

WHOSE VOICE COUNTS?

Aboriginal and Torres Strait Islander participation
in child protection decision-making



Researched and drafted by: John Burton, Policy Officer, SNAICC

With input from SNAICC National Executive members, Sharron Williams, Angela Webb and Garry Matthews and SNAICC staff, Emma Sydenham, Joanne Borg, Chloe John and Daisy Fotopoulos .

External review by Terri Libesman, University of Technology Sydney, and Clare Tilbury, Griffith University.

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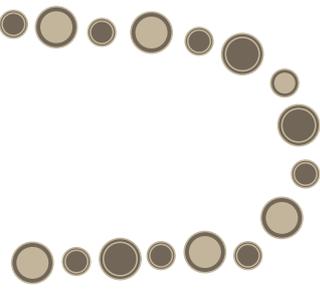
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TABLE OF CONTENTS

Executive Summary	3
1. Introduction.....	7
2. Defining terms.....	9
3. Why is participation important?	11
4. Legislation and policy: the supportive environment for participation.....	15
5. Research process and findings: Learning from cultural advice and support services	19
5.1 Methodology.....	20
5.2 Child protection decision-making phases	21
5.3 Cultural advice and support services	23
5.4 Research findings	27
Element 1: Representative participation	27
Element 2: Good faith negotiation towards agreement.....	31
Element 3: Supporting consent to decisions made	36
Element 4: Prioritising, promoting and safeguarding culture	40
Element 5: Children's participation.....	44
6. A strong model for cultural advice and support.....	47
7. Beyond the advisory model towards true participation.....	53
8. Conclusion	57
References	59





EXECUTIVE SUMMARY

The central importance of Indigenous participation to quality and effective child protection decision-making for Indigenous children is strongly supported by Australian and international evidence, and informed by human rights standards. Participation of Aboriginal and Torres Strait Islander peoples is critical to ensure an alternative cultural lens that reflects the importance of family, culture and community to the well-being of children.

Aboriginal and Torres Strait Islander children continue to be removed from their families and communities at an alarming rate. In this context, this paper questions whether child protection systems in Australia are empowering Aboriginal and Torres Strait Islander peoples to participate in decisions for the care and protection of their children. A strong in-principle commitment to participation exists in Australian law and policy, driven by the advocacy of Aboriginal and Torres Strait Islander peoples and underpinned by the requirements of international human rights law. However, it appears legislative requirements have been undermined by a lack of detailed implementation standards, accountability and resourcing.

This paper explores participation primarily through the lens of cultural advice and support services that have been developed to involve independent Aboriginal and Torres Strait Islander community-controlled organisations in child protection processes. Learnings from the operation of these participation-focussed service models provide opportunity to consider the extent to which Aboriginal and Torres Strait Islander peoples currently participate in key decisions throughout all phases of child protection intervention.

Research methodology and findings

SNAICC conducted interviews with 29 sector service leaders from 11 non-government organisations involved in providing cultural advice and support to government child protection services in four Australian states. Relevant government departments provided input and available program documentation and evaluation were reviewed.

The research questions were aligned with a human rights-based framework for genuine participation, with elements as described below.

The research reveals that, at their best, cultural advice and support services are enabling input to inform joint decisions about cultural strengths, risks and needs of Aboriginal and Torres Strait Islander children and their families. They provide opportunities to support direct participation of families in child protection processes and two-way cultural translation roles between families and government services. However, an absence of final decision-making authority for Aboriginal and Torres Strait Islander communities and limited systems of accountability for government services to seek and use advice ultimately limits their influence. Inadequate resourcing is also a common barrier to effective operation. At their worst, these services present as a tokenistic aside; an optional extra tool for decision-makers that choose to use them, with low capacity to do so and an absence of the shared process and responsibility that could make them work. The following discussion presents specific research findings in relation to each element of participation.

Element 1: Representative participation Aboriginal and Torres Strait Islander peoples select their own representatives in decision-making and participate through their own institutions and procedures.

This research concludes that it is the funding of Aboriginal and Torres Strait Islander community-controlled organisations to provide cultural advice and support that enables an independent community voice in decision-making. Embedding participatory services within resourced professional organisations supports appropriate community representative structures. It also supports accountability of Aboriginal and Torres Strait Islander advisors to address conflicts of interest and ensure confidentiality for families. Major barriers to representative participation include large regional coverage areas of services and limited resources for the establishment and support of local community-

based consultation systems. Direct support for families to ensure they participate in decisions for their children is critical, but only enabled to varying degrees across the four states.

Element 2: Consultation in good faith

Good faith negotiations take place with Aboriginal and Torres Strait Islander peoples from the beginning and throughout decision-making with the aim of reaching agreement.

The research concludes that a lack of requirements and accountability for giving due weight to cultural advice limit good faith negotiation and agreement on decisions made. Positively, program specifications in three states require services to be involved in all significant decisions from the point of notification of child protection concerns to authorities. A lack of resourcing, however, weights involvement towards investigations, with the focus often on family and community-engagement rather than decision-making.

Accountability gaps leave the influence of advice highly dependent on the quality of relationships at the local level. Higher-level agreements between government and Aboriginal and Torres Strait Islander peaks and lead agencies do assist to create shared accountability in some states. Detailed and aligned practice frameworks sometimes support stronger negotiation, particularly in Victoria where systems are more established. Courts have roles to independently consider cultural input in care and protection applications, increasing its influence in decisions. Limited capacity of services to present their views to the court and misrepresentation of views in applications are identified as common limitations of the courts' role. The absence of thorough evaluation of cultural advice and support programs is a critical barrier to determining whether they enable two-way negotiation.

Element 3: Free, prior and informed consent

Aboriginal and Torres Strait Islander peoples have adequate financial and technical resources, time and information to reach decisions without external coercion or manipulation. Their perspectives and positions are reflected in the outcomes of decision-making processes.

This research concludes that while a level of joint decision-making may be achieved through input and negotiation, consent to decisions made remains variable and relationship dependent. No decision-making authority is delegated to services considered in this research, and all are framed in program specifications as 'advice' services with no final decision-making authority. This leaves cultural advice and support services falling well short of implementing legislated requirements for participation and/or self determination of Aboriginal and Torres Strait Islander peoples.

Resource deficiencies are strongly recognised as preventing participation in all decisions and creating barriers to attracting, supporting and retaining quality staff. While information sharing requirements support effective participation, barriers exist to ready access to information and effective information sharing between all relevant stakeholders.

Element 4: Prioritising, promoting and safeguarding culture

Aboriginal and Torres Strait Islander peoples provide input on the nature and importance of culture in decisions and contribute to processes that promote and maintain connection for children to family, community and culture.

This research concludes that the input of cultural advice and support services is critical to ensure genuine assessment of cultural needs in determining a child's best interests. Strong cultural knowledge and community connections of Aboriginal and Torres Strait Islander organisations and their staff provide the basis for cultural considerations. Barriers to effective community

representation described above can sometimes limit the quality and specificity of cultural advice. Cultural competence of government child protection services is critical to their capacity to listen to, understand and value cultural advice. This paper finds limited development of systemic cultural competence. It identifies further opportunities for cultural advice services to directly support development of cultural understanding for government child protection services and their staff.

Supporting the maintenance of cultural connections for children in out-of-home care is a vital priority area for increased resourcing and role definition. This is especially essential for children placed through mainstream agencies who are identified as most vulnerable to losing connections. While services considered in this research are focused on statutory interventions, they play important roles to identify alternative community and family caring solutions and supports that divert children from statutory systems. The need for increased Aboriginal and Torres Strait Islander participation in the design and delivery of early intervention supports that strengthen families and prevent system entries is apparent.

Element 5: Children's participation

Aboriginal and Torres Strait Islander children have the opportunity to participate in decisions that affect them in line with their capacity, age and maturity and receive culturally appropriate support to do so.

The research revealed highly variable and limited engagement of cultural advice and support services in working directly to support and enable child participation. It also indicated a general lack of culturally appropriate or tailored support for enabling the participation of Aboriginal and Torres Strait Islander children. It is clear that further development of strategies, processes and training to increase understanding of good practice in supporting participation of Aboriginal and Torres Strait Islander children is necessary across Australian child protection systems.

Beyond the advisory model towards true participation

Strong cultural advice and support services that reflect the strengths and address the barriers identified in this research could support better decision-making for Aboriginal and Torres Strait Islander children. They could promote increased participation, relocating authority in decision-making through negotiation, shared responsibility, and shared accountability between government and communities. However, ultimately participation cannot be fully enabled where all final decision-making authority remains with government child protection services. International models have suggested possibilities for moving forward through the delegation of statutory functions to Indigenous agencies. Learning from these models suggests that, to be effective, any delegation of statutory child protection authority would need to be in the context of broader service funding for preventative family support. This would not leave Aboriginal and Torres Strait Islander people to deal with the consequences of family breakdown but resource them to actively support stronger families and communities to care for children. The need for supported transition and capacity-building for delegated decision-making has been recognised. This is important for some communities where the impacts of poverty and disadvantage undermine community leadership creating risks for vulnerable members. However, it is also recognised that most Aboriginal and Torres Strait Islander communities have significant leadership and service strengths and delegation of functions could progress quickly drawing on existing strengths.

“When we are making decisions about community people, their present and future, to do that in the absence of community or family, you are not doing a service.”

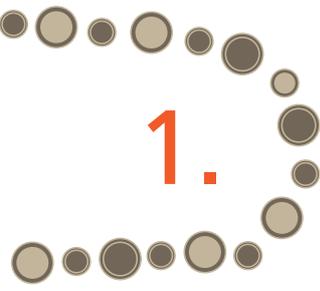
Service leader

Conclusion

This research indicates that current systems and process are falling well short of their goal to empower Aboriginal and Torres Strait Islander communities to make decisions for the care and protection of their children. A shift of authority and focus will be required to achieve genuine participation. Some concrete next steps required at the state and territory level are apparent. These include:

- legislative reform where participation requirements do not match the evidence of the value of participation;
- increased resourcing where under-investment leaves service models falling short of their potential;
- state-wide roll-out where strong service models operate in limited locations;
- developing structures of independent accountability to promote the influence and take up of cultural advice and/or delegating decision-making authority;
- linking cultural advice services with community-led family group conferencing that enables families and communities to engage and find better solutions;
- evaluation of current systems to drive reform; and
- capacity and service system development where independent participation services do not exist, learning from the more developed service model in Victoria.

Committed leadership to implement these and other measures identified in this paper could see substantive movements towards achieving the critical policy goal that Aboriginal and Torres Strait Islander communities genuinely participate in decisions for the care and protection of their own children.



1. INTRODUCTION

Australian child protection systems strongly acknowledge an in-principle commitment to Aboriginal and Torres Strait Islander participation in decisions for the care and protection of their own children.¹ The gradual emergence of this commitment in Australian law and policy has been largely driven by the advocacy of Aboriginal and Torres Strait Islander peoples and organisations, especially since the 1970s.² The tragic outcomes of culturally exclusive decision-making acknowledged in the Bringing them Home report are conclusive in demonstrating that decision-making in the best interests of Aboriginal and Torres Strait Islander children is not possible without a strong Aboriginal or Torres Strait Islander cultural perspectives at the table.³

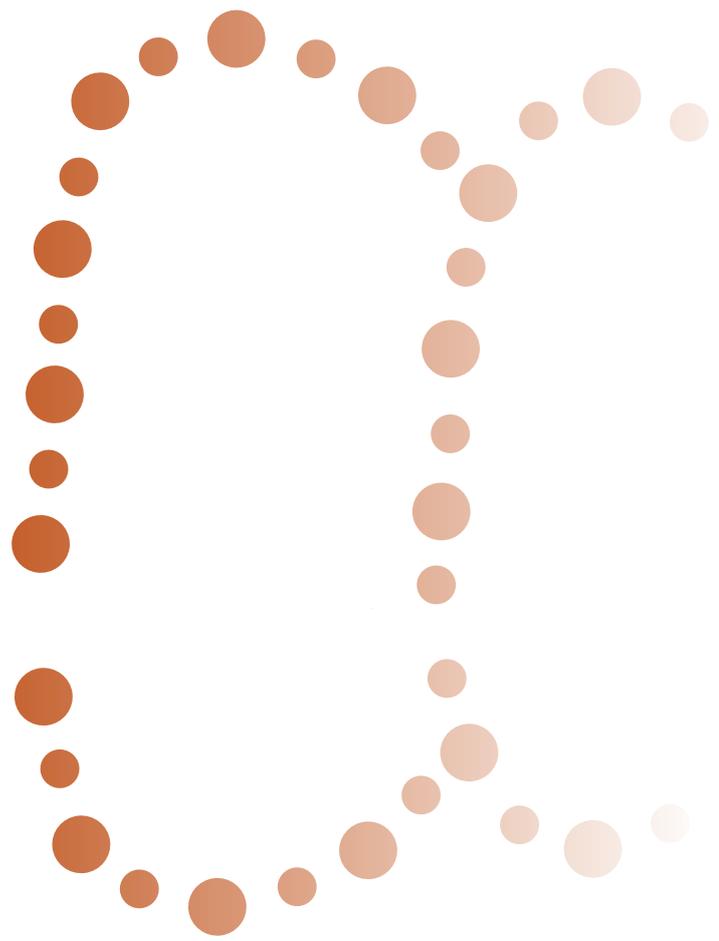
Over recent years, Australia has made significant strides as a society to acknowledge the wrongs of the past and set the platform for reconciliation and change, most publicly through the national apology to the Stolen Generations. Significant questions remain though as to whether we have taken sufficient action to ensure that history does not repeat and redress the ongoing impacts of past policies. Aboriginal and Torres Strait Islander children are still 10 times more likely to be in out-of-home care than other Australian children,⁴ and their higher rates of engagement with child protection systems continue to rise.⁵ When in care, 31% of Aboriginal and Torres Strait Islander children are not placed with kin or other Indigenous carers,⁶ threatening their ongoing connections to family, community and culture. This has flow-on effects for the further and inter-generational breakdown of Aboriginal and Torres Strait Islander society and culture.

In this debilitating context there is a critical need to question whether legislation, policies and systems are empowering Aboriginal and Torres Strait Islander communities to care for and protect their children. This paper explores participation in decision-making as a key domain for providing communities the opportunity to once again bring up their children strong and safe, secure and proud of their cultural identity. This understanding of

participation as critical to positive social change is strongly informed by human rights standards, aligning with the commitments of Australia to respect, protect and promote the rights of children⁷ and Indigenous peoples,⁸ and to bring an end to discriminatory law and policy.⁹ This paper explores particularly the inter-play between collective cultural rights, individual children's rights and the range of participatory rights of children and Indigenous peoples in making child protection decisions.

Very little research has considered systems for supporting participation of Aboriginal and Torres Strait Islander peoples in child protection decisions. Local initiatives and comparative international experience in Canada, the United States and New Zealand have inspired advocacy for reform and informed incremental legal and systems development in Australia.¹⁰ However, detailed implementation standards, guidance and resourcing have been recognised as lacking.¹¹ In this context, this paper seeks to contribute to understanding of participation and its requirements, as well as how effectively current systems enable participation. **Participation is explored primarily through the lens of cultural advice and support services that have been developed to involve independent Aboriginal and Torres Strait Islander community-controlled organisations in child protection processes.** Learnings from the operation of these participation-focussed service models provide opportunity to consider the extent to which Aboriginal and Torres Strait Islander peoples currently participate in key decisions throughout all phases of child protection intervention.

This research is focussed on decision-making in tertiary intervention, where government authorities are required by law to intervene to address the consequences of child neglect and abuse.¹² The paper, however, regularly draws attention to the importance of Aboriginal and Torres Strait Islander participation within the broader context of primary and secondary service design and delivery which has the objective of strengthening families to prevent neglect and abuse.¹³ This reflects broad recognition that effective responses in Indigenous



child welfare must be targeted to '*address the structural and systemic inequality which is embedded in [Indigenous] communities.*'¹⁴ To do so, they must include Aboriginal and Torres Strait Islander participation in prevention and community-development focussed responses.¹⁵

This paper firstly presents the evidence base for why participation of Aboriginal and Torres Strait Islander peoples in child protection decisions for their children is essential. The contribution of Australian legislation and policy to creating a supportive environment for participation is addressed and relevant jurisdictional legislative provisions are compared. The paper then discusses the research process and findings on enablers and barriers to participation in existing service models and opportunities to strengthen participation. These are mapped against elements of a human rights based framework for genuine participation.¹⁶ Learnings from service models considered are drawn together to propose a strong model for cultural advice and support that could strengthen the role of Aboriginal and Torres Strait Islander peoples in making decisions for the care and protection of their own children. Finally, the limitations of advisory models in enabling true participation are addressed alongside consideration of the potential for reforms more strongly aligned with the right of Aboriginal and Torres Strait Islander peoples to self-determination.

2. DEFINING TERMS

In addressing participation of Aboriginal and Torres Strait Islander peoples in child protection decision-making, three strongly interrelated terms require clear definition: 'consultation', 'participation' and 'self-determination'. SNAICC draws upon a human rights based framework to describe these terms and their constituent elements.¹⁷ For the purposes of this paper they are defined in terms of their relevance to Indigenous peoples in the arena of public decision-making rather than their broader application.

Consultation requires good faith negotiation with Indigenous peoples through their chosen representatives with the aim of achieving consent to decisions made that impact the rights and interests of those peoples.¹⁸ Consultation is a requisite element of participation.¹⁹

Participation includes and extends beyond consultation to encompass a broad range of active engagement in public decision-making processes. Participation in decision-making necessarily requires a shift in power-dynamics by which one party with control over decisions cedes authority and enables influence of others. As Arnstein (1969) describes, enabling participation in public decision-making is a process that empowers groups that are excluded:

It is the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future. It is the strategy by which the have-nots join in determining how information is shared, goals and policies are set, tax resources are allocated, programs are operated, and benefits like contracts and patronage are parceled out.²⁰

Arnstein presents a continuum-based understanding which describes the stages of relocation of authority necessary to achieve effective participation, described in Figure 1 below.

