

# Looked after children's right to contact with birth parents: An Australian study

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## Abstract

In Australia, there are more than 46 000 children in out-of-home care (OOHC). Most of these children have been in OOHC for more than 2 years. Similarly, there are more than 407 000 children in the United States and over 80 800 in England who are 'looked after' with approximately one third of these children being in OOHC for more than 2 years. This paper concerns 'looked after' children's rights to contact with their birth parents. The United Nations Convention on the Rights of the Child (UNCRC) requires child protection systems to recognize the rights of children to maintain contact with their families except where this is not in the child's 'best interests'. In this paper, we report on a qualitative study conducted in Australia exploring legal and family support practitioners' perceptions of barriers to contact between children in OOHC and their birth parents. The thematic analysis identified four themes: These were as follows: a focus on systems driven responses; lack of cultural recognition and responsiveness; carers' disconnection from birth parents; and parents' exclusion. We discuss the implications of these findings for understanding and recognizing children's right to contact with birth parents.

## KEYWORDS

'best interests', 'birth parents', 'family contact', 'human rights', 'looked after children', 'out of home care'

## 1 | INTRODUCTION

This paper concerns barriers to contact between children in out-of-home care (OOHC), also referred to as 'looked after' children, and their birth parents. OOHC is defined as overnight care, usually court ordered, for children under 18 years who have been removed from their families by the State due to child protection concerns (Australian Institute of Health and Welfare [AIHW], 2021). OOHC can refer to a range of care environments. In Australia, for example, children in OOHC are primarily cared for in family environments such as relative/kinship carers (54%), foster care (37%) and other home-based arrangements (1%) (AIHW, 2021, p. 51).<sup>1</sup> Residential care accounts for

approximately 7% of placements nationally, and for 14.6% of placements in Queensland, and is largely preserved for children aged over 10 years (AIHW, 2021, p. 52; Productivity Commission, 2022).

Like other English-speaking countries of the Global North, all Australian jurisdictions stipulate that OOHC should be used as last resort and that children should be cared for by their families whenever possible (see also Burge, 2022; Hanson et al., 2019). Yet despite this, many children are in OOHC and remain there for extended periods. On 30 June 2020, approximately 67% of the 46 000 children in OOHC in Australia had been in care continuously for more than 2 years. The proportion of Australian children in OOHC for periods longer than 2 years was much higher than comparable countries

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during the same period. For example, in 2020, in the United States, 31% of the 407 493 children in OOHC had been continuously in care for more than 2 years (US Department of Health & Human Services, 2021). In the same period, in England, 28 650 of 80 850, or 35%, 'looked after' children had been OOHC for more than 2.5 years (Department for Education, 2021). Adoption from OOHC is uncommon in Australia, and this is a contributing factor to the higher proportion of children in OOHC for longer than 2 years, compared with either the United States or England where adoption from OOHC often occurs. Even so, across these three countries, there are substantial numbers of children in OOHC for more than 2 years. These children, like all children in OOHC, have an interest in contact with their birth parents. Although not the topic of this paper, we also acknowledge adopted children's interests in maintaining contact with their birth families, if they so choose.

In Australia and other countries with colonialist legacies, the implications of this extended period of removal are magnified for First Nations people. The AIHW (2021, p. 53) notes that in Australia, 'At 30 June 2020, about 18,900 First Nations children were in out-of-home care—a rate of 56 per 1,000 Indigenous children, which was 11 times the rate for non-Indigenous children'. This difference between First Nations and non-Indigenous children was evident across all age groups. Whereas First Nations children constitute 6% of the population aged 0–17 years in Australia, they constitute 41% of the children in OOHC (AIHW, 2021). Similarly, in Canada, children of First Nations heritage make up 7% of the population but comprise almost 50% of children in OOHC (Burge, 2022).

