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“They Know What’s Best for the Poor Little Black Fellows, Like They Did All Them Years Ago”: Continued Paternalism and Pressure to Place in the Australian Child Protection System

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ABSTRACT

Child protection systems in Australia have been criticised for racialized policies that result in the over-policing of First Nations families and the removal of First Nations children. Under current colonial structures, “protection from harm” is used to justify the removal of First Nations children from community—sometimes permanently—at the expense of culture under the justification of timely decision making to achieve “permanency.” This is inconsistent with First Nations worldviews and the United Nations Declaration on the Rights of Indigenous Peoples. It also contributes to the sustained and increasing over-representation of First Nations children in child protection and Out-of-Home Care (OOHC) systems in all Australian states and territories. Drawing on interviews with 32 First Nations and 5 non-indigenous people in the state of New South Wales, Australia, this paper explores participants’ perceptions of the purpose of placements in statutory OOHC for First Nations children. The findings highlight issues at the systemic, policy and practice levels that result in permanency being equated with disconnection from family and culture, at the expense of restoration. A lack of consultation with community and an inability to participate in decision-making has led to the continuation of colonial policies that prioritise safety through removal and disconnection. We discuss how these policy changes neglect community advice, and entrench the view that “permanency” is best achieved via permanent care away from family and community. We conclude by discussing the importance of genuine self-determination for the wellbeing of First Nations children, families, and culture.

1 | Introduction

As in other societies children are vitally important. For us they are the future and hope. We cannot afford to lose our most precious resource. It is necessary that we instil in them a sense of pride in their history and

culture so that they too have the chance, like other Australians, of knowing who they are and why.
(Daylight and Johnstone 1986, 43)

Despite decades of activism, multiple reforms, and commitments by federal, state and territory governments to “close

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the gap” on First Nations over-representation in child protection and Out-of-Home Care (OOHC) systems current rates of removals exceed what was experienced during the Stolen Generations (Yoorrook Justice Commission 2023). Nationally in 2022–23, First Nations children were 5.6 times more likely to be the subject of a child protection notification, 6.5 times more likely to be the subject of an investigation, 7.2 times more likely to have an investigation result in an substantiated outcome, 10.9 times more likely to be placed on a care and protection order, and 10.8 times more likely to in OOHC, than non-Indigenous children (SNAICC 2024). This shameful pattern is not only observed in every state and territory, but over-representation of First Nations children in Australian child protection systems has worsened over time (Australian Institute of Health and Welfare [AIHW] 2024a), reflecting the ongoing lack of commitment by successive Australian governments to uphold the United Nations Declaration on the Rights of Indigenous Peoples (Office of the High Commissioner for Human Rights [OHCHR] 2007), which Australia has endorsed. Additionally, the focus of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) continues to be skewed towards placement rather than preservation contrary to the ethos of the principles. The inherent disconnection from culture that comes from the statutory removal of First Nations children and placement in OOHC has been shown to disrupt meaningful and sustained links and access to culture, which enables pride in Indigeneity, a sense of belonging and identity, and ultimately, the successful resistance of assimilation and elimination (Krakouer 2020; Krakouer et al. 2018). Aboriginal children’s exposure to First Nations family, community, and culture can therefore be reduced when they are placed into non-Indigenous care (including with non-Indigenous family members) (Krakouer 2020).

This paper presents results from a doctoral dissertation that focused on First Nations and non-Indigenous people’s experiences and understandings of the purpose of the New South Wales (NSW) child protection and OOHC systems. Drawing on interviews with 32 First Nations and 5 non-Indigenous participants, we argue that the continued over-representation of First Nations children in child protection and OOHC needs to be understood as a direct by-product of the systematic exclusion of First Nations knowledge systems—ways of doing and being—by colonial systems. We use recent permanency reforms in NSW as an example of the paternalistic and implicitly racist approaches deployed by colonial child protection systems that not only fail to account for First Nations epistemologies but directly contradict them, thereby perpetuating further harm.

1.1 | The Push Towards Permanency

Child protection legislation in NSW has undergone significant reforms, particularly in relation to permanency. Amendments to the *Children and Young Persons (Care and Protection) Act 1998*¹ introduced new permanency hierarchies when children are placed in OOHC, with the aim of ensuring timely decision making to provide children, families and carers with certainty and stability. The new permanency hierarchy is meant to prioritise family preservation, but where this is not possible, restoration (also called “reunification”) is the preferred permanency

outcome. Following restoration, the hierarchy prioritises guardianship with a relative, and guardianship or open adoption with a “third party.” Third-party parental responsibility orders, and adoption orders can be made to people who are already known to a child, including extended family or foster carers. While adoptions of First Nations children from OOHC remain low (SNAICC 2023), these reforms have been resisted by First Nations communities as they “are a demonstration of systemic interventions repeating cycles of government sanctioned harm to Aboriginal peoples and communities” (Turnbull-Roberts et al. 2022, 170). Specifically, permanency through third-party guardianship orders or adoption is viewed by First Nations communities as a contemporary manifestation of assimilationist policies grounded in systems and practices that fundamentally disrupt First Nations children’s connection to culture (Davis 2019; Grandmothers Against Removals 2018; Krakouer et al. 2023; Turnbull-Roberts et al. 2022).

Another key component of the permanency amendments was the introduction of strict timeframes for restoration before children are to be transitioned to permanent third-party parental responsibility orders.² Parents now have a maximum of 2 years from the time their child is first removed to demonstrate they have adequately addressed the concerns raised by child protection. Failure to do this means that a child will automatically transition into a permanent care pathway, whereby parental responsibility is removed from the child’s parents and vested on a third party (excluding the state) until a child turns 18 years old. Section 79AA of the *Children and Young Persons (Care and Protection) Act 1998* outlines “special circumstances” that can be invoked to extend the allocation of parental responsibility to the Secretary beyond 24 months, to support restoration. These include whether the required support services/resources to support families are available, and whether “active efforts” have been made to support parents to access these services and resources. It remains unclear how often these provisions have been successfully invoked and what child protection services and the courts accept as “special circumstances.” However, the challenges faced by parents accessing services is widely noted, including long wait lists, ineligibility due to having a child removed, and broader structural challenges linked to financial hardship (Blackstock et al. 2023; Hermeston 2023). These are compounded for First Nations families, including through the relative absence of culturally appropriate services/supports (Hermeston 2023). Consequently, the time limits for restoration have been criticised as being unrealistic thereby *reducing* avenues for restoration (Hermeston 2023).

