

REVIEWING IMPLEMENTATION OF
THE ABORIGINAL AND
TORRES STRAIT ISLANDER
CHILD PLACEMENT
PRINCIPLE
NEW SOUTH WALES
2019



SNAICC
National Voice for our Children

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1. Introduction

This report reviews the progress of the New South Wales (NSW) Government in implementing the full intent of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP). This review is conducted on the basis of the best practice approach 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*](#) and SNAICC, 2018, [*The Aboriginal and Torres Strait Islander Child Placement Principle: A Guide to Support Implementation*](#).

It considers changes in the implementation of the five elements of the ATSICPP – prevention, partnership, placement, participation and connection – described in the diagram below across five interrelated system elements, since the comprehensive baseline analysis SNAICC released in April 2018 (2018 Baseline Analysis).¹ These system elements are legislation, policy, programs, processes and practice. The current review therefore only considers ATSICPP implementation efforts over the past year (from 1 May 2018 – 30 April 2019).

It is important to note that the review is somewhat limited in scope. It 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. 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.

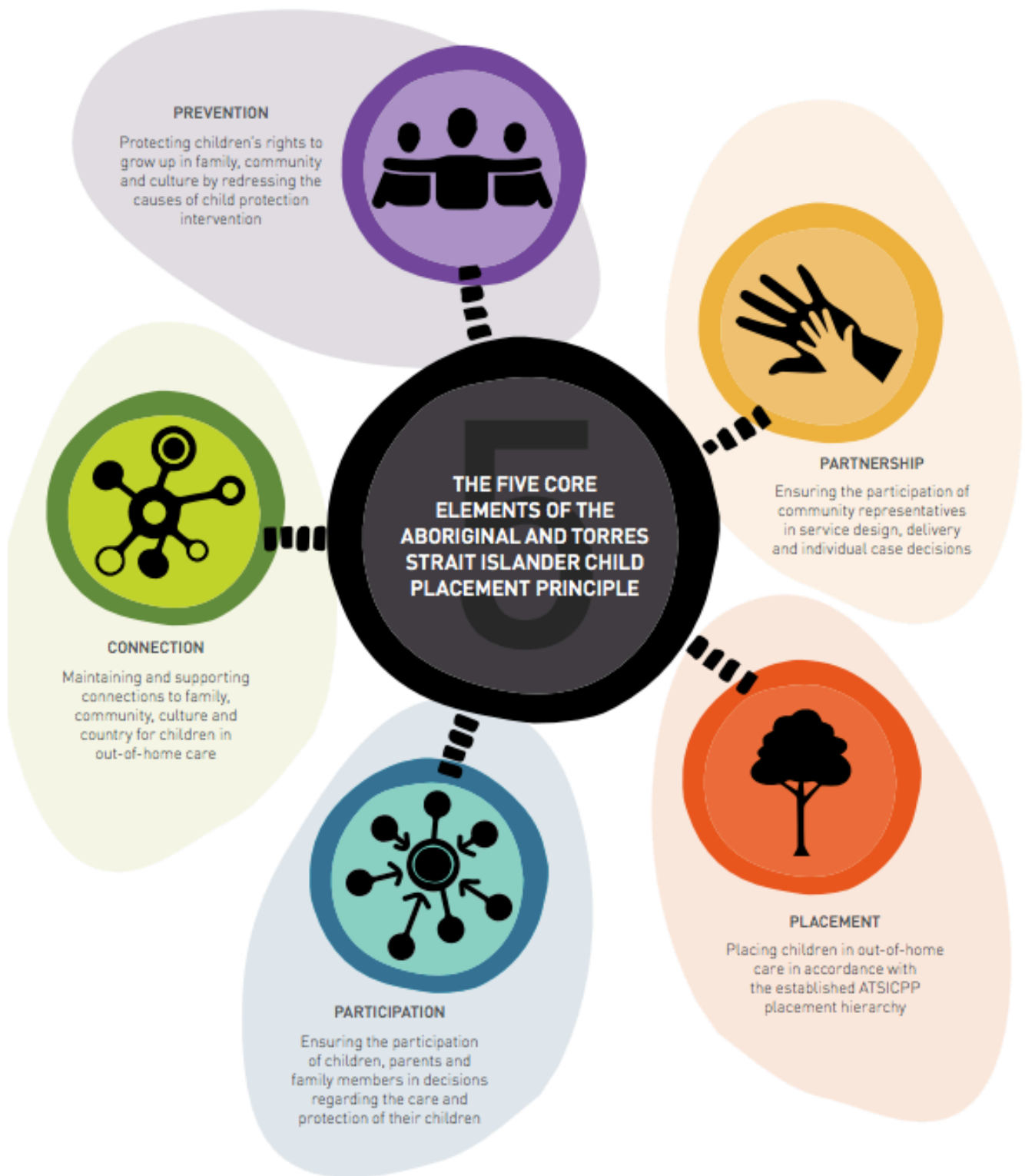
This review is based on available documentation gathered through a desktop review and input provided by the NSW Government and Aboriginal and Torres Strait Islander sector leaders.

