born. Parents described these removals as highly traumatic.

Chloe M. said that the Department of Communities removed her two sons from her care during her pregnancy in 2022 due to allegations that Chloe's partner (the children's father) was committing domestic violence, that the children were being subject to neglect, and that the parents had failed to ensure they received medical care. When Chloe's daughter was born in February 2023, department social workers visited her at the hospital. While the department initially allowed Chloe to take her baby home, they removed the child weeks

¹⁵² Ibid.

¹⁵³ UN Committee on Rights of the Child, General comment No.14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration, U.N. Doc. CRC/C/GC/14 (2013), www.refworld.org/docid/51a84b5e4.html, accessed August 23, 2024, para. 61.

¹⁵⁴ UN General Assembly, Guidelines for Alternative Care of Children, A/Res/64/142 (2010), annex, para. 15.

later. Chloe spoke to Human Rights Watch when she was still at the hospital after the birth and had been told the department planned to take the daughter into care. She said she had been given minimal information about where her daughter would be placed and described her distress at the prospect of her removal:

I feel lost. Feel like I was having a nightmare this morning. I was crying in my sleep. The nurse had to come wake me up. I thought I was dreaming, but I was actually having a dream where it was saying that they was going to take her ... and I was crying in my dream ... It just feels like they just want to take the kids. I don't know ... I don't feel like I got none, [power]. I'm trying my best, but they're not helping.¹⁵⁵

Human Rights Watch also documented some cases in which the department had worked with families to address concerns and avoided removing infant children. These cases showed that mothers were highly motivated to make changes during their pregnancies for their children's benefit and the department has alternatives to highly traumatic infant removals that should be used more frequently.

This was highlighted in the case of Evie D. The Department of Communities had removed three of Evie D.'s children from her care due to domestic violence perpetuated by her ex-partners, homelessness, and substance use. The department removed her two oldest children when they were 4 and 2, and her youngest child from the hospital after Evie had given birth.¹⁵⁶

However, the department worked with Evie during her pregnancy with her fourth child and did not take him from her care. She told Human Rights Watch:

I was pregnant when I worked with them, but then I had him and then I had to go to rehab because otherwise, they will took him off me. And I couldn't go through that experience again after getting one of my babies taken off me already.¹⁵⁷

¹⁵⁵ Human Rights Watch interview with Chloe M., February 4, 2023, Perth.

¹⁵⁶ Human Rights Watch interview with Evie D., February 12, 2023, Perth.

¹⁵⁷ Ibid.

After spending a decade homeless, Evie had secured stable housing for herself and her now 2-year-old son.¹⁵⁸ Evie had grown up in state care herself and said her family had experienced four generations of child removals. She was hopeful about potentially reuniting with her three children who remained in out-of-home care and emphasized the importance of supporting mothers. “Hopefully, [I can get back my other three children], I can't wait ... I got my house, that's a big step for me after 10 years,” she said. “If they can do more for the kids to support the mothers because it's hard to be a single mother at times and to be under a domestic violent relationship.”¹⁵⁹

Similarly, Louise A. was able to remain in the same household as her newborn baby after she and an Aboriginal advocate negotiated with the department to allow the infant to be placed into the care of her adult son, who lived in the same household as her. The Department of Communities had previously removed her 2-year-old son because of alleged physical violence, which she denied. She described her terror as she gave birth fearing her newborn would be removed and how she even had contemplated trying to flee the hospital with her baby:

They reckoned that he was going straight into care.... So as soon as I give birth, they were going come and take him after I have him.... But then I had him at 6 o'clock in the morning, and the nurses they didn't really know what was going on, they had the social worker [at the hospital].

I was 5 centimeters dilated going up to the hospital, to go and have a baby, but at the same time I was going through a lot of emotions and stress, thinking like, I'm going to give birth and then they're just going to take him away from me. Like, I was going through pain and all that there but at the same time I was stressing, cause I'm going give birth to my kid which is going to go like [my other baby].... I started stressing, thinking, I might just walk out of the hospital. I really wanted to just walk out of the hospital with him, but then I thought, nah, I'm not going do that, to show them that I'm a

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

bad mother, where I'm a [good] mother. So I sat there, and I waited, to see what [they] was going to do.¹⁶⁰

National Justice Project lawyer Karina Hawtrey told Human Rights Watch she was concerned that the department's use of "unborn child safety investigations" was a deterrent for women to access prenatal health care:

[Western Australia] is one of the few states in the country to legally permit 'unborn child safety investigations.' The ideal situation is that any investigation occurring during pregnancy is being used to identify supports that can be provided to the mother before the child is born to prevent the risk of future removal. However, in practice, these investigations can lead to a higher level of scrutiny of expecting mothers and higher rates of early removal. It can also create a risk that expecting mothers may disengage from prenatal services and health care because of concerns that they may make a pre-birth report to the Department.... One solution is to fund First Nations run and led birthing services with access to community and health care supports, along the lines of Waminda South Coast Women's Health and Welfare Aboriginal Corporation in NSW.¹⁶¹

Aboriginal women are significantly overrepresented in the Department of Communities investigations into pregnant women. Data shows of the 228 investigations they conducted in 2022-2023 into the safety of "unborn" children, 149 (65 percent) related to Aboriginal women.¹⁶²

SNAICC has previously raised concerns about child safety investigations into pregnant women causing trauma to Aboriginal families nationwide and too often eroding families' trust in health systems. In its 2024 "Family Matters" report, SNAICC wrote:

¹⁶⁰ Human Rights Watch interview with Louise A., January 22, 2023, Perth.

¹⁶¹ Human Rights Watch email correspondence with National Justice Project lawyer Katrina Hawtrey, January 27, 2025.

¹⁶² Australian Institute of Health and Welfare, Child protection Australia 2022–23, July 18, 2024, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-insights>, accessed December 15, 2024), Table 3.6.

Unborn reports, or pre-birth notifications, represent a significant source of harm and trauma for Aboriginal and Torres Strait Islander children, families and communities. These reports involve notifications to child protection authorities about a child who has not yet been born. In Tasmania, these reports are mandatory if there is a reasonable likelihood of abuse or neglect of the child once born. In NSW, Qld, WA and Tasmania, these notifications can be investigated during pregnancy. In other states and territories, these investigations only occur when the child is born. While these processes can assist in directing supports to families at a critical juncture, they often erode trust in—and engagement with—vital health services by linking families to systems of surveillance and policing.¹⁶³

¹⁶³ SNAICC, Family Matters, November 2024, <https://www.snaicc.org.au/wp-content/uploads/2024/11/241119-Family-Matters-Report-2024.pdf>, accessed December 16, 2024, pp. 26-28 (in-text citations omitted).

