



Protecting children at risk: an assessment of whether the Department of Communities and Justice is meeting its core responsibilities

A special report under section 31 of the Ombudsman Act 1974

Pursuing fairness for
the people of NSW.

 **Ombudsman**
New South Wales

Key Observations and Conclusions

This document summarises the key observations and conclusions of the NSW Ombudsman report: [*Protecting children at risk: an assessment of whether the Department of Communities and Justice is meeting its core responsibilities*](#) (the **Report**).

The Department of Communities and Justice (**DCJ**) is the lead agency for child protection in NSW. It identifies its core child protection responsibilities as:

1 **Element 1:** statutory assessment and response to children reported at risk

2 **Element 2:** supporting children in out-of-home care (OOHC) and exiting them to a permanent home

3 **Element 3:** prevention, early intervention and family preservation

The Report examined available published and unpublished information and data to assess whether DCJ is meeting its three core child protection responsibilities.

Based on the available evidence, the Report concludes that DCJ cannot demonstrate that it is meeting any of its three core child protection responsibilities:

- to respond to any child reported at risk of significant harm (ROSH) who requires an investigation,
- to improve the safety and wellbeing of children in OOHC and secure safe, permanent homes for them, and
- to intervene early to prevent escalation of risk of harm to children, and keep families together.

The Report acknowledges various reforms currently underway or announced in the OOHC system and makes eight recommendations to enhance and strengthen future reforms to the child protection system. The recommendations focus on issues not clearly identified as being addressed by the current reform agenda, and that will either be integral to reform or are key responsibilities for DCJ.

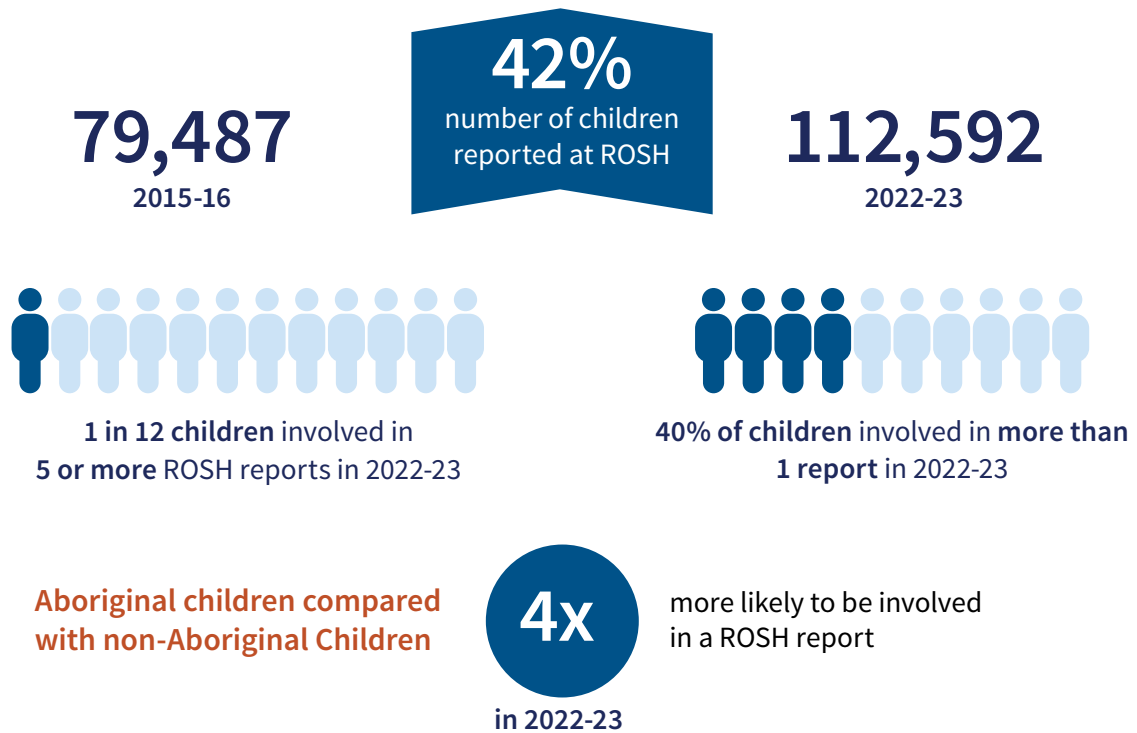
Element 1 – Statutory assessment and response to children reported at risk