This continuum understanding of participation is closely paralleled in the literature on cultural competence. Cross (1989) recognises that developing the competencies necessary to work effectively with culturally different and minority communities requires active engagement in increasing understanding of and value for their different cultural knowledge and perspectives.²¹ This, in turn, leads to increasing commitment and ability to include diverse cultural knowledge in decision-making, and ultimately a commitment to support direct participation and community-control in decision-making for members of valued minority cultures.²²

Figure 1: Arnstein's participation continuum

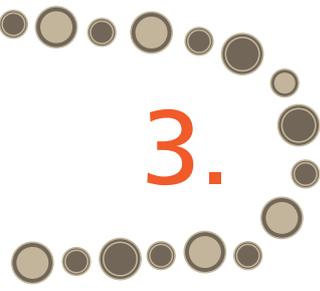
Non-Participation	Tokenism	Citizen-Power
<p>Manipulation: People placed on advisory committee for the purpose of educating them or securing their support.</p> <p>Therapy: Focus on curing people of their 'pathology' rather than focussing on racism and victimisation that create 'pathologies'.</p>	<p>Informing: One way flow of information with no opportunity for feedback/negotiation.</p> <p>Consultation: Inviting opinions with no assurance that they will be taken into account.</p> <p>Placation: Hand-picked participants, or individual representatives in decision-making authorities.</p>	<p>Partnership: power redistribution through negotiation and agreed shared planning and decision-making processes.</p> <p>Delegated Power: dominant decision-making authority granted over a particular plan or program.</p> <p>Citizen Control: full control of policy and management and able to negotiate how outsiders influence and change decisions.</p>



Applying these understandings of participation to the context of Indigenous peoples requires an appreciation of their unique rights to participate in decisions as distinct cultural groups, their special place as original inhabitants of lands, and their shared histories of colonisation and disempowerment in public decision-making. It requires recognition that the cultural values that underpin public institutions and systems have been largely shaped without equal participation of Indigenous peoples. Participation on equal terms must therefore allow for systems cultural change rather than simply including Indigenous peoples within existing mainstream institutions and processes.²³

O'Sullivan (2012) asserts that from an Indigenous human rights perspective '*participation is reasonably the concern of peoples as well as individuals, with no one culture providing the normative foundation for the conduct of public affairs.*'²⁴ Participation is a strongly recognised protective factor for collective cultural rights which have been threatened and violated by decision-making that has excluded Aboriginal and Torres Strait Islander peoples.²⁵ Harris-Short (2012) explains how participatory approaches in health and social welfare can enable decision-making from an alternative cultural perspective drawing on '*the community's rich body of traditions, values and practices to find solutions which accord with the community's philosophy and beliefs and reinforce a positive sense of cultural identity.*'²⁶

Self-determination is the over-arching right of Indigenous peoples to exercise control over the decisions that affect their lives. It is both the source of the right to participate in decisions and the realisation of full empowerment to participate in public decision-making. Self-determination includes subsidiary rights to strong forms of participation, including free pursuit of economic, social and cultural development and autonomy and self-governance in internal and local affairs.²⁷ Thus, enabling increased participation of Indigenous peoples in decision-making promotes their self-determination.



3. WHY IS PARTICIPATION IMPORTANT?

The central importance of Indigenous participation to quality and effective child protection decision-making for Indigenous children is strongly recognised by Australian and international evidence, and informed by human rights standards.

Participation is a human right

Enabling participation of Aboriginal and Torres Strait Islander peoples in decision-making is fundamental to realising their human rights.²⁸ All Australian governments have international legal obligations to ensure the realisation of these rights. The right to participate in decisions comes primarily from the right to self-determination, which requires the empowerment of Indigenous peoples to have control over the decisions that affect their own lives.²⁹ Indigenous peoples and organisations have contributed significantly to the development of this and related rights in international law. Libesman (2007) describes how the advocacy of Indigenous peoples since the 1970s has '*pushed the statist boundaries of the United Nations*' driving recognition of group rights for Indigenous cultural minorities, with self-determination core to their claims.³⁰ The right to participate is fundamentally linked to the rights of Indigenous children and communities to the collective enjoyment of their cultures, requiring their participation in decisions that threaten the connectedness of their cultural groups, including those relating to child protection intervention.³¹

A fundamental right of all children is that their best interests are a primary consideration in all decision-making.³² The United Nations Committee on the Rights of the Child has identified that participation of Indigenous peoples is necessary to ensure a cultural lens in determining the best interests of an Indigenous child.³³ As Lynch (2001) explains:

To understand the best interests of an Indigenous child necessitates an exploration of the fundamental links between culture and identity and the concomitant importance of family and community to the meaningful existence and survival of First Nations and Aboriginal children.³⁴

Participatory rights are also important to overcoming discrimination in decision-making. In particular, it is recognised that achieving equality of participation in public decision-making requires the consent of Indigenous peoples to decisions that affect their rights and interests.³⁵ Every child also has, independently, the right to participate in decisions in line with their age and maturity.³⁶ These participatory rights exist alongside all other rights of children, including, importantly in this context, the right of all children to be free from abuse and neglect,³⁷ noting that collective rights cannot displace individual rights in determining the best interests of children.³⁸

Participation is required in response to past wrongs

The Stolen Generations are the devastating impact of child protection policy and practice in Australia.³⁹ Australia's Indigenous peoples are particularly affected by child protection decision-making owing to the long-term impacts of past policies of forced child removal and their continuing over-representation in the child protection system.⁴⁰ The potential for further damage to the connectedness and survival of Aboriginal and Torres Strait Islander cultures, communities and families through child removal reinforces this as a priority area for the promotion and protection of the right of Indigenous peoples to participate in Australia. The seminal 1997 *Bringing them Home* report on the experiences of members of the Stolen Generations recognises the continuing failure of child welfare departments in all jurisdictions to consult adequately, if at all, with Aboriginal and Torres Strait Islander families and communities.⁴¹ It identifies a frequent failure '*to acknowledge anything of value which Indigenous families could offer children*.'⁴² The report recognises the important role of Aboriginal and Torres Strait Islander organisations to correct this failure and calls on legislation to require that in every matter concerning Aboriginal and Torres Strait Islander children '*the appropriate accredited Indigenous organisation is consulted thoroughly and in good faith*.'⁴³ The importance of legislating the right is also strongly identified:

Statutory recognition of a right to participate in decision making would relieve AICCAAs [Aboriginal and Islander Child Care Agencies] from dependence on the goodwill of the welfare department or individual officers and would provide the basis for funding to fulfil legislative functions.⁴⁴

Learning from the tragic outcomes of decisions that were 'made for' Aboriginal and Torres Strait Islander children and their families requires a priority to never exclude Aboriginal and Torres Strait Islander peoples from child protection decision-making again.

Participation is an essential element of the Aboriginal and Torres Strait Islander Child Placement Principle

The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) acknowledges the importance of family, cultural and community connections to the identity and wellbeing of Aboriginal and Torres Strait Islander children. This principle has been at the heart of efforts to reform child protection practice that has not recognised the importance of culture to promoting the best interests of children.⁴⁵ It requires a priority at all stages of child protection decision-making on keeping children connected to their families, cultures and communities.⁴⁶ Implementation efforts have often construed the principle as limited to a narrow set of placement priorities for children in out-of-home care.⁴⁷ However, a full and proper understanding of the principle and its objectives recognises that it extends well beyond placement-decisions to include broader requirements for supporting cultural connectedness.⁴⁸ As Libesman (2011) explains, the ATSICPP:

is not simply related to the placement of children in out-of-home care. It is also concerned with cultural support for a child from the time that a department has contact with a family to their ongoing cultural needs after they have been placed in out-of-home care.⁴⁹

Aboriginal and Torres Strait Islander agencies have advocated a broad understanding of the ATSICPP as inclusive of participatory rights in line with the literature that asserts that best interests determinations cannot be properly made without an Aboriginal and Torres Strait Islander cultural perspective in decision-making.⁵⁰ This has driven gradually increasing recognition in law, policy and systems operation of the need for participatory roles for Aboriginal and Torres Strait Islander agencies and families. These roles have been recognised as essential to ensure proper account of cultural considerations and enable ATSICPP implementation at all stages of child protection decision-making.⁵¹

Participation enables an alternate cultural lens

Aboriginal and Torres Strait Islander child-rearing values and practices are unique and significantly different from dominant cultural child-rearing in Australia.⁵² While practices vary within different local cultures, they commonly emphasise whole of community caring, and include important roles for extended family and kin in meeting the day to day care needs of children.⁵³ Understanding culturally different caring practice is essential to ensure effective identification and assessment of care concerns; understanding care strengths, risks and alternatives; and supporting the ongoing care needs of Aboriginal and Torres Strait Islander children. As Stanley, Tomison and Pocock (2003) conclude:

Indigenous child rearing practices, particularly those maintained by the more remote communities, have many different characteristics from those in the non-Indigenous community...A failure to be cognisant of these and to take them into account in child protection practice is likely to provide a service which doesn't meet the needs of Indigenous children and families.⁵⁴

Participation provides the opportunity for Aboriginal and Torres Strait Islander people who know and understand these cultural differences to contribute to decision-making that takes proper account of them in determining the best interests of Aboriginal and Torres Strait Islander children.⁵⁵

Participation contributes to better outcomes for children and families

International and Australian evidence has strongly supported the importance of Indigenous participation for positive outcomes in service delivery for Indigenous children and families. In the United States, studies indicate that the best outcomes in community well-being and development for Indigenous peoples are achieved where those peoples have control over their own lives, and are empowered to respond to and address the problems facing their own communities.⁵⁶ Canadian research has shown a direct correlation between increased Indigenous community-control of services and improved health outcomes for Indigenous peoples.⁵⁷ Canadian research has also found a direct connection between Indigenous self-government and reduced rates of youth-suicide.⁵⁸ Denato and Segal (2013) provide a comprehensive review of Australian evidence indicating the crucial importance of Aboriginal and Torres Strait Islander community control to outcomes in health service delivery.⁵⁹ They cite several studies of the Office for Aboriginal and Torres Strait Islander Health to conclude:

A common theme emerging from these extensive reviews regarding 'what works' was the crucial importance of community engagement, ownership and control over particular programs and interventions.⁶⁰

Numerous reports and inquiries in Australia consistently confirm a lack of robust community governance and meaningful Indigenous community participation as major contributors to past failures of Government policy.⁶¹ They highlight the need to build capacity for Aboriginal and Torres Strait Islander community-controlled children and family services.⁶² A recent report of the Australian National Audit Office finds that building the role and capacity of Aboriginal and Torres Strait Islander organisations is not only important for effective service delivery, but an important policy objective in its own right in so far as it promotes local governance, leadership and economic participation, building social capital for Aboriginal and Torres

Strait Islander peoples.⁶³ Indeed, the *Bringing them Home* report concludes that community development approaches to addressing child protection needs are required rather than traditional models of child welfare that '*pathologise and individualise Indigenous child protection needs.*'⁶⁴

Participation supports service access and engagement for Aboriginal and Torres Strait Islander families

New ways of working with Aboriginal and Torres Strait Islander families that are community led and managed can have multiple benefits in ensuring that services are culturally appropriate for and acceptable to Aboriginal and Torres Strait Islander families, addressing the myriad of barriers that contribute to their under-utilisation of mainstream services.⁶⁵ It is well accepted that service access of Aboriginal and Torres Strait Islander families is supported by service systems and providers that develop cultural competence and service delivery that is culturally appropriate.⁶⁶ Collaboration between Aboriginal and Torres Strait Islander communities, mainstream agencies and government can contribute to build competency and offer ways of Indigenous families' experiences of child protection services.⁶⁷ Evaluation of child and family service delivery through the federally funded Communities for Children program identifies that '*Indigenous specific services offer Indigenous families a safe, comfortable, culturally appropriate environment that is easier to access and engage with.*'⁶⁸ The importance of Indigenous-led services to family engagement in child protection is also clearly identified in the *Bringing them Home* report:

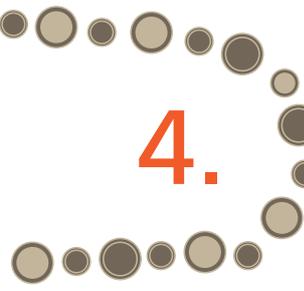
Evidence to the Inquiry confirms that Indigenous families perceive any contact with welfare departments as threatening the removal of their child. Families are reluctant to approach welfare departments when they need assistance. Where Indigenous services are available they are much more likely to be used.⁶⁹

Although this paper focuses particularly on the participation of community organisations or services

“The Indigenous community should be consulted and given an opportunity to participate in the process on how the best interests of Indigenous children in general can be decided in a culturally sensitive way.”

United Nations Committee
on the Rights of the Child

in decision-making, direct engagement with families is also a critical component identified. This paper recognises the important role of Aboriginal and Torres Strait Islander organisations to provide quality support to children and families, so that in turn, they can meaningfully engage with and participate in child protection processes.



4.

LEGISLATION AND POLICY: THE SUPPORTIVE ENVIRONMENT FOR PARTICIPATION

The importance of Aboriginal and Torres Strait Islander participation in decision-making is recognised at all levels of Australian law and policy. Through the *National Indigenous Reform Agreement* (NIRA) all Australian governments have committed to addressing Aboriginal and Torres Strait Islander disadvantage. As a component of the NIRA, the Council of Australian Governments (COAG) has agreed to the principle of 'Indigenous engagement' in service design and delivery including a priority on '*engaging and empowering Indigenous people...in the design and delivery of programs and services.*'⁷⁰ *The National Framework for Protecting Australia's Children 2009-2020* identifies that achieving the outcome that '*Indigenous children are supported and safe in their families and communities*'⁷¹ requires strategies that, '*recognise the importance of Indigenous led and managed solutions.*'⁷² More specifically in the child protection context, through the adoption of the National Out-of-home Care Standards all Australian governments have committed to the goal that '*Aboriginal and Torres Strait Islander communities participate in decisions concerning the care and placement of their children and young people.*'⁷³

The relevant child welfare legislation of most Australian states and territories contains a strong and explicit in-principle commitment to enabling Aboriginal and Torres Strait Islander participation in child protection decision-making. For example, legislation in New South Wales and Western Australia specifies that Aboriginal and Torres Strait Islander peoples should participate in the care and protection of their children '*with as much self-determination as possible.*'⁷⁴ Northern Territory legislation recognises the importance of self-determination to promoting the well-being of Aboriginal children, and Victorian legislation provides specific principles for the engagement of Aboriginal peoples in decision-making based on principles of '*Aboriginal self-management and self-determination.*'⁷⁵

Despite strong in-principle and policy commitment to enabling participation, significant inconsistencies in mandatory requirements and service system design are evident. Libesman (2008) recognises

that the common lack of definition of 'self-determination' and other participatory principles undermines their objectives by leaving the means and extent of participation enabled to the interpretation of government departments.⁷⁶ This control over the participation process directly contradicts the very nature of self-determination as a principle requiring control for Aboriginal and Torres Strait Islander peoples in decision-making. Only in Queensland and New South Wales does legislation expressly require Aboriginal and Torres Strait Islander participation in all significant decisions for Aboriginal and Torres Strait Islander children under the relevant Act.⁷⁷ Other jurisdictions require more limited points of input and engagement, or do not mandate that Aboriginal and Torres Strait Islander people independent of the statutory agency participate.

Requirements for 'participation' and 'self-determination' for Aboriginal and Torres Strait Islander peoples in child protection decisions indicate the need for transference of at least some level of authority to those peoples for decisions made. However, interpretation by government departments has consistently drawn the conclusion that all formal and final authority for decision-making remains with government agencies, as reflected in all participation-focussed service models reviewed for this paper. The only Australian legislative provision that conclusively transfers authority to an Aboriginal agency is s323b of the *Children, Youth and Families Act 2005* (Vic) which provides that a court must not make a permanent care order unless recommended by an Aboriginal agency.

Driven by the advocacy of Aboriginal and Torres Strait Islander community-controlled children and family services over the last thirty years, incremental increases in participation and influence have been achieved. In some jurisdictions, the specific identification of 'gazetted' or 'recognised' Aboriginal and Torres Strait Islander agencies with a role to participate in some or all significant decisions has assisted to promote a structure and resourcing for Aboriginal and Torres Strait Islander agencies to play a part.⁷⁸ Positively, in Victoria and New

South Wales, agreements between government departments and Aboriginal agencies have extended commitments to enabling participation beyond legislative requirements and created a level of shared responsibility for program implementation.⁷⁹ In Victoria, in particular, a longstanding protocol between the Victorian Aboriginal Child Care Agency and the Victorian Department of Human Services,

supported by legislation,⁸⁰ has provided unique recognition of the role of Aboriginal agencies to contribute to and inform decision-making.⁸¹ Table 1 below provides an overview of current legislative requirements aligned with legislative elements required for genuine participation. The source and importance of each of these elements is described in section 5 below.