Harms in Out-of-Home Care

While the child protection system's stated purpose is to protect children, many children are not kept safe from harm while in out-of-home care. Out-of-home care is not necessarily safer than living with a child's parent or parents. Children living in group homes or in the care of other relatives can still be at risk of physical, psychological, and sexual abuse from carers. Children in out-of-home care are also overrepresented in Western Australia's criminal justice system. Research commissioned by the Department of Communities found that young people who were transferred to out-of-home care were more likely to have adverse outcomes compared to young people who had experienced maltreatment but did not enter care. The study also found that Aboriginal children with child protection involvement were even more likely to have poorer outcomes.¹⁶⁴

Human Rights Watch's research suggests that Western Australia has been failing to meet the standards for out-of-home care outlined by the UN Guidelines for the Alternative Care of Children.

Abuse in Care

Children can experience physical, sexual, and emotional abuse in the care system. Across Australia in 2022-2023, there were at least 1,229 recorded cases of children being abused while living in out-of-home care.¹⁶⁵ Of these cases, 629 (51 percent) related to First Nations children.¹⁶⁶ The frequency of cases of abuse in care challenge the common presumption that children are safe in the care system. In Western Australia, a lack of an independent monitoring system of out-of-home care can result in substandard responses to cases where alleged abuse has occurred.

¹⁶⁴ Lima, F., Maclean, M., & O'Donnell, M, Telethon Kids Institute, "Exploring outcomes for people who have experienced out-of-home-care, (2018), <https://www.telethonkids.org.au/contentassets/0a827e30fcaa481ead96fafa42aa5c82/dcpfs-outcomes-report-final.pdf>, accessed October 10, 2024, p.2-5.

¹⁶⁵ Australian Institute of Health and Welfare, Child protection Australia 2022-23, Data tables: Safety of children in care 2022-23, September 27, 2024, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-insights/data>, accessed October 1, 2024.

¹⁶⁶ Ibid.

Human Rights Watch documented several cases in which parents said their children had experienced serious abuse while in out-of-home care. Many parents were frustrated at the Department Communities' failure to keep their children safe and said they had been dismissed when they raised concerns.

Natalie J. said her 17-year-old daughter had been sexually assaulted after the Department of Communities placed her in the care of Natalie's former mother-in-law in 2018.¹⁶⁷ Natalie said her daughter now shows symptoms of mental health harm and attempted to self-harm. "She's not the same since I know that things happen to her at my mother-in-law's house now," she said. "I know she got raped, sexually assaulted, because I could see it. She told me a couple of things."¹⁶⁸

Jessie T. attributes the mental health harm and distress that her 17-year-old son, Steven, experienced to the repeated abuse he endured from carers and other children in group homes while in out-of-home care.¹⁶⁹

"Last week he jumped out of my car while my car was moving, chucked himself on the pavement and that. He doesn't know how to control his emotions, and he doesn't know how to stop it either like when he's in a down mood and he just thinks that's the way he's gotta be and he's gotta be aggressive to people," Jessie T. said. "He thinks that that's the way he's gotta be because that's how he was abused in all the homes."¹⁷⁰

Steven's sister Janice, 16, told Human Rights Watch that at one of the group homes they were placed in, the carers allegedly instructed Steven to hit her and their other siblings. She said: "We were in a group home together and the owners lost something, and they blamed it on us. One of the carers pushed my brother, and they told him to hit us if they didn't find it or anything. But [Steven], he didn't hit us. But they were just forcing us to hate each other and stuff."¹⁷¹

¹⁶⁷ Human Rights Watch interview with Natalie J. February 3, 2023, Perth.

¹⁶⁸ Ibid.

¹⁶⁹ Human Rights Watch interview with Jessie T., February 5, 2023, Perth.

¹⁷⁰ Ibid.

¹⁷¹ Human Rights Watch interview with Janice T., May 9, 2023, Perth.

Another of Steven’s sisters, Rachel, 22, said they had experienced bullying by other young people at group homes.¹⁷² She said one young person had targeted Steven. “He just kept hitting [Steven] every day and just telling [Steven] stuff, whacking him with newspaper, spoons, all that,” she said.¹⁷³

The children’s commissioner of Western Australia has criticized a lack of independent review of the out-of-home care system. In a 2017 report, the commissioner highlighted that although there is an advocate for children in care employed by the Department of Communities in the office of the director general, there was not an independent advocate to support children to raise concerns about their treatment and support.¹⁷⁴ The commissioner pointed out that as an employee of the department, this role has failed to deliver independent oversight because they are neither independent nor external.¹⁷⁵ The commissioner recommended that children:

have access to an independent third-party advocate with whom they can not only raise issues that they may have about their care experience, but from whom they can receive support navigating the out-of-home care system generally. The unique vulnerability of children and young people in care, and the absence of effective parental advocacy, renders this an indispensable form of oversight.¹⁷⁶

As of early 2025, that recommendation had not been implemented.

The UN Guidelines for the Alternative Care of Children encourage governments to ensure that an independent monitoring mechanism is in place to hold agencies, facilities, and professionals accountable. The monitoring mechanism should be empowered to consult with children in out-of-home care in private, visit care settings in which they live, and

¹⁷² Human Rights Watch interview with Rachel T., May 9, 2023, Perth.

¹⁷³ Ibid.

¹⁷⁴ Commissioner for Children and Young People Western Australia, Oversight of services for children and young people in Western Australia, November 2017, p.28.

¹⁷⁵ Ibid, p.28.

¹⁷⁶ Ibid, p.33.

undertake investigations into any alleged situation of violation of children’s rights in those settings based on a complaint or on its own initiative.¹⁷⁷

Incarceration of Children Removed from Their Parents

Children removed from their parents are overrepresented in Western Australia’s criminal justice system.¹⁷⁸ One in four (25 percent) of children ages 10-17 who were detained in 2022-23 had also been in out-of-home care in the past 10 years.¹⁷⁹ First Nations children who were detained were even more likely to have also been in out-of-home care. Of the Indigenous children detained, 30 percent had been in out-of-home care, compared with 17 percent of non-Indigenous children.¹⁸⁰

Human Rights Watch has found that the failure of out-of-home care to provide a stable, safe, and restorative environment for children in has contributed to Indigenous children being overrepresented in Western Australia’s criminal justice system.

