



SNAICC

National Voice for our Children

Children and Young People (Safety) Bill 2016 (SA)

Submission to the Attorney General's Department, South Australia

January 2017

SNAICC – National Voice for our Children (Aboriginal and Torres Strait Islander Corporation) is the national non-governmental peak body for Aboriginal and Torres Strait Islander children.

SNAICC works for the fulfilment of the rights of our children, in particular to ensure their safety, development and well-being.

The SNAICC vision is an Australian society in which the rights of Aboriginal and Torres Strait Islander children, young people and families are protected; our communities are empowered to determine their own futures; and our cultural identity is valued.

SNAICC was formally established in 1981 and today represents a core membership of Aboriginal and Torres Strait Islander community-controlled organisations providing child and family welfare and early childhood education and care services.

SNAICC advocates for the rights and needs of Aboriginal and Torres Strait Islander children and families, and provides resources and training to support the capacity of communities and organisations working with our families.

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Introduction

SNAICC – National Voice for our Children (SNAICC) welcomes the opportunity to comment on the *Children and Young People (Safety) Bill 2016* (SA) (the Bill). We note with deep concern that the Bill does very little to incorporate evidence-based strategies to address the over-representation of Aboriginal and Torres Strait Islander children in South Australia’s child protection system or to ensure the rights of our children in the system to cultural connection and identity are respected. It also fails to reflect consultation with Aboriginal and Torres Strait Islander people, organisations, or the broader community services sector on necessary reforms. Our primary recommendation is:

Recommendation 1: That the South Australian Government halt the progress of the Bill and consult with the sector and Aboriginal and Torres Strait Islander people and organisations on the development of a new bill that incorporates an agenda to genuinely advance the safety and well-being of Aboriginal and Torres Strait Islander children.

The Bill proposes significant reform that we believe only narrowly implements a limited scope of recommendations of the South Australian Child Protection Systems Royal Commission Report (the Nyland Report) and fails to include measures to address the rising over-representation of Aboriginal and Torres Strait Islander children in out-of-home care. As at 30 June 2016, in South Australia, Aboriginal and Torres Strait Islander children were 10.8 times more likely to be placed in out-of-home care than non-Indigenous children.¹ This rate is above the already alarming national figure that indicates that, across Australia, Aboriginal and Torres Strait Islander children are 9.8 times more likely than non-Indigenous children to be placed in out-of-home care.² In South Australia, Aboriginal and Torres Strait Islander children represent 33 per cent of all children in out-of-home care,³ with their representation rising annually and highlighting that, to be effective, the reform of legislation must be centrally focused on their specific needs.

SNAICC believes that what is needed to reverse current trends for Aboriginal and Torres Strait Islander children is an holistic and rights-based approach that targets early intervention, prevention, healing, and family and community strengthening initiatives. Such an approach can only be effectively progressed with recognition and respect of the cultural authority of Aboriginal and Torres Strait Islander peoples who hold the knowledge and expertise to drive change. We encourage reference in the design of legislation to the *Family Matters Roadmap*, developed by SNAICC in partnership with leading child and family service and representative organisations across the country (Annexure A). The Roadmap outlines four evidence-based responses that can address over-representation, drawing on a broad evidence base including the leadership of Aboriginal and Torres Strait Islander organisations and the non-government sector nationally. These priorities for change are:

- All families enjoy access to quality, culturally-safe, universal and targeted services necessary for Aboriginal and Torres Strait Islander children to thrive;
- Aboriginal and Torres Strait Islander people and organisations participate in and have control over decisions that affect their children;
- Law, policy and practice in child and family welfare are culturally safe and responsive; and

- Governments and services are accountable to Aboriginal and Torres Strait Islander people.⁴

As a national peak body we present in this submission a number of recommendations in relation to the Bill based on successful and promising national and international initiatives. SNAICC works in partnership with its South Australian members, including Aboriginal Family Support Services, South Australia (AFSS), and supports and endorses the AFSS submission in response to the Bill.

Consultation on the development of legislation

Despite the significance of the Bill as an opportunity to redress significant failings of the South Australian Child Protection system identified by the Nyland Report, we note with disappointment that the consultation period has been relatively short and taken place at a time of year when many organisations have periods of holiday closure. We believe that such an approach does not reflect a genuine commitment of the South Australian Government to consultation on the development of reforms. We also note with deep concern that the Bill was drafted without prior consultation on its content. By contrast, the Nyland Report called for meaningful consultation with South Australia's Aboriginal communities to draw on Aboriginal knowledge and skills to address children's needs.⁵ SNAICC holds strongly that such genuine consultation requires good faith negotiations with Aboriginal and Torres Strait Islander peoples to obtain their free, prior and informed consent to decisions that impact upon them.⁶ Child protection is amongst the most important legislative areas on which to ensure genuine consultation because of the disproportionate impact on Aboriginal and Torres Strait Islander communities resulting from their over-representation in the system, and the historical and continuing legacy of trauma from the Stolen Generations.

To provide an example of a more genuine consultative process, SNAICC notes the ongoing development of new child protection legislation in Queensland. In that state, the government has pursued an extended period of consultation including:

- inviting consultation throughout 2016 and releasing two discussion papers on legislative reform, with the second incorporating community and sector input following the first; and
- providing support and resources to the state Aboriginal and Torres Strait Islander child protection peak body to consult its membership on reforms and provide input.

This process of consultation has contributed to the development of a range of legislative reform options that reflect evidence and community knowledge of what will be effective to advance the safety and well-being Aboriginal and Torres Strait Islander children with proposals including:

- strengthening guidance on determining the best interests of an Aboriginal or Torres Strait Islander child;
- incorporating a broader understanding of the Aboriginal and Torres Strait Islander Child Placement Principle based on its intent to keep children connected to family and culture;

- including specific requirements for the use of Aboriginal and Torres Strait Islander Family-led Decision Making;
- creating provision for the delegation of guardianship responsibility for Aboriginal and Torres Strait Islander children to Aboriginal and Torres Strait Islander agencies; and
- explicit recognition of the right of self-determination of Aboriginal and Torres Strait Islander peoples.⁷

By contrast, SNAICC sees little evidence of a genuine consultative process in the development of the Bill in South Australia. Reflecting this, the Bill proposes legislation that is likely to denigrate rather than advance the empowerment of Aboriginal and Torres Strait Islander communities in decisions about the care and protection of their children.

Recommendation 2: That the South Australian Government engage with Aboriginal and Torres Strait Islander organisations and community members in a process of consultation and in the co-design of a range of specific legislative measures designed to progress the safety and well-being of Aboriginal and Torres Strait Islander children. Such measures should form part of a broader government strategy to redress the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in South Australia.

Prevention and Early Intervention

Evidence is clear that the primary approach needed to address the over-representation of Aboriginal and Torres Strait Islander children in the child protection system and in out-of-home care is the greater application of prevention and early intervention to heal and strengthen families to deal with the challenges they face and provide safe care for children. This has been recognised as the central tenet of Australia’s National Framework for Protecting Australia’s Children 2009-2020 that aims to reorient service systems towards a public health model for protecting children.⁸

Australian and international evidence has demonstrated the enormous potential downstream social and economic cost benefits of early intervention supports that, especially when applied early in the life cycle, are effective to improve education outcomes and reduce poor health, welfare dependency, substance misuse, child protection and criminal justice intervention.⁹ Family functioning issues and risk factors for child neglect and abuse in Aboriginal and Torres Strait Islander communities are strongly linked to the intergenerational trauma resulting from colonisation, racism, discrimination and forced child removals. Addressing the impacts of trauma for families has been recognised to require significant investment in intensive and targeted family support casework models that provide holistic and culturally safe supports for families to address multiple and complex issues.¹⁰ Prevention has also been identified as the first element of the Aboriginal and Torres Strait Islander Child Placement Principle, recognising that protecting the rights of children to be brought up in their families requires that they have access to a full range of culturally safe and quality universal and targeted support services.¹¹

The Bill in its current form does nothing to direct a priority for prevention or early intervention. The provisions contained within Chapter 4, “Managing risks without removing child or young

person from their home”, create no positive obligations for the provision of family preservation or reunification supports, contrary to the evidence of the critical importance of early intervention. In a move that appears quite extraordinary and out of step with comparable legislation across the country, the Bill makes no reference to the importance of the parent-child relationship to the well-being of children, or the desirability of supporting the maintenance of that relationship. SNAICC believes that the Bill in its present form will do nothing to alleviate, and will likely contribute to increasing, the already large number of children entering care in South Australia, maintaining stress on the child protection system and its staff and perpetuating systemic harm to children.

