

Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd



**Submission to the Queensland Child Protection
Commission of Inquiry**

November 2012

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1. Introduction

We thank all concerned for the opportunity to provide comment and provide further input into the Queensland Child Protection Commission of Inquiry ('The Inquiry'). We acknowledge the particular importance of this Commission of the Inquiry given that 37.6 % of children and young people represented in Queensland's Child Protection System are Aboriginal and Torres Strait Islander Australians.

2. Preliminary Consideration: Our Background For Meaningful Comment

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (ATSILS) provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Our primary role is to provide criminal, civil and family law representation (inclusive of child protection representation). We are also funded by the Commonwealth to perform a State-wide role in key areas of Law and Social Justice Reform, Community Legal Education and monitoring Aboriginal and Torres Strait Islander Deaths in Custody. As an organisation which for four decades has practiced at the coalface of the justice system, we believe we are well placed to provide meaningful comment, not simply from a theoretical or academic perspective, but also from a platform based upon actual experiences. Consequently, we hope that our comments are of assistance in this very important area of much needed reform.

Further, whilst there are certain systemic deficiencies identified within the body of this submission, we do acknowledge that the Department of Communities, Child Safety Services employees and the Non – Government child protection sector perform a highly demanding role in often trying circumstances with strong commitment and integrity. Our submission is based upon our first-hand experiences with the aim of supporting enhanced and holistic quality outcomes for Aboriginal and Torres Strait Islander children (and indeed, for non-Indigenous children) and hence, promoting positive systemic change.

3. International Human Rights Context

It is course axiomatic that everyone should have certain fundamental human rights and be entitled to have them respected. These rights reflect the human dignity of all people. Governments, companies, organisations and individuals all have obligations to respect such rights. Governments, however, have specific obligations to not only ensure that they respect these rights, but that they also:

- Protect them from being violated by anyone else; and
- Ensure that people have the basic conditions and supports to fulfil their rights.

While children possess the full spectrum of human rights attributed to all human beings, there are also some additional specific human rights attributed to children in recognition of their special position and unique needs. The rights of the child are primarily contained in the

United Nations Convention on the Rights of the Child (CRC)¹ which Australia signed, and agreed to be bound by in 1990. Amongst others, the CRC protects the rights of children in relation to:

- freedom from discrimination;
- having an adequate standard of living including proper housing, nutritious food, clothing and the fulfilment of basic needs;
- physical and mental health;
- freedom from violence and abuse;
- the preservation of their identity and culture;
- growing up with family and community and to only being separated from such where it is necessary for their best interests;
- having their ethnic, cultural and linguistic background considered when being placed in out-of-home care;
- having a say in decisions that affect them;
- detention as a last resort; and
- being separated from adults whilst in detention.

Indigenous peoples, including children, are also recognised as having other specific rights that stem from their status as First Nations peoples. These rights are contained within the Declaration on the Rights of Indigenous Peoples (Declaration).² While the Declaration is not a legally binding instrument, it is widely accepted as the international minimum standard for the treatment of Indigenous peoples. Amongst others, the Declaration sets out the rights of Indigenous peoples, including children, in relation to:

- self-determination;
- freedom from forced assimilation or destruction of their culture;
- the practice and revitalisation of their cultural traditions and customs;
- belonging to their Indigenous community or nation;
- accessing education in their own culture and language, including in relation to those living outside of their community;
- participation in decision-making;
- being consulted in good faith and having their free, prior and informed consent obtained before any legislative or administrative measures that may affect them are adopted;
- improvement of their economic and social conditions, including in relation to education, employment, health, sanitation and social security; and
- being actively involved in developing health, housing and other economic and social programs affecting them and to administer such programs through their own institutions.

Given that all Australian governments are under a legal obligation to protect and promote the rights contained within the CRC, (as well as under a moral obligation pursuant to the

¹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

² *United Nations Declaration on the Rights of Indigenous Peoples*, adopted 13 September 2007.

Declaration), in our view it is critical that any review of the Queensland child protection system is undertaken within a framework that holds these rights at its core.

4. Aboriginal and Torres Strait Islander Over-Representation

There were 70,071 Aboriginal and Torres Strait Islander children living in Queensland in 2010.³ The current high rates of Aboriginal and Torres Strait Islander children substantiated for neglect by the Queensland Department of Child Safety ('the Department') demonstrates evidence of the challenging needs of Aboriginal and Torres Strait Islander children and their families. Departmental statistics ending March 31, 2012 demonstrated "neglect" was the highest alleged cause of substantiations (903 out of a total of 4833). This figure represents a 30% increase on substantiations for neglect of Aboriginal and Torres Strait Islander children from the previous 2010-2011 period.⁴

The Australian Bureau of Statistics (ABS) 2008 national survey of Aboriginal and Torres Strait Islander households documented that just over one-quarter (28%) of Aboriginal and Torres Strait Islander people aged 15 years and over lived in households where members had run out of money for basic living expenses in the 12 months prior to interview.⁵ Additionally, 26% of Aboriginal and Torres Strait Islander households live in dwellings with major structural problems.⁶ Adults living in this housing were 37% more likely to report high or very high levels of psychological distress.⁷

At the time of the 2011 Census, the proportion of Aboriginal and Torres Strait Islander households renting their home was almost twice that of other households (63.3% compared with 32.0%).⁸ Additionally, 82.4% of Aboriginal and Torres Strait Islander households in Queensland were family households.⁹ Overcrowded accommodation affects nearly one-third (30%) of Aboriginal and Torres Strait Islander adults. Those with a gross household income in the lowest income quintile were living in housing that needed at least one extra bedroom.¹⁰ Overcrowding rates vary with remoteness: with 49% of Aboriginal and Torres Strait Islander adults in 2008

³ Australian Bureau of Statistics 2010, total Indigenous children population in Queensland. 30 June 2010.

<http://www.oesr.qld.gov.au/products/bulletins/atsi-pop-qld-c11/atsi-pop-qld-c11.pdf>

⁴ Department of Communities, Child Safety and Disability Services Our Performance; Table S.6Q: Children subject to a substantiation, by most serious harm type and Indigenous status, Queensland 2012

<http://www.communities.qld.gov.au/childsafety/about-us/our-performance/investigation-and-assessment-phase/substantiations>

⁵ Australian Bureau of Statistics (ABS) 4714.0 - National Aboriginal and Torres Strait Islander Social Survey, 2008 FINANCIAL STRESS

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4714.0Main%20Features112008?opendocument&tabname=Summary&prodno=4714.0&issue=2008&num=&view=>

⁶ ABS - National Aboriginal and Torres Strait Islander Social Survey, 2008 Housing Circumstances;

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter875Oct+2010>

⁷ Ibid.

⁸ ABS- Census 2011: Office of Economic and Statistical Research

Queensland Treasury and Trade; Aboriginal and Torres Strait Islander Population in Queensland. p.3.

⁹ Census 2011: Aboriginal and Torres Strait Islander Population in Queensland

¹⁰ ABS 4704.0 - The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, Oct 2010

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/8E204960CD6596F8CA257839000FAC0C?opendocument>

affected by overcrowding in remote areas, 20% in regional areas and 13% of adults in major cities.¹¹

In Queensland, Aboriginal and Torres Strait Islander children aged under 15 years, comprised 38% of the total Aboriginal and Torres Strait Islander population (compared with 19% in the non-Aboriginal and Torres Strait Islander population).¹² Nationally, half (50%) of all Aboriginal and Torres Strait Islander households were comprised of single families with children, with one in five (22%) having two or three children aged 0–14 years in 2008. In remote areas, larger families were more common with 7% of households comprising single families with four or more children aged 0–14 years (5% in non-remote areas).¹³ The unemployment rate for Aboriginal and Torres Strait Islander people was over three times the rate for all Australians in 2008.¹⁴

Social and economic disadvantage is evidenced by Aboriginal and Torres Strait Islander families' lower socio economic status. This directly impacts upon an inability to access safe, affordable, long term housing and basic house hold needs and exacerbates families' risk factors - reducing parenting capacity. It is essential the future Aboriginal and Torres Strait Islander child protection service delivery model has complementary approaches which aim to address the intergenerational cycles of trauma, significant poverty, low socioeconomic status of such families and the presenting child protection concerns or needs.

Recommendation 1.

That the Inquiry recommends incorporating and considering the obligation on all Australian governments to protect and promote the rights contained within the United Nations Convention on the Rights of the Child and the Declaration on the Rights of Indigenous Peoples. It is of critical importance that any review of the Queensland child protection system is undertaken within a framework that holds these rights at its core.

Recommendation 2.

That the Inquiry recommends and ensures responses to a significant root cause of Aboriginal and Torres Strait Islander child neglect i.e. low socio – economic and poverty status is incorporated into universal, secondary and statutory child protection systems.

Families experiencing hardship from significant disadvantage should be supported through holistic wrap-around approaches. In addition to core child protection, families require quality access to wrap around support services across housing, health, education and the youth justice

¹¹ ABS 4704.0 - The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, HOUSING CIRCUMSTANCES: OVERCROWDING, Oct 2010

¹² ABS 4713.0 - Population Characteristics, Aboriginal and Torres Strait Islander Australians, 2006
<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/3121445F7A31D1BBCA2578DB00283CB3?opendocument>

¹³ ABS FAMILY AND HOUSEHOLD COMPOSITION,
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter250Oct+2010>

¹⁴ 4714.0 - National Aboriginal and Torres Strait Islander Social Survey, 2008, POPULATION CONTEXT <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4714.0Main%20Features42008?opendocument&tabname=Summary&prodno=4714.0&issue=2008&num=&view=>

system through integrated service delivery models and a coordinated whole of government response.

Recommendation 3.

That the Inquiry recommends the establishment of a steering committee of key Aboriginal and Torres Strait Islander professionals or stakeholders to inform Aboriginal and Torres Strait Islander Child Protection Community Controlled Sector reform.

ATSILS recognises this would align with the United Nation’s Declaration on the Rights of Indigenous Peoples, particularly the obligation to be consulted in good faith and having their free, prior and informed consent obtained before any legislative or administrative measures that may affect them inadvertently or disproportionately are adopted.

ATSILS suggests the involvement of representatives from the Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd, Cape York Institute for Policy and Leadership, Urban Institute for Indigenous Health, Queensland Aboriginal and Torres Strait Islander Human Services Coalition, Aboriginal and Torres Strait Islander Legal Services (Qld) and Academics from the schools of Social Work, Psychology, Social Sciences, Law and Economics be considered essential to this future development process.

Child Safety NGO Programs Director and Child Protection Development Director’s significant expertise and knowledge within their fields would be of significant value in the development of future Aboriginal and Torres Strait Islander non-government service delivery models.

Recommendation 4.

That the Inquiry recommends the establishment of a Co-Deputy Aboriginal and Torres Strait Islander Children’s Commissioner within the existing framework of the Commission for Children, Young people and Child guardian to support in the oversight responsibilities for the benefit of Aboriginal and Torres Strait Islander children’s safety and wellbeing.

5. A Balanced Child Protection System

5.1 Cultural Competency

Aboriginal and Torres Strait Islander cultural competency must be an enhanced feature of both a Government and Non – Government child protection service delivery response. This will promote increasingly targeted efforts and beneficial outcomes that will reduce the over – representation of Aboriginal and Torres Strait Islander children within the statutory system.

Cultural competency encompasses a coherent set of behaviours, attitudes and policies to enable a system, agency or profession to work effectively in cross-cultural environments. In child protection agencies it relates to the skills and abilities to cater for the diverse values, beliefs and behaviours of Aboriginal and Torres Strait Islander children, young people and families and tailoring delivery to meet social, cultural and linguistic needs.¹⁵ Child Protection agencies must enhance and or further develop their cultural competency framework and service delivery models to effectively serve Aboriginal and Torres Strait Islander children and young people.¹⁶

Cultural Competency requires a whole of government response which embeds cultural competency at all levels inclusive of governance, strategic leadership, management, policies, and frontline practices. Nationally the Victorian child protection jurisdiction offers a conceptual framework which incorporate:

- Cultural Destructiveness – as exemplified by the policies that led to the Stolen Generations;
- Cultural Incapacity – which relates to the prevalence of racism and paternalism;
- Cultural Blindness – where there is no understanding of cross-cultural factors and misunderstandings or a belief that a mainstream service does not need to change to meet Aboriginal and Torres Strait Islander clients’ needs;
- Cultural Pre-Competence – where there may be well intentioned actions such as the employment of Aboriginal and Torres Strait Islander staff within the organisation yet there is still not full understanding of cultural differences and the necessary approaches;
- Cultural Competence – where there is an acceptance and respect for cultural diversity within the organisation and service delivery is reviewed and adjusted to meet the needs of different population groups; and

¹⁵ Betancourt, J., Green, A. & Carrillo, E. (2002), *Cultural competence in health care: Emerging frameworks and practical approaches*. The Commonwealth Fund

¹⁶ Secretariat of National Aboriginal and Islander Child Care (SNAICC) 2008, **Foster their culture**-caring for Aboriginal and Torres Strait Islander children in out-of-home care; a resource to assist non-Indigenous carers of Aboriginal and Torres Strait Islander children

- Cultural Proficiency – where cultural diversity is highly valued, active research takes place and self-determination is promoted and supported.^{17 18}

The English language has been consistently identified as a second or third language in Northern, Far Northern and Torres Strait Island regional and remote communities and a major barrier to the level of understanding in both spoken and written communication detailing child protection and legal requirements. ATSILS highlights the need for funded culturally competent interpreters to ensure effective engagement.

The “Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector” delivers important accessible and specialist culturally competent services within the Recognised Entity, Family Support, Family Intervention and Foster and Kinship care services. It is essential that a competent Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector is maintained and enhanced for the future benefit of Aboriginal and Torres Strait Islander children and young people.

Recommendation 5.

That the Inquiry recommend a review of the level of Aboriginal and Torres Strait Islander Cultural Competency within child protection service delivery and ensure it is a future feature of both Government and Non – Government child protection service delivery in order to promote increasingly targeted efforts and beneficial outcomes that will reduce the over – representation of Aboriginal and Torres Strait Islander children within the child protection system.

Recommendation 6.

That the Inquiry recommend and consider how the Queensland Government and non-Government services including Child Safety Services could utilise the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs National Indigenous Interpreters Framework through the Council of Australian Governments (COAG).

Recommendation 7.

That the Inquiry recommend the mandatory provision of community based and supported Interpreters for assurances of fair process to Aboriginal and Torres Strait Islander Queenslanders who utilise English as a second or third language (particular care and attention should be given to the Gulf, Cape and Torres Strait Islander geographical areas).

¹⁷ Victorian Government Department of Human Services (2008), Aboriginal Cultural Competence Framework. Melbourne.

¹⁸ Frankland, R., Bamblett, M., Lewis, P. & Trotter, R. (2010) *This is Forever Business: A framework for maintaining and restoring cultural safety in Aboriginal Victoria*, Melbourne: VACCA

Recommendation 8.