## 1.1 | Maintaining family connection

When children are removed from their families due to child protection concerns, 'contact' with birth families can take various forms including face-to-face interactions, both supervised and unsupervised, or more 'indirect' forms of communication such as phone calls, emails or letters (Kertesz et al., 2022). The United Nations Convention on the Rights of the Child (UNCRC) (UNHRC, 1989) protects the rights of children to 'maintain personal relations and direct contact' with their parents if they are separated from them (art 9[3]; see Masson & Harrison, 2018, p. 28). The UNCRC is ratified by 196 countries and is the most widely ratified human rights treaty in history (UNICEF, 2021; see also Quennerstedt et al., 2018). Australia ratified the UNCRC in 1990. Although it is not binding on domestic courts, the UNCRC does have an influence on child protection law and practice in Australia. For example, child protection legislation in all Australian jurisdictions recognizes the importance of the child's need to maintain family and social contact and cultural connections following removal and placement in OOHC (see, for example, Queensland's *Child Protection Act 1999*, s 5B, 5C). Similarly, in England, Schedule 2 para. 15 of the *Children's Act 1989* stipulates that when a child is being looked after by a local authority, contact between the child and their parents, relatives and friends should be promoted. However, in both the Australian and English legislation, children's right to family

contact is only protected when deemed to be in the child's 'best interests' and consistent with the child's welfare.

The concept of 'best interests' is contested, and for children in OOHC, decision-making about their best interests ultimately rests with officers within the statutory child protection authority. In Australia, child protection authorities usually make decisions about contact with little direction from the Courts and have no binding obligations to consult children, birth parents or family support providers about contact arrangements. A notable exception is NSW, which in 2017 was the first Australian State or Territory to introduce open adoption from OOHC into the Child Protection Legislation, as in this jurisdiction ongoing family contact is 'heavily weighted by judges considering adoption from Out-of-Home care' (Collings et al., 2020, p. 84). Though, as Collings et al. (2020, p. 85) also note, carers are expected to 'manage contact arrangements independently', and, often, this is a cause of concern for carers.

In Australia, like other English-speaking countries of the Global North, there has been a policy shift towards 'permanency planning' for children in OOHC to reduce the number of children who experience unstable fostering and residential care placements over extended periods of time (Burge, 2022; Collings et al., 2020; Hanson et al., 2019; Osmond & Tilbury, 2012). Burge (2022, p. 137) notes that three dimensions of permanence impact on law and policy for children in OOHC:

These include relational permanency (e.g., relationships with parental figures, relatives, foster parents, siblings, and people important to the child or youth), legal permanency (e.g., through legal reunification, guardianship, or adoption), and physical permanency (e.g., encompassing a wide range of norms, daily-living patterns, customs, traditions and culture).

Children's right to birth parent contact is linked to all forms of permanency planning. In his review of the Queensland (Australia) child protection system, Carmody (2013, p. 222) defined relational permanency as 'the experience of having positive loving, trusting and nurturing relationships with significant others, which may include the child's parents, siblings or carers'.

In all Australian jurisdictions, 'legal permanency' in care-giving relationships is recognized as being in children's best interests. In Queensland, for example, child protection legislation requires child protection officers to prioritize the child's needs for permanency (e.g. *Child Protection Act 1999* [Qld] s 5BA). The Queensland Child Protection Act, 1999 was recently amended to stipulate that, for non-Indigenous children, the first preference is for the child to be cared for by their family, the second preference is for the child to be cared by another family member or suitable person and the third preference is for the child to be adopted. Currently in Queensland, adoption severs all legal ties between the child and their birth family (*Adoption Act 2009* [Qld] s 214). For this reason, when permanency planning for First Nations children, guardianship by the State is to be considered prior to adoption (*Child Protection Act 1999* [Qld] s 5BA[4]).

In Australia, as in other countries where First Nations peoples have been subject to colonialist motivated genocide and ongoing displacement of children through OOHC, First Nations communities have powerfully advocated against adoption from OOHC 'because of the historical pattern of using this form of legal permanency to separate Indigenous children from their families, communities, and cultures' (Burge, 2022, p. 134; see also SNAICC, 2018). While adoption is, to date, uncommon from OOHC in Australia, Permanency Orders have been introduced in most jurisdictions. These orders allow for children to be placed permanently with a carer until reaching 18 years of age (e.g. *Child Protection Act 1999* [Qld] s 61[g]). In Victoria, the Children, Youth and Families Act, 2005 (section 321[ca]) states that a Permanent Care Order must include a condition that the person caring for the child 'preserve the child's relationships with [their] birth family'. However, it not known how often Courts include provisions for birth parent contact in Permanency Orders or whether these provisions are implemented.

'Physical permanency' includes children's rights to connection to customs, traditions and culture of their family of origin (Burge, 2022). In Australia, the Aboriginal and Torres Strait Islander Child Placement Principle is intended to protect First Nations children's rights to connection to family, culture and community (SNAICC, 2018). A core element of the Child Placement Principle is that First Nations children are placed within their families, communities or with First Nations carers. Even though this principle is embedded in policy and law in every State and Territory of Australia, in 2021, only '42.2% of Aboriginal and Torres Strait Islander children in out-of-home care were living with Aboriginal and Torres Strait Islander carers' (SNAICC, 2021b, p. 1). Contact with birth parents can form an important component of physical permanency, especially where the State has failed to facilitate children's access to the customs, traditions and cultures of their original families.

