

**Guiding
principles for
strengthening the
participation of
local Aboriginal
community in
child protection
decision making**

Acknowledgement

The artwork entitled 'Passages' created by Aboriginal artist Colin Wightman has been removed from this document as Colin passed away in early 2015.

Colin was of the Goomeri people born on Toomelah Mission in North West NSW.

Colin painted because he liked to tell the stories of the tribe he belonged to, to paint what he saw and what his Nan and other Elders of the Goomeri Tribe told him over the years.

Colin's artwork 'Passages' represents the coming together of family and community and reinforces the importance of cross-generational learning for the continuation of Aboriginal culture.

My nan's house, to me, nan's house was my safe place and symbolises my sense of belonging. Aboriginal people always return home, to their safe place. The home is where it all begins.

The meeting place, community gathering, getting together and supporting each other. Where I grew up there were these 'marker' trees, you knew where you were if you used these marker trees. These trees also had a variety of bush tucker and healing medicines that we used. They were so important to our community, helping us as a life source and also to heal from sickness and other ailments. Community healing is symbolised with these trees.

Positive and loving relationships, are the foundation of our next generation. Parents standing and walking together on a positive path. But also relationships between organisations helping our community and people. A symbol of reconciliation and strength.

The sun is the life source, important for regeneration, also the care and nurturing needed for regeneration. The sun is an important symbol to Aboriginal people, central to our flag. We rely on the sun to provide us comfort and warmth, but also to grow our foods, herbs and medicines. The roots are streaming down to the community. Grounding the community, providing them stability, support and structure.

Family, growing up our elders taught us kids important lessons, stories and cultural customs. In turn though, the children through their learning and asking questions, taught elders things as well. This cross learning and sharing is important to the functioning of our community and the continuation of our culture.

A love story, in our culture there is this love story about a boy and a girl who were not allowed to be together. So the boy took the girl away. The People found out so the boy turned the girl into a freshwater fish and turned himself into the moon. The only way they could be together was when the moon comes out and the fish come to the top of the water and they both change back into human form. After 3 days and 3 nights the boy would change back into the moon again. And so the best time to go fishing even today is by the full moon.

Guiding principles for strengthening the participation of local Aboriginal community in child protection decision making

Context

The number of Aboriginal children being forcibly removed from their families by child protection agencies nation-wide is at an unprecedented high. NSW has the worst rate of removals in Australia. On 2 October 2014, the Senate of the Federal Parliament of Australia agreed to note that: ...*“New South Wales children from Aboriginal communities are being removed from their families at an unprecedented rate with more than 6,000 Aboriginal children, representing about one in 10 Aboriginal children, in out-of-home care in New South Wales...”*¹

The Grandmothers Against Removals (GMAR) formed in Gunnedah, NSW to advocate against the removal of Aboriginal children from both their immediate and extended families. GMAR approached the NSW Department of Family and Community Services (FACS) to advocate for greater community involvement in decision making to reduce the numbers of Aboriginal children removed from both their immediate and extended families.

Starting with a formal proposal to FACS titled *“Prevention and Participation: A community response to the crisis of Aboriginal child removal”*,² GMAR has worked with the New England FACS District Office and the NSW Ombudsman over the past 12 months to develop this set of guiding principles to improve the collaboration between FACS and Aboriginal communities on child protection matters. It is intended to be a guide that may be used by Aboriginal communities and regional FACS offices across NSW.

The existing legislation and policies for making decisions about Aboriginal children at risk of harm mandate greater involvement of Aboriginal communities. The *Children and Young Persons (Care and Protection) Act 1998* (NSW) (‘the Act’) provides legislative guidance for child protection decisions and actions,³ including that:

- the safety, welfare and well-being of the child or young person are paramount;
- account must be taken of the culture, disability, language, religion and sexuality of the child or young person and (if relevant), those with parental responsibility for them;

¹Motion put by Senator Lee Rhiannon and agreed to by the Senate. (Parliament of Australia, The Senate, 2 October 2014, p7620).

²Prepared by GMAR, May 2014.

