

NUKARA

FIBRE I
LAWFUL
AUTHORITY

FIBRE 1

Lawful authority: commitment to progressively transferring statutory functions and powers, for keeping Aboriginal children safe, to the Aboriginal community.

Nukara is the Tasmanian Aboriginal Centre's community-led strategy and action plan for implementing the **Tirrina** model and transferring responsibility for Aboriginal child safety to the Aboriginal community.

Our vision is for all Aboriginal children living in Lutruwita to be safe and well in the care of their families, proudly connected with and strongly supported by their community, culture and country.

Tirrina is the Tasmanian Aboriginal community's model for achieving this vision.

The eight fibres of **Tirrina** provide a strong foundation for the structure of every part of the model, interwoven with the principles of self-determination and truth-telling. While adapted for local application, the fibres are consistent with the eight focus areas of the Safe and Supported Aboriginal and Torres Strait Islander First Action Plan 2023-2026 (Our Safe and Supported Action Plan).

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EXECUTIVE SUMMARY

Lawful authority: commitment to progressively transferring statutory functions and powers, for keeping Aboriginal children safe, to the Aboriginal community.

Transferring statutory powers and functions for keeping Aboriginal children safe, from government to the Aboriginal community, upholds the rights of the Aboriginal community and – most importantly – the rights of Aboriginal children, as set out in the United Nations Declaration on the Rights of Indigenous Peoples and United Nations Convention on the Rights of the Child. This is the overarching objective of the *Nukara* strategy and action plan.

Taking into consideration the feedback from statewide consultations and what was learned from research into the experiences of other jurisdictions, the preferred approach for Lutruwita is to begin the progression by incorporating elements of the Victorian model of legislative enablement. In practice, that means:

- developing a plan to enable the transfer of statutory powers and functions for keeping Aboriginal children safe to the Aboriginal community
- the responsible Minister declaring the Tasmanian Aboriginal Centre (TAC) as a ‘recognised Aboriginal organisation’, under current provisions of the Children, Young People and Their Families Act 1997 (the Act), as an interim measure to allow TAC to lawfully participate in decision-making for Aboriginal children
- drafting legislative amendments, including provisions that:
 - enable the authorisation of Aboriginal Community Controlled Organisations (ACCOs), including the establishment of authorisation criteria and processes
 - allow authorised ACCOs to exercise and perform statutory powers and functions for keeping Aboriginal children safe
 - allow the transfer of legal guardianship for Aboriginal children to an authorised ACCO
 - mandate the application of active efforts to apply the Aboriginal and Torres Strait Islander Placement Principle (Placement Principle)
 - mandate the referral of concerns and reports about the safety of Aboriginal children to an Aboriginal first-point-of-contact service, for initial review and assessment
 - allow the Aboriginal first-point-of-contact service to engage an authorised ACCO to undertake follow-up activities, including further assessment, investigation and powers and functions for next steps, if required.

This document recognises the Aboriginal community’s view that TAC is currently the only ACCO in Lutruwita trusted by the community and positioned to be given lawful authority for keeping Aboriginal children safe. The community also recognises that the transfer of lawful authority is a complex process that requires significant time and sustained commitment from the Aboriginal community, TAC, government and non-government organisations.

CURRENT SITUATION

The *Children, Young Persons and Their Families Act 1997* is the primary legislation for the safety, care and protection of children in Lutruwita. While the Act currently provides for the participation of Aboriginal organisations in relevant statutory decision-making processes, and for TAC and government to embed 'shared' decision-making, government retains statutory responsibility for all decision-making. Although the Act provides for the Minister to declare TAC as a 'recognised Aboriginal organisation', this declaration has not yet been made.

Under the Act, the Secretary of the Department for Education, Children and Young People (DECYP) has primary legal responsibility for decisions involving the safety of all children in Lutruwita. The DECYP Secretary may delegate their powers and functions. The Secretary's delegate is legally able to exercise the powers and functions delegated in their own right, but the Secretary may also continue to exercise and perform the same powers and functions. The Act does not yet allow powers and functions to be delegated to TAC or any other ACCO.

TAC provides a range of service programs designed to reduce the numbers of Aboriginal children entering and support their exiting the current out-of-home care system. The existing service programs are limited by inadequate levels of funding, resourcing and community involvement in decision-making. Through the implementation of *Nukara*, these programs will be further enhanced by establishment of the *Tirrina* model and the transfer of legal authority and responsibilities for keeping Aboriginal children safe.

Agreed national approach to legislative enablement

In 2014, Heather Sculthorpe (TAC CEO and author of the landmark report *luwutina mana-mapali krakani waranta*) recommended amending the Act to allow Aboriginal people to opt to have their matters dealt with under Aboriginal jurisdiction, rather than under Tasmanian legislation. While this recommendation aligned with the 1997 findings of *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, the Bringing Them Home Report concluded that this level of transformative change would require full and complete transfer of jurisdiction to the Aboriginal community.

Despite these and other recommendations, **delegation of authority** is the mechanism that the governments of Australia agreed to progress under the *Safe and Supported Partnership Agreement*. A critical element of this approach is to ensure genuine, shared decision-making in designing and drafting legislation, developing processes and policies, designing and building systems, and ensuring that ACCOs are appropriately funded and resourced to exercise the authorities delegated.

Overview of current measures to reduce entry into care

In 2018, three Aboriginal Liaison Officer (ALO) positions (one in each region) were established and funded by the Tasmanian Government as part of the *Strong Families Safe Kids* action plan for reforming and improving systems to support the safety and wellbeing of Tasmanian children. TAC currently employs ALOs in the Northern and Southern regions; the Circular Head Aboriginal Corporation (CHAC) supports the North-West ALO, noting this position is vacant at the time of publication.

The ALO's role is to respond to child safety concerns reported to the ARL in relation to children who are identified as Aboriginal. ARL staff will generally refer matters to the region's ALO for an initial conversation about the relevant family's needs. The ALO may then liaise with TAC workers to plan outreach activities if the family's Aboriginality has been confirmed.

The scope of the ALO role is broad and includes the following but is not limited to:

- provide support and advice and consulting with professionals and others who may have concerns about the health and wellbeing of children and their families, ensuring that a cultural lens is applied to practice
- provide easy access to information, advice and referral pathways for families, professionals and others who may have concerns for the wellbeing and safety of Aboriginal children
- support child safety and wellbeing assessments, including assessment of the social, personal and economic circumstances and needs of Aboriginal children and their families
- support early and appropriate access to family support services
- supporting families to engage in ARL/CSS assessments.

ALOs are not decision-makers; at best, they can only make recommendations and be involved in decision-making discussions. ALOs do not have any authority to make decisions about matters stipulated in the Act, such as:

- Section 17: ALOs are not authorised to determine that no further action is required in relation to notifications of concerns about child abuse or neglect
- Section 17A: ALOs are not authorised to refer child safety risk notifications to service providers
- Section 18: ALOs are not authorised to carry out child safety risk assessments.

In 2023, DECYP and TAC established the Palawa Children's Working Group. The [former] DECYP Secretary advised the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (Commission of Inquiry) that the Working Group's objective is to provide Aboriginal families and communities with 'opportunity and empowerment to lead in a culturally appropriate manner and make decisions in relation to their particular circumstances'. Since the Working Group was established, opportunities to increase TAC involvement in decisions have been identified and pursued through:

- Northern and Southern (TAC) ALOs' participation in child safety assessment handover meetings, at which ARL staff determine the level of concern for a child's safety and the need for full assessment of their circumstances
- establishing processes which allow Aboriginal children, their families and TAC representatives to attend and more actively participate in a Child Safety Service (CSS) Decision Making Forum (DMF). At this forum, CSS staff should invite families and their support people to join CSS to talk about important decisions that impact the life, personal circumstances and living arrangements of any child deemed to be at risk. Discussions may involve issues such as legal intervention, Care and Protection Orders (Orders) and family reunification.

The greater involvement of TAC representatives in ARL and CSS decision-making meetings signifies the beginning of a critical shift in theory and practice. In this way, TAC is able to: ensure that timely family-finding processes are complete; the unnecessary removal of children from families is prevented; and placement of Aboriginal children in non-Aboriginal out-of-home care is reduced.

The community continues to express concern and frustration about the insensitivity and disrespect caused when families and TAC are frequently only informed about Aboriginal child safety decisions after critical decision meetings have taken place. This impedes the contribution and consideration of important cultural insights and guidance on the most appropriate course of action.

The community believe that if a TAC representative does not attend a meeting, then: a) the Placement Principle may not be applied; and b) there may be no one advocating strongly for and doing things differently in order to keep an Aboriginal child safe from harm, including through the closer engagement of extended family, kin and community support.

Overview of current measures to increase exit from care

TAC is currently funded on a fee-for-service basis to provide day-to-day case management for Aboriginal children on Orders and in out-of-home care. This service is provided through the existing Takariliya Taypani program, with CSS retaining responsibility for case planning decisions.

Takariliya Taypani currently only operates in Nipaluna / Hobart, primarily due to under-resourcing and capacity issues, therefore not all Aboriginal children on Orders are supported by the program. Other families and children who are not in out-of-home care may also participate in the program, if circumstances warrant this higher level of support.

Under existing arrangements, the Secretary is the legal guardian and responsible for case planning decisions. TAC's current role is to:

- identify Aboriginal children in out-of-home care
- assist with family-finding, connection to community, culture and explore pathways for restoration
- support children to set short and long-term goals and work towards achieving these.

