



Discussion Paper

National Framework for the Protection of Australia's Children, 2009-2020

Aboriginal and Torres Strait Islander priorities for the Second 3-year plan

1. Introduction

This paper proposes a number of areas for priority focus for Aboriginal and Torres Strait Islander children in the next three-year plan of the National Framework for the Protection of Australia's Children 2009-2020 (National Framework). It highlights the importance of building on the foundations set by the first three years while also recognising the need for new and innovative approaches to overcome intractable priority concerns. This includes the gross over representation of Aboriginal and Torres Strait Islander children in out-of-home care and the consequences for their removal from culture.

COAG has agreed to include a specific focus on Aboriginal and Torres Strait Islander children under each outcome of the National Framework. This requires clear actions with indicators for progress and budgetary support. Inclusion in the next plan of *the development of a National Partnership Agreement in relation to progressing the Closing the Gap plan for Aboriginal and Torres Strait Islander children and their families* could significantly strengthen the impetus behind the National Framework and redress a glaring gap in the Closing the Gap targets.

The extent of poverty experienced by Aboriginal and Torres Strait Islander peoples ranges from between 40 to more than 50 percent across Australia, whether for remote or urban areas.¹ Aboriginal and Torres Strait Islander peoples experience significant disadvantage across all economic and social development indicators, including being five times more likely to live in overcrowded households than non-Indigenous people.² This context is paramount to the consideration of strategies to support child protection, development and well-being.

This context is reflected in the gross overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system. The gap in the substantiation rate of child abuse and neglect for Aboriginal and Torres Strait Islander children continues to escalate, increasing from 7 times the rate for non-Indigenous children (rates of 37.1 and 5 per 1000 children respectively) in 2009-2010 to almost 8 (rates of 34.6 and 4.5 per 1000 children respectively) in 2010-2011. The most common type of substantiated abuse of Aboriginal and Torres Strait Islander children is neglect ("which was 38% compared with 23% for non-Indigenous children) and the least common is sexual abuse (10%).³ At 30 June 2011 there were 12,358 Aboriginal and Torres Strait Islander children in out-of-home care, 10 times the

¹ B. Hunter (2006) *Assessing the evidence on Indigenous socioeconomic outcomes: A focus on the 2002 NATSISS*, p.100.

² *Overcoming Indigenous Disadvantage Report 2011*, p.49.

³ Australian Institute of Health and Welfare, *Child Protection Australia 2009 – 2010* (2011) [Australian Institute of Health and Social Welfare, Child Protection Australia, 2010-11.](#)

rate of non-Indigenous children. The causes of overrepresentation are recognised as complex, including the legacy of past policies of forced removal, intergenerational effects of separations from family and culture, poor socio-economic status and perceptions arising from cultural differences in child-rearing practices.⁴

While Closing the Gap and related National Partnership Agreements are major initiatives to redress the poverty related causes of neglect and abuse, the National Framework offers a unique opportunity to target focus on children. The first three-year action plan had a series of actions that supported Indigenous children to be supported and safe in their families, which focused on integrated Children and Family Centres and Indigenous Parenting Support Services. Within other areas, new national standards for out-of-home care will have particular impact on Aboriginal and Torres Strait Islander children and concrete proposals for its implementation should be a priority focus of the next plan. Expansion of the Communities for Children program, efforts to increase integration of services, identification tools for early identification of children at risk, enhanced support for carers and workforce development planning were all key relevant features of the first three-year plan.

2. Priority areas for the next three-year action plan

2.1 Scaling up efforts to scale down removal

Sustainable improvements in child protection, development and well-being for Aboriginal and Torres Strait Islander communities requires a strength's based approach that responds to the causes of neglect and abuse. Different strategies targeting remote, rural and urban areas are also critical to reflect the vast differences in community issues spanning across these regions.

A four-pronged approach that targets the range of relevant actors and responds to different layers of risk of abuse and neglect has potential to increase the safety and well-being of Aboriginal and Torres Strait Islander children. This would focus on:

- (a) Strengthening protective behaviours in children and families, and empowering communities to take ownership over issues of abuse and neglect;
- (b) Intensification of family support services targeted towards children and families at risk;
- (c) Continued enhancement of integration of services and improved accessibility of support services to Aboriginal and Torres Strait Islander children and families; and
- (d) Establishing or enhancing mechanisms and support for effective Aboriginal and Torres Strait Islander participation and leadership in policies and programs that impact communities.

