Office of the Aboriginal and Torres Strait Islander Children's Commissioner

Policy Submission

Cairns Public Hearing

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QUEENSLAND Family & Child Commission

OFFICE OF THE ABORIGINAL AND TORRES STRAIT ISLANDER CHILDREN'S COMMISSIONER

Queensland Government

ACKNOWLEDGEMENT OF COUNTRY

The Office of the Aboriginal and Torres Strait Islander Children's Commissioner acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies where we walk, live and work.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging. We acknowledge the important role played by Aboriginal and Torres Strait Islander communities and recognise their right to self-determination, and the need for community-led approaches to support healing and strengthen resilience.

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Contents

Background

"The fundamental principle underlying our recommendations is the right of self-determination for Aboriginal and Torres Strait Islander peoples. Only self-determination can ensure that policies and practices concerning children will be in accord with Aboriginal and Torres Strait Islander values, culture and traditions." [1]

The over-representation of Aboriginal children and Torres Strait Islander children in Queensland's child protection system is not a new crisis—it is the legacy of policies and practices repeatedly condemned by major national inquiries. The Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) is not an exercise in "wokeness", nor is it a case of special treatment for Aboriginal and Torres Strait Islander children. The five elements — Prevention, Partnership, Placement, Participation, and Connection are best understood as a mechanism to remedy entrenched systemic failure. They operationalise rights already enshrined in law for *all children*, ensuring that Aboriginal and Torres Strait Islander children do not continue to be denied protections that have historically been ignored.

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC, 1991) linked child welfare and the removals of Aboriginal children and Torres Strait Islander children to ongoing trauma and distrust of government systems. It warned that the forced removal of children had caused "generations of disruption and dislocation" and urged welfare agencies to act with the "greatest caution" and in partnership with Aboriginal organisations to prevent further harm. [2]

The Bringing Them Home Report (1997) built on this, documenting the profound trauma caused by the Stolen Generations and identifying assimilationist policies of child removal as a violation of fundamental human rights. The report identified solution to this history of violation required Indigenous peoples to determine solutions to child welfare in line with their own cultures and laws.[3] More importantly, this is grounded in the universal commitment to the safety and best interests of all children not a dilution of it. Aboriginal and Torres Strait Islander are entitled to be safe, to live free from violence and be supported in their development as all children should be. Culture is not a risk…it is a right.

The Carmody Inquiry (2013) echoed these findings in a Queensland context, recognising that the principle of self-determination must underpin all decisions affecting Aboriginal and Torres Strait Islander families, and that partnership with community-controlled organisations is essential for better outcomes.

In Queensland, both major political parties have, in different ways, contributed to embedding self-determination within child protection policy. Under the Liberal National Party government (2012–2015), the Carmody Inquiry was commissioned, which explicitly recognised the need to address the over-representation of Aboriginal and Torres Strait Islander children in care and recommended expanding the role of community-controlled organisations in decision-making and kinship placements.

The subsequent Labor governments (2015–present) carried these reforms forward, embedding legislative principles such as "active efforts" and strengthening the Aboriginal and Torres Strait Islander

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[1] Human Rights and Equal Opportunity Commission. (1997). *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.* Sydney: Commonwealth of Australia (p. 635).
[2] Commonwealth of Australia. (1991). *Royal Commission into Aboriginal Deaths in Custody: National Report (Vols. 1–5).* Canberra: Australian Government Publishing Service.
[3] HREOC, 1997

Child Placement Principle within the *Child Protection Act 1999 (Qld)*. While approaches have differed in emphasis, the cumulative effect of policy directions across both sides of the political divide has been to move Queensland child protection practice closer to genuine recognition of Aboriginal and Torres Strait Islander peoples' right to self-determination.

The opportunity in this commission of inquiry will be to move beyond child protection policies of "inclusion" within mainstream systems that reproduce assimilation. Instead, governments must uphold Aboriginal and Torres Strait Islander peoples' right to justice and self-determination, ensuring that cultural continuity, kinship, and community governance are understood as central to child safety. Continuing to rely on inclusion risks perpetuating the very harms these inquiries sought to end—entrenching cycles of trauma, disconnection, and over-representation.

