



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

**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

**OOHC** – Out-of-home care

**QATSTICPP** – Queensland Aboriginal and Torres Strait Islander Child Protection Peak

## 1. Executive summary

The Australian Capital Territory (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. *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 Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) in the Children and Young People Act 2008.<sup>1</sup>

SNAICC – National Voice for our Children was engaged by the ACT Community Services Directorate (CSD) to undertake a consultation process in the ACT, 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. Alongside this substantive work SNAICC was engaged to complete a complementary piece of work 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>2</sup> As part of the consultations SNAICC spoke with community members about who should be considered a kinship carer and how this should be determined for children who have contact with the child protection system.

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 consultation findings on defining and identifying kinship carers for Aboriginal and Torres Strait Islander children. This paper should be read in conjunction with the full final report on embedding the ATSICPP in the Children and Young People Act.<sup>3</sup>

The full report and this supplementary paper seek to address the following questions:

- a) What change is needed to ensure the full intent of the Aboriginal and Torres Strait Islander Child Placement Principle is a part of everyday experience, policy, and practice in the ACT?
- b) Who decides who is a Kinship Carer?
- c) How would they decide?
- d) What would be the process (e.g., Family Group Conferencing, Family-led decision making)?
- e) Is there a role for government to decide who is a Kinship Carer?

The key findings of this paper must be considered in the context of the full report and recommendations.

There was consensus among stakeholders that to properly implement and monitor compliance with the ATSICPP two definitions of kinship carers are necessary: (1) a definition of Aboriginal and Torres Strait kinship carers, and (2) kinship care more generally. There was also significant consensus that the parents and family have the authority to define and decide who is a kinship carer and that this should happen through participation processes like Family Group Conferencing and Aboriginal Family Led Decision making (AFLDM).

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<sup>1</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>2</sup> Ibid.

<sup>3</sup> Available from: [HYPERLINK TBC](#)

### A note on defining kinship

The intention of this paper is not to provide a universal definition of Aboriginal and/or Torres Strait Islander kinship or kinship carers and should not be used as such. How each Aboriginal or Torres Strait Islander community describe and define kinship may have similarities and differences to the ideas presented in this paper. Aboriginal and Torres Strait Islander people in the ACT are not homogenous in their experiences of kinship and this report cannot comprehensively capture the diversity and complexity of these networks and understandings.

This paper provides advice on how the ACT Government should approach the identification of Aboriginal and Torres Strait Islander kinship carers for children in out-of-home care (OOHC) based on the views of Aboriginal and Torres Strait Islander people in the ACT and best practice consistent with the ATSICPP.

## 2. Community consultation

SNAICC conducted consultations with Aboriginal and Torres Strait Islander people and organisations between June-August 2022. Consultation with ACCOs and Aboriginal and Torres Strait Islander community members took place in two stages, an initial consultation session to identify key issues in current practice and how kinship carers should be identified in the ACT and a second consensus building consultation session. A discussion paper was also available for submissions and an online survey to enable maximum participation from Aboriginal and Torres Strait Islander people and organisations in the ACT. Participants included representatives from seven ACCOs and five non-Indigenous service providers, Aboriginal and Torres Strait Islander community members (including parents, kinship carers and family members), the Aboriginal and Torres Strait Islander Co-Design Network, the Ngura Naraganabang (Safety in the Pouch) Advisory Group, the Aboriginal Cultural Services Team and senior Children and Youth Protective Services (CYPS) staff. The full methodology is provided in the full report (pp.19-20).

Stakeholders were asked open discussion questions about who should be considered a kinship carer and how this should be defined and processes for decision making. To provide a starting point for the discussion, SNAICC highlighted an example from Queensland on how kinship and kinship care has been approached in relation to child protection systems. The Queensland Aboriginal and Torres Strait Child Protection Peak (QATSICPP) prepared a position statement that provides the definition below for Aboriginal Kinship.

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*Aboriginal Kinship is a diverse and complex system. For the purpose of this position paper, Aboriginal Kinship refers to the biological bloodlines that have been passed on from generation to generation. For example, although not an immediate family member (e.g., father's sister), a father's cousin would be considered Aboriginal Kinship connection due to the bloodlines that they share. This paper does not discount that Kin may be a person that is not biologically related to the child however this is not Aboriginal Kinship. Consideration of who is kin to a child is also the decision and*

*responsibility of family and those with cultural authority for the child, not the statutory agency.<sup>4</sup>*

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### 3. Consultation findings

#### Key finding 1: Distinguishing between Aboriginal and Torres Strait Islander kinship care and other forms of kinship care

The key challenges identified by stakeholders in relation to defining kinship carers in the ACT were that decisions about who is considered a kinship carer are not being made appropriately and that the current definition is too broad.<sup>56</sup> There were significant concerns from community that the broad definition of kinship carer currently used in the ACT is resulting in children not being placed with their Aboriginal and Torres Strait Islander kin, and in data being unavailable on the number of Aboriginal and Torres Strait Islander children placed with Aboriginal and/or Torres Strait Islander kinship carers.

