

REVIEWING IMPLEMENTATION OF
THE ABORIGINAL AND
TORRES STRAIT ISLANDER
CHILD PLACEMENT
PRINCIPLE
QUEENSLAND
2019



SNAICC
National Voice for our Children



**Reviewing Implementation of the
Aboriginal and Torres Strait Islander Child Placement Principle**

Queensland

October 2019

Table of Contents

1. Introduction	3
2. Overview - Queensland	5
3. Prevention	7
4. Partnership	9
5. Placement	11
6. Participation	12
7. Connection	14

1. Introduction

This report reviews the progress of the Queensland 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 over the page 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.

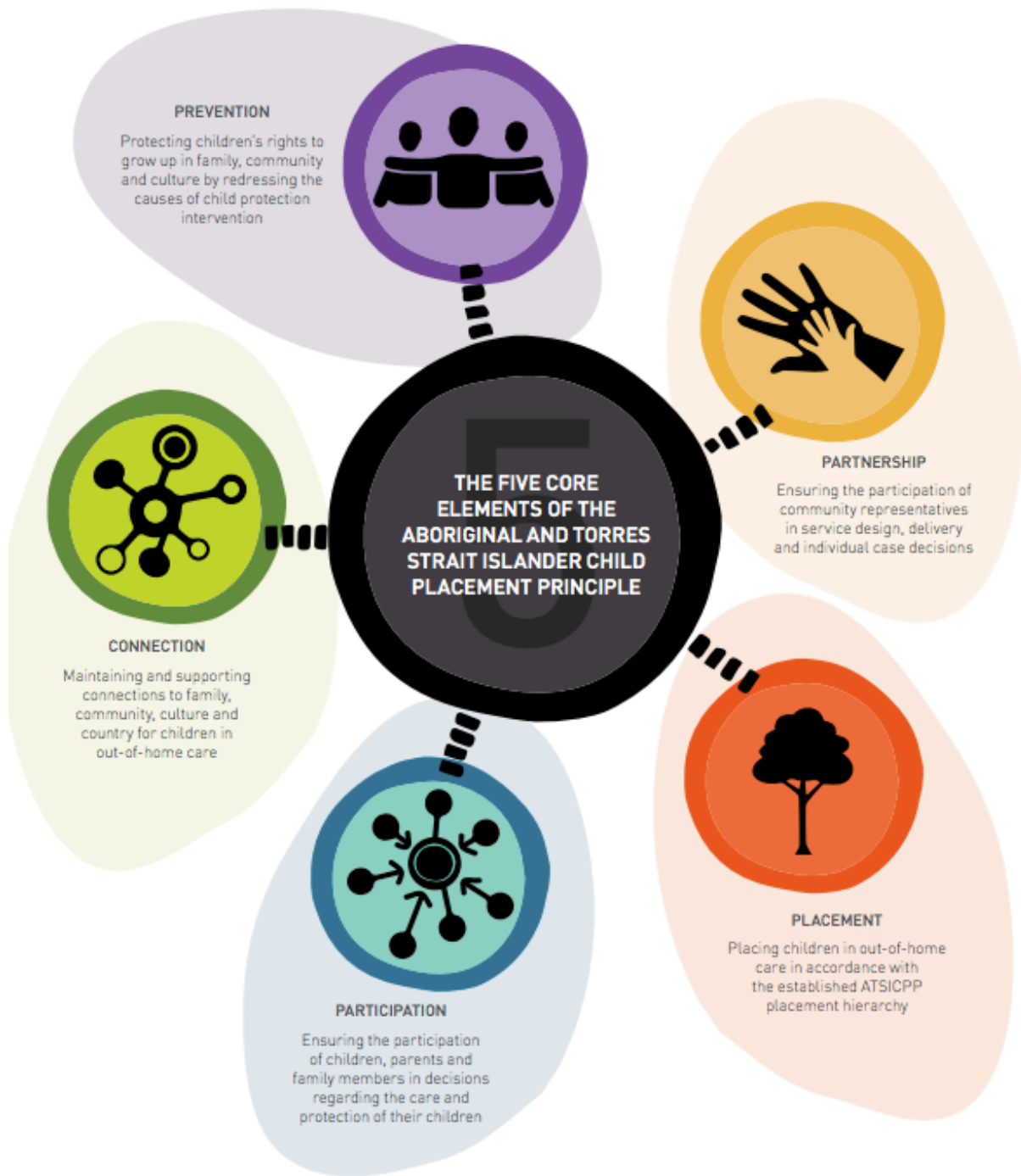
This review is based on available documentation gathered through a desktop review and input provided by the Queensland Government and Aboriginal and Torres Strait Islander sector leaders.

