Secretariat of National
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Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements

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SNAICC is the national non-government peak body that advocates on behalf of Aboriginal and Torres Strait Islander children and their families.

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1. Executive Summary

This paper seeks to respond to ongoing misunderstanding about and partial application of the Aboriginal and Torres Strait Islander Child Placement Principle (the Child Placement Principle). The Child Placement Principle recognises that Aboriginal and Torres Strait Islander people have the knowledge and experience to make the best decisions concerning their children and recognises the importance of each child staying connected to their family, community, culture and country. It promotes a partnership between government and Aboriginal and Torres Strait Islander communities in decision making about children's welfare. This paper sets out the historical context for and development of the Child Placement Principle. It provides a detailed definition of the Principle and its five constituent elements, which include: prevention; partnership; placement; participation; and connections. Finally, it proposes a series of structural changes that are needed to ensure accountability for compliance. In particular, these centre around the adoption of a legislated definition that comprehensively reflects all elements and a national framework to properly monitor compliance efforts and outcomes. Full implementation of the Child Placement Principle will require vision and leadership, supported by legislative change, policy and practice improvements, increased resourcing, improved performance reporting, and accountability to Aboriginal and Torres Strait Islander communities, whose children are so profoundly affected by the interventions government makes on their behalf.

2. Introduction

Aboriginal and Torres Strait Islander peoples have connections to culture, country and community that nurture and support their wellbeing, spirituality and identity development. It is important to child and family wellbeing that these connections be maintained and strengthened. Yet since colonisation, harsh and discriminatory policies and practices, including the forced removal of children from their families, have led to feelings of loss, grief and injustice about the involvement of "welfare" services in the lives of Aboriginal and Torres Strait Islander people.

The Aboriginal and Torres Strait Islander Child Placement Principle aims to ensure government intervention into family life does not disconnect children from their family and culture. The development of the Child Placement Principal in the late 1970s was driven by Aboriginal and Torres Strait Islander Child Care Agencies (AICCAs), drawing on the experiences of Native Americans and the *Indian Child Welfare Act 1978*. The Child Placement Principle was accepted in 1984 at a Social Welfare Ministers Conference, with states and territories agreeing that Aboriginal and Torres Strait Islander children should be raised in their own families and communities, and if placed in out-of-home care for protective reasons, should be placed with Aboriginal or Torres Strait Islander carers. Since the 1980s, each Australian state and territory has adopted the Child Placement Principle to varying degrees in child protection and adoption legislation and policy.

However, over the last three decades, the disproportionate representation of Aboriginal and Torres Strait Islander children in the statutory child protection system has continued: children are more likely to be removed from their family's care, and more likely to be placed with non-family carers, in most jurisdictions. In 2012, despite representing only approximately 4.6% of this population, approximately 33% of all children in out of home care were Aboriginal or Torres Strait Islander children (AIHW, 2013). Aboriginal and Torres Strait Islander children were 8 times more likely than non-Indigenous children to be the subject of substantiated abuse or neglect, and 10 times more likely to be subject to a child protection order and placed in out of home care (AIHW, 2013).

Since the Principle was first endorsed, there have been two ground-breaking national inquiries - the 1991 Royal Commission of Inquiry into Aboriginal Deaths in Custody (RCIADIC) and the 1997 Human Rights and Equal Opportunities Commission (HREOC) Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (*Bringing Them Home*), which considered the operation of the Child Placement Principle. There have also been numerous state and territory inquiries into child protection and out of home care systems. The disproportionate representation of Aboriginal and Torres Strait Islander children in welfare, youth and adult criminal justice, homelessness and other intensive service systems is consistently lamented as unacceptable, and many recommendations have been made about strategies to better meet the needs of Aboriginal and Torres Strait Islander children and their families.

However, across the country, there appears to be a limited understanding and only partial application of the Aboriginal and Torres Strait Islander Child Placement Principle. There is a misperception that the Principle is only about a placement hierarchy for out-of-home care. The Child Placement Principle is not simply about where or with whom an Aboriginal or Torres Strait Islander child is placed. Placement in out-of-home care is one of a range of interventions to protect an Aboriginal or Torres Strait Islander child at risk of harm. The Child Placement Principle recognises the destructive and ongoing impact of policies and practices of assimilation and the separation and removal of Aboriginal and Torres Strait Islander children from their parents and communities. It recognises that Aboriginal and Torres Strait Islander people have the knowledge and experience to make the best decisions concerning their children and recognises the importance of each child staying connected to their family, community, culture and country. It promotes a partnership between government and Aboriginal and Torres Strait Islander communities in decision making about children's welfare, in order to ensure that the connections are understood and maintained.

The purpose of this briefing paper is therefore to:

- provide a detailed definition of the Aboriginal and Torres Strait Islander Child Placement Principle and its constituent elements; and

- inform consideration of systems and structural changes that are needed to ensure accountability for implementation of the Aboriginal and Torres Strait Islander Child Placement Principle.

3. History and Development of the Aboriginal and Torres Strait Islander Child Placement Principle

Appreciating the history and development of the Australian Aboriginal and Torres Strait Islander Child Placement Principle enhances understanding about the original intent and provides the foundation for defining its core elements, that together comprise the Principle. It also points to areas where interpretation and implementation across eight Australian jurisdictions have strayed from the original intent.

The Human Rights and Equal Opportunity Commission referred to the adoption of the Child Placement Principle as "The single most significant change affecting welfare practice since the 1970s" (HREOC 1997: 379). Premised on the belief that Aboriginal children are better off being cared for within their own Aboriginal families and communities, the Principle was established in 1984 following years of concerted action by Aboriginal and Torres Strait Islander peoples, AICCAs and others to address the growing disproportionate representation of Aboriginal and Torres Strait Islander children adopted by or placed in out-of-home care with non-Indigenous carers, and to prevent past practices

continuing or being repeated. The Child Placement Principle establishes the basis for keeping children within their families and communities to provide the link between the past and the future for Aboriginal and Torres Strait Islander cultures and the assurance that if separation or removal is necessary, the child's links with their family, community, and culture are actively maintained (Lock 1997).

