



# Submission to the House of Representatives Standing Committee on Employment, Workplace Relations, Skills & Training

Submission to the Inquiry into the operational and adequacy  
of the National Employment Standards

## Submission Details

**Inquiry:** House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training into the operational and adequacy of the National Employment Standards (NES) under the *Fair Work Act*

**Organisation Name:** Families Australia, ABN 21 830 960 225  
In partnership with the National Foster Care Sustainability Group  
[futureoffostercare.org.au](http://futureoffostercare.org.au)

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## Executive Summary

The National Employment Standards (NES) are minimum employment entitlements that must be provided to all employees in the national workplace relations system. However, the eligibility criteria for some NES leave entitlements are limited to defined activities or specific classes of people.

Statutory kinship and fosters carers provide an essential community service, often with minimal notice, that state and territories are reliant on for their out-of-home care systems to function. Statutory kinship and fosters carers have the day-to-day care and responsibility for children, often for many years, who have been removed by the state under Child Protection legislation and Court Orders. However, they are omitted or not specifically identified in some NES leave entitlements, including Community Service Leave, and Parental Leave. This situation is particularly anomalous when had the child not been removed due to significant safety concerns, the child's parent would have been entitled to these NES leave entitlements.

Statutory kinship and foster carers are overwhelmingly women over the age of 50. Kinship carers are overwhelming Aboriginal and Torres Strait Islanders. Estimates suggest 20 per cent work full-time and a further 20 per cent work part-time or casually. There are approximately 16,000 statutory carer households across Australia. Foster carer numbers continue to decline year-on-year, with foster carer numbers declining over the last 15 years.

Child removals by a state or territory are not optional, planned, predictable, and many times multiple. These removals are emergency, unpredictable responses to a child being in unacceptable risk and requiring an immediate care placement. Statutory kinship and foster carers open their homes and care for children with minimal notice, often within hours of a child being removed from their parents.

Carers often receive children with minimal notice and must immediately manage acute trauma responses, heightened stress responses, emotional dysregulation, attachment insecurity and previously unmet health and mental health needs - when compared to the general population.

Carers coordinate urgent health and development assessments and implement treatment plans. Yet the omission from NES leave provisions undermines carers' workforce participation and economic security, forcing some, predominantly older women and Aboriginal and Torres Strait Islander peoples, to reduce hours, leave jobs, or ultimately rely on Centrelink payments. The omission of statutory kinship and foster carers in NES leave entitlements is a structural gap in the safety net and it adversely impacts women over the age of 50 and Aboriginal and Torres Strait Islander peoples.

The NES are designed to ensure that basic life events and civic responsibilities are supported through employment. This is achieved by providing or protecting leave for circumstances that would otherwise force people out of work and onto government benefits. Consistent with the purpose of the NES, statutory kinship and foster carers should not have to resign, exit the workforce and claim Centrelink benefits to:

- support a child's response to the trauma of being removed from their parents;
- ensure children who enter care and have unaddressed multiple and complex health needs and developmental concerns are assessed and treated by relevant professionals; or
- provide day-to-day care over long periods to very young children.

## About Families Australia

Families Australia is a not-for-profit national peak body that strives to improve the wellbeing of Australian families, especially those experiencing the greatest vulnerability and marginalisation.

Families Australia represents more than 600 members and stakeholders around Australia, all of whom work to advance family wellbeing and participation.

A key focus area for Families Australia is advocating for better support for foster and kinship carers. This includes supporting foster carers and kinship carers' continued participation in the workforce and timely access to health care for all children and young people in their care. This submission has been developed in direct consultation with, and is formally endorsed by, all member organisations and foster carers of the [National Foster Care Sustainability Group](#).