TAC observes that the program's benefits are most evident when everyone in the child's care team works together, with the best interests and cultural safety of the child at the centre of decision-making. However, this does not always occur. Aboriginal children in out-of-home care are not always, and do not always feel seen and heard, and their needs are not always met.

In general, TAC's role in decision-making is unclear and somewhat undervalued. Decision-making approaches vary, depending on which CSS worker is involved. Culturally-informed case planning has proven to be most effective when CSS actively creates opportunities to give Aboriginal children and families and TAC a voice and space to have pivotal roles in decision-making.

TAC workers continue to express concerns that:

- CSS displays a pattern of excluding or delaying invitations for TAC and Aboriginal families to attend meetings
- CSS frequently prioritises the voices of non-Aboriginal carers over the voices of TAC and Aboriginal families
- CSS often fails to adhere to DECYP policies for application of the Placement Principle
- CSS does not consistently encourage 'shared' decision-making approaches, and may set conditions on what TAC staff are permitted to do in the area of case management, despite the fact that TAC is funded to provide case management for Aboriginal children
- CSS does not always share relevant current and historical information about children's circumstances. This makes it difficult and potentially risky for TAC case managers in trying to understand and meet each child's needs
- CSS is perceived as continually trying to shift responsibility onto TAC to tell the child and family about decisions made by CSS. This is extremely difficult for TAC workers, particularly when TAC does not agree with – or has not been provided with any information about the rationale for – decisions made.

The Palawa Children's Working Group continues to monitor and progress initiatives to increase TAC's involvement in:

- CSS DMF processes and meetings
- intensive family reunification processes (pilot program, shared decision-making)
- consultation on policies, processes and decisions involving children in out-of-home care
- CSS processes for identifying Aboriginal children and families
- ARL child safety assessment handover meetings
- Wellbeing in Care Coordination meetings.

Statutory Guardians Committee

The Statutory Guardians Committee was established in 2023 to support the DECYP Secretary in the role of Statutory Guardian. One of the functions of this executive-level committee is to respond to the needs of individual children under the Secretary's guardianship or custody, to ensure that concerns are addressed and/or escalated to the Secretary's Care Team as appropriate. The committee's deliberations would benefit from inclusion of an Aboriginal member or, at a minimum, a standing representative to attend and participate in meetings.



CONSULTATION FINDINGS AND ANALYSIS

Key messages from consultation

- The Aboriginal community wants TAC to 'stop our kids going into welfare' and 'get our kids out of welfare and back with community'.
- The end goal is for the Aboriginal community to be self-determining. Legal responsibility for ensuring the safety of Aboriginal children should be transferred to the Aboriginal community.
- The transfer of lawful authority to TAC cannot happen overnight: this requires genuine partnerships and the investment of significant time, resources and expertise to achieve statewide coverage.
- The Aboriginal community has mixed views about transferring statutory responsibility to the TAC when decisions about court orders need to be made for Aboriginal children unable to live safely at home.
- All stakeholders agree that TAC must be fully supported and resourced by the Tasmanian Government.
- Future processes for statutory decision-making involving Aboriginal child safety must be guided by an Aboriginal practice framework.
- Aboriginal people are best placed to make decisions about keeping Aboriginal children safe.

Voices of the weavers

Community voices

TAC's role as the ACCO of choice for keeping Aboriginal children safe

There is strong consensus within the Aboriginal community that TAC is best positioned to accept responsibility for representing the interests of Aboriginal children in decisions about their safety. The community firmly believes that TAC, as an organisation accountable to Aboriginal families, should be responsible for decisions impacting the safety and wellbeing of their children, not CSS or any other government or non-government organisation. With over 40 years' experience, TAC is recognised by the community as a well-established and respected ACCO, uniquely qualified to represent their values, needs and voices.

***'TAC can be trusted to
be supportive rather
than prescriptive.'***

Consultations revealed that some TAC Aboriginal staff have personal experience, not as workers but as the families of children referred to ARL and CSS for any number of reasons. This shared understanding fosters an environment of respect and trust with children and families, where they feel that TAC workers truly understand their needs and experiences. Recognising this, the community emphasised the importance of self-care, boundary setting, understanding the risk of vicarious trauma, and establishing mechanisms to protect the physical and mental wellbeing of TAC workers.

Community expressed significant levels of fear and mistrust towards CSS, stemming from both historical and recent experiences. They believe that engaging with CSS – particularly processes involving decision-making, child safety planning and family conferencing – can often be extremely difficult, or in some cases, impossible. Some of the issues raised include:

- CSS not engaging with or involving TAC or the family in the decision-making processes regarding Aboriginal children
- lack of cultural awareness, understanding of values, and commitment to cultural safety among some CSS workers, including inconsistent application of the Placement Principle
- no TAC ALO presence in the north-west region.

There was overwhelming support for the service programs currently offered by TAC to be enhanced and expanded statewide to support the transfer of responsibilities for keeping Aboriginal children safe. The community's view is that this would create more and better opportunities to connect Aboriginal children with community, culture and country.

Statutory decisions about alternative living arrangements

The community has mixed views about whether TAC's decision-making authority should extend to seeking court orders to place children in alternative living arrangements. Community identified a range of risks to children, the community and TAC (organisational and workforce) if that responsibility is taken on. Identified risks include:

- if TAC does not have the necessary capacity and capability to make timely, objective and evidence-based decisions, there is a risk that the safety of individual children may be compromised
- if the workforce is not well-supported to prevent and respond to the impact of vicarious trauma, there is a risk that emotional and psychological impacts on individual workers will cause problems with staffing levels, extended staff absences and long-term problems with staff recruitment and retention. Staff unavailability could lead to further risks to the safety of children and families
- there is a risk that relationships between TAC, its workforce and families and community could break down if TAC workers are directly involved in decisions to place children in alternative living arrangements.

The vast majority of members of the community consulted believe that, while TAC should be legally empowered to lead the decision-making process, the statutory power and accountability for making decisions to seek court orders for alternative living arrangements could remain with government for the time being. In time, this responsibility could be transferred in full to TAC, but only when the community agrees TAC is ready to take on this power, consistent with the principle and practices of self-determination.

This group emphasised the importance of TAC's family-first, culturally safe approach to ensure that seeking a court order for alternative living arrangements remains the last resort. If TAC is to be given or share responsibility for exercising statutory power for such decisions, the strong community preference is for trained and respected TAC workers to be entrusted with this responsibility. Once again, the strong community sentiment is that TAC should not take on this responsibility until 'we are ready'.

A few community members believed that TAC should not have or share responsibility for making decisions about alternative living arrangements with CSS. This view is generally held by community members with lived experience of the fear, trauma and suffering caused by ‘taking away our babies and cultural identity’ and do not want TAC to be associated with a system that has caused them and their families so much pain.

Others believe that primary decision-making power could remain with CSS, with TAC taking on a secondary role, guiding and helping families by providing holistic and culturally informed support, with the aim of building safe homes.

A common theme throughout consultation was the call to ensure that the TAC workforce is appropriately trained and supported, and able to act on behalf of the community to take on lawful authority and responsibility for decisions and actions to keep Aboriginal children safe. The clearest messages from community are to ‘get our kids out of welfare and back with community’ and ‘never give up’.

Potential involvement of Elders in decision-making processes

Some people advocated for creation of an ‘Aboriginal court system’ dedicated to child safety decisions. The proposed system could involve Elders and other community representative/s either reviewing and providing feedback on the decisions of others, or having direct input into decisions made.

Concerns were raised about involving Elders and senior community members in decision-making processes, specifically in relation to placing too much pressure on these individuals; fear of Aboriginal community backlash when decisions are made; and potential community division.

TAC staff voices

TAC’s workforce is unanimous in the view that TAC and its workers should not be perceived as taking on the role of CSS. TAC staff strongly believe that any responsibilities taken on by TAC must be recognised by community as being Aboriginal-led, transparent and not part of CSS systems and processes. Staff are explicitly aware that their work must always be child-centred and family-led, with workers supported to focus on family strengths and resilience.

TAC staff comments in relation to the acceptance of lawful authority include:

- *capability and capacity*: TAC must be supported by a strong workforce and suitable carers for Aboriginal children to meet current and future needs
- *being prepared*: TAC must be fully funded, adequately resourced and ready to accept responsibility for statutory powers and functions, as and when they are transferred.

Voices of other stakeholders

Other stakeholders consulted included representatives from government and non-government organisations in the child safety, family support and legal service sectors.

Stakeholders discussed the role of non-Aboriginal people in making decisions about the safety of Aboriginal children. A consistent message from all stakeholders was that the Aboriginal community are best placed to make decisions about Aboriginal children and families.

Stakeholders shared varying levels of discomfort with current decision-making processes, especially where there are no independent Aboriginal representatives present to oversee and advocate for the best interests of children and families. Stakeholders clearly feel that, in the absence of an Aboriginal community representative, the decision-making process lacks cultural safety and accountability to the community. Stakeholders expressed concern that this may leave children and families feeling and being unheard, unsupported and at risk that any decisions made will be inconsistent with their values and not consider their unique personal circumstances.

In considering whether TAC should take on the role of decision-maker for matters of Aboriginal child safety, there was consensus among non-Aboriginal stakeholders that if this is what the Aboriginal community wants, then that is what needs to happen.

