

Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd



Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

**Submission to the Queensland Child Protection
Commission of Inquiry**

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1. Introduction

We thank all concerned for the opportunity to provide comment and provide further input into the Queensland Child Protection Commission of Inquiry ('The Inquiry'). We acknowledge the particular importance of this Commission of the Inquiry given that 37.6 % of children and young people represented in Queensland's Child Protection System are Aboriginal and Torres Strait Islander Australians.

2. Preliminary Consideration: Our Background For Meaningful Comment

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (ATSILS) provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Our primary role is to provide criminal, civil and family law representation (inclusive of child protection representation). We are also funded by the Commonwealth to perform a State-wide role in key areas of Law and Social Justice Reform, Community Legal Education and monitoring Aboriginal and Torres Strait Islander Deaths in Custody. As an organisation which for four decades has practiced at the coalface of the justice system, we believe we are well placed to provide meaningful comment, not simply from a theoretical or academic perspective, but also from a platform based upon actual experiences. Consequently, we hope that our comments are of assistance in this very important area of much needed reform.

Further, whilst there are certain systemic deficiencies identified within the body of this submission, we do acknowledge that the Department of Communities, Child Safety Services employees and the Non – Government child protection sector perform a highly demanding role in often trying circumstances with strong commitment and integrity. Our submission is based upon our first-hand experiences with the aim of supporting enhanced and holistic quality outcomes for Aboriginal and Torres Strait Islander children (and indeed, for non-Indigenous children) and hence, promoting positive systemic change.

3. International Human Rights Context

It is course axiomatic that everyone should have certain fundamental human rights and be entitled to have them respected. These rights reflect the human dignity of all people. Governments, companies, organisations and individuals all have obligations to respect such rights. Governments, however, have specific obligations to not only ensure that they respect these rights, but that they also:

- Protect them from being violated by anyone else; and
- Ensure that people have the basic conditions and supports to fulfil their rights.

While children possess the full spectrum of human rights attributed to all human beings, there are also some additional specific human rights attributed to children in recognition of their special position and unique needs. The rights of the child are primarily contained in the

United Nations Convention on the Rights of the Child (CRC)¹ which Australia signed, and agreed to be bound by in 1990. Amongst others, the CRC protects the rights of children in relation to:

- freedom from discrimination;
- having an adequate standard of living including proper housing, nutritious food, clothing and the fulfilment of basic needs;
- physical and mental health;
- freedom from violence and abuse;
- the preservation of their identity and culture;
- growing up with family and community and to only being separated from such where it is necessary for their best interests;
- having their ethnic, cultural and linguistic background considered when being placed in out-of-home care;
- having a say in decisions that affect them;
- detention as a last resort; and
- being separated from adults whilst in detention.

Indigenous peoples, including children, are also recognised as having other specific rights that stem from their status as First Nations peoples. These rights are contained within the Declaration on the Rights of Indigenous Peoples (Declaration).² While the Declaration is not a legally binding instrument, it is widely accepted as the international minimum standard for the treatment of Indigenous peoples. Amongst others, the Declaration sets out the rights of Indigenous peoples, including children, in relation to:

- self-determination;
- freedom from forced assimilation or destruction of their culture;
- the practice and revitalisation of their cultural traditions and customs;
- belonging to their Indigenous community or nation;
- accessing education in their own culture and language, including in relation to those living outside of their community;
- participation in decision-making;
- being consulted in good faith and having their free, prior and informed consent obtained before any legislative or administrative measures that may affect them are adopted;
- improvement of their economic and social conditions, including in relation to education, employment, health, sanitation and social security; and
- being actively involved in developing health, housing and other economic and social programs affecting them and to administer such programs through their own institutions.

Given that all Australian governments are under a legal obligation to protect and promote the rights contained within the CRC, (as well as under a moral obligation pursuant to the

¹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

² *United Nations Declaration on the Rights of Indigenous Peoples*, adopted 13 September 2007.

Declaration), in our view it is critical that any review of the Queensland child protection system is undertaken within a framework that holds these rights at its core.

4. Aboriginal and Torres Strait Islander Over-Representation

There were 70,071 Aboriginal and Torres Strait Islander children living in Queensland in 2010.³ The current high rates of Aboriginal and Torres Strait Islander children substantiated for neglect by the Queensland Department of Child Safety ('the Department') demonstrates evidence of the challenging needs of Aboriginal and Torres Strait Islander children and their families. Departmental statistics ending March 31, 2012 demonstrated "neglect" was the highest alleged cause of substantiations (903 out of a total of 4833). This figure represents a 30% increase on substantiations for neglect of Aboriginal and Torres Strait Islander children from the previous 2010-2011 period.⁴

The Australian Bureau of Statistics (ABS) 2008 national survey of Aboriginal and Torres Strait Islander households documented that just over one-quarter (28%) of Aboriginal and Torres Strait Islander people aged 15 years and over lived in households where members had run out of money for basic living expenses in the 12 months prior to interview.⁵ Additionally, 26% of Aboriginal and Torres Strait Islander households live in dwellings with major structural problems.⁶ Adults living in this housing were 37% more likely to report high or very high levels of psychological distress.⁷

At the time of the 2011 Census, the proportion of Aboriginal and Torres Strait Islander households renting their home was almost twice that of other households (63.3% compared with 32.0%).⁸ Additionally, 82.4% of Aboriginal and Torres Strait Islander households in Queensland were family households.⁹ Overcrowded accommodation affects nearly one-third (30%) of Aboriginal and Torres Strait Islander adults. Those with a gross household income in the lowest income quintile were living in housing that needed at least one extra bedroom.¹⁰ Overcrowding rates vary with remoteness: with 49% of Aboriginal and Torres Strait Islander adults in 2008

³ Australian Bureau of Statistics 2010, total Indigenous children population in Queensland. 30 June 2010.

<http://www.oesr.qld.gov.au/products/bulletins/atsi-pop-qld-c11/atsi-pop-qld-c11.pdf>

⁴ Department of Communities, Child Safety and Disability Services Our Performance; Table S.6Q: Children subject to a substantiation, by most serious harm type and Indigenous status, Queensland 2012

<http://www.communities.qld.gov.au/childsafety/about-us/our-performance/investigation-and-assessment-phase/substantiations>

⁵ Australian Bureau of Statistics (ABS) 4714.0 - National Aboriginal and Torres Strait Islander Social Survey, 2008 FINANCIAL STRESS

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4714.0Main%20Features112008?opendocument&tabname=Summary&prodno=4714.0&issue=2008&num=&view=>

⁶ ABS - National Aboriginal and Torres Strait Islander Social Survey, 2008 Housing Circumstances;

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter875Oct+2010>

⁷ Ibid.

⁸ ABS- Census 2011: Office of Economic and Statistical Research

Queensland Treasury and Trade; Aboriginal and Torres Strait Islander Population in Queensland. p.3.

⁹ Census 2011: Aboriginal and Torres Strait Islander Population in Queensland

¹⁰ ABS 4704.0 - The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, Oct 2010

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/8E204960CD6596F8CA257839000FAC0C?opendocument>

affected by overcrowding in remote areas, 20% in regional areas and 13% of adults in major cities.¹¹

In Queensland, Aboriginal and Torres Strait Islander children aged under 15 years, comprised 38% of the total Aboriginal and Torres Strait Islander population (compared with 19% in the non-Aboriginal and Torres Strait Islander population).¹² Nationally, half (50%) of all Aboriginal and Torres Strait Islander households were comprised of single families with children, with one in five (22%) having two or three children aged 0–14 years in 2008. In remote areas, larger families were more common with 7% of households comprising single families with four or more children aged 0–14 years (5% in non-remote areas).¹³ The unemployment rate for Aboriginal and Torres Strait Islander people was over three times the rate for all Australians in 2008.¹⁴

Social and economic disadvantage is evidenced by Aboriginal and Torres Strait Islander families' lower socio economic status. This directly impacts upon an inability to access safe, affordable, long term housing and basic house hold needs and exacerbates families' risk factors - reducing parenting capacity. It is essential the future Aboriginal and Torres Strait Islander child protection service delivery model has complementary approaches which aim to address the intergenerational cycles of trauma, significant poverty, low socioeconomic status of such families and the presenting child protection concerns or needs.

Recommendation 1.

That the Inquiry recommends incorporating and considering the obligation on all Australian governments to protect and promote the rights contained within the United Nations Convention on the Rights of the Child and the Declaration on the Rights of Indigenous Peoples. It is of critical importance that any review of the Queensland child protection system is undertaken within a framework that holds these rights at its core.

Recommendation 2.

That the Inquiry recommends and ensures responses to a significant root cause of Aboriginal and Torres Strait Islander child neglect i.e. low socio – economic and poverty status is incorporated into universal, secondary and statutory child protection systems.

Families experiencing hardship from significant disadvantage should be supported through holistic wrap-around approaches. In addition to core child protection, families require quality access to wrap around support services across housing, health, education and the youth justice

¹¹ ABS 4704.0 - The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, HOUSING CIRCUMSTANCES: OVERCROWDING, Oct 2010

¹² ABS 4713.0 - Population Characteristics, Aboriginal and Torres Strait Islander Australians, 2006
<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/3121445F7A31D1BBCA2578DB00283CB3?opendocument>

¹³ ABS FAMILY AND HOUSEHOLD COMPOSITION,
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter250Oct+2010>

¹⁴ 4714.0 - National Aboriginal and Torres Strait Islander Social Survey, 2008, POPULATION CONTEXT <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/4714.0Main%20Features42008?opendocument&tabname=Summary&prodno=4714.0&issue=2008&num=&view=>

system through integrated service delivery models and a coordinated whole of government response.

Recommendation 3.

That the Inquiry recommends the establishment of a steering committee of key Aboriginal and Torres Strait Islander professionals or stakeholders to inform Aboriginal and Torres Strait Islander Child Protection Community Controlled Sector reform.

ATSILS recognises this would align with the United Nation’s Declaration on the Rights of Indigenous Peoples, particularly the obligation to be consulted in good faith and having their free, prior and informed consent obtained before any legislative or administrative measures that may affect them inadvertently or disproportionately are adopted.

ATSILS suggests the involvement of representatives from the Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd, Cape York Institute for Policy and Leadership, Urban Institute for Indigenous Health, Queensland Aboriginal and Torres Strait Islander Human Services Coalition, Aboriginal and Torres Strait Islander Legal Services (Qld) and Academics from the schools of Social Work, Psychology, Social Sciences, Law and Economics be considered essential to this future development process.

Child Safety NGO Programs Director and Child Protection Development Director’s significant expertise and knowledge within their fields would be of significant value in the development of future Aboriginal and Torres Strait Islander non-government service delivery models.

Recommendation 4.

That the Inquiry recommends the establishment of a Co-Deputy Aboriginal and Torres Strait Islander Children’s Commissioner within the existing framework of the Commission for Children, Young people and Child guardian to support in the oversight responsibilities for the benefit of Aboriginal and Torres Strait Islander children’s safety and wellbeing.

5. A Balanced Child Protection System

5.1 Cultural Competency

Aboriginal and Torres Strait Islander cultural competency must be an enhanced feature of both a Government and Non – Government child protection service delivery response. This will promote increasingly targeted efforts and beneficial outcomes that will reduce the over – representation of Aboriginal and Torres Strait Islander children within the statutory system.

Cultural competency encompasses a coherent set of behaviours, attitudes and policies to enable a system, agency or profession to work effectively in cross-cultural environments. In child protection agencies it relates to the skills and abilities to cater for the diverse values, beliefs and behaviours of Aboriginal and Torres Strait Islander children, young people and families and tailoring delivery to meet social, cultural and linguistic needs.¹⁵ Child Protection agencies must enhance and or further develop their cultural competency framework and service delivery models to effectively serve Aboriginal and Torres Strait Islander children and young people.¹⁶

Cultural Competency requires a whole of government response which embeds cultural competency at all levels inclusive of governance, strategic leadership, management, policies, and frontline practices. Nationally the Victorian child protection jurisdiction offers a conceptual framework which incorporate:

- Cultural Destructiveness – as exemplified by the policies that led to the Stolen Generations;
- Cultural Incapacity – which relates to the prevalence of racism and paternalism;
- Cultural Blindness – where there is no understanding of cross-cultural factors and misunderstandings or a belief that a mainstream service does not need to change to meet Aboriginal and Torres Strait Islander clients’ needs;
- Cultural Pre-Competence – where there may be well intentioned actions such as the employment of Aboriginal and Torres Strait Islander staff within the organisation yet there is still not full understanding of cultural differences and the necessary approaches;
- Cultural Competence – where there is an acceptance and respect for cultural diversity within the organisation and service delivery is reviewed and adjusted to meet the needs of different population groups; and

¹⁵ Betancourt, J., Green, A. & Carrillo, E. (2002), *Cultural competence in health care: Emerging frameworks and practical approaches*. The Commonwealth Fund

¹⁶ Secretariat of National Aboriginal and Islander Child Care (SNAICC) 2008, **Foster their culture**-caring for Aboriginal and Torres Strait Islander children in out-of-home care; a resource to assist non-Indigenous carers of Aboriginal and Torres Strait Islander children

- Cultural Proficiency – where cultural diversity is highly valued, active research takes place and self-determination is promoted and supported.^{17 18}

The English language has been consistently identified as a second or third language in Northern, Far Northern and Torres Strait Island regional and remote communities and a major barrier to the level of understanding in both spoken and written communication detailing child protection and legal requirements. ATSILS highlights the need for funded culturally competent interpreters to ensure effective engagement.

The “Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector” delivers important accessible and specialist culturally competent services within the Recognised Entity, Family Support, Family Intervention and Foster and Kinship care services. It is essential that a competent Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector is maintained and enhanced for the future benefit of Aboriginal and Torres Strait Islander children and young people.

Recommendation 5.

That the Inquiry recommend a review of the level of Aboriginal and Torres Strait Islander Cultural Competency within child protection service delivery and ensure it is a future feature of both Government and Non – Government child protection service delivery in order to promote increasingly targeted efforts and beneficial outcomes that will reduce the over – representation of Aboriginal and Torres Strait Islander children within the child protection system.

Recommendation 6.

That the Inquiry recommend and consider how the Queensland Government and non-Government services including Child Safety Services could utilise the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs National Indigenous Interpreters Framework through the Council of Australian Governments (COAG).

Recommendation 7.

That the Inquiry recommend the mandatory provision of community based and supported Interpreters for assurances of fair process to Aboriginal and Torres Strait Islander Queenslanders who utilise English as a second or third language (particular care and attention should be given to the Gulf, Cape and Torres Strait Islander geographical areas).

¹⁷ Victorian Government Department of Human Services (2008), Aboriginal Cultural Competence Framework. Melbourne.

¹⁸ Frankland, R., Bamblett, M., Lewis, P. & Trotter, R. (2010) *This is Forever Business: A framework for maintaining and restoring cultural safety in Aboriginal Victoria*, Melbourne: VACCA

Recommendation 8.

That the inquiry recommend children, young people and families have access to a well - resourced Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector delivering culturally competent universal, secondary and statutory services.

Given that current public investment in both Government and Non-Government systems has failed to reduce the alarming and unacceptable rates of over – representation, the government must adjust upwards the allocation of Child Safety funding (above the currently designated 6% for Aboriginal and Torres Strait Islander annual expenditure).

Aboriginal and Torres Strait Islander children consist of 6.5% of the Queensland child population which is approximately 70,071 children. However Aboriginal and Torres Strait Islander children are disproportionately over – represented at 37% of young people subject to out of home care.

ATSILS recommends that as a minimum, there should be an increase of 30% above the current allocated budget to the Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector. This would reflect a more equitable investment across universal, secondary and statutory services contributing to the culmination of over – representation.

5.2 Structured Decision-Making Process

The Department of Child Safety Queensland adopted eight of the ten Structured Decision Making (SDM) tools¹⁹ during 2005-06 as a response to the Crime and Misconduct Commission’s recommendations to specifically provide more support to frontline child protection staff during the assessment phase of investigations.^{20 21} An overarching goal of the SDM tool suite is to complement professional decision making in each phase of an intervention to assist in identifying and responding to children most in need of protective services.

Conversely, an independent evaluation of Queensland Child Safety SDM tool application has queried its effectiveness, suggesting that mechanical over reliance on the tools has replaced professional judgement around child protection investigations, de-skilling the child protection workforce and contributing to a risk adverse culture which increasingly focuses

¹⁹ A suite of ten SDM tools were developed by the Children’s Research Centre based in Wisconsin, USA.
<http://www.nccdglobal.org/assessment/sdm-structured-decision-making-systems/child-welfare>

²⁰ Department of Communities, Child Safety and Disability Services
<http://www.communities.qld.gov.au/childsafety/about-us/our-performance/intake-phase/notifications>

²¹ Gillingham, P. & Humphreys, C., (2010). Child Protection Practitioners and Decision-Making Tools: Observations and Reflections from the Front Line. British Journal of Social Work (2010) 40, p.2599.

on family deficits and harm indicators, bypassing a more balanced approach which invests in family and cultural preservation.^{22 23}

Of gravest concern is the lack of cultural transferability of the current standardised SDM tools, specifically the Child Strengths and Needs and Family Strengths and Needs SDM tools in recognising the unique spiritual, emotional, mental, physical and cultural holistic needs of Aboriginal and Torres Strait Islander children and their families.²⁴ Whilst there is widespread acknowledgement that cultural competency is central in child abuse and neglect practices, a comprehensive understanding of how Aboriginal and Torres Strait Islander culture is understood and conceptualised within the SDM child protection context has not been clearly articulated.²⁵ This flags the risk of attributed deficits or strengths to Indigenous children and their care givers due to unchecked ethnocentrism or cultural relativism.²⁶ Aboriginal and Torres Strait Islander children's rights to safety and wellbeing are key to this understanding.

Equally concerning is the inability of SDM tools to assess the impact of structural factors affecting Aboriginal and Torres Strait Islander families. Isolated use of the tools without professional critical reflection might generate inaccurate assessment data leading to culturally flawed decision making processes. Actuarial risk indicators relating to socio economic disadvantage significantly impact on Aboriginal and Torres Strait Islander family parenting ability. There is heightened risk of Indigenous child removal to out-of-home-care placement due to poverty, with 48% of all substantiations due to neglect (31 March 2012).²⁷
²⁸

Appropriate Departmental responses to Aboriginal and Torres Strait Islander families and children undergoing assessment must encompass a holistic, self-critical, strength based approach reaching beyond the SDM Family Strengths and Needs Assessment (FSNA) to acknowledge structural risk factors (poor housing, low income, limited educational

²² Gillingham, P. & Humphreys, C., (2010). Child Protection Practitioners and Decision-Making Tools: Observations and Reflections from the Front Line. *British Journal of Social Work* (2010) 40, p.2599.

The main finding of this research that explored how child protection practitioners in Queensland used the SDM tools in the intake and investigation stages was that their implementation had not achieved its aims. The tools were not used to assist decision making, promote consistency or target the children most in need of a service. p.2613

²³ Peakcare (2011) Munro Campaign; quoting Gillingham, P. & Humphreys, C., (2010) Research in Queensland has found that, rather than assisting the process of decision-making, the tools are often completed in retrospect to match the outcome that had already been determined.p.7.

²⁴ Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (2012, p,12). Submission on the Development, Implementation and Review of Queensland Aboriginal & Torres Strait Islander Cultural Support Plans within the Child Protection System.

²⁵ Korbin, J.K.(2008). Child Neglect and Abuse across Cultures p.123 in *Contexts of child development : culture, policy and intervention*, Edited by Gary Robinson, Ute Eikelkamp, Jacqueline Goodnow, Ilan Katz, Charles Darwin University Press.

²⁶ Korbin, J.K.(2008). Child Neglect and Abuse across Cultures p.123 in *Contexts of child development : culture, policy and intervention*, Edited by Gary Robinson, Ute Eikelkamp, Jacqueline Goodnow, Ilan Katz, Charles Darwin University Press.

²⁷ National Council on Crime & Delinquency website 2012; <http://www.nccdglobal.org/assessment/sdm-structured-decision-making-systems/child-welfare>

²⁸ Department of Communities, Child Safety and Disability Services, Our Performance; Substantiations <http://www.communities.qld.gov.au/childsafety/about-us/our-performance/investigation-and-assessment-phase/substantiations>

achievement and reduced employment opportunities) informing an improved and far more balanced understanding of the family's strengths, areas of need and capacity to respond to care for their children.^{29 30}

This broader systemic view is fundamental to early engagement with targeted, capacity building programs through intensive family support mechanisms which align with keeping Aboriginal and Torres Strait Islander children safely within family and kinship care to ensure cultural retention and identity preservation.³¹

To illustrate this point 8,196 Aboriginal and Torres Strait Islander children were subject to departmental intake processes during 2007-08, with an exponential increase over 4 years of 64% or 13,433 Aboriginal and Torres Strait Islander children by 2011.³² This dramatic increase coincides with the utilisation of SDM tools from 2006, thus it is essential that SDM tools are utilised in conjunction with culturally competent professional judgement and decision making to target Aboriginal and Torres Strait Islander families and children in most need of responsive intensive secondary support services and halt the over representation of Aboriginal and Torres Strait Islander children entering the tertiary care system.

Recommendation 9.

That the Inquiry recommend the review the effectiveness of Structured Decision Making frameworks to consider adaption to more appropriate intervention balanced with a culturally-accepted, family-focused, child-centred, strength-based, therapeutic assessment and decision making approach.

Recommendation 10.

That the Inquiry recommend the establishment of a steering committee or task force (as outlined in recommendation 3), as a body to inform the American based Children's Research Centre and Child Safety's Child Protection Development in enhancing Structure Decision Making tools towards a more culturally-accepted, family-focused, child-centred, strength-based, therapeutic assessment and decision making approach.

Recommendation 11.

That the Inquiry recommend the broadening of licencing arrangements between

²⁹ The SDM® System in Child Protection, Assessment; <http://www.nccdglobal.org/assessment/sdm-structured-decision-making-systems/child-welfare>

³⁰ Peakcare Queensland Inc. CHILD PROTECTION PRACTICE, CASE MANAGEMENT AND DECISION MAKING, Child Protection Inquiry Issues Paper – 30th July 2012, Ensuring that that the child protection system is not mis-used by focussing its attention solely on families who are already marginalised by poverty, their socio-economic status and cultural background and delivering interventions that further alienate, rather than engage, these families. (p.6)

³¹ Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd,(2012, p,12). Submission on the Development, Implementation and Review of Queensland Aboriginal & Torres Strait Islander Cultural Support Plans within the Child Protection System.

³² Department of Communities, Child Safety and Disability Services, Our Performance; intake-phase Our Performance, intake; <http://www.communities.qld.gov.au/childsafety/about-us/our-performance/intake-phase>

Queensland Government Child Safety and the Children’s Research Centre to allow for future Non – government utilisation of enhanced structured decision making tools where statutory decisions may be delegated to Non – Government organisations.

5.3 Child Protection and Youth Justice Correlation

Within Queensland a significant issue and limitation for service delivery planning and implementation is the fact that to-date, Aboriginal and Torres Strait Islander dual youth justice and child protection order data breakdown is unavailable. ATSILS acknowledges current efforts by the Commission for Children, Young People and Child Guardian to make this information available in future reporting.

The relationship between the two is well documented in the “Bringing Them Home Report” (of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families). This report identified the significant correlation between removal and subsequent contact with the criminal justice system. The underlying causes associated with Aboriginal and Torres Strait Islander over-representation in both the child protection system and the criminal justice system are often the same. In Queensland for example, it has been found that 54 per cent of Aboriginal and Torres Strait Islander males, and 29 per cent of Aboriginal and Torres Strait Islander females, involved in the child protection system go on to criminally offend both as juveniles and adults.³³ Such evidence, in addition to the fact that the rates of over-representation in both systems continue to rise, makes it clear that neither system is effectively addressing the causes of contact.

A renewed focus on effective early intervention activities could however, serve to simultaneously address the underlying causes of, and hence reduce, Aboriginal and Torres Strait Islander over-representation within both systems. More collaborative case planning between Child Safety and Juvenile Justice workers for children who have entered both systems, would also have significant benefits in terms of meeting the holistic needs of these children.

Recommendation 12.

That the Inquiry recommend enhancing case management processes to ensure formal collaborative case planning between Youth Justice and Child Safety Services where children and young people are receiving services under dual orders.

This is of significant importance due to the evidence that 69% of Youth Justice clients are known to Child Safety and family function is frequently an identified risk factor for youth re – offending.

³³ Anna Stewart, *Transitions and Turning Points: Examining the Links Between Child Maltreatment and Juvenile Offending* (2005) Office of Crime Statistics and Research
<www.ocsar.sa.gov.au/docs/other_publications/papers/AS.pdf> at 24 May 2010.

Recommendation 13.

That the Inquiry recommend the consideration of “justice reinvestment principles” and approach early intervention and secondary diversion as a cost effective approach to minimise future expenditure in the juvenile and adult criminal justice systems.

Recommendation 14.

That the Inquiry recommend the use of Queensland Police Service’s ‘Queensland Early Intervention Pilot Project’ (QEIPP) for Boot Camp funding to ensure a culturally competent early intervention approach for Aboriginal and Torres Strait Islander children and young people receiving services under dual orders. A mandatory referral pathway could be established for children and young people known to child safety and youth justice systems.

ATSILS considers the early intervention pilot a proven provider of culturally competent “Boot Camp” style intervention which is of great benefit to at risk offending children and young people (although ATSILS recommends against the use of the expression “Boot Camp” as such carries with it a negative connotation – rather “Cultural Camp” or “Healing Camp” or some such).

5.4 International Jurisdictional Guidance

5.4.1 Canadian Models

The Canadian model of partial and full delegation to Aboriginal Community controlled services on and off reserves (communities) has occurred from the early 1970’s in Canada.^{34 35 36} The disproportionately high rates of First Nations’ children entering the Canadian child protection system for substantiations of harm, and consequently being placed outside of their communities in non-Indigenous out-of-home-care, necessitated the Canadian government’s devolution to localised community management.³⁷ During the 1980’s and 1990’s the federal Indian Affairs, known as Indian and Northern Affairs Canada (INAC), now the Aboriginal Affairs and Northern Development Canada (AANDC) began entering into partnership agreements with regional, remote and urban Aboriginal communities around delivery of child welfare services.^{38 39 40}

³⁴ The term Aboriginal refers to all First Peoples of Canada including the First Nations, Inuit and Metis Peoples.

³⁵ Blackstock, C. (2010), Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010.p.6
<http://www.assembly.gov.nt.ca/live/documents/content/10-10-21BlackstockReport.pdf>

³⁶ Rae, J. (2009), Program Delivery Devolution: A Stepping Stone or Quagmire for First Nations? Indigenous Law Journal, Vol.7; Issue 2.p.2

³⁷ Blackstock, C. (2010), Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010.p.6

³⁸ Trocmé, N., Knoke, D., & Blackstock, C. (2004), Pathways to the Overrepresentation of Aboriginal Children in Canada’s Child Welfare System, Social Service Review, Vol. 78, No. 4 (December 2004), p.579.

³⁹ Blackstock, C. Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010,p.6

There are currently over 120 First Nations child and family service agencies that deliver culturally appropriate prevention and protection services directly to First Nations' families and children in their regions.⁴¹ Variations exist within the delegated approach, with some agencies providing a full range of protection services which are often termed fully delegated or fully mandated agencies and others that provide a more limited range of services under the child welfare act such as guardianship, foster home recruitment/retention, and family support in conjunction with mainstream services.⁴²

Funding for these programs is provided by the First Nation Child and Family Services (FNCFS) within specific accountability frameworks.⁴³ ⁴⁴ Better outcomes have been demonstrated through block funding approaches, which have allowed First Nations Child and Family services to invest in early intervention programs, for example over a 10 year period to support and mentor healthier family and community environments. Significantly the block funding approach capped the growth of children in out-of-home-care despite substantial population growth.⁴⁵ ⁴⁶

In recognition of structural factors impacting on First Nations families' ability to care for their children, the FNCFS program orientation began shifting during 2007 to an Enhanced Prevention Focused Approach (EPFA).⁴⁷ There are four components to the program including: development; maintenance; operations; and prevention.⁴⁸ Similar to Aboriginal and Torres Strait Islander children primarily being substantiated for neglect in Queensland, overrepresentation of minority

⁴⁰ Rae, J., (2009). Program Delivery Devolution: A Stepping Stone or Quagmire for First Nations? *Indigenous Law Journal*, Vol.7; Issue 2.

⁴¹ Blackstock, C. Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010, p.6.

Currently there are 120 delegated (mandated) agencies across Canada. (Cindy Blackstock, personal communication, September 10, 2012).

⁴² Blackstock, C. Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010, p.6

⁴³ First Nation Child and Family Services Program
<http://www.aadnc-aandc.gc.ca/eng/1100100035204/1100100035205>

⁴⁴ Gough, P., Blackstock, C and Bala, N. (2005) Jurisdiction and funding models for Aboriginal child and family service agencies, *The Centre of Excellence for Child Welfare* no. 30E.

⁴⁵ Blackstock, C. Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010, p.7.

West Region Child and Family Services in Manitoba won the Drucker Award for social innovation for premising its programming on the Medicine Wheel. One particularly innovative program targeted high needs families where there had been, or would likely be, multigenerational child welfare involvement. This wrap-around program integrated an intensive program that provided families with cultural programs, employment, addictions treatment, child care, counseling and other supports all in one location as part of a holistic plan that fully considered spiritual, emotional, physical and cognitive wellness. The results were that many of these high needs families were able to get back on track and did not have future child welfare involvement.

⁴⁶ Lohar, S. (2012). Safe and supportive Indigenous families and communities for children, A synopsis and critique of Australian research. The Australian Institute of Family Studies, CFCA Paper No.7 2012, pp.1-2. Key Messages; Short funding periods and limited resources for programs have restricted the capacity of some services to provide appropriate support to Indigenous families.*

⁴⁷ First Nation Child and Family Services Program
<http://www.aadnc-aandc.gc.ca/eng/1100100035204/1100100035205>

⁴⁸ First Nation Child and Family Services Program
<http://www.aadnc-aandc.gc.ca/eng/1100100035204/1100100035205>

children in the Canadian child welfare system can be partially explained by higher rates of socioeconomic disadvantage and related problems.^{49 50 51}

There are multiple benefits of partial and full delegation of Child and Family Services to Aboriginal Community controlled services as evidenced in Alberta Canada for example, including the delivery of culturally competent and relevant EPFA focused programs which have been shown to result in increased engagement with vulnerable families, reduced case loads, and increased permanency planning in adherence to the Indigenous child placement principle.^{52 53}

The Aboriginal child welfare agency in Canada demonstrates an example of a Native Child and Family Service which serves urban First Nations, Métis and Inuit peoples from all over Canada and the USA who live in the Toronto area. The programs offered are innovative and effective ranging from a youth group to Aboriginal Head Start and child protection services, housing and addiction issues.⁵⁴

Importantly self-governance respectfully reaffirms the traditional responsibility of Aboriginal families and communities to care for their own children, allowing more culturally relevant practice which integrates a holistic acknowledgment of healing past trauma and its effects,⁵⁵ with evidence based approaches to family support and the protection of children.^{56 57} Canadian First

⁴⁹ Trocmé, N., Knoke, D., & Blackstock, C. (2004) Pathways to the Overrepresentation of Aboriginal Children in Canada's Child Welfare System, *Social Service Review*, Vol. 78, No. 4 (December 2004), p.595

⁵⁰ Tonmyr, L., Ouimet, C. & Ugnat, A-M., (2012) A Review of the findings from the Canadian Incidence Study of Reported Child Abuse and Neglect (CIS), *Canadian Journal of Public Health* March/April 2012; 103(2):p.111

Unstable or unsafe housing was associated with increased likelihood of substantiation or placement....highlighting association between child maltreatment and the socio-economic determinants of health and support the need for an intersectorial public health approach in tackling child maltreatment.

The presence of care giver's mental health issues, alcohol or drug abuse, lack of social supports, history of maltreatment and being a victim of domestic violence (are related problems).

⁵¹ First Nations Child and Family Caring Society of Canada, (2005) *Wen:de Coming to the Light of Day*, p. 21. Many First Nations child and family service agencies work with families who could avoid experiencing significant family crisis or child maltreatment if they had received primary or secondary prevention services. Providing an adequate and sustained amount of funding for the development of a holistic and culturally based continuum of primary, secondary and tertiary prevention services would go a long way to ensuring that child removal is a last resort for First Nations children.

⁵² The First Nation Child and Family Services program <http://www.aadnc-aandc.gc.ca/eng/1100100035204/1100100035205>

⁵³ Queensland Government, Department of Communities, Child Safety and Disability Services, Child Safety Services, Indigenous Child Placement Principle, <http://www.communities.qld.gov.au/childsafety/about-us/our-performance/ongoing-intervention-phase/indigenous-child-placement-principle>

⁵⁴ Blackstock, C. Advisory Report I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT; NWT STANDING COMMITTEE ON SOCIAL PROGRAMS 27/04/2010, p.8.

⁵⁵ Walls, M. & Whitbeck, L. The Intergenerational Effects of Relocation Policies on Indigenous Families, *Journal of Family Issues*, 33(9) 1272–1293.

⁵⁶ Lohar, S. (2012). Safe and supportive Indigenous families and communities for children, A synopsis and critique of Australian research. The Australian Institute of Family Studies, CFCA Paper No.7 2012.pp.1-2. Key Messages;

Longer time-frames than those currently provided are required for programs and services to: – build trusting relationships with Indigenous families and community partners; – identify client needs and to plan and implement appropriate responses; – devise and deliver effective engagement strategies; – foster Indigenous cultural understandings for service staff and for the broader community; and – develop evaluation strategies that identify longer-term outcomes for Indigenous families.

Nations child protection models provide an evidenced based insight or proven approach for the Queensland child protection Queensland Child Protection Commission of Inquiry.

5.4.2 New Zealand Models

New Zealand First Nations peoples have embedded their cultural identity within the design and delivery of holistic support services to Maori families and communities, ensuring cultural competency is integral to all aspects of service delivery in the child, family and community context. In Maori culture whānau has been interpreted to mean a multi-generational collective made up of many households that are supported and strengthened by a wider network of relatives.⁵⁸ Additionally, Whānau Ora is about group (whānau) wellbeing.^{59 60}

Between July 2009 and January 2010, the NZ Minister for the Community and Voluntary Sector established a Taskforce to investigate an evidence base around Whānau-centred Initiatives specifically relating to:

- strengthen whānau capabilities

Indigenous participation in the planning, delivery and measurement of programs is critical in fostering greater trust and connectivity and enhancing community awareness.

Engagement strategies work best when Indigenous families are consulted about their needs, and services respond using holistic approaches that are delivered in a culturally sensitive manner.

A collaborative approach to service delivery has resulted in a reduction of service duplication, more efficient use of resources and the promotion of shared goals. It is unclear whether these benefits will result in positive outcomes for Indigenous families in the longer-term.

When Indigenous clients exit from programs there is little known about the impact that services have had on their families beyond their engagement with the program. .

Short funding periods and limited resources for programs have restricted the capacity of some services to provide appropriate support to Indigenous families.

Indigenous perspectives about how child abuse prevention information is shared among the community can help to identify where, when and how child prevention interventions could be delivered.

Program evaluation data are rarely linked to population-wide data to establish the longer-term impact of programs on Indigenous families and communities. Improved data linkage may help to establish a solid evidence base to inform child protection strategies for Indigenous families and communities.

⁵⁷Tilbury, C. (2012), Intensive family-based support services for Aboriginal and Torres Strait Islander children and families; a background paper, Secretariat of National Aboriginal and Islander Child Care (SNAICC).

⁵⁸ New Zealand Government,(2010) Whānau Ora: Report of the Taskforce on Whānau-Centred Initiatives 2.1.6 p.13.

⁵⁹ New Zealand Government, (2010) Whānau Ora: Report of the Taskforce on Whānau-Centred Initiatives 2.1.6 p.29

⁶⁰ Ibid. 4.2.3. The Taskforce has been able to identify six key characteristics of a Whānau Ora philosophy. Whānau Ora is distinctive because it recognises a collective entity, endorses a group capacity for self-determination, has an intergenerational dynamic, is built on a Māori cultural foundation, asserts a positive role for whānau within society and can be applied across a wide range of social and economic sectors. The Taskforce agrees that together those characteristics give definition and distinctiveness to Whānau Ora p.30

- an integrated approach to whānau wellbeing
- collaborative relationships between state agencies in relation to whānau services
- relationships between government and community agencies that are broader than contractual
- improved cost-effectiveness and value for money.⁶¹

Through this inquiry, the New Zealand government has demonstrated its understanding of the importance of Maori culture as fundamental to whānau (child, family and community) wellness.

The provision of wrap around support within family and child service delivery is consistent with whānau ora holistic philosophy. The Task force observed best practice service provision was directed at providing whānau with a comprehensive approach addressing multiple needs of clients with minimal overlap, little inconvenience and no confusion.⁶² Examples of holistic Maori service providers endorsed for their cultural integrity by the Taskforce include:⁶³

- The Rata Te Awhina Trust in Hokitika which is the only Maori provider based on the West Coast of the South Island providing services in a range of sectors, including social services and health.⁶⁴
- Te Ruānanga o Kirikiriroa based in Hamilton has been a long-established urban provider of a wide range of services, with a strong reputation for effectively engaging whānau.⁶⁵
- Te Taiwhenua o Kahungunu in Hastings is a hapū⁶⁶ based provider with a wide range of services involved in developing innovative funding arrangements to support whānau-centred delivery models.⁶⁷

⁶¹ Whānau Ora: Report of the Taskforce on Whānau-Centred Initiatives, (2010,p.69) Appendices; Terms of Reference- Purpose.

⁶² New Zealand Government, (2010) Whānau Ora: Report of the Taskforce on Whānau-Centred Initiatives; 2.4.2 p.19

⁶³ Ibid.p.37.

⁶⁴ Ibid. Social services provided by Rata Te Awhina Trust include; Whanau Youth Plans. Domestic Violence, Truancy, Probation Service, Counselling, Parenting through Separation, Te Rito Collaborative Initiative, Counselling, Whanau Support, Community Education, Self-referred Perpetrator of Family Violence – Adult, Self-referred Perpetrator of Family Violence – Youth Group Programmes for victims of Domestic Violence Youth Initiative, Life-skill programmes.

<http://www.hop.org.nz/Affiliated-M-ori-Providers/Affiliate-Associate-Profiles/West-Coast/Rata-Awhina-Trust> 1.981

⁶⁵ Child and family related services include the Whai Marama Youth Connex offering Infant, Child and Youth Mental Health and Addictions Services in Southern Waikato DHB and Hauraki—this is for 0—19 year olds as well as adult residential mental health services encompassing Whanau / Family support and interaction .

<http://www.terunanga.org.nz/#!services/vstc2=pou-taiohi>

⁶⁶ Hapū refers to a sub-tribe of Maori Peoples <http://www.tkm.govt.nz/glossary/>

⁶⁷ Te Whare Karamu, a 24 hour supportive house for young parents, Family Start, an in-home parenting support, Teen Parent mentoring and support and Youth Transition Services as well as broader programs encompassing mental health, health and community services.<http://www.ttoh.iwi.nz/>

- Te Whānau o Waipareira Trust in Auckland is a leading urban provider delivering across multiple sectors using innovative delivery models within a whānau context.⁶⁸

In August 2010, Te Taiwhenua o Heretaunga was one of 25 provider collectives selected to receive support in the first roll out of the Whānau Ora Program. The program promotes a whānau centred approach to service development and delivery across government and non-government organisations through innovation in delivery, integrated services/contracts and collaboration.⁶⁹

A key finding from the Whānau Ora: Report of the Taskforce on Whānau-centred Initiatives, emphasised the success of seamless implementation as dependent on whole of government commitment to Maori wellbeing encompassing primary, secondary and tertiary service provision.⁷⁰

Recommendation 15.

That the Inquiry recommend and draw from leading international First Nations' child protection models from New Zealand and Canada to inform sector reform within Aboriginal and Torres Strait Islander community controlled child protection.

In particular reform which transfers responsibility and authority for the care, protection and wellbeing of children to the Aboriginal and Torres Strait Islander community, and is responsive to holistic and multi layered needs of communities, families, children and young people.

Recommendation 16.

That the Inquiry explore the Canadian Directive 20 -1 to inform future agreements between Queensland Government and the Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector.

In particular that the inquiry recommend future Queensland legislative, policy and service agreements which affords partial or full delegated responsibility to Non - Government Aboriginal and Torres Strait Islander child protection services within agreed state wide quality assurance framework and standards.