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

	ACT ⁸²	NSW ⁸³	NT ⁸⁴	QLD ⁸⁵	SA ⁸⁶	TAS ⁸⁷	VIC ⁸⁸	WA ⁸⁹
Aboriginal and Torres Strait Islander self-determination is a recognised principle in the Act.	NO	YES s11(1)	YES s12(1)	NO	NO	NO	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) <small>(participation requirements not specific to decision-making)</small>	YES s11(1)	YES s12(2)	YES s6	NO	NO	YES s12	YES s13,14
Consultation/participation of an external Aboriginal and Torres Strait Islander agency is expressly required for all significant decisions .	NO see s10(b) <small>(submissions considered)</small>	YES s12 <small>(organisations and means of participation not specified)</small>	NO	YES s6(1)	NO See ss5(2) (a) & (b) <small>(submissions considered)</small>	NO See s9(2) <small>(submissions considered)</small>	NO ⁹⁰	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) <small>(exceptions)</small> s78A(4)	NO	YES s83(2)	YES s5(1)	YES s9(1)	YES s12(1)(c)	NO see s81 <small>(internal or external consultation)</small>
Input from external Aboriginal and Torres Strait Islander agencies is expressly required in judicial decision-making	NO see s483(g)	NO	NO	YES s6(4)(a)	YES ss5(1) & (2)	YES s9, s51	YES s323(b) <small>(for permanent care orders only)</small>	NO

GREEN – Legislation aligned

YELLOW – Legislation not aligned

GREY – limited / significantly qualified alignment

In only two jurisdictions, Victoria and Queensland, are regionally based Aboriginal and Torres Strait Islander services specifically resourced to fulfil roles to participate in child protection decision-making on a state-wide basis. Additionally, two pilot services are funded in New South Wales, and one centralised service commenced in South Australia in 2011, but all other states and territories lack an independent participation focussed infrastructure. Even where systems supporting participation of Aboriginal and Torres Strait Islander peoples exist, there is limited evaluation and review or independent oversight available to inform understanding of systems' effectiveness. This issue is discussed more fully in relation to accountability for enabling participation in section 5.4 below. Encouragingly, in Victoria, Queensland and New South Wales, more detailed service specifications and practice instructions for the operation of cultural advice and support services exist. These provide an opportunity for review of efforts to enable participation of Aboriginal and Torres Strait Islander agencies that does not exist in other jurisdictions because of the lack of detailed policy and program requirements.

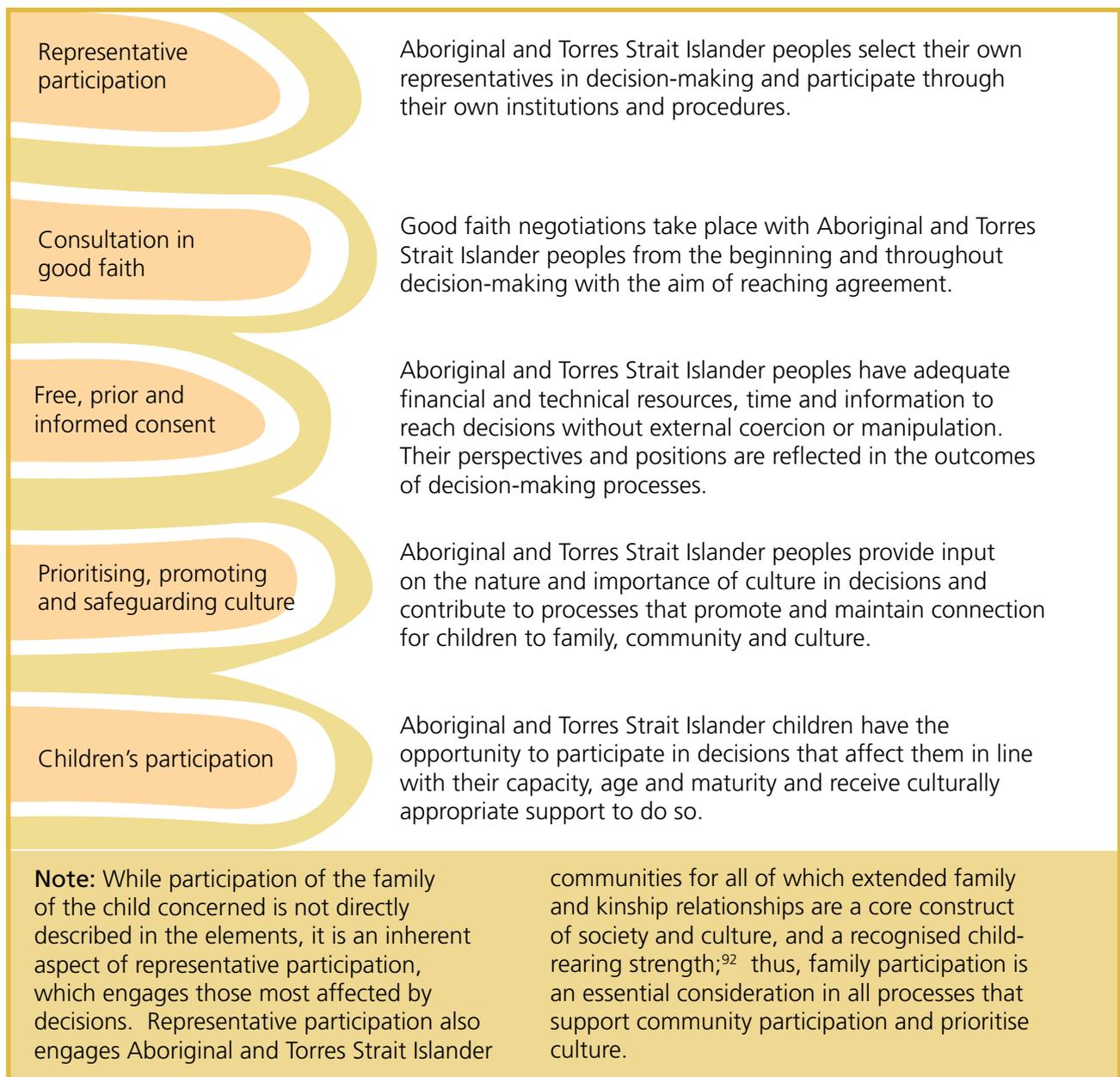


5. RESEARCH PROCESS AND FINDINGS: LEARNING FROM CULTURAL ADVICE AND SUPPORT SERVICES

Evidence and recognition of the need for Aboriginal and Torres Strait Islander participation in decisions to improve outcomes and respect rights is clear. The question this paper explores concerns the effectiveness of systems that support and enable such participation in child protection decisions.

This research identifies enablers for, barriers to, and opportunities for participation. These are analysed through the elements of SNAICC's framework for Aboriginal and Torres Strait Islander participation in child protection decision-making.⁹¹ These elements are described briefly in Figure 2 below.

Figure 2:
Elements of Aboriginal and Torres Strait Islander participation in child protection decision-making



This section first describes the methodology used for researching current systems effectiveness. A broad definition of child protection decision-making phases is provided as context for more detailed discussion of participation in different types and stages of decision-making. Service types that were considered and inform this research are described. Discussion then explores research findings in relation to each identified element of participation.

5.1 METHODOLOGY

The aim of the research is to capture the perspectives of practice leaders on enablers for, barriers to, and opportunities for, participation within Australian child protection systems. It focuses on the role of Aboriginal and Torres Strait Islander community-controlled services that provide cultural advice and support to state and territory governments with responsibility for child welfare administration.

While it is acknowledged that participation obligations are broader than those addressed by cultural advice and support services, reasons for the focus on these services include:

- consultation with Aboriginal and Torres Strait Islander managed and operated services aligns with the identified core participation requirement that Aboriginal and Torres Strait Islander peoples are consulted through their own representative institutions and procedures. This contrasts with systems where internal consultation is undertaken with Aboriginal and Torres Strait Islander people within government departments, or individual Aboriginal and Torres Strait Islander people are selected for consultation by government departments;
- these services are focussed primarily on involvement in and input to decision-making processes, as distinguished from other related services in areas such as out-of-home care and family support that are not focussed on case-management decisions; and

- variably, cultural advice and support services are resourced and enabled to participate across the child protection decision-making spectrum, in contrast to services that have involvement in only limited phases of child protection (for example, out-of-home care services or family preservation services).

The other service type identified as supporting Aboriginal and Torres Strait Islander participation in child protection decisions is 'family group conferencing', which is available and used to differing extents within most Australian jurisdictions.⁹³ Family group conferencing has been recognised for its potential to empower families and communities through collaborative processes that enable them to make decisions about the care and protection of their own children.⁹⁴ Significant risks have also been identified in respect of family group conferencing for vulnerable children and families, where the absence of legal process and safeguards and the dynamics of abusive relationships could adversely impinge on safety and prevent protection concerns being identified and addressed.⁹⁵ These services are considered to some extent but not directly consulted in this research because they operate only at limited decision-making points, and a full consideration of their effectiveness in meeting the needs of Aboriginal and Torres Strait Islander children and families requires further detailed consideration beyond the scope of this paper. All services consulted in this research indicate clearly the importance of specialised Aboriginal and Torres Strait Islander agency participation across all stages of decision-making to complement, support and strengthen decision-making that directly involves the child and relevant family and community members.

The research is primarily consultation-based. It also draws on available evaluation, review and data relating to participation systems and processes, though very limited such information exists. SNAICC identifies child protection systems within four Australian jurisdictions which have significant and resourced functions for the independent participation of Aboriginal and Torres Strait Islander

agencies in decision-making through the provision of cultural advice and support. These are Victoria, New South Wales, Queensland and South Australia. SNAICC consulted with Aboriginal and Torres Strait Islander organisations delivering these services in each relevant jurisdiction and Aboriginal and Torres Strait Islander child protection peak bodies, including in total 11 different organisations. The specific service types provided by consulted organisations are described in section 5.3 below. Figure 3 below lists the service providers that participated in the research. State government departments in each of these jurisdictions were invited to consider and contribute to the research project, and all provided input through discussion and/or written response to questions.

Figure 3: Cultural advice and support service providers participating in the research

<p>New South Wales</p> <p>Aboriginal Child, Family and Community Care State Secretariat (NSW) (AbSec); Illawarra Aboriginal Corporation; and Pius X Aboriginal Corporation.</p>
<p>Queensland</p> <p>Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP); Bargumar Aboriginal and Torres Strait Islander Corporation; Cape York/Gulf Remote Area Aboriginal and Torres Strait Islander Child Care Advisory Association; Central Queensland Indigenous Development; and Wuchopperen Health Service.</p>
<p>South Australia</p> <p>Aboriginal Family Support Services Inc (AFSS)</p>
<p>Victoria</p> <p>Victorian Aboriginal Child Care Agency (VACCA); Mildura Aboriginal Corporation (MAC)</p>

A project discussion paper informed all consultations.⁹⁶ A consistent set of questions was developed and used in interviews with 29 service leaders.⁹⁷ The questions are aligned with elements of SNAICC’s human rights-based framework for the participation of Aboriginal and Torres Strait Islander peoples in decision-making.⁹⁸

For each jurisdiction of focus, desktop research was undertaken to identify and describe the broader context of legislation, policy and practice supporting Aboriginal and Torres Strait Islander participation in child protection decision-making. Based on this research, jurisdiction-based overviews were developed.⁹⁹ The discussion in this section only considers participation in the four jurisdictions within the research scope. This enables insights and learnings to inform opportunities for strengthening the participation of Aboriginal and Torres Strait Islander organisations in child protection decision-making in all jurisdictions.

5.2 CHILD PROTECTION DECISION-MAKING PHASES

Each jurisdiction considered has different processes and terminology defining stages in child protection intervention and decision-making. There are, however, significant points of commonality that enable description of phases that are broadly applicable to every jurisdiction. Table 2 below draws on child protection legislation, policy and practice guidelines in each jurisdiction to describe each phase of child protection decision-making and provide examples of significant decisions. This should be read and used as a broad guide to provide context for discussion of Aboriginal and Torres Strait Islander participation in each stage of decision-making rather than as an authoritative and complete description of child protection phases.

Table 2 – Phases of child protection intervention and key decisions

Intake and initial assessment

Concerns are notified to child protection authorities and an initial assessment determines the appropriate response.

Key decisions: assessment of risk; appropriate response including whether further investigation is necessary; alternative family support referral where further investigation is not required.

Investigation and assessment

Child protection concerns are investigated to determine whether a child is safe and if there is a need for protective intervention.

Key decisions: assessment of family strengths and risks; need for protective intervention; alternatives to protective intervention; supports that can be provided to families directly or through referral.

Ongoing protective intervention

Where a child is determined to be in need of protection or living in a high risk environment intervention is ongoing. This may be through support to address concerns in the home or placement of the child in out-of-home care. Intervention may be through voluntary participation of the family or be supported by a court order.

Key decisions: appropriate type of intervention; need for child placement; supports for family preservation and reunification (decisions in all following phases are further aspects of ongoing protective intervention).

Case planning

The process by which the form and structure of ongoing intervention is defined and regularly reviewed, including planning for ongoing support for the child and defining the roles of different stakeholders.

Key decisions: stakeholders to involve in planning and decision-making; family group conferences; case plan goals and timelines; case plan review; whether reunification is a priority; stability and permanency of care; cultural care planning.

Care and protection applications

Where a child is in need of protection the child protection authority may make application for a court order to enforce protective intervention. A variety of different orders may be made either requiring ongoing home interventions, or granting alternative custody or guardianship for the short or long-term.

Key decisions: Whether to make an application and what type of order to seek; judicial determination of whether to grant an order and what type; duration of orders; family contact.

Out-of-home care placement and support

Where a child is removed from the care of parent/s due to protective intervention she or he will be placed into alternative care. This may be with a kinship carer who is a relative or significant person in the child's life, with a foster carer or in a group home.

Key decisions: where and with whom to place the child; carer assessment, training and support; contact with family, community, culture; transition planning (to and from care and between placements).

Case closure

During any phase of child protection intervention a decision may be made to close a case because the level of risk to the child is assessed as not warranting ongoing investigation or protective intervention. A case may also be closed when a child reaches 18 years of age.

Key decisions: Whether to close a case; referral of family to ongoing support after a case is closed; transition from care planning.

5.3 CULTURAL ADVICE AND SUPPORT SERVICES

The cultural advice and support services that are considered in this research are described here to provide context and understanding of the scope of their respective roles across the phases of child protection in each jurisdiction.

Aboriginal Child Specialist Advice and Support Services (ACSASS) (Victoria)

BACKGROUND, CONTEXT AND COVERAGE AREA:

ACSASS has been operating state-wide in Victoria since 2005. It was established to implement legislative requirements¹⁰⁰ for participation of Aboriginal agencies in child protection decision-making, and the 2002 protocol between the Victorian Department of Human Services (DHS) and the Victorian Aboriginal Child Care Agency (VACCA). VACCA operates ACSASS through its 'Lakidjeka' service in all areas of Victoria except the Mildura Local Government Area, where the service is operated by Mildura Aboriginal Corporation (MAC).¹⁰¹

OBJECTIVES AND ROLE:

The objectives of ACSASS include to ensure an Aboriginal perspective in risk assessments; improve decision-making for Aboriginal children; and improve engagement of Aboriginal families and communities in child protection.¹⁰² ACSASS aims to fulfil roles in: cultural advice provision to DHS staff; facilitating family and community involvement in decision-making; advising on decisions implementing the Aboriginal Child Placement Principle; supporting case planning and cultural support planning; and advising on appropriate family support services.¹⁰³

GOVERNANCE:

ACSASS is operated by Aboriginal community-controlled organisations. The overarching framework for its operation is provided by the protocol agreement that defines the shared responsibility of DHS, VACCA and MAC for responding to Aboriginal children notified to the child protection service.¹⁰⁴ It is further shaped by service agreements, program requirements and the practice guidelines for DHS child protection service staff.¹⁰⁵ Program guidelines encourage the establishment of regional advisory committees including other local stakeholders to support program operation.¹⁰⁶ Quarterly liaison meetings are recommended between local ACSASS teams and regional child protection services for data comparison and to address operational issues.¹⁰⁷ The relationship between VACCA and DHS at the state head-office level also supports effective operation through shared and strategic intervention to address systems issues and local operational barriers.¹⁰⁸

PHASES AND SCOPE OF PARTICIPATION:

The protocol describes the stages of participation and respective responsibilities of Aboriginal agencies and DHS in child protection decision-making for Aboriginal children with a focus on notification and investigation decisions.¹⁰⁹ These stages of participation are further detailed and expanded in ACSASS program requirements to include significant decisions for Aboriginal children in all phases of child protection intervention.¹¹⁰ The scope of the service includes provision of advice and support to DHS as well as direct support for Aboriginal children, families and community members to facilitate their participation in decision-making processes.¹¹¹

Recognised Entities (REs) (Queensland)

BACKGROUND, CONTEXT AND COVERAGE AREA:

The current recognised entity service system was established in 2000 when the Child Protection Act was proclaimed. Following that, the 2004 inquiry into the Queensland child protection system found there was a need for legislative and service system reform to reflect the importance of Aboriginal and Torres Strait Islander participation in child protection decisions.¹¹² It specifically identified the need to fund Aboriginal and Torres Strait Islander agencies to participate.¹¹³ REs have been funded to fulfil statutory requirements for their participation in all significant decisions for Aboriginal and Torres Strait Islander children made under the *Child Protection Act 1999* (Qld) and consultation in relation to non-significant decisions.¹¹⁴ The Queensland Department of Communities, Child Safety and Disability Services currently funds 11 recognised entity (RE) services with a state-wide coverage area. These have been reduced in number and regionalised from the initial 29 services established following the Inquiry. The funding that was previously available for recognised entity services was reduced by half in 2008 to fund the establishment of Aboriginal and Torres Strait Islander family support services.¹¹⁵

OBJECTIVES AND ROLE:

The broad aim of RE services as defined in program specifications is *'to work collaboratively with the department in each phase of the departments decision making processes, to improve outcomes for Aboriginal and Torres Strait Islander children.'*¹¹⁶ Service guidelines specify the key output for RE services is active participation in decisions made by Child Safety in each phase of statutory child protection intervention.¹¹⁷ The role of REs includes: to provide all necessary family and cultural information relating to a case; to attend joint home visits to investigate concerns; to participate in meetings for the coordination of multi-agency responses to concerns; to participate in family group meetings; to advise on placement decisions; to advise and support service referrals; and to actively participate in cultural support, transition and reunification planning.¹¹⁸

GOVERNANCE:

All RE services are operated by Aboriginal and Torres Strait Islander managed and controlled organisations, as required in the funding eligibility specifications.¹¹⁹ The framework for their operation is defined primarily by service agreements and the Child Safety Practice Manual.¹²⁰ Program documentation requires development of local working protocols between Child Safety and RE providers to support daily operation.¹²¹ QATSICPP receives funding as the state Aboriginal and Torres Strait Islander child welfare peak body to provide leadership, advocate on behalf of, and support service development for REs.¹²²

PHASES AND SCOPE OF PARTICIPATION:

In line with strong legislative requirements, the RE role is defined as encompassing participation in all significant decisions in all phases of child protection intervention and consultation on non-significant decisions.¹²³ Notably, exceptions are clearly detailed for urgent decision-making and where the RE is not available.¹²⁴ The RE role is focussed on advice provision to the Department, with program documentation that establishes Child Safety as both funder and client of the RE.¹²⁵ RE services do not have a strong mandate to directly support children, families and community members in child protection processes, but may be required to assist Child Safety staff to provide information to families.¹²⁶

Protecting Aboriginal Children Together (PACT) (New South Wales)

BACKGROUND, CONTEXT AND COVERAGE AREA:

The development of the PACT services emerged in response to recognition by the 2008 *Special Commission of Inquiry into Child Protection Services in New South Wales* of a need to increase Aboriginal participation in child protection decision-making. A key inquiry recommendation was for the development of an advisory service, delivered by Aboriginal organisations, 'to act as advisors to DoCS in all facets of child protection work.'¹²⁷

The New South Wales Department of Families and Community Services (FaCS) funds PACT services in two pilot sites, delivered by Illawarra Aboriginal Corporation in Shellharbour and Pius X Aboriginal Corporation in Moree. AbSec is also funded to provide service development and operational support to the PACT pilot sites. The services commenced in 2012 and will be trialled until June 2014. There is currently no specific commitment by the New South Wales government to continue or expand the trial.

