Submission

To	Secretary to the Committee
Topic	Select Committee on the Children and Young People (Safety and Support) Bill 2024
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UNITING COMMUNITIES

Preamble

Uniting Communities is a member of the South Australian Leadership Coalition for Child Protection Reform and has contributed to the Coalition's response in addition to our Uniting Communities submission. The recommendations in this response are wholly consistent with the position established by the Coalition but serve to provide further emphasis for the need for further changes required to the *Children and Young People (Safety and Support) Bill*.

The *Children and Young People (Safety and Support) Bill* presents a unique opportunity to establish the basis to reform our Child Protection system in South Australia.

While the current Bill has made some small steps in the right direction to this end, it falls well short of the transformation required to make South Australia a leader again in this space. This legislation must go further to ensure that children and young people have the best opportunity to grow up living safely and well in their families, communities and culture.

Put simply, reform in this space is crucial. In South Australia, we currently, and have persistently over more than a decade, lagged well behind the rest of Australia (and comparative jurisdictions around the world) on the key metrics of a highly functional and effective response to the protection and wellbeing of children and young people (refer to Uniting Communities 6 Point Plan for Child protection reform below which contains some of the key statistics on SA's performance in child protection over the past decade).

In particular, South Australia's proportion of children removed from their families and requiring care in our child protection and out-of-home care system remains 50 per cent higher than the Australian average - and this gap has been widening in recent years. On this metric alone we have more than 1,500 children and young people in care that should not be there, fracturing families, placing undue pressures on our foster care community and resulting in poorer childhood – and ultimately lifetime - experience for children and young people.

This damming statistic is the result of several factors, including the paucity of timely services for families to help them adequately care and protect their children. However, it is also a result of legislation that drives the wrong responses to the safety and wellbeing of our children and young people.

South Australia currently has the most punitive and regressive legislation, and by extension, child protection system in Australia. Even as this Bill stands, it still is behind the standards set in other Australian jurisdictions and by international comparison.

While the Bill's stated purpose is to keep children and young people safe from harm 'preferably with their families' and to 'support and strengthen families and communities to improve outcomes for children and young people' (contained within its opening statement), the provisions within the Bill are largely inadequate to deliver on these expectations.

The Bill maintains an approach that assumes that the safety and wellbeing of South Australia's children and young people is best achieved through an ever-expanding statutory response and Department as well as an increased removal and retention of children in a state-based care system.

Today one third of South Australia's child population has at some point been the subject of a child protection notification and we've seen a steady increase in the proportion of South Australian children being in foster, kinship or residential care. This approach has not been sustainable for many years. It's not sustainable for children, families, foster carers or taxpayers. Unfortunately, the current Bill does little to address the problem.

South Australia does not need a simple tweak to the rules and laws governing our child protection system, neither does it need a bigger or more punitive system designed to remove more children from families and communities and keep them in care longer. What is needed is a recalibration of how we protect children and young people, starting with progressive legislation designed to ensure that:

- We focus statutory intervention on those children and young people at greatest risk of significant harm to ensure they receive a rapid response to ensure their protection and safety.
- We orient our system and community response to better supporting and enabling parents and caregivers to meet the safety and developmental needs of children and young people.
- We enable and empower the broader community and agencies involved in the lives of children and families to play their role in keeping children safe from harm and to thrive.
- We facilitate support for families where children and young people are at risk of harm can engage with services outside of our statutory child protection system to receive the assistance required to enhance care and protection *and* that where children and young people have been removed from their families that every effort is made for their safe return to family, community and culture.

Recommendations for Amendments

To achieve the objectives outlined above, and in order to be a transformative piece of child protection legislation, this submission proposes a number of amendments.

It is strongly recommended that all of these changes are introduced to ensure the Bill achieves its stated aims as the time is not for piecemeal or incremental change.

The need to improve South Australia's current performance is too urgent to let the current Bill (not withstanding some minor enhancements to the current Act) be passed without the changes as outlined.

However, rather than suggest wholescale change to all elements of the Bill, we believe reform can be achieved through targeted amendments that leave the structure of the Bill largely intact. Given the time taken to get new legislation before Parliament, we believe this to be a more pragmatic approach to deliver the important changes required.

The proposed amendments fall under four key categories:

- Division 3: Guiding Principles
- Application of Significant Harm
- Insertion and Enhancement of Active Efforts
- Inclusion of Reunification Efforts

1. Guiding Principles

While we acknowledge that the Bill has incorporated a more expansive definition and application of Best Interests (Part 1 Division 3, 11 (1-3)) than contained in the current Act, it has unfortunately not amended the most significant element of this 'Division', that of the Paramount Principle (Division 3, 10(1-2)).

During the initial consultation on this legislation, we outlined alternate examples from across Australia where a more progressive approach to the application of the Guiding Principles has been applied. We have again attached these to this submission and contend that any of the three examples could be readily adapted for the South Australian legislation with a preference for the *Victorian Child, Youth & Families Act 2005* wording to replace the current wording for Division 3(10) to read:

10. Paramount Principle – Best Interests of the Child

10 (1) For the purposes of this Act, the best interests of the child and young person must always be paramount

10 (2) when determining whether a decision or action is in the best interests of the child, the need to protect the child or young person from harm, to protect their rights and promote their development and wellbeing must always be considered.

This slight variation to the Victorian legislation clearly references the important element of protecting children and young people from harm. However, unlike the South Australian legislation, it does not give primacy to safety. Rather, it considers safety and harm as one element of a child's best interest.

The current obsession with safety has had a detrimental impact on the administration and application of child protection in South Australia for some years. Not only has it failed to increase safety, but it has also allowed decisions to be made that are not cognisant of what would be in the best interests of the child or young person.

It has also been a principal driver of the over-representation of South Australian children and young people in care. Safety from harm is but one element of the best interests and should be balanced against other concerns which impact the overall wellbeing, in the immediate and longer term, of the child or young person. This does not displace the importance of safety but places it alongside other elements of best interests.

Uniting Communities strongly endorses a shift to Best Interests as the Paramount Principle in the Bill.

2. Application of Significant Harm

Uniting Communities has long advocated for different thresholds to be used to determine the basis for intervention in relation to child protection matters. In a context where such a disproportionate number of children and young people are currently 'sucked into' our child protection system (one in three of all children and up to nine in ten Aboriginal and Torres Strait Islander children) our current approach and system is not fit for purpose.

Accepting that (preventing) harm is one element of a child's best interests, it is important that legislative measures can ensure that the right response is provided where harm is identified.

The current Act has clearly served to funnel all concerns of harm to an overburdened Child Protection Department, which it has been unable to effectively manage. However, the answer is not to build an even larger Department to receive more referrals and take even more actions in relation to such matters. Rather, the legislative response should be to ensure only those children and young people who are at risk or experiencing 'significant' harm are managed through our statutory system. This would help to ensure that we have a statutory system that is equipped to deal quickly and decisively when a child is exposed to significant harm.

Other forms of harm are better addressed outside of our statutory authority through a comprehensive system of community-based supports for families, children and young people. That South Australia lacks this current platform is no reason to maintain a system, built on the back of previous legislation, that directs all forms of harm to children through a single portal.