The Aboriginal and Torres Strait Islander Working Group for the National Framework for Protecting Australia's Children has guided the development of this report and equivalent reviews for each state and territory jurisdiction. The Working Group is tasked with ensuring implementation of the ATSICPP in line with the agreement under the Fourth Action Plan to “uphold the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle to recognise the rights of Aboriginal and Torres Strait Islander children to be raised in their own culture and the importance and value of their family, extended family, kinship networks, culture and community.”²

The purpose of this review, which will take place annually for all Australian states and territories, is to establish the current status of implementation of the ATSICPP in each state and territory in order to measure progress towards enhanced implementation.

¹ SNAICC – National Voice for our Children (2018). Baseline Analysis of Best Practice Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: New South Wales. Available at

² Commonwealth of Australia (2018). Fourth Action Plan 2018-2020: Supporting Families, Communities and Organisations to Keep Children Safe. Available at https://www.dss.gov.au/sites/default/files/documents/01_2019/dss-fourth-action-plan-v6-web-final.pdf.



2. Overview – New South Wales

Since the 2018 Baseline Analysis, legislative amendments to the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (the Act) have been passed without proper consultation with Aboriginal organisations. These amendments make it easier for children in care to be placed on permanent orders or adopted, risking severing children’s connection to family, community and culture. They also make it more difficult to change orders, which could make it more difficult to place children with their Aboriginal or Torres Strait Islander family in accordance with the placement hierarchy in s13 of the Act. The legislative changes do require the NSW Department of Family and Community Services (Department) to offer Alternative Dispute Resolution (ADR) to all families before filing a care application in the Children’s Court (unless there are exceptional circumstances) which, with the right accompanying support processes, has potential to increase family engagement to plan for the safe care of children with their parents or with kin. The Government has proposed that these changes, focused on achieving permanency as soon as possible, seek to involve families through offering family group conferencing and including consideration of preservation and restoration. However, in the absence of policies and investments that establish a holistic, Aboriginal-led, and culturally safe child and family service system, efforts towards preservation and restoration will remain inadequate. The imposition of arbitrary time frames for restoration, streamlining processes for permanent removals and restrictions on processes to vary or rescind orders may also make it more likely that children and young people entering the system will artificially “exit” to permanent care orders.

While some new policies, in particular the Aboriginal Case Management Policy (ACMP), show significant promise to strengthen the role of Aboriginal or Torres Strait Islander families and Aboriginal community controlled mechanisms across the spectrum of child protection decision-making, and ultimately improve implementation of each element of the ATSI CPP, there remains a major gap between policy and practice. While the ACMP requires Aboriginal family-led decision-making facilitated through Aboriginal community controlled organisations (ACCOs), for example, it is unknown whether the Department will continue to use its existing Department-managed Family Group Conferencing instead. Contrary to these new policies, the Department has also been inconsistent in its engagement with Aboriginal organisations and stakeholders on key legislative, policy and programmatic reforms, showing great initiative in co-designing some while denying community involvement and ignoring consistent Aboriginal community opposition in others. It also recently closed a program (the Protecting Aboriginal Children Together Advisory Service) that implemented key provisions of the ACMP. This reinforces the importance of independent mechanisms of oversight, like an Aboriginal Child and Family Commissioner and clear mechanisms for policy engagement by “Aboriginal Community Controlled Mechanisms” as outlined in the ACMP.

Resourcing programs and processes that give effect to these policies and building in accountability mechanisms will be critical for their effective implementation. Sector leaders have reiterated concerns identified in the 2018 Baseline Analysis that failure to resource and enable implementation of legislative and policy intent mean that these positive reforms have little meaningful impact.

The review of Aboriginal children and young people who entered out-of-home care (OOHC) in NSW in 2015/2016 has been an important initiative for independent examination of the application of the NSW child and family welfare system to Aboriginal children. Its report, which is imminent, will be an important moment for reflection and reform, and for strengthening safeguards for Aboriginal children and young people, and their families.

Diverse early intervention programs have continued through this review period. However, the proportion of spending on intensive family support and family support in relation to other child protection services has fallen further to 14.3% in 2017/18, below the national average expenditure of 16.1%,³ with Aboriginal children also under-represented in the children commencing an intensive family support service.⁴

³ See Steering Committee for the Review of Government Service Provision. (2019). Productivity Commission, Report on Government Services (ROGS). Chapter 16, Table 16A.7.