## Families Australia's Recommendations

Families Australia recommends that the House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training's Inquiry into the operational and adequacy of the National Employment Standards (NES) under the *Fair Work Act* make recommendations to:

1. **Recognise statutory kinship and fosters as a defined group under the NES Community Services Leave entitlement.** This would recognise the unplanned, time-critical and essential community service that they provide and that states and territories are reliant on for their out-of-home care systems to function.
2. Noting the interaction between the NES leave entitlements, that **all NES leave entitlements specifically identify statutory kinship and foster carers as a recognised class of people entitled to leave** - such as in the entitlement to Parental Leave and to Personal, Carers and Compassionate Leave.
3. **Commission national data collection of statutory kinship and foster carers** such as their employment status; occupation; employer size; age; gender; Aboriginal or Torres Strait Islander; and their reduced hours, income loss or workforce exits due to caring for children in out-of-home care.

Families Australia's recommendations align with the objectives of the *Fair Work Act* to promote increased workforce participation and social inclusion, particularly affecting women, women aged 50 and over, and Aboriginal and Torres Strait Islander peoples.

## Detailed Submission

### The National Employment Standards

The National Employment Standards (NES) are minimum employment entitlements that must be provided to all employees in the national workplace relations system. However, the eligibility criteria for some NES entitlements are limited to defined activities or to a defined class of people. These eligibility requirements either exclude statutory kinship and foster carers from some types of leave entitlements under the NES or leave it unclear, creating issues for carers with their employers.

## Case Studies – the adverse impact on workforce participation and finances for statutory kinship and foster carers providing care to children

In providing an essential and time critical community service, and supporting the most vulnerable children in our community, statutory kinship and foster carers workforce participation and financial security is significantly adversely affected. This adverse impact is demonstrated in the experience of two carers outlined below.

### Statutory Kinship Carer - Alice<sup>1</sup>

Alice is single, a grandmother and a proud Aboriginal woman. Alice worked full time in the Public Service. When Alice was contacted by Child Protection in another state and asked to become a statutory kinship carer for her 3-year-old grandson, who had just been removed from his mum, Alice didn't hesitate. She immediately took personal leave from work and travelled interstate to collect her grandson. Despite efforts by Child Protection to support Alice, a childcare vacancy for her grandson was not immediately available. Alice exhausted her personal leave to care for her grandson while she waited for a childcare place. Alice also took her grandson to medical and development assessments, which identified serious concerns that needed further specialist assessment and a management plan to address them. Alice had run out of leave and requested unpaid leave; her grandson was attending several lengthy assessments at different locations.

Six months later, Alice was asked by Child Protection to be the statutory kinship carer for another younger grandson. Alice again travelled interstate immediately. She had no leave available and had to again ask her employer to approve unpaid leave, without any notice or planning. Alice's second son was diagnosed with Foetal Alcohol Spectrum Disorder (FASD) among other medical and development delays.

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<sup>1</sup> Name has been changed.



Alice's two grandchildren in her care were under 3 years of age, and both had complex medical needs, which limited their access to suitable childcare. With no more leave available, Alice ultimately had to resign. She then became reliant on Centrelink payments as her only income stream. Leaving full time employment reduced Alice's income. She no longer contributes to superannuation and can no longer afford her mortgage. Alice is currently arranging to sell her house.

### **Statutory Foster Carer - Susan<sup>2</sup>**

Susan and Michael are middle-aged married statutory foster carers. While they were both working full time, they undertook emergency and respite care for several children. This included caring for Sarah age 12 when her previous foster carers gave her up due to being unable to cope with her behaviours arising from complex trauma and manage their work responsibilities and own health issues.

When Sarah was 16, she was again given up by a foster family who were struggling to cope with the care of multiple children. The agency responsible, knowing that it is virtually impossible to find a foster care placement for adolescents and almost always go into residential care, contacted Susan and Michael and asked whether they would consider taking Sarah long term.

Susan and Michael agreed, deciding that Susan would be the primary carer. In the first 12 months of placement Susan worked part time. However, Sarah had complex medical and developmental needs which had not been adequately diagnosed or treated. She also had emotional, behavioural, relational and developmental needs that created challenging behaviours as a trauma response.

Susan decided she needed to give up paid work to properly support Sarah in addressing these needs. While financially challenging, Sarah is doing better and is the only one of the eight children of her biological parents to have completed year 12.