The establishment of the Child Placement Principle happened at a time in Australia's political history when policy directions shifted from the assimilation of to promoting the self-determination of Aboriginal peoples and the best interests of children (Lock 1997). Following the 1967 referendum, the Commonwealth assumed responsibility for 'Aboriginal and Torres Strait Islander Affairs' and post 1972, the Whitlam Labor Government supported self-determination and self-management. From 1977, AICCAs were established across Australia, with the Secretariat of National Aboriginal and Islander Child Care (SNAICC) commencing in 1981. Concern about the ongoing and discriminatory separation and removal of Aboriginal and Torres Strait Islander children from their families and communities through adoption and child protection practices, and well aware of the devastating legacy of the policies and practices of the "welfare", AICCAs drew on the experiences and successes of Native Americans and the on the United States *Indian Child Welfare Act 1978* to advocate for the development and adoption of a Child Placement Principle for Aboriginal and Torres Strait Islander children.

The core elements of the Principle are now also recognised in both the *United Nations Convention on the Rights of the Child 1990* (*UNCRC*) and the *United Nations Declaration on the Rights of Indigenous Peoples 2008* (*UNDRIP*).

The Indian Child Welfare Act 1978

The *Indian Child Welfare Act 1978* (ICWA) sought to protect the security and stability of families and communities through minimum national standards and the provision of assistance to tribes to operate child and family welfare programs (Lock 1997). The ICWA was passed with the dual objectives of protecting the best interests of Indian children and promoting the stability and security of Indian tribes, communities and families. The ICWA's approach was also located within a framework of self-determination as a means to redress past policies of assimilation and cultural genocide through forced removals of American Indian children from their families. The legislation gives Tribal Courts child welfare jurisdiction over children living on reservations and shared jurisdiction with State Courts over children not living on a reservation. The Act also establishes that for a court to approve the placement of an Indian child in foster care or to terminate parental rights for an Indian child, the court has to be assured that the supports provided to prevent family breakdown had been unsuccessful. State Courts can hear from a broad range of parties - the tribe, Indian custodian and parents - and access to legal representation for parents or Indian custodians in contested matters, and capacity to appoint a separate legal representative for a child subject to proceedings are covered (Libesman 2004).

The ICWA binds State Courts to follow a preferred order of placement. The descending order of preference to be followed is with:

1. a member of the child's extended family;
2. a foster home licensed, approved or specified by the Indian child's tribe;
3. an Indian foster home licensed or approved by an authorised non-Indian licensing authority; or
4. an institution approved by an Indian tribe or operated by an Indian organisation, which has a program suitable to meet the Indian child's needs" (25 USC ICWA s.1915 cited in Lock 1997).

Finally, the ICWA provides for formal agreements between a tribe or tribes and the state government agency covering jurisdiction, authority, confidentiality, and child protection service delivery (Libesman 2004:8).

Inspired by the ICWA, AICCAs were successful in advocating for the adoption of a Child Placement Principle for Aboriginal and Torres Strait Islander children, which incorporated the comprehensive approach apparent in the ICWA.

Consideration at a national level in Australia by the Council of Social Welfare Ministers

The Child Placement Principle has been an accepted principle for child protection work with Aboriginal and Torres Strait Islander families for almost 30 years. The Commonwealth Department of Aboriginal Affairs first proposed the Child Placement Principle in 1979 at a conference of the Council of Social Welfare Ministers (Lock 1997). In 1980, that Department published *Aboriginal Fostering and Adoption - State and Territory Principles, Policies and Practices*. These guidelines asserted that children should be kept within their family and community and that states and territories, given they held responsibilities for adoption and child welfare, should seek advice from "appropriate Aboriginal bodies" about procedures, and assessments of prospective carers and placements (Lock 1997).

In 1983, the Council of Social Welfare Ministers (the predecessor of the Community and Disability Services Ministerial Advisory Council) established a Working Party to review the guidelines (Lock 1997). The Working Party did not support the Child Placement Principle being enacted through Commonwealth legislation, instead recommending that each state and territory legislate the Child Placement Principle (Lock 1997). In 1984, with the support of all states and territories, the Council of Social Welfare Ministers endorsed the Working Party recommendation about the preferred order of placement for Aboriginal children removed from parental care, as follows:

> *That in the foster placement of an Aboriginal child, a preference be given, in the absence of good cause to the contrary, to a placement with:*
> - *a member of the child's extended family;*
> - *other members of the child's Aboriginal community who have the correct relationship with the child in accordance with Aboriginal customary law;*
> - *other Aboriginal families living in close proximity* (Working Party recommendation 6 cited in Lock 1997).

In 1986, the Council of Social Welfare Ministers again considered the issue, when states and territories agreed to implement the Child Placement Principle in policy, but not necessarily in legislation. Given the Commonwealth's funding of AICCAs and the view that states and territories were responsible for child welfare matters, the Commonwealth rejected the concept of national legislation and any financial obligation on its part to support the implementation of the Child Placement Principle. Since then, States and Territories have taken different approaches to incorporating the Principle into legislation and policy (see section 6).

Royal Commission of Inquiry into Aboriginal Deaths in Custody (RCIADIC)

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) reported in 1991. The Royal Commission recommended that the hierarchy of placement preferences in the Principle, as well as the role of Aboriginal and Islander Child Care Agencies in providing advice about the welfare of individual Aboriginal and Torres Strait Islander children be included in legislation in jurisdictions where it had not been already. These and other recommendations related to the Child Placement Principle are listed in Appendix 1.