The development of this report – and equivalent reviews for each state and territory jurisdiction – has been guided by the work of the Aboriginal and Torres Strait Islander Working Group under the National Framework for Protecting Australia’s Children. 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: Queensland. Available at <https://www.snaicc.org.au/wp-content/uploads/2019/02/ATSICPP-Baseline-QLD-Final-April-2018.pdf>.

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 - Queensland

Queensland has continued to progress a number of significant reforms to eliminate the over-representation of Aboriginal and Torres Strait Islander children in the child protection system under *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families (2017-2037)* (Our Way). The 2019-20 Budget provided \$14.6 million over four years, plus other investments, to implement new and enhanced Our Way initiatives.

The Queensland First Children and Families Board was established in November 2018 with majority Aboriginal and Torres Strait Islander sector and community membership to guide implementation, investment and evaluation of Our Way and associated action plans. The Board released the *Changing Tracks Progress Report May 2017 – December 2018* which highlighted that 23 out of 35 actions included in the *Changing Tracks: An Action Plan for Aboriginal and Torres Strait Islander Children 2017-2019* are complete and the remaining 12 are on track for completion by 2019. The second *Changing Tracks Action Plan 2020-22* is currently under development in partnership with Family Matters Queensland, the Board, government and non-government partners, and community.

The *Child Protection Reform Amendment Act 2017* (CPRA) fully commenced in October 2018. It includes: amendments to enable statutory child protection functions and powers for Aboriginal and Torres Strait Islander children to be delegated to the chief executive of an Aboriginal and Torres Strait Islander entity; family-led decision making; permanent care orders with safeguards for Aboriginal and Torres Strait Islander children; and case planning requirements that reflect the connection element of the ATSI CPP. Further legislative reform is underway, with sector leaders advocating for inclusion of a requirement for implementation of the five elements of the ATSI CPP to the standard of 'Active Efforts'.

The *Child Safety Policy: Decisions about Aboriginal and Torres Strait Islander children and young people* and the *Child Safety Practice Manual (CSPM)* have been updated to support implementation of the legislative amendments. Strengthening accountability for implementation of the ATSI CPP, the Department of Child Safety, Youth and Women (Department) also developed an affidavit template to be used in Court applications involving Aboriginal and Torres Strait Islander children and families, providing guidance on evidence required to satisfy each element of the principle.

13 Aboriginal and Torres Strait Islander Community Controlled Organisations (ACCOs) have been funded as part of the Family Participation Program (FPP) to support Aboriginal and Torres Strait Islander families to participate in child protection decision-making and to engage with a range of culturally safe services. In addition, ACCOs deliver 33 Aboriginal and Torres Strait Islander Family Wellbeing Services which have been rolled out across the state to provide culturally responsive support to families experiencing vulnerability. In 2017-18, Queensland had the third highest proportional investment in family support and intensive family support at 16.4%, up from 15.5% in the year before,³ and the highest level of investment in ACCOs to provide these services of states and territories reporting ACCO investment levels – 19.6% of family support and 34% of intensive family support funding.⁴

While these are significant developments to progress achievement of the prevention, partnership and participation elements of ATSI CPP, it is important to ensure they are implemented in accordance with their intent, that investment is targeted and that families are enabled to access family-led decision-making at all points of the child protection continuum, especially at their first engagement to prevent progression along that continuum. There is also still no dedicated commissioner for Aboriginal and Torres Strait Islander children and families in Queensland, critical for ongoing accountability.

In terms of the placement element of the ATSI CPP, the Department reports that an Aboriginal and Torres Strait Islander Kinship Care Program is under development, kinship mapping processes to identify kin for placements have been strengthened, and resources have been developed to improve cultural capability and adherence to legislative requirements in line with the placement hierarchy. This has not translated strongly

³ Steering Committee for the Review of Government Service Provision, Productivity Commission, Report on Government Services – Chapter 16 – Child Protection, 2019, Table 16A.6.

