



SNAICC

National Voice for our Children

**Baseline Analysis of Best Practice Implementation of the
Aboriginal and Torres Strait Islander Child Placement Principle
Australian Capital Territory**

April 2018

Introduction

This resource presents a baseline analysis of the progress of the Australian Capital Territory in implementing the full intent of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) with reference to the best practice approach as set out in Understanding and Applying the Aboriginal and Torres Strait Islander Child Placement Principle – A Resource for Legislation, Policy, and Program Development.

The baseline analysis considers the alignment of the five elements of the ATSICPP – prevention, partnership, placement, participation, and connection – with five interrelated system elements – legislation, policy, programs, processes, and practice. However, as the analysis reveals, there is significant interconnectedness and intersectionality of both the ATISCPP and system elements. Further, piecemeal compliance with a single or even several elements does not, and cannot, lead to the full realisation of the ATSICPP. Instead it is clear that holistic processes of reform are required to ensure full implementation and compliance with the ATSICPP's intent to keep Aboriginal and Torres Strait Islander children safely connected to their families, communities, cultures, and country.

It is important to note that the baseline analysis has a particular focus on child safety, protection, and family support service systems and the work of government departments with primary responsibility for those systems, and so has some limitations to its scope. For example, the prevention element of the ATSICPP covers a broad scope of systems and multiple departmental responsibilities for universal service provision in areas such as health, education, and disability; however, these broader support systems are largely outside the scope of this review. Another important caveat is that the analysis is based on available documentation gathered through a desktop review and requests to state and territories for relevant documentation. State and territory governments have had opportunity to input to each baseline as have Aboriginal and Torres Strait Islander sector leaders.

The development of this resource – and equivalent analyses for each state and territory jurisdiction – has been guided by the work of the Aboriginal and Torres Strait Islander Working Group established under the *Third Three-Year Action Plan 2015-2018* for the *National Framework for Protecting Australia's Children 2009-2020*. The Working Group is tasked with ensuring implementation of the ATSICPP throughout the Third Action Plan and as part of this work seeks, through the current analyses, to establish the current status of implementation in each state and territory in order to track and measure progress towards enhanced implementation.

Overview – Australian Capital Territory

The Australian Capital Territory (ACT) demonstrates some alignment with elements of the ATSI CPP in its legislation, most notably in the strong alignment of the placement hierarchy with a best practice approach. There are also some promising recent initiatives with *'Our Boori Our Way'*, the current independent review of the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care (OOHC), and investment in new early intervention services under the *A Step Up for Our Kids Strategy 2015-2020*. However, there are significant aspects of legislation not aligned with best practice, including the omission of any recognition, promotion or enablers of the right to self-determination. Stability provisions are also contrary to the ATSI CPP, presuming long-term guardianship within 1-2 years and reversing the onus of proof so that parents or carers are required to demonstrate the likelihood of reunification/restoration without any requirement for family support to affect reunification.

The lack of recognition of the right to self-determination is reflected throughout the ACT system, with a lack of evidence of quality practice in family and representative participation in decision-making, and very limited engagement or partnership with Aboriginal and Torres Strait Islander Community Controlled Organisations (ACCOs) in service design or delivery. The ACT is the only jurisdiction however to have an Aboriginal and Torres Strait Islander Elected Body, which aims to support the ACT Government to develop policy and provide services relevant to the needs of people within the community as well as advocating for accountability, transparency and effectiveness.¹

In terms of participation in child protection decision-making, the legislative requirement that decision-makers consider submissions of Aboriginal or Torres Strait Islander people or organisations is limited to where Children and Youth Protection Services, Community Services Directorate (the Directorate) identifies such people or organisations as providing ongoing support to the child or family. This limitation is compounded by the lack of any specific requirement to actively seek views and participation, and significantly, the lack of funding for ACT ACCOs to provide child protection specific services. Even in recent reform documents, there is no clear indication that the participation of ACCOs is recognised or prioritised.

Child and family participation in decision-making is similarly limited with no resourcing of ACCOs to support family participation. A family group conferencing pilot for Aboriginal and Torres Strait Islander children and families has recently commenced and is a promising move towards the greater inclusion of families and communities in decision-making.

The ACT Government spent only 9.2 per cent of its total child protection investment on family support services and intensive family support services in 2015-2016. In line with the ACT Government's commitment to 'increase expenditure at the front end of the system',² a significant increase in the resourcing of ACCOs to support children and families is warranted.

