



Embedding the Aboriginal and Torres  
Strait Islander Child Placement Principle  
in the *Children and Young People Act*  
2008 (Act): FINAL REPORT

**October 2022**

**SNAICC – National Voice for Our Children**

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## Acronyms

**ACCO** – Aboriginal Community Controlled Organisation

**ACT** – Australian Capital Territory

**AFLDM** – Aboriginal Family Led Decision Making

**ATSICPP** – Aboriginal and Torres Strait Islander Child Placement Principle

**CSD** – Community Services Directorate

**CYPS** – Children and Youth Protective Services

**FGC** – Family Group Conference

**OOHC** – Out-of-home care

**UNCRC** - United Nations Convention on the Rights of the Child

**UNDRIP**- United Nations Declaration on the Rights of Indigenous Peoples

## 1. Executive summary

In 2020-21, Aboriginal and Torres Strait Islander children in the Australian Capital Territory (ACT) were 13.8 times more likely than non-Indigenous children to be in out-of-home care (OOHC).<sup>1</sup> This is well above the national rate of 11.5 times for the same period.<sup>2</sup> Of the children in OOHC, 48.5% have been in care for five years or more.<sup>3</sup> This is an unacceptable rate of overrepresentation that must be addressed. Discriminatory policies and practices resulting in the systematic removal of Aboriginal and Torres Strait Islander children from their families and communities has caused significant trauma for generations of families. After decades of advocacy from Aboriginal and Torres Strait Islander people, SNAICC – National Voice for our Children as the national peak body for Aboriginal and Torres Strait Islander children, together with its founding members and leaders, led the development of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP).<sup>4</sup> The ATISCPP is a framework that recognises the strengths of Aboriginal and Torres Strait Islander families and the importance of culture and connection to the wellbeing of children and aims to keep families together.<sup>5</sup>

The ACT is currently in a period of reform following the release of the *Our Booris, Our Way* Review final report in 2019. *The Our Booris, Our Way* Review considered how to reduce over-representation of Aboriginal and Torres Strait Islander children in the child protection system and held significant consultations with Aboriginal and Torres Strait Islander people in the ACT.<sup>6</sup> *Our Booris, Our Way* made 28 recommendations for reform across legislation, policy, and practice. Recommendation 5 of the review was to embed the full intent of the ATSICPP in the *Children and Young People Act 2008* (Act).<sup>7</sup> SNAICC was engaged by the ACT Community Services Directorate (CSD) to undertake a consultation process, under the guidance of the *Our Booris, Our Way* chair and Implementation Oversight Committee, to provide advice to the Government on how the ATSICPP can be included in the legislation and implement recommendation 5.

SNAICC undertook a consultation process that included community forums, an online survey and discussion paper. Over 70 stakeholders contributed to the consultation process throughout May-August 2022. This report summarises the contributions of stakeholders under each of the five elements of the ATSICPP and makes 23 recommendations for changes to the legislation with supporting policy and practice changes required for implementation (for a summary of all recommendations see appendix A).

SNAICC was engaged to complete a complementary piece of work in parallel focused on the definition of kinship carers in the ACT. Deciding who is or not considered a kinship carer and the process for doing so is essential for proper implementation of the ATISCPP, kinship carers are the highest priority placement for children in in out-of-home care. The *Our Booris, Our Way* Review highlighted significant issues with the current definition of kinship carers in the ACT, issues that are resulting in barriers to determining how many Aboriginal and Torres Strait Islander children in care are placed in line with the ATSICPP<sup>8</sup>. As part of the consultations SNAICC spoke with community members about who should be

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<sup>1</sup> Australian Institute of Health and Welfare (AIHW), *Child protection Australia 2020–21*, 2022, available from: <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/out-of-home-care/characteristics-of-children-in-out-of-home-care>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> SNAICC – National Voice for our Children (SNAICC), *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*, 2019, available from: [https://www.snaicc.org.au/wp-content/uploads/2019/06/928\\_SNAICC-ATISCPP-resource-June2019.pdf](https://www.snaicc.org.au/wp-content/uploads/2019/06/928_SNAICC-ATISCPP-resource-June2019.pdf)

<sup>5</sup> Ibid.

<sup>6</sup> Our Booris Our Way Steering Committee, *Our Booris, Our Way Final Report* 2019, pp. 5-12, available from: [https://www.strongfamilies.act.gov.au/\\_data/assets/pdf\\_file/0011/1457813/Our-Booris-Report-FINAL-REPORT.pdf](https://www.strongfamilies.act.gov.au/_data/assets/pdf_file/0011/1457813/Our-Booris-Report-FINAL-REPORT.pdf)

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

considered a kinship carer and how this should be determined for children who have contact with the child protection system. The 23 recommendations made in this report include recommendations for the identification of kinship carers according to Aboriginal and Torres Strait Islander cultural practices. A supplementary paper is provided in appendix E that provides the full consultation report and findings on defining kinship carers. Findings included that to ensure children are supported to stay connected to culture, there needs to be a distinction between Aboriginal and Torres Strait Islander kinship carers and other types of kinship carers, and that only families have the authority to decide who is kin for a child.

The ATSICPP is a holistic framework and proper implementation requires considering and applying each of the five elements in legislation, policy, and practice at every stage of a child's engagement with child protection systems. Fully implementing the ATSICPP requires shared decision making and Aboriginal and Torres Strait Islander led processes that ensure the five elements are applied in a locally specific and appropriate way. This report seeks to provide comprehensive advice to CSD on how the ATSICPP can be embedded in the *Children and Young People Act 2008* (Act) and how legislative reform can be supported through policy and practice as determined by Aboriginal and Torres Strait Islander people in the ACT.

## 2. *Our Booris, Our Way* Review

The *Our Booris, Our Way* Review was undertaken to consider how to reduce the over-representation of Aboriginal and Torres Strait Islander children at every stage of the child protection system.<sup>9</sup> The Review included consultations with community and organisations and the review of the experiences of over 300 Aboriginal and Torres Strait Islander children involved with the child protection system.<sup>10</sup> This significant report provides a comprehensive analysis of the of systemic issues in the ACT child protection system that are driving the overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system and how current policy and practice align with the elements of the ATSICPP. The review calls for a holistic approach to reducing overrepresentation that includes prevention, partnership and participation strategies that adhere more closely to the ATSICPP.<sup>11</sup> It also calls for greater investment in restoration pathways for children on long term orders and connection for Aboriginal and Torres Strait Islander children in out-of-home care.<sup>12</sup>

*Our Booris, Our Way* make 28 recommendations that span legislation policy and practice. The *Our Booris, Our Way* Implementation Oversight Committee was established to oversee Government's implementation of the recommendations. This report is part of implementing recommendation 5 to ensure the full intent of the ATSICPP is reflected in the Children and Young People Act 2008. The recommendations made in this report are what is required for the full intention of the ATSICPP to be included in the legislation, based on community consultation and priorities, SNAICC's existing best practice resources and promising practice examples from other jurisdictions. While this report has a specific focus on the ATSICPP and the Children and Young People Act, the recommendations for legislative reform are supported by policy and practice recommendations, all of which will have significant cross over with a range of the *Our Booris, Our Way* recommendations.

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<sup>9</sup> Our Booris Our Way Steering Committee, *Our Booris, Our Way Final Report*, 2019, available from:

[https://www.strongfamilies.act.gov.au/\\_data/assets/pdf\\_file/0011/1457813/Our-Booris-Report-FINAL-REPORT.pdf](https://www.strongfamilies.act.gov.au/_data/assets/pdf_file/0011/1457813/Our-Booris-Report-FINAL-REPORT.pdf)

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

Table 1: Recommendation 5 of the *Our Booris, Our Way* Review<sup>13</sup>

5	Ensure full intent of Aboriginal and Torres Strait Islander child placement principle is reflected in the Children and Young People Act 2008	December 2018
<p>The child placement principle needs to be explicitly enshrined in legislation. We recommend that the Directorate commence foundation, consultation and research work required to ensure the Aboriginal and Torres Strait Islander Child Placement Principles (CPP) are appropriately described in the Children and Young People Act. This will require, at a minimum, changes to both Sections 10 and 513 of the Children and Young People Act.</p> <p>This legislative change is to recognise the importance of each element of the principle to the Aboriginal and Torres Strait Islander community and their role in changing the practices around child protection that disproportionately impact our community.</p> <p>Legislative change will expedite extensive policy and practice revision and facilitate subsequent performance monitoring and measurement of achievement against these legislative parameters giving additional transparency to the practices and decisions of the Directorate.</p> <p>Acceptance of this recommendation would bring the ACT legislation into a more contemporary practice in alignment with the most recent Family Matters report and also similar to the jurisdictions that have made significant changes to their child protection legislation in Queensland and Victoria.</p>		
INFORMATION FROM THE DIRECTORATE		STEERING COMMITTEE RESPONSE
<p>Agreed.</p> <p>CSD is co-leading (with Queensland) national work to support the implementation of the ATSICPP across all states and territories. The ACT is co-sponsoring (with Queensland) the national Priority One Working Group under the Fourth Action Plan for the National Framework for Protecting Australia's Children 2009-2020. This includes work to actively implement legislation, policy and/or practice to ensure compliance with the five elements of the ATSICPP and to develop a nationally consistent approach to measuring the application of the five elements through data collection and reporting. The workplan for the Priority One Working Group was agreed by all jurisdictions at the Children and Families Secretaries (CAFS) meeting on 13 August 2019 and jurisdictions will now develop project plans to deliver on this national work.</p> <p>CSD is in the process of discussing the policy parameters for the ACT to inform the legislative change required. Work has commenced in drafting an outline of the policy requirements to be detailed. Further work to describe the process to implement for external input into decision making will be undertaken with members of the Aboriginal and Torres Strait Islander community and potentially through the newly established Policy and Practice Co-Design Forum. It is expected to complete this work by the end of the third quarter of 2019-20 (i.e. by March 2020). This will then inform the legislative changes to be made.</p>		<p><i>The Steering Committee understand that legislative change can be a prolonged process, however, there needs to be some more definitive timelines against this recommendation and requires ongoing monitoring.</i></p> <p><i>The ACT must use the co-sponsoring opportunity with Queensland to positively influence key performance indicators that take account of both quality and outcomes for children in out of home care, not simply quantitative measures (for example cultural plans).</i></p>

<sup>13</sup> Image source: Our Booris Our Way Steering Committee, *Our Booris, Our Way Final Report* 2019, pp. 77, available from: [https://www.strongfamilies.act.gov.au/\\_data/assets/pdf\\_file/0011/1457813/Our-Booris-Report-FINAL-REPORT.pdf](https://www.strongfamilies.act.gov.au/_data/assets/pdf_file/0011/1457813/Our-Booris-Report-FINAL-REPORT.pdf)

### 3. The Aboriginal and Torres Strait Islander Child Placement Principle

The ATSICPP recognises the importance of connections to family, community, culture and country in child and family welfare legislation, policy, and practice, and asserts that self-determining communities are central to supporting and maintaining those connections<sup>14</sup>.

It was founded on an intent of systemic change to counter embedded racism that caused the Stolen Generations by explicitly recognising the value of culture and the vital role of Aboriginal and Torres Strait Islander children, families, and communities to participate in decisions about the safety and wellbeing of children.

The ATSICPP aims to:

- 1.ensure an understanding that culture underpins and is integral to safety and wellbeing for Aboriginal and Torres Strait Islander children is embedded in policy and practice;
- 2.recognise and protect the rights of Aboriginal and Torres Strait Islander children, family members and communities in child welfare matters;
- 3.increase the level of self-determination of Aboriginal and Torres Strait Islander people in child welfare matters; and
- 4.reduce the over-representation of Aboriginal and Torres Strait Islander children in child protection and out-of-home care systems.<sup>15</sup>

The ATSICPP protects key human rights of children and Aboriginal and Torres Strait Islander peoples, particularly as recognised in the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Notably, it ensures the rights of children to be protected from harm including through preventative social programs (UNCRC, article 19), to the enjoyment of their cultures in community with their cultural groups (UNCRC, article 30; UNDRIP, articles 11-13) and the rights of Aboriginal and Torres Strait Islander children, families, and communities to participate in decisions that impact upon them (UNCRC, article 12; UNDRIP, articles 3-5, 18-19). Figure 1 shows the five elements of the ATSICPP, the additional focus area of identification is not included in the diagram below but is an important component of implementing the ATSICPP.<sup>16</sup>

