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MEMORANDUM OF ADVICE
Children and Community Services Amendment Bill 2019 (WA)

Introduction

Advice is sought in relation to amendments to the *Children and Community Services Amendment Bill 2019* (WA)[1] which is presently before the Parliament of Western Australia which would result in legislation being enacted which would better promote a strong connection between family, culture and community for Aboriginal and Torres Strait Islander children.

For the purposes of the advice, the identification of what may promote a strong connection between family, culture and community for Aboriginal and Torres Strait Islander children is informed by the expertise, experience and research of the Secretariat of National Aboriginal and Islander Child Care (SNAICC), the Noongar Council for Family Safety and Wellbeing (NCFSW), the Western Australian Aboriginal Child Protection Council (WAACPC) and Family Matters Western Australia (FMWA), as reflected in submissions that have been made to the Government in relation to this Bill and the issues with which it seeks to deal.

SNAICC, FMWA and WAACPC, in their joint submission to the Review of the *Children and Community Services Act 2004* (WA) in April 2017 made the following points:

- As at 30 June 2016 in Western Australia, Aboriginal and Torres Strait Islander children were 17.5 times more likely to be placed in out-of-home care than non-Indigenous children.[2]

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1 https://www.parliament.wa.gov.au/Parliament/Bills.nsf/B283F888C69DAC85482584C0001481AA/$File/Children%2Band%2BCommunity%2BServices%2BAct%2B2004.pdf

2 Steering Committee for the Review of Government Service Provision (2017). Table 16A.17 'Volume F: Community Services' in *Report on Government Services 2017*. Canberra, ACT: Productivity Commission.

- Aboriginal and Torres Strait Islander children are 9.8 times more likely than non-Indigenous children to be placed in out-of-home care.[3]
- In Western Australia, Aboriginal and Torres Strait Islander children represented 54 per cent of all children in out-of-home care at 30 June 2016.[4]
- This over-representation continues to increase annually,[5]
- The Western Australian Out-of-Home Care (OOHC) Reform Strategy has a stated 'specific focus' on reducing the rate of Aboriginal and Torres Strait Islander children entering out-of-home care and overall priorities in first, preventing children entering out-of-home care and second, reunifying children with parents.
- The Earlier Intervention Strategy has a focus area of delivering shared outcomes through collective effort, a culturally competent service system, diverting families from the child protection system, and preventing children entering out-of-home care.
- What is needed to reverse current trends for Aboriginal and Torres Strait Islander children is a holistic and rights-based approach that targets early intervention, prevention, healing, and family and community strengthening initiatives, effectively progressed with recognition and respect of the cultural authority of Aboriginal and Torres Strait Islander peoples who hold the knowledge and expertise, and have the right to drive change in line with the 'Aboriginal Services and Practice Framework 2016-2018'
- The legislation should be consistent with the 'Family Matters Roadmap' - taking account of measures of overrepresentation, family support provision and access, and Aboriginal and Torres Strait Islander community and family empowerment in child protection.[6] The priority responses required to address this situation are:

  • All families enjoy access to quality, culturally-safe, universal and targeted services necessary for Aboriginal and Torres Strait Islander children to thrive;
  • Aboriginal and Torres Strait Islander people and organisations participate in and have control over decisions that affect their children;
  • Law, policy and practice in child and family welfare are culturally safe and responsive;
  and
  • Governments and services are accountable to Aboriginal and Torres Strait Islander people.[7]

Bearing in mind those considerations the SNAICC, FMWA and WAACPC recommended (among other recommendations) that a model of Aboriginal and Torres Strait Islander Family-Led Decision Making facilitated by Aboriginal and Torres Strait Islander organisations is provided for in legislation and is mandated to be offered to families as early as possible in their contact with child protection services, and at a range of significant decision-making points.

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[3] Australian Institute of Health and Welfare (2017) *Child Protection Australia 2015-16*, Canberra: AIHW, p52.
[4] Australian Institute of Health and Welfare (2017) *Child Protection Australia 2015-16*, Canberra: AIHW, p52.
[5] See Steering Committee for the Review of Government Service Provision (2017). Table 16A.17 'Volume F: Community Services' in *Report on Government Services 2017*. Canberra, ACT: Productivity Commission.
[6] SNAICC – National Voice for our Children (2016). *The Family Matters Report: Measuring trends to turn the tide on Aboriginal and Torres Strait Islander child safety and removal*. Melbourne: Author, available at: http://www.familymatters.org.au/wp-content/uploads/2016/12/Family_Matters_Report_2016.pdf
[7] SNAICC – National Voice for our Children (2016). *The Family Matters Roadmap*, available at: http://www.familymatters.org.au/wp-content/uploads/2016/11/TheFamilyMattersRoadmap.pdf
[9] Council of Australian Governments (2009). *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009-2020*. Canberra: Commonwealth of Australia.