During consultations, stakeholders discussed what they could offer in supporting the progressive transfer of statutory powers and functions to TAC. Life Without Barriers has already committed to progressively transferring resources, decision-making and care arrangements for Aboriginal children to the Aboriginal community. At the same time, they continue to advocate for the transfer of ongoing government resourcing and investment in the community's capacity and capability to take on the powers and functions transferred. Life Without Barriers has already approached TAC to discuss the transfer of case management for Aboriginal children when the Takariliya Taypani program is expanded. More information is provided in Life Without Barriers *Elevate Reconciliation Action Plan*.

Stakeholders agreed that TAC must be fully supported and resourced by government. They also emphasised that transferring statutory powers and functions to ACCOs is essential to upholding the rights of the Aboriginal community especially the rights of Aboriginal children, as set out in the *United Nations Convention on the Rights of the Child* and the *United Nations Declaration on the Rights of Indigenous Peoples*. This transfer of power was identified by all stakeholders as a matter of importance.

JURISDICTIONAL SCAN AND ANALYSIS

Key points from jurisdictional scan and analysis

- The legislative reform option that the governments of all Australian states and territories have committed to progressing, under the *Safe and Supported Partnership Agreement*, is delegation of authority.
- Victoria and Queensland are the only two Australian jurisdictions to date to have taken essential first steps in changing legislation to allow authorised ACCOs to be assigned statutory responsibility for decision-making and other powers and functions to keep Aboriginal children safe.
- Other Australian states and territories have not progressed as far as Victoria and Queensland.
- Canada and USA have exercised federal powers to transition to systems founded on First Nations self-determination. Some commentators view their models as demonstrating complete autonomy, achieved through separate First Nations laws and 'courts'. Research suggests that an Aboriginal-designed and Aboriginal-administered legislative process for Lutruwita (similar to USA, Canada and New Zealand) would require Australian Government leadership, in terms of political will, national legislation and other enabling mechanisms.

Alignment with national and state commitments and enablers

The Tasmanian Government has made formal commitments to national and state agreements and initiatives to enhance the role of ACCOs and transfer powers and functions for keeping Aboriginal children safe. The most relevant of these are summarised in the table below.

INITIATIVE	COMMITMENT
<i>Safe and Supported Aboriginal and Torres Strait Islander First Action Plan 2023-2026</i>	<p>Pathway for implementation</p> <p>Provides a pathway/roadmap for Australia's states and territories to transfer child safety statutory powers and functions through delegated authority (legislative amendment, supporting policies, processes, practices and program design to support implementation)</p> <p>Action 1(a):</p> <p>Create:</p> <ul style="list-style-type: none"> ▪ a shared definition of 'delegation of legislative authority' ▪ a product capturing jurisdictional scan of current approaches ▪ a best practice and critical elements framework <p>Action 1(b):</p> <ul style="list-style-type: none"> ▪ Jurisdictional plans to be developed to transfer statutory child protection powers and the exercise of self-determination to ACCOs <p>Action 1(c):</p> <ul style="list-style-type: none"> ▪ Implement jurisdictional plan, measure and report on progress
<i>Commission of Inquiry report findings and recommendations</i>	<p>Shared decision making and transfer of decision-making models</p> <p>Recommends developing models for transfer of decision-making power.</p> <p>Reflects opportunities for increasing ACCOs' decision-making roles and responsibilities, specifying the type of decisions on which CSS needs to 'consult' ACCOs and the type of decisions that CSS needs to 'involve' ACCOs.</p> <p>These 'shared decision' arrangements are critical for building ACCO capacity and capability to exercise delegated decision-making.</p> <p>Recommendation 9.15(d):</p> <ul style="list-style-type: none"> ▪ Amend the Act to: <ul style="list-style-type: none"> i) consult with ACCOs in any decision that has a significant impact on an Aboriginal child ii) involve ACCOs in certain decisions iii) transfer child protection decision making to ACCOs <p>Recommendation 9.15(e)(ii):</p> <ul style="list-style-type: none"> ▪ Develop a model for the transfer of child safety decision-making authority to ACCOs <p>Recommendation 9.15(e)(iii):</p> <ul style="list-style-type: none"> ▪ Invest in ACCOs' capacity to participate in child protection decision-making processes

INITIATIVE	COMMITMENT
<p><i>Closing the Gap</i></p> <p><i>National Agreement reforms, targets and sector strengthening plans</i></p>	<p>Priority Reform 1:</p> <ul style="list-style-type: none"> Partnerships and shared decision-making <p>Priority Reform 2:</p> <ul style="list-style-type: none"> Recognising that Aboriginal community control is an action of self-determination, that ACCOs achieve better results for Aboriginal families and children, and government is committed to increasing the proportion of services delivered by ACCOs <p>Target 12: By 2031, reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent</p> <p>Clauses 32, 43, 44, 45, 62, 71</p> <p><i>Early Childhood Care and Development Sector Strengthening Plan:</i></p> <ul style="list-style-type: none"> C5: Identify opportunities to progressively transfer statutory authority in child protection to ACCOs E5: Jurisdictional plans for applying the Placement Principle F5: Funding to enable ACCOs' shared decision-making processes with government
<p>Family Matters</p>	<p>Recommendation 5:</p> <ul style="list-style-type: none"> Aboriginal decision-making models across all significant child protection decision-making points <p>Recommendation 6:</p> <ul style="list-style-type: none"> Transfer statutory child protection functions to ACCOs and ensure ACCOs are fully resourced to perform statutory roles <p>Recommendation 13:</p> <ul style="list-style-type: none"> Equal participation of Aboriginal people in shared decision-making, policy, service design and systems impacting child safety oversight <p>Recommendation 9:</p> <ul style="list-style-type: none"> Legislate requirements that ACCOs must approve permanent care orders and create alternative, culturally safe approaches to promoting stability and permanency <p>Recommendation 7:</p> <ul style="list-style-type: none"> Models for the participation of children in matters that affect them

Review of Australian states and territories

ACCOS in Victoria and Queensland have been working on models to support the transfer of lawful authority for approximately ten years. Both states are well progressed in system design and staged implementation. The Palawa Children's Future Project Stage 1 extensively researched and analysed Victoria's and Queensland's experiences. Learnings from this research informed development of the *Nukara* strategy and *Tirrina* model, including the service programs that will support TAC's role in exercising statutory powers and performing statutory functions.

High-level observations of the Victorian and Queensland models are included in Fibre 1, including the importance of establishing authorisation processes and eligibility criteria for ACCOs before powers and functions are transferred. More detailed information is included at [Appendix A](#).

Victoria

Victorian legislation (*Children, Youth and Families Act 2005, section 18*) enables the secretary of the responsible department to transfer responsibility for exercising and performing specific statutory powers and functions to the Chief Executive Officer (CEO) of an authorised ACCO. These include powers and functions relating to:

- receiving and investigating reports
- protective intervention
- care and protection orders.

For ACCOs to become authorised in Victoria, they need to complete a minimum pre-authorisation period of 12 months and meet specific requirements co-designed by ACCOs, the responsible department and Victoria's Commissioner for Aboriginal Children and Young People.

Note: Victoria's *Yoorrook Justice Commission* has called for the full transfer of powers and functions, control and resources to Aboriginal people, including: accountability and oversight functions; complaint pathways; system design; obtaining and allocating resources; and the powers and functions of relevant bodies and institutions.

Community Protecting Boorais (CPB) program

Victoria's Community Protecting Boorais (CPB) is an Australia-first program that allows authorised ACCOs to have legal responsibility for gathering information, investigating and assessing child safety concerns and reports involving Aboriginal children, and for ongoing decision-making while children remain in contact with the child safety system. The authorised ACCO is not required to consider the views and wishes of children and their parents when receiving and investigating child safety reports.

The Victorian Aboriginal Child Care Agency (VACCA) and the Bendigo and District Aboriginal Cooperative (BDAC) are the only ACCOs currently authorised to deliver the CPB program.

Aboriginal Children in Aboriginal Care (ACAC) program

The Aboriginal Children in Aboriginal Care (ACAC) program was established as the mechanism through which authorised ACCOs may be assigned legal responsibility for Aboriginal children who are subject to protection orders.



Under ACAC, authorised ACCOs actively work with the child, their family, community and other professionals to develop a case plan for the child, designed to address safety concerns and achieve long-term objectives in a way that is child-centred and culturally appropriate. Consideration is given to the views of children and parents, balanced by and considered alongside what is seen to be in the best interests of the child. For example, a child may say that they do not want to be referred to an ACCO; however there may be concerns that this view has been unduly influenced by their carer.

Review and analysis of the ACAC program concluded that:

- when authorised ACCOs hold decision-making responsibilities for their own community, children and families engage better and feel stronger in their culture
- ACCOs achieve significantly high rates of Aboriginal children returning to their families
- ACCOs keep children connected to community, culture and country, with a demonstrated increase in parental involvement in decision-making.

VACCA was the first authorised ACCO under the ACAC program. This program is also now delivered by the Ballarat and District Aboriginal Cooperative (BADAC) and BDAC (Bendigo).

Professor Muriel Bamblett (CEO, VACCA) told the Commission of Inquiry that VACCA achieves a much higher rate of reunification of Aboriginal children with their families – between 22 and 25 per cent – when compared with the Victorian department’s reunification rate of between 12 and 15 per cent for Aboriginal children.



