RESPONDING TO CHILD PROTECTION ISSUES

DEVELOPED BY FAMILY MATTERS AND GRANDMOTHERS AGAINST REMOVALS NSW

NEW SOUTH WALES COMMUNITY RESOURCE GUIDE
ACKNOWLEDGEMENTS

The Family Matters Community Resource kits were developed by SNAICC – National Voice for Our Children, in close consultation with Grandmothers Against Removals NSW, and Aboriginal and Torres Strait Islander leaders, community-controlled organisations and campaign committees in all Australian jurisdictions.

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1. Aboriginal and Torres Strait Islander children are over-represented in the child protection system, including in out-of-home care.

In NSW and across Australia, Aboriginal and Torres Strait Islander children are over-represented in the child protection system. When compared with non-Indigenous children, Aboriginal and Torres Strait Islander children are more likely to come to the attention of child protection authorities, to have their cases investigated and to be removed from their parents’ care. In NSW at 30 June 2016, Aboriginal and Torres Strait Islander children were 10.4 times more likely than non-Indigenous children to be in out-of-home care – that is, removed from their parents by FACS and placed in ‘care’.

WE NEED strong preventative and early intervention measures to keep children safe and cared for with family. In order to keep children with their families, we need access to quality, culturally safe, early childhood, health, education and other services for Aboriginal and Torres Strait Islander families. For children who have been removed, we need focused and resourced efforts to safely reunify families. We need Aboriginal and Torres Strait Islander community controlled organisations resourced to design and deliver support services to Aboriginal and Torres Strait Islander families.

2. Families aren’t being supported to address their issues so that children can be safely cared for at home or returned home when they have been removed.

Our governments aren’t investing enough into family support services to keep Aboriginal and Torres Strait Islander children safe at home and prevent them from entering the child protection system – there simply aren’t enough services, and particularly, there aren’t enough culturally safe services. There also aren’t adequate supports for families who are working to have their children returned safely home. Currently, the NSW government spends only 17 per cent of child protection expenditure on family support services.

WE NEED governments to spend at least 30 per cent of their total child protection system expenditure on family support services that will help Aboriginal and Torres Strait Islander families keep children safe and cared for at home, and safely return children home who are removed.

3. There aren’t enough resources provided to Aboriginal and Torres Strait Islander community controlled organisations to support families, and families have difficulty finding services that are culturally safe.

Aboriginal and Torres Strait Islander community controlled organisations are best placed to understand, design and deliver services and supports to our families. There is not enough recognition of this and there is not enough investment in community controlled organisations.

WE NEED Aboriginal and Torres Strait Islander community controlled organisations to be properly resourced and supported so that they can support families in their communities.

4. Aboriginal and Torres Strait Islander families and organisations are often left out of the decisions that are made about their children.

Aboriginal and Torres Strait Islander families, communities and organisations have a right to participate in decision making about their children. Self-determination means that Aboriginal and Torres Strait Islander peoples have a right to determine and control what happens to their children. Decisions about Aboriginal and Torres Strait Islander children can often discriminate when decision makers, such as FACS or the court, don’t understand Aboriginal and Torres Strait Islander culture and child rearing practices, and fail to consult about these.

WE NEED stronger laws, policies and practices that require FACS and the courts to involve and listen to Aboriginal and Torres Strait Islander families, community members and organisations when decisions are made about children. A process such as ‘Aboriginal and Torres Strait Islander Family Led Decision Making’ would allow families to participate in significant decision making, design and own solutions, and promote the best interests of their children. FACS also needs to seek out and listen to the knowledge, advice and cultural authority of Aboriginal and Torres Strait Islander community leaders and community controlled organisations – these organisations must actively participate and be taken seriously in decision making.

5. Too many children are placed away from their Aboriginal and Torres Strait Islander relatives andkin.

If Aboriginal and Torres Strait Islander children are removed from their parents, the first placement preference is always a safe placement with family including Aboriginal and Torres Strait Islander relatives and kin. In NSW at 30 June 2016, only 59.4 per cent of Aboriginal and Torres Strait Islander children were placed with family, and only 34.5 per cent were placed with Aboriginal and Torres Strait Islander family.

WE NEED stronger laws, policies and practices that prioritise placement with Aboriginal and Torres Strait Islander family. We need Aboriginal and Torres Strait Islander organisations to be resourced to identify, recruit, assess and support kinship carers.

6. There isn’t enough commitment to keeping children connected to family, community and culture.

If Aboriginal and Torres Strait Islander children are removed from family, their important connections to family, community and culture must be maintained and developed.