⁴ Family Matters (2019). The Family Matters Report 2019, available at https://www.familymatters.org.au/wp-content/uploads/2019/10/1097_F.M-2019_LR.%C6%92.pdf.

to practice yet however with only 55.5% of children in OOHC in Queensland in 2017-18 placed with relatives/kin or other Aboriginal and Torres Strait Islander carers. This is a very slight decrease from 2016-17 (55.8%) and below the national average of 64.5%.⁵ Further, in 2017-18, only 36.9% of Aboriginal and Torres Strait Islander children were placed with Aboriginal and Torres Strait Islander carers, a slight increase from 2016-17 (36.5%).⁶ While preparatory work has commenced, the transfer of statutory responsibility to non-government organisations is yet to progress.

The department is undertaking engagement with discrete Aboriginal and Torres Strait Islander communities regarding the potential for the transfer of safe houses to ACCOs.

Reunification is a focus in Queensland's FPP and a process has been completed to capture reunification data, which will be able to be reported from next year. Permanency provisions however remain concerning, with sector leaders recommending enhanced focus on full implementation of the ATSI CPP as a more effective mechanism to ensure stability for Aboriginal and Torres Strait Islander children.

Aboriginal and Torres Strait Islander children in Queensland are now 8.5 times more likely to be placed in out-of-home care (OOHC) than a non-Indigenous child.⁷ This is a slight decrease from the previous year (8.6 times more likely in 2016-17) and is the lowest rate of over-representation nationally. While this rate is significantly lower than some states and territories, it remains high and it is important that progress continues to achieve compliance with each element of the ATSI CPP and significantly reduce the current rate of overrepresentation.

⁵ Family Matters (2019). The Family Matters Report 2019, available at https://www.familymatters.org.au/wp-content/uploads/2019/10/1097_F.M-2019_LR.%C6%92.pdf.

⁶ Ibid,

⁷ Ibid.

3. Prevention

Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families (2017-2037) (Our Way) continued throughout the reporting period.⁸ The generational strategy aims to eliminate the overrepresentation of Aboriginal and Torres Strait Islander children in OOHC. The 2019-20 Budget provided \$14.6 million over four years, plus other investments, to implement new and enhanced Our Way initiatives. This builds on the \$162.8 million already committed. The *Our Way Monitoring and Evaluation Plan* has been developed to monitor and assess impacts over the life of the Our Way strategy and supporting Action Plans against key performance indicators.

Our Way is being implemented through a series of action plans over the next 20 years and the first action plan, *Changing Tracks: An Action Plan for Aboriginal and Torres Strait Islander Children 2017-2019*, is showing positive results.⁹ Actions in relation to the prevention element of the ATSI CPP include: meeting the needs of Aboriginal and Torres Strait Islander young women under 25 years, and their partners, before and during pregnancy and parenting, especially during the first 1000 days; increasing access to early years programs for children aged two to five years old; and providing families who have complex needs and children at risk with the right services.

The Department reports that the First 1000 days initiative was implemented in Moreton Bay and Townsville in the reporting period. The initiative acknowledges culture as a protective factor for Aboriginal and Torres Strait Islander families that continues to inform parenting practices today and is reviving ceremony as a way to empower families.¹⁰ Eight early childhood development coordinators have been employed to improve Aboriginal and Torres Strait Islander families' linkages with the early childhood education and care sector. The FPP commenced in November 2018 to provide culturally safe universal, targeted and intensive supports for Aboriginal and Torres Strait Islander families experiencing vulnerability (see 'Participation'). The FPP provides an integrated and holistic service system that offers vulnerable families the opportunity to readily engage with a range of culturally safe service providers.¹¹

33 Aboriginal and Torres Strait Islander Family Wellbeing Services have been rolled out across the state to provide culturally responsive support to families experiencing vulnerability. All these services are delivered by ACCOs and work with various culturally appropriate universal, secondary and specialist services; placement services; FPP services; and with individual families to provide tailored, holistic and coordinated supports to meet each family's unique needs.¹² Data from the initial 12 months of operation show that the 33 Aboriginal and Torres Strait Islander organisations that deliver early intervention support to families have achieved a lower rate of re-notifications to the department compared with mainstream, non-Indigenous organisations.¹³

