Aboriginal and Torres Strait Islander Child Placement Principle

Discussion Paper Prepared for the Aboriginal and Torres Strait Islander Child Placement Principle Workshop

20 May 2013
Context:

In May 2013, the Standing Council on Community and Disability Services agreed to convene a national workshop to identify practical steps to enhance the application and reporting of the Aboriginal and Torres Strait Islander Child Placement Principle, a key action under the National Framework for Protecting Australia’s Children 2009-2020 (the National Framework), Second Action Plan 2012-2015.

The National Framework was endorsed by the Council of Australian Governments in April 2009. The Second Action Plan of the National Framework was endorsed by the Standing Council on Community and Disability Services in August 2012.

The Aboriginal and Torres Strait Islander Child Placement Principle Workshop, to be held on 20 May 2013 in Sydney, will be convened by the National Framework Implementation Working Group, established to oversee implementation of the National Framework.

Disclaimer:

The Aboriginal and Torres Strait Islander Child Placement Principle Discussion Paper was prepared by the Australian Centre for Child Protection at the University of South Australia, on behalf of the National Framework Implementation Work Group steering committee, for discussion at the Aboriginal and Torres Strait Islander Child Placement Principle Workshop of 20 May 2013.

The information, comments and/or analysis expressed in the discussion paper are for discussion purposes only and cannot be taken in any way as expressions of Commonwealth policy or indicate a commitment to a particular course of action.

Before relying on any material in the discussion paper, users should seek appropriate professional advice. Please note that the discussion paper is not for further citation or distribution.
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SUMMARY

Developed from an understanding of the devastating impacts of the removal of children from Aboriginal and Torres Strait Islander families and communities, the goal of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) is to enhance and preserve the child’s connection to family and community, and sense of identity and culture in all aspects of government intervention with children. Numerous inquiries and reports have highlighted both the high regard for and importance of the principle, and for the Indigenous individuals and organisations who support its implementation. These reports have also highlighted significant limitations in the implementation and monitoring of the Principle. The purpose of this paper is to provide a limited review of the available information regarding implementation of the ATSICPP to assist discussion at a national workshop on this issue.

Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle as it relates to out of home care

Child Protection Australia (AIHW, 2013) has reported that the impact of embedding the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) into legislation has been “reflected in the relatively high proportions of Aboriginal and Torres Strait Islander children who were placed either with Indigenous caregivers, or with relatives in many jurisdictions” (p42). Across Australia, a total of 69% of Aboriginal and Torres Strait Islander children in out-of-home care were placed in in ‘preferred placements’, meaning with either relatives/kin, other Indigenous caregivers, or in Indigenous residential care.

Findings from the Queensland Commission for Children and Young People and Child Guardian audit of the Indigenous Child Placement Principle has been the only systematic audit aimed at exploring the systemic and practice issues affecting implementation of the ATSICPP in any Australian jurisdiction. A key finding of this audit was that while compliance within each step (identification of children as Aboriginal and/or Torres Strait Islander, involvement of a Recognised Entity\(^1\), following the hierarchy of placement options, proper consideration of placement options and assessment of non-Indigenous carer’s commitment to cultural care) was reported as “quite good”, full compliance with each of the 5 required steps, when viewed together was only achieved in 15% of the audit sample.

Findings from this and other research identify the factors affecting implementation of the ATSICPP as the:

- Over-representation of Aboriginal and Torres Strait Islander children and young people in the care and protection system
- Shortage of Indigenous carers and difficulties recruiting and retaining Indigenous kinship and foster carers

\(^{1}\) The term “recognised entity” is taken from the Queensland legislative context and refers to an individual or organisation that is appropriate to be consulted about an Aboriginal or Torres Strait Islander child's protection and care. If the entity is an individual, he or she must be an Aboriginal person or a Torres Strait Islander with appropriate knowledge of or expertise in child protection. The individual must not be an officer or employee of Child Safety Services. When the recognised entity is an organisation, its members must include individuals who fulfil the previously stated criteria and the organisation must provide services to Aboriginal people or Torres Strait Islanders.
• Practice and systemic issues impacting implementation including workforce training, retention and practice guidance, and the expectations on and resourcing of Aboriginal and Torres Strait Islander Child Care Agencies (or Recognised Entities)
• Inconsistent involvement of and support for Aboriginal and Torres Strait Islander participation in all decisions for the care and protection of their children
• Provision of cultural care planning processes and implementation of plans, particularly the capacity of non-Indigenous carers and agencies in providing cultural care
• Inconsistent quantification, measurement and monitoring of the implementation of the ATSICPP across jurisdictions

Workshop Focus
A number of areas for further exploration are identified in the discussion paper. Specifically the workshop could focus on:

• Exploring in more detail the factors driving the over-representation of Aboriginal and Torres Strait Islander children in out of home care (including the identification of children as Aboriginal and Torres Strait Islander) and the consolidation of strategies to reduce the high level of over-representation
• Identifying factors which inhibit and promote the Aboriginal and Torres Strait Islander participation in all decisions for the care and protection of their children
• Exploring innovative solutions at a legislative, policy and practice levels to address the shortage of Indigenous carers (including family decision making, addressing the impact of workforce turnover and current carer assessment processes), providing increased support to kinship carers, and culturally appropriate supports to non-Indigenous carers and agencies who are involved in the care and protection of Aboriginal children in out of home care.
• To establish an agreed process to facilitate improved consistency in the reporting, monitoring and collecting of data across jurisdictions
• Discuss the barriers and facilitators around the provision and implementation of cultural plans for Aboriginal children in out of home care and explore potential for sharing practice across agencies/jurisdictions
PURPOSE AND SCOPE

In May 2013, the National Framework Implementation Working Group (NFIWG) will convene a national workshop with the assistance from the Secretariat of National Aboriginal Islander Child Care (SNAICC), and representatives from Queensland, New South Wales and the Commonwealth. The objective of the workshop is to discuss the issues impacting on the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSCIPP), and identify strategies to improve implementation and nationally consistent reporting of ATSCIPP across jurisdictions. The workshop scope is narrow, focusing on the application of the ATSCIPP to children entering or in out of home care. This by no means assumes that this focus will be sufficient to address the over-representation of Aboriginal and Torres Strait Islander children in Australian care and protection systems.

This discussion paper aims to provide a review of the available information to support and assist the discussion for the National Framework Implementation Working Group workshop. The paper will examine the current data regarding the application of the ATSCIPP, and highlight the factors in policy and practice which are creating barriers and facilitators to effective implementation of the ATSCIPP. It is not intended to be comprehensive and assumes that attendees at the workshop will have rich understandings of the ATSCIPP and its application in practice.

INTRODUCTION

Aboriginal and Torres Strait Islander children and young people are grossly over-represented across all measures in Australia’s child protection system and continue to endure many disadvantages in comparison to other children. While the vast majority of Aboriginal and Torres Strait Islander children do not enter out of home care, urgent action is required to address the disproportionality in the system.

The Aboriginal and Torres Strait Islander Child Placement Principle (ATSCIPP) (also referred to as the Indigenous Child Placement principle, or the Aboriginal Child Placement Principle) has special significance to the Aboriginal Torres Strait Islander Community. Created nearly 30 years before The Apology, it acknowledged that serious harm can be caused to children by separating them from their families, communities and culture. It was “a step to break the cycle of devastation caused to the Stolen Generations, and emphasised that special attention must be given to ensure that Aboriginal and Torres Strait Islander children who are placed in Care are not caused further harm through loss of contact with family, culture, community and country” (QATSICPP, 2011, p3).

It very important to ensure that the ATSCIPP is implemented as it was intended so that each Aboriginal and Torres Strait Islander child and young person in out of home care can grow up knowing their family, community and culture, and have the opportunity to develop their cultural identity and spirituality.

Despite embedding the ATSCIPP in legislation across all jurisdictions and its priority in the National Framework for Protecting Australia’s Children and the National Standards for Out Of Home Care, there have been reports of inconsistent levels of implementation of the ATSCIPP across Australia. These issues potentially result in Aboriginal and Torres Strait Islander children being dislocated from family and culture (SNAICC, 2012).
PART 1: WHAT IS THE ATSICPP AND HOW IS IT REFLECTED IN LEGISLATION AND THE NATIONAL FRAMEWORK?

History

Tilbury (in preparation) provides an excellent overview of the sociohistorical context which supported the development and adoption of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) across Australia. In brief, the ATSICPP developed out of a pioneering grassroots community movement initiated by Aboriginal and Islander Child Care Agencies (AICCA’s) during the 1970s. The first Aboriginal controlled child and welfare service was established in Victoria in 1977 and was inspired partly by the success of the Native Americans in establishing distinct child welfare legislation to reduced rates of child removal. This was a significant time in the history of Aboriginal people in Australia, who sought to abolish the existing harsh practices and policies and establish a national framework to protect the rights of Aboriginal children and young people (SNAICC, 2008, p3).

Over time, the establishment of AICCA’s which could advocate in the best interests of Aboriginal children grew, and the Aboriginal Child Placement Principle became more widely accepted. In the mid 1980’s, the ATSICPP was introduced into legislation across all Australian States and Territories.

In the 1990s, 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) considered the operation of the Child Placement Principle. State-based inquiries into child protection systems across Australia have also described the factors impeding the implementation of principle from the this period to the current day. Highlighting the devastating and impact of the widespread removal of Aboriginal children from culture, country, language and community, these inquiries have also highlighted the role of AICCAs in care and protection decision making and practice and the factors which limit their abilities to enact these roles (Tilbury, in preparation).

Today there are Aboriginal and Torres Strait Islander Child Care agencies in all States and Territories. The ATSICPP continues to be the founding principle governing the treatment and cultural wellbeing of Aboriginal and Torres Strait Islander children and young people in the care and protection system, and has a vital place in child welfare legislation and practice in every Australian jurisdiction (SNAICC, 2008).
**Definition**

The goal of the **Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)** is to enhance and preserve the child’s connection to family and community, and sense of identity and culture. Tilbury (in preparation) identifies that in achieving this goal, the broader aims of the Principle and its elements are as follows:

1. **Recognise and protect the rights of Aboriginal and Torres Strait Islander children, family members and communities in child welfare matters.** 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 community-controlled 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 elements of the principle 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:
   - with Aboriginal or Torres Strait Islander relatives or extended family members, or other relatives or extended family members; or
   - with Aboriginal or Torres Strait Islander members of the child’s community; or
   - with Aboriginal or Torres Strait Islander family-based carers.

If the preferred options are not available, as a last resort the child may be placed with a non-Indigenous carer assessed as ready, willing and able to support the maintenance of community
and cultural connections for the child or in a similarly assessed 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 community.

4. 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.

5. 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.

All jurisdictions in Australia have adopted elements of the ATSICPP in legislation or policy (AIHW, 2013). A comprehensive review of the incorporation of the ATSICPP in each State and Territory child protection legislation was undertaken by SNAICC (in Libesman, 2011) (see Appendix 1). Overall, legislation in each jurisdiction obligates statutory child protection agencies to enact the ATSICPP by requiring them to:

1) Follow the descending order of preference for placement of an Aboriginal child (first family/kin, local Indigenous community, other Aboriginal carer, then non-Indigenous carer)
2) Consult an Aboriginal agency (or Recognised Entity) regarding the decision making about the child’s placement
3) Ensure children placed with non-Indigenous carers be assisted to keep in contact with family, language and culture
4) Reunite Aboriginal and Torres Strait Islander children who are placed in non-Indigenous families with their families and communities.