As part of the ACT Government's broader OOHC system reform strategy, the Government announced an independent review into the over-representation of Aboriginal and Torres Strait Islander children in OOHC. The review's primary focus will be to 'inform system-wide improvements that will fully realise the [ATSI CPP] in the ACT'. Additionally, case planning for all Aboriginal and Torres Strait Islander children will be reviewed to ensure culturally appropriate placements and supports are ensuring cultural connections. Consistent with a partnership approach, the Government states that it will engage the Aboriginal and Torres Strait Islander community in the design of the review.³

While the review and its intent is promising, currently, in the ACT at 30 June 2016, 26.34 per cent of all children in OOHC were Aboriginal and Torres Strait Islander, making Aboriginal and Torres Strait Islander children 12.5 times more likely than non-Indigenous children to be in OOHC. This means that at that time, 7.76 per cent of all Aboriginal and Torres Strait Islander children in the ACT were in OOHC. In terms of placement, only 59.4 per cent of Aboriginal and Torres Strait Islander children in OOHC were placed with Aboriginal and Torres Strait Islander kin or other family. These statistics illustrate a system that has a long way to go to realise compliance with the full intent of the ATSI CPP. The current reform agenda and the independent review provide important opportunities to address the system's deficiencies in legislation, policy, programs, processes and practice. Genuine engagement and partnership with the ACT Aboriginal and Torres Strait Islander community controlled sector would be a critical starting point for this process.

LEGISLATION

Refers to the *Children and Young People Act 2008 (ACT)* unless otherwise stated

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>ACT legislation contains several provisions recognising the role of family, responsibility of the State to support family, and importance of cultural identity and connections for children – as objects and principles of the Act as a whole (s7, 9), and in relation to the care and protection chapters in particular (s350).</p> <p>‘Family member’ is given a broad definition that includes a person who has responsibility for a child in accordance with traditions and customs of the child’s Aboriginal or Torres Strait Islander community (s13(b)).</p> <p>In relation to Aboriginal and Torres Strait Islander children, decision-makers must consider the need to maintain connections with ‘lifestyle, culture, and traditions’ (s10). Best interests considerations in the care and protection chapters include likely effect of separation from parents or other persons, practicalities of maintaining contact, and for Aboriginal and Torres Strait Islander children – the ‘high priority’ of protecting/promoting cultural and spiritual identity and development, by wherever possible, maintaining and building connections to family, community, and culture (s349).</p> <p>The Director-General can only take Emergency Action if they believe on reasonable grounds that the child is in need of emergency care and protection. The Director-General can only make an application for a care and protection order if it has formed the view on reasonable grounds that the child is in need of care and protection. As a general principle, the court should only make an</p>	<p>There is no provision recognising or upholding the right to self-determination within the Act. Section 7 states as an object of the Act – ‘ensuring that Aboriginal and Torres Strait Islander people are included and participate’ in promoting children’s wellbeing, care, and protection.</p> <p>Representative participation translates in the Act as a requirement that decision-makers ‘must’ consider ‘submissions made by any Aboriginal or Torres Strait Islander people or organisations identified by the Director General as providing ongoing support services [to the child or family]’ (s10). However, there are no requirements to ensure such a submission is sought or obtained.</p> <p>A similar requirement applies to enduring parental responsibility provisions – such a provision can only be made after several matters are satisfied, including the provision of a written report by an Aboriginal or Torres Strait Islander person or organisation that has provided ongoing support to the child/family (s482) (see ‘Connection’).</p> <p>There are several provisions that allow for the Director General to delegate functions (s23) and powers, such as parental responsibility (s503A), however, it is not apparent that this has been designed for the delegation of case management, custody, and guardianship functions and powers to ACCOs.</p> <p>The ACT is the only jurisdiction to</p>	<p>ACT legislation does not use the term ATSICPP. Instead it refers to <i>Priorities for placement with an out-of-home carer – Aboriginal or Torres Strait Islander child or young person</i> (s513).</p> <p>Section 513 aligns strongly with the best practice approach to the placement hierarchy – if an Aboriginal or Torres Strait Islander child is to be placed in OOHC, the child ‘must be placed with the first of the [following] options’ that ‘is available’, ‘to which the child does not object’, and ‘is consistent with any ... cultural plan in force’. The options in order are – kinship carer; foster carer who is a member of the child’s Aboriginal or Torres Strait Islander community in a relationship of responsibility in accordance with local custom and practice; foster carer who is a member of the child’s community; an Aboriginal or Torres Strait Islander foster carer; and a non-Indigenous foster carer who the Director General reasonably believes is sensitive to the child’s needs and is capable of promoting ongoing contact with family, community, and culture, and if family reunion or continuing contact is a consideration, lives near the child’s Aboriginal or Torres Strait Islander family or community.</p>	<p>ACT legislation values and seeks to enable child and family participation in decision-making. In determining a child’s best interests, a decision-maker must consider the views and wishes expressed by a child (s349(1)(b)). A child must be given ‘a reasonable opportunity’ to express views and wishes personally or by a representative (s352). Section 513(1)(b) also states that the child must not ‘object’ to the placement. To enable child and family participation, a decision-maker must endeavour to ensure families understand decisions, the decision-making process, and that they may take part in the decision-making process and have their views and wishes heard (s351).</p> <p>The Act provides for family group conferencing (FGC) in an effort to ‘encourage the child ... and family ... to take part in decisions’ (s74). A FGC may be arranged by the Director General to promote a child’s wellbeing and make arrangements and agreements (s80). This may occur at the early stage of a child protection report (s361(3)(f) – see ‘Prevention’).</p> <p>The facilitator of a FGC is appointed by the Director General (s78), may consult with ‘someone with knowledge of a particular culture’ (s79), and must invite the child (if satisfied that the child can understand and take part), parents (unless not in the child or parent’s best interests), and any person ‘with an interest in, or knowledge of, the care, wellbeing, or development of the child’ who the</p>	<p>The Aboriginal and Torres Strait Islander children and young people principle (s10) supports the need for connection with lifestyle, traditions and culture of their community.</p> <p>The Care and Protection Principles (s350) underpinning decision making, recognise as a high priority, the need to protect and promote a child’s cultural and spiritual identity through a child’s right to cultural connections to family, community and culture (s350(1)(g))</p> <p>The Act provides for contact provisions to be made on interim and final orders (s422, 433). A care plan is required for a child who is or is proposed to be subject to an interim or final order (s455). It should address needs, and for Aboriginal and Torres Strait Islander children ‘the preservation and enhancement of identity’ (s455(b)(ii)). This cultural plan can be either an attachment to, or integrated into, their care plan. Where there are ongoing care proceedings, the cultural plan is to be lodged with the ACT Childrens Court along with the child’s care plan.</p> <p>Where stability proposals are required, adoption cannot be proposed for an Aboriginal and Torres Strait Islander child unless additional prerequisites of s39G <i>Adoption Act 1993</i> (ACT) have been satisfied (s456(5)) (including consideration of adoption by an Aboriginal or Torres Strait Islander carer, need to maintain cultural</p>