SNAICC recommends amendments to include a clear legislative basis for a focus on prevention and early intervention. We encourage reference to relevant provisions of the *Children, Youth and Families Act 2005* (Vic) which makes clear the need to protect, strengthen, preserve and promote each child’s relationships with parents and family members – sections 10(3)(a) and (b) – and which requires all reasonable steps be taken to provide the services necessary for the child to remain in the care of the child’s parent – section 276(2)(b). We further recommend that provisions be included to create accountability for the availability of culturally safe and accessible services for Aboriginal and Torres Strait Islander families delivered by Aboriginal and Torres Strait Islander agencies. This would align with the call in the Nyland Report that “the South Australian Government should fund not-for-profit agencies – preferably Aboriginal organisations – to develop service models that respond to higher risk Aboriginal families with multiple, complex problems.”

Recommendation 3: That the Bill be amended to include measures that promote the safe care of children by their parents and family members, including:

- a) Recognition of the importance of the child-parent relationship and the rights and responsibilities of parents for the care and protection of their children;**
- b) Providing for positive obligations of the state to provide all reasonable family preservation and reunification supports to ensure children can be safely cared for at home;**
- c) Recognition of a specific object to heal and strengthen Aboriginal and Torres Strait Islander families and communities to care for children; and**
- d) Requirements for the availability of quality, culturally safe and accessible family support services provided by Aboriginal and Torres Strait Islander organisations.**

Alignment with the intent of the Aboriginal and Torres Strait Islander Child Placement Principle

The Aboriginal and Torres Strait Islander Child Placement Principle (the Principle) provides the benchmark in Australian law and policy to ensure that the actions that caused the deep harm and tragedy of the Stolen Generations are never repeated. The Principle aims to recognise and protect the rights of Aboriginal and Torres Strait Islander children, families, and communities, increase the level of self-determination for Aboriginal and Torres Strait Islander people in child protection matters, and reduce the disproportionate representation of Aboriginal and Torres Strait Islander children in child protection systems.¹² Tilbury (2013) details the five necessary elements of the Principle to be prevention, partnership, placement,

participation, and connection.¹³ This definition of the Principle has been agreed and adopted nationally, including by South Australia through its commitment as a partner in the implementation of the Third Action Plan for the National Framework for Protecting Australia's Children 2009-2020.¹⁴

We are disappointed that clause 10 of the Bill seeks to bring a narrowly constructed version of the Principle into South Australian primary legislation. Sub-clause 10(1) limits the application of the Principle to “the placement of Aboriginal and Torres Strait Islander children and young people.” This very narrow limitation fails to recognise that decisions made right throughout a child’s contact with child protection services impact upon the child’s connections to family, community and culture and require consideration of the Principle. In particular, we note that clause 10 does not address the critical necessity of prevention-focused efforts to the implementation of the Principle. The Victorian Commission for Children and Young People in its 2016 Inquiry into compliance with the intent of the Aboriginal Child Placement Principle found that the underlying intent of the Principle is “that Aboriginal children should remain in the care of their families of origin wherever possible and safe”, and that to implement this intent:

it is incumbent on the child protection system to provide assistance to Aboriginal families (where required) to allow them to live together in a safe environment. This includes a responsibility to provide assistance aimed at both preventing removal and reunifying families where removal has occurred.¹⁵

The narrow conceptualisation of the Principle as relating only to a placement hierarchy applied at one point of child protection intervention has been a major and persistent barrier to its effective implementation nationally.¹⁶ The current Bill largely perpetuates this problem. In an effort to address this, SNAICC recommends that the Bill explicitly recognise and enable each of the five elements of the Principle. This is a critical step to build awareness and understanding of the broader intent of the Principle, pave the way for targeted and effective implementation, identify and substantiate resource demands, and create accountability mechanisms for full implementation.

In addition to recognition of self-determination as an object of the Principle – currently proposed by sub-clause 10(2)(b) – we recommend that a clause be added to explicitly recognise Aboriginal and Torres Strait Islander people’s right to self-determination as a general principle to be applied in the administration of the entire Act. Such a standalone principle is important so that the right and recognition of Aboriginal and Torres Strait Islander people’s self-determination is not limited to consideration of one provision of the Act, and one aspect of the Aboriginal and Torres Strait Islander Child Placement Principle – in this case currently limited to clause 10. Further, the inclusion of a general self-determination principle would promote awareness of its significance as a critical right of Aboriginal and Torres Strait Islander peoples as recognised in the United Nations Declaration on the Rights of Indigenous Peoples, which has been endorsed by Australia.

We note the current inclusion of principles recognising self-determination in New South Wales,¹⁷ Northern Territory,¹⁸ Tasmanian,¹⁹ Western Australian²⁰, and Victorian²¹ legislation. However, from the limited implementation of these provisions across Australia, it is clear that genuine self-determination cannot be achieved unless additional enabling provisions mandate participation of Aboriginal and Torres Strait Islander peoples in decision-making. Thus, while

we support the inclusion a general self-determination principle, at the same time we recommend enabling mechanisms such as Aboriginal and Torres Strait Islander Family-led Decision-Making and the participation of Aboriginal and Torres Strait Islander community-controlled organisations in decision-making as discussed further throughout this submission.

Recommendation 4: That the right of self-determination of Aboriginal and Torres Strait Islander peoples be recognised as a principle within the Act and reflected in substantive provisions that require the participation of Aboriginal and Torres Strait Islander organisations and families in child protection decision-making (see recommendations 6 and 7 below).

Recommendation 5: That the full definition of the Aboriginal and Torres Strait Islander Child Placement, including its five constituent elements (prevention, partnership, participation, placement, and connection), be incorporated into legislation alongside enabling provisions for each element.

Participation of Aboriginal and Torres Strait Islander Families and Community Controlled Organisations

Representative Participation

Participation of Aboriginal and Torres Strait Islander peoples in decisions that affect them is a core human right,²² and recognised as critical to decision-making that is based on the best interests of children, incorporating an understanding of their cultural needs and rights.²³ To be genuine and effective, participation must extend beyond consultation to genuine inclusion of Aboriginal and Torres Strait Islander children, families and community representatives in the decisions that are made about their children at all stages of the child protection process.²⁴

Recommendation 189 of the Nyland Report called on the South Australian Government to: “Review practice guidance, funding arrangements and the range of declared agencies to ensure that a recognised Aboriginal agency is consulted on all placement decisions involving Aboriginal and Torres Strait Islander children, in accordance with the provisions of section 5 of the Children’s Protection Act 1993.”²⁵ Although this recommendation does not accord with best practice and human rights to enable participation in all significant decisions, it at least calls for inclusion of a representative agency in critical decisions about the placement of Aboriginal and Torres Strait Islander children in out-of-home care. Such decisions have enormous implications for the cultural connections, identity, rights and long-term well-being of Aboriginal and Torres Strait Islander children. In its response to the recommendations of the Royal Commission, the South Australian government accepted recommendation 189. **SNAICC requests the urgent advice of the South Australian Government as to why it has departed from Recommendation 189 of the Nyland Report and its acceptance of that recommendation to exclude any requirement for the participation of Aboriginal agencies in placement and all other decisions for children in the Bill. We are appalled by this abandonment of the obligation of the South Australian government to consult with Aboriginal and Torres Strait Islander communities and their organisations on the decisions that are made about their children.**

The participation of Aboriginal and Torres Strait Islander organisations in decision-making is severely eroded by the Bill. Firstly, the current section 5(1) of the *Children’s Protection Act 1993* (SA) requirement that “no decision or order may be made...as to where or with whom an Aboriginal or Torres Strait Islander child will reside unless consultation has first been had with a recognised Aboriginal organisation, or a recognised Torres Strait Islander organisation, as the case may require” no longer appears in primary legislation. Sub-clause 10(6) flags that regulations may make further provisions for consultation or participation of Aboriginal or Torres Strait Islander persons or organisations in relation to placement decisions, but there is no legislative requirement for this to occur.