As this Commission considers the urgent issue of over-representation, it must learn from the lessons of these landmark inquiries. Self-determination cannot continue to be treated symbolically; it is the proven foundation for safer children, stronger families, and resilient communities. The path forward lies not in repeating the mistakes of assimilation, but in embedding cultural authority, community control, and respect for Aboriginal and Torres Strait Islander kinship and culture at the heart of Queensland's child protection system. This is a change that will improve *all* children's lives.

Proximate Causes [4]

As highlighted in the background to this submission, three prior Inquiries found that assimilationist policy and practice were a proximate cause of the over-representation of Aboriginal and Torres Strait Islander children in child protection services. To emphasise the point the Queensland Government's own statements of compatibility for the *Making Queensland Safer Bills* ("Adult Crime, Adult Time") conceded that the amendments would have a disproportionate impact on Aboriginal and Torres Strait Islander children, with the likely outcome of increased incarceration and longer periods in detention. [5] This acknowledgment is not incidental—it reflects the Government's proximity to and accountability for statutory system outcomes. As the ultimate duty bearer, the State cannot distance itself from the direct and foreseeable consequences of its legislative and policy choices on First Nations children.

In Queensland there exists a clear human rights framework to provide necessary safeguards in acknowledgment of this context. They create enforceable obligations that ensure government decisions are not only measured by political expediency but by their impact on the enduring best interests of children. The disproportionate impacts acknowledged by government highlight why embedding and upholding human rights must be central to child protection policy. Without such safeguards, there is a continued risk of systemic harm being reproduced through state action.

[4] Question 33 - What are the proximate causes for the over-representation of Aboriginal and Torres Strait Islanders children and young people in care?
[5] Queensland Government. (2024). *Making Queensland Safer Bill 2024 – Statement of Compatibility* (Bill No. 043 of 2024). Queensland Legislation. https://www.legislation.qld.gov.au/view/pdf/bill.first.hrc/bill-2024-043

Legal Accountability Framework

Successive Inquiries and governments have highlighted the need for discrete legislation and policy, not as a case of special treatment but instead to play the role of safeguarding the rights that all people have, but which First Nations peoples have been denied from the dominant cultural paradigms that persist within the contemporary child protection system. Importantly in this context, recognition of distinct rights is a critical enabler of the paramount principle – in the best interest of the child.

Table 3. Legal Accountability to Human Rights in Queensland Child Protection

Principle	Child Protection Act 1999 (QLD)	Human Rights Act 2019 (QLD)	UN Declaration on the Rights of Indigenous Peoples (UNDRIP)
Self-determination	5C(1)(a) Aboriginal and Torres Strait Islander people have **the right to self-determination** Section 5C (2) - Embeds the Aboriginal and Torres Strait Islander Child Placement Principle (prevention, partnership, placement, participation, connection).	**Preamble 6:** […] human rights have a special importance for the Aboriginal peoples and Torres Strait Islander peoples of Queensland […] Of particular significance to Aboriginal peoples and Torres Strait Islander peoples of Queensland is **the right to self-determination**. **s 28** Cultural rights — Aboriginal and Torres Strait Islander peoples) ***(1)*** *right to hold distinct cultural rights.* ***(2)*** *right not to be denied cultural rights with other members of their community—* ***(3)*** *right not to be subjected to forced assimilation or destruction of their culture.*	**Preamble:** *"Indigenous peoples have historically suffered from dispossession and marginalization. They have the right to freely determine their political status and freely pursue their economic, social, and cultural development."* **Article 3:** *the right to self-determination.* **Article 4:** *the right to autonomy or self-government* **Article 5:** *the right to maintain and strengthen their distinct political, legal, economic, social and cultural institution* **Article 18:** *the right to participate in decision-making* **Article 19:** *"the right to free, prior and informed consent* **Article 23:** *right to control their own educational, cultural, and social institutions.*

Systemic Drivers of Over-Representation

Summary

Reducing the over-representation of Aboriginal and Torres Strait Islander children in OOHC will require a sustained, institutional recalibration of efforts and resources towards family preservation and restoration. As outlined in Principle Focus, to achieve a meaningful reduction in the number of Aboriginal and Torres Strait Islander children in out of home care, reforms must facilitate: [6]

- Exits from the system to exceed entries
- A reduction in the duration of time children spend in care
- A short-term focus on safe reunification to increase exits from OOHC
- A long-term focus on family restoration efforts to reduce duration of time in OOHC

The evidence continues to demonstrate that if an Aboriginal and or Torres Strait Islander child is in out-of-home care for more than two years, they are increasingly likely to stay in out-of-home care for more than five years.[7] An increase in the length of time a child is in out-of-home care—even slight increases—can have significant effects on the rate of children in care each year, given a longer duration results in children contributing to the yearly count more times. A child in care for five years has the same influence on the overall count as five children who each spend one year in care. Put another way, a five per cent increase in the average length of time children spend in care equates to a five per cent increase in the count of children in care at the end of each financial year.

