

NUKARA

FIBRE 6
LEGAL
SUPPORTS



FIBRE 6

Legal supports: commitment to improving the availability and quality of legal support for Aboriginal children and families engaged with the child safety system.

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

Legal supports: commitment to improving the availability and quality of legal support for Aboriginal children and families engaged with the child safety system.

Improving the availability and quality of legal support provided to Aboriginal children and families will ensure that they have access to the resources and representation they need to navigate complex systems, secure the best outcomes for their families, present their cases at court and protect their rights.

Aboriginal people are more likely to engage with legal supports and services they trust; those that understand and respect their circumstances. Culturally safe and trusted services empower Aboriginal families to actively participate in legal processes, fostering a sense of control and confidence that their situation is represented accurately and respectfully.

The Tasmanian Aboriginal Centre (TAC) is working on behalf of the Aboriginal community to ensure that the voices of Aboriginal children and families are heard and considered when decisions are made that affect their lives, including decisions about legal interventions to keep children safe.

The Tasmanian Government has committed to taking action under the national *Safe and Supported Partnership Agreement*, including Action 6 of our *Safe and Supported Action Plan*, which is to improve the availability and quality of legal supports for Aboriginal children and families engaged with the child safety system.

Fibre 6 aims to ensure that Aboriginal legal services in Lutruwita are readily available, culturally sensitive, respectful and inclusive. That means creating environments in which Aboriginal people are empowered to have a voice, feel that their views and experiences matter and are valued, and that their voices are heard free from discrimination or marginalisation.

This document summarises the findings from consultation and research and proposes a pathway to deliver culturally appropriate legal support and services for Aboriginal children and families.

The proposed approach aims to ensure that:

- TAC's child-safe programs provide community members with clear information about the legal rights of Aboriginal children and families, including the availability of legal support services and actively encouraging help-seeking when needed
- legal support is made available at prevention and early intervention stages to stop issues from escalating, particularly in areas affecting the safety of Aboriginal children, such as family violence and related legal disputes
- strong linkages are established between the child-safe service programs of the *Tirrina* model and culturally-safe legal support and services
- specialised training in culturally sensitive legal representation is developed and is offered to all legal services
- Aboriginal legal services within TAC are reinstated with secure and ongoing funding to ensure long-term sustainability.

CURRENT SITUATION

Access to culturally attuned, quality legal support and services is essential for the effective and timely resolution of matters to ensure the safety of Aboriginal children. Court decisions about alternative living arrangements, the need for interim assessment orders, and placing children in out-of-home care have long-lasting impacts on Aboriginal children, families and community.

In 1973, TAC was funded by the Australian Government to deliver a culturally safe, trusted and timely legal service for the Aboriginal community in Luruwita. The service was maintained for 40 years until government funding was withdrawn in 2015 and the service had to be discontinued. There is currently no funding for TAC to provide legal support or services, despite the fact that Aboriginal children and families are disproportionately involved in legal processes across the child safety and youth justice systems.

Since TAC-provided legal services were discontinued, Aboriginal children and families are required to seek mainstream legal services that are generally not culturally safe or trusted. Many Aboriginal families engaged with the child safety sector cannot afford private legal advice and representation, and have to rely on free legal services. When families attempt to navigate overlapping and complex legal issues, they are particularly exposed to adverse outcomes and are unable – or not confident enough – to exercise their rights or make their voices heard. The injustice of unequal access to quality legal assistance creates significant barriers that can ultimately contribute to the over-representation of Aboriginal children in the child safety system.

As revealed through consultation, legal services in general do not display a deep understanding of the unique social, cultural and historical factors impacting Aboriginal people, nor do they understand Aboriginal strengths and values or how best to empower them. Consultation highlighted many stories of clients feeling alienated, uncomfortable or traumatised when trying to navigate legal complexities of the child safety system.

The current situation is compounded by a broader issue associated with the lack of compulsory cultural competency training for law students and legal practitioners.

‘My experience is that in universities we teach the law, but we don’t teach the reality of the law a lot of the time... my experience is that some teachers bring biases into the classroom, their omissions and narratives dictate how they frame their clients. By the time the students get into practice, I fear they have it ingrained in their heads that Indigenous people are problematic, that they’re trouble – not that they carry intergenerational trauma or have complex needs’.