³*Children and Young Persons (Care and Protection) Act 1998* (NSW), s.2

- in deciding what action is necessary to take to protect a child or young person from harm, the least intrusive intervention that is consistent with protecting them from harm and promoting their development must be chosen; and
- if a child or young person is placed in out-of-home care, they are entitled to a safe, nurturing, stable and secure environment and to maintain relationships with people significant to them, including birth or adoptive parents, siblings, extended family, peers, family friends and community.

The Act also sets out specific provisions for actions and decisions affecting Aboriginal and Torres Strait Islander families,⁴ including that:

- Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young people with as much self-determination as possible; and
- Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities are to be given the opportunity to participate in decisions made concerning the placement and other significant decisions made under the Act about their children and young persons.

The definition of ‘family’ within Aboriginal communities and culture is distinctly different from the Anglo-Australian nuclear family model. Aboriginal family structures are characterised by collective parenting models which involve both immediate and extended family members. This, therefore, necessitates the engagement of broader family networks in the decisions around the care and protection of Aboriginal children, as recognised in the Aboriginal Placement Principles.

These statutory provisions are not sufficient on their own: the 2008 Special Commission of Inquiry into Child Protection Services in NSW identified that Aboriginal communities remained over-represented in the child protection system. This has a traumatic impact on communities at large. Relevantly, the Special Commission recommended that capacity be built in Aboriginal organisations to act as advisers to FACS in all facets of child protection work, and that FACS develop operational guidelines to ensure adherence to the Aboriginal Placement Principles.⁵

Within the legal parameters set by the Act, FACS has developed relevant policy and strategies to direct its work with Aboriginal communities. The FACS *Aboriginal Cultural Inclusion Framework 2015-2018* (ACIF) aims to embed Aboriginal cultural inclusion, accountability and monitoring processes in the work of the Department to deliver better outcomes for Aboriginal people and their families. The ACIF outlines six Key Result Areas; the first is that Aboriginal voices will be heard and included, so that Aboriginal people influence strategy, planning and service. This will be done through the following strategic actions:

⁴ *Children and Young Persons (Care and Protection) Act 1998* (NSW), ss.11-12.

⁵ Recommendation 8.5.

- foster and maintain partnerships with Aboriginal stakeholders in the development, implementation and review of Aboriginal Cultural Inclusion plans;
- engage with Local Decision Making committees in the development of Accords and innovative responses to place based needs;
- work with Aboriginal families to build their capacity to engage with services;
- foster and maintain partnerships with Aboriginal Advisory structures to strengthen cultural inclusion in service delivery; and
- provide Aboriginal staff opportunities to actively engage with Aboriginal communities and influence service design and its Aboriginal workforce.⁶

This document aims to give effect to these objectives at the local level through setting out how FACS and local Aboriginal communities may cooperate on child protection matters.

Development of these Guidelines is linked to an ongoing process to co-design future Aboriginal OOHC services in NSW. The co-design process, which began with a series of workshops led by AbSec and FACS in late 2014, is continuing in 2015.⁷

Purpose

This document creates a set of guiding principles for FACS and local Aboriginal communities to work together in the practical application of the Act and relevant policies. The aim is for the document to be used by individual communities and FACS District offices across NSW to establish and guide their working relationship. It also sets out the structure of a State Wide Advisory Group to oversee the implementation of these guiding principles.

These guiding principles envisage Aboriginal communities forming their own local advisory groups to:

- ensure Aboriginal community participation in decision making regarding the care and protection of Aboriginal children, as required under the Act and ACIF;
- support Aboriginal families and reduce the number of forced removals of Aboriginal children from their immediate and extended families;

⁶ FACS *Aboriginal Cultural Inclusion Framework 2015-2018*, p.8.

⁷ Co-design is a new approach to public service reform being implemented by NSW Family and Community Services that aims to include all stakeholders in change processes. It involves drawing on the experience of caseworkers, partner organisations, community members and families to guide, test, review and even re-design systems. Separate co-design processes, implemented within each district and/or sector, can enable responses to unique district or sector challenges. This in turn allows solutions to be developed that are appropriate to local needs, rather than a one-sized fits all approach. www.facs.nsw.gov.au/reforms/safe-home-for-life/designing-the-system-with-our-partners

- improve the access by Aboriginal people to local services and supports, and where required, interagency cooperation; and
- develop pathways of family restoration for Aboriginal children currently in out-of-home care.