The *Queensland Child Protection Guide* is a web-based decision support tool, developed by government and non-government agencies, to assist professionals to report their concerns to the appropriate statutory

⁸ Department of Communities, Child Safety and Disability Services, Queensland Government (2017). *Our Way – A Generational Strategy for Aboriginal and Torres Strait Islander Children and Families 2017-2037*, available at <https://www.communities.qld.gov.au/resources/campaign/supporting-families/our-way.pdf>

⁹ Department of Communities, Child Safety and Disability Services, Queensland Government (2017). *Changing Tracks – An Action Plan for Aboriginal and Torres Strait Islander Children and Families 2017-2019*, available at <https://www.communities.qld.gov.au/resources/campaign/supporting-families/changing-tracks.pdf>

¹⁰ Queensland First Children and Families Board (2019). *Changing Tracks Progress Report May 2017 – December 2018*, available at <https://www.csyw.qld.gov.au/resources/campaign/supporting-families/changing-tracks-progress-report.pdf>

¹¹ Queensland First Children and Families Board (2019). *Changing Tracks Progress Report May 2017 – December 2018*, available at <https://www.csyw.qld.gov.au/resources/campaign/supporting-families/changing-tracks-progress-report.pdf>

¹² Family Matters (2019). *The Family Matters Report 2019*, available at https://www.familymatters.org.au/wp-content/uploads/2019/10/1097_F.M-2019_LR.%C6%92.pdf

¹³ Lewis (2019) SNAICC Conversations: Family Matters, 7 May 2019, panel, available at <https://www.facebook.com/familymattersau/videos/2172722326152538/>

agency or to refer children and their families to a family support service.¹⁴ The Guide has been updated to be more culturally responsive and reinforce the importance of working across different cultures. The changes also include a stronger focus on a referral to the secondary sector in the first instance to support families and prevent the need for Child Safety intervention in the future, including referrals to the Aboriginal and Torres Strait Islander Family Wellbeing Service. The Department reports that a cultural capability resource is under development for Child Safety staff to improve responses at intake to divert families to Aboriginal and Torres Strait Islander Family Wellbeing Services, the FPP and other culturally responsive services, rather than entry to the tertiary system.

Accountability measures have also improved with the Department developing an affidavit template to be used in Court applications involving Aboriginal and Torres Strait Islander children and families. The template provides guidance for the inclusion of evidence that will satisfy the prevention element of the principle, including comprehensive information about the child and his or her parents' community or language group and the active efforts to support families to engage with ACCOs for early intervention supports.

In 2017-18, 36.6% of children commencing an intensive family support service were Aboriginal and Torres Strait Islander, noting that a further 10% of children who commenced such a service were of unknown Indigenous status.¹⁵ This is comparable to the percentage of children admitted to out-of-home care in 2017-18 in Queensland that were Aboriginal and Torres Strait Islander, which was 39.7%.¹⁶ In 2017-18, Queensland had the third highest proportional investment in family support and intensive family support (16.4%), however this is still below the national average of 17.1%.¹⁷ This is a slight increase from 2016-17 (15.5%).¹⁸ Aboriginal and Torres Strait Islander children in Queensland are now 8.5 times more likely to be placed in OOH than a non-Indigenous child.¹⁹ This is a slight decrease from the previous year (8.6 times more likely in 2016-17) leaving Queensland with the lowest rate of over-representation nationally. While this remains unacceptably high, the significant progress to achieve compliance with the prevention element of the principle is promising.

¹⁴ Department of Child Safety, Youth and Women. (Undated). Child Protection Guide, available at <https://secure.communities.qld.gov.au/cpguide/engine.aspx>

¹⁵ Steering Committee for the Review of Government Service Provision, Productivity Commission, Report on Government Services – Chapter 16 – Child Protection, 2018, Table 16A.32

¹⁶ Steering Committee for the Review of Government Service Provision, Productivity Commission, Report on Government Services – Chapter 16 – Child Protection, 2018, Table 16A.3

¹⁷ ROGS 2019, Table 16A.7.

¹⁸ Steering Committee for the Review of Government Service Provision, Productivity Commission, Report on Government Services – Chapter 16 – Child Protection, 2019, Table 16A.6.