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<p>order for a child if it considers that 'the making of the order would be better for the child ... than making no order at all' (s350(1)(f)). Other provisions require that an order be 'necessary' and in the child's best interests (amongst other matters) (see s464). This language arguably provides less restriction on removal than identified best practice which would restrict removal to where there is an 'unacceptable risk of harm' or as a 'last resort'.</p> <p>In terms of early intervention supports, the Director General's functions include 'providing, or assisting in providing, services directed to strengthening and supporting families' (s22(1)(a)) and on receiving a child protection report the Director General may make a referral to a government or community-based service, provide or arrange support services, or arrange family group conferencing (s361(3)(d)(e)(f)).</p>	<p>have an Aboriginal and Torres Strait Islander Elected Body, established under the <i>Aboriginal and Torres Strait Islander Elected Body ACT 2008 (ACT)</i>. It supports the ACT Government to develop policy and provide services relevant to the needs of people within the community as well as advocating for accountability, transparency and effectiveness. It consists of seven people representing the interests and aspirations of the local Aboriginal and Torres Strait Islander community. The objects of the ACT include ensuring the maximum voice and participation of Aboriginal and Torres Strait Islanders in decisions that affect them.⁴</p>		<p>facilitator believes should attend (s83). If the child does not take part, the facilitator is to take reasonable steps to ascertain, present, and ensure consideration of the child's views (s83(2)). No persons may be legally represented in a FGC (s83(4)), but may have a support person present if the facilitator considers this support person to be appropriate (s83(5)). The Pilot program consists of two identified Aboriginal and Torres Strait Islander FGC Facilitator positions. The Directorate has partnered with Curijo Pty Ltd, an Aboriginal operated organisation certified with Supply Nation, to undertake the pilot.</p> <p>While there are no specific requirements for any Aboriginal and Torres Strait Islander person or organisation to participate, this may be identified by the family in collaboration with the Aboriginal FGC Facilitator. A decision at a FGC may form an agreement to be implemented (s85-90).</p> <p>In terms of court proceedings, the <i>Court Procedures Act 2004 (ACT)</i> provides that parents must attend proceedings (s71) and a child's right to participate is encouraged, including by requirements that the court (s74B) or director general (s74A) ensure a child understands proceedings. Further, a court may only hear a proceeding if the child has a lawyer or the court is satisfied that the child has had a reasonable opportunity to obtain a lawyer and their best interests will be adequately represented (s74G).</p>	<p>connections, and seeking and considering views of Aboriginal and Torres Strait Islander persons or organisation). A stability plan for a child in OOHC may include a proposal for restoration that states the changes needed for safe restoration (s456(3)(b)(ii)).</p> <p>In the development of a care plan, the persons to be 'consulted' include the child, person with daily care responsibility, interested Aboriginal or Torres Strait Islander people, and any Aboriginal or Torres Strait Islander people or organisation identified by the Director General as providing ongoing support services to the child/family (s457).</p> <p>There is a presumption that a long-term parental responsibility provision is in the best interests of a child under 2 years of age in certain circumstances (in OOHC for 1 year) and other children in certain circumstances (in OOHC for 2 years). To rebut this, the parent or other person seeking care must show likelihood of resumption of care during the extension of a short-term parental responsibility provision (s477). The placement of the onus on parents/carers is at odds with practice in other jurisdictions and long-standing practice requiring the Directorate as model litigant to prove that a specific order is in a child's best interests.</p> <p>An enduring parental responsibility provision gives all care and responsibility to a stated person until a child is 18 years (s481). This provision can only be made after, amongst other matters, 1 year of</p>