In light of these issues, permanency legislation, policy and practice has been criticised for a narrow focus on legal orders and placements over other equally important elements including relational, familial and cultural connections (Corrales et al. 2025). Permanency should be viewed as a multidimensional construct (Burge 2020; Freundlich et al. 2006) where stability of placements is an important but not sufficient element to improve children’s outcomes. For First Nations children, the concept of permanency should also reflect Indigenous epistemologies that incorporate broader understandings of family/kinship and wellbeing (see for example, Beaufils 2022; Strangeland and Walsh 2013). As articulated by the First Nations grassroots movement, Grandmothers Against Removals (GMAR):

Stability and permanency planning for First Nations children means supporting families to stay together, not tearing them apart. This is an understanding of permanency that is far more holistic than the one enacted by current permanency policy because it includes consideration of the fact that young people in out-of-home care achieve worse outcomes in adulthood due to removal from their families and cultures. They grow into adults who seek to heal from removal by reconnecting with their families and communities.

(Grandmothers Against Removals 2018, 3)

Despite policy discourse that emphasises restoration as the primary permanency outcome, child protection systems continue to engage in practices that directly contribute to First Nations children's disconnection from culture (Davis 2019; Krakouer et al. 2023; Yoorrook Justice Commission 2023). This is supported by data showing a downward trend in restoration rates and an upward trend in the rate of First Nations children being placed on third-party parental responsibility orders (from 8.5 per 1000 children in 2018 to 10.2 per 1000 children in 2022)³. Among First Nations children on third-party orders, close to 66% live with non-Indigenous relatives or family compared to only 16% living with Aboriginal and Torres Strait Islander relatives or kin (AIHW 2024a). A similar pattern is observed for First Nations children in care, where in 2021 close to 40% were living with non-Indigenous family members (AIHW 2022). These data highlight that for a significant number of First Nations children in the NSW child protection system, "permanency" is a vehicle for *disconnection*.

The works of Tilbury and Thoburn (2008) on the needs of children and families within local contexts, and Litwin (1997) on the immense heterogeneity among First Nations people in child rearing and parenting, stress the importance of maintaining cultural connection in care. More recently, the use of guardianship⁴ as a form of permanence has brought to light several potential consequences and long-lasting impacts for children and families "in the system", including children being permanently dislocated from mob and country and the arguable recreation of the past stolen generations in the form of a new "missing" generation (Swan and Swan 2023). Drawing on research participants' experiences and perspectives, this article explores the ways policy is experienced on the front line, focusing on how the Department of Communities and Justice (DCJ, hereafter referred to as "the department") and OOHc providers are perceived to be actively "pushing" permanent long-term care for First Nations children, often without all stakeholders understanding the possible ramifications. The purpose of OOHc from a child's perspective, and the conceptions of permanence in culture, are explored using research participants' personal experiences and collective community views.

1.2 | Situating the Research/Positionality Statement

Author A is both a Gundungurra (First Nations Australian) and Kanak (New Caledonian) man. Author B is a non-Indigenous

settler-immigrant woman, while Author C is a Gomerioi woman from Moree.

The study on which this paper is drawn was undertaken exclusively by Author A, with engagement and support from AbSec⁵ and in partnership with First Nations organisations and communities. The study involved a First Nations advisory group and continuous engagement with First Nations communities throughout data collection, analysis, and dissemination stages.

The project aimed to contribute to genuine self-determination of First Nations people in the child protection system by not only highlighting challenges but amplifying community-led solutions. Author A has worked across a several areas of the colonial justice system, including government departments and with grassroots organisations, engaging and assisting First Nations communities to build First Nations solutions. Author C is a highly respected Aboriginal community elder who has advocated tirelessly for Aboriginal families and children impacted by colonial child protection systems and is demonstrably committed to First Nations self-determination, leadership, sustainability, and strengthening of First Nations culture and accountability within the community.

2 | Methodology

The findings presented in this paper are drawn from an exploratory research project undertaken by Author A as part of their PhD, which explored First Nations people's experiences of the OOHc system in NSW. The study was supported via engagement with AbSec and a First Nations Advisory research committee, was grounded in the principles of Participatory Action Research, and reflected an awareness of the need to involve stakeholders in the research process to ensure the findings are relevant and able to strengthen capacity within local communities (Fals-Borda 2001). Consistent with the four core principles of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AITSiS 2020) code of ethics, the study included a focus on self-determination by not only amplifying the experiences of First Nations people and communities, but through a commitment to data sovereignty as exemplified through the development and dissemination of a model of care driven by community (Beaufils et al. 2025). Ethics approval was obtained from the University of Technology Sydney Human Research Ethics Committee (Project ID: IDETH18-2922). Participants were recruited with the assistance of AbSec and direct contact with OOHc providers, through email flyers and social media campaigns.

Semi-structured interviews were conducted with 37 (32 First Nations) participants from six participant groups that were currently or previously involved in the NSW OOHc system. These groups included (1) First Nations young people (18–30 years of age) who had been in the OOHc system in the last 10 years ($n = 5$), (2) parents who had a child removed and placed in OOHc in the past 10 years ($n = 3$), (3) family members (siblings, aunties, uncles, and grandparents) with experience of the child protection and OOHc system in NSW ($n = 3$), (4) carers ($n = 6$), (5) community members (elders and extended family) ($n = 11$), and (6) key OOHc departmental and agency

staff ($n = 9$). Participant groups 2–6 included First Nations and non-Indigenous people who were engaged in the OOHC system. The interviews lasted from 30 min to 90 min, and topics included participants' perceptions and understanding of the purpose of OOHC and child protection, placements in care, relationships, and consultation. These were all conducted in person by Author A from January 2020 to March 2020 during fieldwork across NSW.