The position adopted by the SNAICC, FMWA and WAACPC is consistent with identified international human rights standards[8], including those in the United Nations Declaration on the Rights of Indigenous Peoples, which supports self-determination and Aboriginal justice models.

This advice also proceeds on the basis of an intention to recommend amendments which are consistent with the espoused intention of the Government of Western Australia in introducing the Bill to Parliament, as reflected in the Second Reading Speech of the Minister for Child Protection, the Hon Simone McGurk, in which she said –

> The bill introduces amendments to build stronger connection to family, culture and country for Aboriginal children in care through working more closely with Aboriginal people and Aboriginal community–controlled organisations to better implement the Aboriginal child placement principle. These amendments align with recommendation 12.20 of the royal commission—that governments work towards full implementation of the Aboriginal child placement principle and a greater understanding of its intent, which, in broad terms, is to enhance and preserve Aboriginal children's connection to family and community, as well as a sense of identity and culture. The amendments also accord with a commitment by community services ministers in 2017 to — …
>
> > uphold all five domains of the Aboriginal … 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.
>
> The cornerstone elements of the principle are prevention, partnership, placement, participation and connection. The Aboriginal child placement principle in section 12 of the act sets out an order of priority for the placement of an Aboriginal child. The principle prioritises placement with a member of the child's family, an Aboriginal person in the child's community or an Aboriginal person anywhere in Western Australia over placement with non-Aboriginal carers.
>
> Based on feedback particularly from regional communities, amendments to the Aboriginal child placement principle prioritise a child's placement with family or otherwise placements in close proximity to the child's community over placement with an Aboriginal person who may live anywhere in the state. Given its vast geographical size and the cultural diversity of Aboriginal Western Australia, the intention of these amendments is to keep Aboriginal children closer to their communities where possible. This will better support reunification with parents where appropriate and, in any event, Aboriginal children's connection with family, culture and country. If an Aboriginal child is placed with non-Aboriginal carers, it must be with a person who is responsive to the child's cultural support needs and prepared to encourage and support the child to develop and maintain connection with the culture and traditions of the child's family.

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[8] See Committee on the Rights of the Child, UN CRC.C/AUS/CO/5-6, [34(a) and (d)]; Committee on the Elimination of Racial Discrimination, UN CERD/C/AUS/CO/18-20, [25], [26(e)]; Committee on the Elimination of Discrimination against Women, UN CEDAW/C/AUS/CO/8, [51], [52(h)]; Report of the Special Rapporteur on the rights of indigenous people on her visit to Australia, Human Rights Council Thirty-sixth session, 11-29 September 2017, UN A/HRC/36/46/Add.2, [87]-[91]; Report of the Special Rapporteur on violence against women, its cause and consequences on her mission to Australia, Human Rights Council Thirty-eighth session, 18 June-6 July 2018, UN A/HRC/38/47/Add.1, [45]-[46].

Before making a placement for an Aboriginal child, consultation with an Aboriginal representative organisation approved by the CEO will be required. Drawing on the cultural knowledge of approved Aboriginal representative organisations will help to identify placement options that are higher in the placement hierarchy. To this end, it is envisaged that approved Aboriginal representative organisations may be existing native title bodies or other Aboriginal community–controlled organisations that are recognised by the local community with knowledge about the child, the child's family or the child's community. Cultural support planning is also being strengthened.

Cultural support plans are already prepared for each Aboriginal and culturally and linguistically diverse child in care. However, they will become a legislative requirement and, subject to regulations, approved Aboriginal representative organisations will be offered the opportunity to participate in cultural support planning for Aboriginal children in care. Cultural support plans for Aboriginal and culturally and linguistically diverse children will also be provided to the court as part of the written proposal the department must provide in section 143 when applying for a protection order other than a special guardianship order. Written proposals outline proposed arrangements for the child's wellbeing.