WE NEED stronger laws, policies and practices that require ‘cultural support plans’ to be developed, implemented and reviewed for all Aboriginal and Torres Strait Islander children in out-of-home care, and greater financial resources to ensure this happens. Aboriginal and Torres Strait Islander families and organisations must be involved and FACS must support this.

7. Child protection laws and services are increasing the use of permanent care without ensuring children are connected to family and culture or that families get the supports needed to reunify.

Across Australia, many governments have been making it easier and faster to place children in permanent care, arrangements, where they remain in out-of-home care until they are 18. When families aren’t supported properly and Aboriginal and Torres Strait Islander people aren’t involved in the decisions being made, and where strict time limits are placed on the opportunity for children to be reunited with their birth family, there is a big danger that Aboriginal and Torres Strait Islander children will be permanently separated from family, community and culture.

WE NEED to make sure that governments and services support Aboriginal and Torres Strait Islander children in out-of-home care to be reunified with family and to maintain their connections with culture and community.

WE NEED flexible laws and policies that give families the time and opportunity to get the support they need to reunify. We also need decisions about permanent care to always be made by Aboriginal and Torres Strait Islander people and organisations to ensure children don’t lose their culture.

8. Our governments don’t listen to Aboriginal and Torres Strait Islander people enough and aren’t changing how they are doing things.

WE NEED to hold governments accountable to Aboriginal and Torres Strait Islander people. We need Aboriginal and Torres Strait Islander organisations and peak bodies to demand information, accountability and change.

We need a dedicated Commissioner for Aboriginal and Torres Strait Children and Young People in New South Wales to also make these demands. We need you to take action.

We all need to take action.
WHAT ACTION CAN YOU AND YOUR COMMUNITY TAKE?

1. You can get a group of your community members together to share experiences and make a plan to take action. You can take action by yourself or you can get a group of your community members together and take action together. A group with shared experiences and a strong voice can be a powerful force for change.

2. You can contact FACS about individual and shared problems with FACS. You can tell them what is happening for you and your community and ask for the changes you want.

   Family and Community Services
   1800 000 164
   facsinfo@facs.nsw.gov.au

3. You can contact the Ombudsman about individual and shared problems with child protection and family services. The Ombudsman takes and investigates complaints about government agencies and services.

   NSW Ombudsman
   1800 451 524
   nswombd@ombo.nsw.gov.au

4. You can contact the Office of the Children’s Guardian, Advocate for Children and Young People or National Children’s Commissioner about problems with child protection and family services.

   Office of the Children’s Guardian – primarily regarding children in out-of-home care
   (02) 8219 3600
   kids@kidsguardian.nsw.gov.au
   http://www.kidsguardian.nsw.gov.au

   Advocate for Children and Young People
   (02) 9248 0970
   acyp@acyp.nsw.gov.au

   National Children’s Commissioner

5. You can contact your local member of parliament about problems with child protection and family services. You can tell them what is happening for you and your community and ask for the changes you want.

   Local Government

   NSW Parliament

   Federal Parliament
If you need help looking after your children, or if you need help with problems affecting how you look after your children, you can get help to ensure your child is safe and avoid moving further into the statutory (legal) child protection system.

If the ‘child protection department’* (the Department) receives a report or notification that your child has experienced, is experiencing, or is at risk of experiencing harm, including abuse and/or neglect, they will begin to assess the notification.

The notification is considered and an initial assessment about whether to investigate further is made. To make this initial assessment, the Department may look at your family’s child protection history and contact services, schools, or hospitals etc.

If the Department decides to not investigate further, they may instead make referrals to family support and other services.

If the Department decides to investigate further, they will make contact with you and your child. A full assessment of your child’s safety and well-being is made.

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* The ‘child protection department’ is the government agency responsible for child safety and wellbeing in your state or territory – further details, including contact details, are provided in this booklet

The Department may seek a court order (referred to as a ‘care and protection order’ or ‘protection order’) to ensure that your child is safe and looked after.

Usually, before a final order is made, an interim order/s will be made. An interim order may specify where your child lives – for example, with you or in out-of-home care.

A final court order may also specify where your child lives, how long the order is for, and also whether you keep parental responsibility or whether this is given to the Department or another person.

You, as a parent can agree to an interim or final order, or can disagree and contest the making of either type of order at court. You may be able to appeal against an order that is made by the court (for more information about this, see the FAQs).

Throughout this process, the Department must work to ensure your child is safe and well. This includes where an interim or final order has been made. This process is called ‘ongoing case management’.

Ongoing case management may involve supporting you and your child so that your child can return home if it is safe for your child to be there. This is called ‘reunification’. Reunification may occur with a court order in place, or the Department may decide to withdraw involvement completely if they are satisfied that you can ensure your child is safe and well.