The Report examines DCJ’s response to children reported at risk of significant harm (ROSH). DCJ has a legal obligation to assess and determine whether those children are at ROSH and in need of care and protection, and if so, to take whatever action is required to ensure their safety, welfare and wellbeing.

1. DCJ’s response to ROSH reports

In 2022-23, 112,592 children were involved in reports screened by the Helpline as ROSH.

Children reported at ROSH

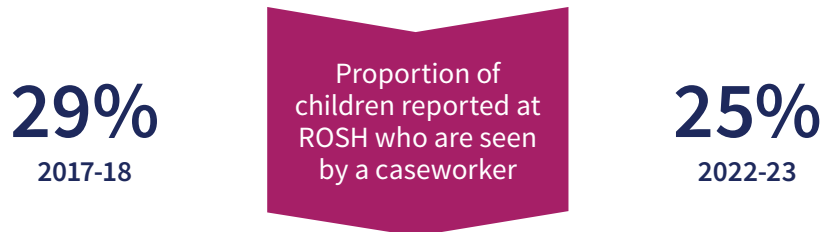


What we found:

- Over the last 8 years, the number of children reported at ROSH increased by 42%.
- Over the last 8 years, an increasing number of children are reported at ROSH more than once each year, with the number reported more than 5 times doubling.
- In 2022-2023, Aboriginal children were 4 times more likely to be involved in a ROSH report.
- DCJ is yet to address flaws or biases in the Structured Decision Making (SDM) tools it uses to screen reports and assess risk to children, which undermine its ability to accurately target and respond to children at ROSH. These tools have been under review since 2021.

2. DCJ's assessment and investigation of children at ROSH

Caseworkers in DCJ's districts/local offices review and triage ROSH reports to determine which children receive a face-to-face response and assessment using the SDM tools.



on average less than half of the children seen by a caseworker are confirmed at ROSH

Aboriginal children compared with non-Aboriginal Children



more likely to be seen by a caseworker

in 2022-23

What we found:

- In 2022-23, only 25% of children reported at ROSH were seen by a caseworker and the outcomes of the remaining 75% of children reported at ROSH are not known.
- In 2022-23, less than 50% of the children seen by a caseworker were substantiated (confirmed) to be at ROSH.
- In 2022-23, Aboriginal children were 7 times more likely to be seen by a caseworker and more than 7 times more likely to be substantiated to be at ROSH.

The NSW Ombudsman has commenced a maladministration investigation into the conduct of DCJ in responding to reports of children at ROSH.

3. Alternative dispute resolution (ADR) to prevent entry to care

For children that DCJ assesses as needing care and protection, it is required to attempt to reduce entries to the OOHC system, including by offering ADR to eligible families

What we found:

DCJ’s data does not show whether DCJ offered ADR to all eligible families in line with the provisions of the *Children and Young Persons (Care and Protection) Act 1998 (Care Act)*. Nor does it show the impact of ADR on entries to care.

Element 2 – Supporting children in out-of-home care (OOHC) and exiting them to a permanent home

DCJ can remove a child from their parents if they are in need of care and protection. DCJ can exercise parental responsibility for children when they enter out-of-home care (OOHC).