There is a cumulative effect on systemic capacity and capability that result from decisions and responses that place future strain on the system's ability to reduce Aboriginal and Torres Strait Islander children overrepresentation.

The data continues to show the disproportionate representation of Aboriginal and Torres Strait Islander children in out-of-home care is being supported by two key trends.[8] [9]

Firstly, the annual number of children entering out-of-home care exceeds the number of children exiting. Secondly, over-representation is a result of the increased length of time Aboriginal and Torres Strait Islander children are spending in out-of-home care. This trend raises significant concerns as reducing durations in care is not quickly achieved due to the ongoing influence of past decisions. This also correlates with the decreasing focus on family restoration and practice passivity leading to a limited viability of re-unification, typically justified by arguments regarding permanency. Past decisions resulting in children entering OOHC means the system is effectively waiting for those children to pass through the system and transition to adulthood. The data indicates that over-representation, even with appropriate responses taken today, will likely continue to rise for some time.

[6] The State of Queensland (Queensland Family and Child Commission). (2021, August). Principle Focus: A child-rights approach to systemic accountability for the safety and wellbeing of Queensland's First Nations children.
[7] Report on Government Services (2025) Table 16A.19
[8] Ibid. 16A.19
[9] Report on Government Services (2025) Table 16A.4

Ineffective Policy-Practice Nexus[10]

Summary

- Since Carmody there has been progress to achieve a sound policy and legislative framework but poor implementation
- Bureaucracy has a normative effect of human behaviour making systems resistant to legislative intentions. This results in practice and outcomes for children that are incongruent with the intent of the legislative reforms.
- Best Interests is not consistently understood as a multidimensional and enduring obligation, rather, at times the Paramount Principle, through subjective and singular notions of safety at a point in time is invoked as a defensible reason for ignoring or failing to adhere to the Aboriginal and Torres Strait Islander child placement principles, at least to the standard of active efforts.
- The ATSICPP does not conflict with nor undermine the paramount principle. Rather, the failure to apply the 5 elements of the ATSICPP compromises the best interests of Aboriginal and Torres Strait Islander children.
- The paramount principle is misused as an escape route for child safety practitioners and administrators to offset their critical accountability for upholding the ATSICPP and children's and families' rights in decision making.
- The interpretation of the paramount principle is often falsely predicated on a culture vs safety binary. When in fact cultural continuity (connection to kin, country and culture) is integral to the long-term best interests of Aboriginal and Torres Strait Islander children.
- The ATSICPP is not incompatible nor in conflict with permanency principles. Permanency for Aboriginal and Torres Strait Islander children is grounded in their connection to kin, country and culture. It is effectively achieved through actively supporting the continuity of connection to the people that they love and the places that they belong to.
- Family preservation and family restoration are the key strategies to achieve permanency, in the best interests of Aboriginal and Torres Strait Islander children.

Over-representation since Carmody

Government departments are failing to implement the core intention of Carmody and its predecessors. Assimilationist policies were designed to *"absorb Aboriginal people into white society"* to destroy Indigenous difference and sovereignty.[11] It is a form of structural violence, legitimised under the guise of benevolence, which sought to make Aboriginal people conform to non-Indigenous values while erasing their cultural, social (kinship) and legal systems. Unfortunately, while the legal structures have sought to redress this, often the time limited focus on the governance of reform, and an inability to transform the practice culture of statutory systems continues to impede the change required to produce improvements in consistency and quality of outcomes for Aboriginal and Torres Strait Islander children and families.

[10] Question 34 - Why has the over-representation of Aboriginal and Torres Strait Islanders children and young people not only failed to abate since the Carmody Inquiry, but, in fact, grown
[11] Moreton-Robinson, A. (2000). *Talkin' up to the White Woman: Indigenous women and feminism*. University of Queensland Press.

