



**Submission on the Development, Implementation
and Review of Queensland Aboriginal & Torres
Strait Islander Cultural Support Plans within the
Child Protection System**

February 2012

1. Introduction

We thank you for the opportunity to provide comment on the development, implementation and review of Cultural Support Plans within Queensland Child Protection. We acknowledge the particular importance of such a review, to the Queensland Commission for Children and Young People and Child Guardian, Department of Communities - Child Safety Services, the Queensland public and perhaps most importantly, the 37.6 % of Aboriginal and Torres Strait Islander children represented in Queensland's Child Protection System.

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 the 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 arena, we believe we are well placed to provide meaningful comment, not only from a theoretical or purely academic perspective, but rather 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.

Please note: 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, 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, holistic quality outcomes for Aboriginal and Torres Strait Islander children and thus promoting positive systemic change.

Summary of our Position

Given the relatively small percentage of Aboriginal and Torres Strait Islander children in Queensland, the fact that they comprise 37.6 % of those placed statutorily in out-of-home care, constitutes a gross and alarming over-representation. Cultural Support Planning is an

instrumental practice approach which can assist in the achieving of an holistic best interest, wellbeing and safety of Aboriginal and Torres Strait Islander children in an effective and timely manner. Appropriate Cultural Support Plans are a right and benefit to all 3017 Aboriginal and Torres Strait Islander children in out of home care. However, for the 47.8% of children placed outside the preferred Child Placement Principle hierarchy it is essential.¹ Cultural Support Planning is integral to achieving the legislated intention of the Aboriginal and Torres Strait Islander Child Placement Principle and preservation of a child's cultural identity.

ATSILS questions the current Department of Communities – Child Safety Cultural Support Plan reported data of 73% current plans and 92.7% total plans based on a comprehensive review of ATSILS' child protection case files and complying child protection stakeholder responses.²

ATSILS is of the view that the accurate percentage of quality Cultural Support Plans will reflect significantly lower adherence. ATSILS presents recommendations outlining required practice enhancements for the benefit of Aboriginal or Torres Strait Islander children in out of home care. ATSILS and the department have a vested interest in ensuring that the internationally and nationally legislated cultural rights of Aboriginal and Torres Strait Islander children are maintained regardless of their out of home care status.

3. Background

3.1 Over-Representation

Aboriginal and Torres Strait Islander children are over-represented across all phases of the child protection continuum including Intake, Investigation and Assessment and Ongoing Intervention.

Aboriginal and Torres Strait Islander children represent around 6.5% of all young people (aged 0-17 years) in Queensland, yet as at 31 March 2011 accounted for:

¹ Queensland Aboriginal and Torres Strait Islander Child protection Peak, *Losing Ground – A report on adherence to the Aboriginal & Torres Strait Islander Child Placement Principle in Queensland* (2011) at <http://www.qatsicpp.com.au/wp-content/uploads/Losingground010911.pdf>.

² Queensland Department of Communities. *Our performance* (2012) at <http://www.communities.qld.gov.au/childsafety/about-us/our-performance>.

- 25.8% of children notified (4,836 of 18,774)
- 29.1% of children substantiated (1,748 of 6,004)
- 40.4% of children admitted to child protection orders (1,731 of 4,282)
- 37.2% of children subject to child protection orders (3,086 of 8,290)
- 37.6% of children living away from home (3,017 of 8,025).³

In 2009-10, Aboriginal and Torres Strait Islander children were:

- 4.7 times more likely to be notified for alleged harm or risk of harm
- 6.1 times more likely to be substantiated for abuse or neglect
- 8.4 times more likely to be subject to a care and protection order
- 8.4 times more likely to be living away from home.⁴

3.2 Previous contact with Department

Aboriginal and Torres Strait Islander children are more likely than non-Aboriginal and Torres Strait Islander children to have had previous contact with the Department prior to their current intake. For children subject to an intake during the year ending 31 March 2011, 71.6% of Aboriginal and Torres Strait Islander children had previously been subject to an intake (9,467 of 13,214), compared to 53.1% for non-Aboriginal and Torres Strait Islander children (29,781 of 56,133).⁵