A further dilution of Aboriginal and Torres Strait Islander representative participation comes with the proposed removal of section 5(2) of the current Act that requires regard to be had to the submissions of a recognised Aboriginal or Torres Strait Islander organisation in relation to any non-placement decisions. The Bill does not propose an equivalent clause, leaving Aboriginal and Torres Strait Islander organisations without even a weak footing to provide advice and submissions, let alone consultation or even more active participation in relation to significant decisions about Aboriginal and Torres Strait Islander children.

In 2016 SNAICC completed a review of legislative alignment with elements of best practice in representative Aboriginal and Torres Strait Islander participation as published in the *Family Matters Report* and reproduced in Table 1 below.²⁶ The table shows significant gaps in the current South Australian legislation’s alignment with human rights-based standards for genuine participation. SNAICC is deeply disappointed that the Bill proposes to move further away from best practice and human rights standards rather than pursuing greater alignment.

Table 1 Alignment of state and territory child protection legislation with elements of participation

GREEN – Legislation aligned **RED** – Legislation not aligned **GREY** – limited / significantly qualified alignment

	ACT ²⁷	NSW ²⁸	NT ²⁹	QLD ³⁰	SA ³¹	TAS ³²	VIC ³³	WA ³⁴
Aboriginal and Torres Strait Islander self-determination is a recognised principle in the Act.	NO	YES s11(1)	YES s12(1)	NO	NO	YES s10G(1)	YES s12	YES s13
Aboriginal and Torres Strait Islander participation and/or consultation is a decision-making principle in the Act.	NO see s7(d) (participation requirements not specific to decision-making)	YES s11(1)	YES s12(2)	YES s6	NO	YES s10G(2)	YES s12	YES ss13,14

	ACT ²⁷	NSW ²⁸	NT ²⁹	QLD ³⁰	SA ³¹	TAS ³²	VIC ³³	WA ³⁴
Consultation/participation of an external Aboriginal and Torres Strait Islander agency is expressly required for all significant decisions.	NO See s10(b) (submissions considered)	YES s12(organisations and means of participation not specified)	NO	YES s6(1)	NO See ss5(2)(a) & (b) (submissions considered)	NO See s10G	NO ³⁵	NO
Consultation with an external Aboriginal and Torres Strait Islander agency is expressly required prior to placement decisions.	NO	YES s12, s13(1)(d) s13(7)(exceptions) s78A(4)	NO	YES s83(2)	YES s5(1)	NO See s10G	YES s12(1)(c)	NO see s81 (internal or external consultation)
Input from external Aboriginal and Torres Strait Islander agencies is expressly required in judicial decision-making	NO See s482(1)(g) (limited input requirement for long-term orders)	NO	NO	YES s6(4)(a)	YES ss5(1) & (2)	NO (evidence and submissions, s51)	YES s323(b) (for permanent care orders only)	NO

In particular, we note that the two areas of legislative alignment in South Australia noted in Table 1 would be removed if the Bill were to be legislated in its current form, making South Australia the least aligned state in the country with best practice legislation for Aboriginal and Torres Strait Islander participation in child protection decision-making.

Recommendation 6: That a provision be included within the Bill requiring the participation of an Aboriginal and Torres Strait Islander agency in all significant decisions made for Aboriginal and Torres Strait Islander children under the Act. Ideally, this provision should be linked to a requirement for Aboriginal Family-led Decision Making, through which Aboriginal agencies can ensure their advice is based on their role to facilitate family participation in the process (see Recommendation 7).

Family Participation

Ensuring the participation of Aboriginal and Torres Strait Islander families in decisions about the care and protection of their children is recognised as a core element of the Aboriginal and Torres Strait Islander Child Placement Principle³⁶ and is central to enabling self-determination in child protection matters for Aboriginal and Torres Strait Islander peoples. Accordingly, SNAICC supports the Bill's provision for a model of Family Group Conferencing as a means to enable such participation. However, we believe there are several limitations to Family Group Conferencing as envisaged by the Bill and describe these below alongside identified best practice.

Studies of family group conferencing have shown that plans generated tended to keep children at home or with their relatives, and that the approach reinforced children's connections to their family and community,³⁷ thus demonstrating the alignment of the model with the central

purpose of the Aboriginal and Torres Strait Islander Child Placement Principle. In Australia and internationally, the promise of culturally adapted models of family-led decision making to engage and empower Aboriginal and Torres Strait Islander families and communities in child protection processes has been recognised,³⁸ though Australian implementation remains very limited to date. In Victoria, where a state-wide model of Aboriginal Family-led Decision Making (AFLDM) has been operating since 2005, the recent report of an inquiry conducted by the Victorian Commission for Children and Young People found minimal compliance with implementation requirements, noting that only 11 per cent of intended meetings occurred in 2014-15, and citing particular deficiencies in departmental referral practice, challenges of a co-convenor model, and various additional practice challenges.³⁹ Despite these issues, the report strongly recommended improvement and continuation of the model, finding that:

There was unanimous agreement that the AFLDM program is extremely valuable in making important decisions to keep a child safe, and maintain the child's culture and identity through connection to their community. The AFLDM program presents one of the most significant opportunities to meaningfully involve families in decision-making and ensure that the process undertaken is led by Aboriginal people.⁴⁰

Research has clearly identified that family decision-making models provide opportunities to bring alternate Indigenous cultural perspectives and worldviews to the fore in decision making, ensuring respect for Indigenous values, history and unique child rearing strengths.⁴¹

We are deeply concerned that the current South Australian Bill doesn't provide for Aboriginal agency-led processes of family group conferencing. In fact, it goes even further to limit Aboriginal and Torres Strait Islander voices in Family Group Conferences by allowing the co-ordinator to determine whether a person nominated by an Aboriginal and Torres Strait Islander organisation can attend depending on his or her "[relevance] to the subject of the conference". We recommend amendment of this clause – sub-clause 19(1)(h) – so that Aboriginal and Torres Strait Islander organisations have a standing entitlement to attend and participate in Family Group Conferencing.

Research has also recognised the danger that these processes will be ineffective to empower families and communities where they remain wholly controlled and operated by non-Indigenous professionals and services.⁴² While strong partnerships with government child protection services are essential to any model of family-led decision making, SNAICC holds strongly and recommends that an effective and culturally strong model of Aboriginal and Torres Strait Islander Family-led Decision Making or Family Group Conferencing must be operated by Aboriginal and Torres Strait Islander community-controlled organisations and that this requirement should be specified in legislation. At this stage, the current Bill does not provide for this, stating that a conference is to be convened by a co-ordinator nominated by the Chief Executive or the Judge of the Court, depending on who convened the conference – sub-clause 18(2).

In consultation with stakeholders for the current trial of Aboriginal and Torres Strait Islander Family-Led Decision Making in Queensland, SNAICC has developed a series of principles for the conduct of a model of Aboriginal and Torres Strait Islander Family-led Decision Making in Queensland. We recommend reference to these principles and their appropriate incorporation

in the design of legislation for South Australia's Family Group Conferencing for Aboriginal and Torres Strait Islander children and families:

- Aboriginal and Torres Strait Islander peoples have the right to participate in decisions that affect their children and families;
- Aboriginal and Torres Strait Islander children are best cared for in their family, kin and cultural networks – supporting families and communities to stay together promotes healing and the protection of future generations;
- Children have a right to participate in decisions made about their own care, in accordance with their age and maturity;
- Family is a culturally defined concept – participants in the decision-making process should be defined by the Aboriginal and Torres Strait Islander families, children and communities;
- Families should be given the opportunity to make decisions without coercion, including having time to meet on their own without professionals present;
- Plans are more likely to be followed through when they are made and owned by the child's family and community;
- When a plan developed by the family group meets safety needs of the child then all professionals should give preference to the family group's plan over other identified plans and provide resources to progress it;
- Aboriginal and Torres Strait Islander community-controlled organisations have cultural and community knowledge that strongly assists the facilitation of family-led decision making. The independent leadership role of Aboriginal and Torres Strait Islander community-controlled organisations needs to be recognised, respected and acknowledged; and
- The Department has statutory obligations to ensure safety for children – these obligations need to include collaboration with Aboriginal and Torres Strait Islander community-controlled organisations and families to ensure safety concerns are clearly identified and addressed in decision-making.