In passing amendments as proposed in this submission, it is strongly recommended that consideration be given to establishing a sufficient, coordinated parallel system of family support that prioritises the referral and delivery of family supports for those seeking assistance with parenting and ensuring the care and nurture of their children and young people. This system should operate outside of the statutory child protection service system to enable it to be a responsive and empowering response that focusses on building parenting and family capacity without the powers of investigation and removal.

Uniting Communities broadly supports the definitions of significant harm and harm as articulated in Part 1 (4) and (5) of the Bill. They provide sufficient explanation not withstanding that they will always remain open to judgement and interpretation.

We are also very supportive of the application of the higher threshold of **significant harm** being applied in:

Part 7 (Division 1) (72) – as the basis for mandatory reporting. This will help to reduce the unnecessary and unhelpful level of reporting currently being undertaken in South Australia.

and

Part 7 (Division 3) (83) – as the basis for the removal of a child or young person.

Furthermore, we are supportive of the lower threshold of **harm** being applied in:

Part 8 (94) – providing for the convening of a family group conference where there is a suspicion of harm – Applying a lower threshold is appropriate where it is used as the gateway to support services or those services aimed at actively engaging families and care givers.

However, Uniting Communities strongly believes there should be greater consistency in the application of the **significant harm** threshold throughout the Bill as it relates to interventions by the Department for Child Protection and the Courts.

If Significant Harm is used as the basis for mandatory referring or reporting children and young people into the Department then any interventions relating to actions taken to remove a child or young person into care, or return them to family post care, should also follow the same logic and threshold. To not do so runs the risk of unreasonable actions being undertaken that are not commensurate with the best interests of the child or young person. This is particularly a risk where the Bill maintains safety as the Paramount Principle.

Uniting Communities recommends the following amendments to the Bill to address this inconsistency (where 'harm' should be 'significant harm'):

- Part 7 (Division 2) (73)(1)(b) – replace may be at 'risk of harm' with '**risk of significant harm**.'

- Part 7 (Division 2) (74)(1) – replace 'risk of harm' with 'risk of **significant harm**.' It should be noted that (1)(v)(B) already provides for no further action where such harm 'would not be expected to have a significant adverse impact…'. However, by setting the initial bar for assessment as significant harm this brings forward this determination thus eliminating unnecessary and often invasive investigation and serving to divert resources to matters requiring statutory intervention.

- Part 7 (Division 2) (75)(1)(a) – as per the previous recommendation and rationale, to replace 'risk of harm' with '**risk of significant harm**.'

- Part 7 (Division 2) (78)(1)(2)(3) – to replace the references to 'harm' with '**significant harm'** across all three clauses. The ordering of drug and alcohol, parenting or mental health assessments should only be undertaken or considered where there is a significant risk of harm for a child or young person to avoid the level of 'net widening' which unreasonably draws children and families into a statutory child protection system that continues to be punitive and overzealous in its interventions.

- Part 7 (Division 3) (84)(2) – The reference to 'at risk of harm' should be replaced with '**at risk of significant harm**.' The return of a child or young person to the custody of their parent or guardian following their removal is currently prohibited under the Bill if the child would be 'at risk of harm'. This lower threshold for the return of a child is used even where the basis of removal (as previously highlighted) is one of risk of significant harm. This is inconsistent and helps to further drive the over representation of children and young people in South Australia's Care System.

- Part 10 (Division 1) (99)(2)(i)(ii)(A) and (3)(a) – the application for court orders should reflect the same threshold used for the removal of a child or young person (83 (1)(a)) which is at **risk of significant harm**. It is therefore recommended that these references to 'harm' be replaced with '**significant harm.'**

3. Active Efforts

Active Efforts describe the role played in enabling and supporting parents and guardians (families) to provide a level of care and protection for their children that would avoid their removal. Active efforts are a fundamental element of any child protection or safety system around the world and are essential in ensuring the purpose of the Act to 'protect children and young people and keep them safe from harm and preferably with their families' is met.

However, despite its significance, it has received limited exposure or reference in the Bill. This is disappointing and a major omission if we are to ensure fewer children and young people are removed into care and have the opportunity to grow up safe and well within family, community and culture.

Beyond references in Part 3 Division 1 (18-21) outlining the functions and responsibilities of the Minister (providing for the option to establish programs for children and young people and to enter into agreements for such services) and Part 3 Division 6 (35) where networks and services for children and young people and their families may (at the discretion of the Minister) be established, the only direct reference to Active Efforts appears in Part 4 Division 3(45). This reference, applying only in respect to Aboriginal and Torres Strait Islander children and young people, merely outlines a basic standard for such efforts which are to be timely, practicable and purposeful etc. Furthermore 45 (3) explicitly states that a failure to meet the stated standards should not affect the validity of any decision under the Act, effectively undermining its value.

This is wholly inadequate if we are to make serious inroads in South Australia, addressing both the paucity of support services for families and the extremely high rates of children and young people in this state who are removed and in our care system.

Despite the proven value of intensive family support programs, only one third of families referred to such services are able to be assisted. As a result, South Australia's default response is to remove children from families in the absence of such services – resulting in worse outcomes for children and families at a much higher cost to our community and the state. A classic lose – lose result.

Many other Australian jurisdictions have taken a more deliberate approach to enshrine the responsibility of the state to offer and deliver services that aim to retain a child or young person living safely with parents or guardian prior to removal. These measures have acted to keep children and young people from unnecessarily entering or remaining in care where active efforts to keep children living safely with their families can be delivered. That there is no such provision in South Australian legislation is one reason for our continuing high level of children and young people in out-of-home care in our state.

To provide the Select Committee with an example of how another Australian jurisdiction has effectively introduced such measures in its legislation, **attached** are excerpts from the *Children & Young Persons (Care and Protection) Act* from New South Wales. While it is acknowledged that transferring such elements from one jurisdiction to another has its challenges and limitations it is strongly recommended that similar specific measures are introduced into the Children and Young People (Safety and Support) Bill that require Active Efforts to be made prior to the removal of children into care or court orders are made for a care order (other than in emergency situations).

At a minimum, consideration should be given to inserting as part of the process of making an Application for a court order (Part 10 (Division 1) (99)) the following as a new clause between 99(4) and (5):

> Before applying for a prescribed Court order in relation to a child or young person removed under this Act the applicant (as defined in 99(1)) must provide evidence to the Court of the following:
> (a) The active efforts made by the Chief Executive, in accordance with the principle of active efforts, before the application was made and the reasons the active efforts were unsuccessful
> (b) The alternatives to a care order that were considered by the Chief Executive before the application was made and the reasons the alternatives were not considered appropriate.

Furthermore, it is recommended that either in addition or as a replacement for the current principle of effective intervention (Part 2 Division 3(12)) that a Principle akin to that used in the NSW *Children and Young Person's (Care and Protection) Act 1998* Chapter 2, Part 1, 9A – Principle of making "active efforts" (p.26-27) (see attached below) be included, tailored to the language and context of South Australian services. The wording of this principle would describe the nature and standards applicable to those services and interventions designed to prevent children and young people from entering care and an expectation that such services must be made available to families prior to removal of a child or young person other than in emergency situations. Uniting Communities would be happy to assist in the drafting of more specific wording for Active Efforts as an amendment to the Bill.