### **The case for recognising statutory kinship and foster care as an eligible Community Service under the NES leave entitlement**

States and territories cannot control demand for out-of-home care systems. Child protection legislation requires states and territories to remove a child when there is an unacceptable risk of significant harm to the child because the child cannot live safely at home. Removal is not optional, planned, or predictable, it responds to an acute situation that requires immediate care for the child.

On removal of a child, jurisdictions have very limited options available. Without statutory kinship and foster carers offering homes, the option is to place the child in residential out-of-home care (or even a motel or caravan park) with supervision provided by a paid workforce on a 24/7 roster. This institutional care is hugely different to a foster home with a carer providing a parental figure, love and support and has very poor outcomes for the child, especially younger children. It is also very costly to the taxpayer.

Residential out-of-home care is *"widely acknowledged as the most expensive and least preferable form of placement, especially for younger children or those requiring more stable environments."*<sup>3</sup> The evidence is unequivocal, children with a residential out-of-home care experience have significantly poorer outcomes than those placed in foster or kinship care and are more likely to be engaged in the Youth Justice system.<sup>4</sup> The impact is also lifelong and inter-generational. It results in a substantial annual economic burden due to increased health care costs and lost productivity.<sup>5</sup>

<sup>2</sup> Names have been changed.

<sup>3</sup> Queensland Family & Child Commission, *"Buyer Beware, How economic forces are shaping Queensland's residential care market, Queensland Family & Child Commission,"* August 2025. pg. 13.

<sup>4</sup> See for example, The New South Wales Government funded *"Pathways of Care Longitudinal Study – Improving the long-term outcomes of children in Out-of-Home Care"*. It commenced in 2011 and is a large-scale longitudinal study of children and young people care and focuses on child development domains of physical health, socio-economic wellbeing and cognitive/learning ability. This study shows that children and young people with a residential care experience have lower school engagement, attendance and achievement, are more likely to be suspended or excluded, are less likely to meet national literacy and numeracy benchmarks and are more frequently involved in the justice system.

<sup>5</sup> Dai Quy Le, Long Khanh-Dao Le, Marie Bee Hui Yap, Divna M. Haslam, Daryl J. Higgin, Eva Malacova, James G. Scott, David Lawrence, Ben Mathews, Cathrine Mihalopoulos, *"Impact of child maltreatment on the costs of health service use and productivity loss: Findings from the Australian child maltreatment study"*, Child Abuse & Neglect 171 (2026) 107818.



Although only about 12 per cent of Australian children in statutory out-of-home care are in residential settings each night, residential out-of-home care is a multibillion-dollar system that accounts for a large proportion of Child Protection budgets in all states and territories. For example, over half of Queensland's \$1.1 billion Child Protection budget is spent on residential out-of-home care, at an average cost of \$2.8 million dollars a day.<sup>6</sup>

By contrast, statutory kinship and foster carers provide immediate, voluntary, family-based placements that support stabilising children, manage acute trauma responses (heightened stress, emotional dysregulation, attachment insecurity, regression), address urgent health and development needs and undertake normal parenting functions, all in a family home.

States and territories are reliant on statutory kinship and foster carers for their out-of-home care systems to function. Statutory kinship and foster carers provide immediate, voluntary, timely and socially critical care and homes to children removed from their parents and placed in out-of-home care. They are treated as volunteers and paid only a partial subsidy that contributes to meeting the needs of the child in their care (between \$11,942 and \$20,462 per annum<sup>7</sup>).

Statutory kinship and foster carers make themselves available to provide time critical voluntary care and support to children placed in care with minimal notice. However, due to the minimal notice and immediate support children need on placement into out-of-home care, statutory kinship and foster carers are reliant on the discretion of their employers to approve leave with minimal notice and planning (assuming they have leave available) or negotiate a flexible work arrangement with alacrity. Consequently, statutory kinship and foster carers often have to reduce their work hours or leave the workforce and claim Centrelink benefits to support children in their care.

In the absence of statutory kinship and foster carers being immediately available to fulfil a critical civic duty, out-of-home care systems nationwide could not function. Statutory kinship and foster carers provide a critical, unplanned and essential community services that state and territories rely on for their out-of-home care systems to function. In these circumstances, the NES entitlement to Community Service Leave should be amended to explicitly recognise statutory kinship and foster carers as a defined group.