⁶⁸ Te Whānau o Waipareira Trust offers a comprehensive range of whānau based family and child centred supports.

<http://www.waipareira.com/>

⁶⁹ Alayna Watene, Kaiwhakahaere Matua, Chief Executive.

<http://www.ttoh.iwi.nz/media/203718/annual%20report%202010%20-%202011.pdf>

⁷⁰ New Zealand Government, (2010) Whānau Ora: Report of the Taskforce on Whānau-Centred Initiatives

5.4.3 The New Zealand Family Led Decision-Making Process

New Zealand is world-renowned for its innovative approach to involving immediate and extended family members as central in the Family Group Conferencing (FGC) legal process, to ensure best outcomes for children involved in the statutory child protection process.⁷¹

The FGC was conceived in 1989 as a response to address the over representation of Maori children entering child protection out-of-home-care and has been adopted in New Zealand child welfare legislation for Indigenous and non-Indigenous children.⁷² The success of the approach is in the incorporation of Maori values recognising the importance of family and placing the family as central decision maker in the process.⁷³

The intention of this process is to transfer the power and authority of decision-making for children into the hands of the people who have a life-long connection with them and who have to live with the outcome of the decisions made.⁷⁴

Through the FGC process, engagement and agreement with family can often be reached prior to Family Court process enabling the child to remain within the extended family network if unable to reside at home, ensuring familial and cultural connection is maintained. If the matter does go to court, planning can occur prior to the hearing within a FGM enabling agreement between the Department and family about the orders, again giving the family responsibility for negotiating the child's best interests and recognising Maori children's unique cultural needs.⁷⁵

Recommendation 17.

That the Inquiry recommend a review of the effectiveness of the existing Family Group Meeting or Case Plan Review and the Court Order Conference model and process.

In particular, that the inquiry compare the current Queensland model with consideration to adopt/transition to the original New Zealand Family Group Conferencing model which is widely accepted as being independent, solution focused, family and community responsive and child centred in approach.

⁷¹ Connolly, M. (2007). Practice Frameworks: Conceptual Maps to Guide Interventions in Child Welfare. *British Journal of Social Work*, 37, 825-837.

⁷² Ban, P. (2005) Aboriginal child placement principle and family group conferences. *Australian Social Work*, December 2005, Vol. 58, No. 4, p.384.

⁷³ Principal Family Court Judge P D Mahony, Paper presented to the Melbourne IAYFJM Congress, Date October 2002, New Zealand Initiatives in Decision Making Around Child Protection Issues, Family Court of New Zealand website; <http://www.justice.govt.nz/courts/family-court/publications/speeches-and-papers/archived-speeches/new-zealand-initiatives-in-decision-making-around-child-protection-issues>

Maori family structures do not follow the nuclear family model. Grandparents play an important part in instilling family and cultural values in their mokopuna (grandchildren). Aunts and Uncles are also involved, and through whangai (a Maori practice whereby children are brought up within family but not by the natural parents) children are sometimes brought up within the families by 'adoptive' aunts and uncles. The extended Maori family is called whanau and a group of whanau makes up the hapu, who collectively form a tribe or iwi. Within Maoridom the child is regarded as the taonga or treasure of the whole family group, primarily of whanau, but extending out to hapu and iwi.

⁷⁴ Ibid, p.390

⁷⁵ Principal Family Court Judge P D Mahony, Paper presented to the Melbourne IAYFJM Congress, Date October 2002, New Zealand Initiatives in Decision Making Around Child Protection Issues, Family Court of New Zealand

Recommendation 18.

That the inquiry recommend Non - Government Independent Aboriginal and Torres Strait Islander Family Group Meeting Conveners are a significant component in the future Queensland child protection system.

6. Aboriginal and Torres Strait Islander Community Controlled Sector Reform

The Queensland Child Protection Commission of Inquiry presents a unique opportunity to progress the Aboriginal and Torres Strait Islander child protection sector into a modern era of community controlled service delivery. The enhancement of a balanced sector with sound economic business models, leading international and national learning and Aboriginal and Torres Strait Islander values, beliefs and principles reflective of families' requirements. This will assist in reducing overrepresentation.

ATSILS's recognises a need to amalgamate resources within the Aboriginal and Torres Strait Islander child protection sector to minimise expenditure and maximise proficiency across strategic direction, governance, leadership and frontline service delivery. Amalgamation or streamlining of the sector would allow for proficient and high quality service delivery standards whilst catering for an evidenced based holistic wraparound approach. ATSILS' view is that proactive sector reform is required to support transition to a renewed service delivery standard which is responsive to the intergenerational traumas, low socio-economic status, immediate and lasting child protection requirements across both universal, early intervention and statutory phases.

The Queensland community controlled Aboriginal and Torres Strait Islander legal services sector have faced challenges in our progression into a modern era of community controlled service delivery. This sector has demonstrated and proven Aboriginal and Torres Strait Islander community controlled service delivery can respond innovatively and proficiently to both client and government (as a purchaser of services) requirements. ATSILS was originally formed in 1972 – largely due to the passion and commitment for justice of various community members. Success in its early stages resulted in the organisation becoming incorporated as a company on 18th September 1974 (Aboriginal & Torres Strait Islanders Corporation (QEA) for Legal Services). The Service was, and remains, a non-profit (public benevolent), community-based organisation. As other ATSILS were formed around the State, the service delivery area of "QEA" became confined to the South Eastern corner of Queensland and operated out of Brisbane. In the late 1990's regional offices were opened at Beenleigh and Maroochydore.

Over time the organisation's role and responsibilities changed. During 1996 and 1997 a review of the Service was undertaken by the commonwealth Attorney- General's – giving birth to the "Stretton Report". This Report suggested various changes to the monitoring of administration and financial responsibilities of the organisation, and the provision of services to clients. These recommendations were implemented and significant changes occurred which enhanced services to clients.

Responding further to the need of ensuring a professional and accountable service, a new organisation (Aboriginal and Torres Strait Islander Legal Service (QLD South) Ltd) was incorporated under the Australian Securities and Investments Commission in 2005 – coinciding with a tendering process by the Commonwealth Attorney - General's Department, which saw the new organisation take on the service needs of the entirety of Southern Queensland – in the process expanding to 17 offices. 2005 also saw the introduction of family and civil law services – addressing a huge area of unmet legal need. A similar process in 2008 saw the Organisation (now re-named the Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd) take on the service delivery for all of mainland Queensland. From the 1st October 2011 the Organisation became State-wide, as it assumed the service delivery role in the Torres Strait Islands and Northern Peninsular Area. ATSILS now consists of 27 offices and sees our staffing levels exceed 180.

Our growth and development would not have been possible without the support of our various communities – as well as the dedicated services of countless Board and staff members throughout the decades. We are also indebted to the earlier pioneering work of various sister organisations which we have since been able to build upon (such as Wakka Wakka at Murgon; Bidjara at Charleville; “QEC” at Rockhampton; “SEQ” at Toowoomba; Tharpuntoo and Njiku Jowan at Cairns; West QLD at Mount Isa; and the District services at Ipswich, Mackay and Townsville). 2012 will also see the 40th anniversary of the founding organisation.

The Queensland Aboriginal and Torres Strait Islander child protection system is well positioned to emerge as an international leader in First Nation's child protection. Aspects of the Aboriginal and Torres Strait Islander Child Protection Sector provide a framework to enhance, integrate and transfer more responsibility for children, young people and family interventions. The current state - wide service delivery model provides assistance across Peak body functions, early intervention, alternative care and statutory systems.

Presently the Aboriginal and Torres Strait Islander community controlled child protection sector consists of:

- Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd
- 11 Recognised Entity Services
- 11 Family Support Services
- 10 Foster and Kinship Care Services

In addition proactive approaches have been taken by agencies and Child Safety to see mainstream funding being applied in Aboriginal and Torres Strait Islander organisations to deliver:

- Family Intervention Services
- Safe houses
- Safe Havens

The Child Safety funded services are auspiced across approximately 20 agencies located across Queensland urban, rural and remote regional areas. This Commission of Inquiry should explore fundamental reform to innovatively transition and position the Aboriginal and Torres Strait

Islander Child Protection Sector to adopt an enhanced service delivery standard. A renewed standard should consider and be inclusive of evidenced based First Nation's child protection models, core universal, secondary and statutory therapeutic interventions and where Aboriginal and Torres Strait Islander professionals in collaboration with expert stakeholders have authority and responsibility for creating positive child protection outcomes for children.

The Inquiry and any recommended reform offers a unique opportunity to capitalise on current proficient governance, management, leadership and frontline service delivery transitioning this important expertise into an enhanced organisational or service standard. A service reflective of localised community and client need from both a child protection and cultural perspective should be achieved through regional and local partnerships. Additionally it will better resource children and young people with wraparound services that are responsive to the multifaceted intervention needs across socioeconomic needs, entrenched intergenerational trauma whilst creating community and family responsibility for immediate child protection concerns.

ATSILS proposes that a future Aboriginal and Torres Strait Islander child protection structure streamline the number of auspice agencies or services into Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agencies or Agency to achieve effective utilisation of resources and better outcomes for families. ATSILS "recommends the consolidation of services into one State wide Aboriginal and Torres Strait Islander child protection/wellbeing agency with a peak secretariat and frontline service delivery functions. Ideally the Queensland Aboriginal and Torres Strait Islander Child Protection Peak is best positioned to lead innovate restructuring to best place the sector and most likely transition to the lead service delivery agency.

Recommendation 19.

That the Inquiry recommend the establishment of a modern and proficient Aboriginal and Torres Strait Islander community controlled business and service delivery models which deliver effective governance, management, leadership and frontline services for the benefit of children and young people.

In particular that the inquiry recommend significant sector re - design to correctly position Queensland Aboriginal and Torres Strait Islander Child Protection sector to accept delegated statutory responsibility as an enduring public investment aimed at the culmination of the unacceptable rates of over – representation.

Recommendation 20.

That the Inquiry recommend a standalone state-wide Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency to deliver universal, early intervention and statutory support services. The agency should be reflective of children, young people and the local community needs throughout the seven identified child safety regional areas and remote locations.

In addition the inquiry to recommend community controlled and community input is proficiently achieved through regional and local informal and professional relationships within

6.1 Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency Model

6.1.1 Governance

...directors and key executives should be equipped with the knowledge and information they need to discharge their responsibilities effectively...

ATSILS suggests capacity building occur to ensure the effective corporate governance of the future child protection agencies or agency (e.g. strategic direction v operational delivery).

By ensuring that the effort of an organisation is well directed, a well-governed organisation will be more efficient and more likely to produce better outcomes.

Governance should be continual, not an instrument that is exercised from time to time depending on circumstances. An effective governance framework should guide the actions of individuals by providing care of direction as to appropriate behaviour and decision-making. When working well, a governance framework produces better outcomes simply because it exists.

ATSILS identifies a number of elements that are central to the governance of an organisation. In particular:

Understanding Success

Directors in control of an organisation need to be clear about what they want to achieve and communicate that effectively to management. This involves the establishment of a clear sense of purpose and the development of clear expectations of performance.

Organising for Success

Once the Directors have developed an understanding of what needs to be achieved, they should be organised appropriately.

Implementing the Right Organisational Structures

Structuring an organisation in a way that is most likely to assist it to achieve its objectives is a commonly accepted proposition. A key question to consider in getting the structure right is whether it is designed so as to support (rather than impede) the operation of governance.

Power must be in Existence, Delegated, Limited and Exercised

In order for an entity to achieve its purpose, power must be given to executives to develop strategy and direction for higher level approval. Power will need to be further delegated as it is not feasible for a small number of individuals to make all decisions. Delegated power needs to be limited to manage risk associated with decision-making and to limit the opportunity for

non-alignment with the interests of the contractual obligations. Finally, parties in receipt of power must exercise it and do so in a responsible manner.

Clarity of Roles

In organising for success all parties within the governance framework must have a clear understanding of their roles and responsibilities, including their personal accountability.

Making Sure Success is Achieved

Governance is about ensuring individuals responsible for performance understand what outcomes they are required to achieve and are provided with the capacity to achieve them.

With Responsibility There Needs to be Accountability

A robust governance framework should, through transparency and accountability mechanisms, link power and responsibility to performance and review indicators

The Principles

Directors need to clearly establish an understanding of success for contractual arrangements, including their expectations of performance.

Directors need to set its purpose clearly and state their expectations of performance. To be successful, power must be: in existence; delegated; limited and exercised.

Power frameworks will influence the efficiency and effectiveness of decision-making and the capacity of the Directors to produce quality outcomes.

There should be clarity of roles within the governance arrangements of the organisation to ensure that efforts are directed towards success and that responsibilities are performed in an efficient manner.

Directors and management of the organisation should have a clear understanding of their roles and responsibilities.

With responsibility there needs to be accountability.

Directors and management have a clear understanding of required outcomes and be held accountable for their performance.

The uniqueness of proficient organisation governance is based on a strong platform of knowledge. ATSILS suggests that future service providers complete the Australian Institute of Company Directors Course. The course covers the key areas for directors and leaders of organisations, including:

- The role of directors and the board
- Board meetings and governance

- Monitoring risk
- Strategic thinking
- Improving board effectiveness
- Reporting and the board
- Leadership, the director's role
- The executive board; and
- Committees

6.1.2 Proposed Organisational Structure

ATSILS suggests the Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency delivers its services in accordance with the western business practices and principles of accountability, effectiveness and efficiency and is committed to providing culturally competent and community sensitive services to its diverse client population.

6.1.3 Proposed Management Model

ATSILS suggested Management Model illustrated in Diagram 1 below is designed to assist in the effective and efficient response to a diverse range of complex organisational, psychological, socio-economic, cultural and environmental influences and challenges which confront the child protection service delivery.

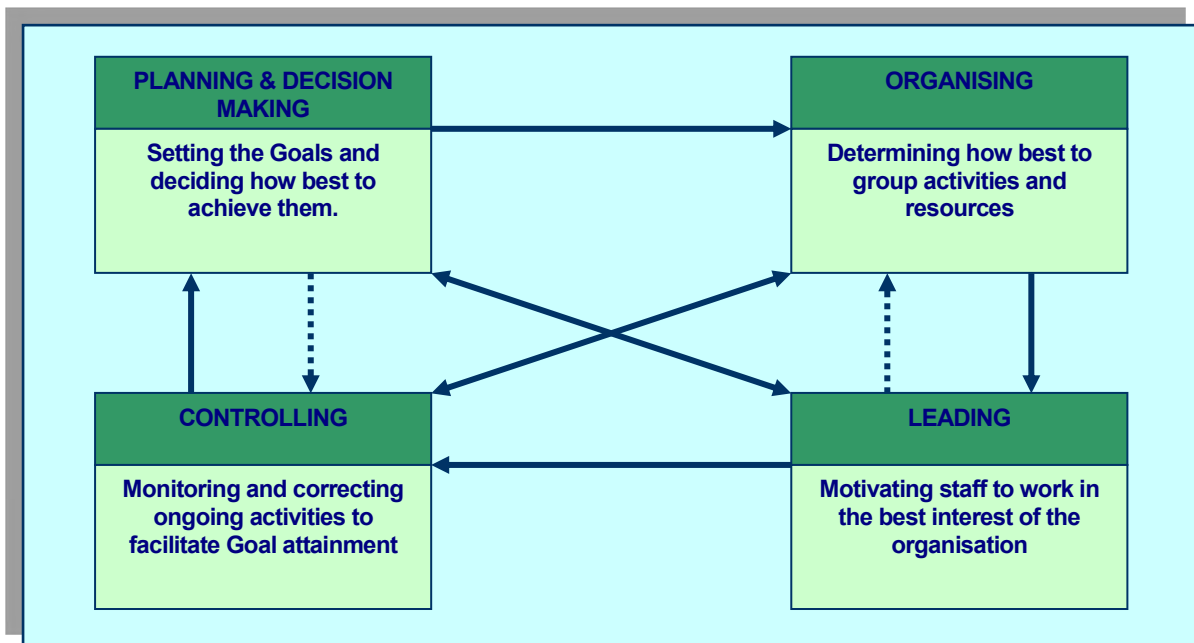
The model provides the organisations staff with a strategic focus and enables the organisation to effectively and efficiently respond to the needs of clients in a business-minded manner while simultaneously delivering culturally appropriate and community sensitive services to the diverse client population.

6.1.4 Proposed Management Process

Management process is focused on four key activities as outlined:

- Planning and Decision Making
- Organising
- Leading; and
- Controlling

Diagram 1: *Proposed Management Process*



The strategic, operational and business planning activities focus on the setting of goals and concentrating on how these goals can be best achieved. Effective decision making within the organisation supplements the planning process and ensures that appropriate, cost effective and efficient courses of action are adopted at all levels throughout the organisation. The effective organisation of human, financial and other resources throughout the organisation is an essential part of the management process. This enables the organisation to efficiently respond to organisational and client needs and continually produce high quality measurable outcomes.

Leadership in the organisation is underpinned by a set of processes, practices and procedures that encourage all staff to work together and in the interests of the organisation and in turn clients. Leadership occurs at every level within the organisation. However, leadership is specifically practiced by the Board of Directors, the Chief Executive Officer and Section Heads within the organisation.

These groups are required to:

- Develop organisational policies and procedures;
- Establish and maintain an effective and responsive strategic planning process to plan for organisational needs;
- Develop, oversee and implement sectional operational plans;
- Implement business-minded approaches to doing business;
- Maintain culturally appropriate and community sensitive approaches in the course of doing business;
- Monitor, control and manage organisational finances, budgets and assets;
- Develop staff training and career development programs;
- Oversee recruitment, selection and induction practices and processes;
- Conduct business in accordance with the organisation's Constitutional requirements;
- Contribute to a safe, healthy and positive work place; and

- Lead by example.

The Board of Directors, Chief Executive Officer and Section Heads must monitor and control processes to ensure that progress continues toward the attainment of the Vision, Mission, Values and strategic goals of the organisation. Effective control mechanisms assist the organisation to adapt to environmental changes, limit the possibility for error, cope with organisational complexity and minimise costs associated with the total operations and service delivery requirements of the organisation.

Diagram 2: *Proposed Management Model*

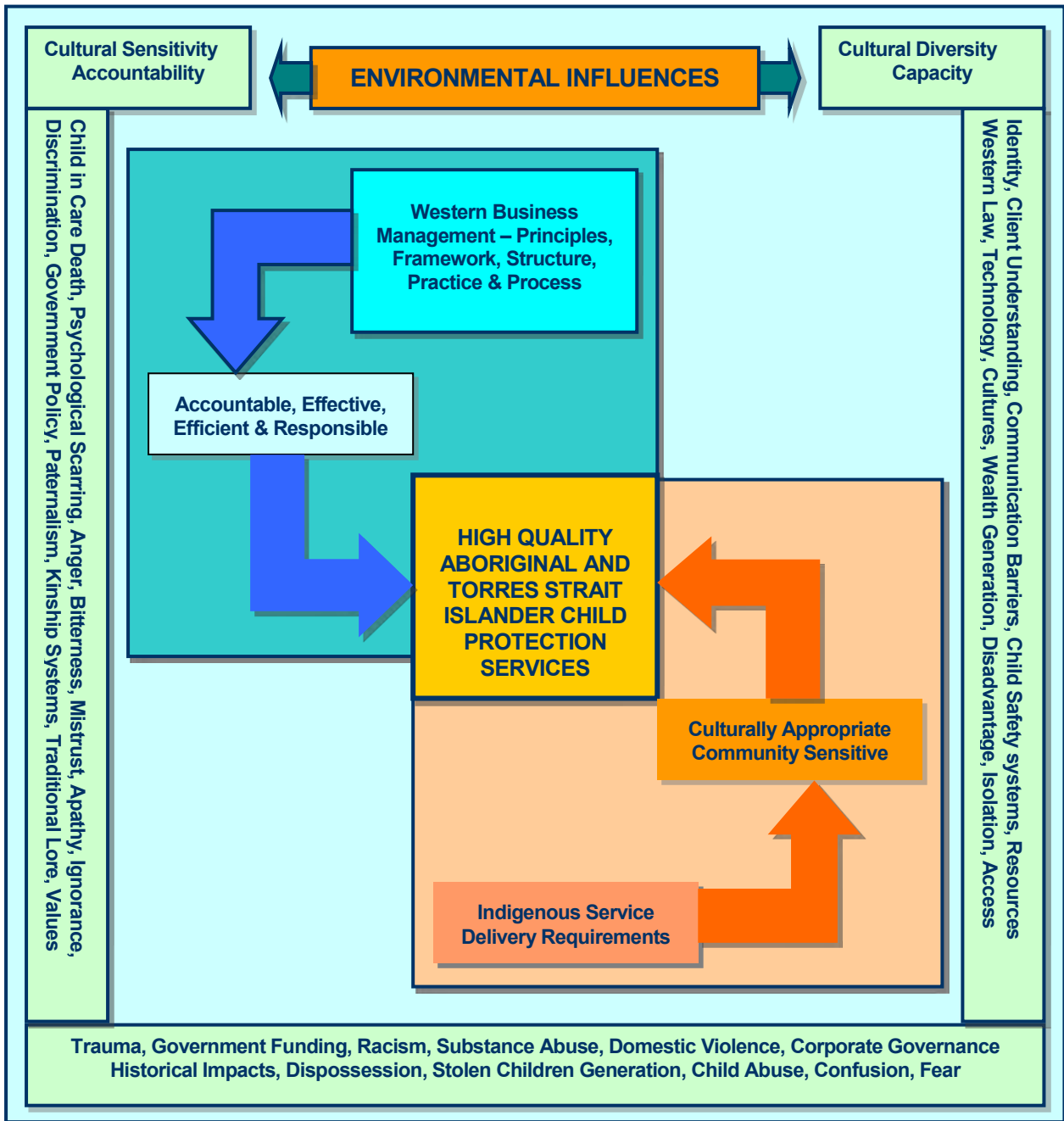
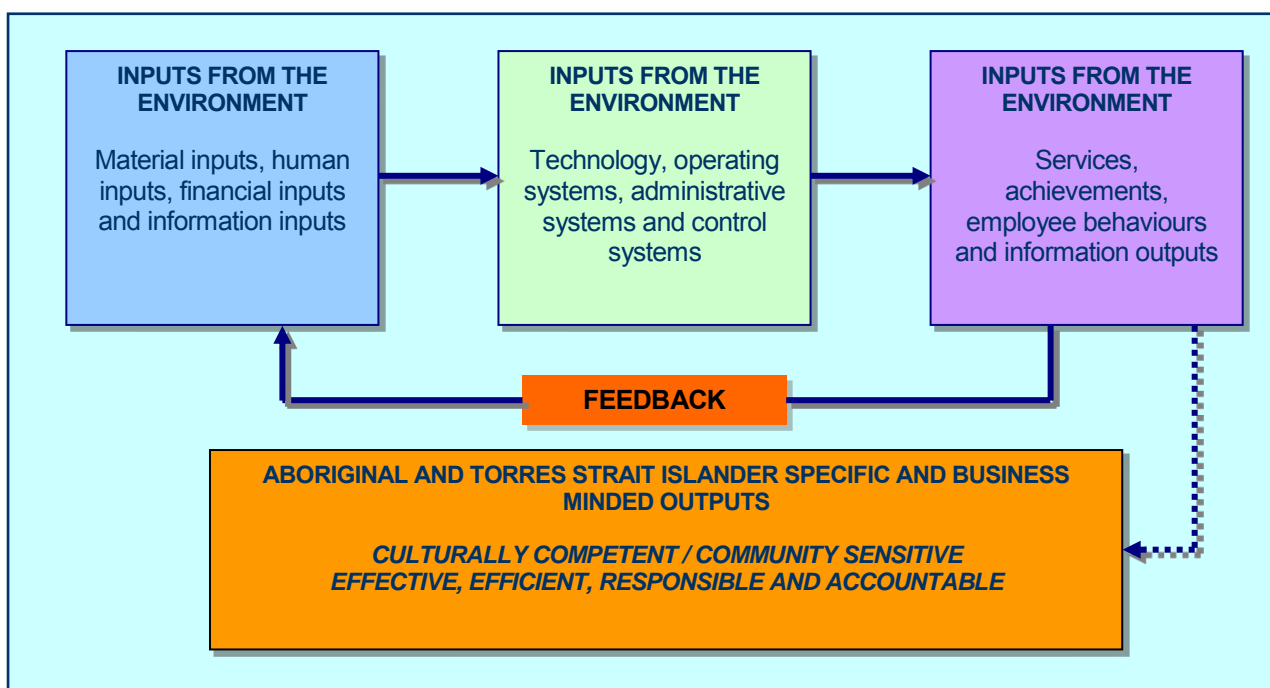


Diagram 3: Proposed Systems Approach to Transforming Inputs into Outputs



The requirement for the delivery of culturally competent outputs acknowledges the distinct differences between Aboriginal and Torres Strait Islander peoples and the need to comply with relevant cultural communication protocols in urban, rural and remote communities throughout Queensland in the process of delivering services.

6.1.5 Community Sensitive Outputs

The requirement for the delivery of community sensitive outputs acknowledges the diversity and changing circumstances among people living in urban, rural and remote communities. Community sensitive approaches in the delivery of services to Aboriginal and Torres Strait Islander clients also takes into account the relevant historical, cultural, psychological and sociological factors that impact upon individual clients.

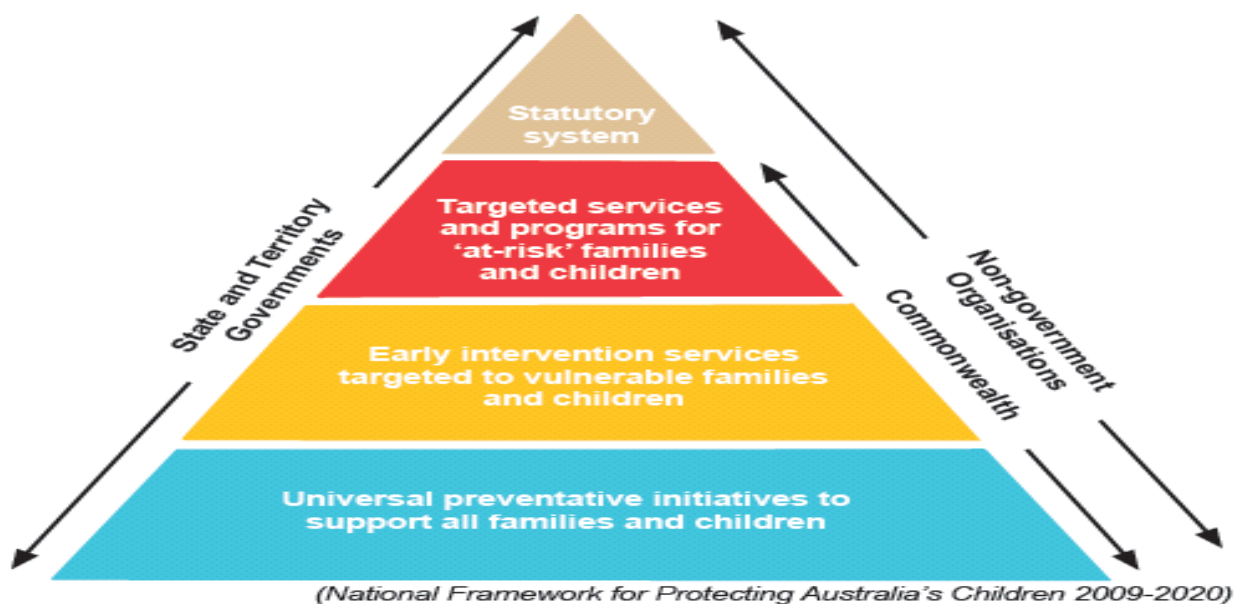
6.1.6 Business Minded Outputs

The requirement for business-minded outputs acknowledges the need to operate responsibly within a western business management framework and maintain effective corporate governance procedures and processes. Measures for compliance, effectiveness, efficiency and accountability underpin performance and delivery of outputs across the organisation

6.1.7 Frontline Services

Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency Model requires a balanced investment across universal, secondary and tertiary services. It is evident families should receive quality universal services as part of holistic wrap around approaches and that this must be identified as a cost effective approach aimed at reducing statutory intervention expenses. The Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency must align

with the preferred population health or holistic service delivery model outlined in the National Child Protection framework:



Aboriginal and Torres Strait Islander children and young people require a support system which responds to their immediate protection and wellbeing whilst delivering comprehensive interventions to promote greater family functioning.

6.1.8 Universal Intervention Team

A community development and capacity building approach is required to create community ownership of, and community responses to, their identified needs. ATSILS has experienced countless requests for assistance to develop local responses but have been limited by lack of resources and the inability of Child Safety to support such approaches due to their restricted mandate. Whilst these approaches may be challenging for Government to initially measure it is essential that Aboriginal and Torres Strait Islander peoples have ownership of issues and solutions through a community development model within a universal preventative initiative.

There is a real need for Aboriginal and Torres Strait Islander communities to be able to access information and awareness programs in relation to what is harm and risk, establishing protective factors, creating acceptable community norms such as appropriate parenting, and promoting safer and stronger environments. Communities must be afforded ownership to develop responses to local and individual issues which impact child wellbeing and safety. It is fundamentally important that this is delivered independently of the statutory system.⁷⁶

Local community groups have attested a willingness and commitment that exists in Aboriginal and Torres Strait Islander communities to care for their own children. There is also commitment to identifying practical needs including prioritising ongoing community child protection education with programs explaining risk, neglect and abuse, identifying

⁷⁶ Secretariat of National Aboriginal and Islander Child Care Incorporated(SNAICC) (2004), Indigenous Parenting Project, MAIN REPORT, p.17.

protective factors, developing community based solutions and promoting the creation of safe environments to better meet children’s care and protection needs.

Recommendation 21.

That the Inquiry recommends a “child protection solution focused” universal education and awareness programs.

The programs should be implemented within the local urban, rural and remote community and be informed by group work and community development practice frameworks. This approach must be accessible to a broader Aboriginal and Torres Strait Islander target group and responsive to immediate child protection and socio – economic status of families.

The programs should aim to empower and capacity build community and family resilience to a range of pressures inclusive of child protection, housing, employment, education, health, violence prevention, substance misuse treatment information and create linkages to direct service providers. It is also essential that a comprehensive mapping exercise is undertaken to identify what services are available. The detailed mapping must include state and federally funded services.

An informative example of a possible Universal intervention approach:

Part A - Stronger Aboriginal and Torres Strait Islander Families Community Education and Awareness Workshops.

Program Proposal

That the Queensland Aboriginal and Torres Strait Islander Child Protection Sector develop a Community Education and Awareness workshops which will build upon individuals, families, and communities knowledge and capacity to provide safer, caring and nurturing family and community environments.

The workshops would target a universal community group and can be inclusive of general community, service providers and families connected to family support or statutory services. The workshops would provide Aboriginal and Torres Strait Islander community, significant kin, carers and parents with a support group offering education on all issues related to meeting the care and protection needs of children and building stronger families.

Service Delivery

- The purpose of the Stronger Aboriginal and Torres Strait Islander Families workshops is to strengthen the capacity of Aboriginal and Torres Strait Islander families, carers and communities to provide a safe and nurturing environment for Aboriginal and Torres Strait Islander children.

- The workshops focus would be to provide education and information to Aboriginal and Torres Strait Islander community, significant kin, carers and parents focusing on children's wellbeing and promoting positive responses to children's care and protection needs. In particular the workshops will deliver knowledge and build understanding of neglect, risks, harm and protective factors, appropriate community and family responses, Child Safety Services, Recognised Entity, Indigenous Family Support services and other service providers.
- The Stronger Aboriginal and Torres Strait Islander Families community workshops would aim to promote healthy lifestyles, safe and supportive environments and emotional wellbeing for children and families. The workshops would also provide an opportunity to highlight the support services available to Aboriginal or Torres Strait Islander families struggling/ or at risk in their local community. The workshops would discuss how to create and encourage family and community protective responses for children who may be at risk or experiencing harm.
- It is also of high importance to provide ownership of community issues and work through these matters in a cultural framework. The Stronger Aboriginal and Torres Strait Islander Families workshops would provide vital opportunities for community, significant kin, carers and parents to understand the Child Safety system and work together to achieve success in creating safe and supportive environments. Throughout workshops community members, significant kin, carers and parents and carers would be encouraged to draw on their existing knowledge and experiences in their life.

Deliverables

- Community Education and Awareness workshops attended by a minimum of 30 participants delivered by Indigenous Family Support services across Queensland.
- a particular focus will be afforded to Aboriginal and Torres Strait Islander communities.
- increase community awareness and understanding of children's care and wellbeing needs, risks, harm, protective factors, child protection services and community support services.
- increase in non-statutory community responses to ensure children's care and protection needs are met within healthy lifestyles, safe and supportive environments.
- reductions in the rates of overrepresentation within the Queensland Child Protection system.
- stronger Aboriginal and Torres Strait Islander Families, particularly safer and stronger Indigenous children

Part B-Stronger Aboriginal and Torres Strait Islander Families

Proposed Program Activity

A Collaborative project between Brisbane Indigenous Media Association (BIMA) and the Aboriginal and Torres Strait Islander Child Protection Sector aimed at raising awareness and promoting the need and rights of Aboriginal and Torres Strait Islander children, young people and families to live in safe, supportive and healthy environment. This would be achieved through the monthly production of radio messages and online content that would be broadcast in Brisbane and via Queensland's Indigenous community radio stations.

BIMA is a not-for-profit community organisation radio station. BIMA is a registered training organisation. BIMA is a proven performer in delivering culturally competent training and health promotion projects and resources for the Aboriginal and Torres Strait Islander people across the state.

Deliverables

1. Producing 3 x 2-min original radio messages each month over a period of 12 months which will provide information to families and parents on:

- How to create safe and supportive environments for raising children
- Promote healthy lifestyles and emotional wellbeing for children and families.
- How to create and encourage family and community protective responses for children who may be at risk or experiencing harm.
- Raise awareness about support services available to Aboriginal or Torres Strait Islander families struggling/ or at risk.
- The legal rights and responsibilities of parents/carers of children and young people in the child protection system.
- Promote other key strategies to strengthen families with linkages to employment, housing, education, community engagement, sporting and cultural activities
- Build awareness of the role of Child Protection agencies and professionals, particularly the importance of Aboriginal and Torres Strait Islander support services.

6.1.9 Early Intervention Team

In the Department's Blue Print for implementation strategy to reduce the over-representation of Aboriginal and Torres Strait Islander children in Queensland's child protection system, key priority areas include:

- providing the right services at the right time; and

- building a robust network of Indigenous service providers.⁷⁷

Aboriginal and Torres Strait Islander Family Support Services (ATSIFSS) are well placed to meet the needs of families, but recognise they have been limited in their capacity to engage in early, non-stigmatised intervention with vulnerable families due to mandated referral pathways from the Department. Families requesting support or having been identified by the Recognised Entity as vulnerable have been unable to self-refer to ATSIFSS preventative services resulting in frustration and lost opportunity for preventative engagement to strengthen family resilience to care for their own children.⁷⁸ Additionally, a wait period of up to 8 weeks may occur for Aboriginal and Torres Strait Islander families who are identified by the Department as placing a child at risk in relation to accessing intensive family support. Vulnerable families in need require a 24 hour response to prevent escalation into the tertiary system.

Families need to have choice around flexible options for secondary intensive family support outside of the statutory care system. Aboriginal and Torres Strait Islander Family Support Services (ATSIFSS) alongside mainstream services fulfils this requirement. Additionally, the type of support families require must match self-identified needs and be flexible and timely. For example, a family may recognise the need to re-establish routines around morning school runs and after school homework and dinner time preparation involving practical tasks such as budgeting, shopping, nutrition education, and cooking skill development. This extra support provided outside of traditional work hours, may diffuse potentially stressful periods within the home, building the families capacity to self-manage. Additionally, support can be tapered in response to family need.⁷⁹

A Demonstration Project funded by Commonwealth Department of Families, Community Services and Indigenous Affairs, and facilitated by Micah Inc. through the Brisbane Homelessness Service Centre in 2006-2007, achieved very positive outcomes engaging with and working alongside Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander families experiencing homelessness who were in contact with the child protection system. The premise of the support was through a community outreach model with responsive, flexible and client-need driven support provision. Families received up to 2 visits daily when required for intensive support, with weekend and evening support where required.

In ATSILS experience, the current early intervention model is actually responding after the fact; often when harm or risk is already entrenched within a family. Whilst the current investment into the Helping Out Families pilot, Referral for Active Intervention and ATSIFSS is welcomed, the reality is that in the majority of case referrals there are linkages to the statutory system. A family support service model must be developed, independent and removed from the statutory system,

⁷⁷ Department of Communities, Child Safety Services.

<http://www.communities.qld.gov.au/resources/childsafety/child-protection/blueprint-strategy.pdf>

⁷⁸ Grant Funding Information Paper: Aboriginal and Torres Strait Island Child Protection Services 2009-10

<http://www.communities.qld.gov.au/resources/childsafety/partners/funding/documents/funding-information-paper-re-fs-2009-10.pdf>

⁷⁹ Australian Human Rights Commission, 2010. Justice Reinvestment: a new solution to the problem of Indigenous over-representation in the criminal justice system.

http://humanrights.gov.au/about/media/speeches/social_justice/2010/20100320_justice_reinvestment.html

or at the very least families should have access to a non-stigma based right of self-referral that is not restricted by the requirement of a previous referral from Child Safety. It is essential that a non-stigma referral pathway is created within the ATSIFSS to promote more effective engagement and responses prior to harm and risk reaching a significant level of concern.⁸⁰

It is ATSILS view that current models of funding and program design may only hold the overwhelming tide of gross Aboriginal and Torres Strait Islander over-representation at bay for a limited period and that it is essential that a non-stigma based referral pathways is created within ATSIFSS to promote more effective engagement and responses prior to harm and risk reaching a significant level of concern.⁸¹

The core competence of the Child Safety funded Aboriginal and Torres Strait Islander Family Support Services is a sound foundation to build on, however it requires enhanced capacity and co-location of integrated specialist responses within a reformed model Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency. It must also be considered essential to diversify the sector employment strategy to afford Aboriginal and Torres Strait Islander agencies the opportunity to recruit tertiary qualified professionals with expertise and knowledge in required core practices.

Aboriginal and Torres Strait Islander children, young people and their families deserve the highest quality support services to address areas of vulnerability and risk which may destabilise a family. Harm and risk indicators including domestic violence, substance misuse, parenting capacity, mental health and child neglect require well-resourced secondary services led by tertiary educated and qualified professionals who can integrate evidence based, culturally competent specialist knowledge to complement wrap around intervention for very vulnerable families.

The function of these multidisciplinary specialist roles are twofold, both in the provision of expert responsive, flexible and timely services to families and as a sector capacity building function. By adopting mentoring supervisory roles, tertiary educated professionals will enable a transfer of comprehensive and authoritative knowledge to their Aboriginal and Torres Strait Islander colleagues, with the view of transitioning greater responsibility to Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agencies.

⁸⁰ Higgins, D., & Katz, I. (2008, p.47) Enhancing service systems for protecting children-Promoting child wellbeing and child protection reform in Australia.

⁸¹Indigenous children had a rate (41.5 per 1,000) of living in out-of-home care that was over eight times greater than the rate for non-Indigenous children (4.9 per 1,000) at 30 June 2010 Commission for Children and Young People and Child Guardian Snapshot 2011: Children and Young People in Queensland; Out-of-home- care.p.18.

<http://www.ccyprg.qld.gov.au/pdf/publications/reports/snapshot2011/Snapshot-Summary-2011.pdf>

37.7% of Aboriginal and Torres Strait Islander children notified (6,588 of 24,834) Quarterly 31March 2012, Queensland Department of Communities.

Our performance, <http://www.communities.qld.gov.au/childsafety/about-us/our-performance>.

35 % of Aboriginal and Torres Strait Islander children substantiated (2,125 of 7454) (31 March 2012). A)

41.8% of Aboriginal and Torres Strait Islander children subject to short-term child protection orders (1,727 of 4,130) (31 March 2012).B).

37.6 % of Aboriginal and Torres Strait Islander children subject to child protection orders (3,147 of 8,371) 30 June 2011.C)

38.5% of Aboriginal and Torres Strait Islander children in out-of-home care (3,219 of 8,367)(31 March 2012). D)

35.4% of Aboriginal and Torres Strait Islander Long term Child protection orders (1611 of 4548) (31 March 2012).E)

There is international recognition of the importance of Indigenous staff capacity building through tertiary education within First Nations child protection services. In Canada the Mi'kmaq-Maliseet BSW program which graduates 30-40 Aboriginal social workers each year, was established 3 decades ago through a collaboration between the Mi'kmaq Family and Children's Services and Dalhousie and St. Thomas Universities in recognition of the absence of Aboriginal social workers in Nova Scotia and largely non-Aboriginal social worker staff in remote and rural areas. This has culminated in a huge professional up skilling of Indigenous staff working within First Nations child and family services.⁸²

Recommendation 22.