¹⁹ Family Matters (2019). The Family Matters Report 2019, available at https://www.familymatters.org.au/wp-content/uploads/2019/10/1097_F.M-2019_LR.%C6%92.pdf

4. Partnership

The *Child Protection Reform Amendment Act 2017* (CPRA) commenced in October 2018 and includes changes to enable the chief executive to delegate some or all of the chief executive's powers, in relation to an Aboriginal or Torres Strait Islander child, to the CEO of an Aboriginal and Torres Strait Islander entity, with appropriate safeguards (section 156). This amendment is supportive of the implementation of the Our Way strategy and Changing Tracks action plan Action 4.2.²⁰ The Department is developing a "Readiness Framework" for the transfer of authority to ACCO's for a range of powers and functions under the Act. The Sector remains very keen to progress this with a number of organisations flagging their readiness to take on functions such as cultural support planning (development and implementation), Investigation and Assessment functions, case management functions and some to trial guardianship.

References to 'recognised entities' in the *Child Protection Act 1999* have been replaced in the CPRA with a new concept of an 'independent Aboriginal or Torres Strait Islander entity' for a child, broadening the range of entities or individuals that may support the child (section 6). Independent entities are a person chosen by an Aboriginal or Torres Strait Islander child, young person or their family to help the child or young person and their family participate in decision making. An independent entity or person may include: a significant individual for a child and their family, such as a relative, kin or elder; or an entity funded by a State or the Commonwealth to provide cultural services, including cultural advice and support, to Aboriginal or Torres Strait Islander persons. The recognised entity program has been decommissioned with the funding being re-directed into the FPP) to facilitate greater rates of participation of Aboriginal and Torres Strait Islander families and young people in decisions that impact upon them. (See 'Participation' below).

The Department reports that the *Child Safety Practice Manual (CSPM)* and linked resources have been updated to support the implementation of the legislative amendments (see also 'Placement', 'Participation' and 'Connection'). The updated online version went live in October 2019. The affidavit template developed by the Department (see 'Prevention') also includes prompts to detail referrals to the FPP and for the involvement of an independent person for the child and family for every significant decision.

A key action under the first *Changing Tracks* Action Plan was the establishment of the Queensland First Children and Families Board, which occurred in November 2018 with majority Aboriginal and Torres Strait Islander sector and community membership to guide implementation, investment and evaluation of Our Way and associated action plans. The Board has met on three occasions over the past 12 months and recently published its *Changing Tracks Progress Report May 2017 – December 2018*.²¹ The report highlights that 23 of the 35 actions are complete or currently being embedded, and that the remaining 12 actions are on track for completion on schedule. This includes the Department partnering with the Queensland Mental Health Commission to contract the Healing Foundation to develop the Aboriginal and Torres Strait Islander Healing Strategy to enhance the social and emotional wellbeing of Aboriginal and Torres Strait Islander people in Queensland suffering intergenerational trauma, violence and/or grief and loss.²²

The second *Changing Tracks Action Plan 2020-22* to support Our Way is currently being developed in partnership with Family Matters Queensland, the Board, government and non-government partners and community. The Department reports that it will prioritise actions that strengthen the ACCO sector to provide evidence based, early intervention, prevention, reunification and transition initiatives that support Aboriginal and Torres Strait Islander children and families to experience the best possible outcomes. The Department has also contracted Winangali Pty Ltd to co-design a Queensland Aboriginal and Torres Strait Islander Children and Families Wellbeing Outcomes Framework to identify outcomes, indicators and measures to enhance investment decisions, align efforts and help monitor progress towards Our Way's desired outcome for Aboriginal and Torres Strait Islander children and families to achieve parity with non-Indigenous children

²⁰ Department of Communities, Child Safety and Disability Services, Queensland Government (2017). *Changing Tracks – An Action Plan for Aboriginal and Torres Strait Islander Children and Families 2017-2019*, available at <https://www.communities.qld.gov.au/resources/campaign/supporting-families/changing-tracks.pdf>

²¹ Queensland First Children and Families Board (2019). *Changing Tracks Progress Report May 2017 – December 2018*, available at <https://www.csyw.qld.gov.au/resources/campaign/supporting-families/changing-tracks-progress-report.pdf>