## **The case for extending NES leave entitlements to statutory kinship and foster carers**

The NES leave entitlements interact with each other. Given the essential role and to ensure clarity and consistency, all NES leave entitlements should be amended to specifically include statutory kinship and foster carers as an identified entitled class. This includes the NES entitlements to Parental Leave and to Personal, Carers and Compassionate Leave.

## **Statutory kinship and foster carers need time to support children to address their prior trauma and multiple and complex health and development issues**

Statutory kinship and foster carers need time to help children address prior trauma and access professional support for complex health and developmental needs. Children in out-of-home care have experienced significantly higher and more intensive rates of child maltreatment (physical, sexual and emotional abuse, neglect, and/or exposure to family and domestic violence) than in the general population.<sup>8</sup> This maltreatment causes cumulative harm that impairs their safety, wellbeing and development, often resulting in long-term emotional, behavioural, relational and developmental functioning difficulties if left untreated.<sup>9</sup>

<sup>6</sup> Commission of Inquiry into the Queensland Child Safety System, hearing on 23 July 2025, at transcript page 18.

<sup>7</sup> State and territory websites, published carer base rates 2025-26

<sup>8</sup> Haslam, D., Mathews, B., Pacella, R., Scott, J. G., Finkelhor, D., Higgins, D. J., Meinck, F., Erskine, H. E., Thomas, H. J., Lawrence, D., & Malacova, E. (2023). *The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report*. Australian Child Maltreatment Study, Queensland University of Technology. <http://doi.org/10.5204/rep.eprints.239397>. Harris LG, Higgins DJ, Willis ML, Lawrence D, Meinck F, Thomas HJ, Malacova E, Scott JG, Pacella R, Haslam DM, "Dimensions of child maltreatment in Australians with a history of out-of-home care. *Child Maltreatment*" 2025 August, 30(3):525-39.

<sup>9</sup> Cumulative harm is caused by the compounding impact of ongoing and/or multiple experiences of child maltreatment. Harris LG, Rattambige D, Hunt GR, Higgins DJ, "Accumulation of violence and victimisation: Why measuring broadly and accounting for different harm types matters", *Current Opinion in Psychology*, <https://doi.org/10.1016/j.copsyc.2025.102260>.





Children in out-of-home care have multiple and complex physical, mental and development health needs.<sup>10</sup> Yet they often face limited access to health services, have incomplete medical histories, poor record-keeping and inconsistent continuity of care.<sup>11 12</sup>

Disability rates are also high. AIHW data shows 22% of children in out-of-home care have disability, compared to around 11–12% of children and young people in the general population (ABS). This means children in care experience disability at approximately twice the rate of their peers. The over-representation remains clear even when compared specifically to children under 15 years (11%), underscoring the strong intersection between disability and out-of-home care systems.

The “*National Clinical Assessment Framework for Children and Young People in Out-of-Home Care*” sets out core elements that cover physical, developmental and mental health. These core elements recommendations include that children in out-of-home care have:

- A Preliminary Health Check as soon as possible and no later than 30 days after entering care to out-of-home care to determine areas of immediate concern.
- A Comprehensive Health and Developmental Assessment (physical, developmental, psycho-social, mental health, dental, optometry and audiology) within three months days after entry to out-of-home care.
- A Health Management Plan developed and integrated with other management plans (e.g. education plans) into a single management plan for the child.
- Follow-up monitoring in accordance with the clinical needs of the child.

Despite these requirements, only a minority of children receive timely assessments in accordance with this national framework. In Victoria, between April 2010 and December 2015, less than 1 per cent (41 of 5,676) of children aged 0–12 complied with the Framework’s recommendations.<sup>13</sup> Children in foster care were the most likely to meet them.<sup>14</sup> This is consistent with evidence given at the Commission of Inquiry into Queensland Child Safety by carers and health professionals, such as Dr Marnie Fraser, Staff Specialist, Paediatrics (Cairns and Hinterland Hospital and Health Service) on 26 September 2025.<sup>15</sup>

Failure to assess and address health and development needs of children in out-of-home care has multiple adverse consequences to the child and their foster or kinship carers. It can lead to challenging behaviours, carer strain, placement breakdown and the child entering residential care.

