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Improving the lifelong trajectory of Australian infants in out-of-home care

An evidence-based case for a Specialist Infant Court

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Infants are significantly over-represented in rates of entry into out-of-home care (OOHC) in every Australian care and protection jurisdiction. Furthermore, First Nations infants are 16 times more likely to enter OOHC than non-First Nations infants. Due to the critical neuro-developmental processes of infancy, where infants enter out-of-home care due to abuse and neglect, they are likely to experience developmental impacts, resulting in adverse longer term biopsychosocial outcomes extending throughout their life span. Australia needs specialist Infant Courts to provide a viable innovation for a sector crying out for reform.

The case for innovation

Child protection jurisdictions throughout Australia are perpetually described as being in a state of crisis. Each year sees an incremental rise in the number of Australian children being removed from parental care and entering the out-of-home care system.

First Nations children experience at least one out-of-home care placement or other supported placement at a significantly higher rate than non-First Nations children. In 2020-21, First Nations children experienced this trauma and disruption at a rate of 69.1 per thousand of population, compared with 10 per thousand for non-First Nations children. Over the ten years to 2020-21, this represents a 32.6% increase in this rate for First Nations children, compared with 18.9% for non-First Nations children (Figure 1).

For infants (children aged zero to three years), the situation is worse – both in terms of their over-representation in out-of-home care and the likely adverse lifetime trajectory associated with that entry at a time of critical neurodevelopmental processes. Infants are consistently over-represented in out-of-home care entry data in every Australian jurisdiction (Figure 2).²

First Nations infants enter out-of-home care at a greater rate than non-First Nations infants in all jurisdictions throughout Australia. In 2021-22, this over-representation was significantly higher in Victoria than in any other jurisdiction, where First Nations infants aged less than one year entered out-of-home care at a rate of 89 per thousand of population, compared with 5.6 per thousand of population for non-First Nations infants (Figure 3), with this disparity continuing, though reducing, as children age.³ This is almost 16 times more First Nations babies removed than non-First Nations babies.

While infants enter out-of-home care at much higher rates than older children, their rates of discharge from out-of-home-care were among the lowest for infants and very young children when compared with children in other age groups.⁴ National and international literature indicates that, of all age cohorts entering out-of-home care, infants experience the longest placement duration⁵ and, where children enter out-of-home care in infancy, they will, on average, spend more of their childhood in care than children who first enter care at an older age.⁶

The significance of infants' entry into out-of-home care lies not only in their over-representation but in the fact that it can compound the harms associated with the adverse events responsible for that entry. National

Figure 1. Rate of children experiencing at least one out-of-home care placement or other supported placement during the year (Australia) by Indigenous status (per thousand population).¹

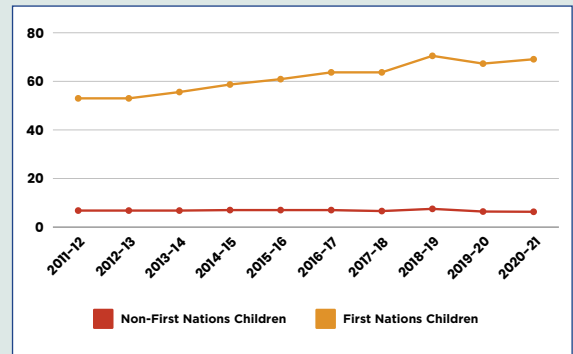


Figure 2. Rate of entry into out-of-home care by state/territory and age group in 2021-22 (per thousand population).

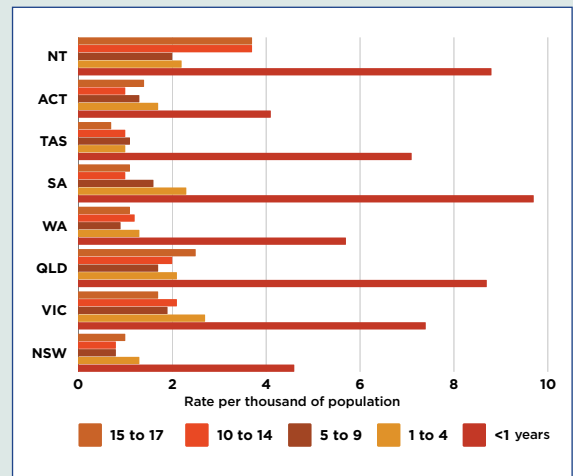
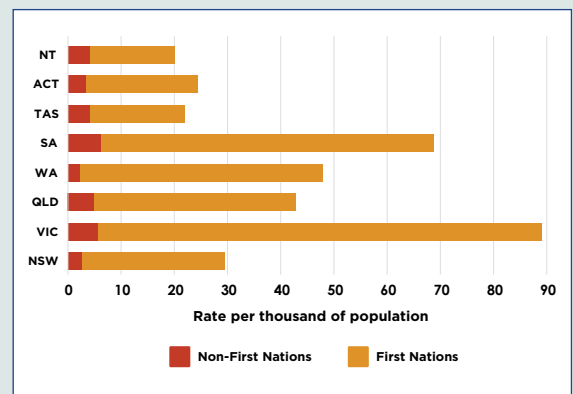