Recent research from Queensland (Commissioner for Children and Young People and Child Guardian, 2012b) has demonstrated that compared to Aboriginal children placed with non-Indigenous carers,

“Children in Indigenous care demonstrate, the same, or better outcomes across every measure of family and community contact and experience greater opportunities to participate in cultural activities and events”. Specifically children placed with an Indigenous carer were reported to have:

- Greater satisfaction with parental contact than those placed with a non-Indigenous carer
- More weekly contact with other family members than those placed with a non-Indigenous carer
- More weekly contact with their traditional language/tribal/totem group than those placed with a non-Indigenous carer, and
- More opportunities to participate in every type of cultural activity/resource offered than those placed with a non-Indigenous carer.

Inherent in the ATSICPP is the implication that a child must have a cultural care plan which is supported and maintained. It is important to note that the creation and maintenance of cultural care plans are inextricably linked to the effective operation of Aboriginal Child Care Agencies (or ACCA’s) in each State and Territory (Richardson, Bromfield & Osborn, 2007), and is a requirement of the National Standards for Out of Home Care.
The ATSICPP is embedded in the National Framework as a priority and is reflected in **Outcome 5** which relates specifically to the care and protection of Indigenous children and states:

*Indigenous children are supported and safe in their families and communities.*

The strategies to support outcome 5 which relate to the ATSICPP are summarised in Table 1.

**Table 1. National Framework Supporting Outcome 5 Related to the Application of the ATSICPP**

<table>
<thead>
<tr>
<th>Domain</th>
<th>Indicator</th>
<th>Data Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Placement of Indigenous Children</td>
<td>5.1 To be developed (Aboriginal Child Placement Principle compliance indicator)</td>
<td>To be determined</td>
</tr>
<tr>
<td></td>
<td>5.2 Proportion of Indigenous children aged 0–17 years in out-of-home care placed with extended family or other Indigenous caregivers</td>
<td>AIHW National Child Protection Data Collection</td>
</tr>
<tr>
<td></td>
<td>5.3 Proportion of Indigenous children aged 0–17 years placed through Indigenous-specific out-of-home care agencies</td>
<td>AIHW National Child Protection Data Collection</td>
</tr>
<tr>
<td>Cultural support plans</td>
<td>5.4 Proportion of Indigenous children aged 0–17 years in care who have a cultural support plan</td>
<td>AIHW National Child Protection Data Collection</td>
</tr>
</tbody>
</table>


**National Standards for Out of Home Care**

**Standard 3** of the National Standards of Out of Home Care relates specifically to the ATSICPP and states:

*Aboriginal and Torres Strait Islander communities participate in decisions concerning the care and placement of their children and young people*

Standard 3 is to ensure that adequate consideration is given to the application of the order of preference within the ATSICPP when placing Aboriginal and Torres Strait Islander children in out of home care to maintain their culture and promote contact with their families.
Standard 10 of the National Standards for Out of Home Care also relates to the ATSICPP and states;

*Children and young people in care are supported to develop their identity safely and appropriately, though contact with their family, friends and culture, spiritual sources and communities and have their life history recorded as they grow up.*

It was proposed that the achievement of Standards 3 and 10 could be determined by measuring the proportion of Indigenous children and young people in out of home care placed in adherence to the ATSICPP by carer type, and by the number of children who have current cultural care plans. A summary of the standards and the proposed measures which relate specifically to Aboriginal and Torres Strait Islander children are presented in Table 2.

Table 2. Indigenous-Specific Measures for National Standards for Out of Home Care

<table>
<thead>
<tr>
<th>Standard</th>
<th>Measure</th>
<th>DATA SOURCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 Placement of Aboriginal and Torres Strait Islander children</td>
<td>Proportion of children 0-17 years in OOHC placed with extended family, Indigenous community, or other Indigenous caregivers, by carer type</td>
<td>AIHW National Child protection Data collection</td>
</tr>
<tr>
<td>10.1 Cultural support plans</td>
<td>Proportion of Indigenous children aged 0-17 years in care who have a current cultural support plan</td>
<td>AIHW National Child protection Data collection</td>
</tr>
</tbody>
</table>

Source: FaHCSIA (2011) National Standards for Out of Home Care: A Priority Project under the National Framework for Protecting Australia’s Children 2009-2020

**HOW WOULD WE KNOW THAT IMPLEMENTATION OF THE ATSICPP IS AS INTENDED?**

At present, there is no jurisdiction-wide uniform systematic protocol in place to monitor and assess implementation of the ATSICPP. Developed to suit the Queensland context, the Child Placement Principle Compliance Assessment Tool has been used for two audits of compliance to the ATSICPP in Queensland in 2008, and in 2010/11 (see Appendix 3). The Tool outlines five steps which must be followed when considering all placement options for Aboriginal and Torres Strait Islander children, and were derived from those described in Queensland’s Child Protection Act, 1999 legislation. The Tool’s 5 steps and indicators for compliance are presented in Table 3. It is important to note that this audit process used the Queensland legislative framework to examine compliance to the ATSICPP in this jurisdiction. It has been noted that this method would not necessarily capture compliance to the broader intent of the ATSICPP as jurisdictional variations in legislation and policy do not necessarily reflect the broader intent described earlier and in Tilbury (in preparation).

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2 It should be noted that the standards relating to connection to community and family have a range of additional indicators which are not Indigenous-specific.
### Table 3. Child Placement Principle Compliance Assessment Tool- Steps and Compliance Indicators

<table>
<thead>
<tr>
<th>Step</th>
<th>Indicators of Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 1: Identify the Child is Indigenous</td>
<td>Compliance occurs if a child is accurately identified as Aboriginal, Torres Strait Islander, or both Aboriginal and Torres Strait Islander.</td>
</tr>
<tr>
<td>Step 2: Involvement of a Recognised Entity</td>
<td>Compliance occurs where there is evidence that the Recognised Entity was provided an opportunity to participate in the placement decision, or was consulted as soon as practicable after the placement decision was made in urgent circumstances.</td>
</tr>
<tr>
<td>Step 3: Hierarchy of placement options</td>
<td>Compliance with section (4) and (6) of the Child Protection Act 1999, occurs where there is evidence that each level of the prescribed hierarchy of placement options in the legislation was considered in order until the placement decision was made.</td>
</tr>
</tbody>
</table>
| Step 4: Proper consideration of placement options: | Compliance occurs where there is evidence of 2 aspects of Step 4:  
- **Step 4A** – Proper consideration and reporting of the Recognised Entity’s views, and  
- **Step 4B** – Proper consideration of the placement option’s ability to ensure optimal retention of relationships with key people. |
| Step 5: Assessment of non-Indigenous carer’s commitment | Compliance occurs where there is evidence of an assessment of the non-Indigenous carer’s commitment to:  
- facilitating contact between the child and the child’s parents and other family members  
- helping the child to maintain contact with the child’s community or language group  
- helping the child to maintain a connection with the child’s Aboriginal or Torres Strait Islander culture, and  
- preserving and enhancing the child’s sense of Aboriginal or Torres Strait Islander identity. |

AIHW (2013) reported that the impact of embedding the ATSICPP into legislation has been “reflected in the relatively high proportions of Aboriginal and Torres Strait Islander children who were placed either with Indigenous caregivers, or with relatives in many jurisdictions” (p42). Across Australia, a total of 69% of Aboriginal and Torres Strait Islander children in out-of-home care were placed in adherence to the ATSICPP in ‘preferred placements’, meaning with either relatives/kin, other Indigenous caregivers, or in Indigenous residential care. Table 4 shows the number and percentage of Aboriginal and Torres Strait Islander children in preferred placements, across jurisdictions by placement type.

The percentages of Aboriginal children being placed in preferred placements, that is with family, relatives/kin, or other Indigenous caregivers vary greatly however across jurisdictions, with the percentage of Aboriginal children in preferred placements ranging from **38.1% in the Northern Territory to 81.6% in New South Wales**. Figure 1 presents the AIHW data comparing percentages of children in preferred placements across jurisdictions. The great variation in the numbers of Aboriginal and Torres Strait Islander children in preferred placements across jurisdictions, while informative, does not reveal why more children are in preferred placements in some jurisdictions more than others.
Table 4. Aboriginal and Torres Strait Islander children in out-of-home care, by Indigenous status and relationship of carer, all States and Territories, 30 June, 2012

<table>
<thead>
<tr>
<th>Relationship</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indigenous relative/kin</td>
<td>5,047</td>
<td>38.2</td>
</tr>
<tr>
<td>Other Indigenous caregiver</td>
<td>2,169</td>
<td>16.4</td>
</tr>
<tr>
<td>Other relative/kin</td>
<td>1,866</td>
<td>14.1</td>
</tr>
<tr>
<td><strong>Total placed with relatives/kin or other Indigenous caregivers or in Indigenous residential care</strong></td>
<td><strong>9,082</strong></td>
<td><strong>68.8</strong></td>
</tr>
<tr>
<td>Other caregiver</td>
<td>4,122</td>
<td>31.2</td>
</tr>
<tr>
<td><strong>Total not placed with relatives/kin or other Indigenous caregivers</strong></td>
<td><strong>4,122</strong></td>
<td><strong>31.2</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>13,204</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Source: AIHW (2013) Child Protection Australia 2011-2012, Cat No. CWS43 (data extracted from Table A25, p81)

Notes
1. This table does not include Indigenous children who were living independently or whose living arrangements were unknown.
2. Percentages in tables may not add to 100 due to rounding.
3. Family group homes and residential care are reported under other caregiver.

Figure 1. Percentage of Aboriginal and Torres Strait Islander children in preferred out of home care placements*, States and Territories, 30 June 2012

Source: AIHW (2013) Child Protection Australia 2011-2012, Cat No. CWS43 (data extracted from Table A25, p81)

*Preferred placements include with relatives/kin, other Indigenous caregivers, or Indigenous residential care.
It should also be noted that the AIHW (2013) data represents simply a separate and distinct administrative measure that reports on the singular outcome of the placement decision making process. This is in contrast to reporting the number of placement decisions that complied with all components of the decision making, participation and support processes as specified in the ATSICPP. Furthermore, these data do not provide any clear information regarding whether these children have a cultural care plan.\(^3\)

To date, the Queensland Indigenous Child Placement Principle audit conducted by the Commissioner for Children and Young People and Child Guardian has been the only systematic audit aimed at exploring the systemic and practice issues affecting compliance to the ATSICPP in any Australian jurisdiction. Since 2008, two audits have been conducted, with the second audit report in 2010/11. The audits assessed compliance to the ATSICPP as outlined in Section 83 of the Child Protection Act, 1999.

The audits assessed compliance with each of the 5 steps as described by the Compliance Assessment Tool. The audit sample which comprised an aggregate calculation of 3 data sources including Departmental electronic records (ICMS) and staff surveys of the Department of Communities Child Safety Officers (CSO’S), and Recognised Entities. Figure 2 shows the results of compliance with each of the 5 steps, based on the aggregate data from the 3 data sources combined.

