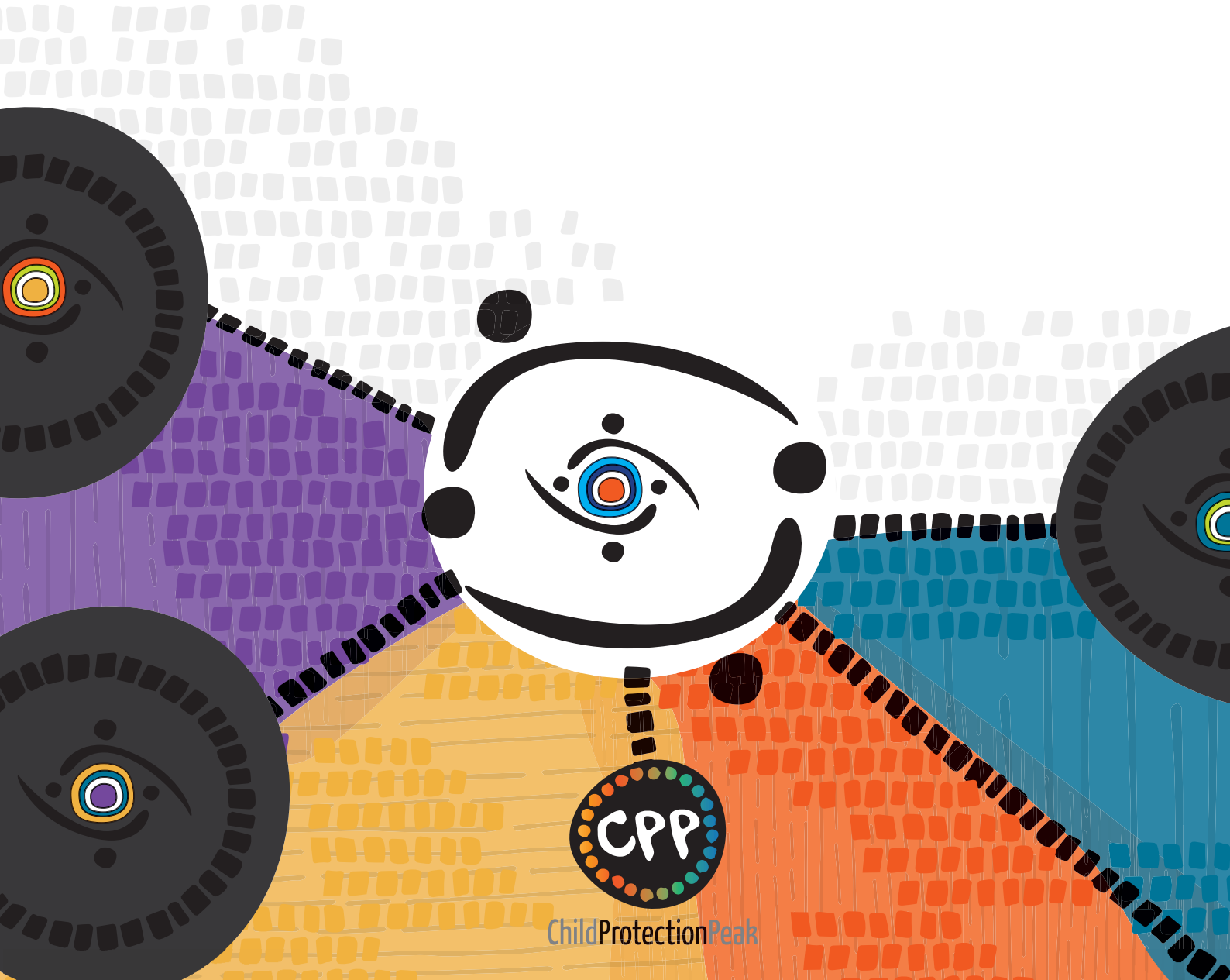
POSITION STATEMENT FOR ABORIGINAL KINSHIP CARE



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ABOUT THE POSITION STATEMENT

The purpose of this position statement is to restate the importance of Aboriginal children and young people being raised by family in community and to set out the changes needed in legislation, policy, programs, processes and practice to realise a new approach to Aboriginal Kinship Care in Queensland.

The position statement uses the format of *Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy and program development* (SNAICC, 2017) which provides the definition of the Child Placement Principle and its aims of:

1) ensuring an understanding that culture underpins and is integral to safety and wellbeing for Aboriginal and Torres Strait Islander children is embedded in policy and practice;
2) recognising and protecting the rights of Aboriginal and Torres Strait Islander children, family members and communities in child welfare matters;
3) increasing the level of self-determination of Aboriginal and Torres Strait Islander people in child welfare matters; and
4) reducing the over-representation of Aboriginal and Torres Strait Islander children in child protection and out-of-home care systems.

Furthering these aims underpins the position statement. Each of the five core elements of the Child Placement Principle – prevention, participation, placement, participation, connection – are examined to encourage a deeper understanding of, and assert new approaches and strategies to raising Aboriginal children and young people who cannot live full time with their parents by supporting and maintaining children's ongoing connections to family, community, culture and country.

This statement focuses on kinship care of Aboriginal children and young people in Queensland. Customary child rearing practices or traditional adoption practices of Torres Strait Islander children and young people are not discussed.

WHAT IS ABORIGINAL KINSHIP?

Aboriginal Kinship is a diverse and complex system. For the purpose of this position paper, Aboriginal Kinship refers to the biological bloodlines that have been passed on from generation to generation. For example, although not an immediate family member (e.g. father's sister), a father's cousin would be considered Aboriginal Kinship connection due to the bloodlines that they share.

This paper does not discount that 'Kin' may be a person that is not biologically related to the child however this is not Aboriginal Kinship. Consideration of who is kin to a child is also the decision and responsibility of family and those with cultural authority for the child, not the statutory agency.

BACKGROUND AND CONTEXT FOR DEVELOPING A POSITION STATEMENT

Aboriginal and Torres Strait Islander children are over-represented in statutory child protection systems across Australia and the reality is that too many of those children live away from their parents and family being raised by foster carers, in residential care, or with people the State has deemed as 'kin'. Just as SNAICC (2016) says about permanency planning, current approaches to kinship care in Queensland "... are not sufficiently flexible or attuned to the reality that, for an Aboriginal and/or Torres Strait Islander child, their stability is grounded in the permanence of their identity in connection with family, kin, culture, and country."