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				care by the stated person, no one with parental responsibility (parents) is willing/able to exercise daily or long-term care responsibility, and for Aboriginal and Torres Strait Islander children, an Aboriginal or Torres Strait Islander person or organisation that has provided ongoing support has been given reasonable opportunity to provide a written report (s482).

POLICY

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>The Aboriginal and Torres Strait Islander Elected Body and the ACT Government have a ACT Whole of Government Agreement 2015-2018 with the theme of Strong Families and key priority areas Cultural Identity, Feeling Safe and Connecting the Community.⁵</p> <p>The ACT has an over-arching <i>ACT Children and Young People's Commitment 2015-2025</i> that has a vision of a whole-of-government and whole-of-community approach to promoting the rights of children.⁶ A priority of this Commitment is strengthening families.</p> <p>The OOHc strategy, <i>A Step Up for Our Kids 2015-2020</i> commits investment in new services over 5 years to keep Aboriginal and Torres Strait Islander children safely at home or to restore them to their birth family.⁷ The strategy states its 'strong focus on keeping children at home wherever possible'.⁸ The strategy specifically states that it will 'shift the pattern of investment to increase expenditure at the front end of the system'.⁹</p> <p>In relation to Aboriginal and Torres Strait Islander children, the strategy states that 'it will offer alternative service options for keeping Aboriginal and Torres Strait Islander children at home with birth families'.¹⁰</p> <p>While the strategy does also note the importance and preference for safe reunification where possible, it also confirms legislative provisions that presume long-term parental responsibility provisions should</p>	<p><i>A Step Up for Our Kids</i> proposes that OOHc providers assume case management for children on long-term orders and that long-term care decisions will be delegated to these agencies. Similarly, kinship care of children on long-term orders will be outsourced to non-government providers.¹³ However, there is no specific commitment for ACCO case management in line with best practice, and further, there is no plan for a regime where custody and guardianship for Aboriginal and Torres Strait Islander children is delegated to ACCOs.</p> <p>Importantly, the strategy proposes the engagement of cultural advisers to provide independent advice regarding entry to care, placement decisions, and cultural plans for Aboriginal and Torres Strait Islander children. After trying a number of approaches, specifically a panel of cultural advisors and then two part time cultural advisors with more direct access into the child protection services, a full time Team Leader of the cultural services team has been employed by the Directorate as a more sustainable approach.¹⁴</p> <p>This does mean however that there is no longer an independent role.</p> <p>The Directorate feels that the need for independent cultural advisors has been superseded by the <i>Our Booris Our Way review</i>, which will provide an independent review of the 350 Aboriginal and Torres Strait Islander children currently engaging with the child protection system.¹⁵</p> <p>The ACT government states that</p>	<p><i>A Step Up for Our Kids</i> states that 'the Aboriginal and Torres Strait Islander Child Placement Principle will continue to guide decisions about placements ... [and that] for most [children] this will mean a kinship care placement with extended family'.¹⁸ This indicates commitment to the high-priority placement with kin and family.</p> <p>The review into over-representation of Aboriginal and Torres Strait Islander children in OOHc proposes to review case planning to ensure 'culturally appropriate placements'.¹⁹ Again, this indicates commitment to high-priority placements.</p>	<p>The ACT government has committed to a family group conferencing pilot specifically for Aboriginal and Torres Strait Islander families. This aims to 'improve outcomes for families and reduce the number of Aboriginal and Torres Strait Islander children in care'. Further, 'conferencing will provide families and extended family with a role in the decision-making process'.²⁰</p>	<p><i>A Step Up for Our Kids – Out-of-Home Care Strategy 2015-2020</i> commits to 'maximising' the connections of children in OOHc to family, community, and culture. It states that this will involve 'independent cultural advice from Aboriginal and Torres Strait Islander community members to support children in care'.²¹ However, it now appears that it is the cultural services team who sit within the Directorate, who provide this advice.²²</p> <p>In the absence of an express reference to 'cultural plan' in legislation, the Directorate has stated that cultural plans are developed for all Aboriginal and Torres Strait Islander children in the care of the Director-General.²³ This is drawn from section 455b of the Act which requires care plans to include a proposal for the preservation and enhancement of their identity as an Aboriginal and Torres Strait Islander young person.</p> <p>The review into over-representation of Aboriginal and Torres Strait Islander children in OOHc proposes to review case planning to ensure supports are in place so that children can 'maintain connections with the culture and traditions of their community'.²⁴</p>