Queensland

Queensland legislation (*Child Protection Act 1999*) provides for delegation of the functions and powers of the chief executive of the responsible department to the chief executive of an authorised ACCO.

Queensland has a planned approach to progressively expanding the scope of authority transferred to ACCOs, founded on an implementation process cycle supported by the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP).

Queensland ACCOs currently focus on building the connection of Aboriginal children on care and protection orders with community, culture and country. A statutory function that may be delegated to ACCOs is to provide opportunities for contact between the child and their parents and appropriate members of the child's family, community and language group.

The responsible department and ACCO make decisions about referrals to an ACCO. To the extent it is safe and practical to do so, the ACCO must seek and consider the views of children and their parents, alongside the best interests of the child.

Over time and when they are ready, ACCOs may be empowered to expand their service programs to include other powers and functions. This may include delegations for functions that strengthen connections, including those involving the reunification of children with their parents and ongoing post-reunification support.

QATSICPP's report on implementing delegated authority

QATSICPP plays a leading role in driving consistency in policy and practice throughout the implementation process, while facilitating flexibility for individual ACCOs as needed. QATSICPP's role may not be fully relevant in a Lutruwita context, considering Queensland's size in comparison to Lutruwita. Irrespective of the size of the jurisdiction or enabling mechanism, significant policy and systems development is still required.

QATSICPP's *Implementing Delegated Authority – Capturing Our Story Final Action Research Report* (2021) analyses key findings for the successful implementation of lawful authority, highlighting that successful reform is not possible without also transforming organisational cultures and attitudes, outdated ways of thinking and deeply-held beliefs that can get in the way of change. This aligns with *Nukara's Water of Systems Change* theory and framework.

The QATSICPP report highlights the importance of:

Attributes of personnel involved: *'I think this is very exciting we have the personal and professional commitment to make big changes and we are going to give this our best shot collectively.'*

Leadership: *'Authorising environment – from the very top we have had very positive messages and our [regional executive director] who has embraced this – and has decided not to stand still, but has moved forward, in a big reform agenda it is easy to freeze, and we have not done this.'*

Time: *'Create time to build and strengthen relationships is needed.'*

'Push through and planning together – there is an urgency to get our kids home – we take it seriously and we want to get our kids home as soon as possible.'

Workforce capability: *'We need a workforce capability strategy to be developed and we collectively build an understanding of what are the critical attributes required to work in [delegated authority].'*
'Cultural Practice Advisor input critical from day one – this needs to be thought about going forward – it is critical that they are included in preparing operational guidelines.'

Accountability: *'Collaboration agreement important to be a structure that assists us in problem solving.'* *'Everyone needs to take ownership.'*

Review of international models

Significant findings of internal and external reviews of First Nations child-safe systems transformation in Canada, the United States of America (USA) and New Zealand, all of which are founded on the principle and practices of self-determination are summarised at [Appendix B](#).



THE WAY FORWARD

Dr Terri Libesman in her 2014 book *'Decolonising Indigenous Child Welfare'* describes differing levels of autonomy and decision-making held by First Nation peoples in a range of international contexts. The five different levels of authority are summarised below from least to most desirable in terms of ensuring Aboriginal cultural safety, self-determination and empowerment:

1. **Paternalistic control** over the Aboriginal community and child safety, entrenched in legislation
2. **Integration of the requirement for Aboriginal input** into existing, statutory decision-making processes and child safety structures
3. **Delegation of authority**, with jurisdiction over child safety matters retained by the state, but some functions, powers and responsibilities are delegated to Aboriginal communities
4. **Shared authority** and shared jurisdiction, with the transfer of some child safety roles, powers and responsibilities to the Aboriginal community
5. **Complete Aboriginal autonomy** with legal establishment and recognition of Aboriginal authority over legislative, judicial and administrative matters involving Aboriginal child safety.

Taking into consideration the feedback from statewide consultations and what was learned from research into the experiences of Victoria and Queensland, the preferred approach for Luruwita is to pursue a combination of Libesman's Level 3 and Level 4 (above) and adopt the Victorian model of legislative enablement.

Rationale for the adoption of Victoria's model include:

- the CEO of an authorised ACCO may be assigned legal guardianship of a child, which includes responsibility for statutory decision-making and for exercising and performing other powers and functions
- this model is much easier to implement and administer than the Queensland model, which involves determining specific powers and functions to be delegated on a case-by-case basis
- the model allows the CEO of the authorised ACCO to sub-delegate most functions and powers to its workforce; the Queensland model does not.

Before authorising the transfer of statutory powers and functions, the DECYP Secretary must be satisfied that an ACCO has systems and processes in place to achieve legislative objectives. Eligibility criteria and processes to support the authorisation of ACCOs must be embedded in legislation and could be enabled through the Executive Director of Aboriginal Policy (DECYP).

Requirements for the transfer of lawful authority

The successful transfer of lawful authority involves:

- structural changes including amending legislation
- investing in, supporting and uplifting the capability, skills and resources of the TAC workforce
- progressively shifting statutory powers and functions to the Aboriginal community, as represented by TAC and/or other ACCOs, as and when the Aboriginal community is ready.



Next steps

Shared decision making (TAC and CSS) may be implemented before the Act is amended. The legislation must be changed before responsibility for powers and functions can be transferred to TAC, on behalf of the Aboriginal community.

Next steps are:

- declare TAC as a 'recognised Aboriginal organisation', under current provisions of the *Children, Young People and Their Families Act 1997*, as an interim measure to allow TAC to lawfully participate in decision-making for Aboriginal children
- develop a plan to enable the transfer of statutory powers and functions to TAC, representing and working on behalf of the Aboriginal community
- draft amendments to the *Children, Young People and Their Families Act 1997*, including provisions that:
 - enable the authorisation of Aboriginal Community Controlled Organisations (ACCOs), including processes to support and achieve the status of 'authorised ACCO'
 - mandate the application of Active Efforts to apply the Aboriginal and Torres Strait Islander Placement Principle (Placement Principle)
 - mandate the referral of concerns and reports about the safety of Aboriginal children to an Aboriginal first-point-of-contact service, for initial review and assessment
 - allow the Aboriginal first-point-of-contact service to engage an authorised ACCO to undertake follow-up activities, including further assessment, investigation and recommendations for next steps, if required
- work with government organisations and non-government organisations to transform existing systems, policies and practices
- establish and enhance TAC service programs under the *Tirrina* model to support and enable powers to be exercised and functions performed.

Appendix A: Review of national approaches

Victoria and Queensland are the only two jurisdictions in Australia to have legislated to allow the transfer of child safety decision-making to ACCOs. The experiences of these states demonstrate that, to be successful, mechanisms to support the transfer of roles, powers, functions and responsibilities to ACCOs must be Aboriginal-led and supported by a well-considered, long-term implementation plan. The process is complex and requires a sustained commitment from government and ACCOs to work together in new and different ways.

A considered understanding of the needs of Aboriginal children and families, priorities, risks, readiness and capabilities, as well as the estimated levels of ongoing funding and other resources required, will provide a strong foundation for the system transformation required to transfer Aboriginal child safety decision-making to ACCOs.

This appendix details insights into the implementation journeys of Victoria and Queensland, and provides an overview of progress underway in other Australian states and territories.

Victoria

Victoria's *Children, Youth and Families Act 2005* (section 18) allows the secretary of the relevant department to authorise the principal officer of an authorised ACCO ('declared Aboriginal agency') to perform certain functions and exercise specific powers in relation to Aboriginal child safety. This provision was part of the original legislation, which came into effect in 2007.

Victoria has established two programs through which ACCOs are legally authorised to provide Aboriginal child safety and decision-making services.

- Through the *Aboriginal Children in Aboriginal Care* program (ACAC), authorised ACCOs have legal responsibility for Aboriginal children on a protection order. Under this program, the ACCO actively works with children and families, community and other professionals to develop a case plan that is culturally appropriate, and in the best interests of the child, to address concerns and achieve long-term objectives.
- Through the *Community Protecting Boorais* program (CPB), authorised ACCOs assume legal responsibility for receiving and investigating formal reports about Aboriginal child safety matters. This enables the ACCOs to become involved and provide preventative and early intervention support much earlier, with the aim of diverting children and families away from the child safety system.
- While all new Aboriginal child safety reports are still received by the responsible government agency's child safety reporting and intake service, that service is required to consult with an *Aboriginal Child Specialist Advice and Support Service* (ACSASS). If it is decided that the matter needs further follow-up, the government service transfers responsibility to an authorised ACCO. The ACCO works directly with children and families, gathers information, engages support services and, if children are at serious risk, makes application to the Children's Court for Care and Protection Orders. At times, joint CPB-police investigations may be initiated.

In 2013, before the relevant delegation of authority was in place, Victoria successfully piloted the 'As if' program at VACCA and BDAC (Bendigo and District Aboriginal Co-operative). The pilot gave ACCOs the opportunity to conduct case practice with a small cohort of Aboriginal children subject to protection orders 'as if' they were authorised under section 18 of the legislation. The pilot allowed Victoria to test and refine proposed arrangements.

- Evaluation of the VACCA pilot noted that of the 13 children who participated, six were reunified with family or kin.
- Evaluation of the BDAC pilot noted that through culturally-attuned practice, high-risk families remained engaged with the pilot and willing to work towards – and in some cases achieve – family reunification.

After the success of the pilots, the ACAC program was developed. The first official ACCO authorisations under section 18 of the legislation were not made until 2017.