4. Reunification

Similar to the commentary and recommendations pertaining to the lack of suitable reference to Active Efforts, the current Bill is largely silent on the prioritisation of reunification or restoration of children and young people to the care of their parents or guardians. Whilst noting that there are some references in the Bill (notably Part 4 Division 3(46)) and Part 10 Division 1 99 (5) to reunification it is clearly not considered a priority in the current Bill. Clause 46 refers only to Aboriginal and Torres Strait Islander children and young people and, at a minimum, should be reflected elsewhere in the Bill to apply to all children and young people. However, it is recommended that further and stronger provisions for reunification are introduced as amendments to the Bill.

Whilst permanency and timely decision making are understandably considered important principles in the delivery of services under the Act, they should not be used to undermine or detract from efforts to reunite children and young people with their parents or guardians.

Timely decisions in relation to initiating reunification are important but restoration of children and young people with families often takes time and should never be ruled out as an option in the trajectory of a child or young person's care experience. Indeed, it would be helpful to reinforce the value of reunification by adding a hierarchy to decision-making akin to that included in the Victorian Children, Youth and Families Act 2005 (Part 4.3, Division 1 - Clause 167) in relation to case planning. Consideration should be given to incorporating this hierarchy as a stated principle under Part 2 Division 3 – Guiding Principles – of the Children and Young People Bill 2024:

The following objectives (a permanency objective) are to be considered in the administration, operation and enforcement of this Act in the following order of preference as determined to be appropriate in the best interests of the child—

(a) family preservation—the objective of ensuring a child who is in the care of a parent of the child remains in the care of a parent;
(b) family reunification—the objective of ensuring that a child who has been removed from the care of a parent of the child is returned to the care of a parent;
(c) adoption—the objective of placing the child for adoption under the Adoption Act 1984;
(d) permanent care—the objective of arranging a permanent placement of the child with a permanent carer or carers;
(e) long-term out of home care—the objective of placing the child in—
(i) a stable, long-term care arrangement with a specified carer or carers; or (ii) if an arrangement under subparagraph
(i) is not possible, another suitable long-term care arrangement.

The NSW *Children and Young Person's (Care and Protection) Act 1998* also provides a valuable template in how reunification can be given greater prominence in the Bill (see attached).

It is recommended that further reference is included in the Bill to reunification that includes at a minimum that:

1) any permanency orders made require written reasons as to why reunification is not possible or if unsuccessfully implemented why the reunification was not successful and;

2) that unless there are explicit significant safety issues all children who are removed experience active efforts to reunify them with their parents or guardians no later than six months from the time they are removed.

Once again Uniting Communities would be happy to consider appropriate drafting of such clauses to reflect this commitment.

Conclusion

We are grateful to the Select Committee on the Children and Young People (Safety and Support) Bill 2024 for the opportunity to provide input. If required, Uniting Communities would be pleased to provide any additional information and provide verbal evidence at a public hearing.

State/Territory	Proposed SA Bill 2024	Current SA Act	QLD	NSW	VIC
Act/Bill Title	Children and Young People (Safety and Support) Bill 2024	Children and Young People (Safety) Act 2017	Child Protection Act 1999 (last amended Feb 2024)	Children and Young Persons (Care and Protection) Act 1998 No 157 (last amended April 2024)	Children, Youth and Families Act 2005 (Last amended July 2024)
Paramount Principle	Division 3—Guiding principles 10—Paramount principle—safety of children and young people (1) The paramount principle in the administration, operation and enforcement of this Act is to ensure that children and young people are safe and protected from harm. 40 (2) No other principle or requirement set out in this Act displaces, or can be used to justify the displacement of, the paramount principle.	7—Safety of children and young people paramount The paramount consideration in the administration, operation and enforcement of this Act must always be to ensure that children and young people are protected from harm.	Paramount principle: The main principle for administering this Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount.	Principles for administration of Act (1) This Act is to be administered under the principle that, in any action or decision concerning a particular child or young person, the safety, welfare and well-being of the child or young person are paramount.	10 Best interests principles (1) For the purposes of this Act the best interests of the child must always be paramount. (2) When determining whether a decision or action is in the best interests of the child, the need to protect the child from harm, to protect his or her rights and to promote his or her development (taking into account his or her age and stage of development) must always be considered.

Children and Young Persons (Care and Protection) Act 1998 No 157 [NSW]

Reference to Active efforts and reunification:

Chapter 4, Part 2 - 37 Alternative dispute resolution by Secretary (p.49)

(1A) If the Secretary determines that a child or young person is at risk of significant harm, the Secretary must offer alternative dispute resolution processes to the family of the child or young person before seeking care orders from the Children's Court.

Chapter 2, Part 1 - 9A Principle of making "active efforts" (p.26-27)

(1) The Secretary must act in accordance with the principle of active efforts in exercising functions under this Act.

(2) The principle of active efforts means—

a. in taking action to safeguard or promote the safety, welfare and well-being of a child or young person—making active efforts to prevent the child or young person from entering out-of-home care, and

b. for a child and young person who has been removed from the child's or young person's parents or family—

   I. making active efforts to restore the child or young person to the child's or young person's parents, or

   II. for a child or young person for whom it is not practicable or in the child's or young person's best interests to be restored to the child's or young person's parents—to place the child or young person with family, kin or community.

- Note— See the permanent placement principles in section 10A and the placement principles for Aboriginal and Torres Strait Islander children and young persons in section 13.

(3) Under the principle of active efforts, the Secretary must also ensure active efforts are—

a. timely, and

b. practicable, thorough and purposeful, and

c. aimed at addressing the grounds on which the child or young person is considered to be in need of care and protection, and

d. conducted, to the greatest extent possible, in partnership with the child or young person and the family, kin and community of the child or young person, and

e. culturally appropriate, and

f. otherwise in accordance with any requirements prescribed by the regulations

(4) Without limiting subsections (1)–(3), active efforts include—

a. providing, facilitating or assisting with access to support services and other resources, and

b. if appropriate services or resources do not exist or are not available—considering 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, and

c. activities directed at finding and contacting the family, kin and community of the child or young person, and

d. the use of any of the following—

I. a parent responsibility contract

II. a parent capacity order,

III. a temporary care arrangement under Chapter 8, Part 3, Division 1,

IV. alternative dispute resolution under section 37, and

V. another matter, activity or action prescribed by the regulations.

(5) To avoid doubt, this section is subject to the requirement under section 9(1) that this Act is to be administered under the principle that, in any action or decision concerning a particular child or young person, the safety, welfare and well-being of the child or young person are paramount

Chapter 5, Part 2, Division 6 - 63 Evidence of active efforts to take alternative action (P. 68)

(1) When making a care application in relation to a child or young person, the Secretary must provide evidence to the Children's Court of the following—

a. the active efforts made by the Secretary, in accordance with the principle of active efforts, before the application was made and the reasons the active efforts were unsuccessful

b. the alternatives to a care order that were considered by the Secretary before the application was made and the reasons the alternatives were not considered appropriate.