Aboriginal children are missing out on being raised by family in community because of a range of historic and contemporary factors including:

1) inadequate resourcing of and access to Aboriginal and Torres Strait Islander community-controlled early intervention, prevention and wellbeing services for children, young people, families and communities
2) increasingly intrusive and disproportionate representation of Aboriginal and / or Torres Strait Islander children the further into the statutory child protection system
3) inadequate and inconsistent processes around how and when Indigeneity and Aboriginal family members and connections are identified
4) inconsistent approaches and a disregard for the participation of children, parents and family, and of community representatives in decision making
5) dismissal and de-valuing of a child or family's culture and connection to culture and community as strengths and consequently taking lesser efforts to use problem-solving, enabling approaches to support family members to raise a child
6) conveniently deeming 'significant others' or unrelated community members as kin to the child or perpetuating practices founded on thinking that any Aboriginal person meets a child's cultural needs
7) the inappropriate application of the same regulatory framework to kinship care as to foster care
8) government approaches to procurement favouring mainstream organisations supporting Aboriginal and non-Indigenous carers fostering Aboriginal children which allows those services to claim cultural competency and believe their role is legitimised because they employ Aboriginal and Torres Strait Islander workers and / or have formal or other connections with community-controlled organisations, rather than Aboriginal children, families and carers supported by Aboriginal and Torres Strait Islander community-controlled organisations
9) investment specifications and contract management of community-controlled foster and kinship care services that require services to focus on foster carers and recruiting foster carers, rather than enabling a child's family and identifying family and community connections
10) myths perpetuated about the capacity and capability of community-controlled organisations to manage programs and provide quality services
11) myths perpetuated that Aboriginal people want or deserve choice about accessing community-controlled or mainstream services
12) the reliance on tertiary qualificaitons as a source of professional expertise rather than acknowledging that professional expertise is a culmination of personal attributes, experience and qualification.

Kinship care is a contested policy area. Older family members have always and continue to support and care for younger family with limited Commonwealth and / or State financial and other supports available for these informal arrangements – family helping out family, not out-of-home care. Formal arrangements happen through intrusive statutory child protection intervention and every jurisdiction approaches and regulates these arrangements slightly differently but fundamentally with a 'one size fits all' approach that perpetuates kinship care being treated in largely the same way as stranger / foster care. With every public inquiry and review, the regulation of kinship care is tightened, not re-conceptualised to meet child, family and community need. There is little or no acknowledgement of the evidence base, just nods to broad 'community expectations' about safety and perceptions of a child's best interests.

Changes are needed in legislation, policy, programs, processes and practice to grow kinship care in ways that comply with the five elements of the Child Placement Principle so that kinship structures are acknowledged as a strength that when activated and appropriately supported, lead to safety and stability and importantly meet an Aboriginal child's cultural needs, which cannot be met in out-of-home care with strangers.

The *Child Protection Act 1999* sets out Queensland legislative and policy framework for child protection intervention. Although a commencement date has not been announced, new principles and provisions offer transformational change in how the legislation is administered in relation to Aboriginal and Torres Strait Islander children, young people, families, and communities. The amendments embed the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle as principles to be considered in all decisions; recognise the right to self-determination; introduce greater flexibility in how cultural advice and information are obtained and considered in decision making by departmental officers, the Litigation Director and the court; ensure the right of participation in decision making that impacts on children, families and communities; and include a new power for the chief executive to delegate some or all powers and functions in relation to a child to the chief executive officer of an Aboriginal or Torres Strait Islander entity.

Other amendments that positively support children being cared for by a child's family are a set of permanency principles that include a preferred hierarchy of intervention and amendments to section 83 to recognise that the child and child's family are the primary source of cultural knowledge about the child and the first priority is for a child to be placed with family and, if not, in their community or language group; a permanent care order with additional considerations if the order is in relation to an Aboriginal or Torres Strait Islander child; limiting the making of consecutive short term orders to a total of two years; and extending access to after-care support to young people who have been in the custody or guardianship of the chief executive until 25 years.

Proposed changes to information sharing provisions seek to get help earlier to unborn children and their families. There is also a focus on ensuring decision making and case planning keep children connected to family, culture and community.

Another government initiative that offers opportunities to shape future directions in family support and child protection is *Changing Tracks: An action plan for Aboriginal and Torres Strait Islander children and families 2017–2019* (Queensland Government, 2017). It establishes a foundation for re-conceptualising support for Aboriginal and Torres Strait Islander children and their families when child/ren cannot live with their parents for short or longer periods of time. Priority actions to enable children and young people who are not currently living with family to thrive and to reengage those who are disconnected from family and kin focus on kinship care, family and kin mapping, and self-determination. The action plan supports findings and recommendations from the Queensland Child Protection Commission of Inquiry, for example, about family led decision making. The Queensland Family and Child Commission's (QFCC) review of the foster care and blue card systems and the Royal Commission into Institutional Responses to Child Sexual Abuse will also shape government approaches to regulating kinship care.

THE VISION

Stability for Aboriginal children and families exists in relationships and connections to community, culture and country. These exist irrespective of a child's day to day living arrangements. Being with family, being raised by family in culture is at the heart of an Aboriginal child's perception of permanence, belonging and identity development. The Aboriginal and Torres Strait Islander Child Placement Principle says that children have the right to be raised in their family. For children who need to live away from their parents for a short or longer period, a child's first placement is the best placement (i.e. the child is being raised by their family in the community in which they have connections to family, culture and country). If not, the child's connections to family, community, culture and country must be maintained and supported.

The preferred approach is for supportive, problem-solving approaches that enable parents and / or the child's family group to raise and care safely for their children in the absence of statutory intervention or, if necessary, the least intrusive statutory intervention for as long as needed. The point is to clearly separate perceptions about risk to a child's safety and wellbeing, which may be a child protection concern, from family and community-controlled approaches to raising children and their understanding and management of any risks to the child.

A tight definition of 'kin' is essential to redress the historically broad interpretation that has privileged adults in the child's community or 'close family friends' being considered 'kin' for the purposes of identifying a placement, rather than meaningful mapping, identification, support and enabling of family members who have a legitimate cultural connection to the child.

An enabling legislative and policy framework, unwavering commitment and concerted actions are essential for self-determination and Aboriginal children being raised by family, connected to community, culture and country. Core to self-determination and to implementing the Child Placement Principle is reforming government procurement and investment decisions in relation to community-based service delivery. The mantra must be Aboriginal children and families, Aboriginal and Torres Strait Islander community-controlled organisations. To be clear, this necessitates privileging investment in Aboriginal and Torres Strait Islander community-controlled organisations and transparency in decision making for new services and contract renewals, and concrete strategies to transition services and programs from non-Indigenous organisations to Aboriginal and Torres Strait Islander community-controlled organisations. Similarly, carers of Aboriginal children who are still supported by the Department should be transitioned to community-controlled organisations.