## 1.2 | Human rights and contact

Given Australia's ratification of the UNCRC, the emergence of human rights legislation in three jurisdictions of Australia, the Australian Capital Territory (*Human Rights Act, 2004*), Victoria (*Charter of Human Rights and Responsibilities Act, 2006*) and Queensland (*Human Rights Act, 2019*), appears to have potential to support recognition of children's and parents' rights to family contact. Consistent with international human rights agreements, human rights legislation in these three jurisdictions recognizes the family as the fundamental unit of society and, as such, its entitlement to be protected by society and the State; the child's right to protection of their best interests; and First Nations people's rights to recognition and protection of cultural identities and practices. Human rights legislation has potential to, at least, assist parents and children to advocate for their right to contact to be observed and supported. The Queensland Human Rights Act, 2019 has the strongest protections for Aboriginal and/or Torres Strait Islander peoples out of all the human rights Acts in Australia, which may have implications for challenging the high levels of over-

representation of First Nations children in OOHC and the limited observance of the Aboriginal and Torres Strait Islander Child Placement Principle in the placement of children, as well as strengthening opportunities for First Nations children to maintain contact with kin, culture and Country.

Benefits of family contact can include the child's sense of family identity including maintenance of community links and cultural identity (Luu et al., 2018; Taplin et al., 2015), placement stability (Salveron et al., 2009) and reducing behavioural problems among children (Palmer et al., 2014). On the other hand, concerns about contact include confusion or conflicted loyalties for children that may undermine the child's placement (Taplin et al., 2015) and distress arising unsatisfactory contact visits (Bullen et al., 2017; Collings et al., 2020). Carers also report feeling unprepared for, and unsupported by agencies involved with, managing family contact (Collings et al., 2020). Birth parents may experience a myriad of practical and emotional challenges to contact, and this can contribute to missed visits and to 'wide variation in mothers' and fathers' capacity to tune in to their infants' physical and emotional needs' (Humphreys & Kiraly, 2009, p. 36; see also Kiraly & Humphreys, 2015; Suomi et al., 2020; Taplin et al., 2021).

To date, the evidence on the barriers facing birth families and children in maintaining contact, best practice for improving parents, carers and children's experience of contact and on the impact of support on stakeholder well-being is limited. These questions must be urgently addressed if Australian child protection services are to better meet their legislative and policy commitments to supporting family contact. This study will address the first question concerning barriers to meaningful contact between removed children and their families.

## 2 | METHOD

The study was conducted in Queensland (Australia) and was initiated by the researchers' curiosity about legal and family support practitioners' views on the extent to which the rights of children in OOHC and their parents to contact are recognized and whether the introduction of the *Human Rights Act* will shape recognition of the right to contact.

In this paper, we report on our analysis of legal and family support practitioners' perceptions to address the research question:

- What are the barriers to meaningful contact between removed children and their families?

While this study was conducted in one jurisdiction within Australia, Queensland, we envisage its findings will have international relevance given: the substantial number of 'looked after' children across the globe; governments' obligations under the UNCRC to support children's rights to contact with birth parents; and the widespread commitment to permanency planning for 'looked after' children that, as we have outlined, can impact on children's opportunities for contact with parents and their original family and cultural networks.

The study was qualitative and informed by constructivist and critical epistemologies. Constructivist epistemology recognizes humans as actively creating the social world, whereas critical epistemology demands a focus on the role of social inequalities and power relations in shaping human experiences and possibilities (Padgett, 2012). Given the over-representation of children from disadvantaged and First Nations families in the OOHC system, it was important that our research included a critical perspective. The critical perspective was reflected in the study design including exploration of the structural factors that impacted on family contact and through the inclusion of a First Nations researcher as a member of the team and in leading data collection with First Nations participants.

