

NUKARA

FIBRE 5
ACTIVE
EFFORTS

FIBRE 5

Active efforts: commitment to implementing the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of active efforts.

***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

Active efforts: commitment to implementing the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of active efforts.

The purpose of the Aboriginal and Torres Strait Islander Placement Principle (Placement Principle) is to recognise and uphold the rights of Aboriginal children to stay connected to family, community, culture and country when child safety interventions occur. When Aboriginal children are assessed as being unable to live safely in the family home, the Placement Principle prioritises the placement of those children in alternative living arrangements with other members of their family or within their cultural community, if possible.

It is widely recognised that **active efforts** are essential to ensuring the Placement Principle is more than just legislative 'guidance' or a public policy commitment: the Placement Principle must be fully embedded in child-safe practice. Active efforts involve the requirement to take affirmative, active, thorough and timely action to maintain or reunite an Aboriginal child with their family. This is generally viewed as the 'gold' standard of practice in applying the Placement Principle.

The Tasmanian Government (Government) has committed to taking actions under the national *Safe and Supported Partnership Agreement*, including Action 5 of our *Safe and Supported Action Plan* which is to implement the Placement Principle to the standard of active efforts.

Changes to Tasmanian legislation and practices are required to mandate and ensure accountability in applying the Placement Principle to the standard of active efforts, consistent with the approaches taken by Queensland (*Child Protection Act 1999*) and USA (*Indian Child Welfare Act 1978*), and similar progress underway in other jurisdictions.

This document summarises the findings of research and consultation undertaken in developing *Nukara* and proposes a pathway for establishment of the legislative and practice foundations needed to ensure adherence to active effort standards in applying the Placement Principle, including to:

- amend the *Children, Young Persons and Their Families Act 1997* (the Act) to:
 - mandate the application of active efforts to apply the Placement Principle
 - recognise a rebuttable presumption that the best interests of an Aboriginal child are inextricably linked to the best interests of the Aboriginal community, and the best interests of both lie in keeping Aboriginal children within that community
 - include other provisions that will support adherence to active efforts by enabling the transfer of statutory functions and powers to the Tasmanian Aboriginal Centre (TAC), on behalf of and representing the Aboriginal community in Lutruwita (refer to *Fibre 1: Lawful authority* for more information about legislative reform)

- embed adherence to active efforts in the proposed Aboriginal practice framework and Aboriginal workforce strategy (refer to *Fibre 4: Aboriginal workforce*), and across the existing and new TAC service programs that comprise the *Tirrina* model
- work with Child Safety Service (CSS) and other services providers to embed system-wide adherence to active efforts in the policies and practices of other organisations.



Fibre 5: Active efforts

CURRENT SITUATION

The Placement Principle was developed in the 1970s-1980s, in response to the forced removal of Aboriginal children from their families, driven by Aboriginal community organisations and advocates fighting for self-determination and the rights of Aboriginal children to remain connected to family, community, culture and country.

In 1984, the Placement Principle was formally recognised and adopted by Victoria, followed by recognition and adoption in other Australian states and territories. Over time, the Placement Principle has been incorporated into Australian child safety laws and policies nationwide, although its implementation varies across jurisdictions.

The Placement Principle aims to:

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

In Lutruwita, more work is needed to ensure consistent statewide, system-wide and transparent application of the Placement Principle to the standard of **active efforts**. That means ensuring accountability across government and non-government organisations for practical implementation of all five elements of the Placement Principle: **Prevention, Partnership, Placement, Participation and Connection**. More information is provided at [Appendix A](#).

Local application of the Placement Principle is guided by section 10G of the Act. Despite the current legislative framework, more work is needed to ensure there is consistent statewide and transparent application of the Placement Principle in Lutruwita. This is evidenced by the lack of state-level progress towards achieving Closing the Gap Target 12, which is to reduce the over-representation of Aboriginal children in out-of-home care by 45 per cent by 2031.