Once in detention, children in the child protection system may be subject to longer term detention. The Western Australia Aboriginal Legal Service has previously raised concerns about the Department of Communities failing to provide bail undertakings to children in its care who had been detained in Banksia Hill Detention Centre because it has failed to find accommodation for them if released.¹⁸¹ This is contrary to the obligation under international law that the detention or imprisonment of a child “shall be used only as a measure of last resort and for the shortest appropriate period of time.”¹⁸²

Human Rights Watch documented five cases in which parents and grandparents said that their children or grandchildren had been incarcerated while living in out-of-home care.

¹⁷⁷ UN Guidelines for the Alternative Care of Children, (February 24, 2010), paras. 128-130.

¹⁷⁸ Australian Institute of Health and Welfare, Young people under youth justice supervision and their interaction with the child protection system 2022–23, October 25, 2024, <https://www.aihw.gov.au/reports/youth-justice/young-people-youth-justice-supervision-2022-23/data>, accessed November 5, 2024, table 9a.

¹⁷⁹ *Ibid*, Table S9d.

¹⁸⁰ *Ibid*, Table S9d.

¹⁸¹ Calla Wahlquist, “Aboriginal children ‘kept in detention’ despite being granted bail in Western Australia,” *Guardian*, <https://www.theguardian.com/australia-news/2021/dec/28/aboriginal-children-kept-in-detention-despite-being-granted-bail-in-western-australia>, accessed October 22, 2024.

¹⁸² Convention on the Rights of the Child, art. 37(b).

Tanya I. said her 12-year-old grandson started “mixing with the wrong crowds” after the Department of Communities removed him from his parents and ended up being repeatedly incarcerated in Banksia Hill Detention Centre.¹⁸³ “He was in Banksia at a very young age, I think it was 12. And then he went in and out, in and out.”¹⁸⁴

Ivy A. similarly described how her 14-year-old son started offending after both the death of his father and his removal into out-of-home care, which had compounded his trauma. “He’s quite a complex little fella ... [he] got caught up with a group of kids and ended up with some really bad charges. And then the state’s gone and taken him into care as of September, which has put more trauma towards his well-being as a young, young, young person,” she said.¹⁸⁵

Lucy W. said her 15-year-old son had been taken into care when he was a toddler and was first incarcerated in Banksia Hill Detention Centre when he was about 11. She said she got little information about her son’s detention from the Department of Communities and had not been able to visit him, but was often told by her son that he had self-harmed while in detention. She described him as being incarcerated so frequently he was “in and out every week.”¹⁸⁶

“[He self-harms in detention] all the time. He’s had to be resuscitated a few times.... A week and a half ago ... [my son] rang me from the hospital and told me he was resuscitated and told me that he was in mental ward at the Children’s Hospital,” she said. “I want to see him stay out of Banksia.... He’s been in Banksia more than he has been in a house since he’s been taken.”¹⁸⁷

Alice A. similarly said she got little communication about the welfare of her 16-year-old grandson when he was in detention. Alice said her 16-year-old grandson had been removed from his parents when he was about 5 and first went to Banksia Hill Detention Centre when he was about 10.

¹⁸³ Human Rights Watch interview with Tanya I., January 17, 2023, Perth.

¹⁸⁴ Ibid.

¹⁸⁵ Human Rights Watch interview with Ivy A., January 22, 2023, Perth.

¹⁸⁶ Human Rights Watch interview with Lucy W., January 22, 2023, Perth.

¹⁸⁷ Ibid.

When the Department of Justice had placed him in Unit 18—a wing of Acacia adult prison where the Western Australian government places some child detainees—the Department of Justice had failed to inform Alice about this.¹⁸⁸

“They didn’t even tell me that they moved him from Banksia Hill to Unit 18,” she said. “They didn’t tell me. So I did ring and say I wanted to know about his progress or if he was all right. And they said, ‘Well, you need to ring the Department of Child Protection because he’s in their care and not yours.’”¹⁸⁹

In 2024, Australia’s national children’s commissioner released a report that found children in the criminal justice system were experiencing some of the most “egregious” human rights violations in the country, such as being held in conditions akin to solitary confinement and being held in adult facilities. Children who encounter the justice system often had unmet needs—such as housing, health care, and education—which had not been addressed by the systems that are meant to support them, including child protection systems.¹⁹⁰ The report called for Australian state and federal governments to urgently prioritize access to safe and affordable housing for children and families, including those in the child protection and justice systems.¹⁹¹ It also called on governments to develop nationally consistent minimum training requirements for workforces in the child justice and related systems, including child protection. The report said training should include child rights, child development, mental health, neurodevelopmental disabilities, cultural competence, and trauma-informed practice.¹⁹²

¹⁸⁸ Human Rights Watch interview with Alice A., January 22, 2023, Perth.

¹⁸⁹ Ibid.

¹⁹⁰ Australia Human Rights Commission (2024), “Help way earlier!’: How Australia can transform child justice to improve safety and wellbeing,” https://humanrights.gov.au/sites/default/files/document/publication/1807_help_way_earlier_-_accessible_o.pdf, accessed October 19, 2024.

¹⁹¹ Ibid, p.12

¹⁹² Ibid, p.13.

Other Australian states, such as New South Wales,¹⁹³ Northern Territory,¹⁹⁴ and Victoria¹⁹⁵ have developed “care not custody” protocols between police and the government department responsible for child protection which aim to ensure that residential group homes do not rely on unnecessary policing of children in out-of-home care. Western Australia has not developed a similar protocol.

¹⁹³ New South Wales government, “NSW Joint Protocol,”

https://www.facs.nsw.gov.au/__data/assets/pdf_file/0006/585726/NSW-Joint-Protocol-2019.pdf, accessed March 1, 2025.

¹⁹⁴ Northern Territory government, “Protocol for police contact for children living in Therapeutic Residential Care,”

https://territoryfamilies.nt.gov.au/__data/assets/pdf_file/0008/796877/Protocol-for-Police-contact-with-children-living-in-Therapeutic-Residential-Care.pdf, accessed March 1, 2025.

¹⁹⁵ Victorian government, “A framework to reduce criminalisation of young people in residential care”,

[https://providers.dffh.vic.gov.au/sites/default/files/2020-](https://providers.dffh.vic.gov.au/sites/default/files/2020-02/A%20Framework%20to%20reduce%20criminalisation%20of%20young%20people%20in%20residential%20care.PDF)

[02/A%20Framework%20to%20reduce%20criminalisation%20of%20young%20people%20in%20residential%20care.PDF](https://providers.dffh.vic.gov.au/sites/default/files/2020-02/A%20Framework%20to%20reduce%20criminalisation%20of%20young%20people%20in%20residential%20care.PDF), accessed March 1, 2025.