3.3 Culturally appropriate placements

As at 31 March 2011, Child Safety reported that 52.2% of Aboriginal and Torres Strait Islander children in out-of-home care were placed with kin, an Aboriginal and Torres Strait Islander carer, or an Aboriginal and Torres Strait Islander residential care service.⁶

3.4 Cultural support plans

As at 31 March 2011, there were 4,052 Aboriginal and Torres Strait Islander children subject to ongoing intervention. Of these, purportedly 3,756 or 92.7% had a cultural support plan. Of those Aboriginal and Torres Strait Islander children subject to ongoing intervention with a cultural support plan, 2,743 (73.0%) are reported to have had a current

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Queensland Department of Communities. above n 2.

cultural support plan (i.e. either initially created in the last six months or reviewed in the last six months).⁷

4. Purpose of Cultural Support Plans

4.1 Cultural Support Plan Objectives

“Any definition of the rights of the child and criteria which seek to determine what is in the best interests of the child must recognise the right to culture as formative for identity and therefore that *maintenance of cultural identity is in the best interests of the child!*” Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd (QATSICPP Ltd)⁸

The legislative intention is that Cultural Support Plans must support Aboriginal and Torres Strait Islander children to reach their full potential and develop into strong secure adults. Where children are supported to be grounded in a foundation of cultural identity and a relationship with their family, extended kin, and community it creates the required linkages to their traditional and modern innate belonging. Their cultural identity must be supported by the holistic life concepts of Aboriginal or Torres Strait Islander traditions which their ancestors, elders, kin and immediate families have accomplished and embedded within their cultural heritage.⁹ This legacy has survived the test of time and is a pathway to understanding or an imperative guide supportive of Aboriginal or Torres Strait Islander children and young people's unique experiences in out of home care.

Ideally Cultural Support Plans must assist Aboriginal and Torres Strait Islander children to utilise this foundation of cultural strength to successfully navigate the unintended detrimental experiences related to statutory out of home care.

In accordance with the legislated and procedural requirements, a Cultural Support Plan is intended to create an environment of resilience supportive of the child's developmental stages and transition to adulthood through the long term development of relationships with positive immediate and extended family and community members creating a supportive safety network.¹⁰

⁷ Ibid.

⁸ Queensland Aboriginal and Torres Strait Islander Child Protection Peak., *Long-Term Guardianship position Paper* (2011).

⁹ Dodson M, *The Wentworth Lecture- The end in the beginning: re(de)finding Aboriginality in Journal of the Australian Institute of Aboriginal and Torres Strait Islander Studies* (1994).

¹⁰ Queensland Department of Communities., *Child Safety Practice Manual-Practice resource Developing a cultural support plan for an Aboriginal or Torres Strait Islander child* (2012) at

The intended resilience established within a child's family, cultural and community groups creates a sense of belonging and active supportive safety network to better support children and young people to successfully navigate high risk environments. Through these linkages children might develop a sense of belonging to country and a sense of understanding of who they are as an Aboriginal or Torres Strait Islander person. Children with this sense of belonging and understanding are imbued with the disciplined positive cultural norms of their people and country.

Cultural Support Plans must create a positive environment where Aboriginal and Torres Strait Islander children and young people regardless of their out of home care status are afforded opportunities to reach their full potential as Aboriginal or Torres Strait Islander peoples and as Australian children and future adults.¹¹

4.2 Cultural Support Plan Requirements

In developing a Cultural Support Plan all stakeholders must consider and are required to meet the obligations outlined in the Queensland *Child Protection Act 1999*, inclusive but not limited to sections:

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.*

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*

<http://www.communities.qld.gov.au/resources/childsafety/practice-manual/pr-developing-cultural-support-plan-atsi.pdf>.

¹¹ Queensland *Child Protection Act 1999*, reprinted as in force on 1 January 2012 reprint No. 7c

authorised officer must consult with a recognised entity for the child as soon as practicable after making the decision.