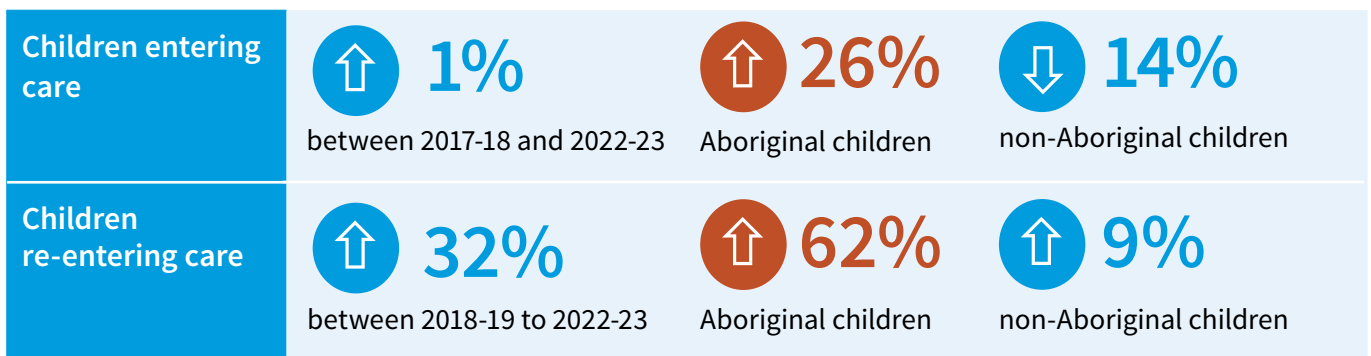
DCJ is required to work towards finding a permanent home for children in OOHC by restoring them to family or, if that is not possible or appropriate, by finding them a guardian or (for non-Aboriginal children) adoptive parent/s. If these options are not possible or appropriate, the child remains in the long-term care of the Minister and may be placed with relatives or kin, foster carers or in non-family based residential care settings.

In 2017-18, DCJ introduced the Permanency Support Program (PSP) with the 4 goals of:

- 1 fewer entries into care
- 2 shorter time in care
- 3 a better care experience
- 4 reducing the over-representation of Aboriginal children in care

1. Entries (and re-entries) into care

Reducing entries and re-entries into OOHC is one way to reduce the number of children in care.



Aboriginal children compared with non-Aboriginal Children



more likely to enter OOHC

in 2022-23

What we found:

Since the start of the PSP in 2017-18:

- Entries into care increased by just under 1%.
- The number and proportion of Aboriginal children entering OOHC has increased significantly - the number increased by 26% (compared to a drop of 14% for non-Aboriginal children), and the proportion increased from 38% to 47%.
- The number of children re-entering care increased by 32%, with a disproportionate 62% increase in the number of Aboriginal children re-entering care.