⁴ See Steering Committee for the Review of Government Service Provision. (2019). Productivity Commission, Report on Government Services (ROGS). Chapter 16, p 16.9.

Although it is too soon to indicate whether early intervention programs are working well for families, on a positive note, the number of Aboriginal and Torres Strait Islander children entering OOHC has dropped significantly from 1, 078 in 2016/17 to 817 in 2017/18.⁵

One area of improvement concerns supports to children, families and guardians where a child is subject to a guardianship order. The Department has commissioned AbSec to develop and administer a guardianship support model in two locations in partnership with local Aboriginal communities. This model and the Guardianship Support System are being developed to deliver specialised services, support networks and resources to ensure that children on guardianship orders receive the supports they need and are supported to maintain their connection to culture. However, these will be voluntary, with no mechanisms in place to ensure that Cultural Care Plans and Cultural Support Plans are followed after a guardianship or adoption order is put in place.

There have been no substantive improvements identified in significant processes like identification of Aboriginal children and young people or cultural planning and there remains no funded programs to support cultural planning.

Aboriginal children are now 10.5 times more likely to be removed from their family, which is above the national rate of over-representation.⁶ Disturbingly, the proportion of Aboriginal or Torres Strait Islander children placed with an Aboriginal or Torres Strait Islander carer in NSW has also dropped dramatically in one year to 52.5% in 2018, from 63.6% in 2017.⁷

NSW has taken some positive steps over the past year to implement the ATSICPP. However, overall, NSW has regressed in its implementation of the ATSICPP and remains a long way from full implementation. The Department reports that implementation of the ATSICPP can differ depending on the localised approach that is informed by the Aboriginal people within each of the districts, and, as such, the nuances regarding implementation may not be captured in the input they provided to inform this review.

⁵ See Steering Committee for the Review of Government Service Provision. (2019). Productivity Commission, Report on Government Services (ROGS). Chapter 16, Table 16A.03.

⁶ See The Family Matters Campaign, *The Family Matters Report 2019*, p 31.

⁷ See The Family Matters Campaign, *The Family Matters Report 2019*, p 77.

3. Prevention

Since the 2018 Baseline Analysis, there have been legislative amendments concerning child protection and adoption. Amendments to the Act now require the Department to offer Alternative Dispute Resolution (ADR) to all families before filing a care application in the Children's Court (unless there are exceptional circumstances).⁸ This process aims to reduce the numbers of Aboriginal and Torres Strait Islander children entering care. While the Department reports that Family Group Conferencing (FGC) is the preferred form of ADR, this is not explicit in the legislation. Section 37 does contain a provision which states that models for conferencing may be developed to accommodate the unique requirements of a community. New provisions also limit the time for consideration of restoration and expedite permanent orders to two years (unless under special circumstances) (s79(8) and s83 of the Act), restricting magistrates' discretion around what a 'reasonable period' could be. This seriously undermines the goals of the ATSICPP and other strong principles for reunification/restoration contained within the Act. This is discussed in greater detail in the 'connection' section below.

On the policy front, the Aboriginal Case Management Policy, Rules and Practice Guidance (ACMP)⁹ has been endorsed during this period. The ACMP seeks to "provide a framework for Aboriginal-led and culturally embedded case management practice to safeguard the best interests of Aboriginal children and young people." It states that Aboriginal case management translates the Aboriginal Child Placement Principles, including the principles of prevention, partnership, placement, participation and connection, into everyday practice. The ACMP includes prevention as a core principle and outlines proactive efforts to promote family preservation. For example, Aboriginal Family Strengthening seeks to address identified risks, builds parental capacity and strengthens family functioning in order to prevent entries into care. The Department informs that the ACMP will be implemented in stages, with funding provided to implement stage 1. Currently, there is no resourcing to drive the cultural, systems and practice change outlined in the ACMP.

Some prevention-focused policies, however, have stalled in this period, including in particular the Targeted Earlier Intervention Program Reform and its commitment to target 30% of investment to Aboriginal community controlled organisations. Sector leaders have reported that the Their Futures Matters (TFM), which includes the Access System Redesign project, aimed at improving access to early intervention supports, is progressing but without transparency.

The diverse early intervention and prevention programs outlined in the 2018 Baseline Analysis continue. In addition, the Permanency Support Program, focusing on investing in preservation services, funds 17 service providers to deliver family preservation packages to prevent children from entering care. Six of these organisations are Aboriginal community controlled organisations. While this is promising, the proportion of spending on intensive family support and family support in relation to other child protection services has continued to fall to 14.3% in 2017/18, below the national average of 17.1%.¹⁰ This is a significant reduction from 26.1% in 2011-2012.¹¹ Further, just over 32% of all children commencing an intensive family support service in 2017/18 were Aboriginal, which has remained about the same since 2016/17.¹²

The ACMP includes a section on identification and de-identification of Aboriginal children and young people, specifying relevant factors for consideration and an identification process, which includes determination of a decision through an Aboriginal Community Controlled Mechanism.¹³ Sector leaders

⁸ Section 37 of the Act.