Finally, we note our support for the Bill's provision for Family Group Conferencing to be utilised at any, and at an early, stage of contact with the child protection system. Sub-clause 18(1) allows for a conference to be called if there is a suspicion that a child is at risk and that arrangements should be made in relation to their care, and it is considered that holding a conference would be appropriate. Under this provision, there would be no need for a substantiation decision or protection order to be made before calling a conference as is the case with AFLDM in Victoria. This approach aligns with research that has described the benefits of enabling a family decision-making process early,⁴³ including the increased likelihood that conferences will focus on resolving family issues utilising services or informal family and community supports to enable children to remain in the safe care of their families.⁴⁴ A number of studies of family group conferencing or family-led decision making have highlighted the more limited scope for empowering families where meetings take place later in child protection intervention and called for their application at earlier stages,⁴⁵ including the review of a promising trial with Aboriginal families in Alice Springs.⁴⁶ Reflecting this research, we recommend that there should be a mandatory requirement to provide the Family Group Conferencing process at the point at which the Chief Executive decides to pursue an investigation and also at subsequent significant decision making points, for example, case planning, case plan review, and placement change. We believe that this process would

provide the basis for Aboriginal and Torres Strait Islander organisations to engage with and support the families to participate throughout all phases of child protection decision-making.

Recommendation 7: That a model of Aboriginal and Torres Strait Islander Family-led Decision Making facilitated by Aboriginal and Torres Strait Islander agencies is provided for in legislation and is mandated to be offered to families as early as possible in their contact with child protection services, and at a range of significant decision-making points.

Placement and Cultural Connection

There is a strong evidence base that describes the critical importance of continuity of cultural identity to child wellbeing,⁴⁷ and the cultural strengths of unique Aboriginal and Torres Strait Islander child rearing practices to support the well-being and safety of children.⁴⁸ The inclusion of requirements for the maintenance of cultural connections for children removed from their families in legislation around the country was a critical call of the *Bringing them Home Report* in 1997 to ensure that the actions that caused the tragedy and continuing traumatic consequences of the Stolen Generations are never repeated. SNAICC is deeply concerned by a number of provisions within the Bill that we believe do not prioritise the maintenance of cultural connection for Aboriginal and Torres Strait Islander children. The following sections detail these concerns.

Placement Hierarchy

Clause 10 of the Bill purports to set out the Aboriginal and Torres Strait Islander Child Placement Principle. As discussed above, clause 10 presents a narrowly constructed and limited version of the Principle and, as we will detail now, an incorrect and alarming version of the placement hierarchy that risks eroding the rights of Aboriginal and Torres Strait Islander children to maintain family, community, and cultural connections.

Sub-clause 10(3)(a) sets out a version of the placement hierarchy that deviates significantly and unacceptably from the Principle's original and intended placement hierarchy. Our first concern is the equivocal requirement for placement in order of priority only if it is "reasonably practicable". We believe that this provides a broad scope for placement decisions to be made without dedication of the efforts and resources required to identify culturally appropriate family placements. We recommend the use of language to the effect that "all reasonable efforts" should be undertaken to exhaust options at one level of the hierarchy, in consultation with Aboriginal and Torres Strait Islander agencies, before moving to the next. One example of stronger and clearer phrasing is the term "wherever possible" that is used in relation to the application of the hierarchy in Victoria.⁴⁹

Further significant issues lie in the way the hierarchy is described. After correctly prioritising placement with a child's family – Aboriginal or Torres Strait Islander kin or other family – if an out-of-home care placement is necessary, the sub-clause then fails to specify that subsequently prioritised community placements are to be with Aboriginal or Torres Strait Islander persons. In other jurisdictions these placements are properly specified as placement with an Aboriginal or Torres Strait Islander person from the child's own community, and then (except in the Australian Capital Territory), if that placement is not possible, with an Aboriginal

or Torres Strait Islander person from another Aboriginal or Torres Strait Islander community.⁵⁰ While the sub-clause contains a requirement that the member of the child's community is to be "determined in accordance with Aboriginal or Torres Strait Islander traditional practice or custom", this does not clearly promote placement with an Aboriginal or Torres Strait Islander person. This is an unacceptable deviation from the form and intent of the placement hierarchy. This deviation is compounded by the failure to include requirements for the participation of an Aboriginal and Torres Strait Islander organisation in the placement decision, increasing the risk that placements will be made that take inadequate account of a child's needs for and rights to cultural connection.

The placement element of the Principle further requires that if a child is not placed with his or her Aboriginal or Torres Strait Islander family, the placement must be within close geographical proximity to the child's family. Across the different Australian jurisdictions (except Western Australia) there are varying provisions promoting placement – with either an Aboriginal or Torres Strait Islander person or with a non-Indigenous person – that is proximate to the child's family.⁵¹ Clause 10 does not include any such requirement. This omission allows a practical barrier – geographical distance – to easily thwart Aboriginal and Torres Strait Islander children's connections to family, community, and culture. It poses a particular threat in terms of the potential relocation of children from South Australia's remote communities to urban centres.

Clause 10 further deviates from the Principle by removing the current provision in regulation 4 that the last preferred placement option is "a [non-Indigenous] person who is able to ensure that the child maintains significant contact with the child's family (as determined by reference to Aboriginal or Torres Strait Islander culture), the child's community or communities and the child's culture". While sub-clause 10(3)(b) does allow Aboriginal and Torres Strait Islander children the "opportunity" for continuing contact with family, community, and culture if placed with a non-Indigenous carer, this is a weak provision compared with current regulation 4 that compels consideration and choice of a non-Indigenous carer based on the carer's ability to ensure the child's connections. Removing this requirement is out of step with all other jurisdictions that retain a version of this requirement for placement with a non-Indigenous carer.⁵² The removal of this requirement is an unacceptable abandonment of a protection that seeks to safeguard Aboriginal and Torres Strait Islander children's rights, connections, and well-being.

Recommendation 8: That an acceptable form of the Aboriginal and Torres Strait Islander Child Placement Principle hierarchy of placement options, aligned with its intent, be included within the Bill. The relevant provision should specify that all reasonable steps are taken to exhaust options at each stage of the hierarchy and that the order of priority for placement is:

- 1. with Aboriginal or Torres Strait Islander relatives or extended family members, or other relatives or extended family members; or**
- 2. with Aboriginal or Torres Strait Islander members of the child's community; or**
- 3. with Aboriginal or Torres Strait Islander family-based carers.**

If the preferred options are not available, as a last resort the child may be placed with a non-Indigenous carer or in a residential setting. If the child is not placed with their extended Aboriginal or Torres Strait Islander family, the placement must be within close geographic proximity to the child's family and include significant

requirement for carers to support the maintenance of cultural connections for the child.

Contact Arrangements

SNAICC understands that the changes proposed by the Bill that remove the power of the court to make orders about contact arrangements and provide this power instead to the Chief Executive – clause 84 – follow a recommendation made by the recent Royal Commission – recommendation 73. However, we remain concerned about this proposal and its potential to limit contact between Aboriginal and Torres Strait Islander children in out-of-home care and their parents, siblings, and other kin. There is a real danger, acknowledged and warned against in the Royal Commission’s report, that contact arrangements determined by the Chief Executive will reflect the resource issues of the Department and not the best interests of the child.⁵³ We suggest that the court is best placed to assess and determine contact arrangements that are in the best interests of a child, considering in the case of Aboriginal and Torres Strait Islander children the importance of connections to family, community, and culture for strong self-identity, resilience, and well-being.⁵⁴ In this regard we are not comforted by the proposed review mechanisms for the Chief Executive’s decisions about contact arrangements, that is, review by a newly established Contact Arrangements Review Panel. We believe that the Youth Court of South Australia, with its established child protection jurisdiction expertise and knowledge of specific families and circumstances through current court proceedings, has the capacity to make appropriate and flexible orders in relation to contact arrangements.

