



SNAICC

National Voice for our Children

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

Victoria

April 2018

Introduction

This resource presents a baseline analysis of the progress of Victoria 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.

Victoria

Victoria clearly has one of the strongest legislative and policy frameworks in the country for addressing the full intent of the ATSI CPP. The Victorian Department of Health and Human Services (Department) demonstrates a high level of transparency, publishing a broad range of relevant policies, practice manuals, and program guidelines on its website. The Department also enables oversight by Aboriginal leaders and organisations by reporting key data to, and seeking input from, Aboriginal or Torres Strait Islander Community Controlled Organisations (ACCOs) at the quarterly Aboriginal Children's Forum (Forum), which is made up of representatives from ACCOs, the community sector and government. The Forum's terms of reference set out its aims to progress self-determination and address the over-representation of Aboriginal children in out-of-home care (OOHC) by delivering on agreed priorities.

Victoria is one of the only states to recognise the role of Aboriginal and Torres Strait Islander organisations to participate in all significant decisions for their children, to support a state-wide model of Aboriginal and Torres Strait Islander Family-Led Decision Making (AFLDM), and to fund ACCOs for participation in policy development and design as well as family support and OOHC functions. It is the only state to have started implementing the delegation of statutory child protection powers to Aboriginal organisations and is one of few states that mandates cultural support planning for all Aboriginal and Torres Strait Islander children in OOHC.

In 2016, the Victorian Commission for Children and Young People conducted two systemic inquiries concerning Aboriginal children in care, '*Always was, always will be Koori children*' and '*In the child's best interest*' and found that while the legislation and policy settings were generally sound there was:

- overall minimal practice compliance across the following key domains:¹
 - *identification of Aboriginality* – was the Aboriginality of the child correctly determined by the completion of the investigation stage (partial compliance);
 - *Aboriginal Child Specialist Advice and Support Service* – was regard given to the advice of ACSASS at every significant decision point (partial compliance);
 - *Aboriginal Family-Led Decision Making* – was an AFLDM meeting convened at substantiation and making of a protection order (minimal compliance);
 - *placement hierarchy* – is there evidence that the child was placed at the highest possible level of placement hierarchy (partial compliance); and
 - *maintaining cultural identity* – is there a completed cultural support plan or case plan that considers opportunities for continuing contact with Aboriginal family, community and culture (minimal compliance); and
- deficient practices by the Department and community services organisations, including non-compliance with legislative and practice requirements for cultural planning and inadequate inclusion and engagement with Aboriginal family, programs and community in decision making.²

The more recently released report of an inquiry into the 'permanency amendments' by the Commission draws attention to continuing concerns across a number of these areas and potential negative impacts of the amendments for Aboriginal and Torres Strait Islander children.

Notably, however, Victoria is the only state to have established an independent Children and Young People's Commissioner dedicated to issues impacting Aboriginal children, the Commissioner for Aboriginal Children and Young People, and is the only state to enable this level of detailed review of ATSI CPP implementation to identify gaps and challenges.

A range of policy and program responses to the issues identified in the Commission's reviews have been undertaken since 2016 which demonstrate significant commitment to reforms that could address implementation gaps, such as:

- new practice requirements and client recording to support the earliest identification of Aboriginality including senior oversight and executive approval to 'de-identify' Aboriginality;
- a new kinship care model that aims to identify kinship carers earlier, strengthen connections, and better support kinship carers;

- the transfer of case management of all Aboriginal children in OOHC to an ACCO;
- more broadly, the transfer and placement of all Aboriginal children in OOHC under the authority, care and case management of an ACCO – this includes the continued trial and full operation of section 18 delegation of functions and powers to an Aboriginal organisation;
- implementation of a new model of cultural planning for Aboriginal children in OOHC that establishes dedicated cultural adviser positions within ACCOs, a statewide coordinator within an ACCO, development of an online cultural portal and portal administrator as well as a requirement that all cultural plans be endorsed by the CEO of an ACCO;
- expansion of the Aboriginal Child Specialist Advice and Support Service that provides Aboriginal input to all child protection significant decisions and review of the program requirements for the service;
- review of the operation of the Aboriginal Family-Led Decision Making program to improve service delivery; and
- the development and piloting of the Return to Country Framework which aims to guide ACCOs delivering Return to Country programs across the state and fund camps for Aboriginal children.

In Victoria, Aboriginal children and families are significantly over-represented in child protection and care services with 8.73 per cent of children in OOHC compared to 0.6 per cent for non-Aboriginal children, as at June 2016. At that time, Aboriginal and Torres Strait Islander children were 14.6 times more likely than non-Indigenous children to be in OOHC and 42.1 per cent were placed with Aboriginal and Torres Strait Islander family and kin. These and other statistics reflect that Victoria has a significant way to go to achieve full compliance with the intent of the ATSICPP.