That the inquiry recommend children, young people and families have access to a well - resourced Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector delivering culturally competent universal, secondary and statutory services.

Given that current public investment in both Government and Non-Government systems has failed to reduce the alarming and unacceptable rates of over – representation, the government must adjust upwards the allocation of Child Safety funding (above the currently designated 6% for Aboriginal and Torres Strait Islander annual expenditure).

Aboriginal and Torres Strait Islander children consist of 6.5% of the Queensland child population which is approximately 70,071 children. However Aboriginal and Torres Strait Islander children are disproportionately over – represented at 37% of young people subject to out of home care.

ATSILS recommends that as a minimum, there should be an increase of 30% above the current allocated budget to the Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector. This would reflect a more equitable investment across universal, secondary and statutory services contributing to the culmination of over – representation.

5.2 Structured Decision-Making Process

The Department of Child Safety Queensland adopted eight of the ten Structured Decision Making (SDM) tools¹⁹ during 2005-06 as a response to the Crime and Misconduct Commission’s recommendations to specifically provide more support to frontline child protection staff during the assessment phase of investigations.^{20 21} An overarching goal of the SDM tool suite is to complement professional decision making in each phase of an intervention to assist in identifying and responding to children most in need of protective services.

Conversely, an independent evaluation of Queensland Child Safety SDM tool application has queried its effectiveness, suggesting that mechanical over reliance on the tools has replaced professional judgement around child protection investigations, de-skilling the child protection workforce and contributing to a risk adverse culture which increasingly focuses

¹⁹ A suite of ten SDM tools were developed by the Children’s Research Centre based in Wisconsin, USA.
<http://www.nccdglobal.org/assessment/sdm-structured-decision-making-systems/child-welfare>

²⁰ Department of Communities, Child Safety and Disability Services
<http://www.communities.qld.gov.au/childsafety/about-us/our-performance/intake-phase/notifications>

²¹ Gillingham, P. & Humphreys, C., (2010). Child Protection Practitioners and Decision-Making Tools: Observations and Reflections from the Front Line. British Journal of Social Work (2010) 40, p.2599.

on family deficits and harm indicators, bypassing a more balanced approach which invests in family and cultural preservation.^{22 23}

Of gravest concern is the lack of cultural transferability of the current standardised SDM tools, specifically the Child Strengths and Needs and Family Strengths and Needs SDM tools in recognising the unique spiritual, emotional, mental, physical and cultural holistic needs of Aboriginal and Torres Strait Islander children and their families.²⁴ Whilst there is widespread acknowledgement that cultural competency is central in child abuse and neglect practices, a comprehensive understanding of how Aboriginal and Torres Strait Islander culture is understood and conceptualised within the SDM child protection context has not been clearly articulated.²⁵ This flags the risk of attributed deficits or strengths to Indigenous children and their care givers due to unchecked ethnocentrism or cultural relativism.²⁶ Aboriginal and Torres Strait Islander children's rights to safety and wellbeing are key to this understanding.

Equally concerning is the inability of SDM tools to assess the impact of structural factors affecting Aboriginal and Torres Strait Islander families. Isolated use of the tools without professional critical reflection might generate inaccurate assessment data leading to culturally flawed decision making processes. Actuarial risk indicators relating to socio economic disadvantage significantly impact on Aboriginal and Torres Strait Islander family parenting ability. There is heightened risk of Indigenous child removal to out-of-home-care placement due to poverty, with 48% of all substantiations due to neglect (31 March 2012).²⁷
²⁸

Appropriate Departmental responses to Aboriginal and Torres Strait Islander families and children undergoing assessment must encompass a holistic, self-critical, strength based approach reaching beyond the SDM Family Strengths and Needs Assessment (FSNA) to acknowledge structural risk factors (poor housing, low income, limited educational

²² Gillingham, P. & Humphreys, C., (2010). Child Protection Practitioners and Decision-Making Tools: Observations and Reflections from the Front Line. *British Journal of Social Work* (2010) 40, p.2599.

The main finding of this research that explored how child protection practitioners in Queensland used the SDM tools in the intake and investigation stages was that their implementation had not achieved its aims. The tools were not used to assist decision making, promote consistency or target the children most in need of a service. p.2613

²³ Peakcare (2011) Munro Campaign; quoting Gillingham, P. & Humphreys, C., (2010) Research in Queensland has found that, rather than assisting the process of decision-making, the tools are often completed in retrospect to match the outcome that had already been determined.p.7.

²⁴ Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (2012, p,12). Submission on the Development, Implementation and Review of Queensland Aboriginal & Torres Strait Islander Cultural Support Plans within the Child Protection System.

²⁵ Korbin, J.K.(2008). Child Neglect and Abuse across Cultures p.123 in *Contexts of child development : culture, policy and intervention*, Edited by Gary Robinson, Ute Eikelkamp, Jacqueline Goodnow, Ilan Katz, Charles Darwin University Press.

²⁶ Korbin, J.K.(2008). Child Neglect and Abuse across Cultures p.123 in *Contexts of child development : culture, policy and intervention*, Edited by Gary Robinson, Ute Eikelkamp, Jacqueline Goodnow, Ilan Katz, Charles Darwin University Press.

²⁷ National Council on Crime & Delinquency website 2012; <http://www.nccdglobal.org/assessment/sdm-structured-decision-making-systems/child-welfare>

²⁸ Department of Communities, Child Safety and Disability Services, Our Performance; Substantiations <http://www.communities.qld.gov.au/childsafety/about-us/our-performance/investigation-and-assessment-phase/substantiations>

achievement and reduced employment opportunities) informing an improved and far more balanced understanding of the family's strengths, areas of need and capacity to respond to care for their children.^{29 30}

This broader systemic view is fundamental to early engagement with targeted, capacity building programs through intensive family support mechanisms which align with keeping Aboriginal and Torres Strait Islander children safely within family and kinship care to ensure cultural retention and identity preservation.³¹

To illustrate this point 8,196 Aboriginal and Torres Strait Islander children were subject to departmental intake processes during 2007-08, with an exponential increase over 4 years of 64% or 13,433 Aboriginal and Torres Strait Islander children by 2011.³² This dramatic increase coincides with the utilisation of SDM tools from 2006, thus it is essential that SDM tools are utilised in conjunction with culturally competent professional judgement and decision making to target Aboriginal and Torres Strait Islander families and children in most need of responsive intensive secondary support services and halt the over representation of Aboriginal and Torres Strait Islander children entering the tertiary care system.

Recommendation 9.

That the Inquiry recommend the review the effectiveness of Structured Decision Making frameworks to consider adaption to more appropriate intervention balanced with a culturally-accepted, family-focused, child-centred, strength-based, therapeutic assessment and decision making approach.

Recommendation 10.

That the Inquiry recommend the establishment of a steering committee or task force (as outlined in recommendation 3), as a body to inform the American based Children's Research Centre and Child Safety's Child Protection Development in enhancing Structure Decision Making tools towards a more culturally-accepted, family-focused, child-centred, strength-based, therapeutic assessment and decision making approach.

Recommendation 11.

That the Inquiry recommend the broadening of licencing arrangements between

²⁹ The SDM® System in Child Protection, Assessment; <http://www.nccdglobal.org/assessment/sdm-structured-decision-making-systems/child-welfare>

³⁰ Peakcare Queensland Inc. CHILD PROTECTION PRACTICE, CASE MANAGEMENT AND DECISION MAKING, Child Protection Inquiry Issues Paper – 30th July 2012, Ensuring that that the child protection system is not mis-used by focussing its attention solely on families who are already marginalised by poverty, their socio-economic status and cultural background and delivering interventions that further alienate, rather than engage, these families. (p.6)

³¹ Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd,(2012, p,12). Submission on the Development, Implementation and Review of Queensland Aboriginal & Torres Strait Islander Cultural Support Plans within the Child Protection System.

³² Department of Communities, Child Safety and Disability Services, Our Performance; intake-phase Our Performance, intake; <http://www.communities.qld.gov.au/childsafety/about-us/our-performance/intake-phase>

Queensland Government Child Safety and the Children’s Research Centre to allow for future Non – government utilisation of enhanced structured decision making tools where statutory decisions may be delegated to Non – Government organisations.

5.3 Child Protection and Youth Justice Correlation

Within Queensland a significant issue and limitation for service delivery planning and implementation is the fact that to-date, Aboriginal and Torres Strait Islander dual youth justice and child protection order data breakdown is unavailable. ATSILS acknowledges current efforts by the Commission for Children, Young People and Child Guardian to make this information available in future reporting.

The relationship between the two is well documented in the “Bringing Them Home Report” (of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families). This report identified the significant correlation between removal and subsequent contact with the criminal justice system. The underlying causes associated with Aboriginal and Torres Strait Islander over-representation in both the child protection system and the criminal justice system are often the same. In Queensland for example, it has been found that 54 per cent of Aboriginal and Torres Strait Islander males, and 29 per cent of Aboriginal and Torres Strait Islander females, involved in the child protection system go on to criminally offend both as juveniles and adults.³³ Such evidence, in addition to the fact that the rates of over-representation in both systems continue to rise, makes it clear that neither system is effectively addressing the causes of contact.

A renewed focus on effective early intervention activities could however, serve to simultaneously address the underlying causes of, and hence reduce, Aboriginal and Torres Strait Islander over-representation within both systems. More collaborative case planning between Child Safety and Juvenile Justice workers for children who have entered both systems, would also have significant benefits in terms of meeting the holistic needs of these children.

Recommendation 12.

That the Inquiry recommend enhancing case management processes to ensure formal collaborative case planning between Youth Justice and Child Safety Services where children and young people are receiving services under dual orders.

This is of significant importance due to the evidence that 69% of Youth Justice clients are known to Child Safety and family function is frequently an identified risk factor for youth re – offending.

³³ Anna Stewart, *Transitions and Turning Points: Examining the Links Between Child Maltreatment and Juvenile Offending* (2005) Office of Crime Statistics and Research
<www.ocsar.sa.gov.au/docs/other_publications/papers/AS.pdf> at 24 May 2010.

Recommendation 13.

That the Inquiry recommend the consideration of “justice reinvestment principles” and approach early intervention and secondary diversion as a cost effective approach to minimise future expenditure in the juvenile and adult criminal justice systems.

Recommendation 14.

That the Inquiry recommend the use of Queensland Police Service’s ‘Queensland Early Intervention Pilot Project’ (QEIPP) for Boot Camp funding to ensure a culturally competent early intervention approach for Aboriginal and Torres Strait Islander children and young people receiving services under dual orders. A mandatory referral pathway could be established for children and young people known to child safety and youth justice systems.

ATSILS considers the early intervention pilot a proven provider of culturally competent “Boot Camp” style intervention which is of great benefit to at risk offending children and young people (although ATSILS recommends against the use of the expression “Boot Camp” as such carries with it a negative connotation – rather “Cultural Camp” or “Healing Camp” or some such).

5.4 International Jurisdictional Guidance

5.4.1 Canadian Models

The Canadian model of partial and full delegation to Aboriginal Community controlled services on and off reserves (communities) has occurred from the early 1970’s in Canada.^{34 35 36} The disproportionately high rates of First Nations’ children entering the Canadian child protection system for substantiations of harm, and consequently being placed outside of their communities in non-Indigenous out-of-home-care, necessitated the Canadian government’s devolution to localised community management.³⁷ During the 1980’s and 1990’s the federal Indian Affairs, known as Indian and Northern Affairs Canada (INAC), now the Aboriginal Affairs and Northern Development Canada (AANDC) began entering into partnership agreements with regional, remote and urban Aboriginal communities around delivery of child welfare services.^{38 39 40}

³⁴ The term Aboriginal refers to all First Peoples of Canada including the First Nations, Inuit and Metis Peoples.

³⁵ Blackstock, C. (2010), Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010.p.6
<http://www.assembly.gov.nt.ca/live/documents/content/10-10-21BlackstockReport.pdf>

³⁶ Rae, J. (2009), Program Delivery Devolution: A Stepping Stone or Quagmire for First Nations? Indigenous Law Journal, Vol.7; Issue 2.p.2

³⁷ Blackstock, C. (2010), Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010.p.6

³⁸ Trocmé, N., Knoke, D., & Blackstock, C. (2004), Pathways to the Overrepresentation of Aboriginal Children in Canada’s Child Welfare System, Social Service Review, Vol. 78, No. 4 (December 2004), p.579.

³⁹ Blackstock, C. Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010,p.6

There are currently over 120 First Nations child and family service agencies that deliver culturally appropriate prevention and protection services directly to First Nations' families and children in their regions.⁴¹ Variations exist within the delegated approach, with some agencies providing a full range of protection services which are often termed fully delegated or fully mandated agencies and others that provide a more limited range of services under the child welfare act such as guardianship, foster home recruitment/retention, and family support in conjunction with mainstream services.⁴²

Funding for these programs is provided by the First Nation Child and Family Services (FNCFS) within specific accountability frameworks.⁴³ ⁴⁴ Better outcomes have been demonstrated through block funding approaches, which have allowed First Nations Child and Family services to invest in early intervention programs, for example over a 10 year period to support and mentor healthier family and community environments. Significantly the block funding approach capped the growth of children in out-of-home-care despite substantial population growth.⁴⁵ ⁴⁶

In recognition of structural factors impacting on First Nations families' ability to care for their children, the FNCFS program orientation began shifting during 2007 to an Enhanced Prevention Focused Approach (EPFA).⁴⁷ There are four components to the program including: development; maintenance; operations; and prevention.⁴⁸ Similar to Aboriginal and Torres Strait Islander children primarily being substantiated for neglect in Queensland, overrepresentation of minority

⁴⁰ Rae, J., (2009). Program Delivery Devolution: A Stepping Stone or Quagmire for First Nations? *Indigenous Law Journal*, Vol.7; Issue 2.

⁴¹ Blackstock, C. Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010, p.6.

Currently there are 120 delegated (mandated) agencies across Canada. (Cindy Blackstock, personal communication, September 10, 2012).

⁴² Blackstock, C. Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010, p.6

⁴³ First Nation Child and Family Services Program
<http://www.aadnc-aandc.gc.ca/eng/1100100035204/1100100035205>

⁴⁴ Gough, P., Blackstock, C and Bala, N. (2005) Jurisdiction and funding models for Aboriginal child and family service agencies, *The Centre of Excellence for Child Welfare* no. 30E.

⁴⁵ Blackstock, C. Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010, p.7.

West Region Child and Family Services in Manitoba won the Drucker Award for social innovation for premising its programming on the Medicine Wheel. One particularly innovative program targeted high needs families where there had been, or would likely be, multigenerational child welfare involvement. This wrap-around program integrated an intensive program that provided families with cultural programs, employment, addictions treatment, child care, counseling and other supports all in one location as part of a holistic plan that fully considered spiritual, emotional, physical and cognitive wellness. The results were that many of these high needs families were able to get back on track and did not have future child welfare involvement.