The interview schedule and questions were piloted before fieldwork, which covered metropolitan, regional, and remote communities, including 11 First Nations groups. After interviews, data were entered into NVivo for analysis, with participants assigned pseudonyms for confidentiality. Author A, a First Nations researcher, analysed the data using Indigenous standpoint theory and constructivist grounded theory (CGT), emphasising how individuals construct meanings from their experiences within various systems. Braun and Clarke's thematic analysis (TA) guided the coding and analysis through a six-stage procedure: (1) transcription, (2) data reduction, (3) initial coding, (4) detailed coding, (5) clustering, and (6) thematic representation. This iterative process allowed for deep, culturally informed insights into participants' experiences, enabling a nuanced understanding of their perspectives (Creswell 2007; Miles and Huberman 1994; Robson 2011).

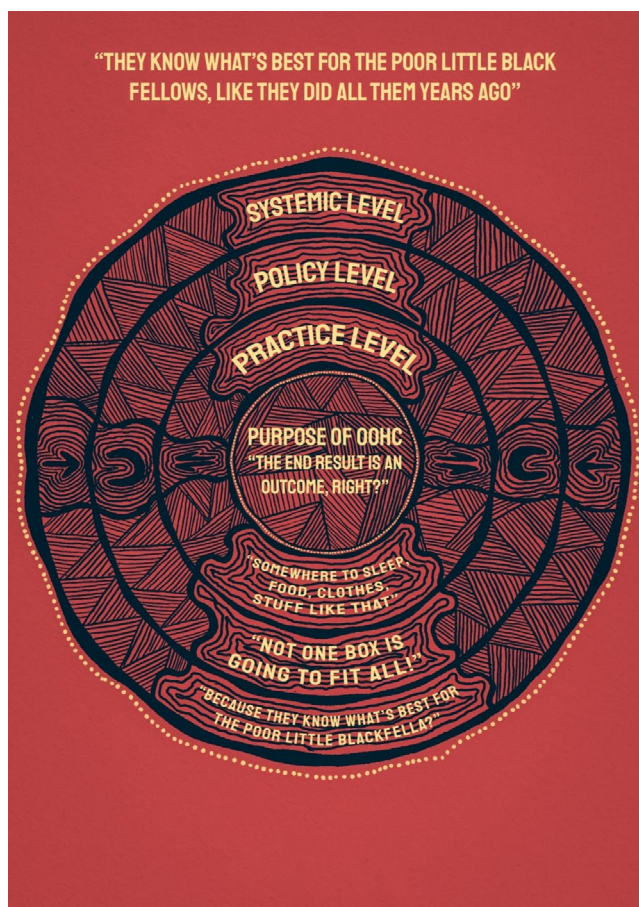


FIGURE 1 | Thematic map—Purpose of OOHC: Themes drawn from interview data associated with individual and collective views of purpose and priorities in OOHC at a systems, policy, and practice levels, as experienced by the participants.

3 | Findings

Figure 1 shows the interrelated and nested factors that contribute to participants' understanding of the “purpose of OOHC” for First Nations children. The focus of this paper is on the way permanence has come to permeate all levels depicted in the model, from broad system factors (*Because they all know what's best...*) to policy positions (*Not one box is going to fit all*) and child protection and OOHC practice (*Somewhere to sleep, food, clothes, stuff like that*).

Systemic level: Paternalism and assimilation, “Because they know what's best for the poor little Blackfella”

Three key issues were identified within the “systemic level”: a *broken child protection system* grounded in paternalism and assimilation, *prioritising western conceptualisations of care*, and the *absence of targeted early intervention* efforts to avoid removals.

Almost all participants ($n = 30$, 81%) perceived that child protection and OOHC system practices are broken.

It's broken, there's no doubt about it. We wouldn't be seeing increases in numbers, especially our kids... the kids still need culture and community. Just because they're with us and they're on country, when was the last time somebody took them out to one of the missions? They've never seen the missions [which are only] 20 kms away.

(Bridgette, Aboriginal carer and OOHC manager with non-Aboriginal agency)

For First Nations people, the child protection and OOHC system is still seen as perpetuating past traumas. Once there is involvement of individuals or families in the system, that child is seen to be lost or permanently gone:

I didn't want my grandkids to go into care. I didn't want them to go in the system, which hasn't changed. Yeah. I was really, at the time, the only person that could care for my grandkids... Well, I had always had my granddaughter on and off anyway since she was born, so it was really no different. It's just when [the department] got involved, it become more formal, and I didn't really get to have a say anymore. They always said what was best, when it wasn't, instead of listening to us, but yeah, but that's why, because I just didn't want the kids to go in the system or they would be gone.

(Irene, Aboriginal carer and age care co-ordinator with Aboriginal agency)

The continued lack of autonomy and self-determination for First Nations people within the child protection and OOHC system is an inevitable consequence of policies and practices imposed on, rather than designed with, First Nations people and families. Participants viewed the overall priorities for First Nations children as paternalistic and implemented

a mechanism aimed at continued assimilation. According to Barbara,

[The Department] know what's best for the poor little Black fellows like they did all them years ago, with assimilation. That [Aboriginal people] are going to go away. They're going to turn us into White people, they're going to give us all a good life... But it's still through the White man's eyes. No matter how much they write and how many Black fellow flags they put in there, it's still through the White man's eyes.

(Barbara, Aboriginal agency staff and community member)

Participants also perceived that the system remains punitive, particularly towards families who have been most impacted by the structural racism of settler colonialism. As Irene put it, "people often demonise the parents and seemingly forget the compounding factors leading to such parental issues," which include addiction, financial constraints, unemployment, and incarceration. These issues were faced by Allen, a First Nations man whose three children were all in care whilst he was incarcerated. Since being released, he had been trying to have the children returned, first getting accommodation and employment. However, it had been 3 years at the time of his interview, and he was losing hope:

They just sort of tell you one thing, do this and do that and then leave you hanging forever, so you wait to see it...I have done my time and sorted myself out, but they just keep punishing me.

(Allen, First Nations man and father of three children)

The perception that child protection systems fail to adequately support parents to achieve restoration was echoed by other participants, including Brooke, who highlighted the way that historical factors are used to justify keeping children in care:

It was never enough, it didn't matter. They always focused on the negative, even though those negatives were so long ago. No matter how far forward I moved, my past was always held against me.

(Brooke, non-Aboriginal mother of three Aboriginal children, one of them in OOHC)

Marcia, a parent who had had three of her five children removed from her care, also highlighted the way that colonial child protection systems put up barriers to restoration extending from historical practices that resulted in First Nations children being stolen from communities and parents:

Kids are getting stolen. Our babies are getting stolen... I've done everything. You know, I've done parenting courses... I've been to rehab. I've done everything they like... Done that but what I do is not good enough.