WHEN WE TALK ABOUT KINSHIP CARE, WHICH CHILDREN ARE WE TALKING ABOUT AND WHAT ARE THE IMPLICATIONS FOR OPERATIONALISING ABORIGINAL KINSHIP CARE?

We're talking about children in range of scenarios. We're talking about children who are already being raised informally by family members, often grandparents, which presents challenges for the children and for the grandparents (ageing population, often low income, possible health issues or conflict with the child's parents). The extent of these arrangements is not known.

We're talking about children who are in the child protection system – where the plan is for the child to return to their parent's day to day care, where the plan is for the child to be raised by extended family in the long term, where the child is currently being raised by approved non-related Indigenous carers, where the child is being raised by approved non-Indigenous carers, where the child may or may not be living with some or all of their siblings, where the child is being raised by non-Indigenous family members, where the child is living in a non-approved placement though often this is with family – and children whose parents need practical, educational, therapeutic, advocacy or other assistance to ensure their children's safety and wellbeing or the safety and wellbeing of an unborn child once born.

We're talking about kinship carer families getting access to the same and tailored family supports as parents. And young people being able to stay put with extended family after they have turned 18 years but they or the carers need access to financial or other supports for that to happen.

At 30 June 2017, 23.6% of Aboriginal and Torres children living away from their parents were living with approved Aboriginal and Torres Strait Islander relatives, 19.1% were living with non-Indigenous kinship carers (this percentage is steadily increasing), and 12.8% with unrelated Indigenous carers. Most of these children were subject to child protection orders granting guardianship to the chief executive; some under guardianship to other orders; and a small number subject to Intervention with Parental Agreement arrangements.

At 30 June 2017, 249 (51%) of the 486 children whose placement was recorded as 'other' (youth detention centres, young people on remand, hospital, unapproved placements) were Aboriginal and Torres Strait Islander children.

Disaggregated data about Court Assessment and Temporary Assessment Orders by Indigenous status are not available.

WHEN WE TALK ABOUT ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITY-CONTROLLED ORGANISATIONS, WHAT DO WE MEAN?

Aboriginal and Torres Strait Islander community-control is fundamental to self-determination and reflective of how Aboriginal and Torres Strait Islander communities operated in the past and to this day. Central to the concept is local Aboriginal and Torres Strait Islander people or communities controlling and operating legally-incorporated, independent, community-based organisations, in which governance is by elected community members, and with objectives relating to building strength and empowerment in community.

WHAT ARE THE BOTTOM LINES?

Aboriginal Community Controlled Organisations working in the foster and kinship care space must be given the opportunity to focus primarily on Aboriginal Kinship Care, separate to foster care. This needs to be done in a timely manner, ensuring that there are adequate support mechanisms and flexibility in service delivery.

Furthermore, there needs to be an audit of children currently living in out of home care to identify if there is a current, documented cultural support plan which includes the identification and mapping of Kin and children who are currently in non compliant placements. Strategies to address identified concerns are integral to the audit.

The development of these cultural supports is not the be all and end all. These cultural support plans need to be properly implemented and regularly reviewed to ensure that the child's connection to family, community, culture and country is maintained. These plans must be endorsed by someone in the child's community who holds a place of cultural authority.

Adequate supports must be in place for informal placements that are currently occurring so that those families that have stepped up to look after their children are able to maintain and provide a home for the child where they can continue to thrive.

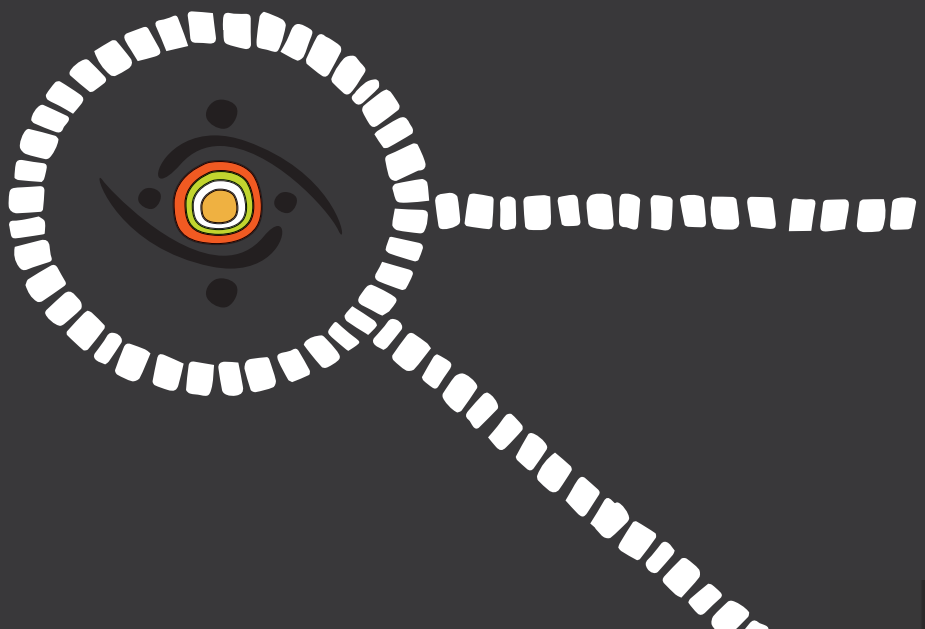
The following section applies the five elements of the Child Placement Principle to Aboriginal Kinship Care utilising the framework set out in *Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy and program development* (SNAICC, 2017).

APPLYING THE

FIVE ELEMENTS

OF THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE TO ABORIGINAL KINSHIP CARE

This section is based on *Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle: A resource for legislation, policy and program development* (SNAICC, 2017), which draws on the research evidence base that describes the Child Placement Principle and on guidance provided by Aboriginal and Torres Strait Islander leaders in the child and family services sector. Each element reflects the content in the resource, and has been contextualised by highlighting and / or drilling down to factors directly relevant to Aboriginal Kinship Care.