If reunification is not possible and your child remains in out-of-home care, the Department must ensure that your child is living in the most safe and culturally appropriate placement possible, and ensure that your child’s connections to family, community and culture are maintained and developed.

* The ‘child protection department’ is the government agency responsible for child safety and wellbeing in your state or territory – further details, including contact details, are provided in this booklet
Frequently Asked Questions

1. I need help looking after my children – who can help?
   You can get help from child care, playgroups, and family support services. You can also get help for problems that affect how you look after your children – physical health, mental health, family violence, alcohol and other drug misuse, gambling, or anything else.

2. Why is ‘child protection’ calling and/or visiting me?
   You, as a parent, are responsible for making sure your children are safe and looked after. But Family and Community Services (FACS) is also responsible for making sure your children are safe and looked after.

   If FACS receives a ‘notification’ or report about your children and believes that your children might not be safe, they have to investigate and make sure your children are okay. One of the first things they will do is contact you to talk about your children – they will call or visit you.

   You can get help from an Aboriginal and Torres Strait Islander legal service to understand why ‘child protection’ is calling or visiting you – see Contact Lists.

3. What did the notification say about my children?
   FACS must tell you what the notification is about and why they are now worried about your children.

   A notification can be about your children experiencing or being at risk of physical harm, sexual harm and/or emotional harm, and/or neglect. This could be about things you have done, or not done, or things that someone else has done.

   An example of emotional harm is if your children have witnessed or know about family violence that has happened to you. An example of physical harm is if your children have been hit or hurt by you or someone else.

4. Do I have to talk to FACS? Do I have to let them into my house?
   Yes, it is best for you and your children if you talk to FACS if they call you or come to your house. This can be hard, so you can ask the child protection worker to call back later or arrange another time or place to meet. You can ask for time to get a support person or lawyer to help you talk to FACS.

   You do not need to let FACS into your house but they can get a court order to come into your house. If you’re worried about this, you can talk to a lawyer from an Aboriginal and Torres Strait Islander legal service – see Contact Lists.

   It is important to tell the child protection worker that your children are Aboriginal and/or Torres Strait Islander. This will help protect your children’s cultural rights and ensure Aboriginal and Torres Strait Islander services are offered to you and your children.

5. Who can help me talk to FACS?
   You can ask anyone to be your support person and help you talk to FACS. You can ask a family member or friend to be your support person. You can also ask someone from your local community group, Aboriginal and Torres Strait Islander community organisation and/or a lawyer from an Aboriginal and Torres Strait Islander legal service – see Contact Lists.

   You can ask the child protection worker to wait until you have a support person or lawyer with you before talking to them.

   If you don’t understand what the worker is saying you can ask them to explain things again and in a different way and/or ask for an interpreter. You should ask the worker if he or she has anything in writing to give you. It is also a good idea for you to write down what the worker tells you.

   FACS has to treat you fairly and with respect. If you aren’t happy with the way you’ve been treated, you have a right to complain to FACS and/or the Ombudsman – see Contact Lists.

6. I’m worried that FACS might take my children away from me. What can I do to stop FACS taking my children away?
   The best way to stop FACS from taking your children away is to show FACS that your children are safe and looked after by you.

   You need to understand what FACS is worried about and explain how you will change things to make sure your children are safe and looked after. You can get help and support from your family and community to make changes. You can also get help from family support services. There may be Aboriginal and Torres Strait Islander organisations that can help you – see Contact Lists.

   If FACS suggests that you do something – for example, see a counsellor – it is important that you do this. However, if a service is not right for you or your children, and/or if you want an Aboriginal and Torres Strait Islander service, you should suggest this to FACS.

7. Can FACS take my children away from me? What should I do if FACS takes my children?
   FACS can take your children if they believe that there is an immediate risk that your children will be seriously harmed.

   FACS can take your children away without a court order if the situation is deemed dangerous, but they will need to go to court very soon after.

   The court then decides if your children come back home to you or not.

   If FACS takes your children away, it is important that you ask for any paperwork and for the reasons why they are taking your children – you should write these reasons down. It is also important to ask when the first court hearing is and then contact a lawyer. There are lawyers at Aboriginal and Torres Strait Islander legal services that can help you – see Contact Lists.

8. If FACS takes my children, who will they stay with? Can I tell FACS who I want my children to stay with?
   FACS must first see if your children can stay with your family. If there is a family member your children can stay with you need to tell FACS about this person. FACS will then complete an assessment to make sure it’s safe for your children to stay with this person.