POLICY

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>be made within 1-2 years – ‘it is felt that 1 year is a reasonable period for birth parents to address the issues that brought their child into care’.¹¹ In June 2017, the ACT government announced an independent review into the over-representation of Aboriginal and Torres Strait Islander children in OOHC in the ACT.¹²</p>	<p>as part of the recently announced review into the over-representation of Aboriginal and Torres Strait Islander children in OOHC, Aboriginal and Torres Strait Islander communities and key organisations will be engaged in the development and design of review methodology.¹⁶ Currently, local and national ACCOs sit on the review’s Steering Committee. Another promising move is the signing of the Family Matters Statement of Commitment by the Minister for Disability, Children and Youth in September 2017. The Directorate has pointed to the Aboriginal and Torres Strait Islander Elected Body, established in 2008, as an example of a way Aboriginal and Torres Strait Islander community members contribute to and shape policy in the ACT.¹⁷.</p>			

PROGRAMS

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>As set out above in 'Policy', <i>A Step Up for Our Kids</i> commits to a new service system of intensive, individualised support for families to prevent children coming into care or return them home as soon as it is safe to do so.</p> <p>As listed in the strategy, they are – placement prevention services (intensive in-home practical support where children are at high risk of entering the statutory care system); reunification services; mother and baby unit (supervision and support in a community-based setting); supported contact services (to coach and mentor parents); and parent-child interaction programs (to improve parent-child interactions).²⁵ The ACT Government has published the <i>A Step Up for Our Kids Baseline report</i> which outlines the extent to which these services have been rolled out and provides early evaluation data where it is available.²⁶</p> <p>It appears that these new services are in addition to existing services such as the Aboriginal and Torres Strait Islander Family Support Program and integrated Indigenous Service Delivery program.²⁷</p> <p>There is no indication that any of these services will be ACCO-designed (or co-designed) or delivered. Already, a mainstream community services organisation has been chosen as the provider of new services under Strengthening High Risk Families.²⁸</p> <p>As at September 2017, since</p>	<p>As set out above in 'Policy', there are several initiatives or programs that have the potential to realise genuine partnership with Aboriginal and Torres Strait Islander communities. This is promising but it is still important to note that there are no partnerships with ACCOs and the community to date. The OOHC and kinship case management by non-government providers presents an opportunity for ACCO case management, and expansion to ACCO custody and guardianship. The engagement of independent cultural advisers regarding various significant issues and decisions for Aboriginal and Torres Strait Islander children was promising, however this role now sits with Team Leader of the cultural services team in the Directorate. The cultural services team is involved in providing advice and working with other Directorate staff in making decisions relating to case management and engagement, placement, kinship assessment, family finding, family contact arrangements, and cultural planning.³³ However, it is not independent and not community-based. These issues will nevertheless be subject to the <i>Our Boori Our Way</i> review.</p> <p>The <i>A Step Up for Our Kids</i> strategy proposes that contracts with non-government service providers must demonstrate how they will deliver culturally proficient services. While promising, this is not aligned with best practice in ACCO engagement to assess,</p>	<p>The outsourcing of support for kinship care is an initiative that seeks to improve access and level of supports for kinship carers. This has been described as a measure that will support kinship carers of Aboriginal and Torres Strait Islander children.³⁴</p> <p>As noted the cultural services team within the Directorate advises the Directorate on placement decisions.</p>	<p>The family group conferencing pilot for Aboriginal and Torres Strait Islander children and families is being delivered in partnership with Curijo Pty Ltd, an Aboriginal operated organisation certified by Supply Nation.³⁵</p> <p>The model of family group conferencing will seek to ensure all members of a child's extended family are contacted and encouraged to be involved – 'this process is considered in line with Aboriginal and Torres Strait Islander cultural values of family and community responsibility'.³⁶</p> <p>General legal services and Aboriginal and Torres Strait Islander legal services may provide government-funded legal advice and representation to children, parents and family members in child protection matters.</p>	<p>The cultural services team within the Directorate provide advice on various matters including cultural planning.³⁷</p> <p>It is the role of the care team to preserve a child's links to cultural identity. The care team can consist of carers, extended family, the Directorate and any supports and services that are working with the child, family or carer.³⁸</p> <p>As part of the <i>A Step Up for Our Kids</i> strategy, in August 2016, a new Advocacy Support Service for Foster and Kinship Carers was established. The service aims to provide advocacy and advice for foster and kinship carers in a way to support their caring role. It operates separately from the Directorate, government, and OOHC providers.³⁹</p>