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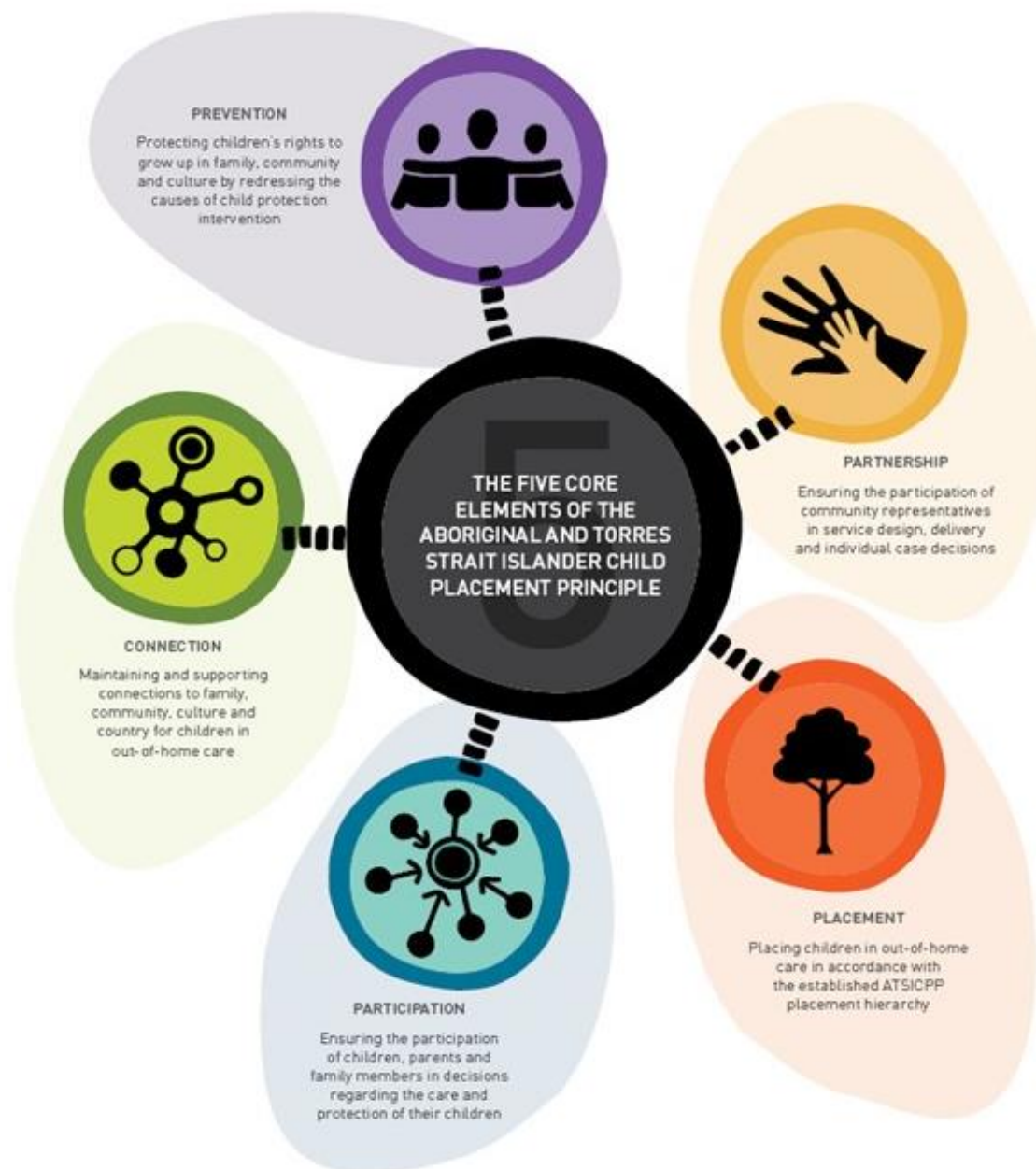
<sup>14</sup>SNAICC, *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy, and program development*, 2019, available from: [https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding\\_applying\\_ATSICPP.pdf](https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding_applying_ATSICPP.pdf)

<sup>15</sup> Ibid pp.2

<sup>16</sup> Ibid pp.2



Figure 1: The five core elements of the Aboriginal and Torres Strait Islander Child Placement Principle<sup>17</sup>



<sup>17</sup> Image source: SNAICC, *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy, and program development*, 2019, available from: [https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding\\_applying\\_ATSICPP.pdf](https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding_applying_ATSICPP.pdf)

## Understanding the five elements

The table below provides a detailed description of each of the five core elements of the ATSICPP. It draws on the research evidence base describing the ATSICPP and its constituent elements, and on the guidance of Aboriginal and Torres Strait Islander leaders in the child and family services sector.<sup>18</sup>

Table 2: Understanding the five elements of ATSICPP

Identification	Description
<b>All children and families, including maternal and paternal extended family members, where appropriate, are asked whether they are Aboriginal and/or Torres Strait Islander.</b>	<p>Aboriginal and/or Torres Strait Islander children have a right to grow up with a communal sense of belonging, a stable sense of identity, to know where they are from, and their place in relation to family, mob, community, land, and culture. Protecting these rights requires that Aboriginal and Torres Strait Islander children who come into contact with the child protection system be identified at the earliest possible point of child protection involvement.</p> <p>This practice focus area examines the following key issues on identification:</p> <ul style="list-style-type: none"> <li>• Need for adopting appropriate legislative and policy frameworks to support early identification;</li> <li>• Definition of an Aboriginal and/or Torres Strait Islander child;</li> <li>• Best practice for identifying Aboriginal and/or Torres Strait Islander children and families; and</li> <li>• Key practice considerations.</li> </ul>
Prevention	Description
<b>Each Aboriginal and Torres Strait Islander child has the right to be brought up within their own family and community</b>	<p>Supporting families and building-up communities to care safely for their children will protect future generations from the devastating effects of removal from family, community, culture, and country. To protect the rights of children to be brought up in their families, it is necessary to ensure families have equitable access to quality service supports including:</p> <ul style="list-style-type: none"> <li>• a full range of culturally safe universal early childhood, education, health and other social services;</li> <li>• targeted and intensive supports to address issues in family functioning, promote healing, and address specific parental issues including trauma, substance misuse, mental health issues, family violence and poverty;</li> <li>• adequate and appropriate housing;</li> <li>• culturally safe family violence prevention, legal and support services;</li> </ul>

<sup>18</sup> SNAICC, *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy, and program development*, 2019, pp. 4-5, available from: [https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding\\_applying\\_ATSICPP.pdf](https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding_applying_ATSICPP.pdf)

	<ul style="list-style-type: none"> <li>• alternative intake and referral pathways to early intervention prior to families engaging with child protection systems; and</li> <li>• an integrated and holistic service system that provides vulnerable families with the opportunity to readily engage with the full range of culturally safe service supports they require.</li> </ul>
<b>Partnership</b>	<b>Description</b>
<p>The participation of Aboriginal and Torres Strait Islander community representatives, external to the statutory agency, is required in all child protection decision-making, including in:</p> <ul style="list-style-type: none"> <li>• individual case decisions at intake, assessment, intervention, placement and care, and judicial decision-making processes; and</li> <li>• the design and delivery of child and family services</li> </ul>	<p>Participation must extend beyond consultation to genuinely include Aboriginal and Torres Strait Islander community representatives in the decisions that are made about children at all stages of child and family welfare decision-making. Protecting the rights of representative participation requires:</p> <ul style="list-style-type: none"> <li>• coverage and capacity of Aboriginal and Torres Strait Islander organisations to lead holistic, integrated prevention, early intervention and out-of-home care service delivery based on their knowledge of local needs;</li> <li>• resourced roles to inform the design of child and family welfare policy and service models at local, state and federal levels;</li> <li>• a resourced legislative role for participation in all child protection decisions;</li> <li>• empowering community-based organisations to facilitate family decision-making processes for all families where child safety concerns are identified;</li> <li>• supporting community-based representative child safety structures to promote safety and wellbeing, input to decision-making about the welfare of children and families, and drive local early intervention and prevention strategies;</li> <li>• building capacity of Aboriginal and Torres Strait Islander organisations and professionals in the sector to deliver the full range of services required; and</li> <li>• ensuring adequate, culturally safe legal representation opportunities.</li> </ul>
<b>Placement</b>	<b>Description</b>
<p>Placement of an Aboriginal or Torres Strait Islander child in out-of-home care is prioritised in the following way:</p> <ol style="list-style-type: none"> <li>1. with Aboriginal or Torres Strait Islander relatives or extended family members, or other relatives or extended family members; or</li> </ol>	<p>Placement in accordance with the hierarchy of placement options seeks to ensure that the highest level of connection possible is maintained for a child to their Aboriginal and/or Torres Strait Islander family, community, culture, and country. Proper application of the placement hierarchy requires child protection decision makers to exhaust all possible options at one level of the hierarchy before considering a lower-order placement.</p>

<p>2. with Aboriginal or Torres Strait Islander members of the child's community; or</p> <p>3. with Aboriginal or Torres Strait Islander family-based carers. If the above preferred options are not available, as a last resort the child may be placed with:</p> <p>4. a non-Indigenous carer or in a residential setting.</p> <p>If the child is not placed with their extended Aboriginal or Torres Strait Islander family, the placement must be within close geographic proximity to the child's family.</p>	<p>No placement should be made unless consultation with the child's family and community representatives can be demonstrated to ensure all possible higher-order placement options have been considered. Community representatives should be able to provide independent advice to the courts on the most appropriate care options.</p> <p>It is essential that policies and procedures are in place to ensure proper implementation of the placement hierarchy, as well as staff capacity to effectively implement it. A thorough process of family mapping, searching for and finding family carers should be integrated into child protection practice to inform initial placements, placement changes and regular placement review. Procedures must also include thorough requirements to ensure children's Aboriginal and/or Torres Strait Islander status is identified at the earliest possible opportunity so that placements connected to culture are explored.</p>
Participation	Description
<p>Aboriginal and Torres Strait Islander children, parents and family members are entitled to participate in all child protection decisions affecting them, including intervention, placement and care, and judicial decisions</p>	<p>Aboriginal and Torres Strait Islander children and families have the best knowledge about the caring strengths and risks that exist in their own families and communities. Involving family members in decision-making can assist to widen circles of support for parents and children, identify placement options with family and community and ensure families take responsibility for plans to address safety concerns that are of their own making. Ensuring the rights of Aboriginal and Torres Strait Islander children and families to participate in decisions affecting them requires:</p> <ul style="list-style-type: none"> <li>• high cultural competency of professionals to engage families in child protection decision-making processes;</li> <li>• family participation in case planning; and</li> <li>• quality family decision-making processes. In particular, taking into account the expressed wishes of the child requires:</li> <li>• availability of child advocates ensuring adequate representation for Aboriginal and Torres Strait Islander children; and</li> <li>• adequate procedures and professional capacity to support participation of children in child-protection decision-making.</li> </ul>
Connection	Description
<p>Aboriginal and Torres Strait Islander children in out-of-home care are supported to maintain</p>	<p>To ensure that Aboriginal and Torres Strait Islander children in out-of-home care do not endure the same sense of loss of identity and dislocation from family and community as the</p>

<p>connections to their family, community, culture, and country, especially children placed with non-Indigenous carers</p>	<p>Stolen Generations, it is critical to actively support them to maintain or to re-establish their connections to family, community, culture, and country.</p> <p>Protecting children’s rights to maintain cultural connections requires that:</p> <ul style="list-style-type: none"> <li>• cultural care plans are developed, resourced, and implemented for every child;</li> <li>• carers make and are held accountable to their commitment to maintaining cultural connections for children;</li> <li>• cultural care arrangements are regularly reviewed and updated to ensure an enduring commitment to maintaining connections is demonstrated;</li> <li>• reunification is considered early, and plans and culturally safe supports put in place to support reunification where it is identified as possible;</li> <li>• options for reunification and reconnection are regularly reviewed, supported and advanced wherever possible; and</li> <li>• decisions relating to permanency of care do not cause harm by severing the potential for future cultural connections for Aboriginal and Torres Strait Islander children.</li> </ul>
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#### 4. Children and Young People Act 2008 (Act)

The legislation that currently regulates the child protection system in the ACT is the *Children and Young People Act 2008* (Act). There are sections of the current Act that address elements of the ATSICPP. SNAICC conducted baseline analysis of legislative alignment with the ATSICPP in 2018, table 3 provides a summary of the current alignment of the legislation with the ATSICPP from this original analysis that has been updated to reflect relevant changes since 2018.

Table 3: Current alignment with the ATSICPP in the Children and Young People Act 2008<sup>19</sup>

Summary of current alignment with the ATSICPP in the ACT legislation				
Refers to the <i>Children and Young People Act 2008</i> (Act) unless otherwise stated				
PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
ACT legislation contains several provisions recognising the role of family, responsibility of the State to support family, and importance of cultural identity and connections for children – as objects and principles of the Act as a whole (s7, 9), and in relation to the care and protection chapters in particular (s350). ‘Family member’ is given a broad definition that includes a person who has responsibility for a child in accordance with traditions	There is no provision recognising or upholding the right to self-determination within the Act. Section 7 states as an object of the Act – ‘ensuring that Aboriginal and Torres Strait Islander people are included and participate’ in promoting children’s wellbeing, care, and protection. Representative participation translates in the Act as a requirement that decision-makers ‘must’ consider ‘submissions made by any Aboriginal or Torres Strait	ACT legislation does not use the term ATSICPP. Instead, it refers to <i>Priorities for placement with an out-of-home carer – Aboriginal or Torres Strait Islander child or young person</i> (s513). Section 513 aligns strongly with the best practice approach to the placement hierarchy – if an Aboriginal or Torres Strait Islander child is to be placed in OOHC, the child ‘must be placed with the first of the [following] options’ that ‘is available’, ‘to which the child does not	ACT legislation values and seeks to enable child and family participation in decision-making. In determining a child’s best interests, a decision-maker must consider the views and wishes expressed by a child (s349(1)(b)). A child must be given ‘a reasonable opportunity’ to express views and wishes personally or by a representative (s352). Section 513(1)(b) also states that the child must not ‘object’ to the placement.	The Aboriginal and Torres Strait Islander children and young people principle (s10) supports the need for connection with lifestyle, traditions, and culture of their community. The Care and Protection Principles (s350(2)) underpinning decision making, refers to section 10 where the principles for Aboriginal and Torres Strait Islander children and young people are set out. This requires decision makers must take into account, , the

<sup>19</sup> SNAICC, *Baseline Analysis of Best Practice Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, Australian Capital Territory, 2018*, pp. 4-6, available from: <https://www.snaicc.org.au/wp-content/uploads/2019/02/ATSICCP-Baseline-ACT-Final-April-2018.pdf>