⁹ NSW Department of Family and Community Services, Aboriginal Case Management Policy, Rules and Practice Guidance <https://www.facs.nsw.gov.au/families/permanency-support-program/aboriginal-case-management-policy>.

¹⁰ ROGS 2019, Table 16A.7.

¹¹ ROGS 2019, Table 16A.7.

¹² ROGS 2019, Table 16A.32.

¹³ Rules and Practice Guidance, Other Case Management Functions. Available at <https://www.facs.nsw.gov.au/providers/children-families/deliver-psp/aboriginal-case-management-policy/rules-and-practice-guidance/chapters/other-case-management-functions>.

indicate, however, that these have not yet been implemented, nor has the Department's Aboriginal identification policy for children and young people involved in child protection, which was under development during the 2018 Baseline Analysis, been finalised. Sector leaders have informed that the Department has not engaged with them on this reform.

Aboriginal children are now 10.5 times more likely to be removed from their family. Aboriginal and Torres Strait Islander children still represent 39.1% of all children in OOHC (as at 30 June 2018), an increase from 38.2% as at 30 June 2017.¹⁴ On a positive note, the number of Aboriginal and Torres Strait Islander children entering OOHC has dropped significantly, from 1,078 in 2016/17 to 817 in 2017/18.

¹⁴ Steering Committee for the Review of Government Service Provision, Productivity Commission, *Report on Government Services – Chapter 16 – Child Protection*, 2019?, Table 16A.2.

4. Partnership

Recent legislative amendments concerning child protection and adoption were passed during this period without adequate partnership with Aboriginal peoples, despite their disproportionate impact. Both Aboriginal and non-Aboriginal child and family organisations and legal advocacy groups joined to denounce the NSW Government for its blatant lack of transparency and consultation in the development of the legislative amendments.¹⁵ There were deep concerns that significant amendments, including on adoption, were rushed through parliament without proper consideration or consultation, risking repetition of past harmful child protection law and policy. Sector leaders report that the Government did not engage with Aboriginal organisation proposals to strengthen safeguards in legislation for Aboriginal children and young people. Policies and strategies that were developed with reportedly minimal consultation with Aboriginal communities include the Aboriginal Outcomes Strategy and an internal policy for the adoption of Aboriginal children in OOHC. It is unclear how these policies are being actioned currently.

A number of policies were initiated or progressed in the reporting period that focus on partnership with Aboriginal communities. These include the transition of Aboriginal children in OOHC to ACCOs, the trialling of an Aboriginal commissioning approach through AbSec, Aboriginal Case Management Policy, the *Aboriginal Industry Development Strategy* (now called the *Aboriginal Child and Family Investment Strategy*), and the *Guiding Principles for Strengthening the Participation of the Local Aboriginal Community in Child Protection Decision Making (Guiding Principles)*. However, sector leaders have informed that some of these have been applied in a piecemeal manner and are inadequately resourced for effective implementation.

The endorsement of the ACMP, developed by AbSec for the Department, demonstrates the opportunity for Aboriginal-led policy development regarding Aboriginal children and families. The policy has the potential to promote meaningful partnerships between the Department and communities, and prioritises greater involvement of Aboriginal communities in the case management of Aboriginal children. It has strong principles for case management around community involvement, including self-determination and advocacy, and accountability to Aboriginal peoples through Aboriginal community controlled mechanisms.¹⁶ This includes the transition of Aboriginal children in OOHC to accredited ACCOs. This has been a policy initiative since 2012; however, implementation efforts had stalled. Recent work has sought to reinvigorate this initiative, and should be sustained until the full transition of Aboriginal children to accredited ACCOs. The Family Strengthening Rules and Practice Guidance also requires proactive efforts to ensure consultation with Aboriginal community controlled mechanisms when conducting a child safety and risk assessment, as well as documentation for reasons for not consulting as early as possible.¹⁷ Importantly, the ACMP also includes a principle of case management accountability, which requires “Engaging openly with Aboriginal community controlled mechanisms that oversees compliance with the Aboriginal Case Management Policy, including family and community participation in decision-making and proactive efforts to support Aboriginal children and families.”¹⁸

Realising the potential of the ACMP will require adequate resourcing and a partnership approach to implementation. However, the recent closure of the Protecting Aboriginal Children Together (PACT) advisory service appears contrary to the policy. Through PACT, Aboriginal organisations provided

¹⁵ Joint Statement New Legislation Announced Demonstrates Disregard for Transparency and Consultation with Public on Vulnerable Children and Families, 26 October 2018. Available at <https://www.absec.org.au/images/downloads/Joint-Statement-Legislative-Reform-Oct-2018-Final.pdf>

¹⁶ NSW Department of Family and Community Services, Aboriginal Case Management Policy, Rules and Practice Guidance, last published on 2 May 2019. Available at <https://www.facs.nsw.gov.au/families/permanency-support-program/aboriginal-case-management-policy>.