Today, assimilation hides behind inclusion. "*Inclusion can sometimes operate as another form of exclusion where Aboriginal people are 'let in' but only on terms that maintain the existing power structures.*"[12] As Wolfe correctly posits colonisation is a process and not an event.[13]
Unless government can enable the sharing of systemic power, government-led systems will not resolve the issue of Aboriginal and Torres Strait Islander over-representation in child protection systems.

Since RCIADIC, let alone Carmody, there has been a failure of governments to create the necessary conditions for Aboriginal and Torres Strait Islander people to be self-determining within government owned and led systems. The policy and practice nexus identifies the gap that exists between formal rules - the laws and regulations made by government and what actually happens on the ground in services, programs and the administration of the child protection system. As Davis makes clear:

"Bureaucracy is a large beast that, we know from the research, takes on a life of its own, with its own practices, norms and culture. Often this culture can be indifferent or resistant to the intentions of legislators. This means that the regulatory framework—the laws and policies that govern a bureaucracy—often compete with, or are neutralised by, the dominant culture of a department."[14]

Specifically important to this idea, the *Act* has achieved numerous amendments since 2018 discretely aimed at improving the systemic outcomes of Aboriginal and Torres Strait Islander children.

Practical attempts to operationalise self-determination

The 2017 amendments to the *Child Protection Act Qld (1999)* were submitted and approved with legislative change evident from October 2018. Some of these changes were in relation to an amendment and insertion of the following into legislation:

- Section 5A Paramount Principal
- Section 5BA Principles for achieving permanency for a child
- Section 5C Additional Principles for Aboriginal and Torres Strait Islander Children (ATSICPP)

The Paramount principle in earlier versions of the legislation is noted below:

"The main principle for administering this Act is that the safety, wellbeing and best interests of a child are paramount."

The amended insertion to Section 5 in 2018:

"The main principle for administering this Act is that the safety, wellbeing and best interests of a child, **both through childhood and for the rest of the child's life**, are paramount."

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[12] Fredericks, B. (2006). Which way? Educating for nursing Aboriginal and Torres Strait Islander peoples. *Contemporary Nurse, 23*(1), 87–99.
[13] Patrick Wolfe (2006) Settler colonialism and the elimination of the native, Journal of Genocide Research, 8:4, 387-409, DOI: 10.1080/14623520601056240
[14] Davis, M. (2019). *Family is culture: Independent review of Aboriginal children and young people in out-of-home care in New South Wales.* Sydney: Family Is Culture Independent Review. Retrieved from https://familyisculture.nsw.gov.au

Legislation changes for the paramount principle shifted the intention of decision making to be long term and future focussed rather than decisions in the best interest of children in the immediate instance without the consideration of future and long-term impact.

This change alongside the embedding of the ATSICPP and Active Efforts (AE) is a clear indicator to a deeper intention for culturally strong and informed decision making for Aboriginal and Torres Strait Islander children with a critical focus on short- and long-term impacts of [dis]connection from kin, community and Country. The Bringing Them Home report explicitly condemns assimilation as a violation of basic human rights.[15] While the intent of taking children was to protect them or improve their lives, the real effect has resulted in life-long adverse outcomes, comprising the long-term wellbeing and safety of stolen generations. The evidence recognises that assimilation caused loss of identity, intergenerational trauma and psychological harm.[16] [17]With more Aboriginal and Torres Strait Islander children in out of home care than ever before, the disconnection from kin, country and culture continues, this time without the excuse of not knowing better.

This is why the recognition of "best interests" as an enduring right and obligation of duty bearers is such a critical cornerstone of the Child Protection Act 1999.

Aboriginal and Torres Strait Islander Placement Principle

The ATSICPP is a key legislative framework for safeguarding the rights, including distinct cultural rights, of Aboriginal and Torres Strait Islander children and young people involved in or at risk of entering the child protection system. It is therefore a practical legislative mechanism for the realisation of self-determination.

Unfortunately, inconsistent interpretation and poor implementation is a risk to the success of Aboriginal and Torres Strait Islander-focussed policies and programs[18], and importantly to the safety and best interests of Aboriginal and Torres Strait Islander children.

