National Commission for Aboriginal and Torres Strait Islander Children and Young People

Review of the National Agreement on Closing the Gap 2026

Submission of the National Commission for Aboriginal and Torres Strait Islander Children and Young People

October 2026

Acknowledgement of Country

The National Commission for Aboriginal and Torres Strait Islander Children and Young People acknowledges the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them, their cultures and Elders past and present.

About the National Commission for Aboriginal and Torres Strait Islander Children and Young People

The National Commission for Aboriginal and Torres Strait Islander Children and Young People (National Commission) is a statutory agency continued under the *National Commission for Aboriginal and Torres Strait Islander Children and Young People Act 2026* (Cth) (National Commission Act). Under the National Commission Act, the National Commissioner for Aboriginal and Torres Strait Islander Children and Young People (National Commissioner) has a broad range of functions, including:

- promoting and enhancing coordination of efforts to identify solutions to systemic issues;
- advising the Commonwealth;
- conducting research and inquiries;
- providing and commissioning educational programs; and
- undertaking public advocacy.

The National Commission's work is grounded in the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Its focus is the rights, interests, development, safety and wellbeing of Aboriginal and Torres Strait Islander children and young people, including their relationships with family, kin, community, culture and Country.

This submission responds to the Productivity Commission's call for submissions to the 2026 Review of the National Agreement on Closing the Gap (the Review), due 26 October 2026. The National Commission welcomes the Review's focus this cycle on outcomes for Aboriginal and Torres Strait

Islander children and young people, which aligns directly with the National Commission's statutory mandate. This submission addresses the four Priority Reforms, the Closing the Gap targets most directly relevant to children and young people, and the accountability needed to drive improvement against them.

Executive Summary

Six years into the National Agreement on Closing the Gap, key outcomes for Aboriginal and Torres Strait Islander children remain static or are worsening. The national rate of children in out-of-home care increased from 47.3 to 52.2 per 1,000 between 2019 and 2025. The Review must assess whether implementation of the Priority Reforms is changing government decisions, transferring authority and resources, and improving children's enjoyment of their rights.[1]

Targets 11 and 12 require coordinated and concurrent action on youth justice and child protection, alongside housing, health, education and family support. Reform must address institutional racism and harmful laws, policies and practices as well as material disadvantage. Culture, kinship and community authority are protective strengths. Full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP), to the standard of active efforts, is central to child protection reform.

The National Commission recommends a child rights and self-determination framework for assessing reform, direct participation by children and young people, and funded government commitments subject to independent scrutiny and corrective action. Governments retain responsibility for delivery; independent oversight must strengthen, rather than displace, that accountability.

Child rights and self-determination framework

The UNCRC provides the assessment framework: non-discrimination and substantive equality (Article 2), best interests as a primary consideration (Article 3), implementation and resourcing (Article 4), survival and development (Article 6), participation (Article 12), and family and cultural rights (Articles 9, 18, 20 and 30). Protection from violence (Article 19) and safeguards in justice (Articles 37 and 40) apply alongside rights to health, education and an adequate standard of living. Closing the Gap targets are measures of progress, not substitutes for these rights.[2]

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1 Productivity Commission, Closing the Gap Annual Data Compilation Report, July 2026, pp. 45–46, Box 2.12. The 2025 national rate includes preliminary Queensland data and an estimated adjustment for third-party parental responsibility orders; interpret with caution. https://assets.pc.gov.au/2026-07/closing-the-gap-annual-data-compilation-july-2026.pdf

2 United Nations Convention on the Rights of the Child (1989), Articles 2–4, 6, 9, 12, 18–20, 24, 27–30, 37 and 40.

General Comment No. 11 explains how the UNCRC applies to Indigenous children. Best-interests assessment must consider cultural identity and collective cultural rights while attending to each child's circumstances and views. Substantive equality requires targeted, adequately resourced measures to address discrimination and unequal access; identical treatment alone is insufficient.[3]

UNDRIP Articles 3–5 affirm self-determination, autonomy and Indigenous institutions; Articles 18–19 address chosen representation and good-faith consultation to obtain free, prior and informed consent; Articles 21–23 address equitable conditions, protection of children and control over development priorities and programs. These standards support authority over priorities, budgets, design, implementation and evaluation. UNDRIP is a declaration, not a treaty; it complements the UNCRC in this analysis. Children's individual rights and Indigenous collective rights must be realised together.[4]

Recommendations

The National Commission recommends the following measures, agreed with Aboriginal and Torres Strait Islander representative institutions and informed by children's direct participation. Implementation should uphold UNCRC and UNDRIP. Timeframes run from publication of the Review's final report; annual reporting begins within 12 months.

1. **Priority Reform implementation:** Assess the Priority Reforms by demonstrated transfers of decision-making authority, funding and data control to Aboriginal and Torres Strait Islander peoples and organisations, and improvements in children's rights and outcomes—not agreements or structures alone.

2. **Delegated authority:** Within 12 months, require each jurisdiction to publish a plan agreed with Aboriginal community-controlled organisations (ACCOs), specifying functions and authority to be transferred, funding, workforce and organisational support, and annual delivery milestones.