(Marcia, Aboriginal mother with three of her five children in OOHC)

The harms that participants associated with colonial ideologies about "child protection" were most evident in way that the department conceptualises "care." There remains a view within First Nations communities that children are being removed to "continue the stolen generations and colonise our children" (Aunty Shelley, Elder, Grandmother, family member and formerly a departmental CP staff). This is reflected in colonial understandings of what "care" should look like:

So the common reason for removals would simply be what they say is neglect, but is overcrowding in housing, when kin is trying to help and care within kinship (the department) would say there is too many people in this house and the kid is being neglected.

(Camilla, Aboriginal cultural manager and community member)

Participants highlight how a Western conceptualization of "care" reflects a simplistic understanding of First Nations child development, identity, and safety. By equating First Nations ways of caring as "risks" to children's safety, child protection practices result in the active disruption of kinship practices. For example, Albert argued that

I personally am not the best fan of that outcomes and best interest language. Like how do you put an outcome on someone's wellbeing? Especially for Aboriginal people, by White organisations and viewpoints. Like it's so varied and complex that... Again, it just seems to me that that these words or ideas applies a blanket approach to our children. So, you know a positive outcome for me might not be a positive outcome for somebody else, we are black, not white. So, for there to be a blanket white approach to care and purpose from the government or system, I don't think that it's possible.

(Albert, Aboriginal education officer, and community member)

For participants, the paternalism inherent in the contemporary child protection system is further evidenced by the *absence* of systemic efforts to avoid removals. As such, a key systemic issue raised by 23 of the 37 participants (62%) is that *more should be done before* the removal and placement of children into statutory OOHC. Several people discussed the importance of earlier family intervention through deep listening to families' situation and the constraints faced by the family, a process that should be completed by a First Nations person. The need for greater case-work efforts directed at early intervention and the prevention of removals was highlighted by Benny, a carer of his cousin's daughter:

But I still think that more work needs to be done with prevention rather than cure, like in regards to the parents, if they see them starting to slide, I think more work like that, intensive work, because

even though it'll cost more dollars upfront for the government, it'll save them money in the long run, like if you're not having to look after those kids 10 years later.

(Benny, Aboriginal carer and community member)

The systemic issues identified by participants have knock-on effects for policy and practice. For First Nations families and communities, the current emphasis on permanency through third party guardianship raises significant concerns about the continuity of assimilationist policies and a “new” wave of stolen generations.

3.1 | Policy Level: The Push Towards “Permanency” Away From Family and Culture

Participants identified four main issues at the policy level: *a shift towards permanence* which has resulted in *definitional and conceptual ambiguity* about the intent of permanency, *community fears, and concerns* about guardianship orders and a *misalignment* between mainstream and First Nations' understanding of the meaning of permanency.

The shift towards permanency and away from restoration was noted by 14 participants (38%). As Auntie Shelley said,

In the beginning [of my involvement with CP] my understanding of when we removed kids and placed them into out-of-home care, the goal was always restoration. And now, when I look at the system, and I've been involved in this group, Grandmothers Against Removals, GMAR, then we can see how that's changed, even though this department will tell you it hasn't. But it's changed for these kids to stay permanently in this care because of the practices they do.

(Auntie Shelley, Elder, Grandmother, family member and formerly a department CP staff)

Participants also raised concerns about the way permanency is more broadly understood to include both restoration *and* permanent care with alternative carers. While both outcomes are considered permanency objectives, they reflect fundamentally different understandings of the purpose of OOHc:

It seems to me that there is uncertainty with removals, like they just take (the child) and then figure it out, now with this permanency, it's confusing...OOHC for me is returning to your family (restoration), not permanency with new people or whatever.

(Bradley, Aboriginal Young Person previously in kinship care with Aboriginal Grandmother)

The above quote highlights the way that permanency has become equated with guardianship outside of the family of origin.

This view was expressed by 23 participants (62%) who perceived that the current policy focus prioritises guardianship arrangements over restoration.

No, I wouldn't put guardianship, permanency, all that into OOHc or restoration. I would never consider restoration to have anything to do with guardianship or permanency, because it doesn't.

(Bradley, Aboriginal Young Person previously in kinship care with Aboriginal Grandmother)

Participants also discussed non-Aboriginal carers' lack of understanding of what permanency means for First Nations people, again highlighting the way that systemic racism perpetuates false beliefs about what is in the best interests of First Nations children. Four participants (11%), all of whom were non-Indigenous, stressed the need for permanency. However, as the below quote highlights, the focus is on minimising disruption to the child, rather than emphasising the fundamental importance of connection to and continuity with community and culture. In this context, and for this non-Indigenous carer, the resilience and fight amongst Aboriginal communities, families, and parents are viewed as ‘futile’:

I think that my youngest child's birth family... Well, her grandmother still says that she's going to fight to get her back into her care, so I think she still thinks that there's an opportunity for her to come back to them, but I mean she's been with me for five and a half years. So I think that the disruption to her... I think that that would be very destabilising for her.

(Pauline, non-Aboriginal foster carer)

In the above quote, there is no reference to finding permanency in culture, rather it is about stability within a small, non-Indigenous family unit. It reflects the implicit priority of the department to create or recreate an essentially nuclear family unit and an emotional bond for the child, rather than prioritising connection to and with family, mob, Country, and culture. This contrasts markedly with First Nations' conceptualisations of permanency as kinship.

But for some of our Aboriginal families, the permanency is there within Kinship. But, it's not what the departments are looking for, or the guidelines. So, that can be a bit of a grey area. Also, [there's] that push regarding guardianship and getting kids out of the system.

