



**SNAICC**

National Voice for our Children

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

**April 2018**

## Introduction

This resource presents a baseline analysis of the progress of South Australia 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 SNAICC (2017) [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.

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 – South Australia

South Australia's compliance with best practice of the Aboriginal and Torres Strait Islander Child Placement Principle needs to be considered in the context of the State's reform process where significant commitments have been made but some are still to be implemented.

In 2016, the Child Protection Systems Royal Commission led by Royal Commissioner Margaret Nyland (Nyland Inquiry) made 260 recommendations. The South Australian Government accepted 256 of the recommendations and has committed to reform the South Australian child protection system, the vision for which is set out in the *A Fresh Start* document. This reform document acknowledges that the new system also needs to respond to the over-representation of Aboriginal and Torres Strait Islander children in the child protection system. Notably, there is recognition that the government has 'a special responsibility to assist and strengthen Aboriginal [and Torres Strait Islander] families, to address the unique challenges they face, and to ensure Aboriginal [and Torres Strait Islander] children have the strongest possible connection to their people and their culture'.<sup>1</sup> This is followed by strong policy commitments to refocus on prevention and early intervention, and to ensuring connections to family, community, culture, and country.

Despite the proposed reforms and stated commitments, past and continuing practice has contributed to a situation where, as at 30 June 2016, Aboriginal and Torres Strait Islander children in South Australia represent 33 per cent of all children in out-of-home care (OOHC), making Aboriginal and Torres Strait Islander children 10.8 times more likely than non-Indigenous children to be in OOHC. Further, in terms of placement, currently only 52.5 per cent of Aboriginal and Torres Strait Islander children in OOHC are placed with Aboriginal and Torres Strait Islander kin or other family.

Despite strong policy statements about the importance of connections to family, community, identity, culture and country, new legislation does not clearly or strongly set out principles recognising and valuing the role of family, the role of the state in supporting families or cultural connections as crucial to best interest considerations. There are general provisions in the legislation which indicate the desirability of maintaining children and young people's connection to their biological family, the importance of early intervention, and that those giving effect to the Act should collaborate with children and young people and their families. The new legislation has relatively limited recognition or promotion of self-determination of Aboriginal and Torres Strait Islander peoples, which is central to the partnership element of the ATSI CPP. It also moves away from representative participation of Aboriginal and Torres Strait Islander community controlled organisations (ACCOs) in child protection decision-making, removing the requirement to consult regarding non-placement decisions. This leaves only the requirement to 'consult' and 'have regard' to submissions of a recognised organisation prior to placement if 'reasonably practicable'. This failure to value and prioritise ACCOs is further reflected in the lack of design, co-design, and delivery of policy and programs in South Australia by ACCOs. In particular, we note initiatives regarding family group conferencing and cultural maintenance plans, which, while positive in intention, will likely suffer in quality and effectiveness from the lack of required ACCO participation and leadership.

In response to the above critique of the new legislative scheme, the Department for Child Protection (Department) states that the legislation provides an overall framework and that there is full commitment to accompanying regulatory and policy frameworks, due for implementation over the next 12-18 months, geared towards real and sustained improvements in service delivery and outcomes for Aboriginal children and families. As part of this commitment the Department has established the Aboriginal Practice Directorate and has ten Principal Aboriginal Consultants (including at least one in every region and program area) to ensure Aboriginal leadership and governance across departmental decision making, policy and program planning. More broadly, the Department has indicated that the new legislative scheme is clear in its intent to ensure the decision making is made as close to the child as possible – while this applies to all children and families, in this context, it signals the intent of the government to position Aboriginal children, families and organisations as central decision makers in relation child protection decisions made. Further, the Government has committed to reviewing the operation of the *Children and Young People (Safety) Act 2017* within 12 months of full operation, in consultation with stakeholders.

While the South Australian reform agenda puts forward a strong prevention and early intervention focus, there is a concerning absence of recognition of the need to involve Aboriginal and Torres Strait Islander families, communities and organisations. It is clear that South Australia needs to significantly increase investment in prevention and early intervention supports – currently only about 6 per cent of the Department for Child Protection's expenditure goes towards family support and intensive family support services.<sup>1</sup> Notably, South Australia invests only 13 per cent of family support and 5 per cent of intensive family support funding to ACCOs,<sup>2</sup> well below the 33 per cent representation of Aboriginal and Torres Strait Islander children in OOHC. The Early Intervention and Research Directorate is promising, having a

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<sup>1</sup>In South Australia prevention and early intervention supports are predominantly funded through the Department for Human Services and the Department for Education, this figure only includes services funded by the Department for Child Protection.

specific remit to consider supports to reduce the number of Aboriginal children requiring a statutory child protection response, and conducts work in partnership with an Aboriginal Leadership Group.

The current reforms offer significant opportunity for embedding the ATSI CPP and reflecting policy commitments in strong programs, processes and practice. The South Australian government must be accountable to the Aboriginal and Torres Strait Islander community in this regard. The appointment of an Advocate for Aboriginal and Torres Strait Islander children within the Office of the Guardian for Children and Young People is a promising step. Further, in addition to the establishment of the Office for the Commissioner for Children and Young People in 2017, the SA government has committed to the establishment of the Office of the Commissioner for Aboriginal Children and Young People. This will provide important Aboriginal and Torres Strait Islander systems oversight and advocacy, provided the Commissioner has adequate functions and powers and has equal standing to the Principal Children's Commissioner.