Background – Existing Act

The *Children and Community Services Act 2004* (WA) is intended to provide for the protection and welfare of children in Western Australia. The guiding principle in the application of the Act is the best interests of the child.

Chapter 3 of the Act sets out a series of principles to be applied in relation to both determining the best interests of Aboriginal children and in administering the Act as it applies to those children. These principles are said to be in addition to principles elsewhere in the Act (which apply to all children).

One of these principles is the *Aboriginal child placement principal*. Significantly the Act also expressly acknowledges the importance of Aboriginal self-determination and Aboriginal community participation.

Section 13 currently provides that –

> *In the administration of this Act a principle to be observed is that Aboriginal people and Torres Strait Islanders should be allowed to participate in the protection and care of their children with as much self-determination as possible.*

Section 14 currently provides that

> *In the administration of this Act a principle to be observed is that a kinship group, community or representative organisation of Aboriginal people or Torres Strait Islanders should be given, where appropriate, an opportunity and assistance to participate in decision-making processes under this Act that are likely to have a significant impact on the life of a child who is a member of, or represented by, the group, community or organisation.*

According to the Statutory Review of the *Children and Community Services Act 2004* (WA) these principles were included in the Act "*in recognition that the legacy of trauma caused by past child welfare practices requires additional considerations to be taken into account when intervening in the lives of Aboriginal families*"

The Act contemplates that these principles will be followed by decision makers under the Act.

For example, in a recent Court case these principles were raised in the context of s 144 of the Act, which requires the Court to consider how the Department plans to look after the children in care before making a protection order and whether those plans could be achieved. These plans are what are known as a s 143 proposal. A section 143 proposal is required to include plans for securing long-term stability, security and safety in the child's relationships and living arrangements. It was argued that for Aboriginal children these objectives could not be achieved unless the s 143 proposal adopted a process of Aboriginal Family Led Decision Making (AFLDM), consistent with the principles of self-determination (in s 13) and family participation in decision making (in s 14) that the Court is require to apply in the administration of the Act. The Department consented to the orders and the AFLDM proposal was endorsed by the presiding Magistrate.

The Bill

The Bill proposes a number of specific amendments intended to promote stronger connection to family, culture and community for Aboriginal and Torres Strait Islander children.

- ***Section 12 The Aboriginal and Torres Strait Islander Child Placement Principle***
  Amendments have been proposed in the Bill to the ATSICPP Placement Hierarchy to preference placement with a non-Aboriginal and/or Torres Strait Islander person who lives in close proximity to the child's community and willing and able to support the child's cultural connections over placement with an Aboriginal person who may live anywhere in the state.

- ***Section 13 - Self-Determination***
  This section is proposed to be amended to declare that Aboriginal and Torres Strait Islander people have "a **right**" to participate in the care and protection of their children "with as much self-determination as possible", whereas the legislation presently merely provides that Aboriginal and Torres Strait Islander people "should be allowed to participate" in care and protection of their children.

- ***Section 14 Principle of community participation***
  This section is proposed to be amended to declare that: "A kinship group, community or Aboriginal or Torres Strait Islander representative organisation **must** be given, where appropriate, an opportunity and assistance to participate in decision-making processes under this Act. However, a proposed sub-section 14(3) provides that the Principle of Community Participation does not apply to a decision for an Aboriginal or Torres Strait Islander child about a placement arrangement or cultural support plan. The Explanatory Memorandum suggests that the Principle's application is limited in that way because of the specific provisions included in sections 81 and 89A relating to Aboriginal children. There are no enabling processes contained in the amendments for the Principle of Community Participation to occur other than in sections 81 and 89A

and there is no logical necessity to disapply the declaration of principle in s 14 in relation to Aboriginal and Torres Strait Islander because of the specific obligations in sections 81 and 89A. If sub-section 14(3) is to remain in the Bill, then it renders the section of little or no practical application.

- ***Section 61 Restriction on special guardianship orders (permanent care orders)***
  This section has been proposed to be amended to require the Court to consider a written report from an Aboriginal person or agency pertaining to a non-Indigenous carer's suitability and willingness to support a child's cultural connection prior to issuing a permanent care order. This amendment improves scrutiny and participation in by the Aboriginal community in such an intervention, while falling short of adopting recommendations of SNAICC that there be a moratorium on permanent care orders, or that the legislation require that an Aboriginal agency approve the making of a permanent care order.