Figure 1 provides a timeline overview of Victoria's progress.

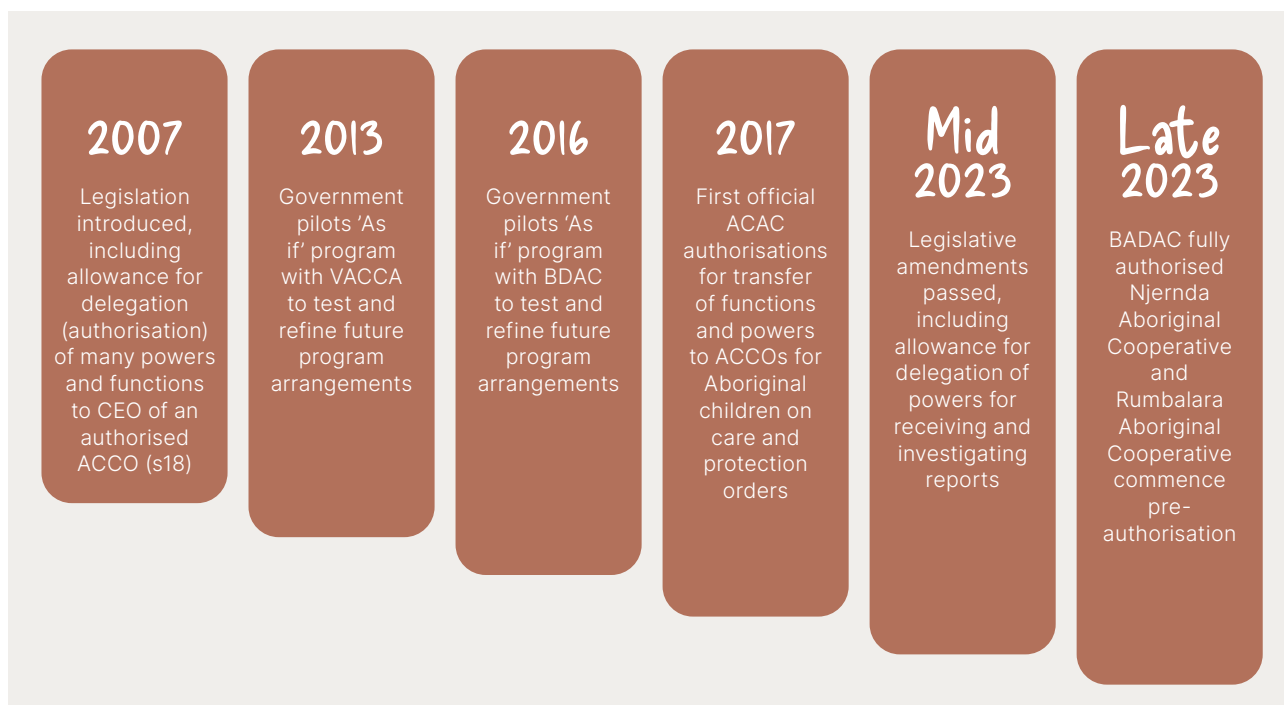


Figure 1: Snapshot of Victoria's timeline for transferring roles, powers and responsibilities to ACCOs

Genuine partnership

In 2018, the Government of Victoria published the Wungurilwil Gapgapduir Aboriginal Children and Families Agreement and Strategic Action Plan, a landmark partnership between the Aboriginal community, government and community service organisations that commits all parties to pursuing better outcomes for Aboriginal children. The Strategic Action Plan details actions required to address the overrepresentation of Aboriginal children in Victoria's child safety and out-of-home care systems.

Legislation

The legislation allows the Secretary of the responsible department to authorise the principal officer of an authorised ACCO to undertake specific functions and powers. In the same way that the Secretary is responsible for the management of Care and Protection Orders, once authority has been assigned to an ACCO, the principal officer of that ACCO is then responsible for management of that Order and associated decision-making. The principal officer can also sub-delegate relevant functions and powers to members of the ACCO's workforce.

Functions and powers that can be delegated to the principal officer of an authorised ACCO in Victoria were originally limited to those that related to protective intervention and Care and Protection Orders. In June 2023, Victoria's *Children and Health Legislation Amendment (Statement of Recognition, Aboriginal Self-determination and Other Matters) Act 2023* broadened child safety authorisations to include receiving and investigating reports.

Other amendments to legislation included provisions that:

- allow authorised ACCOs access to data and other information held in CRIS
- strengthen legislative provisions for application of the Placement Principle
- embed government's commitment to Aboriginal self-determination in the legislative framework for children and family services, including by introducing a *Statement of Recognition* and principles for all decision-makers involved with Aboriginal children and their families in the child safety system
- introduces a *Health Statement of Recognition* and non-binding principles to Victoria's statutory instruments for health services and public health and wellbeing.

Authorised ACCO service delivery and practice approach

After a decision to investigate (CPB) and/or an application for a Care and Protection Order has been made (ACAC), an authorised ACCO may take on functions and powers for decisions about the child's case management and case plan.

ACCOs have developed their own practice approach, designed to ensure that Aboriginal families are engaged in a way that is culturally appropriate and feels safe.

If a child is referred to an authorised ACCO, other government and non-government organisations and services work closely with the ACCO, as they would as if legal authority had remained with the Secretary of the responsible department, including when:

- receiving referrals
- sharing information and providing reports as required
- seeking consent for parental decisions, including those related to medical and education needs (depending on the legal status of the child)
- participating in case planning meetings.

Non-Aboriginal siblings who are subject to Care and Protection Orders may be referred to and case managed by the same authorised ACCO under ACAC, but the ACCO leads decisions on whether or not to manage non-Aboriginal sibling cases. Decisions are based on the best interests of the child and, in most cases, that means the ACCO will take on responsibility for the whole sibling group. Under CPB, only Aboriginal children are currently in scope.

There may be times in which circumstances change for an Aboriginal child and a new case plan or legal action is required. The authorised ACCO can respond as required to such changes. If a new placement is required, the ACCO continues to provide children and families with case planning and case management services.

Current status of Victorian ACCOs

Victorian Aboriginal Child Care Agency (VACCA)

VACCA currently delivers the ACAC program in the geographical areas of Hume/Merri-bek, North-East Melbourne and Inner Gippsland. Further expansion is expected.

Under the CPB program, VACCA responds to Aboriginal child safety reports in Hume/Merri-bek and North-East Melbourne.

Bendigo and District Aboriginal Co-operative (BDAC)

BDAC delivers the ACAC program in the Bendigo district. Authorised in 2019, BDAC has grown to have responsibility for more than 100 children in parts of Dja Dja Wurrung country (Loddon shire) (July 2024).

BDAC is expected to be authorised under the CPB program in the near future.

Ballarat and District Aboriginal Co-operative (BADAC)

After completing an extended period of pre-authorisation, BADAC delivers the ACAC program in the Central Highlands Area. In April 2024, BADA had responsibility for 14 children, with plans to take on another 12.

BDAC is authorised under the CPB program to respond to Aboriginal child safety reports.

Other

Njernda Aboriginal Cooperative and Rumbalara Aboriginal Cooperative are currently completing pre-authorisation for delivery of the ACAC program.

Queensland

Queensland legislation (*Child Protection Act 1999*) provides for the delegation of functions and powers of the Chief Executive of the Department of Children, Youth Justice and Multicultural Affairs in relation to an Aboriginal child who needs protection or is likely to need protection. These functions or powers may be delegated to the CEO of an authorised ACCO (*appropriate Aboriginal or Torres Strait Islander entity*).

The legislation requires an *appropriate* Aboriginal or Torres Strait Islander entity to have:

a function of providing services to Aboriginal persons or Torres Strait Islanders; and whose members include individuals who have appropriate knowledge of, or expertise in, child protection (section 148BA).

Early adopter ACCOs have been operating under delegated authority for four years. Despite legislation allowing for the delegation of many functions and powers at any point along the child safety continuum, Queensland ACCOs currently focus on delegations that relate only to children on Care and Protection Orders.

Authorised ACCOs focus on delegations that increase connections with family, culture and community. This is a key priority established by Queensland's ten-year blueprint for achieving delegated authority: *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and families 2017–2037* (*Our Way*).

Our Way is a long-term, shared commitment by the government and Aboriginal and Torres Strait Islander communities to work together to improve life outcomes and address the overrepresentation in the child safety system. A high priority for *Our Way* is delegated authority. The relevant department is responsible for progressively transferring resources from currently funded services to ACCOs.

Our Way is being delivered through three consecutive action plans:

- *Building and supporting the foundations: Stage one implementation plan (2023–2025)*
- *Embedding the transformation: Stage two implementation plan (2026–2028)*
- *Our decisions, our way: Stage three implementation plan (2029–2032).*

Figure 2 provides a timeline overview of Queensland's progress to date.