PREVENTION	DESCRIPTION
Each Aboriginal child has the right to be brought up within their own family and community.	Supporting families and building up communities to care safely for their children will protect future generations from the devastating effects of removal from family, community, culture and country. In the context of reclaiming and defining Aboriginal Kinship Care, this element acknowledges that collective child rearing practices have operated for centuries. It means Aboriginal children raised by Aboriginal kin connected to their family, community, country and culture, and children and families are supported by Aboriginal and Torres Strait Islander community controlled organisations. To enable and protect a child's right to be brought up in their family, it is necessary to ensure families have equitable access to quality service supports that are planned and delivered by Aboriginal and Torres Strait Islander community controlled organisations. This entails: • equitable and sufficient funding to provide the range of services that are needed • reclaiming the definition of 'kin' to only include adults with a legitimate cultural connection to the child, rather than a government's decision about someone from within the child's broader community • accepting kinship carers and extended family caring informally for younger relatives as having 'western' parental rights for custody and guardianship decisions • recognising that family caring informally or sharing the care of younger relatives (i.e. in the absence of a child protection order) prevents statutory child protection intervention and should attract financial and other supports made available to approved carers • acknowledging kinship carer families need access to the same practical, educational, therapeutic and advocacy supports as other families (i.e. review tight and arbitrary eligibility requirements for access to family support and other services) • acknowledging that a child may have a mixed cultural heritage and has a right to know and understand all and any connections and relationships • offering alternative intake and referral pathways to early intervention that could include a child temporarily, intermittently or on an ongoing basis living with extended family without the imperative or threat of statutory child protection intervention • requiring routine comprehensive evolving, not one off, purposeful mapping of kin, country and culture for each child by and with family and Aboriginal and Torres Strait Islander community controlled organisations • recognising a child's or parent's culture as a protective factor, not contrary to or undermining of a child's physical safety • embracing a broad definition of safety that embraces cultural safety as intrinsic • incorporating access to a full range of culturally safe universal early childhood, education, health and other social services • offering targeted and intensive supports to address issues in family functioning, promote healing, and specific parental issues such as problematic substance use, mental ill health, domestic and family violence, poverty, inadequate and inappropriate housing • ensuring a child's Aboriginal status is identified at the earliest possible opportunity so that services and interventions respond to their culture • enabling family members, particularly grandparents, older family and others who are experiencing vulnerabilities and structural disadvantage, by helping with service system navigation, service access and advocacy • continuously informing an evidence base that incorporates and respects Aboriginal knowledge

PARTNERSHIP	DESCRIPTION
The participation of Aboriginal and Torres Strait Islander community representatives, external to the statutory agency, in all child protection decision-making including: • **Individual case decisions at intake, assessment, intervention, placement and care, and judicial decision-making processes; and** • **The design and delivery of child and family services.**	Participation must extend beyond consultation to genuinely include Aboriginal and Torres Strait Islander community representatives in decisions that are made about children at all stages of child and family welfare decision-making. In the context of reclaiming and defining Aboriginal Kinship Care, this element means community members who are independent and external to the statutory agency participating in decision making about how best to protect and care for children to prevent or limit their contact with the statutory system. Protecting the rights of representative participation requires: • coverage and capacity of Aboriginal and Torres Strait Islander community-controlled organisations to lead holistic, integrated prevention, early intervention and out-of-home care service delivery based on their knowledge of local needs and cultural traditions • a properly resourced legislative role for community participation in all child protection decisions • Aboriginal and Torres Strait Islander community-based organisations facilitating family-led decision making processes for all families where child protection concerns are identified, particularly to identify kin by whom the child/ren can be raised • supporting Aboriginal and Torres Strait Islander community-based representative child protection structures to promote safety and wellbeing, input to decision-making about the welfare of children and families, and drive local early intervention and prevention strategies • building capacity of community-controlled organisations and professionals in the sector to deliver the full range of services required • ensuring adequate, culturally safe legal representation opportunities • attention to identifying Aboriginality and specific cultural and community connections • services and programs that are informed by an evidence base that incorporates and respects Aboriginal knowledge

PLACEMENT	DESCRIPTION
Placement of an Aboriginal or Torres Strait Islander child in out-of-home care is prioritised in the following way: **1 with Aboriginal or Torres Strait Islander relatives or extended family members, or other relatives or extended family members; or** **2. with Aboriginal or Torres Strait Islander members of the child's community; or** **3. with Aboriginal or Torres Strait Islander family-based carers.** **If the above preferred options are not available, as a last resort the child may be placed with:** **4. a non-Indigenous carer or in a residential setting.** **If the child is not placed with their extended Aboriginal or Torres Strait Islander family, the placement must be within close geographic proximity to the child's family.**	Placement in accordance with the hierarchy of options to ensure the highest level of connection possible is maintained for a child to their Aboriginal and / or Torres Strait Islander family, community, culture and country. Proper application of the placement hierarchy requires child protection decision makers to exhaust all possible options at one level of the hierarchy before considering a lower-order placement option. No placement should be made without demonstration of consultation with the child's family and community representatives to ensure all possible higher-order placement options have been considered. Community representatives should be able to provide independent advice to the courts on the most appropriate care options. In the context of reclaiming and defining Aboriginal Kinship Care, this element means that a child's first placement by the statutory agency away from their parents should be planned, made with the child and family's participation, and involve community representatives, so that it is the right placement. That is, the highest priority in the placement hierarchy. If placement with relatives or extended family members is not possible at that time, kin should be identified and enabled so that the child/ren transition to their care to be raised in culture and community. This requires: • families leading decision making using processes that involve identifying extended family and supports for children, parents and extended family • reclaiming the definition of 'kin' to only include adults with a legitimate cultural connection to the child • only investing in Aboriginal and Torres Strait Islander community-controlled organisations to work with family to map each child's kin, country and culture • timely processes for provisionally approving family members to avoid a placement lower in the hierarchy • reviewing procedures and decision making around emergency removals to avoid trauma to children and parents and children being cared for by family from removal • reconceptualising 'placement' as children being raised on an emergency, short or longer term basis by kin who are supported in that role, and inclusive of care arrangements that are shared by extended family members and parents (i.e. a recognition of collective child rearing practices that have existed for centuries) • redefining 'reunification' (i.e. reunifying a child to live with and be raised by their parents) to recognise that where and with whom a child lives and defining success as 'reunification' with parents denies that the concepts are not mutually exclusive • remembering that placement with 'family' includes children knowing and being raised with their siblings • using enabling, supportive processes to transparently resolve any concerns identified in suitability and working with children checks (other than disqualifying offences) for workers and prospective carers • culturally appropriate kinship carer assessment processes that develop an initial case / support plan which identifies what the carer/s need to raise that child in response to the child and family's strengths and needs using a problem solving, enabling approach (i.e. not a prescriptive or prescribed tool or approach that assesses the carer/s and household safety against standard criteria) • focusing the 'approval' decision on the match between extended family and the child/ren's broad range of needs, particularly for cultural safety and wellbeing • streamlining carer assessment and approval processes in relation to multiple children with the same family member