Agreed national approach to ensuring active efforts

At a national level, it is recognised and agreed that jurisdictions must ensure active efforts are taken to apply the Placement Principle to professional practice in a manner that is proactive, thorough and timely. The national requirement for active efforts is embedded in the *Safe and Supported Aboriginal and Torres Strait Islander First Action Plan 2023-2026*.

To further the application of active efforts, [SNAICC – National Voice for our Children](#) developed a comprehensive [resource](#) to enhance implementation of the Placement Principle, designed primarily for professionals working in the legislation, policy and program design sectors.

Overview of current status

In 2019-20, SNAICC was engaged to review the Tasmanian Government's progress in implementing the full intent of the Placement Principle. The review was informed by a best practice, active efforts approach, and considered Tasmanian Government efforts from 1 May 2019 to 30 April 2020. The SNAICC review found that:

Tasmania continues to have limited alignment of legislative, policy and process frameworks to meet the full intent of the [Placement Principle]. Limited mechanisms to ensure Aboriginal participation in policy reform, decision-making, system and service design or delivery has resulted in a child safety system that does not always meet the needs of Aboriginal children, their families and communities. Key findings for each element include:

Prevention: continued investment in the Intensive Family Engagement Services program is positive; however, the investment in family support and intensive family support services as a percentage of total expenditure on child protection and family support-related services remains low (13.1 per cent).

Partnership: there continues to be a lack of design, development and delivery of policy and programs in Tasmania by Aboriginal organisations. Tasmania is one of only two states and territories that does not provide data on the proportion of expenditure on [Aboriginal Community Controlled Organisations] ACCOs, making it difficult to track and report any improvements in implementing this element.

Placement: there have been no identifiable efforts by the [relevant department] ... to implement the Placement element of the [Placement Principle] during the reporting period. This is concerning, given that the number of children placed with Aboriginal carers decreased from 15 per cent in 2018 to 13 per cent in 2019 and has been steadily decreasing over the last decade.

Participation: few efforts have been made to embed [the Participation element of the Placement Principle] into policy and programs in supporting children, families and communities to participate in decision-making, affecting their care and protection. A review of the Act will take [all elements of the Placement Principle] into consideration.

Connection: there has been a concentrated focus [by the relevant department] to improve the identification of Aboriginal children involved with the CSS. The Permanency framework continues to be of concern for Aboriginal children and raises concerns over the reunification process.

There is currently limited implementation of all elements of the [Placement Principle] in Tasmania. Much work remains to be done to realise the [Placement Principle] across all aspects of the child [safety] system.

Family Matters findings

Family Matters is an annual, national publication that holds governments to account for progressing Target 12. In 2024, **Family Matters** reported that:

- since 2019, Tasmania has seen an **eight per cent increase** in the Aboriginal out-of-home care population
- Aboriginal children are **5.6 times more likely** than non-Aboriginal children to be in Tasmania's child safety system and the number is growing
- TAC's family support and health programs currently provide grassroots family and community support, targeting early intervention. Family support has a broad focus and a team dedicated to preventative action and day-to-day issues, including housing, budget demands and family breakdowns. Health programs cover physical, mental, emotional, spiritual, social and cultural wellbeing
- in 2022-23, **only 17 per cent** of Aboriginal children in Tasmania's out-of-home care system were placed with Aboriginal relatives or kin, which is well below that year's national average of 32.2 per cent.

CONSULTATION FINDINGS AND ANALYSIS

Consultation on development of the *Nukara* strategy and *Tirrira* model considered how *Fibre 5: Active efforts* could and should be applied in a practical – rather than a legal – context. Discussions generally focused on issues and concerns around what is **not** currently happening and the detrimental impact this has on Aboriginal children.