LEGISLATION

Refers to the *Children, Youth and Families Act 2005 (Vic)* unless otherwise stated

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>Victorian legislation strongly recognises the primary role of family to a child’s care and well-being, a child’s right to culture with community and the need for State support of the family.</p> <p>In determining the best interests of a child s10 calls for consideration of:</p> <ul style="list-style-type: none"> the need to protect the parent and child relationship and intervene only as necessary for the child’s safety and well-being; the need to promote positive relationships between the child and parent/s and family members; and the need to protect and promote cultural identity by, wherever possible, maintaining and building connection to Aboriginal family and community. <p>Section 11(a) recognises the State’s role in supporting families to promote a child’s safety and well-being.</p> <p>Section 10(g) provides that a child is only to be removed if there is an ‘unacceptable risk of harm’.</p> <p>Before any final protection order is made, ss276(1)(b) and (2)(b) require that all reasonable steps are taken to provide services necessary in the best interests of the child, and services to enable the child to remain in his/her parent/s’ care.</p> <p>Chapter 3 provides for resourcing of community-based child and family services to provide assessments, support services,</p>	<p>Victorian legislation recognises Aboriginal self-determination and makes strong provision for independent and representative Aboriginal participation in child protection decision making.</p> <p>Relevant provisions include:</p> <ul style="list-style-type: none"> recognition of the principle of Aboriginal self-management and self-determination (s12); opportunity ‘should’ be given for Aboriginal community members to contribute views (s12(1)(a)); in relation to a placement or other significant decisions, a meeting ‘should’ be convened by an Aboriginal convenor and ‘wherever possible’ be attended by the child, family and community members (s12(1)(b)); in relation to a decision to place an Aboriginal child in OOHC, an Aboriginal agency ‘must’ be ‘consulted’ (s12(1)(c)); a permanent care order for an Aboriginal child ‘must not’ be made unless recommended by an Aboriginal agency (s323(2)(a)); and the principal officer of an Aboriginal agency may be authorised to exercise specified functions and powers in relation to protection orders for Aboriginal children (ss18, 18A-18D). <p>The legislative requirement for the participation of an Aboriginal agency in all significant decisions for a child is enacted by requiring</p>	<p>Victorian legislation is strongly aligned with best practice.</p> <p>In making a decision to place an Aboriginal child in OOHC, an Aboriginal agency must ‘first’ be ‘consulted’ (s12(1)(c)).</p> <p>Section 13 sets out the placement hierarchy, requiring ‘as a priority, wherever possible’, a child is to be placed with Aboriginal extended family or relatives, ‘and where this is not possible’, other extended family or relatives. If, after an Aboriginal agency is ‘consulted’, neither of these placements is ‘feasible or possible’, a child may be placed with an Aboriginal family from the child’s local community who is within close proximity to the child’s family, or an Aboriginal family from another Aboriginal community – though no preference is expressed between these two placement options. The section continues to then list the ‘last resort’ placement as a non-Aboriginal family living in close proximity to the child’s family.</p> <p>Any non-Aboriginal placement must be able to ensure that a child’s culture and identity is maintained through contact with the child’s community (s13(2)(c)).</p> <p>Section 14 provides a number of further considerations to be taken into account in placement decision making including:</p> <ul style="list-style-type: none"> whether the child identifies as Aboriginal and their expressed wishes; the child’s sense of belonging 	<p>Victorian legislation includes several general and specific provisions allowing and enabling Aboriginal family participation.</p> <p>Section 11 sets out decision-making principles generally that promote child and family engagement and processes that are fair and understandable.</p> <p>Section 11(f) provides that a child and all relevant family members should be ‘encouraged and given adequate opportunity’ to participate in decision making.</p> <p>Section 12(1)(b) provides that a placement or other significant decision in relation to an Aboriginal child ‘should’ involve a meeting convened by an Aboriginal convenor and ‘wherever possible’ include the child, parents, extended family and community members (determined as relevant by the parent/s). The legislation does not specify when a meeting should take place and how it would be enabled.</p> <p>There is further specific provision for a child’s views and wishes to be taken into consideration in determining his/her best interests (s10(3)(d)), and specifically in relation to Aboriginal children, that whether they identify as Aboriginal be considered (s14(1)).</p> <p>In relation to court proceedings, the court must ‘allow’ the child, parents, and other directly interested parties to participate (s522(1)(c)) and must take steps to ensure the proceedings are comprehensible (s522(1)(a) and</p>	<p>Section 10(3)(c) recognises the need to protect and promote an Aboriginal child’s cultural identity by, wherever possible, maintaining and building connection to Aboriginal family and community.</p> <p>‘Desirability’ for a child in OOHC to retain connection with culture is to be considered in determining her/his best interests (s10(3)(m)).</p> <p>Contact with family is also a best interests consideration (s10(3)(k)) and may be court ordered for interim orders (s263(8)), one type of final protection order (s287(3) – family reunification order) and to a limited amount for permanent care orders (s321(1)(d),(e)).</p> <p>There is a stated ‘desirability’ to plan for reunification (s10(3)(i)), where a child has been in care for a cumulative period of less than 12 months (s167(3)). After this, a plan for reunification is only appropriate if safe reunification is likely in the next 12 months, or in exceptional circumstances, if a child has been in OOHC for 24 months (s167(4)).</p> <p>No final order removing a child can be made without reasonable steps to provide services to enable the child to remain in parental care (s276(2)(b)).</p> <p>A cultural support plan is required for an Aboriginal child in OOHC (s176). The plan must set out how the child is to remain connected to community and culture (s176(3)) and must be reviewed at case plan review – at least every 12 months (s169).</p> <p>A permanent care order may not be</p>

