

UNDERSTANDING AND APPLYING THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE

A RESOURCE FOR LEGISLATION, POLICY,
AND PROGRAM DEVELOPMENT



SNAICC
National Voice for our Children

This resource was developed with direction and input from the Aboriginal and Torres Strait Islander Working Group formed under the Third Three-Year Action Plan 2015-2018 of the National Framework for Protecting Australia's Children 2009-2020, and the SNAICC Policy Sub-Committee, with members of both committees including: Kerry Arabena, Rachel Atkinson, Muriel Bamblett, Emma Beckett, Tim Ireland, Andrew Jackomos, Natalie Lewis, Gerry Moore, Wayne Muir, and Sharron Williams.

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ABOUT THIS RESOURCE

This resource provides a description of the definition of the five core elements of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP).

It is the first in a series of resources being produced by SNAICC – National Voice for our Children to support enhanced implementation of the ATSICPP in line with its intent to keep Aboriginal and Torres Strait Islander children safely connected to their families, communities and cultures. The resource is designed primarily for professionals engaged in legislation, policy and program design.

The development of this resource has been informed by the work of the Aboriginal and Torres Strait Islander Working Group for the National Framework for Protecting Australia's Children 2009-2020 (The National Framework). The National Framework is a long-term collaboration between Commonwealth, State and Territory Governments – endorsed by the Council of Australian Governments (COAG) in 2009 – and non-government organisations to promote and enhance the safety and wellbeing of Australia's children. It is premised on a goal to introduce a public health model to keep children safe and well, focusing on providing the universal and targeted supports that will prevent children entering out-of-home care.

The National Framework is now proceeding through implementation of its Third Three-Year Action Plan 2015-2018 (Third Action Plan). The Third Action Plan includes a commitment to reducing the number of Aboriginal and Torres Strait Islander children needing child protection services and sets out a strategy to focus on early intervention, supporting families, and embedding the ATSICPP throughout its work.

As a component of the Third Action Plan, States and Territories have committed to “continuing to fully implement the Aboriginal and Torres Strait Islander Child Placement Principle” and to the following specific action:

All parties agree to ensure the five domains of the ATSICPP (prevention, partnership, placement, participation and connection) are applied to the implementation of strategies and actions identified in the Third Action Plan.

Through the Third Action Plan all Australian Governments have recognised that this broad definition of the ATSICPP must be applied if the Plan is to achieve its goal that Aboriginal and Torres Strait Islander children are “supported and safe in their families and communities”. To assist with efforts to put this commitment into practice, the Aboriginal and Torres Strait Islander Working Group has developed this resource to provide guidance and support to policy makers on how to apply each of the ATSICPP's elements.

Future resources being developed in this series include:

- a baseline analysis of the progress of States and Territories to implement the Aboriginal and Torres Strait Islander Child Placement Principle; and
- a resource for child and family services practitioners on applying the five elements of the ATSICPP.



DEFINITION OF THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE

The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) recognises the importance of connections to family, community, culture and country in child and family welfare legislation, policy and practice, and asserts that self-determining communities are central to supporting and maintaining those connections.

It was founded on an intent of systemic change to counter embedded racism that caused the Stolen Generations by explicitly recognising the value of culture and the vital role of Aboriginal and Torres Strait Islander children, families and communities to participate in decisions about the safety and wellbeing of children.

The ATSICPP aims to:

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

The ATSICPP protects key human rights of children and Aboriginal and Torres Strait Islander peoples, particularly as recognised in the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Notably, it ensures the rights of children to be protected from harm including through preventative social programs (UNCRC, article 19), to the enjoyment of their cultures in community with their cultural groups (UNCRC, article 30; UNDRIP, articles 11-13) and the rights of Aboriginal and Torres Strait Islander children, families and communities to participate in decisions that impact upon them (UNCRC, article 12; UNDRIP, articles 3-5, 18-19).