Voices of the weavers

Community voices

Placement Principle: Placement element

Within the premise of active efforts is the expectation that professional practice is guided by all five elements of the Placement Principle (see [Appendix A](#)). Widespread community responses to that expectation is:

'Why then are Aboriginal children still being taken into care, and into non Aboriginal people's homes? And why are Aboriginal families and community representatives still not included in all decision-making processes?'

During consultation, community spoke about situations in which CSS had planned to place an Aboriginal child with 'white strangers' even though family placement was available; a practice that contradicts and undermines the intent of the Placement Principle. Community describes this as 'disgusting and heartbreaking but not surprising', particularly as similar situations continue to occur, irrespective of the existing legislative and policy framework.

Community voiced a strong call for TAC to step in and help to prevent practices that do not demonstrate active efforts to apply the Placement Principle. Community acknowledges that sometimes families cannot get the job done alone and part of TAC's role should be to support and empower families needing help.

Placement Principle: Participation element

Right across Lutruwita, there is resounding community consensus that families must always be actively involved in decisions about the safety and wellbeing of their children. Community is emphatic that the family's voice and perspective are essential for making well-informed, culturally and contextually appropriate decisions. Community members emphasise that the family's role in decision-making is ongoing and must be integrated into every stage of the child safety continuum:

'The role of the family does not just stop. They don't stop being responsible or caring. They are always responsible for the safety of the child. The family need help and the next step should be getting a team of people to help them.'

One community participant shared their experience when invited to attend a CSS meeting to talk about their son:

'There were so many people in the room, I had no idea who was who. People were talking directly to the carers of my son and asking them what was happening at school for him. Can you imagine how that felt? I was invisible in the room. I felt ashamed.'

The community considers it deeply insensitive to invite Aboriginal families to participate in processes without giving them a genuine voice or decision-making power - leaving them feeling invisible and powerless.

There are many stories about Aboriginal parents' experiences of fear and confusion during and after court appearances:

'Me, the mother of an Aboriginal child in care, to this day have absolutely no idea what length of order my child is on, no idea where they live, and I haven't had contact with them for over six months.'

Stories such as these are common and ongoing, and the community is calling for change.

Placement Principle: Prevention element

Everyone who attended the community workshop agreed that TAC's family support programs are not adequately resourced to prevent Aboriginal children from being removed from their families by CSS. There is an urgent need for increased funding to expand TAC's prevention and early intervention programs across the state, enabling TAC to provide effective, culturally safe supports that will help keep families together. There was a strong view that the community prefer to work with TAC when seeking family support, rather than another service providers.

Placement Principle: Connection element

The experiences of many parents of Aboriginal children in care is that they are not asked about their children's cultural needs by CSS. TAC's Takariliya Taypani program supports the case management of Aboriginal children in out-of-home care, but responsibility for case planning remains with CSS. Since the program was introduced, approximately 30 children have received support: however, only one child had a cultural plan in their child safety care-plan.

There is a strong view that TAC should be resourced to get Aboriginal children who are in care, out on country and connected to the land. Many conversations during consultation focused on getting children to local festivals and camps. Additionally, where Aboriginal children are living in non-Aboriginal placements, it was suggested that non-Aboriginal carers and/or family members be invited and encouraged to attend events, where appropriate.

Placement Principle: Partnership element

Many community members see TAC's role as advocating, supporting and facilitating the reunification of Aboriginal children with families. Furthermore, there was a recognised need for TAC and CSS must work together to prioritise each child's right to autonomy, to have a voice, and to be genuinely heard in decisions that affect their lives.

'Self-determination of children, families and communities is realised through having choice and a voice in decision-making.'

TAC staff voices

Placement Principle: Partnership, Placement and Connection elements

A consistent theme from consultation with the TAC workforce is that the more staff become aware of and engage with Aboriginal children in out-of-home care, the more their concerns increase, particularly around the children's lack of connection with their family, community, culture and country.