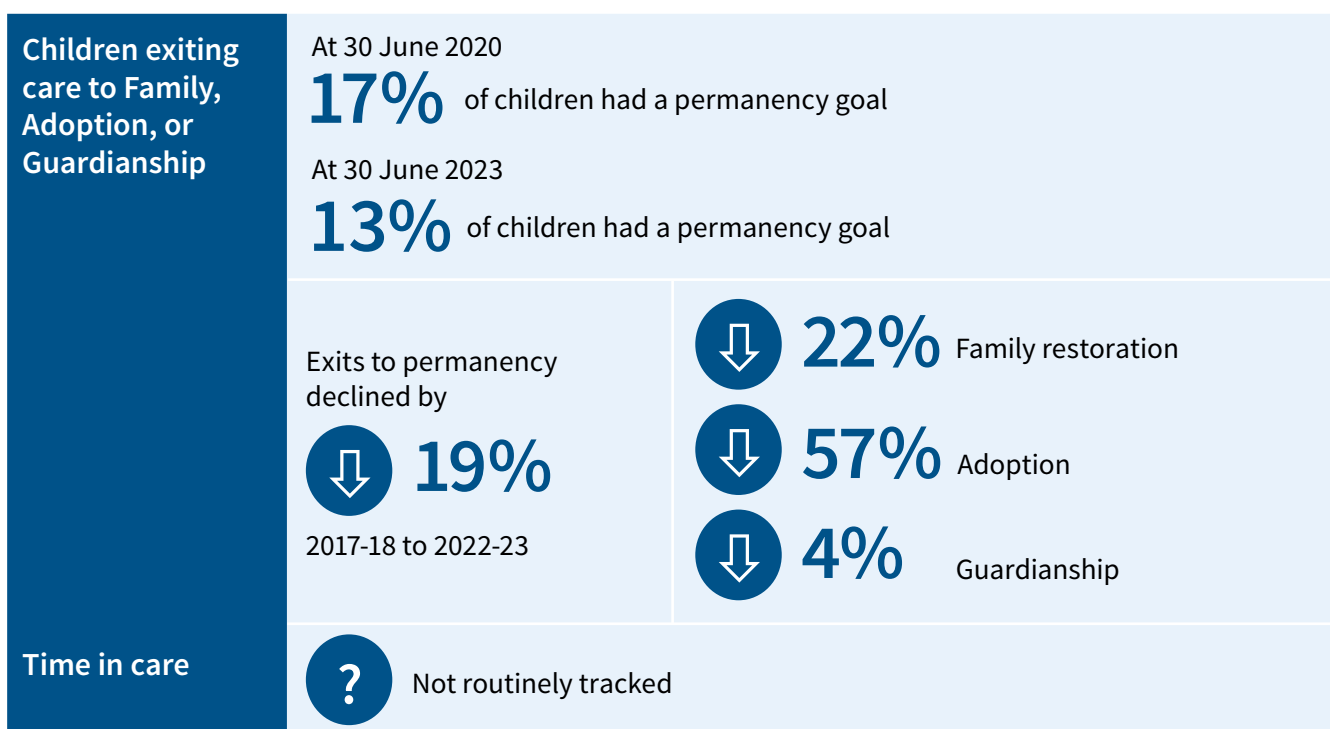
2. Exits from care to permanency

Children leave OOHC, either:

- (a) when they turn 18 and care orders expire, or
- (b) by exit to permanency – restoration to family, guardianship or adoption.

Under the PSP:

- every child in care must have a specific permanency goal (that is, a goal of exiting OOHC through family restoration, guardianship or adoption, or to remain in the long-term care of the Minister)
- OOHC providers, including DCJ, are required to achieve permanency for children within 2 years of children entering care or change of the permanency goal.



What we found:

- Since the start of the PSP in 2017-18, the number of children in OOHC declined by 15%, but:
 - most of the decline was due to children turning 18 years, and
 - the decline was disproportionate - with a decline of only 3% for Aboriginal children compared to 23% for non-Aboriginal children.
- Since 2017-18, exits to permanency declined overall by 19%: 22% drop in restoration to family, 4% drop in guardianships and 57% drop in adoptions.
- Fewer children in statutory OOHC had a required permanency goal - at 30 June 2020, 17% of children had a permanency goal of restoration, guardianship or adoption, by 30 June 2023 that number dropped to 13% of all children in statutory OOHC.
- DCJ does not routinely track whether permanency is achieved within the stipulated 2 years of setting a permanency goal.

In the context of foreshadowed reforms of OOHC, we have recommended that DCJ, in consultation with NGOs and stakeholders, review the factors contributing to, and include remedial action to address, the decline in all types of exits to permanency since the start of the PSP.

3. The education, health, leaving care, safety, and stability of living arrangements for children in care

Education

Both the Department of Education and DCJ have statutory responsibilities to support the educational needs of children in OOHC and improve their outcomes. Educational planning and reviews form a central element of case planning for all school aged children in OOHC.

Educational outcomes for children in care

Compared to all students in NSW public schools, children in care have lower



Retention in school



NAPLAN Participation



NAPLAN Results

What we found:

There is no centralised tracking of education plans.

There has been no improvement in educational outcomes since the commencement of the PSP. Compared to all students in NSW public schools, children in care continue to have:

- lower retention in school
- lower NAPLAN participation (NAPLAN is a nationwide annual assessment for students in Years 3, 5, 7 and 9)
- lower NAPLAN results across all years.