<p>and customs of the child's Aboriginal or Torres Strait Islander community (s13(b)). In relation to Aboriginal and Torres Strait Islander children, decision-makers must consider the need to maintain connections with 'lifestyle, culture, and traditions' (s10). Best interests considerations in the care and protection chapters include likely effect of separation from parents or other persons, practicalities of maintaining contact, and for Aboriginal and Torres Strait Islander children – the 'high priority' of protecting/promoting cultural and spiritual identity and development, by wherever possible, maintaining and building connections to family, community, and culture (s349). The Director-General can only take Emergency Action if they believe on reasonable grounds that the child is in need of emergency care and protection. The Director-General can only make an</p>	<p>Islander people or organisations identified by the Director General as providing ongoing support services [to the child or family]' (s10). However, there are no requirements to ensure such a submission is sought or obtained. A similar requirement applies to enduring parental responsibility provisions – such a provision can only be made after several matters are satisfied, including the provision of a written report by an Aboriginal or Torres Strait Islander person or organisation that has provided ongoing support to the child/family (s482) (see 'Connection'). There are several provisions that allow for the Director General to delegate functions (s23) and powers, such as parental responsibility (s503A), however, it is not apparent that this has been designed for the delegation of case management, custody, and guardianship</p>	<p>object', and 'is consistent with any ... cultural plan in force'. The options in order are – kinship carer; foster carer who is a member of the child's Aboriginal or Torres Strait Islander community in a relationship of responsibility in accordance with local custom and practice; foster carer who is a member of the child's community; an Aboriginal or Torres Strait Islander foster carer; and a non-Indigenous foster carer who the Director General reasonably believes is sensitive to the child's needs and is capable of promoting ongoing contact with family, community, and culture, and if family reunion or continuing contact is a consideration, lives near the child's Aboriginal or Torres Strait Islander family or community.</p>	<p>To enable child and family participation, a decision-maker must endeavour to ensure families understand decisions, the decision-making process, and that they may take part in the decision-making process and have their views and wishes heard (s351). The Act provides for family group conferencing (FGC) in an effort to 'encourage the child ... and family ... to take part in decisions' (s74). A FGC may be arranged by the Director General to promote a child's wellbeing and make arrangements and agreements (s80). This may occur at the early stage of a child protection report (s361(3)(f) – see 'Prevention'). The facilitator of a FGC is appointed by the Director General (s78), may consult with 'someone with knowledge of a particular culture' (s79), and must invite the child (if satisfied that the child can understand and take part), parents (unless</p>	<p>need to protect and promote a child's cultural and spiritual identity through a child's right to cultural connections to family, community, and culture. The Act provides for contact provisions to be made on interim and final orders (s422, 433). A care plan is required for a child who is or is proposed to be subject to an interim or final order (s455). It should address needs, and for Aboriginal and Torres Strait Islander children 'the preservation and enhancement of identity' (s455(b)(ii)). This cultural plan can be either an attachment to, or integrated into, their care plan. Where there are ongoing care proceedings, the cultural plan is to be lodged with the ACT Childrens Court along with the child's care plan. Where stability proposals are required, adoption cannot be proposed for an Aboriginal and Torres Strait Islander</p>
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<p>application for a care and protection order if it has formed the view on reasonable grounds that the child is in need of care and protection. As a general principle, the court should only make an order for a child if it considers that 'the making of the order would be better for the child ... than making no order at all' (s350(1)(f)). Other provisions require that an order be 'necessary' and in the child's best interests (amongst other matters) (see s464). This language arguably provides less restriction on removal than identified best practice which would restrict removal to where there is an 'unacceptable risk of harm' or as a 'last resort'.</p> <p>In terms of early intervention supports, the Director General's functions include 'providing, or assisting in providing, services directed to strengthening and supporting families' (s22(1)(a)) and on receiving a child protection report the</p>	<p>functions and powers to ACCOs.</p> <p>The ACT is the only jurisdiction to have an Aboriginal and Torres Strait Islander Elected Body, established under the <i>Aboriginal and Torres Strait Islander Elected Body ACT 2008 (ACT)</i>. It supports the ACT Government to develop policy and provide services relevant to the needs of people within the community as well as advocating for accountability, transparency and effectiveness. It consists of seven people representing the interests and aspirations of the local Aboriginal and Torres Strait Islander community. The objects of the ACT include ensuring the maximum voice and participation of Aboriginal and Torres Strait Islanders in decisions that affect them.</p>		<p>not in the child or parent's best interests), and any person 'with an interest in, or knowledge of, the care, wellbeing, or development of the child' who the facilitator believes should attend (s83). If the child does not take part, the facilitator is to take reasonable steps to ascertain, present, and ensure consideration of the child's views (s83(2)). No persons may be legally represented in a FGC (s83(4)), but may have a support person present if the facilitator considers this support person to be appropriate (s83(5)). The Pilot program consists of two identified Aboriginal and Torres Strait Islander FGC Facilitator positions. The Directorate has partnered with Curijo Pty Ltd, an Aboriginal operated organisation certified with Supply Nation, to undertake the pilot.</p> <p>While there are no specific requirements for any Aboriginal and Torres Strait Islander person or</p>	<p>child unless additional prerequisites of s39G <i>Adoption Act 1993</i> (ACT) have been satisfied (s456(5)) (including consideration of adoption by an Aboriginal or Torres Strait Islander carer, need to maintain cultural connections, and seeking and considering views of Aboriginal and Torres Strait Islander persons or organisation). A stability plan for a child in OOHC may include a proposal for restoration that states the changes needed for safe restoration (s456(3)(b)(ii)). In the development of a care plan, the persons to be 'consulted' include the child, person with daily care responsibility, interested Aboriginal or Torres Strait Islander people, and any Aboriginal or Torres Strait Islander people or organisation identified by the Director General as providing ongoing support services to the child/family (s457). There is a presumption that a long-term parental</p>
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Director General may make a referral to a government or community-based service, provide or arrange support services, or arrange family group conferencing (s361(3)(d)l(f)).			<p>organisation to participate, this may be identified by the family in collaboration with the Aboriginal FGC Facilitator. A decision at a FGC may form an agreement to be implemented (s85-90).</p> <p>In terms of court proceedings, the <i>Court Procedures Act 2004</i> (ACT) provides that parents must attend proceedings (s71) and a child's right to participate is encouraged, including by requirements that the court (s74B) or director general (s74A) ensure a child understands proceedings. Further, a court may only hear a proceeding if the child has a lawyer or the court is satisfied that the child has had a reasonable opportunity to obtain a lawyer and their best interests will be adequately represented (s74G).</p>	<p>responsibility provision is in the best interests of a child under 2 years of age in certain circumstances (in OOHC for 1 year) and other children in certain circumstances (in OOHC for 2 years). To rebut this, the parent or other person seeking care must show likelihood of resumption of care during the extension of a short-term parental responsibility provision (s477). The placement of the onus on parents/carers is at odds with practice in other jurisdictions and long-standing practice requiring the Directorate as model litigant to prove that a specific order is in a child's best interests.</p> <p>An enduring parental responsibility provision gives all care and responsibility to a stated person until a child is 18 years (s481). This provision can only be made after, amongst other matters, 1 year of care by the stated person, no one with parental responsibility (parents) is</p>
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				<p>willing/able to exercise daily or long-term care responsibility, and for Aboriginal and Torres Strait Islander children, an Aboriginal or Torres Strait Islander person or organisation that has provided ongoing support has been given reasonable opportunity to provide a written report (s482).</p>
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## 5. Consultation report

### Community forums

To ensure that legislative reform reflects community priorities SNAICC held community consultation forums in June and July 2022. The initial consultation session had 28 attendees including carers, parents, advocates, and service providers. The purpose of the initial consultation was to identify key issues in current application of the ATSICPP and how community think the legislation should function to address this. Consultation questions were open ended discussion questions based on those provided in the discussion paper (see appendix C).

SNAICC then developed a starting proposition of recommended functions for the legislation under each of the five elements and the additional focus area of identification and held a second consensus building workshop where SNAICC presented this starting proposition for review to the Expert Advisory Group and then an open community consensus building forum. There were 14 attendees with representatives from each of the organisations below at the consensus building forum.

Table 4: Community consultation forum attending organisations by ACCO status

ACCOs	Gugan Gulwan Youth Aboriginal Corporation
	<i>Our Booris, Our Way</i> Implementation Oversight committee
	Sisters in Spirit Aboriginal Corporation
	Winnunga Nimmityjah Aboriginal Health and Community Services
	Ngunnawal First Nations People Corporation
	ACT Elected Body
	Aboriginal Legal Service
Non-Indigenous services	Yeddung Mura
	Ozchild
	ACTCOSS
	EveryMan
	Relationships Australia

### Community Services Directorate and Non-Government Organisation forums

We also held five consultation sessions with staff within and advisory groups for CSD, key NGO service providers and a lived experience group throughout June-August 2022.

- **The Aboriginal and Torres Strait Islander Co-Design Network (Network).** The Network comprises of Aboriginal and Torres Strait Islander community members with lived experience expertise of human services in the ACT. The group works in partnership with the Directorate to inform service, practice, and policy changes.
- **The Ngura Naraganabang (Safety in the Pouch) Advisory Group.** A stakeholder group comprising all Aboriginal and Torres Strait Islander representatives in key services across government and non-government.
- **The Aboriginal Cultural Services Team (CST).** Comprising all Aboriginal and Torres Strait Islander staff who provide support for Aboriginal and Torres Strait Islander parents, families and children involved with CYPs in the ACT.<sup>20</sup>
- **CYPs leadership staff.** Senior management staff within CYPs

<sup>20</sup> ACT Government, Community Services Directorate. *The Aboriginal Cultural Services Team*, 2019, available from: [https://www.communityservices.act.gov.au/data/assets/pdf\\_file/0015/1333320/The-Aboriginal-Cultural-Services-Team-For-Community-Agencies.pdf](https://www.communityservices.act.gov.au/data/assets/pdf_file/0015/1333320/The-Aboriginal-Cultural-Services-Team-For-Community-Agencies.pdf)

## Discussion paper

A community discussion paper was available from May-July 2022 (see appendix C). The discussion paper was developed with the Expert Advisory Group and was designed to provide an additional way for community members and organisations to provide input into the process and to inform the development of consultation questions and the online survey. Only one submission to the discussion paper was received from Women's Legal Centre (see appendix D).

## Survey

An online survey was available from May-June 2022 as complementary engagement tool for people with a range of lived experiences of the child protection system in the ACT. The survey included 13 questions with a combination of rating scale and short answer response questions (for a full copy of the survey questions see appendix B).

SNAICC received 33 responses to the survey, 67.74% (n=21) of respondents identified as Aboriginal and/or Torres Strait Islander. Respondents had a range of experience in different roles in the child protection system, shown in table 5.

Table 5: Survey respondents by experience of the child protection system

Answer choices	Responses (%)	Responses (n)
<b>Foster carer/ non family carer</b>	9.09%	3
<b>Child/ young person</b>	0.00%	0
<b>Kinship carer</b>	24.24%	8
<b>Parent</b>	18.18%	6
<b>Family member</b>	18.18%	6
<b>Child protection service staff</b>	12.12%	4
<b>Children and family support service staff</b>	30.30%	10
<b>Extended family/ community member</b>	24.24%	8
<b>Legal or other advocate</b>	12.12%	4
<b>Worker in a related service (e.g., family violence, alcohol/other drugs, housing etc.)</b>	12.12%	4
<b>Prefer not to say</b>	6.06%	2
<b>Other</b>	9.09%	3
<b>Total</b>		33

## Wreck Bay and Alexander Maconochie Centre

The consultation methodology included community consultations with Aboriginal and Torres Strait Islander people and organisations in Wreck Bay. SNAICC was unable to connect with key stakeholders in Wreck Bay.

SNAICC also intended to hold consultations with Aboriginal and Torres Strait Islander people currently incarcerated at the Alexander Maconochie Centre. SNAICC were advised by CSD that due to the ongoing Covid-19 pandemic, protocols did not allow for consultations to take place.

These missing voices and perspectives are a limitation of the consultation findings.

## Findings

### Identification

When asked how well the identification element is currently being implemented in the ACT of survey respondents 4.55% (n=1) said well; 18.18% (n=4) said somewhat well; 59.09% (n=13) said not well and 18.18% (n=4) said they were not sure.

Across the survey responses and consultation sessions, SNAICC consistently heard that Aboriginal and Torres Strait Islander children and families are not being appropriately identified by CYPS. In both the community and government consultations SNAICC heard that the information being recorded about children's identity is often incorrect and/or lacks specificity or is tokenistic. For example, SNAICC heard about many instances where children who had spent some time in out-of-home care were told they had cultural connections to nations that were not correct or where true corrections were completely ignored.

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*[redacted for confidentiality] her identity as Torres Strait Islander was not even spoken about or mentioned and was totally ignored (Survey respondent)*

*In my experience, identifying Aboriginal and Torres Strait Islander children is a tokenistic action, where a box is ticked. Identifying should explore the child's culture - Country, kin, mob etc. (Survey respondent)*

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The impacts of this on children and families are that it significantly impacts cultural care planning and connection and can result in further disconnecting children from their identity and culture. Parents shared with us the challenges of having to undo the damage and confusion caused for children who were told incorrect things about their identity.

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*We have to explain to them they are not from where they have been told by the foster carers. We have to explain who their mob are. (Consultation participant)*

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Inconsistent and poor practice were considered the cause of inaccurate identification of Aboriginal and Torres Strait Islander children. Across all stakeholder groups there was agreement that not all CYPS staff were confident in having conversations with families about identity. There were examples of good practice, but this was based on individual practitioners rather than strong policies or training across CYPS. Many participants reported that they felt that CYPS staff were scared or did not know how to ask families respectfully about their identity and this led to them relying on other sources of information like service provider organisations.