National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families

The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families by the Human Rights and Equal Opportunities Commission (1997) exposed the devastating loss and grief experienced resulting from removing children from the care of their families and links to their community. The inquiry endorsed the Child Placement Principle, and identified problems with implementation - in particular, inadequate resourcing and inadequate consultation by statutory agencies with AICCAs. Relevant recommendations from the *Bringing Them Home* report are included in Appendix 1. The Inquiry made 54 recommendations, including national legislation and national standards for child welfare matters concerning Aboriginal and Torres Strait Islander children. Dodson (1999:10) explained that the thinking behind the recommendation was for the Commonwealth to take "the lead in ensuring a co-operative approach to establishing common frameworks and setting common standards to achieve common goals". Underlying the *Bringing Them Home* recommendations was the principle that a greater degree of control should be ceded by government to Aboriginal and Torres Strait Islander communities in the administration of child welfare and juvenile justice.

4. Aims of the Aboriginal and Torres Strait Islander Child Placement Principle

Consistent with the history and development of the Aboriginal and Torres Strait Islander Child Placement Principle, the aims of the Principle are as follows:

(1) **Recognise and protect the rights of Aboriginal and Torres Strait Islander children, family members and communities**.

This includes:

- children's rights to care and protection; to have family connections; to have their culture respected, and as far as possible, to be cared for by their parents
- rights of parents, family members and communities to make decisions about the care and protection of their own children
- rights of children in care to have their protection, wellbeing, developmental and cultural needs met in a quality care system
- rights of children, family members and community organisations to participate in decision-making and have their perspectives respected when determining what is in the best interests of Aboriginal and Torres Strait Islander children
- recognising that the best interests of Aboriginal and Torres Strait Islander children include consideration of whole of life wellbeing (including health, development, culture, identity, and educational domains)

(2) **Increase the level of self-determination for Aboriginal and Torres Strait Islander people in child welfare matters**.

This includes:

- providing recognition and support for Aboriginal and Torres Strait Islander child protection and family support agencies
- promoting a partnership approach to Aboriginal and Torres Strait Islander child protection, based upon agreements regarding jurisdiction, authority, and service delivery

(3) **Reduce the disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system**.

This includes:

- providing supports and programs that strengthen family and community capacity to care for their children, making a child's removal from parental care the option of last resort
- ensuring that if a child is in care, efforts are directed towards ongoing family contact and timely and safe family reunification.

The paper now turns to defining the elements that together will achieve these inter-related intentions.

5. Defining the Aboriginal and Torres Strait Islander Child Placement Principle

As outlined, the Aboriginal and Torres Strait Islander Child Placement Principle is not simply about where or with whom a child is placed in out of home care. The history and intention of the Child Placement Principle is about keeping Aboriginal and Torres Strait Islander children connected to their family, community, culture, and country. This paper proposes the national adoption of five inter-related elements that:

- capture the original intent and purpose of the Aboriginal and Torres Strait Islander Child Placement Principle
- seek to address the legacy of the trauma caused to individuals, families and communities by colonisation and the forced removal of Aboriginal and Torres Strait Islander children from their families, which continues to have profound impact
- build on the recommendations of various inquiries, particularly the RCIADIC and the *Bringing Them Home* Report
- reflect that the Aboriginal and Torres Strait Islander Child Placement Principle is a tool to assist child protection decision makers – government and non-government - to make good decisions about children's care and protection, and which has been demonstrated to support better outcomes for Aboriginal and Torres Strait Islander children
- respond to the contemporary adverse experiences of Aboriginal and Torres Strait Islander children and families in contact with child protection systems across Australia
- embrace current and possible reforms to some jurisdiction's child protection systems, such as through capacity building, transferral of long-term guardianship responsibilities, and the delegation of some statutory decision making to community-controlled agencies
- are consistent with the *National Framework for Protecting Australia's Children* and recent initiatives in some jurisdictions for future directions in service design and delivery to meet the needs of Aboriginal and Torres Strait Islander children and families, and
- when properly and consistently implemented, will assist to reduce the disproportionate representation of Aboriginal and Torres Strait Islander children in child protection systems across Australia.

The elements are:

1. Each Aboriginal and Torres Strait Islander child has the right to be brought up within their own family and community.

2. The participation of Aboriginal and Torres Strait Islander community representatives, external to the statutory agency, is required in all child protection decision making, including intake, assessment, intervention, placement and care, including judicial decision making processes.

3. Placement of an Aboriginal or Torres Strait Islander child in out of home care is prioritised in the following way:
   (a) with Aboriginal or Torres Strait Islander relatives or extended family members, or other relatives or extended family members; or
   (b) with Aboriginal and Torres Strait Islander family-based carers.

   If the preferred options are not available, the child may be placed with 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.

4. Aboriginal and Torres Strait Islander children, parents and family members are entitled to participate in all child protection decisions affecting them regarding intervention, placement and care, including judicial decisions.

5. Aboriginal and Torres Strait Islander children in out-of-home care are supported to maintain connection to their family, community and culture, especially children placed with non-Indigenous carers.

In summary: prevention, partnership, placement, participation, and connections. The rationale for each element and a summary of the mechanisms that are required to fully implement the element is set out below.

Element 1 - PREVENTION: Each Aboriginal and Torres Strait Islander child has the right to be brought up within their own family and community

Rationale: Supporting families and communities to care safely for their children will protect future generations from the devastating effects of removal from family, community, culture and country because it recognises a child's intrinsic connection to their extended family. Aboriginal and Torres Strait Islander children's sense of identity is preserved and enhanced when raised within their family, kinship group, community and culture. This element recognises that the concept of 'family' within Aboriginal and Torres Strait Islander culture is broadly defined, extending beyond that of just the immediate family and embracing a more collective approach to child rearing.