Health

DCJ, non-government OOHC providers and NSW Health are required to collaborate to ensure that the children in care receive the necessary health services and support, via the OOHC Health Pathway Program (HPP).

Under the HPP, the health of every child who enters care must be assessed with a health plan developed and reviewed at least annually (twice yearly for children aged under 5).

Children in care
with health plans

 **21%**

decline in the number of health plans completed between 2017-18 to 2022-23

Only

17%

of children in statutory care had their health plans reviewed in 2022-23

What we found:

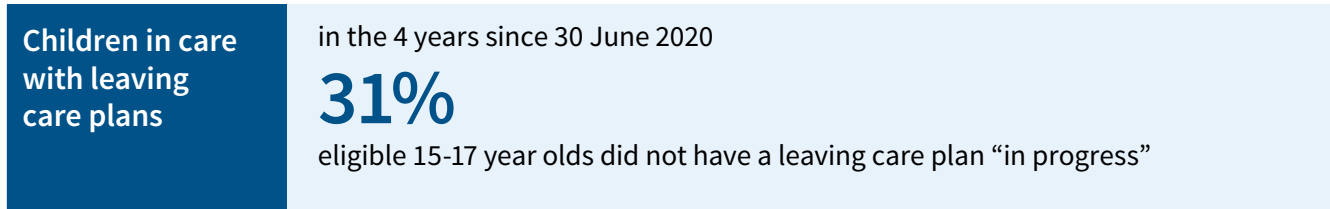
- Neither DCJ nor Health could demonstrate that all children in care have a health plan and that health plans are being reviewed.
- Between 2017-18 and 2023, the number of health plans declined by 21%.
- In 2023, only 17% of children in care have had their health plans reviewed.

An evaluation of the HPP took place in 2022. We have recommended that DCJ and NSW Health review their progress toward implementation of the evaluation recommendations, and propose actions to address any issues identified.

Leaving care planning

Under the Care Act, OOHC agencies, including DCJ, must (in consultation with the child) prepare leaving care plans for children in their care so that young people who have been in statutory care have the necessary independent living skills and support when leaving care.

DCJ policy requires leaving care planning to start when a child in statutory OOHC turns 15 and the finalised plan to be implemented by the time the child or young person leaves out-of-home care (to enable access to any necessary aftercare support).



What we found:

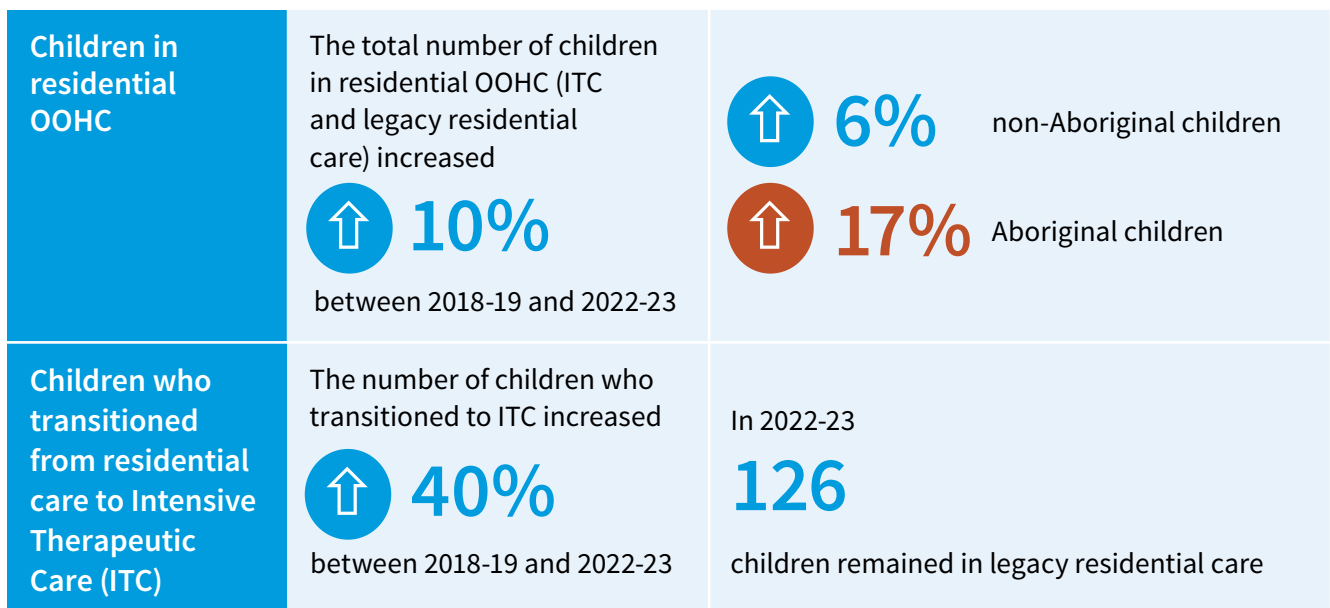
DCJ could not provide data showing whether, and how many, children had a finalised leaving care plan at the time they exited care. Nor could it provide data as to whether plans were in fact implemented on exit from OOHC.