That the Inquiry recommends the current Aboriginal and Torres Strait Islander Family Support Service framework as a foundation or building block to create holistic wraparound Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency with specialist secondary support capabilities and programs.

This should include an employment strategy setting improved service delivery standards through the active recruitment of tertiary educated and qualified professionals and specialist program development.

In particular enhanced specialist roles and program responses targeting the significant harm and risk factors such as

- ***Neglect***
- ***Domestic and Family Violence***
- ***Substance Misuse***
- ***Parenting capacity***
- ***Mental Health (inclusive of responses to intergenerational Grief and loss cycles)***

6.1.10 Statutory Intervention Team

It is fundamentally important that the best interests and wellbeing of Aboriginal and Torres Strait Islander children and young people are maintained within the *Queensland Child Protection Act 1999*. The unique cultural and legal rights of Aboriginal and Torres Strait Islander children and young people are of historical and modern significance. The Aboriginal and Torres Strait Islander specific child protection legislated sections exist to support Aboriginal and Torres Strait Islander children to reach their full potential and to develop into strong and secure adults. It speaks of the right for Aboriginal and Torres Strait Islander children to be supported and grounded in a foundation of cultural identity and a relationship with their immediate family, extended kin and community that creates the linkages of their traditional and modern innate belonging.

⁸² Blackstock,C. (2010), Advisory Report, I WANT TO GROW UP IN MY COMMUNITY: A REVIEW OF THE CHILD AND FAMILY SERVICES ACT10.p.7.

The legislative intent speaks to children’s cultural identity being supported by the holistic life concepts of Aboriginal and Torres Strait Island traditions which their ancestors, elders, kin and immediate families have accomplished and embedded within their cultural heritage. It speaks of utilising this legacy that has survived the test of time and is a pathway to understanding and an imperative guide supportive of Aboriginal and Torres Strait Islander children’s unique lived experience in out of home care. It is this legislative intention that could assist Aboriginal and Torres Strait Islander children as a foundation of cultural strength to successfully navigate the unintended detrimental experiences related to statutory out of home care. This cultural strength can support the creation of an environment of resilience, supportive of the child’s development stages and transition to adulthood, and long term development of relationships with immediate and extended family and community members, thus, creating a supportive safety network.

In the 1970’s national efforts of the Aboriginal and Torres Strait Islander Child Care agencies (AICCAs) drew on inspiration and guidance from the American and Canadian jurisdictions and child protection practices to determine and implement First Nation’s approaches which negotiate unintended and adverse impacts of statutory interventions and practices. In particular AICCAs utilised the examples found within the American “*Indian Welfare Act 1978*” to ensure the unique needs of Aboriginal and Torres Strait Islander children were better met. A significant catalyst for positive change and implementation of the Aboriginal and Torres Strait Islander Child Placement Principle was the First Australian Conference on Adoption in 1976.⁸³

Importantly, all States and Territories accepted and endorsed the Aboriginal and Torres Strait Islander Child Placement principle in 1986 at the Australian Social Welfare Minister Conference. Within Queensland a policy statement was negotiated between the Department of Families, Youth and Community Care and the State Aboriginal and Islander Child Care Agency in 1998. Following this policy agreement the Aboriginal and Torres Strait Islander Child Placement Principle was enshrined in *section 83 of the Queensland Child Protection Act 1999*. The Principle states that:

Section 83 Additional provisions for placing Aboriginal and Torres Strait Islander children in care

- (1) *This section applies if the child is an Aboriginal or a Torres Strait Islander child.*
- (2) *The chief executive must ensure a recognised entity for the child is given an opportunity to participate in the process for making a decision about where or with whom the child will live.*
- (3) *However, if because of urgent circumstances the chief executive makes the decision without the participation of a recognised entity for the child, the chief executive must consult with a recognised entity for the child as soon as practicable after making the decision.*
- (4) *In making a decision about the person in whose care the child should be placed, the chief executive must give proper consideration to placing the child, in order of priority, with—*
 - (a) *a member of the child’s family; or*
 - (b) *a member of the child’s community or language group; or*

⁸³ Queensland Aboriginal and Torres Strait Islander Child Protection Peak. 2011, Aboriginal and Torres Strait Islander Child Placement Principle practice paper.

- (c) *another Aboriginal person or Torres Strait Islander who is compatible with the child's community or language group; or*
 - (d) *another Aboriginal person or Torres Strait Islander.*
- (5) *Also, the chief executive must give proper consideration to—*
- (a) *the views of a recognised entity for the child; and*
 - (b) *ensuring the decision provides for the optimal retention of the child's relationships with parents, siblings and other people of significance under Aboriginal tradition or Island custom.*
- (6) *If the chief executive decides there is no appropriate person mentioned in subsection (4)(a) to (d) in whose care the child may be placed, the chief executive must give proper consideration to placing the child, in order of priority, with—*
- (a) *a person who lives near the child's family; or*
 - (c) *a person who lives near the child's community or language group.*
- (7) *Before placing the child in the care of a family member or other person who is not an Aboriginal person or Torres Strait Islander, the chief executive must give proper consideration to whether the person is committed to—*
- (a) *facilitating contact between the child and the child's parents and other family members, subject to any limitations on the contact under section 87; and*
 - (b) *helping the child to maintain contact with the child's community or language group; and*
 - (c) *helping the child to maintain a connection with the child's Aboriginal or Torres Strait Islander culture; and*
 - (d) *preserving and enhancing the child's sense of Aboriginal or Torres Strait Islander identity.*

The commitment to the best interests of Aboriginal and Torres Strait Islander children and young people is further demonstrated in the overarching additional principles which guide child protection professionals in their case management, and the Chief Executives responsibility to maintain a connection between a child and their language and cultural group. These legislated sections resonate with understanding of, and commitment to, the importance of children and young people remaining connected and participating within their family, community and cultural groups and the longer term effects on a child's identity and sense of self in decision making. It is essential that there is no erosion to the unique legal rights of Aboriginal and Torres Strait Islander children which are safeguards against unintended and detrimental impacts of out of home care. These additional principles state:

5C Additional principles for Aboriginal or Torres Strait Islander children

The following additional principles apply in relation to an Aboriginal or Torres Strait Islander child —

- (a) *the child should be allowed to develop and maintain a connection with the child's family, culture, traditions, language and community;*

(b) *the long-term effect of a decision on the child's identity and connection with their family and community should be taken into account.*

88 Chief executive to provide contact between Aboriginal or Torres Strait Islander child and child's community or language group

(1) *This section applies if the child is an Aboriginal or a Torres Strait Islander child.*

(2) *The chief executive must provide opportunity for contact, as often as is appropriate in the circumstances, between the child and appropriate members of the child's community or language group.*

Recommendation 23.

That the Inquiry recommend maintaining and enhancing the enshrined legislated cultural competency framework aimed at achieving the best interests and wellbeing of Aboriginal and Torres Strait Islander children. Legislative reform to determine the best interest framework should utilise this historical foundation.

The statutory child protection system has systematically failed to adhere to the unique best interests and cultural and legal rights of Aboriginal and Torres Strait Islander children, young people and families. This raises the question whether the State is the most appropriate agency to deliver these essential requirements for Aboriginal and Torres Strait Islander families, or if it is more effective to outsource through statutory delegation to best placed Aboriginal and Torres Strait Islander community controlled agencies and community groups. Current Recognised Entity professionals produce meaningful advice and recommendations within significant and non-significant decision making which supports culturally acceptable and safe outcomes. The important legislated Recognised Entity role should be enhanced as a component of Aboriginal and Torres Strait Islander practice.

A fundamental flaw in the implementation of the existing Recognised Entity model is that professionals have been limited in their participation and consultation roles in relation to decision-making. The role is defined and administrated through legislation, policy and procedural and service agreements. ATSILS have observed the role to have significant limitations in relation to the level of engagement and information gathering with family, kin and community to inform their participation in decision making. This impacts the levels of meaningful cultural and practical statutory support provided to immediate family, extended family and significant community members on whom children and young people in care are ultimately reliant upon for adequate case management.

The Recognised Entity model is limited to participation and consultation in decision making by way of Child Safety services which ultimately hinders the independence of the model. Furthermore, the constraining model limits professional's meaningful engagement with family, kin and community which could allow for comprehensive development of child centred but family focused interventions. Cultural practice is fundamental to ensuring the preservation and enhancement of Aboriginal and Torres Strait Islander children's cultural identity whilst in out of home care. The Department of Communities holds responsibility for supporting and affording the appropriate resources to Aboriginal and Torres Strait Islander

professionals to adequately meet the children's needs and negotiate holistic responses to the detrimental impacts of out of home care.

It is clear that Aboriginal and Torres Strait Islander Recognised Entity professionals would be more efficiently utilised in a practical statutory role if given appropriate authority to deliver case work in key points in practice. Proactive legislative amendments could delegate enhanced responsibility to Recognised Entity professionals to deliver targeted case work assistance in family group meeting conferencing, cultural support planning and implementation, assisting children through mentoring/transition to adulthood and a court advisory role. Whilst it may be argued that this is currently occurring, ATSILS recommends a strengthening of legislation would better support the intention of the legislated Recognised Entity model, most importantly the intended outcomes for families.

The current Recognised Entity model is outlined in *section 6 of the Child Protection Act 1999*:

Section 6 Recognised entities and decisions about Aboriginal and Torres Strait Islander children

- (1) *When making a significant decision about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must give an opportunity to a recognised entity for the child to participate in the decision-making process.*
 - (2) *When making a decision, other than a significant decision, about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a recognised entity for the child before making the decision.*
 - (3) *However, if compliance with subsection (1) or (2) is not practicable because a recognised entity for the child is not available or urgent action is required to protect the child, the chief executive or an authorised officer must consult with a recognised entity for the child as soon as practicable after making the decision.*
 - (4) *If the Children's Court exercises a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the court must have regard to —*
 - (a) *the views, about the child and about Aboriginal tradition and Island custom relating to the child, of*
 - (i) *a recognised entity for the child; or*
 - (ii) *if it is not practicable to obtain the views of a recognised entity for the child — members of the community to whom the child belongs; and*
 - (b) *the general principle that an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal or Torres Strait Islander community.*
- Editor's note—The Acts Interpretation Act 1954, section 36, contains definitions of Aboriginal tradition and Island custom.*
- (5) *As far as is reasonably practicable, the chief executive or an authorised officer must try to conduct consultations, negotiations, family group meetings and other proceedings involving an Aboriginal person or Torres Strait Islander (whether a child or not) in a way and in a place that is appropriate to Aboriginal tradition or Island custom.*
 - (6) *In this section— **significant decision**, about an Aboriginal or Torres Strait Islander child, means a decision likely to have a significant impact on the child's life.*

Examples of decisions relating to an Aboriginal or Torres Strait Islander child that may be significant decisions—

2 a decision made in the course of investigating an allegation of harm to the child

2 a decision about placing the child in care

It must be acknowledged that Aboriginal and Torres Strait Islander family and cultural structures are a tool for positive empowerment and that a transfer of greater responsibility to the Recognised Entity sector would create integration across core Aboriginal and Torres Strait Islander practices and improve the safety and wellbeing of children. It is important that the current risk adverse and punitive approaches which hinder inclusive family engagement and community based solutions are addressed to allow for more positive outcomes across key child protection indicators such as children’s holistic safety and wellbeing, reunification, family and community contact, cultural perseverance and enhancement strategies. Ideally, a cultural shift within the child protection workforce and enhancement of the role of Aboriginal and Torres Strait Islander professionals is required to achieve innovative integration across the child protection continuum.

ATSILS recommends the Queensland Government explore legislative amendments to *section 6 of the Child protection Act 1999* to create a more responsive and proficient Aboriginal and Torres Strait Islander statutory response. In particular we recommend the inquiry explore:

- The concept and meaning of “significant decisions” with consideration of legislative reform which could redefine this concept to allow for more active inclusion and responsibility of Recognised Entity professionals at significant points in practice. Such could provide guidance at key points similar to the significant decision making points as currently outlined in Recognised Entity contract arrangements with Child Safety. For example, section 6 (4) broadly determines a court role, (although this may require strengthening to provide the authority of the court with independent and professional child protection advice from an Aboriginal or Torres Strait Islander professional) it provides valuable insight of the possibility of delegation of responsibilities such as family group meeting convening;
- The adaption of Section 6 (5) to outline a family group meeting convening role. This would prove instrumental in assisting a more balanced process and ultimately facilitating a more family and culturally responsive decision making process which would create increased levels of family based solutions and clearer progression towards addressing child protection concerns, reunification, adherence to section 83 and cultural retention strategies;
- Proactive amendments that could assist in developing or strengthening similar case work responses to section 6 (4), and 6 (5) which actively transfer responsibilities for case work activities for intensive cultural preservation and mentoring or supporting transition to adulthood to Recognised Entity professionals. Importantly, through such delegation, family and community will have ownership of responses that transfer the responsibility for children back to the Aboriginal and Torres Strait Islander community; and
- The implications and restrictions imbedded in the current conceptualisation of “participation and consultation” in decision making. Ideally, the Queensland public must

have confidence in an Aboriginal and Torres Strait Islander statutory assistance agency to actively address over-representation through sufficient engagement and case work activities. The unintended minimisation resulting from the current “participation and consultation” model is restrictive of more positive outcomes. ATSILS suggests that a delegation model with case work responsibility would create more inclusive community and family ownership.

- A fundamental redesign of section 6 of the Child Protection Act which enables Aboriginal and Torres Strait Islander professionals meaningful input into the culmination of overrepresentation will require additional amendments across the Act providing the appropriate statutory authority. A current example within the present participation based model is *Section 83* where the Recognised Entity role interfaces with Child Safety’s statutory placement function. ATSILS would suggest *section 82 Placing a Child in Care* direct importance to achieving adherence to cultural retention and placement principle obligations also be explored for possible amendments affording Aboriginal and Torres Strait Islander professionals more authority determining placements in the best interest of children.

Recommendation 24.

That the Inquiry recommends legislative amendments to section 6 ‘Recognised entities and decisions about Aboriginal and Torres Strait Islander children’ within the Child Protection Act 1999 to delegate partial and/or full statutory responsibility for child protection case management to Aboriginal and Torres Strait Islander professionals and their representative agency.

By way of suggestion, the amended section could read along the following lines:

Section 6 Recognised entities and decisions about Aboriginal and Torres Strait Islander children

- (1) *The below subsections (2) to (4) apply in instances where a Aboriginal and Torres Strait Islander children are subject to Intake and Investigation and Assessment.*
- (2) *When making a significant decision about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must give an opportunity to a recognised entity for the child to participate in the decision-making process.*
- (3) *When making a decision, other than a significant decision, about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a recognised entity for the child before making the decision.*
- (4) *However, if compliance with subsection (2) or (3) is not practicable because a recognised entity for the child is not available or urgent action is required to protect the child, the chief executive or an authorised officer must consult with a recognised entity for the child as soon as practicable after making the decision.*
- (5) *If the Children’s Court exercises a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the court must receive a Recognised Entity written court report to inform and have regard to —*
 - (a) *the views, about the child and about Aboriginal tradition and Island custom relating to the child, and*
 - (b) *the views of a child’s immediate family, extended family and community members to whom the child belongs; and*
 - (c) *the general principle that an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal or Torres Strait Islander community; and*
 - (d) *the general principle that cultural preservation and enhancement is central to identity development and long term wellbeing.*

Editor’s note—The Acts Interpretation Act 1954, section 36, contains definitions of Aboriginal tradition and Island custom.

- (6) *the chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to Independently convene Family Group and Case Plan Review Meeting and conduct consultations, negotiations, family group meetings and other proceedings involving an Aboriginal person or Torres Strait Islander (whether a child or not) in a way and in a place that is*

appropriate to Aboriginal tradition or Island custom.

- (7) *The chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case management responsibilities for the purposes of transitioning of a child to adulthood commencing at the age of 15 years.*
- (8) *The chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case management responsibilities for the development, implementation and review of children and young people's cultural support plan.*
- (9) *The chief executive or authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case responsibility for child and family contact.*
- (10) *In this section— significant decision, about an Aboriginal or Torres Strait Islander child, means a decision likely to have a significant impact on the child's life; Significant decisions only apply across intake, investigation and assessment and placement decision making.*

Examples of decisions relating to an Aboriginal or Torres Strait Islander child that may be significant decisions—

1. *a decision made in the course of investigating an allegation of harm to the child*
2. *a decision about placing the child in care*

Recommendation 25.

That the Inquiry recommend a second phase of legislative amendments to section 82 'Placing Child In Care' to delegate partial statutory responsibility for child protection case management to Aboriginal and Torres Strait Islander professionals and their representative agency.

In particular the inquiry recommend the provision of a legislative framework for Foster and Kinship Care agencies to instrumentally meet children and young people's holistic needs through provision of proficient child placement practices and cultural supports.

By way of a suggestion, the amended section could read along the following lines:

82 Placing child in care

(1) The chief executive may place the child in the care of—

- (a) an approved kinship carer for the child; or***
- (b) an approved foster carer; or***
- (c) an entity conducting a departmental care service; or***
- (d) a licensee; or***
- (e) if it is not possible, or not in the child's best interests, for the child to be placed in the care of an entity mentioned in paragraphs (a) to (d)—a provisionally approved carer for the child; or***
- (f) if the chief executive is satisfied another entity would be the most appropriate for meeting the child's particular protection and care needs—that entity.***

Example for paragraph (f)—

A particular medical or residential facility may be the most appropriate entity for a child with a disability.

(2) Also, if the child is in the chief executive's custody or guardianship under a child protection order, the chief executive may place the child in the care of a parent of the child.

(3) The chief executive may grant approval to Aboriginal and Torres Strait Islander foster and kinship care agencies the authority to administrate subsections 1 (a), (b), (c), (e)

Recommendation 26.

That the Inquiry recommend a third phase of legislative amendments to section 6 ‘Recognised entities and decisions about Aboriginal and Torres Strait Islander Children’ within the Child Protection Act 1999 to delegate partial and/or full statutory responsibility for child protection case management to Aboriginal and Torres Strait Islander professionals and their representative agency.

In particular that the inquiry recommend a third step towards statutory responsibility for children and young people living within long term guardianship arrangements with progression towards greater authority across the child protection continuum for all Aboriginal and Torres Strait Islander children’s immediate and long term safety.

An informative example of Aboriginal and Torres Strait Islander Family Group Meeting Convener program⁸⁴:

Program Proposal

Aboriginal and Torres Strait Islander families, children and young people’s active participation in decision making processes in both statutory and family support services is essential to the success of targeted interventions and responses. This service delivery enhancement will actively support positive outcomes dependant on the participation of Aboriginal or Torres Strait Islander families and children. The program actively recognizes family, community and cultural connections as integral in identifying concerns, solutions and responsibilities to achieve safe and nurturing environments. Recognizes and utilizes modern and traditional approaches to decision making and the benefits in ensuring best cultural practice regarding the Culture as a tool for positive change, Aboriginal and Torres Strait Islander Child Placement Principle and the cultural support planning for children in care.

The Aboriginal and Torres Strait Islander Family Group Meeting Convener role is a necessary enhancement aligned to the current legislated Family Group meeting and case plan review process. Furthermore, it supports the key cultural responsibilities of ensuring the planning process is a culturally respectful and inclusive process and for this purpose, actively mitigate through participatory and facilitative strategies, the effects of power imbalances related, for example, to differences in age, cultural positioning and the use of statutory power (Child Safety Practice Manual –Practice Paper Family Group Meetings).

⁸⁴ Victorian Aboriginal Child Care Agency Co-operative Limited (VACCA) (2008) Programs: Dhum Djirri Aboriginal Family Decision Making Program.

The program acknowledges the key Family Group Meeting and case plan review process, and seeks to enhance this model with Aboriginal and Torres Strait Islander Family Group Convenors. ATSILS identifies and acknowledges that this enhancement is best provided by Aboriginal and Torres Strait Islander professionals based within Aboriginal and Torres Strait Islander community controlled organisations.

Program Roles

Aboriginal or Torres Strait Islander Family Group Convenors must be implemented within the existing infrastructure of the Recognised Entity service to:

- Facilitate and convene relevant sections within the Family Planning meeting (Indigenous Family support service users statutory cases only);
- Facilitate Family group or case plan review meetings (such as family options available within the Aboriginal and Torres Strait Islander Child Placement principle);
- Help develop cultural support plans;
- facilitate family responses to identified concerns (e.g. to develop a safety plan);
- Promotion safe reunification; and
- Achieve non-statutory outcomes.

Service Delivery

- Assess referrals and engage in preparation work with immediate family, extended family, family Elders, significant community members and key professional supports.
- Convene statutory Family group meetings & Case plan Review meetings to facilitate active participation of immediate family, extended family, family Elders and significant community members to achieve positive responses to child's care and protection needs.
- Convening of non-statutory Indigenous Family Support services cases to facilitate active participation of immediate family, extended family, family Elders and significant community members to achieve positive family responses to identified risks of harm to children and young people.
- Develop Aboriginal and Torres Strait Islander Case Plans to provide to Child Safety, service providers, families and children; and
- Develop Aboriginal and Torres Strait Islander Family plans in partnership with Indigenous Family Support Services to provide to the family, Manager of Family Support services, Family support workers and relevant stakeholders.

Deliverables

- Target group 1. Families and children engaged in statutory intervention provided with Aboriginal and Torres Strait Islander Family Group Conveners.
- Target group 2. Families and children engaged in the Indigenous family support service with Aboriginal and Torres Strait Islander Family Group Conveners.
- Aboriginal and Torres Strait Islander Case Plans provided to Child Safety services for statutory cases.
- Aboriginal and Torres Strait Islander Family plans provided to Indigenous Family Support services and Families.
- Increased family and community involvement and participation in responding & planning to risks and child protection concerns.
- Increased engagement of Aboriginal and Torres Strait Islander immediate family, extended family, family elders and significant community members in decision making processes.
- Enhancement and integration between Child Safety services, Indigenous Family Support services, Recognised Entity services and Aboriginal or Torres Strait Islander families.
- Enhanced adherence and practice approach of the legislated Aboriginal and Torres Strait Islander Child Placement Principle.
- Reduction in the rate of Aboriginal and Torres Strait Islander overrepresentation within the child protection system.
- Improved access to formal support services and community networks to support positive outcomes for children and young people.

7. Recommendation Overview

Recommendation 1.

That the Inquiry recommends incorporating and considering the obligation on all Australian governments to protect and promote the rights contained within the United Nations Convention on the Rights of the Child and the Declaration on the Rights of Indigenous Peoples. It is of critical importance that any review of the Queensland child protection system is undertaken within a framework that holds these rights at its core.

Recommendation 2.

That the Inquiry recommends and ensures responses to a significant root cause of Aboriginal and Torres Strait Islander child neglect i.e. low socio – economic and poverty status is incorporated into universal, secondary and statutory child protection systems.

Families experiencing hardship from significant disadvantage should be supported through holistic wrap-around approaches. In addition to core child protection, families require quality access to wrap around support services across housing, health, education and the youth justice system through integrated service delivery models and a coordinated whole of government response.

Recommendation 3.

That the Inquiry recommends the establishment of a steering committee of key Aboriginal and Torres Strait Islander professionals or stakeholders to inform Aboriginal and Torres Strait Islander Child Protection Community Controlled Sector reform.

ATSILS recognises this would align with the United Nation’s Declaration on the Rights of Indigenous Peoples, particularly the obligation to be consulted in good faith and having their free, prior and informed consent obtained before any legislative or administrative measures that may affect them inadvertently or disproportionately are adopted.

ATSILS suggests the involvement of representatives from the Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd, Cape York Institute for Policy and Leadership, Urban Institute for Indigenous Health, Queensland Aboriginal and Torres Strait Islander Human Services Coalition, Aboriginal and Torres Strait Islander Legal Services (Qld) and Academics from the schools of Social Work, Psychology, Social Sciences, Law and Economics be considered essential to this future development process.

Child Safety NGO Programs Director and Child Protection Development Director’s significant expertise and knowledge within their fields would be of significant value in the development of future Aboriginal and Torres Strait Islander non-government service delivery models.

Recommendation 4.

That the Inquiry recommends the establishment of a Co-Deputy Aboriginal and Torres Strait Islander Children's Commissioner within the existing framework of the Commission for Children, Young people and Child guardian to support in the oversight responsibilities for the benefit of Aboriginal and Torres Strait Islander children's safety and wellbeing.

Recommendation 5.

That the Inquiry recommend a review of the level of Aboriginal and Torres Strait Islander Cultural Competency within child protection service delivery and ensure it is a future feature of both Government and Non – Government child protection service delivery in order to promote increasingly targeted efforts and beneficial outcomes that will reduce the over – representation of Aboriginal and Torres Strait Islander children within the child protection system.

Recommendation 6.

That the Inquiry recommend and consider how the Queensland Government and non-Government services including Child Safety Services could utilise the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs National Indigenous Interpreters Framework through the Council of Australian Governments (COAG).

Recommendation 7.

That the Inquiry recommend the mandatory provision of community based and supported Interpreters for assurances of fair process to Aboriginal and Torres Strait Islander Queenslanders who utilise English as a second or third language (particular care and attention should be given to the Gulf, Cape and Torres Strait Islander geographical areas).

Recommendation 8.

That the inquiry recommend children, young people and families have access to a well - resourced Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector delivering culturally competent universal, secondary and statutory services.

Given that current public investment in both Government and Non-Government systems has failed to reduce the alarming and unacceptable rates of over – representation, the government must adjust upwards the allocation of Child Safety funding (above the currently designated 6% for Aboriginal and Torres Strait Islander annual expenditure).

Aboriginal and Torres Strait Islander children consist of 6.5% of the Queensland child population which is approximately 70,071 children. However Aboriginal and Torres Strait Islander children are disproportionately over – represented at 37% of young people subject to out of home care.

ATSILS recommends that as a minimum, there should be an increase of 30% above the current allocated budget to the Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector. This would reflect a more equitable investment across universal, secondary and statutory services contributing to the culmination of over – representation.

Recommendation 9.

That the Inquiry recommend the review the effectiveness of Structured Decision Making frameworks to consider adaption to more appropriate intervention balanced with a culturally-accepted, family-focused, child-centred, strength-based, therapeutic assessment and decision making approach.

Recommendation 10.

That the Inquiry recommend the establishment of a steering committee or task force (as outlined in recommendation 3), as a body to inform the American based Children’s Research Centre and Child Safety’s Child Protection Development in enhancing Structure Decision Making tools towards a more culturally-accepted, family-focused, child-centred, strength-based, therapeutic assessment and decision making approach.

Recommendation 11.

That the Inquiry recommend the broadening of licencing arrangements between Queensland Government Child Safety and the Children’s Research Centre to allow for future Non – government utilisation of enhanced structured decision making tools where statutory decisions may be delegated to Non – Government organisations.

Recommendation 12.

That the Inquiry recommend enhancing case management processes to ensure formal collaborative case planning between Youth Justice and Child Safety Services where children and young people are receiving services under dual orders.

This is of significant importance due to the evidence that 69% of Youth Justice clients are known to Child Safety and family function is frequently an identified risk factor for youth re – offending.

Recommendation 13.

That the Inquiry recommend the consideration of “justice reinvestment principles” and approach early intervention and secondary diversion as a cost effective approach to minimise future expenditure in the juvenile and adult criminal justice systems.

Recommendation 14.

That the Inquiry recommend the use of Queensland Police Service’s ‘Queensland Early Intervention Pilot Project’ (QEIPP) for Boot Camp funding to ensure a culturally competent early intervention approach for Aboriginal and Torres Strait Islander children and young people receiving services under dual orders. A mandatory referral pathway could be established for children and young people known to child safety and youth justice systems.

ATSILS considers the early intervention pilot a proven provider of culturally competent “Boot Camp” style intervention which is of great benefit to at risk offending children and young people (although ATSILS recommends against the use of the expression “Boot Camp” as such carries with it a negative connotation – rather “Cultural Camp” or “Healing Camp” or some such).

Recommendation 15.

That the Inquiry recommend and draw from leading international First Nations’ child protection models from New Zealand and Canada to inform sector reform within Aboriginal and Torres Strait Islander community controlled child protection.

In particular reform which transfers responsibility and authority for the care, protection and wellbeing of children to the Aboriginal and Torres Strait Islander community, and is responsive to holistic and multi layered needs of communities, families, children and young people.

Recommendation 16.

That the Inquiry explore the Canadian Directive 20 -1 to inform future agreements between Queensland Government and the Aboriginal and Torres Strait Islander Community Controlled Child Protection Sector.

In particular that the inquiry recommend future Queensland legislative, policy and service agreements which affords partial or full delegated responsibility to Non - Government Aboriginal and Torres Strait Islander child protection services within agreed state wide quality assurance framework and standards.

Recommendation 17.

That the Inquiry recommend a review of the effectiveness of the existing Family Group Meeting or Case Plan Review and the Court Order Conference model and process.

In particular, that the inquiry compare the current Queensland model with consideration to adopt/transition to the original New Zealand Family Group Conferencing model which is widely accepted as being independent, solution focused, family and community responsive and child centred in approach.

Recommendation 18.

That the inquiry recommend Non - Government Independent Aboriginal and Torres Strait Islander Family Group Meeting Conveners are a significant component in the future Queensland child protection system.

Recommendation 19.

That the Inquiry recommend the establishment of a modern and proficient Aboriginal and Torres Strait Islander community controlled business and service delivery models which deliver effective governance, management, leadership and frontline services for the benefit of children and young people.

In particular that the inquiry recommend significant sector re - design to correctly position Queensland Aboriginal and Torres Strait Islander Child Protection sector to accept delegated statutory responsibility as an enduring public investment aimed at the culmination of the unacceptable rates of over – representation.

Recommendation 20.

That the Inquiry recommend a standalone state-wide Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency to deliver universal, early intervention and statutory support services. The agency should be reflective of children, young people and the local community needs throughout the seven identified child safety regional areas and remote locations.

In addition the inquiry to recommend community controlled and community input is proficiently achieved through regional and local informal and professional relationships within community frontline practice.

Recommendation 21.

That the Inquiry recommends a “child protection solution focused” universal education and awareness programs.

The programs should be implemented within the local urban, rural and remote community and be informed by group work and community development practice frameworks. This approach must be accessible to a broader Aboriginal and Torres Strait Islander target group and responsive to immediate child protection and socio – economic status of families.

The programs should aim to empower and capacity build community and family resilience to a range of pressures inclusive of child protection, housing, employment, education, health, violence prevention, substance misuse treatment information and create linkages to direct service providers. It is also essential that a comprehensive mapping exercise is undertaken to identify what services are available. The detailed mapping must include state and federally funded services.

Recommendation 22.

That the Inquiry recommends the current Aboriginal and Torres Strait Islander Family Support Service framework as a foundation or building block to create holistic wraparound Aboriginal and Torres Strait Islander Child Protection/Wellbeing Agency with specialist secondary support capabilities and programs.

This should include an employment strategy setting improved service delivery standards through the active recruitment of tertiary educated and qualified professionals and specialist program development.

In particular enhanced specialist roles and program responses targeting the significant harm and risk factors such as

- *Neglect*
- *Domestic and Family Violence*
- *Substance Misuse*
- *Parenting capacity*
- *Mental Health (inclusive of responses to intergenerational Grief and loss cycles)*

Recommendation 23.

That the Inquiry recommend maintaining and enhancing the enshrined legislated cultural competency framework aimed at achieving the best interests and wellbeing of Aboriginal and Torres Strait Islander children. Legislative reform to determine the best interest framework should utilise this historical foundation.

Recommendation 24.

That the Inquiry recommends legislative amendments to section 6 ‘Recognised entities and decisions about Aboriginal and Torres Strait Islander children’ within the Child Protection Act 1999 to delegate partial and/or full statutory responsibility for child protection case management to Aboriginal and Torres Strait Islander professionals and their representative agency.

By way of suggestion, the amended section could read along the following lines:

Section 6 Recognised entities and decisions about Aboriginal and Torres Strait Islander children

- (1) The below subsections (2) to (4) apply in instances where a Aboriginal and Torres Strait Islander children are subject to Intake and Investigation and Assessment.*
- (2) When making a significant decision about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must give an opportunity to a recognised entity for the child to participate in the decision-making process.*
- (3) When making a decision, other than a significant decision, about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a recognised entity for the child before making the decision.*
- (4) However, if compliance with subsection (2) or (3) is not practicable because a recognised entity for the child is not available or urgent action is required to protect the child, the chief executive or an authorised officer must consult with a recognised entity for the child as soon as practicable after making the decision.*
- (5) If the Children’s Court exercises a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the court must receive a Recognised Entity written court report to inform and have regard to —*
 - (c) the views, about the child and about Aboriginal tradition and Island custom relating to the child, and*
 - (d) the views of a child’s immediate family, extended family and community members to whom the child belongs; and*
 - (e) the general principle that an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal or Torres Strait Islander community; and*
 - (f) the general principle that cultural preservation and enhancement is central to identity development and long term wellbeing.*

Editor’s note—The Acts Interpretation Act 1954, section 36, contains definitions of Aboriginal tradition and Island custom.

- (6) the chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to Independently convene Family Group and Case Plan Review Meeting and conduct consultations, negotiations, family group meetings and other proceedings involving an Aboriginal person or Torres Strait Islander (whether a child or not) in a way and in a place that is appropriate to Aboriginal tradition or Island custom.*
- (7) The chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case management responsibilities for the purposes of transitioning of a child to adulthood commencing at the age of 15 years.*
- (8) The chief executive or an authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case management responsibilities for the development, implementation and review of children and young people’s cultural support plan.*
- (9) The chief executive or authorised officer must give Aboriginal and Torres Strait Islander families an opportunity for the Recognised Entity to deliver case work and case responsibility for child and family contact.*
- (10) In this section— significant decision, about an Aboriginal or Torres Strait Islander child, means a decision likely to have a significant impact on the child’s life; Significant decisions only apply across intake, investigation and assessment and placement decision making.*

Examples of decisions relating to an Aboriginal or Torres Strait Islander child that may be significant decisions—

- 1. decision made in the course of investigating an allegation of harm to the child*
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(1) The chief executive may place the child in the care of—

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(f) if the chief executive is satisfied another entity would be the most appropriate for meeting the child's particular protection and care needs—that entity.

Example for paragraph (f)—

A particular medical or residential facility may be the most appropriate entity for a child with a disability.

(2) Also, if the child is in the chief executive's custody or guardianship under a child protection order, the chief executive may place the child in the care of a parent of the child.

(3) The chief executive may grant approval to Aboriginal and Torres Strait Islander foster and kinship care agencies the authority to administrate subsections 1 (a), (b), (c), (e)

8. Conclusion

Aboriginal and Torres Strait Islander children, families and communities must reflect on the 2012 Queensland Child Protection Commission of Inquiry as a moment of positive change. It is fundamentally imperative that the future child protection system is reflective and responsive to Aboriginal and Torres Strait Islander children.

Please accept the Aboriginal and Torres Strait Islander Legal Service's preliminary Queensland Child Protection Commission of Inquiry submission which provides solution based approaches, commentary and associated recommendations. ATSILS recommends the implementation of these strategies to support the development of a proficient and balanced service delivery model across both Government and Non – Government service providers.

Aboriginal and Torres Strait Islander children have and deserve unique human rights. ATSILS considers it fundamentally important that the cultural rights of Aboriginal and Torres Strait Islander children and young people in out of home care are upheld - particularly their legal right to cultural identity preservation and enhancement through meaningful connection with family, kin, cultural, language and community groups.

It is vitally important our children and young people have access to a proficient Aboriginal and Torres Strait Islander community controlled non – government sector delivering sound best practice and evidenced based outcomes across governance, management, leadership and frontline service delivery. Furthermore the potential to transition towards more responsive partial delegation model presents a promising opportunity for Aboriginal and Torres Strait Islander professionals to deliver casework in a culturally competent model.

ATSILS will continue to advocate for the best interest of Aboriginal and Torres Strait Islander children as “a party with leave to appear” at the Inquiry. In addition to this preliminary submission ATSILS will deliver a closing Inquiry submission.

I thank you for your careful consideration of this submission and for affording us an opportunity to have input. I also take this opportunity to acknowledge the invaluable assistance provided to me by three of my Brisbane staff members in an earlier draft: Mr William Hayward (Law and Justice Advocacy Development Officer), Tania Schmakeit (Researcher) and Ms Jenifer Ekanayake (Director of Family Law).

Yours faithfully,



Shane Duffy

Chief Executive Officer



Aboriginal & Torres Strait Islander
Legal Service (QLD) Ltd

Continuing Professional Development Presentations April 2012 – March 2013
Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd
Presentation Coordinator: Gregory Shadbolt, Principal Legal Officer: (07) 3025 3888*

Date and Time	TOPIC	PRESENTER	LAW TYPE	LOCATION
Tuesday 17 th April 2012	The Non Recording of a Criminal Conviction	Stephen Cavanagh	Criminal Law (Skills: Advocacy)	Beenleigh #110
Thursday 3 rd May 2012	Child Protection (Offender Reporting) Act	Kelly Roggenkamp	Criminal Law	Brisbane #111
Tuesday 15 th May 2012	Sexual Offences – Uncharged acts	Sarah Laikind	Criminal Law	Hervey Bay #112
Thursday 31 st May 2012	Consumer Credit – setting aside judgments	Martin Doyle	Civil Law (Skills: Advocacy)	Mackay #113
Tuesday 12 th June 2012	Vehicle Impoundment and Forfeiture Applications	Nathan Smith	Criminal Law (Skills: Advocacy)	Townsville #114
Thursday 28 th June 2012	Bail Applications in the Children’s Court	Kerri Patterson	Criminal Law (Skills: Advocacy)	Townsville #115
Tuesday 10 th July 2012	Judicial Review of Administrative Decisions	Fiona Campbell	Civil Law (Skills: Advocacy)	Cairns #116
Thursday 26 th July 2012	Cognitively Impaired Clients (criminal justice system).	Renee Lees	Criminal Law	Cairns #117
Tuesday 7 th August 2012	Advocacy Skills	Kate Power	Cross-jurisdictional (Skills: Advocacy)	Brisbane #118
Thursday 23 rd August 2012	DNA Evidence	Lewis Shillito	Criminal Law	Brisbane #119
Tuesday 4 th September ‘12	Circumstantial Evidence	Tim Hishon	Criminal Law	Maroochydore #120
Thursday 20 th September	Hostile/Adverse Witnesses	David Castor	Criminal Law (Skills: Advocacy)	Normanton #121
Tuesday 2 nd October 2012	Breaches of Parole	Gavin Townsing	Criminal Law	Beenleigh #122
Thursday 18 th October 2012	Case Conferencing (Submissions to Prosecutors)	Ian Pilgrim	Criminal Law (Skills: comm’ation)	Mount Isa #123
Tuesday 30 th October 2012	Intoxication (as a defence)	Trevor Hoskin	Criminal Law (Skills: Advocacy)	Ipswich #124
Thursday 15 th November ‘12	Discrimination Law: Accommodation/Rental	Garry Scott	Civil Law	Murgon #125
Tuesday 27 th November ‘12	Adoption	Bruce Guy	Family Law	Rockhampton #126
Thursday 13 th December ‘12	QCAT – Review Applications (Children’s Matters)	Jennifer Ekanayake	Family/Civil Law (Skills: Advocacy)	Brisbane #127

2013				
Tuesday 22 nd January 2013	Expert Evidence – exception to hearsay rule	Alan Korobacz	Cross-jurisdictional (Skills: Advocacy)	Murgon #128
Thursday 7 th February 2013	Foetal Alcohol Spectrum Disorder (crim. justice)	Andrew Hackett	Criminal Law	Brisbane #129
Tuesday 19 th February 2013	Conflict of Interests	Cameron Young	Cross-jurisdictional (Ethics)	Brisbane #130
Thursday 7 th March 2013	Managing Conflict in the Workplace	Jane Oliver	Cross-jurisdictional (practice manage't)	Brisbane #131
Tuesday 19 th March 2013	Professional Obligations: Legal Services Commission	Terry Morgans	Cross-jurisdictional (Ethics)	Brisbane #132
Standby/Reserve Presenters				
Deadline for Draft	TOPIC	PRESENTER	LAW TYPE	LOCATION
31 st May 2012	Children's Court 101	Kate Steel	Criminal Law (Skills: Advocacy)	Townsville
31 st August 2012	Mental Health Act	Andrew Ferrett	Criminal Law	Strathpine
30 th November '12	Provocation	David Anderson	Criminal Law	Cairns

* Please note: It is requested that non-ATSILS' staff book ahead where possible in order to ensure that there is sufficient space available. Attendees can also participate at one of our regional offices via video-links. We also reserve the right to substitute presenters (or in exceptional cases, topics) should the need arise. There is no charge for attendances, all are most welcome. Copies of the CPD papers are provided on the day itself.