Application of the ATSICPP at all decision-making points is critical to ensuring the immediate and long-term safety and wellbeing of Aboriginal and Torres Strait Islander children and young people. Without proper implementation of the ATSICPP, the child protection system will continue to compromise the inalienable rights of Aboriginal and Torres Strait Islander children and young people in Queensland. In recognition of the need for appropriate implementation of the ATSICPP Queensland introduced a legislative standard in May 2023 in which active efforts were enshrined in section 5F of the Child Protection Act 1999 and legislated "relevant authorities" to apply active efforts in the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle that were purposeful, timely and thorough in practice.

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[15] Human Rights and Equal Opportunity Commission. (1997). *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Commonwealth of Australia. https://humanrights.gov.au/our-work/bringing-them-home-report-1997

[16] Langton, M. (1993). *Well, I heard it on the radio, and I saw it on the television…: An essay for the Australian Film Commission on the politics of representation*. Australian Film Commission / Australian Institute of Aboriginal and Torres Strait Islander Studies.

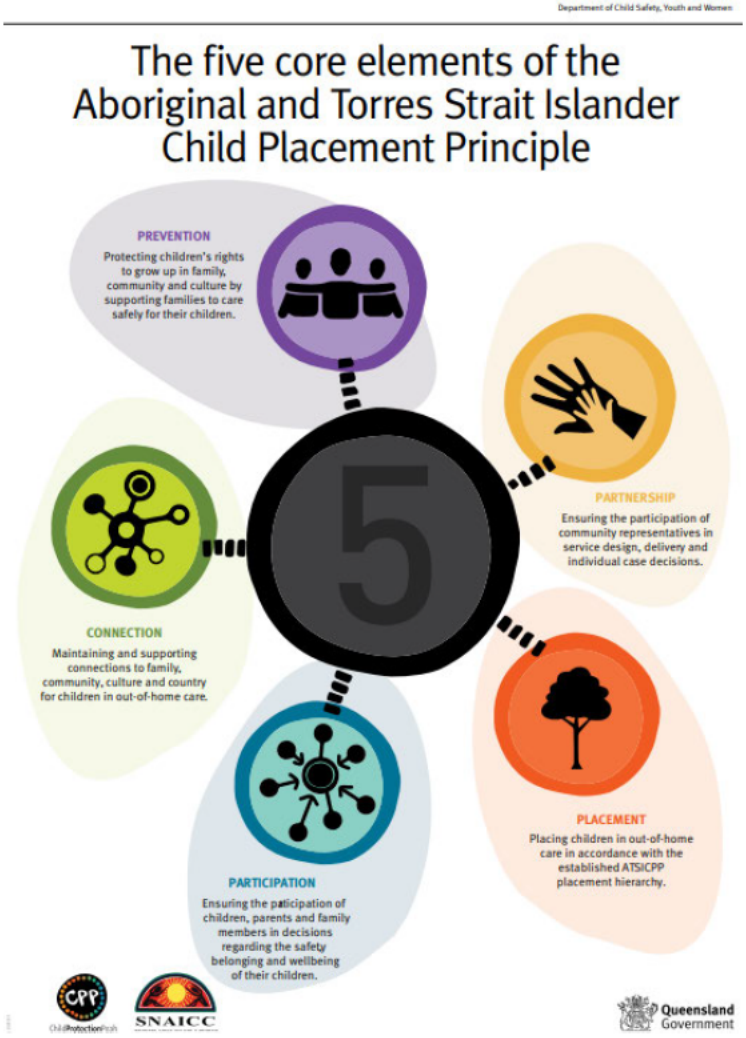
[17] Dudgeon, P., Milroy, H., & Walker, R. (Eds.). (2014). *Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice* (2nd ed.).