During the 4 years since 30 June 2020, only 69% of the children in care aged 15 to 17 had a leaving care plan recorded as being ‘in progress’.

Safety of children in care – provision of Intensive Therapeutic Care

We focused on children in residential care, both because of their high or complex needs, and to assess the implementation of a key initiative, the Intensive Therapeutic Care (ITC) model.

ITC was implemented in 2018-19 as a new model of care for children in residential care – to progressively replace residential OOHC in NSW by transitioning all children in residential OOHC to ITC over a 2-year period and improve the safety and stability of their care.



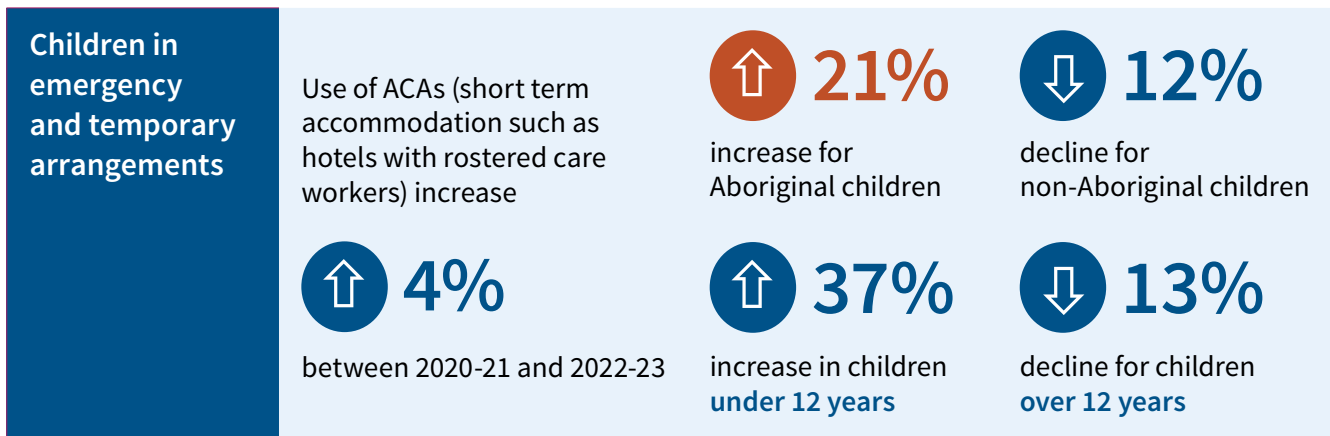
What we found:

- The transition of all children in residential care to ITC within the stipulated 2 years was not achieved, and has still not been achieved.
- Since 2018-19, the total number of children in residential OOHC increased by 10% (from 658 to 722) with the number of Aboriginal children increasing by 17% (from 224 to 262) compared to 6% for non-Aboriginal children, accounting for 59% of the total increase.
- Between 2018-19 and 2022-23, there was a sharp increase in the number (142%) and proportion (from 23% to 35%) of children in residential OOHC with a substantiated allegation that they had been abused while in care.