OBJECTIVES AND ROLE:

PACT pursues concurrent aims to improve case-planning and decision-making, connect families with support services, and reduce the placement of Aboriginal children with non-Indigenous carers.¹²⁸

The PACT service model seeks to enable shared decision-making between Community Services and Aboriginal organisations and community members.¹²⁹ Roles of the PACT service include: advising FaCS on decision-making and family engagement in all phases of child protection intervention; participating in home visits and investigations; facilitating child, family and community-member participation in processes and decision-making; identifying appropriate family support referrals; ensuring case planning promotes cultural connection; and advising on placement decisions.¹³⁰

GOVERNANCE:

The PACT services are operated by Aboriginal community-controlled organisations. Governance for PACT includes partnerships between Community Services and Aboriginal organisations at multiple levels. A project leadership group includes representatives from AbSec as the state Aboriginal child welfare peak body and is convened by FaCS Partnership and Planning.¹³¹ At the local level AbSec convenes a coordination group that provides strategic, professional, and cultural advice to support the service. This group includes representatives of AbSec, the PACT service provider, Community Services Aboriginal Services Branch, the director within the local Community Service Centre and other Aboriginal community members and agencies.¹³² The framework for service operation is provided primarily by the PACT service provision guidelines.¹³³

PHASES AND SCOPE OF PARTICIPATION:

The trial services are targeted at new entries to the child protection system and will operate at key decision-making points across the child protection spectrum as these new cases proceed. This includes at the point of entry to the system, in investigations and assessments, in case planning and ongoing intervention, and in out-of-home care.¹³⁴ As well as provision of advice in all phases of child protection decision-making, the PACT role extends to direct support for the effective engagement of parents, family members and children in child protection processes.¹³⁵

Gazetted Organisation (South Australia)

BACKGROUND, CONTEXT AND COVERAGE AREA:

Participation of Aboriginal and Torres Strait Islander agencies in decisions relating to the placement of children in out-of-home care has been legislatively mandated in South Australia since the introduction of the *Children's Protection Act 1993 (SA)*.¹³⁶ No specific funding was provided for this role until 2011, though the role was fulfilled to the extent possible by Aboriginal Family Support Services (AFSS) prior to this time.¹³⁷ A single full-time position has been funded within AFSS, which is the only organisation in South Australia providing the Gazetted Organisation role. AFSS provides the service for all Aboriginal children state-wide. Though no regional Gazetted Organisation service system exists, AFSS communicates regularly with its regional offices delivering related services, and other relevant organisations, to seek local information to inform the role.¹³⁸

OBJECTIVES AND ROLE:

The Gazetted Organisation fulfils the legislative requirements for consultation with a recognised Aboriginal organisation prior to making decisions about where an Aboriginal child will reside,¹³⁹ and to participate in family care meetings.¹⁴⁰ No detailed service specifications or practice manuals are available that define the role of the Gazetted Organisation or of other agencies in working with the Gazetted Organisation. In fulfilling the Gazetted Organisation role, AFSS reports against a number of key performance indicators that they inform SNAICC are under ongoing development. Performance measurement focuses on responses to referrals from Families SA, provision of information, completion of court reports and attendance at family care meetings.¹⁴¹

GOVERNANCE:

The Gazetted Organisation service is managed by AFSS, an Aboriginal community-controlled organisation. The framework for its operation is primarily determined by a service agreement between Families SA and AFSS and legislative requirements.¹⁴²

PHASES AND SCOPE OF PARTICIPATION:

The Gazetted Organisation participates in family care meetings which are required, subject to exceptions, before any application for a court order that grants custody or guardianship is made.¹⁴³ It also provides written advice to accompany all court applications seeking such orders.¹⁴⁴

5.4 RESEARCH FINDINGS

The following sections provide a discussion of research findings in relation to each of the elements of Aboriginal and Torres Strait Islander participation in child protection decision-making identified in SNAICC's participation framework.¹⁴⁵ An overview is provided for each element to draw out key enablers and barriers to implementation through cultural advice and support services. Opportunities for strengthening service design and delivery are also identified based on analysis of enablers and barriers, and the vision of service leaders for new ways of working to realise goals for strong participation.

Element 1: Representative participation

Genuine participation of Aboriginal and Torres Strait Islander peoples in decision-making requires representative consultation with Aboriginal and Torres Strait Islander peoples through their own institutions and procedures.¹⁴⁶ Elements of representative consultation include that:

- Aboriginal and Torres Strait Islander communities select their own representatives in consultation processes;
- consultation respects Aboriginal and Torres Strait Islander decision-making processes; and
- consulted people are broadly representative of the specific Aboriginal and Torres Strait Islander community affected by the decision being made.

Dodson (1999) explains the significance of consultation with organisations external to the statutory agencies, noting:

the impossibility of indigenous workers [internal to statutory agencies] being advocates and spokespeople for indigenous communities and families, because they are beholden to the philosophies, the processes and practices of the particular government department or agency.¹⁴⁷

Cultural advice and support services show potential to enable Aboriginal and Torres Strait Islander communities to be independently represented in child protection decisions. The following discussion addresses the extent to which these services support independent representation and

process. It then reflects on enablers and barriers to representation of specific affected communities, taking a particular focus on support for families to participate in making decisions for the care and protection of their own children.

Independent representation and process

Service leaders indicate that it is the funding of non-government Aboriginal and Torres Strait Islander community-controlled organisations that enables a level of independent cultural input in decision-making. Through community governance of these organisations, Aboriginal and Torres Strait Islander people are able to select their representatives and pursue independent decision-making processes. They describe the important role of specialised advice services that assist to ensure selected community representatives are provided with adequate training and support to participate effectively. This is identified as important in contrast to government workers selecting Aboriginal and Torres Strait Islander people to consult who may not have adequate knowledge, may not understand child protection processes, may not be appropriately representative of the community, and may not be respectful of confidentiality for a family. Embedding participatory processes within a professional organisation and service context is recognised as critical to ensuring both effective representation and appropriate accountability of Aboriginal and Torres Strait Islander people who contribute to decision-making. Most service leaders observe that substituting consultation with other Aboriginal and Torres Strait Islander people still commonly occurs and is not appropriate to support the best outcomes for children and families.

Within some jurisdictions service leaders describe that a significant level of internal consultation with Aboriginal and Torres Strait Islander department workers remains a key and often alternate source of input to independent cultural advice and support services. Although such processes may add value to decision-making, they also clearly cannot enable independent community representation where the statutory agency maintains control over the selection of advisors and use of advice without independent oversight. One service leader explains the weakness of internal consultation:

The department wants their Aboriginal staff to serve as a conduit to the Aboriginal community, but there is always a tension between their culture and the culture of the department. Even where there is an altruistic intent to include cultural perspectives, the engrained culture of the department ultimately overrules the 'Aboriginality' of the worker.

Representing the specific affected community and family

Long-standing relationships and trust that exist between Aboriginal and Torres Strait Islander organisations and their communities are identified as the source of both their legitimacy to represent the community and the critical cultural knowledge that can inform better decision-making for children. Services explain the importance that they employ only Aboriginal and Torres Strait Islander people who are from or who live in and are part of the local community in advisor roles. This is critical to ensure that advice comes from a cultural perspective and is informed by community knowledge. While community connection can be viewed as a conflict of interest, service leaders view it as a strength in ensuring that children's best interests are considered in the context of their cultures and communities. One service leader explains that the very nature of that 'conflict' is what is needed to ensure informed decision-making:

That information that they want is not on a computer, it's not in a filing cabinet, it's actually in our heads, the knowledge of our people, of who's who in the community.

One significant barrier identified is the large coverage areas of services, reducing their capacity to represent the many and diverse individual Aboriginal and Torres Strait Islander cultures and

communities in their regions. Consistently service leaders describe the need for more strongly supported and resourced systems to enable broader local community consultation. This would enhance the quality of their advice and their legitimacy to provide it:

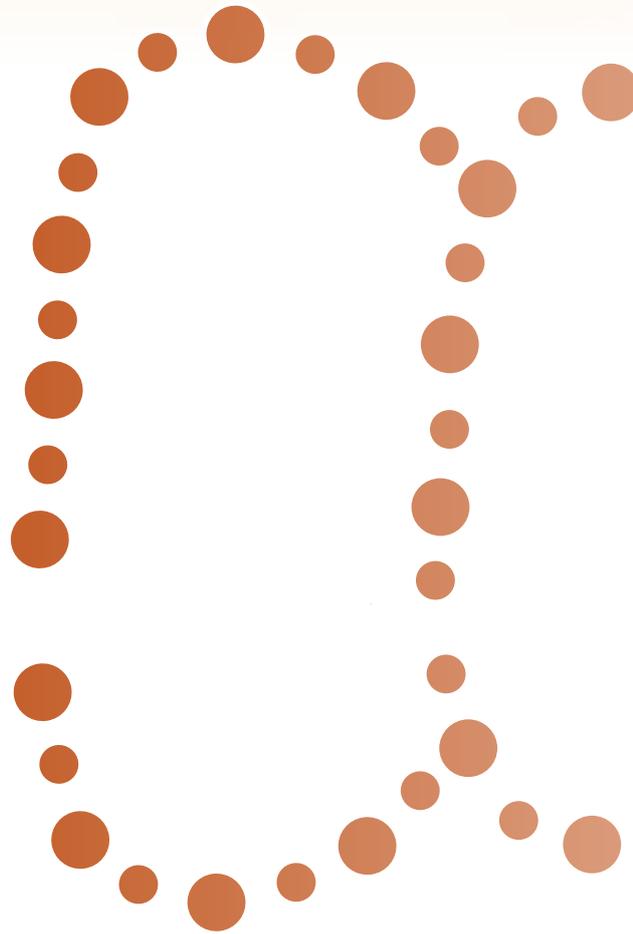
With local child protection committees you've got respected Elders from groups or clans that...are able to provide that cultural connection and the [cultural advisor] is the in-between person. It's not like all the weight is on their shoulders. They're getting help. There is community involvement knowing where their kids are going.

Another significant concern is that all cultural advice and support services are funded by the government departments that they provide advice to. Variably, a number of service leaders describe that the independence of their advice is significantly compromised by the need to limit criticism that could threaten the continuance of their funding agreement. Others are of the view that they can and do provide uncompromised advice regardless. The opportunity to strengthen independence through alternate funding streams is commonly identified alongside other measures to promote accountability for the decision-making process addressed in Element 2 below.

Services within two states identify that direct support for families to participate in decisions is key to their role, while in the other two states they recognise their limited role as a significant gap and missed opportunity. They explain that including families and children in decision-making processes is critical to ensure those most affected by decisions are represented and also increases the opportunity that care solutions in the best interests of a child can be found within the family. The trust of community members for Aboriginal and Torres

Strait Islander organisations and workers, as well as the cultural competence of those organisations to work with families, positions them well to support family participation. Where such roles are enabled, service leaders identify that they improve family engagement through support including: explaining child protection processes in culturally appropriate ways; making families feel comfortable to engage and share their stories; acting as cultural translators between families and non-Indigenous government staff; and identifying and engaging appropriate extended family members in decision-making.

Where family group conferencing processes are available to families, service leaders highlight the potential of cultural advice and support services to complement and strengthen these. Important roles identified for cultural advice services in relation to conferences include: input to decisions about whether conferences should be used; identifying families to participate as early as possible; ensuring cultural and community information gathered at earlier stages is shared with convenors so they do not duplicate processes; providing culturally appropriate support to families to participate; and ensuring a culturally informed understanding of conference outcomes is included in later decision-making. Regardless of the involvement of other Aboriginal and Torres Strait Islander people as supports or convenors, cultural advice and support services highlight that their role in decision-making across the child protection process requires their involvement in family group conferences so that they are not moving 'in and out' of a case. Current barriers are identified in lack of role clarity and inclusion of cultural advice services in process requirements for conferences in some jurisdictions. Some service leaders describe that in the absence of a role for their service, families are often not adequately supported to participate in conferences and do not genuinely contribute to decision-making.



OVERVIEW: REPRESENTATIVE PARTICIPATION

Aboriginal and Torres Strait Islander peoples select their own representatives in decision-making and participate through their own institutions and procedures.

ENABLERS

- Funding of Indigenous* community-controlled organisations enables selection of representatives and independent decision-making.
- Indigenous* organisations with cultural and community knowledge and connection are funded to provide input.
- Indigenous* organisations choose and employ local Indigenous* staff with local community and cultural knowledge to inform decision-making.
- Families trust Indigenous* organisations and workers and engage more effectively in child protection processes.
- Specialised services for cultural input and advice assist to ensure professional advisors with appropriate skills and knowledge provide input.

BARRIERS

- Large regional or state-wide coverage areas restrict capacity of Indigenous* organisations to represent specific communities.
- Limited systems/resources are in place for cultural advice and support services to conduct individual community-level consultation.
- Reduced independence for Indigenous* decision-making due to funding of cultural advice and support services by child welfare departments.
- Limited roles in some states for Indigenous* organisations to directly support families and children to participate in decision-making.
- Roles of cultural advice and support services to support family group conferencing processes are unclear and inconsistent.
- Indigenous* community members can experience conflict working closely with child protection services because of negative community attitudes to those services and require high-level support.
- In some cases government department workers consult with other Indigenous* people outside of the specialised service who may not be appropriate representatives.

Based on analysis and the vision of service leaders, opportunities to strengthen representative participation include:

- Developing, strengthening and resourcing of community-level consultation systems, including systems of cooperation and information sharing between local service providers. Actions must take account of and build on existing community-level leadership and structures for participation in consultations. They could include, for example, supporting community child protection groups and linking them to cultural advisors who act as intermediaries between the community and the government child protection service.
- Investment in training and support for community leaders to participate in child protection committees and provide confidential input for child protection cases.
- Establishing alternative funding streams and direct oversight for cultural advice and support services through bodies that are independent of the government child protection service to promote genuine independence of advice given.
- Roles for Aboriginal and Torres Strait Islander agencies to support family participation and two-way communication and engagement between families and government services. These would include: roles in family engagement, support and coordination for family group conferencing; ability to work with families independently from the government child protection service; and joint participation with child protection services in home visits and any meetings with the family.

*Aboriginal and Torres Strait Islander

Element 2: Good faith negotiation towards agreement

Genuine participation of Aboriginal and Torres Strait Islander peoples in decision-making requires that those peoples are consulted in good faith about matters that affect them. Elements of good faith consultation include that:

- consultations begin early and are ongoing throughout the decision-making process, and
- consultations are in the nature of negotiations that work towards agreement.

Determining whether two-way negotiation is enabled by cultural advice services is a complex task that could not be fully achieved without thorough evaluation. As noted below, the absence of any thorough evaluation of cultural advice and support programs is a critical barrier to understanding their effectiveness. The discussion below considers primarily the systems in place that promote negotiated decision-making and the extent of accountability for their implementation. It addresses systems supporting due weight and influence of advice in decision-making.

Participation throughout decision-making

Involving Aboriginal and Torres Strait Islander people from the very start of the decision-making process before any key decisions have been made is recognised as both respectful and necessary for genuine participation. For example, service leaders highlight that decisions to investigate are critically important for Aboriginal and Torres Strait Islander people due to the high anxiety caused by child protection investigations and the potential for that anxiety to escalate concerns even where investigation was unnecessary in the first place. Positively, PACT, ACSASS and RE service models require consultation with cultural advice and support services at the point of notification and in all significant decisions throughout the life of a case. In each of these jurisdiction there are procedures in place to promote the early identification of children as Aboriginal and Torres

Strait Islander, ensuring service involvement for those children where they are correctly identified. In South Australia participation points are far more limited with input only prescribed for decisions about where a child will reside and only practically supported through the provision of written advice to the courts and participation in family care meetings.

A common barrier identified is that participation is weighted to earlier stages of child protection investigation due to inadequate resourcing to participate in all decisions. This can exclude involvement in decisions critical to maintaining connection to culture for children in out-of-home care, including ongoing case planning processes, and decisions that prioritise reunification with family. Service leaders describe that often priorities are determined by requests from the government child protection service for input rather than their own participation priorities. Some identify the concern that government child protection services place greater value on support to conduct investigations rather than actual participation in decisions. For example, advisors may be called on only to positively engage the family or to be a community 'informant', but their opinions on the course of action to take may not be valued. Exclusion from consultation on decisions made after-hours is another recognised weakness, with no existing or effective after-hours consultation system in all but one jurisdiction.