LEGISLATION

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PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>referrals and entry to integrated local service networks for families. This Chapter, in Part 3.2, allows for referral to support services.</p>	<p>the Secretary in section 16(1)(j) to give effect to a Protocol with two Victorian ACCOs (see ‘Policy’ section below) that in turn requires participation in all significant decisions.</p>	<p>where they have parents from different Aboriginal communities; and</p> <ul style="list-style-type: none"> the child’s best interests where they have one Aboriginal and one non-Aboriginal parent. 	<p>(b)). Section 525 sets out a broad range of proceedings for which a child aged 10 years or more is presumptively required to be legally represented. Section 524 provides that the court may or must adjourn proceedings in certain circumstances if a child is not legally represented. The section also provides that the court may adjourn proceedings if a parent is not legally represented.</p>	<p>made placing an Aboriginal child solely in the care of a non-Aboriginal person unless there is no suitable Aboriginal placement, there has been consultation with the child and the order accords with the ATSICPP (set out in the Act) (s323(1)). No permanent care order may be made unless an Aboriginal agency recommends the order and a cultural plan has been prepared (s323(2)). Specific functions and powers may be delegated to an Aboriginal agency (ss18, 18A-18D).</p>

POLICY

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>The Victorian Government’s 2016 <i>Roadmap for Reform</i> prioritises prevention and early intervention and commits to working with Aboriginal communities to develop strategies regarding earlier and more culturally competent services, including co-design of universal services.³</p> <p>The policy sees an enhanced role for universal services, integrated wraparound supports and targeted early interventions.</p> <p>The <i>Roadmap</i> specifically promotes the role of ACCOs, noting the need for capacity building.</p>	<p>Policy in Victoria requires the Department to ‘consult’ with an ACCO in relation to all significant decisions about an Aboriginal child. A Protocol exists with two Victorian ACCOs in relation to this consultation.⁴</p> <p>The <i>Roadmap for Reform</i> lists as a guiding principle – ‘ensuring Aboriginal self-determination around decision making and care for Aboriginal children and families’.⁵ The document states a staged plan will be developed for the transition of placement and case management, including OOH management and custody and guardianship of Aboriginal children to ACCOs – this will involve capacity building of ACCOs.</p> <p>The <i>Roadmap</i> commits to working with Aboriginal communities in service design. The <i>Roadmap</i> also calls for ACCOs to provide greater oversight and coordination of wraparound supports.</p> <p>In 2017, the Victorian Government made several significant commitments, backed up with funding, including \$1.1 million for ACCOs to case manage 120 Aboriginal children living in kinship care;⁶ a wider commitment to transfer the case management of all Aboriginal children in OOH to ACCOs (target of 30% ACCO management by Dec 2017);⁷ and the even higher level commitment to implementing section 18 – the exercise of Departmental functions and powers by ACCOs in relation to Aboriginal children on protection</p>	<p>Victorian policy reinforces the legislated placement hierarchy. The <i>Aboriginal Child Placement Principle Guide 2002</i> repeats the hierarchy and that the order of priority of placement ‘is to be followed in the absence of good cause to the contrary at all times’.¹⁰</p> <p>This document also recognises the role of family and ACCOs in placement decision making. More recently, the Victorian Government has committed to a new model for kinship care that seeks to identify kinship carers earlier, strengthen Aboriginal community connections, and better support kinship carers. The new model is supported by \$33.5 million investment and includes support to ACCOs.¹¹</p>	<p>Victorian policy builds on the legislated allowance for Aboriginal and Torres Strait Islander family participation through a family meeting by providing for Aboriginal Family-Led Decision Making (AFLDM) meetings.¹² This AFLDM policy also states a practice aim as – empowering children to find their voice and speak out about their experience in a safe environment – it is essential that children are involved in the decision-making process (even if the child does not attend the meeting).</p>	<p>Victorian policy is strong in recognising the importance of an Aboriginal child’s cultural connections.</p> <p>The <i>Roadmap for Reform</i> includes as a guiding principle – ‘supporting the connection of all children, young people and families to their family, cultures and communities’.¹³</p> <p>The <i>Roadmap</i> describes as a ‘major concern’ the finding of <i>Taskforce 1000</i>¹⁴ that the majority of Aboriginal children in care are not connected with community and culture and commits to the implementation of cultural support plans.</p> <p>Various program and process documents recognise and promote family and ACCO participation in the development of cultural support plans (see ‘Programs’ and ‘Processes’ below).</p> <p>There is a stated policy focus on ‘maximising opportunities for reunification’¹⁵ and reunification as the preferred case planning permanency objective where the child is in OOH.¹⁶</p> <p>As part of the <i>Roadmap</i> reforms, the Victorian Government has committed to providing ‘return to country’ cultural and family connection programs for 20 Aboriginal children residing in OOH over an 18 month period.¹⁷</p>