## 2.1 | Sample

A purposive sampling approach was used to recruit participants who had at least 2 years' experience in legal or family support practice with families whose children are placed in OOHC. The recruitment involved a two-stage process. In Stage One, the research team identified 14 non-government legal and family support agencies that delivered legal or family support services to children and families involved with child protection systems. The research team approached the leaders of these agencies to provide 'gatekeeper' approval for front-line workers to be approached. In order to recruit participants from both metropolitan and regional areas, leaders of agencies in three locations (Brisbane, South West Queensland and Far North Queensland) were targeted. The leaders who provided the gate-keeper approval were asked to identify a staff member through whom the research team could distribute information about the study including an invitation to participate. In Stage Two, the research team distributed the recruitment information to staff at the agencies where we had achieved gatekeeper approval for participation and then staff contacted the research team to express interest in participation.

The sample comprised 27 practitioners providing legal or family support services to families, primarily to parents and children, involved with child protection services. The characteristics of the participants are outlined in Table 1.

## 2.2 | Data collection

Participants were offered the option of participating in focus groups or individual interviews. All chose to participate in a group interview; however, there was only one participant in one of the interviews because other expected participants became unavailable on the day. Data were collected between July and October 2020. Due to COVID restrictions, all interviews were conducted online. There were four focus groups with family support workers, three focus groups with legal service workers and one interview with a worker in legal services. One family support worker group and one legal service worker group were focused on workers in regional areas (a total of 7 participants). There was one focus group with only First Nations workers

**TABLE 1** Participant characteristics

Item	Characteristics of sample	Total
Qualifications	Law	10
	Social work/human services	15
	Social sciences/other	2
Sector	Legal services	11
	Family support services	16
Time in sector	Less than 5 years	3
	5–10 years	7
	10–20 years	8
	20 years+	9
Current role	Lawyer/solicitor	6
	Senior lawyer/solicitor	4
	Family support worker	13
	Family support manager/team leader	4
Age	18–24	1
	25–34	6
	35–44	6
	45–54	9
	55+	5
Aboriginal and/or Torres Strait Islander	Yes	4
	No	23
Gender	Female	25
	Male	2

**TABLE 2** Focus group participants

Legal services workers focus group 1	5 participants
Legal services workers focus group 2	4 participants
Legal services workers focus group 3 (regional)	2 participants
Legal service worker interview	1 participant
Family support focus group 1	4 participants
Family support focus group 2	3 participants
Family support focus group 3 (regional)	5 participants
Family support focus group 4 (First Nations)	3 participants

(3 participants), and another First Nations worker participated in the regional family support workers' focus group. The number of participants in each focus group and interview is outlined in Table 2.

The legal services focus groups and interviews were led by a research team member with legal qualifications, whereas the family support focus groups were led by social work researchers. One focus group was for First Nations workers, and this was led by a First Nations researcher with social work qualifications. A semi-structured interview protocol was implemented involving three parts: These were birth family contact under different conditions of removal, specifically short/long term orders, kinship/foster care/residential care; cultural identities of the children, particularly children identified as First Nations compared with non-Indigenous children; implications of

the new *Human Rights Act*; and implications for family contact of proposed permanency planning reforms. The focus group was of 50- to 100-min duration, whereas the individual interview was of approximately 50-min duration.

### 2.3 | Data analysis

Data were transcribed and entered into NVIVO (version 12), a qualitative analysis software program. We undertook an inductive thematic analysis using the guidelines provided by Braun and Clarke (2013). The approach involves six structured phases including data familiarization, initial coding and searching, reviewing and defining themes. At the outset, all four research team members familiarized themselves with the data by reading the transcripts multiple times. The team then generated an initial coding framework relevant to the research foci. With the use of NVIVO software, two members of the team then coded the entire data set inductively. New codes and sub-codes emerged as the analysis progressed. The entire team met regularly during the coding and ongoing development of the coding frame to discuss and resolve any discrepancies in the analysis process.

Once the coding was completed, the team then searched for themes across the codes and grouped codes together where they reflected an underpinning pattern in the data. As an illustration of this, our coding frame included a 'parent' code titled 'broader systems factors'. This included 12 'child' codes that we identified as referring to four distinct dimensions of systems driven responses to family contact. One of these dimensions was 'lack of accountability' of the child protection authority, or any other entity, to support children's contact with their parents. The theme of 'lack of accountability' emerged when we grouped together three codes related to participants concerns about: issues with legislation; the Human Rights Act not being considered; and bureaucracy, referring to the prioritization of bureaucratic requirements over children's right to contact with their parents.