Placement decisions are recognised in legislation and program requirements as a core priority for involvement of Aboriginal and Torres Strait Islander agencies to promote compliance with the Aboriginal and Torres Strait Islander Child Placement Principle. However, services identify variable levels of involvement in these decisions. Barriers include information blockages where their advice on placement options is not passed on to placement services and out-of-home care agencies that they have no direct relationship with, and limited capacity for involvement in ongoing case planning and review for children in out-of-home care.

Detailed public reporting on the extent of compliance with participation requirements at different stages of decision-making is lacking. Only in Queensland are statistics available through audit reports compiled by the Queensland Commission for Children and Young People on consultation before placement decisions. These indicate that in 2010/11 compliance with the requirement to consult with a recognised entity prior to placement could only be demonstrated by Child Safety Officers in 62% of relevant cases.¹⁴⁸

Processes and accountability supporting negotiation

The processes and frameworks that support the engagement of cultural advice services in negotiated decision-making are more significantly developed in Victoria and in the initial design of pilot services in New South Wales that has strongly considered the Victorian model. Elements of these service models provide a strong practice framework for enabling involvement and a degree of influence in negotiations. These include:

- agreements/protocols between government and Aboriginal and Torres Strait Islander organisations creating shared responsibility for consultation and outcomes, increasing negotiating strength for cultural advice services;¹⁴⁹
- high level partnerships between government departments and Aboriginal and Torres Strait Islander organisations supporting shared input to program design and review, and shared responsibility for resolving issues;
- significant efforts to align policies and procedures between cultural advice services and government child protection departments, including through detailed shared service guidelines,¹⁵⁰ and practice instructions for government workers that incorporate detailed requirements for working with the cultural advice service;¹⁵¹

- significant joint process requirements that support collaborative work, for example: joint planning of home visits and investigation process,¹⁵² joint analysis of information gathered in investigations,¹⁵³ joint participation in case planning meetings and family decision-making meetings;¹⁵⁴
- dispute resolution procedures that enable specific issues that arise in negotiations to be escalated up the chain of management in both organisations and addressed; and
- development of joint monitoring and evaluation frameworks and requirements.

These contrast significantly with the current system in Queensland where the lack of shared and aligned processes and practice requirements between REs and government child protection services has been consistently identified as a barrier to their effective operation.¹⁵⁵

Requirements to give due weight to advice are a key indicator that at a systems process level there is an objective to actively include the perspectives of cultural advice services in decision-making. These are commonly absent or lacking detail. Most strongly in Victoria service requirements state clearly that *'the purpose of consultation is to ensure that cultural advice and information is included in decision-making.'*¹⁵⁶ Practice instructions also provide detailed information about the value of cultural advice and its importance to good decision-making, and specifically require the consideration of ACSASS advice.¹⁵⁷ By contrast, in Queensland the practice manual for child protection workers and the practice advice on working with recognised entities focus on input from these services without providing specific direction on the weight to be afforded to RE advice.¹⁵⁸ In South Australia, service leaders identify that the Gazetted Organisation service is established to provide a one-way information feed of advice without any joint process, feedback mechanisms or two-way negotiation. Service leaders express frustration at

systems that do not grant weight or authority to cultural advice in decision-making processes:

In many cases they ask for opinions, views, considerations. But like much consultation with Aboriginal people the decision has already been made.

So if you've got a system where [we] need to be consulted but it's up to the department whether they take that advice or not, and if they don't take it there is no means, no process of justifying why they didn't take it, anything goes.

We can ask all these questions. But in reality we are actually only asking questions and they don't have to respond to them. We need to have some kind of formalised agreement that makes the Department accountable. At the moment it's just out of good will.

Requirements for the recording of advice and its consideration are also critical to enabling accountability for implementation of participation standards and service objectives. Generally, service leaders believe there is limited recording of their input and its use, especially outside of formal requirements to record advice in court submissions. The only review available nationally of recorded advice is that of the Queensland Commission for Children and Young People that found in 2008 that any record of the nature of RE participation could only be found in less than 4% of cases reviewed,¹⁵⁹ and in 2010/11 that completion of the 'Recognised Entity / Child Placement Principle' form within the Department's Integrated Client Management System was non-mandatory and only undertaken in 45% of reviewed cases.¹⁶⁰

In the absence of significant accountability mechanisms for the inclusion of cultural advice and support services in negotiations, service leaders commonly recognise that their level of participation and influence is highly dependent on the quality

of relationships between workers at the local level. While all service leaders believe that these relationships are a priority and need to be fostered, they also indicate that relationship dependent participation is inconsistent, fragile and susceptible to factors including staff change-over and variable management level reinforcement of requirements. One service leader comments:

something that we've learnt is that so much emphasis appears to be on the relationship at a pretty grass roots level for it to work, and it means that it's always a bit fraught.

Service leaders highlight the importance of positive relationship building processes that promote shared understanding and collaborative work between cultural advice and support services and government child protection services. They provide examples, including: shared training experiences; staff spending time at each others offices (especially for induction); regular meetings to discuss and address operational issues; informal 'meet 'n greets'; joint planning processes; and shared discussion of expectations, especially with new staff.

Monitoring, evaluation and review

Monitoring and evaluation are critical to the ongoing development of procedures that support negotiation. Consultations reveal highly limited joint review of either individual decision-making processes or cultural advice and support program operation more generally. In some jurisdictions review is primarily through one-way assessment of the performance of contract requirements by the cultural advice service, rather than addressing issues in collaborative work with the government service. In most jurisdictions it was evident that monitoring of systems effectiveness focussed on inputs by the cultural advice service, or quantitative measurement of consultations and processes taking place. In current processes, there are no apparent measures of outcomes for children and families as a result

of the involvement of cultural advice and support service. services. There is no focus, for example, on measuring improved cultural care for Aboriginal children or improved compliance with the Aboriginal and Torres Strait Islander Child Placement Principle. Also, no broader program evaluation of any cultural advice and support service has been completed.

Only in New South Wales is there evidence of significant and outcomes focussed evaluation being built into program design. AbSec and PACT services note positively their participation in contributing to the evaluation measures and processes. Positive aspects of the evaluation framework currently under development include that it considers both the participation of PACT staff in decision-making processes as well as the outcomes and influence of advice and support provided. For example, the draft evaluation framework seeks to measure the percentage of cases where PACT input changes or influences the process, and both the participation in and level of endorsement by PACT advisors of care applications and care plans.¹⁶¹ In Victoria, one attempt was made at a program evaluation with shared involvement of Aboriginal and Torres Strait Islander organisations and the Department, however, it did not meet expectations and was not completed. The program remains unevaluated after eight years of state-wide operation, restricting capacity to address internal operational issues and inform development of cultural advice and support services nationally. Uniquely, in Queensland, a level of independent review is enabled by the role of the Commission for Children and Young People to audit compliance with relevant participation standards in legislation, generating statistical information about the extent of service involvement in decision-making that isn't available in other states .

In some specific locations innovative approaches are enabling regular and ongoing review that service leaders believe allows operational issues to be addressed and relationships to be strengthened. These processes are identified as a significant gap in program requirements and generally involve at least monthly meetings to discuss operational issues,

themed areas, and/or specific cases, so that issues in the relationship between cultural advice service and government child protection are identified and improved. Service leaders highlight that these processes are necessarily based on two-way discussions and negotiation and are very different to one-way contract reporting requirements.

Role of the court

In care and protection applications to the courts there is opportunity for enabling influence of cultural advice through independent consideration of that advice by the court. In all jurisdictions considered there are requirements to present the views of cultural advice services to the courts either as a part of the application by the government child protection service or as a separate submission. Some service leaders express concern that their views are misrepresented or used selectively in court applications and they are not able to view applications to know how their perspectives are represented. Where they know there is a point of disagreement, services identify positively the opportunity to submit a separate and alternate view:

Sometimes the opinions that are most aligned to theirs are the ones they will put forward, and where it's not they're the most likely to be left out. But those are the ones where we'll be vigilant about putting in a separate view.

However, services generally note that they do not have capacity to present separate statements for all court applications and that enabling their participation through court proceedings relies on magistrates being aware of consultation requirements and proactive in holding child protection services accountable for including cultural advice in submissions. It appears that whether magistrates do this is highly variable, and depends on particular magistrates and their value for the input of cultural advice services.

OVERVIEW: CONSULTATION IN GOOD FAITH

Good faith negotiations take place with Aboriginal and Torres Strait Islander peoples from the beginning and throughout decision-making with the aim of reaching agreement.

ENABLERS

- Most service models require participation from point of notification and for all significant decisions.
- Procedures are generally in place to identify children as Indigenous* early.
- Clear process frameworks and significant efforts to align procedures between Indigenous* services and government evident in some jurisdictions.
- An agreed protocol in Victoria increases negotiating strength for Indigenous* services.
- Higher-level partnerships support Indigenous* organisation input to policy and programs development.
- Dispute resolution procedures generally exist to address issues.
- Shared development of evaluation frameworks (NSW) and joint compliance requirements (Vic) promote shared accountability.
- Independent review in Qld by the Children's Commission.
- In some locations regular operational review meetings occur between Indigenous* and government services.
- In some locations courts play a significant role to consider cultural advice and services can make independent submissions.

BARRIERS

- Services have inadequate capacity to participate in all decisions and priorities are determined by government request.
- Low capacity directs and restricts engagement to earlier stages of intervention.
- Most jurisdictions lack effective after-hours consultation process.
- Services depend on government requests and are sometimes excluded because of poor compliance with consultation requirements.
- Lack of aligned procedures and local working protocols limit collaborative work between Indigenous* services and government.
- Limited requirements to take account of and justify departure from advice.
- Limited requirements to record advice and its use or limited recording in practice.
- Lack of feedback mechanisms to ensure cultural advisors know how advice is used.
- Seeking and use of advice is highly dependent on variable relationships between workers.
- Lack of Indigenous* engagement in design of monitoring and review in some jurisdictions.
- Monitoring and review focussed on input rather than influence and outcomes of advice.
- Lack of any completed program evaluation to inform program development.
- Views are sometimes misrepresented or used selectively in court submissions.

Based on analysis and the vision of service leaders, opportunities to strengthen consultation in good faith include:

- Increasing independent monitoring and review functions through external bodies, for example, children's commission.
- Strengthening legislation to ensure participation is mandated at all stages of decision-making and further aligning systems operation to existing legislative participation requirements.
- Developing local agreements and working protocols between Aboriginal and Torres Strait Islander organisations and government child protection services.
- Joint development of outcomes focussed monitoring and evaluation between Aboriginal and Torres Strait Islander organisations and government child protection services.
- Joint training between Aboriginal and Torres Strait Islander organisations and government child protection services to promote shared understanding and collaborative work.
- Stronger recording and internal accountability in government child protection services for complying with consultation requirements and considering advice.
- Practice instructions that clearly direct government child protection service staff on the importance of and weight to be given to cultural advice.
- Feedback mechanisms to ensure Aboriginal and Torres Strait Islander services know how their advice is used and influences decisions.

*Aboriginal and Torres Strait Islander

ELEMENT 3: SUPPORTING CONSENT TO DECISIONS MADE

Genuine participation of Aboriginal and Torres Strait Islander peoples in decision-making requires that decisions are made with their free, prior, and informed consent. Elements of decision-making with free, prior and informed consent include that:

- consultation aims to achieve agreement and consent for decisions made;
- Aboriginal and Torres Strait Islander peoples contribute and agree to the process for consultation;
- there is an absence of coercion and manipulation in decisions made by Aboriginal and Torres Strait Islander peoples;
- Aboriginal and Torres Strait Islander peoples have access to financial, technical and other assistance;
- adequate time is allowed for reaching a decision; and
- all relevant information is provided to enable Aboriginal and Torres Strait Islander peoples to make an informed decision.

There is a significant overlap in the goals to achieve agreement on decisions, as considered under Element 2 above, and to achieve consent to decisions-made. In many respects, these are the same, as an agreement to a decision could be viewed as a form of consent and vice-versa. As a result, the first two elements relating to the objective of and process for seeking agreement have largely been addressed. Issues of accountability for consulting and taking account of advice given discussed above are also critical to satisfying this element, noting that to ensure free, prior and informed consent, it needs to be verifiable. The third element, requiring an absence of coercion and manipulation, is also largely addressed in relation to representative participation because of its close connection to the requirement for independent Aboriginal and Torres Strait Islander decision-making process.

There are two critical differences that distinguish this element of participation. The first is that the concept of consent goes beyond agreement to focus on the authority of Aboriginal and Torres

Strait Islander parties as those most affected by decision-making for their children. It suggests that a final authority or power of veto is required for Aboriginal and Torres Strait Islander parties to reflect their consent to decisions made. This places an obligation on decision-makers to defer to that authority, or alternatively requires a formal delegation of decision-making power by the State. The second is that for any agreement to constitute consent it must be arrived at with adequate information, time and resources for the Aboriginal and Torres Strait Islander party to properly consider, fully understand and contribute to the decision that is being made. Thus, the focus here is firstly on whether any aim to defer or delegate authority exists as a precursor to enabling consent in child protection decision-making, and then on the final three elements, considering resources, time and information needed.

Aim to achieve consent

No decision-making authority is delegated to any cultural advice and support service considered in this research, and program requirements in all jurisdictions are clear that final decision-making authority always remains with the statutory agency. This is unsurprising given the common framing of services designed to meet participation requirements as 'advice' services rather than as active decision-making bodies. Despite recognised and legislated principles supporting self-determination or participation in child protection decision-making, no final authority is granted to any Aboriginal and Torres Strait Islander agency or person for any decision. This, combined with the lack of requirements and accountability for the use and inclusion of advice in decision-making discussed above, indicates that any consent to decisions will be variable, fragile and relationship dependent, rather than required. Significant consultation compliance shortfalls reported in the limited jurisdictions where compliance information is available indicate that there are already a large number of decisions that Aboriginal and Torres Strait Islander agencies have no input to or opportunity to consent to at all. The absence of any strong system to enable consent of Aboriginal and Torres Strait Islander peoples to decisions presents as perhaps the most significant weakness

of existing systems in enabling participation. A service leader reflects on the limits of their influence:

As an NGO we don't have the capacity to influence at the level that we need to have influence, and given the rising number of Aboriginal children coming into the system, there needs to be better processes so that we are a consideration and not something that can be considered in the absence of anything else. The system needs to change so that there is a reality around the role rather than a wish.

Resources to participate

Services commonly identify that they have significantly less resources than required to participate in all required decisions and processes. Again, a lack of program evaluation and reported consultation compliance information makes it very difficult to assess the adequacy of resourcing for enabling participation. A number of service leaders indicate that caseloads of around 20-40 children per advisor may be manageable, while caseloads are more commonly around 50-150 per advisor. Only in one specific location, where caseloads are around 20-25 per advisor, does a service believe that they have adequate resources to respond to participation requests, but even then they are not confident that they could do so if included in all required decisions. In the early stages of the PACT trial in New South Wales caseloads have been limited to 12 per advisor and service leaders are confident that this is a more realistic expectation. In Victoria, inadequate resourcing of ACSASS services has been commonly recognised as a barrier to effective service delivery, including in the recent report of the *Protecting Victoria's Vulnerable Children Inquiry* which recommended increased resourcing of ACSASS to fulfil its intended functions.¹⁶² Service leaders also identify that high workloads of government child protection workers can limit their capacity to consult and build relationships with cultural advisors.

Service leaders identify multiple impacts of low resourcing. These include: participation in particular decisions has to be prioritised at the expense of others; assumptions that advisors are over-burdened

lead to consultation requests not being made; and consultation is directed to other Aboriginal and Torres Strait Islander people and organisations outside of the service. Prioritisation of resources is generally described as being towards 'the pointy end' of child protection intervention, limiting participation in ongoing case management and review to keep children connected to culture and support reunification with their families. Though, some service leaders note that their organisations are able to provide a level of support to children in out-of-home care where they also have responsibility for out-of-home care service delivery. Service leaders explain the impact of low resourcing on their capacity to participate:

Reduction of the amount of time that can be spent on reunification is a major impact... there's no in-depth case management with any family because the time isn't there to do that.

The investigation and assessments take priority. Can't attend the placement meeting, can't go to court...that's the impact.

Barriers to effective resourcing are also identified in terms of attracting, retaining and supporting quality staff in cultural advice and support services. Services highlight the challenges for Aboriginal and Torres Strait Islander people working in the field of child protection and resourcing that does not adequately recognise their high support and debriefing needs. While service leaders are adamant that with appropriate support community members can do the job, they also emphasise the challenges:

It's not an easy job. You're asking people to live in their local communities, help make some pretty difficult decisions, then put up with everything that goes with that. You're not going to get people running at you and saying: 'yep, I'll do that.'...I've done a lot of my work over the years in supervising and supporting staff and it's nothing compared to the work I've done supporting staff [here] because it's not just about their work, it's about their communities.

In identifying essential staff requirements, service leaders commonly describe particular personal

attributes as being more important than formal qualifications. Nonetheless, they explain that a level of training for understanding of child protection systems is necessary, primarily to provide a common language for discussion and negotiation with government child protection service staff. Commonly resources are provided to enable cultural advice service staff to complete relevant child protection qualifications. Some service leaders identify the need for greater resourcing so that people with relevant community and cultural knowledge can be trained to work effectively in non-Indigenous child protection systems, including in the courts.

Time to participate

For the most part, services believe they have adequate time to respond to requests for input. Specific challenges are identified in South Australia where the service is required to provide written responses to court applications for cases they have not had broader involvement in and have limited time to read information and obtain community input to inform a response. Particularly where services have roles to participate in joint activities, such as home visits, they identify that they are often informed late about these and not included in the planning process and this can exclude their participation because they are unavailable to attend. A particular challenge has been identified in remote locations where government workers fly in and out with limited time to consult cultural advisors and explore local solutions, with the outcome that children are removed to urban centres.

Access to information

Generally, service leaders describe that they are able to access information relevant to their participation in a case. Service guidelines support sharing of all relevant information between government services and cultural advice services in line with legislative provisions that enable broad information sharing for the protection of children. One challenge identified is that services sometimes have to be proactive to seek out all information that they need rather than being provided with it. Because they rely on government provision of information it is not always readily available when needed. Some services have identified that the alignment of data systems and direct access to case information for Aboriginal and Torres Strait Islander children would be a positive measure to increase ready access to necessary information, and also enable them to better anticipate processes and workload.