PROGRAMS

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>commencing services, mainstream provider, Uniting, has supported 169 families, of which 57 identify as Aboriginal and Torres Strait Islander families.²⁹</p> <p>In relation to reunification, relevant supports may continue for 18 months despite the legislative and policy presumption for long-term parental responsibility provisions within 1-2 years.³⁰ A Reunification Panel will be established to oversee reunification efforts and monitor progress of cases.³¹ There are no available details about the membership of the Panel and whether Aboriginal and Torres Strait Islander community members and leaders have a say or monitor cases involving Aboriginal and Torres Strait Islander children.</p> <p>Through the Directorate, the ACT administers 3 Child and Family Centres – in Gungahlin, Tuggeranong, and West Belconnen. All of these centres provide a range of services to support Aboriginal and Torres Strait Islander children and families, however, it does not appear that any of these services are community-controlled.</p> <p>The Directorate also points to the Mother and Baby Unit as a key preventative and early intervention service – supports are available through the Mother and Baby Unit at Karinya House for pregnant women, mothers and families whose children are at risk of entering care. Since the commencement of the service in January 2016, Karinya House has supported 33 families, with 21 of these achieving their goals as at 30 June 2017.³²</p>	<p>train, and review cultural competency of such organisations, and far removed from best practice of ACCOs being resourced and prioritised to design and deliver services and case management.</p> <p>See also ‘Participation’ re family group conferencing pilot for Aboriginal and Torres Strait Islander children and families.</p>			

PROCESSES

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>The Directorate has not to date provided process related documents such as guidelines, procedures, or child protection practitioner manuals online. However, The ACT Government has made a commitment through <i>Open Access</i> to make policies available on line from 1 January 2018. The Directorate has commenced uploading policies and will continue to do so until they are publicly available.⁴⁰ This will assist understanding of processes that may align with best practice implementation and compliance with the ATSICPP.</p> <p>There are no available documents that set out processes for early identification of children as Aboriginal and/or Torres Strait Islander.</p> <p>It is not apparent that there are alternative referral pathways at notification, including to ACCO-run support services.</p> <p>Further, there is no information available about whether culturally safe risk assessment tools are in use that involve family and community participation in assessing harm and conducting safety planning.</p>	<p>No clear processes are available to indicate how Aboriginal and Torres Strait Islander community and organisation participation in decision-making will be enabled.</p>	<p>There are no available documents that set out processes to guide and enable best practice placement decision-making by the Directorate.</p> <p>The <i>'Working together for kids'</i> series is a practical, easy to read set of guides that outline the typical child protection process in the ACT. These guides have been developed specifically for parents and families that become involved with Child and Youth Protection Services and are available on the public website.⁴¹</p>	<p>The cultural services team aim to support families to have a voice within the child protection system and will be enhanced through the FGC pilot.⁴²</p> <p>There is already some detail available about the family group conferencing pilot for Aboriginal and Torres Strait Islander children and families which commenced late last year. The meeting will be organised and chaired by an Aboriginal and Torres Strait Islander trained facilitator. Persons who will be invited to attend include the child (if 'old enough' to participate), parents and any other guardians, extended family such as grandparents, aunts, uncles, family friends, and neighbours who have a significant relationship with the child, and professionals who have knowledge of the child and parents.</p> <p>The stages of the conference will be – sharing the story; family yarning (private discussion amongst family members only); and moving forward, which seeks to reach a decision that can be implemented and signed off by all parties.⁴³</p> <p>The Directorate states that the process centres on the family and will enable family members to identify who in the family can be best placed to provide care and support to the child and the parents.⁴⁴</p> <p>In relation to children's views, there is now an internal requirement to record the views and wishes of children in the Departmental information management system.⁴⁵</p>	<p>Processes of care planning can be incidentally identified in the <i>Foster Carer and Kinship Carer Guide</i>. This document states that a child should be involved, and the child's views should be considered in the development of a care plan. Parents should also be involved, including in the review of a care plan – reviews, including review of the cultural plan, to occur every 3 months in the first year and then less often.⁴⁶</p>