¹⁷ NSW Department of Family and Community Services, Aboriginal Family Strengthening Rules and Practice Guidance, last published on 2 May 2019. Available at <https://www.facs.nsw.gov.au/providers/children-families/deliver-ppsp/aboriginal-case-management-policy/rules-and-practice-guidance/chapters/aboriginal-family-strengthening>.

¹⁸ NSW Department of Family and Community Services, Aboriginal Case Management Policy, Rules and Practice Guidance, last published on 2 May 2019. Available at <https://www.facs.nsw.gov.au/families/permanency-support-program/aboriginal-case-management-policy>.

advice on child protection intervention in one location which is now left without the service. Another PACT site was transitioned to an Intensive Family Based Service.

Many of the programs outlined in the 2018 Baseline Analysis continue, including Their Futures Matter (TFM). As part of TFM, the Aboriginal Evidence Building in Partnership (AEBP) project was initiated and aims to build the evaluation capabilities of the ACCO sector and the evidence base for promising programs run by Aboriginal organisations that are supporting Aboriginal children, young people, families and communities in NSW. However, sector leaders report that, to date, TFM has had limited focus on the specific needs of Aboriginal children, families and communities, and discussions around involving Aboriginal people in the governance of TFM have never been actioned. The Department has also funded AbSec to develop holistic Aboriginal community controlled approaches in western and far western NSW, including in relation to transitioning Aboriginal children in OOHc to ACCOs.

Finally, the Department has committed to an Aboriginal commissioning approach for guardianship support services. AbSec will be established as a commissioner of services, working with local Aboriginal communities to develop the outcomes and approach, and then commissioning that service. This program is a key opportunity, if properly resourced, to support a culturally strong and community-led approach to service provision that is responsive to community need.

Processes that have sought to build a foundation to strengthen partnerships (and other elements of the ATSICPP) during the reporting period include the Aboriginal Cultural Capability Framework, which was introduced in 2018 to underpin and build the Department's organisational and staff cultural capability to deliver outcomes for Aboriginal people in NSW. There are two key elements to the Framework: 1) the cultural capability of all Department staff, non-Aboriginal and Aboriginal, frontline and non-frontline; and 2) the cultural safety of all Aboriginal staff. To progress element 1, the Department funded a mandatory Aboriginal cultural capability training program to train staff between 2018 and 2022. The Framework also introduces an Aboriginal Impact Statement (AIS) to help the Department ensure that Aboriginal stakeholders are consulted in the development and implementation of projects and actions that impact and or address the needs of Aboriginal people. Sector leaders have indicated that there was limited consultation with Aboriginal organisations in the development of this Framework.

In relation to practice, the Office of the Senior Practitioner (OSP) is redeveloping the content for the Casework Development Course and is consulting with a number of internal and external Aboriginal stakeholders. This includes the Stolen Generations and Grandmothers Against Removal (GMAR) NSW.

Finally, the independent review of Aboriginal children and young people who entered OOHc in NSW in 2015/2016 is in finalisation and the report is likely to be released in September or October. This should provide practical recommendations to strengthen implementation of the ATSICPP and reduce the over-representation of Aboriginal children in OOHc in NSW. The Department reports that most districts have already implemented panels to improve practice with Aboriginal children, young people and families as a result of this review with the panels being responsible for implementing the review recommendations. There is no clear information on the make-up and role of these panels and whether Aboriginal people sit on them.

5. Placement

Recent legislative amendments weakened provisions on compliance with the placement element of the ATSI CPP, adding mandatory considerations for the Children's Court before granting leave for an application to vary or rescind a care order.¹⁹ This includes the length of time that the child has been in the care of the present carer, the stability and security of the current care arrangements, and the course that would result in the least intrusive intervention into the life of the child.²⁰ This decreases the likelihood that placements which are not with Aboriginal or Torres Strait Islander family will be altered in preference of family placements consistent with the legislated placement hierarchy set out in s13 of the Act. It also misconstrues the construct of stability for Aboriginal and Torres Strait Islander children, placing emphasis on a stable living arrangement rather than a stable sense of identity and understanding of where they are from, which requires being raised within extended family and kin networks that form the foundation of their identity and culture.