(2) Without limiting subsection (1), the Secretary must provide evidence that, before making the care application, active efforts were made to—

a. provide, facilitate or assist with support for the safety, welfare and well-being of the child or young person, including support for the parents of the child or young person, and

b. consider any of the following actions that are relevant—

I. a parent responsibility contract,

II. a parent capacity order

III. a temporary care arrangement under Chapter 8, Part 3, Division 1

IV. an alternative dispute resolution process under section 37.

(3) Subsections (1)(a) and (2) do not apply in relation to a care application that is seeking an emergency care and protection order.

(4) The Children's Court may adjourn proceedings if the Court is not satisfied with the evidence provided by the Secretary under subsection (1).

(5) If the Children's Court is not satisfied with the evidence provided by the Secretary under subsection (1), the Court must not take either of the following actions unless the Court is satisfied that taking the action is in the best interests of the safety, welfare and well-being of the child or young person—

a. dismiss a care application in relation to the child or young person

b. discharge the child or young person from the care responsibility of the Secretary.

Chapter 5, Part 2 - 79A allocation of parental responsibility by guardianship order (p.84).

(3) The Children's Court must not make a guardianship order unless it is satisfied that— (a) there is no realistic possibility of restoration of the child or young person to his or her parents, and

Chapter 5, Part 2 - 79AA Special circumstances that warrant allocation of parental responsibilities to Minister for more than 24 months (p.84)

(2) Without limiting the matters to which the Children's Court may have regard in making its decision, the Court may have regard to the following—

a. whether support services and other resources that are reasonably required to support the restoration of the child or young person to the child's or young person's parents are available to the parents,

b. if the services and other resources mentioned in paragraph (a) are not available at the time the Court is making its decision—whether a longer period of allocation of parental responsibility to the Minister is needed to facilitate access to the services or other resources,

c. the active efforts made by the Secretary to restore the child or young person to the child's or young person's parents,

d. any other matters prescribed by the regulations.

Chapter 5, Part 2 - 83 Preparation of permanency plan (p. 90)

(1) If the Secretary applies to the Children's Court for a care order (not being an emergency care and protection order) for the removal of a child or young person, the Secretary must assess whether there is a realistic possibility of the child or young person being restored to his or her parents within a reasonable period, having regard to—

a. the circumstances of the child or young person, and

b. the evidence, if any, that the child or young person's parents are likely to be able to satisfactorily address the issues that have led to the removal of the child or young person from their care.

(2) If the Secretary assesses that there is a realistic possibility of restoration within a reasonable period, the Secretary is to prepare a permanency plan involving restoration and submit it to the Children's Court for its consideration.

(3) If the Secretary assesses that there is not a realistic possibility of restoration within a reasonable period, the Secretary is to prepare a permanency plan for another suitable long-term placement for the child or young person and submit it to the Children's Court for its consideration.

(3A) A permanency plan prepared under subsection (3) must include the following—

c. the reasons for the Secretary's assessment that there is not a realistic possibility of restoration within a reasonable period, and

d. details of the active efforts the Secretary has made to—

I. restore the child or young person to the child's or young person's parents, or

II. if restoration to the child's or young person's parents is not practicable or in the best interests of the child or young person— place the child or young person with family, kin or community.

(5) The Children's Court is to decide whether to accept the Secretary's assessment of whether or not there is a realistic possibility of restoration within a reasonable period—

(5A) However, the Children's Court may, having regard to the circumstances of the case and if it considers it appropriate and in the best interests of the child or young person, decide, after the end of the applicable period referred to in subsection (5), whether to accept the Secretary's assessment of whether or not there is a realistic possibility of restoration within a reasonable period.

(5B) Before deciding whether to accept the Secretary's assessment of whether or not there is a realistic possibility of restoration within a reasonable period, the Children's Court may direct the Secretary to provide the Court with—

a. the reasons for the Secretary's assessment that there is not a realistic possibility of restoration within a reasonable period, and

b. evidence of the active efforts the Secretary has made to—

I. restore the child or young person to the child's or young person's parents, or

II. if restoration to the child's or young person's parents is not practicable or in the best interests of the child or young person— place the child or young person with family, kin or community.

(7) The Children's Court must not make a final care order unless it expressly finds—

a. that permanency planning for the child or young person has been appropriately and adequately addressed, and

b. that prior to approving a permanency plan involving restoration there is a realistic possibility of restoration within a reasonable period, having regard to—

I. the circumstances of the child or young person, and

II. the evidence, if any, that the child or young person's parents are likely to be able to satisfactorily address the issues that have led to the removal of the child or young person from their care.

Chapter 5, Part 2 - 83A Additional requirements for permanency plans for Aboriginal and Torres Strait Islander children and young persons (p. 93)

(2) If the Secretary assesses, under section 83(3), that there is not a realistic possibility of restoring a child or young person to the child's or young person's parents within a reasonable period, the Secretary must—

a. include in the permanency plan evidence of the active efforts made, in accordance with the principle of active efforts, to determine whether the child or young person can be placed with any of the following, in accordance with the principle for the general order for placement of Aboriginal and Torres Strait Islander children and young persons under section 13(1)—

   i. a relative

   ii. a member of kin or community,

   iii. another suitable person, and

Chapter 5, Part 2 - 84 Requirements of permanency plans involving restoration (p.94)

(1) A permanency plan involving restoration is to include the following—

a. a description of the minimum outcomes the Secretary believes must be achieved before it would be safe for the child or young person to return to his or her parents,

b. details of the services the Department is able to provide, or arrange the provision of, to the child or young person or his or her family in order to facilitate restoration,

c. details of other services that the Children's Court could request other government departments or funded non-government agencies to provide to the child or young Children and Young person or his or her family in order to facilitate restoration,

d. a statement of the length of time during which restoration should be actively pursued.

Chapter 5, Part 2 - 85 Provision of services to facilitate restoration (p. 95)

A government department or agency or a funded non-government agency that is requested by the Children's Court to provide services to a child or young person or his or her family in order to facilitate restoration is to use its best endeavours to provide those services.

Chapter 5, Part 2 - 85A Review of permanency plans involving restoration

(1) A permanency plan involving restoration is to be reviewed by the designated agency responsible for the placement of the child or young person—

a. at the end of the length of time included in the permanency plan as the length of time during which restoration should be actively pursued, or

b. if a review is directed by the Children's Guardian.

(2) A permanency plan involving restoration is to be reviewed by the designated agency if it has not been reviewed under subsection (1) within 12 months after the last occasion on which it was considered by the Children's Court.

(3) A review is to determine—

a. whether the provisions of the permanency plan should be changed, particularly with respect to the length of time during which restoration should be actively pursued, and

b. whether other arrangements should be made for the permanent placement of the child or young person, and

c. whether the designated agency should recommend to the Secretary that an application for a care order be made or whether the designated agency should make an application for the rescission or variation of a care order.

(5) A contact order made under this section has effect for the period specified in the order, unless the order is varied or rescinded under section 86A or 90.