Dr Eddie Cubillo, Mabo Centre Director

CONSULTATION FINDINGS AND ANALYSIS

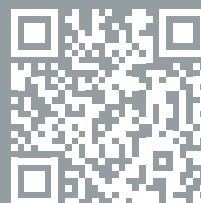
Voices of the weavers

Community voices

Nukara consultation revealed the urgent need for Aboriginal families and children to be active participants in legal decision-making. Community is adamant that their voices must be heard in every matter that directly affects their lives, especially as the current legal system often fails to seek or understand their views.

The community's desire is for TAC to provide a legal service to assist and represent children and families, helping them to exercise their rights to actively participate and be heard during legal proceedings, with due consideration given to the culture and values of Aboriginal people. These rights are grounded in the right to equal protection of the law and protection from discrimination (Universal Declaration of Human Rights, particularly Articles 7 and 10), as well as the right to a fair and impartial hearing that gives due consideration to the customs, traditions, rules and legal systems of Aboriginal people (Universal Declaration on the Rights of Indigenous Peoples, particularly Article 40).

Community conversations revealed the ongoing impact of the Australian Government's decision to withdraw funding for TAC's Aboriginal legal service. Community highlighted that this decision not only marked the end of a trusted, culturally safe legal service, but left many people in the community feeling abandoned and unsupported. Community also made it clear that in order to re-establish an Aboriginal legal service, TAC must receive adequate and ongoing funding. This is considered vital for ensuring access to local, Aboriginal-led legal services and the timely provision of legal support.



Having a voice
Dakota

'The [TAC] legal service represented (the Aboriginal community) in Tasmania for 43 years and ... always received a clear audit report ... [The service was] respected by police, government, welfare and educational structures and resources ... it was respected as an independent agency; a one-stop shop for recourse to [the] complexity of modern life.'

Former Supreme Court judge, Pierre Slicer AO

During consultations, community said that currently Aboriginal people need to access mainstream legal services. Community spoke about their personal experiences of accessing mainstream legal services that demonstrated a significant lack of cultural safety and understanding of 'Aboriginal ways'. They also spoke about how lawyers failed to respect or consider their cultural values and unique circumstances. With this in mind, community highlighted the importance of increasing the cultural competency of mainstream service practitioners and support staff to ensure that the Aboriginal community's needs are being met in a safe and appropriate way.

Many community members are concerned about culturally unsafe biases and assumptions when navigating the child safety legal system and accessing legal support. This is viewed as yet another systemic barrier. Community is calling for greater legal awareness and action to support the reunification of children with their families, and for ensuring that Aboriginal children are connected with their families, community, culture and country.

There is widespread community agreement that a new TAC legal service could assist in increasing community awareness and understandings about legal rights. The community's view is that it is important for the legal team to be funded to provide community legal education to help break down the barriers presented by complex legal jargon and processes.

There are mixed community views about what a new and contemporary TAC legal service would 'look like' in the present day and how the service would best support children and families. The suggested scope of TAC legal services may extend from facilitating legal processes, such as taking on the role of separate representative for children involved in court proceedings under the *Children, Young Persons and Their Families Act 1997* (the Act).

Consultation revealed that community's experience with the current legal system left them feeling confused and unable to follow court proceedings or their lawyer's advice.

While acknowledging current limitations and the need for progressive change, community advocates for a long-term vision that includes the establishment of culturally-safe justice mechanisms, such as a separate 'Aboriginal court system' for criminal matters akin to the Victorian Koori Courts. Future vision discussions also included an Aboriginal community representative model in courts and tribunals for child safety matters.

'In court, it felt like they were talking about my life, my family and our future in a completely different language. I felt ashamed and scared because I couldn't understand. It was awful.'

TAC staff voices

When reflecting on the holistic nature of TAC's service delivery, staff made renewed calls for re-establishing Aboriginal legal services for children and families. This promoted further discussion, highlighting the importance of having a local, Aboriginal-led legal service, designed and delivered by community, as an essential part of TAC's wraparound service programs.