Through the Third Action Plan for the National Framework for Protecting Australia's Children, there is an "agreement to adopt a broader definition of the Aboriginal and Torres Strait Islander Child Placement Principle" incorporating its five elements:



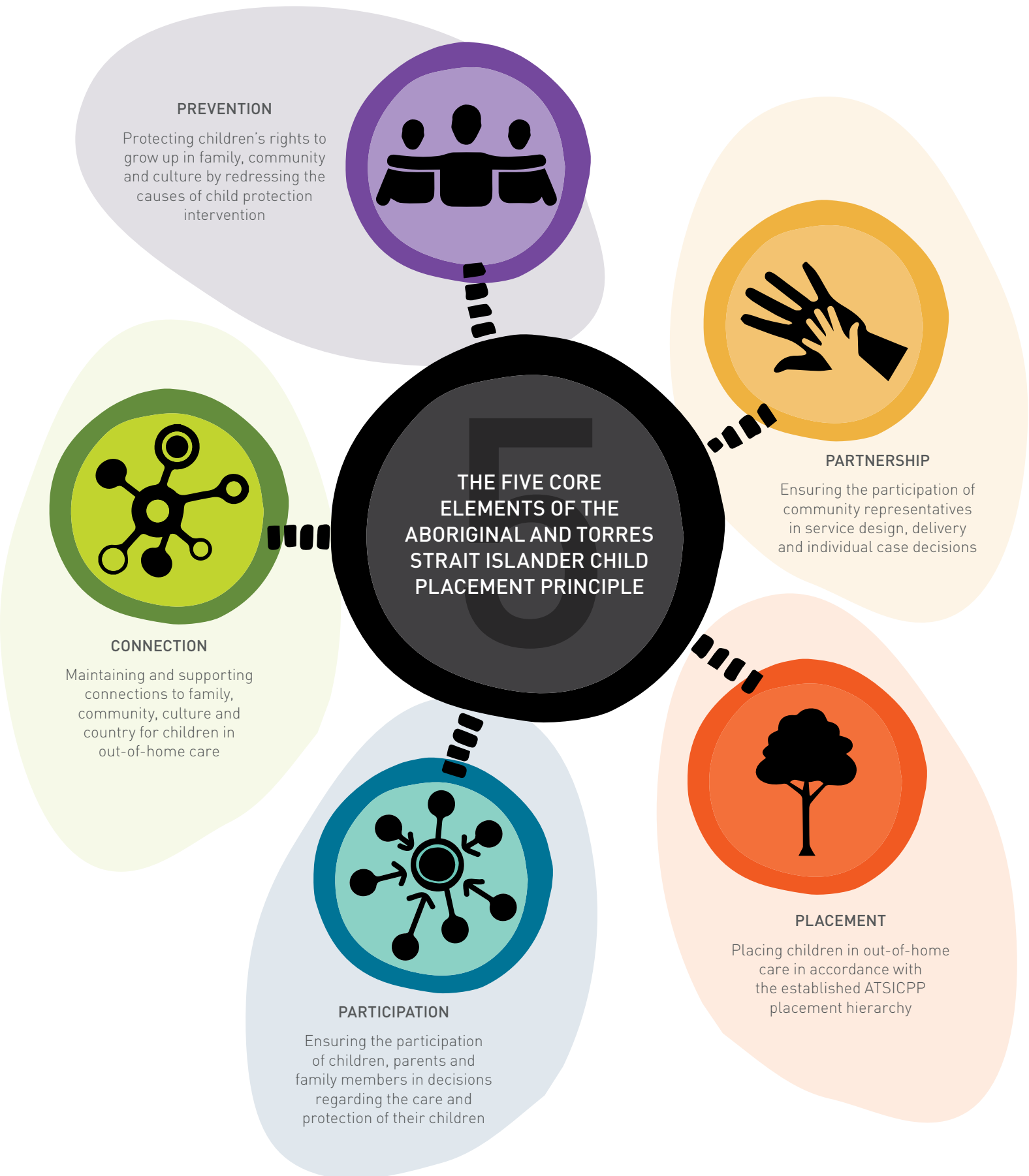





FIGURE 1 – The five core elements of the Aboriginal and Torres Strait Islander Child Placement Principle

UNDERSTANDING THE FIVE ELEMENTS OF THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE

The table below provides a detailed description of each of the five core elements of the **Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)**. It draws on the research evidence base describing the ATSICPP and its constituent elements, and on the guidance of Aboriginal and Torres Strait Islander leaders in the child and family services sector.