**LEGISLATION**

Refers to the *Children and Young People (Safety) Act 2017 (SA)* unless otherwise stated. Note: some sections of the Act commenced on 26/02/2018, others will commence on 22/10/2018.

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>South Australian legislation includes a parliamentary declaration acknowledging that 'outcomes for Aboriginal and Torres Strait Islander children and young people in care have historically been poor' and that is unacceptable (s4(3)). The Act goes on to list as an objective of section 12 – that relates predominately to placement decision making – 'reducing the incidence of the removal of Aboriginal and Torres Strait Islander children' (s12(2)(c)). There are only limited express provisions regarding the role of family or the state to support family, or best interests considerations relating to connections to family, community, and culture. Instead reference to these issues can, to some extent, be drawn from priorities and principles that state the desirability of family (biological) connections (s8(3)), the priority of early intervention measures (s9) and require consideration of culture and language in interventions (s10(1)(c)).</p> <p>A child may be removed from a premises, including when in the care of parents or family, the child has suffered, or there is a significant possibility that he/she will suffer, serious harm, and removal is 'necessary' to prevent harm, and there is 'no reasonably practicable alternative' to removal (s41). There are no similar or other restrictions on the making of orders removing a child, such as a prerequisite to provide family preservation or reunification supports. While section 50(4) does require, before applying for an order removing a child, assessment</p>	<p>South Australian legislation contains few and relatively weak provisions relating to partnership with Aboriginal and Torres Strait Islander communities. Notably, there is no express reference to the right of self-determination in the Act.</p> <p>A recognised Aboriginal or Torres Strait Islander organisation is defined in section 12(8) as an organisation declared as such by the Minister after consultation with the Aboriginal or Torres Strait Islander community or a section of that community. The key role of a recognised organisation set out in the Act is consultation regarding placement of an Aboriginal or Torres Strait Islander child (s12(3)(c)) – see 'Placement'. The Act also stipulates that Aboriginal or Torres Strait Islander organisation 'may' be involved in Family Group Conferencing (s23(1)(h)) and cultural planning (s156(1)(a)(i)).</p> <p>Otherwise in relation to partnership, one of the several functions of the Minister is to 'collaborate with and assist Aboriginal and Torres Strait Islander communities to develop and implement strategies to ensure that Aboriginal and Torres Strait Islander children and young people are, so far as is reasonably practicable, protected from harm' (s14(2)(a)).</p> <p>While section 146 allows the Minister or Chief Executive to delegate functions and powers, it is not apparent that this has been designed to delegate functions and powers to recognised organisations or ACCOs generally.</p>	<p>Section 12 is titled 'Aboriginal and Torres Strait Islander Child Placement Principle'. However, despite the objects in its subsection, it is limited to setting out the placement hierarchy. It provides that if an Aboriginal or Torres Strait Islander child is to be placed in care, if 'reasonably practicable', the child 'should' be placed, in order of priority, with a member of the child's family, member of the child's community who has a relationship of responsibility for the child, member of the child's community, and finally, an Aboriginal or Torres Strait Islander person (s12(3)(a)). All of these persons/placements are to be 'determined in accordance with Aboriginal or Torres Strait Islander traditional practice or custom'. Most notably, s12(3)(a) does not specify placement with an Aboriginal or Torres Strait Islander person until the fourth level of the hierarchy, a provision significantly out of step with the best practice hierarchy and legislation in other jurisdictions. On this latter point, the Department has advised that the intention of the legislation is that placement is with Aboriginal family and community, and that any risk of misinterpretation will be remedied in the accompanying regulations and/or policy as appropriate.</p> <p>If a child is unable to be placed with any of the above persons, or it is not in the child's best interests to do so, the child 'should' be given the 'opportunity' of continuing contact with family, community, and culture (s12(3)(b)).</p>	<p>The parliamentary declaration provision states the 'intention' that the administration of the Act is to be done in 'collaboration with, and with the cooperation of' children and their families (s4(4)). An object of section 12 relating to the ATSI CPP is to enable Aboriginal and Torres Strait Islander people to participate in the care and protection of their children (s12(2)(b)).</p> <p>A principle of intervention is that 'consideration should be given', by the court, to making arrangements by way of a family group conference 'if possible and appropriate' (s10(1)(d)). These provisions reflect relatively weak and non-mandatory requirements to enable conferences compared to best practice and legislation in some other jurisdictions.</p> <p>A system of family group conferencing is set out in Part 2 of Chapter 4. Its purpose is for the child and family themselves to 'make' decisions (s21(1)(a)) though only the Chief Executive or court can convene a conference (s22, see also s67 re court referral). The child, parents, guardians, family members and others, including a person nominated by an Aboriginal or Torres Strait Islander organisation (who the convenor considers relevant) are 'entitled' to attend, however, any of these persons may be excluded in the child's best interests (s23(1)(2)).</p> <p>Further details regarding procedures for family group conferencing are set out, including requirements for a child to have an advocate, to allow the child and family to have private discussions,</p>	<p>There is a stated 'desirability' of maintaining connections between a child and biological family (s8(3)) and a principle that culture and language should be taken into account when taking action (s10(1)(a)). As part of the 'object' to maintain connections of Aboriginal and Torres Strait Islander children with family and culture (s12(2)(a)), subsection 12(3)(b) provides that a child placed outside the hierarchy of preferred placements 'should' be given the opportunity for continuing contact with family, community, and culture.</p> <p>The Act does not allow for contact to be court ordered. For children in OOHC, the Chief Executive determines contact arrangements, including by having regard to the likelihood of reunification (s93) – a stipulation which has raised concern given that the importance of family, community, and cultural connections does not depend on the likelihood of reunification.<sup>3</sup></p> <p>The Act permits the Contact Arrangements Review Panel to review contact arrangement decisions (s94).</p> <p>Before applying for an order removing a child, the Chief Executive must assess the likelihood and timeframe for reunification (s50(4)). However, there is no specific requirement for any decision-maker to consider and apply this information in a way that would affect the making of an order removing a child.</p> <p>Further, in line with the principle regarding timely decisions that</p>