TAC staff have expressed growing concern for the wellbeing of Aboriginal children where there is a clear lack of regard for their cultural needs. These concerns are heightened when TAC staff are unable to identify or connect with Aboriginal children placed in non-Aboriginal placements.

A major concern raised by staff is the disproportionate weight and preference given to the voices of non-Aboriginal carers. While these carers may meet the basic daily needs of Aboriginal children, the children risk experiencing significant harm if they are not connected to their family, community, culture, and country.

TAC staff continue to help many children with family-finding and/or building relationships with their family. Staff report that, at times, the positive outcomes of these efforts may be significantly downplayed or obstructed by non-Aboriginal carers and CSS.

One example provided during consultations involved a situation in which a TAC worker accompanied a young person to a large community festival, at which an opportunity arose for the child to meet their great-aunt. The moment was described as one of *'celebration and joy'*. Afterwards, the young person told the TAC worker that it was like looking in a mirror, and she couldn't believe how much she looked like her great-aunt. The next week, the TAC worker received 'please explain' correspondence from CSS, stating that the carer felt blind-sided and believed that TAC acted behind their back, causing the child stress by introducing her to her family.

'It is not ok and just plain embarrassing that CSS talks this big talk, but when it comes to family and cultural connections for our children, the voices of the carers, the Department and even the non-government organisations supporting the carers have voices that are louder than ours.'

TAC workers identified this example as a major concern, expressing worries about the ongoing placement of Aboriginal children with non-Aboriginal carers, particularly when the children have no contact with their family or community. These concerns are further compounded by the perception that both the carers and CSS lack understanding of, or disregard the importance of these vital cultural connections.

Placement Principle: Participation element

In consultation forums, TAC staff expressed the desire to understand why CSS, does not appear to proactively support the reunification of Aboriginal children with their families. Staff note that Aboriginal children are generally not being reunified and that this does not appear to be a priority for CSS. The perception is that CSS focuses on risk-based obstacles rather than possible solutions and enablers to support reunification.

Prior to seeking orders to remove Aboriginal children from their families and place them in out-of-home care, statutory child safety agencies are currently required to clearly document and articulate to the courts the active efforts they have taken, ideally across all elements of the Placement Principle. Active efforts should always ensure the participation of family and community representatives when those decisions are made.

To support families to participate in decision-making, they should be offered financial and transport assistance, as well as personal support to attend family conferences, meetings and court. Without such support, it may be extremely difficult, or even impossible for families to be physically present, resulting in decisions being made without their voices being heard and considered.

Placement Principle: Prevention element

TAC staff are concerned about shortcomings in the level of recognition within government and non-government organisations in relation to Aboriginal values, strengths and 'ways of doing'. This raises concerns among TAC staff that a one-size-fits-all approach remains at the forefront of decision-making.

Voices of other stakeholders

Placement Principle: all elements

In consultation forums, stakeholders working with or having a connection to the child safety system were asked if they were aware that Aboriginal children were:

- a) still being removed from their families and placed in out-of-home care with little or no consultation with Aboriginal families and organisations, and
- b) still being placed with non-Aboriginal carers.

The stakeholders present expressed disappointment in these ongoing practices and were curious as to how this situation was able to continue in contravention of the Placement Principle. In response, forum facilitators inquired about stakeholders' perceptions of their obligation to ensure *active efforts* and were asked to raise this question within their workplaces.

In the forums, many stakeholders acknowledged that they receive specific funding to support Aboriginal people and build partnerships with Aboriginal organisations. Discussions around stakeholders' interpretations of the meaning of 'partnership' revealed widely-held understandings viewed through a narrow lens, with stakeholders using terms such as 'shared goals', 'consultation' and 'collaboration'.

The Aboriginal community and TAC understand very well that genuine partnerships involve much more and, when done properly, partnerships between Aboriginal and non-Aboriginal organisations can create an environment in which Aboriginal people and communities are supported and encouraged to achieve self-determination and shape their lives according to their own values and beliefs, not those that may be imposed on them.