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*They need to be trained better and they need to actually talk to families, not the cultural services team or any other organisation, actually ask the families and make sure that the information is correctly recorded and that foster carers and workers are telling children the correct things about their identity. (Consultation participant)*

*How can you be confident enough to remove a child from their parents but too scared to have a conversation about identity? (Consultation participant)*

*It's not government's place to be identifying or not identifying – that's up to the community (Consultation participant)*

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CYPS staff highlighted some key policy and process gaps for identifying Aboriginal and Torres Strait Islander children and families, in particular the confusion that some staff felt about how to ask about identity and who is the authority on the information. Solutions raised by both CYPS, and community stakeholders included improved training about how to speak with families about their identity and increasing understanding of why identity is so important to Aboriginal and Torres Strait Islander children and families. Participants were clear that the legislation needs to support policy and practice by recognising the importance of Aboriginal and Torres Strait Islander identity and that the government has an obligation to promote and protect Aboriginal and Torres Strait Islander identity. Policy and practice changes were also suggested in the form of increased support and training across CSD including cultural safety training and training on the ATSICPP as well as requiring mandatory completion of the identity fields in record management system.

### Prevention

When asked how well the prevention element is currently being implemented in the ACT no survey respondents said that prevention is currently happening well. 13.05% (n=3) said somewhat well; 65.22% (n=15) said not well and 21.74% (n=5) said they were not sure.

Prevention was seen by both CYPS and community consultation stakeholders as both the most important element of the ATSICPP and the element where the least investment and progress is being made. We heard that ACCOs are significantly under resourced for family support services and that funding was primarily directed to non-Indigenous organisations. Prevention includes access to the universal services required to support families to thrive, SNAICC heard from ACCOs that the funding environment does not support these services to be delivered and that ACCOs do a significant amount of unpaid family support work.

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*There's no investment in family preservation services with ACCOS. Most of the funding is with mainstream non-Aboriginal organisations which do not provide culturally relevant, responsive or safe services to families, children and young people. There are also no services that provide intensive family support and preservation to address issues that often bring families to the attention of child protection. Mental Health, drug and alcohol, family/domestic and sexual violence, housing, disengagement from education, culture and social supports. We have two main Aboriginal services here who don't have capacity to take on more but are dealing with the majority of families and young people with no real investment in building their capacity as the needs of families, children and young people become even more complex. What is missing is the genuine commitment from ACT Government to build indigenous capability in the community sector to continue the work they do. We also have no accountability around service funding agreements and indigenous expenditure in the early support space which goes to non aboriginal organisations. We also don't see true representation on governance committees of people with lived experience of the*

*system to codesign services in the prevention and preservation space. This should be mandatory as this will help to identify the needs of families to keep children safe at home and for young people to contribute as well. They are a cohort that continue to be overrepresented in out of home care and more needs to be done to keep them safe and with family (Survey respondent)*

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There is also a significant challenge for early support service delivery where to access many of the support programs families must have an open case with CYPS.. This was seen as a significant barrier to families wanting to engage in these programs for fear of having children removed and was not seen as 'early support' if the circumstances already required an open case with CYPS. Families should be able to access early support services without needing to be involved with CYPS. CYPS staff also acknowledged that this is a significant challenge for engaging families in these programs because families were fearful of having any further contact with CYPS. This also creates significant challenges for ACCOs who know the families and understand early support needs are prevented from supporting families because they cannot take self-referrals or respond without an open CYPS case.

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*We do not often witness engagement aimed at supporting women and their children to stay together or to avoid child removal.*

*Since we primarily engage with women to provide early intervention legal advice and support rather than crisis support or support for women appearing in court, we would expect to see evidence of services and supports aimed at keeping families together.”*  
(Women’s Legal Centre ACT, discussion paper submission)

*“In the Next Steps for our Kids 2022-2030: ACT Strategy to Strengthen Families and Keep Children and Young People Safe (Next Steps), the ACT Government observes that ‘Families told us they need to feel safe to ask for help and to be able to access support before risks escalate’.*

*The evidence we have observed in our child protection practice does not demonstrate that Aboriginal and Torres Strait Islander families feel safe asking for help or support, and fear emergency action being taken immediately if they do reach out for support.*  
(Women’s Legal Centre ACT, discussion paper submission)

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There was also a strong message that prevention was not being considered across the child protection continuum. SNAICC heard that families were not being given the opportunity or support, including for women experiencing family violence, to prevent more interventionist CYPS responses.

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*Why don’t they use all the money they spend on taking children away on actually supporting families? (Community Consultation participant)*

*We also believe that providing culturally safe supports for mothers experiencing family or domestic violence (rather than having children removed because mothers*

*have been unable to protect children from a violent perpetrator) would result in children being able to stay safely with their families. (Women's Legal Centre ACT, discussion paper submission)*

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ACCO stakeholders were clear that they wanted to deliver support services, but funding limited their capacity to do so. There were also concerns that any recommendations to recognise or strengthen the role of ACCOs in the legislation would lead to ACCOs having a mandate that they are not funded to fulfil. In particular participants from ACCOs spoke about the challenges of providing the holistic, wrap around service that families need in a limited funding environment where they are competing with large non-Indigenous organisations.

### Partnership

When asked how well the partnership element is currently being implemented in the ACT of the survey respondents 4.55% (n=1) said well; 8.70% (n=2) said somewhat well; 69.57% (n=16) said not well and 17.39% (n=4) said they were not sure.

There was a consistent message from all stakeholder groups that the relationship between Government and ACCOs and Aboriginal and Torres Strait Islander people in the ACT has completely broken down. Community members and ACCOs were clear that they are fatigued by consultation processes and promises of reform that are not resulting in any changes for families. Government and NGO stakeholders were unsure how to rebuild relationships and agreed that where there were strong relationships and informal partnerships, these were the result of individuals rather than collective efforts. The relationship breakdown is a significant issue. Government can contribute to repairing these relationships by delivering on reforms and investment in formal partnerships with ACCOs and funding ACCOs appropriately.

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*This won't mean nothing for our community, families, children or young people who are involved or at risk of involvement of the child protection system. Everyone is tired of hearing about the child placement principle and including it in legislation if it's not actually meaningful, beneficial, practical or culturally responsive to the needs of families, children and carers. In theory this is great, it looks pretty, makes you feel optimistic, but the truth is, unless it's going to stop the systemic issues, over representation and poor outcomes for our mob, it's going to be like every other plan, strategy and tag line that doesn't deliver. (Survey respondent)*

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One example of partnership that was cited as moving towards more shared decision making was the Aboriginal Co-Design Network, as described by one stakeholder:

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*Aboriginal and Torres Strait Islander people being equal partners with government in the child protection system- we are never equal, there is a power imbalance. Equality means we have what we need to effectively participate, lead and be the decision makers. It means we adjust our ways to be inclusive and hear from those who are ultimately affected by what the child protection system does to our families, children, young people, and community. We are not represented in the highest levels of government or child protection, we aren't at the decision-making table, we aren't the*



*ones leading the work and codesigning the solutions. When this starts to change then we can say we are equal partners. There are only a few examples where this dynamic is being shifted. One is the Aboriginal and Torres Strait Islander Codesign Network. People with lived experience, leading the work, being supported to build their capacity to understand the child protection system to help shape a new way of working and engaging to develop practical and strategic solutions. Other examples are handpicked people by government to represent the views of our community who are disengaged and not consulting. We continue to have people in rooms talking about the community, families, children and young people and what they need instead of with them. We will always miss the mark whilst this continues. (Survey respondent)*

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Service providers described the significant power imbalance between services and support staff for families and CYPS. There were examples of staff being told they were not allowed to speak in meetings or not being provided with sufficient information to advocate for or support families. There were descriptions of racism experienced by Aboriginal staff where when advocating for families they were accused of being angry and aggressive.

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*We try and advocate for our families, but we get either intentionally left out of the loop or can't get information. If we are able to be there we are ignored or told not to speak, then when you do you get labelled as an angry black woman who is 'being aggressive' (Consultation participant)*

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## Participation

No survey respondents said that participation is currently happening well in the ACT. 8.70% (n=2) respondents said somewhat well, 73.91% (n=17) said not well, 17.39% (n=4) said not sure.

It was a significant and extremely concerning finding that most community stakeholders reported not knowing that they had any right to participate in decision-making throughout engagement with CYPS. Stakeholders reported that families are not being informed either at all or well enough about the ATISCPP and their rights or the government's obligations to uphold these rights. The impact of the poor relationship and partnership was also raised here, ACCOs were the preferred organisations for families to engage with for participatory processes but ACCOs are not sufficiently resources or empowered to perform this role. CYPS staff also felt that this was an area for significant improvement for practice with all families.

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*Needs to be with people families trust – it doesn't come from CYPS. There is so much mistrust between mob and CYPS. (Consultation participant)*

*Services are culturally unsafe for families – need to address racism in existing services and respect the role of ACCOs. (Consultation participant)*

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The processes that do exist to support participation are hindered by this power and information asymmetry. Family group conferencing was not seen as a useful mechanism for family participation

because the process was not seen as culturally safe or independent. There were also significant concerns about how ACCOs and family members were excluded from these processes either explicitly or through the withholding of relevant information.

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*Make promises about being part of the care team and part of the decisions, but key people don't get invited and don't get information (Consultation participant)*

*We have family group conferencing which has some decision-making – but we can't get our kids in there. We're pushing to get FGC moved to the community, it needs to be independent. (Consultation participant)*

*Families don't understand their rights, processes, or what decisions they can be included in or not make. There is a tag line about family led decision making, but in practice decisions are made by child protection and supported by their Aboriginal staff. Families are brought together, "consulted" had their views and wishes heard but ultimately told of the decision outcome. The Family Group Conferencing is another process that is being tagged as family led decision making. This is a child protection process, to a family led, community led process with independent people. Its run by Aboriginal staff in child protection. There is no trust, it's also not seen as a safe space. I've had my experience with it and it was completely inappropriate. It should be outsourced to ACCOS or community to help facilitate these meetings where, how, and when it suits the family. My experience is that it's done too late, not in the right way and with inexperienced staff. It was about the family having a discussion, bringing everyone into a room without anyone's safety being considered to discuss what's happened and to make decisions about the children. These are often families who have had conflict, or no support and then you have Aboriginal workers who don't seem to know what their roles are. It was confusing and uncomfortable. This model is not family led decision making its misleading. (Survey Respondent)*

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There were a number of barriers for families to participate in decision-making and other processes for families. One was the lack of knowledge that these opportunities exist and should be being offered to families.

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*I was not invited to any formal discussions - I phoned the department every week to ask what I needed to do to get my grandson in my care. (Survey respondent)*

*In my experience in the out of home care system, families are sometimes actively excluded from decision making and completely disempowered. There is minimal effort to contact family and limited or no effort to be flexible in opportunities to participate. Often it feels that government make decisions, pass the decision on in written communication, and call that participation. (Survey respondent)*

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When families were provided an opportunity to participate, many felt silenced and their voices were not reflected in the final decisions, making the process feel pointless and further disempowering families. This was related to concerns that family group conferencing was being offered too late in the process.

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*Families are treated poorly, and our voices are silenced. we are treated like criminals and so are our support people even if they are from place like Gudan. Sometimes we are told not to even talk (Survey respondent)*

*Rarely invite family to the meetings, and ignore what they're saying anyway(Survey respondent)*

*Family group conferencing only happens when they are making placement decisions. By that time it is too late. (Consultation participant)*

*In our child protection practice, we do not commonly see evidence that Care and Protection works in partnership with Aboriginal or Torres Strait Islander people or organisations. Key issues include cases where families and children have not been consulted on the development of contact plans or cultural plans, contact plans and cultural plans have not been implemented (by the foster care organisations or by foster carers), and where interventions (such as decisions to remove a child) are not applied consistently. (Women's Legal Centre ACT, discussion paper submission)*

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The lack of accessible legal support for parents and families is a barrier to participation in process and decision-making. This was seen as one of the key drivers of the overuse of 18-year orders and parents not being able to participate properly or understand fully the processes and decisions.

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*Families are not even on an even playing field to be included in decision making. If families had the same money to get legal support, that would put families on a more even playing field. (Consultation participant)*

*Incarcerated parents – they get these documents given to them and they are told to sign, they are signing 18-year orders for their children when they don't even know what they're signing (Consultation participant)*

*There are no dedicated community and legal support services available to families who seek restoration of their children back into their care. These applications are generally not funded by Legal Aid ACT. The Red Cross Birth Advocacy Service does provide information and some support for families to advocate for themselves, however they do not provide ongoing representation and intensive case management services to support families seeking restoration. There is a huge gap in the community and legal service response to supporting families seeking restoration.*

*The Women's Legal Centre does provide advice and in some exceptional cases, social work support and legal representation, for cases where there is a good prospect of success in restoration occurring.*

*However, this work is intensive, and the Centre does not receive any specialist funding to do this valuable work. (Women's Legal Centre ACT, discussion paper submission)*

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Stakeholders were aware of the Cultural Services Team as one mechanism for supporting participation but did not see this as sufficient or independent. The Cultural Services Team were seen as being in a difficult position of not having enough resources, independence, or decision-making power to effectively support families.

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*There needs to be a massive improvement in the Indigenous engagement area. I am aware of the Indigenous team within CYPS however I am also aware that some CYPS workers haven't heard of them before either. This needs to be remedied as soon as possible with either an increase of advertisement within CYPS or by making it compulsory to have the Indigenous teams engagement and input when it comes to Indigenous youth. (Survey respondent)*

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## Placement

When asked how well the placement element is currently being implemented in the ACT of the survey respondents 4.55% (n=1) said well; 22.73% (n=5) said somewhat well; 63.64% (n=14) said not well and 9.09% (n=2) said they were not sure.

This was the element of the ATSICPP that was most well-known by stakeholders. There was some misunderstanding of the ATSICPP as being wholly made up of the hierarchy. It was a significant concern to stakeholders that the co-location of Aboriginal and Torres Strait Islander and non-Indigenous family at the top level on the hierarchy was being used to justify not looking at Aboriginal family members in favour of non-Indigenous family because they are placed equally in the hierarchy.

There was also a strong theme that not enough was being done at the early stages of engagement to identify Aboriginal and Torres Strait Islander family members who can provide short- or long-term kinship care for children if it is required.