The proposed exercise of the Chief Executive’s power to determine contact arrangements is concerning in light of the suggestion by sub-clause 84(3)(b) that contact with parents and family will not be prioritised or even pursued if the Chief Executive is not satisfied that reunification is likely, or is satisfied that reunification is unlikely. The sub-clause requires the Chief Executive, when determining contact arrangements when reunification is unlikely, to give “particular consideration” to the need to not undermine the ability of a child to establish and maintain an attached relationship with his or her guardian. This consideration seems to suggest that continued contact with parents or other previous carers would limit a child’s ability to form an attachment with his or her current out-of-home carer. A recent review and analysis of attachment theory dispels this idea, instead stating that “it is important to acknowledge that it is possible for children to maintain contact with birth parents or other caregivers without compromising the development of an attachment bond with a child’s foster parent”.⁵⁵ Accordingly, sub-clause 84(3)(b) provides improper guidance to the Chief Executive, skewing assessment and decisions about contact arrangements that should be made in the best interests of the child. Again, we point to the importance of continuing safe connections to family for Aboriginal and Torres Strait Islander children – a key consideration in any best-interests assessment and decision.

Recommendation 9: That the youth court retain its power to make orders in relation to contact arrangements and that this power not be fettered by required consideration of the likelihood or not of reunification and an assumed inability of a child to form an attachment with a current carer inferred by sub-clause 84(3)(b).

Cultural Support and Maintenance Plans



SNAICC welcomes the positive inclusion of requirements in clause 24 of the Bill to include cultural maintenance plans in case planning where relevant to the circumstances of the child. We believe this section should be slightly amended to include a clear and mandatory requirement that a cultural maintenance plan must be developed for every Aboriginal or Torres Strait Islander child.

The Nyland Report highlighted poor compliance with cultural maintenance planning requirements by Families SA, including very few plans produced and poor quality plans with very little detail concerning the child's cultural needs and how they would be met.⁵⁶ The report highlighted the lack of support for carers around cultural maintenance, and called for the participation of a recognised Aboriginal organisation in the development of plans and the dedication of carer resources and training to support cultural maintenance.⁵⁷ SNAICC believes that the requirement to appropriately resource an Aboriginal organisation to participate in or to develop cultural support plans should be specified in legislation to ensure their participation.

SNAICC particularly welcomes the requirements in clause 144(1) providing for detailed reporting by the Chief Executive on the extent to which case plans are supporting the cultural needs of Aboriginal and Torres Strait Islander children.

Recommendation 10: That the completion of cultural maintenance plans be mandated for all Aboriginal and Torres Strait Islander children in out-of-home care and that the role and provision of resources for Aboriginal and Torres Strait Islander agencies to participate in or complete cultural maintenance planning be specified in legislation.

Stability and Permanency

SNAICC strongly recognises the importance of stability for children who are engaged with child protection services and supports measures that promote their holistic stability of relationships, identity and care. When legislating regarding permanence of care we recommend very careful consideration of the measures introduced and the extent to which they align with the holistic aspects of stability for children.

Permanency in the care and protection sector has been defined as comprising three key aspects, "relational permanence (positive, caring, stable relationships), physical permanence (stable living arrangements), and...legal arrangements."⁵⁸ Recent state and territory reforms have tended to focus on the latter two. SNAICC believes that this has been to the detriment of key aspects of relational permanence that are central to the well-being and lifelong outcomes of Aboriginal and Torres Strait Islander children. The theory underpinning many permanency planning reforms asserts that the sooner an enduring attachment with a carer can be established, the greater stability can occur, and that this is a better outcome for a child's well-being.⁵⁹ Aboriginal and Torres Strait Islander people commonly question this narrow construct of attachment theory that centres stability on the singular emotional connection between a child and a carer. This has been described as "inconsistent with Aboriginal and Torres Strait Islander values of relatedness and child-rearing practices."⁶⁰ For Aboriginal and Torres Strait Islander children, permanence is identified by a broader communal sense of belonging; a

stable sense of identity, where they are from,⁶¹ and their place in relation to family, mob, community, land and culture.

Regardless of the positive intention of permanency reform, the long-term and permanent removal of Aboriginal and Torres Strait Islander children from their families presents harrowing echoes of the Stolen Generations for Aboriginal and Torres Strait Islander communities. Legal permanency measures have tended to reflect an underlying assumption that a child in out-of-home care experiences a void of permanent connection that needs to be filled by the application of long-term guardianship or permanent care orders. This understanding is flawed in its failure to recognise that children begin their out-of-home care journey with a permanent identity that is grounded in cultural, family and community connections. This is not changed by out-of-home care orders. Inflexible legal measures to achieve long-term guardianship and permanent care may actually serve to sever these connections for Aboriginal and Torres Strait Islander children, in breach of their human rights, and break bonds that are critical to their stability of identity while they are in care and later in their post-care adult life.

We contend that the Bill as it is currently shaped seeks a narrow and hastened path to legal permanence without properly safeguarding the holistic needs of Aboriginal and Torres Strait Islander children for stability. The proposals in the current Bill, which follow the Royal Commission's recommendations 153 and 154, attempt to achieve stability and permanency for children in a timely manner by paving the way for "other person guardianship" to occur sooner. Clause 80 reduces the qualifying period before a carer can make an application to the Chief Executive for a long-term guardianship order (known as "other person guardianship") to two years or even less as allowed by the Chief Executive, while clause 51 reverses the onus of proof so that it is the parents who must prove that the carer should not become the child's legal guardian. It is worth pausing here to briefly note the offensive nature of the reversal of the onus of proof in discounting the rights of parents and the significant and important role they hold in their children's lives.

This reversal of the onus of proof fails to account for the obligation of the state to provide appropriate support to parents as specified in article 18(2) of the United Nations Convention on the Rights of the Child. The Bill does not build in any safeguards to ensure that long-term orders are only made where reunification attempts have been pursued, resourced, and exhausted. In this regard we recommend consideration of provisions within the Victorian legislation that require that before a protection order removing a child from a parent's care is made, the court must be satisfied that all reasonable attempts have been taken by the Department to provide the services necessary to enable the child to remain in the care of his or her parent.⁶² Further, the Bill does not require specific review of compliance with the Aboriginal and Torres Strait Islander Child Placement Principle, or review of an Aboriginal and Torres Strait Islander agency to ensure long-term orders are appropriate and maintain cultural connections for an Aboriginal or Torres Strait Islander child.

SNAICC asserts that the permanent removal of Aboriginal and Torres Strait Islander children from their families currently presents a high level of risk of causing additional harm to Aboriginal and Torres Strait Islander children due to factors including:

- The current inadequate participation of Aboriginal and Torres Strait Islander peoples in decision making to ensure decisions are informed of cultural needs and safe care options in the child's family and community;

- Limited compliance with the Aboriginal and Torres Strait Islander Child Placement Principle; and
- Insufficient provision of supports to preserve and reunify families.

SNAICC describes these concerns fully in its policy position paper *Achieving Stability for Aboriginal and Torres Strait Islander Children*, available on the SNAICC website and appended to this submission. We believe that remedy of these concerns will be more effective than the broader and faster implementation of long-term guardianship orders to promote stability for Aboriginal and Torres Strait Islander children.

Recommendation 11: That a moratorium on long-term orders for Aboriginal and Torres Strait Islander children is provided for a period of at least 2 years or until appropriate reforms are progressed to reflect improved compliance with the Aboriginal and Torres Strait Islander Child Placement Principle, appropriate support for family preservation and reunification, and adequate provisions for cultural maintenance for Aboriginal and Torres Strait Islander children in out-of-home care.