TABLE 1

PREVENTION	DESCRIPTION
<p>Each Aboriginal and Torres Strait Islander child has the right to be brought up within their own family and community</p> 	<p>Supporting families and building-up communities to care safely for their children will protect future generations from the devastating effects of removal from family, community, culture and country.</p> <p>To protect the rights of children to be brought up in their families, it is necessary to ensure families have equitable access to quality service supports including:</p> <ul style="list-style-type: none"> • a full range of culturally safe universal early childhood, education, health and other social services; • targeted and intensive supports to address issues in family functioning, promote healing, and address specific parental issues including trauma, substance misuse, mental health issues, family violence and poverty; • adequate and appropriate housing; • culturally safe family violence prevention, legal and support services; • alternative intake and referral pathways to early intervention prior to families engaging with child protection systems; and • an integrated and holistic service system that provides vulnerable families with the opportunity to readily engage with the full range of culturally safe service supports they require.
PARTNERSHIP	DESCRIPTION
<p>The participation of Aboriginal and Torres Strait Islander community representatives, external to the statutory agency, is required in all child protection decision-making, including in:</p> <ul style="list-style-type: none"> • individual case decisions at intake, assessment, intervention, placement and care, and judicial decision-making processes; and • the design and delivery of child and family services 	<p>Participation must extend beyond consultation to genuinely include Aboriginal and Torres Strait Islander community representatives in the decisions that are made about children at all stages of child and family welfare decision-making.</p> <p>Protecting the rights of representative participation requires:</p> <ul style="list-style-type: none"> • coverage and capacity of Aboriginal and Torres Strait Islander organisations to lead holistic, integrated prevention, early intervention and out-of-home care service delivery based on their knowledge of local needs; • resourced roles to inform the design of child and family welfare policy and service models at local, state and federal levels; • a resourced legislative role for participation in all child protection decisions; • empowering community-based organisations to facilitate family decision-making processes for all families where child safety concerns are identified; • supporting community-based representative child safety structures to promote safety and wellbeing, input to decision-making about the welfare of children and families, and drive local early intervention and prevention strategies; • building capacity of Aboriginal and Torres Strait Islander organisations and professionals in the sector to deliver the full range of services required; and • ensuring adequate, culturally safe legal representation opportunities.

PLACEMENT	DESCRIPTION
<p>Placement of an Aboriginal or Torres Strait Islander child in out-of-home care is prioritised in the following way:</p> <ol style="list-style-type: none"> 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 above preferred options are not available, as a last resort the child may be placed with: a non-Indigenous carer or in a residential setting. <p>If the child is not placed with their extended Aboriginal or Torres Strait Islander family, the placement must be within close geographic proximity to the child's family.</p>	<p>Placement in accordance with the hierarchy of placement options seeks to ensure that the highest level of connection possible is maintained for a child to their Aboriginal and/or Torres Strait Islander family, community, culture and country. Proper application of the placement hierarchy requires child protection decision makers to exhaust all possible options at one level of the hierarchy before considering a lower-order placement.</p> <p>No placement should be made unless consultation with the child's family and community representatives can be demonstrated to ensure all possible higher-order placement options have been considered. Community representatives should be able to provide independent advice to the courts on the most appropriate care options.</p> <p>It is essential that policies and procedures are in place to ensure proper implementation of the placement hierarchy, as well as staff capacity to effectively implement it. A thorough process of family mapping, searching for and finding family carers should be integrated into child protection practice to inform initial placements, placement changes and regular placement review. Procedures must also include thorough requirements to ensure children's Aboriginal and/or Torres Strait Islander status is identified at the earliest possible opportunity so that placements connected to culture are explored.</p> 
<p>Aboriginal and Torres Strait Islander children, parents and family members are entitled to participate in all child protection decisions affecting them, including intervention, placement and care, and judicial decisions</p> 	<p>Aboriginal and Torres Strait Islander children and families have the best knowledge about the caring strengths and risks that exist in their own families and communities. Involving family members in decision-making can assist to widen circles of support for parents and children, identify placement options with family and community and ensure families take responsibility for plans to address safety concerns that are of their own making.</p> <p>Ensuring the rights of Aboriginal and Torres Strait Islander children and families to participate in decisions affecting them requires:</p> <ul style="list-style-type: none"> high cultural competency of professionals to engage families in child protection decision-making processes; family participation in case planning; and quality family decision-making processes. <p>In particular, taking into account the expressed wishes of the child requires:</p> <ul style="list-style-type: none"> availability of child advocates ensuring adequate representation for Aboriginal and Torres Strait Islander children; and adequate procedures and professional capacity to support participation of children in child-protection decision-making.
<p>Aboriginal and Torres Strait Islander children in out-of-home care are supported to maintain connections to their family, community, culture and country, especially children placed with non-Indigenous carers</p> 	<p>To ensure that Aboriginal and Torres Strait Islander children in out-of-home care do not endure the same sense of loss of identity and dislocation from family and community as the Stolen Generations, it is critical to actively support them to maintain or to re-establish their connections to family, community, culture and country.</p> <p>Protecting children's rights to maintain cultural connections requires that:</p> <ul style="list-style-type: none"> cultural care plans are developed, resourced, and implemented for every child; carers make and are held accountable to their commitment to maintaining cultural connections for children; cultural care arrangements are regularly reviewed and updated to ensure an enduring commitment to maintaining connections is demonstrated; reunification is considered early, and plans and culturally safe supports put in place to support reunification where it is identified as possible; options for reunification and reconnection are regularly reviewed, supported and advanced wherever possible; and decisions relating to permanency of care do not cause harm by severing the potential for future cultural connections for Aboriginal and Torres Strait Islander children.