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*The work at the front end to identify appropriate family or extended family or community a child can go to does not occur. This should be an area of priority and training and building relationships with community so we can keep kids safe and with family or those who are important to them. Family Finding is not as extensive, and the resources are not there to do it well. We see too many kids going to foster carers because they couldn't identify family. Often families find out later and are quite distressed. We need a service that can do this that is run by Aboriginal people and culturally responsive. When kids are in out of home care in a non aboriginal placement our kids get lost, we know they are less likely to come back home. More vetting and training and assessment of non aboriginal carers has to be done to ensure that they*

*are able to keep that connection. This just doesn't exist though nor does the support or resources to do it well (survey respondent)*

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There was confusion about the process for assessing kinship and foster carers and significant concern about how assessment processes disadvantaged Aboriginal and Torres Strait Islander carers because assessments were based on white understandings of child rearing.

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*There are not many Aboriginal and Torres Strait Islander carers, and the threshold to be a carer can often mean that kin are assessed as not appropriate - there needs more openness to a range of caregiving and less judgement about 'safe care' (which is usually a very 'white' assessment). (Survey respondent)*

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Critically there was a strong concern that placing children in care was being done too quickly and that long-term orders were being used too often and without proper time and investment in family preservation and restoration. This concern was heightened by the lack of available legal support for families going through court proceedings. SNAICC heard concerning examples of parents being asked to sign 18-year orders for children without understanding what this means or how this impacts their ability to pursue family restoration.

SNAICC was also undertaking a parallel piece of work, consulting with community on defining Aboriginal kinship in the context of child protection in the ACT. The consultation findings are provided in a supplementary paper (appendix E); however, the findings of this work are essential for the full implementation of the ATSICPP. Stakeholders told us that the currently definitions of kinship in placement decisions are both too broad and sometimes too narrow when being used to justify excluding family members from participation. SNAICC heard many examples of placements being listed as kinship placements when children are placed with non-Aboriginal family members, stakeholders felt strongly that this is kinship care but not Aboriginal Kinship care. Placements like these could be used to disguise the low rate of children in Aboriginal kinship care by including those broader kinship placements. There were also examples of placements that stakeholders did not think should meet any definition of kinship care and that again these types of placements with people children may have an existing relationship with but who are not kin could be used to disguise the number of Aboriginal children in lower order placements on the hierarchy. Stakeholders were clear that the legislation needed to require a tighter definition of Aboriginal kinship and that data collection on placement type needed to enable transparency about compliance with the hierarchy.

### Connection

When asked how well the connection element is currently being implemented in the ACT, of the survey respondents 4.55% (n=1) said well; 13.64% (n=3) said somewhat well; 59.09% (n=13) said not well and 22.73% said they were not sure.

Cultural care plans are not being used appropriately. Stakeholders reported that the information being included in cultural plans is tokenistic and that they are not fit for purpose. Community members described how cultural plans should be “like a bible” for a child while they are in out of home care. They should inform all the decisions being made. SNAICC also heard about how it is essential for cultural plans to grow with children. The cultural needs of a child at age four are different for a young person at age 15. There were many concerning examples (also highlighted in the *Our Booris, Our Way* review)

of poor practice where cultural information has been copied and pasted from online sources instead of meaningfully discussed with families. The intention of the connection element is to ensure that children in out-of-home care have their right to grow up strong in culture and identity with family and community protected. Stakeholders were very clear that the legislation and supporting policy and practice needed to recognise the importance of connection to culture and treat cultural plans as the living roadmap that is developed with children and their families so that children in out-of-home care have their cultural rights protected and upheld.

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*Connection is more than just the activities identified in a child's cultural plan. Its having time on country, with your mob, having relationships, knowing where you fit and belong in the family and the community. It's being seen and heard, valued, and having a place. Accountability in this area is measured by a completed cultural plan. It's a tick box that says we've done what we needed; however, this is about a child's life that goes beyond the words on that document and is about growing up in your family, community, culture and if you're lucky your country. If you are not part of it, you're not connected, we don't get to see whether this is happening the way it should, our community aren't involved in it, because we would know these kids, we would see them, we would be part of contributing to that sense of connection and belonging. (Survey respondent)*

*There seems limited interest and investment in authentic connection - many annual reviews cannot even identify Country, let alone kin, totem, or any significant cultural connections, and this is accepted, including excuses like 'no one knows'. Well, keep asking and find someone to help! (Survey respondent)*

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Not enough is being done to support ongoing contact with parents and families. Stakeholders shared examples of the restrictions placed on parents and families during contact and how this impacts connection. There were also examples of attachment theory being misused to justify limited contact with families of origin. Primarily this included families being told that contact would distress or confuse children.

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*Often attachment to carers is used as an excuse to not maintain connections with parents, in the case management plan it will say that if a child feels uncomfortable then the visit with parents will cease and then they use that as an excuse to stop all contact. (Consultation participant)*

*I was required to provide a business case for my grandson to be financially supported to get to meet his siblings - who all reside in other states of Australia. I was also informed that it was a one-off thing so basically, 'do not apply for financial assistance again' (Survey respondent)*

*We often hear that foster carers are not complying with contact plans, including not allowing video calls to occur. We also hear that foster carers are not bringing children to see their mothers where contact plans specify how and when contact is to occur.*

*Our clients often miss out on make-up visits with their children where an initial visit doesn't occur. Our clients feel that foster carers carry a lot of the decision-making power where children have been placed with them, rather than complying with plans or orders. We hear that where mothers receive little to no support from ACT Together when they raise their concerns about non-compliance of the contact and cultural plans and are left feeling helpless. We understand that even where other service providers are assisting mothers and make contact with ACT Together, these services have also receive no response from ACT Together. (Women's Legal Centre ACT, discussion paper submission)*

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The phrase "set and forget" was used by multiple stakeholders to describe the approach to restoration. Through this phrase, stakeholders were referring to the practice of CYPS putting children in out-of-home care placements, and not progressing or prioritising work to support the child and family so that the child could be safely restored to the care of parents and family members. The connection element also includes pursuing restoration early and often for children in out-of-home care. Stakeholders were concerned about the use of 18-year orders in situation where families were not first supported to work towards and seek restoration.

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*People need to know their legal rights; families don't get any legal support and they don't have the money to keep up with the courts. (Survey respondent)*

*Where 18-year orders are in place for a child, we hear from Aboriginal and Torres Strait Islander clients who have taken steps to address the concerns CYPS had initially had which prompted removal and are looking at restoration. We hear that women feel their voices are not heard and ACT Together are reluctant to assist women seeking restoration and often women tell us that the Foster carers strongly oppose restoration preferring the child/children stay in their care. (Women's Legal Centre ACT, discussion paper submission)*

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## 6. Recommendations

Findings from consultations are clear and consistent with the original findings from the *Our Booris, Our Way* Review; the five elements of the ATSICPP are not being applied consistently or correctly by child protection services in the ACT. Our recommendations for the legislation are grouped under the five elements of the ATSICPP and the additional focus area of identification. A priority for stakeholders was that the legislation needs to compel CYPS services to implement every element of the ATSICPP and ensure that there is sufficient specificity so the elements cannot be misunderstood or misused.

The recommendations align closely with SNAICC's existing recommendations for best practice that can be found in *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*<sup>21</sup> and *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle, a resource for legislation, policy, and program development*<sup>22</sup>. These resources provided the basis for both the consultation process and the recommendations. They are based on SNAICC's extensive consultation with Aboriginal and Torres Strait Islander peoples and organisations for over four decades.

### 6A. Embedding the ATSICPP in the *Children and Young People Act 2008* (Act)

**Recommendation 1:** Amend section 10 of the Children and Young People Act to fully reflect the right to self-determination for Aboriginal and Torres Strait Islander Peoples and the five elements of the ATSICPP as principles of the legislation, including:

- i. Each of the five elements, and the requirement to undertake “active efforts” to implement them, should be individually specified as a principle of the Act in section 10
- ii. Aboriginal and Torres Strait Islander peoples’ right to self-determination should be specified as a principle of the Act in section 10
- iii. A requirement to consider the impact on a child’s right to cultural identity and connection of decisions made in accordance with the Act should be included
- iv. Include a definition of “active efforts” in the dictionary of the Act that recognises that active efforts are “thorough, timely and purposeful efforts that aim to ensure an Aboriginal and Torres Strait Islander children’s connection to family, community, culture and Country is maintained at every stage of a child’s engagement with child protection services.”

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<sup>21</sup> SNAICC – National Voice for our Children (SNAICC), *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*, 2019, pp. 42-44, available from: [https://www.snaicc.org.au/wp-content/uploads/2019/06/928\\_SNAICC-ATSICPP-resource-June2019.pdf](https://www.snaicc.org.au/wp-content/uploads/2019/06/928_SNAICC-ATSICPP-resource-June2019.pdf)

<sup>22</sup> SNAICC, *Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy, and program development*, 2019, pp.9-16, available from: [https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding\\_applying\\_ATSICPP.pdf](https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding_applying_ATSICPP.pdf)



Example of promising legislation: *Child Protection Act 1999* (Qld)

**5C Additional principles for Aboriginal or Torres Strait Islander children**

(1) The following additional principles apply for administering this Act in relation to Aboriginal or Torres Strait Islander children—

- (a) Aboriginal and Torres Strait Islander people have the right to self-determination;
- (b) the long-term effect of a decision on the child's identity and connection with the child's family and community must be taken into account.

(2) The following principles (the child placement principles) also apply in relation to Aboriginal or Torres Strait Islander children—

- (a) the principle (the prevention principle) that a child has the right to be brought up within the child's own family and community;
- (b) the principle (the partnership principle) that Aboriginal or Torres Strait Islander persons have the right to participate in significant decisions under this Act about Aboriginal or Torres Strait Islander children;
- (c) the principle (the placement principle) that, if a child is to be placed in care, the child has a right to be placed with a member of the child's family group;

*Note— See section 83 for provisions for placing Aboriginal and Torres Strait Islander children in care.*

- (d) the principle (the participation principle) that a child and the child's parents and family members have a right to participate, and be enabled to participate, in an administrative or judicial process for making a significant decision about the child;
- (e) the principle (the connection principle) that a child has a right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language, particularly when the child is in the care of a person who is not an Aboriginal or Torres Strait Islander person.

## 6B. Identification

**Recommendation 2:** Amend the *Children and Young People Act 2008* (Act) (including but not limited to section 7(d)) to recognise a child's right to enjoy culture with their community

**Recommendation 3:** Amend the *Children and Young People Act 2008* (Act) (including but not limited to section 7(d)) to recognise that the government has a responsibility to protect and promote Aboriginal and Torres Strait Islander children's cultural identity

**Recommendation 4:** Amend the *Children and Young People Act 2008* (Act) to require that active efforts are made to identify all Aboriginal and Torres Strait Islander children who come in contact with Child and Youth Protection Services at the earliest possible opportunity.

### *Identification: supporting policy*

- i. Set the minimum requirements that active efforts have been made to identify children as being Aboriginal and/or Torres Strait Islander by the completion of any investigation (i.e., all children and family members have been asked if they identify as Aboriginal and/or Torres Strait Islander).

- ii. Require mandatory completion of the Aboriginal and Torres Strait Status fields for the child and parents in client records.
- iii. Require record of active efforts that have been attempted with the child and family directly.
- iv. Require that when a child or family is identified as Aboriginal or Torres Strait Islander by a third party who is not a child's family, active efforts must be made to confirm this with the child and their family.
- v. If a child and/or family have identified as Aboriginal and/or Torres Strait Islander and this is recorded, require that they cannot be de-identified without consultation with the family and an ACCO and/or trusted person for the family.
- vi. Require that all levels of CYPS staff have undertaken cultural awareness and safety training in addition to training on the implementation of the ATSICPP.

#### *Identification: supporting Practice*

- i. Client management systems must require completion of Aboriginal and Torres Strait Islander identity status fields.
- ii. All practitioners have a responsibility to make active efforts to find out if a child is Aboriginal and/or Torres Strait Islander. Active efforts include:
  - a. Asking all children and families (including extended family members) if they are Aboriginal and/or Torres Strait Islander
  - b. Telling children and families that practitioners have an obligation to uphold and protect their cultural rights
  - c. Providing information on available support for Aboriginal and Torres Strait Islander families (i.e., Cultural Services Team, ACCOs)
  - d. Asking children and families throughout engagement if their cultural needs are being met
  - e. Providing families with opportunities to check if their information is correct
- iii. Practitioners need access to appropriate training and guidance on how to have respectful conversations about identity consistent with SNAICC's guidelines to support implementation (pp. 8-13)

#### **Connected Our Booris Our Way recommendations**

- Recommendation 1: Allocation of Aboriginal and Torres Strait Islander children's cases to experienced and culturally intelligent case workers
- Recommendation 2: Engagement of SNAICC for training on embedding Child Placement Principle
- Recommendation 19: Appropriate identification, and de-identification, of children

## **6C. Prevention**

**Recommendation 5:** Amend the *Children and Young People Act 2008* (Act) to more clearly and explicitly recognise that connection to family, community, culture, and country are in the best interests of Aboriginal and Torres Strait Islander children, including:

- i. Strengthen Section 349 by including a standalone sub-section that reflects the existing section 349(1)(g), and also includes an unqualified statement that cultural connection is in the best

interests of Aboriginal and Torres Strait Islander children and supports their wellbeing, development and identity.

- ii. Include an additional sub-section in section 349 that specifies clearly that the best interests of an Aboriginal or Torres Strait Islander child can only be properly determined in consultation with members of the child's Aboriginal or Torres Strait Islander community and family.

**Recommendation 6:** Amend the *Children and Young People Act 2008* (Act) to recognise that the government has a responsibility to support families by working in partnership with Aboriginal and Torres Strait Islander people and ACCOs, including:

- i. amendment of section 7(d) to change the words "included and participate in" to "partner in"
- ii. amendment of section 7(d) to include a reference to the role of Aboriginal and Torres Strait Islander community-controlled organisations. This could be achieved by revising section 7(d) to begin with the words, "ensuring that Aboriginal and Torres Strait Islander people and Aboriginal and Torres Strait Islander community-controlled organisations partner in..."