Recommendation 12: That in the absence of a moratorium, as called for in Recommendation 11, the onus of proof be placed upon the Chief Executive to demonstrate that a long-term guardianship order is in the best interests of the child, and that certain requirements are specified as needing to be demonstrated, including:

- The full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle;
- The adequate provision of family preservation and reunification supports; and
- The recommendation of an Aboriginal agency that a long-term guardianship order is appropriate to support the cultural identity and long-term well-being of the child.

Aboriginal and Torres Strait Islander Guardianship

Aboriginal and Torres Strait Islander Guardianship refers to the delegation of, in South Australia's case, the Chief Executive's functions and powers under the Act, to an Aboriginal and Torres Strait Islander organisation. While such a system has not been incorporated or envisaged by the current Bill, the current overhaul of the child protection system and legislation provides a prime opportunity for South Australia to consider and adopt this valuable initiative. In addition to going some way to realising genuine partnership, as an element of the Aboriginal and Torres Strait Islander Child Placement Principle, and self-determination, the exercise of guardianship rights and responsibilities by an Aboriginal and Torres Strait Islander organisation aligns with Australian and international evidence that Indigenous self-determination exercised through the control of the design and delivery of services for their own families and communities is key to achieving better outcomes.⁶³ SNAICC strongly believes that better decisions will be made and better outcomes will be achieved for Aboriginal and Torres Strait Islander children in out-of-home care where the agencies and people who know and understand their culture, community, family and historical context have control over the decisions made about their care.

A system of Aboriginal and Torres Strait Islander guardianship is currently operating in Victoria, and in its current review of its child protection legislation, Queensland is considering implementing an equivalent system to recognise Aboriginal and Torres Strait Islander self-determination and cultural authority. We now go on to describe the Victorian experience, which provides a model for South Australian consideration and implementation.

In Victoria, the delegation of guardianship to Aboriginal agencies is currently being delivered through two Aboriginal agencies and is enabled by section 18 of the *Children, Youth and Families Act 2005* (Vic). The Victorian Aboriginal Child Care Agency (VACCA) has clearly described the importance and potential benefits of delegation:

Aboriginal guardianship provides an opportunity to change the whole nature of the relationship between Aboriginal communities and child protection; it is the means to ensure that identity and belonging is central to any response to an Aboriginal child who needs the protection of guardianship.

For an Aboriginal child, their guardian will be an Aboriginal person who is proud of their Aboriginal culture and shares the aspirations for Aboriginal children that exist across Aboriginal communities. An Aboriginal guardian will engage with children and families in a way that is familiar. The opportunity for a child to be proud of their culture and strongly connected to their Aboriginal community will build their resilience to manage the challenges they will certainly face in their adult life.⁶⁴

In its consideration of the exercise of Aboriginal guardianship in the Canadian context, VACCA observed that the transfer of guardianship to Aboriginal agencies resulted in increased connection to families, culture, and community for Aboriginal children.⁶⁵ Translated to the Australian context this would go to enhanced compliance with the connection element of the Aboriginal and Torres Strait Islander Child Placement Principle.

While section 18 was first included in legislation in Victoria in 2005, it was not until November 2015 that enabling provisions were introduced that allow for the practical and effective exercise of Aboriginal guardianship.⁶⁶ Provisions relating to the provision, exchange, and use of information, powers and functions of an acting Principal Officer (of an Aboriginal agency), and delegation of functions and powers by a Principal Officer to an employee of the Aboriginal agency, are now in place, making Aboriginal guardianship an operable reality. Reflecting on this experience, we urge South Australia to consider and ensure that essential enabling provisions are included at the outset with a power enabling the delegation of functions and powers to an Aboriginal and Torres Strait Islander agency.

During the period that Victoria's section 18 was practically inoperable, a pilot program was implemented whereby an Aboriginal agency, VACCA, acted *as if* it had formally been delegated guardianship rights and responsibilities for Aboriginal children. The trial from 2013 to 2015 saw almost half of all children safely reunified with family – parents or another family member – despite indications that the children were on a pathway to long-term out-of-home care. The 13 children included in the program had been in out-of-home care for some time, with 10 children in out-of-home care for more than eight years and four children having been in out-of-home care within six months of their birth.⁶⁷

VACCA CEO Professor Muriel Bamblett AO praised the trial, noting, “the most significant learning of the pilot was that through the development of strong and positive relationships with a competent, professional Aboriginal organisation, Aboriginal families who have previously been *written off* were supported to enable their children to safely return to their care and their communities. Aboriginal community-controlled agencies have the intrinsic cultural knowledge to deliver holistic, targeted services.”⁶⁸

An independent evaluation of the trial found “potential benefits for Aboriginal children, young people and their families from a distinctive section 18 approach by an Aboriginal Community Controlled Organisation.”⁶⁹ The evaluation reflected that even though the trial's cohort was broadly representative of Aboriginal children on relevant protection orders in out-of-home care, given the very small size of the sample and the absence of a control group to compare outcomes, “it would be unwise and premature to draw any firm conclusions from the outcomes achieved for these particular children.”⁷⁰ The evaluation did, however, conclude that the outcomes “are cautiously encouraging and if replicated and sustained on a larger scale could have a positive impact upon slowing and eventually reducing the number of Aboriginal children subject to protection orders and placed in out-of-home care.”⁷¹

VACCA's own review of the trial set out many project learnings, some tied to the nature of the *as if* trial and others relevant to the full implementation of section 18. A significant learning was the need for adequate funding, support, and infrastructure to perform guardianship related activities, at least at the level currently provided to the child protection service, including in relation to access to legal advice and representation, training, brokerage, and expert advice for highly complex case decisions.⁷²

Following the promising *as if* pilot of Aboriginal guardianship and with the introduction of the enabling provisions that allow for the practical operation of section 18, in 2016 the Victorian Government committed funding for VACCA to continue the delivery of section 18 services.⁷³ The Victorian Government has expressed clear commitment to the successful implementation

of section 18, taking a staged and planned approach and building the capacity of Aboriginal organisations to assume and exercise functions and powers in relation to Aboriginal children.⁷⁴ As part of this approach, in July 2016, the Bendigo and District Aboriginal Co-operative joined a 12-month trial as part of the section 18 rural pilot program.⁷⁵

SNAICC is strongly encouraged by the initial progress of Aboriginal guardianship in Victoria and its significant potential to increase self-determination in child protection matters for Victoria's Aboriginal peoples. We strongly recommend that the current Bill be amended to allow for a similar approach to Aboriginal and Torres Strait Islander guardianship to be pursued in South Australia. At the same time, in order to support such a system, we call for proper investment to build capacity and capability of Aboriginal and Torres Strait Islander organisations to take on a trial.

As a concluding caveat, we note that while Aboriginal and Torres Strait Islander guardianship is important for participation, self-determination, and achieving better outcomes for children, a narrow focus and reliance on delegation of guardianship as a solution to these and other issues is limiting and misconceived. A review of the Canadian experience of delegating statutory authority to Aboriginal agencies revealed limitations to achieving outcomes where Indigenous community agencies are provided only with responsibility for statutory child protections functions and are not resourced to provide the holistic preventive supports that are needed to heal and strengthen communities and stop the flow of children coming into out-of-home care.⁷⁶ These learnings highlight that the delegation of guardianship, while a vital component to achieving self-determination, is not the panacea for Aboriginal and Torres Strait Islander child protection issues, but must be part of a broader process to empower Aboriginal and Torres Strait Islander communities and their organisations to respond to the underlying causes of child protection intervention.

Recommendation 13: That a provision be added to the Bill that is equivalent to section 18 of the *Children, Youth and Families Act 2005 (Vic)*, providing for the future delegation of the Chief Executive's powers under the Act to the Chief Executive Officer on an Aboriginal and/or Torres Strait Islander agency.

¹ Steering Committee for the Review of Government Service Provision (2017). Table 16A.17 'Volume F: Community Services' in *Report on Government Services 2017*. Canberra, ACT: Productivity Commission.

² Steering Committee for the Review of Government Service Provision (2017). Table 16A.17 'Volume F: Community Services' in *Report on Government Services 2017*. Canberra, ACT: Productivity Commission.

³ Steering Committee for the Review of Government Service Provision (2017). Table 16A.17 'Volume F: Community Services' in *Report on Government Services 2017*. Canberra, ACT: Productivity Commission.