Challenging Child Removals

Parents have limited opportunities to challenge the Department of Communities' decisions to remove their children. In many removals, parents are excluded from hearings in the early stages of the court process. When the department initially applies to the Children's Court of Western Australia to seek warrants to remove children, the parents do not get an opportunity to appear in court.

The department is required to apply to the Children's Court of Western Australia to obtain protection orders that make the department the legal guardian of the child with authority to decide where they live. The parents can challenge the department in these hearings but often have limited access to legal representation.

Parents can apply to the Children's Court to revoke protection orders if they believe the situation used to justify the child's removal has changed.

Limited Access to Legal Recourse

Parents often lack legal representation in child and protection proceedings, where courts decide on issuing protection orders and placing children in out-of-home care. Not all cases go to trial—for example, if parents reach an agreement with the department during pre-trial hearings.¹⁹⁶ Some cases are also heard by Dandjoo Bidi-Ak, a court within the Children's Court that aims to create a “culturally safe and respectful environment” and adopts a mediative approach.¹⁹⁷

However, when cases do reach trial, many parents do not have legal representation. Human Rights Watch documented six cases of child removals where mothers said they did not have legal representation. In current legislation governing child removals in Western Australia, parents are not guaranteed legal representation, making it harder for courts to determine what action will be in the best interests of the child.

¹⁹⁶ Children's Court of Western Australia, “Stages of a Protection and Care Case,” (April 10, 2024), https://www.childrencourt.wa.gov.au/S/stages_of_a_protection_and_care_case.aspx?uid=6938-53-4044-7116, accessed October 23, 2024.

¹⁹⁷ Children's Court of Western Australia, “Dandjoo Bidid-Ak,” October 23, 2024, https://childrencourt.wa.gov.au/D/dandjoo_bidi_ak.aspx, accessed November 4, 2024.

Data obtained by Human Rights Watch from the Children’s Court shows that in the year 2023-2024, mothers and families had legal representation in only 14 percent of cases (10 of 70 cases) where a child protection hearing commenced.¹⁹⁸ Among the respondents, 7 (10 percent) chose to self-represent, 20 (29 percent) were unrepresented, and 12 (17 percent) did not appear. Additionally, there were 21 cases where it was not recorded whether a respondent appeared or if they had legal representation.¹⁹⁹ Data was not available on how many of the cases were Indigenous families.

The lack of legal representation disadvantaged parents and, in some cases, they were confused about the court process. For instance, Rita I., who did not have legal representation, said she had missed the court hearing when it was decided that her two daughters would be placed under protection orders until they turned 18. She said: “I missed the court visit, the last visit, and the court date when they decided to give the kids to my sister until they was 18.... I didn’t even know that I had to go to court.” Rita I. was homeless and had left school when she was in Year 9.²⁰⁰

Similarly, the Department of Communities removed five of six children from Belinda E.’s care. Belinda said she did not have legal representation and likewise missed the court hearing when it was decided her children would be placed under a protection order until they turned 18. Belinda E. was a victim of domestic violence who had experienced chronic homelessness.²⁰¹

The Children’s Court of Western Australia itself has previously raised concerns about parents being unrepresented in care and protection trials. In a submission to a 2017 parliamentary inquiry into domestic violence, the court highlighted some of the disadvantages respondent parents faced:

Respondent parents face a myriad of difficulties in the protection and care jurisdiction and a significant number of respondent parents are either perpetrators and/or victims of family and domestic violence. Respondent parents are likely to [live with] mental health issues, drug and alcohol

¹⁹⁸ Email from the Children’s Court of Western Australia court media to Human Rights Watch, October 16, 2024.

¹⁹⁹ Ibid.

²⁰⁰ Human Rights Watch interview with Rita I., January 24, 2023, Perth.

²⁰¹ Human Rights Watch interview with Belinda E., February 12, 2023, Perth.

issues ... [live with] disability and may be incarcerated. Respondent parents may also be homeless or living at risk, illiterate and may not have access to a mobile telephone.²⁰²

The Court's submission also said that lack of legal representation might result in parents who suffer from significant disadvantages not opposing orders sought by the Department of Communities:

These orders have serious repercussions given that the respondent parent is losing their parental rights in relation to their child, in many cases until the child is aged 18 years. A victim of domestic violence may want to defend an application in respect of her child but due to the impact of that violence may not have the confidence, strength or ability to represent herself at trial. There is a danger she may not oppose an order because of the additional burden of being a victim of family violence on top of the burden of being self-represented.²⁰³

Legal Aid Western Australia, the statutory body that provides legal assistance for those who may not otherwise be able to afford it, told Human Rights Watch that prior to 2022, due to limited funding they had only been able to provide respondents with a very limited grant for initial advice, negotiation, and an initial court attendance.²⁰⁴ However, it changed its guidelines in January 2022, following the allocation of a new cost and demand model funding from the state government that now enabled it to fund respondents to care and protection matters through to trial “where reasonable to do so.”²⁰⁵

²⁰² Judge Julie Wager, “Submission to the parliamentary inquiry on domestic violence (Submission No. 15),” October 9, 2019, [https://www.parliament.wa.gov.au/parliament/commit.nsf/\(Evidence+Lookup+by+Com+ID\)/584F4DA98176D0974825849B00186708/\\$file/SUB+15+-+20191009+-+MCWA+-+Judge+Julie+Wager+Childrens+Court+of+WA_Redacted.pdf](https://www.parliament.wa.gov.au/parliament/commit.nsf/(Evidence+Lookup+by+Com+ID)/584F4DA98176D0974825849B00186708/$file/SUB+15+-+20191009+-+MCWA+-+Judge+Julie+Wager+Childrens+Court+of+WA_Redacted.pdf), accessed October 20, 2024.

²⁰³ Ibid.

²⁰⁴ Human Rights Watch email correspondence with Legal Aid Western Australia, October 1, 2024.

²⁰⁵ Children and Community Services Act 2004, November 1, 2024, https://www.legislation.wa.gov.au/legislation/statutes.nsf/RedirectURL?OpenAgent&query=mrdoc_47868.docx, accessed November 2, 2024, p. 47.

Increased access to legal services has been promoted as a way to reduce the number of Aboriginal children entering the care system. The data from the Children’s Court, however, suggests that many parents still go unrepresented in care and protection proceedings.

In 2020, the National Commissioner for Aboriginal and Torres Strait Islander People June Oscar released a report “Wiyi Yani U Thangani” (Women’s Voices), which recommended all state and territory governments introduce a Child Protection Notification Referral System to automatically refer parents to culturally safe legal advice as soon as they had any interactions with the child protection system.²⁰⁶ This is like the existing Custody Notification system, which requires police to call Aboriginal Legal Services whenever an Aboriginal person, child or adult, is detained in a police facility.