PLACEMENT	DESCRIPTION
(cont)	• upskilling and enabling Kin Carers, as needed, so they are strong advocates and service system navigators for the children in their care • changing the definition and counting rules for 'Aboriginal and Torres Strait Islander residential care' to only count Aboriginal and Torres Strait Islander community-controlled services delivering residential care services • changing the definition and counting rules for compliance with the Child Placement Principle to reflect the 5 elements of the Child Placement Principle • transferring all Aboriginal and Torres Strait Islander carers caring for Aboriginal and Torres Strait Islander children to Aboriginal and Torres Strait Islander community-controlled organisations, with associated resourcing • finalising the transfer of any Aboriginal and Torres Strait Islander carers who are still attached to the Department to Aboriginal and Torres Strait Islander community-controlled organisations, with associated resourcing • changing procurement processes, investment specifications and contract management procedures for Aboriginal and Torres Strait Islander community-controlled foster and kinship care services so that the programs focus on identifying kin and supporting families • amending the definition of 'visitable site' for OPG community visitors and advocates so that the homes of kinship carers are excluded from routine visiting • clarifying the role of OPG community visitors and advocates in asserting cultural support for Aboriginal children in non-compliant placements (i.e. children who are not being raised by the true definition of kin) • 'cultural continuity and connection' being accepted as a 'complex need' held by Aboriginal children which necessitates this being considered a 'qualification' of an intensive or professional foster carer caring for an Aboriginal child • cultural support planning and plans being signed-off by a person with cultural authority for that child • services and programs being continuously informed by an evidence base that incorporates and respects Aboriginal knowledge • extending supports to carers and young people past 18 years to enable the young person to stay put

PARTICIPATION	DESCRIPTION
Aboriginal and Torres Strait Islander children, parents and family members are entitled to participate in all child protection decisions affecting them, including intervention, placement and care, and judicial decisions.	Aboriginal and Torres Strait Islander children and families have the best knowledge about the caring strengths and risks that exist in their own families and communities. Involving family members in decision making can assist to widen circles of support for parents and children, identify placement options with family and community, and ensure families take responsibility for plans to address safety concerns that are of their own making. In the context of reclaiming and defining Aboriginal Kinship Care, this element plays a significant role in preventing or mitigating statutory involvement and where it occurs, acknowledging the child's and family's knowledge about their needs and how best to meet them. Ensuring the rights of Aboriginal children and families to participate in decisions affecting them requires: • listening to and valuing the views of the child • high cultural competency of professionals to engage family members in child protection decision making processes • child and family participation in case planning and review • quality family-led decision-making processes that seek to enable all participants • working to the time it takes to genuinely engage children, parents and other family members in participatory processes • recognising that decisions and decision-making aren't one-offs, rather should evolve as circumstances and participants change • access to adequate, culturally safe legal advice, information and representation In particular, taking into account the expressed wishes of the child requires: • availability of child advocates to ensure adequate representation for Aboriginal children • adequate procedures and professional capacity to support participation of children in child protection decision making

CONNECTION	DESCRIPTION
Aboriginal and Torres Strait Islander children in out-of-home care are supported to maintain connections to their family, community, culture and country, especially children placed with non-Indigenous carers.	To ensure that Aboriginal and Torres Strait Islander children in out-of-home care do not endure the same sense of loss of identity and dislocation from family and community as the Stolen Generations, it is critical to actively support them to maintain or to re-establish their connections to family, community, culture and country. In the context of reclaiming and defining Aboriginal Kinship Care, this element has implications for Aboriginal children living with non-Indigenous family members, with un-related Indigenous carers and away from their own family, community, culture and country, or with non-Indigenous foster carers or in non-Indigenous residential care, and preparing young people who age out of care. Protecting children's rights to maintain cultural connections requires: - an audit of cultural support planning for each Aboriginal child in out-of-home care to ensure there is a cultural support plan and that it has sign-off by a cultural authority for that child and is resourced and being implemented - cultural care arrangements are regularly reviewed and updated to ensure an enduring commitment to maintaining connections is demonstrated - un-related Indigenous foster and kinship carers and non-Indigenous family carers make and are held accountable to their commitment to maintain children's cultural connections - non-Indigenous foster and kinship care services are held accountable for their legislated responsibilities in relation to the Standards of Care to maintain cultural connections for Aboriginal children placed with their services - reunification with parents is supported early, with plans and culturally safe supports - options for reunification and reconnection are regularly reviewed, supported and progressed wherever possible - decisions relating to permanency of care do not cause harm by severing the potential for future cultural connections for Aboriginal and Torres Strait Islander children

BEST PRACTICE

BEST PRACTICE FOR IMPLEMENTING ABORIGINAL KINSHIP CARE IN RELATION TO THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE

The tables on the following pages set out a best practice approach to implementing Aboriginal Kinship Care with respect to the five core elements of the Aboriginal and Torres Strait Islander Child Placement Principle. The content draws on research evidence and the guidance of Aboriginal and Torres Strait Islander child and family sector leaders.

Each table considers the inter-relationships between legislation, policy, programs, process, and practice, highlighting the intersectionality of the five elements. In particular, the Placement element works best when the Prevention element has been and is respected and operationalised to support parents and family and prevent children being removed from their parents' care.

The Placement element is highly reliant on the Partnership and Participation elements as these embody self-determination through the participation of children, families and community representatives, including community-controlled organisations, in processes and decision making about children's safety, wellbeing and ongoing connections. Aboriginal and Torres Strait Islander approaches driven by community-controlled organisations are essential across the five elements, especially to support long term cultural safety and connections for children being raised away in out-of-home care.

Similarly, the different system elements against which best practice is considered in the tables are essential to realising the scale of reform required to align with the Child Placement Principle.

Regular review and compliance reporting against the five elements of the Child Placement Principle are essential to keeping on track with reform and informing practice review and best practice implementation.

While the QATSICPP Practice Standards, Supervision Framework and supporting resources have been developed with and for Aboriginal and Torres Strait Islander child and family services providing child protection services for Aboriginal and Torres Strait Islander children, respect and understanding of the framework and approach are helpful to all organisations working for better outcomes for Aboriginal and Torres Strait Islander children and families, and a strong, sustainable and capable community-controlled sector able to deliver these outcomes.

ACTIVE EFFORTS

The *Guidelines for Implementing the Indian Child Welfare Act* (ICWA) (United States Department of the Interior, 2016) includes Regulation 23.2 which states that "Active efforts means affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family"

Dr Sarah Kastelic presenting to the 7th National SNAICC Conference.

The guideline further states:

ICWA requires the use of "active efforts" to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family. The statute does not define "active efforts," but the regulation does in § 23.2. The "active efforts" requirement in ICWA reflects Congress' recognition of the particular history of the treatment of Indian children and families. Many Indian children were removed from their homes because of poverty, joblessness, substandard housing, and other situations that could be remediated through the provision of social services. The "active efforts" requirement helps ensure that parents receive the services that they need so that they can be safely reunified with their children. The "active efforts" requirement is designed primarily to ensure that services are provided that would permit the Indian child to remain or be reunited with their parents, whenever possible, and helps protect against unwarranted removals by ensuring that parents who are, or may readily become, fit parents are provided with services necessary to retain or regain custody of their child. This is viewed by some child-welfare organizations as part of the "gold standard" of what services should be provided in all child-welfare proceedings, not just those involving an Indian child.