![Figure 2 Compliance with 5 steps of the ATSICPP- combined ICMS and survey data from CSO’s and RE’s](image)


\(^3\) Nationally agreed technical specifications have been developed for the collection of data on whether children in out of home care have cultural support plans, with data collection to commence nationally from July 2013 (starting with 2012-13 data). It is hoped these data will be reported in the 2012-13 National Framework annual report to COAG (as part of Appendix D National Standards), pending data availability/quality from jurisdictions.
A key finding of this audit was that while compliance within each step was reported as “quite good”, full compliance with each of the 5 required steps, when viewed together was **only achieved in 15% of the audit sample**. Furthermore, when examining each data source individually, compliance with each of the steps as reported from the CSO surveys, RE surveys, or ICMS records varied considerably. A summary of figures for responses showing evidence of compliance with each of the five steps from each data source is shown in Figure 3.

**Figure 3 Breakdown of Compliance per data source (yes, evidence of compliance)**

<table>
<thead>
<tr>
<th>Step</th>
<th>CSO surveys</th>
<th>RE surveys</th>
<th>ICMS records</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Identify child Indigenous</td>
<td>76%</td>
<td>79%</td>
<td>22%</td>
</tr>
<tr>
<td>2. Involvement of RE</td>
<td>44%</td>
<td>41%</td>
<td>9%</td>
</tr>
<tr>
<td>3. Hierarchy of placement options</td>
<td>20%</td>
<td>9%</td>
<td>20%</td>
</tr>
<tr>
<td>4A. Proper consideration of RE views</td>
<td>36%</td>
<td>20%</td>
<td>39%</td>
</tr>
<tr>
<td>4B. Proper consideration of retention of relationships</td>
<td>40%</td>
<td>9%</td>
<td>40%</td>
</tr>
<tr>
<td>5. Assessment of non-Indigenous carer commitment</td>
<td>23%</td>
<td>23%</td>
<td>3%</td>
</tr>
</tbody>
</table>


The audit concluded from the data, that taken overall:

> “Complete compliance with the Compliance Assessment Tool was not as strong and was established for **58 (or 15%)** of the 388 placement decisions comprising the audit sample. “Child safety Officers need to improve compliance with all necessary steps”.

A summary of the audit’s key findings and recommendations for improving compliance for each of the 5 steps is summarised in Table 5.
### Table 5. Summary of Findings of Practice Compliance to the ATSICPP

<table>
<thead>
<tr>
<th>Step</th>
<th>Key Findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>1: Identify the Child is Indigenous</td>
<td>“Strong compliance in identifying the cultural status of Aboriginal and Torres Strait Islander children and young people who come into contact with the child protection system</td>
</tr>
<tr>
<td>2: Involvement of a Recognised Entity</td>
<td>Child Safety Officers are aware of the need to involve or consult with Recognised Entities. However there is need for improved practice and/or record keeping.</td>
</tr>
<tr>
<td>3: Hierarchy of placement options</td>
<td>ICMS records did not capture sufficient rationale about the identification and consideration of placement options to inform the assessment of compliance with Step 3 at all. There is need for improved practice and/or record keeping in relation to the identification, consideration and assessment of placement options in accordance with the prescribed hierarchy outlined in section 83</td>
</tr>
<tr>
<td>4: Proper consideration of placement options:</td>
<td>In a large number of placement decisions the Recognised Entity’s views were being properly considered by the Department of Communities. However there is need for further improved practice and/or record keeping. Child Safety Officers are doing well at assessing the placement option’s ability to retain some, but not all, of the child’s relationships with family and people of significance. There is need for improved practice and/or record keeping in regard to assessing a placement option’s ability to retain the child’s relationships with all (not just some) of their parents, siblings and people of significance.</td>
</tr>
<tr>
<td>5: Assessment of non-Indigenous carer’s commitment</td>
<td>There is a need for improved practice and/or record keeping in regard to assessment of the non-Indigenous carer’s commitment to maintaining the child’s connection to family, community and culture</td>
</tr>
</tbody>
</table>

PART 2: FACTORS WHICH IMPACT ON IMPLEMENTATION OF THE ATSICPP

A report by the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) which reviewed the results of the Queensland ATSICPP audit said that there were “still an unacceptable number of Aboriginal And Torres Strait Islander children being placed in non-Indigenous care placements, not connected with family and community” (p18).

The reasons for failures to place Aboriginal children in accordance to the ATSICPP are multiple and complex. A range of reports and available data were reviewed regarding the implementation of the ATSICPP, and have been identified under 5 main themes, which will be addressed as follows:

Over representation of Aboriginal and Torres Strait Islander children in out-of-home care

Aboriginal and Torres Strait Islander children are significantly over-represented in the out of home care system. The Australian Institute of Health and Welfare (2013) reported as of 30 June 2012, there were a total of 13,299 Aboriginal and Torres Strait Islander children in out-of-home care in Australia, a rate of 55.1 per 1000 children. These rates varied across jurisdictions and ranged between 20.7 per 1000 in the Northern Territory to 83.4 per 1000 in New South Wales. Taken collectively, nationally the rate of Aboriginal and Torres Strait Islander children in out-of-home care was calculated to be 10 times the rate for non-Indigenous children. Table 6 provides a summary of the numbers of Aboriginal and Torres Strait Islander children in out-of-home care across Australian jurisdictions as of 30 June, 2012.

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Number of Children</th>
<th>Number per 1000 children</th>
<th>Rate Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>5,991</td>
<td>11,177</td>
<td>17,192</td>
</tr>
<tr>
<td>VIC</td>
<td>1,028</td>
<td>5,106</td>
<td>6,207</td>
</tr>
<tr>
<td>QLD</td>
<td>3,041</td>
<td>4,919</td>
<td>7,999</td>
</tr>
<tr>
<td>WA</td>
<td>1,614</td>
<td>1,760</td>
<td>3,400</td>
</tr>
<tr>
<td>SA</td>
<td>706</td>
<td>1,828</td>
<td>2,458</td>
</tr>
<tr>
<td>TAS</td>
<td>212</td>
<td>789</td>
<td>1,009</td>
</tr>
<tr>
<td>ACT</td>
<td>134</td>
<td>421</td>
<td>566</td>
</tr>
<tr>
<td>NT</td>
<td>573</td>
<td>127</td>
<td>700</td>
</tr>
<tr>
<td>Total</td>
<td>13,299</td>
<td>26,127</td>
<td>39,621</td>
</tr>
</tbody>
</table>

Source: AIHW (2013) Child Protection Australia 2011-12, Cat No. CWS43 (Table 4.4, p.42)

* ‘all children’ includes children whose Indigenous status was unknown
* The ”rate ratio” is a measure of how many Aboriginal or Torres Strait Islander children were in out of home care for every non-Indigenous child who was in out-of-home-care
The causes for the over-representation for Aboriginal and Torres Strait Islander children in the out of home care system are multiple and complex and beyond the scope of this paper to detail. They are however, largely recognised as a combination of factors including legacies of past policies of forced removal, intergenerational effects of separations from family and culture, poor socio-economic status and perceptions arising from cultural differences in child rearing practices (Australian Institute of Family Studies, 2012). Sadly, this over-representation does not appear to be improving with time (Tilbury, 2009).

The over representation of Aboriginal and Torres Strait Islander children in out of home care is continuing to increase steadily (see Figure 4.6 taken from AIHW, 2013, p.46), making it likely that the requirements of the ATSCIPP will become increasingly difficult to fulfil.

There is an urgent need to explore the factors driving this over-representation and to identify means to reduce the number of Aboriginal and Torres Strait Islander children entering care. On the former issue, in the course of writing this discussion paper, it has been suggested that the means of identifying whether children are Aboriginal or Torres Strait Islander (Step 1 of the process for implementing the ATSCIPP) may inadvertently be identifying children who have Aboriginal or Torres Strait Islander ancestry, but the details of that ancestry are not known. That is children who would
not have been identified as Aboriginal or Torres Strait Islander prior to their involvement in the child protection system. It is not known to what extent this may be influencing the number of children who are entering care who are identified as Aboriginal by the child protection system but who have not been identified as Aboriginal prior to this involvement, although it has been suggested that this could be a significant proportion of children.

On the issue of reducing the number of Aboriginal and Torres Strait Islander children entering out of home care, there is an emerging policy and evidence base regarding models which incorporate cultural and community knowledge, family resources, and evidence based practices in child protection practices. These models include, but are not limited to, specialist Aboriginal child protection advisory and family support services, family decision making and conferencing models, an increasing focus on father involvement and attachment focused programs, and programs to support families with highly complex needs involved in the criminal justice system, drug and alcohol and family violence services. The role of healing services for families is also an emerging element of the evidence base. It is not known to what extent these services might collectively prevent placement of Aboriginal and Torres Strait Islander children in out of home care.

**Shortage of Indigenous carers and difficulties recruiting and retaining Indigenous kinship and foster carers**

One of the most concerning issues preventing the implementation the ATSICPP is that there is a shortage of Aboriginal and Torres Strait Islander carers available (Bromfield et al 2007; Richardson et al, 2007; Richardson et al, 2005). Overall, the available literature (Bromfield, Higgins and Richardson, 2007; Richardson, 2007; QATSICPP, 2011; Government of Victoria, 2012), including a recent consultation with Indigenous Kinship carers (FaHCSIA, 2012b) have highlighted several key issues causing these problems:

- There are more Aboriginal children in care than there are Indigenous adults to care for them.

There are a disproportionately high number of Aboriginal and Torres Strait Islander children needing care. While Aboriginal and Torres Strait Islander children comprise approximately one third of the out of home care population, Indigenous people comprise only 2% of the total Australian population. Furthermore, compared with non-Aboriginal children and adults there is a greater proportion of Aboriginal children to the proportion of Aboriginal adults potentially available to care for them. This is referred to as the youth dependency ratio. The youth dependency ratio is the percentage of the population under 15 years divided by the percentage of the population aged 15 to 64 years, which includes potential carers (Scott et al, 2012). In addition, the calculation of the youth dependency ratio includes Aboriginal adults incarcerated in the justice system; therefore it is possible that the figures for available adults may be somewhat over-estimated.