National Justice Project lawyer Karina Hawtrey told Human Rights Watch she was concerned about the high rates of removals occurring in Western Australia without warrants or with warrants that denied parents the opportunity to present their side of the argument in court:

Where parents are excluded from the early parts of the child removal process, their child can be taken from them before they have the chance to respond to the Department’s accusations of the risks of harm to their child or to make changes to address them. Parents are also unable to correct any factual errors in the Department’s account or present their own views and evidence until much later when a case goes before the Court. In circumstances where governments and public servants make decisions about a person’s rights, like the right of a parent to care for their child, there is a legal duty to make sure that the person has a chance to respond to any allegations made about them, known as procedural fairness. In the area of child protection Governments have created laws which allow them to avoid this duty despite the risk of unfairness to parents and caregivers.

²⁰⁶ Australian Human Rights Commission, “Wiyi Yani U Thangani Report,” December 9, 2020, <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>, accessed October 31, 2024, p. 102.

We believe the Department needs to be held to a higher level of scrutiny and accountability for their decisions to remove children through the law, the Courts and through independent oversight.²⁰⁷

The UN's guidelines for alternative care of children state that where a decision is made by the appropriate authorities to remove a child against the will of their parents, the parents should be assured "access to appropriate legal representation."²⁰⁸

²⁰⁷ Human Rights Watch email correspondence with National Justice Project lawyer Karina Hawtrey, January 27, 2025.

²⁰⁸ UN Guidelines for the Alternative Care of Children, G.A. Res. 64/142, U.N. Doc. A/RES/64/142 (2010) <https://www.refworld.org/docid/4c3acd162.html>, para. 47.

Visits and Reunifications

The Department of Communities case worker manual states that “reunification is usually the preferred option for a child in provisional protection and care or on a protection order (time-limited)” and directs child protection workers that they must be “proactive and commence reunification as soon as the child enters provisional protection and care.”²⁰⁹

Reunification is a term used to refer when a child in care is permanently reunited with their parent or parents. Once the Department of Communities places children under a protection order stating the children will remain in care until they turn 18, the department no longer pursues family reunification. Parents can still, however, apply to the Children’s Court to have a protection order revoked.²¹⁰

Human Rights Watch found several cases in which the Department of Communities had not sought to reunite families as soon as possible, even where families had sought to address the department’s safety concerns. In some cases, children had resorted to physically running away from placements to reunite with their parents.

Failure to Ensure Speedy Reunification

Aboriginal children in the Western Australian out-of-home care system face lower rates of family reunification than non-Indigenous children. In 2020-2021, about 17 percent of First Nations children living in the Western Australian out-of-home care system were reunited with their families, compared with about 25 percent of non-Indigenous children.²¹¹ Of the 112 children that were removed from the parents interviewed by Human Rights Watch, only about 18 were reunited.

²⁰⁹ Department of Communities, Caseswork Practice Manual, *Stability and Connection Planning*, <https://www.wa.gov.au/organisation/departments-of-communities/casework-practice-manual#article/3417-stability-and-connection-planning>, accessed December 20, 2024.

²¹⁰ Ibid.

²¹¹ Australian Institute of Health and Welfare, “Data tables: Aboriginal and Torres Strait Islander Child Placement Principle indicators Data,” August 26, 2022, <https://www.aihw.gov.au/reports/child-protection/atsicpp-indicators/data> accessed October 20, 2024), Table S2.3b.

The UN Guidelines for the Alternative Care of Children state that as well as being a measure of last resort, the removal of a child from the care of the family should wherever possible be temporary and for the shortest duration. Removal decisions should be regularly reviewed and the child’s return to parental care, once the original causes of removal have been resolved or have disappeared, should be in the best interests of the child.²¹²

Families interviewed by Human Rights Watch described the reunion process as unnecessarily prolonged and unresponsive. When asked what changes they wanted to see to the child protection system, many interviewees said quicker family reunification.²¹³ Most of the children spent years in the out-of-home care system.

In some instances, children were reunited with their families after physically running away from care placements. The Department of Communities’ case worker manual acknowledges there are scenarios in which children leave their placements and “self-select” to live with family or friends.²¹⁴ The manual instructs workers to assess the risk of the “self-selected” placement and respond accordingly.²¹⁵ However, children resorting in some cases to running away to reunite with their parents reflects a failure to ensure family contact and visitations, and that some children feel unsafe in their care placements.²¹⁶

The Department of Communities removed Rachel T., now 22, from her mother Jessie T. at age 9, due to her mother’s relationship with her abusive partner. Jessie said she had already left that relationship when the department removed Rachel and her siblings. However, the Department of Communities failed to ensure that Rachel’s care arrangements were temporary and that the removal decisions received regular reviews. At 14, Rachel ran away from her care placement and returned to her mother, who then took her to the Department of Communities office. Rachel told Human Rights Watch:

“Mum being mum, she was doing the right thing. She took me back into the [Department of Communities] office and said, ‘Look, [Rachel] ran away.

²¹² UN Guidelines for the Alternative Care of Children, G.A. Res. 64/142, U.N. Doc. A/RES/64/142 (2010) <https://www.refworld.org/docid/4c3acd162.html>, para. 14.

²¹³ Human Rights Watch interviews with Louise A., Ivy A., Briana L., and Alice A.

²¹⁴ Department of Communities, Casework practice manual, <https://www.wa.gov.au/organisation/departments-of-communities/casework-practice-manual#article/3424-self-selected-living-arrangements>, accessed October 29, 2024.

²¹⁵ Ibid.

²¹⁶ Ibid.

She's come to me because I'm her mum.' And they said, 'What do you want to do with her?' ... They actually separated me and my mum and asked mum if she actually wanted to have me back in her care. When she said, 'Are you really asking me if I want my child back with me? Of course I do. I just thought that I had to bring her back.'²¹⁷

Officials only then organized for Rachel to be formally reunified with her mother.

Rachel told Human Rights Watch she thought department officials should listen to children's wishes when they wanted to be reunited with their parents. "Children are humans, too," she said.²¹⁸

Now a mother of two children herself, Rachel said she experienced justified fear about the department removing her own children.²¹⁹ "I don't like people looking at [my children] or I get scared that there's going to be someone who walks up from the department of child protection [and takes them]," she said. "They've made me really scared about life. I just think that they're always going to be coming back."²²⁰

Rachel has a close relationship with her mother, Jessie T., even naming her daughter after her mother. Jessie now hopes to become a domestic violence advocate to help other women including mothers whose children the department had removed. She and Rachel had recently attended a domestic violence prevention training course.²²¹

Rachel's sister, Betty T., was also reunited with their mother only after running away from care when she was about 12 in 2016. Betty said that on previous occasions the Department of Communities had threatened her mother that she would face arrest if she did not return her to care.²²²

²¹⁷ Human Rights Watch interview with Rachel T., January 6, 2023, Perth.