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PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>of the likelihood of reunification and the period in which reunification will likely occur, there is no specific requirement for any decision-maker to consider and apply this information in a way that would affect the making of an order removing a child.</p> <p>There is a strong emphasis on prevention and early intervention efforts – early intervention is a priority (s9), functions of the Minister include promoting and assisting the development of early intervention strategies, and promoting, supporting, and ‘adequately resourcing’ evidence-based programs delivering preventative and support services directed towards strengthening and supporting families (s14(1)(b)(c)). Further, the Minister must ensure that the latter programs/services are offered to children and families and ‘genuine efforts are made to encourage’ child and family participation in these (s14(3)).</p> <p>Section 20 sets out that Child and Family Assessment and Referral Networks may be established, with the intention that these networks will provide a targeted intervention response for families with children in the first 100 days , prioritizing Aboriginal children and their families.</p> <p>Section 10(1)(d) – make arrangements by way of FGC</p>		<p>Before any placement is made, the Chief Executive or the court ‘must’, where ‘reasonably practicable’, ‘consult with and have regard to any submissions of a recognised Aboriginal or Torres Strait Islander organisation’ (s12(3)(c)).</p> <p>The Regulations may make further provision in relation to placement of Aboriginal and Torres Strait Islander children (s12(6)), however, at this point in time, amended Regulations complementing the new Act have not been introduced.</p>	<p>to ascertain and present the views of absent persons, and to conclude with valid decisions only with agreement of the child, parents, and guardians (s23-24). Importantly, section 26 states that the Chief Executive ‘should’ give effect to valid decisions.</p> <p>In relation to court proceedings, assumed parties are the child, parents, and guardians (s51), with provision for the court to join other interested persons and/or hear representations from these persons (s51, 66). There is a strong emphasis on ascertaining and considering the views of the child (s8(1)(a), 10(1)(b)) including as expressed personally (s62) or through a legal representative (who must act on direct instructions as far as reasonably practicable) (s63). There is some limitation on the making of orders if a child is unrepresented (s64).</p> <p>Another means of child and family participation is by court-ordered conferences to determine and/or resolve matters in dispute in proceedings (s65).</p>	<p>promote ‘permanency and stability’ (s10(1)(a)), a person who has been caring for a child for 2 years, or less as determined by the Chief Executive, may request that the Chief Executive seek a long-term guardianship order (s89).</p> <p>The new Act has inverted the onus of proof, which is now placed on a person opposing orders where a child is in the custody, or under the guardianship of the Chief Executive (s59). This makes it more difficult for, for example, a birth parent to oppose an order because it requires them to prove why their child should be reunified with them, rather than requiring the state to prove why they should not be.</p> <p>A case plan is required for all children in OOH and ‘must’ include a cultural maintenance plan, reunification plan, and contact arrangements as ‘may be relevant’ (s28). Although no provisions completely mandate the following matters, the Chief Executive is required to annually report the extent to which cultural maintenance plans for Aboriginal and Torres Strait Islander children had input from local communities and organisations, and the extent to which cultural needs are supported (s156(1)(a)(i),(ii)).</p> <p>Reporting about the extent a child has access to a case worker, community, relative or other person from their Aboriginal or Torres Strait Islander community is also required (s156(1)(a)(iii)).</p>