The team also compared similarities and differences between the themes emerging from the data from the two types of professionals who participated in the study, that is, those employed in legal services compared with those in family support services and also compared themes emerging from the First Nations family support workers' focus group with those emerging from other focus groups that comprised mostly of non-Indigenous participants. While most of the themes were shared across the focus group data, points of difference in opinion or emphasis are discussed in the analysis. A thematic map was developed from the themes and checked against the data set. Four themes were identified: These were systems driven responses, lack of cultural recognition and responsiveness, carers' disconnection from birth parents and parents' exclusion. We turn now to discuss these themes.

### 2.4 | Findings

'Systems Driven Responses': Participants viewed the occurrence of approved family contact to be influenced by 'system driven

responses'. This meant that the priorities and resources of the child protection system were perceived as constraining opportunities for family contact and often at the expense of children's best interests or families' needs. Respondents remarked that the system is under-strain and under-resourced. It was noted that child protection officers carry heavy case-loads, whereas carers and parents often face competing demands on their time and had limited resources available to them. This contributed to a view that the statutory child protection authority placed low significance on family contact. Four sub-themes reflected different aspects of how system driven responses constrained meaningful contact with families.

The first sub-theme was "inconsistency of contact". As one respondent stated:

[the] biggest complaint that we probably hear is it's not enough contact or it's no contact, or the contact is extremely inconsistent. Whereas it's maybe twice a week one week and then nothing for another two weeks or four weeks or something like that, without any I guess big explanation as to why (Legal Workers Focus Group 1).

Respondents cited examples of contact arrangements being changed by the child protection caseworkers without explanation or notice and without consultation with parents, thus adding to their sense of disenfranchisement. The crisis-focused nature of the system responses contributed to inconsistency in family contact arrangements.

The inconsistency was identified by participants as antithetical to the children's best interests. Respondents noted that most children need and seek stability and consistency in their care arrangements.

I worked with a few children when I was in counselling with children in care, definitely for some of them I guess they felt like they just wanted some consistency, whatever that looked like (Family Support Workers, Focus Group 3, regional area).

Further, respondents observed that most children and young people wanted to maintain contact with their birth parents and that some young people in their teens opt to self-place with their parents. Maintaining quality contact was important for strengthening family bonds on which some young people in OOHC may rely and which are likely to be important to them and their family across the life course.

A second sub-theme was 'lack of flexibility' in contact arrangements. Respondents indicated that this inflexibility was driven by systems requirements and resource constraints. For instance, one respondent noted:

The Department argues they haven't got the staff to be able to do it [arrange contact] when they insist on it being supervised, or the room bookings don't allow it and they don't seem willing to arrange it after hours for parents who work. Or at weekends .... I've seen a



justification in a letter to a parent saying oh it's not in the child's best interest to see you at the weekend. Really? How have they assessed that? (Family Support Worker, Focus Group 3 regional).

Respondents identified that the rigid time constraints, when combined with the inappropriate venue for the visits, limited opportunities for families to have fun together or for other forms of casual interaction to occur. Further, the time restrictions around contact visits placed further pressures on parents, particularly those with paid work or other caring responsibilities, in maintaining contact with their children. Respondents also identified that COVID-19 restrictions led to reduced time for visits, the cessation of visits altogether during some points in the pandemic and the loss of face-to-face contact between birth parents and children when contact occurred only online. Overall, contact arrangements appeared to be driven by departmental systems considerations, particularly resource constraints, rather than the children's rights to meaningful contact with their birth parents.

A third sub-theme was 'unsuitable environments' for contact visits. This refers to participants' views that contact environments are often inappropriate for building family relationships. As a respondent remarked:

often that contact takes place at a specified Child Safety centre, so there's that environment as well. Parents often report that they, they often feel quite, you know, under the spotlight, scrutinised, of course, given the nature of what's going on. So, the quality, the infant interaction is affected by that dynamic (Family Support Worker Focus Group 1).

The venue for family contact inhibits the quality of that contact for a range of reasons including that parents felt uncomfortable in a Child Safety office and they also perceived that they were under surveillance during contact.

A fourth sub-theme was the 'lack of accountability' of the child protection authority, or any other entity, to support children's contact with their parents. This 'lack of accountability' means that there was no consequence for the child protection authority when family contact did not occur. Respondents from the Legal Workers Focus Groups contrasted the opportunities for family contact in Child Protection services to Family Law situations. A respondent remarked:

if you think about the Family Law Act with those primary considerations that the child has a right to a meaningful relationship with both parents and be safe from harm ... the Courts kind of make sure that they're aware that they're enforceable and if that contact is not being made then there can be contraventions. But can you ever imagine contravening the Department of Child Safety for not making the child available? ... I know the legislation and everything is completely different, but I just feel that it's fairly arbitrary sometimes

in terms of how those matters kind of unfold (Legal Services Workers, Focus Group 1).