Please note: The Bar Association's accreditation code for all ATSILS' presentations is different for each presentation. The Code will be "ATSILS" followed by the presentation date. For example, the Code for the first presentation on the 17th April 2012 will be: "ATSILS170412" and the code for the last presentation on the 19th March 2013 will be "ATSILS190313".

Further, each CPD is scheduled for 1 hour – which equates to 1 CPD point for attendees. Presenters accrue 3 CPD points for each 1 hour presentation.



Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

Family and Civil Law Workshop 21st March 2012 Brisbane AGENDA

We hope you find this Workshop both enjoyable and valuable. Our sincere welcome to all.

21st March 2012

Day 1

Child Protection Day

Topic	Start *	Finish	Probable CPD Points
Arrival Tea & Coffee	8.30 am	9.30 am	
Session 1			
Welcome (Greg Shadbolt PLO Brisbane Office)	9.30 am	9.45 am	
Topic 1. ATSILS – Being a Defining Influence in Child Protection Legal Representation (Greg Shadbolt– Brisbane Office)	9.45 am	10.30 am	
Topic 2. Aboriginal & Torres Strait Islander Over-representation within Child Protection System and Historical Influences. (William Hayward – Brisbane Office)			
Morning Tea	10.30 am	10:45 am	
Session 2			
Topic 3. Queensland Child Protection Service Delivery System. <ul style="list-style-type: none"> • Universal Prevention. • Early Intervention & Targeted Services. • Statutory Services. (William Hayward – Brisbane Office)	10.45 am	11.00 am	
Topic 4. Department Of Communities – Court Services	11.00am	11:45 am	
Topic 5. Practice and Case management Standards Child Protection Law (Jennifer Ekanayake Director of Family Law)	11:45 am	12.45 pm	
Lunch	12.45 pm	1.30 pm	



Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

21st March 2012

Day 1

Child Protection Day (cont.)

Session 3			
Topic 6. Case Scenarios			
<ol style="list-style-type: none"> 1. Extended family member. 2. Contesting a child protection order. 3. Establishing positive outcomes with Long Term Guardianship order. 	1.30pm	2.00pm	
Topic 7. Professional Q&A Panel			
<p>Attendees include:</p> <ul style="list-style-type: none"> • Department of Communities Child Safety Services Practice Improvement • Department of Communities Court Services • Indigenous Family and Child Support Service (Recognised Entity) • Kurbingui Family Support Service (Family Support) • Queensland Aboriginal & Torres Strait Islander Child Protection Peak 	2.00pm	2.45pm	
Afternoon Tea	2.45pm	3.00pm	
Session 4			
Topic 8. Tools for Negotiation, Mediation & Litigation.			
<ul style="list-style-type: none"> • Aboriginal and Torres Strait Islander Specific Legislation. • Investigation and Assessment • Structured Decision Making Tools • Family group Meetings/Case Plan Reviews • Appeals and Reviews <p>(William Hayward –Brisbane Office)</p>	3.00pm	5.00pm	



Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

22 March 2012

Day 2 - CIVIL LAW

Topic	Start	Finish	Probable CPD Points
Arrival Tea & Coffee	8.30 am	9.00 am	
Session 5			
<ul style="list-style-type: none"> • Introductions • Team Discussion re end of day ACTION PLAN • Lawyer reports – Trends; Capacities; Cultural Issues. Maria Rinaudo - facilitator 	9.00am	10.00am	
Morning Tea	10.00 am	10:30 am	
Session 6			
<ul style="list-style-type: none"> • Overview – Case work • Big Picture Maria Rinaudo (Director of Civil Law)	10.30am	11.00am	
Session 7			
<ul style="list-style-type: none"> • Public Trustee • Roles of the PT (Katherine Williams, Lawyer) • Client Services – What they do on the ground (Presenter: Manager Client Services) 	11.00	12.00	1
Session 8			
<ul style="list-style-type: none"> • Internet Research (To be Confirmed) 	12.00	12.45	0.45
Lunch	12:45pm	1.30pm	
Session 9			
<ul style="list-style-type: none"> • QCAT (2 guest presenters) • Residential Tenancies • Homelessness intervention • Debt recovery <ul style="list-style-type: none"> ○ And: Regulated dogs ○ Leave for legal representation ○ Appeals 	1.30pm	2.30pm	1
Session 10			
<ul style="list-style-type: none"> • Police complaints/CMC; DIC; Body Disputes – Overview and Fact Sheets (Maria and Rory) 	2.30pm	2.45pm	0.25
Afternoon Tea	2.45pm	3.00pm	
Session 11			
Pro bono and deferred payment firms	3.00 pm	3.30pm	1
Session 12			
Team Action Plan (Part 2) Group discussion facilitated by Maria Rinaudo	3.30 pm	4.30 pm	



Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

22 March 2012

Day 3 - FAMILY LAW

Topic	Start	Finish	Probable CPD Points
Arrival Tea & Coffee	8.30 am	9.00 am	
Session 13			
Cultural Training Overview - Bill Ivinson, Head, School of Indigenous Australian People, Southbank Institute of Technology	9.00am	10.00am	1.0
Session 14			
The Judicial approach on how to evidence Aboriginal identity under the Family Law Act.....a recent case study - Sheldon v Weir Martin Doyle Regional Manager ATSILS Mackay	10.00am	10.30am	0.5
Morning Tea	10.30 am	11:00 am	
Session 15			
Child Support and Enforcement Action Darren Ranger, Community Project officer, Queensland - Child Support Agency	11.00	12.00	1.0
Session 16			
Getting the best use out of <i>The Family Law Book</i> Craig Nicol, Family Lawyer and co-author of <i>The Family Law Book</i>	12.00	12.45	0.45
Lunch	12:45pm	1.30pm	
Session 17			
Review of Practice and Case management Standards Family law Jennifer Ekanayake, Director of Family Law and Greg Shadbolt, Principal Legal Officer	1.30pm	2.00pm	0.5
Session 18			
Conflicts of Interest and related matters Group discussion facilitated by Greg Shadbolt Principal Legal Officer	2.00pm	2.45pm	0.45
Afternoon Tea	2.45pm	3.00pm	
Session 19			
General Business: Funding for expert reports, Paralegal assistance for family/civil lawyers, Merits assessment Any other matters	3.00 pm	4.30pm	

Child Protection



Case Management Standards

December 2012



Case Management Standards: Child Protection

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Introduction

It should be noted that these **Case Management Standards** represent the *minimum* level of work necessary to be undertaken in client representations. The central objective of these standards is to assist staff (legal, field and administrative) in achieving and maintaining efficient and effective levels of case management.

Compliance with these Standards by ATSILS staff is an essential pre-requisite to ensuring consistency of service delivery and that service is maintained at professional levels.

Further, these Case Management Standards must be read in conjunction with (and not in substitution of) all legislative requirements (statutory and regulatory); Rules and Practice Directions of the various Courts; requirements of relevant governing bodies (i.e. the Bar Association of Queensland and the Queensland Law Society); and all other relevant Organisational policies and procedures.

Please also refer to section 1 of our document entitled: “*Procedure: Case Management Standards Family Law*”.

1. Casework Assistance

In general we provide assistance to the parents or legal guardians of a child in Child Protection matters*. Further, whilst there might not (at least at first instance) be any actual legal conflict of interest between the parents or legal guardians, the practitioner should restrict representation to **one** of the parties. In determining which of the two parties to represent, the Aboriginal or Torres Strait Islander party should be given preference (i.e. where the other party is a non-Indigenous Australian). Where both parties are Indigenous Australians (and dual assistance is sought contemporaneously – i.e. the “first in time” rule has no application) – then priority should be given to that party who is least likely to have an appropriate alternative referral agency available to them. All else being equal, priority should be given to the female client (in accordance with funding body priorities relating to the representation of women and children).

Requests for assistance from a prospective kin carer or a non-party may be considered if we do not act for a party in the same matter.

Requests for direct representation of a child can be considered if we do not already represent a party in the matter. However, in this regard, consideration should also be given to the likelihood of a subsequent approach from the related parent or guardian for assistance. Further, please note our casework criteria that require us to refer potential clients (including children) to a more appropriate organisation funded to provide that assistance where such exists e.g. Youth Advocate, Legal Aid Queensland.

* *The Child Protection Act* (‘the Act’) provides a definition of ‘parent’ for separate stages of the process.

Casework assistance may include one or more of the following and would ordinarily comprise of separate files (and matter numbers) although in some instances (i) and (ii) could comprise of one file:

- (i) Pre litigation stage;
- (ii) Litigation stage;
- (iii) Appeal stage;
- (iv) Reviewable decisions – assistance and representation in matters before the Queensland Civil and Administrative Tribunal; and
- (v) Revocation applications.

2. Initial interview with the client

Arrange an appointment with the client. Refer to paragraph 1.3 *Procedure: Case Management Standards Family Law* concerning the initial interview process. Ensure that the client meets the threshold criteria for a casework grant of aid for this stage (merit/means test). **If so** - a new file should be opened (with a copy of the Casework Sheet being provided to data entry personnel). The client should complete a '*Client Instruction Questionnaire (Child Protection)*' – **Annexure R**.

2.1. Prior to the initial interview where practicable:

- (i) Ascertain if the client:
 - (a) needs an interpreter and/or assistance to communicate, and if so: seek information about interpreter and other services, (including free services) and fees involved, if any, bearing in mind such expenditure requires prior approval; and/or
 - (b) needs / wishes to have a support person to assist at the interview and if so ascertain if a family member, or service provider (such as a social worker) could provide that support.
- (ii) Request the client to provide all available documentation relating to the matter, including applications /affidavits and court orders where relevant. See **Annexure S** for a list of *Children's Court and Queensland Civil and Administrative Tribunal* forms.
- (iii) Ascertain if the client has any issues relating to capacity. After proper investigation, if the issue of capacity is not resolved, make further and better inquiries including calling for medical reports. Document all steps taken.

Note: In urgent cases and where the client does not have any material, request the Child Safety Officer ('CSO') at the relevant service centre of the Department of Communities (Child Safety) ('the Department') for the information/material.

2.2. At the interview:

Obtain from the client full particulars of:

- (i) The client; the subject child or children (hereafter referred to as 'the child'); any other parties involved such as partners and potential kin carers, including dates of birth and current addresses; and the client's version of departmental involvement.
- (ii) The level of involvement by the Department including whether court proceedings have commenced and if so, what orders have been made and upcoming court dates - as well as details / copies of any documents filed in court.
- (iii) The Child Safety Service Centre involved and:

- the name of the CSO /team leader; and
 - A full history of the Department’s current and previous intervention/s in relation to the subject child, his/her siblings and in the parent/s (including information about the outcome/s of any investigation/s).
- (iv) The client’s response to the Department’s protective concerns and any actions taken by or on behalf of the client to address those concerns.
- (v) Existing Case Plans for the child.
- (vi) Any upcoming Family Group Meeting or court ordered conference.
- (vii) Whether a separate representative for the child has been appointed.
- (viii) Whether a Recognised Entity (‘RE’) is involved and the officer dealing with the matter. If an RE is not involved, the reason for such non-involvement.
- (ix) The whereabouts of the child e.g. placed with a department-approved carer or with family/friends etc. If the child is with a carer, whether the carer is Aboriginal or Torres Strait Islander and whether the child has been placed within or outside the child’s community*.
- Note
- *(a) The Act does not provide a definition for ‘community’. See ATSILS’ Staff Cultural Training folder (G:Drive) for a discussion on the differences between community within the context of kinship relationships systems under customary law and geographical location connection;
- (b) Where reunification is the stated goal: whether the child has been placed geographically close to the parent/s.
- (x) Whether the client has been referred by the Department for assistance or support to service providers or a family support service and if so their details.

Explain to the client:

- (i) The client’s role – which is to include him/her advising or making available to the practitioner, correspondence and other communications from the Department.
- (ii) The practitioner’s role and its limitations.
- (iii) The provisions in the Act for the placement of children in care and the statutory obligations placed on the Chief Executive when placing an Aboriginal or Torres Strait Islander child in care.

- (iv) Where the child has been removed, the usual timeframes associated with the court process and the advisability of giving priority to identifying and nominating family or other suitable persons as kin or temporary carers for the child as soon as possible.
- (v) If kin carers are proposed - whether their details have been provided to the Department; whether the relevant application forms have been completed; and the possibility of seeking provisional approval for a carer.
- (vi) The role of support persons, depending on the facts of each case. It would be useful to inquire about the client's support network amongst family/ friends/community (including workers at the local AICHS or local community group or a counsellor etc.).
- (vii) The involvement of the child: The Act provides for the child's involvement in the proceedings (subject to the child's level of maturity) such as to express views, attend case planning and review meetings, appear in court or be represented by a lawyer (subject to the child's capacity to give instructions), seek a variation or revocation of a child protection order. Refer also to *The Charter of Rights for a child in care*; and *The Standards of Care*.
- (viii) Where relevant, the option for a mother to consent (or not to consent) to the participation of the RE in an unborn child notification. As a general rule, in most instances we would recommend to a mother that it is likely to be beneficial if their consent is forthcoming.
- (ix) The support/assistance that is available after ascertaining the areas in which the client might need support and consider referrals to appropriate agencies (e.g. housing, counselling, financial support) giving priority to culturally appropriate services wherever possible.
- (x) The Chief Executive's obligations in relation to meeting a child's protection and care needs under a Child Protection Order or Agreement; and specifically in relation to Aboriginal and Torres Strait Islander children.
- (xi) Accessing Departmental records via the Right to Information process
- (xii) Reviewable decisions and associated deadlines.
- (xiii) Where relevant, the role of community agencies and how they might be able to assist the client. (Note: it is useful to maintain a list of such agencies - including culturally competent agencies - in your local area after establishing the types of assistance they can provide).

3. The Department of Communities (Child Safety) ('the Department')

3.1. Communication with the Department

Initial contact with the Department is usually through a Child Safety Officer or a Court Coordinator. Some Court Coordinators are also lawyers.

Communications with departmental staff should be as per unrepresented parties until such time as the Department is legally represented. The Department is usually represented by Crown Law or a member of the private bar when a matter proceeds to trial.

It is advisable to maintain a record of conversations with departmental staff (including their names, dates/times) and later confirm same in writing. In general, letters should be addressed to the Manager of the relevant service centre and marked for the attention of the Child Safety Officer or team leader having charge of the matter. When requesting the Department to respond, it is best to provide a reasonable deadline for such (e.g. 7 or 14 days).

The *Child Safety Practice Manual* ('Practice Manual') provides a set of procedures/standards for the delivery of child protection services by the Department. It would be useful to refer to the manual at each stage of the process to ascertain if the guidelines/standards are being met.

3.2. Complaints

The Department has an internal complaints procedure. Complaints can also be made direct to the Minister and to external agencies including the Commission for Children and Young People and Child Guardian, the Crime and Misconduct Commission and the Queensland Ombudsman (where relevant). However, staff should first seek executive approval (CEO or PLO) prior to commencing any communications direct to a Minister.

3.3. Confidentiality obligations

Be aware of confidentiality obligations that pertain to:

- (a) information or material disclosed, obtained from or given by persons involved in the administration of the Act; and
- (b) records produced by the Department in court proceedings.

In particular, note the **prohibition** upon publication of information leading to the identification of children. See Chapter 6, Part 6, Divisions 1-4 of the Act. A breach of the Act in this regard constitutes a criminal offence. If in doubt, staff should seek a written ruling from either the ATSILS Principal Legal Officer or Director of Family Law prior to embarking upon any course which could possibly constitute non-compliance with the statutory provisions in this regard.

4. Completion and service of Notice of Address for Service

Where relevant, file and serve a *Notice of Address for Service* on the Department of Communities (Child Safety) as well as any other parties - including the separate representative.

5. Family Group Meetings ('FGM')

The Act provides for a FGM to be initiated by the Chief Executive of the Department or ordered by the Children's Court.

5.1. Ascertain if a FGM has been scheduled and:

- (i) Advise the client of the right to a support person at the FGM.
- (ii) Give advance notice to the client and the FGM coordinator in advance of your availability to attend the meeting.
- (iii) Consider the provision in the Act for:
 - (a) The Chief Executive or an authorised officer of the Department to 'try to conduct consultations, negotiations, family group meetings and other proceedings involving an Aboriginal person or Torres Strait Islander (whether a child or not) in a way and in a place that is appropriate to Aboriginal tradition* or Island custom'; and
 - (b) A private independent convenor.
- (iv) Consider if a request should be made for an Aboriginal or Torres Strait Islander convenor or joint convenor.

*see the ATSILS' *Staff Cultural Training* folder (G:Drive) for a discussion on Aboriginal and Torres Strait Islander traditions and customs.

5.2. Prior to the FGM check if:

- (i) The convenor has contacted the client to discuss persons to be included in the FGM.
- (ii) A S51 Notice has been sent to the client, significant family members and other relevant parties; and a reasonable opportunity provided to the parties to attend/participate in the FGM or provide their views; and if the Notice meets the requirements of the Act.
- (iii) The child (if able to participate) has been invited to attend.
- (iv) The RE has been invited to attend.
- (v) Any community groups, including relevant kinship group representatives and other agencies supporting or working with the family/children have been invited. If not, inquire why those parties have not been invited to the meeting.
- (vi) Decide in advance how to advocate for the client after discussing with the client:
 - (a) The purpose and role of the FGM.

- (b) The client's expectations from the FGM and concerns/issues for case planning and reality test the client's proposals.
- (c) Any safety concerns for the client at the FGM.

5.3. At the FGM

- (i) Ensure the client understands and participates in the discussions, if necessary, taking time out for instructions and explanations.
- (ii) Raise issues on behalf of the client that the practitioner feels are relevant where the client is unable to do so.
- (iii) Advise the client about matters being discussed and the likely impact of goals and outcomes proposed.
- (iv) Request the RE to state their position.

6. Case Planning

A case plan may include among other things, care arrangements for the child; goals to be achieved by implementing the plan; matters for which the Department is responsible; the child's contact with family, including siblings and how such is to be facilitated - including travel arrangements; arrangements to maintain the child's ethnic and cultural identity; matters for which the parent or carer will be responsible; and if a child is over 15, a *Transition from Care Plan*.

6.1. If litigation is on foot, ascertain if the Case Plan, and if reviewed, a S51X report about the revision, has been filed in the proceedings (as the Court must not make a Child Protection Order unless they are filed).

6.2. Determine if an earlier Case Plan is in place and the review date on the Plan (the legislation currently provides for review in keeping with the child's age and the circumstances of the case and in any event, every six months); and if so, ascertain whether:

- (i) The client attended the case planning/review meeting.
- (ii) The client had legal support/representation when that Plan was developed.
- (iii) The outcomes and goals set out in the Plan are measurable and achievable.
- (iv) Progress has been made on the existing Plan, including goals achieved with a view to the formulation of the next Case Plan; as well as any deadlines overlooked by departmental staff or service providers.
- (v) A change of circumstances relating to the client requires the review of an existing Case Plan.
- (vi) Support services if any, allocated to the client are culturally competent and have fully carried out their obligations.
- (ix) **Cultural Support Plans** are adequate and requirements met.
- (x) The child's views (if appropriate) have been obtained.

6.3. When a Case Plan is being drafted or reviewed request that the Plan:

- (i) Record any goals already achieved by the client on an existing Case Plan, together with the outcome.
- (ii) Records the client's attitude to any orders sought/intervention proposed by the Department.
- (iii) Records the child's views (where appropriate).
- (iv) Includes outcomes and goals that are measurable and achievable and reflect the client's capacity to engage with services.
- (v) Includes review dates and deadlines for actions by each of the parties including Child Safety Officers.
- (vi) Places on record the practitioner's or client's objection(s) to outcomes/goals proposed.
- (vii) Where reunification is the stated goal, records all support and tools to be made available to the family to achieve that goal.
- (viii) Records arrangements (depending upon the client's instructions) for maintaining the child's cultural identity and connection by way of a **Cultural Support Plan**. Obviously such goes beyond merely identifying the child's clan or his/her participation in NAIDOC events; and could include:
 - how the child is to remain connected to their family group, culture and community - for example, the involvement of the child's family and extended family in cultural support;
 - the continuation of efforts to identify a suitable placement within the child's extended family or community;
 - the maintenance of contact between siblings, extended family and community members;
 - participation in cultural and community events;
 - establishing and maintaining links with the **relevant** Aboriginal or Torres Strait Islander services;
 - the obligations of a non-Aboriginal or Torres Strait Islander carer in terms of S83(7) having care of an Aboriginal or Torres Strait Islander child;
 - arrangements to maintain a child's cultural connection and identity when the child's parents are from different Aboriginal or Torres Strait Islander communities - as a family's cultural heritage can differ from community to community;
 - how the Department will monitor and coordinate the **Cultural Support Plan** to ensure that it is implemented on a continuing basis.

6.4. At the conclusion of the meeting it is advisable to request the convenor for a copy of the draft Case Plan to ensure that it correctly reflects what was discussed and agreed to - as well as any matters not agreed to - and to notify the Department of any discrepancies as soon as possible in writing (as the legislation currently provides for endorsement of the Case Plan within 10 business days unless the Plan is inappropriate).

Note:

(i) The review of an existing Case Plan is a participative process and must involve the child (where appropriate), the family, and other significant or relevant persons as well as service providers and the RE. The same participants that were invited to the FGM should be given a reasonable opportunity to participate in the review of the Plan. A FGM might not be required for a Case Plan review.

(ii) The parties may be cross-examined about actions set out in the Case Plan.

Chapter 4 of the *Child Safety Practice Manual* sets out guidelines/standards on case planning.

7. The Separate Representative

The Act states the Children's Court may order that a child be separately represented by a lawyer. The Act further states that the Court must consider making orders about the child's separate legal representation if the application for the Order is contested by the child's parents or the child opposes the application. The Separate Representative's primary responsibility is to act in the child's best interests.

7.1. Should an order be sought for the appointment of a Separate Representative, consider requesting that the appointee have experience of working with, and a knowledge and understanding of the issues affecting, Aboriginal and Torres Strait Islander people.

7.2. Communication with the Separate Representative is as with another party to the matter. The separate representative although not a party to the proceedings 'must do anything required to be done by a party and may do anything permitted to be done by a party'.

7.3. After a Separate Representative is appointed, ascertain if:

- The Separate Representative has developed a position in relation to the matter, and how it is to proceed.
- The *Social Assessment Report** (if ordered) will be ready before the Court Ordered Conference - and if a copy will be provided to the practitioner well in advance for consideration by the client.
- The letter of instruction from the Separate Representative to the expert report writer is attached; and check the letter for the instructions given.

Note: the Separate Representative is not bound to accept the recommendations of the expert. The recommendations are to be considered as part of the evidence before the court.

- Where a Social assessment Report has not been ordered - if the Separate Representative has ascertained the views of the child.

* A *Social Assessment Report* might not be the most appropriate document in all instances – consider discussing with the Separate Representative a more appropriate report given the circumstances of each case (e.g. a cultural report; an independent review of actions taken by the Department; a risk assessment or a wishes report).

7.4. For Social Assessment and other reports, consider requesting:

- (a) That the report writer has experience of working with, as well as a knowledge and understanding of, the issues affecting Aboriginal and Torres Strait Islander people.
- (b) Where appropriate, an additional Cultural Report.

Note: the Separate Representative may refer a matter to the Court if the parties reach an agreement with which the Separate Representative is unable to agree.

8. Direct Representation of a child

Please see comments on page 1 of this part in relation to direct representation of a child or young person.

The subject child/young person is a party to the proceedings in the Children’s Court and also has the right to commence and be a party to proceedings in QCAT (where he or she is the subject of a decision to be reviewed).

A direct representative acts on their client’s instructions, with the child or young person being the client.

8.1. It is the direct representative’s (‘DR’) responsibility to:

- Ensure the child or young person is competent* to give instructions;
- Receive instruction for each course of action they undertake for the client;
- Explain to the client the legal process and possible outcomes or consequences thereof;
- Actively advocate the client’s position;
- Ensure the client understands the nature of the proceedings;
- Ensure the practitioner understand the client’s directions;
- Ensure communication with the client is in keeping with the age, maturity, level of education and language proficiency and takes into consideration any special needs.

*See ‘Gillick competence’ principles set out in the English case of *Gillick - V West Norfolk and Wisbech Area Health Authority 1986* accepted in the Australian High Court decision of *Marion*.

- 8.2. Where a direct representative is appointed, all communication is through the direct representative. This would include the service of filed documents and other material provided to other parties as well as negotiations.
- 8.3. The client is owed the same duties of competence, loyalty, confidentiality and professional representation as an adult client - see also sections 1-7 and 9-11 of this document.

9. The Recognised Entity ('RE')

The Act provides for the involvement of an RE where an Aboriginal or Torres Strait Islander child is involved, by way of:

- Participation in decision making about the child.
- The requirement for the Children's Court to have regard to the RE's views about the child and Aboriginal and Torres Strait Islander customs relating to the child.
- The requirement for consultation with the RE about the administration of the Act in relation to Aboriginal and Torres Strait Islander children.
- Giving the RE a reasonable opportunity to attend and participate in a FGM and in the review and preparation of a revised Case Plan for the child.
- Participation in a Court ordered conference.
- Participation in decision making about where the child will live when the child is placed in out of home care. And
- Membership of the Suspected Child Abuse and Neglect (SCAN) team system involving the child.

S 246I of the Act provides for the Chief Executive to keep a list of Entities available for consultation concerning issues relating to the protection and care of Aboriginal or Torres Strait Islander children. The Chief Executive must not include an Entity on the list unless the Entity is an "individual" who is an Aboriginal or Torres Strait Islander person, and who has appropriate knowledge of or expertise in child protection. Further, that person must not be an officer or employee of the Department. The list can also include an "entity" whose members have the aforementioned skills (and subject to the aforementioned prohibition) that have a function of providing services to Aboriginal and Torres Strait Islanders. The Chief Executive is also required to make the list available for public inspection.

9.1 Consider each of the requirements for an RE and their statutory involvement.

9.2 Ascertain if the RE:

- (i) is from the local area or has a connection to the child's community;
- (ii) takes into consideration information about the child's family, community and culture and if necessary clarifying any subjective information;
- (iii) will be attending or providing input into Case Planning meetings, COC and at court events;

- (iv) has the knowledge, expertise and capacity to provide advice and recommendations on:
 - family, community and cultural matters for consideration in developing a *Cultural Support Plan*;
 - adherence to the Aboriginal and Torres Strait Islander Child Placement Principles;
 - culturally appropriate intervention approaches;
- (v) has formed a view on the matter and has expressed that view;
- (vi) is able to provide a family, community and cultural context to any child protection risk and existing protective factors;
- (vii) has the separate functions of an RE and family support service;
- (viii) has considered the least intrusive intervention with referral to family support.

Note:

- (i) Currently 11 regional RE hubs and 11 family support services are in place. Some RE's have dual funding to include family support services. Family support services are usually available through referrals from the Department. RE's can actively recommend a referral to the intensive family support service at three key points i.e. Intake, Investigation & Assessment and Ongoing Intervention phases.
- (ii) See the *Practice Manual for Recognised Entity Functions and Family Support Service* published by the Queensland Aboriginal & Torres Strait Islander Child Protection Peak (QATSICPP).

The Department has separately advised the RE's upon the limitations of their role.

10. Children's Court

The Children's Court is a closed court. Objection can be made to any persons other than those permitted to be present in the court room.

10.1. Court events

- (a) The practitioner (or delegate) must attend all court events.
- (b) At each stage, the practitioner must:
 - (i) Record the advice given to the client in relation to the orders sought and the client's election; obtain the client's signature confirming same; and place such on the client's file.
 - (ii) Write to the client advising of the outcome; the next court date; the need for the client to attend; the client's rights and obligations pursuant to any orders made; and whether any order should be reviewed or appealed.
 - (iii) Obtain a copy of any orders made to forward to the client as well as placing such on the client's file.

10.2. Prior to Each Court Event

The practitioner must:

- (i) Explain to the client the court process and the purpose of the specific court event.
- (ii) Discuss with the client (and where necessary make arrangements), for the client's safety at the court event; as well as their right to be accompanied by a support person.
- (iii) Obtain copies of application/affidavits filed by the Department and any supporting documents provided by the client.
- (iv) Provide drafts of any affidavit material prepared for the client for the client's perusal and instructions.
- (v) Ascertain if the client agrees to any interim orders sought or seeks interim orders and any material required to be filed on behalf of the client.
- (vi) Consider the possibility of settlement by the client agreeing to the order sought or an amended order and any material required to be filed on behalf of the client.
- (vii) Effect service of documents on legal representatives of the parties/child, the separate representative if any, and on the Department by forwarding to court services and the child safety service centre.
- (viii) Ascertain the RE's position and if their caseworker will be attending.
- (ix) Consider any necessary adjournment (see 10.3).

Note

(1) It might be useful to:

- Liaise with the court coordinator of the area office in relation to the next court event.
- Inquire in advance about practices and procedures followed at that particular court registry – for example, the Brisbane Children's Court allows a practitioner to be seated throughout any appearance.

Note

(2) The *Domestic and Family Violence Protection Act 2012* provides for the Children's Court hearing a child protection proceeding to make or vary a domestic violence order against a **parent** of a child for whom an order is sought in that proceeding provided the **aggrieved is also a parent** of the child. Consider if a DVO or variation is required, for example, for a child to remain safely in the home **OR** obtain instructions for submissions or response where such an order or variation is sought by another party or proposed by the court on its own initiative.

10.3. Adjournments

- (i) Consider any necessary adjournment. It is possible to adjourn the hearing administratively and this can be done by all parties writing to the Court requesting the adjournment.
- (ii) An application for adjournment should only be made if it is necessary for the efficient conduct of the case.
- (iii) In deciding the period of an adjournment, the court must take into account the principle that it is in the child's best interests for the application to be decided as soon as possible.

10.4. Mentions

- (i) Ensure timely attendance and advise the Department's court coordinator or court services officer that the client is represented.
- (ii) If the practitioner is unable to attend due to remoteness of the court or some other reason:
 - Advise the court in writing as soon as possible of your inability to attend and request permission to attend by telephone; and (assuming permission is granted):
 - Provide detailed written submissions to the court with copies to each of the parties prior to the mention of the matter and be available by telephone at the time of the mention. The submission must set out the client's position in relation to the orders sought by the Department.
- (iii) Upon each adjournment consider whether an application should be made:
 - (a) For an interim custody order to any person such as a suitable family member.
 - (b) To discharge any temporary orders.
 - (c) For an interim order for the protection of the child.
 - (d) For any of the following:
 - The appointment of a separate representative and whether the circumstances warrant a request for the separate representative to have experience of working with Aboriginal or Torres Strait Islander parties.
 - The preparation of a Social Assessment Report and the particular issues the report must address and whether a request that the report writer have experience of working with Aboriginal or Torres Strait Islander parties is warranted.
 - The medical examination or treatment of the child.
 - Contact with the family during the adjournment period and how it is to happen.
 - Convening of a FGM for an updated Case Plan.
 - Convening of a court ordered conference.
- (iv) Should orders be sought on behalf of the client:
 - (a) File any material in support of the client's position by way of affidavit to support /challenge any order sought and serve on other parties prior to the mention date.
 - (b) Explain to the client the implications of the factors referred to at (a) to (d) above prior to the court event.
 - (c) Issue subpoenas as required - see section 10.8 (3).
- (v) Advise the court of the client's position and any material the practitioner intends to rely upon to support the client's application if any, and where relevant, have ready

submissions in support of their client - including the relevant sections of the Act, Rules or Regulations.

- (vi) Should the client decide to consent to the orders sought, the consent should be in writing, signed, dated and witnessed. Prior to such, an explanation should have been provided to the client (and documented) in relation to the consequences of the order, and the client's rights and obligations.

10.5. After the mention:

- (i) Write to the client advising him or her of:
- The outcome of the mention;
 - The next court date and the need for the client to attend;
 - Their rights and obligations pursuant to any orders made; and
 - Whether any order should be reviewed or appealed.
- (ii) Obtain a copy of the orders for the client and the file.

10.6. Court Ordered Conference ('COC'):

Should the client oppose the orders sought by the Department, the Children's Court will order that a conference be held between the parties. The date for a COC is set by the independent chairperson who chairs the conference. Prior to setting the date it is possible that the chairperson might seek information from the parties to ascertain if the matter is suitable for conferencing.

The parties to the litigation must attend the COC and attempt to reach an agreement. A representative of the RE is also expected to be present.

The chairperson has the discretion to allow each party to have a support person in addition to their legal representative.

The conference is confidential in that all communications at the conference can only be used in court proceedings with the consent of all parties, including the separate representative, if any.

Should the matter settle at the COC, the chairperson prepares a report for the court which is signed by all parties and the report is handed up in court at a mention of the matter immediately following the conference (this practice may not be followed by all the courts). A copy of the document must be provided to the parties.

(1) Prior to the COC:

- (i) Consider if the client requires a support person for the COC and if so, arrange for such.
- (ii) Explain the COC process to the client and the need to participate and reality test their expectations.
- (iii) Establish the client's position.
- (iv) Provide advice to the client on the likelihood of success of any application before the court should the matter not resolve at COC, and of the applicability of the ATSILS' merit test.

- (v) Where appropriate, consider a proposal to settle. However, do not advise the client to consent to the order sought if the order is not considered appropriate.
- (vi) Explain to the client that communication at a COC is confidential and can only be used with consent in court materials. Should any subsequent departmental material contain information disclosed at the COC (without the parties permission) a request can be made for the withdrawal of the material and should they not comply, apply to the Court to disregard that information.
- (vii) Ascertain the RE's position – the Act provides that the RE may attend.
- (viii) Ascertain the Separate Representative's position.
- (ix) Ascertain the child's views where applicable from the direct representative or other sources.
- (x) Ascertain if the COC should be adjourned for a further FGM.
- (xi) Ascertain if the parties are ready for the COC - for instance whether:
 - where relevant ,the client has filed material to support his/her position;
 - the Department's decision maker will be present at the COC; and
 - the Department has sought legal advice (the Department is usually not legally represented at this stage).

(2) Some difficulties encountered at the COC:

- (i) Inadequate preparation by Child Safety Officers / parties; limited information sharing.
- (ii) The Social Assessment Report is not made available to the parties until shortly before the COC or not at all (in such instances consider if the non or late availability of the report would impact on the effective conduct of the conference).
- (iii) Non-attendance of the Department's decision maker.
- (iv) Non-attendance of the RE.
- (v) The Department has not obtained legal advice.
- (vi) The separate representative's position is not made clear.
- (vii) The parties are distracted by virtue of concentrating upon matters relating to the Case Plan (i.e. due to the lack of an appropriate Case Plan).

Should the matter resolve at the COC and it is practicable for the Application to be heard earlier than the adjournment date, the chairperson and the parties are advised of the earlier time. This could be immediately following the COC.

Note: Even though all parties consent to an order, the Court is required to satisfy itself that the order should be made.

(3) Further issues to consider in relation to a COC:

- (i) Whether the COC should be adjourned for a further FGM (to sort out concerns relating to the Case Plan).
- (ii) Whether a further COC is required (for any other reason).

10.7 Directions for trial

Should the matter not resolve at the COC and remain contested, trial directions should be sought at the next mention (provided the matter is ready for trial).

(1) Prior to the court event:

(i) Advise the client in writing of the next date; reason for the court event and their need to attend.

(ii) Carry out a merits assessment based upon AT SILS' conditions of assistance and discuss the outcome with the client. Should a decision be made to withdraw assistance at this stage the client should be notified in writing (together with the reasons thereof).

(iii) Discuss with the client any options to settle and if appropriate, negotiate an agreed outcome.

(iv) Narrow down the issues for trial.

(v) Consider if orders should be sought for (if not already made):

- The appointment of a Separate Representative – see section 7.
- A Social Assessment or other report/updated Social Assessment Report.

(vi) Consider if the matter is ready for trial – the matter might not be ready for example if the Separate Representative has just been appointed or the Social Assessment Report has just been requested.

(2) Where merit requirements are satisfied, consider trial directions after formulating a plan based on:

(i) the client's instructions;

(ii) the evidence required;

(iii) the existing Case Plan and the evidence required to support the client's case;

(iv) the number of likely witnesses and the length of the trial;

(v) any expert witnesses required;

(vi) the availability of counsel; and

(vii) the time required to prepare for trial.

(3) Ensure that dates for trial and filing of each party's material as well as the issue of subpoenas are set and that the Applicant is required to file his or her material first - with sufficient time allowed for filing the client's response.

10.8 Preparation for Trial

See the *Child Protection Act*, the *Children's Court Rules 1997* and the *Children's Court Act 1992* in relation to procedure.

Matters for consideration and action by the practitioner:

- (1) Grant of assistance and instructing counsel:

- Where appropriate, seek a grant of aid from Legal Aid Queensland with which to brief counsel (subject to means and merits tests) under the LAQ policy for grant of aid to ATSILS.
- Where a grant of aid is refused or is unavailable, make your own preparation for trial (seeking input from your colleagues in relation to any areas where you lack experience or the requisite knowledge).
- Confirm trial dates with counsel in writing (see preparation of brief supra).
- Brief counsel for trial and consider if a conference is required, bearing in mind the grant of aid does not extend to a conference.
- Ascertain if counsel is prepared to consider/settle the client's draft affidavit prior to filing.

(2) The client:

- Explain how the matter is to proceed and what is required of the client.
- Explain the trial process including examination-in-chief and cross-examination; and the possibility of negotiations prior to or on the day with a view to settlement.
- Review the application and orders sought and whether the client's instructions have changed (in which case amended material might have to be filed).
- Notify the client and confirm in writing the trial dates and the need for their attendance (as well as the need for their witnesses to attend).
 - Prepare the client's response affidavit in draft and provide same to the client for their perusal - explaining the potential consequences of false or misleading statements. Obtain the client's instructions on the draft, bearing in mind any difficulties the client might have in reading/comprehending - in which case, and necessary arrangements should be made to assist the client, with the appropriate wording being inserted/substituted into the document.
 - Provide to the client copies of any affidavits and other material filed.
 - Advise the client to arrive early and to bring a support person if required.
 - The requirement for an independent interpreter.

(3) Subpoenas:

- Rule 27 of the *Children's Court Rules* is the general rule applicable to the issue of subpoenas. S8 of the *Children's Court Act* may be invoked should additional direction be required.
- Issue Subpoenas where required (Forms 23 and 24) - this could also include seeking information as to whether the Department has taken the appropriate steps in adhering to the child placement principle. In this regard, request the Department to provide copies of the Departmental files that include records from the paper as well as electronic files - and if they do not comply, subpoena the material. See also sections 190 & 191 of the Act in relation to production of material by the Department.
- Ascertain the required conduct money and request the ATSILS Finance Section to issue a cheque **after** approval has been sought and granted on a 'Request for Approval and Payment' form – see **Annexure Q**. A written undertaking to pay can accompany the subpoena in the case of urgency or a delay in the issue of cheques.
- Arrange for timely inspection and follow up where required.

- (4) Witnesses:
- Serve subpoenas on witnesses required to give evidence.
 - Notify any witnesses in writing of the trial dates and provide them with copies of their affidavits. Speak to the witnesses in advance about giving evidence and the content of their affidavit. Confirm with all witnesses as to their availability to give evidence and arrange times for their attendance for the purposes of cross-examination to minimise waiting times.
 - List the order of witnesses based on availability.
 - Give notice to the other party of their witnesses required for cross-examination.
- (5) Procedural:
- Consider if a further FGM or COC is required.
 - If there is any reason to believe a matter is not ready to proceed to Trial, the matter should be brought to the Court's attention as soon as possible.
 - If a matter has settled, this should also be brought to the Court's attention as soon as possible.
 - Liaise with the court coordinator of the area office where required in relation to preparation for and matters related to the trial.
 - The need for a transition order.

10.9 Trial

(1) On the day of the trial:

- Arrange for the client to consult with counsel.
- Ensure that all witnesses are in court or available as arranged.
- Arrange for the client to occupy safe/secure area where possible.