BEST PRACTICE FOR IMPLEMENTING THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILD PLACEMENT PRINCIPLE

The tables on the following pages describe the elements of a best-practice approach to implementing the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP). The tables draw on research evidence on best practice and the guidance of Aboriginal and Torres Strait Islander child and family service sector leaders across the country.

In interpreting and applying these tables, it is critical to be aware of and reflect on the intersectionality of the elements of the ATSICPP. For example, the partnership and participation elements relate to self-determination through the participation of children, families and community representatives – including Aboriginal and Torres Strait Islander community-controlled

organisations (ACCOs) – in processes and decision-making. However, further Aboriginal and Torres Strait Islander approaches driven by ACCOs are essential across all elements – the empowerment of families and communities is critical to effective prevention efforts, to quality placement decisions that are aligned with the ATSICPP, and to support long-term cultural connections for children in out-of-home care.

Similarly, the different system elements, against which best practice is considered in the table – legislation, policy, programs, process and practice – are strongly interconnected and holistic processes of reform are required to ensure their alignment with the ATSICPP.

Regular review and compliance reporting against all elements of the ATSICPP are inherent and overarching processes that inform practice review and best practice implementation of the ATSICPP.



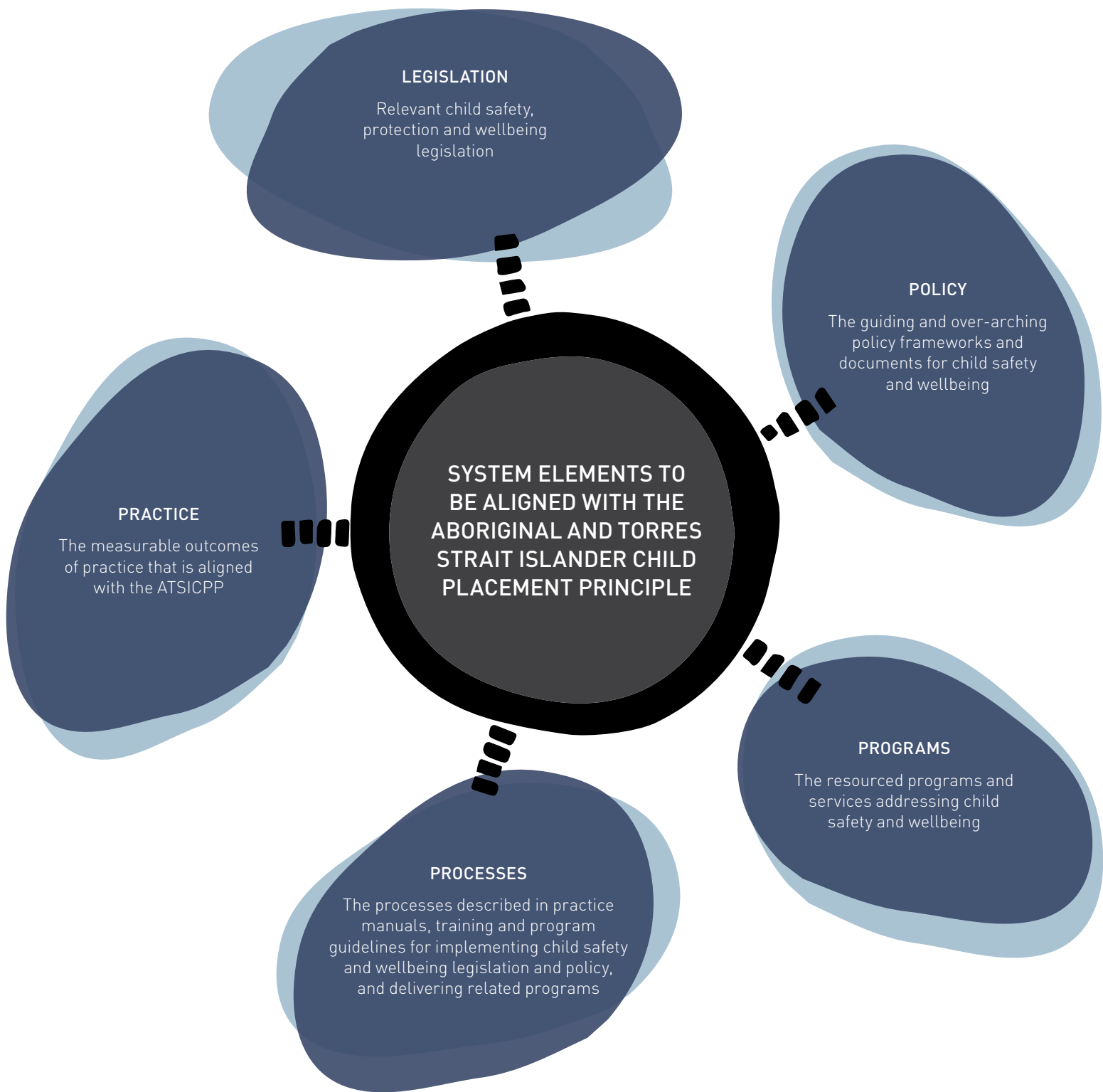
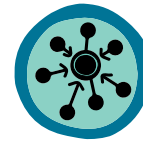


FIGURE 2 – System elements to be aligned with the Aboriginal and Torres Strait Islander Child Placement Principle

TABLE 2

LEGISLATION

BEST PRACTICE



PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<ul style="list-style-type: none"> • Recognises the primary role of parents and family in the care and wellbeing of a child • Recognises a child's right to enjoy culture with community • Recognises the State's role to support family and community to care for children • Requires referrals to family support services on notification to a child protection agency • Restricts removal of child to only if there is an 'unacceptable risk of harm' or as a 'last resort' or similar • Specifies minimum requirements for the provision of