**Recommendation 7:** Amend the *Children and Young People Act 2008* (Act) to recognise that ACCOs have a unique role in supporting families and that the government has a responsibility to fund and support ACCOs to do this, including:

- i. amendment of section 7 to include an additional sub-section following section 7(e) that specifies as an object of the Act: "ensuring that services provide by, or for, government for the wellbeing, care and protection of Aboriginal and Torres Strait Islander children and young people – (i) provide, wherever possible, the option for the child and family to access the services through an Aboriginal and Torres Strait Islander community-controlled organisation."

**Recommendation 8:** Amend the *Children and Young People Act 2008* (Act) (including but not limited to section 360) to require that active efforts are made to connect a family with early support services upon notification to CYPS, with consent of the family for referrals to support services. Provisions should include requirements for:

- i. When a notification occurs, consent to be sought from the parent/s to make a referral to support services.
- ii. Providing referrals for Aboriginal and Torres Strait Islander children wherever possible, and where chosen by the family, to an Aboriginal and Torres Strait Islander community-controlled service.
- iii. Where a family has provided consent, that active efforts are made to connect a family with their chosen service.

**Recommendation 9:** Amend the *Children and Young People Act 2008* (Act) to restrict the removal of a child to "where there is unacceptable risk of harm to the child"

**Recommendation 10:** Amend the *Children and Young People Act 2008* (Act) to set minimum requirements for active efforts in providing family preservation and restoration supports at every stage of the child and family's engagement with child protection services, including:

- i. A requirement that all reasonable steps have been taken by the Director-General to provide the services necessary to enable the child to remain in the care of the child's parent/s

Example of promising legislation: *Children, Youth and Families Act 2005 (Vic)*

**10 Best interests principles**

(3) ...in determining what decision to make or action to take in the best interests of the child, consideration must be given to the following, where they are relevant to the decision or action—

(a) the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child;

... (g) that a child is only to be removed from the care of his or her parent if there is an unacceptable risk of harm to the child;

**276 Restrictions on the making of protection orders**

(2) The Court must not make a protection order that has the effect of removing a child from the care of the child's parent unless—

(a) the Court has considered and rejected as being contrary to the best interests of the child, an order allowing the child to remain in the care of the child's parent; and

(b) the Court is satisfied by a statement contained in a disposition report in accordance with section 558(c) that all reasonable steps have been taken by the Secretary to provide the services necessary to enable the child to remain in the care of the child's parent

*Prevention: supporting policy*

- i. Recognise that community-controlled services and programs are more likely to be effective and prioritise ACCOs as providers of services<sup>23</sup>
- ii. Increase investment in prevention and early support including universal child and family services and targeted intensive support programs
- iii. Increase investment in ACCOs to provide integrated and wrap around support services through a flexible funding model
- iv. Quarantine proportion of funding for children and family services that can only be allocated to ACCOs or ACCO led consortia /partnerships
- v. Recognise and value Aboriginal and Torres Strait Islander worldviews of child-rearing and child development in policy development
- vi. Require record keeping of active efforts from practitioners that demonstrate every effort has been made to provide culturally safe, quality family preservation and restoration supports
- vii. Require decision making to be based on risk assessment frameworks that have been designed through shared decision making with Aboriginal and Torres Strait Islander people.
- viii. Remove requirements for an open case with CYPS for accessing early or intensive support services.

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<sup>23</sup> Commonwealth of Australia Department of the Prime Minister and Cabinet. *National Agreement on Closing the Gap*, 2020, available from: <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>.

#### *Prevention: supporting practice*

- i. Conducting a culturally safe, comprehensive assessment of a child and family's needs and circumstances, with a focus on family preservation (or reunification) as the most desirable goal
- ii. Identifying and providing an integrated service response that provides for the full range of a child and family's needs. This can include resources such as housing, financial, transportation, mental health, drug, and alcohol supports, childcare services, as well as actively assisting the child and family to access these supports
- iii. Identifying and utilising alternative referral pathways at notification and intake, including to ACCO-run support services, to divert children and families from further child protection involvement
- iv. Children and families are actively assisted to access the necessary services, including though financial or transportation assistance.

#### **Connected Our Booris Our Way recommendations**

- Recommendation 9: Early support programs available
- Recommendation 9(a): Accessible and appropriate early support programs for drug and alcohol rehabilitation, family violence, mental health, and trauma

#### **6D. Participation**

**Recommendation 11:** Amend the *Children and Young People Act 2008* (Act) to require that an Aboriginal and Torres Strait Islander family-led decision-making (AFLDM) process is facilitated as early as possible and for all significant decisions. The requirements for AFLDM should include specific elements of best practice that extend upon the current provisions for family group conferences in Chapter 3 of the Act, including:

- i. Making the holding of an AFLDM meeting/s mandatory prior to the making of significant decisions;
- ii. Requiring facilitation of an AFLDM process and meeting/s by an Aboriginal and Torres Strait Islander community-controlled organisation or another Aboriginal and Torres Strait Islander person independent of the statutory agency;
- iii. Requiring that Aboriginal and Torres Strait Islander organisations working with the family have the opportunity to attend and participate in the AFLDM process and meeting/s;
- iv. Requiring the identification and participation of members of the child's extended Aboriginal and Torres Strait Islander family and kinship network in the AFLDM process and meetings.

**Recommendation 12:** Amend the *Children and Young People Act 2008* (Act) and/or the Court Procedures Act 2004 to require that parents have had all reasonable opportunity to access legal representation before a matter can be heard (noting that this recommendation complements requirements for separate legal representation of children that are already strongly provided for by sections 74E to 74H of the Court Procedures Act 2004)

#### *Participation: supporting policy*

- i. Ensures adequate funding and availability of culturally safe legal services for Aboriginal and Torres Strait Islander parents and children, including through Aboriginal and Torres Strait Islander Legal Services
- ii. Provides for culturally safe AFLDM, supported and delivered by ACCOs;

- iii. Promotes the role of ACCOs in supporting families to participate in decision-making, including in AFLDM

*Participation: supporting practice*

- i. Active efforts should be made to include families in decision making:
  - a. Taking time to explain to families the opportunities for being involved in decision making at every stage (i.e., case planning, cultural care planning, identification of kin, court proceedings)
  - b. Ensure age and developmentally appropriate participation of children and young people in processes like AFLDM
  - c. Recognising broader, holistic understandings of family and consulting parents on who else they want to be involved (i.e., extended family and community members)
  - d. Building trust and rapport with families through actions like:
    - i. giving space and time for cultural protocols to emerge when engaging with family members
    - ii. seeking input from close family members on whether they want other family to be approached by the worker or if they prefer to seek involvement of others themselves
    - iii. when conducting meetings with families, acknowledging Country as this is an important way to create a culturally safe space
    - iv. being clear on why family and others who are important to the family/child are participating in the informal sessions and find out what each person can do to support the child's needs
    - v. staying focused on keeping children safe and connected to family, culture, and community
    - vi. keeping meetings focused on problem solving and goal setting that directly relate to the best interests of the child, rather than laying blame

**Connected Our Booris Our Way recommendations**

- Recommendation 4: Universal access to Family Group Conferencing
- Recommendation 8(a): Culturally appropriate advocate service
- Recommendation 8(b): Access to legal representation and advocacy
- Recommendation 13: Aboriginal and Torres Strait Islander Father inclusive practice
- Recommendation 16: Increase Aboriginal and Torres Strait Islander led decision making in Child Protection
- Recommendation 18: Support development of the Cultural Services Team

## 6E. Partnership

**Recommendation 13:** Amend the *Children and Young People Act 2008* (Act) to require participation of independent representative ACCOs in all significant decisions about Aboriginal and Torres Strait Islander children.

**Recommendation 14:** Amend the *Children and Young People Act 2008* (Act) to allow for the delegation of any and all statutory child protection functions to the chief executive of an Aboriginal and Torres Strait Islander community-controlled organisation. Provisions should provide flexibility to allow for the specific nature and timing of delegations to be planned and progressed in partnership with ACCOs.

### Alignment with commitments under Safe and Supported: National Framework for Protecting Australia's Children 2021-2031 (Safe and Supported)

Through *Safe and Supported* all Australian Governments have committed to “undertake reform in each jurisdiction’s next review of relevant legislation and policy, with a view to... supporting delegation of authority in child protection to families, communities and Aboriginal and Torres Strait Islander community-controlled organisations.

**Recommendation 15:** Amend section 482 of the *Children and Young People Act 2008* (Act) to require that the Childrens Court may not include an enduring parental responsibility provision in a care and protection order unless an Aboriginal and Torres Strait Islander organisation provides a report recommending the inclusion of the provision.

#### *Partnership: supporting policy*

- i. Commits to genuine partnership in co-design of legislation and policy
- i. Promotes ACCO and Aboriginal and Torres Strait Islander peak bodies’ participation in system and service design
- ii. Prioritises and strategises to build ACCO capacity for partnership, decision-making and service delivery
- iii. Incorporates ACCO-led evaluation and continuous improvement to develop an evidence base drawn from cultural and community knowledge.
- iv. Works with Aboriginal and Torres Strait Islander communities and ACCOs to ensure they lead the process of identifying and taking on delegated statutory functions that they choose to deliver.

#### *Partnership: supporting practice*

- i. Government needs to make active efforts to:
  - a. Move away from open competitive tendering, and either determine funding in consultation with ACCOs based on need or create restricted tendering processes that are only open to ACCOs.
  - b. Design funding selection criteria that support self-determination by prioritising ACCOs, and that reflect the importance of cultural safety in service delivery.
  - c. In instances where an ACCO has applied for funding but does not meet all the criteria, work with the ACCO to identify non-Indigenous organisations it could partner with to deliver the service, using a capacity development approach, and help to facilitate partnership discussions.
- ii. Non-Indigenous organisations need to make active efforts to:
  - a. Develop and implement organisational policies of not competing for tenders when they know that there are ACCOs who can deliver services. If a service has developed its cultural competence (see further below) then it should understand whether there are ACCOs who could deliver a service, or how to find out.
  - b. Before applying for a grant, reach out to relevant ACCOs to find out whether and how they could potentially partner (see the section on sharing resources below).

- c. Educate their funders. If funders initiate tendering processes that don't support self-determination, non-Indigenous organisations need to use their influence to explain why.

#### Examples of promising legislation

Section 18 of the *Children, Youth and Families Act 2005* (Vic) enables the Secretary to “authorise the principal officer of an Aboriginal agency to perform specified functions and exercise specified powers in relation to a protection order in respect of an Aboriginal child.”

In 2017, Queensland passed amendments to child protection legislation as a result of which Section 6AA (2) (b) of the *Child Protection Act 1999* (Qld) now stipulates that an independent Aboriginal and Torres Strait Islander entity must be engaged to facilitate the participation of a child and her or his family members in significant decisions for the child. These provisions strongly support both the participation and partnership elements of the ATSICPP.

As part of the same amendments in 2017 Queensland introduced detailed provisions providing for the delegation of legislative authority under Part 2A of the *Child Protection Act 1999* (Qld) to an Aboriginal or Torres Strait Islander person who is the chief executive of an Aboriginal or Torres Strait Islander entity.

#### Connected Our Booris, Our Way recommendations

- Recommendation 6: Feasibility study Aboriginal Child Care Association

## 6F. Connection

**Recommendation 16:** Amend the *Children and Young People Act 2008* (Act) to prioritise family restoration without unreasonably restrictive time limits, or unreasonable requirements on parents to disprove presumptions against restoration, including:

- i. Removing the rebuttal presumption in section 477(3) that places the onus on parents to prove that it is not in the best interests of their children to be placed on long-term orders after 1 year for children under 2, and 2 years for children over 2;
- ii. Requiring that the Childrens Court must not make a long-term order or include an enduring parental responsibility (EPR) provision in an order unless it is satisfied that minimum requirements have been met for the provision of family restoration supports (see recommendation 17). Consistent with Recommendation 26(b) of the *Our Booris, Our Way* review, EPR should only be available for Aboriginal and Torres Strait Islander kin and carers;
- iii. Including an express provision that recognises the desirability of timely, safe, successful and supported reunification of the child with her or his parent/s as a high and first priority;
- iv. Removing altogether the timeframes specified in section 477 that lead to the presumption that long-term orders are in the best interests of the child, to enable the court to determine the best interests of the child based on the individual circumstance of each child and family.

**Recommendation 17:** Amend the *Children and Young People Act 2008* (Act) to specify minimum requirements for the provision of family restoration supports. This must include requiring active efforts to be made by the director-general to support parents to seek restoration at all points in their



engagement with CYPs, including the provisions of and referral to culturally safe support services to facilitate restoration.