(2) Negotiations prior to trial:

The Department's legal representative is usually available on the day of the trial. Either party may approach the other to negotiate a settlement prior to the trial. In that event, the registry staff should be notified of any resulting delay.

The negotiation process should be explained to the client and the client consulted and instructions obtained after explaining the consequences of the terms of settlement proposed (such as the effect and period of orders; the client's rights), prior to finalising settlement. The client's understanding of what is explained should be ascertained.

(3) Attendance at the trial:

S 105 of the Act provides that the Children's Court is not bound by the rules of evidence but may inform itself in any way it thinks appropriate. The practitioner may present their case in keeping with the rules of evidence - including objecting to evidence. The Magistrate will decide if the rules are to apply or to be dispensed with.

- (i) The practitioner should attend at the hearing to instruct counsel (unless running the matter themselves) and take accurate records of the proceedings, including witness names; a sufficient summary of the evidence given; and directions or orders made by

the Court during the course of the hearing. See “**Procedure: Briefing Counsel**” for additional information.

- (ii) Maintain a List of Exhibits throughout the Trial.
- (iii) Maintain an adequate summary of questions and answers.
- (iv) Take careful notes of the evidence to assist counsel with his or her cross-examination and submissions.
- (v) Keep a detailed file note confirming what occurred on each day of the Trial as well as handwritten notes from the Trial.
- (vi) It is usual for the applicant to present their case first.

(4) At the conclusion of the Trial:

- (i) Write to the client, confirming for them the outcome/progress.
- (ii) Provide sealed copies of orders made or advise of the expected date of Judgment being delivered (if known).
- (iii) Inform the client of their obligations under the Orders and, where relevant, their right of Appeal.
- (iv) Where relevant, ensure all accounts are finalised in a timely manner.
- (v) Following judgment being delivered by the Court, write to the client informing them of the Orders made and reasons for Judgment - supplying copies of both sets of documents if they are available.
- (vi) Discuss with the client, where relevant, the provision in the Act to seek a revocation of a Child Protection Order including the process and the legislative requirements involved.

10.10 Appeals

The practitioner should, where relevant, consider the prospects of an appeal and inform the client of their options in relation to an appeal. Consult with your Regional Manager, Director of Family Law or Principal Legal Officer about a preliminary view on the prospects of an appeal. All time limits must be observed in relation to an appeal.

(1) Should an appeal be appropriate:

- (i) Take instructions from the client.
- (ii) Seek a grant of aid (if available) for obtaining an advice on appeal from Counsel.
- (iii) (Should a grant of aid be approved) assist the client to complete and lodge the written notice with the registrar of the appellate Court within 28 days after the decision is made and serve on the parties.
- (iv) Consider if a stay order should be sought.
- (v) Brief counsel with all relevant material. It is best that the same practitioner and counsel who conducted the initial Trial appear on the Appeal wherever possible.

(2) After the Appeal is concluded:

- (i) Advise the client in writing of the outcome and provide sealed copies of any orders made or advising of the expected date of Judgment if known.
- (ii) Upon receipt of the Judgement, provide a copy to the client confirming the outcome in writing. The client should also be informed of their obligations under the Orders and their right of any further Appeal. Discuss such first with your Regional Manager, Director of Family Law or Principal Legal Officer and consider if any further grants of aid are available from LAQ or other sources.
- (iii) If at any time there is an extended and unexplained delay in receiving a Judgement, this should be followed up with the Court.

11. Reviewable decisions

The Act provides that *'an aggrieved person for a reviewable decision may apply, as provided under the Queensland Civil and Administrative Tribunal ('QCAT') Act to the tribunal to have the decision reviewed'*. QCAT hears review applications pertaining to decisions made by the Department and the Commission for Children and Young People.

Advice and representation may be provided in relation to reviewable decisions subject to a merits and means test. At each stage, the practitioner must record the advice given to the client and the client's election and obtain the client's signature confirming same.

Casework could consist of assisting a party to prepare for the tribunal process or acting for the party in the matter - subject to the provision in the QCAT Act for the requirement of leave to represent a party.

11.1. Call for all relevant documentation and take full instructions from the client (see section 2 on Page 4 of this document).

- (i) Ascertain whether:
 - i. the decision is a reviewable decision;
 - ii. the matter is before a court of law;
 - iii. the decision maker has given written notice to each person entitled to review the decision of the review process;
 - iv. a review application has been filed or is required to be filed and the time limits;
 - v. a written statement of reasons has been provided by the decision maker and if not, the time limits for providing a statement of reasons;
 - vi. the client requires an interpreter and/or a specialist support person; and
 - vii. other parties who may elect to be a party have done so, or persons who may be joined have been advised of such.
- (ii) Where a statement of reasons has not been provided or does not give adequate information, seek an order requiring that the statement or further information be provided.
- (iii) Should the decision maker lodge an application to dismiss or make other submissions with respect to the review application, draft and file a response as required within the stipulated time or seek an extension of time.

- (iv) Advise the registrar of any parties not named in the matter that have an interest in the matter.
- (v) Consider if a request should be made to the tribunal to request the decision maker to reconsider the decision.
- (vi) Consider if it is appropriate to request to attend tribunal events via remote conferencing.
- (vii) Consider if an application for a stay is required.

11.2 Compulsory Conference

A compulsory conference ('Conference') is the next stage of the Review process. A Conference is to be heard by at least two members of whom at least one should be legally qualified - and if a matter relates to an Aboriginal or Torres Strait Islander child, if practicable, a member who is Aboriginal or Torres Strait Islander. A written request may be made to the Tribunal for both.

(1) Prior to the conference:

(i) Explain to the client:

- What happens at the Conference.
- The requirement for the client to attend the Conference.
- The role of the tribunal members.
- That such Conferences are, in general confidential.
- Subject to exceptions, anything said or done at the Conference is not admissible at any stage in the proceeding.

(ii) Narrow down the issues and carry out a case assessment.

(iii) Consider the alternatives to reaching an agreement.

(iv) Where relevant, consider a negotiation plan based on what is most important to the client and reality test any proposal.

(v) Prepare a case summary and opening statement which identifies key factual and legal issues; important non-legal issues; and the client's future objectives.

(vi) Consider and prepare the case management directions or orders required if the matter does not settle at the Conference. Consider the requirement for further leave to represent the client; the evidence required; the number of likely witnesses; expert witnesses if any; subpoenas required (including subpoenas for witnesses); and possible expenses for which ATSILS' approval is required; the time required to prepare for the hearing; the length of the hearing; if orders for a separate representative/social assessment/cultural report are required; and a written request for the tribunal to consist of a legally qualified member as well as an Aboriginal or Torres Strait Islander member.

(2) At the Conference:

- (i) Participate in negotiations if the other party is willing to negotiate – this may happen in private sessions. Use the private sessions to communicate the client's interests and to set out the strengths and weaknesses of the client's, as well as the other party's

case and to use the member to fully explore the strengths and weaknesses of the case.

- (ii) Consider breaks where necessary and obtain instructions from the client at all stages.
 - (iii) Should the matter not settle, seek case management directions or orders.
 - (iv) Consider if an adjournment should be sought to gather more information or clarification from the decision maker prior to directions being finalized.
- (3) Following the Conference, advise the client in writing of the outcome of the Conference and any orders made including a copy of the orders.

11.3 The Tribunal hearing

The QCAT Act provides for three members to convene a Tribunal - at least one of which must be legally qualified.

(1) Prior to the hearing

- (i) Conduct a merits assessment and advise the client of the outcome.
- (ii) Advise the client of hearing dates and provide copies of all orders.

- (iii) Explain to the client:
 - (a) the need for all parties to attend;
 - (b) the child's right to express his/her views; and
 - (c) the role of the tribunal and the hearing process.
- (iv) Consider if an application should be made to attend by remote conferencing.
- (v) Consider if the matter could be considered on written submissions.
- (vi) Arrange to inspect documents produced under Notice.
- (vii) Prepare and file documents as directed including witness statements.
- (viii) Draw up a list of witnesses attending by telephone for filing with the tribunal and arrange for witnesses to be provided with copies of their statements in advance. Explain to the witnesses what is required of them.

(2) The hearing

The Tribunal is not bound by the Rules of Evidence and may inform itself in any way it considers appropriate. If the Tribunal does not consist of an Aboriginal or Torres Strait Islander member, although such was requested in advance, consider raising this as an issue.

The practitioner must attend all Tribunal events. See also sections 10.7 to 10.9 of this document.

11.4 Appeals

See also section 10.10 of this document.

Appeals can be made to the QCAT Appeal Tribunal for decisions made by a non-judicial member, and to the Court of Appeal if the decision was made by a judicial member. Leave of the Court of Appeal is required if the appeal does not involve a question of law.

Note: the separate deadlines for seeking leave and filing of appeals.

Application fees

Although application fees are not payable for children and young people matters, an appeal fee is applicable. Consider a waiver application if there is difficulty in paying the appeal fee.

Stay Orders

The Act states that the tribunal may make an order staying the operation of a decision against which the appeal is made. Consider whether a stay order should be sought and if so, lodge a completed Form 44.

Note: Specific legislation referred to herein is subject to amendment – so please double **check currency** at the material time.

12. References and Acknowledgements

12.1 References:

- The Community Legal Education folder on Child Protection found on the Organisation's G Drive (ATSILS). For example, <G:\Community Legal Education\Child Protection\Training Tools\SWCLC LawSays>
- The Staff Cultural Training folder found on the Organisation's G Drive. For example, <ATSILS Cultural Competency LegalPractice Quiz 2012>
- Department of Child Safety Practice Manual (subject to change) at <http://www.childsafety.qld.gov.au/practice-manual/> for Child Safety policy guidelines.
- The UN Convention on the Rights of the Child.
- *Recognised Entity Functions Practice Manual* - Queensland Aboriginal and Torres Strait Islander Child Protection Peak. See also within the Community Legal Education folder the section relating to Recognised Entities on the Organisation's G Drive).
- *Family Support Service Practice Manual* - Queensland Aboriginal and Torres Strait Islander Child Protection Peak.

12.2 Acknowledgements:

Legal Aid Queensland *Case Management Standards-Family Law*.

For further information or assistance, please contact:

Director of Family Law and/or Principal Legal Officer
Aboriginal & Torres Strait Islander Legal Service (Qld) Limited
Tel: (07) 3025 3888 www.atsils.org.au Fax: (07) 3025 3800
PO Box 13035, George Street, Brisbane Queensland 4003 Australia.



A decorative graphic in the top-left corner consisting of five blue ovals of varying sizes arranged in a descending arc, and a large orange shape that curves from the bottom-left towards the top-left, partially overlapping the ovals.

Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd

Innovative, Professional and Culturally Proficient Legal Services for Our People



I would like to commence by acknowledging and paying my respects to the traditional custodians of the land upon which we meet today - and also to acknowledge and pay my respects to Elders past and present.



Greetings from



Our Chairperson:
Kenny Georgetown

Greetings from



Our CEO:
Shane Duffy

The Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd: *Our background*



We are a non-profit, public benevolent, community-based organisation – funded via the Commonwealth Attorney-General's Department.

We provide criminal, family and civil law assistance throughout Queensland (including the Torres Straits since the 1st October 2011).

We also have State-wide jurisdiction in the areas of:

- Monitoring Indigenous Australian Deaths in Custody;
- Indigenous Australian Community Legal Education; and
- Law Reform.

Our Values



The traditional values of
Care, Share and Respect

form the foundation for our
organisation and underpin our
commitment to providing quality legal
services.

Our Vision and Mission



Our Vision: To lead in the delivery of innovative, professional and culturally competent legal services.

Our Mission: ATSILS fosters productive community and stakeholder relationships and partnerships to deliver quality legal assistance, advice and representation, and advocate law reform and policy development to rectify policies and practices that impact disproportionately on the legal rights of Aboriginal and Torres Strait Islander people.



Our Strategic Goals (2011 – 2014)

ATSILS will contribute to the achievement of outcomes across six strategic priority areas:

1. Cultural Leadership and Governance;
2. Quality Legal Services;
3. Dedicated, Highly Skilled and Professional Staff;
4. Community Legal Education and Advocacy Law Reform and Policy Development;
5. Productive Community and Stakeholder Relationships and Partnerships; and
6. Quality Promotions, Marketing and Media.

HISTORICAL INFLUENCES & OVER – REPRESENTATION



European Invasion and Settlement 1770's-1890's

Illustration showing the arrival of Europeans in Australia, featuring a large Union Jack flag and a map of Australia.

Protection & Segregation 1890's-1950's

Illustration showing the period of protection and segregation, featuring a ship labeled "MARITIME STRIKE! 1936" and a sign "EQUAL WAGES AND WAGES FOR SERVICES (1939-1950)".

Aborigines made captives of their own country

Assimilation 1950's-1960's

Illustration showing the period of assimilation, featuring a man in a white shirt and a man in traditional Aboriginal dress holding a spear.

Aborigines forced to live like "whites"

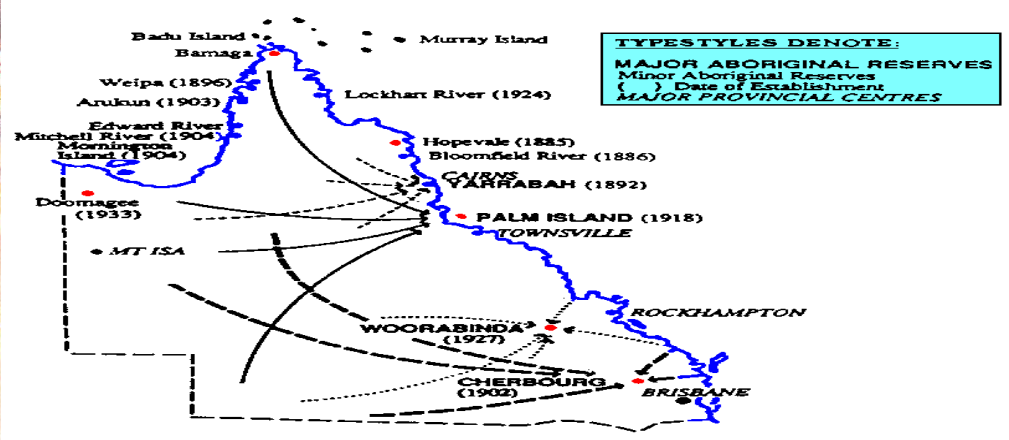
Integration 1960's

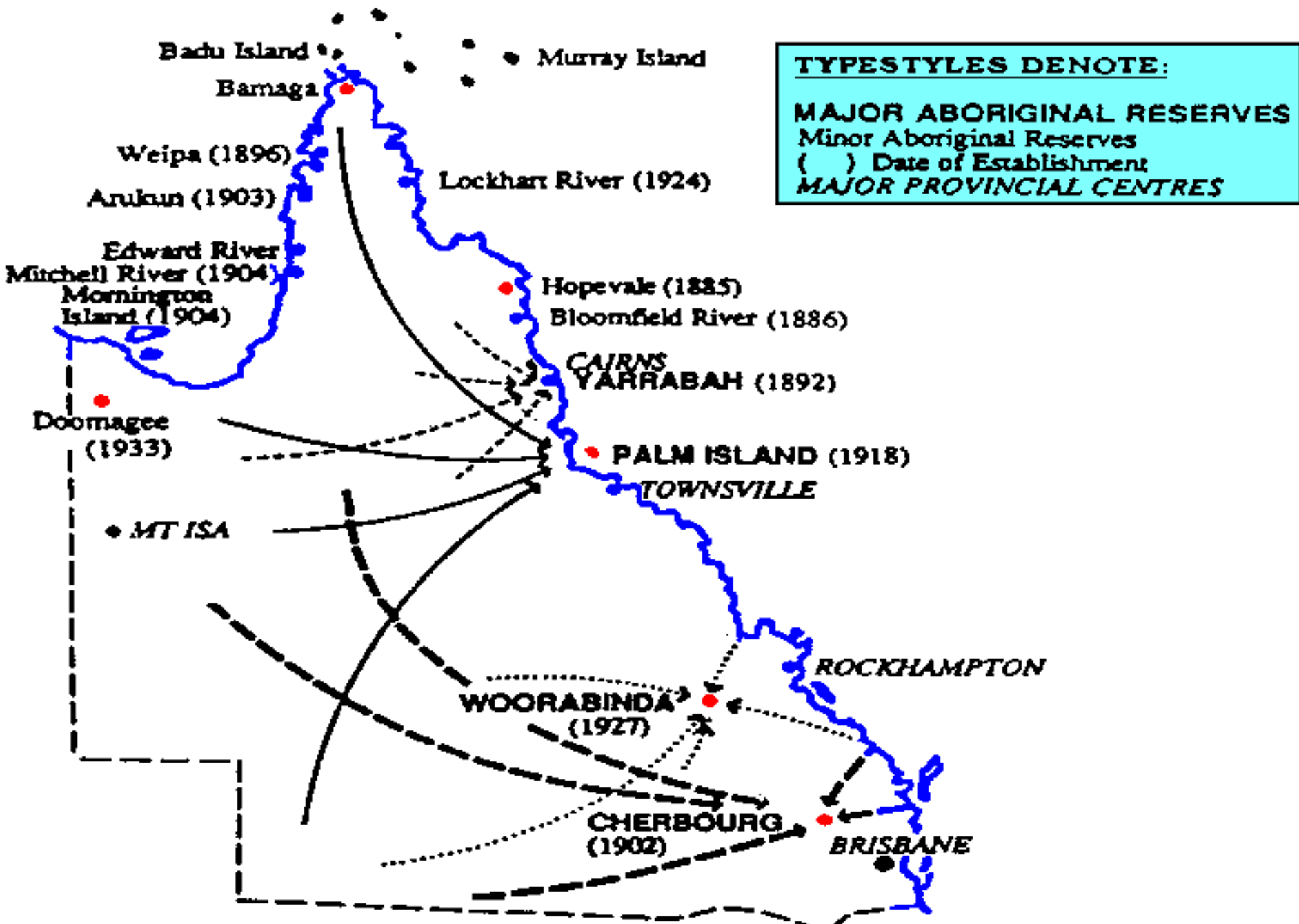
Illustration showing the period of integration, featuring a hand holding a sign that says "90% of Australians voted that Aborigines should be Australian citizens." and another hand holding a sign that says "WE WANT OUR RIGHTS".

Some recognition of Aboriginal culture

Towards Self-Determination

Illustration showing the period of self-determination, featuring a sign that says "WE WANT LAND NOT HANDOUT" and a portrait of a man.





THE QUEENSLAND CHILD PROTECTION ENVIRONMENT





The Child Protection Environment

Aboriginal & Torres Strait Islander children are over-represented across all phases of the child protection system. This is demonstrated at Intake, Investigation and Assessment and Ongoing Intervention.

Aboriginal and Torres Strait Islander children represent around 6.5% of all young people (aged 0-17 years) in Queensland.



The Child Protection Environment

As of 31st of March 2011 Aboriginal & Torres Strait Islander Children accounted for:

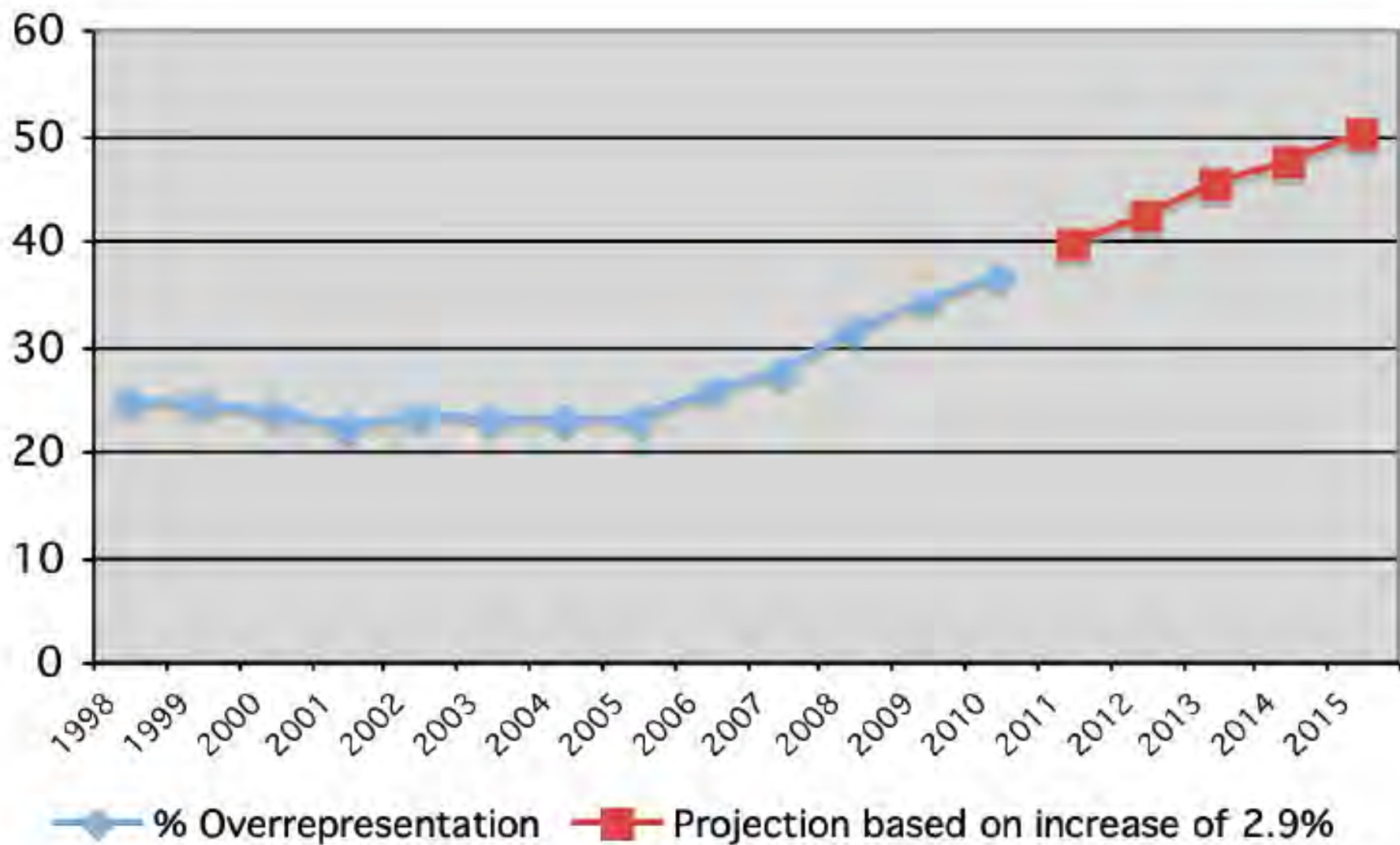
25.8% of children notified (4,836 of 18,774)

29.1% of children substantiated (1,748 of 6,004)

40.4% of children admitted to child protection orders (1,731 of 4,282)

37.2% of children subject to child protection orders (3,086 of 8,290)

37.6% of children living away from home (3,017 of 8,025).





The Child Protection Environment

Previous contact with Department

Aboriginal and Torres Strait Islander children are more likely than non-Aboriginal and non-Torres Strait Islander children to have had previous contact with the Department prior to their current intake.

For children subject to an intake during the year ending 31 March 2011, 71.6% of Aboriginal and Torres Strait Islander children had previously been subject to an intake (9,467 of 13,214), compared to 53.1% for non-Aboriginal and Non-Torres Strait Islander children (29,781 of 56,133).

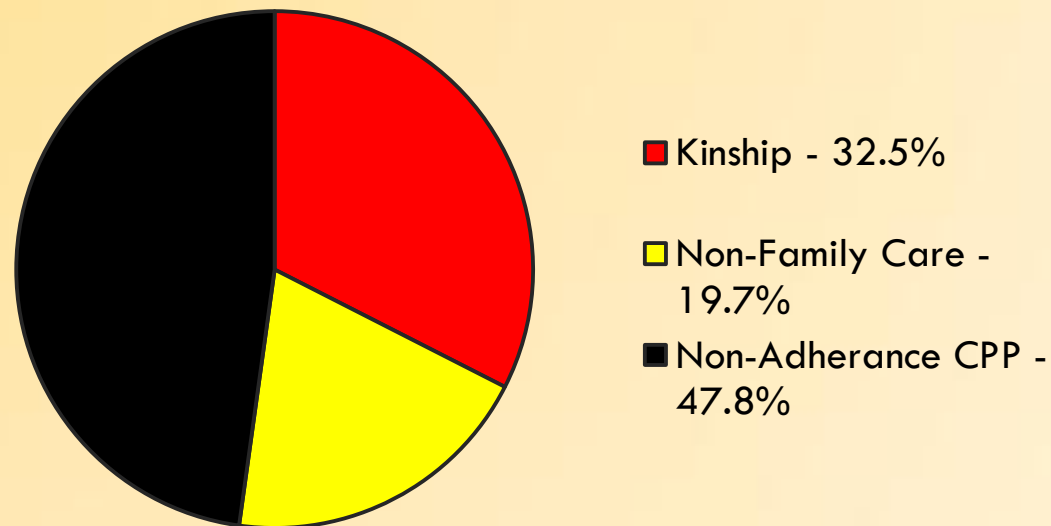


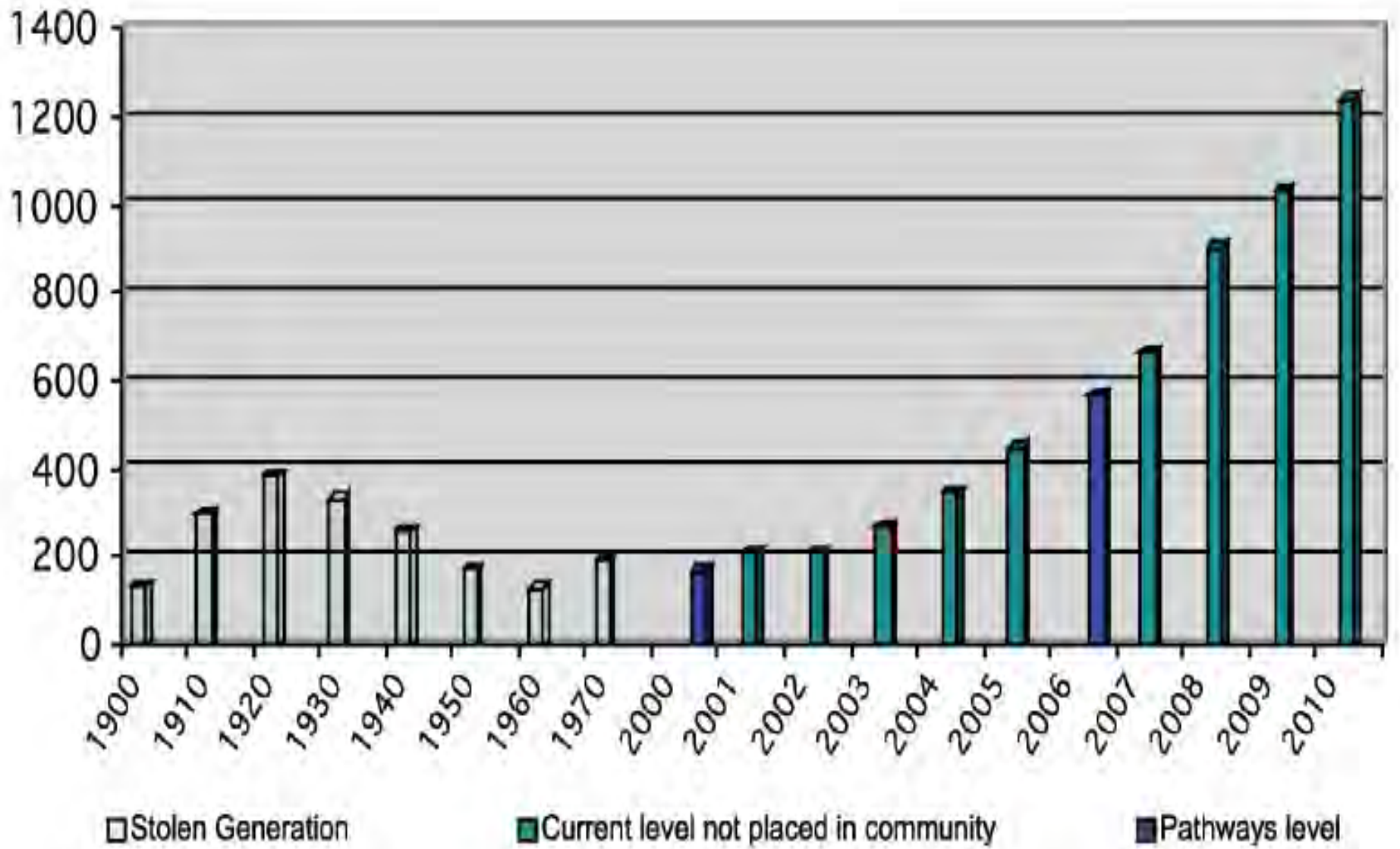
The Child Protection Environment

Culturally appropriate placements

As at 31 March 2011, 52.2% of Aboriginal and Torres Strait Islander children in out-of-home care were placed with kin, an Aboriginal and Torres Strait Islander carer, or an Aboriginal and Torres Strait Islander residential care service.

Demonstration of Aboriginal and Torres Strait Islander Placements







The Child Protection Environment

Cultural support plans

As at 31 March 2011, there were 4,052 Aboriginal and Torres Strait Islander children subject to ongoing intervention. Of these, 3,756 or 92.7% had a cultural support plan.

Of those Aboriginal and Torres Strait Islander children subject to ongoing intervention with a cultural support plan, 2,743 (73.0%) had a current cultural support plan.

QUEENSLAND CHILD PROTECTION SERVICE DELIVERY MODEL



**STATUTORY
SERVICES**

**TARGETED SERVICES AND
PROGRAMS FOR "AT RISK"
FAMILIES AND CHILDREN**

**EARLY INTERVENTION SERVICES TARGETED TO
VULNERABLE FAMILIES AND CHILDREN**

**UNIVERSAL PREVENTATIVE INITIATIVES TO SUPPORT ALL
FAMILIES AND CHILDREN**

ABORIGINAL AND TORRES STRAIT ISLANDER SPECIFIC LEGISLATION



Aboriginal and Torres Strait Islander specific child protection legislation



1. Additional Principles for Aboriginal and Torres Strait Islander children
2. Chief Executives Functions
3. Decision making regarding Aboriginal and Torres Strait Islander children
4. Placement of Aboriginal and Torres Strait Islander children
5. Contact between Aboriginal and Torres Strait Islander children's community or language group



5c Additional Principles for Aboriginal and Torres Strait Islander children

The following additional principles apply:

- a) The child should be allowed to develop and maintain a connection with the child's family, culture, traditions, language and community;
- b) The long term effect of a decision on the child identity and connection with their family and community should be taken into account.





7 Chief executive's functions

The following function applies to early intervention and intensive family support diversions:

(f) Helping Aboriginal and Torres Strait Islander communities to establish programs for preventing or reducing incidences of harm to children in communities; and

There are 11 Aboriginal and Torres Strait Islander Family Support Services which must be utilised as an alternative to intrusive statutory intervention. This may be diversion out of the statutory at an Intake, Investigation and Assessment and ongoing intervention phase.



What is the Legislated function of a Recognised Entity?

Recognised Entity



The Recognised Entity core function areas outlined within Department of Communities Service Agreements are:

Intake

Investigation & Assessment

Case Planning

Matter of Concern

Placement

Court

SCAN



Recognised entities & decisions about Aboriginal & Torres Strait Islander children – section 6.

- 1) When making a significant decision about an Aboriginal or Torres Strait Islander child, the Recognised Entity must be given an opportunity to participate in the decision making process.
- 2) When making a decision, other than a significant decision, about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a Recognised Entity for the child before making the decision.
- 3) However, if compliance with subsection 1) or 2) is not practicable because a Recognised Entity for the child is not available or urgent action is required to protect the child, the chief executive or an authorised officer must consult with a Recognised Entity for the child as soon as practicable after making the decision.



Recognised entities & decisions about Aboriginal & Torres Strait Islander children – section 6.

- 4) If the Children’s Court exercises a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the court must have regard to –
- (a) The views, about the child and about Aboriginal tradition and Islander custom relating to the child, of –
 - (i) a Recognised Entity for the child; or
 - (ii) if it is not practicable to obtain the views of a Recognised Entity for the child – members of the community to whom the child belongs; and
 - (b) The general principle that an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal or Torres Strait Islander community.



Recognised entities & decisions about Aboriginal & Torres Strait Islander children – section 6.

5) As far as is reasonably practicable, the chief executive or an authorised officer must try to conduct consultations, negotiations, family group meetings and other proceedings involving an Aboriginal person or Torres Strait Islander in way and in a place that is appropriate to Aboriginal tradition or Island custom.

(6) In this section – ***significant decision***, about an Aboriginal or Torres Strait Islander child, means a decision likely to have a significant impact on the child's life.

Aboriginal and Torres Strait Islander Child Placement Principle



- The national efforts of Aboriginal and Torres Strait Islander Child Care Agencies (AICCAs) achieved recognition of the Aboriginal and Torres Strait Islander Child Principle in the 1970s.
- AICCAs drew knowledge and inspiration from American and Canadian First nation peoples – example *Indian Child Welfare Act 1978*
- 1986 accepted and endorsed by all States and Territories at the Australian Social Welfare Ministers conference, implemented as policy but not necessarily as legislation. A Policy Statement was negotiated between the then Department of Families, Youth and Community Care and the then State Aboriginal and Islander Child Care Agency, (i.e., the Peak Body) in December 1998.
- In Queensland the Aboriginal & Torres Strait Islander Child Placement Principle has been enshrined in *section 83 of the Queensland Child Protection Act 1999*.



Additional provisions for placing Aboriginal and Torres Strait Islander children in care – Section 83.

- (1) This section applies if the child is an Aboriginal or a Torres Strait Islander child.
- (2) The chief executive must ensure a Recognised Entity for the child is given an opportunity to participate in the process for making a decision about where or with whom the child will live.
- (3) However if because of urgent circumstances the chief executive makes the decision without the participation of a Recognised Entity for the child, the chief executive must consult with a Recognised Entity for the child as soon as practicable after making the decision.



Additional provisions for placing Aboriginal and Torres Strait Islander children in care – Section 83.

(4) In making a decision about the person in whose care the child should be placed, the chief executive must give proper consideration to placing the child, in order of priority, with-

- a) A member of the child's family; or
- b) A member of the child's community or language group; or
- c) Another Aboriginal person or Torres Strait Islander who is compatible with the child's community or language group; or
- d) Another Aboriginal person or Torres Strait Islander.



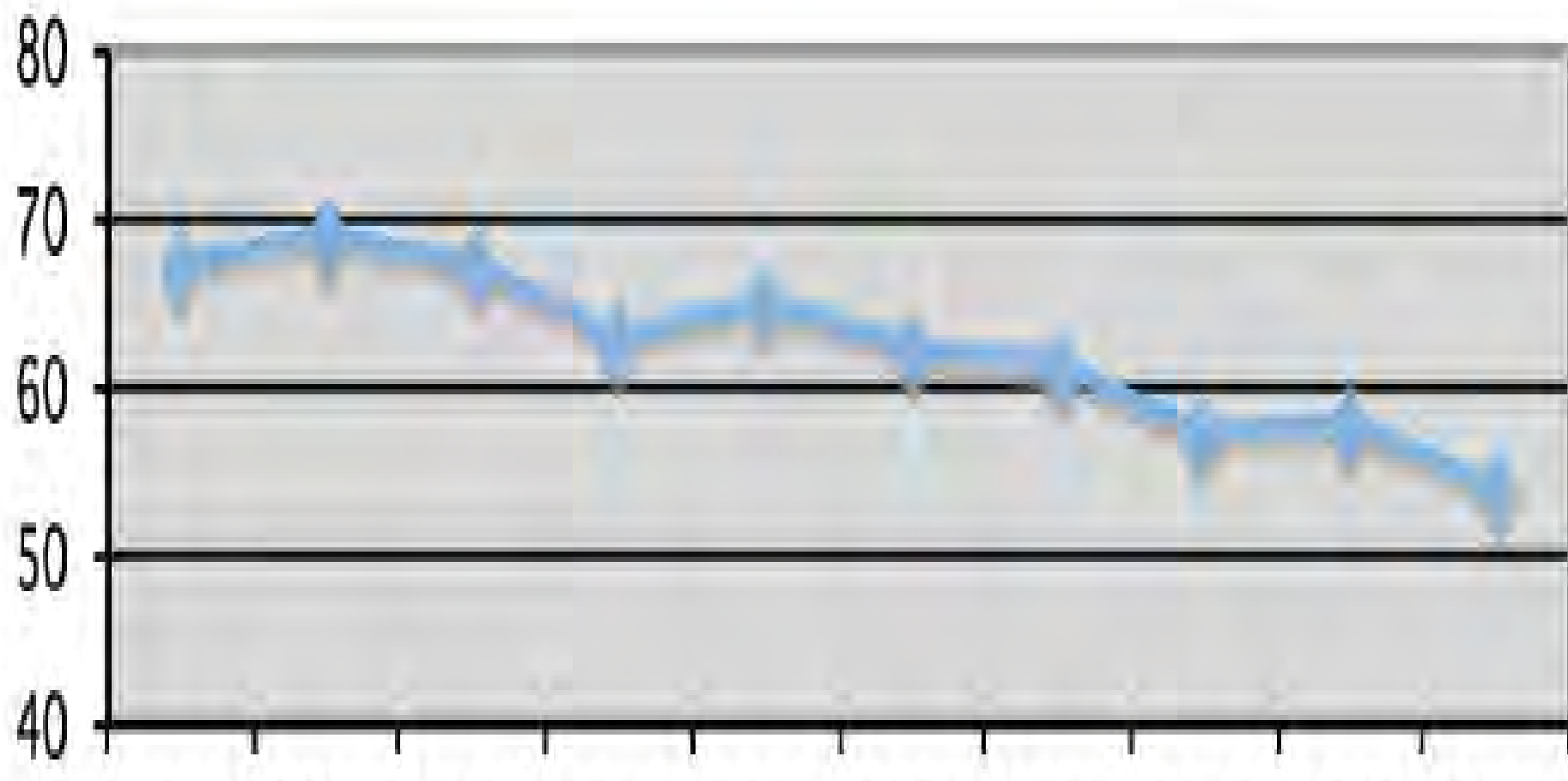
Additional provisions for placing Aboriginal and Torres Strait Islander children in care – Section 83.

(5) Also, the chief executive must give proper consideration to-

- a) The views of a recognised entity for the child; and
- b) Ensuring the decision provides for the optimal retention of the child's relationships with parents, siblings and other people of significance under Aboriginal traditional or Island custom.

(6) If the chief executive decides there is no appropriate person mentioned in subsection (4) a) to d) in whose care the child may be placed, the chief executive must give proper consideration to placing the child, in order of priority, with-

- a) a person who lives near the child's family; or
- b) a person who lives near the child's community or language group.



◆ % in adherence CPP

Additional provisions for placing Aboriginal and Torres Strait Islander children in care – Section 83.



(7) Before placing the child in care of a family member or other person who is not an Aboriginal person or Torres Strait Islander, the chief executive must give proper consideration to whether the person is committed to-

- a) facilitating contact between the child and the child's parents and other family members, subject to any limitation on the contact under section 87; and
- b) helping the child to maintain contact with the child's community or language group; and
- c) helping the child to maintain a connection with the child's Aboriginal or Torres Strait Islander culture; and
- d) preserving and enhancing the child's sense of Aboriginal or Torres Strait islander identity.

**Chief executive to provide contact between Aboriginal or Torres Strait Islander child and child's community or language group.
Section 88.**



- (1) This section applies if the child is an Aboriginal or a Torres Strait islander child.
- (2) The chief executive must provide opportunity for contact, as often as is appropriate in the circumstances, between the child and appropriate members of the child's community or language group.

THE GUIDING CHILD PROTECTION PRINCIPLES



Section 4 of the CPA describes the purpose of the legislation and section 5 of the CPA contains guiding principles that can be used when advocating on behalf of a client. These are the principles that should be followed by anyone involved with child protection. (i.e. you, Child Safety Services, parents, lawyers etc.).

Note: Print a copy of section 4 and 5 of the *Act* for your own reference.

What is in the best interests of the child?