Overall, the imbalances in the youth dependency ratio have serious consequences for the capacity of Aboriginal communities to meet the needs of children requiring out of home care (Bromfield et al, 2007).
Current carers are ageing and retiring and are not being replaced by new carers

Bromfield et al (2007) noted that as carers get older they reach a point where they are no longer able to cope with the demands of caring for young children. This issue is further compounded by the fact that retiring carers are not being replaced by new recruits as they age out of the out of home care system. One Aboriginal and Torres Strait Islander representative who participated in the research commented:

"The carers we’ve got now - [the program] started in 1988...around 1990 they just went out and recruited and recruited and what’s left over is what we’ve got now since that.. and that is a problem because they have been around for so long now and they are getting old and it is time to try and get new carers in or look at other option of how we can place kids” (p.5)

Difficulties recruiting new carers

Problems in recruiting new carers have been reported by Aboriginal and Torres Strait Islander agencies, despite their intensive efforts via various means (see Bromfield et al, 2007). One Aboriginal and Torres Strait Islander described the difficulties their local agency had in recruiting new carers in their community:

"Recruitment is really difficult. The way we recruit is word of mouth, putting flyers out into the community, into Indigenous organisations, TAFE colleges, the Uni, community organisations, which doesn’t work... Don’t get a lot of response. The coordinator goes out and talks to institutes (like the TAFEs and the Uni and community organisations). It’s hard work. Basically we’ve covered just about every avenue possible where we could try and get the message out here that we want carers and there is just no responses”(Bromfield et al, 2007, pp4-5)

Some of the reasons attributed to the difficulties in recruiting new carers have been related to the trauma associated with past government practices of removal during the Stolen Generations, which still resonate in Indigenous communities. This can result in feelings of mistrust or fear of mainstream welfare organisations for some Indigenous people, and can impact on their willingness to engage and participate as carers (FAHCSIA, 2012).

Carer shortage is not due to a lack of willingness to care, but a lack of support to care

It is important to note that the difficulties with recruiting and retaining carers does not necessarily stem from a lack of willingness to provide care. On the contrary, Indigenous people who are capable of providing care are more likely to do so than their non-Indigenous counterparts (Bromfield et al, 2007). Rather the more likely issues revolve around a lack of financial and practical capacity to provide care. It is well-established that Indigenous people experience greater material disadvantage than non-Indigenous people in Australia, and are more likely to live in low income households which impedes their eligibility to provide care under the statutory criteria. The key issues which compromise the capacity for Indigenous carers to provide care include:
Overload, lack of support and risk of burnout of current carers.

The complexity of children’s needs and the poorer-socio-economic circumstances of many Indigenous families impacts on their capacity to respond to the increasing demands of the out-of-home care system. For instance, Kinship careers are much more likely to be grandparents, to be single, older, come from a low socio economic background, live in poorer accommodation and may be working (McGuiness and Arney, 2012). Furthermore many carers are older Aboriginal women, some of whom work in professional positions in carer agencies themselves and feel obligated to take on the responsibilities of providing foster care, as well as caring for their own children (Bromfield et al, 2007). One non-Indigenous agency representative who participated in Bromfield et al’s (2007) research commented:

“A lot of the workers … who run or work in these services - many of them themselves are carers. This is unusual when you compare it to non-Indigenous services… You get these multiple role situations happening… I think there’s some significant advantages and some real risks. The advantages are that for the children, I think, is that they’re kept close with their community and generally speaking I think receive excellent care. The risks are … that the individuals concerned … get burnt out and feel overloaded. But they are intrinsic parts of their community and strong functioning people and they get called on for multiple responsibilities … Not to mention the fact that they also sit on the board of the local medical service, local Aboriginal Medical Service, the legal service, and the land council, it’s just extraordinary.” (p6)

Kinship care is considered the preferred placement option for Indigenous children as it is considered ‘least intrusive”, and indeed, more Indigenous than non-Indigenous children are in kinship placements. Despite this, kinship carers often receive less practical and financial support from child welfare bodies than foster carers, including less training, less information and caseworker support (FAHCSIA, 2012). Furthermore, when training to provide care is available, it is often culturally inappropriate (Richardson et al, 2007).

Indigenous carers face not only the financial and practical burdens of care, but also significant emotional and physical demands. Many children in out of home care have highly complex needs and issues, in particular mental health and behavioural problems stemming from their own traumatic abuse experiences. As one commented in the Protecting Victoria’s Vulnerable Children Inquiry (2012):

“There are some things about caring for a child who has experienced trauma that we cannot control: however we can ensure that there is regular respite for carers, therapeutic support for placements, education support and adequate financial reimbursement” (p.304)
Difficulties for Indigenous carers to meet eligibility criteria

The impact of legislative and policy procedural requirements such as police checks, and carer suitability assessments acts as a significant barrier which may exclude many potential Indigenous people to provide much needed out of home care. In particular, current Anglo centric assessment processes undertaken by mainstream child protection services do not take into account the differences in Indigenous family structures, living arrangements and parenting practices. For example, sharing the care of children between multiple adults not all of whom are biologically related does not fit with Anglocentric assessment models based on concepts of a biological nuclear family being the ‘safest’ configuration. These Anglocentric carer assessment tools have been regarded by carers as not culturally appropriate or sensitive, and employ culturally inappropriate methods which may alienate potential carers (FAHCSIA, 2012).

These issues taken together indicate there is a very high risk of burnout for the Indigenous carers, and that the available numbers of carers will continue to dwindle and not be replaced unless increased supports are put in place, and alternative recruitment and retention strategies are found.

Methods such as the Winangay Carer Assessment Tools have been developed to better understand, assess and plan to meet the needs of Indigenous and non-Indigenous adults caring for Aboriginal and Torres Strait Islander children.

Practice and Systemic issues affecting implementation

In addition to the aforementioned issues regarding the difficulties recruiting and retaining of Indigenous carers, the available literature also suggests that implementation of the ATSCIPP is also impeded by a complex combination of systemic and practice issues. These are essentially related to the working relationships between Aboriginal and Torres Strait Islander Child Care Agencies and mainstream child protection departments, and lack of capacity and resources for Aboriginal agencies to undertake their role, particularly with regard to providing cultural care (Libesman, 2011).

SNAICC (April 2012) has also pointed out that there appears to be a lack of clarity regarding the interpretation of the ATSCIPP. For example, the understanding of what is in the “best interests” of an Aboriginal child particularly in terms of maintaining their physical, social, and emotional, and cultural safety, which in turn influences placement decisions and outcomes for children.

Procedural knowledge and record keeping

Research has suggested that a significant barrier to the implementation of the ATSCIPP is the lack of adequate and uniform procedural knowledge with respect to how to apply it. This is particularly so with respect to administrative procedures involving documentation and record keeping between statutory child protection Departments and Aboriginal Agencies to ensure an ongoing connection to culture and family for Aboriginal children in out of home care (Libesman, 2011). Thus, the importance of establishing effective working relationships between the Aboriginal agencies and non-Indigenous departmental and NGO staff involved with a child’s placement decisions cannot be under-estimated.
Libesman’s (2011) focus group research reported that some staff in Aboriginal agencies identified some weaknesses in compliance with record keeping and documentation requirements. Several reasons why documentation and record keeping may be a weak point for some Aboriginal agencies included a lack of cultural relevance and purpose of documentation in their work, the precedence of other more pressing responsibilities, lower levels of staff confidence or training in the administrative requirements of their roles. In addition, the added pressure on Aboriginal agencies to provide more services for specialised cultural advice and assistance than they’re funded for, means there is little time for administrative/record keeping tasks.

- **Workforce turnover**

Identified in the course of discussions to inform this paper, was the issue of workforce turnover in statutory placement services, particularly of Aboriginal and Torres Strait Islander staff. It is not known to what extent the level of turnover is representative of other areas of child protection practice, but the impacts of turnover include the loss of cultural, community and organisational knowledge as well as the costs of training and support for new staff.

**Cultural Care and Implementation of the ATSICPP**

It has been suggested as evidenced by the results of the QLD audit and other research that the component of the ATSICPP regarding maintaining children’s connection to culture and community, is the greatest area of non-compliance to the ATSICPP, particularly in situations where children are placed with non-Indigenous carers. The key issues relate fundamentally to the inadequate provision of cultural care at systemic and practice levels (Libesman, 2011).

*Cultural care* can be difficult to define in practice. It has however been described as:

“..about being part of a family, community, extended network, knowing where you belong, and knowing what the difference is between two different nations” (Libesman, 2011, p11).

Libesman (2011) described the practice of Cultural care as comprising two key components:

1) Collecting and recording names of the child or young person’s parents, mob, family, and ancestors, and recording this information on a genogram. Helping to find out important information about a child’s family, their heritage (such as their parents country and clans), stories associated with their country and their totem

2) Helping a child stay connected in a day to day way with their Aboriginal or Torres Strait Islander Communities. This is the more active an ongoing aspect of cultural care.

SNAICC (Libesman, 2011) has conducted comprehensive focus group research around the cultural care of Aboriginal and Torres Strait Islander children with representatives from statutory child protection agencies from each jurisdiction (except NT), and representatives from Aboriginal Child Care Agencies.

With regard to the provision of cultural care, a lack of systemic and practical supports for Aboriginal agencies to provide and maintain connections to culture and family for Aboriginal children in their care were highlighted in the research. The main issues of concern are discussed below.
Lack of uniform Cultural Care Practice Framework across Jurisdictions

Richardson et al (2007) commented that there appears to be an absence of a unifying national practice framework which underpins cultural care across jurisdictions. Libesman’s (2011) research clearly showed that the integration of cultural care plans in departmental policies, and how they are implemented in practice vary greatly between jurisdictions.

A summary of the Libesman’s (2011) review of the legislation and departmental policies and practice regarding cultural care plans, which involved a review of Departmental websites, and interviews with Departmental representatives, is available in Appendix 3.

Overall, the picture is mixed. Victoria is the only jurisdiction to legislate for cultural care plans, and the jurisdictions vary with regard to the allocation of funding resources to cultural plans. Also of note is that the legislation does not adequately specify how to implement the cultural care plans.

Libesman’s (2011) review of government Departmental websites found that Victoria and Queensland have placed examples of their cultural plans online, while NSW has an online case plan which can be used by external agencies (which included an area of information regarding “cultural identity”), but no copy of the cultural care plan that needs to be attached. Other jurisdictions either do not use cultural plans or do not have copies available on their websites (Libesman, 2011).

While the legislation in most jurisdictions provides a role for Aboriginal agencies with respect to making placement decisions for Aboriginal children requiring out of home care, some jurisdictions have gained greater recognition and participation of Aboriginal agencies in decision making than others. Of concern also is that there is a lack of specificity in the legislation and policies with respect to which Aboriginal organisations will play a role in decision-making, the timing of their involvement in care and protection processes, and the level to which they will be involved. Complicating this further is that at times conflicting advice may be provided by different Indigenous participants in care and protection matters (e.g., different staff within an Indigenous organisation, or between staff in Indigenous and non-Indigenous agencies, and/or with family and community members).

Given the variation of legislation across jurisdictions with regard to consultation, (with no legislative requirement to consult at all in the NT), it has been suggested that best practice models for adequately financed, resourced and staffed Aboriginal services to provide cultural advice and support in child-protection decision-making could be promoted with additional funding support for the establishment of programs.