family preservation and reunification supports at early stages • Recognises Aboriginal and Torres Strait Islander community controlled organisations' (ACCOs) roles to provide family support services • Includes enablers for early intervention support services 	<ul style="list-style-type: none"> • Recognises and promotes self-determination as a principle of the entire Act • Requires participation of independent representative ACCOs in all significant decisions about children • Requires ACCOs to approve permanent care decisions, including whether a permanent care order (or similar) is pursued through court proceedings • Provides for delegation of case management, custody and guardianship functions and powers to ACCOs 	<ul style="list-style-type: none"> • Specifies placement hierarchy in line with best practice (see Table 1) • Requires 'all reasonable efforts' be made to adhere to placement hierarchy, or similar language such as 'wherever possible' • Requires – prior to placement – non-kin carers demonstrate commitment and capacity to support family, community, cultural and country connections • Requires – prior to placement – ACCO participation in placement decision-making 	<ul style="list-style-type: none"> • Requires that views of a child, parents and family members be considered by decision-makers • Requires Aboriginal and Torres Strait Islander Family-Led Decision-Making (ATSIFLDM), family group conferencing, mediation or similar family participation as early as possible and for all significant decisions • Requires the court to ensure proceedings are comprehensible to a child, parents and family members • Recognises right to legal representation for children and families in court proceedings • Limits judicial decision-making if children and/or parents are unrepresented 	<ul style="list-style-type: none"> • Recognises a child's right to enjoy culture with community • Recognises a child's right to contact with family • Allows contact with family to be court ordered • Prioritises family reunification without unreasonably restrictive time limits • Specifies minimum requirements for the provision of family reunification supports • Requires a cultural care plan for all children in out-of-home care (OOHC) that is implemented and regularly reviewed • Specifies safeguards in relation to permanency of care provisions that maintain connections to family, community, culture and country • Provides for delegation of case management, custody and guardianship functions and powers to ACCOs