Evidence before the Commission of Inquiry into the Queensland Child Safety System highlighted a case in which a child under one in foster care had persistent scabies. The Manager gave evidence that scabies was *seen a bit* by Child Safety in children,<sup>16</sup> and that a child under one year old in foster care had a diagnosis of persistent and recurring scabies, requiring antibiotics four times a day. However, the Manager’s evidence was that the diagnosis was not recorded in the information provided to her new foster carer.<sup>17</sup> Further, the foster carer had to relinquish care as they could not manage the child’s medical needs.<sup>18</sup> The child did not receive appropriate specialist treatment until seven or eight months later, when a medically trained foster carer arranged private care.<sup>19</sup>

Compliance with the National Clinical Assessment Framework requires carers to attend multiple medical and therapeutic appointments within 30–90 days of a care placement, creating unavoidable employment disruption. However, timely

<sup>10</sup> “*National Clinical Assessment Framework for Children and Young People in Out-of-Home Care*” March 2011, [national-clinical-assessment-framework-for-children-and-young-people-in-out-of-home-care.pdf](#).

<sup>11</sup> “*National Clinical Assessment Framework for Children and Young People in Out-of-Home Care*” March 2011, [national-clinical-assessment-framework-for-children-and-young-people-in-out-of-home-care.pdf](#).

<sup>12</sup> “*National Clinical Assessment Framework for Children and Young People in Out-of-Home Care*” March 2011, [national-clinical-assessment-framework-for-children-and-young-people-in-out-of-home-care.pdf](#).

<sup>13</sup> McLean, K., Hiscock, H., and Goldfeld, “Timeliness and extent of health service use by Victorian (Australian) children within first year after entry to out-of-home care: Retrospective data linkage cohort study,” *Child and Youth Services Review* 134 (2022) 106359.

<sup>14</sup> McLean, K., Hiscock, H., and Goldfeld, “Timeliness and extent of health service use by Victorian (Australian) children within first year after entry to out-of-home care: Retrospective data linkage cohort study,” *Child and Youth Services Review* 134 (2022) 106359.

<sup>15</sup> Queensland Commission of Inquiry into the Child Safety System, at [www.childsafetyinquiry.qld.gov.au](#).

<sup>16</sup> Queensland Commission of Inquiry into the Child Safety, Day 33, 3 February 2026, transcript pg 3868.

<sup>17</sup> Queensland Commission of Inquiry into the Child Safety, Day 33, 3 February 2026, transcript pg 3870.

<sup>18</sup> Queensland Commission of Inquiry into the Child Safety, Day 33, 3 February 2026, transcript pg 3874.

<sup>19</sup> Queensland Commission of Inquiry into the Child Safety, Day 33, 3 February 2026, transcript pg 3878.



access to care is essential to address children's multiple and complex unmet health needs and to start their recovery from trauma.

## Data on children in out-of-home care

The latest data in respect of children in out-of-home care is from the Australian Institute of Health and Welfare's (AIHW), the "*Child Protection Australia 2023-24*" report.<sup>20</sup> The Productivity Commission reports on the Closing the Gap Targets, which are relevant Aboriginal and Torres Strait Islander children in out-of-home care. The salient points from these data sets are below:

- **The total number of children in out-of-home care is decreasing:** On 30 June 2024, 44,900 Australian children were in out-of-home care. Between 30 June 2020 and 30 June 2024, the number of children in out-of-home care decreased from 8.2 to 7.7 per 1,000.<sup>21</sup>
- **Aboriginal or Torres Strait Islander are significantly overrepresented in out-of-home care:** Of the 44,900 children in out-of-home care on 30 June 2024, 20,000 were Aboriginal or Torres Strait Islander. Aboriginal or Torres Strait Islander Children are 9.6 times more likely to be in out-of-home care.<sup>22</sup>
- **The Closing the Gap target to reduce the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care is worsening.** By 2031, Closing the Gap Target 12 seeks to reduce the rate of overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent. The Productivity Commission reports that, nationally, this target is deteriorating. In 2019, 47.3 per 1,000 Aboriginal and Torres Strait Islander children were in out-of-home care. In 2024, the rate was 50.3 per 1,000 children.<sup>23</sup> For non-Indigenous children, the rate is 4.6 per 1,000 children.