⁴⁶ Lohar, S. (2012). Safe and supportive Indigenous families and communities for children, A synopsis and critique of Australian research. The Australian Institute of Family Studies, CFCA Paper No.7 2012, pp.1-2. Key Messages; Short funding periods and limited resources for programs have restricted the capacity of some services to provide appropriate support to Indigenous families.*

⁴⁷ First Nation Child and Family Services Program
<http://www.aadnc-aandc.gc.ca/eng/1100100035204/1100100035205>

⁴⁸ First Nation Child and Family Services Program
<http://www.aadnc-aandc.gc.ca/eng/1100100035204/1100100035205>

children in the Canadian child welfare system can be partially explained by higher rates of socioeconomic disadvantage and related problems.^{49 50 51}

There are multiple benefits of partial and full delegation of Child and Family Services to Aboriginal Community controlled services as evidenced in Alberta Canada for example, including the delivery of culturally competent and relevant EPFA focused programs which have been shown to result in increased engagement with vulnerable families, reduced case loads, and increased permanency planning in adherence to the Indigenous child placement principle.^{52 53}

The Aboriginal child welfare agency in Canada demonstrates an example of a Native Child and Family Service which serves urban First Nations, Métis and Inuit peoples from all over Canada and the USA who live in the Toronto area. The programs offered are innovative and effective ranging from a youth group to Aboriginal Head Start and child protection services, housing and addiction issues.⁵⁴

Importantly self-governance respectfully reaffirms the traditional responsibility of Aboriginal families and communities to care for their own children, allowing more culturally relevant practice which integrates a holistic acknowledgment of healing past trauma and its effects,⁵⁵ with evidence based approaches to family support and the protection of children.^{56 57} Canadian First

⁴⁹ Trocmé, N., Knoke, D., & Blackstock, C. (2004) Pathways to the Overrepresentation of Aboriginal Children in Canada's Child Welfare System, *Social Service Review*, Vol. 78, No. 4 (December 2004), p.595

⁵⁰ Tonmyr, L., Ouimet, C. & Ugnat, A-M., (2012) A Review of the findings from the Canadian Incidence Study of Reported Child Abuse and Neglect (CIS), *Canadian Journal of Public Health* March/April 2012; 103(2):p.111

Unstable or unsafe housing was associated with increased likelihood of substantiation or placement....highlighting association between child maltreatment and the socio-economic determinants of health and support the need for an intersectorial public health approach in tackling child maltreatment.

The presence of care giver's mental health issues, alcohol or drug abuse, lack of social supports, history of maltreatment and being a victim of domestic violence (are related problems).

⁵¹ First Nations Child and Family Caring Society of Canada, (2005) *Wen:de Coming to the Light of Day*, p. 21. Many First Nations child and family service agencies work with families who could avoid experiencing significant family crisis or child maltreatment if they had received primary or secondary prevention services. Providing an adequate and sustained amount of funding for the development of a holistic and culturally based continuum of primary, secondary and tertiary prevention services would go a long way to ensuring that child removal is a last resort for First Nations children.

⁵² The First Nation Child and Family Services program <http://www.aadnc-aandc.gc.ca/eng/1100100035204/1100100035205>

⁵³ Queensland Government, Department of Communities, Child Safety and Disability Services, Child Safety Services, Indigenous Child Placement Principle, <http://www.communities.qld.gov.au/childsafety/about-us/our-performance/ongoing-intervention-phase/indigenous-child-placement-principle>

⁵⁴ Blackstock, C. Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010, p.8.

⁵⁵ Walls, M. & Whitbeck, L. The Intergenerational Effects of Relocation Policies on Indigenous Families, *Journal of Family Issues*, 33(9) 1272–1293.

⁵⁶ Lohar, S. (2012). Safe and supportive Indigenous families and communities for children, A synopsis and critique of Australian research. The Australian Institute of Family Studies, CFCA Paper No.7 2012.pp.1-2. Key Messages;

Longer time-frames than those currently provided are required for programs and services to: – build trusting relationships with Indigenous families and community partners; – identify client needs and to plan and implement appropriate responses; – devise and deliver effective engagement strategies; – foster Indigenous cultural understandings for service staff and for the broader community; and – develop evaluation strategies that identify longer-term outcomes for Indigenous families.

Nations child protection models provide an evidenced based insight or proven approach for the Queensland child protection Queensland Child Protection Commission of Inquiry.

5.4.2 New Zealand Models

New Zealand First Nations peoples have embedded their cultural identity within the design and delivery of holistic support services to Maori families and communities, ensuring cultural competency is integral to all aspects of service delivery in the child, family and community context. In Maori culture whānau has been interpreted to mean a multi-generational collective made up of many households that are supported and strengthened by a wider network of relatives.⁵⁸ Additionally, Whānau Ora is about group (whānau) wellbeing.^{59 60}

Between July 2009 and January 2010, the NZ Minister for the Community and Voluntary Sector established a Taskforce to investigate an evidence base around Whānau-centred Initiatives specifically relating to:

- strengthen whānau capabilities

Indigenous participation in the planning, delivery and measurement of programs is critical in fostering greater trust and connectivity and enhancing community awareness.

Engagement strategies work best when Indigenous families are consulted about their needs, and services respond using holistic approaches that are delivered in a culturally sensitive manner.

A collaborative approach to service delivery has resulted in a reduction of service duplication, more efficient use of resources and the promotion of shared goals. It is unclear whether these benefits will result in positive outcomes for Indigenous families in the longer-term.

When Indigenous clients exit from programs there is little known about the impact that services have had on their families beyond their engagement with the program. .

Short funding periods and limited resources for programs have restricted the capacity of some services to provide appropriate support to Indigenous families.

Indigenous perspectives about how child abuse prevention information is shared among the community can help to identify where, when and how child prevention interventions could be delivered.

Program evaluation data are rarely linked to population-wide data to establish the longer-term impact of programs on Indigenous families and communities. Improved data linkage may help to establish a solid evidence base to inform child protection strategies for Indigenous families and communities.

⁵⁷Tilbury, C. (2012), Intensive family-based support services for Aboriginal and Torres Strait Islander children and families; a background paper, Secretariat of National Aboriginal and Islander Child Care (SNAICC).

⁵⁸ New Zealand Government,(2010) Whānau Ora: Report of the Taskforce on Whānau-Centred Initiatives 2.1.6 p.13.

⁵⁹ New Zealand Government, (2010) Whānau Ora: Report of the Taskforce on Whānau-Centred Initiatives 2.1.6 p.29

⁶⁰ Ibid. 4.2.3. The Taskforce has been able to identify six key characteristics of a Whānau Ora philosophy. Whānau Ora is distinctive because it recognises a collective entity, endorses a group capacity for self-determination, has an intergenerational dynamic, is built on a Māori cultural foundation, asserts a positive role for whānau within society and can be applied across a wide range of social and economic sectors. The Taskforce agrees that together those characteristics give definition and distinctiveness to Whānau Ora p.30

- an integrated approach to whānau wellbeing
- collaborative relationships between state agencies in relation to whānau services
- relationships between government and community agencies that are broader than contractual
- improved cost-effectiveness and value for money.⁶¹

Through this inquiry, the New Zealand government has demonstrated its understanding of the importance of Maori culture as fundamental to whānau (child, family and community) wellness.

The provision of wrap around support within family and child service delivery is consistent with whānau ora holistic philosophy. The Task force observed best practice service provision was directed at providing whānau with a comprehensive approach addressing multiple needs of clients with minimal overlap, little inconvenience and no confusion.⁶² Examples of holistic Maori service providers endorsed for their cultural integrity by the Taskforce include:⁶³

- The Rata Te Awhina Trust in Hokitika which is the only Maori provider based on the West Coast of the South Island providing services in a range of sectors, including social services and health.⁶⁴
- Te Ruānanga o Kirikiriroa based in Hamilton has been a long-established urban provider of a wide range of services, with a strong reputation for effectively engaging whānau.⁶⁵
- Te Taiwhenua o Kahungunu in Hastings is a hapū⁶⁶ based provider with a wide range of services involved in developing innovative funding arrangements to support whānau-centred delivery models.⁶⁷

⁶¹ Whānau Ora: Report of the Taskforce on Whānau-Centred Initiatives, (2010,p.69) Appendices; Terms of Reference- Purpose.

⁶² New Zealand Government, (2010) Whānau Ora: Report of the Taskforce on Whānau-Centred Initiatives; 2.4.2 p.19

⁶³ Ibid.p.37.

⁶⁴ Ibid. Social services provided by Rata Te Awhina Trust include; Whanau Youth Plans. Domestic Violence, Truancy, Probation Service, Counselling, Parenting through Separation, Te Rito Collaborative Initiative, Counselling, Whanau Support, Community Education, Self-referred Perpetrator of Family Violence – Adult, Self-referred Perpetrator of Family Violence – Youth Group Programmes for victims of Domestic Violence Youth Initiative, Life-skill programmes.

<http://www.hop.org.nz/Affiliated-M-ori-Providers/Affiliate-Associate-Profiles/West-Coast/Rata-Awhina-Trust> 1.981

⁶⁵ Child and family related services include the Whai Marama Youth Connex offering Infant, Child and Youth Mental Health and Addictions Services in Southern Waikato DHB and Hauraki—this is for 0—19 year olds as well as adult residential mental health services encompassing Whanau / Family support and interaction .

<http://www.terunanga.org.nz/#!services/vstc2=pou-taiohi>

⁶⁶ Hapū refers to a sub-tribe of Maori Peoples <http://www.tkm.govt.nz/glossary/>

⁶⁷ Te Whare Karamu, a 24 hour supportive house for young parents, Family Start, an in-home parenting support, Teen Parent mentoring and support and Youth Transition Services as well as broader programs encompassing mental health, health and community services.<http://www.ttoh.iwi.nz/>

- Te Whānau o Waipareira Trust in Auckland is a leading urban provider delivering across multiple sectors using innovative delivery models within a whānau context.⁶⁸

In August 2010, Te Taiwhenua o Heretaunga was one of 25 provider collectives selected to receive support in the first roll out of the Whānau Ora Program. The program promotes a whānau centred approach to service development and delivery across government and non-government organisations through innovation in delivery, integrated services/contracts and collaboration.⁶⁹

A key finding from the Whānau Ora: Report of the Taskforce on Whānau-centred Initiatives, emphasised the success of seamless implementation as dependent on whole of government commitment to Maori wellbeing encompassing primary, secondary and tertiary service provision.⁷⁰

Recommendation 15.

That the Inquiry recommend and draw from leading international First Nations' child protection models from New Zealand and Canada to inform sector reform within Aboriginal and Torres Strait Islander community controlled child protection.

In particular reform which transfers responsibility and authority for the care, protection and wellbeing of children to the Aboriginal and Torres Strait Islander community, and is responsive to holistic and multi layered needs of communities, families, children and young people.

Recommendation 16.

That the Inquiry explore the Canadian Directive 20 -1 to inform future agreements between Queensland Government and the Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector.

In particular that the inquiry recommend future Queensland legislative, policy and service agreements which affords partial or full delegated responsibility to Non - Government Aboriginal and Torres Strait Islander child protection services within agreed state wide quality assurance framework and standards.

⁶⁸ Te Whānau o Waipareira Trust offers a comprehensive range of whānau based family and child centred supports.

<http://www.waipareira.com/>

⁶⁹ Alayna Watene, Kaiwhakahaere Matua, Chief Executive.

<http://www.ttoh.iwi.nz/media/203718/annual%20report%202010%20-%202011.pdf>

⁷⁰ New Zealand Government, (2010) Whānau Ora: Report of the Taskforce on Whānau-Centred Initiatives

5.4.3 The New Zealand Family Led Decision-Making Process

New Zealand is world-renowned for its innovative approach to involving immediate and extended family members as central in the Family Group Conferencing (FGC) legal process, to ensure best outcomes for children involved in the statutory child protection process.⁷¹

The FGC was conceived in 1989 as a response to address the over representation of Maori children entering child protection out-of-home-care and has been adopted in New Zealand child welfare legislation for Indigenous and non-Indigenous children.⁷² The success of the approach is in the incorporation of Maori values recognising the importance of family and placing the family as central decision maker in the process.⁷³

The intention of this process is to transfer the power and authority of decision-making for children into the hands of the people who have a life-long connection with them and who have to live with the outcome of the decisions made.⁷⁴

Through the FGC process, engagement and agreement with family can often be reached prior to Family Court process enabling the child to remain within the extended family network if unable to reside at home, ensuring familial and cultural connection is maintained. If the matter does go to court, planning can occur prior to the hearing within a FGM enabling agreement between the Department and family about the orders, again giving the family responsibility for negotiating the child's best interests and recognising Maori children's unique cultural needs.⁷⁵

Recommendation 17.

That the Inquiry recommend a review of the effectiveness of the existing Family Group Meeting or Case Plan Review and the Court Order Conference model and process.

In particular, that the inquiry compare the current Queensland model with consideration to adopt/transition to the original New Zealand Family Group Conferencing model which is widely accepted as being independent, solution focused, family and community responsive and child centred in approach.

⁷¹ Connolly, M. (2007). Practice Frameworks: Conceptual Maps to Guide Interventions in Child Welfare. *British Journal of Social Work*, 37, 825-837.

⁷² Ban, P. (2005) Aboriginal child placement principle and family group conferences. *Australian Social Work*, December 2005, Vol. 58, No. 4, p.384.

⁷³ Principal Family Court Judge P D Mahony, Paper presented to the Melbourne IAYFJM Congress, Date October 2002, New Zealand Initiatives in Decision Making Around Child Protection Issues, Family Court of New Zealand website; <http://www.justice.govt.nz/courts/family-court/publications/speeches-and-papers/archived-speeches/new-zealand-initiatives-in-decision-making-around-child-protection-issues>

Maori family structures do not follow the nuclear family model. Grandparents play an important part in instilling family and cultural values in their mokopuna (grandchildren). Aunts and Uncles are also involved, and through whangai (a Maori practice whereby children are brought up within family but not by the natural parents) children are sometimes brought up within the families by 'adoptive' aunts and uncles. The extended Maori family is called whanau and a group of whanau makes up the hapu, who collectively form a tribe or iwi. Within Maoridom the child is regarded as the taonga or treasure of the whole family group, primarily of whanau, but extending out to hapu and iwi.

⁷⁴ Ibid, p.390

⁷⁵ Principal Family Court Judge P D Mahony, Paper presented to the Melbourne IAYFJM Congress, Date October 2002, New Zealand Initiatives in Decision Making Around Child Protection Issues, Family Court of New Zealand

Recommendation 18.

That the inquiry recommend Non - Government Independent Aboriginal and Torres Strait Islander Family Group Meeting Conveners are a significant component in the future Queensland child protection system.