POLICY

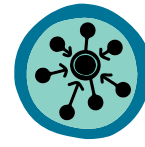
BEST PRACTICE



PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<ul style="list-style-type: none"> • Prioritises increasing investment in prevention and early intervention, including universal child and family services and intensive and targeted family support services • Pursues integrated family support services and service systems • Recognises that community-controlled approaches are more likely to be effective and promotes the role of ACCOs to provide early intervention services • Recognises and values Aboriginal and Torres Strait Islander worldviews of child-rearing and child development in practice and policy development 	<ul style="list-style-type: none"> • Recognises and promotes ACCO participation in all significant decision-making • Commits to genuine partnership in co-design of legislation and policy • Prioritises ACCO case management, OOHHC management and ACCO custody and guardianship • Promotes ACCO and Aboriginal and Torres Strait Islander peak bodies' participation in system and service design • Prioritises and strategizes to build ACCO capacity for participation and service delivery • Incorporates ACCO-led evaluation and continuous improvement to develop an evidence base drawn from cultural and community knowledge 	<ul style="list-style-type: none"> • Emphasises preference for high-priority placements and continuing review of lower-priority placements • Recognises and promotes participation of family and ACCOs in placement decision making • Promotes the role of ACCOs in kinship carer and other placement identification, assessment and support 	<ul style="list-style-type: none"> • Provides for culturally safe family group conferencing, mediation and/or other participation, supported and delivered by ACCOs – for example ATSIFLDM • Promotes the role of ACCOs in supporting families to participate in decision making, including in family group conferencing, ATSIFLDM or similar 	<ul style="list-style-type: none"> • Emphasises the importance of maintaining and developing connections to family, community, culture and country • Recognises and promotes the importance of family participation and ACCO-led processes for developing and reviewing cultural care plans • Commits to implementation of cultural care plans • Prioritises and supports safe and timely family reunification

PROGRAMS

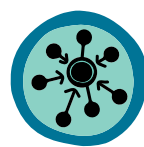
BEST PRACTICE



PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<ul style="list-style-type: none"> • Family support service referral networks that include ACCOs • ACCO-run family preservation and reunification programs • ACCO-run support services • Early availability of ACCO-operated ATSIFLDM or similar approach to enable family and community participation in decision making 	<ul style="list-style-type: none"> • ACCO participation in child protection decision making through consultation and decision-making programs • ACCO-operated ATSIFLDM or similar approach to enable family and community participation in decision making • ACCO case management, including OOHC management • ACCO custody and guardianship • ACCO peak body roles in system design, sector representation and sector development • While working toward ACCO-led and operated programs, ACCOs to assess, train, and review cultural competency of community service organisations 	<ul style="list-style-type: none"> • Kinship and family scoping programs • ACCO-led program for placement identification, assessment and support, prioritising kinship carers • ACCO-operated ATSIFLDM or similar approach to enable family and community participation in decision making • ACCO-run reconnection programs that seek to place children back with family and community 	<ul style="list-style-type: none"> • ACCO-operated ATSIFLDM or similar approach to enable family and community participation in decision making • Legal services that are available and accessible for children, parents and family members, particularly Aboriginal and Torres Strait Islander Legal Services 	<ul style="list-style-type: none"> • ACCO-operated ATSIFLDM or similar approach to enable family and community participation in decision making • Resourced implementation of contact arrangements and cultural care plans through ACCOs • ACCO case management, including OOHC case management • ACCO custody and guardianship • ACCO-run family reunification programs and support services • ACCO-run reconnection programs that seek to place children back with family and community