POLICY

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
	<p>orders under the Aboriginal Children in Aboriginal Care program.⁸</p> <p>The <i>Roadmap</i> also acknowledges the important work of the Aboriginal Children’s Forum, which since 2015 has convened ACCOs, community service organisations and government (including the Department) with an aim to progressing self-determination and redressing the over-representation of Aboriginal children in OOHC.</p> <p>The Forum is an important site for ACCOs to demand accountability and participate in, and in fact lead, policy and program development.⁹</p> <p>The Department also launched a comprehensive Aboriginal health, wellbeing and safety strategic plan, <i>Korin Korin Balit-Djak</i> in 2017 embedding Aboriginal self-determination as the core principle underpinning all policy domains.</p>			

PROGRAMS

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p><i>Child FIRST</i> is a support and referral service which provides a central referral point for community-based family support services and an alternative referral pathway to child protection. In some areas, referrals about Aboriginal children and families may be made directly to ACCOs. A referral may be made to the 'Integrated Family Support Services' program.¹⁸</p> <p><i>Integrated Family Support Services (Indigenous) (IFS)</i> is a local area network of family services, including a community-based child protection practitioner, and may include an Aboriginal worker. IFS engages families and provides services such as in-home intervention, casework, and counselling. IFS may link to AFPP, AFRS (ACCO-run, see below) or make other referrals.</p> <p>The <i>Aboriginal Family Preservation Program (AFPP)</i> commenced in 1998 and provides intensive support over a short period to prevent removal or enable reunification. The program is 'grounded in Aboriginal culture', using intensive family support, practical assistance, and parenting education. There are currently 5 AFPPs run by ACCOs.</p> <p><i>Aboriginal Family Restoration Services (AFRS)</i> commenced in 2006. The services are similar to AFPPs but are residential based, providing 24/7 in-home support to families where there is an imminent risk of removal. There are currently 3 AFRS run by ACCOs.¹⁹</p> <p><i>Aboriginal Family-Led Decision</i></p>	<p>In line with the Protocol with two ACCOs, Aboriginal Child Specialist Advice and Support Services (ACSASS) are operated by the Victorian Aboriginal Child Care Agency (VACCA) and Mallee District Aboriginal Services (MDAS). ACSASS are required to be consulted by the Department about all significant decisions including placement decisions, provide advice, attend joint visits, and assist families to understand the child protection process.</p> <p>Aboriginal Family-Led Decision Making (AFLDM) meetings include an ACCO co-convenor to ensure the cultural integrity of the family group conferencing process. However, the <i>Family-Led Decision Making Program Guidelines 2016</i> state that an ACCO co-convened AFLDM is the 'preferred practice for Aboriginal children' rather than mandatory.²¹ AFLDM is initiated at substantiation of harm and when a child is subject to a protection order.</p> <p>In relation to case management, some Victorian ACCOs are currently case contracted to manage some Aboriginal children in OOHC placements, including kinship care placements (see 'Practice' section below for details).</p> <p>An 'as if' trial of delegation of statutory functions for children under certain protection orders by an ACCO ran from 2013 to 2015²² and in 2016 funding was allocated to enable full implementation of section 18. This commenced in November 2017. Through the</p>	<p>Aboriginal Child Specialist Advice and Support Services (ACSASS) are operated by two ACCOs – the Victorian Aboriginal Child Care Agency (VACCA) and Mallee District Aboriginal Services (MDAS). As part of ACSASS's role, they 'consult' with and are consulted by the Department regarding placement decisions. ACSASS must be consulted even if the Department is working with other ACCOs.²⁴</p> <p>AFLDM meetings in Victoria are to be initiated at substantiation of harm and when a child is subject to a protection order. AFLDM have been identified as a program/process that can assist in kinship and other placement identification.</p> <p>The <i>Roadmap for Reform</i> commits to funding for a stronger focus on the recruitment of Aboriginal kinship and foster carers.²⁵ Following this, the Victorian Government has committed, and committed funding to, a new model for kinship care that seeks to identify kinship carers earlier, strengthen connections, and better support kinship carers (see also 'Policy' above).²⁶</p>	<p>AFLDM meetings allow for an ACCO co-convenor to ensure the cultural integrity of the process however such co-convening is noted as the 'preferred practice for Aboriginal children' rather than mandatory.²⁷ AFLDM is initiated at substantiation of harm and when a child is subject to a protection order. The Program Guidelines recognise the importance of participation of family in decision making and AFLDM as an action aligning with the right to self-determination.</p> <p>AFLDM necessarily involve family in decision making.</p> <p>General legal services and Aboriginal and Torres Strait Islander legal services, including family violence prevention and legal services, may provide government-funded legal advice and representation to children, parents and family members in child protection matters.</p>	<p>AFLDM meetings have been identified as useful in developing cultural support plans with family and ACCOs.</p> <p>Currently, a Cultural Plan Brokerage Initiative exists to provide funding to implement cultural support plans, providing \$786,000 in 2017-18. The <i>Roadmap for Reform</i> commits to increase funding to ensure cultural support plans are in place for all Aboriginal children in OOHC.²⁸</p> <p>Targeted Care Packages are aimed at children in OOHC including residential care to assist them to return home, move to a foster or kinship placement, or transition to independent living.²⁹</p> <p>In Oct 2016, further funding (\$687,000) was committed to 10 ACCOs to help ensure Aboriginal children in OOHC are connected to their culture and community through these Targeted Care Packages.³⁰</p> <p>In relation to ACCO case management, including OOHC case management and section 18/Aboriginal guardianship – see the 'Partnership – Programs' section.</p> <p>In relation to ACCO run family reunification programs – see 'Prevention – Programs' section. Recently, a Return to Country framework has been developed to guide return to country programs undertaken by ACCOs – it is currently being piloted by two ACCOs.³¹</p>