The document is not intended to bind local communities. Rather, it aims to support Aboriginal self-determination by presenting a template that has been endorsed by GMAR, FACS and the NSW Ombudsman and can be adapted to suit the needs of individual communities. It will be important that this document is promoted widely to Aboriginal communities across NSW to enable them to opt into the arrangements it establishes and fulfil the new functions envisaged for local communities effectively.

Roles and responsibilities

Local advisory groups

The role of the local advisory groups is to provide a governance structure through which local Aboriginal communities can participate with FACS in decision making regarding the care and protection of Aboriginal children – including on the need for early intervention supports for vulnerable families before the point of removal.

The local advisory groups will develop individual frameworks to engage the local Aboriginal community in identifying avenues of decision making that involve Aboriginal families, services and community in the care and protection of Aboriginal children. This will include – but is not limited to – the following:

1. Monitoring the implementation of the Aboriginal Child Placement Principles, these guiding principles and the FACS *Aboriginal Cultural Inclusion Framework 2015-2018* for the local Aboriginal community – including reviewing practices within FACS that impede its ability to create cooperative and respectful relationships with Aboriginal families and communities.
2. Monitoring and reviewing the implementation of cultural care planning, and in doing so, have regard to the various pieces of work being progressed in this area by the NSW Children's Court, the Aboriginal Legal Service and the FACS Aboriginal Strategic Branch, and others as relevant.
3. Identifying and assessing the effectiveness of current and/or culturally appropriate service models and options to support families earlier and prevent entry into the child protection system (e.g. Protecting Aboriginal Children Together: PACT and the Aboriginal Intensive Family Based Service: IFBS), and making adjustments to these models where appropriate.

4. Identifying and assessing the effectiveness of current and/or culturally appropriate service models and options for families when they are involved in the child protection system (e.g. Family Group Conferencing, Care Circles) and making adjustments to these models where appropriate.
5. Considering innovative approaches to addressing community concerns regarding prevention, early intervention and out-of-home care in the local Aboriginal community.
6. Building the capacity of the local Aboriginal community to care for local children in circumstances where emergency removals are necessary (i.e. working with the community to increase the number of kinship carers).
7. Developing a process for community representatives to raise concerns with FACS about individual cases and receive feedback.
8. Reviewing the membership of the local advisory group to ensure appropriate community, NGO and government representation.

Local advisory groups will encourage FACS to adopt a strengths-based approach in working with vulnerable Aboriginal families, Aboriginal carers and communities, while ensuring that the best interests of the child are the paramount consideration. Affected families may choose to engage the support of GMAR members regarding individual cases (or any other issues). Individual case or policy decisions made by the local advisory groups should be reviewed and may be changed if new information comes to hand.

FACS

FACS has committed to review and improve its practices and engagement with local Aboriginal communities to achieve the outcomes that are in the best interests of Aboriginal children and young people as well as their families.

In implementing the *FACS Aboriginal Cultural Inclusion Framework*, FACS Districts are expected to establish local engagement arrangements with Aboriginal communities to inform priorities and strategic actions in their Aboriginal Cultural Inclusion Plan.⁸

⁸ FACS *Aboriginal Cultural Inclusion Framework 2015-2018*, p.3.

Under these guiding principles, FACS will:

- take active steps to identify relevant local decision making bodies which may be interested in forming the local advisory group in each of its districts;
- ensure it is doing business with the right Aboriginal people, promoting a transparent process for participation in the local advisory groups, noting that what works is not the same in every community; and
- work collaboratively with local advisory groups on child protection decisions as outlined in this document.