- (4) If the Childrens 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—

- 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

51B What is a case plan

- (1) A **case plan** for a child is a written plan for meeting the child's protection and care needs
- (2) A case plan may include any of the following matters—
- (a) a goal or goals to be achieved by implementing the plan;
- (b) arrangements about where or with whom the child will live, including interim arrangements;
- (c) services to be provided to meet the child's protection and care needs and promote the child's future wellbeing;
- (d) matters for which the chief executive will be responsible, including particular support or services;
- (e) the child's contact with the child's family group or other persons with whom the child is connected;
- (f) arrangements for maintaining the child's ethnic and cultural identity;
- (g) matters for which a parent or carer will be responsible;
- (h) a proposed review day for the plan.

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*
 - (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.*

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.*

122 Statement of standards

- (1) *The chief executive must take reasonable steps to ensure a child placed in care under section 82(1) is cared for in a way that meets the following standards (the **statement of standards**)—*

- (a) *the child's dignity and rights will be respected at all times;*
- (b) *the child's needs for physical care will be met, including adequate food, clothing and shelter;*
- (c) *the child will receive emotional care that allows him or her to experience being cared about and valued and that contributes to the child's positive self-regard;*
- (d) *the child's needs relating to his or her culture and ethnic grouping will be met;*
- (e) *the child's material needs relating to his or her schooling, physical and mental stimulation, recreation and general living will be met;*
- (f) *the child will receive education, training or employment opportunities relevant to the child's age and ability;*
- (g) *the child will receive positive guidance when necessary to help him or her to change inappropriate behaviour;*
- (h) *the child will receive dental, medical and therapeutic services necessary to meet his or her needs;*
- (i) *the child will be given the opportunity to participate in positive social and recreational activities appropriate to his or her developmental level and age;*
- (j) *the child will be encouraged to maintain family and other significant personal relationships;*
- (k) *if the child has a disability—the child will receive care and help appropriate to the child's special needs.*

A comprehensive Cultural Support Plan must:

- a. Draw upon a culturally appropriate assessment process determining the child's holistic cultural needs.
- b. Draw upon a comprehensive identification process gathering accurate information of the Child's Aboriginal and/or Torres Strait Islander family, community and cultural connections.
- c. Establish a collaborative/co-developed document representative of the child's holistic cultural needs and the family, community and cultural groups key guidance and commitment. (This should include immediate and kinship family, significant Elders, clan and moiety groups, language and community groups.)
- d. Establish key individuals, groups and services committed to ensuring the cultural retention and enhancement of the child's cultural belonging and identity.

- e. Establish regular weekly, monthly and annual activities ensuring active participation in family, community, cultural groups as well as generic Aboriginal and Torres Strait Islander culture. This requires a balance between activities supporting a child's unique cultural belonging to their immediate family/cultural groups and generic cultural activities which allow to child/young person to actively express their Aboriginality.
- f. Draw on a comprehensive and resourced contact plan with immediate, extended families and cultural groups to ensure the child's identity, cultural connection and belonging are persevered and enhanced whilst subject to out of home care.
- g. Draw on a comprehensive resource summary. This must outline the formal approval for personal, services, resources and financial assistance required to preserve and enhance the child's cultural identity.
- h. Draw on a comprehensive monitoring and review cycle. This must include monitoring of implementation during ongoing intervention cycles finalised by a formal review in the development of a new case plan.

5. Influencing Factors Impeding Implementation

ATSILS conducted a review and held internal and external Rights of the Child - Child Protection Community workshops in Cairns, Mt Isa, Townsville, Rockhampton, Sunshine Coast, Logan and Toowoomba in 2011. The aims of these review and workshops were to provide proficient community and stakeholder legal education regarding the *Queensland Child Protection Act 1999* and the *Commission for Children and Young People Act 2000* – as well as facilitating an inclusive community consultation and development process with Queensland Aboriginal and Torres Strait Islander child protection professionals. The community/stakeholder workshops identified a range of influencing factors impeding the successful implementation of Cultural Support Plans aimed at ensuring a child's cultural preservation and enhancement. In particular:

- a) In 2009 enhancements to the Department of Communities –Child Safety Services Information Client Management System (ICMS) established an environment where a Child Safety Officer's completion of an Aboriginal or Torres Strait Islander child's identification field results in the automatic procreation of a Cultural Support Plan

within the case plan template. ATSLS recognises that this ICMS development promotes the creation of Cultural Support Plans however ATSLS draws the Commissioner's attention to the fact that current performance data is represented by a significant proportion of Cultural Support Plans with limited to no quality case management information or actions.