PROGRAMS

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p><i>Making</i> (AFLDM or ATSIFLDM) is initiated at substantiation of harm and when a child is subject to a protection order. The former provides an opportunity to address concerns and divert from further statutory intervention.²⁰</p>	<p>Aboriginal Children in Aboriginal Care program (the program name for implementation of section 18) 36 children have been authorised to the Victorian Aboriginal Child Care Agency in the north metropolitan region in Melbourne. A rural trial of Aboriginal guardianship is also continuing to mid-2018 in Bendigo at Bendigo & District Aboriginal Cooperative.²³</p>			

PROCESSES

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>An extensive publicly accessible online <i>Child Protection Manual</i> provides policies, procedures, advices, and protocols for child protection practitioners.³² The <i>Aboriginal Child Placement Principle Guide 2002</i> directs practitioners to ensure all efforts are taken to strengthen families and keep them together before statutory intervention is considered.³³ The <i>Manual</i> emphasises the importance of early identification of a child as Aboriginal and/or Torres Strait Islander. An information sheet accessible through the <i>Manual</i> clearly sets out processes to identify a child as Aboriginal or Torres Strait Islander starting at intake, including a script of questions and recording requirements. Identification must be confirmed at the end of the investigation stage. The <i>Roadmap for Reform</i> prioritises stronger consultation with ACCOs to identify children who are Aboriginal.³⁴ Child FIRST, as set out in the 'Programs' section above, provides an alternative referral pathway to support services at intake, including to Integrated Family Support Services. The Department may also make referrals to community-based child and family services at any point, starting at intake/notification.</p>	<p>In relation to consulting with an ACSASS, the <i>Manual</i> sets out a non-exhaustive list of what constitutes a 'significant decision', starting as early as 'classification of report'.³⁵ The <i>Manual</i> directs practitioners to share information with and seek participation of ACSASS, including to organise for ACSASS to attend client visits, planning meetings, and court hearings. Practitioners are required to record consultations with ACSASS and reasons if consultation or involvement does not occur or is declined by family. In relation to permanency decisions, once a decision has been made to pursue a permanent care order, a meeting must be held with the VACCA permanent care team to discuss VACCA's development of its permanent care cultural assessment report. The <i>Manual</i> sets out the legislative requirement but later states that it is 'good practice' to not lodge an application for a permanent care order without a VACCA report recommending the order³⁶ – it is concerning that this is referred to as 'good practice' given the legislative bar on the making of an order unless recommended by an Aboriginal agency (see 'Legislation' section above).</p>	<p>The <i>Manual</i> contains guidance for practitioners on understanding and identifying Aboriginal kinship relationships and assessing potential kinship carers, including linking to a detailed document which includes definitions of kin and processes to be undertaken including developing genograms.³⁷ The <i>Manual</i> sets out procedures for involving family and ACCOs (and ACSASS) in placement decision making, including early involvement, information exchange, and AFLDM. The <i>Manual</i> clearly directs practitioners that 'if placement in OOHC is likely or necessary, consult ACSASS beforehand unless this would result in an unreasonable delay or as soon as possible after placement'. The <i>Manual</i> states that ACSASS will assist in the identification of a placement for an Aboriginal child and further that 'if after consultation between child protection, the family, and ACSASS it is decided that a suitable kinship care placement is not available then a placement through an ACCO or other CSO can be sought'. The <i>Manual</i> reinforces the legislative provision that kinship care is the preferred home-based placement type and 'must be considered and investigated before any other placement option is considered'.</p>	<p>The <i>Family-Led Decision Making Program Guidelines 2016</i> set out procedures to enable accessible, timely and informed family participation in AFLDMs.³⁸ This includes guidance regarding referral to AFLDM, cultural safety, the attendance of support persons, participation of Elders at the parents' discretion, preparation, family engagement and the meeting process. The <i>Guidelines</i> also note the need for an assessment of the appropriateness of the child's attendance. The <i>Manual</i> provides advice about the conduct of an interview with a child, including that an interview without parental permission is only to occur in exceptional circumstances (and where it aligns with the child's best interests) and that in such cases a supportive adult should be present. In relation to legal representation, the <i>Manual</i> sets out processes for directing Aboriginal parents to the Victorian Aboriginal Legal Service and for ensuring eligible children obtain legal representation, preferably prior to a court hearing.</p>	<p>The <i>Manual</i> and <i>Aboriginal and Torres Strait Islander Child Placement Principle Guide 2002</i> specifically mandate that the Department seek advice about the identification of, and approaches to meeting, an Aboriginal child's cultural needs from ACSASS.³⁹ Essentially, ACSASS are to be consulted in the development of cultural support plans. The <i>Manual</i> notes that AFLDM can be used to engage families to develop cultural support plans. The <i>Manual</i> states that development of a cultural plan is to commence within 2 weeks of a child being placed in OOHC. A Senior Advisor – Cultural Planning from the local ACCO supports development of the plan and it is signed off by the CEO. Then, regular reviews are required as part of the broader case planning review process (within 12 months or otherwise as set out in legislation). The <i>Manual</i> specifically states that the Department must consult ACSASS about addressing areas where cultural connections need to be encouraged. The <i>Manual</i> provides advice about developing and implementing the cultural plan, including involving children and family, documentation, implementation, and review. In relation to reunification, the <i>Manual</i> sets out detailed processes for assessing and pursuing reunification, including that it should be assessed and planned for as early as possible, supported and reviewed.</p>