Figure 3. Rate of infants' entry into out-of-home care in 2021-22 by state/territory and Indigenous/non-Indigenous status (per thousand population).



and international literature indicates that infants in out-of-home care are more likely to experience developmental delays, adverse physical health, and attachment problems, and are more likely to experience adverse longer term outcomes than other children.⁷ Chief amongst the impact of exposure to adverse childhood experiences in infancy is the deleterious impact on attachment formation. 'Attachment' refers to the unique relationship formed between infants and their caregiver/s that is foundational to healthy development, and it is the bedrock of positive infant mental health and adaptive development over the life span. Adversity during the first three years of life impacts on the development of three major neuro-biobehavioural systems – the stress response system, the development of emotional and behavioural regulation, and the capacity to make and sustain prosocial adaptive relationships. Where exposure to traumatic harm and to dysfunction and inconsistency in key attachment relationships occurs in infants, they are likely to develop adverse mental health conditions, impacting on psychological and social development, that have lasting negative impacts across their life span.⁸

For First Nations infants and their families, the deleterious impact of involvement in child protection processes, and particularly in relation to entry into out-of-home care or non-familial living arrangements, is significantly compounded by the reality of intergenerational familial trauma associated with racist Australian policies and practices leading to the Stolen Generations, whereby *'subsequent generations continue to suffer the effects of parents and grandparents having been forcibly removed, institutionalised, denied contact with their Aboriginality'*.⁹ Loss of connection to culture as a result of removing First Nations children from parental or familial care has been *'multiple and profoundly disabling'*¹⁰ with ongoing and lifelong impact on the overall wellbeing of First Nations children. The rates of removal have continued to increase since the release of the *Bringing Them Home*

report, with 2020–21 seeing this rate at 69.1 per thousand of population for First Nations children compared with 10 per thousand of population for non-First Nations children.

Policy context

All Australian state and territory governments are signatories to the Commonwealth Department of Social Services' *Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031*, which was preceded by *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020*.

Driven by the principle of ensuring access to 'quality universal and targeted services designed to improve outcomes for children, young people and families,'¹¹ the National Framework commits Australian governments to identify children and young people who have experienced abuse or neglect, including those in out-of-home care, as a priority target for systemic reform. Most notably with respect to the out-of-home care cohort, early intervention and targeted support for children and families experiencing vulnerability, addressing the over-representation of First Nations children in child protection systems, and strengthening the capacity of the child and family sector are identified as specific focus areas.

The Safe and Supported framework explicitly supports the National Agreement on Closing the Gap, and specifically aims to support Closing the Gap's critical socio-economic target of reducing the rate of over-representation of First Nations children in out-of-home care by 45% by 2031. This urgent demand for systemic reform in the child and family welfare sector, particularly for First Nations children and their families and communities, has been given voice in Victoria through the 2023 Yoorrook Justice Commission – our first truth-telling process into the failings of the child protection and criminal justice systems with respect to First Nations families and communities. The Yoorrook Justice Commission has recommended urgent and transformative reformative change to improve outcomes for First Nations children and their families who interface with child protection jurisdictions.

Within this context of clamouring for reform, national expenditure on care services has continued to grow exponentially year on year, with a national spend of in excess of \$5 billion in the 2021-22 financial year alone.¹² Despite years of increasing investment across every state and territory child protection system, out-of-home care metrics continue



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to worsen. Notably, little innovation has been investigated, not least funded, with respect to the nation's children's courts, which are in a unique position to combine the exercise of judicial authority with evidence-based innovation, representing a shift away from traditional adversarial processes - the outcomes of which are at the heart of the urgent need for reform. The piloting of a Specialist Infant Court in an Australian jurisdictional context is one such innovation.