- The child's interests are paramount (in all of the decision making process (section 5A) a child's interests are considered above parents' or anyone else's interests)
- Families have the primary responsibility for the upbringing, protection and development of the child and should be supported in this (only in a minority of cases should a child be taken out of their family's care) (Section 5B (b));
- The preferred way of ensuring a child's wellbeing is through the support of the child's family (Section 5B(c));
- The powers that Child Safety Services has when acting in child protection matters should be exercised in a way that is open, fair and respects the rights of people affected by their exercise, and in particular, in a way that ensures (Section 5D(1) (a)):
 - * actions taken, while in the best interests of the child, maintain family relationships and are supportive of individual rights and ethnic, religious and cultural identity or values; and
 - * the views of the child and the relevant persons (Section 5D(b)) are considered; and
 - * the child and the child's parents have the opportunity to take part in making decisions affecting their lives (Section 5E).
- * (Section 5D(2)) does not apply to a Courts decision making process

- If a child does not have a parent able and willing to protect the child, the State has a responsibility to protect the child, but in protecting the child the State must not take action that is unwarranted in the circumstances (Section 5B(e));
- If the child is removed from the child's family the aim is to reunite the child with their family if possible and to maintain family and social contacts, ethnic and cultural identity must be taken into account Further, this section states that 'support should be given to the child and child's family' in order to assist with the return of the child(Section 5B(f));
- When deciding in whose care a child is placed, Child Safety Services must give proper consideration to placing a child with kin (Section 5B(h-j));
- A child should be kept informed in relation to anything affecting them and if appropriate (considering the age and maturity of the child) their views must be taken into consideration by Child Safety Services (Section 5E (1)–(3));
- A child has a right to long term alternative care if a child does not have a parent able and willing to give the child ongoing protection in the foreseeable future (Section 5B(g));

- When any significant decision is to be made about Aboriginal and Torres Strait Islander children:
 - The child should be allowed to develop and maintain a connection with family, culture, traditions, language and community (Section 5C(a));
 - a recognised entity is to be consulted and have an opportunity to participate in the decision making process (Section 6).

Tip: Print a copy of Section 5 of the Act and where necessary refer to it when advocating for your client.

INVESTIGATION AND ASSESSMENT PHASE



What is the purpose of Child safety's Investigation and Assessment phase?



- Commence the Investigation and Assessment within the designated timeframe
- Assess the safety of the child to determine any immediate harm indicators
- Assess the harm/risk of harm and
- Assess the level of future risk of harm, determine whether a child is in need of protection and determine the appropriate type of ongoing intervention



14 Chief executive may investigate alleged harm

(1) If the chief executive becomes aware (whether because of notification given to the chief executive or otherwise) of alleged harm or alleged risk of harm to a child and reasonably suspects the child is in need of protection, the chief executive must immediately -

- a) have an authorised officer investigate the allegation and assess the child's need of protection; or
- b) take other action the chief executive considers appropriate.

(2) If the chief executive reasonably believes alleged harm may have involved the commission of a criminal offence relating to the child, the chief executive must immediately give details of the alleged harm to the police commissioner.

Who is a child in need of protection?



The law

The Child Protection Act 1999 (Qld) (CPA) tells the Courts, Child Safety Services and the general community what to do in child protection. Some sections of the CPA state quite clearly if they do or do not affect the decision making process of the Court or Child Safety Services. The definition of a child who needs protection is written in section 10 of the CPA:

1. “A child who has suffered harm (past), is suffering harm (present) or is at unacceptable risk of suffering harm (future)”; and
2. “Does not have a parent able and willing to protect the child from the harm”.

What is harm?



Section 9 of the CPA says it is 'Any detrimental effect of a significant nature on the child's physical, psycho- logical or emotional wellbeing'.

It doesn't matter how this harm was caused.

Harm can be caused by:

physical, psychological or emotional abuse or neglect; or sexual abuse or exploitation.

Harm can be caused by—

a single act, omission or circumstance; or a series or combination of acts, omissions or circumstances.



What does this mean?

Child Safety Services has to prove or assert that:

harm has, is or is likely to occur, and

there is no parent able or willing to protect the child from harm

This is contained in section 10 of the CPA, and the above 2 elements must be met to establish that the child is a child in need of protection.



Burden of Proof - Balance of Probability

- If Child Safety Services believe that the child is in need of ongoing protection and that the criteria to show past, existing or future harm coupled with no parent willing or able to look after the child has been met then they can ask the court to make a Child Protection Order.
- Evidence of Proof - If parents refute allegations and don't believe there are sufficient grounds, they not only need to state their case, they also need to support their case with evidence or proof.
- The rules of evidence, although considered by the court, are somewhat relaxed in relation to proof of allegations or submissions by Child Safety Services to a Court. If your client denies the assertions of Child Safety Services in their application they need to prove this by way of evidence.
- The outcome is determined on the balance of probability, Child Safety's rationale for applying for Temporary Custody Order, Temporary Assessment Order, Court Assessment Order and Child Protection Order must be clearly recorded and documented.



What is ATSILS's Initial Advice

- Remember that everything your client tell Child Safety Services will form part of their assessment.
- Also inform your client any evidence gathered could be used in criminal proceedings against your client or others.
- Your client does not have to answer any of their questions (there is no obligation under the CPA to do so).
- However, its best to try and be on good terms with Child Safety Services so answering the questions your client feels comfortable with is ok.
- Remember to provide your client with helpful tips;
- Take your time to answer. Think about the question
- If you don't understand something, ask what is meant by the question or statement
- If you feel overwhelmed or confused ask for a break
- It's also ok to ask for a support person to be present (such as a friend, family member or a lawyer)
- Take notes. Make sure your notes are not just in relation to face to face meeting but also include ALL contact with Child Safety Services staff or associated service providers. Create a Journal documenting everything, keep all child safety documents.
- It is legal and permissible for you to record a conversation provided that you are one of the people in the conversation (e.g. you could use your mobile).
- Inform your client that the department is there to assess their willingness and ability to care for their child, and if harm or risk of harm exist.
- Inform your client to clearly discuss their strengths and protective factors within their household.



Immediate legal litigation in Investigation and Assessment - key considerations

- In the duration of an investigation and assessment, Child Safety will utilise Structured Decision Making tools (SDM) to guide their decisions.
- In particular, in the investigation and assessment phases the department will complete a Safety Assessment and Family Risk Evaluation SDM.
- It is useful to explore the professional standard and adherence to legislation in Child Safety's decision making process and actions. This may support short term and longer term litigation actions.



What should information should families gather to support their case.

1. Photo's of house, rental receipts, rental agreement

- 1.1 Photo's of inside and outside of house
- 1.2 Photo's of children's bedroom
- 1.3 Rental Agreement
- 1.4 Rent Receipts to date
- 1.5 Letter of support from Agents



What should information should families gather to support their case.

2. Professional assessment report and other service providers reports from Queensland Health, ATODS, Relationship Counselling etc

- 2.1 Assessment report or support letters required for parents to articulate their ability or willingness to meet their children's care and protection needs.
- 2.2 Demonstration of a understanding of alleged/or confirmed Child protection concerns, community and family support network.



What should information should families gather to support their case.

3. Support letters from Aboriginal Islander Community Organisations

- 3.1 Recognised Entities formal position
- 3.2 Family Support Services formal position
- 3.3 Other support services
- 3.4 Demonstration of a professional support network



What should information should families gather to support their case.

4. Character references/support letters

- 4.1 Family
- 4.2 Community members
- 4.4 Demonstration of a community support network

FAMILY GROUP / CASE PLAN REVIEW MEETING





Is it the initial FGM or is it a FGM to Review a previous case plan?

There are different types of Family Group Meetings.

These can be:

- to make or review a case plan;
- to make recommendations about or deal with a matter about the child's care, protection and well-being.

It is important that you find out from Child Safety Services what the meeting is going to be about. Once you know what it's about, take time out to prepare for the meeting.

- Section 73(2) of the *Child Protection Act 1999* states that Child Safety Services must take steps that are reasonable and practicable to help the child's family meet the child's protection and care needs. This requires Child Safety Services to have regular contact with the child, the child's parents, or other appropriate members of the child's family to constructively work towards the case plan goal.

51B What is a case plan



- (1) A case plan for a child is a written plan for meeting the child's protection and care needs
- (2) A case plan may include any of the following matters—
 - (a) a goal or goals to be achieved by implementing the plan;
 - (b) arrangements about where or with whom the child will live, including interim arrangements;
 - (c) services to be provided to meet the child's protection and care needs and promote the child's future wellbeing;
 - (d) matters for which the chief executive will be responsible, including particular support or services;
 - (e) the child's contact with the child's family group or other persons with whom the child is connected;
 - (f) arrangements for maintaining the child's ethnic and cultural identity;
 - (g) matters for which a parent or carer will be responsible;
 - (h) a proposed review day for the plan.



Who can attend a FGM ?

The person who convenes the meeting (likely to be a Child Safety Services FGM convenor) determines who is to be present and must give a reasonable opportunity for the following people to be involved:

- anyone who might make a useful contribution to the plan's development at the meeting (section 51L(1)(g));
- the child's parents (section 51L(1)(b));
- the child if appropriate (section 51L(1)(a));
- members of the child's family (section 51L(1)(c));
- persons who have a significant relationship with the child (section 51L(1)(d));
- legal representative of the child (section 51L(1)(e));
- recognised Aboriginal and Torres Strait Islander agency representative (section 51L(1)(f));
- support people for parent or child (legal representative, youth worker, elders etc.) (s51L(2)).

What Child Safety Services must do before the meeting (section 51M):



- Tell invitees that it will be a case plan meeting
- Inform the attendees that Child Safety Services considers that the child is a child in need of protection
- Outline the assessed risks and assessed needs
- Provide details of the proposed meeting including day, time, venue
- Provide opportunities for attendees to identify issues
- Get the views of people who can't come to the meeting (s51N) (this may include a child, a member of a child's family group or a relevant service provider).



It is important that you help your client prepare

Ask your client:

- What are your goals?
- Do you want reunification?
- What do you want to achieve?
- What sort of contact do you want? How long for? Who with?
- Do you want to increase contact over a period of time? If so do you want to set case plan review dates?
- What decisions would you like to be involved in? (eg education, health, doctors appointments etc)
How are you to be contacted?
- What support would you like from Child Safety Services? Are you eligible for Family Support diversion? Can Child Safety Services assist with referrals to your client for support services such as counselling, health or housing etc.



It is important that you help your client prepare

- Everything that is said in these meetings is NOT confidential.
- What your client says can be used in court.
- Your client and the child's family group have to be told about the meeting and given enough time to prepare for the meeting before it is held.
- If your client doesn't understand something, ask Child Safety Services has an obligation to tell your client in their own words what things mean.
- If English is not your client's first language ensure that Child Safety Services have engaged a qualified translator for the meeting.



Preparing client for FGM

It is essential that clients spend time preparing for these meetings. Child Safety Services should give everyone who is to attend an outline of the issues to be discussed which gives the client an opportunity to prepare. If Child Safety Services hasn't, follow it up.

If a parent does not accept that the child is a child in need of protection, it is still vital that the client attends the case plan meeting. This is because if Child Safety Services is successful in its court application, then this is the plan that will be in place for at least the next 6 months.

The Chief Executive has 7 days to endorse a plan developed at the FGM. A copy of which should be then sent to yourself and your client.



Can the Case Plan be changed?

Yes, only within 10 days of it being developed. It will only be amended if it is in the child's best interests and the current plan is clearly impracticable (s51R). Written notice of the change/s must be given to all of the people who attended the meeting.

Copies of the plan must be given to the child (if relevant), parents, and anyone else affected by the plan (section 51T).

Child Safety Services must support the plan by providing or arranging a service to assist the goals of the plan (section 51T(d)).

It must be reviewed at least every 6 months (section 51V). From this review a report and a revised case plan must be completed.

Things to look at are:

- the child's age and circumstances;
- nature of arrangements in place under the plan;
- any problems or potential problems or ways it might be improved; and
- the length of the order in place (section 51V).

CASE SCENARIO



APPEALS AND REVIEWS





Child Safety Services Internal Review

If your client is having problems with Child Safety Services workers, then there are a number of things you can do:

1. Talk to the Child Safety Officer or their Team Leader.
2. Write a letter to the Child Safety Officer, Team Leader or Manager of the Child Safety Service Centre explaining the problems you have and what you want to happen. Keep at least 3 copies of the letter.
3. If your client does not get a response to your letter then send a copy of it to the Director of the Child Safety Regional Office. You can also speak to a complaints officer at the Regional Office.



Child Safety Services Internal Review

4. If the matter is still not resolved, call or email the Complaints, Case Review and Investigation Branch.
5. If the complaint isn't resolved to your satisfaction, then you can ask Child Safety for an internal review of the complaint.
6. Another option is to send a copy of your complaint letter or write a new letter to the Minister for Child Safety. Send this letter to the Child Safety Service's central office.
7. If your complaint is taking a long time and/or is not resolved to your satisfaction, your client might want to talk to their local State Member of Parliament.

You can find the name and address of your local MP on:

www.parliament.qld.gov.au

(go to 'Legislative Assembly' then go to 'Current Members').



The CCYPG advocates for the rights, interests and wellbeing of children and young people.

If your child is having problems with Child Safety Services any Child Safety Services Officers or their care arrangements, they can contact CCYPG for help.

They also have a Community Visitor program where they visit a child in care.

Free Call: 1800 688 275 / Phone: 07 3247 5525

PO BOX 12671

Brisbane George St Qld 4003

www.ccyprg.qld.gov.au



Queensland Civil and Administrative Tribunal

If Child Safety Services has made a decision about (a child who is under a Child Protection Order):

- who a child should live with;
- not telling parents where they are living; or
- the amount and type of contact between a child and their parent/s or other relatives;
- then the Queensland Civil and Administrative Tribunal (QCAT) can review this decision and either agree or disagree with Child Safety Services or change things about Child Safety Service's position or make a new decision.

There is a 28 day time limit to appeal the Child Safety Services decision, however you can ask the Child Safety Services to make a new decision about a particular situation and then you can appeal that to the QCAT.

If you are unsure if the decision Child Safety Services has made in your case is a decision that can be looked at by the QCAT, then get legal advice.



Queensland Civil and Administrative Tribunal

You can fill in an application (it's best if you can get it checked over by a lawyer first) and lodge it with the QCAT.

For further information about the QCAT, what to expect and how to prepare, see the information contained on their website:

<http://www.justice.qld.gov.au/QCAT/home.htm>

Contact details are:

Address: Level 9

Bank of Queensland Centre

259 Queen Street

Brisbane QLD 4000

Postal address: GPO Box 1639

Brisbane 4001

Phone: 1300 QLD CAT or 1300 753 228 between 8.30am and 5.00pm

Fax: 07 3221 9156

Email: enquiries@qcat.qld.gov.au



The QO deals with complaints about the decisions of public sector agencies (including Child Safety Services).

You can make a complaint about the decisions or actions of Child Safety Services to the Queensland Ombudsman.

Freecall: 1800 068 908 / Phone: 07 3005 7000

GPO Box 3314,

Brisbane Qld 4001

www.ombudsman.qld.gov.au



The Office of the Adult Guardian is an independent body that assists adults who are not able to make decisions for themselves which can be caused by intellectual or psychiatric disability, dementia, acquired brain injury or temporary impairment such as delirium or unconsciousness.

The Adult Guardian can make representations on behalf of parents with impaired decision-making capacity to Child Safety Services and other service providers.

Phone: 07 3234 0870 / 1300 653 187

PO BOX 13554

Brisbane George St Qld 4003

www.justice.qld.gov.au/guardian



The CMC accepts complaints about official misconduct of public officials in state government departments and agencies, local government, the Queensland Police Service and members of State Parliament (so this could be Child Safety officers). When making a complaint, make sure:

It relates to an activity that could be a criminal offence or serious enough to warrant dismissing the officer concerned

You give as much information and documentation as possible.

Freecall: 1800 061 611 / Phone: 07 3360 6060

GPO Box 3123,

Brisbane Qld 4001

www.cmc.qld.gov.au



What if your client does not agree with a decision?

Your client can appeal the decision but this must be within 28 days of the decision being made. The appeal is to the District Court. You must use Form 96 available from the Court Registry or on www.courts.qld.gov.au

Ask the parents to write a clear statement why it is believed the decision is wrong or unfair, ATSIILS should enhance the statement and lodge it with the District Court of Queensland.

Once an order is made, can the order be changed?

Yes. The order can be varied or revoked by making an application to the court.

An order will only be revoked if it is proven that the order is no longer necessary to protect the child from harm.

If you have any questions or would like me to send you any materials: please do not hesitate to contact me: (07) 3025 3888, or
via: william.hayward@atsils.org.au

www.atsils.org.au

Thankyou – William Hayward – Law, Justice and Advocacy Development Officer



Blue Card for Child Related Employment

ATSILS Support

In the event that you are required to apply to the Commission for Children and Young People and Child Guardian for a **Blue card for Child Related Employment** and need legal advice or support, our organisation is available to provide legal assistance and advice 24 hours a day – 7 days a week. We recommend that were the Commission for Children and Young People and Child Guardian may request an applicant to make a submission regarding their suitability for a Blue Card for Child Related Employment or you are seeking to appeal a decision that you contact ATSILS Civil law stream for advice and assistance. We can then advise you of your legal rights in a way which will allow you to make informed decisions as to the option which is in your best interest.

ATSILS Blue Card Advice and Assistance

- **Initial advice in relation to applying and Blue Card Process.**
- **Assistance and Advice responding to Request for Additional information, request for submissions, appealing negative notice decisions, paper work.**
- **Supporting either self representation, and providing legal representation**

Blue Card

The Commission for Children and Young People and Child Guardian holds the responsibility for administrating the Blue card system which has three main parts:

The Blue card screening process which assesses an applicant's eligibility to work with children based on their known past police and disciplinary information.

The Daily ongoing Monitoring of applicants' and cardholders police information to ensure immediate steps are taken to protect children if required

Mitigating future risk by requiring organisations to implement risk management strategies aimed at minimising risks of harm to children.

Blue card Application process

Blue cards are a legislated or legal requirement in a range of child related services to ensure the safety and wellbeing of Queensland children and young people. Examples of employment or volunteering that will require a blue card are:

Childcare

Church groups, clubs and associations

Sporting and active recreation groups

Private teaching, coaching or tutoring

Schools

Religious representatives

Health, counselling and support services

Child protection

Barriers & Difficulties

There are a range of difficulties people may experience while applying for a Blue card and it is important to seek support either informally or formally to ensure your best chance of success. Most difficulties can be easily worked through with the right support. Some example of difficulties may include:

Lack of information or knowing where to find the support

Numeracy and literacy

Understanding the questions/wording blue card application

Identification

Concerns regarding police or professional disciplinary

Responding to request for further information or requests for submission

Remoteness or rural location

Timeframes

It is important the Blue card application form is correctly filled out and lodged with the Commission for Children and Young People and Child Guardian. In the first stage or the initial blue card application we encourage you to seek support from your employer or volunteer agency and the Blue card contact centre. This will support with reducing approval/decision timeframes which is often a frustration experienced by organisations, professionals and volunteers.

There are two types of applications, a Paid employee blue card application and a Volunteer Blue card application form. Please find link to the Commission's Blue card application forms:

Paid Employee

<http://www.ccypcg.qld.gov.au/bluecard/applications/paidemployees.html>

Volunteer/Student

<http://www.ccypcg.qld.gov.au/bluecard/applications/volunteersandstudents.html>

Blue Card Assessment Process

The Commission for Children and Young People and Child Guardian will assess application to decide either a:

Positive Notice – person is considered eligible to work with children and young people. Positive notice letter and Blue card are issued.

Negative notice – person is considered ineligible to work with children and young people. Negative notice is issued.

It is important to understand the blue card assessment process is not designed to further punish people for their past behaviour or life experience, rather it is aimed at ensuring the safety and wellbeing of children and young people.

Submission

The Commission for Children and Young People and Child Guardian may ask an applicant to provide a submission with information and context about their blue card eligibility.

It is strongly encouraged that applicants seek ATSILS advice and assistance to prepare a submission representative of their current life circumstances and why the Commissioner should consider their eligibility despite their past behaviour or experiences.

As an applicant it is important to provide your story and understanding of any past behaviour or experience so that the Commission for Children and Young People and Child Guardian can make a decision based on all the facts. The submission may include personal, family or cultural circumstances at the time of the concerning behaviour, any actions you have taken to address the behaviour and your current life circumstances and standing within the community.

Please find a link to the Commission's information sheet, How to make a submission:

<http://www.ccypcg.qld.gov.au/pdf/bluecard/infosheets/08-434-How2Make-a-Submission-MAR11.pdf>

As an Applicant you can give ATSILS permission to discuss information about you blue card application. This can allow ATSILS as a third party to support you throughout the application process and maintain confidentiality or privacy.

Please find a link to the Commission's form, Authority to liaise with an authorised person:

<http://www.ccypcg.qld.gov.au/pdf/bluecard/forms/11-669-021-Auth-to-Liaise-with-Authorised-Person-JUN11.pdf>

Appealing a decision

In some cases as an applicant you may disagree with the Commission for Children and Young People and Child Guardian decision to refuse a positive notice and issue blue card. It is important to understand you can apply to the Queensland Civil and Administrative Tribunal or QCAT to have the decision reviewed. These decisions include:

Issuing of a negative notice, or

The refusal to cancel a negative notice previously issued.

QCAT is independent from the Commission for Children and Young People and Child Guardian and has authority to review administrative decisions including those about blue cards. A QCAT application for a review form must be lodged within 28 days of receiving the letter advising you of the Commission's decision.

QCAT may hold an informal preliminary conference this allows for the opportunity to discuss your application direct with a representative for the Commission for Children and Young People and Child Guardian, develop an understanding of the QCAT process, discuss your application material, witnesses and reasons for your appeal.

Following a preliminary conference, at a later date a QCAT hearing will commence with the Tribunal members, Commission for Children and Young People and Child Guardian representatives and the applicant.

QCAT will require you or a legal representative (if required) to present your reason for appeal, supporting material and present any witnesses before the tribunal members. It is important to be well prepared and ready to present your application or case before the QCAT Tribunal.

QCAT will make its decision after considering all the information and issues relevant to your review. The tribunal will provide a written reason for its decision to you and the Commissioner for Children and Young People and Child Guardian.

Please find link to the Commission's information sheet on Queensland Civil and Administrative Tribunal:

<http://www.ccypcg.qld.gov.au/pdf/bluecard/infosheets/Info-Sheet-QCAT.pdf>

It is strongly encouraged that applicants seek ATSILS advice and assistance to prepare an appeal representative of their current life circumstances and why the Commissioner should re-consider their eligibility despite their past behaviour or experiences.

SCAN Meetings

What is SCAN (Suspected Child Abuse and Neglect) and what are their meetings about?

These meetings are held to discuss cases of suspected child abuse and neglect and to make recommendations about how to best assist families keep children safe from harm or risk of harm.

Officers from government departments who have an interest or involvement in the case (such as Department of Child Safety, Health, Education, Police and if relevant recognised Aboriginal and Torres Strait Islander entities) meet together to make recommendations for a child.

The information discussed in these meetings may assist Child Safety Services and their work with families. Whilst the minutes of these meetings are confidential, you can expect your client's Child Safety Officer to advise your client if their family is to be referred to SCAN and to discuss the outcome of these meetings with your client.

There is now a legislative basis for SCAN meetings. The purpose is to establish a coordinated response to the child protection needs of a child by facilitating :

- information sharing
- planning and co-ordination of actions
- holistic and culturally responsive assessment.

Core Members:

- DChS
- Health
- Education
- Police
- Recognised Aboriginal and Torres Strait Islander entities

Invited Members:

- Others that may be helpful eg Disabilities or Housing

Responsibilities of Core Members:

- to have appropriate knowledge and experience in child protection.
- to come to recommendations based on shared relevant information and sources.
- to take action required under recommendations.
- to monitor the implementation and review effectiveness of recommendations.
- to invite and facilitate contributions from other service providers who may help.

SCAN Pointers

- SCAN can assist in Case Planning process, but the ultimate responsibility remains with Child Safety Services to develop and implement
- You have to be invited to participate in SCAN meetings
- Ask for copies of minutes. There is no obligation under the CPA for Child Safety Services to give this, but if that is informing a case planning meeting then it would be helpful if you had it (this is the reasoning that you can use for getting the minutes for your client)

Note what referrals have been given to SCAN. Sometimes they base their decisions on incorrect information, so if you can find out the information given, you can respond to it.

**Does a parent have to let
Child Safety Services into
their home?**

Remember that because your client does not have to answer any questions or attend any interviews legally, then if they decide to, they can ask for their own support person to be present.

Clients do not have to let Child Safety Services workers or the Police into their home. However, Child Safety Services workers and/or the Police can:

- Enter their home if they believe a child is in immediate danger (Section 16) or they have a Temporary Assessment Order (Section 28) (they have to give a copy of the order to your client) and can remain as long as is necessary to assess this.
- Take the child with them and into their care (Section 18). If Child Safety Services takes the child, they can only keep them for a maximum of 8 hours, unless they apply for a court order (or already have a court order) (Section 18).
- Seize things when entering a home to assess whether a child is in immediate danger or to carry out their assessment under a court order (Section 177).
- They must give your client a receipt for the items they take (Section 178).

Note: Child Safety Services or the Police can be involved in the investigation stage and the Police have the same powers as Child Safety Services under the CPA. It is important to remember:

- that the Police can carry on their own investigations separate to Child Safety Services
- that even if the Police stop investigating the case, or the matter isn't taken to court, or that your client is found not guilty in criminal law proceedings, Child Safety Services may still have child protection concerns, and may still seek a Child Protection Order.

Ensure legal representation and advice.

Does Child Safety Services have to tell a parent they have had contact with a child at school?

Child Safety Services has a number of responsibilities under the Act to inform parent/s if they have removed a child.

Under the CPA, Child Safety Services must tell at least one (1) parent about the allegation of harm unless it would jeopardise a criminal investigation or expose the child to further harm (Section 15(1)).

**Does Child Safety
Services have to tell a
parent they have taken
their child?**

Child Safety Services can have contact with a child at school or **child care centre if they believe it is in the child's best interests** that contact is made before they inform the parent/s.

Child Safety Services must tell at least one (1) parent that they have had contact with the child and the reasons for that contact, unless it would jeopardise a criminal investigation or expose the child to further harm.

Note: The child is NOT obliged to answer any questions Child Safety Services asks. This means the child can choose to remain silent or only answer some questions. The child can also ask for a support person to be present, such as a teacher, family member, support worker or lawyer.

**Can they investigate
my client's pregnancy?**

Yes. Child Safety Services can investigate pregnant women (Section 21A) if they reasonably suspect the child may be in need of protection after he or she is born.

They must not, however, interfere with the rights and liberties of the pregnant woman (Section 21A(5)).

The purpose of the section is to reduce the likelihood that the child will need protection after birth.

Child Safety Services can offer help and support to the pregnant woman (Section 21A(2)(b)) or investigate and assess the likelihood that the child will need protection birth (Section 21A(2)(a)).

If the child is Aboriginal or Torres Strait Islander the Child Safety Services must consult with a Recognised Entity for the purpose of assessing the protection needs of the child (Section 21A(3)); however, Section 21A(3) applies only if the pregnant woman consents (Section 21A(4)).

Usual Court Process:

If you agree with the order (consent):

Application filed by Child Safety Services in the Children's Court

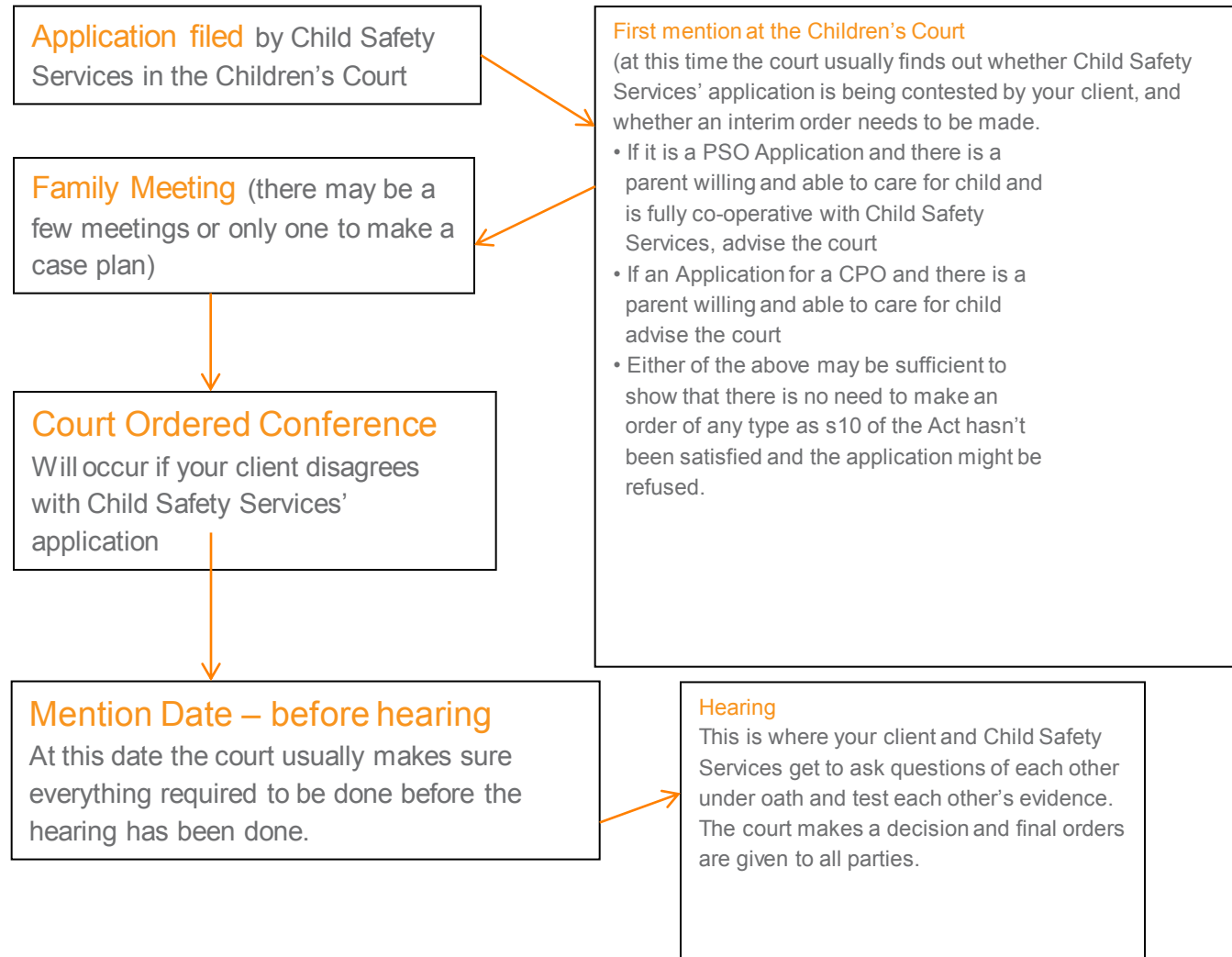
Family Meeting

There may be a few meetings or only one to make an appropriate case plan

First mention at the Children's Court: at this time the court usually finds out whether Child Safety Services application is being contested by your client, and whether an interim order needs to be made.

If your client has agreed to the order, then there will usually be one other mention at court where Child Safety Services will hand up consent papers and relevant case plan. If the court is satisfied with this, a CPO is then made. Make sure your client is fully aware of the type of order being sought and how it will affect them in the future.

If you disagree with an order (contest):



Note: you can consent to an order at any stage

Court Involvement

What should I do if my client gets a notice to go to court?

The documents that your client is likely to get from Child Safety Services are:

- **An application for a Court Assessment Order (CAO) or Child Protection Order (CPO)** (this will say at the end of the document when the next court date is and which court your client has to go to)

- **Affidavit/s**

- ❖ Immediately arrange legal advice for your client
- ❖ If your client needs an interpreter at court, you must tell the court as soon as possible
- ❖ If your client is eligible for free legal advice/services from Legal Aid Queensland have your client apply immediately
- ❖ If you are seeking to use the services of a specific law firm, ask if they are a Legal Aid preferred supplier
- ❖ If they are, submit your Legal Aid Application through that firm
- ❖ If they are not eligible for Legal Aid, they will need to see a private lawyer
- ❖ If the court hearing has been scheduled for the next day or soon after, it is important for the parent/s to **go to court and request an adjournment whilst they 'seek legal advice and representation'.**

Court Orders

Assessment Orders

These orders allow Child Safety Services to investigate and assess whether the child is a child in need of protection. There are 2 types of Assessment Orders:

Temporary Assessment Order (3 consecutive days)

Court Assessment Order (4 weeks)

Both of these orders can be extended once only and only if approved by the court.

Temporary Assessment Orders (Emergency Orders)

Child Safety Services can apply for an emergency order (s25). This order lasts for a maximum of 3 consecutive days.

A court hearing is not necessary and a Magistrate can issue this order by telephone, fax or radio. The court may (section 28):

- order a medical examination;
- allow the Police or Child Safety Services officer to have contact with the child;
- allow the Police or Child Safety Services officer to enter and search the premises;
- if parent/s have denied access, and, if necessary, take the child into care;
- order contact with a parent/s: supervised, unsupervised or not at all.

Court Decisions

What if my client doesn't agree with a decision?

A decision can be appealed, however this must be within 28 days of the decision being made (section 118).

The appeal is to the District Court. Your client must use Form 96, available from the Court Registry or on -

http://www.courts.qld.gov.au/_data/assets/word_doc/0008/88469/ucpr-f-96-070614.doc or by accessing

<http://www.courts.qld.gov.au> and entering the words 'form 96' into the search area.

Write a clear statement why your client believes the decision is wrong or unfair, have a lawyer check it and lodge it with the District Court of Queensland.

Once an order is made, can the order be changed?

Yes. The order can be varied or revoked by making an application to the court (section 65).

An order will only be revoked if the Court it is satisfied that the order is no longer necessary to protect the child from harm (section 65(6)).

Get your client legal advice if your client is considering this.

Please note that making an application for a revocation of an order (say for example in 6 months which may be enough time to establish a change in circumstances) is often easier than appealing a CPO once it has been made.

What if my client refuses to do what the order says?

Your client can be charged with an offence (section 168).

A warrant can be issued for an officer to enter and search premises and remove a child if your client prevents the child from being taken into care, or if your client takes the child from someone **else's custody (who has been appointed to take care of your client's child)**.

Note: Interstate orders can be enforced here and orders made in Queensland can be enforced in other states. If your client is having problems with interstate orders, seek legal advice.

Court Ordered Conferences (COC)

These meetings are held if your client contests the application made by Child Safety Services.

A court appointed chairperson runs the meeting, and the aim is to get an agreement between your client and Child Safety Services, to avoid going to a hearing. Your client can be represented by a lawyer.

Remember: these meetings are confidential and what the parents say can't be used in court.

However, a report outlining the outcome of the meeting is given to the court afterwards (section 72).

What if my client hasn't been told about court proceedings?

Seek legal advice immediately. The documents must be 'served' properly on the client.

This means that the court documents must be given to your client in person, sent by post or left at the last known premises of a parent (section 56(1&2)).

What if my client doesn't go to court?

The case can be decided without your client (section 58) [as long as Child Safety Services can prove that they have given your client copies of the court documents (or made reasonable attempts to do so) within a reasonable time before the hearing].

**What if my client wants
me to provide a report
or I am required to give
evidence to the court?**

Do some reading on report writing: Thompson (1989, Chapters 9 and 10); Eggleston (1978, pp132–135); Bernstein (1977, p 414); also Chapter 2, [2.370] ff.

2. Prepare a resume of qualifications as an expert, including academic qualifications, professional experience and research publications.
3. Give a coherent account of investigated contacts and findings, including the dates, quantity and length of interviews. Demonstrate why the chosen contacts were selected, explain any choice of theory and justify inferences. It will further assist the court in deciding on the weight of evidence to know the steps involved in reaching the opinions expressed. On a practical level, prepare written exhibits in sequence and, where appropriate, a bibliography.

4. Give a coherent account of investigated contacts and findings, including the dates, quantity and length of interviews. Demonstrate why the chosen contacts were selected, explain any choice of theory and justify inferences. It will further assist the court in deciding on the weight of evidence to know the steps involved in reaching the opinions expressed. On a practical level, prepare written exhibits in sequence and, where appropriate, a bibliography.

5. Express these findings in as simple, clear and unequivocal a way as possible, although ambiguities and alternative explanations should also be included. Avoid easy generalisations or clichés. Do not use jargon or very technical terms. Where these latter are considered necessary, explain them.

6. Remember that few lawyers can equal your expertise in your own area of knowledge, and that while you should be ready to justify any conclusion, you do not have to answer silly or overly personal questions.

If the demand is for a “yes” or “no” answer and this is not appropriate, tell the judge that this is the case. Some hypothetical questions can be justified and will give you a chance to fill in on the complexities of the situation or to mention whether other social workers may disagree with your interpretation.

Avoid giving “off the top of the head” answers that are difficult to justify.

7. **Even if you are very sympathetic to, or oppose, a client's case,** do not respond as if you were an advocate or have to make out a case. Impartiality can be harder to adhere to when you have been called by one side only, but it is still very important to your credibility.

8. Remember that while your contribution may be useful and while your elucidation of the facts may play a substantial part in allowing the court to reach an appropriate and just outcome, the responsibility for this is not yours; it belongs to the court.

What happens if there is a court order already?

First, read the order. If your client doesn't understand what is in the order, get legal advice.

Depending on when the order was made, your client may be able to appeal the decision (your client only has 28 days after the decision was made to appeal it).

Preparation for Court

Make sure you take time to assist your client in preparing to go to court. It is important to know what to expect (it can be a very daunting process, so preparation is vital). Some tips for your clients are:

1. Get legal advice before they go;
2. Dress neatly in conservative clothes. It shows the court that your client is serious;
3. Prepare! Make sure your client knows what s/he wants and that their lawyer has enough information too. A key tip is to type up a list of **the key disagreements your client has with Child Safety Service's** case (a good idea is to read the documents Child Safety Services gives your client and preferably type up a list of what your client sees as the key disagreements and give those to their lawyer). This will help your client be clear in court and also help their lawyer argue their case;

4. Take notes into court with them about what they want to say. Your client will be asked questions and have a chance to have his/her say. Be aware that anything your client says will be used to make the final decision. Think about what questions your client might be asked and practice answering the questions;
5. Obtain copies of Child Safety Services files by applying through a Right to Information Application (RTI). Please note that it can take many weeks to do this (Child Safety Services has to respond to an application within 45 days but rarely **meets this timeframe**), **so it's best to get in early. Your client** can get the RTI documents from the Child Safety Services website;
6. In the forms, remember to ask for all paper and electronic files, notes, letters and entries relating to the client.

At Court

- Remember to be polite, call the Magistrate 'Your Honour'
- Everything is focussed on what is in the best interests of the child;
- **If your client doesn't understand what's going on, your client** can ask the Magistrate, a Court Officer or if your client is represented, their lawyer, to explain it to your client (under section 106 of the CPA the court must ensure that a child, parent or other party understands the nature, purpose and legal implications of the proceeding);

- The court has to be satisfied that your client has had a reasonable opportunity to obtain legal representation;
- **A separate representative (a child's lawyer) may be** appointed for the child. Your client or his/her lawyer can ask for a separate representative to be appointed for the child;
- If the child is mature enough and wants to have a say, the court must be informed;
- The Court must state its reasons for decision when any order is made.

Adjournment (putting off to a later date) (section 66)

The court can put off the proceedings to a later date (this could be for a number of reasons including allowing your client to get legal representation).

This is called an adjournment.

The court can make an interim order (this means a **temporary or an 'in the meantime order'**) that allows Child Safety Services to have custody of the child until the final decision of the application (section 99).

The court can also order:

- no contact or only supervised contact with a child
- a written report about the child, family members and home environment (Usually this is undertaken by the **Child's Separate Legal Representative and funded by Child Safety Services**. If ordered by the Court then the Magistrate **MUST** state the particular issues to be covered in the report.)
- a medical examination of the child
- a family meeting
- separate legal representation for the child
- a conference between Child Safety Services, your client and a court appointed person.

Types of Child Protection Orders

(Section 61 *Child Protection Act 1999*)

A Child Protection Order is an order made by the Court where it has been decided that the child is in need of protection. This means Child Safety Services has to prove:

- harm has, is or is likely to occur and
- there is no parent able and willing to protect the child from harm

Before a CPO is granted the court looks at:

- whether parent/s have been given the court documents (or reasonable attempts have been made by Child Safety Services to do this)
- whether an appropriate case plan has been made and shown to the court
- if the order has been contested, a case conference has to have been held (or reasonable attempts to hold a conference have been made)
- **whether the child's wishes or views have been made known to the court (if possible)**
- **a parent's criminal history, domestic violence history, traffic history and reports by Child Safety Services (and if relevant reports about adult members of your household)**
- whether the protection of the child can be achieved by less intrusive terms? (this means thinking about questions like: 'does the order have to be for 2 years or is 1 year enough?').