(6) Despite subsection (5), if the Children's Court decides (whether by acceptance of the Secretary's assessment under section 83 or otherwise) that there is no realistic possibility of restoration of a child or young person to his or her parent, the maximum period that may be specified in a contact order made under subsection (1A) concerning the child or young person is 12 months.

Chapter 8, Part 3, Division 1 - 151 Making of temporary care arrangements (p. 150)

(3) The Secretary must not, in the case of a child, make a temporary care arrangement in respect of the child unless—

a. a parent of the child consents to the arrangement and a permanency plan involving restoration is in place in relation to the child, or

b. the parents of the child are, in the opinion of the Secretary, incapable of consenting to the arrangement.

Chapter 8, Part 3, Division 3 - 155 Reports and reviews of supported out-of-home care

(6) At the conclusion of a review, the designated agency is to determine—

a. whether restoration of the child or young person to family care is possible and, if not, how the parenting needs of the child or young person are to be met, and

Chapter 17 - 266 Minister to give annual report about active efforts (p. 216)

(1) The Minister must prepare an annual report relating to the implementation and impact of the principle of active efforts for each of the 5 financial years following the commencement of this section.

(2) Each report must include details about the following matters for the financial year to which the report relates—

a. the actions taken by the Secretary to implement the principle of active efforts,

b. funding that was directly invested in active efforts measures, including to—

I. the Department, and

II. non-government organisations and Aboriginal community-controlled organisations

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Reframing South Australia's Child Protection System
A 6 Point Plan for Change

To effect positive reform requires both an agreed understanding of the problem as well as a common objective that we can aspire to and hold ourselves to account. To bring about change for our Child Protection System in SA therefore requires agreement to what we are seeking to change and action. Although it could be subject to much wordsmithing it is proposed that a good starting point is the following overriding objective for SA's Child protection system:

"Keeping as many children and young people living safely and growing up healthily and happily in their own families, community and culture".

If we assess South Australia's performance over the past 2 decades against this objective, we have on all available indicators failed. Our rate of children being removed from family and community has continued to grow at a level well above the national average. We now sit 52% higher than the national rate of children in care.

Where once we were considered a leader in Child Protection, South Australia is now a laggard. Our rate of children being removed and remaining in care has continued to deteriorate for the past decade at a time where across the rest of Australia is has improved.

Whilst we can debate the causes of this state of affairs for children and young people and their families, what is more important is to chart a way forward. It's not yet another public inquiry, Royal Commission or research project, or investigation. Nor will it be achieved through a change in leadership for our Child Protection Department or for that matter, a change of Government.

What is needed is a clear, achievable but nonetheless, ambitious plan that has at its heart the following key components:

1. Consensus that what we are seeking to achieve is to **keep as many children and young people living safely and growing up healthily and happily in their own families, community and culture.** Agreeing that this is our key objective helps to frame the type and degree of responses we then enact. It doesn't mean that intervention won't be needed to protect children from harm by removing them from their families and household for a period of time. It does mean though that our primary efforts (and investment) will be directed to keeping children living safely in their own homes and communities wherever possible. This is a fundamental reframe of our current approach to managing the safety and wellbeing of children in SA. How we frame the problem and objective determines how we fix it.

2. A political response which involves a high-level Compact across all major political parties to collectively work to establish a new approach which includes an agreed narrative on the objective of our child protection system and intervention. To facilitate real reform, we also need agreement to avoid making political gain from catastrophes and major incidents within child protection. This is not to suggest that accountability is not important or required. However, the politicisation of child protection has failed to improve the performance of our current system and has perversely

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probably caused more harm by seeking to further reinforce an overly punitive and surveillance response that is fundamentally flawed. Getting multi-lateral political buy-in to the need for a complete reform agenda for child protection in SA is probably the single most important pre-requisite for sustainable and effective change. To shift the dial on child safety and wellbeing in SA requires a consistent, long-term (multi-year) plan that all sides of politics can contribute to and ultimately commit to. Without this it will be impossible to have the community conversations required to reframe our response. Without a multi-partisan commitment maintaining the course for reform will not be possible. This requires true political leadership which has been largely absent for many years. **As a starting point all leaders of our Political Parties in SA should agree to a collaborative multi-partisan Compact to deliver on an agreed reform agenda for Child Protection in South Australia.**

3. Legislative reform – the review of the Children and Young People (Safety) Act provides the ideal platform to achieve an agreed understanding of the legislative levers and responses required to keep children safe, supported and thriving. There are many elements of the Act that need to be addressed but the following changes will be required to underpin a whole system reform.

   - **Change the threshold of risk underpinning the obligation to report** – the current definition is antiquated and has created a funnel for drawing children (and their families) into a statutory vortex that is often unnecessarily and unreasonably broad. In some cases, it has only served to increase the risk of harm for children rather than protect them.

   - **Put an end to mandatory reporting** – it has failed to achieve the objective of making child protection everyone's responsibility and creates an overwhelming culture of detection, surveillance and reporting rather than responding and helping.

   - **Enshrine the value and obligation to offer and deliver prevention and early intervention services to families at risk** and tie any decision to remove children from families to a right to be provided such assistance. This shifts the onus of responsibility for the State to not only look at and respond to issues of safety for children but their obligation to do whatever is needed to keep children living safely within their family and community. It is a "Family Support First" response to addressing risk of harm. This had been the intent of the Prevention and Early intervention for the Development and Well-being of Children and Young people Bill introduced to Parliament back in late 2017 which unfortunately was never legislated.

4. Shifting the investment and expenditure paradigm - our expenditure on care services alone has risen by an astonishing 264% in the past decade. It is difficult to identify another area of public expenditure in this State that has got anywhere close to this level of increased cost. We now spend over $0.66B a year to care for the growing number of children we are removing from families and communities. It's not a financially sustainable trajectory. Conversely our investment in ensuring families can receive the support required to maintain children living safely and well at home has only marginally improved over the corresponding period and is well below what most other jurisdictions across Australia are investing in strengthening and supporting families. Only 9.1% of total child protection expenditure in SA is spent on early intervention (intensive family support

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services and family support services). This proportional allocation of resources for prevention has declined over the past decade. These services are aimed at supporting families to keep children safely at home.

As a result, most families who require quality and often sustained help to ensure they can keep their children safe are not able to access needed help. It is not surprising that we then resort to (the more costly) alternative of removing children into care environments including residential homes. At a minimum the level of resourcing for family support and interventions including reunification needs to be quadrupled in SA to give us a fighting chance of turning the tide of excessive child removals. **We should be aiming to lift our expenditure on family support and intensive family support services to $275M p.a. if we are serious about making a sizeable dent in the over representation of children in care in SA.** Even then, on today's values, it would only represent 30% of our total expenditure on Child Protection in SA.

5. Setting targets – setting targets to keep more children and young people living safely at home and out of our care systems signals a very important message. Targets matter as they help shift where and how we spend money and ensure a focus on meeting the overarching goal of keeping more children in their homes, safe and thriving. **Our initial target should aim to reduce the number of children in care in SA to the national average in the next 3 years.**

   South Australia's rate of children and young people in our care system is currently just under 52% higher than the national average. If we were to perform at the national average of children in care, there would be 1,560 less children and young people in care in South Australia today. This would in turn save South Australians more than $214M p.a. in out of home care expenditure – money better directed to helping families and keeping children out of our care system. Beyond this target we should aim to become a leader in keeping children safely within their families and communities by achieving care rates at 10% below the national average. These are ambitious but by no means unattainable targets if we implement the reforms as outlined.