**POLICY**

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>The <i>A Fresh Start</i><sup>4</sup> 2016 reform document commits to establishing an Early Intervention Research Directorate within the Department of the Premier and Cabinet, responsible for creating and coordinating a 5 year whole-of-government prevention and early intervention strategy. The Directorate will include a focus on Aboriginal children and families that seeks ‘culturally suitable approaches to early intervention and prevention’. A specific commitment has been made to work with Aboriginal leaders and organisations to ensure referral pathways and services are culturally appropriate. The Directorate includes a specific remit to consider supports to reduce the number of Aboriginal children requiring a statutory child protection response and is committed to conduct any targeted research work in partnership with the Aboriginal Leadership Group established specifically to provide cultural governance over research.</p>	<p><i>A Fresh Start</i> commits to a ‘collaborative approach’ to addressing the over-representation of Aboriginal and Torres Strait Islander children in the child protection system. This involves ‘meaningful engagement’ with Aboriginal and Torres Strait Islander peoples and a commitment to increasing the capacity and capabilities of ‘Aboriginal NGOs’.</p> <p>The <i>A Fresh Start – Progress Report, June 2017</i><sup>5</sup> states that the Government is ‘actively involving’ the Aboriginal and Torres Strait Islander community in the current reforms.</p> <p>In May 2017, the Department signed the <i>Family Matters Statement of Commitment</i> – Family Matters being an Aboriginal and Torres Strait Islander-led campaign to eliminate the over-representation of Aboriginal and Torres Strait Islander children in OOHC. At this time, the Chief Executive commented that ‘by collaborating with Family Matters and other Aboriginal service providers, peak bodies, and the community, we can better understand the issues and develop solutions together’.<sup>6</sup></p>	<p>The ‘critical shortage of suitable Aboriginal carers was recognised in the Nyland Inquiry and the South Australian Government has responded in <i>A Fresh Start</i> with a commitment for increased efforts to identify appropriate carers earlier. An <i>Out-of-Home Care Strategy</i> is currently being developed.<sup>7</sup> An initial process of targeted consultation on the draft Strategy took place with targeted stakeholders including the State’s Gazetted Organisation, in January 2018. It is reported that all stakeholders supported the proposed up-front focus on improving outcomes for Aboriginal children in care and agreed for the need for clear actions.</p>	<p>There is no express reference or policy focus on child or family participation in decision-making, including in the recent reform document, <i>A Fresh Start</i>. Further, while there is now a legislated regime of family group conferencing, there is no express commitment in the legislation. That said, the Department has stated the policy will seek to ensure a culturally safe and appropriate model is implemented for Aboriginal children and young people, and their families (such as by Torres Strait Islander Family-Led Decision-Making (ATSIFLDM)). The Department is also working to develop a Gazetted Organisation policy which will focus on understanding how to embed cultural governance and practical mechanisms that recognise cultural authority across the child protection pathway. An external Aboriginal consultant has been engaged to undertake this work.</p> <p>Further, the Department has indicated their commitment to an Aboriginal employment target of 10%.</p>	<p><i>A Fresh Start</i> commits to ‘[ensuring] Aboriginal and Torres Strait Islander children have the strongest possible connection to their people and their culture’. Every Aboriginal and Torres Strait Islander child in OOHC ‘will’ have a cultural maintenance plan to help ‘establish, reconnect, and maintain connection with family, community, country, and culture’.<sup>8</sup></p> <p>Every Aboriginal and Torres Strait Islander child should have an Aboriginal Cultural Identity Support Tool (see ‘Processes’ below) that ensures their cultural needs are met.</p>

**PROGRAMS**

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>In phase 1 of the <i>A Fresh Start</i> reforms, metropolitan Child and Family Assessment and Referral Networks (CFARNs) were piloted, focusing on early intervention to prevent further child protection system involvement. CFARNs seek to provide targeted support for families with children in the first 1,000 days, with comprehensive assessment and planning to coordinate access to service. CFARNs will 'develop partnerships with Aboriginal services'. The Mount Gambier pilot will be focused on Aboriginal and Torres Strait Islander children and will be used to identify new service models that are culturally appropriate.<sup>9</sup> While the CFARNs intend to make culturally appropriate referrals to Aboriginal services, there appears to be limited support to or funding of ACCOs to design and deliver support, preservation, or reunification programs. The Department does support Aboriginal Family Support Services (AFSS), an ACCO, by funding the Stronger Families support program.<sup>10</sup> Overall, South Australia invests 13% of family support and 5% of intensive family support funding in ACCOs.<sup>11</sup> The 2013 fifth and final annual report about children on the APY Lands (as called for by the Children on APY Lands Commission of Inquiry 2018) described various Departmental programs in place to prevent child sexual abuse and recommended that these continue to receive sufficient funding and where possible be expanded. There is no further reporting and it is not apparent whether funding has continued or increased, or</p>	<p>Several strategies for engagement with the Aboriginal and Torres Strait Islander community are set out in <i>A Fresh Start</i>. These include an Aboriginal Community Leadership Reference Group to represent the needs of Aboriginal children, families, and communities, and to provide advice and guidance to government. This Group will then advise the Portfolio Management Board, an internal group of senior government executives, and a member will sit on the Child Safety and Wellbeing Advisory Panel. The Panel is co-chaired by the CEO of AFSS, and includes other Aboriginal and Torres Strait Islander membership including SNAICC, the Commissioner for Aboriginal Engagement and the Aboriginal Legal Rights Movement.<sup>12</sup> Further consultation will be undertaken with the Anangu Pitjantjatjara Yankunytjatjara and Maralinga Tjarutja Lands communities. The Department states that it regularly attended and seeks advice of the South Australian Aboriginal Advisory Council on child protection policy and practice. The Council is the South Australian government's peak Aboriginal advisory group and currently has child protection as a strategic priority. The Council is made of 10 Aboriginal persons appointed by the Minister for Aboriginal Affairs and Reconciliation. This Council now falls within the remit of the Department of Premier and Cabinet. The Department of Child Protection also has internal structures for the sharing of Aboriginal cultural knowledge and experiences to</p>	<p>A Family Scoping Unit for Aboriginal and Torres Strait Islander children and families is being established. This will seek to identify kin as safe care options and is placed early in the child protection continuum, in the Child Safety Pathway (see 'Prevention – Processes').<sup>14</sup> Other than consultation with a recognised organisation regarding placement, there are no ACCO-led programs for placement identification, assessment, or support, or reconnection. AFSS provides Residential Care for children under the guardianship of the Minister (or Chief Executive after October 2018). Priority is given to Aboriginal and Torres Strait Islander children. AFSS's residential care program has houses in, Ceduna, Port Lincoln, and the Adelaide metropolitan area.<sup>15</sup></p>	<p>There is currently no ACCO-operated ATSIFLDM or similar approach to enable family and community participation in decision-making. Department or court administered family group conferencing will operate as per recently passed legislation (see 'Legislation – Participation' above). Previously, Family Care Meetings operated prior to the initiation of court proceedings (see 'Practice' below). 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>Despite a strong policy commitment to ensuring connections and for cultural maintenance plans for all Aboriginal and Torres Strait Islander children in OOHC, there are limited resourced programs to implement cultural support plans. AFSS runs its own Connection to Culture program to support children in OOHC – family based placements or residential placements – to maintain connections to family and culture. This involves working with foster carers, AFSS Residential Care, and the Department.<sup>16</sup> This program is funded by the Department. AFSS is funded by the Department to run reunification programs but the decision to refer to this program sitting with the Department and the delay in referral after removal is of significant concern. Otherwise, there is currently no ACCO-operated ATSIFLDM, no ACCO OOHC or case management, and no ACCO custody and guardianship at this time.</p>