PROCESSES

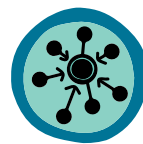
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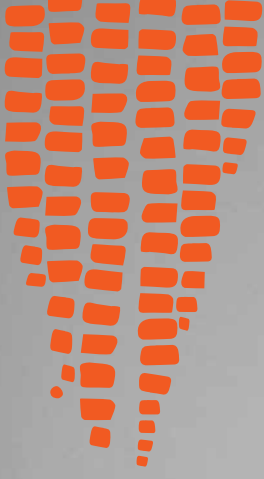
PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<ul style="list-style-type: none"> • Early identification of a child as Aboriginal and/or Torres Strait Islander – at notification and intake stage • Alternative referral pathways at notification and intake, including to ACCO-run support services • Culturally safe and appropriate risk assessment tools that involve family and community in assessing harm and participating in safety planning 	<ul style="list-style-type: none"> • Procedures to enable timely and informed ACCO participation in all significant decision making, starting at notification • Recording outcomes of ACCO participation, including reasons if advice or decision not followed • Requirement for ACCO participation in court proceedings, including invitation to attend court • Guidelines for delegation of custody and guardianship to ACCOs 	<ul style="list-style-type: none"> • Guidance on Aboriginal and Torres Strait Islander kinship relationships provided to child and family services practitioners • Procedures to enable timely, informed and culturally safe family and ACCO participation in placement decision making, including by ATSIFLDM or similar • Culturally appropriate carer assessment tools, processes and supports • Assessment of placement options conducted and exhausted in order of hierarchy – these assessments to be recorded • Regular review of lower-level placements with a goal to reconnect with a prioritised placement – these reviews to be recorded 	<ul style="list-style-type: none"> • Procedures to enable accessible (such as by the use of interpreters), timely, informed and culturally safe family participation, including by ATSIFLDM or similar • Guidance on consulting children and including their views in a culturally safe manner • Views of children, parents and family members to be recorded and decision-makers' consideration of these views to be noted and discussed in written decisions • Advice to children, parents and family members about rights to legal representation and accessing legal services, particularly Aboriginal and Torres Strait Islander legal services 	<ul style="list-style-type: none"> • Guidance on assessing and meeting the cultural care needs of children, developed through ACCO consultation • Procedures to enable development, review and updating of cultural care plans with families and ACCOs, including through ATSIFLDM or similar • Guidance, requirements and supports for carers to meet cultural care and contact needs of children • Delegation of custody and guardianship functions and powers to ACCOs enabled, with clear guidelines • Early and continued assessment of reunification opportunities and supports to be provided

PRACTICE

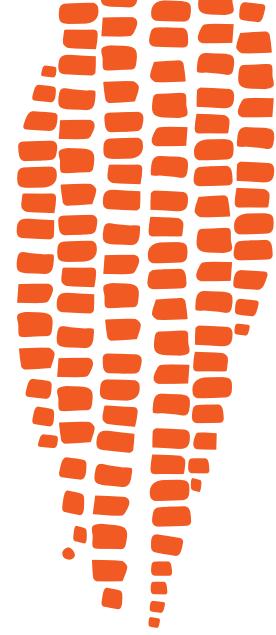
BEST PRACTICE



PREVENTION	PARTNERSHIP	PLACEMENT	PARTICIPATION	CONNECTION
<ul style="list-style-type: none"> Investment in early intervention and family support services increases relative to tertiary child protection services over time Participation of families in early intervention supports is at least equivalent to their use of tertiary services High participation of families in ACCO-run early intervention supports, including family preservation and reunification services, with particular attention to ACCO design, delivery and evaluation of these services Diversion of families who receive supports from child protection intervention Reduced placement of children in OOHC Reduced rate of re-entry to the child protection system 	<ul style="list-style-type: none"> Increasing coverage and capacity of ACCOs High rate and quality of ACCO participation, including in child protection decision-making, ACCO operated ATSIFLDM or similar and system/service design ACCO case management, including OOHC management for all children ACCO custody and guardianship for all in OOHC Aboriginal and Torres Strait Islander-led practice review of ATSICPP implementation 	<ul style="list-style-type: none"> Placement with high-priority placement options Placement with high-priority placement options maintained through kinship care supports Assessment of placement options conducted and exhausted in order of hierarchy Regular review of all lower-level placements and placing children in higher-level placements as soon as possible 	<ul style="list-style-type: none"> ATSIFLDM or similar is offered to all families at the earliest possible opportunity when concerns are identified Quality family decision-making processes (such as ATSIFLDM) producing plans that are owned and supported by family and community Family-based solutions to child protection issues reducing requirements for further child protection intervention All children and families have access to culturally appropriate legal representation 	<ul style="list-style-type: none"> Completion, quality, implementation (including support to carers), review and updating of cultural care plans for all children High rate of reconnection to family and community for children placed away High level of quality and safe contact with family High rate of safe and timely reunification No/low rate of permanent care orders (or similar) made in relation to children in placements disconnected from family, community, culture and country