   If there is no family your children can stay with, FACS must then consider – in this order – an Aboriginal or Torres Strait Islander person in your children’s community, an Aboriginal or Torres Strait Islander person who lives nearby, and lastly a non-Indigenous person who can make sure your children maintains a connection to their family, community, and culture. If FACS cannot find one of these carers, your children may stay in a residential home with other children.

   You can suggest family, friends, or other persons who you want your children to stay with. FACS must consider and assess the person/s you suggest, but FACS doesn’t need to choose that person/s. The court has the final say about who your children will stay with – the court might give FACS the power to decide who your children stay with.

   If you need help talking to FACS about who you want your children to stay with, you can contact an Aboriginal and Torres Strait Islander organisation and/or an Aboriginal and Torres Strait Islander legal service – see Contact Lists.

9. Can I still see my children if they have been taken away from me?
   Usually yes. If FACS has taken away your children and the matter has gone to court, the court will make an order that tells you when you can see your children and if there needs to be someone to supervise your time with your children.

   If there is no court order telling you when you can see your children or if there are any problems with seeing your children, you should talk to FACS or contact a lawyer at an Aboriginal and Torres Strait Islander legal service – see Contact Lists.
10. If my children have been taken away from me, how will they keep their language and culture?

Although it’s not the same as living with you, your children can keep their connections to family, language, and culture by staying with an Aboriginal and/or Torres Strait Islander family member or carer, spending time with you and with other family, and going to family and cultural events.

FACS is required to take your children’s connections to family, language, and culture seriously and must develop and follow a cultural plan to make sure that these connections are developed and maintained.

If you have any worries about your children’s connections to family, language, and culture, you can speak to an Aboriginal and Torres Strait Islander organisation and/or a lawyer at an Aboriginal and Torres Strait Islander legal service – see Contact Lists.

11. How do I get my children back home? Do I have to do all of the things FACS asks me to do?

If FACS suggests that you do something, such as going to court, you need to tell the court. It is best if you have a lawyer to help you at your next court hearing – see Contact Lists.

You can do this by getting help and support from your family and community, and/or by getting help and support from support services – see Contact Lists.

If FACS suggests that you do something, such as see a counsellor and/or a family support service, it is important that you do this. However, if a service is not right for you or your children, and/or if you want an Aboriginal and Torres Strait Islander service, you should suggest this to FACS.

You should also keep talking to your lawyer about getting help for your children. A lawyer from an Aboriginal and Torres Strait Islander legal service can help you – see Contact Lists.

12. Do I need to go to court?

Yes, you need to go to every court hearing – even if your children are still living with you.

It is best if you have a lawyer to help you at court. You can find a lawyer to help you from an Aboriginal and Torres Strait Islander legal service – see Contact Lists.

If you can’t go to court, you need to tell the court or your lawyer this.

FACS should tell you about the first time you need to go to court. If you don’t know when the first or next court hearing is, you should contact FACS and/or your lawyer.

13. What if I’m not happy with the court’s decision?

If you’re not happy with the court’s decision, you need to talk to your lawyer about this as soon as possible.

You may be able to appeal the decision, but you need to do this as soon as possible. For example, you must appeal a final order within 28 days of the making of the order.

If things have changed since the court made its decision, you may be able to ask the court to change or remove an order. Again, you should talk to your lawyer about this as soon as possible.

If you don’t already have a lawyer, you can contact an Aboriginal and Torres Strait Islander legal service to help you – see Contact Lists.

14. How do I make a complaint about FACS?

FACS is required to treat you fairly and with respect. They are required to keep your information private unless they need to share it to keep your children safe. They are required to give you all the information you need to understand what they are doing, what they are asking for, and why. This includes answering your questions about your children as soon as they can.

FACS needs to make sure your children are safe and looked after, including if your children have been taken away from you.

If you think FACS hasn’t acted in the right way, you can make a complaint.

Usually, it is best to first complaint to your children’s child protection worker or their supervisor. If you’re still not happy, you can make a complaint to FACS’ complaint section. After this you can make a complaint to other agencies such as the Ombudsman – see Contact Lists.

It can be hard to make a complaint. If you need help you can speak to an Aboriginal and Torres Strait Islander organisation or lawyer at an Aboriginal and Torres Strait Islander legal service – see Contact Lists.

15. How do I make a complaint about my lawyer?

It is your lawyer’s job to represent you fairly and properly. Your lawyer should also treat you fairly and with respect.

If you don’t think your lawyer has done their job properly and/or has treated you unfairly or disrespectfully, you can make a complaint – see Contact Lists.
This document provides general information only. It does not provide or replace the need for legal, procedural or other advice. All efforts have been made to ensure the accuracy and completeness of information contained in this document, which was current at the time of publishing in 2017 and is subject to change.
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