If we are to truly acknowledge Aboriginal Kinship Care then we must ensure we are making active efforts. These efforts must be:

- Affirmative
- Active
- Thorough; and,
- Timely.

The tables about best practice on the following pages include examples of true Active Efforts for Aboriginal children.

LEGISLATION

BEST PRACTICE

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
Recognises the highest priority as Aboriginal children raised by Aboriginal family, supported by ACCOs Preferences supporting informal non-statutory intervention over intrusive statutory approaches Requires routine, comprehensive purposeful mapping of each child's kin, country and culture Recognises a child's right to enjoy culture with community Restricts removal of child to only if there is an 'unacceptable risk of harm' or as a 'last resort', and only with regard to Partnership and Participation Specifies minimum requirements for family preservation and ongoing connection to family and community at all stages Recognises the role of ACCOs to provide a holistic range of services that support children and families Recognises a definition of 'kin' that only includes adults with a legitimate cultural connection to the child Embraces a definition of 'visitable sites' for OPG CVs and advocates that excludes routine visiting of kin carer homes For non-compliant placements, supports OPG CV's role as advocating for increased compliance with the CPP, asserting cultural rights and needs, supporting cultural identity and a child's participation in decision making Requires a review of the regulation of kinship care to clarify differences with foster care Enables children to live with extended family as needed, rather than as an indicator of parental abuse or neglect warranting statutory intervention	Recognises and promotes self-determination as underpinning all decision making under child protection legislation Requires a resourced legislative role for participation of ACCOs in all significant statutory decisions Requires ACCOs to approve decisions about a child's permanency arrangements, applications for orders etc Provides for delegation of case management, custody and guardianship functions and powers to ACCOs Assesses the relevance of historical offending behaviour / criminal history in relation to current capacity to fulfil requirements as a worker or kinship carer	Reviews the regulation of kinship care to recognise fundamental differences with foster care – identification, assessment and approval, training and support Specifies placement hierarchy in accordance with best practice Requires 'all reasonable efforts' (or similar) be made to adhere to the placement hierarchy and requires routine re-visiting of lower priorities to address non-compliance Requires non-kin placements – prior to placement – to demonstrate commitment and capacity to support family, community, cultural and country connections Requires – prior to placement decisions – ACCO participation in decision making Removes structural and systemic impediments to WWCCs Recognises 'authority to liaise' at the point of applying for a WWCC Changes the definition of 'visitable site' so that kinship carer homes are not in scope for routine visiting by OPG community visitors and advocates	Requires the views of children, parents and family members be sought and considered by decision makers Requires FLDM as a mechanism for family participation early and often for all significant decisions Requires access to legal information, advice and representation in decision making forums and court proceedings Limits judicial decision making if children and / or parents are unrepresented Requires – prior to placement – child and family participation in decision making	Recognises a child's right to enjoy culture with community Recognises a child's right to have contact with their siblings, parents and other family members Allows contact with family to be court ordered Recognises that a child being raised by extended family connected to community and culture is a perspective on 'reunification' Recognises that unreasonable or restrictive timeframes and expectations on families to address entrenched disadvantage undermines children's connections with family, community and culture Requires a cultural support plan for all children living away from their parents (including with non-Indigenous family) that is signed-off by a cultural authority, implemented and regularly reviewed Specifies safeguards around permanency to maintain a child's connections to family, community, culture and country Provides for delegation of case management, custody and guardianship functions and powers to ACCOs

POLICY

BEST PRACTICE

PREVENTION	
Conceptualises kinship care as a form of family support, not an out-of-home care placement option	Prioritises identification of Aboriginality and cultural and community connections
Pursues integrated models of support services designed, planned and delivered by ACCOs and systems	Emphasises preference for higher-priority placements and routine review of lower-order placements
Recognises that community-controlled approaches are more likely to be effective and promotes the role of ACCOs in supporting parents, carers and families	Enables expedited approval processes for kin to avoid emergency or short term lower-order placements
Recognises and respects informal arrangements for guardianship of a child in the absence of court orders	Enables prevention and early intervention supports to avoid emergency removals
Supports existing informal arrangements continuing where family are caring for children	Recognises and promotes ACCO participation in placement decision making
Recognises and respects Aboriginal world views of child rearing and child development in policy and practice development	Promotes the role of ACCOs in identifying and enabling kin, assessment and support
Recognises purposeful mapping of a child's kin, country and culture at all stages of contact with the system	Reviews the regulation of kinship care to recognise fundamental differences with foster care – identification, assessment and approval, training and support
Reviews program guidelines / investment specifications for foster and kinship care services operated by ACCOs to focus the role on kinship care	Privileges investment in ACCOs for any and all mapping of a child's kin, country and culture
Recognises that Aboriginal Kinship Care includes cultural support planning and review	Reviews the counting rules for state-based and national performance measures relating to the CPP and residential care
Recognises culture and child and family connection to culture as protective factors for a child's safety	Redefines 'reunification' as connection with family encompassing children being raised by extended family
Supports a full range of culturally safe universal early childhood, education, health and other wellbeing services	Prioritises children being raised with their siblings by kin
Ensures a child's Aboriginal status is identified at the earliest stage so services and interventions respond to their cultural needs	Recognises the approval of kin carers as focused on the match between the child needs and the extended family
Recognises ACCO participation in all significant decisions	Reviews program specifications and contracts for ACCO-run foster and kinship care services to focus on identifying kin and supporting children and families
Commits to co-design of legislation, policy, service and system design, and procurement processes with ACCOs and ACCO peak bodies	Clarifies the role of OPG CVs and advocates to assert cultural support for children in lower order placements
Ensures adequate, culturally safe legal representation opportunities	Recognises 'cultural continuity and connection' as a qualification needing to be held by intensive or professional foster carers caring for an Aboriginal child
Prioritises ACCO case management of Aboriginal children	Ensures quality assurance, audit and accreditation mechanisms properly assess and monitor legislated obligations for children's rights and adherence to the CPP
Prioritises ACCO custody and guardianship of Aboriginal children	Addresses burdensome administrative processes with WWCCs, involves Aboriginal people and ACCOs in requisite processes for determining suitability
Prioritises and strategises to build ACCO capacity for participation and service delivery	Recognises the context of offending behaviour with appropriate regard for current behaviour and standing, contribution to family and community life, rehabilitation and evidence of positive life changes
Privileges procurement of and investment in ACCO-led models and services	Supports problem solving, enabling approaches to addressing concerns identified in suitability and WWCCs for workers and carers
Incorporates ACCO-led evaluation and continuous improvement to develop knowledge and an evidence base that incorporates cultural and community knowledge	Provides accessible guidance about options and support in relation to submissions about recourse for a negative WWCC notice
Transitions any foster and kinship carers caring for Aboriginal children from the department to ACCOs	
Transitions all foster and kinship carers caring for Aboriginal children from mainstream to ACCO-run services	
Reviews program guidelines and procurement processes for ACCO-run services supporting foster and kinship carers	
Supports natural justice and review rights around negative notices for WWCCs (excl exclusionary offences)	

PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
Recognises ACCO participation in all significant decisions Commits to co-design of legislation, policy, service and system design, and procurement processes with ACCOs and ACCO peak bodies Ensures adequate, culturally safe legal representation opportunities Prioritises ACCO case management of Aboriginal children Prioritises ACCO custody and guardianship of Aboriginal children Prioritises and strategises to build ACCO capacity for participation and service delivery Privileges procurement of and investment in ACCO-led models and services Incorporates ACCO-led evaluation and continuous improvement to develop knowledge and an evidence base that incorporates cultural and community knowledge Transitions any foster and kinship carers caring for Aboriginal children from the department to ACCOs Transitions all foster and kinship carers caring for Aboriginal children from mainstream to ACCO-run services Reviews program guidelines and procurement processes for ACCO-run services supporting foster and kinship carers Supports natural justice and review rights around negative notices for WWCCs (excl exclusionary offences) Prioritises identification of Aboriginality and cultural and community connections	Emphasises preference for higher-priority placements and routine review of lower-order placements Enables expedited approval processes for kin to avoid emergency or short term lower-order placements Enables prevention and early intervention supports to avoid emergency removals Recognises and promotes ACCO participation in placement decision making Promotes the role of ACCOs in identifying and enabling kin, assessment and support Reviews the regulation of kinship care to recognise fundamental differences with foster care – identification, assessment and approval, training and support Privileges investment in ACCOs for any and all mapping of a child's kin, country and culture Reviews the counting rules for state-based and national performance measures relating to the CPP and residential care Redefines 'reunification' as connection with family encompassing children being raised by extended family Prioritises children being raised with their siblings by kin Recognises the approval of kin carers as focused on the match between the child needs and the extended family Reviews program specifications and contracts for ACCO-run foster and kinship care services to focus on identifying kin and supporting children and families Clarifies the role of OPG CVs and advocates to assert cultural support for children in lower order placements Recognises 'cultural continuity and connection' as a qualification needing to be held by intensive or professional foster carers caring for an Aboriginal child Ensures quality assurance, audit and accreditation mechanisms properly assess and monitor legislated obligations for children's rights and adherence to the CPP Addresses burdensome administrative processes with WWCCs, involves Aboriginal people and ACCOs in requisite processes for determining suitability Recognises the context of offending behaviour with appropriate regard for current behaviour and standing, contribution to family and community life, rehabilitation and evidence of positive life changes Supports problem solving, enabling approaches to addressing concerns identified in suitability and WWCCs for workers and carers Provides accessible guidance about options and support in relation to submissions about recourse for a negative WWCC notice	Recognises and promotes child and family participation in placement decision making Promotes the role of ACCOs in supporting families to participate in FLDM Provides for culturally safe FLDM processes Incorporates family and community views in assessments of suitability and capacity of potential 'carers'	Emphasises the importance of maintaining and developing connections to family, community, culture and country Recognises and promotes the importance of family participation and ACCO-led processes for developing and reviewing cultural support plans Commits to implementation of individualised comprehensive cultural support plans Prioritises and supports safe and timely reunification with parents or extended family Supports regular review of options for reunification and reconnection and implementation of associated strategies

PROGRAMS

BEST PRACTICE

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
ACCO role includes independently identifying kin and transitioning children to be raised by kin ACCO-run family preservation and (re) connection services and programs Family and other support service referral networks that include ACCOs Early availability of ACCO-operated FLDM or similar approach to enable child, family and community participation in decision making Targeted and intensive supports that address social, economic and structural disadvantage Evidence informed programs that respect and help build Aboriginal knowledge	ACCO-operated FLDM or similar approach to enable child, family and community participation in decision making ACCO participation in child protection decision making ACCO case management of Aboriginal children ACCO custody and guardianship of Aboriginal children ACCOs and ACCO peak body role in system design, sector representation and sector development While working toward ACCO-led and operated programs, assessment, training and review of mainstream providers' cultural competency by ACCOs Targeted education and communication about WWCCs to improve community understanding, including service support and advice available in situ	ACCO-led kinship and family scoping programs ACCO-run programs for placement identification, assessment and support of kin carers ACCO-operated FLDM or similar approach to enable child, family and community participation in decision making ACCO-run reconnection programs that seek opportunities for children who are not living with parents back with parents and community Networks / communities of practice for Aboriginal Kin Care workers to develop and share expertise and experiences Services and programs that are continuously informed by an evidence base that incorporates and respects cultural knowledge After care support – financial and other – to young people and kin carers so that young people can stay put after they turn 18	ACCO-operated FLDM or similar approach to enable child, family and community participation in decision making Accessible legal services Community values and is confident about participation opportunities and mechanisms	ACCO-operated FLDM or similar approach to enable child, family and community participation in decision making Resourced implementation of family contact arrangements and cultural support plans through ACCOs ACCO case management of Aboriginal children ACCO custody and guardianship of Aboriginal children ACCO-run reunification and post-reunification programs and support services ACCO-run reconnection programs that seek opportunities for children who are not living with parents back with parents and community