Achievement of this element requires the following mechanisms:

Legislation	Policy / practice	Resources	Accountability
• Prioritising family preservation efforts to keep each child in the family home and treating removal from family and extended family as the intervention of last resort • If a child is removed from parental care, prioritising timely reunification with family • Embracing a broad definition of 'parent' and 'family member' in statutory and judicial decision making processes • Defining adoption as the last resort in permanency planning for Aboriginal and Torres Strait Islander children • Recognising a child's right to the preservation of their cultural identity	• Identifying each Aboriginal and Torres Strait Islander child at intake or as soon as possible thereafter • Recognising that child abuse and neglect is linked with poverty and structural disadvantage that can manifest as family violence, substance abuse, mental health issues and housing instability • Recording a child's cultural status so that it positively shapes decision making and interventions • If the statutory agency is uncertain about a child's Indigenous status, contacting community representatives to determine whether anything is known about the child's cultural identity • Specifying flexible yet timely decision making for family reunification that incorporate purposive, individualised case planning with each child and family (i.e. not a prescriptive timeframe by which the case plan goal changes from	• Prioritising investment in family support, family preservation and preventative services to address underlying issues impacting on parents' capacity to care for their children • Capacity-building and other technical assistance schemes to help communities and community agencies build their capacity to provide comprehensive and evidence-based support services for children and families • Prioritising investment in Aboriginal and Torres	• Publicly reporting on valid and meaningful performance indicators, including disparity rates at entry to out-of-home care and relative spending on in-home and out-of-home interventions • Independent evaluation and review

	reunification to long term out of home care) • Demonstrating to the court that extensive efforts have been made by the statutory agency and other service providers to preserve the family • Training for statutory workers about the Child Placement Principle, legal requirements and practice tips on how to work effectively with Aboriginal and Torres Strait Islander families and agencies	Strait Islander community-controlled organisations to develop and deliver culturally appropriate and acceptable family support and prevention services	

Element 2 - PARTNERSHIP: The participation of Aboriginal and Torres Strait Islander community representatives, external to the statutory agency, is required in all child protection decision making, including intake, assessment, intervention, placement and care, including judicial decision making processes.

Rationale: In the mid-1980s, the Council of Social Welfare Ministers considered and endorsed the requirement for statutory child protection agencies to consult with extended family, community members and Aboriginal and Torres Strait Islander agencies prior to making decisions about interventions. Dodson argues the importance of external community representatives to avoid the "impossibility of indigenous workers [in specialised indigenous sections or units in government agencies] being advocates and spokespeople for indigenous communities and families, because they are beholden to the philosophies, the processes and practices of the particular government department or agency" (1999: 9). This element focuses on *participation* in decision making processes rather than community representatives (or designated departmental staff) providing cultural advice or information, or being consulted. Participation means joint decision making and joint action, sharing decision making, whereas consultation implies that one party – the statutory agency - retains control over the process and decisions. The participation of community controlled and led organisations recognises that the best interests of an Aboriginal or Torres Strait Islander child are met by drawing on the experience and knowledge held only by family and community. It promotes the building of trusting relationships with the family and improves communication between the family and the child protection system.

Achievement of this element requires the following mechanisms:

Legislation	Policy / practice	Resources	Accountability
• Participation of Aboriginal and Torres Strait Islander community representatives in *all* decisions, prior to a decision being made and not just about a child's placement in out of home care • Reviewing previous decisions, as soon as practicable, with community representatives where the community representatives have not participated in decision making (eg. it is later found that a child is an Aboriginal or Torres Strait Islander child) • Courts and tribunals taking account of community representatives' views • Allowing for delegation of decision making authority to Aboriginal and Torres Strait Islander agencies	• Identifying all Aboriginal and Torres Strait Islander children at intake or thereafter • Recording consultation and decision-making with community representatives • Developing protocols setting out the respective roles and responsibilities of the statutory agency and recognised community organisations in decision making processes • Interventions, programs and services designed, delivered and administered by community-controlled and led organisations • Establishing processes for delegating decision making authority to Aboriginal and Torres Strait Islander community organisations • Training for statutory workers about how to work collaboratively and make joint decisions with Aboriginal and Torres Strait Islander community representatives	• Adequately resourcing community controlled and led agencies to enable representation and participation in joint decision making	• Publicly reporting on indicators of community agency participation in decision-making • Independent evaluation and review

Element 3 - PLACEMENT: 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 with other relatives or extended family members; or (2) with Aboriginal and Torres Strait Islander family-based carers. If the preferred options are not available, the child may be placed with 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.

Rationale: National, state and territory child protection inquiries and reviews have heard and continue to hear peoples' stories about separation and removal from family and community, and the significant impacts on social and emotional wellbeing, identity development, and likely contact with adult service systems such as those dealing with homelessness, mental health, substance abuse, criminal justice and unemployment. Where the separation or removal of a child from their family is unavoidable (a decision that requires the participation of community representatives), the child's continuing connection to their family and community and identity development is the priority, as is the least disruption for the child. This means clearly defining the hierarchy of preferences for placing a child in out of home care with the highest priority for the child to be placed with Aboriginal or Torres Strait Islander family members. Where this is not possible, at least in the first instance, consideration can be given in turn to the next lower order option, each of which makes it harder for the child to maintain stability, security and familiarity and connection with their culture, family, community, educational and recreational activities. The preferences apply for all placements in out of home care – respite, emergency, short and long term.

Achievement of this element requires the following mechanisms:

Legislation	Policy / practice	Resources	Accountability
• Considering each child's placement in priority order • Regularly reviewing placement decisions if the child is not placed in accordance with priorities • Regulation of care provisions are differentiated for kinship carers and other foster carers (i.e. regulation is culturally sensitive)	• Recording the outcome of deliberations in priority order • Establishing, implementing and publicly reporting on effective and timely measures to identify family members • Placing sibling groups together • Making positive attempts to locate family members, including through family group meetings, which should be held as soon as child protection intervention is required • Matching the level and nature of practical and financial supports to kinship carers with the child's needs and those of the carer household • Where a child is placed with a non-Indigenous carer, prioritising reunification with their family and community even where reunification with their parent/s is not possible • Training for statutory workers about the Child Placement Principle, legal requirements and practice tips on how to best implement the law in both service provision and court settings.	• Adequately resourcing community-controlled and led organisations to identify, assess, train, approve and support kinship and foster carers	• Public and consistent reporting on valid and meaningful performance indicators on compliance with placement preferences • Reviews of placement decisions where children are not placed in accordance with priorities • Independent evaluation and review

Element 4 - PARTICIPATION: Aboriginal and Torres Strait Islander children, parents and family members are entitled to participate in all child protection decisions affecting them regarding intervention, placement and care, including judicial decisions.