**Recommendation 18:** Amend the *Children and Young People Act 2008* (Act) to require that every Aboriginal or Torres Strait Islander child on a child protection order must have a cultural plan that has been developed with input from the child, their parents, and Aboriginal and Torres Strait Islander family and/or community members. The Act should also include:

- i. A requirement for the plan to be updated annually
- ii. Minimum requirements for active efforts to maintain a child's connection to culture when in out-of-home care
- iii. Minimum requirements for the content of a quality cultural support plan

*Connection: supporting policy:*

- i. Emphasises the importance of maintaining and developing connections to family, community, culture, and country
- ii. Recognises and promotes the importance of family participation and ACCO-led processes for developing and reviewing cultural plans
- iii. Commits to implementation of cultural plans
- iv. Prioritises and supports safe and timely family reunification
- v. Implementation of Recommendation 26 (b) of *Our Booris, Our Way*, that the Directorate clarify in a formal policy position that EPR only be available for Aboriginal and Torres Strait Islander kin and carers

*Connection: supporting practice:*

- i. Cultural care plans must be developed with the child, family, kin, community (especially Elders and those with cultural authority for the child)
- ii. Families should be provided the opportunity to have the cultural services team and/or ACCO involved in developing the plan
- iii. Cultural care plans should be comprehensive and reviewed annually

**Connected Our Booris Our Way recommendations**

- Recommendation 11(a): Improve quality and monitoring of Cultural Plans
- Recommendation 12: Pathways to restoration
- Recommendation 18: Support development of the Cultural Services Team

## 6G. Placement

**Recommendation 19:** Amend section 513 of the *Children and Young People Act 2008* (Act) to reflect the full intent of the placement hierarchy in line with the views of the ACT Aboriginal and Torres Strait Islander community, and specifying the hierarchy as follows:

- i. as a priority, wherever possible, the child must be placed with the child's Aboriginal or Torres Strait Islander extended family or relatives. If, after all reasonable efforts, this is not possible, the child may be placed with other extended family or relatives;
- ii. if, after consultation with the relevant Aboriginal and Torres Strait Islander agency, and the child's family, including through Aboriginal Family-led Decision Making, placement with extended family or relatives is not possible, the child may be placed, in order of priority, with—
  - a. an Aboriginal or Torres Strait Islander carer from the local community and within close geographical proximity to the child's natural family;
  - b. an Aboriginal or Torres Strait Islander carer from another Aboriginal community;
  - c. as a last resort, a non-Aboriginal or Torres Strait Islander carer living in close proximity to the child's natural family;
- iii. any non-Aboriginal or Torres Strait Islander carer must demonstrate, prior to taking on the care of the child, a strong commitment to ensure the maintenance of the child's Aboriginal or Torres Strait Islander culture and identity, including through contact with the child's culture, family and community.

**Recommendation 20:** Amend the *Children and Young People Act 2008* (Act) to include a specific definition of Aboriginal and Torres Strait Islander kinship carers as distinct from other forms of kinship carers, in alignment with the supplementary paper to this report, "Defining kinship care for Aboriginal and Torres Strait Islander children in the ACT."

**Recommendation 21:** Amend the *Children and Young People Act 2008* (Act) to expressly require prior to placement, the participation of children, parents and family members through Aboriginal Family Led Decision Making, and the participation of an ACCO, in placement decision-making.

### *Placement: supporting policy*

- i. Emphasises preference for high-priority placements and continuing review of lower-priority placements
- ii. Recognises and promotes participation of family and ACCOs in placement decision-making
- iii. Requires mandatory completion of fields distinguishing Aboriginal and Torres Strait Islander kinship carers from other kinships carers
- iv. Promotes the role of ACCOs in kinship carer and other placement identification, assessment, and support
- v. Active efforts toward compliance with the placement hierarchy:
  - a. Families are provided opportunities to participate in placement decisions through Aboriginal family led decision making
  - b. Thorough scoping of family to identify culturally connected placements through Aboriginal and Torres Strait Islander agencies
  - c. Assessment of placement options conducted and exhausted in order of hierarchy – these reviews to be recorded

### *Placement: supporting practice*

- i. Practitioners should be having conversations about family and kin early to support family preservation, connection, and if required appropriate kinship placement options.
- ii. Active efforts to support higher order placements
- iii. Active efforts to identify and support higher order placements in the hierarchy include:

- a. Families are provided opportunities to participate in placement decisions through Aboriginal family led decision making/ family group conferencing
- b. Thorough scoping of family to identify culturally connected placements through Aboriginal and Torres Strait Islander agencies
- c. Assessment of placement options conducted and exhausted in order of hierarchy – these reviews to be recorded

#### Connected Our Booris Our Way recommendations

- Recommendation 10(a): Access to supports for Kinship carers
- Recommendation 10 (b): Kinship Care Assessment Process

## Appendix A – Recommendation summary table

6A. Embedding the ATSCPP in the Children and Young People Act 2008	
<p><b>Recommendation 1:</b> Amend section 10 of the Children and Young People Act to fully reflect the right to self-determination for Aboriginal and Torres Strait Islander Peoples and the five elements of the ATSCPP as principles of the legislation, including:</p> <ul style="list-style-type: none"> <li>v. Each of the five elements, and the requirement to undertake “active efforts” to implement them, should be individually specified as a principle of the Act in section 10</li> <li>vi. Aboriginal and Torres Strait Islander peoples’ right to self-determination should be specified as a principle of the Act in section 10</li> <li>vii. A requirement to consider the impact on a child’s right to cultural identity and connection of decisions made in accordance with the Act should be included</li> <li>viii. Include a definition of “active efforts” in the dictionary of the Act that recognises that active efforts are “thorough, timely and purposeful efforts that aim to ensure an Aboriginal and Torres Strait Islander children’s connection to family, community, culture and Country is maintained at every stage of a child’s engagement with child protection services.”</li> </ul>	
6B. Identification	
<p><b>Recommendation 2:</b> Amend the <i>Children and Young People Act 2008</i> (Act) (including but not limited to section 7(d)) to recognise a child’s right to enjoy culture with their community</p> <p><b>Recommendation 3:</b> Amend the <i>Children and Young People Act 2008</i> (Act) (including but not limited to section 7(d)) to recognise that the government has a responsibility to protect and promote Aboriginal and Torres Strait Islander children’s cultural identity</p> <p><b>Recommendation 4:</b> Amend the <i>Children and Young People Act 2008</i> (Act) to require that active efforts are made to identify all Aboriginal and Torres Strait Islander children who come in contact with Child and Youth Protection Services at the earliest possible opportunity.</p>	
Supporting policy	Supporting Practice
<ul style="list-style-type: none"> <li>vii. Set the minimum requirements that active efforts have been made to identify children as being Aboriginal and/or Torres Strait Islander by the completion of any investigation (i.e., all children and family members have been asked if they identify as Aboriginal and/or Torres Strait Islander).</li> <li>viii. Require mandatory completion of the Aboriginal and Torres Strait Status fields for the child and parents in client records.</li> <li>ix. Require record of active efforts that have been attempted with the child and family directly.</li> <li>x. Require that when a child or family is identified as Aboriginal or Torres Strait Islander by a third party who is</li> </ul>	<ul style="list-style-type: none"> <li>iv. Client management systems must require completion of Aboriginal and Torres Strait Islander identity status fields.</li> <li>v. All practitioners have a responsibility to make active efforts to find out if a child is Aboriginal and/or Torres Strait Islander. Active efforts include: <ul style="list-style-type: none"> <li>a. Asking all children and families (including extended family members) if they are Aboriginal and/or Torres Strait Islander</li> <li>b. Telling children and families that practitioners have an obligation to uphold and protect their cultural rights</li> <li>c. Providing information on available support for Aboriginal and Torres Strait Islander families</li> </ul> </li> </ul>

<p>not a child's family, active efforts must be made to confirm this with the child and their family.</p> <p>xi. If a child and/or family have identified as Aboriginal and/or Torres Strait Islander and this is recorded, require that they cannot be de-identified without consultation with the family and an ACCO and/or trusted person for the family.</p> <p>xii. Require that all levels of CYPs staff have undertaken cultural awareness and safety training in addition to training on the implementation of the ATSICPP.</p>	<p>(i.e., Cultural Services Team, ACCOs)</p> <p>d. Asking children and families throughout engagement if their cultural needs are being met</p> <p>e. Providing families with opportunities to check if their information is correct</p> <p>vi. Practitioners need access to appropriate training and guidance on how to have respectful conversations about identity consistent with SNAICC's guidelines to support implementation (pp. 8-13)</p>
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## 6C. Prevention

**Recommendation 5:** Amend the *Children and Young People Act 2008* (Act) to more clearly and explicitly recognise that connection to family, community, culture, and country are in the best interests of Aboriginal and Torres Strait Islander children, including:

- iii. Strengthen Section 349 by including a standalone sub-section that reflects the existing section 349(1)(g), and also includes an unqualified statement that cultural connection is in the best interests of Aboriginal and Torres Strait Islander children and supports their wellbeing, development and identity.
- iv. Include an additional sub-section in section 349 that specifies clearly that the best interests of an Aboriginal or Torres Strait Islander child can only be properly determined in consultation with members of the child's Aboriginal or Torres Strait Islander community and family.

**Recommendation 6:** Amend the *Children and Young People Act 2008* (Act) to recognise that the government has a responsibility to support families by working in partnership with Aboriginal and Torres Strait Islander people and ACCOs, including:

- iii. amendment of section 7(d) to change the words "included and participate in" to "partner in"
- iv. amendment of section 7(d) to include a reference to the role of Aboriginal and Torres Strait Islander community-controlled organisations. This could be achieved by revising section 7(d) to begin with the words, "ensuring that Aboriginal and Torres Strait Islander people and Aboriginal and Torres Strait Islander community-controlled organisations partner in..."

**Recommendation 7:** Amend the *Children and Young People Act 2008* (Act) to recognise that ACCOs have a unique role in supporting families and that the government has a responsibility to fund and support ACCOs to do this, including:

- ii. amendment of section 7 to include an additional sub-section following section 7(e) that specifies as an object of the Act: "ensuring that services provide by, or for, government for the wellbeing, care and protection of Aboriginal and Torres Strait Islander children and young people – (i) provide, wherever possible, the option for the child and family to access the services through an Aboriginal and Torres Strait Islander community-controlled organisation."

**Recommendation 8:** Amend the *Children and Young People Act 2008* (Act) (including but not limited to section 360) to require that active efforts are made to connect a family with early support services upon notification to CYPs, with consent of the family for referrals to support services. Provisions should include requirements for:

- iv. When a notification occurs, consent to be sought from the parent/s to make a referral to support services.
- v. Providing referrals for Aboriginal and Torres Strait Islander children wherever possible, and where chosen by the family, to an Aboriginal and Torres Strait Islander community-controlled service.
- vi. Where a family has provided consent, that active efforts are made to connect a family with their chosen service.

**Recommendation 9:** Amend the *Children and Young People Act 2008* (Act) to restrict the removal of a child to “where there is unacceptable risk of harm to the child”

**Recommendation 10:** Amend the *Children and Young People Act 2008* (Act) to set minimum requirements for active efforts in providing family preservation and restoration supports at every stage of the child and family’s engagement with child protection services, including:

- ii. A requirement that all reasonable steps have been taken by the Director-General to provide the services necessary to enable the child to remain in the care of the child’s parent/s

Supporting policy	Supporting Practice
<ul style="list-style-type: none"> <li>ix. Recognise that community-controlled services and programs are more likely to be effective and prioritise ACCOs as providers of services<sup>24</sup></li> <li>x. Increase investment in prevention and early support including universal child and family services and targeted intensive support programs</li> <li>xi. Increase investment in ACCOs to provide integrated and wrap around support services through a flexible funding model</li> <li>xii. Quarantine proportion of funding for children and family services that can only be allocated to ACCOs or ACCO led consortia /partnerships</li> <li>xiii. Recognise and value Aboriginal and Torres Strait Islander worldviews of child-rearing and child development in policy development</li> <li>xiv. Require record keeping of active efforts from practitioners that demonstrate every effort has been made to provide culturally safe, quality</li> </ul>	<ul style="list-style-type: none"> <li>v. Conducting a culturally safe, comprehensive assessment of a child and family’s needs and circumstances, with a focus on family preservation (or reunification) as the most desirable goal</li> <li>vi. Identifying and providing an integrated service response that provides for the full range of a child and family’s needs. This can include resources such as housing, financial, transportation, mental health, drug, and alcohol supports, childcare services, as well as actively assisting the child and family to access these supports</li> <li>vii. Identifying and utilising alternative referral pathways at notification and intake, including to ACCO-run support services, to divert children and families from further child protection involvement</li> <li>viii. Children and families are actively assisted to access the necessary services, including though financial or transportation assistance.</li> </ul>

<sup>24</sup> Commonwealth of Australia Department of the Prime Minister and Cabinet. *National Agreement on Closing the Gap*, 2020, available from: <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>.

<p>family preservation and restoration supports</p> <p>xv. Require decision making to be based on risk assessment frameworks that have been designed through shared decision making with Aboriginal and Torres Strait Islander people.</p> <p>xvi. Remove requirements for an open case with CYPs for accessing early or intensive support services.</p>	
<b>6D. Participation</b>	
<p><b>Recommendation 11:</b> Amend the <i>Children and Young People Act 2008</i> (Act) to require that an Aboriginal and Torres Strait Islander family-led decision-making (AFLDM) process is facilitated as early as possible and for all significant decisions. The requirements for AFLDM should include specific elements of best practice that extend upon the current provisions for family group conferences in Chapter 3 of the Act, including:</p> <ul style="list-style-type: none"> <li>v. Making the holding of an AFLDM meeting/s mandatory prior to the making of significant decisions;</li> <li>vi. Requiring facilitation of an AFLDM process and meeting/s by an Aboriginal and Torres Strait Islander community-controlled organisation or another Aboriginal and Torres Strait Islander person independent of the statutory agency;</li> <li>vii. Requiring that Aboriginal and Torres Strait Islander organisations working with the family have the opportunity to attend and participate in the AFLDM process and meeting/s;</li> <li>viii. Requiring the identification and participation of members of the child's extended Aboriginal and Torres Strait Islander family and kinship network in the AFLDM process and meetings.</li> </ul> <p><b>Recommendation 12:</b> Amend the <i>Children and Young People Act 2008</i> (Act) and/or the Court Procedures Act 2004 to require that parents have had all reasonable opportunity to access legal representation before a matter can be heard (noting that this recommendation complements requirements for separate legal representation of children that are already strongly provided for by sections 74E to 74H of the Court Procedures Act 2004)</p>	
<b>Supporting policy</b>	<b>Supporting Practice</b>
<ul style="list-style-type: none"> <li>iv. Provides for culturally safe AFLDM, supported and delivered by ACCOs;</li> <li>v. Promotes the role of ACCOs in supporting families to participate in decision-making, including in AFLDM; and</li> <li>vi. Ensures adequate funding and availability of culturally safe legal services for Aboriginal and Torres Strait Islander parents and children, including through Aboriginal and Torres Strait Islander Legal Services.</li> </ul>	<ul style="list-style-type: none"> <li>ii. Active efforts should be made to include families in decision making: <ul style="list-style-type: none"> <li>e. Taking time to explain to families the opportunities for being involved in decision making at every stage (i.e., case planning, cultural care planning, identification of kin, court proceedings)</li> <li>f. Ensure age and developmentally appropriate participation of children and young people in processes like AFLDM</li> <li>g. Recognising broader, holistic understandings of family and consulting parents on who else</li> </ul> </li> </ul>

	<p>they want to be involved (i.e., extended family and community members)</p> <p>h. Building trust and rapport with families through actions like:</p> <ul style="list-style-type: none"> <li>i. giving space and time for cultural protocols to emerge when engaging with family members</li> <li>ii. seeking input from close family members on whether they want other family to be approached by the worker or if they prefer to seek involvement of others themselves</li> <li>iii. when conducting meetings with families, acknowledging Country as this is an important way to create a culturally safe space</li> <li>iv. being clear on why family and others who are important to the family/child are participating in the informal sessions and find out what each person can do to support the child's needs</li> <li>v. staying focused on keeping children safe and connected to family, culture, and community</li> <li>vi. keeping meetings focused on problem solving and goal setting that directly relate to the best interests of the child, rather than laying blame</li> </ul>
6E. Partnership	



**Recommendation 13:** Amend the *Children and Young People Act 2008* (Act) to require participation of independent representative ACCOs in all significant decisions about Aboriginal and Torres Strait Islander children.