(a) Protective based behaviours

The three-year plan could instigate a major child abuse prevention initiative with funding to develop, promote and deliver culturally-based protective behaviours programs for Aboriginal and Torres Strait Islander children, young people, families and community leaders across Australia. This initiative would provide long-term funding for protective behaviours programs that address sexualised behaviour in children and provide children and young people with the tools, language and strategies to safely speak up when they are at risk.

Evidence-informed Aboriginal and Torres Strait Islander protective behaviours programs

⁴ Australian Institute of Health and Social Welfare, Child Protection Australia, 2010-11.

would contain a number of key components:

- peer support and education;
- child participation focus, empowering children to protect themselves;
- whole of community protective behaviours education;
- community education on impacts of abuse and neglect; and
- an understanding of Aboriginal and Torres Strait Islander approaches to child rearing.

This approach engages community in child safety and well-being concerns and provides a basis for increased participation in developing, and responsibility for implementing, strategies to redress these concerns. Importantly, this approach would build the capacity of community and community ownership of the issues for improved outcomes.

(b) Intensive family based services

In the context of the disadvantage and crisis situations of many Aboriginal and Torres Strait Islander families and communities, a focus on targeted responses for at-risk families as well as primary preventative programs is fundamental, as recognised in the National Framework.

A powerful role for the three-year plan could be to elevate efforts to unpack what we mean by a “prevention” oriented model and instigate improvements to support family preservation in the best interests of the child. While this may have short term cost implications, the costs of removal, both human and financial are enormous and untenable. As the National Framework recognises, prevention is the only way. \$2.5 Billion was spent by the national Government on child protection, out-of-home-care and intensive family support services in 2008-2009, and another \$2.5 billion collectively by state/territory jurisdictions.⁵ This does not take account of the long-term increased risks of substance abuse; mental illness; poor health; homelessness; juvenile offending; and incarceration.

Intensive family support is one component of a broader child and family welfare system. Research over the last two decades has been critical in pointing out the need to deal more effectively with large numbers of reports about child abuse and neglect, the need to engage more productively with families, and the limitations of relying on out-of-home care. The solutions proposed involve better-tailored responses to help maltreating families. Intensive family support operates at the secondary tier of primary-secondary-tertiary continuum of services to at risk families. Secondary or ‘targeted’ family support services have a child protection focus, supporting improved family functioning to ensure the care, safety and wellbeing of children.

The three-year plan could initiate a new program of culturally appropriate intensive family-based supports for families at-risk of child protection intervention, building on promising approaches adopted in Victoria, New South Wales, and Queensland.

While there are gaps in evidence, a body of knowledge has developed about the design and characteristics of quality family support programs that increase the likelihood of successful outcomes. Research identifies five elements of effective intensive family support, which should form the basis of program development. Services must be purposive, planned and matched to need; relationships based; provide a mix of practical, educational, therapeutic and enabling services; be tailored to a child’s needs, allowing for support for longer durations where required; and family participation and engagement. The Recent Report of

⁵ Steering Committee for the Review of Government Service Provision, Productivity Commission (2010) *Report on Government Services*, Commonwealth of Australia.

the Protecting Victoria's Vulnerable Children Inquiry, January 2012, recommended expansion of the Victorian program (Victorian Inquiry Report).⁶

(c) Integrated, culturally accessible support services

Deeper integration and improved coordination of services is another fundamental issue that requires ongoing urgent redress. Integrated services that respond holistically to child and family needs within early childhood education and care environments are critical to assist families to cope with life stressors, build their parenting skills and access the supports that they need to properly care for their family. The recent NSW Ombudsman's Report (2011) *Addressing indigenous disadvantage: the need to do things differently* reinforces the ongoing need for increased efforts on the implementation of programs: 'the how factor'. In particular, he highlighted that chronic staffing shortages in high-need locations a disjointed and poorly targeted approach by government agencies, the rollout of 'piecemeal' initiatives combined with weak accountability structures, and the lack of robust community governance and meaningful Aboriginal community participation as major contributors to past failures of Aboriginal policy.⁷