State Wide Advisory Group

A State Wide Advisory Group will be established to oversee the implementation of these guiding principles. [NB: It may also be more practical to utilise an existing Aboriginal advisory body and include GMAR on it in relation to this aspect of its work]. It will provide a draft implementation plan for submission to the FACS Executive Board for their consideration. The State Wide Advisory Group will ensure these guiding principles operate within the boundaries of relevant legislation, including:

- *Children and Young Persons (Care and Protection) Act 1998*
- *Privacy and Personal Information Protection Act 1998*
- *Health Records and Information Privacy Act 2002*
- *Community Welfare Act 1987*
- *Court Suppression and Non-publication Orders Act 2010*
- *Children's Court Act 1987*

While it is not within the scope of this group to seek legislative change, the group may comment on the effectiveness of legislation in achieving the best interests of the child and improve processes that may assist this effectiveness.

The State Wide Advisory Group will also determine methods of effective monitoring and evaluation of the guiding principles.

The State Wide Advisory Group will produce an annual statement to report on its activities and outcomes.

Membership of the State Wide Advisory Group is detailed in the following section. GMAR will be represented on it, and will also assist Aboriginal communities as local groups are established. The individual members of GMAR may also be members of their local advisory groups.

Membership

Local advisory groups

Local Aboriginal communities will determine the make up of the local advisory group to suit their individual needs – as what works in one community may not be effective in another. The following suggestions on membership are made for local communities to consider in establishing their group.

It will be critical that membership of the local advisory groups recognise community knowledge and include Aboriginal community members and grass roots organisations focused on promoting child safety and wellbeing. Established Local Decision Making (LDM) regional alliances and Aboriginal Community Working Parties may play an important role as existing governance structures or identifying alternative entities or individuals to participate.

Government representatives could include staff from the relevant:

- FACS District, e.g. the Operations Director;
- FACS Community Services Centre (CSC), e.g. the Manager Client Services;
- FACS Aboriginal specialist / caseworker
- Local NSW Health District
- NSW Police Local Area Command (ACLO / YLO / DVLO)
- Local schools

The number of government representatives should not outweigh the number of community representatives on the local advisory group.

Given that the focus of the local advisory group is tapping into community knowledge and expertise to promote early intervention and prevention strategies, it is important that the membership of groups is not overly focussed on out-of-home care or other tertiary support service providers as these services can also be consulted in an expert capacity by invitation where appropriate.

State Wide Advisory Group

The State Wide Advisory Group members will comprise:

- GMAR representatives;
- AbSec CEO/Chairperson
- FACS senior representatives, including from Head Office, the Aboriginal Strategic Branch, and operational cluster Deputy Secretary;

- Northern Regional Coalition of Aboriginal Peak Organisations, as the LDM covering the New England area of the Hunter New England District, and other LDMs as relevant⁹; and
- additional parties may be consulted in an advisory and/or expert capacity by invitation.

Independent review could be provided by the NSW Ombudsman's Office, which will hold observer status at State Wide Advisory Group meetings on invitation.

Confidentiality

Due to the sensitivity of the matters discussed at meetings of local and state wide advisory groups, confidentiality is to be maintained at all times. A member can however share non-identifying information and consult with colleagues to seek expertise and advice that will assist and inform the work of the local or state wide advisory group.

Reporting arrangements

The local advisory group will provide reports to the relevant FACS District Director about its activities and will make relevant information available to the local Aboriginal community in accordance with community governance structures to inform its advice.

The State Wide Advisory Group will provide advice and information to the relevant FACS District Directors to inform the work of local advisory groups.

Administration

The local advisory groups will be chaired by representatives nominated by the relevant community, and will meet fortnightly or monthly.

The State Wide Advisory Group will not have a formal chair. It will meet quarterly from (a date to be confirmed).

Secretariat responsibility will be undertaken by FACS.

If members of either the local advisory groups or the state wide advisory group are unable to attend a meeting, the Secretariat is to be informed prior to the meeting and a delegated member identified.

⁹ LDMs are currently developing their Accords which may include child protection as a priority area. See <http://www.aboriginalaffairs.nsw.gov.au/local-decision-making/> for more details.

Review

The progress and scope of the local community and State Wide Advisory groups will be reviewed in an agreed period yet to be determined.

Version 7: August 2015

(Version presented at the launch in Tamworth 9 November 2015).