Type of Order	Maximum length of time	Meaning
		Please note there are legislative amendments and additions which affect this section which have yet to be enacted at a date to be decided.
Directions Order	1 year	This is the least intrusive order. This directs a parent to do or not do something to protect the child.
Protective Supervision Order	1 year	This order allows Child Safety Services to supervise the child while the child remains in a parent's care.
Short Term Custody Order	2 years	This order grants custody of the child to Child Safety Services or a suitable family member.
Short Term Guardianship	2 years	This order grants short-term guardianship to Child Safety Services.
		Please note there are legislative amendments and additions which affect this section which have yet to be enacted at a date to be decided.
Long term Guardianship	Until child turns 18 years	This order grants long term guardianship to Child Safety Services, a suitable family member or other person.

Contact: The Court can also order a parent to not have contact or to have only supervised contact under any of these orders

Intervention with Parental Agreement

Child Safety Services may want to work with your client and the family without taking court action. The CPA specifies a preference for intervening with parental agreement (section 51ZB). Parent/s may choose to agree to this. Under this agreement, Child Safety Services may:

- organise support services for the family;
- arrange for a child to be placed in care for a short time **(where they will have to sign what's called a 'Care Agreement');**
- obtain the views of the child and may even make the child part of any agreements.

**What is a care
agreement?**

It is a short term agreement between a parent/s and Child Safety Services for your client's child to temporarily be in the care of Child Safety Services. This means that Child Safety Services has a right to make all day to day decisions about the child, including where the child is to live. There are 2 types of care agreements: 'Assessment Care Agreement' and 'Child Protection Care Agreement'.

All care agreements must (section 51ZF):

- be in writing
- state how long it is for
- state where the child is to live (including phone number)
- state the contact arrangements with your client and other family members
- state the type of decisions about the child your client must be consulted about.

Tips:

Make sure the agreement is in writing and that your client receives a copy of it

Be aware that Child Safety Services can apply for a CPO at any time during the care agreement.

**What are your client's rights
under a care agreement?**

Your client and the child have the same rights as your client would if there was a Child Protection Order in place.

Your client has the right to be treated fairly, appropriately and with respect. Ask Child Safety Services for a copy of their Code of Conduct on this issue.

How long does it last?

Assessment Care Agreements

Assessment Care Agreements must not be longer than 30 days and cannot be extended (section 51ZH(2)).

Child Protection Care Agreements

Initially they should not be longer than 30 days. They can be extended but cannot be longer than a total of 6 months (adding up any periods the child has been in care under an agreement in the last 12 months) (section 51ZH(8)).

It is important to remember that before an extension is granted, a family group meeting to make a case plan must be made. Make sure that before your client goes to a family group meeting he/she prepares for it.

**Can a parent stop
a care agreement?**

Yes, at any time, but notice of two (2) days must be given to Child Safety Services (section 51ZI).

Be aware though that Child Safety Services can then apply for a court order to remove the child or keep the child under an agreement and assess any suspected harm to the child.

A care agreement ends automatically if Child Safety Services gets a CPO granting custody or guardianship of a child to them.

Note: If you are assisting a client under a care agreement or a client is considering a care agreement, get Child Safety Services to specifically state what they want to achieve, by when and exactly what Child Safety Services wants the parents to do.

Information Sharing

If Child Safety Services asks me to provide information about a client, what do I tell them?

There are a number of options for you, depending on the circumstances. (section 159A-B) of the CPA outlines information sharing between Child Safety Services, other agencies, government departments and community organisations.

Note: Obligations to divulge information will differ depending on whether you are an employee of a government department or a community organisation.

Section 159A-B of the *Child Protection Act 1999* – Information Sharing Purpose & Principles

The following dot points are some of the key, relevant principles relating to sharing information about children and families with Child Safety Services and other government departments;

- To exchange information whilst protecting the confidentiality of the information
- Each service provider should contribute within their own sphere of responsibility to assessing and meeting the protection and care of children and supporting their families (Child Safety Services has the primary responsibility for investigating and **planning children's care & protection**)
- Service providers should work collaboratively and in a way that respects the functions and expertise of other service providers (that means Child Safety Services, other government departments and community organisations)
- **Because a child's welfare and best interests are paramount, their protection and care needs take precedence over the protection of an individual's privacy (ie a parent's or grandparent's privacy).**

Section 159C of the *Child Protection Act 1999* – Relevant Information

Relevant information is defined in section 159C. It is information that a service provider reasonably believes would:

- help investigate allegation or risks of harm or assess need for protection
- help investigate or assess pregnant women and assist in supporting them
- **help develop or assess effectiveness of a child's case plan**
- help make plans, decisions or provide services to children or family
- can be facts or opinions
- **can be information about a child, child's family or someone else**
- does not apply to criminal history where rehabilitation has expired under that act.

Prescribed entity

A prescribed entity is defined under the *Child Protection Act 1999*. Prescribed entities have some obligations to disclose some information to Child Safety Services. It is important to note that one of the potential definitions of prescribed entities could be a bit confusing for community organisations.

This is:

- CEO of a service that provides services to children, families or pregnant women prescribed under regulation (section 159D(h))
- this does not mean community organisations, it is referring to other government agencies not already listed (government agencies are regulated).

Note: Community Organisations are not prescribed entities.

Service Provider

Community organisations fall under the definition of 'service provider' under section 159D of the CPA, which is:

Another person providing a service to children or families.

Obligations to give information to Child Safety Services

Community organisations, and therefore community workers have no obligations to disclose ANY information under the CPA unless they are a prescribed entity (no matter what Child Safety Services might say to you).

If Child Safety Services says that you have an obligation to provide information, and you do not want to give any information, please be aware that if any of the following sections of the CPA are quoted to you, then you can respond appropriately:

- section 159N only applies to prescribed entities (ie government departments and the Police). There is no obligation for service providers (ie community organisations or NGOs) to disclose information
- section 159M (3) states that a service provider MAY (emphasis added) give **relevant information to a 'prescribed entity'** (in this section it means government departments and the Police – so you can choose to give child protection information to Child Safety Services or other government departments if you want to).

Protection from liability

If you choose to give information to Child Safety Services, section 159Q states that a person acting honestly in giving child protection information is not liable civilly, criminally or under an administrative process. This means you!

Information required by other laws

Section 159R states that any information required to be disclosed under other Acts, still applies. So, if there is another law which says you have to disclose information, you will be obliged to do so.

Summary – information sharing

1. There is NO obligation to disclose information to Child Safety Services.

2. If you want to decline a request you may wish to use the following:

- You **don't need to say anything**
- That there is no obligation under the CPA to require you to do so
- You have obtained legal advice and there is no obligation under the s159N of the CPA to require you to disclose information (the relevant sections ONLY require government departments to disclose information)
- That you do not have any information that would help the department investigate harm or assess the need for protection
- That you have no information that you would reasonably believe could assist the department
- That **it is likely to endanger a person's life or safety** or you believe it is not in the public interest.

3. You may choose to share child protection information with the Police or other government departments (Child Safety Services, adult corrective services, community services, disability services, education, housing services, public health and the Police).

4. You won't be held liable for any information regarding child protection you may give to Child Safety Services, the Police, other government departments, or other service providers.

5. The only time that you may be required to disclose information to Child Safety Services is if Child Safety Services obtains a court order requiring you to do so

Health Passports

A health passport is to be established for all children in care.
There are a number of purposes for this being:

To track the medical treatments for the child in care.

To track pharmaceuticals prescribed for the child.

To maintain an awareness of the child's needs should there be;

- A. A new CSO appointed
- B. A new Foster Care placement
- C. A reunification with the family.

8 Key Tips for Workers

1. Respond to every concern/issue you or your client has IN WRITING! Use the complaints handling process of DChS – start with local area and manager, if no response, then fax/email copies to everyone to create extra pressure to respond.
2. Remember the QCAT – just putting in an application often gets things going!
3. If you are working with a child, you or the child can contact the CCYPCG for assistance in negotiations.
4. Buy your client a diary – remind them to write dates, times, names of everyone they spoke to and what they said (very important for evidence in future court case).
5. Everything under the Child Protection Act is focused on the best interests of the child and this is paramount. Frame your conversations around this. Quote Schedule 1 and s5 of the CPA.

6. Changes to the Family Group Meetings mean that a whole range of people can be involved in the case planning meeting process and legislation specifically states support people, broader family networks and anyone who could make a useful contribution to the process. This is your argument to be involved or for others to participate.
7. Remember everything you and your client say to Child Safety Services can be used by them in court proceedings. Be mindful of what you say!
8. Child Safety Services Practice Manuals could be very useful in understanding how Child Safety Services officers make their decisions. The Child Safety Services practice manual is now available online at the following address:

<http://www.childsafety.qld.gov.au/practice-manual/index.html>

The Child Protection Act (Qld) 1999 can be read and downloaded from the following site:

http://www.legislation.qld.gov.au/Acts_SLs/Acts_SL_C.htm

Making a complaint is sometimes the only option if you want to change things from the way they are. Some tips before you make a complaint:

1. Remember to record every conversation you have with a Department worker. Record the name of every Child Safety Services worker you spoke to and the date and time you spoke to them.
2. If you are not getting calls returned, record the number of times you attempted to make contact.

TIP: a diary helps!

3. Ask for paperwork. If you get paperwork late and you have a court date, then you can ask the court for more time to look at the paperwork and get legal advice. **Remember:** keep all paperwork!
4. If you receive a letter from Child Safety Services that you do not agree with, then it is important that you reply in a letter what your side of the story is.

If you have any questions but we're out of time; or would like me to send you any materials: please do not hesitate to contact me: (07) 3025 3888, or via: william.hayward@atsils.org.au

Thankyou – William Hayward – Law, Justice and Advocacy Development Officer



Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

Family and Civil Law Workshop 21st March 2012 Brisbane AGENDA

We hope you find this Workshop both enjoyable and valuable. Our sincere welcome to all.

21st March 2012

Day 1

Child Protection Day

Topic	Start *	Finish	Probable CPD Points
Arrival Tea & Coffee	8.30 am	9.30 am	
Session 1			
Welcome (Greg Shadbolt PLO Brisbane Office)	9.30 am	9.45 am	
Topic 1. ATSILS – Being a Defining Influence in Child Protection Legal Representation (Greg Shadbolt– Brisbane Office)	9.45 am	10.30 am	
Topic 2. Aboriginal & Torres Strait Islander Over-representation within Child Protection System and Historical Influences. (William Hayward – Brisbane Office)			
Morning Tea	10.30 am	10:45 am	
Session 2			
Topic 3. Queensland Child Protection Service Delivery System. <ul style="list-style-type: none"> • Universal Prevention. • Early Intervention & Targeted Services. • Statutory Services. (William Hayward – Brisbane Office)	10.45 am	11.00 am	
Topic 4. Department Of Communities – Court Services	11.00am	11:45 am	
Topic 5. Practice and Case management Standards Child Protection Law (Jennifer Ekanayake Director of Family Law)	11:45 am	12.45 pm	
Lunch	12.45 pm	1.30 pm	



Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

21st March 2012

Day 1

Child Protection Day (cont.)

Session 3			
Topic 6. Case Scenarios			
<ol style="list-style-type: none"> 1. Extended family member. 2. Contesting a child protection order. 3. Establishing positive outcomes with Long Term Guardianship order. 	1.30pm	2.00pm	
Topic 7. Professional Q&A Panel			
<p>Attendees include:</p> <ul style="list-style-type: none"> • Department of Communities Child Safety Services Practice Improvement • Department of Communities Court Services • Indigenous Family and Child Support Service (Recognised Entity) • Kurbingui Family Support Service (Family Support) • Queensland Aboriginal & Torres Strait Islander Child Protection Peak 	2.00pm	2.45pm	
Afternoon Tea	2.45pm	3.00pm	
Session 4			
Topic 8. Tools for Negotiation, Mediation & Litigation.			
<ul style="list-style-type: none"> • Aboriginal and Torres Strait Islander Specific Legislation. • Investigation and Assessment • Structured Decision Making Tools • Family group Meetings/Case Plan Reviews • Appeals and Reviews <p>(William Hayward –Brisbane Office)</p>	3.00pm	5.00pm	



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22 March 2012

Day 2 - CIVIL LAW

Topic	Start	Finish	Probable CPD Points
Arrival Tea & Coffee	8.30 am	9.00 am	
Session 5			
<ul style="list-style-type: none"> • Introductions • Team Discussion re end of day ACTION PLAN • Lawyer reports – Trends; Capacities; Cultural Issues. Maria Rinaudo - facilitator 	9.00am	10.00am	
Morning Tea	10.00 am	10:30 am	
Session 6			
<ul style="list-style-type: none"> • Overview – Case work • Big Picture Maria Rinaudo (Director of Civil Law)	10.30am	11.00am	
Session 7			
<ul style="list-style-type: none"> • Public Trustee • Roles of the PT (Katherine Williams, Lawyer) • Client Services – What they do on the ground (Presenter: Manager Client Services) 	11.00	12.00	1
Session 8			
<ul style="list-style-type: none"> • Internet Research (To be Confirmed) 	12.00	12.45	0.45
Lunch	12:45pm	1.30pm	
Session 9			
<ul style="list-style-type: none"> • QCAT (2 guest presenters) • Residential Tenancies • Homelessness intervention • Debt recovery <ul style="list-style-type: none"> ○ And: Regulated dogs ○ Leave for legal representation ○ Appeals 	1.30pm	2.30pm	1
Session 10			
<ul style="list-style-type: none"> • Police complaints/CMC; DIC; Body Disputes – Overview and Fact Sheets (Maria and Rory) 	2.30pm	2.45pm	0.25
Afternoon Tea	2.45pm	3.00pm	
Session 11			
Pro bono and deferred payment firms	3.00 pm	3.30pm	1
Session 12			
Team Action Plan (Part 2) Group discussion facilitated by Maria Rinaudo	3.30 pm	4.30 pm	



Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

22 March 2012

Day 3 - FAMILY LAW

Topic	Start	Finish	Probable CPD Points
Arrival Tea & Coffee	8.30 am	9.00 am	
Session 13			
Cultural Training Overview - Bill Ivinson, Head, School of Indigenous Australian People, Southbank Institute of Technology	9.00am	10.00am	1.0
Session 14			
The Judicial approach on how to evidence Aboriginal identity under the Family Law Act.....a recent case study - Sheldon v Weir Martin Doyle Regional Manager ATSILS Mackay	10.00am	10.30am	0.5
Morning Tea	10.30 am	11:00 am	
Session 15			
Child Support and Enforcement Action Darren Ranger, Community Project officer, Queensland - Child Support Agency	11.00	12.00	1.0
Session 16			
Getting the best use out of <i>The Family Law Book</i> Craig Nicol, Family Lawyer and co-author of <i>The Family Law Book</i>	12.00	12.45	0.45
Lunch	12:45pm	1.30pm	
Session 17			
Review of Practice and Case management Standards Family law Jennifer Ekanayake, Director of Family Law and Greg Shadbolt, Principal Legal Officer	1.30pm	2.00pm	0.5
Session 18			
Conflicts of Interest and related matters Group discussion facilitated by Greg Shadbolt Principal Legal Officer	2.00pm	2.45pm	0.45
Afternoon Tea	2.45pm	3.00pm	
Session 19			
General Business: Funding for expert reports, Paralegal assistance for family/civil lawyers, Merits assessment Any other matters	3.00 pm	4.30pm	



POSITION DESCRIPTION – 027LPCCP

Legal Practitioner: Criminal Law and Child Protection – Full Time, Fixed Term.

A. CONTEXT, PURPOSE OF THE ROLE AND OPPORTUNITY:

About us

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation established to provide professional and culturally proficient legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 27 offices and more than 190 personnel.

Our Vision is to be the leader in the delivery of innovative, professional and culturally proficient legal services. Our mission is to foster collaborative partnerships with our communities, key government and non-government stakeholders to influence positive change and deliver high quality legal services for our people within or exposed to the justice system.

The purpose of the Legal Practitioner, Criminal Law and Child Protection is to provide high quality legal representation to clients in the criminal law and child protection law matters.

This role allows a qualified and organised legal professional to provide enthusiastic and diligent service with Aboriginal and/or Torres Strait Islander Court Support and Field Officers and administrative support staff. The majority of our client demand provides excellent opportunity in criminal casework for a professional advocate. (In most of our offices, civil and family jurisdictions are also covered.)

Opportunity

This role encompasses working in some of Queensland's more remote areas and will appeal to a diligent, motivated and self-reliant legal practitioner. You will have frequent opportunity to provide expert information directly to clients, and to external stakeholders about client matters. You can rely on the State-wide resources of the Principal Legal Officer and the Directors of Law (Criminal Law and Family Law), plus the support of the Mt Isa Regional Manager (also a legal practitioner in Criminal Law).

A corporate services team based in Brisbane provides administrative and human resources support; regionally, administration support ensures a knowledgeable office system.

Our Regional Offices provide a rewarding social justice environment for service delivery which is achieved through one-to-one in person, by teleconference, phone and satellite, direct community visiting and at our offices.

B. REPORTING STRUCTURE:

Duties are performed under the guidance and direction of the Chief Executive Officer; Principal Legal Officer; Director of Criminal Law; Director of Family Law; and in regional (or remote) areas, the Regional Manager (also a Legal Practitioner).

Continued/...2



C. SELECTION CRITERIA (Please address these criteria, in writing, using the ATSILS Recruitment Application Form):

I. ESSENTIAL CRITERIA (6)

1. **Values:** Alignment to the values and vision of ATSILS and an appreciation of and sensitivity to the challenges our clients have faced and continue to face in their right for justice and equity;
2. **Qualifications:** Admission as a legal practitioner within the State of Queensland and holder of (or eligibility for immediate acquisition of) a current practising certificate.
3. **Multi-skilling:** Capacity to provide both high level client services in criminal law and child protection proceedings (including making applications for bail; pleas in mitigation; appearing at call-overs, committal hearings and summary hearings;) while ensuring exemplary case management standards;
4. **Core legal duties:** Proven high level of professional service in all aspects of criminal and child protection law – within both adult and youth jurisdictions; a demonstrated knowledge of diversionary alternatives available to police/magistrates/judges;
5. **Confidence in and knowledge of legislation:** An in-depth working knowledge of the *Youth Justice Act 1992*, (as amended) and the *Criminal Code 1899*, (as amended); the *Child Protection Act* (as amended); with a commitment to keeping up to date on law and procedures;
6. **Access, teamwork and communication:** preparedness to work after hours if necessary; willingness to assist in the development of Court Support/Field Officers and other legal staff members' training/education; sound interpersonal and communication skills;

II. DESIRABLE CRITERIA (2)

7. Windows 2007 or 2010 computer literacy including the ability to use dedicated legal database software.
8. **Queensland Driver licence:** in some locations this may be an essential criterion.

These selection criteria and your responses must be entered into the ATSILS Recruitment Form (or handwritten, or attached as a separate page to your application if you do not use Microsoft Word with tables/data entry).

This form is available from the www.atsils.org.au careers webpage, or via email to careers@atsils.org.au.



D. PROFESSIONAL DUTIES:

1. Ensure that Aboriginal and Torres Strait Islander people are provided with conscientious, ethical and culturally competent representation within the criminal justice and child protection systems.
2. Provide legal advice and minor assistances across the legal spectrum including Child Protection matters (with appropriate referrals where necessary).
3. Provide casework assistance (including advocacy e.g. summary and committal hearings, child protection applications) in the Criminal Law and Child Protection areas.
4. Provide Duty Lawyer assistance in the Criminal Law and Child Protection areas.
5. Attend call-overs, present submissions in mitigation of sentence, and instruct counsel as might be required in relation to superior court matters.
6. Participate in circuit court and after-hours rosters as well as outreach work as required.
7. Provide community legal education in the Criminal Law and Child Protection (and related) areas as might be directed.
8. Contribute to law reform submissions relating to the Criminal Law and Child Protection areas as directed.
9. Maintain a high level of knowledge and understanding of criminal justice and child protection issues impacting upon Aboriginal and Torres Strait Islander people through continuing education.
10. Ensure all work undertaken by the practitioner on a file complies with prescribed standards for quality and case management.
11. Undertake other duties as may be reasonably required (within the general ambit of the position).

E. TEAM, COMMUNICATION AND QUALITY IMPROVEMENT DUTIES:

12. Undertake study or training which might, from time to time be determined by the Executive, and contribute to the professional development of other team-members (including Court Support/Field Officers) as required.
13. Take part in workplace health and safety compliance initiatives and support other team members to do the same.
14. Contribute to a supportive team environment, through various workplace activities.
15. Participate in annual appraisal of own work, and attend and document regular supervision sessions with the staff to whom you report.



F. CORE COMPETENCIES

Your performance will be evaluated on the following facets:

- The application of your knowledge of law and procedure in the criminal law jurisdiction and child protection areas as well as your commitment to improvement in this area;
- Your diligence in ensuring a friendly, culturally competent and flexible service to our clients, staff and visitors;
- Whether your communication is relevant, articulate and concise (both oral and written) including developing an ability to present effectively to external stakeholders and the extent to which you provide a professional and stable presence in the community as your employer's representative;
- Whether your capacity to develop supportive, positive, informative and consistent relationships with your team members and embracing diversity, is clearly demonstrated;
- The timeliness, quality and responsiveness to law reform and educational matters;
- Whether your ability to juggle competing schedules, inside and outside the office environment reflects your strong organisational skill (including compliance to file management protocols); and
- Whether the development of your ability to calmly assist clients (and their families) with complex needs in a timely manner is reflected in a well-balanced, stress-managed working environment.

F. CONTRACT, LOCATION & FURTHER INFORMATION

This Normanton-based position attracts a remuneration package and conditions as per the ATSILS Contract which includes an option for salary-sacrifice packaging (in accordance with ATO regulations), and flexible working arrangements. The starting salary is from \$65,000 (plus superannuation and annual leave loading) for newly admitted practitioners, and ranges well above this figure dependent upon experience and qualifications. A contribution towards relocation costs may be available where applicable.

A full-time, fixed term contract is offered, subject to performance and funding. At ATSILS we also offer structured professional development in conjunction with performance management, and study leave for approved work-related courses.

The Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd adheres to the tenets of Equal Opportunity Employment. Aboriginal and Torres Strait Islander people are encouraged to apply.

For further information please contact:
Human Resources Manager
Aboriginal & Torres Strait Islander Legal Service (Qld) Limited (ATSILS)
ABN: 11 116 314 562

T: (07) 3025 3888 Fax (07) 3025 3800
E: careers@atsils.org.au www.atsils.org.au
A: Level 5, 183 North Quay, Brisbane, Queensland, Australia.
M: PO Box 13035 George Street, Brisbane Qld 4003



POSITION DESCRIPTION – 017LPCP
Legal Practitioner: Child Protection – Full Time – Fixed Term

A. CONTEXT, PURPOSE OF THE ROLE AND OPPORTUNITY:

About us

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation established to provide professional and culturally proficient legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 26 offices and more than 170 personnel.

Our Vision is to be the leader in the delivery of innovative, professional and culturally proficient legal services. Our mission is to foster collaborative partnerships with our communities, key government and non-government stakeholders to influence positive change and deliver high quality legal services for our people within or exposed to the justice system.

The purpose of the Legal Practitioner, Child Protection is to provide high quality legal assistance and representation to clients in a busy team environment, in the Child Protection area.

This role allows a qualified and organised legal professional to provide enthusiastic and diligent service with administrative support staff. The majority of ATSILS client demand provides excellent opportunity in child protection across family and criminal jurisdictions, with occasional diversity into civil matters.

Opportunity

You will have frequent opportunity to provide expert casework assistance and information directly to clients, and to external stakeholders about client matters. You can rely on the State-wide resources of the Principal Legal Officer and the Director of Law (Family) and your immediate legal team.

A corporate services team based in Brisbane provides administrative and human resources support; locally, administration support with regional management ensures a friendly office environment.

Our regional Cairns office provides a rewarding social justice environment for service delivery which is achieved through one-to-one in person, by teleconference, phone and satellite, direct community visiting and at our offices.

B. REPORTING STRUCTURE:

Duties are performed under the guidance and direction of the Chief Executive Officer, Principal Legal Officer, the Director of Family Law, and the Regional Manager (also a Legal Practitioner).



C. SELECTION CRITERIA *(Please address these criteria, in writing, using the ATSILS Recruitment Application Form):*

I. ESSENTIAL CRITERIA (6)

1. **Values:** Alignment to the values and vision of ATSILS and an appreciation of and sensitivity to the challenges our clients have faced and continue to face in their right for justice and equity.
2. **Qualifications:** Admitted as a legal practitioner within the State of Queensland and holder of (or be eligible for immediate acquisition of) a current practising certificate.
3. **Core legal duties:** Experience (or an in-depth understanding) of Child Protection matters (including casework); while ensuring exemplary case management standards.
4. **Multi-skilling:** Sound interpersonal and communication skills including a demonstrated ability to empathetically convey sound information or advice to clients individually and in groups, and to present written information and online applications in concise, plain language using Windows Microsoft Office technology.
5. **Confidence in and knowledge of legislation:** An in-depth working knowledge of key legislation, practices and procedures in the field of Child Protection, with a commitment to keeping up to date on law and procedure.
6. **Access, teamwork and communication:** preparedness to work after hours if necessary; willingness to assist in the development of Paralegal/Court Support Officers and other legal staff training/education; sound interpersonal and communication skills.

II. DESIRABLE CRITERIA (2)

7. Windows 2003 or 2007 computer literacy including the ability to use dedicated legal database software.
8. **Queensland Driver's licence:** In some locations this desirable criteria may be escalated to an essential criteria where a court circuit or multiple location service is in place.

These selection criteria and your responses must be entered into the ATSILS Recruitment Form (or handwritten, or attached as a separate page to your application if you do not use Microsoft Word with tables/data entry).

This form is available from the www.atsils.org.au/careers webpage, or via email to careers@atsils.org.au.

Continued/...3



D. PROFESSIONAL DUTIES:

1. Ensure that Aboriginal and Torres Strait Islander people are provided with conscientious, ethical and culturally proficient representation.
2. Undertake specialist Child Protection Law casework assistance (including advocacy assistance);
3. Ensure procedures (such as file maintenance) are compliant with required professional standards.
4. Provide expert legal advice and minor assistances in the Child Protection area.
5. Provide emergency after-hours assistance in relation to Child Protection matters.
6. Provide community legal education in the Child Protection and related areas as directed.
7. Attend and/or present at various stakeholder meetings, conferences and the like in relation to Child Protection matters, as directed, and report on initiatives
8. Provide input into law reform submissions relating to the Child Protection area as directed.
9. Provide back-up support in the Family and/or Civil law areas on an as-needs basis (e.g. due to a colleague's absence) as might be directed.
10. Undertake other duties as may be reasonably required.

E. TEAM, COMMUNICATION AND QUALITY IMPROVEMENT DUTIES:

11. Undertake study or training which might be determined by the Executive, and contribute to the professional development of other team-members (including administrative, paralegal staff and Field/Court Support Officers) as required.
12. Take part in workplace health and safety compliance initiatives and support other team members to do the same.
13. Contribute to a supportive team environment, through various workplace activities.
14. Participate in annual appraisal of own work, and attend and document regular supervision sessions with the staff to whom you report.

F. CORE COMPETENCIES

Your performance will be evaluated on the following facets:

- The application of your knowledge of law and procedure in the Family law jurisdiction as well as your commitment to expanding your knowledge;
- Whether your communication is relevant, articulate and concise (both oral and written) including developing an ability to present effectively to external stakeholders;
- Whether your capacity to develop supportive, positive and consistent relationships with your team members and embracing diversity, is clearly demonstrated;
- Whether your ability to juggle competing schedules, inside and outside the office environment reflects your strong organisational skill (including compliance to file management protocols); and
- Whether the development of your ability to calmly assist clients with complex needs in a timely manner is reflected in a well-balanced, stress-managed working environment.



G. CONTRACT, LOCATION

This Cairns-based position attracts a remuneration package and conditions as per the ATSILS Contract which under current ATO legislation includes attractive salary packaging with a tax-free component. The starting salary range is from \$55,000 (plus superannuation and leave loading) for a newly admitted practitioner, and ranges well above this figure dependent upon experience and qualifications.

Our standard full-time, fixed term contract is offered, subject to performance and funding. Additionally, under current ATO regulations (which are subject to change), we offer a salary sacrifice option. Contribution towards relocation costs may be made where relevant upon application.

At ATSILS we also offer well-regarded, structured professional development in conjunction with performance management, and study leave for approved work-related courses.

The Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd adheres to the tenets of Equal Opportunity Employment. Aboriginal and Torres Strait Islander people are encouraged to apply.

For further information please contact:
Human Resources Manager
**Aboriginal & Torres Strait Islander Legal
Service (Qld) Limited** (ATSILS)
ABN: 11 116 314 562

T: (07) 3025 3888 Fax (07) 3025 3800
E: careers@atsils.org.au www.atsils.org.au
A: Level 5, 183 North Quay, Brisbane
M: PO Box 13035 George Street, Brisbane Qld 4003



POSITION DESCRIPTION – 026LJAD
Law and Justice Advocacy Development Officer – Full Time, Fixed Term Contract

A. CONTEXT, PURPOSE OF THE ROLE AND OPPORTUNITY:

About us

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation established to provide professional and culturally proficient legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 26 offices and more than 170 personnel.

Our Vision is to be the leader in the delivery of innovative, professional and culturally proficient legal services. Our mission is to foster collaborative partnerships with our communities, key government and non-government stakeholders to influence positive change and deliver high quality legal services for our people within or exposed to the justice system.

The purpose of the Law Reform and Community Legal Education Lawyer is to

- Provide well-researched law reform submissions and associated resources to ensure a high profile contribution to targeted legislation that adversely impacts Aboriginal and Torres Strait Islander peoples
- Ensure a strategic approach to community legal education is achieved across Queensland.

Opportunity

You will have opportunity to provide strategic advisory services directly to internal staff and external stakeholders regarding justice system reform through the development of key submissions.

Exercise your discerning legal skills to research and develop solutions to complex justice system reform issues. You will be able to tackle both contemporary and historic approaches to reform of targeted issues including criminal law, mental health, family and child protection law.

Work closely within a leadership context with the Chief Executive Officer and Principal Legal Officer to ensure educational resources are designed, delivered and evaluated in Community Legal Education across Queensland.

B. REPORTING STRUCTURE:

Duties are performed under the guidance and direction of the Chief Executive Officer (CEO) and Principal Legal Officer (PLO).



C. SELECTION CRITERIA *(Please address these criteria, in writing, using the ATSILS Recruitment Application Form):*

I. ESSENTIAL CRITERIA (6)

1. **Values:** Alignment to the values and vision of ATSILS and an appreciation of and sensitivity to the challenges our clients have faced and continue to face in their right for justice and equity.
2. **Qualifications and experience:** Be admitted or be in a position to be immediately admitted as a legal practitioner within Queensland; or have a minimum of three (3) years high level experience in strategic development and analysis of nation-wide law and policy matters.
3. **Specialist Expertise:** Comprehensive knowledge of Aboriginal and Torres Strait Islander cultures and societies and the importance of successfully developing a strategic approach to reform and education – including:
 - an appreciation of a broad range of issues as they might relate to the criminal justice system;
 - a contemporary understanding of current State, national and international initiatives that aim to address Aboriginal and Torres Strait Islander law reform while improving community legal education; and
 - a demonstrated ability to take an analytical and constructive approach to legal questions; challenging assumptions and producing proposals for dealing with matters for which there may be no precedent.
4. **Multi-skilling:** Sound interpersonal and communication skills including a demonstrated ability to empathetically convey key information or advice to key stakeholders, networked groups, law reform advocates and justice-related departmental or agency personnel etc., and to present verbal, written information and online documents in lucid, well-organised language using Windows Microsoft Office technology. This may require considerable initiative, strong organisational skills as well as the ability to both work successfully without close supervision and to co-operate effectively in a busy team environment – sometimes under considerable pressure.
5. **Confidence in and knowledge of legislation and the Australian justice system:** An in-depth working knowledge of key legislation, practices and relevant policy and a commitment to keeping up to date on law, community legal education and child protection policy.
6. **Access, teamwork and communication:** preparedness to work after hours if necessary; willingness to travel and present or gather educational materials, research, findings, project plans and other key materials to forums, groups and key external stakeholders.

II. DESIRABLE CRITERIA (3)

7. Windows 2003 or 2007 computer literacy including the ability to use dedicated legal research systems, presentation software and intermediate use of Microsoft Word 2010 for complex submission and report writing.
8. Project management and presentation skills a distinct advantage.
9. **Queensland Driver's licence:** Useful for regional community education travel, and may be a requirement to continued employment.

These selection criteria and your responses must be entered into the ATSILS Recruitment Form (or handwritten, or attached as a separate page to your application if you do not use Microsoft Word with tables/data entry). Please refer to the last page of this position description.

This form is available from the www.atsils.org.au (careers webpage), or via email to careers@atsils.org.au.



D. CORE DUTIES:

1. Participate in community legal education forums at locations across Queensland.
2. Conduct high-level research into legal issues and legislation that impact negatively upon Aboriginal and Torres Strait Islander peoples, including conducting research from an historical perspective.
3. Report on positive interventions and reforms that contribute to reform of the justice and community legal education systems.
4. Compile high quality written submissions in relation to same – including briefing notes, summarised presentations (suitable for online distribution) and correspondence.
5. Successfully manage and co-ordinate positive working relationships and partnerships with a diverse range of stakeholders including government departments and agencies, non-government organisations and other community groups on difficult and sometimes complex law and policy matters.
6. Compile and present papers on behalf of ATSILS at conferences, community forms, stakeholder meetings and other key strategic facilities to ensure a high profile of this project.
7. Draft community legal education materials individually or in collaboration with the CEO or PLO or their nominees.
8. Be prepared to travel across Queensland, and from time-to-time around Australia in order to facilitate the gathering and analysis of research material; attend conferences; and be prepared to work outside normal working hours if necessary.
9. Prepare internal reports as may be directed – including statistical data on activities, take-up, and distribution of material and research inputs for data collection/funding purposes.
10. Undertake other duties as may be reasonably required.

E. TEAM, COMMUNICATION AND QUALITY IMPROVEMENT DUTIES:

11. Undertake study or training which might be determined by the Executive.
12. Take part in workplace health and safety compliance initiatives and support other team members to do the same.
13. Contribute to a supportive team environment, through various workplace activities.
14. Participate in annual appraisal of own work, and attend and document regular supervision sessions with the staff to whom you report.

Continued/...4



F. CORE COMPETENCIES

Your performance will be evaluated on the following facets:

- The application of your knowledge of law and associated policy and how this impacts law reform submissions, and other agreed community education initiatives;
- Whether your communication is relevant, articulate and concise (both oral and written) including developing an ability to present effectively under time-pressure to external stakeholders;
- Whether your capacity to develop supportive, positive and consistent relationships within the justice system/law reform network is strengthened through strategic partnerships and key outcomes;
- Whether your ability to juggle competing schedules, locally and across Australia reflects your strong strategic and project planning skill; and
- Your ability to influence outcomes in networks and other key organisations through accurate representation of ATSILS' position(s) on law reform and prioritised community education projects.

G. CONTRACT, LOCATION

This position attracts a remuneration package and conditions as per the ATSILS Contract which, under current ATO legislation allows an option for attractive salary packaging. The starting salary is \$55,000 (plus superannuation and leave loading), and ranges above this figure dependent upon expertise in law reform outcomes and post-graduate qualifications.

A full-time, fixed term contract is offered, subject to performance and funding.

A contribution towards any relocation costs might also be made available upon application.

At ATSILS we offer structured professional development in conjunction with performance management, and study leave for approved work-related courses.

The Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd adheres to the tenets of Equal Opportunity Employment. Aboriginal and Torres Strait Islander people are encouraged to apply.

For further information please contact:

<p>Human Resources Manager Aboriginal & Torres Strait Islander Legal Service (Qld) Limited (ATSILS) ABN: 11 116 314 562</p>	<p>T: (07) 3025 3888 Fax (07) 3025 3800 E: careers@atsils.org.au www.atsils.org.au A: Level 5, 183 North Quay, Brisbane, Queensland, Australia. M: PO Box 13035 George Street, Brisbane Qld 4003</p>
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The Aboriginal & Torres Strait Islander Legal Service (Qld) Limited gratefully acknowledges the support of the Australian Government via the Commonwealth Attorney General's Department in the funding of this position.



**POSITION DESCRIPTION – 028PTCO
Prisoner Throughcare Officer– Full Time – Fixed Term**

A. CONTEXT, PURPOSE OF THE ROLE AND OPPORTUNITY:

About us

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 27 offices and approximately 190 personnel.

Our Vision is to be the leader in the delivery of innovative, professional and culturally competent legal and other support services. Our mission is to foster collaborative partnerships with our communities, key government and non-government stakeholders to influence positive change and deliver high quality legal and other support services for our people within or exposed to the justice system.

The purpose of the Throughcare Officer role is to: reduce recidivism and incarceration rates by supporting Aboriginal and Torres Strait Islander juvenile detainees (both pre and post release) and their families through the delivery of intensive, high-quality case management (“throughcare”) services.

The focus will be upon assisting a discrete number of targeted detainees who are considered to be of a high risk of reoffending – working collaboratively where appropriate (and possible) with Correctional Facility staff and other stakeholders.

Opportunity

You will have an opportunity to provide specialist services to Throughcare clients and their families, and in many contexts, their communities. You can rely on the State-wide resources of the Chief Executive Officer and the Principal Legal Officer, as well as on occasions working collaboratively with specialist advocates, Aboriginal and Torres Strait Islander Court Support Officers, and law reform officers.

You will be designated to a defined geographic area in Queensland and will have the opportunity to work closely with various selected clients, their families and support networks.

As a social worker or other case-worker in the justice system, you will also have opportunity to provide direct intensive case management support to ATSILS’ clients and detainees within specific detention facilities.

A corporate services team based in Brisbane provides administrative and human resources support to a busy legal defence team State-wide.

B. REPORTING STRUCTURE:

Duties are performed under the guidance and direction of the Chief Executive Officer and the Principal Legal Officer. Local inter-team and safety reporting is to the Regional Manager.



C. SELECTION CRITERIA (Please address these criteria, in writing, using the *ATSILS Recruitment Application Form*):

I. ESSENTIAL CRITERIA (8)

1. **Values:** Alignment to the values and vision of ATSILS and an appreciation of and sensitivity to the challenges our clients have faced and continue to face in their right for justice and equity, including access to a constructed pathway to reduced/cessation of offending behaviour; and a clear understanding of the issues Aboriginal and Torres Strait Islander peoples face when incarcerated.
2. **Qualifications:** A degree in Social Work or the Behavioural Sciences from a recognised tertiary institution (or a minimum five (5) years' demonstrated experience of work of a similar nature or equivalent competencies relating to the case management of clients in the Criminal Justice system)
3. **Professional Services ability:** Demonstrated ability to provide culturally competent case management and counselling services to Aborigines and Torres Strait Islander people in incarceration; and to communicate sensitively and in a culturally competent manner with Aboriginal and Torres Strait Islander clients, their families, communities and others.
4. **Professional conduct expertise:** Demonstrated ability to maintain client confidentiality and illustrate an awareness of the issues relating to client confidentiality and privacy within relevant Aboriginal and Torres Strait Islander communities and the work environment.
5. **Strong written communication:** Demonstrated skills and abilities in the preparation of clear, concise written communication including the ability to analyse and extract relevant information for preparing formal reports, assessments and other relevant documentation.
6. **Systemic knowledge:** professional familiarity (or the ability to rapidly acquire a comprehensive knowledge of) the criminal justice system including Court processes, Corrective and Family Services practices and the relevant legislation.
7. **Queensland Driver licence** (and an ability to drive for work purposes in normal traffic conditions).
8. **Satisfactory security clearances:** *National Criminal Record Check* (Qld Police) and holder or (or immediate ability to hold), and the Queensland *Blue Card (Working With Children Check)*. (NB. Being in possession of a criminal record does not preclude selection as the best candidate for the position. See *ATSILS Recruitment Application Form* for policy statement.)