## Data on Statutory Kinship and Foster Carers

Data on the number, characteristics and employment status of statutory kinship and foster carers is outlined below.

### Households

On 30 June 2024 in Australia:

- **Foster Carer Households:** there were about 8,000 foster care households with a child in their care. Of these households, 47.1 per cent had two or more children in their care.<sup>24</sup>
- **Kinship Care Households:** there were about 16,000 kinship care households with a child in their care. Of these households, 35.1 per cent had two or more children in their care.<sup>25</sup>

Foster and kinship carers often have more than one child in their care with precedence given to placing siblings together. There is strong evidence that placing siblings together improves their outcomes,<sup>26</sup> and it supports Aboriginal and Torres Strait Islander children in maintaining connections to family and culture.<sup>27</sup>

<sup>20</sup> Australian Institute of Health and Welfare, Child Protection Australia 2023-24, [Child protection Australia 2023-24, Report editions - Australian Institute of Health and Welfare](#).

<sup>21</sup> Australian Institute of Health and Welfare, Child Protection Australia 2023-24, [Child protection Australia 2023-24, Report editions - Australian Institute of Health and Welfare](#).

<sup>22</sup> SNAICC National Voice for our Children, "*Family Matters Report 2025, Strong, loved and full of potential*", 2025, page 2. [Family Matters Report 2025](#).

<sup>23</sup> Productivity Commission, Closing the Gap, Information Repository, Child Protection data, <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/child-protection>.

<sup>24</sup> Australian Institute of Health and Welfare, Child Protection Australia 2023-24, [Child protection Australia 2023-24, Report editions - Australian Institute of Health and Welfare](#).

<sup>25</sup> Australian Institute of Health and Welfare, Child Protection Australia 2023-24, [Child protection Australia 2023-24, Report editions - Australian Institute of Health and Welfare](#).

<sup>26</sup> NSW Government Communities and Justice - Pathways of Care Longitudinal Study (POCLS)

<sup>27</sup> SNAICC – National Voice for our Children (2017), Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle.



## Characteristics

The NES review specifically requires consideration of the experiences of women and workers aged 55 and over. Statutory kinship and foster carers fall squarely within this cohort.

### Data

Data and research on statutory kinship and foster carers is largely collected through surveys, usually at a state or territory level.

An Australian Institute of Families Studies research report<sup>28</sup> found that in respect of statutory kinship and foster carers:

- 88 per cent of foster carers and 87 per cent of kinship carers were female.
- The median age of kinship and foster carers was 53 years and aging over time.
- 25 per cent were in part-time employment, 19 per cent were in full-time employment.
- Most carers had an annual gross household income of less than \$60,000, with one-fifth of carers relying on less than \$30,000.
- One third report that the child in their care had a developmental condition (intellectual disability, physical disability, diagnosed behavioural problem or diagnosed mental illness).

In Victoria in 2024, a foster carer survey<sup>29</sup> found:

- 78 per cent were female.
- 35 per cent worked full-time, 18 per cent worked part-time, 6 per cent worked casually or in contract work and 14 per cent were retired.
- 18 per cent report that the loss of income and superannuation was the most challenging aspect of being a foster carer.

In the 2024-25 South Australian annual survey of foster and kinship carers:<sup>30</sup>

- 87.4 per cent identified as female.
- 4.7 per cent identified as First Nations.
- 81 per cent had reduced or ended their employment to provide care.
- 19.9 per cent were employed on a part-time or casual basis. 17.3 per cent were employed full-time, 17.3 per cent were retired.
- 67 per cent reported that their superannuation had reduced because they were a career.