Stakeholders participating in the *Nukara* consultation process agreed that TAC should be fully resourced and supported by the Tasmanian Government to take on statutory responsibility for keeping Aboriginal children safe. These stakeholders also committed to fostering genuine partnerships including providing training to upskill the TAC workforce.

JURISDICTIONAL SCAN AND ANALYSIS

Review of Australian states and territories

In Victoria and Queensland, ACCOs are currently focusing on the transfer of statutory decision-making. While legislation in both states allows for the delegation or authorisation of many functions or powers at any point along the child safety continuum, the work of ACCOs in both jurisdictions to date tends to focus on the delivery of programs to support the connection of Aboriginal children on court orders with their family, community, culture and country. More information on the progress of Victoria and Queensland is provided in Fibre 1: Lawful authority.

In Queensland, active efforts are embedded in provisions of the *Child Protection Act 1999*, requiring the relevant authority to make purposeful, thorough and timely efforts to apply the Placement Principle. The objective is to ensure that all decisions prioritise cultural safety, connections to family, community, culture and country, and self-determination for Aboriginal children and their families.

ACCOs in South Australia have recognised that current child safety assessment tools are not culturally appropriate, and that this has a detrimental impact on the over-representation of Aboriginal children in the out-of-home care system. South Australian ACCOs are working with their interstate counterparts to conduct a national review of the appropriateness of existing child safety assessment tools, with the aim of informing development of a stronger, more culturally sensitive model and toolkit for child safety practitioners.

Alignment with national and state commitments and enablers

The Tasmanian Government has made formal commitments to national and state agreements and initiatives to implement the Placement Principle to the standard of active efforts. The most relevant of these are summarised in the table below.

INITIATIVE	COMMITMENT
Safe and Supported Aboriginal and Torres Strait Islander First Action Plan 2023-2026	<p>Action 5(a):</p> <ul style="list-style-type: none"> Develop national standards for active efforts <p>Action 5(b):</p> <ul style="list-style-type: none"> Develop jurisdictional plan for the Placement Principle <p>Action 5(c)(i):</p> <ul style="list-style-type: none"> Review existing indicators (Australian Institute of Health and Welfare partnership) <p>Action 5(c)(ii):</p> <ul style="list-style-type: none"> Progress development and implementation of national reporting (indicators, data collection, published reports) <p>Action 5(d):</p> <ul style="list-style-type: none"> Report on specific indicators at state and territory levels
Safe and Supported Action Plan 2021-31	<p>Action 8(a):</p> <p>Promote dissemination and use of Placement Principle resources, building on Action 5 work to enhance implementation of all elements of the Placement Principle to the standard of active efforts</p>
Commission of Inquiry findings and recommendations	<p><i>'Aboriginal children, parents and family members must be able to participate in all ... decisions affecting them, including placement decisions ... this requires practices such as Aboriginal family-led decision making and respect and acknowledgment of cultural authority and traditional child-rearing practices. The 'participation' element is reflected in Standard 3 of the National Out Of Home Care Standards, which requires that Aboriginal communities 'participate in decisions concerning the care and placement of their children and young people.'</i> (Vol 4: 147)</p> <p>Recommendation 9.15(a) to (j):</p> <ul style="list-style-type: none"> Fully implement and ensure compliance with all elements of the Placement Principle, across government and non-government sectors of Tasmania's child safety system

INITIATIVE	COMMITMENT
Closing the Gap	Closing the Gap: All priority areas and Target 12
National Agreement reforms, targets and sector strengthening plans	Early Childhood Care and Development Sector Strengthening Plan: <ul style="list-style-type: none"> Develop jurisdictional plans for developing and resourcing ACCO functions, aligned to the five elements of the Placement Principle
Family Matters 2024	Recommendation 9: <ul style="list-style-type: none"> Legislate that ACCOs must approve permanent care orders Partner with ACCOs to promote stability and permanency, ensuring ACCOs have information and roles to ensure ongoing cultural connections Recommendation 10: <ul style="list-style-type: none"> Nationally consistent standards for family support, legislation, policy and practices apply active efforts across all elements of the Placement Principle Recommendation 11: <ul style="list-style-type: none"> Increase investment in reunification