- ***Section 81 Consultation before placement of Aboriginal or Torres Strait Islander child***
  This section has been proposed to be amended to require consultation with:
  - an Aboriginal or Torres Strait Islander who is a member of the child's family;
  - an Aboriginal or Torres Strait Islander representative organisation approved by the CEO;
  - an officer who is Aboriginal or Torres Strait Islander and has relevant knowledge of the child, the child's family or the child's community.

  The section at present does not require consultation with an Aboriginal organisation or the child's family.

- ***Section 89 Care plan***
  This amendment makes it explicit in s 89(3A)(d) that a care plan for an Aboriginal or Torres Strait Islander child must incorporate a 'cultural support plan'. That is consistent with the objective set out in the proposed s 9(ga)(iii) of preserving and enhancing an Aboriginal or Torres Strait Islander child's connection with culture and traditions of the child's family or community. The involvement of family is reinforced by s 89(3A)(f)(ii) which provides that decisions about connections with the child's family must be recorded.

- ***Section 89A Cultural support plan***
  This proposed additional section defines a 'cultural support plan' as 'a plan that contains arrangements for developing and maintaining the child's connection with the culture and traditions of the child's family or community' and provides that 'an approved Aboriginal or Torres Strait Islander representative organisation is to be given an opportunity to participate in the preparation of a cultural support plan for an Aboriginal or Torres Strait Islander child'.

<u>Proposal for Amendments to the Bill</u>

Bearing in mind the objective of this advice set out in its introduction (which is consistent with the objective of the Government in introducing this Bill (as reflected in the Second Reading Speech of the Minister) and the above review of relevant provisions of the Act and

amendments proposed by the Bill, the Bill would better achieve its objectives if the Parliament was to resolve upon some additional amendments to sections 14, 81 and 89

The proposed amendments to section 14 and section 81 and the proposed new section 89A in the Bill introduced to the Parliament would amend the Act to read as follows:

Section 14 Principle of community participation

(1) *A kinship group, community or Aboriginal or Torres Strait Islander representative organisation must be given, where appropriate, an opportunity and assistance to participate in decision-making processes under this Act that are likely to have a significant impact on the life of a child who is a member of, or represented by, the group, community or organisation.*

(2) *Consideration must be given to the wishes and views of the child, taking into account the maturity and understanding of the child, and the child's parents about the participation of a group, community or organisation under subsection (1).*

(3) *This section does not apply to a decision for an Aboriginal or Torres Strait Islander child about a placement arrangement or cultural support plan.*

Section 81

Before making a placement arrangement in respect of an Aboriginal child or a Torres Strait Islander child the CEO must consult with the following —

(a) an Aboriginal person or Torres Strait Islander who is a member of the child's family;

(b) subject to the regulations, an approved Aboriginal or Torres Strait Islander representative organisation;

(c) an officer who is an Aboriginal person or Torres Strait Islander who, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community.

Section 89A.

(1) A cultural support plan for a child is a plan that contains arrangements for developing and maintaining the child's connection with the culture and traditions of the child's family or community.

(2) Subject to the regulations, an approved Aboriginal or Torres Strait Islander representative organisation is to be given an opportunity to participate in the preparation of a cultural support plan for an Aboriginal 20 or Torres Strait Islander child.

Explanatory Memorandum and Statutory Review

Consideration of amendments to the Bill needs to occur in the context of an understanding of the provisions proposed for amendment of the Act, taking into account how the Explanatory Memorandum to the Bill[9] deals with those provisions and the Statutory Review of the Children and Community Services Act 2004 (the Review), tabled in the Parliament of Western Australia on 28 November 2017,[10] which gave rise to the form in which those provisions appear in the Bill.

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[9] https://www.parliament.wa.gov.au/Parliament/Bills.nsf/B283F888C69DAC85482584C0001481AA/$File/EM%2B-%2BCHILDREN%2BAND%2BCOMMUNITY%2BSERVICES%2BAMENDMENT%2BBILL%2B2019.pdf

[10] Tabled Paper No.991.

Section 14

Section 14, as proposed in the Bill, reflects one of the 5 elements of the ATSI Child Placement Principle advocated by SNAICC, FMWA and WAACPC in their submission to the Review and acknowledged in the Second Reading speech, i.e., participation. The other principles are prevention, partnership, placement, and connection. Consistently with the position of the Government those principles should be fully incorporated into the legislation and be complemented by enabling provisions for each element.