²¹⁸ Human Rights Watch interview with Rachel T., November 20, 2023, Perth.

²¹⁹ Human Rights Watch interview with Rachel T., May 9, 2023, Perth.

²²⁰ Ibid.

²²¹ Human Rights Watch interview with Jessie T., November 20, 2024, Perth.

²²² Human Rights Watch interview with Betty T., January 6, 2023, Perth.

Zara M., 15, said she had run away from her placement with a foster carer to be with her mother.²²³ Zara said in her placement she had been subject to verbal abuse, including racist remarks, by her carer’s adult daughter and 13-year-old granddaughter.²²⁴ Human Rights Watch viewed a threatening text message sent to Zara that supported these claims.²²⁵ Zara’s mother, Abbie M., had successfully obtained a restraining order against the adult daughter of the carer, of which Human Rights Watch viewed a copy.²²⁶

Zara told Human Rights Watch her mental health had improved since she had been reunited with her mother, although she missed her two younger sisters who both remained in care. One sister was with the same carer whom Zara had been placed with and had sent her text messages that said she was being “shouted at” and “called a dog” by the carer’s granddaughter who had also allegedly said “I just want to murder you.”²²⁷

“It’s been so much better [to be back with mum],” Zara said. “I mean I said to the carer that she made me feel like I want to kill myself.”²²⁸

Zara said that she had been frightened to tell the department she wanted to be reunited with her mother, because when her case worker had come to speak with her, the interview had occurred just outside her carer’s house where she could be overheard by the family.²²⁹

“[The carer’s family] opened the windows beforehand, and they just stood there pretending they were doing something ... and that’s why when [the case worker asked] did I want reunification, I obviously said no,” Zara said. “[The carer’s adult daughter] said ‘If you go back with your mum you’re going to be living under a bridge, going to public school.’”²³⁰

Other parents interviewed by Human Rights Watch shared concerns about lengthy family reunification processes.

²²³ Human Rights Watch interview with Zara M., November 19, 2024, Perth.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Ibid.

Louise A., whose 2-year-old son the Department of Communities removed from her care in 2022 over a physical abuse allegation that she denied, told Human Rights Watch family reunification was “slow motion,” adding she only heard from the department “when they wanted.” “Sometimes it could be weeks before I hear from them,” she said.²³¹

Ivy A., who had her three children removed by the Department of Communities in September 2022 due to alleged neglect and domestic violence perpetrated by her partner, said that by January 2023, she had only had one meeting with the department to discuss steps towards family reunification.²³²

Emma H., who had her three children removed by the Department of Communities due to alleged neglect in December 2022, said she felt the department did not take into consideration “positive” things families did.²³³ Emma, who had stable housing, expressed frustration at the lack of information she had been given about why her children could not be reunited with her. “I’m not sure. That’s just all up to them [the department],” she said. “All I know is I want them home.”

Prolonged separation had a negative impact on both parents and children’s mental wellbeing and relationships. Rachel T. described self-harming because she wanted to be with her mother and siblings: “I was always sad because all I wanted to do was to be with my mum and my siblings ... There was one time where I did cut my arm up a few times. [After self-harming] I sat there and cried and then I took off from the home and I sat in a park for all night. I would’ve been 9 or 10 [when it happened].”²³⁴

Rachel said her time in care also had a harmful effect on her relationships with her siblings. Because the department had often separated her from them by placing them with different carers or in group homes, they had not been able to form a bond until they were reunited with their mother as teenagers. “When I was living in group homes, I was pretty much separated from my siblings and all that,” she said. “Our siblings don’t really have

²³¹ Human Rights Watch interview with Louise A., January 22, 2023, Perth.

²³² Human Rights Watch interview with Ivy A., January 23, 2023, Perth.

²³³ Human Rights Watch interview with Emma H., January 6, 2023, Perth.

²³⁴ Human Rights Watch interview with Rachel T., May 9, 2023, Perth.

that bond that we should have. The only time with bonding is now that we're in our teenage years going into adulthood, you shouldn't be like that."²³⁵

Melony A., whose two daughters, 9 and 12, the department had removed about seven years earlier due to alleged domestic violence committed by her children's father, said she experienced depression following her children's removal.²³⁶ Melony, who had grown up in out-of-home care herself, said she had rarely seen her children since the department removed them and the Children's Court placed them on protection orders, which stated they would remain in care until they turned 18.²³⁷ She said: "I'm finding it hard to get back out in life again. [When the department removed my children it] just took my life away from me. I never got even a chance to be anything in their life."²³⁸

Failure to Support Family Visits

In some cases, families said they experienced barriers to visits because children had been placed with carers a significant distance from their parents.

Evie D. told Human Rights Watch she was not consulted about where her children would be placed, and they ended up living with a carer several hours distant on public transportation.²³⁹ "My kids are sitting in [town redacted] four hours away from me and then I had to travel out there to see them," she said.²⁴⁰

In other cases, parents said they faced what they perceived to be excessive supervision during visits.

Emma H. said she had visits in a department office and was told she could not touch her children or remove them from the room during the interaction. She said:

The kids wanted to go outside and play in the sand and [they said] no ... you have to stay inside, I said, "Well, if it's outside and no one else is here. So

²³⁵ Ibid.

²³⁶ Human Rights Watch interview with Melony A., January 22, 2023, Perth.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Human Rights Watch interview with Evie D., February 12, 2023, Perth.

²⁴⁰ Ibid.

why can't we just go outside and play outside? For a little bit?" ... I had to ring people to ask get confirmation to see if that was allowed to happen."²⁴¹

Briana L., whose infant son was removed in 2023 due to her lack of housing, described feeling under surveillance during visitations that occurred in the department office.²⁴²

"I can't take him outside of the office of the [Department of Communities] and their supervisors which I think is disgusting," she said. "I can't even take him outside for a walk... You're constantly being watched, and they judge everything you do, whether you sneeze, cough or whatever it may be, like that all gets reported back."²⁴³

Melony A., whose two daughters the department removed about seven years ago due to alleged domestic violence by their father, said the cost of travel had been a financial burden for her attending visitation. When asked about the barriers to visitation, she said: "Mostly always money, [I] just could not budget around it."²⁴⁴

Decline of Aboriginal Kinship Carers

There has been a decline in the number of children placed with Aboriginal family members or kinship carers over the last two decades. In 2023, of the First Nations children in Western Australia's out-of-home care system, about 40 percent were living with Indigenous relatives or kin.²⁴⁵ Twenty years earlier, in 2003, about 51 percent were living with Indigenous relatives or kin.²⁴⁶

Human Rights Watch found in some cases there were Indigenous family members who were willing to care for children the Department of Communities had removed, but the department had instead placed children with non-Indigenous relatives or foster carers.