The importance of community ownership is a further undercurrent that the Ombudsman highlighted. This is an issue widely reflected in national and international evidence as a key factor in increasing community and family participation and engagement with services. Evidence also indicates that it improves the quality and responsiveness of services,⁸ and helps to overcome many of the identified barriers to Aboriginal and Torres Strait Islander families accessing services.⁹ As recognised by the National Framework, partnership approaches also have significant potential to overcome multiple barriers and contribute to positive outcomes for Indigenous children and families, including through increasing capacity of the Aboriginal service sector and increasing service accessibility to families. While the National Framework and other national policy documents reinforce the importance of partnerships, more is required however to develop and implement practical measures to support and enable genuine partnerships between Aboriginal and Torres Strait Islander agencies, mainstream service providers and Government for effective service delivery.

Significant measures are in place to improve integration of children and family support services. Any new measures should build on what already exists and support a seamless service system. In order to build on initiatives in recent years to ensure a strong cross-section of services to meet the diverse needs of Aboriginal and Torres Strait Islander communities, the following initiatives are proposed.

To complement the Children and Family Centres initiative of the first three-year action plan, the second plan could introduce an *innovative program that offers targeted support to budget based funded services that provide place-based integrated services to children and families*. This would be sufficiently flexible to respond to local need in order to ensure that existing services can enhance their capacity to provide high quality integrated services on

⁶ The Honourable Philip Cummins (Chair) (2012) *Report of the Protecting Victoria's Vulnerable Children Inquiry*, Department of the Premier and Cabinet, Melbourne, Recommendation 34, p.309, available at <http://www.childprotectioninquiry.vic.gov.au/report-pvvc-inquiry.html>.

⁷ NSW Ombudsman (2011) *Addressing Indigenous Disadvantage: the need to do things differently*. Sydney, NSW Ombudsman, 4.

⁸ Kitson, R. & Bowes, J (2010) 'Incorporating Indigenous ways of knowing in early education for Indigenous children'. *Australian Journal of Early Childhood*. Vol. 35 (4), 85.

⁹ SNAICC (2011) *Increasing Aboriginal and Torres Strait Islander access and engagement with child and family services*, Melbourne, 2.

par with new integrated services. This builds on the existing relationships, experience, skills and infrastructure, and with minimal support has the potential to significantly improve outcomes in accordance with current Government policy. The program would model and support innovative programs around key areas such as: maximising service integration; local workforce development; community engagement; measuring outcomes; engaging the most vulnerable families; cultural safety and transition to school. Enhancing capacity of Aboriginal and Torres Strait Islander organisations would be a central component of this priority, which would in turn support both culturally appropriate and accessible service delivery, as well as enhancing governance, leadership and economic participation, which builds social capital for Aboriginal and Torres Strait Islander communities and individuals.

Unpacking genuine partnerships between Aboriginal and Torres Strait Islander agencies, mainstream service providers and Government for effective service delivery could be another important component. One action could *consider integration of a partnership framework¹⁰ into all Government service contracts and tenders to require a genuine partnership with an appropriate Aboriginal and Torres Strait Islander service for any service provision targeted at Aboriginal and Torres Strait Islander peoples.*

A prerequisite for genuine partnerships is cultural competence of all participating personnel. An important aspect of the three-year action plan then could also be *the Development and implementation of a national workforce development plan which aims to ensure the cultural competence of all staff in mainstream support service providers which service Aboriginal and Torres Strait Islander children and families within each state and territory.*¹¹ This is consistent with and reinforced by Recommendation 33 of the Report of the Protecting Victorian Vulnerable Children Inquiry.¹² This could be initiated through the inclusion of staff and service cultural competence within the National Analysis of workforce trends and approaches impacting on Australia's child protection workforce project that FaHCSIA is currently undertaking.