Rationale: Encouraging and supporting the participation of all children and family members in these significant decisions and decision-making processes means that their expert knowledge, views and preferences can be heard and listened to. Decisions in which people are involved are more likely to be accepted and understood. Families are more likely to take responsibility for issues and 'buy-in' to interventions decided upon. Involving family members reflects their important role in child rearing practices generally and increases the likelihood and mechanisms for identifying supports and options to address care and protection issues. This is also a matter of procedural justice: in the administration of law, a fair procedure is one that affords those who are affected by an opportunity to participate in the making of the decision.

Achievement of this element requires the following mechanisms:

Legislation	Policy / practice	Resources	Accountability
• Recognising the rights of parents and extended family to participate in all child protection decisions, including court decisions • Recognising a child's right to participate in all child protection decisions, including court decisions • Recognising the rights of children, parents and extended family to be supported to participate in child protection decision making, including court decisions • Embracing a broad definition of 'parent' and 'family member' in statutory and judicial decision making processes • Ensuring family group meeting processes are made available at the earliest stage of child protection intervention, and at further key decision making stages	• Training for statutory workers about the Child Placement Principle and how to ensure child and family participation in case work • Utilising inclusive, transparent, accountable and culturally sensitive approaches to decision making that enable child and family understanding and participation • Recording children's and family members' views • Consulting with Aboriginal and Torres Strait Islander community representatives to identify and support family members to participate in decision making • Partnership approaches between statutory agencies and Aboriginal and Torres Strait Islander community organisations to convene and conduct family group meetings	Adequate funding for Aboriginal and Torres Strait Islander organisations and professionals to support children and families to understand and participate in decision making and review processes	• Developing and publicly reporting on valid and meaningful performance indicators concerning child and family participation in decision-making • Independent evaluation and review

Element 5 - CONNECTIONS: Aboriginal and Torres Strait Islander children in out of home care are supported to maintain connection to their family, community and culture, especially children who are placed with non-Indigenous carers.

Rationale: There is ample evidences and personal testimony about the deleterious effects of alienation from culture that can arise from the separation of children from their families. Research also confirms the importance of culture as a crucial element of identity formation for all people, including Aboriginal and Torres Strait Islander people. Research demonstrates that threats to the persistence of personal or cultural identity can adversely affect individual or community well-being: "Failures to achieve a viable sense of self or cultural continuity are strongly linked to self-destructive and suicidal behaviours" (Chandler and Lalonde 1998).When Aboriginal and Torres Strait Islander people have strong cultural attachments, outcomes improve across a range of areas, including self-assessed health, substance abuse, employment and educational attainment (Boyd and Biddle in Dockery 2012). Policy that seeks to improve outcomes for Aboriginal and Torres Strait Islander people must therefore take into account that *"Indigenous culture should be maintained and leveraged as a part of the solution to Indigenous disadvantage, rather than being seen as part of the problem" (*Boyd and Biddle in Dockery 2012). Key to this is rebuilding cultural continuity, demonstrated by preservation of Indigenous language, community control over key services and local decision-making (Chandler and Lalonde 2008; Hallett, Chandler and Lalonde 2007). The best way to ensure that Aboriginal and Torres Strait Islander children in out of home care today do not endure the same sense of loss of identity and dislocation from family and community as the Stolen Generations is to actively support them to maintain or to re-establish their connection to family, community, culture and country. The best interests of a child are generally inextricably linked to their family and community, which means for some children, there are multiple connections to Aboriginal, Torres Strait Islander or non-Indigenous family and community that require ongoing attention. (Also refer to the UN Committee on the Rights of the Child General Comment 11 on Indigenous Children).

Achievement of this element requires the following mechanisms:

Legislation	Policy / practice	Resources	Accountability
• Prior to placing an Aboriginal or Torres Strait Islander child with non-Indigenous carers, assessing the prospective carers' willingness and capacity to maintain and support the child's sense of cultural identity and contact between the child and their family, community and culture • Developing, implementing and regularly reviewing cultural support	• Routinely recording each child's personal and family history • Mandatorily requiring cultural awareness and competency training for non-Indigenous foster carers caring for Aboriginal and Torres Strait Islander children • Actively supporting each child's continued contact with their parents, siblings and other family members while the child is in care (i.e. initially and if child remains in long term out	• Resourcing Aboriginal and Torres Strait Islander agencies to manage placements and support carers for Aboriginal and Torres Strait Islander children, promoting an Aboriginal perspective and cultural priority in out of home care case	• Publicly reporting on valid and meaningful performance indicators, including cultural support plans • Independent evaluation and review • Monitoring the placement to ensure the child's relationships

plans for each child placed with non-Aboriginal and Torres Strait Islander carers, including supporting the child to maintain connections with all of the cultural groups with which they have a connection • Ensuring non-Indigenous carers caring for Aboriginal and Torres Strait Islander children are actively working to maintain each child's sense of cultural identity and contact between the child and their family, community and culture • Prioritising long term guardianship or enduring or shared parental responsibility to a family member as a permanency planning option where a child's reunification with their parents is assessed as not possible	of home care) • Placing sibling groups together • Including cultural competence standards in accreditation, service standards and / or licensing requirements for non-Indigenous agencies providing out of home care services for Aboriginal and Torres Strait Islander children • Continuing financial, practical and other supports to family members who are granted long term parental or guardianship responsibilities • Ensuring the participation of Aboriginal and Torres Strait Islander community representatives in the development and review of cultural support plans	management • Financially resourcing cultural support planning goals and strategies, for example, for travel for children and / or parents	and connections are nurtured and supported

6. State and Territory Legislative Recognition

To date, the Commonwealth government has not enacted national Aboriginal and Torres Strait Islander Child Placement Principle legislation. There are provisions relating to Aboriginal and Torres Strait Islander children and families in each State or Territory Act (see Table 2).