²⁴¹ Ibid.

²⁴² Human Rights Watch phone interview with Briana L., May 14, 2024.

²⁴³ Ibid.

²⁴⁴ Human Rights Watch interview with Melony A., January 22, 2023, Perth.

²⁴⁵ Australian Institute of Health and Welfare, "Data tables: Child protection Australia 2022-23", September 27, 2024, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-insights/data>, accessed October 25, 2024), table S5.12.

²⁴⁶ Australian Institute of Health and Welfare, "Child protection Australia 2002-2003", January 22, 2004, <https://www.aihw.gov.au/getmedia/9e70f2a8-f17f-4237-9dfa-daa14b359e04/cpa02-03.pdf?v=20230605171044&inline=true>, accessed October 25, 2024, Table 4.9.

Maintaining a connection to culture gives children a strong sense of self and is a protective factor. A 2017 research report by Telethon Kid’s Institute for the Royal Commission into Institutional Responses to Child Sexual Abuse found that: “Empirical data now supports the idea that connection to culture is associated with better emotional, social and physical health of Aboriginal and Torres Strait Islander peoples.”²⁴⁷

Human Rights Watch spoke to some families in which children had been placed with non-Indigenous carers, despite there being family members willing to care for them. For example, Violet B. described how the department removed her daughter’s newborn baby and—despite Violet being willing to care for her granddaughter—placed her with a non-Indigenous foster carer for three weeks in 2018.²⁴⁸ Violet’s daughter used substances during her pregnancy and had mental health issues, which prompted Violet to call the police who referred the case to the Department of Communities.²⁴⁹ Violet told Human Rights Watch that she was “getting emotional” recalling what happened:

That broke my heart.... When they took [my granddaughter] for that three weeks, that was, like ... unbelievable, like I can’t imagine what the Stolen Generation went through ... [It was] inappropriate as well, because when [my granddaughter] went to foster care, she was with a white lady. Like y’know, if there’s Aboriginal foster carers out there, then our Aboriginal children should go to an Aboriginal foster carer, I reckon.²⁵⁰

Violet’s daughter ended up passing her drug tests and after three weeks the baby was returned to her.²⁵¹

Alison A. said that her now 16-year-old grandson had initially been placed in her care after the Department of Communities removed him from his parents at age 5, but the

²⁴⁷ Telethon Kids Institute, “Aboriginal and Torres Strait Islander children and child sexual abuse in institutional contexts,” July 2017, https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/research_report_-_aboriginal_and_torres_strait_islander_children_and_child_sexual_abuse_in_institutional_contexts_-_causes.pdf, accessed October 27, 2024.

²⁴⁸ Human Rights Watch interview with Violet B., January 16, 2023, Perth.

²⁴⁹ Ibid.

²⁵⁰ Ibid.

²⁵¹ Ibid.

department then placed him in residential care after she asked for financial assistance with fuel:

They picked [my grandson] up from school because I was taking him from my house to [suburb redacted] every day for school, morning and evening. And that's about 30 kilometers every week. And well, it was about 25 kilometers there and 25 home.... And I asked for support with petrol or vouchers to help me so that I can go make it easier for me to go every morning. And they just went and picked him up from school and said, "I don't have that problem anymore because we've taken them back into care." ... It was just like when I asked for the voucher, they just went in and took him.²⁵²

Alison said her grandson was then placed in residential group homes as opposed to with a foster family.²⁵³ "He was never placed with a family. He was always placed in [residential care].... From what I can gather, three [care homes]. But when I question him, he gets a bit aggressive. 'What do you want to know for? You didn't help me. And you told them that you didn't want me,'" she said.²⁵⁴

Alison said she had never said she did not want her grandson in her care. "Definitely not," she said. "I kept fighting to find out where he was to bring him home."²⁵⁵

Gemma C., from whom the Department of Communities removed her five children due to allegations relating to drug use and domestic violence by her boyfriend, said that while the Department of Communities placed her infant son with family, her 9-year-old son was with a non-Indigenous carer and her 13- and 14-year-old daughters were meant to be in care but were living on the street and the department was unaware of their location.²⁵⁶

²⁵² Human Rights Watch interview with Alison A., January 22, 2023, Perth.

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ Human Rights Watch interview with Gemma C., January 6, 2023, Perth.

She said the department had not listened to her during discussions about her children’s placements. “My two girls are on the street, don’t know where they are. I worry for them all the time, and [the department] don’t even know where they is,” she told Human Rights Watch.²⁵⁷ “My boy’s in foster care, when he could’ve been across the road at my sister’s house. ... He’s telling me that he doesn’t like it there [in foster care]. So that makes me worry all the time, you know?”²⁵⁸

Ben G. sought custody of three of his grandchildren. The children had been removed from his daughter Nadine’s care due to her substance use and domestic violence perpetrated by her ex-partner. The oldest grandchild, a 13-year-old boy, was in Ben’s care, but the three younger siblings were separated from their brother and placed with a non-Indigenous paternal extended family member.²⁵⁹

Ben said he could not understand the department’s rationale in refusing to place the children with him. Ben is a homeowner who works full-time for an Aboriginal and Torres Strait Islander nongovernmental organization. He has never had contact with the criminal justice system or engaged in any form of drug use. He has extended family support and was prepared to reduce his working hours to part-time to take care of the children.²⁶⁰

In meetings with the department, he felt spoken down to and said that concerns he had about the safety of the children’s current placement had been dismissed and he was warned by department employees about “speaking out of place” in meetings.²⁶¹

The Department of Communities removed two infant daughters from Blake G. and his partner in 2016 and 2017, due to homelessness and domestic violence allegations. Blake had specifically requested his daughters be kept together in the same care arrangement. He had been under the impression that the department had complied with this request; however, this did not occur, and they were separated.²⁶² Human Rights Watch reviewed documentation from the department, which confirmed that in 2020 Blake had reported to

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Human Rights Watch interview with Ben G., February 5, 2023, Perth.