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*They [CYPS] will say that anyone who has even met a child before is a kinship carer! It won't even be an Aboriginal person. They don't actually keep kids connected. (Community Consultation participant)*

*The definition is too broad – it is all in the Our Booris report, we need to be able to tell how many kids are actually being placed with Aboriginal kinship carers (Community Consultation participant)*

*We believe local Aboriginal and Torres Strait Islander community is best placed to respond to this question. Mulleun Mura and the Women's Legal Centre would support a definition developed and led by grass roots community members and community-led organisations. First Nations staff at the centre do wish to note that where children are removed, it is often the case that they are placed with the paternal grandparent (of the parent who is not Aboriginal and/or Torres Strait Islander) of the children due to the greater financial resources of those grandparents.*

*We do not consider this to be part of a kinship arrangement. We consider a placement with a non-Indigenous family member should only be considered where an Aboriginal or Torres Strait Islander family member (e.g., grandparent) is unable to fulfil a kinship role and it is in the best interests of the child to do so. (Women's Legal Centre ACT, discussion paper submission)*

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<sup>4</sup> Queensland Aboriginal and Torres Strait Islander Child Protection Peak, *Position Statement for Aboriginal Kinship Care*, 2020, pp.4, available from: <https://www.qatsicpp.com.au/wp-content/uploads/2020/05/CPP-POSITION-STATEMENT-KINSHIP-BK.pdf>

<sup>5</sup> Kinship carers are defined in the Children and Young People Act 2008 as a "family member or significant person"

There was considerable support among stakeholders for the parameters set out in the QATSICPP definition of Aboriginal kinship, however there were a range of perspectives on who should be considered a kinship carer for Aboriginal and Torres Strait Islander children. Some stakeholders described kinship carers as Aboriginal and Torres Strait Islander people who had connections or relationships with children beyond biological relatives and others felt that kinship carers should only include biological relatives but extend beyond immediate family.

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*Kin in my culture as an Aboriginal person is not just my blood, but those who are important and significant to me through my connection and relationship with them in line with my culture, values and traditions. (Survey respondent)*

*I would consider all Aboriginal and Torres Strait Islander people as my kin (Community Consultation participant)*

*It is hard because sometimes children might be best placed with their non-Aboriginal family and even though they are family and it is technically kinship care, it is different to being placed with Aboriginal family (Community Consultation participant)*

*People with kinship and blood ties to the children would be preferred (Survey respondent)*

*An Aboriginal person or family member who is known and trusted by the biological family and asked by the biological family to consider kinship care placement of vulnerable child (Survey respondent)*

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In response to the need for increased transparency and clarity on the types of placements being provided for Aboriginal and Torres Strait Islander children but also not discounting that kinship will look different for each family, there was consensus that there should be a definition that provides a distinction between 'kinship carers' and 'Aboriginal and Torres Strait Islander kinship carers'. The purpose of such a definition would be to make sure children are being provided with placements that support their connection to family, culture and community and increased transparency in placement decisions.

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*Non-Aboriginal family members can still be kinship carers, but this shouldn't be the same as Aboriginal kinship (Community Consultation Participant)*

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## **Key finding 2: Only families have the authority to decide who is a kinship carer**

There was consensus across all consultation groups that it was not the role of statutory agencies to identify who is or is not a kinship carer for Aboriginal and Torres Strait Islander children. There was a strong and consistent message from community members that the authority for identifying kin for children lies with family.

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*It has to be the parents and family that have the say about who can be considered a kinship carer. It can't just be anyone that has met the family. (Community consultation participant)*

*They [CYPS] need to actually to talk to families about who is important to a child and who should be included in decision making right at the start. You need the voices of the family, when you lose that things go wrong (Consultation participant)*

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There was also strong consensus about how processes to identify kin should happen early in the engagement with families as part of mapping support for families and connections for children. This was connected to themes about the need for Family Group Conferencing to be independent to CYPS and for the full implementation of the ATSICPP to ensure the participation of children and families in these processes.