Another fundamental component of the action plan that responds to the pressing service delivery issues detailed above concerns broadscale capacity development of Aboriginal and Torres Strait Islander organisations and development of the Aboriginal and Torres Strait Islander workforce. *One action could explore pioneering strategies that build the capacity of these organisations to address gaps in service provision, including through innovative partnership-based approaches. A nationwide audit of child and family service provision by Aboriginal and Torres Strait Islander agencies would be a comprehensive first step to this process, identifying resource, organisational, geographical and sector capacity gaps.* The approach taken by the Aboriginal Child, Family and Community Care Secretariat and the Association of Children's Welfare Agencies in NSW, supported by the NSW Department of Families and Community Services, to build the capacity of Aboriginal out-of-home care services through facilitated partnerships between mainstream service providers and

¹⁰ SNAICC has developed a framework for genuine partnership development that could inform this approach: SNAICC (2012) *Opening Doors through Partnerships: Practical approaches to developing genuine partnerships that address Aboriginal and Torres Strait Islander Community Needs*, SNAICC.

¹¹ Productivity Commission (2011) *Early Childhood Development Workforce*, Research Report, Melbourne, Recommendation 14.8.

¹² "Aboriginal cultural competence should be a feature of the Department of Human Services standards for community service organisations. Further, the performance of agencies in relation to cultural competence should be an area of specific focus in the next cycle of community service organisation registration" Ch12, p.297, available at <http://www.childprotectioninquiry.vic.gov.au/report-pvvc-inquiry.html>.

Aboriginal communities and organisations could be used as a model of good practice. This aspect was integrated into the Victorian Inquiry Report (see p.310).

This could be complemented by *agreement on a coordinated workforce strategy that builds on workforce plans in each jurisdiction, as part of the broader Early Years Development Workforce Development Strategy agreed by COAG*. This would give priority to placing suitably qualified staff in Indigenous-focused services and include a specific plan to build the Indigenous early childhood education and care workforce.¹³

(d) Leadership and voice

Mechanisms for participation, voice and leadership development of Aboriginal and Torres Strait Islander peoples are prerequisites for sustainable improvements in child safety and well-being. The National Framework has a strong role in strengthening the foundations for unified leadership on issues central to its objectives.

Building on the first plan, an imperative action would be to *prioritise establishment of a national children's commission, with an Aboriginal and Torres Strait Islander Office and/or Co-Commissioner, to develop a culturally appropriate national agenda to redress critical human rights concerns impacting Indigenous children*.

2.2 Cultural and other support to children in out-of-home care

Each Australian state and territory has legislation enacting the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) with varying definitions and compliance requirements. The principle seeks to maintain connection to family and culture for Aboriginal and Torres Strait Islander children in out-of-home care by:

- (a) Prioritising placement of Aboriginal and Torres Strait Islander children in order, with family, community, or other Aboriginal and Torres Strait Islander families, where such placement is safe and in the best interests of the child;
- (b) Requiring consultation with Aboriginal and Torres Strait Islander organisations about the child's placement; and
- (c) Ensuring that Aboriginal and Torres Strait Islander children in out-of-home care are supported to maintain connection to family and culture.

In many jurisdictions there is a lack of clear data on compliance with the ATSICPP, and a lack of effective compliance mechanisms. Essentially the ATSICPP suffers from a series of significant implementation shortfalls that result in a large number of Aboriginal and Torres Strait Islander children continuing to be dislocated from family and culture, exacerbating the inter-generational effects of the Stolen Generations. For example, a recent report of the Queensland Commission for Children and Young People found that child protection workers could only demonstrate consideration of the hierarchy of placement options in 26% of cases; and Aboriginal and Torres Strait Islander agencies had been consulted in only 62% of cases, despite the legislative requirement to do so.¹⁴ Research suggests that the third component of the ATSICPP, maintaining connection to culture, is the greatest area of non-compliance.¹⁵

¹³ Productivity Commission (2011) *Early Childhood Development Workforce*, Research Report, Melbourne, Recommendation 14.2, pp. liv – lv, and 356 – 363, and 373 – 375.

¹⁴ Commission for Children and Young People and Child Guardian (2012) *Indigenous Child Placement Audit Report 2010/11*.