**PROGRAMS**

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>whether ACCO-run services have been prioritised and resourced. The new requirements for family group conferencing are commendable in terms of early availability with no prerequisite for a substantiation of harm or making of a protection order before a conference can be held, however there is no program for ACCO-operated ATSIFLDM.</p> <p>The SA Department for Education fund and administer 4 Children and Family Centres, formerly Aboriginal Child and Family Centres, that are specifically committed to integrated early childhood education and care of Aboriginal and Torres Strait Islander children.</p> <p>EIRD, DCP and the Australian Centre for Child Protection are working in partnership with the Commonwealth on a targeted research piece to identify opportunities for early intervention and prevention for Aboriginal families. A report will be produced by the end of 2018 which will inform future directions and specifically consider opportunities for partnership with Aboriginal organisations.</p> <p>Linked to this research, the Department is also leading work with EIRD to establish an Aboriginal designed, Aboriginal led Family Preservation service to be delivered by an Aboriginal organisation. It is anticipated this activity will assist in the development and broader implementation of a culturally effective family preservation service across the state.</p>	<p>shape reform – the Department’s Child Protection Statewide Aboriginal Network and the Senior Aboriginal Leadership Group (a sub-committee of the Senior Executive Group).<sup>13</sup></p> <p>In terms of other partnership efforts/programs, there is currently only one recognised organisation that is gazetted – AFSS – and the only legislated role is consultation regarding placement decisions relating to an Aboriginal and Torres Strait Islander children. AFSS has only 3 staff to perform its gazetted recognised organisation across the entire state (although the Department has stated an intention to review its policy and scope models to increase the number operating across the state and to enhance the role of Aboriginal organisations in Departmental operations).</p> <p>Following the 2018 election, the incoming government signalled its intention to pursue the State Aboriginal Action Plan . They have also indicated their intention to honour some aspects of the previous government’s commitments in relation to the Buthera Agreement with the Narungga Nation.</p> <p>There is no ACCO-operated ATSIFLDM, no ACCO OOHHC or case management, and no ACCO custody and guardianship at this time. While AFSS plays an active service and advocacy role, there is currently no ACCO state peak body or commitment to fund a state peak body.</p>			