(Ashley, manager, permanency support program and family member)

It is worth noting Ashley's concern that the “push” for permanency serves to obscure important facets of First Nations culture such as kinship and connection of Aboriginal children in well-functioning Aboriginal families. For Ashley, kinship provides place and consistency, an overlooked part of First Nations culture, and is grounded in an understanding that

permanency can—and should—include broader conceptualisations than simply a stable care arrangement. This was highlighted by other participants who discussed the use of alternative care arrangements⁶ as preferable to First Nations children being placed with non-Indigenous carers, including non-Indigenous family members. For example, Charlotte stated,

It's pretty sad to see Aboriginal kids going into a non-Aboriginal placement. You say that the placement looks good on paper because it will say they can do this, this and this by trying to keep them connected to culture, they can take them to cultural events, they can whatever, I feel like that's fuck all, do you know what I mean? It's not the same. It's not the same as being around Aboriginal people. It's not the same as growing up black. We've got a huge push for getting kids out of ACA placements, hotel/motel placements but if you ask me, right, here's an Aboriginal kid with [Aboriginal organisation], here's a placement over here. That family's white. You ask me where they should be and I say hotel/motel placement with that black organisation. Because that's where they belong, not over here with the white placement. We're the same colour, we have the same language... It's just the same understanding, the same humour... everything that comes along with it.

(Charlotte, a First Nations child protection worker)

The definitional ambiguity and the misalignment between First Nations and mainstream conceptualisations of permanency resulted in several community fears and concerns. Most participants ($n = 27$, 73%) had experience of the policies and practices surrounding permanency planning. These participants expressed anxiety and uncertainty about how guardianship might affect children and the community in the future.

The guardianship, the adoption. What I'm seeing on the ground and what I'm hearing from my local community is it's very, very scary.

(Trevor, Aboriginal carer and foster care co-ordinator at an Aboriginal OOHHC agency)

This was reinforced by 14 participants (38%) who saw guardianship as a new form of adoption of First Nations children, perpetuating enduring loss.

And when we look at this out-of-home care and that forced adoption legislation, [the] thing that came through last year, guardianship, that is just heart-breaking. If that is not another re-enactment of the stolen generation, you tell me what that is, that our people can be taken away.

(Barbara, Aboriginal agency staff and community member)

Recent amendments to the *Adoption Act 2000* (NSW) make it easier for children to be adopted from OOHHC. While Division 2 of the Act (Aboriginal children) includes special provisions that require consultation with Aboriginal Community Controlled Organisations (ACCOS), a separate application to the Court and evidence that other actions are not viable in the child's best interests (section 36), the very inclusion of adoption as a permanency objective for Aboriginal children raises the trauma of the stolen generations. For Barbara (above), this is equated with forced adoptions, while for Margaret, it raises concerns about differentially negative treatment of Aboriginal children in OOHHC:

I rang [named Aboriginal Agency] and I said I'm concerned if they're doing this. Like I'm a Black person but do they do it as much with non-Aboriginal people? And if it is, so these kids are going into this with non-Aboriginal people? It was something that I couldn't comprehend. You know, like I was really concerned about that side of it.

(Margaret, Aboriginal carer and community member)

These concerns were exacerbated by a perception that the shift towards permanency was compounding the non-adherence to the Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPP). Participants indicated that in reality, placement priorities follow the “fastest option” (Albert), not the ATSICPP, as this can be “too difficult” (Charlotte). This is concerning, as the ATSICPP principles and its safeguards were set in place to protect First Nations children and to regularly maintain and monitor their culture. Participants expressed concern about the superficiality of government child protection policy implementation when compared to its goals. For example, Albert commented:

I think governments are looking to try to take care of the kid as best they can but a lot of the time they will go for the easiest, fastest option... To me it seems as though they'll just take the kid out and put them with whoever, without actually doing a bit of work to understand who their families are and where they should go while in care, they set and forget.

(Albert, Aboriginal education officer and community member)

Participants argued that the conceptualisations of permanency embodied in legislation, policy, and practice reflect a colonial understanding of stability and security through a “permanent place to live” within a “nuclear family” that prioritises placement away from Kinship. Ensuring that all children have safety, stability, consistency, and nurturance is self-evidently important. However, as noted by participants, equally valid priorities reflecting First Nations epistemologies are rendered invisible in favour of western conceptions of a “forever home.” This raises significant issues for cultural continuity (and discontinuity) when permanency planning for First Nations children.

3.2 | Practice Level: Restoration Should Always Be an Option

At the practice level, participants identified three major issues related to the emphasis on permanency for First Nations children: *restoration should always be an option*, a lack of *accountability by child protection departments* resulting in a further erosion of trust, and *poor communication* with long-term carers and families.

The importance of ensuring that restoration is always an option for First Nations children in care was raised by multiple participants. This is consistent with First Nations' understanding of permanency as Kinship and further reinforces First Nations epistemologies that view wellbeing as inherently linked to connection to and continuity with community and culture (Beaufils 2022; Davis 2019). Aunty Shelley commented from her community and cultural perspective on how the use of permanency and guardianship conflicts with cultural practices and Aboriginal family life:

We don't need that shit. Guardianship, adoption is not a part of our living, our being, our culture. Like I said earlier, grandmothers have taken on kids before without the department becoming involved and realistically, it was a part of our culture. Even sometimes I think the grannies [grandkids] were just told to be around the grandmother. The mother might only get to see the grandkid twice a week. You know what I mean? They put in these structures that don't fit in with our way of life and we can do that. It's just a natural thing that happens. But this thing about even people want to own our kids and control our kids, we don't even do that in life generally. You know what I mean? They're not obligated to me as such, they're obligated to a few people in my family, not just me.

(Aunty Shelley, Elder, Grandmother, family member and formerly department CP staff)

Twenty-three participants (62%) said restoration should always be an option in OOHC. They noted that restoration does not mean specifically or exclusively restoring children to the parents or the perpetrator of abuse, but to mob, community, and culture. For example, Charlotte said,

Like we need to be talking about their families as their forever home. We need to be talking about returning them home, restorations and all of that sort of stuff. Like that should be our main goal all the time. And it is... always is on paper. Restoration is always... They go on paper but I think people get lost in all the work that's involved in having these kids in care and finding a good placement for them when they're sort of losing the focus and then not really focussing on finding family.

(Charlotte, Aboriginal child protection worker with the department and family member)

However, 24 participants (65%) also spoke about the need for the restoration of children to their Aboriginal families. As Camilla highlighted, it is important to prioritise children's safety, but this should be balanced with connection through restoration:

Out-of-home care is needed when there is such a need. Like I said, there's case that you just go: Yip, okay. The baby's got to be looked after here, but there is and should always be opportunity for restoration to country, family and community.