PRACTICE

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>The proportion of ACT spending on intensive family support services and family support services in relation to total child protection spending fell from 9.75% in 2011-2012 to 9.2% in 2015-2016.⁴⁷ This is the second lowest proportional spend on family support services across all Australian jurisdictions. Of all 367 children commencing an intensive family support service in the ACT within 2015-2016, 30.79% were Aboriginal and Torres Strait Islander. There are no available figures from 2011-2012.⁴⁸</p> <p>In the ACT, Aboriginal and Torres Strait Islander children represented 26.34% of all children in OOHC as at 30 June 2016, an increase from 23.67% as at 30 June 2012.⁴⁹</p> <p>Aboriginal and Torres Strait Islander children were 12.5 times more likely than non-Indigenous children to be in OOHC at 30 June 2016, an increase from 10.5 times as likely at 30 June 2012.⁵⁰ As at 30 June 2016, 7.76% of all Aboriginal and Torres Strait Islander children in the ACT were in OOHC, an increase from 5.58% at 30 June 2012.⁵¹</p> <p>In terms of referrals to support services on notification – a pathway that is allowed for by legislation – ACT ACCOs have fed back that this does not occur in practice. The Directorate reports that it regularly makes referrals to support services upon receipt of a child protection report or when matters proceed to appraisal.</p>	<p>There are no available measures of practice of partnership. While currently legislation, programs, and processes do not appear to be strong, the reform agenda appears positive and with prioritisation, resourcing, and capacity recognition and building of ACCOs, genuine partnership can emerge.</p> <p>The current review into over-representation of Aboriginal and Torres Strait Islander children in OOHC, particularly with its focus on the ATSI CPP and engagement with Aboriginal and Torres Strait Islander communities as early as the phase 1 methodology development, is a promising step towards partnership.</p> <p>The ACT ACCO sector report being treated disrespectfully in terms of not being recognised or valued by the Directorate and decision-makers. This includes no real efforts to seek submissions from ACCOs regarding decisions being made about a child. ACT ACCOs report that their staff are treated poorly. This has been ‘independently’ reported by mainstream non-ACCO providers.</p>	<p>The proportion of ACT Aboriginal and Torres Strait Islander children placed with Aboriginal or Torres Strait Islander kin or other family, or an Aboriginal or Torres Strait Islander home-based carer fell from 63.9% as at 30 June 2012 to 60.4% as at 30 June 2016.⁵²</p> <p>However, in terms of the first preferred placement, as at 30 June 2016, 59.4% of children were placed with Aboriginal and Torres Strait Islander kin or other family, an increase from 55.6% at 30 June 2012.⁵³</p> <p>ACT ACCOs have reported that kinship carers feel unsupported and isolated to the extent that they consider relinquishing care.</p> <p>Kinship carers are paid the same carer allowance as foster carers, to support their care of the child.⁵⁴</p>	<p>There are no available statistics, reports, or reviews of the use of family group conferencing pilot program as yet.</p> <p>Feedback from the ACT ACCO sector is that families often feel unsure of what is actually happening in the child protection system and process, including why removal has taken place. This even occurs in some cases where there are support people and lawyers available. More specifically in relation to removal, ACT ACCOs report that families often receive extensive paperwork as the reason for removal, at the time of removal.</p> <p>The Directorate reports that in every instance where a child is removed from their parents care, the Directorate must present all evidence to the ACT Children’s Court within two days. Parents are legally represented, including by the Aboriginal Legal Service, and have access to all the material that the Directorate seeks to rely upon in court. Under <i>A Step Up For Our Kids</i>, the Red Cross Birth Parent Advocacy Service has been funded to provide advocacy services for parents, including assisting them to understand child protection processes and to participate to the full extent possible.⁵⁵</p>	<p>There is a lack of reporting on the completion and quality of care plans, the rate of contact, reconnection, or reunification for Aboriginal and Torres Strait Islander children and families. The Directorate does report, in its Annual Report, on the number of cultural plans created in a year – in 2016-2017, 137 new cultural care plans were prepared.⁵⁶</p> <p>In relation to the current practice of cultural planning, the ACT ACCO sector report that cultural care plans are either non-existent or lack vital family information, and further, there does not appear to be any monitoring of them.</p> <p>ACT ACCOs report seeing a trend in the return or reunification of children in OOHC subject to long-term orders (to 18 years of age) to their birth families when the children reach 13 years of age, and that this occurs without any work with the children and families who have been denied family contact and cultural connections.</p> <p>The Directorate reported that there is no policy or practice that aims to return children on long term orders to their families at 13 years of age.</p>