Another significant barrier identified in some jurisdictions is information sharing between different organisations and services involved with a case. This is highlighted significantly by REs in Queensland who note that even within a single Aboriginal and Torres Strait Islander organisation they are restricted in communication and support across their services because of confidentiality requirements, and the need for all cultural advice to flow through and be passed on by the government child protection service.

One service leader comments:

It goes against our method of working here where we all talk to each other and all help each other out. The richness of information gets lost in the process.

OVERVIEW: FREE, PRIOR AND INFORMED CONSENT

Aboriginal and Torres Strait Islander peoples have adequate financial and technical resources, time and information to reach decisions without external coercion or manipulation. Their perspectives and positions are reflected in the outcomes of decision-making processes.

ENABLERS

- Services receive government funding to provide input (highly varied funding levels).
- Most services are funded for regional operation enabling more direct participation in cases on the ground.
- In limited locations services indicate that caseloads are at reasonable levels to enable participation in decisions.
- Technical support and advocacy for services is enabled in NSW through dedicated funding for the state peak body.
- Training is generally available to Indigenous* service staff to develop required understanding of child protection systems and processes.
- Some services have adequate time to consider and provide input to decisions.
- Some services are provided with or able to seek out all relevant information held by government departments for decision-making.

BARRIERS

- Absence of any authority of Indigenous* organisations in decision-making means consent is dependent on good-will / agreement.
- Commonly services indicate that caseloads for workers are far too high to enable their participation in all required decisions.
- Lack of recognition in resourcing of high support needs of Indigenous* staff working in child protection.
- Low resources and high demands contribute to staff burnout and inability to attract and retain quality staff.
- Low resources and pressure on government child protection services limits their capacity to consult.
- Short notice of joint process and activities and lack of shared planning limits ability to participate.
- Lack of resources for community consultation to ensure adequate information from Indigenous* family and community.
- Services often have to seek out needed information rather than being provided with it or having ready access.
- Information sharing restrictions limit capacity to seek information from and provide it to other relevant service providers.

Based on analysis and the vision of service leaders, opportunities to strengthen consent to decisions made include:

- Delegation of authority to Aboriginal and Torres Strait Islander organisations could ensure consent through direct decision-making powers.
- Strengthened accountability for decision-makers to seek and use cultural advice (further detail under Element 2 above).
- Increased resourcing to reduce caseloads and increase capacity for considering and contributing to decisions, including resourcing for community-level consultation systems.
- Shared planning of joint actions between Aboriginal and Torres Strait Islander agencies and government child protection services could promote joint participation.
- Stronger information sharing protocols and practices between Aboriginal and Torres Strait Islander agencies and government child protection services could enable better-informed decision-making. This could include aligned databases and direct access for cultural advice services to case information.

*Aboriginal and Torres Strait Islander

ELEMENT 4: PRIORITISING, PROMOTING AND SAFEGUARDING CULTURE

Genuine participation of Aboriginal and Torres Strait Islander peoples requires their input to ensure decisions prioritise, safeguard and promote Aboriginal and Torres Strait Islander cultural rights. Elements required to achieve this include that:

- Aboriginal and Torres Strait Islander peoples provide input on the nature and importance of culture in decisions.
- Aboriginal and Torres Strait Islander peoples participate in processes to maintain connection for Aboriginal and Torres Strait Islander children to their communities, families and cultures.
- Aboriginal and Torres Strait Islander peoples participate in the design and delivery of child and family services that intervene early to prevent family breakdown, and child abuse and neglect.

Promoting consideration of and value for culture in decision-making for children is at the heart of the mandate and objectives of cultural advice and support services. Their operation is supported by strong principled recognition in legislation and policy in all Australian jurisdictions that cultural, family and community connection are essential to positive identity development and wellbeing for Aboriginal and Torres Strait Islander children. As the *National Framework for Protection Australia's Children* explains:

Maintaining connection to family, community and culture is essential within a framework that respects the physical, mental and emotional security of the child. This is particularly important in light of the historical experiences that Aboriginal families have had with child protection agencies.¹⁶³

Commonly services describe that their involvement in decision-making is a core process for ensuring that this understanding translates into a genuine assessment and consideration of children's cultural needs in determining their best interests. The following discussion addresses the extent to which cultural advice services can and do support cultural connection for children and their strengths in doing so.

Input on the nature and importance of culture in decisions

Two key areas are identified as significantly impacting the extent to which services can provide input on and promote value for culture in child protection processes. These are: the scope and depth of cultural knowledge that informs advice given; and the cultural competence of decision-makers.

The strength of cultural knowledge that cultural advice and support services bring to decision-making is described under Element 1 above as arising from their deep cultural understanding and connections as Aboriginal and Torres Strait Islander community members and representatives. Service leaders particularly describe their role to input knowledge of cultural strengths in caring for children to increase options for responding to care concerns within the child's family and community, and support compliance with the Aboriginal and Torres Strait Islander Child Placement Principle. They provide examples of the types of cultural knowledge that are critical to inform better decision-making for children. These include knowledge of:

- family and kinship structures, including strengths within kinship groups to care for children;
- specific cultures, traditions and child-rearing practices of the community;
- community dynamics and politics;
- the role of elders in the community;
- the trans-generational impacts of past child welfare practices on the current situation of a community;
- language for community engagement and the significance of language to cultural connection for children;
- the services that are available to support families, including knowing whether those services are culturally appropriate; and
- risks for children in the community and how they can be addressed or managed.

Barriers to strong and detailed cultural knowledge of services are recognised as strongly aligned with barriers to effective community representation as discussed under Element 1 above. For example,

service leaders describe that the quality and depth of cultural advice is restricted where they are inadequately resourced to undertake community consultations, and support the broader involvement of family and community members to inform decision-making.

In the context that all services are advisory in decision-making, the influence of cultural input is significantly dependent on the competence of decision-makers to listen to, understand and value advice. While service leaders note positive examples of individual workers or regional government offices developing strong cultural competence and respectful relationships with Aboriginal and Torres Strait Islander communities, they also commonly describe that such efforts are limited and highly inconsistent.

Service leaders explain that non-Indigenous child protection workers regularly operate from their own cultural values base and are limited in their capacity to attribute value to advice from an alternative cultural perspective. There are opportunities in some jurisdictions for cultural advice and support services to provide training to inform government workers of the value of cultural advice in decision-making, particularly as a component of induction processes. Service leaders also identify informal opportunities to influence cultural understanding where they are effectively engaged in collaborative work and negotiations. As one service leader explains, *'we're educating them as well as linking them into the community.'* However, capacity for informal influence is also restricted where there is an identified lack of respect for the knowledge and expertise of Aboriginal and Torres Strait Islander workers. As one service leader explains:

Even though you tell people that Aboriginal people are more experienced because they know what they know [about culture and community], it doesn't count because it's not on a certificate.

The level of training and support for cultural competence development of government child protection services is generally considered by Aboriginal and Torres Strait Islander agencies to be inadequate. A common outcome is that

those services or individual staff will view cultural advisors as a hindrance, rather than adding value. Almost all service leaders identify significant opportunity to increase effectiveness if resourced and enabled to provide greater direct support to build cultural competence capacity of government services. Strategies identified that could support this include: significant time spent by government workers in cultural advice services as a component of their induction to build relationships and learn about the culture and community; targeted support for government service team leaders to drive effective practice in their teams; targeted support for individual workers and regional services demonstrating poor cultural understanding and engagement; and regular meetings to discuss broader cultural issues between advisors and government staff.

Maintaining connection to culture for children in out-of-home-care

Cultural advice and support services in most jurisdictions have a role to provide support to government staff in the development and review of cultural support plans. These plans have the purpose of supporting cultural connections for Aboriginal and Torres Strait Islander children in out-of-home care. Service leaders identify that this is a critical process to ensure children do not lose connections, especially children placed with non-Indigenous carers and supported by non-Indigenous agencies. However, they generally describe limited actual capacity for involvement. A major barrier identified is the diversion of limited resources to investigation and assessment processes. Clarity of roles is another significant concern. Responsibility for plans most often remains with government departments, but some Aboriginal and Torres Strait Islander organisations identify that the bulk of work in developing and supporting plans is done by them, either through cultural advice services or out-of-home care service delivery. They note that they have limited involvement when children are placed through mainstream agencies that they do not have a direct consultation relationship with. Even where cultural advice services input to planning they sometimes describe the work that they do as wasted because of limited resources to support and limited accountability for carers to

implement cultural support plans. As noted above, services also identify that they have limited capacity in general to support ongoing decision-making and case review for children in out-of-home care and that this limits their ability to promote re-unification where children have been separated from their families and cultures. They commonly emphasise that this is a priority area for strengthening their involvement, particularly noting that they believe children placed through mainstream agencies are most vulnerable and often do lose cultural connections.

Early intervention to prevent family breakdown

As cultural advice and support services considered are focussed primarily on input to statutory decision-making, this research does not significantly consider Aboriginal and Torres Strait Islander participation in the design and delivery of earlier intervention family support services. A number of service leaders describe frustration at the lack of resources available to support Aboriginal and Torres Strait Islander organisations to deliver earlier intervention supports and reduce the high entry rates of children to statutory systems that are stretching resources and capacity for cultural advice services. Service leaders also indicate that they

have significant roles to divert families from further statutory intervention wherever possible. This includes through: referral to culturally appropriate support services where they are available; ensuring cultural misunderstanding does not contribute to unnecessary escalation of concerns or child removal; and supporting family engagement in identifying and developing solutions to care concerns. The lack of capacity to make direct service support referrals and the general lack of non-statutory referral pathways for family support are identified as concerns. REs in Queensland, for example, recognise significant barriers to their ability to provide holistic care and support to families where even referrals to family support services delivered by the same organisation have to be made through the government child protection service. Some service leaders also describe the concern that there are unrealistic expectations, internally and externally, that their service will reduce over-representation of Aboriginal and Torres Strait Islander children in child protection systems. They explain that their late stage of involvement and the complex history and causes of Aboriginal and Torres Strait Islander disadvantage that drive increasing system entries means that reducing over-representation is not a reasonable expectation of cultural advice services alone.

OVERVIEW: PRIORITISING, PROMOTING AND SAFEGUARDING CULTURE

Aboriginal and Torres Strait Islander peoples provide input on the nature and importance of culture in decisions and contribute to processes that promote and maintain connection for children to family, community and culture.

ENABLERS

- Government policy strongly recognises the importance of family, community and cultural connection to identity and wellbeing for Indigenous* children.
- Strong cultural knowledge and community connection of Indigenous* services and staff promote consideration of cultural needs in best interests decision-making.
- Indigenous* service knowledge of cultural and community strengths and risks increases the range of options available for safe care in a child's family, community and culture.
- Indigenous* service staff have formal and informal opportunities to provide cultural education to non-Indigenous child protection workers.
- In some locations government child protection services demonstrate significant effort to build cultural competence and community connection.
- Some requirements or roles for Indigenous* services to participate in development and review of cultural support plans exist.
- Cultural advice services have roles to identify and recommend culturally appropriate support services to divert families from statutory intervention.

BARRIERS

- Variable cultural competence of government child protection services and their staff and variable efforts to develop competence.
- Government workers often view cultural advice services as a hindrance rather than adding value.
- Variable cultural competence of magistrates and appreciation of the role and value of Indigenous* service input to decisions.
- Limited formal opportunities for Indigenous* services to provide cultural education for government services.
- Limited or absence of roles to support and review cultural care planning for children in out-of-home care, especially when placements are supported by mainstream agencies.
- Concern that input to cultural care planning is wasted because of poor implementation including lack of resources for family contact and lack of accountability for non-Indigenous carers to support connection.
- Lack of non-statutory referral pathways limits opportunity to divert families from statutory intervention, including no direct referral roles for cultural advice services.
- Unrealistic expectations that cultural advice services will reduce Indigenous* over-representation amidst complexities of Indigenous* disadvantage.

Based on analysis and the vision of service leaders, opportunities to strengthen value for Aboriginal and Torres Strait Islander cultures in decision-making include:

- Increased direct training and support from Aboriginal and Torres Strait Islander services for cultural competence development of government services and courts.
- Induction of government child protection workers through spending time working with cultural advice services to build relationships and cultural understanding.
- Increased resourcing for cultural advice and support services to participate in and lead cultural support planning and review for Aboriginal and Torres Strait Islander children.
- Greater resources for Aboriginal and Torres Strait Islander organisations to deliver and make direct referrals to early intervention family support services to divert families from statutory intervention.

*Aboriginal and Torres Strait Islander

ELEMENT 5: CHILDREN'S PARTICIPATION

Genuine participation of Aboriginal and Torres Strait Islander peoples in decision-making requires that Aboriginal and Torres Strait Islander children have the opportunity to participate in decisions that affect them in line with their capacity, age and maturity. Elements required to achieve this include that:

- children have access to culturally appropriate participation processes and representatives;
- children are informed of their right to be free from abuse and have easy access to ways of reporting abuse; and
- children have access to redress where their right to participate has been violated.

The research revealed highly variable and limited engagement of cultural advice and support services in working directly to support and enable child participation. As a result, the following discussion addresses their role and potential for supporting child participation more generally rather than addressing specific elements in detail.

Roles of cultural advice and support services to promote child participation in decision-making are varied. For example, RE services in Queensland have no specific role to provide direct support to children, while PACT services in New South Wales have a strong mandate to work with children, for example, by: helping children to understand child protection processes;¹⁶⁴ obtaining the views of children in risk assessments;¹⁶⁵ and facilitating active involvement of children in case planning and review.¹⁶⁶

Generally, service leaders recognise that in the absence of their involvement, there is limited culturally appropriate or tailored support for enabling the participation of Aboriginal and Torres Strait Islander children. They express that they are in a strong position to provide that support, as well as the desire with adequate resources to do so. Many describe that they can and do seek the views of children wherever possible or seek to hold government workers accountable for fulfilling commitments to seek and include children's views

in decisions. Overall, this seems to be an under-developed area with service leaders shedding little light on the systems, processes and competencies required to support children's participation. One service leader explains:

I think there is a gap in our training about how we gather information from children about what they want...Kids are often very conflicted and they're worried about hurting their parents. We could do better work in that area.

Some service leaders explain that this is a neglected area in child protection systems and practice more generally. They describe that while practitioners consider that the views of the child are important, they get de-prioritised amidst other pressures and priorities in child protection work. One service leader explains that there is an opportunity for cultural advice services to fill a gap to support participation of Aboriginal and Torres Strait Islander children where there is limited capacity to do so in government child protection services. Another, however, identifies that cultural advice services sometimes can't be involved in detailed interviews with children unless children request their involvement because having multiple people present would be too intimidating. One service leader explains that their role should be to be available to support children and to have them know that someone from their own culture and community can advise and help them out throughout their involvement with child protection services:

The children should be able to know who we are and know they can contact us and have conversations...I think we need to have a professional relationship with our children, age appropriate.

The adequacy and appropriateness of legal support and representation of Aboriginal and Torres Strait Islander children in court proceedings is outside the scope of this research, but requires further attention. Service leaders did not reflect significantly on the interaction of their roles with representation for children in court proceedings.

OVERVIEW: CHILDREN'S PARTICIPATION

Aboriginal and Torres Strait Islander children have the opportunity to participate in decisions that affect them in line with their capacity, age and maturity, and receive culturally appropriate support to do so.

ENABLERS

- Significant roles for Aboriginal and Torres Strait Islander services to support children's participation recognised in Vic and NSW.
- Legislation and policy in all jurisdictions strongly recognises the right of children to participate.
- Some cultural advice and support services are proactive about supporting children and ensuring their views are included.

BARRIERS

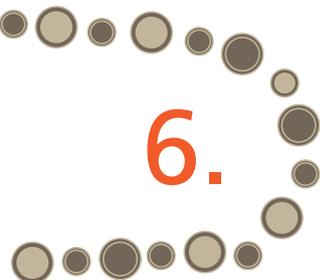
- In some jurisdictions there is no requirement for Aboriginal and Torres Strait Islander children's participation to be supported by an Aboriginal and Torres Strait Islander agency.
- A general lack of culturally appropriate support for Aboriginal and Torres Strait Islander children's participation is identified.
- Detailed practice knowledge, processes, training and competencies around supporting Aboriginal and Torres Strait Islander children's participation appear limited.

Based on analysis and the vision of service leaders, opportunities to strengthen Aboriginal and Torres Strait Islander children's participation in decision-making include:

- Stronger, resourced and clearly defined roles for Aboriginal and Torres Strait Islander agencies to provide culturally appropriate support to children to participate in child protection processes.
- Development of strategies, processes and training to increase understanding of good practice in supporting participation of Aboriginal and Torres Strait Islander children in child protection decision-making. These could be developed in partnership to support the practice of both Aboriginal and Torres Strait Islander agencies and government child protection services with significant input from Aboriginal and Torres Strait Islander children.

*Aboriginal and Torres Strait Islander





6.

A STRONG MODEL FOR CULTURAL ADVICE AND SUPPORT

One service leader presents her vision for a service that could walk alongside families, advocate for the best interests of children from a cultural perspective, support families to make positive decisions for their own children, and enable a genuine community voice throughout decision-making:

There needs to be a community voice at every stage of decision-making. When we are making decisions about community people, their present and future, to do that in the absence of community or family you are not doing a service. Aboriginal NGOs need to be advising appropriate programs to work with families in terms of their ability to reconnect with themselves, with their children and with their community. In an ideal world that journey would have someone who walks alongside and supports them and provides the advocacy that builds the families' capacity to advocate for themselves and get the right outcomes.

Reflecting this vision and drawing on the knowledge and experience of service leaders captured in this research, the following are proposed components of a strong model of cultural advice and support in child protection decision-making. They seek to align with the elements of genuine participation described above, though also reflect the limitations of an advisory service in enabling full participation.