**PROCESSES**

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>There are no publically available child protection practitioner manuals, guidelines, or procedures and so it is difficult to determine if processes exist across any of the ATSCIPP elements. The Department advises that these are being revised to support the full implementation of the new legislation in October 2018. This will include a new <i>Clinical Governance Framework</i> focused on practice quality and continuous improvement. The Department states that this will include specific strategies that support staff to develop and maintain skills in culturally safe child protection practice. In addition, a <i>Practice Framework</i> has been developed that describes the principles that underpin culturally safe practice which will ultimately sit within the new Manual of Practice being developed to support implementation of the legislation with a focus on quality.</p> <p>In terms of prevention and alternative referral pathways, in July 2017, the new Child Safety Pathway (Pathway) was established as the new ‘front door’ into the child protection system. It involves an intake and assessment system, including the Multi-Agency Assessment Unit which seeks to identify alternative early intervention options offered by partnering agencies. This may include referral to CFARNs (see ‘Programs’ above).</p> <p>The new Pathway will specifically include Aboriginal and Torres Strait Islander staff, decisions will be informed by Aboriginal</p>	<p>There are currently limited available procedures that enable or even describe informed ACCO participation, including for the legislatively required ‘consultation’ with a recognised organisation regarding placement. The Department advises new resources are being developed as part of the implementation of the new Act and will include the new gazetted organisation policy which will include guidance on broader opportunities for participation and partnership across the child safety pathway.</p> <p>A <i>Frequently Asked Questions</i> document, seemingly targeted at parents, provides some guidance about the process by which ‘other person guardianship’ assessments and decisions are made. ‘Other person guardianship’ is guardianship of a child that is held by a suitable person, not the Chief Executive (formerly the Minister). The document states that considerations about ‘other person guardianship’ for Aboriginal children will be ‘initially discussed with the [Department’s] Principal Aboriginal Consultant, Principal Social Worker, and the carer... consultation will occur with AFSS, [Department] Aboriginal staff, and other gazetted organisations’.<sup>18</sup></p>	<p>While there is no publicly available practitioner guidance regarding Aboriginal and Torres Strait Islander kinship relationships – the Department website, when providing information to the general public, describes kinship care arrangements and states that ‘in Aboriginal communities, kin may be a relative of the child or someone who shares a cultural or community connection’.<sup>19</sup></p> <p>Significantly, the Department adopted the Winangay kinship assessment tool, an ACCO-developed Aboriginal kinship carer assessment tool, by late 2017 and is committed to full roll out of the tool.<sup>20</sup></p> <p>Despite this commendable initiative, there are numerous best practice processes that are not documented, including enablers of timely and informed ATSIFLDM to inform placement decision-making, requirements to conduct and record assessment of all placement options in order of preference, and requirement and procedures to regularly review lower-level placements with a view to reconnect a child with a prioritised placement.</p>	<p>Limited reference to family ‘consultation’ is made in relation to assessment of appropriateness of ‘other person guardianship’ for Aboriginal and Torres Strait Islander children (see also ‘Partnership’). The Department merely states that assessment for ‘other person guardianship’ will require consultation with extended family and community members ‘where appropriate’.<sup>21</sup></p> <p>Otherwise, there are no available processes or procedures detailing how timely and informed child and family participation is enabled – there are no available documents setting out processes for consulting with children and including their views; seeking, recording, and considering family member’s views; or advising children, parents, and family about their rights to legal representation, particularly by Aboriginal and Torres Strait Islander legal services. The Department advises that the new Act provides the authorising framework and signals the government’s commitment to ensuring decision making is made as close to the child as possible, and this will be supported by clear policy and practice guidance that supports participation of Aboriginal children, families and organisations as key decision makers across the system.</p>	<p>An Aboriginal Cultural Identity Support Tool is being implemented to consider and process cultural advice to ensure connections to kin and culture.<sup>22</sup> At this stage there is no detailed or further information about this Tool. Feedback from the community sector is that this Tool is not yet in use. The Department states that it is committed to the implementation of the Tool, with the expectation that all Aboriginal and Torres Strait Islander children will have a completed Tool within 12 months.</p> <p>A child’s Aboriginal Life Story Book may also help develop connections with culture, supported by family and community members.<sup>23</sup> Feedback from the community sector is that very few Life Story Books have been completed to date.</p> <p>In the absence of ACCO-led and operated, or in fact any programs that enable child, family, and community participation in cultural support planning and implementation (see ‘Programs’ above), the Department states that ‘it is the responsibility of the case worker to make sure each child has a cultural maintenance plan’.<sup>24</sup> In terms of implementation, the Department states that this requires increased efforts to upskill Aboriginal and non-Aboriginal carers to maintain crucial cultural connections.<sup>25</sup> There are no details regarding upskilling or guidance for maintaining connections.</p> <p>The <i>Rapid Response Framework</i> outlines the way children under the guardianship of the Minister (now</p>

**PROCESSES**

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>representatives, and options for referring families to 'successful Aboriginal programs will be increased'.<sup>17</sup> However, as set out in 'Programs' above, there are limited resourced ACCO-designed and delivered programs.</p>				<p>Chief Executive) access government services. The Framework does not appear to have yet been updated since 2005 and in light of recent reforms, but does include some positive requirements for case planning for Aboriginal and Torres Strait Islander children – this should include spiritual and cultural needs, including connection to family, community, stories, and land.<sup>26</sup> Further, the Department has stated that the framework is scheduled for review.</p> <p>In terms of reunification, following the lack of legislative and policy commitment to prioritising and pursuing reunification, there are no available procedures calling for early and continued assessment of reunification opportunities, and supports to be provided.</p>