6. Structural Change - To achieve this level of reform requires strong political commitment and a changed community narrative about what child safety and protection means and what is needed to give us our best chance of achieving it. However, it also requires all systems and services which interact with children and families to work in a greater sense of harmony and common purpose. This might require some different structural and governance measures to ensure all those with a responsibility for protecting and supporting children and families (whatever their role) are directing their efforts, their resources and their accountability and reporting to better align with the agreed goal of **keeping children safe in family and community.**

   The primary responsibility for child safety and wellbeing is not our Child Protection Department although they have a very important role to play. It is in our schools, health settings, community agencies and housing authorities amongst others. Creating a 'super' Department responsible for the wellbeing of all Children and Families may not be viewed as a positive or desirable reform. However other structural reforms should be considered to facilitate all of agency and Government

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(and ultimately society) accountability for promoting the welfare of our children, young people and their families. Our current fractured responses are not working and haven't been working for many years. Creating an alternative line of responsibility and reporting either through agency amalgamation or through other means (such as a high-level Cabinet or Parliamentary Committee) for managing a more cohesive response should certainly be part of the broader reform agenda.

Creating a State where we have a declining number of children needing to be removed or remaining in care is possible. But it won't be achieved under our current legislative and policy settings. However, with political will and a consensus around how we define the problem and frame the objective - it can be done. A world in which more of our children and young people grow up safely and can thrive with their families and in their communities is good for all South Australians.

Simon Schrapel AM
Chief Executive
Uniting Communities

Child protection data sourced from Productivity Commission Report on Government Services 2024: Comparing South Australia & Australia

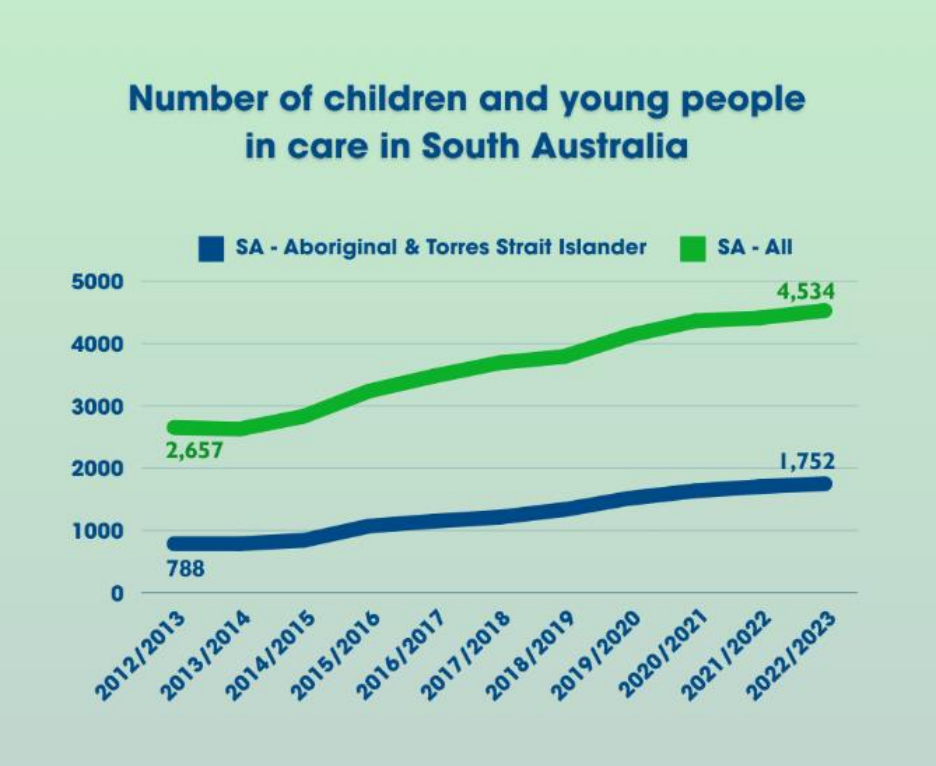
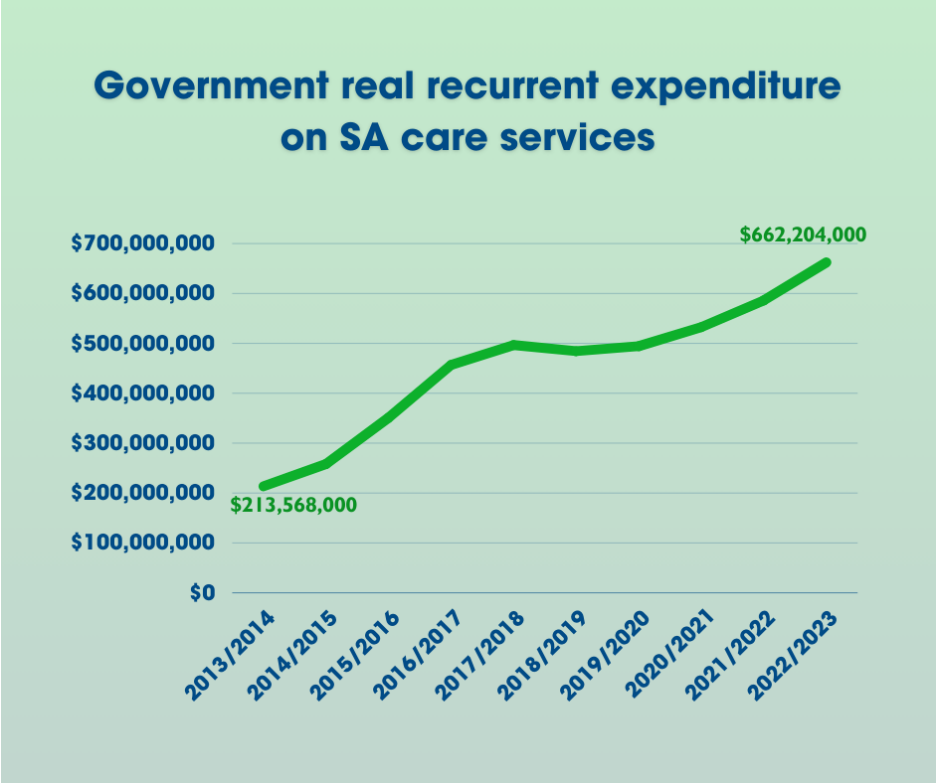