**Recommendation 14:** Amend the *Children and Young People Act 2008* (Act) to allow for the delegation of any and all statutory child protection functions to the chief executive of an Aboriginal and Torres Strait Islander community-controlled organisation. Provisions should provide flexibility to allow for the specific nature and timing of delegations to be planned and progressed in partnership with ACCOs.

**Recommendation 15:** Amend section 482 of the *Children and Young People Act 2008* (Act) to require that the Childrens Court may not include an enduring parental responsibility provision in a care and protection order unless an Aboriginal and Torres Strait Islander organisation provides a report recommending the inclusion of the provision.

Supporting policy	Supporting Practice
<ul style="list-style-type: none"> <li>ii. Commits to genuine partnership in co-design of legislation and policy</li> <li>v. Promotes ACCO and Aboriginal and Torres Strait Islander peak bodies' participation in system and service design</li> <li>vi. Prioritises and strategises to build ACCO capacity for partnership, decision-making and service delivery</li> <li>vii. Incorporates ACCO-led evaluation and continuous improvement to develop an evidence base drawn from cultural and community knowledge.</li> <li>viii. Works with Aboriginal and Torres Strait Islander communities and ACCOs to ensure they lead the process of identifying and taking on delegated statutory functions that they choose to deliver.</li> </ul>	<ul style="list-style-type: none"> <li>iii. Government needs to make active efforts to:               <ul style="list-style-type: none"> <li>a. Move away from open competitive tendering, and either determine funding in consultation with ACCOs based on need or create restricted tendering processes that are only open to ACCOs.</li> <li>b. Design funding selection criteria that support self-determination by prioritising ACCOs, and that reflect the importance of cultural safety in service delivery.</li> <li>c. In instances where an ACCO has applied for funding but does not meet all the criteria, work with the ACCO to identify non-Indigenous organisations it could partner with to deliver the service, using a capacity development approach, and help to facilitate partnership discussions.</li> </ul> </li> <li>iv. Non-Indigenous organisations need to make active efforts to:               <ul style="list-style-type: none"> <li>a. Develop and implement organisational policies of not competing for tenders when they know that there are ACCOs who can deliver services. If a service has developed its cultural competence (see further below) then it should understand whether there are ACCOs who could deliver a service, or how to find out.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>b. Before applying for a grant, reach out to relevant ACCOs to find out whether and how they could potentially partner (see the section on sharing resources below).</li> <li>c. Educate their funders. If funders initiate tendering processes that don't support self-determination, non-Indigenous organisations need to use their influence to explain why.</li> </ul>
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## 6F. Connection

**Recommendation 16:** Amend the *Children and Young People Act 2008* (Act) to prioritise family restoration without unreasonably restrictive time limits, or unreasonable requirements on parents to disprove presumptions against restoration, including:

- v. Removing the rebuttal presumption in section 477(3) that places the onus on parents to prove that it is not in the best interests of their children to be placed on long-term orders after 1 year for children under 2, and 2 years for children over 2;
- vi. Requiring that the Childrens Court must not make a long-term order or include an enduring parental responsibility (EPR) provision in an order unless it is satisfied that minimum requirements have been met for the provision of family restoration supports (see recommendation 17). Consistent with Recommendation 26(b) of the *Our Booris, Our Way* review, EPR should only be available for Aboriginal and Torres Strait Islander kin and carers;
- vii. Including an express provision that recognises the desirability of timely, safe, successful and supported reunification of the child with her or his parent/s as a high and first priority;
- viii. Removing altogether the timeframes specified in section 477 that lead to the presumption that long-term orders are in the best interests of the child, to enable the court to determine the best interests of the child based on the individual circumstance of each child and family.

**Recommendation 17:** Amend the *Children and Young People Act 2008* (Act) to specify minimum requirements for the provision of family restoration supports. This must include requiring active efforts to be made by the director-general to support parents to seek restoration at all points in their engagement with CYPS, including the provisions of and referral to culturally safe support services to facilitate restoration.

**Recommendation 18:** Amend the *Children and Young People Act 2008* (Act) to require that every Aboriginal or Torres Strait Islander child on a child protection order must have a cultural plan that has been developed with input from the child, their parents, and Aboriginal and Torres Strait Islander family and/or community members. The Act should also include:

- iv. A requirement for the plan to be updated annually
- v. Minimum requirements for active efforts to maintain a child's connection to culture when in out-of-home care
- vi. Minimum requirements for the content of a quality cultural support plan

Supporting policy	Supporting Practice
vi. Emphasises the importance of maintaining and developing	iv. Cultural care plans must be developed with the child, family, kin, community

<p>connections to family, community, culture, and country</p> <p>vii. Recognises and promotes the importance of family participation and ACCO-led processes for developing and reviewing cultural plans</p> <p>viii. Commits to implementation of cultural plans</p> <p>ix. Prioritises and supports safe and timely family reunification.</p> <p>x. Implementation of Recommendation 26 (b) of Our Booris, Our Way, that the Directorate clarify in a formal policy position that EPR only be available for Aboriginal and Torres Strait Islander kin and carers</p>	<p>(especially Elders and those with cultural authority for the child)</p> <p>v. Families should be provided the opportunity to have the cultural services team and/or ACCO involved in developing the plan</p> <p>vi. Cultural care plans should be comprehensive and reviewed annually</p>
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## 6G. Placement

**Recommendation 19:** Amend section 513 of the *Children and Young People Act 2008* (Act) to reflect the full intent of the placement hierarchy in line with the views of the ACT Aboriginal and Torres Strait Islander community, and specifying the hierarchy as follows:

- iv. as a priority, wherever possible, the child must be placed with the child's Aboriginal or Torres Strait Islander extended family or relatives. If, after all reasonable efforts, this is not possible, the child may be placed with other extended family or relatives;
- v. if, after consultation with the relevant Aboriginal and Torres Strait Islander agency, and the child's family, including through Aboriginal Family-led Decision Making, placement with extended family or relatives is not possible, the child may be placed, in order of priority, with—
  - a. an Aboriginal or Torres Strait Islander carer from the local community and within close geographical proximity to the child's natural family;
  - b. an Aboriginal or Torres Strait Islander carer from another Aboriginal community;
  - c. as a last resort, a non-Aboriginal or Torres Strait Islander carer living in close proximity to the child's natural family;
- vi. any non-Aboriginal or Torres Strait Islander carer must demonstrate, prior to taking on the care of the child, a strong commitment to ensure the maintenance of the child's Aboriginal or Torres Strait Islander culture and identity, including through contact with the child's culture, family and community.

**Recommendation 20:** Amend the *Children and Young People Act 2008* (Act) to include a specific definition of Aboriginal and Torres Strait Islander kinship carers as distinct from other forms of kinship carers, in alignment with the supplementary paper to this report, "Defining kinship care for Aboriginal and Torres Strait Islander children in the ACT."

**Recommendation 21:** Amend the *Children and Young People Act 2008* (Act) to expressly require prior to placement, the participation of children, parents and family members through Aboriginal Family Led Decision Making, and the participation of an ACCO, in placement decision-making.

Supporting policy	Supporting Practice
<ul style="list-style-type: none"> <li>vi. Emphasises preference for high-priority placements and continuing review of lower-priority placements</li> <li>vii. Recognises and promotes participation of family and ACCOs in placement decision-making</li> <li>viii. Requires mandatory completion of fields distinguishing Aboriginal and Torres Strait Islander kinship carers from other kinships carers</li> <li>ix. Promotes the role of ACCOs in kinship carer and other placement identification, assessment, and support</li> <li>x. Active efforts toward compliance with the placement hierarchy:</li> <li>xi. Families are provided opportunities to participate in placement decisions through Aboriginal family led decision making</li> <li>xii. Thorough scoping of family to identify culturally connected placements through Aboriginal and Torres Strait Islander agencies</li> <li>xiii. Assessment of placement options conducted and exhausted in order of hierarchy – these reviews to be recorded</li> </ul>	<ul style="list-style-type: none"> <li>iv. Practitioners should be having conversations about family and kin early to support family preservation, connection, and if required appropriate kinship placement options.</li> <li>v. Active efforts to support higher order placements</li> <li>vi. Active efforts to identify and support higher order placements in the hierarchy include: <ul style="list-style-type: none"> <li>a. Families are provided opportunities to participate in placement decisions through Aboriginal family led decision making/ family group conferencing</li> <li>b. Thorough scoping of family to identify culturally connected placements through Aboriginal and Torres Strait Islander agencies</li> <li>c. Assessment of placement options conducted and exhausted in order of hierarchy – these reviews to be recorded</li> </ul> </li> </ul>

## Appendix B – Survey questions

\* 1. Are you an Aboriginal and/or Torres Strait Islander person?

- ☐ Yes
- ☐ No

2. What roles have you been in when coming into contact with the child protection system?

Select any/all that apply

- ☐ Foster carer / non-family carer
- ☐ Child / young person
- ☐ Kinship carer
- ☐ Parent
- ☐ Family member
- ☐ Child protection service staff
- ☐ Children and family support service staff
- ☐ Extended family / community member
- ☐ Legal or other advocate
- ☐ Worker in a related service (e.g. family violence, alcohol/other drugs, housing etc.)
- ☐ Prefer not to say Other (please specify)

3. Have you heard of the Aboriginal and Torres Strait Islander Child Placement Principle?

- ☐ Yes
- ☐ No

4. How well do you understand the Aboriginal and Torres Strait Islander Child Placement Principle?

Very well

- ☐ Well
- ☐ Somewhat well
- ☐ Not well

Is there anything you would like to say about why you gave this answer?

5. Identification is about making sure that Aboriginal and Torres Strait Islander children are identified by child protection services so their cultural rights are upheld. How well are child protection services doing at appropriately (or properly) identifying Aboriginal and Torres Strait Islander children?

- ☐ Well
- ☐ Somewhat well
- ☐ Not well
- ☐ Not sure

Is there anything you would like to say about why you gave this answer?

6. Prevention is about how the government and child protection services support families to stay together and stop children from being removed. How well are government and child protection services doing at preventing children from being removed and keeping families together?

- ☐ Well
- ☐ Somewhat well

- ☐ Not well
- ☐ Not sure

Is there anything you would like to say about why you gave this answer?

7. Partnership is about Aboriginal and Torres Strait Islander people and organisations being equal partners with government in the child protection system. How well are government and child protection services doing at working in partnership with Aboriginal and Torres Strait Islander people and organisations?

- ☐ Well
- ☐ Somewhat well
- ☐ Not well
- ☐ Not sure

Is there anything you would like to say about why you gave this answer?

8. Participation is about making sure that a child and all the people important to them are included equally in decision making. How well are the government and child protection services doing at including children and their families in decision making?

- ☐ Well
- ☐ Somewhat well
- ☐ Not well
- ☐ Not sure

Is there anything you would like to say about why you gave this answer?

9. Placement is about Aboriginal and Torres Strait Islander children in out-of-home care being placed with carers who keep them connected to their family, community, culture and country. How well are the government and child protection services doing at placing children with these kinds of carers?

- ☐ Well
- ☐ Somewhat well
- ☐ Not well
- ☐ Not sure

Is there anything you would like to say about why you gave this answer?

10. Kinship carers have an important role in the child protection system, they are the preferred carers for children in out-of-home care. Who should be considered a kinship carer?

Is there anything you would like to say about why you gave this answer?

11. Connection is about making sure that Aboriginal and Torres Strait Islander children in care are supported to stay connected to their family, community, culture and country. How well are child protection services doing at supporting children to stay connected to their family, community, culture and country?

- ☐ Well
- ☐ Somewhat well
- ☐ Not well
- ☐ Not sure

Is there anything you would like to say about why you gave this answer?

12. The Children and Young People Act is the legislation (law) that regulates the child protection system in the ACT. Is there anything you would like to say about how the Aboriginal and Torres Strait Islander Child Placement Principle should be included in the legislation (law)?

13. Is there anything else you would like to say about the child protection system in the ACT?

## Appendix C – Discussion paper

Attachment 1

## Appendix D – Women’s Legal Centre ACT Submission

Attachment 2

## Appendix E – Supplementary paper: Defining Kinship Carers for Aboriginal and Torres Strait Islander children in the ACT

Attachment 3