3. **ATSICPP implementation, active efforts and data:** Within 12 months, jurisdictions fund active efforts across prevention, partnership, placement, participation and connection, and agree Indigenous-governed indicators with annual reporting and safe disaggregation. Implement measures under existing powers immediately; complete necessary legislation and full implementation within 24 months.

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[3] UN Committee on the Rights of the Child, General Comment No. 11 (2009), Indigenous children and their rights under the Convention, CRC/C/GC/11, especially paragraphs 23–31 and 38–39.

[4] United Nations Declaration on the Rights of Indigenous Peoples (2007), Articles 3–5, 18–19 and 21–23.

4. **Targets 11 and 12 and their social determinants:** Assess Targets 11 and 12 together and require concurrent action on child protection and youth justice. Measure progress alongside housing, education, employment and access to community-led prevention and support, addressing discriminatory laws and practices as well as material disadvantage.
5. **Accountability for implementation:** Within 12 months, governments name responsible ministers and agencies, including Commonwealth responsibilities, and establish funded milestones and annual independent assessment and public reporting. Publish corrective plans within 90 days of findings. Refer overdue actions to the next Joint Council meeting; publish government responses and revised deadlines within 30 days of that meeting. Align funding with assessed need and protect essential supports.
6. **Consolidated reporting:** Bring together findings from Sector Strengthening Plans, First Nations-led sector reviews and jurisdictional reviews in annual reporting. Aboriginal and Torres Strait Islander organisations should determine measures of success, informed by children's views, with Indigenous data governance and minimal duplication.
7. **Require action to prevent racism:** Within 12 months, governments introduce mandatory agency anti-racism standards and annual compliance reporting. Within 24 months, legislate a positive duty to take reasonable and proportionate measures to eliminate racial discrimination in policy and service delivery, with independent regulators empowered to investigate and enforce compliance.
8. **Children's participation:** Within six months, establish funded, accessible and culturally safe ways for children to influence implementation, budgets and evaluation. Include children in care, detention and remote communities, and children with disability. Report annually to children on how their views changed decisions and explain decisions not to adopt their proposals.

Priority Reforms

The four Priority Reforms should be assessed as mechanisms for realising rights and redistributing decision-making authority. The Review should identify the legal, funding and administrative barriers to implementation and recommend changes that can be independently assessed.

Priority Reform One: Formal Partnerships and Shared Decision-Making

Consultation alone does not establish shared decision-making authority over policy, budgets or implementation. Self-determination depends on representatives chosen through Aboriginal and Torres Strait Islander processes and good-faith consultation to obtain free, prior and informed consent under UNDRIP Article 19. Adult representation does not substitute for children's direct, accessible and culturally safe participation. Recommendations 1, 2 and 8 address authority, resourcing and influence.

Priority Reform Two: Building the Community-Controlled Sector

Short-term, restrictive commissioning can undermine continuity of support and community control. Service delivery contracts alone do not transfer authority to determine priorities or design and administer programs. Effective transfer depends on sustained, flexible funding for services, governance, workforce and infrastructure, while governments retain their obligations to children. Recommendations 2 and 5 link authority and resources to assessed need and measurable transfer milestones.

Priority Reform Three: Transforming Government Organisations

Cultural capability initiatives alone cannot address discriminatory laws, funding rules, risk assessment tools or frontline decisions. Organisational transformation requires evidence that policy and practice uphold children's rights, including culturally informed best-interests assessment, and that complaints lead to effective remedies and system change. Recommendations 3, 4, 5 and 7 connect implementation, legal reform, anti-racism duties and independent accountability. The Australian Human Rights Commission's National Anti-Racism Framework recommends a positive duty under the Racial Discrimination Act 1975 and Commission powers to monitor and enforce compliance. Recommendation 7 applies that approach to government agencies; its deadlines and interim standards are this submission's proposals, to be developed with Aboriginal and Torres Strait Islander partners.[5]

Priority Reform Four: Shared Access to Data and Information

Data access alone does not establish Aboriginal and Torres Strait Islander authority over collection, interpretation, use or publication. Inadequate disaggregation can conceal inequalities, while aggregate outcomes can obscure children's experiences of support, cultural connection, participation and safety. Recommendations 1, 3 and 6 connect Indigenous data governance with implementation measures, safe disaggregation and consolidated reporting; missing measures cannot demonstrate progress.