The goals, principles and outcomes detailed in the new ACMP support increased compliance with the legislated placement hierarchy. This includes through, for example:

- the aim “to support practitioners to engage early with Aboriginal families and empower families to shape case planning, identifying tailored priorities and solutions to keep children safe and with their family and community”
- the child focused principle which requires “providing every opportunity for a child to be raised within their own family, community, culture and on Country where they are cared for in safe and nurturing homes, by relatives and kin who support and strengthen their identity and connections to family...”²¹

The ACMP also outlines new processes for family engagement and placement decision-making which, if appropriately implemented, would increase family and kinship placements. The Aboriginal Child Safety Rules and Practice Guidance of the ACMP, for example, outlines requirements to be satisfied in order to place an Aboriginal child outside of family/kin. These include clear and convincing evidence that all proactive efforts have been made to identify suitable family/kin and that the placement has been endorsed through the local Aboriginal Community Controlled Mechanism (Aboriginal local governance groups and ACCOs).²²

The Department's supervision policy, released in 2018, outlines key decisions that must be made in group supervision. This includes decisions about the possible entry into care of an Aboriginal child. While a Director of Community Services will provide the final approval, the Department identifies that group supervision helps to ensure that all casework options to keep the child at home safely have been explored. Implementation of the 2017 *Child Protection Practice Framework* has commenced. The Department reports that the Framework mandates the Department to consult with an Aboriginal person whenever the possible removal of a child is being considered. Consultation should focus on strategies to keep the child at home safely. If this is not possible, consultation should explore how to carry out an entry into care and who to place with the child with, with a focus on looking for Aboriginal kin and keeping the child on country. It is unclear who the Aboriginal person consulted will be and if it is someone within or external to the Department. Sector leaders have noted serious concerns about this Framework, stating that it was developed without meaningful consultation with Aboriginal organisations, lacks appropriate safeguards and assumes that the Department, rather than ACCOS, is best placed to carry out work relevant to the safety and wellbeing of children.

¹⁹ S90(2A) and S90(2B) of the *Children and Young Persons (Care and Protection) Act 1998 No157*.

²⁰ Ss90(2B)(b) and (2B)(c) of the Act.

²¹ NSW Department of Family and Community Services, Aboriginal Case Management Policy, Rules and Practice Guidance, available at <https://www.facs.nsw.gov.au/families/permanency-support-program/aboriginal-case-management-policy>.

²² The Department, Aboriginal Child Safety Rules and Practice Guidance, last published on 2 May 2019, available at <https://www.facs.nsw.gov.au/providers/children-families/deliver-ppsp/aboriginal-case-management-policy/rules-and-practice-guidance/chapters/aboriginal-child-safety>.

Further, the Department has commissioned Winangay Resources Inc. to roll out the Winangay Aboriginal Kinship Assessment tool in the following districts by September 2019: South Western Sydney, New England, Hunter, Central Coast, Central Sydney, South Eastern Sydney and Northern Sydney. This resource provides a culturally safe way to assess potential and existing Aboriginal kinship carers.

Despite these developments, the proportion of Aboriginal and Torres Strait Islander children placed with Aboriginal and Torres Strait Islander kin or other family, or an Aboriginal home-based carer has continued falling, reducing from 79.3% in 30 June 2016²³ to 74.4% in 30 June 2018.²⁴ The percentage of children placed solely with Aboriginal and Torres Strait Islander carers was 52.5% in the same period; a significant decrease since 2013, when the percentage was 65.4%.²⁵ Existing counting rules and definitions that excluded children on guardianship and adoption orders, means that this data presents an incomplete picture.

²³ Steering Committee for the Review of Government Service Provision, Productivity Commission, Report on Government Services – Chapter 16 – Child Protection, 2017, Table 16A.23

²⁴ See The Family Matters Campaign, *The Family Matters Report 2019*, p 74.

²⁵ See The Family Matters Campaign, *The Family Matters Report 2019*, p 77.

6. Participation

Recent legislative amendments have somewhat strengthened provisions that support family decision-making around the support and care of children at risk. Section 37 of the Act now mandates that the Department must offer ADR to all families before filing a care application in the Children's Court (unless there are exceptional circumstances). Appropriate access to independent supports for families to participate in ADR will be important to accompany this requirement. The Department reports that ADR can be provided by an Aboriginal facilitator, and that families can be supported by an Aboriginal caseworker or an Aboriginal person from the family or community to participate in the process, though this is not explicitly stated in the legislation and therefore unenforceable. Research highlights the importance of Aboriginal family-led decision-making processes being supported by an independent facilitator through ACCOs, with processes controlled by non-Indigenous professionals and services at risk of being ineffective to empower families and communities.²⁶ While strong partnerships with government child protection services are essential to any model of family-led decision making, a best practice effective and culturally strong model of AFLDM is led by ACCOs.