Some promising approaches have been described (SNAICC, 2012; Higgins, 2010; see Appendix 5) and include:

- Lakidjeka Aboriginal specialist Advice and Support Service, Victorian Aboriginal Child Care Agency (VACCA)
- Protecting Aboriginal Children Together (PACT) (Pilot in New South Wales, established as per the Victorian Inquiry’s recommendation 34)
- Indigenous Family and Child Support Service (IFACSS) (Examples of a holistic approach to service provision approach discussed in Higgins (2010))
Support for Aboriginal and Torres Strait Islander agencies which are resourced to place and support Aboriginal children in out of home care

Following the Review of the WA Aboriginal and Torres Strait Islander Child Placement Principles report (2009), a recommendation was made to amend the legislation was amended s81 of the Children and Community Services Act 2004 (WA) so that consultation only needs to occur with Aboriginal individuals or organisations with respect to a placement. This amendment emphasises the role of Aboriginal Practice Leaders and other Aboriginal staff within the Department who oversee what happens with Aboriginal children brought to the Departments attention, and was justified in the report as:

“There is evidence that the requirement to consult an approved agency as set out in Section 81 is not achieving the intended outcomes. Evidence suggests that it is not an effective utilisation of resources and more importantly that it promotes a “tick the box” approach to Aboriginal child placement and so promotes cynicism and devalues professional practice. As such Section 81 may be working against effective engagement with Aboriginal families and community members. Utilising the extensive knowledge of Senior Officer Aboriginal Services in each district and involving those significant individuals/or organisations that are relevant to the child are the keys to supporting the decision-making that is required” (Government of WA, 2009, p18)

This feeling that the consultation of Aboriginal agencies is being implemented as a “tick the box” exercise has been echoed in the course of consultation in preparing this discussion paper, from both statutory child protection staff and the staff of Indigenous agencies. This has led to consultations with Indigenous agencies by departmental staff in some jurisdictions being seen as ad hoc, providing insufficient time for appropriate consultation, and hampered by information sharing restrictions which do not allow the Indigenous agencies to consult beyond their organisational boundaries.

While it was agreed that Aboriginal agencies possess the appropriate cultural expertise, communication and negotiation skills and community connections, and are by far better placed to undertake cultural care work than non-Indigenous agencies, they have limited resources to do it.

This includes having insufficient time, funding, staffing and practical staff supports to undertake the complex and time-consuming family location work, resources to find carers, as well as funding for the practical day-to-day work required to maintain the child’s contact with family (e.g. travel to rural and remote areas for family gatherings and cultural events).

“Building the capacity of Aboriginal agencies is an essential part of cultural care. It is really hard for a mainstream agency to provide cultural care—even if they have Aboriginal workers. They have a different background and way of relating to and understanding of the world”... “The complexity of cultural knowledge, particular areas, laws, totems, skin, are missed by non-Aboriginal and Torres Strait Islander workers (Libesman, 2011, p43).

Indeed, recommendation 36 of the Protecting Victoria’s Vulnerable Children Inquiry report (Scott et al, 2012) identified that maintaining cultural connections for Aboriginal children is crucial, and that the responsibility for their placements should lie entirely with Aboriginal Agencies. The Inquiry subsequently recommended a 10 year plan to progressively transfer the responsibility for the out of home care placements of Aboriginal children in non-Aboriginal placements, to Aboriginal Child Care organisations. This strategy was intended to:
“...both enhance self-determination and provide a practical means to strengthen cultural links for those children” (p310). (See Appendix 4 for a full summary of Recommendation 36)

- Support for Non-Aboriginal and Torres Strait Islander Carers and Agencies to provide cultural care to the Aboriginal children in their care

Libesman (2011) emphasised that the increasing numbers of Aboriginal children in some jurisdictions going into ‘last-resort’ placements outside of their family/kinship network, with non-Aboriginal carers disconnects them further from their culture and community. Providing cultural care to an Aboriginal child is a daunting prospect for a non-Aboriginal carer and agency. The research raised a significant concern that quality of cultural care for these children is often ad-hoc and relies heavily on non-Indigenous carer themselves to fulfil this role. This was considered an unreasonable demand given their lack of cultural knowledge and training, or connections with the child’s community. Thus non-Aboriginal carers require special support and at present, Libesman (2011) suggested there are insufficient supports offered to non-Indigenous carers to help them keep the children in their care connected to their family, kin, culture and communities (e.g. cultural care linkage workers).

Libesman’s (2011) interviews with statutory Department representatives revealed that non-Aboriginal departmental staff often don’t have the skills or confidence to know how to locate family members, and do not possess the community connections, cultural knowledge and skills to engage with the Aboriginal communities, often not knowing where/how to look beyond the child’s immediate family. It has thus been suggested that there is a great need for carers and caseworkers in non-Aboriginal agencies to receive comprehensive cultural competence training, particularly in relation to the processes required for connecting Aboriginal and Torres Strait Islander children and young people to their culture, family and community. SNAICC (2012a) suggested that the second 3 year plan of the National Framework should focus on:

“...the development and implementation of a national workforce development plan which aims to ensure the cultural competence of all staff in mainstream support service providers which service Aboriginal and Torres Strait Islander children and families within each State and Territory.” (p.5)

This recommendation was consistent with Recommendation 33 of the Report of Protecting Victoria’s vulnerable children Inquiry. The Inquiry recommended that:

“...given large numbers of vulnerable Aboriginal children and families will continue to receive a range of services from mainstream providers, Aboriginal cultural competence should become a feature of the DHS standards for registering community service organisations. Additionally, culturally competent approaches to family and statutory child protections services for Aboriginal children and young people should be expanded” (p.272)

Standard 10 of the National Standards for Out of Home Care relates to the requirement for:
children to be supported to develop their identity safely and appropriately through contact with their families, friends, culture, spiritual sources and communities and have their life history recorded as they grow up.

One way to implement this standard would in the first instance be to canvass the measures required to create a supportive environment for good practice in cultural support planning. These measures could include legislative reform, funding and accountability for services and governments in creating, monitoring and implementing cultural support plans. Furthermore, this could involve improving the quality and availability of culturally appropriate resources nationally to support carers and care services (SNAICC, 2012).

**Inconsistent Monitoring and Reporting of Compliance across Jurisdictions**

The AIHW data presented earlier indicate that across jurisdictions in varying degrees, it is not always possible to place children in compliance with the placement hierarchy of the ATSICPP, and Aboriginal children may be separated from their community, family and culture.

One major issue impacting on our understanding of the factors which impact on compliance with the ATSICPP relate to how compliance data can be quantified, measured and monitored. SNAICC (2013) suggested that jurisdictions differ in the ways they monitor, measure, collect and report compliance data. These inconsistencies make data interpretation and reporting difficult, particularly when comparing and interpreting the data at a national level. The problems are created by differing legislation, policies and practice in government departments, who employ varying methodologies to collect and report on the numbers of Aboriginal children in care, the involvement of Aboriginal agencies, placement decision making processes, and the provision of cultural care plans. A key issue is about gaining a better understanding of how compliance can be measured and monitored in a uniform manner across jurisdictions (SNAICC, 2013).

SNAICC’S (2012b) recent discussion paper proposed that the second 3 year action plan of the National Framework needs to address these issues at legislative, policy and practice levels. Similarly, Recommendation 35 of the Protecting Victoria’s Vulnerable Children Inquiry (2012) suggested that an “Aboriginal Children’s Commissioner or deputy commissioner should be created to monitor, measure and report publicly on progress against objectives for Aboriginal children and young people across all areas of government activity” (p310). As noted earlier, the Australian Institute of Health and Welfare have identified that nationally agreed technical specifications have been developed for the collection of data on whether children in out of home care have cultural support plans, and that data collection is planned to commence later this year.
The information reviewed in this report highlights the multiple and complex issues behind the barriers to implementation in the ATSICPP across Australian jurisdictions. It is hoped that the stakeholders attending the workshop can review these issues and have an opportunity to explore innovative ideas that can improve the implementation of the ATSICPP.

The Goals for the National Framework’s second action plan (2012-15), and the National Standards of Out of Home Care could be presented as a hierarchy (see Figure 5), which would be expected to occur assuming there is implementation and adherence to the ATSICPP, with the ultimate goal being to reduce the numbers of Aboriginal and Torres Strait Islander children in out of home care.

Figure 5: Hierarchy of goals for compliance with the ATSICPP
A summary of the barriers and possible facilitators to the implementation of each of the 5 steps of the ATSICPP are shown in Table 7.

Table 7. Barriers and Facilitators to compliance with the ATSICPP

<table>
<thead>
<tr>
<th>Barriers</th>
<th>Facilitators</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Systemic</strong></td>
<td><strong>Practice</strong></td>
</tr>
<tr>
<td>Over representation of Aboriginal children in child protection system and out of home care</td>
<td>Identification of Aboriginal children during child protection processes – possible inconsistencies and breadth of scope</td>
</tr>
<tr>
<td>Variation of legislation, policy and practice across jurisdictions</td>
<td>Gaps between policy and practice due to system pressures and carer scarcity</td>
</tr>
<tr>
<td>Lack of Uniform practice Framework for the ATSICPP</td>
<td>Procedural knowledge, record keeping practices between departments and RE’s regarding the making process</td>
</tr>
<tr>
<td>Lack of standardised data collection, monitoring and reporting methodologies across agencies within individual jurisdictions</td>
<td>Development of a national practice Framework for the ATSICPP</td>
</tr>
<tr>
<td>Inconsistent, monitoring and reporting of compliance data across jurisdictions</td>
<td>Development of methodology to measure and monitor ATSICPP compliance</td>
</tr>
<tr>
<td>Variation in legislation and policy regarding the provision of cultural care plans</td>
<td>Development of standardised procedures and record keeping practices between Aboriginal agencies and Departments in the placement decisions</td>
</tr>
<tr>
<td>Lack of uniform cultural care practice framework</td>
<td>Lack of uniformity in jurisdictional practices around the provision of cultural care plans, and the recording and monitoring of children with cultural plans</td>
</tr>
<tr>
<td>Turnover of staff, particularly Aboriginal and Torres Strait Islander staff, in placement services</td>
<td>Difficulties for Aboriginal staff in RE’s to maintain record keeping procedures and practices due to time constraints/cultural irrelevance, additional workloads</td>
</tr>
<tr>
<td></td>
<td>Culturally inappropriate for non-Indigenous workers and agencies to undertake complexities of cultural care work (family location), due to lack of cultural knowledge, connections and expertise</td>
</tr>
<tr>
<td></td>
<td>Loss of knowledge re kinship and cultural connections</td>
</tr>
<tr>
<td>Barriers</td>
<td>Facilitators</td>
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<tr>
<td>------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Systemic</strong></td>
<td><strong>Practice</strong></td>
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<td>Shortage of Aboriginal foster and kinship Carers*</td>
<td>Shortage of Aboriginal foster and kinship Carers*</td>
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<td>- youth dependency ratio imbalance in Aboriginal population (not enough</td>
<td>- Difficulties recruiting/retaining carers</td>
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<td>Aboriginal adults available to care</td>
<td>- carer burnout</td>
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<td>- carer ageing out of system</td>
<td>- lack of practical and financial support for carers</td>
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<td>- carers not meeting eligibility criteria</td>
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<td>- culturally inappropriate Anglo centric assessment methods for potential</td>
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<td>Inadequate support for non-Indigenous carers and agencies to provide cultural</td>
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<td>Lack of financial, practical support for Aboriginal agencies to provide</td>
<td>Absence of unified “good practice” models for Aboriginal agencies</td>
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<td>cultural advice and decision-making</td>
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<td>Develop best practice models so that Aboriginal agencies are adequately</td>
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<td>sourced to provide cultural care and be active participants in placement</td>
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<td>decision making</td>
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<td>Lack of cultural competence training for non-Indigenous carers and</td>
<td>Comprehensive training to support child protection decision-makers in</td>
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<td>agencies</td>
<td>implementing the ATSICPP, and development of measurement tools to effectively</td>
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<td>monitor and report</td>
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Key areas of discussion could explore:

- Explore in more detail the factors driving the over-representation of Aboriginal and Torres Strait Islander children in out of home care (including the identification of children as Aboriginal and Torres Strait Islander) and consolidate strategies to reduce the high level of over-representation
- Explore innovative solutions at a legislative, policy and practice levels to fund solutions to the shortage of Indigenous carers, and providing increased support to kinship carers, and culturally appropriate supports to non-Indigenous carers and agencies who are involved in the care and protection of Aboriginal children in out of home care.
- To establish an agreed process to facilitate improved consistence in the reporting, monitoring and collecting of data across jurisdictions
- Discuss the development of a unified policy and practice around the provision and implementation of cultural plans for Aboriginal children in out of home care
- how statutory child protection departments, and Aboriginal Agencies in each jurisdiction can collaborate to share information on strategies to improve compliance with the principle
- To agree upon the conceptual understanding of the ATSICPP to form the basis of the key standards of compliance which can translate into tangible measurable outcomes which can be reported to the AIHW, and feed in to the national Framework Standards for Out of Home Care
- To explore best practice strategies and how we can learn from these to implement them across other jurisdictions
REFERENCES


Commissioner for Children and Young People and Child Guardian (2012b). 2011 *Views of Children and Young people in Foster Care Survey: overview and selected findings*. Brisbane


Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) (2012b). A Report on consultations carried out by the Department of Families, Communities and Indigenous Affairs with Indigenous care organisations under the National Framework of Protecting Australia’s Children. Canberra


Libesman, T. (2011). *Cultural Care for Aboriginal and Torres Strait Islander Children in Out of Home Care*. Fitzroy, Melbourne Victoria: Secretariat of National Aboriginal and Islander Child Care (SNAICC)


Secretariat of National Aboriginal and Islander Child Care (SNAICC) (2008). *Foster our Culture*


Secretariat of National Aboriginal and Islander Child Care (SNAICC)(2012b). *Genuine Participation of Aboriginal and Torres Strait Islander peoples in Child-Protection Decision-Making for Aboriginal and Torres Strait Islander Children-A human rights framework*.


### APPENDIX 1: LEGISLATION AND POLICY IN EACH JURISDICTION

The following tables were compiled from Libesman’s (2011) review. *Cultural Care for Aboriginal and Torres Strait Islander Children in Out of Home Care*

<table>
<thead>
<tr>
<th>Department</th>
<th>ACT</th>
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<tr>
<td><strong>Legislation</strong></td>
<td><strong>ACT</strong></td>
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<td>Office for Children, Youth and Family Support</td>
<td>Department of Community Services</td>
<td>Department of Communities</td>
<td>Department for Education and Child Development</td>
<td>Department of Human Services (Children, Youth and Families)</td>
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<td></td>
<td><em>Children and young people Act, 2008</em></td>
<td><em>Children and Young persons (Care and Protection) Act 1998</em></td>
<td><em>Child Protection Act 1999</em></td>
<td><em>Children’s Protection Act 1993; Children’s Protection Regulations 2006</em></td>
<td><em>Children, Youth and Families Act 2005</em></td>
</tr>
<tr>
<td><strong>Aspirational statements</strong></td>
<td><strong>Special protection of culture:</strong> Decision maker must take into account the need for ATSI children to maintain a connection with lifestyle, culture and traditions of their community; and ATSI traditions and values: s10. <strong>Self-determination:</strong> The closest statement to self-determination is found in s7: The objective of the Act is to ensure that ATSI people are included and participate in care and protection of ATSI children.</td>
<td><strong>Special protection of culture:</strong> All decisions made must take into account the culture, language and religion of the child; Child is entitled to special protection and assistance with maintaining their identity, language, cultural and religious ties: s9. <strong>Self-determination:</strong> ATSI people should participate in the care of their children with ‘as much self-determination as possible’: s11.</td>
<td><strong>Special protection of culture:</strong> The chief executive must provide opportunity for the child’s contact, as often as appropriate, with members of their community or language group: s88. Children’s Court must recognise the principle that an ATSI child should be cared for within an ATSI community: s6. <strong>Self-determination:</strong> None explicitly stated in legislation.</td>
<td><strong>Special protection of culture:</strong> In considering the best interests of the child when placing them in out of home care, consideration must be given to the need to maintain and build an Aboriginal child’s connection to their family, community, and Aboriginal cultural and spiritual identity: s10(3)(c). <strong>Self-determination:</strong> In recognition of Aboriginal self-determination, when making decisions on Aboriginal child, Secretary or community service must give consideration to contributions by various Aboriginal family members, community members, organisations and the child themselves s12.</td>
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<tr>
<td><strong>ATSI participation in decision making</strong></td>
<td>Decision maker must take into account submissions made by ATSI organisations: s10</td>
<td>ATSI families and organisations must be allowed to participate in decisions regarding the placement of their children (and other such significant decisions) ‘by means approved by the Minister’: s12</td>
<td>When making a placement decision regarding an ATSI child, a recognised ATSI agency must be allowed to participate: ss6, 83. If urgent or otherwise not practicable, the chief executive or other officer must consult with the ATSI agency after making the decision: ss6, 83. The chief executive or other officer must conduct consultations with ATSI people in a manner appropriate to their traditions and customs: s6(5). The Children’s Court should also consider the views of a recognised ATSI agency or members of the child’s community: s6.</td>
<td>ATSI organisation must be consulted before decisions made on ATSI child: s5. A person or court making any decision regarding ATSI children must have regard: o To submissions made by a consulted ATSI organisation; and o If there has been no consultation – to ATSI traditions and cultural values: s5. Consultations with ATSI people must be conducted in a manner appropriate to their traditions and customs: s5(5)-(6).</td>
<td>In recognition of Aboriginal self-determination, when making decisions on Aboriginal child, Secretary or community service must give consideration to contributions by: o Members of child’s Aboriginal community and ‘other respected Aboriginal persons’; o Meeting should be set up with Aboriginal convener or Aboriginal organisation and the child, child’s parents, child’s extended family, other appropriate members of Aboriginal community, where possible; o With out of home care decisions Aboriginal agency must be consulted and the Placement principle applied (this does not, however, apply to ‘child care agreements’ not involving custody): s12. When placing an Aboriginal child in out of home care, regard must be had to advice from Aboriginal agencies and principles in s14: s13(1).</td>
</tr>
<tr>
<td><strong>Placement Principle</strong></td>
<td>Chief-executive may place an ATSI child with any of the following out of home carers: o A kinship carer; o Member of child’s ATSI community with some customary relationship to the child; o Member of the child’s community;</td>
<td>The ‘general order’ for carers for ATSI child placed in out of home care are: a) member of child’s extended family or kinship group; b) member of the child’s ATSI</td>
<td>The ATSI child must be placed, in order of priority, with: o A family member; or o Member of the child’s community or language group; or</td>
<td>An ATSI child placed in out of home care should be placed, in order of priority, with: o Member of child’s family (with reference to Aboriginal culture); o Member of child’s</td>
<td>When placing Aboriginal child in out of home care: o First priority is child placed with Aboriginal extended family; o If not possible, then child may be placed with</td>
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<td>o An ATSI carer; o A non-ATSI carer who is sensitive to the child’s needs; is capable of promoting the child’s ongoing contact with their ATSI family, community and culture; and lives near the child’s ATSI family/community where reunification or continued connection is still a consideration: s513. NOTE: In this reinterpretation of the Placement Principle, the ACT Chief-Executive does not have to prioritise ATSI over non-ATSI carers.</td>
<td>o Another ATSI person who is compatible with child’s community or language group; or o Another ATSI person: s83. If this cannot be done, the ATSI child must be placed, in order of priority with: o A person who lives near the family; o A person who lives near the community or language group: s83. If placing the child with a non-ATSI person, the person must be committed to facilitating contact with the child’s family, where appropriate; their community or language group; their ATSI culture; their sense of ATSI identity</td>
<td>Aboriginal community who has a relationship of responsibility for the child; o Member of child’s Aboriginal community; o Person with same Aboriginal cultural background as child; o Non-Aboriginal person who is able to ensure that the child maintains significant contact with their family, community/ies and culture: reg 4(b).</td>
<td>Aboriginal family from local community; from another Aboriginal community or, as a last resort a non-Aboriginal family living near the child’s family: s13(2). If child is placed with non-Aboriginal carer, they must ensure the maintenance of the child’s culture and identity through contact with the child’s community: s13(2)(c). Placement principle does not apply to ‘child care agreements’ not involving custody: s13(3).</td>
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</table>

**Additional Placement considerations**

Chief-executive must place them based on: who is first available; whether the child objects; whether it is consistency with any current ATSI cultural plan in force: s513.

In deciding placement account must be taken to:
a) whether child self-identifies as ATSI: s13(2);
b) the child’s express wishes: s13(2); c) if child has parents from different ATSI communities, the ‘general order’ still applies but the best interests of the child will be the determining factor: s13(3); d) if child has one ATSI and one non-ATSI parent, placement must be based on the best interests of the child and the ‘principles’ of this Act (see In making placement decision, the Chief Executive must take into account:
o The views of a recognised ATSI agency; and o The need to ensure optimal retention of the child’s relationship with family and other people of significance under ATSI tradition |

Decision maker should take into account:
o If child objects to placement on reasonable grounds. If that is the case the child should be placed with the next available person by order of above priority: reg 4(c). |

In deciding placement account must be taken to:
o Whether child self-identifies as Aboriginal: s14(1). o The child’s expressed wishes: s14(1). o If child has parents from different Aboriginal communities, the placement order still applies but consideration should be given to the child’s personal sense of belonging: s14(3); o If a child has one Aboriginal parent and one non-Aboriginal parent, the child
Wherever this child is placed, arrangements must be made to ensure they can stay in contact with their family, culture and community from both sides: s13(4)-(5); e) If child is placed with non-ATSI carer, there is a fundamental objective to reunite them with their ATSI family or community; and that continuing contact with ATSI family community and culture be assured: s13(6).

Cultural care

Cultural plans may be required in certain circumstances under legislation (s455):
- For ATSI children subject to a “care protection order” may have a care plan created that includes proposals for how to maintain and enhance their ATSI cultural identity.
- When preparing a care plan, the Chief Executive must tell relevant ATSI people close to the child or relevant ATSI organisations of this plan.

In the legislation there is suggestion of something perhaps akin to a cultural care plan in some circumstances – the Chief Executive must ensure care planning is carried out for children in need of protection, or where no other entity is carrying out such care and protection (s51C).

In this care plan, the Chief Executive must encourage the participation of ATSI agencies and persons: s51D.

The chief executive must provide opportunity for the child’s contact, as often as appropriate, with members of their community or language group: s88.

O Cultural support funding of up to $500 for each Aboriginal child in an alternative care placement.
O As part of the Aboriginal Community Engagement Strategy, Aboriginal Community Groups have been established in the southern and northern metropolitan regions to: develop strategies; identify gaps in services and offer best practice advice.