6. Aboriginal and Torres Strait Islander Community Controlled Sector Reform

The Queensland Child Protection Commission of Inquiry presents a unique opportunity to progress the Aboriginal and Torres Strait Islander child protection sector into a modern era of community controlled service delivery. The enhancement of a balanced sector with sound economic business models, leading international and national learning and Aboriginal and Torres Strait Islander values, beliefs and principles reflective of families' requirements. This will assist in reducing overrepresentation.

ATSILS's recognises a need to amalgamate resources within the Aboriginal and Torres Strait Islander child protection sector to minimise expenditure and maximise proficiency across strategic direction, governance, leadership and frontline service delivery. Amalgamation or streamlining of the sector would allow for proficient and high quality service delivery standards whilst catering for an evidenced based holistic wraparound approach. ATSILS' view is that proactive sector reform is required to support transition to a renewed service delivery standard which is responsive to the intergenerational traumas, low socio-economic status, immediate and lasting child protection requirements across both universal, early intervention and statutory phases.

The Queensland community controlled Aboriginal and Torres Strait Islander legal services sector have faced challenges in our progression into a modern era of community controlled service delivery. This sector has demonstrated and proven Aboriginal and Torres Strait Islander community controlled service delivery can respond innovatively and proficiently to both client and government (as a purchaser of services) requirements. ATSILS was originally formed in 1972 – largely due to the passion and commitment for justice of various community members. Success in its early stages resulted in the organisation becoming incorporated as a company on 18th September 1974 (Aboriginal & Torres Strait Islanders Corporation (QEA) for Legal Services). The Service was, and remains, a non-profit (public benevolent), community-based organisation. As other ATSILS were formed around the State, the service delivery area of "QEA" became confined to the South Eastern corner of Queensland and operated out of Brisbane. In the late 1990's regional offices were opened at Beenleigh and Maroochydore.

Over time the organisation's role and responsibilities changed. During 1996 and 1997 a review of the Service was undertaken by the commonwealth Attorney- General's – giving birth to the "Stretton Report". This Report suggested various changes to the monitoring of administration and financial responsibilities of the organisation, and the provision of services to clients. These recommendations were implemented and significant changes occurred which enhanced services to clients.

Responding further to the need of ensuring a professional and accountable service, a new organisation (Aboriginal and Torres Strait Islander Legal Service (QLD South) Ltd) was incorporated under the Australian Securities and Investments Commission in 2005 – coinciding with a tendering process by the Commonwealth Attorney - General's Department, which saw the new organisation take on the service needs of the entirety of Southern Queensland – in the process expanding to 17 offices. 2005 also saw the introduction of family and civil law services – addressing a huge area of unmet legal need. A similar process in 2008 saw the Organisation (now re-named the Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd) take on the service delivery for all of mainland Queensland. From the 1st October 2011 the Organisation became State-wide, as it assumed the service delivery role in the Torres Strait Islands and Northern Peninsular Area. ATSILS now consists of 27 offices and sees our staffing levels exceed 180.

Our growth and development would not have been possible without the support of our various communities – as well as the dedicated services of countless Board and staff members throughout the decades. We are also indebted to the earlier pioneering work of various sister organisations which we have since been able to build upon (such as Wakka Wakka at Murgon; Bidjara at Charleville; “QEC” at Rockhampton; “SEQ” at Toowoomba; Tharpuntoo and Njiku Jowan at Cairns; West QLD at Mount Isa; and the District services at Ipswich, Mackay and Townsville). 2012 will also see the 40th anniversary of the founding organisation.

The Queensland Aboriginal and Torres Strait Islander child protection system is well positioned to emerge as an international leader in First Nation's child protection. Aspects of the Aboriginal and Torres Strait Islander Child Protection Sector provide a framework to enhance, integrate and transfer more responsibility for children, young people and family interventions. The current state - wide service delivery model provides assistance across Peak body functions, early intervention, alternative care and statutory systems.

Presently the Aboriginal and Torres Strait Islander community controlled child protection sector consists of:

- Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd
- 11 Recognised Entity Services
- 11 Family Support Services
- 10 Foster and Kinship Care Services

In addition proactive approaches have been taken by agencies and Child Safety to see mainstream funding being applied in Aboriginal and Torres Strait Islander organisations to deliver:

- Family Intervention Services
- Safe houses
- Safe Havens

The Child Safety funded services are auspiced across approximately 20 agencies located across Queensland urban, rural and remote regional areas. This Commission of Inquiry should explore fundamental reform to innovatively transition and position the Aboriginal and Torres Strait

Islander Child Protection Sector to adopt an enhanced service delivery standard. A renewed standard should consider and be inclusive of evidenced based First Nation's child protection models, core universal, secondary and statutory therapeutic interventions and where Aboriginal and Torres Strait Islander professionals in collaboration with expert stakeholders have authority and responsibility for creating positive child protection outcomes for children.

The Inquiry and any recommended reform offers a unique opportunity to capitalise on current proficient governance, management, leadership and frontline service delivery transitioning this important expertise into an enhanced organisational or service standard. A service reflective of localised community and client need from both a child protection and cultural perspective should be achieved through regional and local partnerships. Additionally it will better resource children and young people with wraparound services that are responsive to the multifaceted intervention needs across socioeconomic needs, entrenched intergenerational trauma whilst creating community and family responsibility for immediate child protection concerns.

ATSILS proposes that a future Aboriginal and Torres Strait Islander child protection structure streamline the number of auspice agencies or services into Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agencies or Agency to achieve effective utilisation of resources and better outcomes for families. ATSILS "recommends the consolidation of services into one State wide Aboriginal and Torres Strait Islander child protection/wellbeing agency with a peak secretariat and frontline service delivery functions. Ideally the Queensland Aboriginal and Torres Strait Islander Child Protection Peak is best positioned to lead innovate restructuring to best place the sector and most likely transition to the lead service delivery agency.

Recommendation 19.

That the Inquiry recommend the establishment of a modern and proficient Aboriginal and Torres Strait Islander community controlled business and service delivery models which deliver effective governance, management, leadership and frontline services for the benefit of children and young people.

In particular that the inquiry recommend significant sector re - design to correctly position Queensland Aboriginal and Torres Strait Islander Child Protection sector to accept delegated statutory responsibility as an enduring public investment aimed at the culmination of the unacceptable rates of over – representation.

Recommendation 20.

That the Inquiry recommend a standalone state-wide Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency to deliver universal, early intervention and statutory support services. The agency should be reflective of children, young people and the local community needs throughout the seven identified child safety regional areas and remote locations.

In addition the inquiry to recommend community controlled and community input is proficiently achieved through regional and local informal and professional relationships within

6.1 Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency Model

6.1.1 Governance

...directors and key executives should be equipped with the knowledge and information they need to discharge their responsibilities effectively...

ATSILS suggests capacity building occur to ensure the effective corporate governance of the future child protection agencies or agency (e.g. strategic direction v operational delivery).

By ensuring that the effort of an organisation is well directed, a well-governed organisation will be more efficient and more likely to produce better outcomes.

Governance should be continual, not an instrument that is exercised from time to time depending on circumstances. An effective governance framework should guide the actions of individuals by providing care of direction as to appropriate behaviour and decision-making. When working well, a governance framework produces better outcomes simply because it exists.

ATSILS identifies a number of elements that are central to the governance of an organisation. In particular:

Understanding Success

Directors in control of an organisation need to be clear about what they want to achieve and communicate that effectively to management. This involves the establishment of a clear sense of purpose and the development of clear expectations of performance.

Organising for Success

Once the Directors have developed an understanding of what needs to be achieved, they should be organised appropriately.

Implementing the Right Organisational Structures

Structuring an organisation in a way that is most likely to assist it to achieve its objectives is a commonly accepted proposition. A key question to consider in getting the structure right is whether it is designed so as to support (rather than impede) the operation of governance.

Power must be in Existence, Delegated, Limited and Exercised

In order for an entity to achieve its purpose, power must be given to executives to develop strategy and direction for higher level approval. Power will need to be further delegated as it is not feasible for a small number of individuals to make all decisions. Delegated power needs to be limited to manage risk associated with decision-making and to limit the opportunity for

non-alignment with the interests of the contractual obligations. Finally, parties in receipt of power must exercise it and do so in a responsible manner.

Clarity of Roles

In organising for success all parties within the governance framework must have a clear understanding of their roles and responsibilities, including their personal accountability.

Making Sure Success is Achieved

Governance is about ensuring individuals responsible for performance understand what outcomes they are required to achieve and are provided with the capacity to achieve them.

With Responsibility There Needs to be Accountability

A robust governance framework should, through transparency and accountability mechanisms, link power and responsibility to performance and review indicators

The Principles

Directors need to clearly establish an understanding of success for contractual arrangements, including their expectations of performance.

Directors need to set its purpose clearly and state their expectations of performance. To be successful, power must be: in existence; delegated; limited and exercised.

Power frameworks will influence the efficiency and effectiveness of decision-making and the capacity of the Directors to produce quality outcomes.

There should be clarity of roles within the governance arrangements of the organisation to ensure that efforts are directed towards success and that responsibilities are performed in an efficient manner.

Directors and management of the organisation should have a clear understanding of their roles and responsibilities.

With responsibility there needs to be accountability.

Directors and management have a clear understanding of required outcomes and be held accountable for their performance.

The uniqueness of proficient organisation governance is based on a strong platform of knowledge. ATSILS suggests that future service providers complete the Australian Institute of Company Directors Course. The course covers the key areas for directors and leaders of organisations, including:

- The role of directors and the board
- Board meetings and governance

- Monitoring risk
- Strategic thinking
- Improving board effectiveness
- Reporting and the board
- Leadership, the director's role
- The executive board; and
- Committees

6.1.2 Proposed Organisational Structure

ATSILS suggests the Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency delivers its services in accordance with the western business practices and principles of accountability, effectiveness and efficiency and is committed to providing culturally competent and community sensitive services to its diverse client population.

6.1.3 Proposed Management Model

ATSILS suggested Management Model illustrated in Diagram 1 below is designed to assist in the effective and efficient response to a diverse range of complex organisational, psychological, socio-economic, cultural and environmental influences and challenges which confront the child protection service delivery.

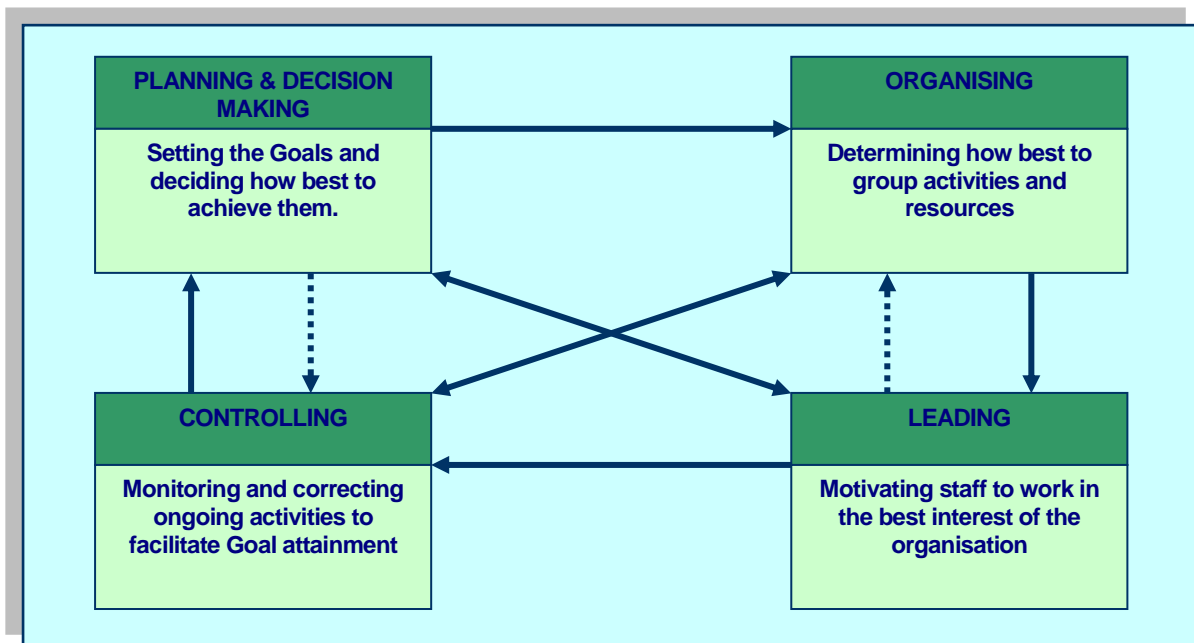
The model provides the organisations staff with a strategic focus and enables the organisation to effectively and efficiently respond to the needs of clients in a business-minded manner while simultaneously delivering culturally appropriate and community sensitive services to the diverse client population.

6.1.4 Proposed Management Process

Management process is focused on four key activities as outlined:

- Planning and Decision Making
- Organising
- Leading; and
- Controlling

Diagram 1: *Proposed Management Process*



The strategic, operational and business planning activities focus on the setting of goals and concentrating on how these goals can be best achieved. Effective decision making within the organisation supplements the planning process and ensures that appropriate, cost effective and efficient courses of action are adopted at all levels throughout the organisation. The effective organisation of human, financial and other resources throughout the organisation is an essential part of the management process. This enables the organisation to efficiently respond to organisational and client needs and continually produce high quality measurable outcomes.

Leadership in the organisation is underpinned by a set of processes, practices and procedures that encourage all staff to work together and in the interests of the organisation and in turn clients. Leadership occurs at every level within the organisation. However, leadership is specifically practiced by the Board of Directors, the Chief Executive Officer and Section Heads within the organisation.

These groups are required to:

- Develop organisational policies and procedures;
- Establish and maintain an effective and responsive strategic planning process to plan for organisational needs;
- Develop, oversee and implement sectional operational plans;
- Implement business-minded approaches to doing business;
- Maintain culturally appropriate and community sensitive approaches in the course of doing business;
- Monitor, control and manage organisational finances, budgets and assets;
- Develop staff training and career development programs;
- Oversee recruitment, selection and induction practices and processes;
- Conduct business in accordance with the organisation's Constitutional requirements;
- Contribute to a safe, healthy and positive work place; and

- Lead by example.

The Board of Directors, Chief Executive Officer and Section Heads must monitor and control processes to ensure that progress continues toward the attainment of the Vision, Mission, Values and strategic goals of the organisation. Effective control mechanisms assist the organisation to adapt to environmental changes, limit the possibility for error, cope with organisational complexity and minimise costs associated with the total operations and service delivery requirements of the organisation.