Table 2: Overarching provisions for Aboriginal and Torres Strait Islander children in each state's and territory's child protection legislation

NSW	Part 2 of the *Children and Young Person's (Care and Protection) Act 1998*, Aboriginal and Torres Strait Islander principles, includes 'Aboriginal and Torres Strait Islander participation in decision making' (s.11), 'Aboriginal and Torres Strait Islander child and young person placement principle' (s.12), 'Records relating to Aboriginals and Torres Strait Islanders' (s.14), and Initial identification - Aboriginals and Torres Strait Islanders' (s.32)
Vic	The *Children, Youth and Families Act 2005* contains a Division, 'Additional decision-making principles for Aboriginal children' that includes additional decision making principles in recognition of self-management and self-determination (s.12), 'Aboriginal Child Placement Principle' (preferred placement hierarchy) (s.13), and further principles for placing Aboriginal children relating to the child's wishes, non-Aboriginal parents or parents from different Aboriginal communities (s.14).
Qld	The *Child Protection Act 1999* includes additional principles for Aboriginal and Torres Strait Islander children about continuing connection to culture and considering the long term effect on the child's identity and connection of a decision (s.5C), participation of 'recognised entities' in significant decisions, consultation about other decisions and the court having regard for the recognised entities' views (s.6), and the hierarchy of placement preferences (s.83).
WA	Division 3 of the *Children and Community Services Act 2004*, 'Principles relating to Aboriginal and Torres Strait Islander children', sets out the 'Aboriginal and Torres Strait Islander child placement principle' (hierarchy of placement options) (s.12), principle of self-determination (s.13), and principle of community participation (s.14).
SA	The *Children's Protection Act 1993* includes 'Provisions relating to dealing with Aboriginal or Torres Strait Islander children' (s.5), which state that decisions cannot be made about a child's placement without first consulting a recognised Aboriginal or recognised Torres Strait Islander organisation, and generally having regard for the submissions from the recognised organisation or for Aboriginal or Torres Strait Islander traditions and cultural values. The section also states that children should be kept within their own community.
Tas	The *Children, Young Person's and their Families Act 1997* includes 'Provisions relating to dealing with Aboriginal children' (s.9), which state that decisions cannot be made about a child's placement without first consulting a recognised Aboriginal organisation, and generally having regard for the submissions from the recognised organisation or for Aboriginal traditions and cultural values. The section also states that children should be kept within their own community.
NT	The *Care and Protection of Children Act 2007* includes a section, 'Aboriginal children' (s.12), which sets out that kinship grounds, representative organisations and communities have a major role in promoting the wellbeing of Aboriginal children through self-determination and, where nominated by an Aboriginal child's family should participate in decision making about the child and the hierarchy of placement preferences.
ACT	The *Children and Young People Act 2008* contains the 'Aboriginal and Torres Strait Islander children and young people principle' (s.10), which sets out the factors that decision-makers under the Act must take into account and 'Priorities for placement with out-of-home carer

	- Aboriginal and Torres Strait Islander child or young person' (s.513), which lists the hierarchy of placement preferences

Legislative recognition commenced in the mid-1980s, and Western Australia was the last jurisdiction to legislate aspects of the Principle in 2004. Each jurisdiction's child protection legislation contains specific provisions in respect of decision-making about Aboriginal and Torres Strait Islander children, noting the importance of each child's connections to their family, community and culture. Therefore, States and Territories recognise that the Principle is broader than placement – that it encompasses prevention, partnership, participation and connections.

In addition to overarching provisions in legislation, some State and Territory laws contain provisions relating to Aboriginal and Torres Strait Islander children that are specific to particular parts of the child protection process, such as the children's court, placement decisions, out-of-home care standards, and so on. However:

- There are different levels of detail about consulting with community representatives and which decisions require the involvement of community representatives
- Many of the provisions are generic and not specific to the participation of Aboriginal or Torres Strait Islander children, families and communities in decision-making.
- There are different levels of detail about providing information to children and to family members about supporting and resourcing children and families to participate and ensuring that children and families understand the decisions that are made.
- Placement hierarchies are different in each jurisdiction – see Appendix 2.
- The Acts utilise a range of definitions of a child's family

These differences present a fundamental barrier to achieving full compliance with the ATSICPP. Because the principle as a whole is not defined, its intent is not fully understood or implemented consistently. This has implications for how compliance with Child Placement Principle is measured and publicly reported. Because the provisions in each state and territory's legislation are different, it means that child protection intervention into the lives of Aboriginal and Torres Strait Islander families is dealt with differently depending upon the jurisdiction, which is one of the main arguments in support of national legislation on this issue.

A detailed report on State and Territory compliance with all five elements of the Child Placement Principle is currently in preparation.

7. Accountability and Reporting

Currently there are many barriers to comprehensive and consistent implementation of the Child Placement Principle, which have undermined efforts to achieve its aims. Clearly over-representation will continue to rise unless there is consistent, concentrated and specific attention and monitoring of service delivery and outcomes for Aboriginal and Torres Strait Islander families. Currently, there is limited performance measurement, even though some jurisdictions have reform strategies targeted to addressing over-representation or meeting the needs of Aboriginal and Torres Strait Islander children and families.

Some work towards more consistent national implementation of the Child Placement Principle has been foreshadowed in the National Framework to Protect Australia's Children (COAG 2009). The *National Standards for Out-of-Home Care*, which are part of National Framework, contain an overarching principle and standard that 'Aboriginal and Torres Strait Islander communities are to be

involved in decisions in accordance with the Aboriginal Child Placement Principle' (FaHCSIA 2010:9). The meaning of the standard is explained as:

> Maintaining connections to family, community and country will help Aboriginal and Torres Strait Islander children and young people to develop their identity, feel connected to their culture and develop their spirituality...Aboriginal and Torres Strait Islander communities' participation in decisions could be through Aboriginal and Torres Strait Islander controlled organisations that participate in decision making with child protection agencies and non-government organisations (FaHCSIA 2011:9).