This lack of accountability for family contact contributed to privileging of systems driven responses. This meant that even where child protection officers considered family contact to be in the child's best interests, their capacity to facilitate such contact was affected by organizational priorities and resources constraints.

'Lack of cultural recognition and responsiveness': Our second theme refers to barriers experienced by First Nations children and their families to contact arrangements that support cultural protocols and needs. Despite legislative and policy changes to recognize First Nations families, such as the establishment of the Child Placement Principle, systems driven responses continue to constrain cultural recognition and responsiveness. Respondents outlined numerous circumstances where the child protection bureaucracy imperatives, such as time-frames for visits, created barriers to children participating in culturally important family events. Many examples of this related to children being denied opportunities to participate in ceremonies related to sorry business, which concerns the passing of a family member and which often occurs on country over several days. A First Nations worker commented that:

We have great difficulty when families are going through sorry business, and they want their children part of that, you know, that it is just part of that the family's belief, a part of their cultural protocols, and as much as we try and advocate that sort of thing, that Child Safety just don't see, I suppose the importance of that. Again that's around belonging, that connection, so there's time frames and I think again we always come back to you know, the safety of the child, that's definitely paramount, but again it's around those beliefs that are really important, as small as it may seem to people that don't understand it, but it's really important and it's really difficult to, I suppose respect the family around that time, you know definitely being a you know, Aboriginal person myself, when those things can't happen I feel part of that disrespect (First Nations Family Support Workers, Focus Group 4).

Respondents were concerned that the child protection authority did not understand the significance of children's engagement in culturally important family events as central to the child's connection to family and culture.

Respondents identified that child protection professionals exhibited limited awareness of the historical context of the forced separation of First Nations children from their families and of cultural protocol and practices. As a respondent stated:

just the ways in which racism and discrimination impacts on contact, and I think certainly the inherent bias and prejudice and the way in which attitudes

within child safety reflect on reports and even how things are presented in court. I feel that there's a real often lack of understanding, cultural understanding of the impacts of intergenerational trauma and violence and other significant challenges that young women and young parents may be experiencing. So, that definitely does come through in terms of the lack of understanding when – particularly if women don't turn up to contact visits or if there are other barriers as to how they may be presenting when they're attending, particularly when they're – if the contact's only being provided at child safety offices with only child safety workers, I think there's huge challenges for young women in yeah, in how they're viewed and in attending those contacts (Legal Focus Group 1).

As this excerpt indicates, concern arises both about the lack of understanding of cultural protocols and also regarding lack of recognition of the intergenerational effects of the forced removal of First Nations children. This lack of understanding can contribute to barriers to family contact such as through adverse assessments of parenting capacity, without due regard for parents' trauma, and to contact occurring in unsuitable environments. Lack of cultural recognition and responsiveness was identified also in relation to how contact occurs. Whereas the child protection authority focused on bureaucratic protocol, such as the completion of safety checks and carer registration, cultural protocols were often unaddressed.

'Carers disconnection from birth families' was the third theme. Respondents' observed relationships between carers and birth parents were often poor or non-existent. This contributed to challenges around communication flow and contact. For example, one respondent noted:

Most of our young parents probably don't know the foster parents very well, and see them occasionally, but there's not a huge relationship and that can often be a problem in the sense that often they don't know what's happening for their child (Family Support Workers, Focus Group 2).

In Queensland, as in other states and territories of Australia, foster and kinship care is managed separately from the child protection authority. Responsibility for engaging with birth parents usually falls outside the remit of the foster and kinship care services, and these services often have little or no contact with birth parents.

In the context of poor relationships, carers may resist birth parent contact due to negative views about them. These views have consequences for the children also. As one respondent stated:

if you have a carer that's not positive about a family ... we have children that overhear conversations ... so that's where the children then obviously perceive their family as, you know scary, that sort of thing, and again

it's not even about their parents, it's about the whole of their family (First Nations Family Support Workers, Focus Group 4).

Respondents noted that carers' resistance to contact could be linked to carers' holding negative views of birth parents that had developed in the absence of contact with them. Further, respondents raised concerns that some carers developed a strong sense of ownership of the children in their care, which was more likely where long-term orders were in place, and this contributed to a reluctance to support contact.