Cultural plans are required under s176:
- Secretary must prepare a cultural plan for each Aboriginal child placed in out of home care who are under a guardianship to Secretary order.
- This plan must set out how this child will remain connected to their community and culture.
- This ‘community’ is the one in which the child has a sense of belonging; or has primarily lived; or is the community of their parents/grandparents.
- Secretary must monitor compliance by the carer of the child.

Policy from website:
- Details on the cultural plans can be found at the Department of Human Services’ website.
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<tr>
<td>regarding cultural care.</td>
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<td>o No “Aboriginal Life Story” books.</td>
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<tr>
<td>Access to record keeping</td>
<td>None required under legislation.</td>
<td>Records regarding the placement of ATSI children must be kept permanently: s14(1). The child and parents (and anyone authorised by either) are entitled to access these records: s14(2).Specifications on what must be recorded including the plan for a child leaving out of home care: s167. NOTE: some exceptions are permitted under regulations.</td>
<td>None required under legislation.</td>
<td>None required under legislation</td>
<td>None required under legislation.</td>
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<tr>
<td>Permanent placement</td>
<td>No comment specific to ATSI children in legislation.</td>
<td>A permanency plan must comply with the Placement Principle: s78A. The child can only be permanently placed with a non-ATSI carer after the child, ATSI organisations and members of the child’s community have been consulted; the carer family is ‘culturally appropriate’; and approval has been granted by the Minister for Community Services and the Minister for Aboriginal Affairs: s78A.</td>
<td>No comment specific to ATSI children in legislation.</td>
<td>No comment specific to ATSI children in legislation.</td>
<td>The court must not make a permanent care order to place an Aboriginal child with a non- Aboriginal carer unless: o No suitable place can be found with an Aboriginal carer; o The child has been consulted; o The order accords with the Placement Principle; o An Aboriginal agency recommends the order; A cultural plan has been prepared (if the Court requires it): s323.</td>
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<td>Aspirational statements</td>
<td><strong>Special protection of culture:</strong> The objective of the Aboriginal Child Placement Principle is for ATSI children in out of home care to maintain a connection with family and culture: s12(1). <strong>Self-determination:</strong> None explicitly stated in legislation.</td>
<td><strong>Special protection of culture:</strong> None stated in legislation explicitly. <strong>Self-determination:</strong> Kinship groups, representative organisations and Aboriginal communities have a major role though self-determination, in promoting the wellbeing of Aboriginal people: s12(1).</td>
<td><strong>Special protection of culture:</strong> Decision makers must take into consideration the general principle that an Aboriginal child should remain within the Aboriginal community: s9. <strong>Self-determination:</strong> None explicitly stated in legislation.</td>
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<td>ATSI participation in decision making</td>
<td>When making placement arrangements the CEO must ensure an ATSI officer is involved and consult with an ATSI agency: s81.</td>
<td>Kinship groups, representative organisations or the child’s Aboriginal community should be able to participate in decision making involving the child: s12(2).</td>
<td>A decision regarding where an Aboriginal child will reside may only be made once a recognised Aboriginal organisation has been consulted: s9. Decision makers must take into consideration: o Submissions made by consulted Aboriginal organisations; and o where one has not made submissions, Aboriginal traditions (including kinship rules) generally held by the Aboriginal community: s9.</td>
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<td>Placement Principle</td>
<td>Where practicable, an ATSI child must be placed, in order of priority with: o A member of the child’s family; o An ATSI person in the child’s community in accordance with local customary practice; o An ATSI person; o A non-ATSI person who is sensitive to the needs of the child and who can promote the child’s connections with their culture and, where possible, family: s12.</td>
<td>Aboriginal child should be placed with person in this order of priority: o Member of child’s family; o Aboriginal person in the child’s community based on community practice; o Any other Aboriginal person; o A non-Aboriginal person who is capable of promoting the child’s connection with their culture and if possible contact with their family. Aboriginal child should be placed in close proximity to child’s family and community.</td>
<td><strong>Nothing in legislation.</strong> The Department of Health and Human Services website states that placement decisions be made in reference to the Aboriginal Placement Principle which means, after consulting with Aboriginal services, the child may be placed, in order of priority, with: o Extended family or relatives o An Aboriginal family from the local community o A non-related non-Aboriginal family living in close proximity to the child’s family.</td>
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<tr>
<td>Additional Placement considerations</td>
<td>None.</td>
<td>None.</td>
<td>None explicitly stated</td>
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<td><strong>Cultural care</strong></td>
<td>Policy from Website: o Cultural Plans for ATSI children must be included in their Care Plans.43</td>
<td>None required by legislation. Policy from website: o NTFC develops a Cultural Care Plan for all ATSI children in care. o There are other suggestions for ways to sustain contact with a child’s ATSI culture. E.g. A Life Story Book, attending NAIDOC events.</td>
<td>None required under legislation. No policy regarding cultural care stated on website</td>
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<td><strong>Access to record keeping</strong></td>
<td>None required under legislation.</td>
<td>None required under legislation.</td>
<td>None required under legislation.</td>
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<td><strong>Permanent Placement</strong></td>
<td>No comment specific to ATSI children in legislation. However, when making protection orders, the Court must heed the ATSI Child Placement Principle: s61</td>
<td>No comment specific to ATSI children in legislation.</td>
<td>No comment specific to ATSI children in legislation.</td>
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</table>

Source: Libesman (2011), Appendices from report (found on pp.72-85)

1. Department of community Services (NSW), 2008/09 Annual Report, *Helping Aboriginal Families*, available online
2. Department of Community Services (NSW), *Foster Care Life Story Factsheet*, available online
3. Department of Communities (QLD) *Foster Care - Aboriginal and Torres Strait Islanders*, Queensland Government, available online
4. Department of Families and Communities (SA) 2008/9 annual Report, available online
5. Department of Human Services (VIC), *Aboriginal Cultural Support Plan*, available online
6. Department for Child Protection (WA), *My Care Plan and Meetings*, available online
7. Department of Health and Families (NT), *Aboriginal Children in Care*, NT Families and Children program, available online
8. Department of Health and Human Services (TAS), *Out of Home Care*, available online
APPENDIX 2 QUEENSLAND AUDIT ATSICPP COMPLIANCE TOOL

Child Placement Principle Compliance Assessment Tool

Every applicable step must be complied with and recorded to fully comply with s83 of the Child Protection Act 1999 when considering all placement options the welfare and best interests of the child are paramount.

**STEP 1**
Identify the child is Indigenous under s83(a)

- Is the child Indigenous?
  - Yes: compliance
  - No: non-compliance

Indigenous Child Placement Principle (s83 of the Child Protection Act 1999) does not apply

**STEP 2**
Involvement of a recognised entity (RE) s83(a) and (a)

- Has the recognised entity been given an opportunity to participate in the decision-making process?
  - Yes: compliance
  - No: non-compliance

**STEP 3**
Hierarchy of placement options s83(a) and (a)

- Were any family members identified as placement options?
  - Yes: compliance
    - go to step 3
  - No: non-compliance

- Were any community/language group members identified as placement options?
  - Yes: compliance
    - go to step 4
  - No: non-compliance

- Were any compatible Indigenous carers identified as placement options?
  - Yes: compliance
    - go to step 4
  - No: non-compliance

- Were any other Indigenous carers identified as placement options?
  - Yes: compliance
    - go to step 4
  - No: non-compliance

- Were any non-Indigenous carers living near the child's family or community/language group members identified as placement options?
  - Yes: compliance
    - go to step 4
  - No: non-compliance

**STEP 4**
Proper consideration of placement options s83(c)

- Has proper consideration been given to:
  - The placement option's ability to ensure optimal retention of relationships with parents, siblings, and people of significance,
  - The views of the recognised entity?
  - and placement option was suitable
    - Yes: compliance
    - go to step 5
    - (if carer is non-Indigenous) go back to step 3
  - No: non-compliance

**STEP 5**
Assessment of non-Indigenous carers' commitment s83(c)

- Has proper consideration been given to the non-Indigenous carer's commitment to:
  - Facilitating contact between child and the child's family?
  - Helping maintain contact with community or language group?
  - Helping maintain connection with culture?
  - Preserving and enhancing child's sense of Aboriginal or Torres Strait Islander cultural identity?

- Yes: compliance
- No: non-compliance
# APPENDIX 3 LEGISLATION AND DEPARTMENTAL PRACTICES (LIBESMAN, 2011)

## Legislation and Departmental Practices Relating to Cultural Care Plans across Australian Jurisdictions

### Summary of Libesman’s (2011) research

<table>
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<tr>
<th>Jurisdiction</th>
<th>Cultural Care Plan Departmental policies/practice</th>
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| NSW          | o Nothing specific in legislation.  
              |   o A new Aboriginal Cultural Support (ACS) function is now part of DOCS’s electronic database KiDS (the Key Information Directory System). This guides caseworkers in collecting and recording information to support effective cultural planning.  
              |   o On DOCS’s website, there is a hard copy of a Case Plan suggested for use by external out of home care agencies, which includes a section to be filled in relating to a child’s ‘Cultural Identity’, with a note that for Aboriginal and Torres Strait Islander children an extra Cultural Care Plan must be attached. A copy of this Cultural Care Plan is not available through DOCS’s website.  
              |   o “Aboriginal Life Story” book produced in 2009. Sections of this help children explore and develop their connectedness to their culture, family and community |
| WA           | o No legislative requirement for consultation with Aboriginal agencies (Decision making role undertaken by Department Aboriginal Practice Leaders)  
              |   o Each ATSI child has a separate cultural plan to their care plan  
              |   o WA Department was unable to inform on what percentage of ATSI children have a cultural plan  
              |                   No specific funding for cultural care in WA  
              |   o Policy: cultural plans must be included in their Care Plans  
              |   o Cultural Plan is not available from Department’s website, it is only available via the Department’s Field Worker intranet |
| SA           | o None required by legislation.  
              |                   Policy:  
              |   o Cultural Support Funding of up to $500 for each Aboriginal child in an alternative care placement.  
              |   o SA does not appear to have Cultural Plans on their website. |
| VIC          | o Cultural plans are required in legislation under s176:  
              |   o DOCs have statutory responsibility for making cultural support plans and do so in consultation with Aboriginal Community Controlled Organisations (ACCOS) and ACSASS (part of VACCA).  
              |   o Aboriginal Family decision making workers are funded to develop cultural plans  
              |   o There is a legal requirement only to prepare cultural plans for ATSI children on Guardianship orders, however many ATSI children in care are without guardianship orders). Between Sep 2009-Feb 2010, only 34 ATSI children on Guardianship orders were reported to have had a cultural plan prepared (small percentage)  
              |                   Policy:  
              |   o No “Aboriginal Life Story” books.  
              |   o Details on cultural plans can be found at the DHS website |
| QLD          | o In the legislation suggests something akin to a cultural care plan in some circumstances, whereby Legislation requires a Recognised Entity (RE)plays a key role in enacting the ATSICPP  
              |   o Cultural support plans developed by the Department of Communities in conjunction with RE  
<pre><code>          |   o In 2010 Dept could not provide info on how many cultural plans had been prepared |
</code></pre>
<table>
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<tr>
<th>Jurisdiction</th>
<th>Cultural Care Plan Departmental policies/practice</th>
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<tbody>
<tr>
<td></td>
<td><strong>Policy:</strong></td>
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<tr>
<td></td>
<td>o Nothing regarding cultural care. It only mentions a brief synopsis of the Placement Principle and of what constitutes and RE</td>
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| TAS         | o Cultural care plans not required under legislation.  
|             | o No policy regarding cultural care stated on website |
| ACT         | o Cultural plans *may* be required in certain circumstances under legislation (s455): For ATSI children subject to a “care protection order” *may* have a care plan created that includes proposals for how to maintain and enhance their ATSI cultural identity.  
|             | o When preparing a care plan, the Chief Executive must tell relevant ATSI people close to the child or relevant ATSI organisations of this plan.  
|             | o An ACT cultural plan is not available from the Office for Children, youth and Family support website |
| NT          | o Cultural plans not required by legislation.  
|             | **Policy:**                                      |
|             | o NTFC develops a Cultural Care Plan for all ATSI children in care.  
|             | o Other suggestions to sustain contact with a child’s ATSI culture. E.g. A Life Story Book, attending NAIDOC events |
|             | o Copy of the NT cultural plan is not available from the Department of Health and Families website |