⁴ SNAICC – National Voice for our Children (2016) *The Family Matters Roadmap*, available at: <http://www.familymatters.org.au/wp-content/uploads/2016/11/TheFamilyMattersRoadmap.pdf>

⁵ Child Protection Systems Royal Commission (2016). *The life they deserve: Child Protection Systems Royal Commission Report*. Adelaide: Government of South Australia, p448.

⁶ SNAICC – National Voice for our Children (2012) *Genuine Participation of Aboriginal and Torres Strait Islander Peoples in Child Protection Decision-making for Aboriginal and Torres Strait Islander Children*, available at: http://www.snaicc.org.au/wp-content/uploads/2015/12/002939_bdfc.pdf

⁷ Queensland Department of Communities, Child Safety and Disability Services, Website page: "Child Safety Legislation Reform", <https://www.communities.qld.gov.au/childsafety/about-us/legislation/child-safety-legislation-reform>

- ⁸ Council of Australian Governments (2009). *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020*. Canberra: Commonwealth of Australia.
- ⁹ Fox, S., Southwell, A., Stafford, N., Goodhue, R., Jackson, D. and Smith, C. (2015). *Better Systems, Better Chances: A Review of Research and Practice for Prevention and Early Intervention*. Canberra: Australian Research Alliance for Children and Youth.
- ¹⁰ Tilbury, C. (2012). *Moving to Prevention Research Report: Intensive Family Support Services for Aboriginal and Torres Strait Islander Children*. Melbourne: SNAICC.
- ¹¹ Tilbury, C. (2013). *Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements*. Melbourne: SNAICC.
- ¹² Tilbury, C. (2013). *Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements*. Melbourne: SNAICC.
- ¹³ Tilbury, C. (2013). *Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements*. Melbourne: SNAICC.
- ¹⁴ Commonwealth of Australia Department of Social Services (2015). *National Framework for Protecting Australia's Children: Third Three-Year Action Plan 2015–2018 – Driving Change, Intervening Early*. Canberra: Author.
- ¹⁵ Victorian Commission for Children and Young People (2016). *In the Child's Best Interests: Inquiry into Compliance with the Intent of the Aboriginal Child Placement Principle in Victoria*. Melbourne: Author, p69.
- ¹⁶ Tilbury, C. (2013). *Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements*. Melbourne: SNAICC.
- ¹⁷ Section 11 *Children and Young Persons (Care and Protection) Act 1998* (NSW).
- ¹⁸ Section 12 *Care and Protection of Children Act 2007* (NT).
- ¹⁹ Section 10G *Children, Young Persons and Their Families Act 1997* (Tas).
- ²⁰ Section 13 *Children and Community Services Act 2004* (WA).
- ²¹ Section 12 *Children, Youth and Families Act 2005* (Vic).
- ²² SNAICC (2013). *Whose Voice Counts: Aboriginal and Torres Strait Islander Participation in Child Protection Decision Making*. Melbourne: Author.
- ²³ United Nations Committee on the Rights of the Child (2009). *Indigenous children and their rights under the Convention*. General Comment No. 11, 30-33, available at: http://www2.ohchr.org/english/bodies/crc/docs/GC.11_indigenous_New.pdf
- ²⁴ SNAICC (2013). *Whose Voice Counts: Aboriginal and Torres Strait Islander Participation in Child Protection Decision Making*. Melbourne: Author.
- ²⁵ Child Protection Systems Royal Commission (2016). *The life they deserve: Child Protection Systems Royal Commission Report*. Adelaide: Government of South Australia.
- ²⁶ SNAICC – National Voice for our Children (2016). *The Family Matters Report: Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal*. Melbourne: Author.
- ²⁷ *Children and Young People Act 2008* (ACT)
- ²⁸ *Children and Young People (Care and Protection) Act 1998* (NSW)
- ²⁹ *Care and Protection of Children Act 2007* (NT)
- ³⁰ *Child Protection Act 1999* (Qld)
- ³¹ *Children's Protection Act 1993* (SA)
- ³² *Children, Young Persons and Their Families Act 1997* (Tas)
- ³³ *Children, Youth and Families Act 2005* (Vic)
- ³⁴ *Children and Community Services Act 2004* (WA)
- ³⁵ Although not legislatively entrenched, s16(1)(j) of the *Children, Youth and Families Act 2005* (Vic) requires the Victorian Department of Human Services (DHS) to give effect to the existing protocol between VACCA and DHS, inclusive of the agreement with Mildura Aboriginal Corporation (MAC), additionally requiring consultation on notification and investigation decisions.
- ³⁶ Tilbury, C. (2013). *Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements*. Melbourne: SNAICC.
- ³⁷ Pennell, J., Edward, M., & Burford, G. (2010). 'Expedited Family Group Engagement and Child Permanency', *Children and Youth Services Review* 32, p1012-1019.
- ³⁸ Ban, P. (2005). 'Aboriginal Child Placement Principle and Family Group Conferences', *Australian Social Work*, 58(4), p384-394; Drywater-Whitekiller, V. (2014). 'Family Group Conferencing: An Indigenous Practice Approach to Compliance with the Indian Child Welfare Act', *Journal of Public Child Welfare* 8(3), p260- 278; Marcynyszyn, L.A., Bear, P.S., Geary, E., Conti, R., Pecora, P.J., Day, P.A., and Wilson, S.T. (2012). 'Family Group Decision Making

(FGDM) with Lakota Families in Two Tribal Communities: Tools to Facilitate FGDM Implementation and Evaluation', *Child Welfare* 91(3), p113-134.

³⁹ Victorian Commission for Children and Young People (2016). *In the Child's Best Interests: Inquiry into Compliance with the Intent of the Aboriginal Child Placement Principle in Victoria*. Melbourne: Author, p120-29.

⁴⁰ Victorian Commission for Children and Young People (2016). *In the Child's Best Interests: Inquiry into Compliance with the Intent of the Aboriginal Child Placement Principle in Victoria*. Melbourne: Author, p126.

⁴¹ Ban, P. (2005). 'Aboriginal Child Placement Principle and Family Group Conferences', *Australian Social Work* 58(4), p384-394; Drywater-Whitekiller, V. (2014). 'Family Group Conferencing: An Indigenous Practice Approach to Compliance with the Indian Child Welfare Act', *Journal of Public Child Welfare* 8(3), p260- 278.

⁴² Ban, P. (2005). 'Aboriginal Child Placement Principle and Family Group Conferences', *Australian Social Work* 8(4), p384-394, 392.

⁴³ Devaney, C. and Byrne, P. (2015). 'The Value of Family Welfare Conferencing within the Child Protection and Welfare System', *Child Care in Practice*, p1-17.

⁴⁴ Boxall, H., Morgan, A., and Terer, K. (2012). *Evaluation of the Family Group Conferencing Pilot Program*, AIC Reports, Research and Public Policy Series 121. Canberra: Australian Institute of Criminology.

⁴⁵ Huntsman, L. (2006). *Family Group Conferencing in a Child Welfare Context: Literature Review*. Ashfield: Centre for Parenting and Research, Research, Funding, and Business Analysis Division: NSW Department of Community Services; Laverne, F.H. (2005). 'Family Group Conferencing: An Alternative Approach to the Placement of Alaska Native Children under the Indian Child Welfare Act', *Alaska Law Review* 22(1), p89.

⁴⁶ Arney, F., McGuinness, K., and Westby, M. (2012). *Report on the Implementation of Family Group Conferencing with Aboriginal Families in Alice Springs*. Menzies School of Health Research.

⁴⁷ Colquhoun, S., and Dockeray, M. (2012). *The link between Indigenous culture and wellbeing: Qualitative evidence for Australian Aboriginal peoples*, p. 23, 26; Armstrong, S, Buckley, S., Lonsdale, M., Milgate, G., Kneebone, L., Cook, L., and Skelton, F. (2012). Starting school: a strengths-based approach towards Aboriginal and Torres Strait Islander children, p. 10; Chandler, M., and Lalonde, C. (1998) *Cultural Continuity as a Hedge Against Suicide in Canada's First Nations*.