ATSILS questions the authenticity of the current publicly reported data on Cultural Support Plan performance. Consultations with the State-wide non-government child protection agencies provided advice and information indicating majority of plans are incomplete and fail to meet children's cultural retention needs. The consultation findings are further evidenced by an ATSLS internal review of child protection case files demonstrating a large percentage of cultural support plans with no information recorded under the Cultural Support Plans' five information headings.¹²

- b) The Aboriginal and Torres Strait Islander Kinship Reconnection project (2010) commissioned by the Placements for Aboriginal and Torres Strait Islander working group conducted a sample audit of 28 children. The audit confirms ATSLS concerns relating to the effectiveness of Cultural Support planning with only 7 children benefiting from a Completed Cultural Support Plan and 6 receiving a partial plan.¹³ More concerning, 50% of children audited did not benefit from any form of Cultural Support planning.¹⁴ The audit conducted quality assurance of Cultural Support Plans and constructively evaluated each plan. If the key findings of the Kinship Care Reconnection report sample data are projected into the current 3017 Aboriginal and Torres Strait Islander children in out of home care, 1508 children would have no cultural support plan, 697 children would have a partial cultural support plan and only 811 would have a completed cultural support plan!

- c) The current Structured Decision Making (SDM) tools, particularly the Child Strengths and Needs SDM tool is an inadequate assessment of Aboriginal and Torres Strait Islander children's spiritual, emotional, mental, physical and cultural holistic needs. Current supportive practice resources that offer Child Safety Officers cultural

¹² Aboriginal & Torres Strait Islander Legal Service (Qld), *Rights of the Child-Child Protection report*.(2011) .

¹³ Paul Testro, *Report on the Aboriginal and Torres Strait Islander Kinship Re-connection Project. Peak Care (2010)* at <http://cpp.comverj.com/wp-content/uploads/2010/09/Kinship-Reconnect-Project-FinalReport-22-06-10.pdf>.

¹⁴ Ibid.

guidance are not integrated into the SDM assessment process and are not ICMS mandatory fields. ATSILS suggests that an enhanced assessment processes will result in assessments representative of the unique needs of children required for enduring and meaningful cultural retention and identity preservation.

- d) Minimal identification of a child's Aboriginal and Torres Strait Islander status – in particular, a lack of comprehensive identification of connections and belonging within immediate family, extended families, clan, moiety, language and community groups.
- e) Minimal engagement of immediate family, extended family, significant community and cultural persons impact the cultural support plan co-development process. This minimal engagement is restricting the input of knowledge and commitment from the broader family, community, cultural language groups. There are a number of key stakeholders internal and external within the child protection systems who have important roles to fulfil. However there is a lack of coordination within the child protection phases and clarification of duties and responsibilities.

It is evident that cultural support planning requires collaboration between Department of Communities Child Safety Officers, Child Safety Support Officers, Recognised Entity and Family Support services to actively gather information and co-develop cultural retention strategies at the initial phase of investigation and assessment. This process must be further enhanced throughout the ongoing intervention phase, and a comprehensive draft must be tabled at the family group or case plan review meeting. The family group or case plan review meeting is time limited and often emotional charged as stakeholders discuss a range of sensitive child protection topics it is not a conducive forum for development, rather the appropriate forum for finalisation and stakeholder approval of a Cultural Support Plan.

The Recognised Entity and Aboriginal or Torres Strait Islander Child Safety Support Officer is restricted in the level of cultural support plan specific engagement, preparation, development and implementation. The Recognised Entity model is limited to participation and consultation in decision making by way of the Department of Communities - Child Safety which ultimately hinders the independence of the model. Furthermore the constraining model limits worker's

cultural engagement with family, kin and community which could allow for comprehensive development of a Cultural Support Plan.

The Aboriginal and Torres Strait Islander Child Safety Support Officer (identified position) lacks a comprehensive position distribution detailing the role's cultural engagement and development responsibilities. Additionally a fundamental flaw is the managerial discretion which often results in the role being utilised for core child protection activities at the expense of cultural development beneficial to children and young people.