²² Family Matters (2019). *The Family Matters Report 2019*, available at https://www.familymatters.org.au/wp-content/uploads/2019/10/1097_F.M-2019_LR.%C6%92.pdf

across agreed wellbeing domains.²³

The Department has engaged QATSICPP to develop an options paper for a new stand alone Aboriginal and Torres Strait Islander Kinship Program to realise its commitment to transfer the management and support of departmentally managed carers to non-government organisations. 15 ACCOs have also been funded as part of the FPP to support Aboriginal and Torres Strait Islander families to participate in child protection decision-making as well as engage with a range of culturally safe service providers (see 'Participation') and investment in 33 Aboriginal and Torres Strait Islander Family Wellbeing Services delivered by ACCOs has occurred (see 'Prevention').²⁴ Queensland has the highest level of investment in ACCOs to provide family support and child protection services of states and territories reporting ACCO investment levels – including 19.6% of family support funding, 34% of intensive family support funding and 14% of overall expenditure on child protection, out-of-home care and family support services.²⁵

While there has been important progress in compliance with the partnership element of the principle, Queensland does not have a dedicated commissioner for Aboriginal and Torres Strait Islander children and families.

²³ Ibid.

²⁴ Queensland First Children and Families Board (2019). Changing Tracks Progress Report May 2017 – December 2018, available at <https://www.csyw.qld.gov.au/resources/campaign/supporting-families/changing-tracks-progress-report.pdf>

²⁵ Family Matters (2019). The Family Matters Report 2019, available at https://www.familymatters.org.au/wp-content/uploads/2019/10/1097_F.M-2019_LR.%C6%92.pdf.

5. Placement

The CPRA amended section 83 of the *Child Protection Act 1999*, commencing as of October 2018, to strengthen the requirement to adhere to the placement hierarchy. The *Child Protection Act 1999* states that the chief executive must give “proper consideration” to placing an Aboriginal or Torres Strait Islander child with a person who is a member of the child’s family group whereas the CPRA states that the chief executive, “must, if practicable” adhere to this. The CRPA also amends the placement hierarchy to better reflect the ATSI CPP placement hierarchy.

The *Child Safety Policy: Decisions about Aboriginal and Torres Strait Islander children and young people* has been updated to support the implementation of the legislative amendments to embed the ATSI CPP in practice.²⁶ The policy specifies that, in making decisions about where an Aboriginal or Torres Strait Islander child will live, Child Safety must, if practicable, have the child live with a member of the child’s family group and that Aboriginal and Torres Strait Islander children and families must be enabled to exercise agency over their lives (see ‘Participation’). The affidavit template developed by the Department (see ‘Prevention’) also includes guidance on evidence required to demonstrate that all placement options have been explored in accordance with the placement principle and the placement hierarchy in section 83 of the Act.

An action within the *Changing Tracks Action Plan 2017-2019* was to strengthen kinship care investment, and supports and resources to maximise the use of kinship care placements (action 4.1).²⁷ In response to this, the Department reports that it is currently in the process of developing an Aboriginal and Torres Strait Islander Kinship Care Program, with QATSI CPP engaged to provide an options paper. The Department also informs that kinship mapping processes to identify kin for placements have been strengthened, and resources have been developed to improve cultural capability and adherence to legislative requirements in line with the ATSI CPP in relation to placement. Following the 2014 to 2016 trial of the Winangay Kinship Carer Assessment Tool in Queensland, and a review undertaken in 2019 of carer assessment practices and processes, the Department is considering options for the implementation of a culturally appropriate kinship carer assessment tool. This will occur in 2020.

55.5% of children admitted to OOHC in Queensland in 2017-18 were placed with relatives/kin or other Aboriginal and Torres Strait Islander carers.²⁸ This is a very slight decrease from 2016-17 (55.8%) and below the national average of 64.5%.²⁹ In 2017-18, 36.9% of Aboriginal and Torres Strait Islander children were placed with Aboriginal and Torres Strait Islander carers, which is a slight increase from 2016-17 (36.5%).³⁰

²⁶ Department of Child Safety, Youth and Women. (2018). Child Safety Policy, available at <https://www.csyw.qld.gov.au/resources/dcsyw/child-family/protecting-children/decision-making-atsi-children-641.docx>

²⁷ Department of Communities, Child Safety and Disability Services, Queensland Government (2017). *Changing Tracks – An Action Plan for Aboriginal and Torres Strait Islander Children and Families 2017-2019*, available at <https://www.communities.qld.gov.au/resources/campaign/supporting-families/changing-tracks.pdf>

²⁸ Steering Committee for the Review of Government Service Provision, Productivity Commission, Report on Government Services – Chapter 16 – Child Protection, 2019, Table 16A.21.