PRACTICE

Note- the Victorian Commission for Children and Young People has conducted significant review of the practice and practical implementation of the ATSI CPP and is referenced below⁴⁰

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>The proportion of Victorian spending on intensive family support services and family support services in relation to total child protection spending rose slightly from 22.68% in 2011-2012 to 24.95% in 2015-2016.⁴¹ This is the highest proportion of spending of any jurisdiction in Australia. Of all children commencing an intensive family support service in Victoria within 2015-2016, only 6.35% were Aboriginal and Torres Strait Islander. This proportion is up from 5.4% in 2011-2012, however, is still extremely low considering the over-representation in the child protection system, and relative to other jurisdictions.⁴²</p> <p>In terms of other practice measures, a 2011 KPMG report about Child FIRST and IFS commissioned by the Department found clear indications of greater capacity for earlier intervention as evidenced by an increase in the proportion of families receiving more intensive service provision and consistent prioritisation of more vulnerable families. The report suggested that the introduction of Child FIRST and IFS had a reasonable moderating effect on child protection growth. The report found that ACCO engagement was being limited by ACCO capacity constraints and lack of access to local ACCOs.</p> <p>In relation to identification of children as Aboriginal and/or Torres Strait Islander, the Victorian Commission for Children and</p>	<p>There are 13 ACCOs that are part of the Victorian Aboriginal Children and Young People's Alliance plus other non-member ACCOs (a similar number of predominately health ACCOs) that provide child and family services and support. The Victorian Aboriginal Child Care Agency (VACCA) also provides services across the state and inputs to policy design alongside the Alliance.</p> <p>The Victorian Commission for Children and Young People in its inquiry into compliance with the ATSI CPP found that from Jan 2013 to Dec 2014 there was only 'partial compliance' with the requirement that regard be given to the advice of ACSASS at every significant decision point. The Commission found that the Department was not contacting ACSASS about every Aboriginal child and not at every significant decision point. For example, ACSASS attended first home visits for only 31% of children and were contacted by the Department prior to placement changes in only 23% of cases. Only 29% of case files recorded ACSASS's views. Further, there were disproportionately few AFLDM meetings.⁴⁷</p> <p>The Commission's <i>Safe and Wanted</i> report also finds poor engagement with ACSASS.⁴⁸</p> <p>The Commission believes that ACSASS program should be expanded across ACCOs to better reflect local knowledges and contexts and better comply with</p>	<p>The proportion of Victorian Aboriginal and Torres Strait Islander children placed with Aboriginal or Torres Strait Islander family or other family, or an Aboriginal or Torres Strait Islander home-based carer rose from 55.3% as at 30 June 2012 to 73.8% at 30 June 2016.⁵³ However, in terms of the first preferred placement, as at 30 June 2016, only 69.8% of children were placed with family, including Aboriginal or Torres Strait Islander kin or other family, an increase from 50% at 30 June 2012.⁵⁴ The current rates are the highest rates of appropriate placements in Australia.</p> <p>The Victorian Commission for Children and Young People in its inquiry into compliance with the ATSI CPP found that from January 2013 to December 2014 there was only 'partial compliance' with the placement hierarchy. It found that placement was not being made at the highest level 'as a priority, wherever possible'. It found that not all Aboriginal extended family members were identified before lower level placements were made, and only 56% of Aboriginal children were placed with kin – 31% with Aboriginal kin, and 25% with non-Aboriginal kin. The Department reports that placement with Aboriginal kin is now at 44.5%. It also found that there was no evidence of prioritisation of placement with an Aboriginal carer from another community over a non-Aboriginal carer in the child's</p>	<p>The Victorian Commission for Children and Young People in its inquiry into compliance with the ATSI CPP found that from January 2013 to December 2014 there was only 'minimal compliance' with the requirement to convene an AFLDM meeting at substantiation and at the making of a protection order.⁵⁷ The Commission found that there were disproportionately few AFLDM meetings in 2014-2015, only 250 referrals – 141 matters went on to the meeting stage – out of 1,250 intended (funded) AFLDM meetings. Further, some meetings that did occur were held months or even years after substantiation. The Commission also found that the Department often did not follow processes to refer cases to AFLDM convenors within 24 hours or hold discussions with the convenor.</p> <p>The Commission did find that when held AFLDM produced valuable outcomes in delivering culturally based decision making – that there was unanimous agreement that the AFLDM program is extremely valuable in making important decisions to keep a child safe, and maintain the child's culture and identity through connection to their community. The Commission also found that ACCOs were limited in the AFLDM process due to resourcing and capacity constraints.</p> <p>Also significantly, the Commission found that the AFLDM program does not always appear to be truly family-led, with Departmental staff</p>	<p>The Victorian Commission for Children and Young People in its inquiry into compliance with the ATSI CPP found that from January 2013 to December 2014 there was only 'minimal compliance' with the requirement to complete a cultural support plan or a case plan that considers opportunities for continuing contact with Aboriginal family, community, and culture.⁵⁹ The Commission found that where cultural support plans were mandatorily required for Aboriginal children, as at 31 December 2014 (children under certain guardianship orders), only 29% were in place. Noting that it was always best practice for all Aboriginal children in OOH to have cultural support plans (despite a then lack of legislative requirement), the Commission found that at 31 December 2014, only 6.7% of Aboriginal children in OOH had a cultural support plan. The Commission believes that cultural support plans need to be active living documents that are reviewed by a community Aboriginal panel to ensure cultural rigour and connection. They should also be reviewed annually and cultural care plan compliance should be reported on annually by the Department.⁶⁰</p> <p>The Commission's <i>Safe and Wanted</i> report into the 'permanency amendments' found very poor compliance with cultural support plan requirements – more than 80% of Aboriginal children in</p>