Diagram 2: *Proposed Management Model*

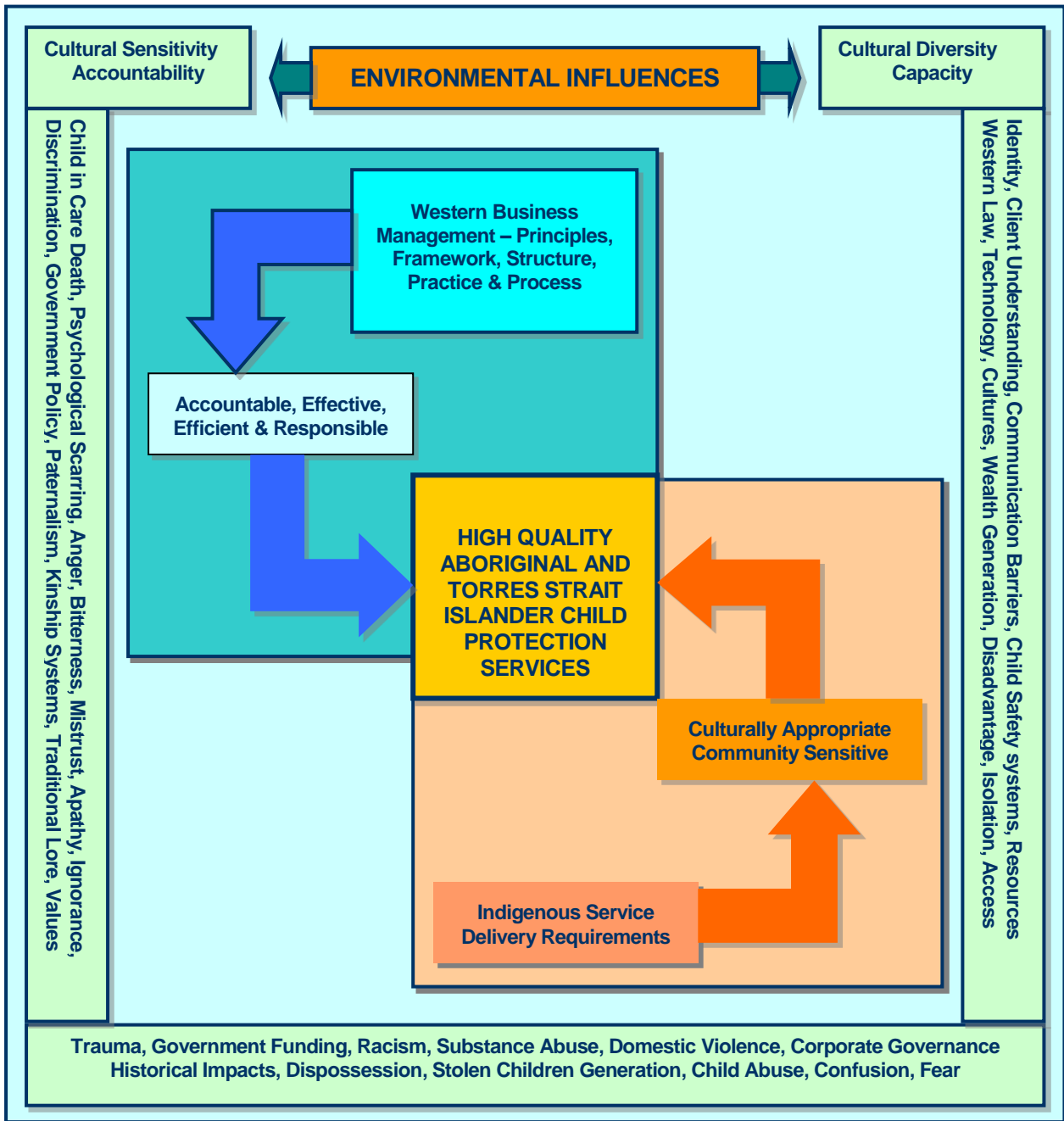
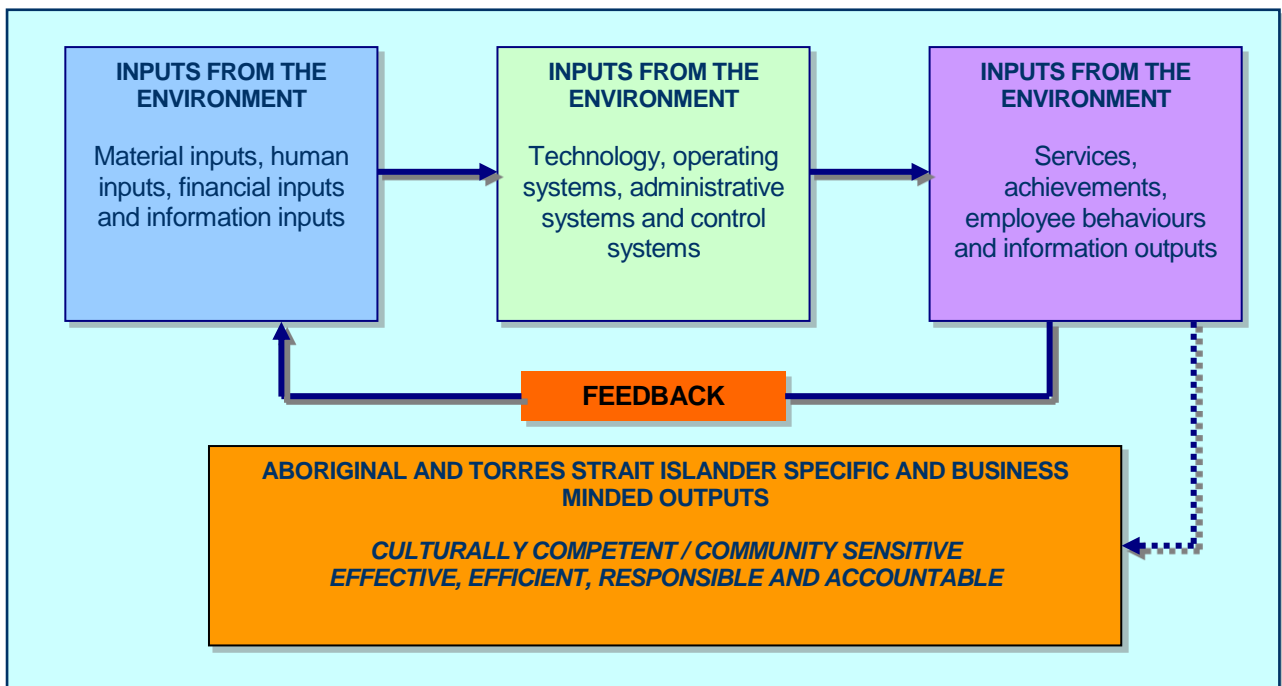


Diagram 3: Proposed Systems Approach to Transforming Inputs into Outputs



The requirement for the delivery of culturally competent outputs acknowledges the distinct differences between Aboriginal and Torres Strait Islander peoples and the need to comply with relevant cultural communication protocols in urban, rural and remote communities throughout Queensland in the process of delivering services.

6.1.5 Community Sensitive Outputs

The requirement for the delivery of community sensitive outputs acknowledges the diversity and changing circumstances among people living in urban, rural and remote communities. Community sensitive approaches in the delivery of services to Aboriginal and Torres Strait Islander clients also takes into account the relevant historical, cultural, psychological and sociological factors that impact upon individual clients.

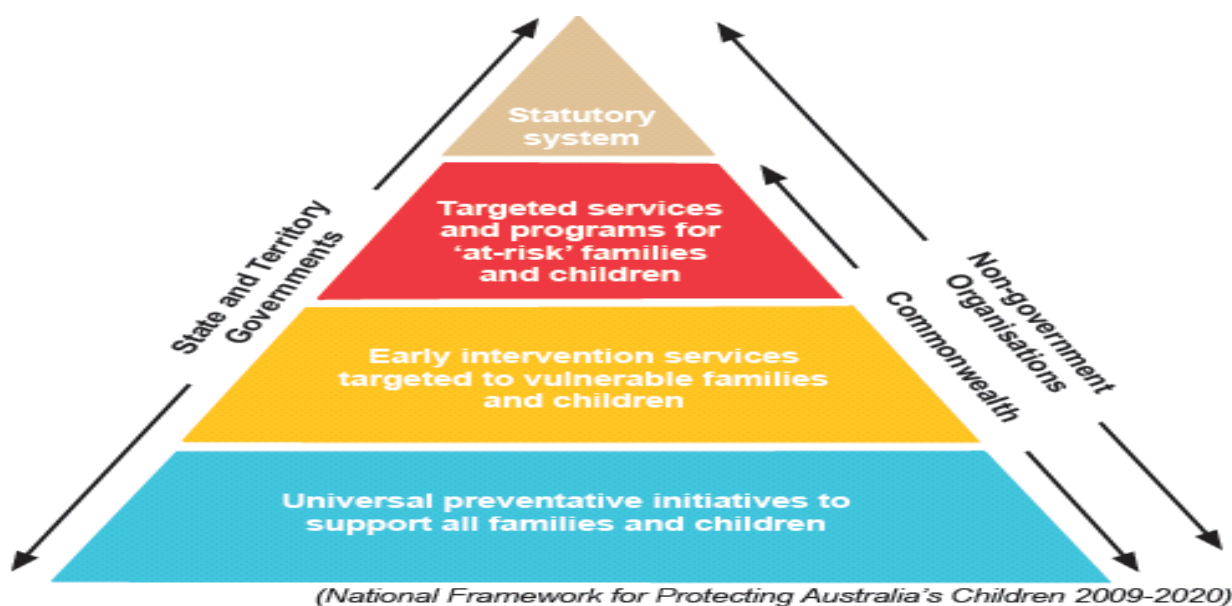
6.1.6 Business Minded Outputs

The requirement for business-minded outputs acknowledges the need to operate responsibly within a western business management framework and maintain effective corporate governance procedures and processes. Measures for compliance, effectiveness, efficiency and accountability underpin performance and delivery of outputs across the organisation

6.1.7 Frontline Services

Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency Model requires a balanced investment across universal, secondary and tertiary services. It is evident families should receive quality universal services as part of holistic wrap around approaches and that this must be identified as a cost effective approach aimed at reducing statutory intervention expenses. The Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency must align

with the preferred population health or holistic service delivery model outlined in the National Child Protection framework:



Aboriginal and Torres Strait Islander children and young people require a support system which responds to their immediate protection and wellbeing whilst delivering comprehensive interventions to promote greater family functioning.

6.1.8 Universal Intervention Team

A community development and capacity building approach is required to create community ownership of, and community responses to, their identified needs. ATSILS has experienced countless requests for assistance to develop local responses but have been limited by lack of resources and the inability of Child Safety to support such approaches due to their restricted mandate. Whilst these approaches may be challenging for Government to initially measure it is essential that Aboriginal and Torres Strait Islander peoples have ownership of issues and solutions through a community development model within a universal preventative initiative.

There is a real need for Aboriginal and Torres Strait Islander communities to be able to access information and awareness programs in relation to what is harm and risk, establishing protective factors, creating acceptable community norms such as appropriate parenting, and promoting safer and stronger environments. Communities must be afforded ownership to develop responses to local and individual issues which impact child wellbeing and safety. It is fundamentally important that this is delivered independently of the statutory system.⁷⁶

Local community groups have attested a willingness and commitment that exists in Aboriginal and Torres Strait Islander communities to care for their own children. There is also commitment to identifying practical needs including prioritising ongoing community child protection education with programs explaining risk, neglect and abuse, identifying

⁷⁶ Secretariat of National Aboriginal and Islander Child Care Incorporated(SNAICC) (2004), Indigenous Parenting Project, MAIN REPORT, p.17.

protective factors, developing community based solutions and promoting the creation of safe environments to better meet children’s care and protection needs.

Recommendation 21.

That the Inquiry recommends a “child protection solution focused” universal education and awareness programs.

The programs should be implemented within the local urban, rural and remote community and be informed by group work and community development practice frameworks. This approach must be accessible to a broader Aboriginal and Torres Strait Islander target group and responsive to immediate child protection and socio – economic status of families.

The programs should aim to empower and capacity build community and family resilience to a range of pressures inclusive of child protection, housing, employment, education, health, violence prevention, substance misuse treatment information and create linkages to direct service providers. It is also essential that a comprehensive mapping exercise is undertaken to identify what services are available. The detailed mapping must include state and federally funded services.

An informative example of a possible Universal intervention approach:

Part A - Stronger Aboriginal and Torres Strait Islander Families Community Education and Awareness Workshops.

Program Proposal

That the Queensland Aboriginal and Torres Strait Islander Child Protection Sector develop a Community Education and Awareness workshops which will build upon individuals, families, and communities knowledge and capacity to provide safer, caring and nurturing family and community environments.

The workshops would target a universal community group and can be inclusive of general community, service providers and families connected to family support or statutory services. The workshops would provide Aboriginal and Torres Strait Islander community, significant kin, carers and parents with a support group offering education on all issues related to meeting the care and protection needs of children and building stronger families.

Service Delivery

- The purpose of the Stronger Aboriginal and Torres Strait Islander Families workshops is to strengthen the capacity of Aboriginal and Torres Strait Islander families, carers and communities to provide a safe and nurturing environment for Aboriginal and Torres Strait Islander children.

- The workshops focus would be to provide education and information to Aboriginal and Torres Strait Islander community, significant kin, carers and parents focusing on children's wellbeing and promoting positive responses to children's care and protection needs. In particular the workshops will deliver knowledge and build understanding of neglect, risks, harm and protective factors, appropriate community and family responses, Child Safety Services, Recognised Entity, Indigenous Family Support services and other service providers.
- The Stronger Aboriginal and Torres Strait Islander Families community workshops would aim to promote healthy lifestyles, safe and supportive environments and emotional wellbeing for children and families. The workshops would also provide an opportunity to highlight the support services available to Aboriginal or Torres Strait Islander families struggling/ or at risk in their local community. The workshops would discuss how to create and encourage family and community protective responses for children who may be at risk or experiencing harm.
- It is also of high importance to provide ownership of community issues and work through these matters in a cultural framework. The Stronger Aboriginal and Torres Strait Islander Families workshops would provide vital opportunities for community, significant kin, carers and parents to understand the Child Safety system and work together to achieve success in creating safe and supportive environments. Throughout workshops community members, significant kin, carers and parents and carers would be encouraged to draw on their existing knowledge and experiences in their life.

Deliverables

- Community Education and Awareness workshops attended by a minimum of 30 participants delivered by Indigenous Family Support services across Queensland.
- a particular focus will be afforded to Aboriginal and Torres Strait Islander communities.
- increase community awareness and understanding of children's care and wellbeing needs, risks, harm, protective factors, child protection services and community support services.
- increase in non-statutory community responses to ensure children's care and protection needs are met within healthy lifestyles, safe and supportive environments.
- reductions in the rates of overrepresentation within the Queensland Child Protection system.
- stronger Aboriginal and Torres Strait Islander Families, particularly safer and stronger Indigenous children

Part B-Stronger Aboriginal and Torres Strait Islander Families

Proposed Program Activity

A Collaborative project between Brisbane Indigenous Media Association (BIMA) and the Aboriginal and Torres Strait Islander Child Protection Sector aimed at raising awareness and promoting the need and rights of Aboriginal and Torres Strait Islander children, young people and families to live in safe, supportive and healthy environment. This would be achieved through the monthly production of radio messages and online content that would be broadcast in Brisbane and via Queensland's Indigenous community radio stations.