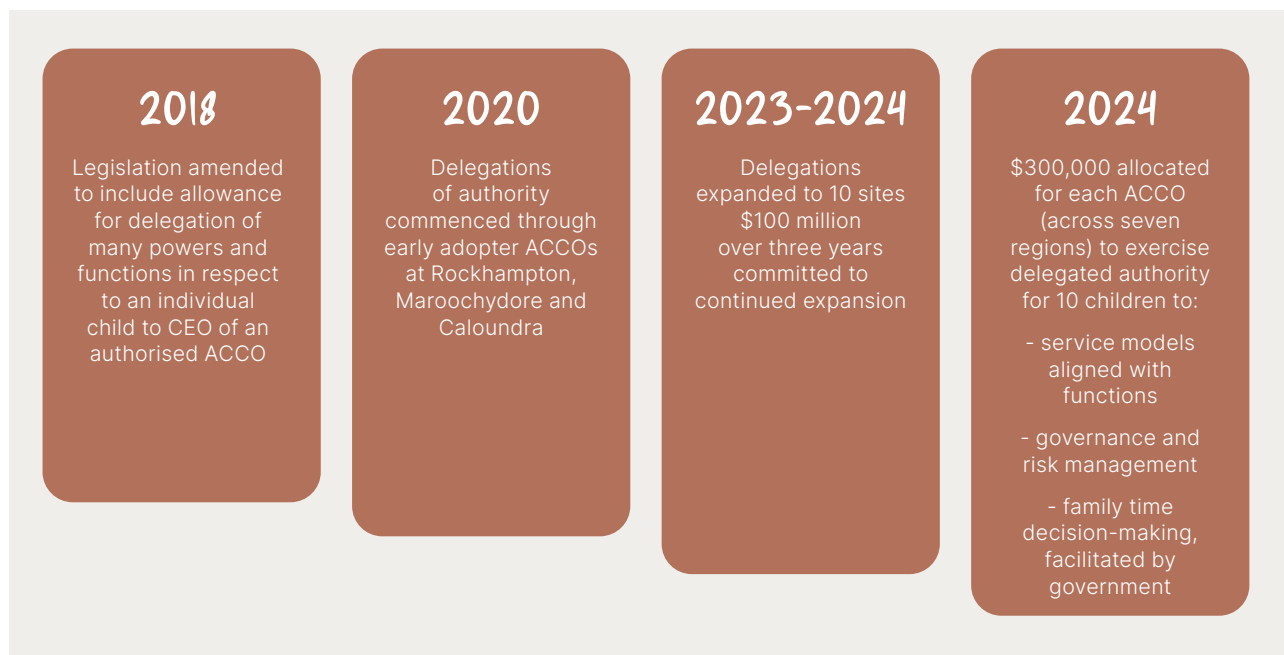


Figure 2: Snapshot of Queensland's timeline for transferring roles, powers and responsibilities to ACCOs

Legislation

Queensland's legislation is broad and allows for the delegation of many functions or powers, in respect to a particular child, at any point along the child safety continuum.

Delegations must state: the name of the person to whom the function or power is delegated; the name of the child to whom the delegation applies; each function and power the delegate may exercise in relation to the child; and any conditions that apply to the delegation.

Powers and functions can only be delegated to a person who is:

- an Aboriginal or Torres Strait Islander person, and
- the CEO of an appropriate Aboriginal or Torres Strait Islander entity, and
- holds a 'working with children' authority.

The person making the delegation must also be reasonably satisfied that the delegate is appropriately qualified and a suitable person in relation to the powers and functions.

Practical barriers with these requirements include:

- not all ACCO CEOs are Aboriginal or Torres Strait Islander people
- issues with 'appropriate' qualifications in relation to making child safety decisions
- safety concerns for an ACCO chief executive who may be personally responsible for making decisions in small local communities.

Governance

QATSICPP has a leading role in the implementation of delegated authority at policy and practice levels, working closely with government and driving the collection and analysis of data to understand and refine the implementation approach.

Key learnings in developing *Our Way* include the importance of:

- the readiness, priorities, capability and support needs of communities
- engagement with government to understand and support new ways of working at all levels of the department (leadership is paramount)
- engagement with all participants to promote and share knowledge, understandings and concerns
- implementation processes that encourage genuine partnership
- shared responsibility, vision and priorities across government and the community
- shared accountability as one of the five principles guiding implementation.

ACCOs in Queensland may look to achieving delegated authority for a broader range of powers and functions. QATSICPP will play an important role in ensuring consistency while allowing sufficient flexibility to support progressive implementation in areas across Queensland.

ACCOs have different client management systems and information sharing arrangements: some are able to enter data directly into the government-held information management system; others record data in their own systems and provide this to government for government entry into the government-held information management system.

Current status of Queensland ACCOs

In accordance with *Our Way*:

- most new ACCOs commence with 'contact' delegations for a child to have contact with their parents, family, community and language group (sections 87 and 88)
- ACCOs may then expand program delivery responsibilities to include other delegations for individual children over time, as experience grows and in response to the needs and views of each child and their family
- expansion of delegations will be undertaken in a planned way, using local implementation process cycles.

Commencement with 'contact' delegations under the legislation was viewed as a lower risk approach that would test systems and processes, and assess areas of expertise/need, while ensuring that children benefited from family and cultural connections, areas in which government was viewed as not doing well. This approach builds on the community and cultural knowledge and strengths of ACCOs and acknowledges the fundamental relationship between community, culture, country and child safety.

Central Queensland Indigenous Development (CQID) and Refocus are 'early adopter' ACCOs for delegated authority, currently operating in Rockhampton, Maroochydore and Caloundra.

CQID and Refocus concentrate on increasing each child's connection to family, kin, culture, country and community. This is a key priority for *Our Way*. Both CQID and Refocus have expanded to include 'reunification' delegations, if safe for the child, including decisions about reunification and ongoing post-reunification support.

To date, the organisations have sought different delegations:

- refocus concentrates on powers and functions for children, focusing on family time connection, case planning, reunification, residential care and housing
- CQID concentrates on powers and functions for children transitioning into adulthood, focusing, for example, on connections with culture and language.

QATSICPP and ACCO representatives are not currently in favour of accepting delegated responsibility for decisions to remove children from their families. This position may change in the future.

Reunification with families

At the time of research, of the 158 Aboriginal children that have been under delegation to ACCOs in Queensland, Refocus has reunified 19 with their parents/families. CQID's reunification numbers are lower as this ACCO focuses on children transitioning to adulthood and/or independence. This observation highlights the importance of choosing a range of delegation-specific indicators to measure success.

A risk associated with 'contact' delegations (sections 87 and 88) is the potential for carers to advocate for their own interests, rather than those of the child. Section 91 of the legislation provides carers with the right to appeal decisions to remove a child from their care. In a Tasmanian context, this is relevant to consideration of the Tasmanian Government's commitment to expanding the guardianship role of the Tasmanian Civil and Administrative Tribunal (TASCAT) by 2029 to include the review of child safety decisions.

Processes for choosing delegations

The current process is that the ACCO's board of management and community work together to decide which powers and/or functions they would like to be delegated. The ACCO works in partnership with the government department in their region. The ACCO CEO then applies to the head of the responsible department, seeking delegation.

Delegations relate to an individual child and for a specific decision. Formal letters of request and offer are exchanged before delegations may come into effect. These letters specify the powers/functions delegated and the child for whom the delegations apply.

Additional information

QATSICPP is currently trialling the *Family Caring for Family* model, which focuses on providing a range of financial and practical family supports to help prevent entry into and increase exit from the child safety system.

Other Australian jurisdictions

New South Wales (NSW)

A desktop review suggests NSW is yet to advance delegation to ACCOs.

Family Matters 2024 rated NSW's performance against Building Block 2 (participation, control and self-determination) as poor. Despite having the highest proportion of investment in ACCOs for care services, minimal progress has been made to transfer case management, with deficiencies in planning, resources and accountability. NSW has also been criticised by peak body and sector representatives, with issues including low levels of transparency and partnership. Case consultation and family participation remains largely internalised, rather than partnered with independent ACCOs.

In 2019, Professor Megan Davis published *Family is Culture Independent Review into Aboriginal Out-of-Home Care in NSW*, the output of a three-year study involving more than 1,000 Aboriginal children in out-of-home care. Davis' review report included 125 recommendations across areas including legislative amendment.

While NSW Government has delegated some 'parental responsibility' functions for non-Aboriginal children to *Barnardos Australia*, Barnardos does not have delegation for any functions of parental responsibility in respect to Aboriginal and Torres Strait Islander children: that responsibility is believed to rest with the relevant department.

South Australia (SA)

In early 2023, the South Australian Government released a report on review of the *SA Children and Young People (Safety) Act 2017*, with key themes including embedding all elements of the Aboriginal and Torres Strait Islander Child Placement Principle to empower Aboriginal people to lead decision-making for Aboriginal children, families and communities. The SA Government is considering opportunities identified in the report, and has committed to legislative amendment after further consultation.

Family Matters 2024 rated SA's performance against Building Block 2 (participation, control and self-determination) as poor. Investment in family group conferencing is assessed as promising, but not delivered through ACCOs. There is stated to be limited engagement of Aboriginal stakeholders in legislative review.

Northern Territory (NT)

In 2021, NT launched *Kids Safe, Family Together, Community Strong: 10-Year Generational Strategy for Children and Families* in the Northern Territory and an action plan that includes commitments to transfer authority for child safety decision making to Aboriginal communities and develop the ACCO sector.

Family Matters 2024 rated NT's performance against Building Block 2 (participation, control and self-determination) as poor. Investment in ACCOs is low, despite an increase in demand for ACCO family support. Other findings reported include no Aboriginal family-led decision-making, limited progress on implemented and low level referrals to Aboriginal legal services.