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Human Rights interview with Blake G., November 11, 2024, Perth.

the department that he had believed the girls had been placed together. The department had placed both girls with non-Indigenous carers. Blake told Human Rights Watch that his daughters' relationship as sisters and connection to their culture was very important to him, but the sisters had not been given the chance to attend cultural events together:

When we had a care plan meeting I said to them it's very important for them to be identified as Aboriginal as part of their culture and they have to learn their culture, but they're only learning at [the department's] way, what they think they should be learning, and then they're going to different [cultural events] on their own, and the two girls only get to see each other when [department] people say, instead of being raised together as sisters.²⁶³

Insufficient Support to Kinship Carers

Human Rights Watch spoke with some family carers who said they had struggled financially when they assumed informal care arrangements, but received little assistance when they reached out to the Department of Communities asking for support in their new roles.

Both foster carers and family carers are meant to receive a subsidy of between A\$448 (US\$283) to \$607 (US\$384) per fortnight per child.²⁶⁴ The subsidy is initiated by the Department of Communities.²⁶⁵

Alison A. said her grandson came to stay with her after he was released from youth detention at age 16. She told Human Rights Watch that she “argued black and blue” with Department of Communities officials “just for a bed, a doona [quilt] and a pillow. And that took a meeting with 12 people around the white round table.”

“I asked [the Department of Communities] for a food voucher [for my grandson] when he was here ... and they said, ‘No, because he is of age, you should be getting his own money and paying board.’ I said, ‘Even if he did get his own money, he’d be getting about what,

²⁶³ Ibid.

²⁶⁴ Department of Communities, December 2024, Fostering Financial Support, https://www.wa.gov.au/system/files/2024-12/fostering_financial_support_info.pdf, accessed December 20, 2024.

²⁶⁵ Ibid.

\$200 [US\$130; per week]?’ Not even that. And most times when you live at home you don’t get the money.”

Violet B. became a carer for three of her grandchildren after they were removed from their mother’s care but said she initially did not receive financial support: “I found it hard financially, because at first I wasn’t getting Centrelink [Australian social security program], or any payment or any income, when the kids were like babies,” she said. “When they got a bit older ... I started getting Centrelink payments for them.”²⁶⁶

Natalie J. said she had her niece in her care for more than a year before she received carer payments from the department. “A year and a half and I didn’t get no payments, no nothing for her,” she said. “Then they finally put me on a payment. But the payment was really like \$86 [US\$56] a fortnight.”²⁶⁷

Lucy G. said there was limited financial support when her three grandchildren were placed with her until she was eventually able to get a grant of aid from the department. She said that the department’s supports:

were very, very thin. Then them three kids come with hardly anything. And [the department] was very, very, very, very hard at first. But then someone told me that there’s a grant with family open.... So that took about eight, nine months [before learning about it]. It’s a hard experience when you do have the love for your grandchildren. You want them with family, but there needs to be a hell of a lot more supports and things in place.²⁶⁸

The UN Committee on the Elimination of Discrimination against Women, which monitors state compliance with the Convention on the Elimination of All Forms of Discrimination against Women, has called for states to generate data on and establish the monetization of unpaid care work as a baseline for its recognition and compensation as part of

²⁶⁶ Human Rights Watch interview with Violet B., January 16, 2023, Perth.

²⁶⁷ Human Rights Watch interview with Natalie J., February 3, 2023, Perth.

²⁶⁸ Human Rights Watch interview with Lucy G., 2023, Busselton.

recognizing the essential care work mostly borne by women.²⁶⁹ The UN Human Rights Council has also recognized the “the need to invest in the care economy and to create robust, resilient and gender-responsive, disability-inclusive and age-sensitive care and support systems with full respect for human rights, with a view to recognizing, valuing, reducing and redistributing unpaid care, domestic work and support.”²⁷⁰

²⁶⁹ United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee), “Concluding observations on the fifth periodic report of Kyrgyzstan,” CEDAW/C/KGZ/CO/5, November 29, 2021, <https://docs.un.org/en/CEDAW/C/KGZ/CO/5>, para. 38(a); United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee), “Concluding observations on the sixth periodic report of Uzbekistan,” CEDAW/C/UZB/CO/6, March 1, 2022, <https://www.ohchr.org/en/documents/concluding-observations/cedawcuzbco6-concluding-observations-sixth-periodic-report>, para 36(a); United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee), “Concluding observations on the seventh periodic report of Bolivia,” CEDAW/C/BOL/CO/7, July 12, 2022, <https://www.ohchr.org/en/documents/concluding-observations/cedawcbolco7-concluding-observations-seventh-periodic-report>, para 26(e); United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee), “Concluding observations on the tenth periodic report of Ecuador,” CEDAW/C/ECU/CO/10, November 24, 2021, <https://www.ohchr.org/en/documents/concluding-observations/cedawcecuco10-concluding-observations-tenth-periodic-report>, para 38(b).

²⁷⁰ UN Human Rights Council, “Centrality of care and support from a human rights perspective,” Resolution 54/6, A/HRC/RES/54/6.

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“All I Know Is I Want Them Home”

Disproportionate Removal of Aboriginal Children from Families in Western Australia

Nearly two decades after the Australian government issued an apology to First Nations peoples for the forced removal of their children, Western Australia’s child protection authorities continue to disproportionately remove children from Aboriginal families and place them in out-of-home care.

“*All I Know Is I Want Them Home*” details how Western Australian authorities have removed children from mothers fleeing domestic violence and from parents facing homelessness. Aboriginal children make up nearly 60 percent of those in Western Australia’s out-of-home care system, even though Aboriginal children represent just 7 percent of the child population. In the last 20 years, the number of Aboriginal children living in out-of-home care in Western Australia has skyrocketed.

Western Australian child protection authorities investigate families and remove children where they suspect harm is taking place or is likely to take place. The report finds that Aboriginal children are being removed from their families because of a system that focuses more on policing families than providing them with needed support. First Nations families said domestic violence was the most common reason children were removed, but often mothers trying to leave violent relationships said state authorities provided them inadequate support. Some explained they avoided seeking help because of justifiable fears their children would be taken from them.

Human Rights Watch urges the Western Australian government to ensure parents are given early access to adequate support, including legal representation. It should create a Western Australian commissioner for Aboriginal children and young people to conduct inquiries, and receive and determine individual complaints relating to Aboriginal children in out-of-home care. First Nations people should be central to decision-making on ending the overrepresentation of Aboriginal children in child removals by the state.



Jade Wallam, an Aboriginal Noongar woman, cuddles her grandchild in the state of Western Australia in 2025. In 2011, state officials removed her children from her and placed them in foster care.

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