<p>Young People in its 2016 reports – into compliance with the ATSCPP, and separately into Aboriginal children in OOHC – found only ‘partial compliance’ with the requirement that Aboriginality be correctly determined by the end of the investigation stage.⁴³</p> <p>In Victoria, Aboriginal and Torres Strait Islander children represented 19.3% of all children in OOHC as at 30 June 2016, an increase from 16.56% as at 30 June 2012.⁴⁴</p> <p>Aboriginal and Torres Strait Islander children were 14.6 times more likely than non-Indigenous children to be in OOHC at 30 June 2016, up from 10.1 times as likely at 30 June 2012.⁴⁵ As at 30 June 2016, 8.73% of all Aboriginal and Torres Strait Islander children in Victoria were in OOHC, an increase from 5.06% at 30 June 2012.⁴⁶</p>	<p>principles of self-determination.⁴⁹ Since then, in 2016-17 the Department increased funding for ACSASS by an additional \$3.6 million over two years to improve capacity to consult on significant decisions. The Department undertook a review of ACSASS in 2017 and agreed to implement the Commission’s recommendation that ACSASS should be opened up for provision by other ACCOs in 2018-19.</p> <p>As at Dec 2015, according to the Commission, ACCOs managed about 14% of Aboriginal children in OOHC placements (223 of 1,579). At this same time, ACCOs were only funded to deliver 275 placements. Under the Victorian Aboriginal Kinship Care Model, as at 2014-2015 and as reported by the Commission, 9 ACCOs were case contracted the management of a maximum of 114 kinship care cases.⁵⁰ The Department agreed to targets set by the Aboriginal Children’s Forum to contract all Aboriginal children on contractible orders in OOHC to ACCOs by 2021. In 2017, \$1.1 million was provided to fund an additional 120 Aboriginal children to be contracted to ACCOs.</p> <p>Section 18 delegation to ACCOs started implementation in November 2017 and continues to be trialled in Bendigo with a view to full authorisation there in 2018-19. An independent evaluation of the small 2013-2015 ‘as if’ Aboriginal guardianship trial was optimistic about the ‘potential for a distinctive Aboriginal approach to child welfare ... that upholds the</p>	<p>local community.⁵⁵</p> <p>The Commission believes that there needs to be a focus on documentation of decision making processes with regard to hierarchy compliance.⁵⁶</p>	<p>over-represented at meetings, Elders not being fully briefed, and families not being well-represented. Again, in the Commission’s <i>Safe and Wanted</i> report, it found poor and delayed practice in convening AFLDM.⁵⁸</p> <p>The Department is undertaking a review of the AFLDM program requirements to address these concerns.</p>	<p>OOHC had no cultural support plan in the period of March-August 2016, There was also an increase in the number of Aboriginal children without a cultural support plan since the introduction of the amendments.⁶¹</p> <p>The 2013-2015 ‘as if’ Aboriginal guardianship trial saw 46% of the small project cohort of 13 children returned from foster or residential care to parents or family.⁶²</p> <p>The <i>Safe and Wanted</i> report by the Commission found that the rate at which Aboriginal children and reunified with their parents decreased by 9% in the 6 months following the permanency amendments, compared with the 6 months prior.⁶³</p> <p>In the Commission’s systemic inquiry into Aboriginal children in OOHC (flowing from Taskforce 1000), it found that ‘Aboriginal children in OOHC are provided with greater opportunity for meaningful engagement with culture when their placement, case management and guardianship are provided by an ACCO’. The Commission found that the majority of Aboriginal children in care are not connected with community and culture.⁶⁴</p> <p>Amendments to the <i>Children Youth and Families Act</i> 2005 made cultural plans a requirement for all Aboriginal children in OOHC, significantly increasing the numbers of children requiring plans. In 2016-17 \$5.3 million over two years was allocated to the establishment of a new model for cultural planning (see ‘Programs’ above).</p>