BIMA is a not-for-profit community organisation radio station. BIMA is a registered training organisation. BIMA is a proven performer in delivering culturally competent training and health promotion projects and resources for the Aboriginal and Torres Strait Islander people across the state.

Deliverables

1. Producing 3 x 2-min original radio messages each month over a period of 12 months which will provide information to families and parents on:

- How to create safe and supportive environments for raising children
- Promote healthy lifestyles and emotional wellbeing for children and families.
- How to create and encourage family and community protective responses for children who may be at risk or experiencing harm.
- Raise awareness about support services available to Aboriginal or Torres Strait Islander families struggling/ or at risk.
- The legal rights and responsibilities of parents/carers of children and young people in the child protection system.
- Promote other key strategies to strengthen families with linkages to employment, housing, education, community engagement, sporting and cultural activities
- Build awareness of the role of Child Protection agencies and professionals, particularly the importance of Aboriginal and Torres Strait Islander support services.

6.1.9 Early Intervention Team

In the Department's Blue Print for implementation strategy to reduce the over-representation of Aboriginal and Torres Strait Islander children in Queensland's child protection system, key priority areas include:

- providing the right services at the right time; and

- building a robust network of Indigenous service providers.⁷⁷

Aboriginal and Torres Strait Islander Family Support Services (ATSIFSS) are well placed to meet the needs of families, but recognise they have been limited in their capacity to engage in early, non-stigmatised intervention with vulnerable families due to mandated referral pathways from the Department. Families requesting support or having been identified by the Recognised Entity as vulnerable have been unable to self-refer to ATSIFSS preventative services resulting in frustration and lost opportunity for preventative engagement to strengthen family resilience to care for their own children.⁷⁸ Additionally, a wait period of up to 8 weeks may occur for Aboriginal and Torres Strait Islander families who are identified by the Department as placing a child at risk in relation to accessing intensive family support. Vulnerable families in need require a 24 hour response to prevent escalation into the tertiary system.

Families need to have choice around flexible options for secondary intensive family support outside of the statutory care system. Aboriginal and Torres Strait Islander Family Support Services (ATSIFSS) alongside mainstream services fulfils this requirement. Additionally, the type of support families require must match self-identified needs and be flexible and timely. For example, a family may recognise the need to re-establish routines around morning school runs and after school homework and dinner time preparation involving practical tasks such as budgeting, shopping, nutrition education, and cooking skill development. This extra support provided outside of traditional work hours, may diffuse potentially stressful periods within the home, building the families capacity to self-manage. Additionally, support can be tapered in response to family need.⁷⁹

A Demonstration Project funded by Commonwealth Department of Families, Community Services and Indigenous Affairs, and facilitated by Micah Inc. through the Brisbane Homelessness Service Centre in 2006-2007, achieved very positive outcomes engaging with and working alongside Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander families experiencing homelessness who were in contact with the child protection system. The premise of the support was through a community outreach model with responsive, flexible and client-need driven support provision. Families received up to 2 visits daily when required for intensive support, with weekend and evening support where required.

In ATSILS experience, the current early intervention model is actually responding after the fact; often when harm or risk is already entrenched within a family. Whilst the current investment into the Helping Out Families pilot, Referral for Active Intervention and ATSIFSS is welcomed, the reality is that in the majority of case referrals there are linkages to the statutory system. A family support service model must be developed, independent and removed from the statutory system,

⁷⁷ Department of Communities, Child Safety Services.

<http://www.communities.qld.gov.au/resources/childsafety/child-protection/blueprint-strategy.pdf>

⁷⁸ Grant Funding Information Paper: Aboriginal and Torres Strait Island Child Protection Services 2009-10

<http://www.communities.qld.gov.au/resources/childsafety/partners/funding/documents/funding-information-paper-re-fs-2009-10.pdf>

⁷⁹ Australian Human Rights Commission, 2010. Justice Reinvestment: a new solution to the problem of Indigenous over-representation in the criminal justice system.

http://humanrights.gov.au/about/media/speeches/social_justice/2010/20100320_justice_reinvestment.html

or at the very least families should have access to a non-stigma based right of self-referral that is not restricted by the requirement of a previous referral from Child Safety. It is essential that a non-stigma referral pathway is created within the ATSIFSS to promote more effective engagement and responses prior to harm and risk reaching a significant level of concern.⁸⁰

It is ATSILS view that current models of funding and program design may only hold the overwhelming tide of gross Aboriginal and Torres Strait Islander over-representation at bay for a limited period and that it is essential that a non-stigma based referral pathways is created within ATSIFSS to promote more effective engagement and responses prior to harm and risk reaching a significant level of concern.⁸¹

The core competence of the Child Safety funded Aboriginal and Torres Strait Islander Family Support Services is a sound foundation to build on, however it requires enhanced capacity and co-location of integrated specialist responses within a reformed model Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency. It must also be considered essential to diversify the sector employment strategy to afford Aboriginal and Torres Strait Islander agencies the opportunity to recruit tertiary qualified professionals with expertise and knowledge in required core practices.

Aboriginal and Torres Strait Islander children, young people and their families deserve the highest quality support services to address areas of vulnerability and risk which may destabilise a family. Harm and risk indicators including domestic violence, substance misuse, parenting capacity, mental health and child neglect require well-resourced secondary services led by tertiary educated and qualified professionals who can integrate evidence based, culturally competent specialist knowledge to complement wrap around intervention for very vulnerable families.

The function of these multidisciplinary specialist roles are twofold, both in the provision of expert responsive, flexible and timely services to families and as a sector capacity building function. By adopting mentoring supervisory roles, tertiary educated professionals will enable a transfer of comprehensive and authoritative knowledge to their Aboriginal and Torres Strait Islander colleagues, with the view of transitioning greater responsibility to Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agencies.

⁸⁰ Higgins, D., & Katz, I. (2008, p.47) Enhancing service systems for protecting children-Promoting child wellbeing and child protection reform in Australia.

⁸¹Indigenous children had a rate (41.5 per 1,000) of living in out-of-home care that was over eight times greater than the rate for non-Indigenous children (4.9 per 1,000) at 30 June 2010 Commission for Children and Young People and Child Guardian Snapshot 2011: Children and Young People in Queensland; Out-of-home- care.p.18.

<http://www.ccyprg.qld.gov.au/pdf/publications/reports/snapshot2011/Snapshot-Summary-2011.pdf>

37.7% of Aboriginal and Torres Strait Islander children notified (6,588 of 24,834) Quarterly 31March 2012, Queensland Department of Communities.

Our performance, <http://www.communities.qld.gov.au/childsafety/about-us/our-performance>.

35 % of Aboriginal and Torres Strait Islander children substantiated (2,125 of 7454) (31 March 2012). A)

41.8% of Aboriginal and Torres Strait Islander children subject to short-term child protection orders (1,727 of 4,130) (31 March 2012).B).

37.6 % of Aboriginal and Torres Strait Islander children subject to child protection orders (3,147 of 8,371) 30 June 2011.C)

38.5% of Aboriginal and Torres Strait Islander children in out-of-home care (3,219 of 8,367)(31 March 2012). D)

35.4% of Aboriginal and Torres Strait Islander Long term Child protection orders (1611 of 4548) (31 March 2012).E)

There is international recognition of the importance of Indigenous staff capacity building through tertiary education within First Nations child protection services. In Canada the Mi'kmaq-Maliseet BSW program which graduates 30-40 Aboriginal social workers each year, was established 3 decades ago through a collaboration between the Mi'kmaq Family and Children's Services and Dalhousie and St. Thomas Universities in recognition of the absence of Aboriginal social workers in Nova Scotia and largely non-Aboriginal social worker staff in remote and rural areas. This has culminated in a huge professional up skilling of Indigenous staff working within First Nations child and family services.⁸²

Recommendation 22.

That the Inquiry recommends the current Aboriginal and Torres Strait Islander Family Support Service framework as a foundation or building block to create holistic wraparound Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency with specialist secondary support capabilities and programs.

This should include an employment strategy setting improved service delivery standards through the active recruitment of tertiary educated and qualified professionals and specialist program development.

In particular enhanced specialist roles and program responses targeting the significant harm and risk factors such as

- ***Neglect***
- ***Domestic and Family Violence***
- ***Substance Misuse***
- ***Parenting capacity***
- ***Mental Health (inclusive of responses to intergenerational Grief and loss cycles)***

6.1.10 Statutory Intervention Team

It is fundamentally important that the best interests and wellbeing of Aboriginal and Torres Strait Islander children and young people are maintained within the *Queensland Child Protection Act 1999*. The unique cultural and legal rights of Aboriginal and Torres Strait Islander children and young people are of historical and modern significance. The Aboriginal and Torres Strait Islander specific child protection legislated sections exist to support Aboriginal and Torres Strait Islander children to reach their full potential and to develop into strong and secure adults. It speaks of the right for Aboriginal and Torres Strait Islander children to be supported and grounded in a foundation of cultural identity and a relationship with their immediate family, extended kin and community that creates the linkages of their traditional and modern innate belonging.

⁸² Blackstock,C. (2010), Advisory Report, I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT10.p.7.

The legislative intent speaks to children’s cultural identity being supported by the holistic life concepts of Aboriginal and Torres Strait Island traditions which their ancestors, elders, kin and immediate families have accomplished and embedded within their cultural heritage. It speaks of utilising this legacy that has survived the test of time and is a pathway to understanding and an imperative guide supportive of Aboriginal and Torres Strait Islander children’s unique lived experience in out of home care. It is this legislative intention that could assist Aboriginal and Torres Strait Islander children as a foundation of cultural strength to successfully navigate the unintended detrimental experiences related to statutory out of home care. This cultural strength can support the creation of an environment of resilience, supportive of the child’s development stages and transition to adulthood, and long term development of relationships with immediate and extended family and community members, thus, creating a supportive safety network.

In the 1970’s national efforts of the Aboriginal and Torres Strait Islander Child Care agencies (AICCAs) drew on inspiration and guidance from the American and Canadian jurisdictions and child protection practices to determine and implement First Nation’s approaches which negotiate unintended and adverse impacts of statutory interventions and practices. In particular AICCAs utilised the examples found within the American “*Indian Welfare Act 1978*” to ensure the unique needs of Aboriginal and Torres Strait Islander children were better met. A significant catalyst for positive change and implementation of the Aboriginal and Torres Strait Islander Child Placement Principle was the First Australian Conference on Adoption in 1976.⁸³

Importantly, all States and Territories accepted and endorsed the Aboriginal and Torres Strait Islander Child Placement principle in 1986 at the Australian Social Welfare Minister Conference. Within Queensland a policy statement was negotiated between the Department of Families, Youth and Community Care and the State Aboriginal and Islander Child Care Agency in 1998. Following this policy agreement the Aboriginal and Torres Strait Islander Child Placement Principle was enshrined in *section 83 of the Queensland Child Protection Act 1999*. The Principle states that:

Section 83 Additional provisions for placing Aboriginal and Torres Strait Islander children in care

- (1) *This section applies if the child is an Aboriginal or a Torres Strait Islander child.*
- (2) *The chief executive must ensure a recognised entity for the child is given an opportunity to participate in the process for making a decision about where or with whom the child will live.*
- (3) *However, if because of urgent circumstances the chief executive makes the decision without the participation of a recognised entity for the child, the chief executive must consult with a recognised entity for the child as soon as practicable after making the decision.*
- (4) *In making a decision about the person in whose care the child should be placed, the chief executive must give proper consideration to placing the child, in order of priority, with—*
 - (a) *a member of the child’s family; or*
 - (b) *a member of the child’s community or language group; or*

⁸³ Queensland Aboriginal and Torres Strait Islander Child Protection Peak. 2011, Aboriginal and Torres Strait Islander Child Placement Principle practice paper.

- (c) *another Aboriginal person or Torres Strait Islander who is compatible with the child's community or language group; or*
 - (d) *another Aboriginal person or Torres Strait Islander.*
- (5) *Also, the chief executive must give proper consideration to—*
- (a) *the views of a recognised entity for the child; and*
 - (b) *ensuring the decision provides for the optimal retention of the child's relationships with parents, siblings and other people of significance under Aboriginal tradition or Island custom.*
- (6) *If the chief executive decides there is no appropriate person mentioned in subsection (4)(a) to (d) in whose care the child may be placed, the chief executive must give proper consideration to placing the child, in order of priority, with—*
- (a) *a person who lives near the child's family; or*
 - (c) *a person who lives near the child's community or language group.*
- (7) *Before placing the child in the care of a family member or other person who is not an Aboriginal person or Torres Strait Islander, the chief executive must give proper consideration to whether the person is committed to—*
- (a) *facilitating contact between the child and the child's parents and other family members, subject to any limitations on the contact under section 87; and*
 - (b) *helping the child to maintain contact with the child's community or language group; and*
 - (c) *helping the child to maintain a connection with the child's Aboriginal or Torres Strait Islander culture; and*
 - (d) *preserving and enhancing the child's sense of Aboriginal or Torres Strait Islander identity.*

The commitment to the best interests of Aboriginal and Torres Strait Islander children and young people is further demonstrated in the overarching additional principles which guide child protection professionals in their case management, and the Chief Executives responsibility to maintain a connection between a child and their language and cultural group. These legislated sections resonate with understanding of, and commitment to, the importance of children and young people remaining connected and participating within their family, community and cultural groups and the longer term effects on a child's identity and sense of self in decision making. It is essential that there is no erosion to the unique legal rights of Aboriginal and Torres Strait Islander children which are safeguards against unintended and detrimental impacts of out of home care. These additional principles state:

5C Additional principles for Aboriginal or Torres Strait Islander children

The following additional principles apply in relation to an Aboriginal or Torres Strait Islander child —

- (a) *the child should be allowed to develop and maintain a connection with the child's family, culture, traditions, language and community;*

(b) the long-term effect of a decision on the child's identity and connection with their family and community should be taken into account.

88 Chief executive to provide contact between Aboriginal or Torres Strait Islander child and child's community or language group

(1) This section applies if the child is an Aboriginal or a Torres Strait Islander child.

(2) The chief executive must provide opportunity for contact, as often as is appropriate in the circumstances, between the child and appropriate members of the child's community or language group.

Recommendation 23.

That the Inquiry recommend maintaining and enhancing the enshrined legislated cultural competency framework aimed at achieving the best interests and wellbeing of Aboriginal and Torres Strait Islander children. Legislative reform to determine the best interest framework should utilise this historical foundation.