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*Those genograms should be done with the parents and child. It can't be a situation where one conversation happens and then that is it, finding kin takes time and you need to put in the effort to connect with people (Consultation participant)*

*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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Stakeholders described many examples where active efforts were not being made to appropriately identify Aboriginal and Torres Strait Islander kinship carers. Stakeholders described how Aboriginal and Torres Strait Islander family members were overlooked or not contacted as potential kinship carers.

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*They [CYPS] don't even look at the Aboriginal family. Even when there are people who want to take on the kids. They always go straight to the non-Indigenous family. (Community consultation participant)*

*They don't even try to find Aboriginal family. They don't ask or talk to anyone. Then they just say they couldn't identify anyone suitable. (Community consultation participant)*

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### Key finding 3: Support for Aboriginal and Torres Strait Islander kinship carers

Stakeholders also raised concerns about the lack of support for kinship carers and the inequitable access to resources that often lead non-Indigenous family members being assessed as more appropriate placement options. This is well summarised by the submission from Women's Legal Centre ACT below:

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*The Women's Legal Centre also recognises the need for Aboriginal and Torres Strait Islander grandmothers to be more supported in their role as kinship carers. In some cases, grandmothers are looking after eight or more children, without adequate practical supports from care and protection. Greater financial and practical supports for grandparents, including access to culturally appropriate respite care, free childcare, facilitated transport, housing supports and access to healthcare and counselling supports, would help support these women who are often battling their own health issues and the huge stress and physical strain of looking after multiple children. (Women's Legal Centre ACT, discussion paper submission)*

*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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Stakeholders felt strongly that the supports offered to foster carers needed to be provided on the same basis to kinship carers.

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*Foster carers get all this extra support, respite, funding, all sorts of things. Where are these supports for our kinship carers? (Community consultation participant)*

*Grannies taking on care of multiple kids, then CYPS come in and say that they can't handle it anymore and put the kids with white foster carers and gives them [foster carers] all this money, why don't CYPS just help them [kinship carers]? (Community consultation participant)*

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Part of improving the practices around kinship care must be to invest in support for Aboriginal and Torres Strait Islander kinship carers who either take on care of a child or who want to take on that responsibility but require additional support to meet the requirements for becoming a kinship carer.

## 4. Recommendations

### A. Defining Aboriginal and Torres Strait Islander kinship carers

- i. Implement Recommendation 20 of SNAICC's report on embedding the ATSICPP in the Children and Young People Act 2008 to include a specific definition of Aboriginal and Torres Strait Islander kinship carers in the context of the child protection system.
- ii. Make the following addition to section 516:

"For an Aboriginal and/or Torres Strait Islander child, the Director-General may authorise (a **specific parental authority**), orally or in writing, an Aboriginal and/or Torres Strait Islander family member of the child or young person, or an Aboriginal or Torres Strait Islander person identified by the child's Aboriginal and/or Torres Strait Islander family as being the child's kin, to exercise the daily care or long-term care responsibility for the Director-General- (an **Aboriginal and/or Torres Strait Islander kinship carer**)"

*As noted above, the purpose of this definition is not to define kinship for all Aboriginal and Torres Strait Islander people. It is to support transparency and compliance with the ATSICPP to enable distinction between those children in OOHC placed with Aboriginal and/or Torres Strait Islander kinship care compared to other types of kinship care.*

### B. Mandatory recording of placements with Aboriginal and Torres Strait kinship carers

- i. Ensure all relevant policies require mandatory completion of fields distinguishing Aboriginal and Torres Strait Islander kinship carers from other kinships carers in record management systems.
- ii. Ensure all record management systems allow for distinguishing between Aboriginal and Torres Strait Islander kinship carers and other types of kinship care
- iii. Report publicly and transparently on the number of Aboriginal and Torres Strait Islander children placed with Aboriginal and Torres Strait Islander kinship carers

### C. Recognise family authority in decision making and identification of kinship carers in all relevant policy and practice guidelines

- i. Practitioners must have conversations about family and kin in the earliest stages of engagement to support family preservation, connection, and if required appropriate Aboriginal and Torres Strait Islander kinship placement options.
- ii. Families must be provided opportunities to participate in placement decisions and identification of Aboriginal and Torres Strait Islander kinship carers through ACCO led AFLDM and/or Family Group Conferencing.
- iii. Families must be involved in family finding and the identification of culturally connected placement options.
- iv. Families must be offered the opportunity to have a trusted person, ACCO or the Cultural Services Team involved in the identification of culturally connected placement options.
- v. Assessment of placement options conducted and exhausted in order of hierarchy – these reviews must be recorded.