The NSW Ombudsman has commenced an inquiry into whether the Intensive Therapeutic Care model for children in residential OOHC is achieving its objectives.

Stability of living arrangements

When foster, relative and kinship or residential placements are not available or have broken down, DCJ has established emergency and temporary care arrangements for children, referred to as high-cost emergency arrangements (HCEAs). These include Alternate Care Arrangements (ACAs) and the Interim Care Model (ICM).



What we found:

Between 2020-21 and 2022-23:

- there has been increasing reliance on temporary and emergency placements, especially for children under 12 years
- Aboriginal children were over-represented in emergency and temporary placements
- some children stayed for many months in ACAs.

4. The overrepresentation of Aboriginal children in OOHC

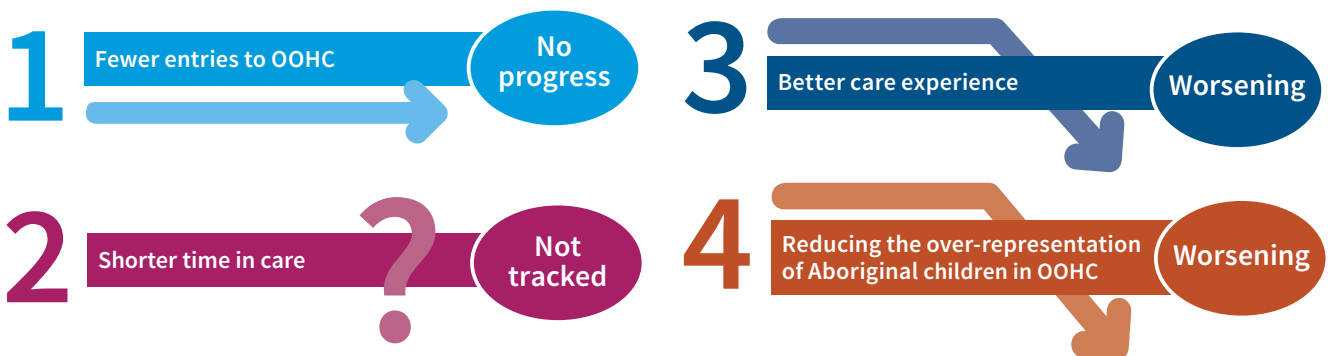
One of the key goals of the PSP is to reduce the overrepresentation of Aboriginal children in care.



What we found:

- Since the start of the PSP, the number of children in OOHC has declined by 15% overall. However, the decline was disproportionate with a decline of only 3% for Aboriginal children compared to 23% for non-Aboriginal children.
- In 2022-23, Aboriginal children were 12 times more likely to be in OOHC (up from 9.5 times in 2017-18).
- In 2022-23, Aboriginal children were 12 times more likely to enter OOHC than non-Aboriginal children (up from 9 times in 2017-18).
- Between 2017-18 and 2022-23:
 - the number of Aboriginal children entering OOHC has increased significantly (26%, compared with a drop of 14% for non-Aboriginal children) and the proportion of children in OOHC who are Aboriginal increased from 38% to 47%.
 - Aboriginal children made up an increasing proportion of children entering OOHC not for the first time (from 43% to 53%).
 - Aboriginal children accounted for 59% of the increase in the number of children in residential OOHC.
- Between 2020-21 and 2022-23, the proportion of children in alternative care arrangements who are Aboriginal rose from 49% to 56%.