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 and family's needs and negotiate Cultural Support Plans responsive to the detrimental impacts of out of home care and which are reflective of individual circumstances.

- f) The Commission's Community Visitors Program data 2009 to 2010 indicate that one quarter of Aboriginal and Torres Strait Islander children in out of home care had no contact with their parents, and almost half of Aboriginal and Torres Strait Islander children had no contact with their traditional language or tribal group in the year.¹⁵ This data alerts ATSLS to the paucity of content and ineffective implementation of Cultural Support Plans which could result in detrimental disconnection from a child or young person's family, language and community group.

- g) Queensland's Create Foundation, a peak voice for children in out of home care additionally confirms inconsistencies with Cultural Support Plan performance data and children or young people's experiences. In particular the Create Foundation's "Be heard" report outlines:
 - Only 8% of children in care feel they know enough about their family story;

¹⁵ Commission for Children and Young People and Child Guardian, *Special Needs of Aboriginal and Torres Strait Islander Children (2010)* at http://www.ccyipcq.qld.gov.au/pdf/publications/reports/child_guardian_report_09-10/special-needs-of-Aboriginal-and-Torres-Strait-Islander-children.pdf.

- Only 5 % report knowing of their Cultural Support Plan; and
- Anecdotally communicated their experiences as being one of non-connection to their culture.¹⁶

ATSILS acknowledges feedback collected by the Commission's Community visitor program, with 98.5 % of children in out of home care reporting satisfaction with their carers, and 87.3% reporting satisfaction with the Department in relation to cultural activities and linkages.¹⁷ Consideration must be given to age of children providing this feedback and the possible influence of gratuities compliance. There is inconsistent evidence in relation to children in out of home care experience of cultural preservation and enhancement. Reported figures might indicate positive immediate care environments; nevertheless the longer term holistic benefits achieved through Aboriginal and Torres Strait Islander children's belonging, connection and participation within their cultural relationships are of grave community concern.

- h) The Queensland Aboriginal and Torres Strait Islander Child Protection Peak "Losing Ground Report" - a report on adherence to the Aboriginal and Torres Strait Islander Child Placement Principle in Queensland, clearly identifies that well-resourced Cultural Support Plans are fundamental to children's cultural preservation and enhanced identity.¹⁸ Cultural Support Plans are beneficial for all Aboriginal or Torres Strait Islander children in out of home care particularly for children placed outside the preferred hierarchy of the Child Placement Principle. The report acknowledges the rates of 37% over- representation further compounds the lack of adherence to the Aboriginal and Torres Strait Islander Child Placement Principle with 1241 children in out of home care placed outside the preferred hierarchy.¹⁹
- i) The Department of Communities (Child Safety) and (Youth Justice) require strengthening and more comprehensive collaborative case management where

¹⁶ Create Foundation, *Issues for Children and Young People in Care Overview*.(2011).

¹⁷Commission for Children and Young People and Child Guardian, *Special Needs of Aboriginal and Torres Strait Islander Children (2010)* at http://www.ccyipcq.qld.gov.au/pdf/publications/reports/child_guardian_report_09-10/special-needs-of-Aboriginal-and-Torres-Strait-Islander-children.pdf.

¹⁸ Queensland Aboriginal and Torres Strait Islander Child protection Peak. above n 1.

¹⁹ Ibid.

facilitating services to children subject to dual orders. Collaborative case management must ensure:

- Integrated Information systems to ensure collaborative assessment, planning, implementation, monitoring and recordkeeping review in dual orders; and
- Aboriginal and Torres Strait Islander children on dual orders receive adequate cultural preservation to ensure justice restoration and respond to a child's long term holistic needs.

“The Bringing Them Home Report” (of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families), made significant correlation to people's child removal experiences and subsequent contact with the criminal justice system.²⁰

As of the 30 June 2010:

- The rate of Aboriginal and Torres Strait Islander young people subject to supervised youth justice orders was 27.8 per 1,000 young people aged 10–16 years.
- This was more than 13 times the rate for non-Indigenous young people, which was 2.0 per 1,000 young people.
- Aboriginal and Torres Strait Islander young people were also strongly over-represented, making up 53.0% of those spending time in detention.²¹

It is concerning that the Department of Communities has delivered only two recent data cross-matching exercises in 2009 and 2010 to examine the overlap between the Child Safety and Youth Justice systems and failed to explore a Aboriginal,

²⁰Human Rights and Equal Opportunity Commission, *Bringing them Home -Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) at http://www.hreoc.gov.au/social_justice/bth_report/index.html.