**PRACTICE**

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<p>The proportion of South Australian spending on intensive family support services and family support services in relation to total child protection spending rose from 4.62% in 2011-2012 to 6.26% in 2015-2016.<sup>27</sup></p> <p>Of all children commencing an intensive family support service in South Australia within 2015-2016, 41.29% were Aboriginal and Torres Strait Islander.<sup>28</sup></p> <p>In South Australia, Aboriginal and Torres Strait Islander children represented 33% of all children in OOHc as at 30 June 2016, an increase from 27.7% as at 30 June 2012.<sup>29</sup> Aboriginal and Torres Strait Islander children were 10.8 times more likely than non-Indigenous children to be in OOHc at 30 June 2016, an increase from 8.4 times as likely at 30 June 2012.<sup>30</sup> As at 30 June 2016, 6.6% of all Aboriginal and Torres Strait Islander children in South Australia were in OOHc, an increase from 4.5% at 30 June 2012.<sup>31</sup></p> <p>At 30 June 2016, 33% or about 994 children of all children subject to guardianship orders to the Minister (now Chief Executive), were Aboriginal or Torres Strait Islander. This is an increase from 22.8% in 2006 and 29.6% in 2015 (Office of the Guardian for Children and Young People).<sup>32</sup></p> <p>The Government has advised it has committed to work through EIRD in partnership with an Aboriginal organisation to pilot an Aboriginal designed, Aboriginal delivered family preservation program.</p>	<p>As noted above, there is currently only one gazetted recognised organisation in South Australia – Aboriginal Family Support Services. However, there are several other ACCOs working in the child and family welfare sector. The Department has stated the intention to develop a policy relating to the role of gazetted organisations with a view to expanding the number of recognized organisations as well as increasing the opportunities for participation in decision making at all points across the child protection system.</p> <p>It is unsurprising in light of the lack of programs and processes regarding partnership, and the relatively recent, and general, policy commitment to partnership, that there are no available measures of practice of partnership.</p> <p>Since around 2005/6, the Office of the Guardian for Children and Young People has supported a position for an Advocate for Aboriginal and Torres Strait Islander children. The Advocate seeks to promote the importance of connections to culture and to strongly advocate for all Aboriginal and Torres Strait Islander children in care.<sup>33</sup></p> <p>The government has announced a commitment to the appointment of a Commissioner for Aboriginal Children and Young People during the election campaign. Recruitment will commence in the coming months.</p>	<p>The proportion of 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 in South Australia fell from 73.4% as at 30 June 2012 to 60.5% as at 30 June 2016.<sup>34</sup></p> <p>However, in terms of the first preferred placement, as at 30 June 2016, only 52.5% of children were placed with Aboriginal and Torres Strait Islander kin or other family, a decrease from 57% at 30 June 2012.<sup>35</sup></p> <p>Significantly, the Department adopted the Winangay kinship assessment tool, an ACCO-developed Aboriginal kinship carer assessment tool, by late 2017 and is committed to full roll out of the tool.<sup>36</sup></p>	<p>The new Act sets out a regime of family group conferencing. This moves on from the previous Family Care Meeting system set out under the old legislation – these meetings, involving the child, family and Department, were convened when the Department held care and protection concerns and prior to the initiation of court proceedings. The Nyland Inquiry found that there should be greater use of these meetings and not just as a pre-cursor to court proceedings, and further found several deficient practices including inappropriate direction/leading by the coordinator, lack of attendance by relevant persons, lack of child participation, and lack of implementation of meeting decisions.<sup>37</sup></p> <p>The Office of the Guardian for Children and Young People reported that a significant number of complaints/issues brought before it included those relating to ‘participation in decision-making’.<sup>38</sup></p>	<p>There does not appear to be any reporting by the Department or otherwise on the completion or quality of case plans or the cultural maintenance plan section of a case plan, the rate of reconnection or contact with family, or the rate of successful reunification.</p> <p>The Office of the Guardian for Children and Young People reported that a significant number of complaints/issues brought before it included those relating to ‘contact with significant others’.<sup>39</sup> The Government has indicated its commitment to establishing an Aboriginal Family Scoping unit within the Department for Child Protection. This unit is dedicated to finding family and kin to care for children in care at the earliest opportunity, and seeks to ensure more Aboriginal children in care are cared for by kin and are supported to maintain cultural connections.</p>