Source: Libesman (2011) *Cultural Care for Aboriginal and Torres Strait Islander Children in In Out of Home Care* (pp. 72-85)
APPENDIX 4 RECOMMENDATION 36, PROTECTING VICTORIA’S VULNERABLE CHILDREN’S INQUIRY

The Department of Human Services should develop a comprehensive 10 year plan to delegate the care and control of Aboriginal children removed from their families to Aboriginal communities. This would include:

• Amending section 18 of the Children, Youth and Families Act 2005 to reflect Aboriginal community decision making processes and address current legislative limitations regarding implementation;

• Developing a sustainable funding model to support transfer of guardianship to Aboriginal communities that recognises the cost of establishing an alternative guardianship pathway. These arrangements would initially be on a small scale and require access to significant legal advice, legal representation, practice advice, specialist assessments and therapeutic treatment;

• Developing a State-wide plan to transfer existing out-of-home care placements for Aboriginal children and young people from mainstream agencies to Aboriginal community controlled organisations and guide future resource allocation (with performance/registration caveats and on an area basis);

• Providing incentive funds for Aboriginal community controlled organisations to develop innovative partnership arrangements with mainstream providers delivering out-of-homecare services to Aboriginal children to connect them to their culture;

• Targeting Aboriginal community controlled organisations capacity building to these activities i.e. guardianship, cultural connection and provision of out-of-home care services; and

• Providing increased training opportunities for Aboriginal community controlled organisation staff to improve skills in child and family welfare.

The proposed Aboriginal Commissioner or Deputy Commissioner for children and young people should report on performance against this plan

Lakidjeka Aboriginal Child Specialist Advice and Support Service (ACSASS)

*Lakidjeka* is a Yorta Yorta word meaning ‘the child’ or ‘children’.

The Lakidjeka Aboriginal Child Specialist Advice and Support Service (ACSASS) program provides culturally appropriate advice and consultation on decisions that determine the future of at-risk Aboriginal children; such as whether there is a strong need for Aboriginal children to be removed from their families, and relocated to a place of safety. The *Lakidjeka* ACSASS program is run by the Victorian Aboriginal Child Care Agency (VACCA), and operates in a number of regions across Victoria.

Lakidjeka is a unique Indigenous-specific response to statutory child protection intervention for Aboriginal and Torres Strait Islander children and families. Child protection services are required to consult with the Lakidjeka before making any key decisions. Lakidjeka staff ensure decisions are made with the advice and knowledge of Aboriginal people.

Other States and Territories look to the program for best practice in including Aboriginal people in joint decision making processes.

The *Lakidjeka* program is built on the collaboration with the Department of Human Services, Victoria the department responsible for administering the child protection service. It provides the DHS child protection practitioners with important cultural and case-management advice.

*Lakidjeka’s* aims include:

- Providing an Indigenous perspective into child protection risk and safety assessments, planning processes and decision-making in relation to Indigenous children;
- Improving case planning and decision-making concerning Indigenous children and young people who have been notified to child protection;
- Improving engagement of Indigenous children and young people and their families with relevant support services;
- Improving the involvement of Indigenous family and community members in the support of Aboriginal child protection clients;
- Improving Indigenous children’s connection to their community and strengthening their cultural identity.

*Lakidjeka* provides the following services children and young people from 0 to 17 years of age and include:

- Facilitating the placement of Indigenous children in line with the hierarchy of placement options outlined in the Aboriginal Child Placement Principle;
- Undertaking joint visits with child protection workers to assist in their understanding of Aboriginal child-rearing practices and assist families to understand child protection concerns and processes;
- Attending court and providing verbal and written evidence;
Attending pre-hearings, case conferences, case planning meetings and family group conferences;

Attending ongoing visits as required;

Making referrals to other services;

Providing a 24-hour on-call response to notifications;

Advising child protection staff of culturally relevant referral pathways;

Providing input into departmental cultural support plans;

Facilitating families’ involvement in decision-making;

Providing decision-making input where there are allegations of abuse of Indigenous children placed in out-of-home care;

Providing advice to mainstream out-of-home care service providers about facilitating community and cultural connection for Indigenous children.

A great strength of *Lakidjeka* is the insight that Indigenous staff can bring to an understanding of child protection matters involving Indigenous children and families. *Lakidjeka* staff bring a cultural and community perspective which inform key departmental decisions on:

- What community placements are available if required;
- What the appropriate referral pathways are;
- How the department can best develop a cultural support plan;

The program plays a role with mainstream out-of-home care providers by assisting them to understand the importance of cultural and community connection and how this is most appropriately undertaken.

**Facilitating children’s placement in line with the Aboriginal Child Placement Principle**

*Lakidjeka* is authorised by the Secretary of the Department of Human Services to be able to receive information on notifications on Aboriginal children. With regard to placement of children, Department is required to consult *Lakidjeka*, when making placement decisions whereby-

1. If an out-of-home placement is needed for the child, *Lakidjeka* will take primary responsibility for finding an appropriate placement for the child within the Aboriginal community according to the hierarchy of placement options prescribed in the Aboriginal Child Placement Principle. If a placement is not identified by *Lakidjeka*, this task will become the responsibility of the Department of Human Services.

2. *Lakidjeka* staff will be consulted on any significant decisions made by the Department of Human Services in relation to Indigenous children, such as issuing protective orders and determining outcomes for Indigenous children involved in allegations of abuse in care processes.

3. The Department of Human Services will continue to involve *Lakidjeka* case workers as cultural consultants and partners in the case management of an Aboriginal child, including undertaking joint home visits, seeking input into the cultural support plan, attending case planning meetings and involvement in the court processes.
Lakidjeka staff are Indigenous people with connections in their local communities and often able to identify family members with whom the child can be placed, and engage key people in the family who can participate in the planning and decision-making process regarding a child’s wellbeing.

Providing cultural guidance to the statutory child protection service

Lakidjeka has built a reputation for providing sound advice to child protection departments on the child’s Indigenous community and valuable information to promote the child’s cultural identity. Staff are able to inform decisions on placement options and use a sophisticated Indigenous risk assessment process as well as having skills in collaborative case management.

Lakidjeka staff also provide input into the Department’s ‘Beginning Practice’ training program for new child protection workers. Lakidjeka regularly provides advanced training courses on working with Aboriginal families and organisations for child protection workers and other child and family welfare staff.

Lakidjeka’s success in this training is significant as it is seen by key sector stakeholders as having led to more informed decision-making by child protection services and other child and family welfare services.


Further information on VACCA: www.vacca.org

Protecting Aboriginal Children Together (PACT) Pilot

What is PACT?

PACT came into being following a recommendation of the Special Commission of Inquiry into Child Protection Services in NSW (2008) to: “Consider establishing a Lakidjeka model of consultation to provide an Aboriginal perspective in relation to the best ways of keeping Aboriginal children and young people safe.”

PACT is an advisory service provided by Aboriginal advisors in Aboriginal non-government organisations (NGOs) to assist Aboriginal children, young people and families engaging with the NSW child protection system. It supports decision-making in the best interests of the child; that is, that meets their individual needs and enhances their physical, emotional, cognitive, social and cultural development. PACT is based on the ACASS Lakidjeka model of consultation to provide an Aboriginal perspective in relation to the best ways of keeping Aboriginal children and young people safe.

The PACT service provides a community perspective on safety and on the care and protection services that are provided to Aboriginal children, young people and families to enable shared decision-making between CS and Aboriginal organisations and community members.
PACT Aims

- It will improve case planning and decision-making processes in cases where an Aboriginal child or young person is the subject of a risk of significant harm report to ensure their best interests.
- It will improve Aboriginal families and community members’ involvement in supporting Aboriginal children and young people reported to CS.
- It will improve Aboriginal families’ and their children’s engagement with relevant support services.
- It aims to reduce the number of Aboriginal children and young people in out-of-home-care placements with non-Aboriginal.

Who is involved?

AbSec has a lead role in community consultation and engagement. AbSec and Community Services Aboriginal Services Branch work with Aboriginal non-government organisations implement PACT in selected site locations.

In 2011/2012, the service commenced in two pilot sites. Myimbarr/Illawarra Aboriginal Corporation - Shellharbour and Pius X Aboriginal Corporation Moree are contracted to provide the service in partnership with the local CSC.

Aboriginal NGO staff are employed as PACT Advisors to deliver the service. CS consult with PACT advisors about risk assessments and other significant decisions in the care and protection of Aboriginal children and young people.

Information sourced from fact sheet

Indigenous Family and Child Support Service (IFACSS), Brisbane, QLD

IFACSS is a Recognised Entity

- IFACSS is a partnership across a range of agencies that aims to provide a coordinated serviced for parents, families and communities to ensure the safety and wellbeing of Aboriginal and Torres Strait Islander children and young people.

The role of the Recognised Entity team

- Actively participate in decisions made by the Department of Communities (Child Safety) regarding Aboriginal and Torres Strait Islander Children and young people throughout each phase of statutory child protection process.
- Jointly participate in significant decisions to assess what intervention process needs to be established to ensure the safety of the child/ren.
• provide information to families to help them understand the purpose and impact of each of the statutory phases.

The Recognised Entity Team continues to attend training to increase their knowledge and understanding of processes relating to the Department of Child Safety

Role of the Foster and Kinship Care team

• recruit, train, assess and support Aboriginal and Torres Strait Islander families who want to care for children and young people requiring Out of Home Care placement.

• advocate and support families after they have been approved as Provisional, Foster or Kinship Carers to ensure the safety of our children.

• ensure ALL CARERS are holders of a current Blue Card and that they undergo personal history checks by the Department of Communities (Child Safety)

The Foster and Kinship Care Team have developed Foster Carer Training Strategies which have seen the recruitment of Murri Families increase and they also developed other resources in order to educate and ensure culturally appropriate care is provided to our children placed in Non-Indigenous Care.

Information sourced from website: www.atsichbrisbane.org.au