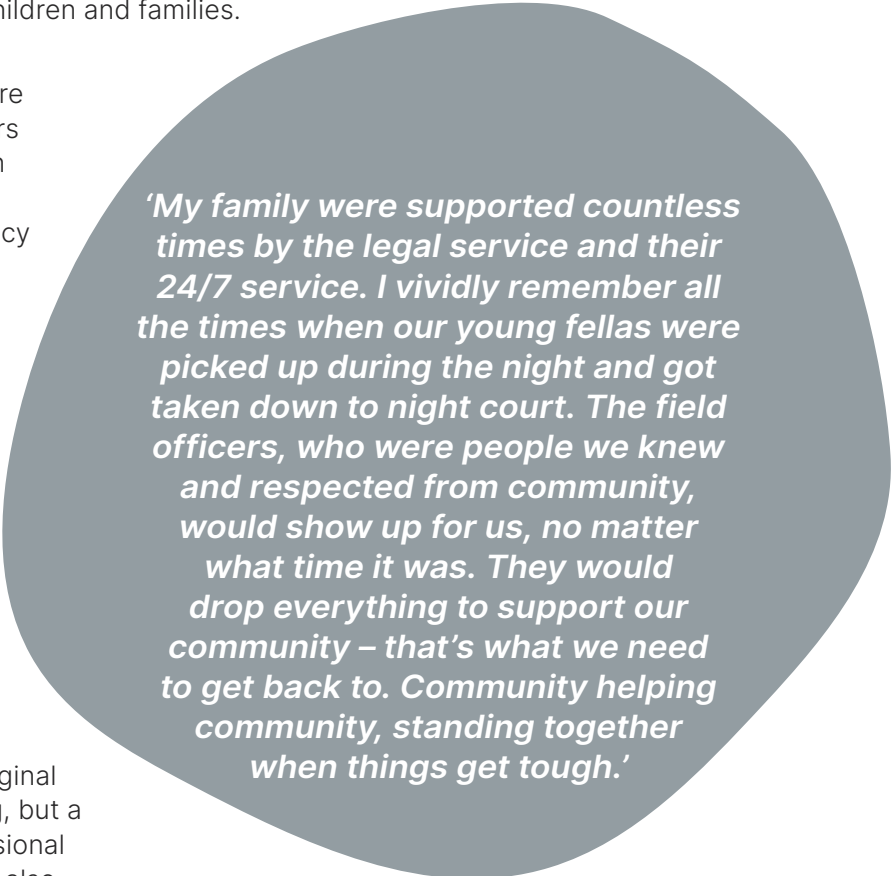
TAC staff are enthused by the possibility of returning to the previous 'one-stop shop' model, where community would be able to access the Aboriginal legal service in the 'same building' as they access their GP or any number of other TAC services.

Staff who were around during the 'old days' reflect fondly on the former legal service and its lawyers, who had a unique and invaluable role in building strong, respectful relationships with the community. TAC lawyers were seen as trusted advocates who worked to ensure that Aboriginal people felt supported and heard, which helped to build trust and confidence in all areas of the legal system.

Re-establishment of the TAC legal service is also seen by staff as having potential to increase the TAC workforce's general knowledge about laws, legal supports and the legal system, which would help them support children and families.

TAC staff highlight the urgent need for more culturally competent and respectful lawyers in mainstream services. In the consultation forums, there was a consistent message: there is a severe lack of cultural competency and understanding within mainstream legal services and the judiciary more broadly. Staff relayed many stories about clients reporting that they felt isolated, powerless and afraid when navigating legal proceedings. Many stories surfaced where clients felt unsupported and confused, particularly when children's court orders were involved.

When reflecting on how to improve legal services for Aboriginal children and families, staff proposed cultural competency training as one way of ensuring that lawyers are better equipped to respectfully and effectively assist Aboriginal clients. This should not be one-off training, but a necessary and ongoing element of professional development for legal practitioners. It was also noted that lawyers, judicial officers and other legal staff should also undertake this training.



'My family were supported countless times by the legal service and their 24/7 service. I vividly remember all the times when our young fellas were picked up during the night and got taken down to night court. The field officers, who were people we knew and respected from community, would show up for us, no matter what time it was. They would drop everything to support our community – that's what we need to get back to. Community helping community, standing together when things get tough.'