²¹ Commission for Children and Young People and Child Guardian, *Child Guardian: Consultation Report Youth Justice System report* (2011) at http://www.ccypcg.qld.gov.au/resources/publications/childGuardian/Child-Guardian_Consultation-Report-Youth-Justice-System.html.

Torres Strait Islander and Non-Indigenous children data comparison. As at 30 June 2010, 63 per cent of children and young people in the youth justice system were known to the child protection system.²² ATSLS is concerned high percentages of Aboriginal and Torres Strait Islander children in out of home care are additionally overrepresented in the Youth Justice system.

- j) There are overwhelming indications that a percentage of “completed” Cultural Support Plans are generic based plans developed directly from other sources rather than a process of individual assessment and engagement. Although children benefit from generic cultural events the purported essence of Cultural Support Plans are to embed meaningful direct participation with family, community and cultural groups to achieve a sense of belonging to country and cultural heritage within the child’s identity.²³
- k) The current Departmental Case Plan ICMS form containing the Cultural Support Plan fields is designed for the 6 month case management cycle. These fields must support the immediate ongoing intervention activities targeting preservation and enhancement during the future 6 months of case management. Currently no stand-alone Cultural Support Plan document exists demonstrating and recording the child’s Aboriginal or Torres Strait Islander cultural identity and meeting the holistic wellbeing needs unique to out of home care.²⁴
- l) There is minimal comprehensive integration/coordination of core legislation and procedural requirements. It is evident the legislated intention of ensuring children’s cultural identity is preserved and enhanced could be strengthened within a child’s Cultural Support Plan by referencing legislated authority and integrating core Aboriginal and Torres Strait Islander child protection practices.

²² Department of Communities, 2010. *2009-2010 Child Protection Partnership report*, downloaded from <http://www.communities.qld.gov.au/childsafety/about-us/our-performance/resources-and-publications/2009-2010-child-protection-partnerships-report>

²³ Aboriginal & Torres Strait Islander Legal Service (Qld), *above n 20.*

²⁴ *Ibid.*

Overwhelming indications are that children would benefit from direct consideration and referencing of requirements outlined the *Child Protection Act 1999*, in particular sections:

- 5C Additional principles for Aboriginal and Torres Strait Islander children;
 - 6 Recognised entities and decisions about Aboriginal and Torres Strait Islander children;
 - 51B What is a case plan;
 - 83 Additional provisions for placing Aboriginal and Torres Strait Islander children in care;
 - 88 Chief Executive to provide contact between Aboriginal or Torres Strait Islander child and the child's community or language group; and
 - 122 Standards of Care.^{25 26}
- m) In 2010 a reallocation of the designated "*Aboriginal and Torres Strait Islander Child Protection Community Controlled Sector Funding*" resulted in a reduction in the State's 32 Recognised Entity services to 11 regional service delivery hubs. The reform positively allowed an investment into early intervention and intensive family support services, however, a perceived unintended outcome was the reduced capacity of Recognised Entity service to adequately respond to Cultural perseverance and enhancement actions. This reduced capacity, is contradictory to the *Departmental Implementation Blueprint for Crime and Misconduct 2004 Inquiry into Abuse in Foster Care* recommendations. The blueprint required funding reflective of the proportion of Aboriginal and Torres Strait Islander children in out of home care which presently

²⁵ Ibid.

²⁶ *Queensland Child Protection Act 1999* reprinted as in force on 1 January 2012 reprint No. 7c.

should be a 37.6 million investment to address over - representation and provide quality secondary, early intervention and statutory services.²⁷

- n) There is no designated Cultural Support Plan funding allocated within local Child Safety Service Centre budgets resulting in an environment where there are limited resources and support services available to support the comprehensive implementation of children's Cultural Support Plans and retention activities.
- o) There is an environment restrictive of cultural safety and competence leading to lack of comprehensive development, implementation and monitoring of cultural support plans.²⁸ Departmental employees must adequately demonstrate an understanding of cultural awareness, cultural sensitivity and cultural safety within their workplace and performance to ensure suitable child protection practices are accessible to Aboriginal and Torres Strait Islander families.