### Research

Research shows that foster carers engaged in work are more likely to be in part-time employment.<sup>31</sup>

Research studies of kinship carers have reported that becoming a carer affected their employment. Kinship carers reported struggling to manage their workloads and reducing their working hours to meet the needs of children in their care.<sup>32</sup> A recent study called for urgent reform to account for the needs of Aboriginal kinship carers in Western Australia to enable them to continue to provide care.<sup>33</sup>

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<sup>28</sup> Australia Institute of Families Studies, "Working Together to Care for Kids, A survey of foster and relative/kinship carers. Research Report" 2018.

<sup>29</sup> [Foster Care Association of Victoria, Carer Survey 2024 Report](#).

<sup>30</sup> Connecting Foster & Kinship Carers – SA, Annual Foster & Kinship Carer Survey Summary 2024-24, [Annual Foster & Kinship Carer Survey 2024-25](#).

<sup>31</sup> McHugh, M. and Valentine, K., "Financial and Non-Financial Support to Formal and Informal Out of Home Carers" Final Report, Social Policy Research Centre, University of New South Wales, January 2011, pg 6.

<sup>32</sup> See Williams, R., & Badry, D. E. (2023). Aboriginal kinship carers and carers of children with Fetal

Alcohol Spectrum Disorder in Western Australia: Advancing knowledge from an Indigenous and disability lens. First Peoples Child & Family Review, 18(1), 60-80.

<https://fpcfr.com/index.php/FPCFR/article/view/603>; DiGiacomo, M., Green, A., Delaney, P., Delaney, J., Patradon-Ho, P., Davidson, P. M., & Abbott, P. (2017). Experiences and needs of carers of Aboriginal children with a disability: a qualitative study. BMC Family Practice, 18(1), 96.





This demonstrates that foster and kinship care has a measurable workforce participation impact that is not currently recognised in the NES leave entitlements.

## Aboriginal and Torres Strait Islander statutory carers

As of 30 June 2024, 63.2 per cent of Aboriginal and Torres Strait Islander children in out-of-home care were living with kin (family) or Aboriginal and Torres Strait Islander carers.<sup>34</sup>

Aboriginal and Torres Strait Islander children remain significantly overrepresented in out-of-home care despite Closing the Gap Targets. Statutory kinship and foster carers provide long-term care but largely do not assume legal parenting responsibility or adopt Aboriginal and Torres Strait Islander children. Instead, they play an important role in supporting reunification with their birth parents, communities and culture. This is consistent with the Aboriginal and Torres Strait Islander Child Placement Principles, which are enshrined in child protection legislation in all states and territories.<sup>35</sup>

## Statutory kinship and foster carer allowances are a small contribution to cover the costs or the needs of the child

Statutory kinship and foster carers receive a subsidy or allowance to partially cover the support needs of the children in their care from the state or territory government. It is not a full reimbursement of the costs associated with caring. The average carer allowance in Australia varies between \$457 and \$787 per fortnight (\$11,942 and \$20,462 per annum) depending on the age of the child and the jurisdiction responsible for providing the payment to the carer.<sup>36</sup> There is no contribution to the carer's superannuation.

Statutory kinship and foster carers manage complex medical assessments and management plans. Often, they also pay very significant costs for treatment. This should be reimbursed by the state or territory department responsible for child protection, although such reimbursements are often not timely and/or received at all.<sup>37</sup>

## Who is the parent and is responsible for a child in out-of-home care?

Statutory kinship and foster carers have the care of a child in out-of-home care but not the legal responsibility, which remains with the state and/or their birth parent. While legal rights and responsibility may remain with the state or birth parents, the day-to-day parenting responsibilities fall entirely to statutory kinship and foster carers. The NES framework does not reflect this reality.

## How long are children in out-of-home care?

Statutory kinship and foster care placements for children in out-of-home care are incorrectly assumed to be 'temporary' or 'short-term' or *emergency placements*, but most last several years. In 2023-24, 69 per cent of children in out-of-home care had been in care for two or more years.<sup>38</sup>

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<https://doi.org/10.1186/s12875-017-0668-3>; and Kiraly, M. (2023). In loco parentis: Informal kinship care in Australia—social benefit and material poverty. *Societies*, 13(11), 227. <https://www.mdpi.com/2075-4698/13/11/227>.