Pursuant to section 38 of the Act, where parents decide that someone apart from themselves should be a guardian for their child, the court can also make an order by consent without the need to find that there is no realistic possibility of restoration. An important safeguard provides that this order can only be made where all parties have received independent legal advice (s38(2B)). However, the recent legislative amendments significantly reduce the opportunity of families to seek changes to orders, as discussed in the 'placement' section above. These changes make preventative measures and strong family participation from the outset even more important. Further, sector leaders report that proposals to strengthen existing participation provisions were not considered in the recent legislative reform process. The ACMP also outlines new processes for family engagement and placement decision-making which, if appropriately implemented, would significantly strengthen the decision-making role of families. The Rules and Practice Guidance require proactive efforts, which are to include Aboriginal family-led decision-making processes, to ensure Aboriginal families have ongoing participation in decision-making which affects them and their children. This includes in conducting child safety and risk assessments and developing a case plan.²⁷

Currently, child and family participation is facilitated through Family Group Conferencing. This is administered by the Department, which does not meet the ATSICPP requirements. As at May 2019, the Department has 88 FGC facilitators including 13 Aboriginal facilitators able to provide a state-wide service, slightly less than the 16 of 100 facilitators reported in the 2018 Baseline Analysis. A recent tender process is being finalised and will result in an approximate increase to 108 facilitators, with the Department establishing initiatives to retain more Aboriginal facilitators. The Department reports that preliminary data for 2018/19 at May 2019 indicates that of approximately 506 FGCs, 40% of participants were Aboriginal families. There is no data available on the percentage of FGCs that were facilitated by an Aboriginal facilitator. Shifting the administration of this program to Aboriginal community control under AFLDM would assist in overcoming the significant power imbalances between the Department and families, and support a more culturally safe process to strengthen participation and accountability. The ACMP states that AFLDM should be delivered by ACCOs, though there has been no progress to implement this.

The Office of the Senior Practitioner has developed four Practice Kits to support practitioners to work in partnership with families when domestic violence, drug and alcohol, mental health, or child sexual abuse are a concern. Each kit has a chapter specific to working with Aboriginal families and communities.

²⁶ Ban, P. (2005). 'Aboriginal Child Placement Principle and Family Group Conferences', Australian Social Work 8(4), p384-394, 392.

²⁷ The Department, Aboriginal Family Strengthening Rules and Practice Guidance, last published on 2 May 2019, available at <https://www.facs.nsw.gov.au/providers/children-families/deliver-psp/aboriginal-case-management-policy/rules-and-practice-guidance/chapters/aboriginal-family-strengthening>.

7. Connection

Recent amendments to the Act and the *Adoption Act 2000* increase the likelihood of permanent orders being made, including adoption and guardianship. This includes requiring guardianship or adoption within two years after an initial care order is made (in the absence of special circumstances) (ss79(9) and (10) of the Act) and removing the requirement for consent of a child's parents to adoption where applications are made by the child's guardian (s67(1)(d) of the *Adoption Act 2000*). Such provisions undermine the intent of the ATSI CPP and are deeply flawed in a system which fails to redress systemic disadvantage, ensure access to culturally safe support services, ensure informed Aboriginal decision-making or have independent Aboriginal oversight mechanisms. These permanent orders also lack critical safeguards to support ongoing connection to family, community and culture in accordance with the ATSI CPP. While changes include provisions to allow contact orders for the life of a guardianship order (s86), there are no mechanisms to ensure that such contact orders are implemented.

Policies to increase guardianship and adoption also remain despite the known risks to enduring connections for Aboriginal children and young people. Failure to ensure ongoing connection is inconsistent with the best interests of Aboriginal children and their lifelong wellbeing. There are no adequate mechanisms to ensure that Cultural Care Plans and Cultural Support Plans are followed after a guardianship or adoption order.

The ACMP supports adherence to the ATSI CPP to ensure children are actively supported to preserve and enhance their connections with their family, community, culture and Country. The policy prioritises preservation, placements with relative and kin, the co-placement of siblings and maintaining proximity to Country.²⁸ While this is not new policy, the ACMP also includes provisions around strengthening accountability mechanisms to deliver on these commitments. These provisions have yet to be implemented.

In May 2019, the Department commissioned AbSec to engage with local Aboriginal communities and stakeholders within an identified geographical area to develop a Guardianship Support Model that meets the community's need and to establish a commissioning plan for its procurement and implementation. The model will be focused on achieving positive outcomes for Aboriginal children and young people on guardianship orders, across all domains, through specialised services delivered to Aboriginal children and young people directly, as well as their guardians and family networks. It is noted that while AbSec is supporting an effective model of support for Aboriginal children and young people on guardianship orders, it remains strongly opposed to these orders. Further this model remains at the discretion of guardians, with no meaningful mechanism to promote or ensure action is taken to build or maintain connection to family, community or culture. It is proposed that initial implementation sites will include Hunter New England and South Western Sydney in late 2019.