'Parents' exclusion' by the child safety authority emerged as the fourth theme. As a respondent stated:

The culture from the Department has always been exclusive. They exclude the parents. It should be a lot more inclusive. The Act does provide for you to include the parents in, to assist the parents in their issues because, obviously, it's in the best interests of the children to be reunified to a parent if they can be, but they're very exclusive. It's almost like an adversarial environment, or climate, rather than an inclusive one (Legal Services Worker, interview).

Parents' exclusion was linked to the structure of child protection system in which parents often lacked knowledge of their rights and or capacity to act on them. Respondents from the legal services group noted that few families were legally represented and had limited awareness of their rights. Family support workers noted that few parents had the skills or resources to engage advocates and had limited capacity to advocate for themselves in the context of the myriad challenges often facing them.

Parent exclusion was reflected in a lack of understanding of, or empathic response to, the challenges facing many parents that both contributed to child removal and created difficulties in maintaining contact. A respondent stated:

If a parent has not turned up one week because they're deeply depressed or they've no money for the bus fare, or for phone credit to ring up and whatnot, they can't make it or for whatever reason, all sorts of things may go up in their lives, contact is reduced as a kind of punishment. Now how is that in the child's best interest? (Family Support Workers, Focus Group 3, regional area).

Respondents perceived that the child protection authority's concerns about parent behaviour contributed to the authority reducing parents' access to their children. Respondents perceived that trust could be built where child protection workers adopted a relationship-based approach including showing care and concern for parents. However, respondents stated that such practice approaches were not routine, and, instead, respondents identified that parents often felt judged and excluded. In relation to the theme of 'parent exclusion' a

sub-theme of 'parents losing hope' also emerged. This referred to dual effects of systems driven responses and parent exclusion on parents' views on their role as parents and their relationship with their children. The loss of hope was a barrier to contact. A respondent remarked:

I've seen you know parents again lose that motivation when a long-term order is taken, I think it kind of feels like well what's the point? I work with a young mum who, one child is on a long-term order and the other one is on a short term, and I can see the relationship she holds is very different with each child, yeah (Family Support Worker, Focus Group 2).

As children are placed on long-term orders and supports for contact visits are withdrawn by child protection authorities, and sometimes by other agencies, it was perceived that parents often found maintaining contact practically and emotionally challenging.

### 3 | DISCUSSION

Most children and birth families want to maintain contact (Kiraly & Humphreys, 2015; Sen & Broadhurst, 2011). Despite legislative and policy directives in support of children's continued contact with their families, our study found that family contact arrangements are inadequate to support children's relationships with their parents and other members of their birth family and community. The prioritization of systems driven responses was associated with inconsistencies, inflexibilities and inappropriateness of contact environments. As Taplin et al. (2021) report, many families experience contact environments as clinical and places where they are under surveillance (see also Kiraly & Humphreys, 2015).

We found that relationships between carers and parents are often poor or non-existent. Distrust between carers and parents seemed to flourish in the absence of training and support for carers and birth parents to meet and to negotiate care arrangements (see also Collings & Wright, 2022; Humphreys & Kiraly, 2009). Participants identified parents were excluded by a lack of consultation in decision-making about family contact and by the lack of responsiveness to parents' practical and emotional needs to sustain contact (Cocks, 2019; Kiraly & Humphreys, 2015). This exclusion reflects a lack of value placed on the role of birth parents in children's lives. Masson and Harrison (2018, p. 111) remark that 'It becomes even more difficult for parents to maintain contact where their involvement is viewed negatively or as a destabilizing influence'.

In the context of the significant systemic barriers to quality contact, it is hard to disentangle parents, carers and children's experiences of family contact from the impact of the poor resourcing and management of their experiences of such contact (see Collings et al., 2020). In part, these systemic barriers reflect the under-resourcing of child and family services. Yet, respondents also perceived that child protection authorities were not held to account by the Courts or political leaders

for ensuring family contact occurs. It was perceived that this lack of accountability led workers to place a low priority on family contact. Our study also points to the continuing lack of cultural responsiveness in contact between First Nations children and their families. This is despite the introduction of the Child Placement Principle in all jurisdictions of Australia and the call from First Nations leaders for increased efforts to connect children in OOH to family and culture (Oscar, 2020; SNAICC, 2021a).