The statutory child protection system has systematically failed to adhere to the unique best interests and cultural and legal rights of Aboriginal and Torres Strait Islander children, young people and families. This raises the question whether the State is the most appropriate agency to deliver these essential requirements for Aboriginal and Torres Strait Islander families, or if it is more effective to outsource through statutory delegation to best placed Aboriginal and Torres Strait Islander community controlled agencies and community groups. Current Recognised Entity professionals produce meaningful advice and recommendations within significant and non-significant decision making which supports culturally acceptable and safe outcomes. The important legislated Recognised Entity role should be enhanced as a component of Aboriginal and Torres Strait Islander practice.

A fundamental flaw in the implementation of the existing Recognised Entity model is that professionals have been limited in their participation and consultation roles in relation to decision-making. The role is defined and administrated through legislation, policy and procedural and service agreements. ATSILS have observed the role to have significant limitations in relation to the level of engagement and information gathering with family, kin and community to inform their participation in decision making. This impacts the levels of meaningful cultural and practical statutory support provided to immediate family, extended family and significant community members on whom children and young people in care are ultimately reliant upon for adequate case management.

The Recognised Entity model is limited to participation and consultation in decision making by way of Child Safety services which ultimately hinders the independence of the model. Furthermore, the constraining model limits professional's meaningful engagement with family, kin and community which could allow for comprehensive development of child centred but family focused interventions. Cultural practice is fundamental to ensuring the preservation and enhancement of Aboriginal and Torres Strait Islander children's cultural identity whilst in out of home care. The Department of Communities holds responsibility for supporting and affording the appropriate resources to Aboriginal and Torres Strait Islander

professionals to adequately meet the children's needs and negotiate holistic responses to the detrimental impacts of out of home care.

It is clear that Aboriginal and Torres Strait Islander Recognised Entity professionals would be more efficiently utilised in a practical statutory role if given appropriate authority to deliver case work in key points in practice. Proactive legislative amendments could delegate enhanced responsibility to Recognised Entity professionals to deliver targeted case work assistance in family group meeting conferencing, cultural support planning and implementation, assisting children through mentoring/transition to adulthood and a court advisory role. Whilst it may be argued that this is currently occurring, ATSILS recommends a strengthening of legislation would better support the intention of the legislated Recognised Entity model, most importantly the intended outcomes for families.

The current Recognised Entity model is outlined in *section 6 of the Child Protection Act 1999*:

Section 6 Recognised entities and decisions about Aboriginal and Torres Strait Islander children

- (1) *When making a significant decision about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must give an opportunity to a recognised entity for the child to participate in the decision-making process.*
 - (2) *When making a decision, other than a significant decision, about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a recognised entity for the child before making the decision.*
 - (3) *However, if compliance with subsection (1) or (2) is not practicable because a recognised entity for the child is not available or urgent action is required to protect the child, the chief executive or an authorised officer must consult with a recognised entity for the child as soon as practicable after making the decision.*
 - (4) *If the Children's Court exercises a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the court must have regard to —*
 - (a) *the views, about the child and about Aboriginal tradition and Island custom relating to the child, of*
 - (i) *a recognised entity for the child; or*
 - (ii) *if it is not practicable to obtain the views of a recognised entity for the child — members of the community to whom the child belongs; and*
 - (b) *the general principle that an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal or Torres Strait Islander community.*
- Editor's note—The Acts Interpretation Act 1954, section 36, contains definitions of Aboriginal tradition and Island custom.*
- (5) *As far as is reasonably practicable, the chief executive or an authorised officer must try to conduct consultations, negotiations, family group meetings and other proceedings involving an Aboriginal person or Torres Strait Islander (whether a child or not) in a way and in a place that is appropriate to Aboriginal tradition or Island custom.*
 - (6) *In this section— **significant decision**, about an Aboriginal or Torres Strait Islander child, means a decision likely to have a significant impact on the child's life.*

Examples of decisions relating to an Aboriginal or Torres Strait Islander child that may be significant decisions—

- 2 a decision made in the course of investigating an allegation of harm to the child*
- 2 a decision about placing the child in care*

It must be acknowledged that Aboriginal and Torres Strait Islander family and cultural structures are a tool for positive empowerment and that a transfer of greater responsibility to the Recognised Entity sector would create integration across core Aboriginal and Torres Strait Islander practices and improve the safety and wellbeing of children. It is important that the current risk adverse and punitive approaches which hinder inclusive family engagement and community based solutions are addressed to allow for more positive outcomes across key child protection indicators such as children’s holistic safety and wellbeing, reunification, family and community contact, cultural perseverance and enhancement strategies. Ideally, a cultural shift within the child protection workforce and enhancement of the role of Aboriginal and Torres Strait Islander professionals is required to achieve innovative integration across the child protection continuum.

ATSILS recommends the Queensland Government explore legislative amendments to *section 6 of the Child protection Act 1999* to create a more responsive and proficient Aboriginal and Torres Strait Islander statutory response. In particular we recommend the inquiry explore:

- The concept and meaning of “significant decisions” with consideration of legislative reform which could redefine this concept to allow for more active inclusion and responsibility of Recognised Entity professionals at significant points in practice. Such could provide guidance at key points similar to the significant decision making points as currently outlined in Recognised Entity contract arrangements with Child Safety. For example, section 6 (4) broadly determines a court role, (although this may require strengthening to provide the authority of the court with independent and professional child protection advice from an Aboriginal or Torres Strait Islander professional) it provides valuable insight of the possibility of delegation of responsibilities such as family group meeting convening;
- The adaption of Section 6 (5) to outline a family group meeting convening role. This would prove instrumental in assisting a more balanced process and ultimately facilitating a more family and culturally responsive decision making process which would create increased levels of family based solutions and clearer progression towards addressing child protection concerns, reunification, adherence to section 83 and cultural retention strategies;
- Proactive amendments that could assist in developing or strengthening similar case work responses to section 6 (4), and 6 (5) which actively transfer responsibilities for case work activities for intensive cultural preservation and mentoring or supporting transition to adulthood to Recognised Entity professionals. Importantly, through such delegation, family and community will have ownership of responses that transfer the responsibility for children back to the Aboriginal and Torres Strait Islander community; and
- The implications and restrictions imbedded in the current conceptualisation of “participation and consultation” in decision making. Ideally, the Queensland public must

have confidence in an Aboriginal and Torres Strait Islander statutory assistance agency to actively address over-representation through sufficient engagement and case work activities. The unintended minimisation resulting from the current “participation and consultation” model is restrictive of more positive outcomes. ATSILS suggests that a delegation model with case work responsibility would create more inclusive community and family ownership.

- A fundamental redesign of section 6 of the Child Protection Act which enables Aboriginal and Torres Strait Islander professionals meaningful input into the culmination of overrepresentation will require additional amendments across the Act providing the appropriate statutory authority. A current example within the present participation based model is *Section 83* where the Recognised Entity role interfaces with Child Safety’s statutory placement function. ATSILS would suggest *section 82 Placing a Child in Care* direct importance to achieving adherence to cultural retention and placement principle obligations also be explored for possible amendments affording Aboriginal and Torres Strait Islander professionals more authority determining placements in the best interest of children.

Recommendation 24.

That the Inquiry recommends legislative amendments to section 6 ‘Recognised entities and decisions about Aboriginal and Torres Strait Islander children’ within the Child Protection Act 1999 to delegate partial and/or full statutory responsibility for child protection case management to Aboriginal and Torres Strait Islander professionals and their representative agency.

By way of suggestion, the amended section could read along the following lines:

Section 6 Recognised entities and decisions about Aboriginal and Torres Strait Islander children

- (1) *The below subsections (2) to (4) apply in instances where a Aboriginal and Torres Strait Islander children are subject to Intake and Investigation and Assessment.*
- (2) *When making a significant decision about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must give an opportunity to a recognised entity for the child to participate in the decision-making process.*
- (3) *When making a decision, other than a significant decision, about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a recognised entity for the child before making the decision.*
- (4) *However, if compliance with subsection (2) or (3) is not practicable because a recognised entity for the child is not available or urgent action is required to protect the child, the chief executive or an authorised officer must consult with a recognised entity for the child as soon as practicable after making the decision.*
- (5) *If the Children’s Court exercises a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the court must receive a Recognised Entity written court report to inform and have regard to —*
 - (a) *the views, about the child and about Aboriginal tradition and Island custom relating to the child, and*
 - (b) *the views of a child’s immediate family, extended family and community members to whom the child belongs; and*
 - (c) *the general principle that an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal or Torres Strait Islander community; and*
 - (d) *the general principle that cultural preservation and enhancement is central to identity development and long term wellbeing.*

Editor’s note—The Acts Interpretation Act 1954, section 36, contains definitions of Aboriginal tradition and Island custom.

- (6) *the chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to Independently convene Family Group and Case Plan Review Meeting and conduct consultations, negotiations, family group meetings and other proceedings involving an Aboriginal person or Torres Strait Islander (whether a child or not) in a way and in a place that is*

appropriate to Aboriginal tradition or Island custom.

- (7) *The chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case management responsibilities for the purposes of transitioning of a child to adulthood commencing at the age of 15 years.*
- (8) *The chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case management responsibilities for the development, implementation and review of children and young people's cultural support plan.*
- (9) *The chief executive or authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case responsibility for child and family contact.*
- (10) *In this section— significant decision, about an Aboriginal or Torres Strait Islander child, means a decision likely to have a significant impact on the child's life; Significant decisions only apply across intake, investigation and assessment and placement decision making.*

Examples of decisions relating to an Aboriginal or Torres Strait Islander child that may be significant decisions—

1. *a decision made in the course of investigating an allegation of harm to the child*
2. *a decision about placing the child in care*

Recommendation 25.

That the Inquiry recommend a second phase of legislative amendments to section 82 'Placing Child In Care' to delegate partial statutory responsibility for child protection case management to Aboriginal and Torres Strait Islander professionals and their representative agency.

In particular the inquiry recommend the provision of a legislative framework for Foster and Kinship Care agencies to instrumentally meet children and young people's holistic needs through provision of proficient child placement practices and cultural supports.

By way of a suggestion, the amended section could read along the following lines:

82 Placing child in care

(1) The chief executive may place the child in the care of—

- (a) an approved kinship carer for the child; or***
- (b) an approved foster carer; or***
- (c) an entity conducting a departmental care service; or***
- (d) a licensee; or***
- (e) if it is not possible, or not in the child's best interests, for the child to be placed in the care of an entity mentioned in paragraphs (a) to (d)—a provisionally approved carer for the child; or***
- (f) if the chief executive is satisfied another entity would be the most appropriate for meeting the child's particular protection and care needs—that entity.***

Example for paragraph (f)—

A particular medical or residential facility may be the most appropriate entity for a child with a disability.

(2) Also, if the child is in the chief executive's custody or guardianship under a child protection order, the chief executive may place the child in the care of a parent of the child.

(3) The chief executive may grant approval to Aboriginal and Torres Strait Islander foster and kinship care agencies the authority to administrate subsections 1 (a), (b), (c), (e)

Recommendation 26.

That the Inquiry recommend a third phase of legislative amendments to section 6 ‘Recognised entities and decisions about Aboriginal and Torres Strait Islander Children’ within the Child Protection Act 1999 to delegate partial and/or full statutory responsibility for child protection case management to Aboriginal and Torres Strait Islander professionals and their representative agency.

In particular that the inquiry recommend a third step towards statutory responsibility for children and young people living within long term guardianship arrangements with progression towards greater authority across the child protection continuum for all Aboriginal and Torres Strait Islander children’s immediate and long term safety.

An informative example of Aboriginal and Torres Strait Islander Family Group Meeting Convener program⁸⁴:

Program Proposal

Aboriginal and Torres Strait Islander families, children and young people’s active participation in decision making processes in both statutory and family support services is essential to the success of targeted interventions and responses. This service delivery enhancement will actively support positive outcomes dependant on the participation of Aboriginal or Torres Strait Islander families and children. The program actively recognizes family, community and cultural connections as integral in identifying concerns, solutions and responsibilities to achieve safe and nurturing environments. Recognizes and utilizes modern and traditional approaches to decision making and the benefits in ensuring best cultural practice regarding the Culture as a tool for positive change, Aboriginal and Torres Strait Islander Child Placement Principle and the cultural support planning for children in care.

The Aboriginal and Torres Strait Islander Family Group Meeting Convener role is a necessary enhancement aligned to the current legislated Family Group meeting and case plan review process. Furthermore, it supports the key cultural responsibilities of ensuring the planning process is a culturally respectful and inclusive process and for this purpose, actively mitigate through participatory and facilitative strategies, the effects of power imbalances related, for example, to differences in age, cultural positioning and the use of statutory power (Child Safety Practice Manual –Practice Paper Family Group Meetings).

⁸⁴ Victorian Aboriginal Child Care Agency Co-operative Limited (VACCA) (2008) Programs: Dhum Djirri Aboriginal Family Decision Making Program.

The program acknowledges the key Family Group Meeting and case plan review process, and seeks to enhance this model with Aboriginal and Torres Strait Islander Family Group Convenors. ATSILS identifies and acknowledges that this enhancement is best provided by Aboriginal and Torres Strait Islander professionals based within Aboriginal and Torres Strait Islander community controlled organisations.

Program Roles

Aboriginal or Torres Strait Islander Family Group Convenors must be implemented within the existing infrastructure of the Recognised Entity service to:

- Facilitate and convene relevant sections within the Family Planning meeting (Indigenous Family support service users statutory cases only);
- Facilitate Family group or case plan review meetings (such as family options available within the Aboriginal and Torres Strait Islander Child Placement principle);
- Help develop cultural support plans;
- facilitate family responses to identified concerns (e.g. to develop a safety plan);
- Promotion safe reunification; and
- Achieve non-statutory outcomes.

Service Delivery

- Assess referrals and engage in preparation work with immediate family, extended family, family Elders, significant community members and key professional supports.
- Convene statutory Family group meetings & Case plan Review meetings to facilitate active participation of immediate family, extended family, family Elders and significant community members to achieve positive responses to child's care and protection needs.
- Convening of non-statutory Indigenous Family Support services cases to facilitate active participation of immediate family, extended family, family Elders and significant community members to achieve positive family responses to identified risks of harm to children and young people.
- Develop Aboriginal and Torres Strait Islander Case Plans to provide to Child Safety, service providers, families and children; and
- Develop Aboriginal and Torres Strait Islander Family plans in partnership with Indigenous Family Support Services to provide to the family, Manager of Family Support services, Family support workers and relevant stakeholders.