6. Recommendations

Recommendation 1

The Queensland Commission for Children, Young People and Child Guardian conduct a quality assurance audit of children in out of home care's Cultural Support Plans. The audit should analyse the quality and effectiveness of Plans by measuring the preservation and enhancement of children's holistic cultural needs.

A separate cultural support plan audit should be in addition to the Aboriginal and Torres Strait Islander Child Placement Principle audit to ensure precise prominence. The audit should determine adherence to Aboriginal or Torres Strait Islander children's legal rights as required in *Child Protection Act 1999 and Child Protection Regulations 2000*.

Recommendation 2

²⁷ Department of Communities, *Blueprint for implementing the recommendations of the January 2004 Crime and Misconduct Commission report* (2004) at <http://www.communities.qld.gov.au/childsafety/about-us/publications/blueprint-for-implementing-the-cmc-report-recommendations>.

²⁸ Aboriginal & Torres Strait Islander Legal Service(Qld), *above n 20*.

The Commission for Children, Young People, and Child Guardian, Department of Communities (Child Safety), Children Research Centre and relevant stakeholders collaboratively develop a culturally-specific structured decision-making tool to assess Aboriginal and Torres Strait Islander children's spiritual, cultural, emotional, mental, and physical needs to inform responsive holistic intervention.

The culturally specific Structured Decision Making tool should be implemented within the Department of Communities (Child Safety) Information Client Management System. The assessment must support key cultural considerations and practices relating to proficient development of cultural retention actions. An example of culturally sensitive assessment process is the Winangay Resources kinship carer assessment tool.^{29 30}

Recommendation 3

The Commission for Children, Young People and Child Guardian, Department of Communities (Child Safety) and the relevant stakeholders to develop methods/tools which strengthen and record the identification of a child's immediate family, extended kin, cultural, language and community groups in the duration of Investigation and Assessment and Ongoing Intervention phases.

For example: currently in the Brisbane region the Family Decision Making Meeting led by the Indigenous Family and Child Support Service (IFACSS) is responsive to cultural requirements outlined throughout the Aboriginal and Torres Strait Islander Placement Principle. At the earlier stages of intervention, the Recognised Entity worker and Aboriginal and Torres Strait Islander Child Safety Support Officer engage the family in placement decision making by facilitating kinship placement options.

²⁹ Winangay Resources, *Winangay Kinship Carer Assessment Tool*, presentation by Paula Hayden at Aboriginal and Torres Strait Islander Legal Service (2011).

³⁰ Winangay Resources, *Winangay Aboriginal Resources Stronger Ways with Aboriginal children and families*. (2012) at <http://winangay.com/>.

Recommendation 4

The Commission for Children, Young People and Child Guardian, Department of Communities (Child Safety) and the relevant stakeholders must develop and implement enhanced Aboriginal and Torres Strait Islander engagement processes. In particular, methods at the investigation and assessment and ongoing Intervention phases that actively facilitate the child, immediate and kin family members, community, cultural language and moiety groups active co-development of Cultural Support Plans.

The Commission for Children, Young People and Child Guardian, Department of Communities and relevant stakeholders should explore international and national Indigenous best practice engagement models. For example: the Victorian Model of Aboriginal Family Decision Making within the Family group meeting structure.^{31 32}

Recommendation 5

The Commission for Children, Young People and Child Guardian, Department of Communities and relevant stakeholders collaboratively develop a culturally appropriate Cultural Support Plan template and guidance aimed at supporting the long term spiritual, cultural, emotional, mental, and physical holistic needs of Aboriginal or Torres Strait Islander children in care.

The culturally appropriate stand-alone Cultural Support Plan template should support cultural retention and preservation action within the 6 month statutory case plan, whilst being available to the child, family and kin to ensure ultimate facilitation of cultural connection and knowledge.

Recommendation 6

³¹ Victorian Aboriginal Child care Agency, QATSICPP Ltd agency visit Muriel Bamblett interview conducted by William Hayward & EJ Garrett (2010).