The substantive amendment proposed to what is now sub-section 14(1) by the Amending Act is said to be technical in nature following the outcomes of the Review. Relevantly, according to the Review, the amendment is intended to ensure that the principle applies to the administration of the Act by the Court and SAT as well as the CEO.

The amendment does not accurately reflect the wording of Recommendation 16 of the Review, which was as follows:

> Section 14 should be amended to provide that in performing a function under the Act, a person, court or tribunal must observe the principle that an Aboriginal child's family, community or representative organisation is entitled to and should be given opportunities and, where appropriate, assistance to participate in decision-making processes under the Act that are likely to have a significant impact on the life of a child. In observing this principle the views of the child and the child's parent or parents must be considered.

The Recommendation strengthens the principle as currently drafted by deleting the words "*where appropriate*" and re-inserting them after the word "*opportunity*" so the section would read "*be given an opportunity and, where appropriate, assistance to participate in decision-making processes*". There is no explanation in the Memorandum for the failure of the Bill to adopt this Recommendation.

While the definition of "family" in section 3 of the Act is amended by the Bill to include an Aboriginal child's relatives 'under customary law or tradition of the child's community', a corresponding amendment has not been made in the Bill to use the word "family", a so defined, to replace the out dated and undefined term "kinship group" used in section 14(1).

The other significant change to section 14 is the insertion of a new sub-section 14(3) which expressly excludes decisions about the placement of children and cultural care plans from the principle of community participation. This exclusion was not recommended by the Review. While according to the Explanatory Memorandum the exclusion in 14(3) is required because of the specific provisions in section 81, in my view that reflects a misunderstanding of the operation of section 14. As the Review acknowledged, section 14 provides a guiding principle for those carrying out the administration of the Act[11]. There is no reason why section 14 is not able to co-exist with and complement specific enabling provisions like s 81. Otherwise, the proposed addition of sub-section 14(3) significantly limits the scope for application of the Participation Principle. The placement of children in protection is central to the operation of the Act. Placement decisions will assume even more importance if the amendments related to permanency planning included in the Bill are passed.

[11] Review, p 55-56.

Section 81

The amendments proposed to section 81 Before making a placement arrangement in respect of an Aboriginal or Torres Strait Islander child, the CEO must consult with the following —
(a) an Aboriginal person or Torres Strait Islander who is a member of the child's family;
(b) subject to the regulations, an approved Aboriginal or Torres Strait Islander representative organisation;
(c) an officer who is an Aboriginal person or Torres Strait Islander who, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community.

The current section 81 provides that the CEO must consult with "**at least one of** the following:
(a) an officer who is an Aboriginal person or a Torres Strait Islander;
(b) an Aboriginal person or a Torres Strait Islander who, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community;
(c) an Aboriginal or Torres Strait Islander agency that, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community. (emphasis added)

A Court might interpret the amendment deleting the words "at least one of" as leading to the implication of an intention that consultation must be with each of the three new categories in sub-paragraphs (a), (b) and (c), which are to be read conjunctively. That may be reinforced by the addition of a proposed new sub-section (2) –

> (2) If it is not practicable, for reasons of urgency or otherwise, to consult as required under subsection (1) before making a placement arrangement, the consultation must take place as soon as practicable after the placement arrangement is made.

It suggests that the legislature has taken into account that the consultation requirement may be onerous if it required consultation with more than one person or agency.

However, the usual rule of interpretation of subparagraphs, not joined with the conjunctive "and", is that they are to be read disjunctively. The consequence of that rule being applied is that the CEO's obligation is satisfied if consultation occurs with any one of the three categories in sub-paragraphs (a) to (c).

Further, section 81 only refers to 'consultation' whereas section 14 refers to "*opportunity and assistance to participate in decision-making processes*" and the requirement in section 81(a) is satisfies if there is consultation with only one family member.

In its discussion of section 81 the Review commented that:
"*During community consultations with Aboriginal people the importance of consulting members of the child's family and kinship network in relation to where children should be placed was emphasised. This was seen as fundamental to supporting self-determination and participation in decision-making and a gap in the current consultation requirements*." (94).

The Review reported that "*Consultation with family should become a separate requirement under section 81. This reflects current practice and majority feedback, particularly from community consultations. Linking the meaning of family to the definition of relative in section 3 of the Act will also provide for consultation with a broad range of people within an Aboriginal child's extended family and kinship network.*"

Given this view expressed in the Report, it is difficult to understand why no amendment was proposed to require consultation with more than one family member. This limited for form of family participation in placement decision making can be directly contrasted to the legislation in Queensland and Victoria.