The potential of Specialist Infant Courts

Specialist Infant Courts (also known as Early Childhood Courts or Safe Babies Courts) had their origin in the 1990s in Miami, Florida, and today exist in over 100 jurisdictions throughout more than 36 states in the US. They arose from collaboration between infant mental health clinicians and judicial officers who observed existing systems failing infants and their families. Unfortunately, there is no such court in Australian care and protection jurisdictions.

Embedding infant mental health and early childhood development expertise into solution-focussed court processes, Specialist Infant Courts seek to understand and focus remediation attempts on the underlying causes of infants and their families appearing in these specialised dockets. Their focus is on preventing further trauma and its impact on child development and infant mental health, and healing the effects of past experiences. Such courts adopt a non-adversarial approach and employ the expertise of multidisciplinary teams, led by a court-employed Community Coordinator offering individualised, dyadic, evidence-based treatment approaches, to the familial issues and dynamics that have led to their involvement in abuse and neglect proceedings. In Specialist Infant Courts, therapeutic jurisprudence manifests itself in less adversarial court events that see more genuine engagement amongst parties, ensuring more accurately informed understandings of root problems, and consequently more accurately targeted and effective interventions.

Multiple evaluations¹³ throughout the US indicate that Specialist Infant Courts achieve the following outcomes:

- infants exit out-of-home care up to three times faster than those in traditional justice approaches
- infants are five times less likely to re-enter out-of-home care than those in traditional adversarial approaches
- a reduction in future applications relating to abuse or neglect in participant families



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- improved user experiences of Children's Court proceedings, with participants reporting feeling more respected and involved, and reporting improved life circumstances, greater understanding of early childhood development, and trauma and attachment as a consequence of their involvement
- greater relational stability and care for infants and children at higher rates, and in a shorter period of time than those in control groups.

Cost-benefit analyses of Specialist Infant Courts also found that 75% of Specialist Infant Court costs are mitigated by out-of-home care cost avoidance alone, and that further cost-benefit is achieved through disrupting lifelong, usually intergenerational, patterns of dysfunction and disadvantage.

Stakeholder consultation

An Australian-first Specialist Infant Court would introduce a proven, evidence-based innovation to a child protection sector crying out for reform in every Australian jurisdiction. The concept has been presented by the author at national and international conferences and forums and has received significant sector support. Submissions relating to the potential of a Specialist Infant Court have been made to Victoria's Yoorrook Justice Commission, as well as in response to the Australian Human Rights Commission's call for submissions relating to youth justice and child wellbeing reform. Enthusiastic support for an Australian-first model has been received by the Australian Chair of the Australian Association for Infant Mental Health, the President of the World Association for Infant Mental Health, and from sector professionals spanning the legal, social work, psychiatric and psychological fields.

While a Specialist Infant Court is not an exclusively First Nations focussed initiative, it does hold particular promise to address the significant over-representation of First Nations infants, their families and communities in child protection and out-of-home care systems.

The development of a First Nations focussed model that addresses the cultural and community support needs of First Nations participants needs to adopt a First Nations led and self-determined process. Engagement with First Nations sector leaders and organisations in Victoria in relation to this critical work has commenced.

Policy recommendations

It is recommended that Australia's care and protection jurisdictions invest in evidence-based, solution-focussed approaches such as a Specialist Infant Court over traditional adversarial approaches to jurisprudence which fail to contribute to urgent reform within the child protection and child and family welfare sectors.

Specifically, it is recommended that funding is provided by the Victorian Government to allow for a three-year pilot and evaluation in what is arguably already Australia's most innovative care and protection jurisdiction in the Children's Court of Victoria, building on the successful solution-focussed approaches currently underway in the Family Drug Treatment Court and Marram-Ngala Ganbu.

In designing a First Nations component of a Specialist Infant Court, it is recommended that ongoing consultation with the First Nations communities continue to occur with respect to the development of a model and approach that meets the needs of their families and communities. It is recommended that the design of the elements of a Specialist Infant Court model that address the cultural and community support needs of First Nations participants adopt a First Nations led and self-determined process at a community level.

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With an almost 30 year history of statutory, clinical, leadership and managerial roles across the Victorian child and family welfare sector, and most recently in the Children's Court of Victoria, Matthew Wilson has significant expertise in the complexity of need of vulnerable children and families. Matt's academic qualifications lie in social work, child, adolescent and family mental health, child and family practice leadership, and addiction science. His Churchill Fellowship, and the content and recommendations of it and of his Policy Futures article are his own views and do not represent any formal or informal position of the Children's Court of Victoria.

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