¹⁵ Libesman, T (2011) *Cultural Care for Aboriginal and Torres Strait Islander Children in Out of Home Care*, SNAICC.

This issue cannot be ignored. The basis for change is there but requires renewed efforts on a strategy to make it happen. The National Framework is the clear vehicle through which to action this national issue. *A national strategy for full compliance with the Aboriginal and Torres Strait Islander Child Placement Principle*, consistent with recommendations from the United Nations Committee on the Rights of the Child,¹⁶ would refocus energy and commitment for implementation and refine strategies to overcome current stagnation. While child protection is a state issue, the National Framework for the Protection of Australia's Children 2009-2020 provides all of Government commitment to redress this issue. This strategy could build on achievements of the first 3-year plan, with a *clear entry point through Standard 3 of the National Out-of-Home Care Standards*. A comprehensive strategy could be framed by a *Productivity Commission Inquiry* into the status of implementation of the ATSI CPP, identification of what is working and why, outcomes being achieved through the ATSI CPP and identification of implementation blockages.

The three year action plan could take up a number of legal, policy and practice gaps that contribute to weak outcomes from the ATSI CPP. Priority areas could include:

- (a) *Good practice support to encourage states to improve culturally appropriate child protection decision-making supported by Aboriginal Child Specialist Advice Services.* The current situation varies across jurisdiction, with no legislative requirement to consult at all in the Northern Territory. Good practice models of properly empowered, capacitated and resourced services equipped to provide cultural advice and support in child protection decision-making could be promoted with initial bonus funding support for the establishment of programs.

Promising approaches that could be drawn on to expand and enhance across other jurisdictions include the Aboriginal Child Specialist Advice Support Service (ACSASS) in Victoria, and the Protecting Aboriginal Children Together (PACT) pilot in New South Wales. The Victorian Inquiry recommended establishment in Victoria (Recommendation 34, p.309).

- (b) *The inclusion of a study on the potential relevance, benefits, risks, and learnings from best practice internationally on self-governance models for Indigenous child protection decision-making* would be an important contribution to inform development of the child protection systems in Australia. Such a study could identify good practice examples in the implementation of self-governance and control and set out possible models applicable for the Australian context. This could be followed by development of state plans for the delegation of care and control of Aboriginal and Torres Strait Islander children in care. This action could draw from the recommendations for the delegation of control to Aboriginal communities recommended in the Victorian Inquiry Report.¹⁷
- (c) *Comprehensive training program to support child protection decision-makers in implementing the ATSI CPP and development of tools for enhanced accountability.* A relevant body, such as the national children's commission, or in the interim State children's commissions or SNAICC could be tasked to monitor and report on compliance. Clear compliance data in each jurisdiction could support detailed national compliance data reporting by the Australian Institute of Health and Welfare.

¹⁶ Committee on the Rights of the Child (2005) *Concluding Observations: Australia*, UN Doc CRC/C/15/Add.268, p.39.

¹⁷ Victorian Inquiry Report, Recommendation 36, p.310.

- (d) Persistent removal of Aboriginal and Torres Strait Islander children from their culture through out-of-home care placements has a debilitating effect on children and on the evolution and strength of Aboriginal and Torres Strait Islander cultures in Australia. To enable good practice in cultural care, there is a strong need to ensure that all Aboriginal and Torres Strait Islander children have a cultural support plan that is tailored to their individual needs and implemented with the support of carers, out-of-home care agencies and government child protection services. Currently plans are only mandated in Victoria. While most non-Indigenous agencies recognise the need to support the development and implementation of cultural plans to support children, 'the challenge is to translate this good will into sustained commitments, processes and resources.'¹⁸

A priority action is recommended for the three-year action plan to implement Standard 10 of the National Out-of-Home Care Standards, which requires that 'children and young people in care are supported to develop their identity, safely and appropriately, through contact with their families, friends, culture, spiritual sources and communities and have their life history recorded as they grow up.' An appropriate initial action would be to *identify, encourage and support good practice among states and responsible services to implement this standard, including canvassing the measures necessary to create a supportive environment for good practice in cultural support planning.* Measures include: legislative reform; funding and accountability for services and government in creating, implementing and monitoring cultural support plans; and improving the quality and availability of culturally appropriate resources nationally to support carers and care services.