II. DESIRABLE CRITERIA (4)

9. Windows 2007 or 2010 computer literacy including ability to use legal database software.
10. Mediation certification issued by a registered mediation accreditation body.
11. Experience in the conduct of complaints involving clients and prison system personnel.
12. Experience in the provision of intensive case management services.

Please address these selection criteria inside the *ATSILS Recruitment Application Form*. This form is available from the webpage, or via email to careers@atsils.org.au.



D. PROFESSIONAL DUTIES:

1. **Case Management:** Provide culturally competent, intensive case management services to targeted clients in detention centres using a range of techniques. These include the assessment of criminogenic transitional and reintegration needs and opportunities, crisis intervention, family support, consultation, counselling, conflict resolution, negotiation, liaison, community, stakeholder and correctional/detention employee networking and referrals.
2. **Volume and location of clients:** Facilitate the case management of clients via regular visits to the Correctional Facilities of Greater Brisbane and to Gatton (and further afield if so directed by the Chief Executive Officer). It is envisaged that between 15 and 25 clients will be case managed per year – on *average* for periods of approximately 6 months each (both pre and post release).
3. **Engagement towards successful transition:** Meet and engage with detainees, their families, communities, correctional/detention staff and other relevant individuals/organisations in order to assess the specific needs of clients and to develop appropriate case management plans that support clients to address their offending behaviour and are aimed at facilitating their successful transition back into the community (with a specific focus upon reducing the likelihood of reoffending).
4. **Sentence Management:** Assist and advocate for clients in relation to sentence management issues or queries whilst they are incarcerated, where such is linked to their case management needs (or otherwise, provided such is confined to minor assistance).
5. **Supervised Release Order support:** Assist and mentor clients in meeting their post-release Supervised Release order conditions.
6. **Network co-ordination:** Engage in a multi-disciplinary approach by interacting and consulting with key services in relation to rehabilitative programs and healing; peer support; health services; housing; educational and work opportunities; Centrelink agencies; and other pre and post release needs agencies.
7. **Production of professional documents:** Create and maintain individual case files for clients and participate in regular file reviews. Prepare detainee profiles and family assessments as such relate to the case management of targeted clients – **in this case they are exclusively male**. Prepare complex reports and assessments to a high standard within rigid time frames in order to meet urgent deadlines. Compile statistical and other case management and outcomes-related reports as directed by the PLO.
8. **Improve useful access:** Assist case-managed clients in accessing restorative justice and reintegration programs; provide feedback and education about such programs; encourage the inception and development of community-based healing and other relevant initiatives where such is required.
9. **Program development:** Assist in identifying the broader trends and issues that affect detainees and liaise with other relevant agencies in order to improve throughcare services.
10. **Other Assistance:** Provide advice and minor assistances to prisoners and detainees (including appropriate referrals).
11. **Any other duties** as might reasonably be directed by the PLO.

E. TEAM, COMMUNICATION AND QUALITY IMPROVEMENT DUTIES:

12. Undertake study or training which might be determined by the CEO, and contribute to the professional development of other team-members as required.
13. Take part in workplace health and safety compliance; support other team members to do the same.
14. Contribute to a supportive team environment, through various workplace activities.
15. Participate in annual appraisal of own work, and attend and document regular supervision sessions with the staff to whom you report.



F. CORE COMPETENCIES

Your performance will be evaluated on the following facets:

- Whether your capacity to make effective assessments; case plans and manage the implementation of case plans for targeted clients is demonstrated by the outcomes;
- The achievement of optimal relationship building and reporting that contributes to improved recidivism statistics of the detainees in your allocated caseload (over a 3-year cycle);
- Your ability to manage and prioritise intensive casework within the parameters of the position;
- Whether your communication is relevant, articulate and culturally proficient including developing an ability to present effectively (in writing and orally) to external stakeholders. This includes an ability to build culturally appropriate rapport with individual clients and communities of relevance.
- Whether your capacity to develop supportive, positive and consistent relationships with your team members and embracing diversity, is clearly demonstrated;
- Whether your ability to juggle competing schedules, inside and outside the office environment reflects your strong organisational skill;
- The extent to which you illustrate an awareness of the issues relating to client confidentiality and privacy within the Aboriginal & Torres Strait Islander community and the work environment.
- Whether the development of your ability to calmly assist clients with complex needs in a timely manner is reflected in a well-balanced, stress-managed working environment.
- Ability to match individual case-managed client needs to available resources.

G. CONTRACT, LOCATION

This position attracts a remuneration package and conditions as per the ATSILS Contract. The starting salary is from \$55,000 (plus superannuation and leave loading) and ranges above this figure dependent upon experience and qualifications.

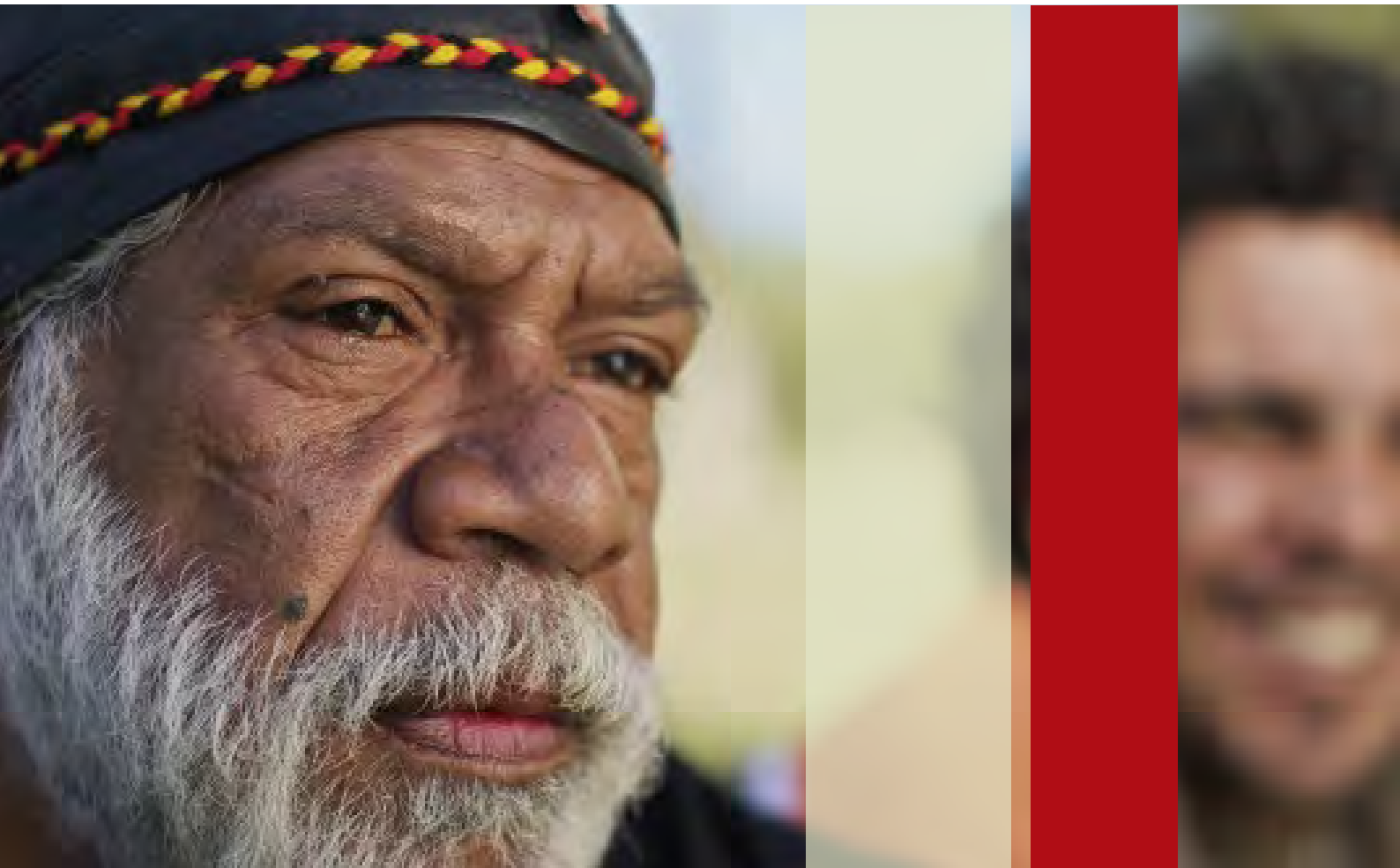
Our standard full-time, fixed term contract is offered, subject to performance and funding. Additionally, under ATO regulations, we offer an optional tax-free salary sacrifice threshold which considerably reduces taxable income. Aboriginal & Torres Strait Islander candidates are encouraged to apply.

At ATSILS we also offer well-regarded, structured professional development in conjunction with performance management, and study leave for approved work-related courses.

The Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd adheres to the tenets of Equal Opportunity Employment. Aboriginal and Torres Strait Islander people are encouraged to apply.

<p>For further information please contact: Human Resources Manager Aboriginal & Torres Strait Islander Legal Service (Qld) Limited (ATSILS) ABN: 11 116 314 562</p>	<p>T: (07) 3025 3888 Fax (07) 3025 3800 E: careers@atsils.org.au www.atsils.org.au A: Level 5, 183 North Quay, Brisbane, Queensland, Australia M: PO Box 13035 George Street, Brisbane Qld 4003</p>
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Our Organisation acknowledges with appreciation that this position is funded by the Australian Government (via the Commonwealth Attorney-General's Department).



Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
CORPORATE PLAN 2011-2014



Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

ACKNOWLEDGING OUR PEOPLE PAST, PRESENT AND FUTURE

ATSILS acknowledges the traditional custodians of the lands on which our offices now operate. Our growth and development would not have been possible without the support of our various communities.

2012 marks the 40th anniversary of the founding organisation. We are proud of how far we have come and acknowledge that the journey ahead requires the collective commitment and the continued support of our staff and communities.

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd Corporate Plan 2011-2014 outlines how we will deliver Innovative, Professional and Culturally Competent legal services that change Aboriginal and Torres Strait Islander peoples' lives for the better.



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Chairperson's Foreword

On behalf of my Board of Directors and staff, I am pleased to present the 2011–2014 Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd's (ATSILS) Corporate Plan - Innovative, Professional and Culturally Competent legal services for our people.

Over the past six years, we have shown the way in the delivery of quality legal services for Aboriginal and Torres Strait Islander people and this is something of which my Directors and I are particularly proud. This achievement

is not easily attained, and or sustained, and I therefore acknowledge the tireless efforts of my fellow Directors, Chief Executive Officer, senior management and staff. We should all feel much pride, given that this is what we set out to achieve some years ago.

As of July 2011, ATSILS, along with our counterparts across Australia, will deliver services in accordance with the Australian Government's new Indigenous Legal Assistance and Policy Reform (LAPR) Program. The LAPR Program is designed to continuously improve the quality of our legal assistance and advice, and policy reform outcomes for Aboriginal and Torres Strait Islander peoples. Over the next three years, we will also increase the delivery of quality legal education programs to raise the legal awareness and understanding and reduce the exposure to the justice system.

In October 2011, ATSILS assumed full responsibility for the delivery of legal services across the Torres Strait Islands and the Northern Peninsula Area. I extend a warm welcome to our Torres Strait Islander people and communities and look forward to working in collaboration and partnership to ensure the delivery of quality legal services.

ATSILS will continue to lead by example. My Directors combine extensive cultural and business knowledge with excellent leadership skills and a deep respect for lore and culture to drive innovative, professional and culturally competent change within our organisation and across the justice system.

We remain acutely aware of the past and present psychological and sociological impacts of colonisation and fully understand the correlation that this has with Aboriginal and Torres Strait Islander people's exposure to the justice system. While our challenges are complex and often difficult, we remain focused on producing groundbreaking results that change our peoples' lives for the better.

I am pleased to present our 2011-2014 Corporate Plan to our Aboriginal and Torres Strait Islander communities and welcome your participation, support and feedback.

I also encourage our key government and non-government partners to embrace this Plan and actively contribute toward its successful implementation.

Ken Georgetown
CHAIRPERSON

Chief Executive Officer's Introduction

Our 2011–2014 Plan outlines how we will deliver innovative, professional and culturally competent legal services for Queensland's Aboriginal and Torres Strait Islander people in accordance with the Australian Government's Indigenous Legal Assistance and Policy Reform (LAPR) Program.

This Plan aligns with the intention of the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) Memorandum of Understanding, the NATSILS' National Priorities Corporate Plan 2011-2014 and is reflective of the Standing Committee of Attorneys' Generals National Indigenous Law and Justice Framework 2009–2015.

Over the next three years, ATSILS will deliver outcomes across six strategic priority areas:

- Cultural Leadership and Governance
- Quality Legal Services
- Dedicated, Highly Skilled and Professional staff
- Community Legal Education and Advocacy, Law Reform and Policy Development
- Productive Community and Stakeholder Relationships and Partnerships
- Quality Promotions, Marketing and Media

With ATSILS assuming full responsibility for the delivery of legal services in the Torres Strait Islands and the Northern Peninsula Area, we will establish culturally competent management systems and processes to ensure an effective and efficient transition.

As Chief Executive Officer, I remain committed to working closely with our communities and key government and non-government stakeholders to promote integrity, strength and pride in our lore and culture among our clients to reduce exposure to the justice system.

I encourage all staff to embrace this Plan and commit to its successful implementation over the next three years. As a united team, we will deliver quality outcomes against each of our priority areas by removing chance and creating choice.

Shane Duffy
CHIEF EXECUTIVE OFFICER



ABOUT ATSILS

ATSILS is a non-profit, community based organisation which delivers competent, equitable and effective criminal, civil and family law services to Aboriginal and Torres Strait Islander people.



OUR VISION

To lead in the delivery of Innovative, Professional and Culturally Competent legal services.

MISSION

ATSILS fosters productive community and stakeholder relationships and partnerships to deliver quality legal assistance, advice and representation, and advocate law reform and policy development to rectify legal policies and practices that impact adversely and disproportionately on the legal rights of Aboriginal and Torres Strait Islander people.

VALUES

The traditional values of Care, Share and Respect form the foundation of our organisation and underpin our commitment. At ATSILS:

We **Care** for the human and legal rights, safety and psychological well-being of our clients, their families and communities.

We **Share** a common understanding of our clients' challenges and needs and diligently strive to deliver the highest quality of legal services.

We **Respect** the cultural diversity, values and beliefs of our clients and aim to sustain the delivery of confidential, innovative, professional and culturally competent legal services.

OUR HISTORY

The Legal Service was originally formed in 1972 – largely due to the passion and commitment for justice of various community members. Success in its early stages resulted in the Organisation becoming incorporated as a company on 18th September 1974 (Aboriginal & Torres Strait Islanders Corporation (QEA) for Legal Services). The Service was, and remains, a non-profit (public benevolent), community-based organisation. As other ATSILS were formed around the State, the service delivery area of “QEA” became confined to the South Eastern corner of Queensland and operated out of Brisbane. In the late 1990's regional offices were opened at Beenleigh and Maroochydore.

Over time the Organisation's role and responsibilities have changed. During 1996 and 1997 a review of the Service was undertaken – giving birth to the “Stretton Report”. This Report suggested various changes to the monitoring of administration and financial responsibilities of the Organisation, and the provision of services to clients. These recommendations were implemented and significant changes occurred which enhanced services to clients.

Responding further to the need of ensuring a professional and accountable service, a new Organisation (Aboriginal and Torres Strait Islander Legal Service (QLD South) Ltd) was incorporated under the Australian Securities and Investments Commission in 2005 – coinciding with a tendering process by the Commonwealth Attorney-General's

Department, which saw the new organisation take on the service needs of the entirety of Southern Queensland – in the process expanding to 17 offices. 2005 also saw the introduction of family and civil law services – addressing a huge area of unmet need. A similar process in 2008 saw the Organisation (now re-named the Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd) take on the service delivery for all of mainland Queensland (with the exception of the Northern Peninsular Area and the Torres Strait Islands). From the 1st October 2011 the Organisation became State-wide, as it assumed the service delivery role in the Torres Strait and Northern Peninsular Area. ATSILS now consists of 27 offices and sees our staffing levels exceed 180.

Our growth and development would not have been possible without the support of our various communities – as well as the dedicated services of countless Board and staff members throughout the decades. We are also indebted to the earlier pioneering work of various sister organisations which we have since been able to build upon (such as Wakka Wakka at Murgon; Bidjara at Charleville; “QEC” at Rockhampton; “SEQ” at Toowoomba; Tharpuntoo and Njiku Jowan at Cairns; West QLD at Mount Isa; and the District services at Ipswich, Mackay and Townsville). 2012 will also see the 40th anniversary of the founding organisation.

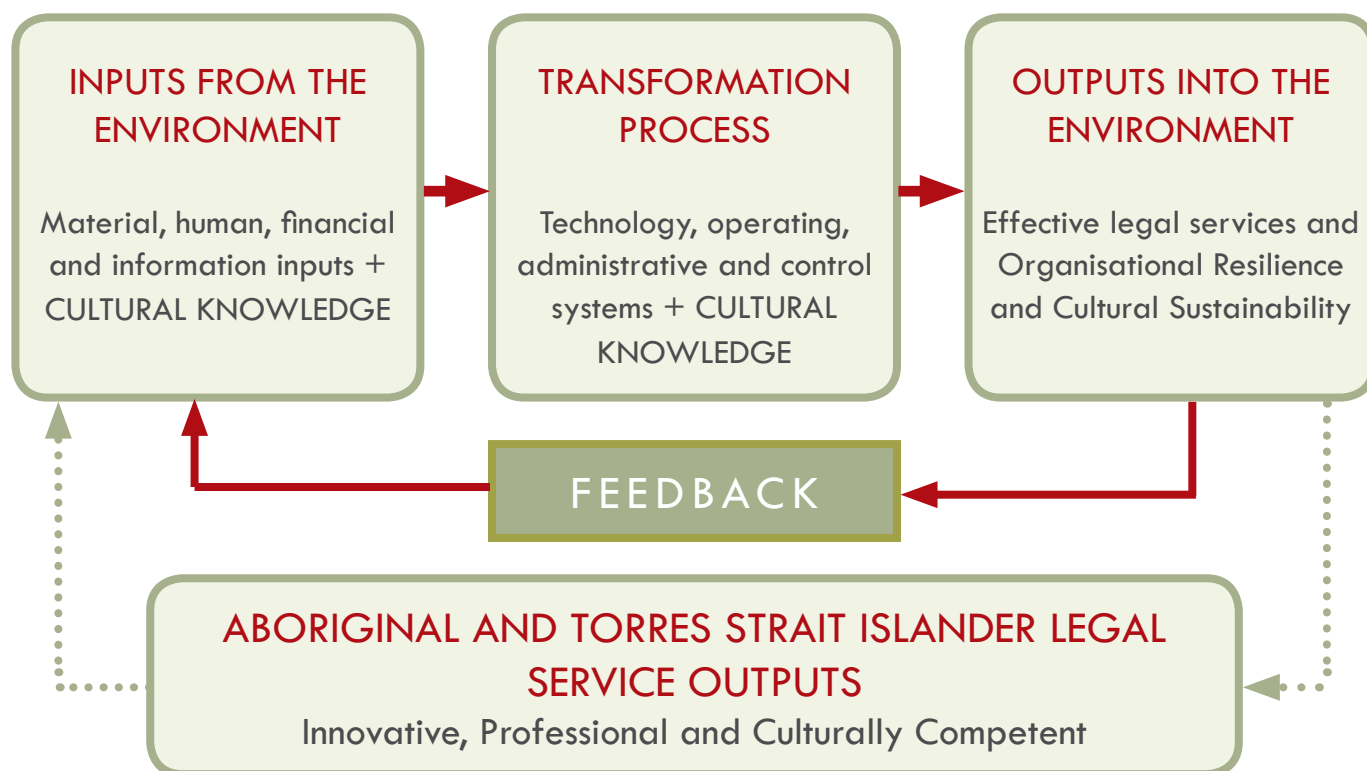


OUR BUSINESS APPROACH

ATSILS adopts western business practices and principles and applies them to culturally competent service delivery.

OUR BUSINESS APPROACH

Our performance is measured by our capacity to transform total resource inputs into innovative, professional and culturally competent service outputs.



OUR ROLE

ATSILS is a non-profit, community based organisation contracted by the Commonwealth Attorney-Generals' Department (AGD) to deliver competent, accessible, equitable and effective criminal, civil and family law services to Aboriginal and Torres Strait Islander people in Queensland.

Under the AGD's Indigenous Legal Assistance and Policy Reform (LAPR) Program, ATSILS provides the following services to support legal case work:

- Legal Assistance
- Expensive Indigenous Cases
- Indigenous Test Cases
- Law Reform and Policy Development
- Community Legal Education
- Prisoner Throughcare
- Deaths in Custody Monitoring

Our role is to:

- Ensure Aboriginal and Torres Strait Islander clients and their families receive high quality legal assistance, advice and representation if they come into contact with the justice system;
- Assist and inform Aboriginal and Torres Strait Islander people and communities, through community legal education programs, to enhance their understanding of the justice system;
- Influence positive change within the justice system to reflect a better understanding and appreciation of the culturally specific and diverse challenges and circumstances that impact upon Aboriginal and Torres Strait Islander people and communities;
- Provide quality evidenced-based research, advice and direction to rectify policies and practices that impact adversely and disproportionately on the legal rights of Aboriginal and Torres Strait Islander people under Australian law;
- Maintain a proactive focus and monitoring role to ensure accountability in the implementation of the Royal Commission into Aboriginal Deaths in Custody recommendations; and
- Ensure the ongoing development and continuous improvement of the LAPR Program and its outcomes.

GUIDING PRINCIPLES

Human Rights

The Articles contained in the United Nation's Declaration on the Rights of Indigenous Peoples' underpin everything we do.

Lore

We acknowledge, value, honour and respect customary lore. Our lore is not to be compromised or devalued in the delivery of our services.

Leadership

Our decisions and actions are guided by strong cultural knowledge, leadership and governance.

Diversity

Our value and respect for diversity is acknowledged across our communities, reflected in the composition of our Board of Directors and staff and through the sensitive way in which we deliver our services.

Integrity

Our integrity is measured by the way we put our values into action and through the accountable, open, honest and ethical business and management systems we sustain.

Collaboration

We work in collaboration and partnership and share a mutual responsibility, dedication, commitment and passion for the delivery of high quality legal services to our clients.

OUR PROGRAMS AND SERVICES

Indigenous Legal Assistance

Our legal assistance services provided in criminal, civil and family law matters involve:

1. Advice Matters – Legal advice or information that is not provided as part of Duty or Casework Matters. This includes the provision of a free-call telephone advice service, referrals, preliminary assistance in the writing of short letters and the completion of forms;
2. Duty Matters – Attendance at court and receipt of initial instructions by a lawyer. This includes all mentions, pleas, applications including for bail, or adjournments performed on a duty lawyer basis, or where the matter is completed on the same day; and
3. Casework Matters – Ongoing legal services in relation to a particular legal problem, such as conducting a defended hearing. It is not necessary that the matter involve litigation. Casework Matters may also include the provision of detailed legal advice or the negotiation of a claim for or against the client.

ATSILS also provides 24 hour legal representation and advice on criminal matters for Aboriginal and Torres Strait Islander people.

Expensive Indigenous Cases

Subject to meeting the eligibility and assessment criteria outlined in the AGD's Expensive Indigenous Cases Guidelines, ATSILS may be able to supply legal casework to clients where cases require funding of an amount that would severely impact upon our organisation's ability to fund daily operations if a case was to be pursued.

Indigenous Test Cases

Subject to meeting the eligibility and assessment criteria outlined in the AGD's Indigenous Test Case Guidelines, ATSILS may apply for funding for case work to:

1. Promote the review of laws and administrative practices that have the effect of discriminating against Aboriginal and Torres Strait Islander people;
2. Promote the recognition of Aboriginal and Torres Strait Islander peoples' social, cultural, economic, legal and political rights through the conduct of litigation; and
3. Promote the resolution of inconsistencies and ambiguities in the application of existing laws through the conduct of litigation or other legal means.

Law Reform and Policy Development

Law reform and policy development includes:

1. Supporting the continued improvement and accessibility and equity of legal services to Aboriginal and Torres Strait Islander people;
2. Research, advocacy and policy development that identifies laws, policies and practices, particularly in relation to incarceration, policing, family violence and the needs of youth that impact adversely and disproportionately on Aboriginal and Torres Strait Islander peoples; and
3. Engaging with key stakeholders to influence positive change and deliver innovative, professional and culturally competent legal services.

Community Legal Education

Community Legal Education activities include:

1. The provision of information and educational programs to inform, advance and protect the rights of Aboriginal and Torres Strait Islander people; and
2. Community-based consultation to identify and develop localised community legal education programs.

Throughcare Services

Throughcare services aim to reduce recidivism and incarceration rates by supporting Aboriginal and Torres Strait Islander prisoners (both pre and post release) and their families through the delivery of intensive, high-quality case management (“throughcare”) services.

The focus will be upon assisting a discrete number of targeted prisoners who are considered to be of a high risk of reoffending – working collaboratively where appropriate (and possible) with Correctional Facility staff and other stakeholders.

Deaths In Custody Monitoring

Deaths in custody monitoring involves:

1. Advocating in accordance with the overall objectives of government legal programs and guidelines, to advance the legal rights of Aboriginal and Torres Strait Islander people;
2. Providing advocacy support to individual clients and their families affected by the criminal justice system, including appearances before Coronial Inquests;

3. Monitoring the treatment of clients in custody;
4. Analysing and processing individual client complaints;
5. Reviewing relevant organisational procedures and channelling information into the community legal education and law reform processes; and
6. Monitoring and advising key stakeholders on the progress and implementation of the Royal Commission into Aboriginal Deaths in Custody recommendations.

OUR CHALLENGES

ATSILS deals with a diverse range of complex legal, historical, cultural, geographical and socio-economic challenges that adversely impact upon our client population.

We are particularly mindful of the following challenges relating to human rights and government-driven Closing the Gap - Social Inclusion and Law and Justice Reform initiatives:

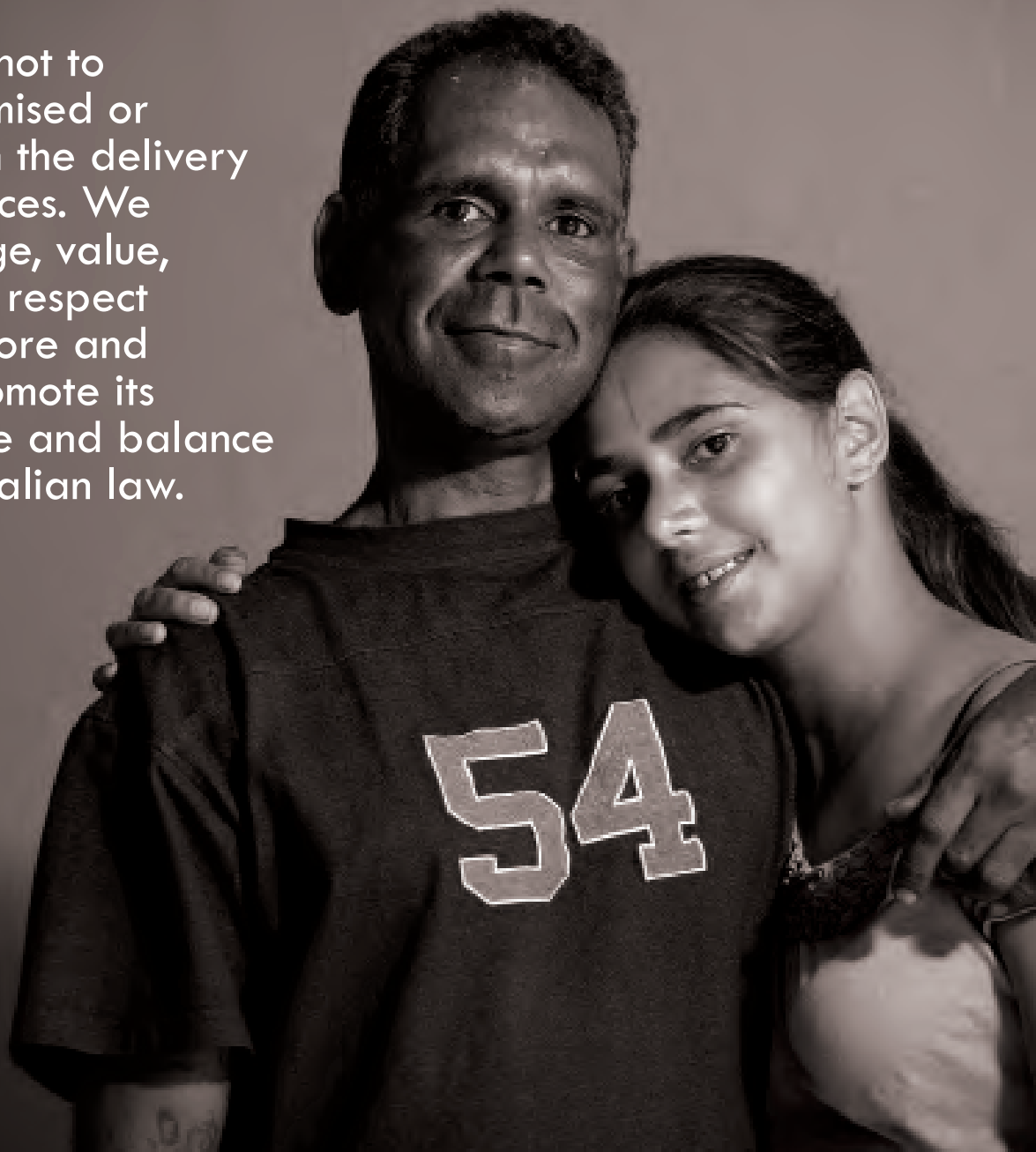
- Ensuring that legal services are delivered in accordance with the Articles of the United Nation's Declaration on the Rights of Indigenous Peoples;
- Raising awareness and understanding toward the cultural diversity, geographical isolation and socio-economic disadvantage among our client population;
- Moving beyond the social and bureaucratic apathy to ensure the efficient implementation of ALL recommendations of the Royal Commission into Aboriginal Deaths in Custody;
- Dealing with ongoing impacts of colonisation, in particular, extreme socio-economic disadvantage, inter-generational psychological trauma and scarring that contribute to varying degrees of frustration, anger, low self esteem and anti-social behaviour among our client population;
- The lack of awareness and understanding across our client population toward the justice system;
- The lack of cultural appreciation, awareness and understanding within the justice system toward the challenges that impact upon Aboriginal and Torres Strait Islander people; and
- The potential and ongoing threat of changes in government public policy and direction.

Our Board of Directors, management and staff acknowledge and accept that to realise our Vision, we must:

- Maintain a detailed knowledge, understanding and sensitivity toward the historical challenges that impact upon our clients;
- Maintain a high level of dedication, commitment and passion to ensure optimum performance;
- Maintain a knowledgeable and up-to-date understanding of the contemporary justice system, practices and procedures;

- Maintain strong cultural leadership and governance;
- Preserve strong cultural pride and integrity;
- Recruit, train and retain dedicated, highly skilled and professional staff;
- Sustain strong and productive community and stakeholder relationships and partnerships; and
- Remain innovative in our thinking to continuously improve and maximise our performance.

Our lore is not to be compromised or devalued in the delivery of our services. We acknowledge, value, honour and respect customary lore and actively promote its permanence and balance within Australian law.




OUR PRIORITIES

ATSILS promotes policies and programs within law reform that reflect and respect our cultures and lore and increase fairness and equitable treatment of Aboriginal and Torres Strait Islander people.



CULTURAL LEADERSHIP AND GOVERNANCE

 **Objective:** To sustain ethical, accountable and transparent management and decision-making systems, policies, practices and procedures.

Strategies:

- Maintain a Board structure of appropriate size and composition to reflect geographical and cultural diversity.
- ATSILS governance will be reflected through sound:
 1. Strategic and business planning;
 2. Risk management;
 3. Financial management and reporting;
 4. Human resource planning and development;
 5. Compliance and accountability; and
 6. Transparent, robust and culturally informed decision-making.
- ATSILS funding will reflect and meet demand.

Performance Measures

- ATSILS leadership delivers on improved access to law and justice services for Aboriginal and Torres Strait Islander people and strengthens the organisation's influence and resilience.
- ATSILS management systems and approach are ethical, accountable and transparent.
- Compliance with AGD policy directions.
- The extent to which strong leadership and governance is embraced throughout the organisation.

2 QUALITY LEGAL SERVICES



Objective: To sustain the delivery of quality legal services.

Strategies:

- Provide quality legal services in the areas of criminal, family and civil law that meet, or exceed national standards.
- Provide quality services in the area of prisoner “Throughcare” that meet, or exceed national standards.
- Provide information, referral advice and direction to individuals and families on how to access support services that address client need.

Performance Measures

- Meet and or exceed funding agreement contractual obligations and professional standards.
- Number and quality of successful Throughcare outcomes.
- Quality of information, advice and direction based on client and family feedback.

3

DEDICATED, HIGHLY SKILLED AND PROFESSIONAL STAFF

 **Objective:** To recruit and retain dedicated, highly skilled and professional staff.

Strategies:

- Provide staff with access to quality training, development and career planning opportunities.
- Facilitate and support the accreditation of professional staff.
- Support professional development to ensure cultural appreciation and understanding among ATSILS staff.
- Support the unique training, development and mentoring requirements of remote area staff.

Performance Measures

- Quality of staff retained throughout the organisation.
- Number of staff (including remote area staff) who access high quality training, development and career planning opportunities.
- All ATSILS workplace environments are professional, safe and healthy.
- Level of job satisfaction among ATSILS staff.

4

COMMUNITY LEGAL EDUCATION AND ADVOCACY, LAW REFORM AND POLICY DEVELOPMENT

Objective: To deliver quality community legal education and evidenced-based advocacy.

Strategies:

- Monitor the justice system and environment to identify laws, policies and practices¹ that impact adversely and disproportionately on Aboriginal and Torres Strait Islander people and prepare informed evidence-based advice and direction to advocate reforms.
- Monitor progress, and maintain a lead advocacy role to support the efficient implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.
- Promote policies and programs within future law reform that reflect and respect our cultures and lore and increase fairness and equitable treatment of Aboriginal and Torres Strait Islander people.
- Develop and deliver innovative and culturally competent community legal education programs.
- Identify and engage pro-bono law firms.
- Provide Queensland-specific research, advice and direction to inform the NATSILS national advocacy and law reform agenda.

Performance Measures

- The extent to which ATSILS advice, direction and advocacy contribute to law reform.
- The number of Royal Commission into Aboriginal Deaths in Custody recommendations successfully implemented throughout Queensland.
- The extent to which policies and programs in future law reform reflect and respect culture and lore and promote fairness and equitable treatment.
- The extent to which CLE programs contribute to increased awareness based on client feedback.
- Number of pro-bono law firms engaged.
- Extent to which ATSILS research, advice and submissions contribute to the national law reform agenda.

¹Laws, policies and practices particularly in relation to incarceration, policing, family violence and the needs of youth.

5

PRODUCTIVE COMMUNITY AND STAKEHOLDER RELATIONSHIPS AND PARTNERSHIPS

 **Objective:** Foster collaborative relationships and partnerships that deliver mutual benefits.

Strategies:

- Maintain an active presence and participation at relevant community, government and non-government stakeholder legal forums.
- Establish and maintain quality relationships and partnerships with government and non-government stakeholders.
- Maintain effective, up-to-date community engagement practices.
- Establish and maintain new stakeholder partnerships and relationships that deliver mutual benefits and continuously improve ATSILS services and operations.

Performance Measures

- ATSILS is represented at all relevant legal forums.
- Number of Memorandum of Understanding Agreements established.
- Extent to which community engagement policy captures community input and contributes to improvement of ATSILS services and operations.
- Number and quality of new stakeholder relationships and partnerships established.

6

QUALITY PROMOTIONS, MARKETING AND MEDIA

Objective: To sustain a positive ATSILS brand and image.

Strategies:

- Actively promote ATSILS Corporate Plan 2011-2014 to our communities and government and non-government stakeholders.
- Maintain professional and up-to-date website.
- Ensure the accuracy of all media reporting relevant to ATSILS operations and, where appropriate, information relating to client legal cases and details.
- Contribute positive media stories to enhance the ATSILS brand and image and raise mainstream community awareness and understanding of our services.
- Develop innovative promotional and marketing ideas and concepts to enhance the ATSILS brand and image.
- Develop initiatives that appropriately recognise the background and history of ATSILS.
- Develop and maintain an ATSILS Communications, Marketing and Media Strategy.
- Identify and recruit an ATSILS' Patron.
- In collaboration with NATSILS, participate in, and or, host a National Aboriginal and Torres Strait Islander Legal Service Conference.

Performance Measures

- ATSILS Corporate Plan 2011 – 2014 is understood and embraced by all key stakeholders.
- Website remains up-to-date.
- Media stories enhance mainstream awareness and understanding and raise profile and image of ATSILS.
- Promotional and marketing materials remain relevant and up-to-date.
- ATSILS background and history is formally recognised.
- ATSILS Communications, Marketing and Media Strategy raise the organisation's profile and enhance operations.
- Patron strengthens capacity to influence law reform agendas.
- ATSILS successfully hosts a National Aboriginal and Torres Strait Islander Legal Services Conference.

OFFICE LOCATIONS AND CONTACT DETAILS

Head Office

Level 5, 183 North Quay, Brisbane Q 4000
PO Box 13035 George Street, Brisbane Q 4003

Ph: (07) 3025 3888 | Fax: (07) 3025 3800

Toll Free: 1800 012 255 (24 hrs, 7 days)

Email: info@atsils.org.au

www.atsils.com.au



Aboriginal & Torres Strait Islander
Legal Service (Qld) Ltd

BAMAGA: Office to be located

Services Provided: Criminal, civil and family law via outreach from Thursday Island

BEENLEIGH: (07) 3804 5033

Services Provided: Criminal Law (non criminal referred to Brisbane or Southport)

BUNDABERG: (07) 4152 8044

Services Provided: Criminal, Family and Civil Law

CAIRNS: (07) 4046 6400

Services Provided: Criminal, Family and Civil Law

CHARLEVILLE: (07) 4654 1721

Services Provided: Criminal, Family and Civil Law

CHINCHILLA: (07) 4662 8418

Services Provided: Criminal Law (non criminal matters referred to Toowoomba)

COOKTOWN: (07) 4069 6771

Services Provided: Criminal Law (with civil and family law via outreach from Cairns)

CUNNAMULLA: (07) 4655 2191

Services Provided: Criminal Law (non criminal matters referred to Charleville)

DALBY: (07) 4662 1317

Services Provided: Criminal Law (non criminal matters referred to Toowoomba)

GOONDIWINDI: (07) 4671 0766

Services Provided: Criminal Law (non criminal matters referred to Toowoomba)

HERVEY BAY: (07) 4128 2488

Services Provided: Criminal Law (predominantly), limited Family and Civil Law

IPSWICH: (07) 3812 2772

Services Provided: Criminal, Family and Civil Law

MACKAY: (07) 4953 4058

Services Provided: Criminal, Family and Civil Law

MAROOCHYDORE: (07) 5452 7633

Services Provided: Criminal, Family and Civil Law

MOUNT ISA: (07) 4744 0900

Services Provided: Criminal, Family and Civil Law

MURGON: (07) 4168 1944

Services Provided: Criminal, Family and Civil Law

NORMANTON: (07) 4745 1118

Services Provided: Criminal Law and Child Protection matters (with other law types referred to Mount Isa)

PALM ISLAND: (07) 4770 1222

Services Provided: Criminal Law (non criminal matters referred to Townsville)

ROCKHAMPTON: (07) 4927 5711

Services Provided: Criminal, Family and Civil Law

ROMA: (07) 4622 5366

Services Provided: Criminal Law (non criminal matters referred to Charleville)

SOUTHPORT: (07) 5532 6988

Services Provided: Criminal, Family and Civil Law

STRATHPINE: (07) 3205 1253

Services Provided: Criminal and Family Law (civil law matters referred to Brisbane)

ST GEORGE: (07) 4625 3052

Services Provided: Criminal Law (non criminal matters referred to Toowoomba)

THURSDAY ISLAND: (07) 4069 1091

Services Provided: Criminal, Family and Civil Law

TOOWOOMBA: (07) 4659 7822

Services Provided: Criminal, Family and Civil Law

TOWNSVILLE: (07) 4722 5111

Services Provided: Criminal, Family and Civil Law

WARWICK: (07) 4661 7799

Services Provided: Criminal Law (non criminal matters referred to Toowoomba)