Legislation

Legislation contains principles recognising the importance of:

- cultural connection to the identity and well-being of Aboriginal and Torres Strait Islander children; and
- self-determination in child protection for Aboriginal and Torres Strait Islander peoples.

The Aboriginal and Torres Strait Islander Child Placement Principle is clearly defined and mandated.

Legislation mandates Aboriginal and Torres Strait Islander community-controlled agency participation in all significant decisions for Aboriginal and Torres Strait Islander children from the point of notification to child protection authorities. Obligations to enable participation apply to government agencies as well as non-government organisations with child protection decision-making responsibility. Measures to identify children as Aboriginal and Torres Strait Islander at the earliest possible opportunity are required. Participation of Aboriginal and Torres Strait Islander agencies is required and described in a variety of legislated child protection processes including judicial proceeding, family group conferences, and case planning including cultural support planning. Aboriginal and Torres Strait Islander agencies have a mandated oversight role for implementation of the Aboriginal and Torres Strait Islander Child Placement Principle, including requirements for their approval for all out-of-home care placements for Aboriginal and Torres Strait Islander children, and their participation in the process of selecting and approving carers.

Agreements

State level protocols are agreed between Aboriginal and Torres Strait Islander organisations and relevant state and territory government departments. Protocols recognise the broader commitment of all parties to respecting and promoting the rights of Aboriginal and Torres Strait Islander children and implementing the Aboriginal and Torres Strait Islander Child Placement Principle. Detailed roles and responsibilities of Aboriginal and Torres Strait Islander agencies and government child protection services are specified, reflecting legislative requirements and the broader processes for engagement between agencies. Local level agreements are developed between cultural advice and support services, government child protection services and other local stakeholders to contextualise broader requirements and promote collaborative work and information sharing.

Governance and resource allocation

Community management of cultural advice and support services is enabled through service delivery by Aboriginal and Torres Strait Islander community-controlled organisations. Funding agreements are managed by bodies independent of the government child protection service. Services are funded for local operation, ideally working with a single government service centre. Where regionalisation is necessary because of capacity or funding limitations, resourced individual community-based consultation structures (discussed below) input to and complement regional service operation.

Multi-layered partnership structures create accountability and support for effective local operation, and include:

- state/territory level partnerships for program development and support between Aboriginal and Torres Strait Islander peak bodies or lead agencies and child welfare departments; and
- local coordination groups that meet monthly and include management of cultural advice and support services, government child protection services, Aboriginal and Torres Strait Islander peak bodies or lead agencies, child welfare department staff with responsibility for program development and support, and other local stakeholders. These groups create a critical link between broader legislative and policy priorities and local program implementation, enabling high-level support to address issues as they arise.

Aboriginal and Torres Strait Islander peak bodies or lead agencies are funded to support program development and review at the state/territory level, and provide technical assistance for local operation. The number of cultural advisor positions funded limits caseloads to approximately 20-30 open cases for Aboriginal and Torres Strait Islander children. Significant further refinement of caseload requirements is needed considering different modes and intensity of participation at different stages of child protection intervention and taking account of travel requirements in broad rural and remote coverage areas. One team leader and one administration support worker are in place for every 3-4 advisors and management support is aligned to the size and scope of each organisation.

Community consultation

Where cultural advice and support services have regional coverage areas, they are funded to establish and/or support community-level child protection committees to enable consultation with and input from individual communities. This is especially necessary in rural and remote areas where organisations service multiple distinct communities. Services provide training to community-members to understand child protection processes and in providing confidential input to support decision-making. They act as facilitators and intermediaries between community leadership structures and government services.

Operational guidelines and practice instructions

Detailed guidelines and practice instructions are developed for the operation of cultural advice and support services. Guidelines clearly define the scope of participation requirements and detail processes in each and every phase of child protection decision-making. Practice requirements of government child protection service staff are aligned with and complement cultural advice service guidelines and staff of both organisations undertake joint training in their effective implementation. Depending on local circumstances and service development it may be advantageous for both organisations to adopt a shared set of guidelines. Regardless, roles and responsibilities of each organisation are reflected in local level agreements that reinforce joint operational requirements.

Information sharing

Service guidelines require full sharing of all relevant case information between cultural advice services and government child protection services. Alignment of information databases and shared access to case information enables ready-access to information for cultural advice and support services without having to seek-out or rely on information provision by the government child protection service. Professional organisationally embedded cultural advice services develop and employ strong and accountable systems for maintaining privacy of information and processes for responding to and managing conflicts of interest. Cultural advice and support services participate directly in all processes

with the family, including home visits and family conferences, to ensure they receive and interpret information directly rather than second-hand from government child protection staff. Cultural advice and support services are enabled to share information with other service providers, for example, in out-of-home care and family support, to ensure a free-flow of information that supports best interests decision-making for children rather than information flow exclusively managed by government child protection staff.

Employment, training and workforce development

Services have exemptions to employ cultural advisors who are all Aboriginal and Torres Strait Islander people either from or living in and part of the local Aboriginal and Torres Strait Islander community. Formal qualification requirements are secondary to local cultural and community knowledge and capacity to provide quality and confidential advice. All advisors are provided with training at a minimum level of Certificate IV in Child Protection at the commencement of their employment to enable systems understanding and shared language for work with government services. Resourcing of services specifically recognises high support needs of Aboriginal and Torres Strait Islander people who live and work in their communities, having limited opportunity to 'switch off'. Strong debriefing and supervision are built into service design, and caseloads are set at realistic levels as described above. Joint training is provided to cultural advisors and government staff in understanding and implementing cultural advice and support service guidelines and requirements.

Relationship support and development

Monthly meetings between management and staff of cultural advice and support services and government child protection services enable ongoing review of issues as they arise in the relationship between the organisations and staff. At least annually, or when significant numbers of new staff come on, specific meetings are held between staff of both organisations to discuss expectations and shared objectives more broadly. Workers of both organisations collaborate to plan and conduct specific case-related activities, and

are responsible for negotiating approaches and reviewing outcomes together. Dispute resolution procedures involve management level staff of both organisations working together to address issues and support the continuance of collaborative and professional working relationships following disagreements.

Cultural competence development

Cultural advice and support services have a role to provide regular training sessions on cultural awareness and the importance of cultural advice in child protection decision-making. This training forms a component of induction for all new staff, and is renewed annually by each local child protection service. New staff of government child protection services spend significant time working alongside (shadowing) cultural advice and support service workers to build relationships and develop initial understanding of local culture and community dynamics (at least 2 days). Government child protection services and staff are proactive in establishing respectful relationships with the local Aboriginal and Torres Strait Islander community, including through building partnerships with local community organisations and attending significant community events. Broader training and practice requirements for government child protection services reflect and reinforce the critical importance of cultural, community and family connections to the identity and wellbeing of Aboriginal and Torres Strait Islander children.

Child and family support and engagement

Services have strongly recognised and enabled roles to support participation of family members in child protection processes. Roles include:

- providing information in culturally appropriate ways;
- cultural translation roles between family members and child protection service staff;
- reducing family anxiety and increasing engagement through support that is independent of the government service;
- assisting families to prepare for and contribute to family group conferences; and
- identifying and involving appropriate extended family members in decision-making.

Cultural advice and support services identify and refer families to family support and specialist services that are culturally acceptable and appropriate to meet their needs. Additionally, services have specifically identified roles to provide culturally appropriate support to children for their participation in child protection processes. This includes significant training and development in core competencies and processes for enabling child participation. Families and children are able to withhold consent to direct support, but the cultural advice and support service continues to be consulted even where not directly supporting the family.

Focus on maintaining connections to family, community and culture

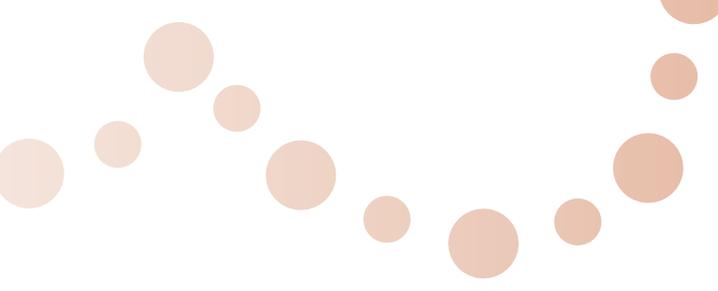
Operational requirements reflect the need to ensure a dedicated focus on maintaining and restoring connections to family, community and culture for children in out-of-home care. Funding recognises that this is resource intensive, particularly having regard to the high number of Aboriginal and Torres Strait Islander children in out-of-home care and the detailed work required to research, create and support implementation of cultural support plans. Resourcing is adjusted dependent on other roles of Aboriginal and Torres Strait Islander agencies, recognising the priority that an Aboriginal and Torres Strait Islander organisation always leads the process of cultural support planning for children in care, either through the cultural advice services or out-of-home care service delivery. Regardless of the depth of their role in cultural support planning, cultural advice and support services are always strongly engaged in selection of carers and have roles to work closely and share information with placement services. They have an oversight role for government and non-government agencies to ensure every effort is made to comply with the Aboriginal and Torres Strait Islander Child Placement Principle. They are involved in case planning and case plan reviews. They input to processes and decisions that prioritise safe family reunification, including referral of families to intensive reunification support.

Role in judicial decision-making

Program requirements specify that the views of cultural advice and support services must be included in court applications made by government child protection services. Cultural advice and support services are also able to submit separate views, and can review and assist in the development of any section of the application that includes their views. In line with legislative requirements, magistrates are proactive in ensuring that views are included and querying the absence of cultural advice. Aboriginal and Torres Strait Islander organisations have roles to work with courts to promote shared understanding of the importance of cultural considerations in child protection decision-making and develop strong processes for courts to ensure the inclusion of their advice.

Monitoring, review, and reporting

Government child protection services are required to record and report on both their consultation with cultural advice and support services and their consideration and use of advice. Cultural advice and support services report in a complementary manner on their provision of advice and its influence. Joint compliance statistics reflect levels of engagement between services at specified decision-making stages and in joint processes such as home visits and investigations. Specific requirements to record and justify disagreement with advice or decisions-made by both organisations provide data that reflects the value and influence of advice in decision-making. Feedback communication mechanisms ensure that disagreements and justifications for departure from advice are always communicated to the cultural advice and support service. Monthly meetings between staff of both organisations (as described above) provide opportunity for review and response to operational issues as they arise. Dispute resolution procedures include a specific focus on reviewing and addressing cases where cultural advice and support services believe their views were not sought, listened to, or adequately considered.



Program evaluation and auditing

Outcomes-based measures of effectiveness are agreed between government services and Aboriginal and Torres Strait Islander organisations and inform broader outcomes-focused program evaluations every 3-4 years. Cultural advice and support services and government child protection services jointly plan and conduct evaluations, involving other relevant stakeholders. These ensure that successes and barriers to program implementation are clearly identified and inform future program development. Drawing on all reported information, independent bodies have roles to audit and report on implementation of participation requirements at least every 2 years. This could be as a component of broader audits of compliance with the Aboriginal and Torres Strait Islander Child Placement Principle as is current practice of the Queensland Commission for Children and Young People.

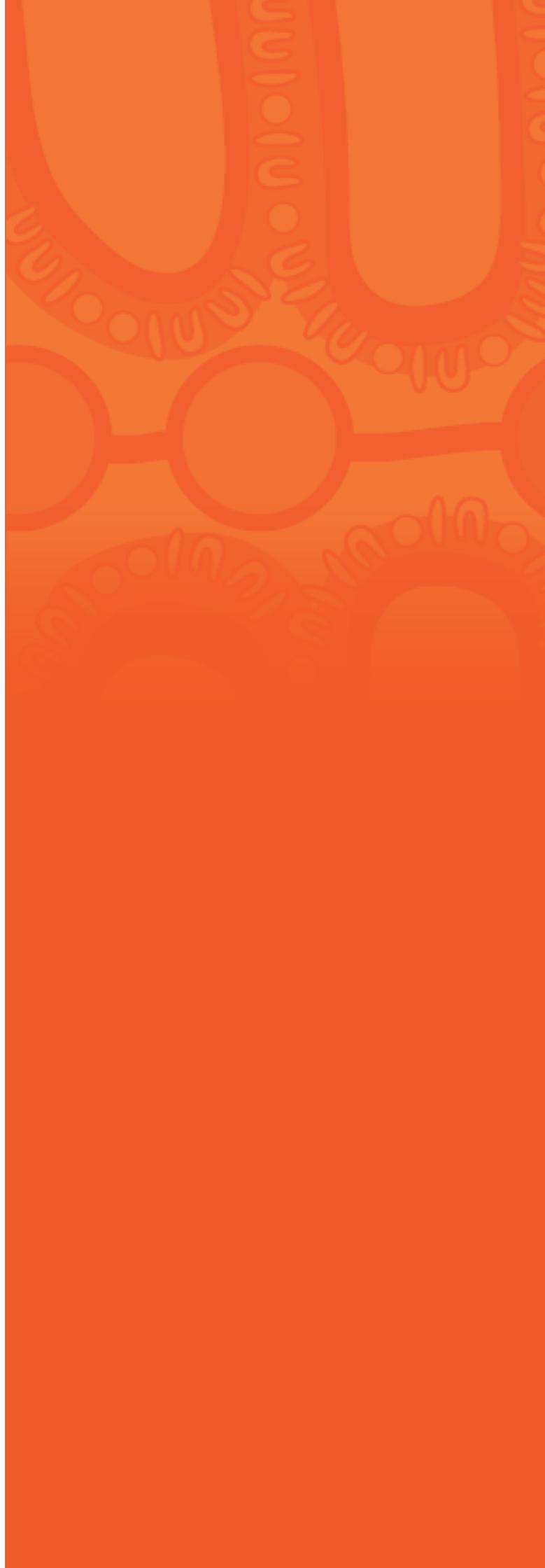
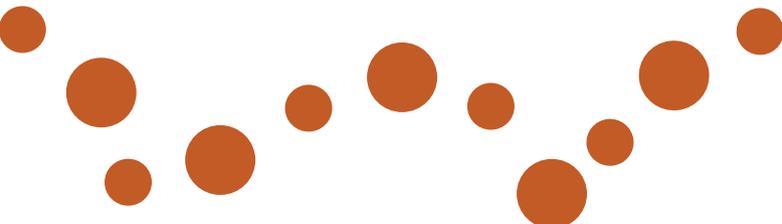
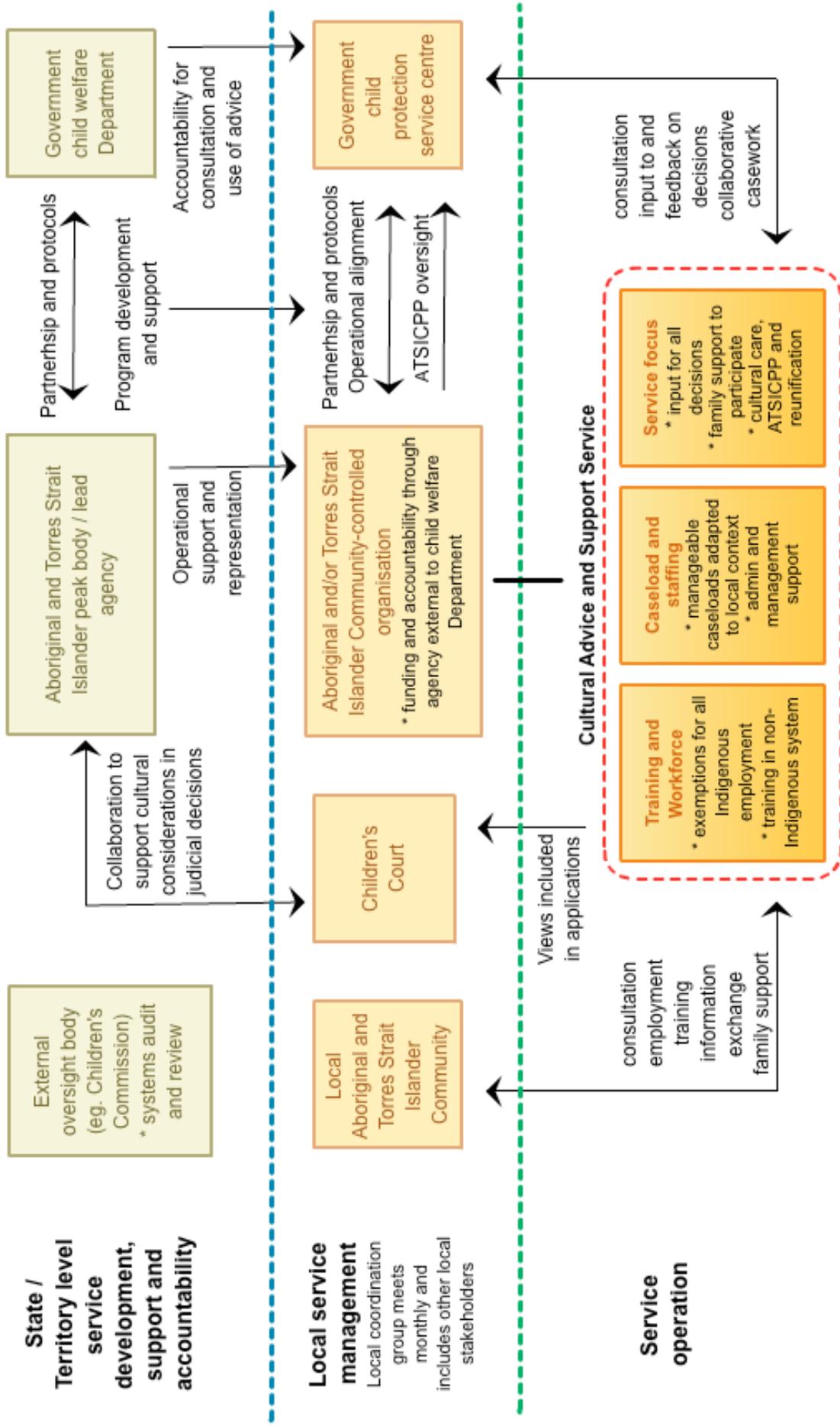
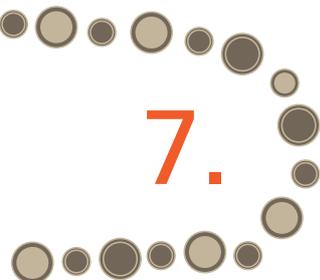


Figure 4: A Strong Cultural Advice and Support Service





7.