The performance measure for the standard is set as the one reported on annually in the *Report on Government Services*, currently inaccurately named 'Compliance with the Aboriginal Child Placement Principle'. This measure is for one element of the principle only: the proportion of Aboriginal and Torres Strait Islander children and young people in out-of-home care placed with (1) the child's Aboriginal or Torres Strait Islander extended family, (2) with non-Indigenous family members, (3) with other Aboriginal or Torres Strait Islander carers, and (4) with Aboriginal or Torres Strait Islander residential care (SCRGSP 2013: Table 15A.23, see Table 10 in Appendix 3). This is problematic because, as discussed, placement is only part of the Principle.

The second action plan to progress the National Framework includes an action to enhance the application and nationally consistent reporting of the Principle, developing a compliance indicator for the Aboriginal Child Placement Principle and reporting on the proportion of Indigenous children placed through Indigenous-specific out-of-home care agencies (COAG 2012:22). Another standard focuses on children being supported to develop their identity. For Aboriginal and Torres Strait Islander children, this will be measured by the proportion of Aboriginal and Torres Strait Islander children who have a current cultural support plan (FaHCSIA 2011:21). It will be reported publicly from 2014 using 2012-13 data (FaHCSIA 2011:17).

Action is needed to establish a national framework to properly monitor the efforts made to comply with the Principle, and the results of those efforts. The framework must be agreed between Aboriginal and Torres Strait Islander community-controlled agencies and government child protection agencies, in line with the partnership intent of the Principle. It must be capable of measuring both outcomes and processes related to all five elements of the Principle (prevention, partnership, placement, participation and connections).

Performance measurement is an important evaluation tool. Compliance with all five elements of the principle should be measured comprehensively and publicly reported at least annually. This would involve developing new indicators, improving existing counting rules, and improving data collection and/ or data collection methods. Reporting should not only rely on administrative data. Data can be obtained from other sources including case file audits, child and family surveys, and kinship carer surveys. In addition to reporting performance data, states and territories should be required to report on program efforts and results, through program evaluations and reviews conducted collaboratively with Aboriginal and Torres Strait Islander community agencies.

The proposed actions through the National Framework are important, but a specific national framework for compliance with the Child Placement Principle is required to drive the significant work that is required to achieve positive change in this area.

8. Conclusion

This paper sets out in detail the many limitations of the ways state and territory governments currently implement the Aboriginal and Torres Strait Islander Child Placement Principle. What is urgently required is the adoption and proper implementation of a legislated definition of the Child Placement Principle that comprehensively reflects all of its component elements. Full implementation will require vision and leadership, supported by strategies to improve performance, including legislative change, policy and practice improvements, increased resourcing, improved performance reporting, and accountability to Aboriginal and Torres Strait Islander communities, whose children are so profoundly affected by the interventions government makes on their behalf.

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APPENDIX 1

Recommendations in respect of the Aboriginal and Torres Strait Islander Child Placement Principle made by the Royal Commission of Inquiry into Aboriginal Deaths in Custody and in the *Bringing Them Home* report of the National Inquiry into the Removal of Aboriginal Children from their Families

Recommendations of the RCIADIC

Recommendation 54
That in States or Territories that have not already so provided, there should be legislative recognition of:
a. The Aboriginal Child Placement Principle; and
b. The essential role of Aboriginal Child Care Agencies. (2:83)

Recommendation 62
That governments and Aboriginal organisations recognise that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organisations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise. (2:252)

Recommendation 235
That policies of government and the practices of agencies that have involvement with Aboriginal juveniles in the welfare and criminal justice systems should recognise and be committed to ensuring, through legislative enactment, that the primary sources of advice about the interests and welfare of Aboriginal juveniles should be the families and community groups of the juveniles and specialist Aboriginal organisations, including Aboriginal Child Care Agencies. (4: 177)

Recommendation 236
That in the process of negotiating with Aboriginal communities and organisations in the devising of Aboriginal youth programs governments should recognise that local community based and devised strategies have the greatest prospect of success and this recognition should be reflected in funding. (4:177)

Recommendations from the National Inquiry into the Removal of Aboriginal Children from their Families (*Bringing Them Home* report)

Self-determination
Recommendation 43a
That the Council of Australian Governments negotiate with the Aboriginal and Torres Strait Islander Commission, the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Secretariat of National Aboriginal and Islander Child Care and the National Aboriginal and Islander Legal Services Secretariat national legislation establishing a framework for negotiations at community and regional

levels for the implementation of self determination in relation to the well-being of Indigenous children and young people (national framework legislation).

Recommendation 43b
That the national framework legislation adopt the following principles
1. That the Act binds the Commonwealth and every State and Territory Government.
2. That within the parameters of the Act Indigenous communities are free to formulate and negotiate an agreement on measures best suited to their individual needs concerning children, young people and families.
3. That negotiated agreements will be open to revision by negotiation.
4. That every Indigenous community is entitled to adequate funding and other resources to enable it to support and provide for families and children and to ensure that the removal of children is the option of last resort.
5. That the human rights of Indigenous children will be ensured.

Recommendation 43c
That the national framework legislation authorise negotiations with Indigenous communities that so desire on any or all of the following matters,
1. the transfer of legal jurisdiction in relation to children's welfare, care and protection, adoption and/or juvenile justice to an Indigenous community, region or representative organisation,
2. the transfer of police, judicial and/or departmental functions to an Indigenous community, region or representative organisation,
3. the relationship between the community, region or representative organisation and the police, court system and/or administration of the State or Territory on matters relating to children, young people and families including, where desired by the Indigenous community, region or representative organisation, policy and program development and the sharing of jurisdiction, and/or
4. the funding and other resourcing of programs and strategies developed or agreed to by the community, region or representative organisation in relation to children, young people and families.