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- ² Community Services, ACT Government (2015). *A Step Up for Our Kids – Out-of-Home Care Strategy 2015-2020*, available at https://www.communityservices.act.gov.au/_data/assets/pdf_file/0009/682623/CSD_OHCS_Strategy_web_FINAL.pdf
- ³ Rachel Stephen-Smith MLA, Media Release 15 June 2017, *Government to Review Over-Representation of Aboriginal and Torres Strait Islander Children in Out-of-Home Care*, available at https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rachel-stephen-smith-mla-media-releases/2017/government-to-review-over-representation-of-aboriginal-and-torres-strait-islander-children-in-out-of-home-care
- ⁴ <http://atsieb.com.au/wp-content/uploads/2013/07/ATSIEB-Act-2008-6-March-2013.pdf>
- ⁵ <http://www.communityservices.act.gov.au/atsia/agreement-2015-18>
- ⁶ ACT Government (2015). *ACT Children and Young People's Commitment 2015-2025*, available at https://www.communityservices.act.gov.au/_data/assets/pdf_file/0008/798785/CSD_CYPC_A4_web.pdf
- ⁷ Community Services, ACT Government (2015). *A Step Up for Our Kids – Out-of-Home Care Strategy 2015-2020*, available at https://www.communityservices.act.gov.au/_data/assets/pdf_file/0009/682623/CSD_OHCS_Strategy_web_FINAL.pdf
- ⁸ Community Services, ACT Government (2015). *A Step Up for Our Kids – Stepping Up for Parents*, available at http://www.communityservices.act.gov.au/_data/assets/pdf_file/0007/683044/Birth-Parents-Info-Sheet.pdf
- ⁹ Community Services, ACT Government (2015). *A Step Up for Our Kids – Out-of-Home Care Strategy 2015-2020*, available at https://www.communityservices.act.gov.au/_data/assets/pdf_file/0009/682623/CSD_OHCS_Strategy_web_FINAL.pdf
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- ¹¹ Community Services, ACT Government (2015). *A Step Up for Our Kids – Stepping Up for Parents*, available at http://www.communityservices.act.gov.au/_data/assets/pdf_file/0007/683044/Birth-Parents-Info-Sheet.pdf
- ¹² Rachel Stephen-Smith MLA, Media Release 15 June 2017, *Government to Review Over-Representation of Aboriginal and Torres Strait Islander Children in Out-of-Home Care*, available at https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rachel-stephen-smith-mla-media-releases/2017/government-to-review-over-representation-of-aboriginal-and-torres-strait-islander-children-in-out-of-home-care
- ¹³ Community Services, ACT Government (2015). *A Step Up for Our Kids – Out-of-Home Care Strategy 2015-2020*, available at https://www.communityservices.act.gov.au/_data/assets/pdf_file/0009/682623/CSD_OHCS_Strategy_web_FINAL.pdf
- ¹⁴ Information provided by the Directorate
- ¹⁵ Information provided by the Directorate. <https://www.strongfamilies.act.gov.au/our-booris,-our-way>
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- ¹⁷ See <http://atsieb.com.au/>; information provided by the Directorate
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- ²⁸ See <http://www.communityservices.act.gov.au/ocys/child-and-youth-protection-services/out-of-home-care-strategy-2015-2020/new-services-for-families>
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- ⁴⁸ Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services – Chapter 16 – Child Protection*, 2017, Table 16A.30
- ⁴⁹ Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services – Chapter 16 – Child Protection*, 2017, Table 16A.17
- ⁵⁰ Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services – Chapter 16 – Child Protection*, 2017, Table 16A.17
- ⁵¹ Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services – Chapter 16 – Child Protection*, 2017, Table 16A.17 and Table 16A.34
- ⁵² Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services – Chapter 16 – Child Protection*, 2017, Table 16A.23
- ⁵³ Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services – Chapter 16 – Child Protection*, 2017, Table 16A.23
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- ⁵⁶ Community Services, ACT Government, *Annual Report 2016-2017*, available at <http://www.communityservices.act.gov.au/home/publications/annual-reports/2016-2017/part-b-organisation-overview/b.2-performance-analysis>