⁴⁸ Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) (2009). *Footprints in Time: The Longitudinal Study of Indigenous Children—Key Summary Report from Wave 1*, p. 42; SNAICC (2004). *Indigenous Parenting Project: Final Report*, Melbourne, p. 40; Yeo, S. (2003). "Bonding and attachment of Australian Aboriginal children", *Child Abuse Review*, 12, 299; Taylor, J. (2011). "Coming, ready or not: Aboriginal children's transition to school in urban Australia and the policy push". *International Journal of Early Years Education*, 19(2), 145, p. 148; Armstrong, S, Buckley, S., Lonsdale, M., Milgate, G., Kneebone, L., Cook, L., and Skelton, F. (2012). *Starting school: a strengths-based approach towards Aboriginal and Torres Strait Islander children*, pp.11-12.

⁴⁹ Section 13(2)(a) *Children, Youth and Families Act 2005* (Vic).

⁵⁰ Subsection 513(2)(b) *Children and Young People Act 2008* (ACT); subsections 13(1)(b) and (c) *Children and Young Persons (Care and Protection) Act 1998* (NSW); subsections 12(3)(b) and (c) *Care and Protection of Children Act 2007* (NT); subsections 83(4)(b), (c), and (d) *Child Protection Act 1999* (Qld); subsections 10G(3)(b) and (c) *Children, Young Persons and Their Families Act 1997* (Tas); subsections 13(2)(b)(i) and (ii) *Children, Youth and Families Act 2005* (Vic); and subsections 12(2)(b) and (c) *Children and Community Services Act 2004* (WA).

⁵¹ Subsection 513(2)(e)(iii) *Children and Young People Act 2008* (ACT); subsection 13(1)(c) *Children and Young Persons (Care and Protection) Act 1998* (NSW); subsection 12(4) *Care and Protection of Children Act 2007* (NT); subsection 83(6) *Child Protection Act 1999 Act* (Qld); subsection 10G(4) *Children, Young Persons and Their Families Act 1997* (Tas); and subsections 13(2)(b)(i) and (iii) *Children, Youth and Families Act 2005* (Vic).

⁵² Subsection 513(2)(e) *Children and Young People Act 2008* (ACT); subsection 13(6) *Children and Young Persons (Care and Protection) Act 1998* (NSW); subsection 12(3)(d) *Care and Protection of Children Act 2007* (NT); subsection 83(7) *Child Protection Act 1999 Act* (Qld); subsection 10G(3)(d) *Children, Young Persons and Their Families Act 1997* (Tas); and subsections 13(2)(c) *Children, Youth and Families Act 2005* (Vic).

⁵³ Child Protection Systems Royal Commission (2016). *The life they deserve: Child Protection Systems Royal Commission Report*. Adelaide: Government of South Australia, p225.

⁵⁴ Colquhoun, S. and Dockeray, M. (2012). *The Link between Indigenous Culture and Wellbeing: Qualitative Evidence for Australian Aboriginal Peoples*, p23, 26; Armstrong et al. (2013). *Starting School: A Strengths-Based Approach towards Aboriginal and Torres Strait Islander Children*. Australian Council for Educational Research, p10; Chandler, M., and Lalonde, C. (1998). 'Cultural Continuity as a Hedge Against Suicide in Canada's First Nations' *Transcultural Psychiatry* June 35, p191-219.

⁵⁵ Sara McLean (2016). 'Children's Attachment Needs in the Context of Out-of-Home Care', *CFCA Practice Resource*, November, available at: <https://aifs.gov.au/cfca/sites/default/files/publication-documents/cfca-practice-attachment.pdf>

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- ⁵⁶ Child Protection Systems Royal Commission (2016). *The life they deserve: Child Protection Systems Royal Commission Report*. Adelaide: Government of South Australia, p463.
- ⁵⁷ Child Protection Systems Royal Commission (2016). *The life they deserve: Child Protection Systems Royal Commission Report*. Adelaide: Government of South Australia, p464.
- ⁵⁸ Tilbury, C., and Osmond, J. (2006). 'Permanency Planning in Foster Care: A Research Review and Guidelines for Practitioners', *Australian Social Work* 59(3), p268.
- ⁵⁹ New South Wales Department of Community Services (2007). *Permanency Planning Policy*, available at: http://www.community.nsw.gov.au/__data/assets/pdf_file/0005/322259/POLICY_PERMANCY_PLANNING.PDF, p4.
- ⁶⁰ Osborn, A., and Bromfield, L., (2007). '*Getting the Big Picture: A Synopsis and Critique of Australian Out-of-Home Care Research*'. NCPIC Issues No. 27 – October 2007. Melbourne: Australian Institute of Family Studies.
- ⁶¹ Yeo, SS. (2003). 'Bonding and Attachment of Australian Aboriginal Children', *Child Abuse Review* 12, p293.
- ⁶² Section 276(2)(b) *Children, Youth and Families Act 2005* (Vic).
- ⁶³ For a full discussion of relevant evidence on the importance and value of Aboriginal and Torres Strait Islander participation in child protection decision-making see SNAICC (2013). *Whose Voice Counts: Aboriginal and Torres Strait Islander Participation in Child Protection Decision Making*. Melbourne: Author.
- ⁶⁴ Victorian Aboriginal Child Care Agency (2012). *Aboriginal Guardianship in Victoria: Implementing section 18 of the Children, Youth, and Families Act*. Melbourne: Author.
- ⁶⁵ Victorian Aboriginal Child Care Agency (2011). *Aboriginal Guardianship: Canadian Study Tour, Section 18 Report*. Melbourne: Author.
- ⁶⁶ *Children, Youth and Families Amendment (Aboriginal Principal Officers) Bill 2015* (Vic).
- ⁶⁷ Victorian Aboriginal Child Care Agency (2015). *Examining s18 Implementation: Review of the s18 Project by the Victorian Aboriginal Child Care Agency*. Melbourne: Author; Naughton&Co (2015). *S.18 'As If' Project Evaluation Report*. Melbourne: Author.
- ⁶⁸ Professor Muriel Bamblett AO, *Section 18 Receives Funding*, available at:
- ⁶⁹ Naughton&Co (2015). *S.18 'As If' Project Evaluation Report*. Melbourne: Author.
- ⁷⁰ *Ibid*, p42.
- ⁷¹ *Ibid*, p42.
- ⁷² Victorian Aboriginal Child Care Agency (2015). *Examining s18 Implementation: Review of the s18 Project by the Victorian Aboriginal Child Care Agency*. Melbourne: Author.
- ⁷³ Jenny Mikakos, Minister for Families and Children (15 June 2016). *Building Strong Futures for Aboriginal Children in Care* (media release), available at: <http://www.premier.vic.gov.au/building-strong-futures-for-aboriginal-children-in-care/>
- ⁷⁴ Natalie Hutchins, Minister for Aboriginal Affairs (16 September 2015). *Second Reading Speech*, available at: http://hansard.parliament.vic.gov.au/search/?LDMS=Y&IW_FIELD_ADVANCE_PHRASE=be+now+read+a+second+time&IW_FIELD_IN_SpeechTitle=Children,+Youth+and+Families+Amendment+Aboriginal+Principal+Officers+Bill+2015&IW_FIELD_IN_HOUSENAME=ASSEMBLY&IW_FIELD_IN_ACTIVITYTYPE=Second+Reading&IW_FIELD_IN_SittingYear=2015&IW_DATABASE=*; State of Victoria, Department of Health and Human Services (2016). *Roadmap for Reform: Strong Families, Safe Children – The First Steps*. Melbourne: Author.
- ⁷⁵ Bendigo and District Aboriginal Co-Operative (7 November 2016). *News*, available at: <http://www.bdac.com.au/news-publications/news/98-pilot-program-benefits-vulnerable-children>
- ⁷⁶ McKenzie, B. & Shangreux, C. (2011). 'From Child Protection to Community Caring in First Nations Child and Family Services' in Kufeldt, E. and McKenzie, B. (eds.) (2011). *Child Welfare: Connecting Research, Policy and Practice*, 2nd ed, Waterloo: Wilfrid Laurier University Press.