BEYOND THE ADVISORY MODEL TOWARDS TRUE PARTICIPATION

Cultural advice and support services, by their very nature as advisory services, are incapable of enabling full participation. A strong cultural advice and support service, as described above, can effectively increase Aboriginal and Torres Strait Islander influence in decision-making process, moving towards a partnership model of participation that relocates power based on negotiation, shared responsibility, and shared accountability. In limited circumstances, it is clear that incremental legislative change, existing service models and relationships have increased the influence of Aboriginal and Torres Strait Islander peoples in child protection decisions. For example, Libesman (2012) describes that in Victoria the memorandum of understanding between VACCA and the Department of Human Services together with legislative requirements has established a degree of shared jurisdiction and created

*'a sphere of influence which has expanded as understanding and more subtle nuances with respect to cultural difference have been established.'*¹⁶⁷

However, in failing to transfer or delegate any final decision-making authority, participation enabled through a cultural advice model remains dependent on the capacity and good-will of government child protection services and their individual staff to value, seek, take and ultimately use and adopt advice. No genuine partnership can exist where all final authority remains with one party.

In practice, the limits of advisory services in enabling participation are reflected in service systems that achieve highly variable levels of input and influence in decision-making for Aboriginal and Torres Strait Islander peoples. This is nowhere more observable than in Queensland where state-wide cultural advice and support services exist, but latest audit results show just over 60% consultation rates for placement decisions.¹⁶⁸ Available statistics there and elsewhere do not report on other decision-making processes, or interrogate the genuine nature of consultation and negotiation that takes place. Unsurprisingly, service leaders in Queensland identify that the model reflects significant tokenism and provides only limited opportunities for participation.

A lack of genuine partnership-based participatory models is evidenced by systems and policies that work to box Aboriginal and Torres Strait Islander services as providing advice that only relates to the 'cultural part' of decision-making as opposed to the broader risk assessment and management components of child protection service delivery. This is reflected in the way many service leaders describe their role. This contrasts with a genuine understanding of participation that appreciates that a cultural perspective is active and inseparable in all decision-making. It is further reflected by targeting of cultural advice service resources to initial family engagement and cross-cultural communication, limiting services to a community engagement role.

A true participatory model requires more significant alignment with the right to self-determination, enabling Aboriginal and Torres Strait Islander peoples to exercise control over decisions that affect their lives. Though no stronger model has been employed in Australia, international models suggest possibilities for reform through the delegation of statutory child protection functions to Indigenous authorities. In Canada, statutory child protection functions have been delegated to First Nations peoples living 'on reserve' since the mid-1980's.¹⁶⁹ Canada provides a context for comparison in Indigenous child welfare because of similar histories of colonisation and forced child removal, and continuing trauma for children and families.¹⁷⁰ More recently, Canadian authorities have extended delegation beyond reserves to urban areas including Toronto and Vancouver, and also province-wide in Manitoba.¹⁷¹ Benefits of delegated models identified in the Canadian context include that:

- they enable '*development of more responsive community-based services that allow for incorporation of Aboriginal values, beliefs and traditions, including more culturally appropriate practices*;¹⁷² and
- they are more likely to lead to community capacity building initiatives and community caring models of service delivery that shift the focus from removal of children from family, community and culture.¹⁷³

The funding of delegated authorities based on costs of statutory intervention with limited scope for preventative family support activities has been recognised as a significant weakness of delegation in Canada.¹⁷⁴ This suggests that to be effective, any delegation of statutory child protection authority would need to be in the context of broader service funding for preventative family support. This would not leave Aboriginal and Torres Strait Islander people to deal with the consequences of family breakdown but resource them to actively support stronger families and communities to care for children. Indeed, this was reflected strongly in consultations that inform this research, with service leaders emphasising the need for greater focus on community controlled preventative family support and early intervention initiatives.

A significant criticism of delegation models in Canada and advisory models in Australia is that both are aimed at sensitising non-Indigenous systems to cultural considerations, rather than genuinely enabling authority and operation of alternative cultural frameworks for responding to child protection concerns. As Harris-Short (2012) explains:

Such is the strength with which the philosophy, norms and practices of the non-Aboriginal population are entrenched within the governing, legal and administrative framework of the non-native system, there are strong grounds for concern that reforms such as these may only ever enjoy qualified success. Indeed, those concerns are borne out by the limited impact of the recent reforms in Canada and Australia, providing considerable fuel for the argument that the only effective long-term solution for Aboriginal children and families is the autonomy and freedom promised by self-government.¹⁷⁵

Behrendt (2009) identifies failures in past government policies labelled as self-determination as resulting from transfer of responsibility for program delivery to Aboriginal people while not enabling any capacity at the grassroots level for those people

*'to make decisions over the policies that affected them and the programs that were delivered into their community. In short, the policy of 'self-determination' did not go far enough in devolving power from government to Aboriginal people.'*¹⁷⁶

A devolution of power does not negate the possibility and even desirability in many circumstances for partnership-based approaches, rather than completely separate Aboriginal and Torres Strait Islander systems and processes. What is needed though, where partnership is the vehicle for enabling participation, is a stronger commitment to genuine shared responsibility and accountability for all levels and stages of decision-making.

While calling for transfer of authority in child protection matters, commentators have also recognised significant risks where poverty, disadvantage and colonising factors have undermined community capacity for just decision-making and effective service design and delivery in some communities.¹⁷⁷ Risks are particularly high for vulnerable women and children where political and personal interference within male dominated community leadership structures could, and has in particular cases, impinged on community safety.¹⁷⁸ Rather than an argument against participatory community-based child protection, capacity gaps indicate strongly the need for a community-development focus that empowers Aboriginal and Torres Strait Islander women, children and men within a framework that protects the human rights of all community members. Empowering community members to deal with the challenges facing their children and families, while addressing key issues including family violence, drug and alcohol dependence and mental health, has the potential to build stronger, healthier communities. As Harris-Short (2012) recognises, *'It is only within the context of healthy, flourishing communities that long-term solutions to Aboriginal child welfare can be found.'*¹⁷⁹

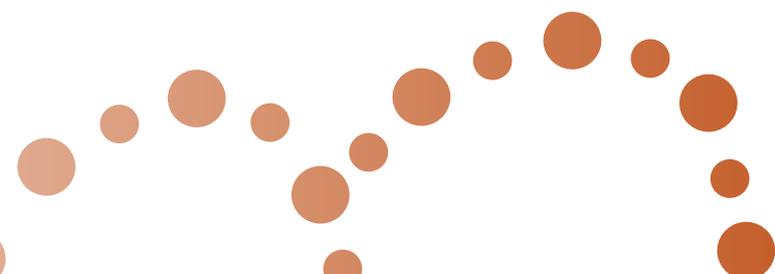
Genuine risks do highlight the need for supported transition processes that ensure that child protection leadership structures and governance

capacity are adequate to protect and promote human rights, and are inclusive of women. The need for strengths-based approaches to capacity building for child protection leadership is evident. These must recognise that enormous and culturally distinct strengths in caring for children exist in all Aboriginal and Torres Strait Islander communities, and that significant service delivery and leadership capacity exists in many communities.¹⁸⁰

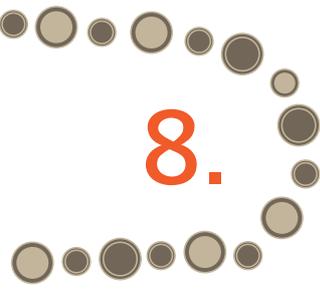
Recent efforts to build capacity for Aboriginal and Torres Strait Islander service management and delivery state-wide in New South Wales describe a key promising approach.¹⁸¹ They suggest that drawing on strengths and building capacity for communities to take control of child welfare services is possible in the short to medium term. Initial rapid growth in service capacity in New South Wales and positive long-term capacity growth plans indicate potential for building Aboriginal community-controlled child and family focussed service capacity state-wide.¹⁸² A key feature of this approach has been leadership from the state Aboriginal community-controlled child welfare peak body to support capacity development and to facilitate partnerships between Aboriginal communities and mainstream agencies where current service capacity is low and additional support for growth is required.¹⁸³ It is important to note that this initiative has been limited to the narrow-scope of out-of-home care service delivery within existing State-defined service delivery frameworks. However, there is significant potential to support capacity in these communities for delivering more broadly focussed and strongly participatory child and family support services.

“There needs to be better processes so that we are a consideration and not something that can be considered in the absence of anything else.”

Service leader







8. CONCLUSION

This research indicates that current systems and process are having very limited effect in empowering Aboriginal and Torres Strait Islander communities to make decisions for the care and protection of their children. Though established within principled legal and policy frameworks that aim to enable participation for Aboriginal and Torres Strait Islander peoples, service systems fall well short of this goal.

At their best, cultural advice and support services are enabling a stream of information to inform joint decisions about cultural strengths, risks and needs of Aboriginal and Torres Strait Islander children and their families. They sometimes provide opportunities to support the direct participation of families in child protection processes that affect them and enable two-way cultural translation roles between families and government services. Where higher-level agreements have been reached between Aboriginal and Torres Strait Islander agencies and government and these are supported by legislation and service system resourcing and development, increased influence in decision-making has been achieved. However, in the absence of final authority for Aboriginal and Torres Strait Islander communities to make decisions, and with limited systems of accountability, services are overall highly limited in enabling genuine participation.

At their worst, these services present as a tokenistic aside; an optional extra tool for decision-makers that choose to use them, with low capacity to do so and an absence of the shared process and responsibility that could make them work. While cultural advice services have likely enhanced decision-making for individual Aboriginal and Torres Strait Islander children in particular cases, they have not yet fundamentally altered systems that continue to apply largely mainstream frameworks in the response to concerns of child neglect and abuse.

The reality of ineffective service models is compounded by legislation that is either not strongly aligned with participatory standards or leaves the means and extent of participation

broadly open to interpretation, and an absence of independently resourced services in half of Australia's states and territories. Additionally, where these services do exist, service leaders commonly identify a large gap between expectations of them and resource allocation. A lack of program evaluation means that this gap, and other system and process deficiencies, have not been well described or quantified.

This paper has applied learnings from current systems to propose a more strongly resourced model of cultural advice and support with systems and processes designed to enhance the influence of independent community representative bodies in child protection decision-making. Independence and accountability are identified as core areas for reform, including through regular participatory evaluation, external independent oversight and addressing power imbalance where Aboriginal and Torres Strait Islander services are funded by the same child protection decision-making authorities they need to critique and influence.

A shift of authority and focus will be required to achieve the goal that Aboriginal and Torres Strait Islander communities genuinely participate in decisions for the care and placement of their children. At a minimum, this paper suggests that Aboriginal and Torres Strait Islander agencies must have authority or oversight in key decisions promoting implementation of the Aboriginal and Torres Strait Islander Child Placement Principle. This includes decisions about whether a child is in need of protection, whether out-of-home care is required, what services would assist a family, where and with whom a child is placed in care, reunification support and permanency planning. In line with the evidence and national priorities,¹⁸⁴ reform must not only focus on participation in tertiary interventions. It must rather ensure a holistic decision-making role and adequate resources for Aboriginal and Torres Strait Islander communities to care for, preserve and reunify their families, addressing the broader challenges of poverty and disadvantage they experience.

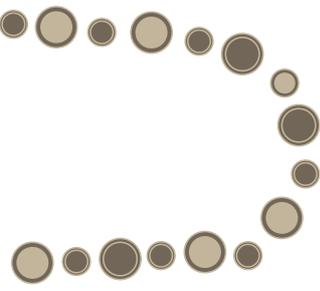
There are real concerns about current state and territory policy directions in this area, which conflict with national and state and territory policy recognition of the importance of increased Indigenous participation to improve outcomes, and require urgent attention. In 2010, the Western Australian government legislated to remove requirements for consultation with independent Aboriginal agencies in child protection, citing weaknesses in consultation systems that did not acknowledge the absence of substantive efforts to develop consultation systems or resource Aboriginal agencies to participate.¹⁸⁵ Victoria has not taken up the 2012 Victoria's Vulnerable Children Inquiry recommendation to address under-resourcing of cultural advice and support delivered through ACSASS.¹⁸⁶ The 2013 Queensland Child Protection Commission of Inquiry has also failed to provide a framework for strong Aboriginal decision-making, recommending 'shared practice' models rather than decision-making roles for Aboriginal and Torres Strait Islander communities.¹⁸⁷ There are more positive actions to counter these trends however, with a recent trial for transferring guardianship of Aboriginal children in out-of-home care to Aboriginal agencies in Victoria recognising the promise of Aboriginal community leadership to address the vast challenges in the care and protection of Aboriginal children.¹⁸⁸

Australia must be alert to these formal and informal policy shifts and their potential outcomes. This paper highlights the urgency that governments and sector leaders act now to harness current opportunities to learn from the past and use the knowledge we have to better facilitate and enable participation. There is a need to invest

in genuine models that do enable and ensure those most affected and best equipped to make decisions are strongly involved. Some concrete next steps required at the state and territory level are apparent. These include:

- legislative reform where participation requirements do not match the evidence of the value of participation;
- increased resourcing where under-investment leaves service models falling short of their potential;
- state-wide roll-out where strong service models operate in limited locations;
- developing structures of independent accountability to promote the influence and take up of cultural advice and/or delegating decision-making authority;
- linking cultural advice services with community-led family group conferencing that enables families and communities to engage and find better solutions;
- evaluation of current systems to drive reform; and
- capacity and service system development where independent participation services do not exist, learning from the more developed ACSASS service model in Victoria.

Committed leadership to implement these and other measures identified in this paper could see substantive movements towards achieving the critical policy goal that Aboriginal and Torres Strait Islander communities genuinely participate in decisions for the care and protection of their own children.



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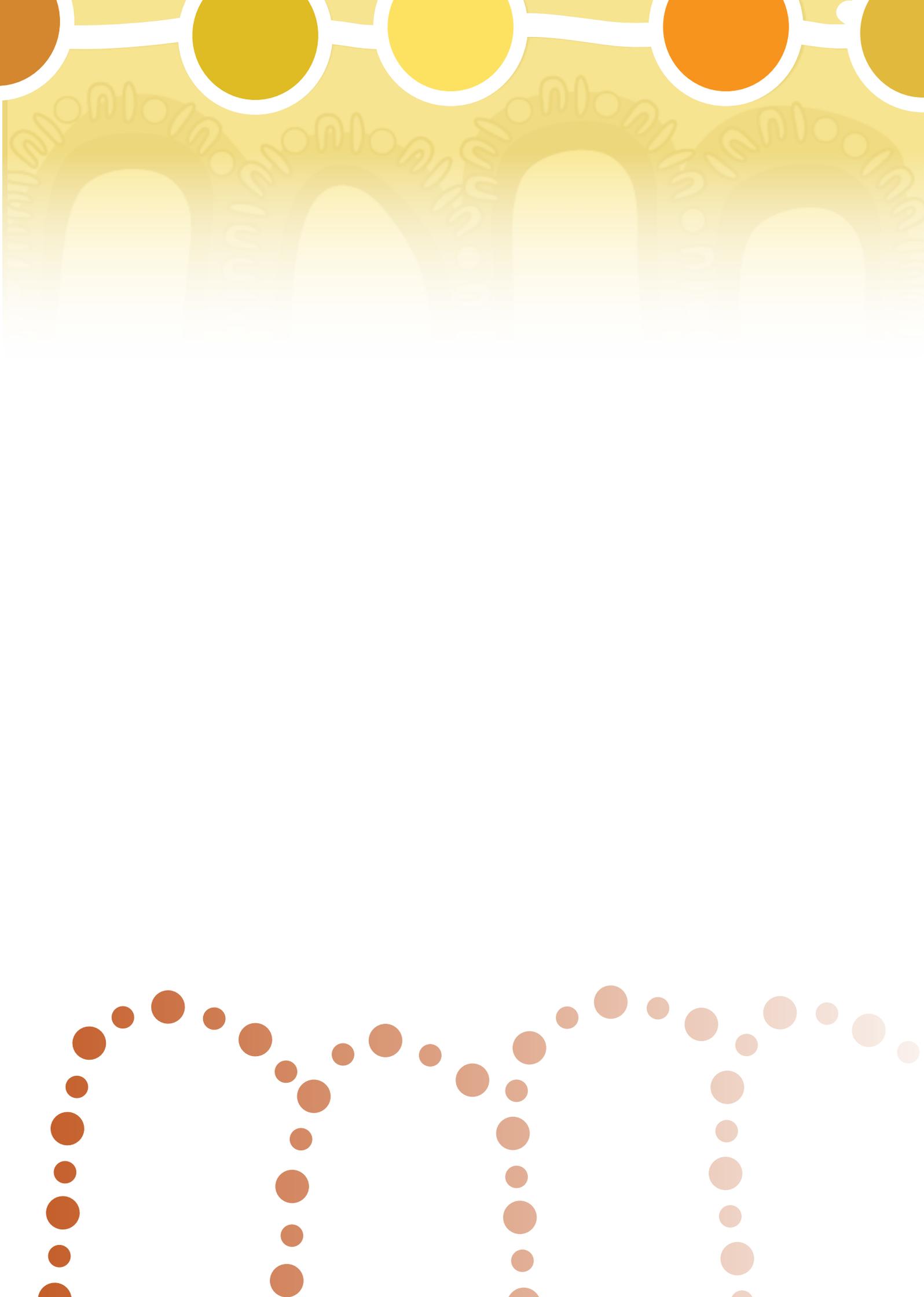
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Level 1, 252-260 St Georges Rd, North Fitzroy Victoria 3068
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