Western Australia (WA)

WA's child safety laws currently require the CEO of the relevant department to consult with Aboriginal family and community members on cultural support planning and before making a placement arrangement for an Aboriginal child. The most recent legislative amendments did not include provisions for the delegation of authority for Aboriginal child safety to ACCOs.

WA has a 10-year roadmap to reduce the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care, developed in partnership with Aboriginal communities and organisations.

Family Matters 2024 rated WA's performance against Building Block 2 (participation, control and self-determination) as very poor, noting that prescriptive program requirements and short-term pilots offer limited potential for ACCO-led service delivery. Aboriginal family-led decision-making was found to have only been implemented in two locations, with no commitment to broader roll-out. WA's Aboriginal Representative Organisation pilot was deemed to have not met community expectations, with limited authority and resources for ACCOs.

Australian Capital Territory (ACT)

ACT is progressing legislative review to bring the territory's legislation into line with the Aboriginal and Torres Strait Islander Child Placement Principle. ACT is also progressing establishment of a new ACT Aboriginal and Torres Strait Islander Children's Commissioner role.

Family Matters 2024 rated ACT's performance against Building Block 2 (participation, control and self-determination) as poor. Progress is being made on investment in ACCOs, but there is evidence of ongoing distrust between ACCOs and government, as well as a lack of resources for ACCOs to support family participation in child safety processes, such as in Aboriginal family-led decision-making. A positive finding is that the ACT's co-design network provides Aboriginal community advice based on lived and living experience.

Conclusions

The transfer of lawful authority for Aboriginal child safety to ACCOs is a responsibility shared by government and the Aboriginal community. This must be seen as *transferring, not outsourcing*.

Over the years, the governments of Australia's states and territories have partnered with local Aboriginal and Torres Strait Islander communities on a range of initiatives to reduce the over-representation of their children in out-of-home care. Transfer of statutory authority to ACCOs is the strongest commitment by governments to date. This does not need to overshadow other non-statutory initiatives; transfer of authority can complement current initiatives that are working well.

Understanding the current model of care for Aboriginal children in contact with Tasmania's child safety system – not just out-of-home care, but also reports of concerns and incidents of child abuse to the ARL and family support services – is critical for the development of robust action plans for transferring responsibility for Aboriginal child safety to the Aboriginal community.

Despite Queensland legislation allowing for the delegation of many functions or powers at any point along the child safety continuum, Queensland ACCOs continue to focus on delegations for individual children that increase the contact and connection of each child on Care and Protection Orders with their families and culture.

Victoria's progress is more advanced and applies across the full child safety continuum. ACCOs' responsibilities can extend from receiving initial concerns and reports of incidents, to reunifying children on Care and Protection Orders with their families.

Victoria's authorisation process is considered a much simpler approach, because it does not require the alignment of powers and functions with operational case management decisions. Victoria's authorisation process is also easier to administer and manage from both government and ACCO perspectives.

Appendix B: Review of international approaches

This appendix summarises the findings of comprehensive international research into how other First Nations people are reclaiming statutory responsibility for child safety decision-making. The review focuses on the experiences of and progress being made in Canada, New Zealand and USA, consistent with the principle and practice of self-determination.

Part 1: Jurisdictional snapshot

New Zealand

- New Zealand has national legislation and arrangements.
- Oranga Tamariki (also known as the Ministry for Children) is the government department responsible for the safety and wellbeing of children, specifically children at risk of harm, youth offenders and children under state guardianship.
- The Māori Inquiry into Oranga Tamariki was one of five inquiries launched after a media investigation and video emerged showing the attempted removal of a newborn baby from its mother at a maternity ward in May 2019. In June 2019, NZ media reported that three Māori babies each week were being removed from their mothers, and of 283 babies taken into state care in the preceding year, more than 70 per cent were Māori or Pasifika.
- When findings and recommendations of the NZ Government's Hawke's Bay Practice Review were released in 2020, reform processes were already well underway, including steps to ensure greater scrutiny of government policies and practices, improve relationships with families, and provide them with earlier and better planning and support.
- As a result of the reforms, the number of court orders issued to remove babies from their families and into state care more than halved in the 2019-20 financial year.
- In 2019, the Oranga Tamariki Act 1989 was amended to include provisions (section 7AA) that require the chief executive of the department to recognise and provide a practical commitment to the principles of the Treaty of Waitangi, including to enter into partnerships, monitor and report on disparities for Māori, and uphold the principles of the Treaty of Waitangi in decision-making.
- After 35 claimants brought an action for breach of Treaty and loss of children into the care system, a 'Māori transitional authority' was established to independently monitor the partnerships set up between Oranga Tamariki and Māori organisations (in accordance with section 7AA) and advocate for the devolution of power to Māori organisations, aiming to ensure that no Māori children were in state care.
- The NZ Government has committed to fully implement the United Nations Declaration on the Rights of Indigenous People (UNDRIP), which includes that:
 - *indigenous peoples have the right to self-determination (Article 3)*
 - *indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions (Article 4).*
- The NZ Government initiated formal consultations with Māori to develop a framework for UNDRIP implementation and progress is being made, as reported to the Australian Parliament by the Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia in November 2023.

- A group of NZ academics recently wrote a paper advocating for more fundamental changes to the child safety system, include investment in indigenous-designed and/or led services and moves to devolve responsibility for child safety services to their indigenous peoples, similar to Canadian legislation.

Canada

- Canada has both federal and state/province based legislation and arrangements.
- In 2021, the Government of Canada introduced legislation to provide for First Nations' child safety, through *An Act respecting First Nations, Inuit and Métis Children, Youth and Families*.
- Under that legislation, Canada's indigenous groups can develop and administer their own legislation, with two options to exercise jurisdiction, being to either: a) continue working with delegated agencies; or b) design and deliver their own child and family services solutions to best suit their needs.
- Canada's *United Nations Declaration on the Rights of Indigenous Peoples Act* came into force in 2021, described by the Government of Canada as: 'a roadmap for the Government of Canada and Indigenous peoples to work together to implement the Declaration based on lasting reconciliation, healing, and cooperative relations'.
- Similar progress is occurring at provincial levels, for example, British Columbia has been working to implement similar legislation.
- As of January 2022, 54 indigenous governing bodies had submitted notice of their intent to exercise lawful jurisdiction in child safety. In response, 18 coordination agreement discussion tables were established to provide opportunities for each indigenous group, community or people to work with the relevant provincial, territorial and/or federal governments to determine responsibilities, processes and the coordination of services to ensure smooth and effective exercise of jurisdiction.
- First Nations, Inuit and Métis leaders have noted that UNDRIP implementation is a helpful tool for holding governments to account, while cautioning that a major challenge is to define, and codify in practice, principles such as self-determination.
- Canada's 2022 budget committed \$87.3 million over three years for capacity-building to support indigenous communities in their negotiations to exercise jurisdiction. The government also provided \$340.8 million to Wabeseemoong Independent Nations to enact and deliver services under their own child safety authority. The 2023 budget committed \$444.2 million over three years to support Peguis First Nation (Manitoba) and Louis Bull Tribe First Nation (Alberta) to exercise jurisdiction over their child safety systems.
- Some First Nations organisations have taken on responsibility for the full spectrum of child safety functions, right across the continuum of care.
- Some First Nations leaders caution about the lack of a clear commitment for appropriate levels of long-term funding to develop, implement and sustain child safety arrangements.

USA

- USA has overarching federal legislation established within the Indian Child Welfare Act 1978 (ICWA), supported by statutory codes at state/province levels.
- ICWA authorises US states and indigenous tribes to enter into agreements regarding care, custody and jurisdiction over child safety proceedings, including: agreements for the orderly transfer of jurisdiction on a case-by-case basis; and agreements for concurrent jurisdiction between USA states and indigenous tribes. Funding arrangements are through the *Social Security Act 1935*.
- ICWA was established to address extremely high rates of indigenous children being removed from their families by state agencies and adopted out. This was a huge shift in federal law and policy in relation to First Nations peoples.
- ICWA:
 - *mandates self-determination*
 - *affirms the inherent responsibility of tribes as parens patriae in child safety matters*
 - *affirms exclusive jurisdiction of tribes over child safety matters arising on tribal reservations, or when the child is a ward of the tribal court, as well as concurrent jurisdiction for actions arising outside the reservation*
 - *requires that US states defer to tribal child safety codes and practices (eg tribal codes directly impact state action and outcomes for families/children).*
- The National Indian Child Welfare Association supports tribes to build capacity at the tribal, state and federal levels. The association works alongside tribal organisations to ensure that Active Efforts are upheld and to facilitate effective ICWA implementation through training, forums and workshops.
- Active Efforts is the gold standard of practice that other countries (including Australia) are trying to emulate. While sometimes and mistakenly interpreted as 'reasonable' efforts, ICWA defines and mandates Active Efforts as *'affirmative, active, thorough and timely efforts intended primarily to maintain or reunite an [indigenous child] with his or her family'*.
- Tribal laws define the tribal government's responsibilities to protect children who are at risk of maltreatment and guide tribal court decisions involving intervention, removal, reunification and permanent legal and relational connectedness.
- Tribal systems are adaptive, multi-layered and tailored to the culture and community values of the tribe, with many public and private sector organisations working together. Some nations are creating unique community supports around housing to reduce child removals and keep families intact. The most promising models are systems that are informed by community trauma and embrace broad responsibility for healing and wellbeing, going well beyond basic social services.
- Adaptive child safety systems have three tribal pillars: laws and codes; child family programs; and community supports.
- Many tribes have established comprehensive, culturally-attuned codes and courts, and are animating their laws and community services with traditional values that honour child and community wellbeing.
- Tribal law is often recognised as helping to resolve internal conflicts or approach an issue in a more traditional way, such as using customary adoptions to preserve family relationships, rather than permanently severing parental rights.