PROCESSES

BEST PRACTICE

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
Early identification of a child as Aboriginal at intake or notification Alternative referral pathways at intake and notification to ACCO-run support services Culturally safe and appropriate risk assessment tools that involve family and community in assessing risk of harm and participating in safety planning	Procedures to enable timely and informed ACCO participation in all significant decision making Recording ACCO and family participation in decision making, and reasons if advice or decisions are not followed Requirement for ACCO participation in judicial decision making, particularly for family connection and contact arrangements Guidelines for delegation of custody and guardianship of Aboriginal children to ACCOs User friendly and streamlined processes for organisations about WWCC regulatory requirements and processes Funded positions in child and family wellbeing ACCOs to assist community applications for WWCCs and support organisational compliance through advice and technical support	Guidance on Aboriginal kinship relationships provided to child and family service practitioners Procedures to enable timely, informed and culturally safe family and ACCO participation in placement decision making, including FLDM Culturally appropriate kin carer assessment processes and supports, not prescribed or prescriptive assessment tools Assessment of placement options conducted exhaustively in order of the hierarchy, with records of assessments kept Regular review of lower-order placements with a goal to reconnect with a higher-order placement, with records of reviews kept Quality assurance and evaluation processes Cultural support plans signed off by a person with cultural authority for the child	Recognise the role of FLDM in identifying kin Accessible, timely, informed and culturally safe family participation, including the use of interpreters Guidance on consulting with children and including their views in a culturally safe manner Views of children, parents and family members are recorded and decision makers' consideration of these views noted and discussed in written decisions Advice to children, parents and family members about their rights to legal representation and access to legal services, particularly Aboriginal and Torres Strait Islander legal services Advice to children, parents and family members about review rights and assistance to pursue these rights	Acknowledge child and family as a source of cultural knowledge Guidance on assessing and meeting the cultural care needs of children, developed through ACCO consultation Procedures to enable development, review and updating of cultural support plans with families and ACCOs, including through FLDM or similar Guidance, requirements and supports for non-related and non-Indigenous carers to meet cultural care and connection needs of children Clear guidelines for delegation of custody and guardianship functions and powers to ACCOs Early and continued assessment of reunification opportunities for children in non-compliant placements and supports to be provided

PRACTICE

BEST PRACTICE

PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
Proportionate investment in early intervention and ACCO led family support and wellbeing services relative to tertiary child protection services Family participation in early intervention supports is at least equivalent to their use of tertiary interventions High participation of families in ACCO run family preservation and (re)connection services that are ACCO designed, delivered and evaluated Acknowledging and supporting a child's different cultural heritages and relationships Fewer children placed in non compliant (i.e. lower order) placements Reduced rate of re entry to the statutory child protection system	Increased coverage and capacity of ACCOs across the service delivery spectrum Higher rate and quality of ACCO participation, including in decision making, ACCO operated FLDM or similar and system / service design ACCO case management of Aboriginal children ACCO custody and guardianship for children living away from their parents Aboriginal and Torres Strait Islander led practice review of ATSICPP implementation	Separate regulation of kinship care and foster care Placement with higher order options maintained through enabling and supporting kin carers and other family Assessment of placement options conducted and exhausted in order of hierarchy Regular review of all lower level placements and placing children in higher order placements as soon as possible Community confidence in the blue card system so WWCCs are seen as a meaningful component of community safeguards for protecting children	FLDM early and often Quality family decision making processes producing plans that are owned and supported by family and community Family based solutions to reduce further or more intensive statutory intervention All children and families have access to culturally appropriate legal advice, information and representation	Implementation, review, updating of quality cultural support plans, including support to carers High rate of reconnection to family and community for children in non compliant placements High level of quality and safe contact with family High rate of safe and timely reunification and ongoing support as needed for family No permanent care orders made in relation to children in placements disconnected or with possibility of disconnection from family, community, culture and country

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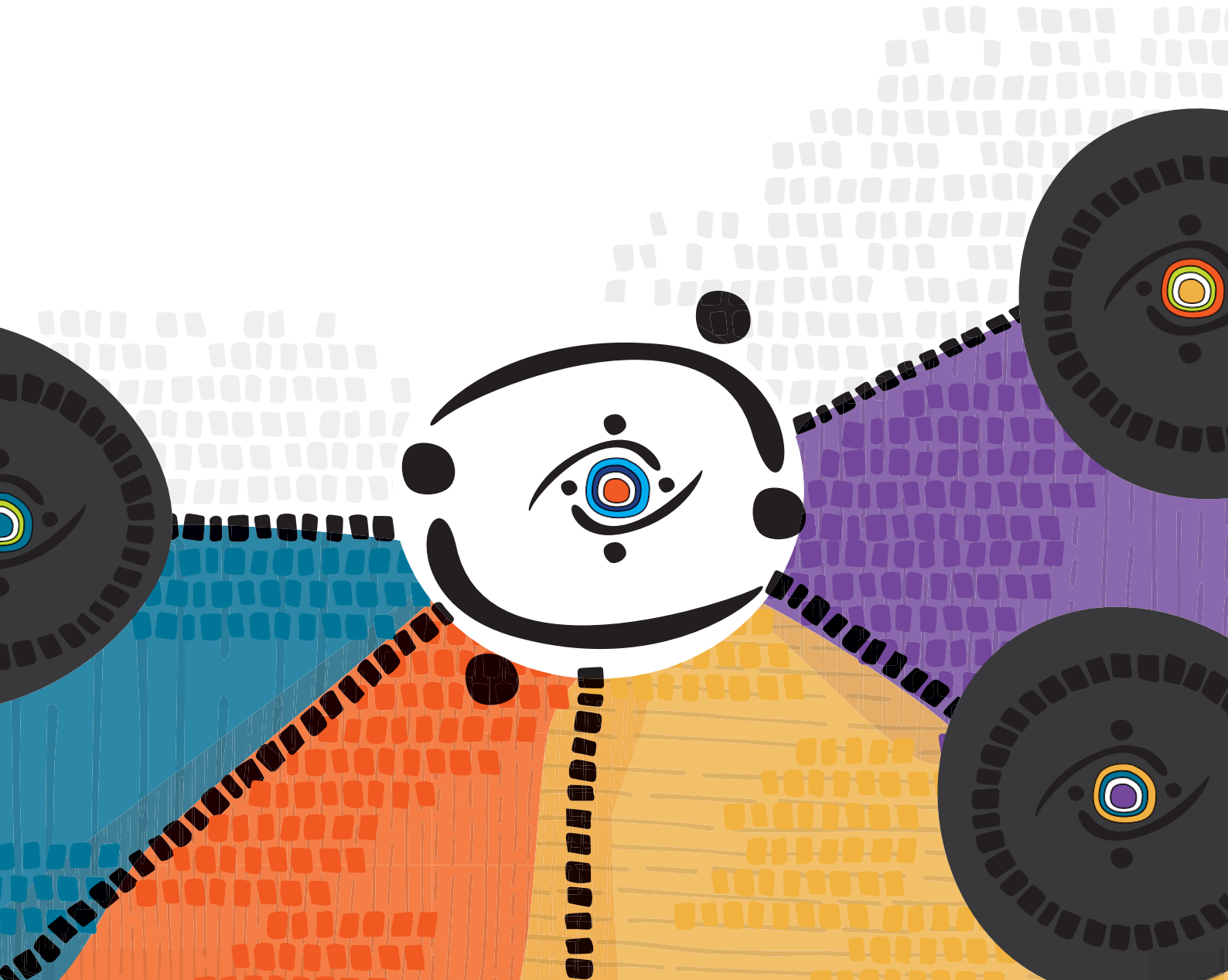
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