(Camilla, Aboriginal cultural manager and community member)

All three parent participants agreed with the need to remove children generally and in the removal of their own children for a period, while they sought assistance so they could "sort themselves out". However, all continued to seek restoration, including Alan, who stated,

They've got to be removed for some reason you know. Obviously, there are bad parents out there but there's fucking good parents there too that just take the wrong road and they need to be straightened back up and given back their fucking kids.

(Alan, Aboriginal father of two children in OOHC)

In addition, four of the five young people interviewed, all of whom were care leavers, described wanting restoration to some form of family or to have restoration as an option. Bradley, for example, articulated that OOHC should be temporary not permanent:

I think the purpose should be a place for children, a temporary arrangement. Out-of-home care should be, "We're putting the kids in out-of-home care to get them away from what's going on that might not be right." But then there needs to be more around working with other people that are involved, not permanency. Like, as I got older, speaking to my mum, and because of my interest in the sector, I was able to speak to her and, sort of, get what she thought about the day of removal and what happened after that. And, even though, yes, bad decisions were made, but that happens, and for a department, they should be looking at, 'Yes, that's happened, that's shit. But how can we work with this person to get, while her kids are in this safe place called out-of-home care, let's work with her so that we can get those kids back to her?' And that never happened.

(Bradley, Aboriginal young person previously in kinship care with Aboriginal Grandmother)

Eight participants (22%) raised concerns about the lack of accountability by the department when guardianship orders are being sought. For example, Ashley suggested that "guardianship

is meaning less kids in the system. It is what the government wants because it is less accountability, ... and it reflects really good for a government report, for stats.” Further, there was a perception that the limited evidence to justify these placements will likely lead to further problems:

So we remove the kids, and then holy crap, they've been in here too long. That doesn't look good on the department, or the minister. And then, it's just going to run more risks if these kids are being left for services that have not done all the other work that's required for outcomes, and then they push for guardianship... You need to have evidence for a guardianship order. But I'm sure there's a lot of people that have fluffed that up before. They've pushed it through, signed it off. And then these kids have been left, no care or support. Then you've got JJs [Juvenile Justice], you've got other kids running off. It could be broad circumstances but if the support's not there... I just think it's going to probably, be a little more risk in the future.

(Ashley, manager, permanency support program and family member)

The increased privatisation in the NSW OOHC system also contributed to the perception of a lack of accountability by the department. Participants felt that child protection departments view First Nations children as “commodities” within a Western system that functions as “a business... and if you don't get the business model, then you're going to fail” (Camilla, Aboriginal cultural manager, and community member). This in turn contributes to a perception of OOHC providers being incentivised to not prioritise restoration:

I think for as long as they can keep these kids in care, they [departmental and agency staff] have got jobs. These people haven't got jobs without these kids in their care, so you want to do everything you can to keep your job.

(Jim, carer and Aboriginal agency staff)

The failure to support parents to achieve restoration, combined with a push towards third-party guardianship, led some participants to argue that child protection departments—either deliberately or through poor practice—do not provide potential long-term carers and families with sufficient information to make informed decisions. This results in First Nations families agreeing to guardianship without a clear understanding of what this entails. For example, participants noted that families and community may not fully understand the implications of their child entering an OOHC placement, particularly when guardianship becomes the permanency goal:

I see, too often, where family and their children have come into out-of-home care and I don't say this with disrespect at all, but family and community not understanding or that are fully informed. They are now not the legal guardian of this child and what is going to happen. This creates some things that we

have to deal with around that because I don't know if parents really grasp that they aren't your child and that parent [responsibility] now lies with the minister. Do they actually understand that? I don't think so, no.

(Anthony, Aboriginal case manager, Aboriginal OOHC agency and family member)

Similarly, Margaret shared her concerns about how the department promoted guardianship to carers:

Well, she [child's case manager with the department] come in and... Second time she'd met me and it was like, so have you thought about guardianship and I was like... And I've heard it around, you know. I'd heard [named non-Aboriginal Agency] and that talk about it before and I was like, no, I haven't really. [And she says] oh, well, here, you know, we've got the things and this is what it is and, yes, it just means that, you know, we don't have to come and visit you... but you'll still get the money side of it but it just means there's that security for [named child] and he'll stay with you until he's 18 or whatever. And I was just like, oh, yes, I'll think about it.

(Margaret, Aboriginal carer and community member)

This can lead to an overburdening of families and communities that are not supported appropriately by the department:

We've seen one old Aunt that lives pay packet to pay packet, I think she's on a disability pension to be honest, and some medical issues happened with her grandson that she was providing guardianship for and she financially couldn't support it. So, she came in here trying to ask for the support and help and unfortunately, she had guardianship. The big push for permanency, I think that that is failing our kids. It's putting our kids at more risk. It's putting our carers at risk. It's putting, at the end of the day, community back at risk. I really hope that in probably three years, four- or five-years' time when the research is done that we haven't got a spike back in kids re-entering care because carers just can't do it.

(Trevor, Aboriginal carer and foster care co-ordinator with Aboriginal agency)

Despite these challenges, some participants expressed hope that now is the time for change in favor of community and culture. For example, Michelle said,

Years ago, it was more just like take them, that was it, and I don't agree with that and I still feel like it's a little bit like that now, but the Aboriginal communities are getting more of a say...I feel like that's a need, especially in the Aboriginal community, for these

kids so they can go home because otherwise they're just going to be in care forever. And then that comes with the loss of identity and like all those things you think they won't have because they're still in care. [I] always believe that they should be with their family, no matter what.

(Michelle, non-Aboriginal kinship carer and community member)

For participants in this study, removals were seen to be necessary when families or parents needed some time to “sort themselves out.” However, the timeframes for restoration and lack of genuine mobilisation to support or facilitate restoration was widely viewed as problematic. As such, participants reflected on the punitiveness inherent in a system that removes children to protect their best interests but is perceived to be engaging in systemic forms of cultural disconnection. This was perceived to be compounded by a lack of accountability by child protection departments and private OOHC providers and the lack of adequate communication with families and communities about the implications of having a child removed into OOHC.