Deliverables

- Target group 1. Families and children engaged in statutory intervention provided with Aboriginal and Torres Strait Islander Family Group Conveners.
- Target group 2. Families and children engaged in the Indigenous family support service with Aboriginal and Torres Strait Islander Family Group Conveners.
- Aboriginal and Torres Strait Islander Case Plans provided to Child Safety services for statutory cases.
- Aboriginal and Torres Strait Islander Family plans provided to Indigenous Family Support services and Families.
- Increased family and community involvement and participation in responding & planning to risks and child protection concerns.
- Increased engagement of Aboriginal and Torres Strait Islander immediate family, extended family, family elders and significant community members in decision making processes.
- Enhancement and integration between Child Safety services, Indigenous Family Support services, Recognised Entity services and Aboriginal or Torres Strait Islander families.
- Enhanced adherence and practice approach of the legislated Aboriginal and Torres Strait Islander Child Placement Principle.
- Reduction in the rate of Aboriginal and Torres Strait Islander overrepresentation within the child protection system.
- Improved access to formal support services and community networks to support positive outcomes for children and young people.

7. Recommendation Overview

Recommendation 1.

That the Inquiry recommends incorporating and considering the obligation on all Australian governments to protect and promote the rights contained within the United Nations Convention on the Rights of the Child and the Declaration on the Rights of Indigenous Peoples. It is of critical importance that any review of the Queensland child protection system is undertaken within a framework that holds these rights at its core.

Recommendation 2.

That the Inquiry recommends and ensures responses to a significant root cause of Aboriginal and Torres Strait Islander child neglect i.e. low socio – economic and poverty status is incorporated into universal, secondary and statutory child protection systems.

Families experiencing hardship from significant disadvantage should be supported through holistic wrap-around approaches. In addition to core child protection, families require quality access to wrap around support services across housing, health, education and the youth justice system through integrated service delivery models and a coordinated whole of government response.

Recommendation 3.

That the Inquiry recommends the establishment of a steering committee of key Aboriginal and Torres Strait Islander professionals or stakeholders to inform Aboriginal and Torres Strait Islander Child Protection Community Controlled Sector reform.

ATSILS recognises this would align with the United Nation’s Declaration on the Rights of Indigenous Peoples, particularly the obligation to be consulted in good faith and having their free, prior and informed consent obtained before any legislative or administrative measures that may affect them inadvertently or disproportionately are adopted.

ATSILS suggests the involvement of representatives from the Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd, Cape York Institute for Policy and Leadership, Urban Institute for Indigenous Health, Queensland Aboriginal and Torres Strait Islander Human Services Coalition, Aboriginal and Torres Strait Islander Legal Services (Qld) and Academics from the schools of Social Work, Psychology, Social Sciences, Law and Economics be considered essential to this future development process.

Child Safety NGO Programs Director and Child Protection Development Director’s significant expertise and knowledge within their fields would be of significant value in the development of future Aboriginal and Torres Strait Islander non-government service delivery models.

Recommendation 4.

That the Inquiry recommends the establishment of a Co-Deputy Aboriginal and Torres Strait Islander Children's Commissioner within the existing framework of the Commission for Children, Young people and Child guardian to support in the oversight responsibilities for the benefit of Aboriginal and Torres Strait Islander children's safety and wellbeing.

Recommendation 5.

That the Inquiry recommend a review of the level of Aboriginal and Torres Strait Islander Cultural Competency within child protection service delivery and ensure it is a future feature of both Government and Non – Government child protection service delivery in order to promote increasingly targeted efforts and beneficial outcomes that will reduce the over – representation of Aboriginal and Torres Strait Islander children within the child protection system.

Recommendation 6.

That the Inquiry recommend and consider how the Queensland Government and non-Government services including Child Safety Services could utilise the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs National Indigenous Interpreters Framework through the Council of Australian Governments (COAG).

Recommendation 7.

That the Inquiry recommend the mandatory provision of community based and supported Interpreters for assurances of fair process to Aboriginal and Torres Strait Islander Queenslanders who utilise English as a second or third language (particular care and attention should be given to the Gulf, Cape and Torres Strait Islander geographical areas).

Recommendation 8.

That the inquiry recommend children, young people and families have access to a well - resourced Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector delivering culturally competent universal, secondary and statutory services.

Given that current public investment in both Government and Non-Government systems has failed to reduce the alarming and unacceptable rates of over – representation, the government must adjust upwards the allocation of Child Safety funding (above the currently designated 6% for Aboriginal and Torres Strait Islander annual expenditure).

Aboriginal and Torres Strait Islander children consist of 6.5% of the Queensland child population which is approximately 70,071 children. However Aboriginal and Torres Strait Islander children are disproportionately over – represented at 37% of young people subject to out of home care.

ATSILS recommends that as a minimum, there should be an increase of 30% above the current allocated budget to the Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector. This would reflect a more equitable investment across universal, secondary and statutory services contributing to the culmination of over – representation.

Recommendation 9.

That the Inquiry recommend the review the effectiveness of Structured Decision Making frameworks to consider adaption to more appropriate intervention balanced with a culturally-accepted, family-focused, child-centred, strength-based, therapeutic assessment and decision making approach.

Recommendation 10.

That the Inquiry recommend the establishment of a steering committee or task force (as outlined in recommendation 3), as a body to inform the American based Children’s Research Centre and Child Safety’s Child Protection Development in enhancing Structure Decision Making tools towards a more culturally-accepted, family-focused, child-centred, strength-based, therapeutic assessment and decision making approach.

Recommendation 11.

That the Inquiry recommend the broadening of licencing arrangements between Queensland Government Child Safety and the Children’s Research Centre to allow for future Non – government utilisation of enhanced structured decision making tools where statutory decisions may be delegated to Non – Government organisations.

Recommendation 12.

That the Inquiry recommend enhancing case management processes to ensure formal collaborative case planning between Youth Justice and Child Safety Services where children and young people are receiving services under dual orders.

This is of significant importance due to the evidence that 69% of Youth Justice clients are known to Child Safety and family function is frequently an identified risk factor for youth re – offending.

Recommendation 13.

That the Inquiry recommend the consideration of “justice reinvestment principles” and approach early intervention and secondary diversion as a cost effective approach to minimise future expenditure in the juvenile and adult criminal justice systems.

Recommendation 14.

That the Inquiry recommend the use of Queensland Police Service’s ‘Queensland Early Intervention Pilot Project’ (QEIPP) for Boot Camp funding to ensure a culturally competent early intervention approach for Aboriginal and Torres Strait Islander children and young people receiving services under dual orders. A mandatory referral pathway could be established for children and young people known to child safety and youth justice systems.

ATSILS considers the early intervention pilot a proven provider of culturally competent “Boot Camp” style intervention which is of great benefit to at risk offending children and young people (although ATSILS recommends against the use of the expression “Boot Camp” as such carries with it a negative connotation – rather “Cultural Camp” or “Healing Camp” or some such).

Recommendation 15.

That the Inquiry recommend and draw from leading international First Nations’ child protection models from New Zealand and Canada to inform sector reform within Aboriginal and Torres Strait Islander community controlled child protection.

In particular reform which transfers responsibility and authority for the care, protection and wellbeing of children to the Aboriginal and Torres Strait Islander community, and is responsive to holistic and multi layered needs of communities, families, children and young people.

Recommendation 16.

That the Inquiry explore the Canadian Directive 20 -1 to inform future agreements between Queensland Government and the Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector.

In particular that the inquiry recommend future Queensland legislative, policy and service agreements which affords partial or full delegated responsibility to Non - Government Aboriginal and Torres Strait Islander child protection services within agreed state wide quality assurance framework and standards.

Recommendation 17.

That the Inquiry recommend a review of the effectiveness of the existing Family Group Meeting or Case Plan Review and the Court Order Conference model and process.

In particular, that the inquiry compare the current Queensland model with consideration to adopt/transition to the original New Zealand Family Group Conferencing model which is widely accepted as being independent, solution focused, family and community responsive and child centred in approach.

Recommendation 18.

That the inquiry recommend Non - Government Independent Aboriginal and Torres Strait Islander Family Group Meeting Conveners are a significant component in the future Queensland child protection system.

Recommendation 19.

That the Inquiry recommend the establishment of a modern and proficient Aboriginal and Torres Strait Islander community controlled business and service delivery models which deliver effective governance, management, leadership and frontline services for the benefit of children and young people.

In particular that the inquiry recommend significant sector re - design to correctly position Queensland Aboriginal and Torres Strait Islander Child Protection sector to accept delegated statutory responsibility as an enduring public investment aimed at the culmination of the unacceptable rates of over – representation.

Recommendation 20.

That the Inquiry recommend a standalone state-wide Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency to deliver universal, early intervention and statutory support services. The agency should be reflective of children, young people and the local community needs throughout the seven identified child safety regional areas and remote locations.

In addition the inquiry to recommend community controlled and community input is proficiently achieved through regional and local informal and professional relationships within community frontline practice.

Recommendation 21.

That the Inquiry recommends a “child protection solution focused” universal education and awareness programs.

The programs should be implemented within the local urban, rural and remote community and be informed by group work and community development practice frameworks. This approach must be accessible to a broader Aboriginal and Torres Strait Islander target group and responsive to immediate child protection and socio – economic status of families.

The programs should aim to empower and capacity build community and family resilience to a range of pressures inclusive of child protection, housing, employment, education, health, violence prevention, substance misuse treatment information and create linkages to direct service providers. It is also essential that a comprehensive mapping exercise is undertaken to identify what services are available. The detailed mapping must include state and federally funded services.

Recommendation 22.

That the Inquiry recommends the current Aboriginal and Torres Strait Islander Family Support Service framework as a foundation or building block to create holistic wraparound Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency with specialist secondary support capabilities and programs.

This should include an employment strategy setting improved service delivery standards through the active recruitment of tertiary educated and qualified professionals and specialist program development.

In particular enhanced specialist roles and program responses targeting the significant harm and risk factors such as

- *Neglect*
- *Domestic and Family Violence*
- *Substance Misuse*
- *Parenting capacity*
- *Mental Health (inclusive of responses to intergenerational Grief and loss cycles)*

Recommendation 23.

That the Inquiry recommend maintaining and enhancing the enshrined legislated cultural competency framework aimed at achieving the best interests and wellbeing of Aboriginal and Torres Strait Islander children. Legislative reform to determine the best interest framework should utilise this historical foundation.

Recommendation 24.

That the Inquiry recommends legislative amendments to section 6 ‘Recognised entities and decisions about Aboriginal and Torres Strait Islander children’ within the Child Protection Act 1999 to delegate partial and/or full statutory responsibility for child protection case management to Aboriginal and Torres Strait Islander professionals and their representative agency.

By way of suggestion, the amended section could read along the following lines:

Section 6 Recognised entities and decisions about Aboriginal and Torres Strait Islander children

- (1) The below subsections (2) to (4) apply in instances where a Aboriginal and Torres Strait Islander children are subject to Intake and Investigation and Assessment.*
- (2) When making a significant decision about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must give an opportunity to a recognised entity for the child to participate in the decision-making process.*
- (3) When making a decision, other than a significant decision, about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a recognised entity for the child before making the decision.*
- (4) However, if compliance with subsection (2) or (3) is not practicable because a recognised entity for the child is not available or urgent action is required to protect the child, the chief executive or an authorised officer must consult with a recognised entity for the child as soon as practicable after making the decision.*
- (5) If the Children’s Court exercises a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the court must receive a Recognised Entity written court report to inform and have regard to —*
 - (c) the views, about the child and about Aboriginal tradition and Island custom relating to the child, and*
 - (d) the views of a child’s immediate family, extended family and community members to whom the child belongs; and*
 - (e) the general principle that an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal or Torres Strait Islander community; and*
 - (f) the general principle that cultural preservation and enhancement is central to identity development and long term wellbeing.*

Editor’s note—The Acts Interpretation Act 1954, section 36, contains definitions of Aboriginal tradition and Island custom.

- (6) the chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to Independently convene Family Group and Case Plan Review Meeting and conduct consultations, negotiations, family group meetings and other proceedings involving an Aboriginal person or Torres Strait Islander (whether a child or not) in a way and in a place that is appropriate to Aboriginal tradition or Island custom.*
- (7) The chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case management responsibilities for the purposes of transitioning of a child to adulthood commencing at the age of 15 years.*
- (8) The chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case management responsibilities for the development, implementation and review of children and young people’s cultural support plan.*
- (9) The chief executive or authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case responsibility for child and family contact.*
- (10) In this section— significant decision, about an Aboriginal or Torres Strait Islander child, means a decision likely to have a significant impact on the child’s life; Significant decisions only apply across intake, investigation and assessment and placement decision making.*

Examples of decisions relating to an Aboriginal or Torres Strait Islander child that may be significant decisions—

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(c) an entity conducting a departmental care service; or

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(e) if it is not possible, or not in the child's best interests, for the child to be placed in the care of an entity mentioned in paragraphs (a) to (d)—a provisionally approved carer for the child; or

(f) if the chief executive is satisfied another entity would be the most appropriate for meeting the child's particular protection and care needs—that entity.

Example for paragraph (f)—

A particular medical or residential facility may be the most appropriate entity for a child with a disability.

(2) Also, if the child is in the chief executive's custody or guardianship under a child protection order, the chief executive may place the child in the care of a parent of the child.

(3) The chief executive may grant approval to Aboriginal and Torres Strait Islander foster and kinship care agencies the authority to administrate subsections 1 (a), (b), (c), (e)

8. Conclusion

Aboriginal and Torres Strait Islander children, families and communities must reflect on the 2012 Queensland Child Protection Commission of Inquiry as a moment of positive change. It is fundamentally imperative that the future child protection system is reflective and responsive to Aboriginal and Torres Strait Islander children.

Please accept the Aboriginal and Torres Strait Islander Legal Service's preliminary Queensland Child Protection Commission of Inquiry submission which provides solution based approaches, commentary and associated recommendations. ATSILS recommends the implementation of these strategies to support the development of a proficient and balanced service delivery model across both Government and Non – Government service providers.

Aboriginal and Torres Strait Islander children have and deserve unique human rights. ATSILS considers it fundamentally important that the cultural rights of Aboriginal and Torres Strait Islander children and young people in out of home care are upheld - particularly their legal right to cultural identity preservation and enhancement through meaningful connection with family, kin, cultural, language and community groups.

It is vitally important our children and young people have access to a proficient Aboriginal and Torres Strait Islander community controlled non – government sector delivering sound best practice and evidenced based outcomes across governance, management, leadership and frontline service delivery. Furthermore the potential to transition towards more responsive partial delegation model presents a promising opportunity for Aboriginal and Torres Strait Islander professionals to deliver casework in a culturally competent model.

ATSILS will continue to advocate for the best interest of Aboriginal and Torres Strait Islander children as “a party with leave to appear” at the Inquiry. In addition to this preliminary submission ATSILS will deliver a closing Inquiry submission.

I thank you for your careful consideration of this submission and for affording us an opportunity to have input. I also take this opportunity to acknowledge the invaluable assistance provided to me by three of my Brisbane staff members in an earlier draft: Mr William Hayward (Law and Justice Advocacy Development Officer), Tania Schmakeit (Researcher) and Ms Jenifer Ekanayake (Director of Family Law).

Yours faithfully,



Shane Duffy

Chief Executive Officer