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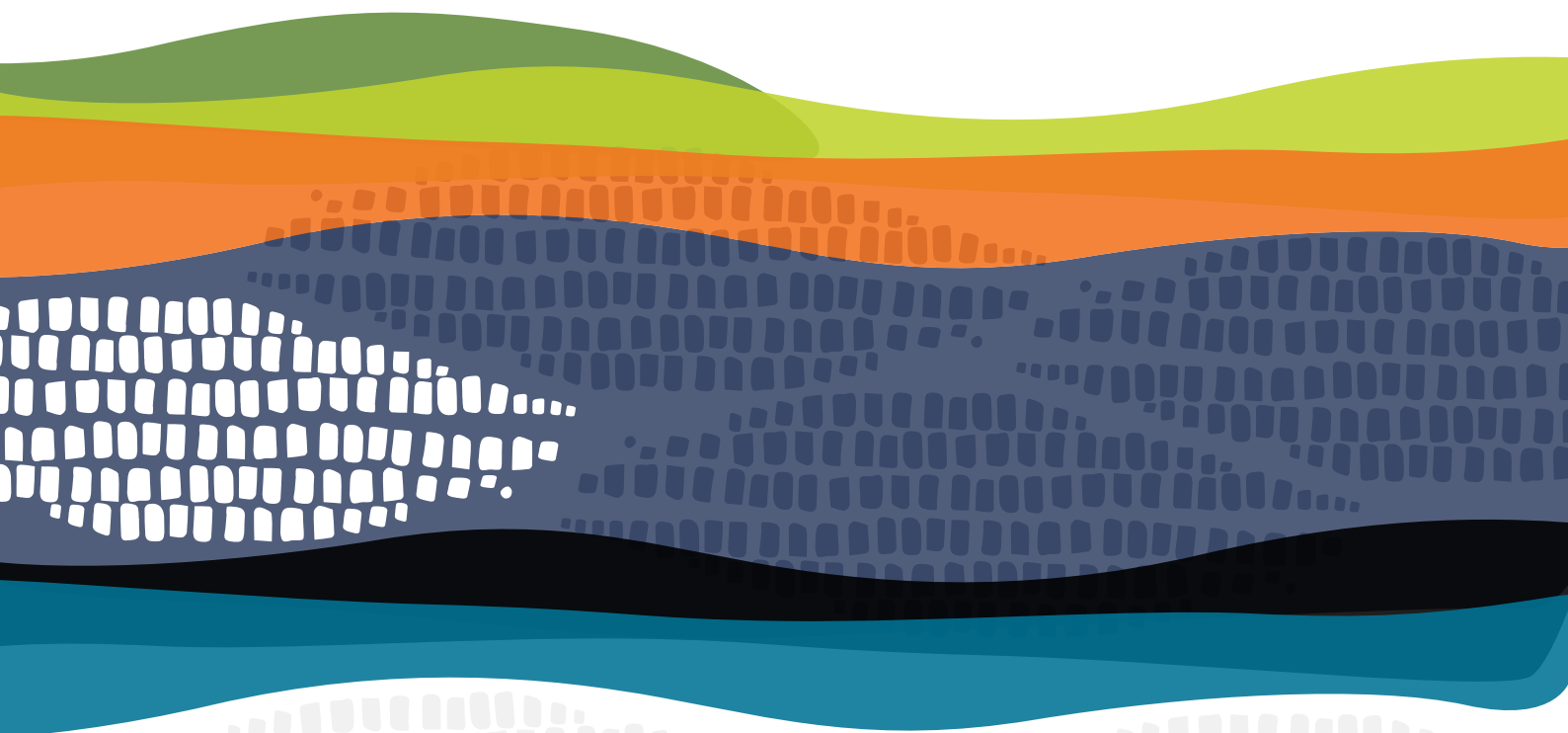
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