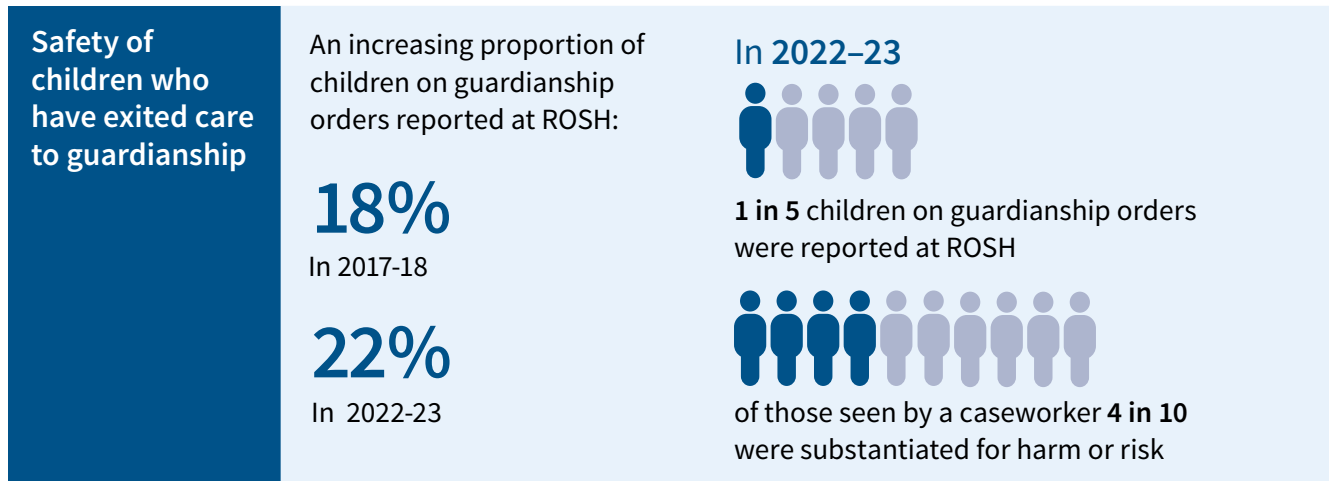
Progress towards Permanency Support Program goals for children in care



5. The safety of children who exit care to guardianship

The aim of permanency is that children exiting OOHC do not return to it.

We looked at whether children who have exited care under guardianship orders have had further contact with the child protection system.



What we found:

- Since the start of the PSP, the number of children entering OOHC not for the first time increased by 32%.
- In 2022-23, not first-time entries to OOHC accounted for nearly one third of all entries to OOHC.
- Between 2017-18 and 2022-23, the proportion of children on guardianship orders who were subsequently reported at ROSH rose from 18% to 22%.
- The proportion of children on guardianship orders seen by a DCJ caseworker and substantiated for harm or risk of harm has increased in recent years from 32% in 2020-21 to 41% in 2022-23.

It is critical to understand and address the reasons why so many children are returning from ‘permanency’ to OOHC, particularly Aboriginal children. We have recommended that DCJ review the adequacy of permanency planning and post-permanency support for children and their families, and address issues contributing to poor permanency outcomes for children.

Element 3 - prevention, early intervention, and family preservation

DCJ is required by the Care Act and the *Community Welfare Act 1987* to work with families and the wider community to minimise the risk of significant harm to children and young people, prevent entries into OOHC and, where relevant, facilitate restoration.

Family preservation and early intervention services

DCJ funds hundreds of NGOs to provide various services through three streams of programs that deliver voluntary early intervention and preservation services that aim to keep children reported at ROSH at home with families. These are:

- Family Preservation Services
- Targeted Earlier Intervention program
- Family Connect and Support services

What we found:

- Despite their critical role in preventing harm to children and strengthening families to reduce entries into care, insufficient information is collected or reported on the outcomes of these programs to assess and understand their individual and collective contribution to prevention of abuse and neglect.
- Without such information DCJ cannot know whether these programs are effective or working as intended.

The Report concludes that the child protection system is not adequately protecting and supporting children and families and this situation is not improving.