²⁹ Ibid.

³⁰ Ibid.

6. Participation

The CPRA, commenced in October 2018, and strengthens the rights of Aboriginal and Torres Strait Islander peoples to self-determination and enables family-led decision-making (section 6). Further, it ensures that families can be supported through the introduction of the independent person, who is chosen by the family to facilitate their meaningful participation in decision-making (section 6). This recognises that the child and the child's family is the primary source of cultural knowledge in relation to the child.

In support of these amendments, the *Child Safety Policy* (see 'Placement') has been updated to establish the Aboriginal and Torres Strait Islander independent entity (independent person) and family-led decision making processes.³¹ The policy states that Child Safety must give proper consideration to the views of the child and the child's family about where and with whom the child will live and ensure the decision provides for the optimal retention of the child's relationships with family members and other people of significance to the child under Aboriginal tradition or Island custom. The affidavit template (see 'Prevention') provides guidance for the inclusion of evidence that will comply with the participation principle, including the use of Aboriginal and Torres Strait Islander family led decision making processes and the involvement of an independent person for every significant decision.

Following Queensland's successful trial of Aboriginal and Torres Strait Islander family-led decision-making in 2016-17, the Government has rolled out a Family Participation Program (FPP) across the state, providing funding to 15 ACCOs to support Aboriginal and Torres Strait Islander families to participate in child protection decision-making.³² This is a significant step towards compliance with the participation element of the ATSICPP, however to date uptake has been slow. Sector leaders report that this is primarily because of further work required by Department staff to transition from a mindset that funded programs are a resource for the Department and accept that these are resources to support and empower families' full participation. Referral to these programs has often been viewed as at the Department's discretion rather than enabling a right of families as intended within the legislation. Measures have been taken to remedy this, including amendment of the FPP guidelines to make it very clear that referrals are mandatory (subject to the family's agreement) and requirements to confirm details of referral on the cover sheet of DCPL material, so that independent information and materials can be sought directly from FPP providers to the Director of Child Protection Litigation prior to making decisions/taking action. QATSICPP has proposed inclusion within the CPRA of a right of tribes and kin to intervene at any time in a child custody proceeding and make recommendations regarding the placement of a child to embed this right to participation, as is contained in the *Indian Child Welfare Act 2016 (USA)*.³³ Further work in this next period will also be important to ensure investment is targeted and enables families to access family-led decision-making at all points of the child protection continuum, especially at their first engagement to prevent further progression along that continuum.³⁴

The Department conducted a statewide consultation project, through the First Nation Voices initiative (formerly called Deadly Voices) enabling young people to share their in-care experiences to help influence and improve policy and practice in the child protection sector.³⁵ The Department reports that an action that enables the participation of children in program design, policy and practice will be included within the Our Way second three year action plan. QATSICPP recommends establishing a dedicated Aboriginal and Torres

³¹ Department of Child Safety, Youth and Women. (2018). *Child Safety Policy*, available at <https://www.csyw.qld.gov.au/resources/dcsyw/child-family/protecting-children/decision-making-atsi-children-641.docx>

³² Department of Child Safety, Youth and Women (2019). *Family Participation Program*, available at <https://www.csyw.qld.gov.au/child-family/child-family-reform/meeting-needs-requirements-aboriginal-torres-strait-islander-children-families-communities/family-participation-program>

³³ QATSICPP (2019). Submission in response to *Discussion Paper: Rethinking rights and regulation: towards a stronger framework for protecting children and supporting families*.

³⁴ Family Matters (2019). *The Family Matters Report 2019*, available at https://www.familymatters.org.au/wp-content/uploads/2019/10/1097_F.M-2019_LR.%C6%92.pdf

³⁵ Queensland First Children and Families Board (2019). *Changing Tracks Progress Report May 2017 – December 2018*, available at <https://www.csyw.qld.gov.au/resources/campaign/supporting-families/changing-tracks-progress-report.pdf>

Strait Islander Child Guardian, or equivalent, to advocate for and support children to participate in decisions that impact them, make complaints and seek review of decisions on the basis of established grounds.³⁶

³⁶ QATSICPP (2019). Submission in response to *Discussion Paper: Rethinking rights and regulation: towards a stronger framework for protecting children and supporting families*.