<sup>33</sup> J. Jones, S. Moodie, R. Chenhall, J. Brook, R. Williams, K. Davis, C. Garlett, A. Gibberd, E. Banks, B. Harrap, M. O'Donnell, B. McNamara, S. Eades, 'Our babies are our gold': The experiences of aboriginal kinship carers in Western Australia, *Children and Youth Services Review* (2026), doi: <https://doi.org/10.1016/j.childyouth.2026.108827>.

<sup>34</sup> Australian Institute of Health and Welfare, Child Protection Australia 2023-24, [Child protection Australia 2023-24, Report editions - Australian Institute of Health and Welfare](#).

<sup>35</sup> The Aboriginal and Torres Strait Islander Child Placement Principle has been shaped by Aboriginal and Torres Strait Islander leaders and community-controlled child welfare organisations, emerging from grassroots advocacy in the 1970s in response to the profound harms caused by child removal policies, including those that led to the Stolen Generations, and was formally recognised in Australian child welfare legislation in the early 1980s. Across all Australian jurisdictions, the Aboriginal and Torres Strait Islander Child Placement Principle is embedded in legislation, policy and practice and is foundational to building a culturally safe national child protection system that uphold the rights of Aboriginal and Torres Strait Islander children, families and communities. The Aboriginal and Torres Strait Islander Child Placement Principles include "support family-led decision-making, prevent unnecessary entry into care and promote family reunification where separation occurs", see [Child Placement Principle | National Framework | SNAICC](#).

<sup>36</sup> State and territory websites, published carer base rates 2025-26

<sup>37</sup> For example, see Queensland Commission of Inquiry into the Child Safety, Day 33, 3 February 2026, transcript pages 3880.

<sup>38</sup> Australian Institute of Health and Welfare, Child Protection Australia 2023-24, [Child protection Australia 2023-24, Report editions - Australian Institute of Health and Welfare](#).



Although placements in foster families are lengthy, case plans commonly prioritise reunification with the child's birth family. This means foster and kinship carers are unlikely to become the child's legal parents, adopt them or even have a long-term care order for them—particularly for Aboriginal and Torres Strait Islander children, where maintaining family and cultural connections is paramount. As a result, statutory kinship and foster carers are generally ineligible for parental leave under the National Employment Standards, despite providing full-time, day-to-day parenting and meeting children's medical, educational and developmental needs over many years.

Long-term placements in foster or kinship care reflect the complex challenges many birth families face, including family and domestic violence, mental health concerns, substance misuse, housing insecurity, and poverty. These family challenges increase the risk of child harm and must be addressed before a child can safely return to their birth family.<sup>39</sup> Many children age out of out-of-home care without reunification with birth parents being possible.

Reunification work with birth parents is often highly intensive and long-term, and if assessed as safe, reunification usually involves a gradual increase in supervised contact over time. Given this reality, it is important to note that statutory kinship and foster carers cannot reasonably be characterised as short-term volunteer activity for the purposes of the NES Parental Leave entitlement. The position is anomalous: had the child remained safely with their birth parents, those parents would have been entitled to parental leave, yet the carer who assumes full parental responsibility receives none.

### Fit for Purpose in a Changing Labour Market

The NES was designed in a labour market characterised by single-income households and lower female workforce participation. Contemporary Australia is defined by dual-income households, high female participation, and cost-of-living pressures.

Without formal recognition of statutory and kinship carers caring responsibilities, workforce participation is compromised, carers exit the workforce and then rely on Centrelink benefits. The NES, as currently structured, does not reflect the current labour market realities. The absence of establishment leave disproportionately impacts women in mid-to-late career stages, exacerbating superannuation inequity and workforce exit.

### Recommended Additional Data Collection

Child protection is a state-based responsibility. States and territories survey accredited foster carers and kinship carers. However, introducing state or national data collection for accredited foster carers and kinship carers would assist to better understand the population and the risk of workforce attrition due to inadequate leave protections under the NES. Data collection could include employment status (full-time, part-time or casual); industry or occupation; employer size; age; gender; Aboriginal or Torres Strait Islander; and reduced hours, income loss or workforce exits.