Targets affecting children and young people

This submission prioritises Targets 11 and 12 because of the serious rights implications of child removal and detention. That focus does not limit the National Commission's broader mandate. Early development, health, education, family safety, social and emotional wellbeing, culture and language

[5] Australian Human Rights Commission, National Anti-Racism Framework (2024), recommendations 10–11: proposed positive duty and compliance/enforcement powers. https://humanrights.gov.au/sites/default/files/2024-11/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf

are integral to children's rights. Governments remain accountable for implementation; the National Commission contributes independent scrutiny, advice and advocacy within its statutory functions.[6]

Targets 11 and 12: youth justice and child protection

Target 12 commits to reducing the rate of overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent by 2031. The national rate increased from 47.3 to 52.2 per 1,000 children between 2019 and 2025 and the target is assessed as worsening. Full implementation of the ATSICPP requires timely, purposeful, adequately resourced and demonstrable action across all five elements. Placement decisions must apply the hierarchy alongside culturally informed best-interests assessment, children's views and sustained family, kin and cultural connections. In 2024, 63.2 per cent of Aboriginal and Torres Strait Islander children in out-of-home care were placed with relatives, kin or other Aboriginal and Torres Strait Islander carers; this indicator alone cannot establish compliance with the ATSICPP.[7,8]

Target 11 commits to reducing the detention rate for Aboriginal and Torres Strait Islander young people aged 10–17 by at least 30 per cent by 2031. National progress shows no change from baseline, with low confidence. Of First Nations young people under youth justice supervision in 2022–23, 76 per cent had contact with child protection services during the ten years to 30 June 2023. This overlap supports coordinated reform; it does not establish that progress on Target 12 is a precondition for progress on Target 11. Youth justice reform must proceed concurrently, including diversion, access to legal assistance and detention only as a last resort and for the shortest appropriate period, consistent with UNCRC Articles 37 and 40.[9,10]

The Review should examine how statutory thresholds, risk assessment, policing, bail and remand settings and responses to behaviour in care contribute to system contact. Poverty or inadequate housing must not, by themselves, be treated as neglect; families require timely practical support alongside assessment of any protection concerns. Progress must include safe prevention of entry into care, safe reunification and effective support. Lower care numbers achieved through unmet

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6 National Commission for Aboriginal and Torres Strait Islander Children and Young People Act 2026 (Cth), ss 11–14, 33–34. https://www.legislation.gov.au/C2026A00014/asmade/text

7 Productivity Commission, Closing the Gap Annual Data Compilation Report, July 2026, pp. 45–46, Box 2.12. The 2025 national rate includes preliminary Queensland data and an estimated adjustment for third-party parental responsibility orders; interpret with caution. https://assets.pc.gov.au/2026-07/closing-the-gap-annual-data-compilation-july-2026.pdf

8 Australian Institute of Health and Welfare (AIHW) 2025, Child protection Australia 2023–24: ATSICPP indicators, Australian Government, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2023-24/contents/indicators/atsicpp-indicators>.

9 Productivity Commission 2026, Socioeconomic outcome area 11: Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system, Closing the Gap Information Repository, Australian Government, <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/youth-justice/>.

10 Australian Institute of Health and Welfare 2024, Young people under youth justice supervision and their interaction with the child protection system 2022–23, Australian Government, <https://www.aihw.gov.au/reports/youth-justice/young-people-youth-justice-supervision-2022-23/summary>.

protection needs, changed classifications or unsupported exits would not represent success. Cultural identity, kinship and community connections must be assessed as rights and protective strengths.[11]

Targets 13 and 14: family safety and wellbeing

Target 13 seeks at least a 50 per cent reduction in all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children by 2031, as progress towards zero. Outcome 14 concerns high levels of social and emotional wellbeing; its target is a significant and sustained reduction in suicide towards zero. Both require attention to children's safety, culturally grounded support and community-led prevention. The Review should also connect this analysis with early childhood, education, health, housing, culture and language outcomes, without reducing these rights to their contribution to Targets 11 and 12.[12]

Strengthening accountability for non-delivery

Each government should identify responsible ministers and agencies, funded actions and milestones against its commitments. Commonwealth reporting should specify its own funding, policy and coordination responsibilities and how national leadership will address cross-jurisdictional barriers. Federal divisions of responsibility must not obscure who is required to act. Independent assessment should examine implementation and children's experiences, with a published government response within a specified period, a funded corrective action plan for identified failures and escalation through the Joint Council where milestones are missed. The National Commission and relevant First Nations Children's Commissioners, Guardians and Advocates should contribute within their respective mandates. Funding scrutiny should redirect resources towards effective support and community control, without penalising children or withdrawing essential services.

Consolidating outcomes from related initiatives

The Review should draw together Sector Strengthening Plans, SNAICC and Family Matters evidence, and jurisdictional child protection and youth justice reviews, identifying unresolved recommendations, responsible governments and implementation gaps. Aboriginal and Torres Strait Islander organisations and children and young people should help determine measures of success. A consolidated monitoring framework should report both target trends and whether children experience safety, cultural connection, participation and timely support, while respecting Indigenous Data Sovereignty and avoiding duplicate reporting burdens.

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[11] Productivity Commission, Closing the Gap Information Repository, Outcome 12, historical and ongoing target context, accessed 19 October 2026. https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/child-protection/

[12] Closing the Gap 2026, Closing the Gap targets and outcomes, Australian Government, <https://www.closingthegap.gov.au/national-agreement/targets>.

Conclusion

The Review should recommend a funded and time-bound program of reform that gives practical effect to children's rights and Aboriginal and Torres Strait Islander self-determination. The essential tests are whether authority and resources have shifted, harmful government practices have changed, children have influenced decisions, and independent scrutiny has secured corrective action. Progress must be demonstrated in children's safety, development, cultural connection and opportunities for a fair chance at life.