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	<p>primacy of the child's safety, stability, and development, and privileges the importance of cultural safety and family empowerment'.⁵¹</p> <p>The Aboriginal Children's Forum offers an opportunity for ACCOs to contribute and co-design policy, and provide oversight of policy and priorities.⁵²</p>			
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² Commission for Children and Young People, Victoria, *Always Was, Always Will Be Koori Children*, 2016, available at <https://ccyp.vic.gov.au/assets/Publications-inquiries/always-was-always-will-be-koori-children-inquiry-report-oct16.pdf>

³ See <http://www.strongfamiliesafechildren.vic.gov.au/roadmap-for-reform-strong-families-safe-children>

⁴ See for example, the Protocol between the Department and VACCA, available at <http://www.cpmanual.vic.gov.au/sites/default/files/Protocol-Child-Protection-Victorian%20Aboriginal-Child-Care-Agency-%28VACCA%29%202832.pdf>

⁵ See <http://www.strongfamiliesafechildren.vic.gov.au/roadmap-for-reform-strong-families-safe-children>

⁶ Minister for Families and Children, *Connecting Aboriginal Kinship to Community*, Media Release, 30 August 2017, available at <https://www.premier.vic.gov.au/connecting-aboriginal-kinship-to-community/>

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⁸ Minister for Families and Children, *Empowering Aboriginal Communities to Help Their Children Receive the Care They Need*, Media Release, 25 November 2017, available at

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¹² Department of Human Services, State of Victoria, *Family-Led Decision-Making Program Guidelines*, Version 3, March 2016, available at

<http://www.cpmanual.vic.gov.au/sites/default/files/2454%20FLDM%20Guidelines%20V3.pdf>

¹³ See <http://www.strongfamiliesafechildren.vic.gov.au/roadmap-for-reform-strong-families-safe-children>

¹⁴ Commission for Children and Young People, *Always Was Always Will Be Koori Children: systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, October 2016, see https://www.parliament.vic.gov.au/file_uploads/CCYP_-_Always_was_always_will_be_Koori_children_Systemic_Inquiry_report_October_2016_QZZbp4gC.pdf

¹⁵ See <http://www.strongfamiliesafechildren.vic.gov.au/roadmap-for-reform-strong-families-safe-children>

¹⁶ See <http://www.cpmanual.vic.gov.au/advice-and-protocols/advice/case-planning/family-reunification>

¹⁷ See <http://www.strongfamiliesafechildren.vic.gov.au/roadmap-for-reform-strong-families-safe-children>

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¹⁹ See <https://providers.dhhs.vic.gov.au/aboriginal-children-care>

²⁰ See <https://providers.dhhs.vic.gov.au/aboriginal-children-care>

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²³ See <https://dhhs.vic.gov.au/publications/aboriginal-children-aboriginal-care-program>

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- ³⁴ See <http://www.strongfamiliesafechildren.vic.gov.au/roadmap-for-reform-strong-families-safe-children>
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