- <sup>1</sup> Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Government of South Australia's Response to the Child Protection Systems Royal Commission Report: A Life They Deserve*, available at <https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a-fresh-start.pdf>
- <sup>2</sup> Forthcoming *Family Matters Report* (2017).
- <sup>3</sup> See SNAICC – National Voice for our Children (2016). *Achieving Stability for Aboriginal and Torres Strait Islander Children in Out-of-Home Care*. Melbourne: Author
- <sup>4</sup> Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Government of South Australia's Response to the Child Protection Systems Royal Commission Report: A Life They Deserve*, available at <https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a-fresh-start.pdf>
- <sup>5</sup> Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Progress Report, June 2017*, available at [https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a\\_fresh\\_start\\_progress\\_report.pdf](https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a_fresh_start_progress_report.pdf)
- <sup>6</sup> Department for Child Protection, South Australia (15 May 2017). *Media Release – Department for Child Protection takes the pledge because Family Matters*, available at <https://www.childprotection.sa.gov.au/department/media-centre/media-releases/department-child-protection-takes-pledge-because-family>
- <sup>7</sup> Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Progress Report, June 2017*, available at [https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a\\_fresh\\_start\\_progress\\_report.pdf](https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a_fresh_start_progress_report.pdf)
- <sup>8</sup> See <https://www.childprotection.sa.gov.au/children-care/support-children-care/additional-support-children-care>
- <sup>9</sup> Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Progress Report, June 2017*, available at [https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a\\_fresh\\_start\\_progress\\_report.pdf](https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a_fresh_start_progress_report.pdf)
- <sup>10</sup> See <https://www.afss.com.au/stronger-families>
- <sup>11</sup> Forthcoming *Family Matters Report* (2017).
- <sup>12</sup> Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Government of South Australia's Response to the Child Protection Systems Royal Commission Report: A Life They Deserve*, available at <https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a-fresh-start.pdf>; Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Progress Report, June 2017*, available at [https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a\\_fresh\\_start\\_progress\\_report.pdf](https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a_fresh_start_progress_report.pdf)
- <sup>13</sup> Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Progress Report, June 2017*, available at [https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a\\_fresh\\_start\\_progress\\_report.pdf](https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a_fresh_start_progress_report.pdf)
- <sup>14</sup> Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Progress Report, June 2017*, available at [https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a\\_fresh\\_start\\_progress\\_report.pdf](https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a_fresh_start_progress_report.pdf)
- <sup>15</sup> See <https://www.afss.com.au/residential-care>
- <sup>16</sup> See <https://www.afss.com.au/connection-to-culture>
- <sup>17</sup> Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Progress Report, June 2017*, available at [https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a\\_fresh\\_start\\_progress\\_report.pdf](https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a_fresh_start_progress_report.pdf)
- <sup>18</sup> Department for Child Protection, South Australia (2017). *Other Person Guardianship – Frequently Asked Questions*, available at <https://www.childprotection.sa.gov.au/sites/g/files/net916/f/opg-faq.pdf>
- <sup>19</sup> See <https://www.childprotection.sa.gov.au/children-care/out-home-care/types-out-home-care>
- <sup>20</sup> Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Progress Report, June 2017*, available at [https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a\\_fresh\\_start\\_progress\\_report.pdf](https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a_fresh_start_progress_report.pdf)
- <sup>21</sup> Department for Child Protection, South Australia (2017). *Other Person Guardianship – Frequently Asked Questions*, available at <https://www.childprotection.sa.gov.au/sites/g/files/net916/f/opg-faq.pdf>
- <sup>22</sup> Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Progress Report, June 2017*, available at [https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a\\_fresh\\_start\\_progress\\_report.pdf](https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a_fresh_start_progress_report.pdf)
- <sup>23</sup> See <https://www.childprotection.sa.gov.au/children-care/support-children-care/life-story-work>
- <sup>24</sup> See <https://www.childprotection.sa.gov.au/children-care/support-children-care/additional-support-children-care>
- <sup>25</sup> Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Government of South Australia's Response to the Child Protection Systems Royal Commission Report: A Life They Deserve*, available at <https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a-fresh-start.pdf>
- <sup>26</sup> See <https://www.childprotection.sa.gov.au/child-protection-initiatives/rapid-response-children-under-guardianship-minister>
- <sup>27</sup> Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services – Chapter 16 – Child Protection*, 2017, Table 16A.1
- <sup>28</sup> Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services – Chapter 16 – Child Protection*, 2017, Table 16A.30
- <sup>29</sup> Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services – Chapter 16 – Child Protection*, 2017, Table 16A.17
- <sup>30</sup> Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services – Chapter 16 – Child Protection*, 2017, Table 16A.17
- <sup>31</sup> 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
- <sup>32</sup> Office of the Guardian for Children and Young People, Government of South Australia, *Annual Report 2015-2016*, available at <http://www.gcyp.sa.gov.au/wp-content/uploads/2017/01/Guardian-for-Children-and-Young-People-Annual-Report-2015-16.pdf?x26381>
- <sup>33</sup> See <http://www.gcyp.sa.gov.au/2017/08/aboriginal-children-community-culture/>
- <sup>34</sup> Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services – Chapter 16 – Child Protection*, 2017, Table 16A.23
- <sup>35</sup> Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services – Chapter 16 – Child Protection*, 2017, Table 16A.23
- <sup>36</sup> Attorney-General's Department, Government of South Australia (2016). *Child Protection, A Fresh Start – Progress Report, June 2017*, available at [https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a\\_fresh\\_start\\_progress\\_report.pdf](https://www.childprotection.sa.gov.au/sites/g/files/net916/f/a_fresh_start_progress_report.pdf)
- <sup>37</sup> Child Protection Systems Royal Commission, Government of South Australia (2016). *The Life They Deserve: Child Protection Systems Royal Commission Report*, available at [https://agdsa.govcms.gov.au/sites/g/files/net2876/f/complete\\_report\\_child\\_protection\\_systems\\_royal\\_commission\\_report.pdf?v=1494388953](https://agdsa.govcms.gov.au/sites/g/files/net2876/f/complete_report_child_protection_systems_royal_commission_report.pdf?v=1494388953)

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<sup>38</sup> Office of the Guardian for Children and Young People, Government of South Australia, *Annual Report 2015-2016*, available at <http://www.gcyp.sa.gov.au/wp-content/uploads/2017/01/Guardian-for-Children-and-Young-People-Annual-Report-2015-16.pdf?x26381>

<sup>39</sup> Office of the Guardian for Children and Young People, Government of South Australia, *Annual Report 2015-2016*, available at <http://www.gcyp.sa.gov.au/wp-content/uploads/2017/01/Guardian-for-Children-and-Young-People-Annual-Report-2015-16.pdf?x26381>