- The Mille Lacs Band of Ojibwe (Minnesota) recently established a Family Healing Wellness Court, and directs that court to, for example: provide intensive services and more frequent court intervention to prevent family breakup and facilitate reunification; improve the safety and wellbeing of children whose families are affected by substance abuse, trauma and mental health conditions; prevent prenatal exposure of infants to alcohol and other controlled substances; expedite family reunification; and reduce the length of out-of-home placements.
- Against the backdrop of tribal codes and courts, tribal systems provide a range of community-based services and partner directly with families to meet particular needs. Services include family preservation, foster care, mental health care, substance abuse treatment, and employment, housing and financial assistance. The Family Healing Wellness Court is supported by a multidisciplinary team that culturally and collaboratively supports families involved with the child safety system.
- A collaborative research study by the Native Nations Institute (University of Arizona) and the National Indian Child Welfare Association examined over 100 tribal codes to determine the range of authority over child safety matters. The study analysed eight aspects of tribal policies, namely: culture, jurisdiction, tribal-state relationships, child abuse reporting, paternity, foster care, termination of parental rights and adoption. Among lessons learned, the study suggests that cultural values have the most positive impact on outcomes. For example, many tribal codes set a higher burden of proof to remove a child from their home and disallow termination of parental rights, favouring instead customary adoption. Placement preferences favour grandparents and extended family. The study validated the central tenet of self-determination: the most important and effective approach to supporting families and safeguarding children is through tribal governance.

Analysis

In 2014, Heather Sculthorpe (TAC) observed that the constitutions of most of the USA tribal nations and agreements between USA states and tribes are invariably heavily influenced by mainstream US Government agencies, rather than tribal law:

[ICWA] ... has been studied extensively and is often propounded as a model for other systems of Aboriginal child welfare. Indeed, some commentators have described this system as “an example of a complete autonomy model with recognition of Indian tribal jurisdiction over legislative, judicial and administrative matters pertaining to indigenous children.” In reality, the jurisdiction of the ... tribes is far from complete autonomy.

Part 2: Churchill Fellowship – Candice Butler (QATSICPP)

In 2023, Candice Butler (Director, QATSICPP Centre of Excellence) visited New Zealand, Canada and USA on a Churchill Fellowship to examine how other First Nations were progressing work on the transfer of authority for child safety powers and functions. Butler's key learnings are:

1. Strong legislation to ensure the transfer of statutory powers and functions to First Nations communities

All jurisdictions highlight the importance of the best interests of the child, focusing on upholding the Placement Principle.

Port Gamble and Lummi Nations (USA) provide examples of communities successfully creating their own tribal laws, through their own processes, allowing decisions to be made in a way that is culturally grounded and keeps children in community, connected with kin and culture. They also demonstrate accountability mechanisms to draw upon when working alongside governments and enabling First Nations decision-making.

Canada and USA have federal child safety legislation. While Butler identified some weaknesses in Canada, USA and New Zealand, she concluded that Australia should still pursue national legislation that allows for child advocacy, safety and the ability to draw on rights for First Nations children, families and communities, with legislation that includes at a minimum:

- recognition of the right to self-determination
- ensuring cultural rights of the child are at the forefront and that there is ongoing connection to kin, community and culture
- all elements of the Aboriginal and Torres Strait Islander Child Placement Principle
- transfer of statutory functions and powers.

2. First Nations-led processes

Embed cultural knowledge and governance

Vancouver (British Columbia, Canada) looked to the wisdom of ancestors and ensured that they drew upon traditional child-rearing practices and indigenous governance structures.

Driven by the community

It is important that Aboriginal communities are not only brought along on the journey, but that the powers and functions implemented are grounded in community. Governments need to ensure that ACCOs are given time to engage with communities to understand their aspirations and visions. ACCOs also need to ensure that all community stakeholders who interact with child safety authorities are included in conversations.

Honour time

Take time to build relationships, not only with and between First Nations communities, but also within and between government agencies and those communities.

Have courageous conversations

Participants must be able to express their views and concerns, and develop risk mitigation strategies if necessary, including working through unconscious bias.

First Nations leadership at every level

Success is evident when First Nations people are at the table, bringing with them a mix of leadership and credibility. First Nations roles should be embedded in government and ACCOs, in order to oversee the design, development and transfer of child safety authority.

3. Embedding strong practice

First Nations Practice Framework

First Nations-informed practice frameworks developed through collaborations with Elders, families and children are important, drawing upon First Nations ways of being, doing and knowing. Frameworks should be trauma-informed, strengths-based and ensure that children, families and communities have a voice and choice.

Treaty of Waitangi is at the core of positive shift in the Oranga Tamariki practice framework, the implementation of which is promoted, embedded and led by First Nations and non-First Nations personnel within Oranga Tamariki in areas including: working alongside local communities; and providing training, supervision, coaching and guidance to teams across NZ.

Key First Nations roles

In NZ, practice frameworks are being promoted, embedded and led by First Nations and non-First Nations roles within Oranga Tamariki. While there is a level of frustration about how long it takes for staff to 'jump on the bus' of First Nations-informed practice, staff are committed to staying the course to achieve full implementation because they acknowledge this is a key element of better decision-making and better outcomes for children.

Active efforts

Active efforts should be consistent with the social and cultural conditions of each child, in partnership with parents, extended family members, custodians and tribes.

Practice Leads

Most First Nations organisations examined had embedded Practice Lead roles in organisations. Incumbents of these roles are valued by leadership and are First Nations people, either from or with links to the local area. These individuals understand the impacts of colonisation, know families in the area and are able to walk alongside practitioners and leaders to embed a culture of strong First Nations practice.

4. Policies that support and enable change

Developing strong First Nations policies

The development, implementation and evaluation of policy by First Nations organisations is critical to the transfer of statutory child safety powers and functions.

The experience of Vancouver Aboriginal Child and Family Services Society shows that First Nations sovereignty is first and foremost in determining best practice. While there may be initial government pushback, success can be achieved by standing strong and working with government. This experience highlights the importance of having staunch policy specialist allies working alongside First Nations people to develop strong First Nations policies.

California's Office of Tribal Affairs highlighted the importance of closing the gap between policy development and implementation: when policy is developed, equal attention should be given to how, when and by whom that policy will be implemented.

Accountability

Canada's Dnaagdawenmag Binnoojiiyag Child and Family Services' policies use simple, concise and action-oriented language to ensure that staff and partners are able to easily understand and put principles and policies into practice. They also provide holistic, culturally-informed guidance for staff performance reviews and supervision.

Research demonstrates the critical need to establish robust evaluation of policy effectiveness, including opportunities for children, families and communities to hold decision-makers to account. The learning for Lutruwita is that the voices of Aboriginal children and families must be included when policies are developed, implemented and reviewed.

5. Programs that heal the mind, body and spirit

Programs that are developed and led by First Nations peoples are proven to offer the best fit for their communities and demonstrate the importance of restorative practice.

6. Cultural authority

The experiences of all jurisdictions demonstrate the importance of First Nations leadership and cultural authority at all levels, such as through listening to and working in accordance with the voices of Elders.

It is important to recognise the need to listen to the voices of those with cultural authority, whether Elders, other adults or children, in designing a system through which child safety decision-making can be truly reclaimed.

The experiences of other jurisdictions shows that First Nations people in leadership roles 'get it', that is they understand the ongoing challenges of living and working in a First Nations community and the subtle – or not so subtle – racism that may occur in the wider community.

7. Listening to the voices of children

Seeking out and giving children opportunities to actively participate, and then listening to and seriously considering their voices and wishes is critical in all areas of child safety.

8. The opportunity for youth justice

The role of First Nations communities in determining options, processes and pathways for youth justice continues throughout the child safety continuum.

9. Research and evaluation

Two research and evaluation methodologies can be drawn upon to evaluate options for transferring statutory powers and functions: Participatory Action Research; and Transformative Participatory Evaluation.

Research and evaluation should be undertaken by and for First Nations peoples, supported by genuine partnerships with First Nations organisations and universities. When First Nations people are the researchers – not just the researched – research is transformed: questions are framed differently; problems are conceptualised differently; and participants engage on different terms.

10. Accountability to children, families and communities

All First Nations child safety policies and practices must be transparent and demonstrate accountability, not just to the immediate family of a child but to their extended family and community. Canada's First Nations Caring Society is an example of an advocacy organisation that works to ensure the safety and wellbeing of First Nations children and their families through education, public policy campaigns and quality resources to support the community.

Accountability also covers resourcing and funding for ACCOs. Canada's First Nations Caring Society highlights the importance of equality in funding and resourcing. Funding parity is not just about service delivery; it is also about ensuring resources for policy development, research and evaluation, and ongoing practice support and development. Prevention and early intervention efforts must be funded to at least the same levels, but preferably more than responding to immediate risks to child safety.

Other successful accountability mechanisms include establishment of commissioner roles and child safety peak bodies for Aboriginal children. Where strong accountability mechanisms exist, there is likely to be greater self-determination for Aboriginal people.



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