International

Active efforts is the gold standard of practice that other nations (including Australia) are trying to emulate. The concept originated in the *Indian Child Welfare Act 1978* (USA), which sought to establish a legal standard for responding to the widespread, systemic removal of Native American children from their families and communities. The legislation defines active efforts as: *'affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian Child with his or her family'*.

Since 1978, the active efforts concept has been adopted globally, particularly in jurisdictions such as Canada and Australia, as part of efforts to address the over-representation of indigenous children in state care.

In 2023, Candice Butler (Director, QATSI CPP Centre of Excellence) visited USA, Canada and New Zealand 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 research included review of the steps taken to embed adherence to active efforts standards in legislation and practice.

Butler's findings include that active efforts *'should be provided in a way that is consistent with the child's prevailing social and cultural conditions and it should be conducted in partnership with the child's parents, extended family members, [cultural] custodians and tribes'*.

THE WAY FORWARD

Nukara proposes a pathway for establishment of the legislative and practice foundations needed to ensure adherence to active efforts standards in applying the Placement Principle, including to:

- amend the *Children, Young Persons and Their Families Act 1997* (the Act) to:
 - mandate the application of active efforts to apply the Placement Principle
 - recognise a rebuttable presumption that the best interests of an Aboriginal child are inextricably linked to the best interests of the Aboriginal community, and the best interests of both lie in keeping Aboriginal children within that community
 - include other provisions that will enable transfer of statutory functions and powers to the Tasmanian Aboriginal Centre (TAC), on behalf of and representing the Aboriginal community in Lutruwita (refer to Fibre 1: Lawful authority for more information about legislative reform)
- embed adherence to active efforts in the proposed Aboriginal practice framework and Aboriginal workforce strategy (refer to Fibre 4: Aboriginal workforce), and across the existing and new TAC service programs that comprise the *Tirrina* model
- work with CSS and other relevant services providers to embed system-wide adherence to active efforts in the policies and practices of other organisations
- declare TAC to be a recognised Aboriginal organisation to be able to perform specific functions under the Act.

Next steps

The next steps for implementing the Placement Principle to the standard of active efforts include to:

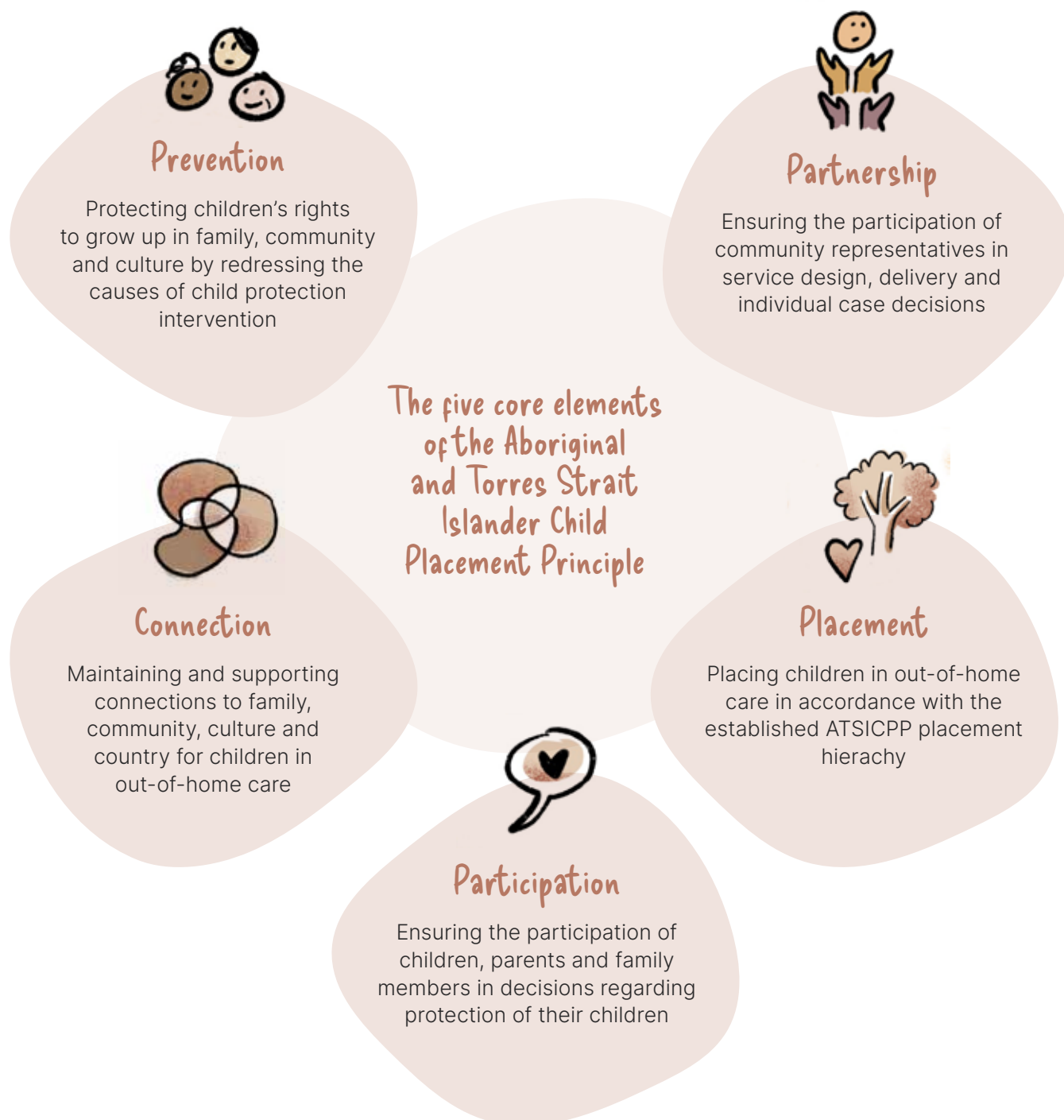
- include the requirement for adhering to and applying the Placement Principle to the standard of active efforts in all partnership agreements, including the overarching formal partnership and funding agreement between TAC and the Tasmanian Government
- review currently documented TAC policies, procedures and practices against the standard of active efforts, and update as required
- review the currently documented policies, procedures and practices of government and non-government child safety service providers against the standard of active efforts, and update as required
- work with CSS to design and implement a process to immediately identify each child's Aboriginal status as soon as the child comes into contact with the government's child safety system, supported by policies and practices for next steps when Aboriginal children are identified
- as an interim measure, ensure that CSS includes a cultural plan for all Aboriginal children in out-of-home care statewide, developed in consultation with and approved by the child and their family
- review and integrate the work of South Australia and other jurisdictions in developing a new, culturally-informed child safety assessment model and toolkit for practitioners

- develop and implement a family-finding process to keep Aboriginal children connected to community, culture and country, and communicate and incorporate that process into all child-safe practices by TAC, CSS, ARL and other service providers
- implement educational campaigns to transform ways of thinking across the child safety sector and broader community by encouraging truth-telling, improved understandings of active efforts, and the underlying importance of connections with family, community, culture and country in ensuring the safety and wellbeing of Aboriginal children, including ways in which those connections may be maintained or reestablished.



Appendix A: Five elements of the Placement Principle

The Aboriginal and Torres Strait Islander Placement Principle (Placement Principle) comprises five core elements, as depicted by SNAICC:





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