³² Victorian Aboriginal Child care Agency, *DHUM DJIRRI - Aboriginal Family Decision Making (2012)* at <http://www.vacca.org/FAQRetrieve.aspx?ID=39909>.

The Commission for Children, Young People and Child Guardian to review and consider the original Departmental implementation blueprint for the Crime and Misconduct Commission 2004 Inquiry into Abuse in Foster Care.

In particular the Commissioner to review the original CMC Aboriginal and Torres Strait Islander Community Controlled funding recommendations aligned with rates of over - representation in comparison to current reduced Aboriginal and Torres Strait Islander regional service delivery hubs and the unintended implications on quality outcomes for Aboriginal and Torres Strait Islander children and young people.

Recommendation 7

The Commission for Children, Young People and Child Guardian, Department of Communities and relevant stakeholders collaboratively develop a Cultural Support Plan implementation framework.

The implementation framework should clarify key roles of Child Safety Officers, Child Safety Support Officers and Non-government agencies such as Recognised Entity and Linkup services. The framework should consider the allocation of designated Cultural Support Plan funding for each Child Safety Service Centre based on Aboriginal and Torres Strait Islander representation.

The Commission for Children, Young People and Child Guardian, Department of Communities and relevant stakeholders to consider international and national intensive cultural support models with allocated cultural support officers and resourcing to ensure the ultimate cultural retention and preservation. For example: in Victoria – Victoria Aboriginal Child Care Agency Koorie Cultural Placement and Support Program, and in New South Wales KARI Aboriginal out of Home Care service – Cultural Liaison Officer.^{33 34 35}

Recommendation 8

³³ Victorian Aboriginal Child care Agency, above n 39.

³⁴ Victorian Aboriginal Child care Agency, *Koorie Cultural Support* (2012) at <http://www.vacca.org/FAQRetrieve.aspx?ID=39919>.

³⁵ KARI Aboriginal Resources, SNAICC National Conference 'For Our Children, Local strengths, national Challenges' – Out of Home Care; Culturally appropriate Aboriginal Case Management in Out Of Home Care (OOHC) Presented by Chris Laurie and Casey Walpole (2010) at <http://www.kari.com.au/resources/SNAICC%20Presentation%20Handout.pdf>.

The Commission for Children, Young People and Child Guardian, Department of Communities Child Safety and Youth Justice services develop a comprehensive collaborative case management approach for Children and Young people on **dual orders**.

In particular collaborative case management promoting cultural preservation and enhancement as a tool to address root causes of offending and promote justice restoration. The collaborative case management approach should include cooperative planning, implementation and record keeping between Youth Justice and Child Safety services to ensure consistent and responsive cultural outcomes for children on dual orders.

The Commission to collect and report a data comparison of Aboriginal, Torres Strait Islander and Non – Indigenous children and young people subject to dual youth justice and child protection orders.

7. Conclusion

ATSLS cannot emphasise enough the importance of Aboriginal and Torres Strait Islander children and families receiving competent and consistent child protection services. ATSLS recommends the implementation of these strategies targeting the detrimental impact of cultural identity erosion whilst in out of home care. ATSLS considers it vitally important that the cultural rights of Aboriginal and Torres Strait Islander children in out of home care are upheld - particularly their legal right to proficient identity preservation and enhancement through meaningful connection with family, kin, cultural, language and community groups.

It is essential the public, (specifically families with children in out of home care) have full confidence in the Department of Communities Child Safety's cultural retention strategies. Furthermore those strategies must ensure the communities' respect and trust is preserved through consistency in developing, implementation and monitoring of Cultural Support Plans.

As to the holistic cultural needs of the 3,017 Aboriginal and Torres Strait Islander children in care, it is essential that such is met through quality Cultural Support Plans in the immediate future.

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 two of my Brisbane staff members in an earlier draft: Mr William Hayward (Law and Justice Advocacy Development Officer) and Ms Jenifer Ekanayake (Director of Family Law).

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Shane Duffy'. The signature is written in a cursive, flowing style with a large initial 'S' and a long, sweeping tail.

Shane Duffy
Chief Executive Officer