Resourcing and capacitating Aboriginal and Torres Strait Islander out-of-home care agencies to support foster and kinship carers to develop and implement cultural support plans, as well as including data on cultural support plans for reporting by the Australian Institute of Health and Welfare, would also assist.

- (e) Carers carry significant burden in assuming care for children and require additional support to ensure sustainability and necessary support for the wellbeing of the child. An important action for consideration in the plan is national *harmonisation of Government financial and non-financial supports for foster and kinship* to ensure carer financial supports reflect the actual costs of care. *Also a major gap for redress is the development of a model to support family carers, specifically in relation to Aboriginal and Torres Strait Islander communities.*

3. Overview of priorities and Link to National Framework Outcomes

Proposed Priority Actions	National Framework Outcome
<i>Development of a National Partnership Agreement in relation to progressing the Closing the Gap plan for Aboriginal and Torres Strait Islander children and their families</i>	5 primary 1 secondary
<i>Child abuse prevention initiative with funding to develop, promote and deliver culturally-based protective behaviours programs for Aboriginal and Torres Strait Islander children, young people, families and community leaders</i>	1 5,6

¹⁸ Libesman, T (2011) *Cultural Care for Aboriginal and Torres Strait Islander Children in Out of Home Care*, SNAICC.

<i>Establish a new program of culturally appropriate intensive family-based supports for families at-risk of child protection intervention, building on promising approaches adopted in Victoria, New South Wales, and Queensland</i>	2,3 5
<i>Initiate an innovative program that offers targeted support to budget based funded services that provide place-based integrated services to children and families.</i>	2 3, 5
<i>Consider integration of a partnership framework into all Government service contracts and tenders to require a genuine partnership with an appropriate Aboriginal and Torres Strait Islander service for any service provision targeted at Aboriginal and Torres Strait Islander peoples</i>	2, 3, 4, 5
<i>Development and implementation of a national workforce development plan which aims to ensure the cultural competence of all staff in mainstream support service providers which service Aboriginal and Torres Strait Islander children and families within each state and territory</i>	2, 3 4, 5
<i>Explore pioneering strategies that build the capacity of Aboriginal and Torres Strait Islander organisations to address gaps in service provision, including through innovative partnership-based approaches. A nationwide audit of child and family service provision by Aboriginal and Torres Strait Islander agencies would be a comprehensive first step to this process, identifying resource, organisational, geographical and sector capacity gaps</i>	2, 3, 4, 5
<i>Agreement on a coordinated workforce strategy that builds on workforce plans in each jurisdiction, as part of the broader Early Years Development Workforce Development Strategy agreed by COAG</i>	2 3, 5
<i>Prioritise establishment of a national children's commission, with an Aboriginal and Torres Strait Islander Office and/or Co-Commissioner, to develop a culturally appropriate national agenda to redress critical human rights concerns impacting Indigenous children</i>	5 1,2,3,4,6
<i>A national strategy for full compliance with the Aboriginal and Torres Strait Islander Child Placement Principle, as a means to implement Standard 3 of the National Out-of-Home Care Standards. A comprehensive strategy could be framed by a Productivity Commission Inquiry</i>	4 5
<i>Good practice support to encourage states to improve culturally appropriate child protection decision-making supported by Aboriginal Child Specialist Advice Services</i>	4 3,5
<i>A study on the potential relevance, benefits, risks, and learnings from best practice internationally on self-governance models for Indigenous child protection decision-making</i>	4 3,5
<i>Comprehensive training program to support child protection decision-makers in implementing the ATSI CPP and development of tools for enhanced accountability</i>	4 3,5
<i>Identify, encourage and support good practice among states and services to ensure universal, adequate and enforceable cultural care planning, through Standard 10 of the National Out-of-Home Care Standards</i>	5 4
<i>Harmonisation of Government financial and non-financial supports for foster and kinship to ensure carer financial supports reflect the actual costs of care. Also a major gap for redress is the development of a model to support family carers, specifically in relation to Aboriginal and Torres Strait Islander communities.</i>	4 5