4 | Discussion

This study builds on existing scholarship by First Nations researchers on the continued assimilationist underpinnings of contemporary child protection systems throughout Australia. Despite decades of activism, scholarship, independent inquiries, and reviews, child protection policies and practices remain firmly grounded in racist assumptions that the best interests of First Nations children can best be met through “permanency” away from family and culture (Warren et al. 2025). This is reflected in one of our key findings, that “permanency” is conceptualised by participants as primarily a push towards permanent care through third party guardianship rather than through restoration. This results in a perception that the department is not only pressuring carers to seek guardianship orders but is doing so in a way that is aligned with “market” principles that focus on reducing the size—and consequently cost—of providing OOHC services. As participants in this study noted, this results in an entrenchment of a system that fundamentally *disconnects* First Nations children from communities and culture (Krakouer et al. 2023). These types of amendments to permanency are not isolated within the NSW jurisdiction, as other First Nations authors have identified a similar trend across colonial Australia (SNAICC 2021; Krakouer 2023), reflecting a paternalistic attitude, where as one our participants noted, child protection systems continue to assume that “they know what’s best for the poor little Blackfella.” For participants in this study, the inherent paternalism of child protection systems, policies, and practices reflects the logics of (white) possession (Moreton-Robinson 2015) that justify punitive and intrusive interventions into First Nations communities under the guise of “saving” the Aboriginal child (Faulkner 2023; McQuire 2024). While the official language of paternalism may be couched in benevolence (i.e., “promoting” cultural connection), it is in fact an act of state-sanctioned violence based on racist, colonial assumptions of First Nations pathology, particularly in relation to child safety, child rearing, and child care (McQuire 2024).

On the surface, the push to provide children in OOHC with certainty about their living arrangements in a timely manner is uncontroversial and reflects an understanding of the inherent trauma associated with removal and the lack of stability that has characterised many children's experiences of OOHC (see for example, Schofield et al. 2007). However, as our data highlights, the ideal of permanency has become equated, almost exclusively, with the transfer of legal guardianship of a child. This is inconsistent with the stated intent of legislative amendments and child protection policy that putatively prioritise *restoration* as the primary permanency outcome when a child enters OOHC. As participants noted, however, child protection policies and practices in NSW are inconsistent with a focus on restoration. This is supported by First Nations scholarship which has found that despite commitments to closing the gap on the over-representation of First Nations children in care, and to “self-determination,” child protection policies and practices fail to incorporate the views of First Nations communities (Beaufils 2022; Davis 2019; Hermeston 2023; Krakouer et al. 2018, 2023). Official data supports this view. For example, in 2021–22, only 2%⁷ of First Nations children in care (including those on third-party/guardianship orders) were restored to family in NSW. During the same period the rate of First Nations children on Third Party Parental Responsibility Orders (i.e., guardianship) has increased (AIHW 2024a). This reflects a troubling trend where guardianship is prioritised over restoration for children in care, with the NSW government focusing on policies that reduce OOHC statistics at the expense of First Nations children's cultural needs.

The concept of permanence as it is currently operationalised serves dual purposes: it minimises the state's accountability for ensuring children's positive outcomes once they are removed and prioritises efficiency over genuine cultural continuity and familial connection. In the absence of publicly available data that tracks children's outcomes once they are in permanent alternative care, it is not possible to conclude whether guardianship to a third-party is in fact contributing to improved outcomes for children. Anecdotally, service providers in the OOHC sector in NSW have indicated that permanent care placements start breaking down when children enter adolescence, and their trauma-based behaviours begin to escalate. To date, however, there has not been any research in Australia that has identified the rate of permanent care placement breakdowns. This is a significant gap in knowledge, which further contributes to the perception that the push towards “permanency” through guardianship does not reflect the intention of ensuring children's best interests, particularly for First Nations children (Blackstock et al. 2023; Hermeston 2023). As participants in this study noted, “permanency” reflects more of a “set and forget” mentality within OOHC, leading to rapid placements that often disconnect First Nations children from their families and communities. This approach, characterised by a lack of early intervention, fails to facilitate meaningful restoration processes.

First Nations participants also expressed concerns that recent reforms set unrealistic timeframes for parents seeking to reunify with their children, often enacted without genuine community consultation. Legislative amendments in

NSW introduced a strict 24-month limit on restoration. The “clock” on restoration commences the moment a child first enters OOHC and is cumulative, meaning that if restoration is not successful and a child returns to OOHC, the “clock” is not reset (as per section 76(4B) *Children and Young Persons (Care and Protection) Act 1998* N. 157). However, the restoration time frames exist alongside new “active efforts” provisions (Section 9A) which specify that the department has a responsibility to provide, facilitate or assist with access to support services and, where the necessary support services do not exist or are not available, to consider “alternative ways of addressing the relevant needs of the child or young person and the family, kin or community of the child or young person (section 9A(4a, 4b))”. Further, section 83A outlines additional requirements for permanency plans for Aboriginal and Torres Strait Islander children. Consistent with the Aboriginal and Torres Strait Islander child placement principles (ATSICPP), where restoration is not considered viable, consideration must be given to ensuring that a permanency plan prioritises placement with a relative, a member of kin or community, or another “suitable” person.

Despite these multiple provisions, First Nations communities continue to experience the NSW child protection and OOHC systems as punitive, paternalistic, and incompatible with First Nations understanding of culture and kin (Beaufils 2022; Beaufils et al. 2025). For many participants, the push towards permanency through guardianship, rather than by supporting families to stay together or through restoration, resembles historical practices of assimilation, reminiscent of the stolen generations (see for example, Grandmothers Against Removals 2018; Krakouer et al. 2023). This view is supported by data showing that in 2021–22, only 18.2% of First Nations children on guardianship orders were placed with an Aboriginal and Torres Strait Islander relative or kin, compared to 65.6% who were placed with non-Indigenous relatives or kin (AIHW 2024b). While this is technically consistent with the ATSICPP placement principles that prioritise placements with family/relatives/kin, it reflects a colonial understanding of ‘safety’ and ‘family’ at the expense of genuine well-being, which encompasses cultural connection (Blackstock et al. 2023; Krakouer et al. 2023). Participants emphasised that First Nations kinship provides inherent stability and belonging, which is undermined by recent changes to the OOHC system that prioritise expedience. Many viewed the push for permanency as a continuation of colonial practices, leading to further disconnection from culture and community.