7. Connection

Commencing in October 2018, the CPRA introduced a new type of child protection order — a permanent care order - to provide an option for a child requiring long-term OOHC (section 59), with specific safeguards for Aboriginal or Torres Strait Islander children. Safeguards include that the Court must: have regard for Aboriginal tradition and Island custom for the child, and the child placement principles; be satisfied the child's case plan includes appropriate details about how their connection to culture, community or language group will be developed and maintained; and be satisfied the decision to apply for the order has been made in consultation with the child. If appropriate the Court may have regard to the views of the child, their family or the independent entity for the child to be satisfied of these matters. The Department has implemented a practice where any Permanent Care Order application for an Aboriginal or Torres Strait Islander child is reviewed by a specialist solicitor within the Department to ensure compliance with all five ATSI CPP elements, with a particular focus on the legislative requirements in relation to connection. In the period between October 2018 and June 2019, three permanent care orders have been made for Aboriginal and Torres Strait Islander children. Two of these children were placed with Aboriginal and/or Torres Strait Islander relatives/kin and one was placed with a non-Indigenous carer.

QATSI CPP remains deeply concerned that the current limited application of the ATSI CPP provides inadequate safeguards against the disconnection of Aboriginal and Torres Strait Islander children from kin, country and culture when subject to permanent orders. QATSI CPP recommends redressing these limitations as a more effective mechanism to support stability for Aboriginal and Torres Strait Islander children. It advocates for strengthening language in the Act, and introducing the concept of 'Active Efforts' to establish a requisite standard of application regarding all five elements as a priority.

The CPRA did not amend the case planning requirements in relation to cultural support planning and it remains the case that a child's case plan 'may' address contact with family and arrangements for maintaining connection with cultural identity (section 51). However, the CPRA does place a greater emphasis on ongoing connections and culture as a protective factor for Aboriginal and Torres Strait Islander children (section 5). The CPRA amends case planning requirements to include details of how the plan is consistent with the connection principle for an Aboriginal or Torres Strait Islander child (section 51). The CPRA also includes a provision for an independent Aboriginal or Torres Strait Islander entity to be involved in case planning for an Aboriginal or Torres Strait Islander child (section 51). The *Child Safety Policy* supports this, stating that family led decision-making processes may be used to support the development of cultural support plans.

The Department informs that it has strengthened case planning processes to be more culturally safe and increase participation and that they involve an independent person in case planning processes where the family agrees. The Department reports that it has also strengthened culturally capable practice through training and resources to ensure children's case plans have a strong focus on connection to family, community, culture and Country.

The *Child Safety Policy* (see 'Placement') supports the legislation and highlights that decisions in relation to Aboriginal and Torres Strait Islander children must promote their safe care and connection with family, community, culture and country.³⁷ The policy includes that the Department will arrange for family-led decision-making, when it is practicable and in the best interests of the child, when developing a case plan. The affidavit template contains prompts for the inclusion of detailed evidence as to how connection to family, culture and community will be maintained, particularly for children placed outside of their community.

An indicator within the *Changing Tracks* Action Plan is for more Aboriginal and Torres Strait Islander children in OOHC to reunite with their parents and families by 2019.³⁸ The Department indicates that the process to capture this data is now complete and will be able to be provided from next year. The FPP

³⁷ Department of Child Safety, Youth and Women. (2018). *Child Safety Policy*, available at <https://www.csyw.qld.gov.au/resources/dcsyw/child-family/protecting-children/decision-making-atsi-children-641.docx>

³⁸ Department of Communities, Child Safety and Disability Services, Queensland Government (2017). *Changing Tracks – An Action Plan for Aboriginal and Torres Strait Islander Children and Families 2017-2019*, available at <https://www.communities.qld.gov.au/resources/campaign/supporting-families/changing-tracks.pdf>

guidelines require the Department to refer families to the program to support reunification (subject to the family's agreement). Whether there is current funded capacity to meet this requirement is unclear, however the Department reports it is currently enhancing funding for the FPP to increase its capacity to support families to lead decision making at the key stages of the child protection process, including reunification.