TAC staff consider that the unique and unparalleled role that TAC plays in the lives of the Aboriginal community means that it is best-placed to support the community's legal needs. An example was given of a situation in which a young person in out-of-home care was detained on remand at Ashley Youth Detention Centre, on the grounds that an address for bail could not be provided. Although the young person was being supported by TAC, TAC staff were not notified until after they been detained and taken to Ashley Youth Detention Centre. In the 'old days', TAC's legal service had established systems to ensure prompt notification if any Aboriginal person was detained. This would have enabled swift and effective action to prevent the detention of children and ensure they were supported within the community.

Voices of other stakeholders

During consultation, other stakeholders emphasised the critical role TAC plays in helping families coming into contact with the child safety and legal systems. They recognise this work as a vital part of TAC's holistic, wraparound service, filling the gaps left by government and mainstream legal services, but were generally unaware that this work is unfunded. Stakeholders expressed clear views that the Aboriginal community would be better served if TAC legal services were funded and re-established. Concerns were expressed about the current lack of access to culturally safe and appropriate legal representation. Stakeholders strongly agreed that a local, Aboriginal-led TAC legal service was the answer.

JURISDICTIONAL SCAN AND ANALYSIS

Australia

The Council of Australian Law Deans (CALD) recognises the need for Aboriginal communities to have access to legal representation that respects and reflects their cultural values and practices. CALD acknowledges the lack of Aboriginal content in the law curricula of Australian universities, advocating for law schools nationwide to work in partnership with Aboriginal communities to prioritise the development of culturally competent and safe courses and programs.

CALD's Statement on Racial Discrimination states that:

'... CALD acknowledges the part that Australian legal education has played in supporting, either tacitly or openly, the law's systemic discrimination and structural bias against [Aboriginal] peoples.'

The National Aboriginal and Torres Strait Islander Legal Service states the current funding for Aboriginal legal services is insufficient to meet rising costs, despite investments from the national agreements and partnerships. As a result, services are turning away clients, freezing services, and are unable to provide essential support that prevents initial contact with the justice system. Aboriginal people face the highest legal needs in Australia and encounter systemic bias at every stage. Without adequate, needs-based funding, these communities are denied access to justice.

Royal Commission into Aboriginal Deaths in Custody

Systemic racism within the legal system was a key finding of the Royal Commission into Aboriginal Deaths in Custody (1991), which identified that the lack of understanding of Aboriginal cultures contributed to poorer legal outcomes and limited access to justice for Aboriginal people.

Victoria

In their inquiry into Victoria's child safety and criminal justice system, Yoorrook Justice Commission identified the critical need for timely, culturally sensitive legal support to help overcome the systemic barriers and injustices faced by Aboriginal families. The Commission recommended enhancing procedures for the notification to Aboriginal legal service providers in situations such as when Aboriginal children are at risk of being removed from their families.

International

Indigenous legal services in the USA, Canada and New Zealand are designed to address the unique needs of indigenous families and children, with a focus on cultural competence, self-determination and community-based solutions.

USA

In the USA, legal services for indigenous children and families are provided through a mix of federal, state and tribal programs, with a strong emphasis on sovereignty and self-determination for Native American tribes. The arrangements include tribal courts and tribal legal services.

First Nations judicial systems

Many First Nations groups operate their own legal systems, including family law courts, under the authority of tribal sovereignty. Tribal courts handle cases related to child welfare, custody and adoption within their communities, applying culturally relevant laws and practices.

First Nations service delivery

Legal services for First Nation families are provided by a number of organisations, including:

- Native American Rights Fund: offers legal representation and advocacy for families, especially in matters of child safety
- Tribal legal assistance: many tribes offer free or low-cost legal services to their members, especially for matters involving children and families.

Canada

In Canada, indigenous peoples have unique legal rights and structures for child and family services, emphasising self-governance and cultural preservation.

First Nations judicial systems

First Nations judicial systems: Indigenous communities have access to both provincial and territorial legal systems, as well as specialised indigenous court systems in some regions, such as the Indigenous Court Programs of Ontario and British Columbia.

First Nations service delivery

Some legal aid programs cater specifically to First Nation communities:

- Legal Aid Ontario: provides services to First Nation families in Ontario
- Indigenous Bar Association: works on legal reform and provides resources and support for First Nation families and children.