ACFCs (Department-funded) and other Aboriginal community controlled early childhood education and care services (funded through child care funding of the Commonwealth Government) also provide a range of culturally informed programs and services that aim to ensure all children learn about and stay connected to their culture. These include language programs, Aboriginal storytelling and Dreamtime, dancing, music and routine activities including daily flag raising and Welcome to Country ceremonies that aim to instil cultural pride. The Department informs that Aboriginal children in OOHc make up approximately 30% of the children attending the ACFCs.

There remain no specific funded programs supporting cultural planning, or cultural connection/reconnection for Aboriginal children and young people or their families. AbSec has developed a Creating Cultural Connections training package, with positive uptake from sector partners. The Department is funding provision of this training to Targeted Earlier Intervention providers to strengthen their engagement capacity. There has been limited engagement to date,

²⁸ See The Department, Aboriginal Child Safety Rules and Practice Guidance, last published on 2 May 2019. Available here <https://www.facs.nsw.gov.au/providers/children-families/deliver-ppsp/aboriginal-case-management-policy/rules-and-practice-guidance/chapters/aboriginal-child-safety>.

however, with the Department's OOHC team, despite it providing case management to the largest proportion of Aboriginal children in OOHC.

The processes relating to connection, like cultural planning, remain substantially unchanged since the 2018 Baseline Analysis. Resourcing and effective implementation of the ACMP will be very important for improvement in these areas.

In relation to practice, the Office of the Senior Practitioner has published a number of Practice Advice topics to support practice in relation to promoting connection for Aboriginal children.²⁹ The *Aboriginal Cultural and Spiritual Identity Domain of the Quality Assurance Framework* (QAF) has been developed to provide valid and reliable information to casework practitioners on cultural outcomes of Aboriginal and Torres Strait Islander children and young people in OOHC in NSW. This was developed in consultation with AbSec, the Department's Aboriginal Reference Group (ARG), Aboriginal academics and key ACCOs. QAF Aboriginal Cultural and Spiritual Identity information is provided to caseworkers bi-annually to gain a clear picture of what is happening for that child or young person. It is intended that caseworkers use this information to review what support the child needs and facilitate appropriate cultural activities and knowledge sharing for the child or young person on an ongoing basis.

Despite these efforts, a recent CREATE report suggests that less than 40% of Aboriginal young people in OOHC in NSW who responded to a survey were aware of a personal cultural support plan and that young people had infrequent contact with family members.³⁰ The Australian Institute of Health and Welfare did not report on the percentage of Aboriginal children who had a cultural plan in NSW in 2018. While there is no available data on the number of Aboriginal children reunified with their birth parents in the 2017-18 period, six Aboriginal children were adopted with non-Indigenous carers in 2017-18,³¹ risking disconnection from family and culture, and 1,906 Aboriginal children were placed on third-party parental responsibility orders.³² No data is available on how many of the children on third-party parental responsibility orders were placed with a relative or kin carer, or an Aboriginal carer. This highlights both the need for urgent data development as well as stronger accountability measures for the development and implementation of cultural care plans for these children.

²⁹ See <https://caseworkpractice.intranet.facs.nsw.gov.au/practice-advice/working-with-children-and-families/building-connections-for-children-through-family-finding>; <https://caseworkpractice.intranet.facs.nsw.gov.au/practice-advice/working-with-children-and-families/cultural-practice-with-aboriginal-communities>; <https://caseworkpractice.intranet.facs.nsw.gov.au/practice-advice/working-with-children-and-families/dignity-driven-practice>; <https://caseworkpractice.intranet.facs.nsw.gov.au/practice-advice/permanency/permanency-planning-finding-permanent-relationships-for-children>; <https://caseworkpractice.intranet.facs.nsw.gov.au/practice-advice/partnerships/respectful-partnerships-with-families>; <https://caseworkpractice.intranet.facs.nsw.gov.au/practice-advice/ethics-and-reflection/separation-and-loss>; <https://caseworkpractice.intranet.facs.nsw.gov.au/practice-advice/ethics-and-reflection/social-justice-and-human-rights>; and <https://caseworkpractice.intranet.facs.nsw.gov.au/practice-advice/working-with-children-and-families/understanding-trauma-and-resistance>.

³⁰ CREATE, p.66 <https://create.org.au/wp-content/uploads/2019/03/CREATE-OOHC-In-Care-2018-Report.pdf>

³¹ The Family Matters Campaign, *The Family Matters Report 2019*, p.38

³² Data provided by FACS to inform *The Family Matters Report 2019*. Available on the Family Matters website on 17 October 2019.