Recognition of governments' obligations under the UNCRC to enable children's contact with birth parents unless *proven* not to be in the child's 'best interests' requires cultural and structural change in the child protection systems including the courts, child protection authorities and family support services. In some states and territories, courts are empowered to make contact orders in certain circumstances (see Qld *Child Protection Act 1999* sections 67[1][b], 68[1][c]). Courts need to utilize the provisions already available to them to ensure that children are maintaining contact with families, regardless of the duration of Child Protection orders. Child protection authorities (or other entities responsible for contact) must be held accountable for ensuring that contact occurs and is of sufficient frequency, duration and quality to maintain relationships. Such accountability should include the right of appeal to an independent body. The human rights Acts in the ACT, Victoria and Queensland may support parents to advocate for increased contact, and if decisions are made that are incompatible with human rights, parents may have an alternative form of redress under human rights law. Australian case law on human rights in child protection is sparse at present; however, government agencies are turning their minds to how their decision-making could be more rights-compliant.

Alongside the possibilities provided by human rights legislation for improved legal accountability, action is needed to the social and cultural barriers to birth parent contact outlined in this paper. Recognition of the valuable role birth parents have in children's lives and across the life course needs to be reflected in resource allocation to support consistency, flexibility and appropriateness of family contact. There is an urgent need for more research on best practice in supporting birth family contact (Taplin et al., 2015). Small scale quality studies and practice case studies have indicated that birth parents can benefit from peer support and specialist playgroups targeted at the unique and challenging experiences of parents of children in OOH (Gibson & Parkinson, 2013; Salveron et al., 2009; Taplin et al., 2015). Collings and Wright's (2022) study of birth parents and carers of children in permanent care highlights the need for better support and training of carers and for professional support to be available to birth parents to manage the challenges of contact.

Promising findings of mixed methods intervention studies indicate that structured support for parents and carers can improve some key elements of contact, such as reducing visit cancellations (Furlong et al., 2021; Suomi et al., 2020). Furlong et al.'s (2021, p. 5) study conducted in the Republic of Ireland found that a structured parenting skills programme delivered to both foster parents and birth parents was associated clinically significant improvements in 'parenting stress and the parent-child relationship' measures. However, overall, there



are few intervention studies on family contact and little evidence on the impact of these interventions on well-being of children, carers and birth families. In the historical context of exclusion of families and the continuing lack of cultural recognition and responsiveness to First Nations people, researchers must collaborate with children, parents and other family members to build evidence on family contact policy and practice. Further, child protection authorities must commit to, and be held accountable for, properly resourcing best practice approaches to family contact.

## 4 | STUDY LIMITATIONS

The study reported here was based on a small purposive sample of legal and human service professionals involved in support and advocacy with and for families involved with child protection services. While prior research has pointed to concerns about parents' challenging behaviours as contributors to problematic contact arrangements (Humphreys & Kiraly, 2009), this did not emerge in our study. This may be due to the roles and professional experience of the study participants that involved support and advocacy with and for birth families. None of our participants held statutory child protection roles or were involved in the supervision of contact visits.

Most participants' practice focused on the stages of the child protection process before permanency care arrangements are made. Indeed, in Australia, there is little formal family support offered for parents once children are in permanent care (Cocks, 2019; Fernandez, 2014). In summary, we were unable to explore family contact for children subject to permanent care orders. This is because the respondents to the study were focused on preventing permanent removal, and in the Australian practice environment, there appears to be little formal support for family contact once permanency care orders are made.

## 5 | CONCLUSION

Having ratified the UNCRC, Australian governments, like most English-speaking countries of the Global North, have agreed to support children's contact with birth parents, unless this is proven not to be in the child's best interests. Several Australian jurisdictions now have Human Rights legislation in place that should further strengthen the States' accountability to the UNCRC. We have highlighted the myriad challenges facing children and birth parents in maintaining relationships post-separation. We propose cultural and structural change so that children's rights to birth parent contact are prioritized and implemented. We call also for more research into best practice in family contact across the different phases of OOHC, from short term to permanent orders, as well as for parents, carers and children to be included as collaborators in knowledge building. For most children in OOHC, their relationships with their birth parents and other family members will have significance across the life course, and for this reason, it is in their best interests that such relationships are supported.

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## DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available on request from the corresponding author. The data are not publicly available due to privacy or ethical restrictions.

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## ENDNOTE

<sup>1</sup> The AIHW figures for placement types add up to 99% rather than 100%, and this appears to arise from rounding up the placement figures, which are approximate.

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