New Zealand

New Zealand has a legal framework that aims to protect the rights of Māori families and children, focusing on cultural practices and principles.

First Nations judicial systems

Te Kōti Rangatahi is a specialist court for children and young people, including those from Māori communities. The court is designed to work with young people, focusing on rehabilitation rather than punishment, with Māori cultural practices incorporated into the legal process.

First Nations service delivery

Māori Legal Aid provides services specifically tailored to Māori communities, including:

- Te Puni Kōkiri provides support and advocacy services for Māori families and individuals navigating the legal system, provided through the Ministry for Māori Development
- Māori Law Society provides resources and support for Māori lawyers and clients, focusing on culturally safe legal services.

Alignment with national and state commitments and enablers

The Tasmanian Government has made formal commitments to *Safe and Supported* and other significant national and state agreements and initiatives to improve the availability and quality of legal support for Aboriginal children and families. 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>	Action 6: <ul style="list-style-type: none">▪ Improve availability and quality of legal supports for Aboriginal children and families engaged with child [safety] systems Action 6 (a): <ul style="list-style-type: none">▪ Scope current and future interfaces between child [safety] systems and relevant legal services Action 6 (b): <ul style="list-style-type: none">▪ Identify and address areas for improvement and commit to addressing the barriers faced by Aboriginal children and families in seeking legal support Action 6 (c): <ul style="list-style-type: none">▪ Develop and implement joint proposal informed by Action 6(a)
<i>Commission of Inquiry findings and recommendations</i>	Recommendation 9.36: <ul style="list-style-type: none">▪ Expand the jurisdiction of the Tasmanian Civil and Administrative Tribunal to include review of child [safety] orders and child participation in the review process Recommendation 9.27 <ul style="list-style-type: none">▪ Improve representation including court support and ongoing case management for children in out of home care

INITIATIVE	COMMITMENT
<i>Closing the Gap National Agreement</i>	<p>Priority reform 3:</p> <ul style="list-style-type: none"> Ensure mainstream bodies that deliver services to Aboriginal people undertake systemic and structural reform. Using a holistic model of care, Aboriginal Community Controlled Organisations (ACCO) have the greatest local impact, by transforming the way services are designed and delivered <p>Clause 38:</p> <ul style="list-style-type: none"> Commitment by all jurisdictions to establishing formal policy partnerships, including the Justice Policy Partnership <p>Clause 49:</p> <ul style="list-style-type: none"> Commitment by all jurisdictions to joint national strengthening efforts including the Justice Sector Strengthening Plan
<i>National Strategic Framework for Information Sharing between the Family Law and Family Violence and Child Protection Systems</i>	<p>Overview of the National Framework:</p> <ul style="list-style-type: none"> High-level commitment to nationally consistent, two-way information sharing between the federal family law courts and state and territory courts, child safety, police and firearms agencies



THE WAY FORWARD

While development of a new child-safe model for Aboriginal children is the highest priority, reinstating an Aboriginal legal service within TAC is an important step towards ensuring culturally competent legal support for Aboriginal children and families.

Re-establishment of the TAC legal service will help Aboriginal families to navigate the child safety system and other legal challenges, while ensuring cultural safety and alignment with the broader objectives of Aboriginal self-determination and justice.

The proposed scope of the reinstated TAC Aboriginal legal service should include consideration of the following:

- seeking and securing ongoing funding
- integrating with the *Tirrina* model to ensure seamless support for families navigating the child safety system
- partnering with UTAS to encourage Aboriginal people to pursue law careers
- recruit Aboriginal legal professionals
- recruiting legal professionals with cultural competence in family law and child safety
- collaborating with culturally safe legal services for access to legal resources and culturally competent lawyers.

Next steps

- Support development of a plan to transition statewide legal supports and advocacy to the TAC.
- Ensure that all TAC child-safe programs provide community members with information on:
 - legal rights of Aboriginal children and families
 - availability of legal support services
 - legal support options at prevention and early intervention stages.
- Establish close linkages between *Tirrina* programs and culturally-safe legal services.
- Develop training on culturally sensitive representation and make these resources available to legal services.



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Nukara 2025