Figure 1 Sourced from Productivity Commission Report on Government Services 2024



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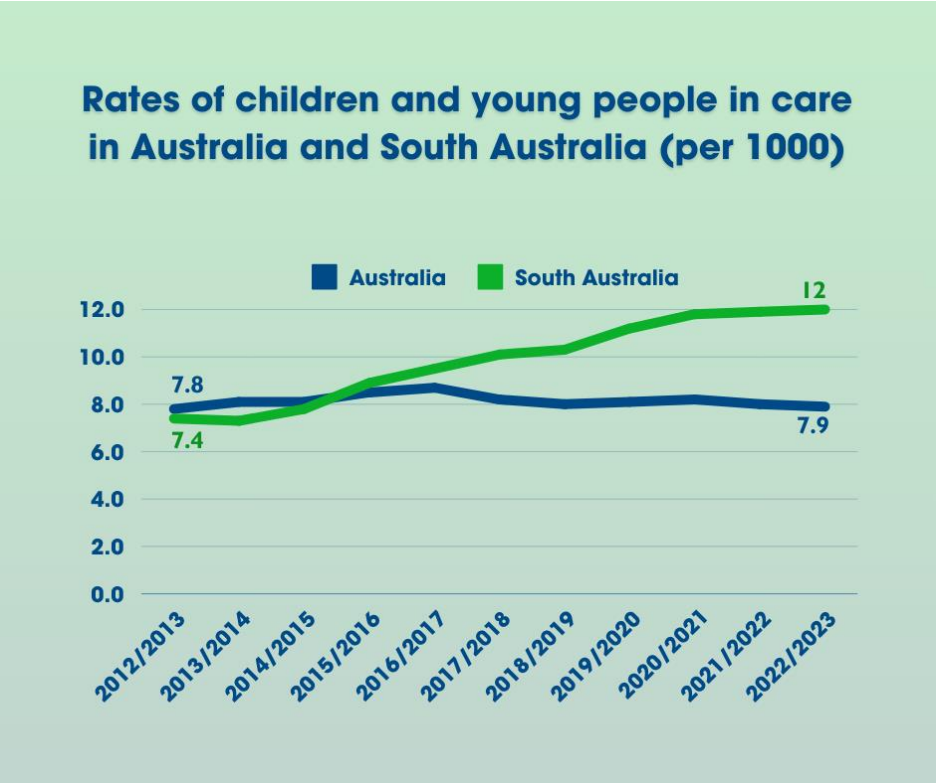

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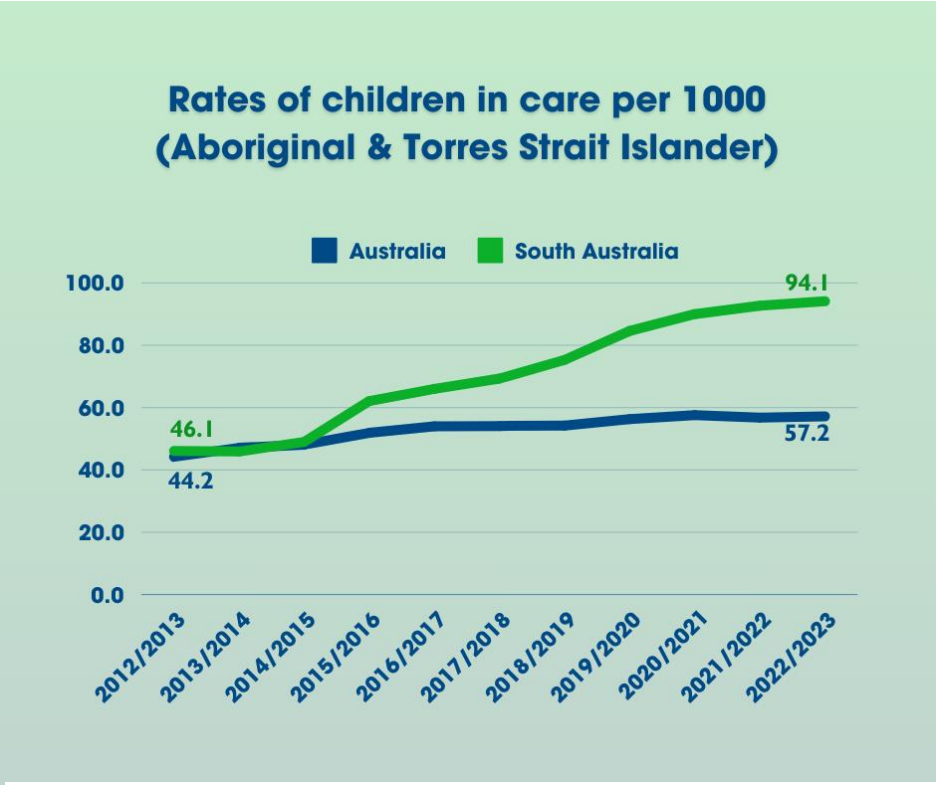

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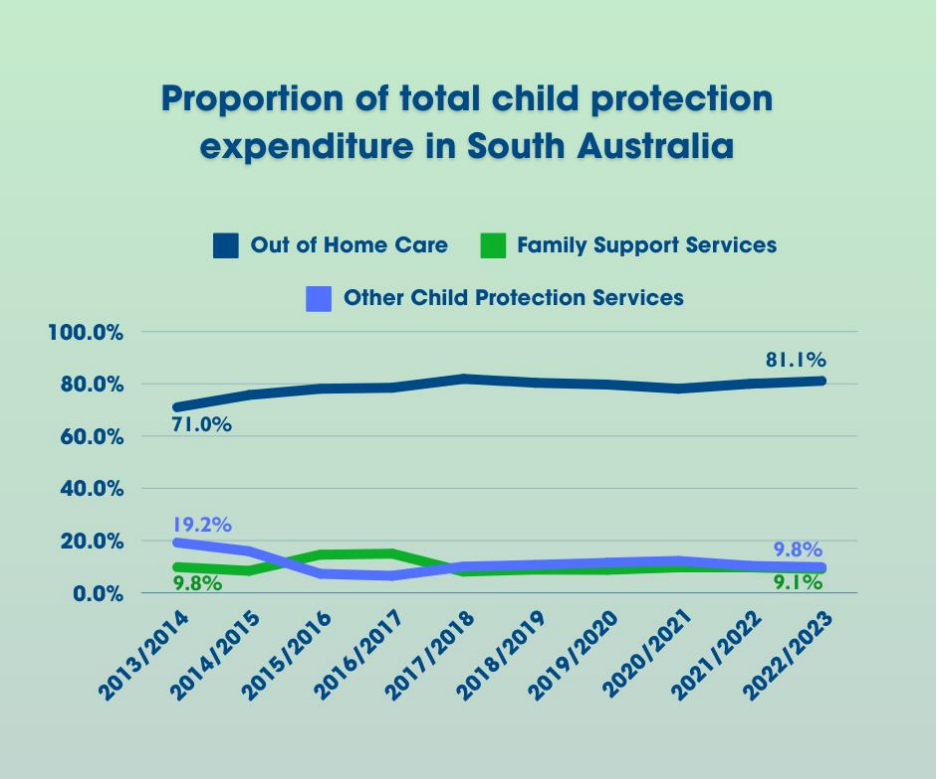