National standards for Indigenous children
Recommendation 44
That the Council of Australian Governments negotiate with the Aboriginal and Torres Strait Islander Commission, the Aboriginal and Torres Strait Islander Social Justice Commissioner, the Secretariat of National Aboriginal and Islander Child Care and the National Aboriginal and Islander Legal Services Secretariat national legislation binding on all levels of government and on Indigenous communities, regions or representative organisations, which take legal jurisdiction for Indigenous children establishing minimum standards of treatment for all Indigenous children (national standards legislation).

National standards for Indigenous children under State, Territory or shared jurisdiction
Recommendation 45a
That the national standards legislation include the standards recommended below for Indigenous children under State or Territory jurisdiction or shared jurisdiction.

Recommendation 45b
That the negotiations for national standards legislation develop a framework for the accreditation of Indigenous organisations for the purpose of performing functions prescribed by the standards.

Standard 6: Indigenous Child Placement Principle
Recommendation 51a

That the national standards legislation provide that, when an Indigenous child must be removed from his or her family, including for the purpose of adoption, the placement of the child, whether temporary or permanent, is to be made in accordance with the Indigenous Child Placement Principle.

Recommendation 51b
Placement is to be made according to the following order of preference,
1. placement with a member of the child's family (as defined by local custom and practice) in the correct relationship to the child in accordance with Aboriginal or Torres Strait Islander law,
2. placement with a member of the child's community in a relationship of responsibility for the child according to local custom and practice,
3. placement with another member of the child's community,
4. placement with another Indigenous carer.

Recommendation 51c
The preferred placement may be displaced where,
1. that placement would be detrimental to the child's best interests,
2. the child objects to that placement, or
3. no carer in the preferred category is available.

Recommendation 51d
Where placement is with a non-Indigenous carer the following principles must determine the choice of carer,
1. family reunion is a primary objective,
2. continuing contact with the child's Indigenous family, community and culture must be ensured, and
3. the carer must live in proximity to the child's Indigenous family and community.

Recommendation 51e
No placement of an Indigenous child is to be made except on the advice and with the recommendation of the appropriate accredited Indigenous organisation. Where the parents or the child disagree with the recommendation of the appropriate accredited Indigenous organisation, the court must determine the best interests of the child.

APPENDIX 2

Table 9: Hierarchy of preferences for placing Aboriginal and Torres Strait Islander children in out of home care, all States and Territories

	NSW	Vic	Qld	WA	SA [1]	Tas [2]	NT[3]	ACT
1	Member of the child's extended family or kinship group, as recognised by the Aboriginal &TSI community to which the child belongs	Aboriginal extended family or, if not possible, other extended family or relatives	A member of the child's family	A member of the child's family	A member of the child's family	Extended family	A member of the child's family	Kinship carer
2	A member of the Aboriginal or TSI community to which the child belongs	An Aboriginal family from the local community within close geographical proximity to the child's family or an Aboriginal family from another community, or as a last resort, non-Aboriginal family in close proximity to the child's family	A member of the child's community or language group	An Aboriginal or TSI person in the child's community in accordance with local customary practice	A member of the child's community who has a relationship of responsibility for the child, as determined by reference to Aboriginal or TSI traditional practice or custom	An Aboriginal family in local community	An Aboriginal person in the child's community, in accordance with local practice	A foster carer who is a member of the child's Aboriginal or TSI community in a relationship of responsibility for the child according to local custom and practice
3	A member of another Aboriginal or Torres Strait Islander family residing in the		Another Aboriginal or Torres Strait Islander person compatible with	An Aboriginal and Torres Strait Islander person	a member of the child's community, determined by ref to Aboriginal or	Other Aboriginal people	Any other Aboriginal person	Foster carer who is a member of the child's community

	vicinity of the child's usual place of residence		the child's community or language group		TSI traditional practice or custom			
4	Other suitable appropriate person after consultation with family and Aboriginal or Torres Strait Islander organisations appropriate to the child		Another Aboriginal or TSI person	A person who is not an Aboriginal or TSI person but who is sensitive to the child's needs and capable of promoting the child's connection with culture and where possible family	A person of Aboriginal cultural background for an Aboriginal child or a person of TSI cultural background for a TSI child	Non-Aboriginal family in geographic proximity to the child's family where the child's ongoing cultural identity and sense of belonging will continue	A person who is not Aboriginal but who is sensitive to the child's needs and capable of promoting the child's connection with their culture and family	A non-Aboriginal or Torres Strait Islander foster carer
5			A person who lives near child's family		A person who is able to ensure that the child maintains significant contact with their family (as determined by reference to Aboriginal or TSI culture), the child's community or communities and the child's culture			A non-Indigenous foster carer sensitive to the child's needs, capable of promoting the child's ongoing contact with family, community and culture and if reunification is possible lives near the child's family or community

6			A person who lives near the child's community or language group					

1. In regulation only
2. In practice guidance only.
3. All Aboriginal children should, as far as practicable, be placed in close proximity to the child's family and community

APPENDIX 3

Table 10: Placement types for Aboriginal and Torres Strait Islander children in out of home care at 30 June 2012

%	NSW	Vic	Qld	WA	SA	Tas	NT	ACT	Aust
Placed with Aboriginal and TSI family	**48.9**	26.8	21.7	42.5	40.7	**11.4**	48.1	27.8	38.2
Placed with non-Aboriginal and TSI family	14.8	**23.2**	12.6	12.2	16.3	22.4	**7.5**	-	14.1
Placed with other A&TSI carer	17.2	**5.3**	**17.8**	12.6	16.4	11.4	8.3	10.4	15.4
% placed in A&TSI residential care	0.6	1.1	1.7	**2.0**	1.0	**0.5**	1.5	-	1.1
Placed with other non-Indigenous carer	17.0	36.3	**6.2**	20.8	15.1	52.9	30.1	**61.9**	19.0
Placed in non-Indigenous residential care	**1.4**	7.4	**40.1**	9.9	10.5	**1.4**	4.5	-	12.2

Source: Table 15A.23, *Report on Government Services 2013* (Steering Committee for the Review of Government Service Provision 2013). Outliers in bold indicate range.