The provisions in Victoria expressly apply to "*a decision in relation to the placement of an Aboriginal child or other significant decision*" (s 12) These provisions require that the decision making process "*should involve a meeting convened by an Aboriginal convener who has been approved by an Aboriginal agency or by an Aboriginal organisation approved by the Secretary and, wherever possible, attended by—*

(i) the child; and
(ii) *(ii) the child's parent; and*
(iii) *(iii) members of the extended family of the child; and*
(iv) *(iv) other appropriate members of the Aboriginal community as determined by the child's parent;".*

Similarly in Queensland the Child Protection Act, s 83, the equivalent of section 81 in the WA legislation, provides, subject to certain exceptions which are not relevant for present purposes that "*the chief executive must, in consultation with the child and the child's family, arrange for an independent Aboriginal or Torres Strait Islander entity for the child to facilitate the participation of the child and the child's family in the process for making a decision about where or with whom the child will live*."

Proposed Further Amendment

The proposed further amendments to the Bill set out below would address what might be described as failures by the Bill to meet the expressed intention of the Government, in conformity with views expressed in the Review report.

The **proposed amended Section 14** might be further amended:

a. in accordance with the recommendation of the Review to ensure that the words "where appropriate" relate only to assistance not the opportunity to participate in decision making. Participation; and
b. to replace the undefined term kinship group with a reference to "family" to pick up the new definition of Aboriginal family proposed in the Bill;
c. to ensure the principle applies to all decisions which have a significant impact on the life of a child and do not exclude placement decisions pursuant to
d. sections 81 and 89A.

The changes proposed to the draft of section 14 in the Bill are as marked below:

14 Principle of community participation

(1) ~~***A kinship group***~~***The child's family****, community* ~~***or***~~ ***and*** *Aboriginal or Torres Strait Islander representative organisation must be given*~~***, where appropriate,***~~ *an opportunity and****, where appropriate,*** *assistance to participate in decision-making processes under this Act that are likely to have a significant impact on the life of a*

child who is a member of, or represented by, the group, community or organisation.

(2) Consideration must be given to the wishes and views of the child, taking into account the maturity and understanding of the child, and the child's parents about the participation of a family group, community or organisation under subsection (1).

(3) ~~This section does not apply to a decision for an Aboriginal or Torres Strait Islander child about a placement arrangement or cultural support plan.~~

Section 81 could be further amended to bring it into line with the principle articulated in section 14 by creating a stand-alone provision that extends the principle to the statutory definition of Aboriginal family but limits it to an obligation to provide an opportunity for participation for those members of the family who choose to avail themselves of it. The limitation of the obligation in relation to Aboriginal families provision to providing them with an opportunity to participate would address any concern regarding the practicality of mandatory consultation with each member of the child's extended family, while ensuring an opportunity for those members of the child's family who wish to participate in the decision making process to do so.

It should also be made clear in the section that the obligations of the CEO to consult are conjunctive, not disjunctive.

81. Consultation before placement of Aboriginal or Torres Strait Islander child

*(1) Before making a placement arrangement in respect of an Aboriginal or Torres Strait Islander child, **~~the CEO must consult with the following~~** —*

(a) ~~an Aboriginal person or Torres Strait Islander who is a member of the child's family~~ the CEO must provide an opportunity and, where appropriate, assistance for the child's family to participate in the process for making a decision about where or with whom the child will live; and

(b) the CEO must consult with the following —

*(i) subject to the regulations, an approved Aboriginal or Torres Strait Islander representative organisation; **and***

(ii) an officer who is an Aboriginal person or Torres Strait Islander who, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community.

Section 89A should also be amended to bring it into line with the principle in s 14 by extending the opportunity to participate in decision making regarding a cultural support plan to the child's family.

89A. Cultural support plan

(1) A cultural support plan for a child is a plan that contains arrangements for developing and maintaining the child's connection with the culture and traditions of 15 the child's family or community.

*(2) Subject to the regulations, an approved Aboriginal or Torres Strait Islander representative organisation **and the child's family** is to be given an opportunity **and, where appropriate, assistance** to participate in the preparation of a cultural support plan for an Aboriginal or Torres Strait Islander child.*

GREG McINTYRE S.C.
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