Figure 5 Sourced from Productivity Commission Report on Government Services 2024

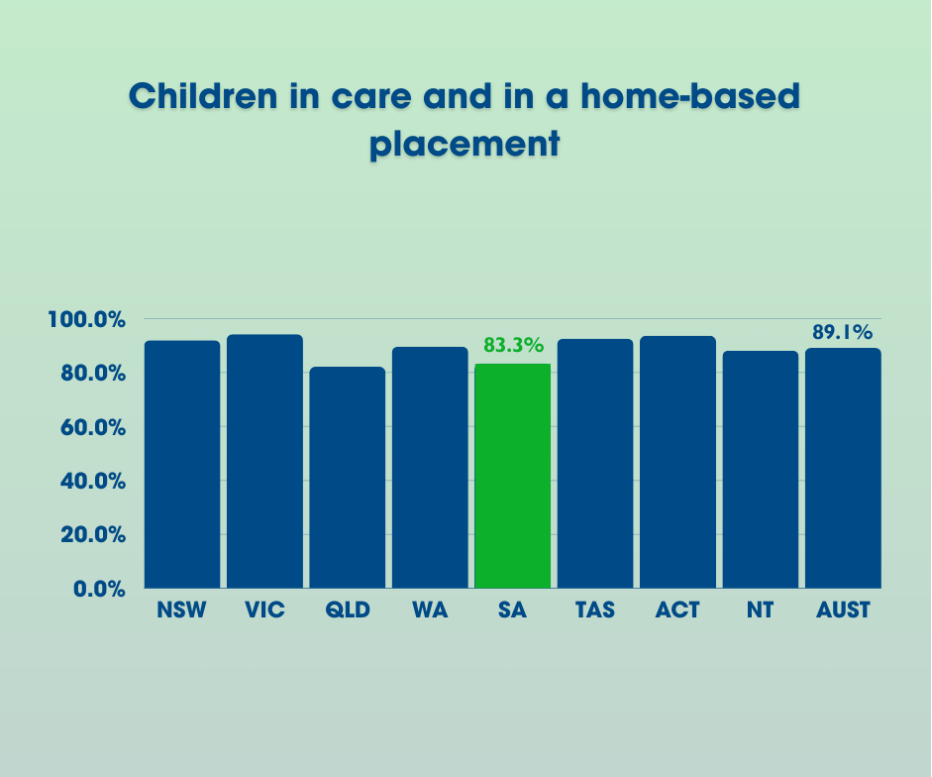
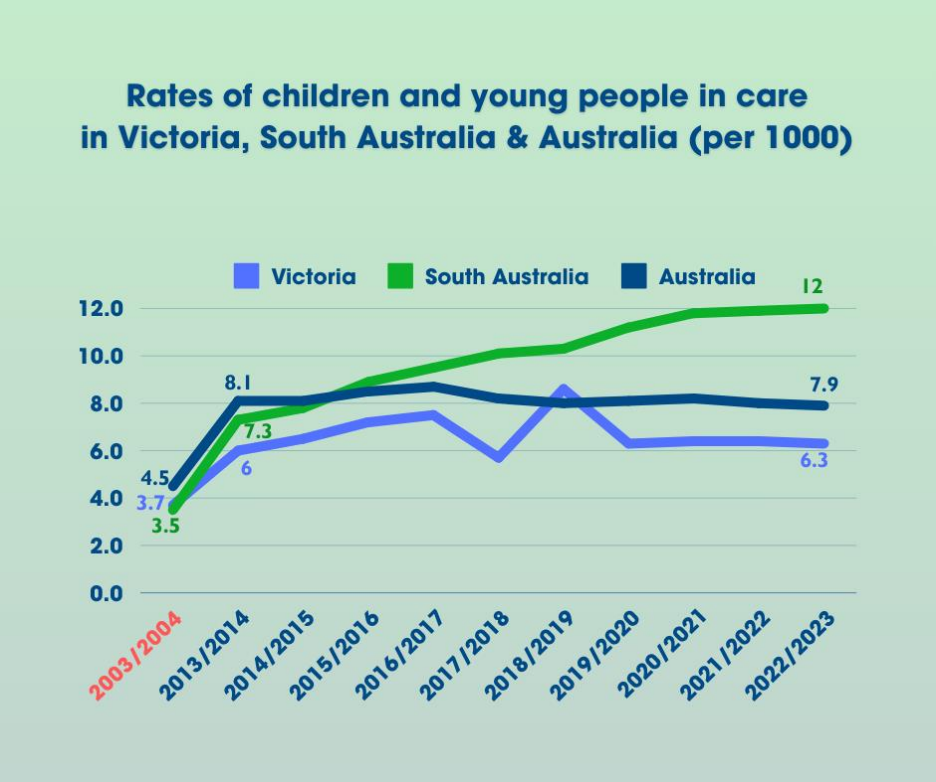


Figure 6 Sourced from Productivity Commission Report on Government Services 2024

Child protection data sourced from Productivity Commission Report on Government Services 2024: Comparing South Australia, Australia & Victoria



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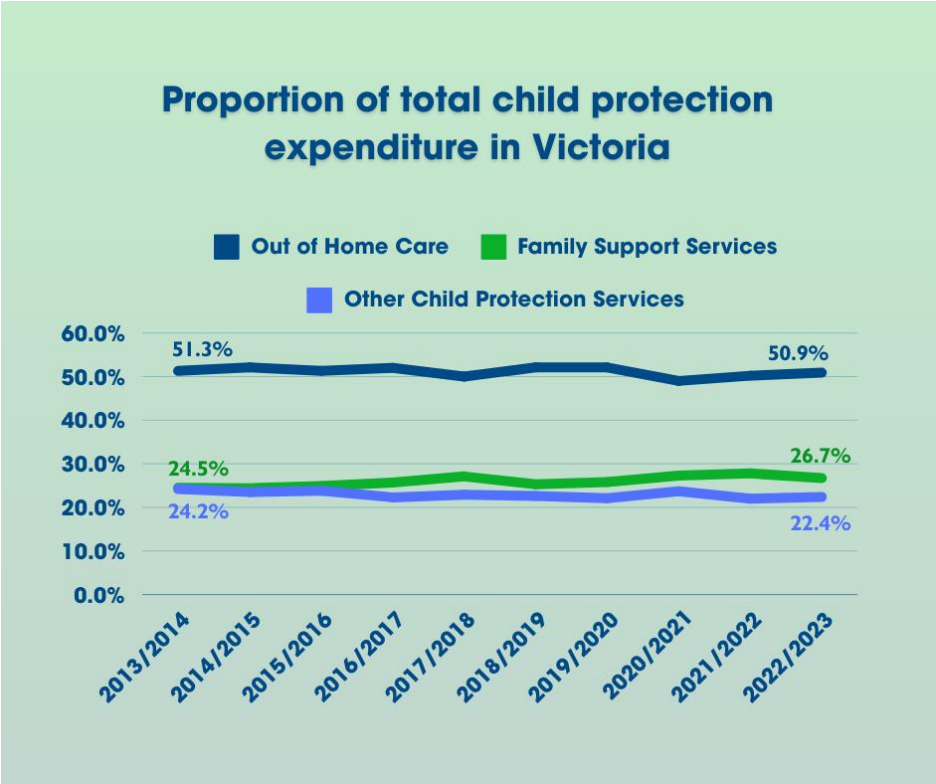

Figure 8 Sourced from Productivity Commission Report on Government Services 2014 & 2024