Concerns about the department’s approach to guardianship also emerged, as it signifies a relinquishment of responsibility by the state, with families feeling misled about the implications of such placements. This disconnection from community care raises concerns about the future of First Nations children within the system. Specifically, participants argued that the current system effectively commodifies children by “incentivising” private providers to keep children in care for as long as possible thereby reducing efforts to work towards restoration. The increased reliance on private providers in the NSW OOHC system has been raised as a significant concern (see for example Hermeston 2023), however, there remains an absence of empirical research in Australia that specifically addresses this

issue. International evidence, particularly from England and Wales, indicates that privatisation of OOHC is associated with poor outcomes for children, including increased *instability* and poorer quality of care (Ablitt et al. 2024; Carey 2021). The lack of engagement with First Nations communities has led to concerns that the outcomes prioritised by government (i.e., “permanency”) do not align with the needs of First Nations children, families, and communities (Davis 2019).

Participants underscored the need for the OOHC system to prioritise restoration over permanent removals. Effective restoration requires time, ongoing support, and culturally sensitive practices. Current policies not only fail to protect children’s cultural identities but also perpetuate a cycle of disconnection and trauma. Consistent with the tenets of the UN Declaration on the Rights of Indigenous Peoples (OHCHR 2007), the First Nations community advocates for policies that recognise their inherent rights to govern and care for their own children, aiming for a system that fosters genuine cultural continuity and familial ties. Until systemic changes occur, the legacy of child removals will persist, underscoring the urgent need for reform that aligns with First Nations values.

4.1 | Limitations

There are some limitations to this study. First, although the focus of the broader study on which this paper is based was on the way First Nations peoples and knowledges are understood in the OOHC system, the sample is limited to 37 participants, including four non-Indigenous people. As such, the findings cannot be—nor do we claim them to be—generalisable to other communities within NSW. Second, while all First Nations interviewees identified as Aboriginal from various NSW nations, the absence of Torres Strait Islander voices restricts broader applicability, as their cultures and colonial experiences differ significantly. Further, the findings only provide limited insights into the experiences of young Aboriginal adults who exited OOHC. Due to time limits and funding constraints, it was not possible to recruit children in OOHC. Despite these limitations, the findings presented in this paper are consistent with existing scholarship, reflecting the deeply entrenched nature of harm perpetuated by systems that are meant to protect the most vulnerable.

5 | Conclusions

This article brings forward the voices of the First Nations communities that continue to fiercely resist OOHC reforms in NSW. As a form of permanency that is steeped in Western ideologies (Mackieson et al. 2017) guardianship contradicts First Nations perspectives of parenting, child rearing and community living. Their voices—and their resistance—remains crucial given the many areas of OOHC that require redevelopment in light of the ongoing exclusion of First Nations communities’ knowledge. Defining a shared understanding of the purpose of and expectations for OOHC is vital. Child protection policy cannot focus solely on “removal from harm” and must instead include a holistic approach to wellbeing and care for children that is future focused, includes self-determination, and actively works towards restoration.

The apparent failure to prioritise reunification reflects the colonial underpinnings of child protection systems and policies that continue to be imposed under the guise of reform, neglecting the essential aspects of cultural connection that First Nations communities uphold (Beaufils 2022; Faulkner 2020; Krakouer et al. 2023; Mitchell et al. 2019). Under these present settings, restoration seems impossible for most of the research participants, who feel that they continue to be punished despite their best efforts to “work with” the department. In a system that has become increasingly privatised, the conception of *in loco parentis* when applied to non-Indigenous carers creates and reinscribes assimilationist tendencies. As stated by participant Anthony, carers must understand that “as much as we want you to look after them like they’re your own, they’re not your own, and children have their own family and they have their own identity.”

The governance and accountability of those implementing removals need to be transparent, but this is not possible under current settings. Placement in OOHC must better align with First Nations community beliefs and focus on using temporary placements until healing is completed and families are stronger. Stronger programme support for early intervention and family support is also crucial to healing and sustained restoration. Placement options should be more flexible and include First Nations models of community care, not just Western models of parental care. In the case of permanency arrangements other than restoration, the apparent shift in policy discourse away from assimilation will ultimately lead to the same results unless there is significant change grounded in genuine Aboriginal self-determination.

Author Contributions

James Beaufils: conceptualization, methodology, investigation, validation, formal analysis, funding acquisition, visualization, project administration, resources, writing – review and editing, writing – original draft, software, data curation, supervision. **Tatiana Corrales:** writing – review and editing, visualization, validation, formal analysis. **Aunty Deb Swan:** supervision, writing – review and editing, visualization.

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Conflicts of Interest

The authors declare no conflicts of interest.

Endnotes

¹ On 4 February 2019, amendments to the *Children and Young Persons (Care and Protection) Act 1998* (NSW), and the *Adoption Act 2000* (NSW) were enacted. Section 83 of the amended Act requires child protection authorities to consider whether there is a ‘realistic possibility of restoration’ within a period not exceeding 24 months, and if not, to arrange for another long-term legal order such as guardianship or adoption.

² Case plan goals in placements in NSW are expected to shift to alternative permanent care by 24 months after entering care unless there are

special circumstances as per s 79 of the *Children and Young Persons (Care and Protection) Act*.

³ During the same period there was no change in the rate at which non-Indigenous children were placed on third party parental responsibility orders (1.2 per 1000 children in 2018 and 1.3 per 1000 in 2022).

⁴ Guardianship is an order made by the Children’s Court for a child in out-of-home care (foster care) who cannot be returned to their family for their own safety. The child or young person will remain in the care of their guardian until they turn 18 or until the Children’s Court changes the order. Under a guardianship order, a child or young person is no longer considered to be in foster or out-of-home care but in the independent care of their guardian. Department of Communities and Justice. Accessed from <https://www.facs.nsw.gov.au/families/guardianship/what-is-guardianship>.

⁵ AbSec is the peak body for Aboriginal child, family and community services in NSW.

⁶ Alternative Care Arrangements are short-term emergency placements that include hotels/motels and caravan parks.

⁷ There are varying ways to present reunification data. For example, in 2021–22, of the total number of First Nations children who were discharged from OOHC ($n = 1050$), 15% exited to reunification while 13.5% exited to guardianship through a third-party parental responsibility order (AIHW 2024a, 2024b). This would indicate a 15% reunification rate. However, this only accounts for the number of children who were discharged from care. The 2% figure reported above refers to the proportion of First Nations children in OOHC who achieved reunification. While the distinction may appear subtle it is important as it highlights the true rate of reunification when viewed as an outcome for all children in OOHC.

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