[18] Dillon, M. C. (2020), Evaluation and review as drivers of reform in the Indigenous policy domain, Policy Insights Paper No. 2/2020, Centre for Aboriginal Economic Policy Research, Australian National University https://doi.org/10.25911/5ee359f29a190

Section 5F explicitly requires that when making significant decisions regarding Aboriginal and Torres Strait Islander children, relevant authorities must:

- make active efforts to apply the Aboriginal and Torres Strait Islander child placement principle
- involve, where appropriate, an independent Indigenous entity to facilitate family participation

Diagram 1. The five core elements of the ATSICPP



This legislative standard of active efforts raises the application of the Aboriginal and Torres Strait Islander Child Placement Principle to a legally enforceable level, requiring relevant authorities to actively pursue the 5 key elements of the principle through thorough, purposeful and timely efforts. In relation to child protection, this means public entities, including service providers have an inherent accountability to ensure Aboriginal and Torres Strait Islander peoples are not subjected to forced assimilation or the destruction of their culture.[19]

Active efforts are to ensure children and families voices are heard and rights are upheld in decisions that directly and profoundly impact upon their lives. The five constituent elements of the ATSICPP (above)

[19] QHRA, 2019 s.28(3)

are not contentious nor controversial, they are fundamental to responsible, rights affirming performance of statutory responsibilities as it pertains to decisions regarding Aboriginal and Torres Strait Islander children.

5A-5BA-5C exemplifies the policy-practice nexus [20]

The paramount principle is misused as an escape route for decision makers to offset the critical accountability for upholding the ATSICPP and children's and families' rights in decision making.

The application of the ATSICPP is legislated to be implemented by a "relevant authority" which outside of the Chief Executive and Litigated Authority is an "authorised officer" – someone who is employed within Child Safety to undertake the responsibilities of the Act. There is a significant element of control that exists with the department on upholding a collective approach in applying ATSICPP to support sections 5A and 5BA. All elements of section 5C are completely reliant on the "authorised officer" engaging with children, family and communities to support active participation in decisions. Whereas 5A and 5BA do not have a practice-based process, just an internal consideration based on the evidence provided.

Perceived conflict, based on subjective interpretation of legislative principles can arise in decision making any time all principles are collectively considered in decisions about the best interest of children. This conflict is controlled by Child Safety through their mechanisms of engagement and actively applying section 5C alongside 5A and 5BA. Whilst not intending to be controversial, it is my opinion that this "conflict" is too often invoked and resolved in the context of managing agency risk, comfort or convenience of adults as opposed to what is truly in the immediate and enduring best interests of an individual child.

That the paramount principle and general principles are not understood as inclusive of the ATSICPP informing and enhancing the decisions in relation to section 5A highlights the invisible and unnamed paradigm within the system. Aboriginal and Torres Strait Islander culture cannot be separated from the enduring best interest of our children. Cultural continuity is also not at odds with safety and not purely contingent on parental willingness or ability at a point in time. Despite recognition in the act of the role of parent, in a cultural context, being shared with responsibility and capacity extending beyond a primary parent, this remains difficult to reconcile in practice. Continuing to improve processes of cultural kinship mapping, identification, assessment and support of cultural kinship carers for our children, results in options for our children, that are in their best interests and affirm their rights to cultural care and connection. This is not about suggesting that culture is privileged over physical safety, but that continuity of connection to kin, country and culture must be central to all decisions about safety in order to achieve outcomes that are in a child's enduring best interests.

The ATSICCP is supportive of cultural continuity for Aboriginal and Torres Strait Islander children in contact with the child protection system. Cultural continuity is reflected in community control, preservation of language, connection to land, cultural events, and intergenerational knowledge, all which

[20] To what extent does the Aboriginal and Torres Strait Islander Placement Principle conflict with other principles set out in ss 5A to 5BA and, to the extent of any conflict, how does the Department resolve any conflict of priorities?

demonstrated as powerful protective factor against suicide among First Nations youth.[21] [22] It builds identity, resilience, and community cohesion, helping young people navigate challenges and maintain hope for their future.[23]

This has important ramifications for application of section 5A and 5BA.

The paramount principle is invoked in urgent contexts to justify decision making that has occurred, without proper regard for the ATSICPP. The failure to adhere to the ATSICPP in decisions can have little to do with actual urgency of a decision, but the unwillingness of decision makers or the inability to accept that adherence to the ATSICPP leads to decisions that are truly in the best interests of Aboriginal and Torres Strait Islander children. This "conflict" of legislative principles is subjective, potentially manufactured to excuse poor practice. This concerning practice (avoiding implementation of the ATSICPP, especially to the standard of active efforts) is not limited to urgent, point in time decisions.

Rather than in conflict, failure to apply the ATSICPP guarantees contravention of the paramount principle.

Additional significant decisions where the Paramount Principle conflicts with the ATSICPP

LTG-SO/PCO Approvals to non-Indigenous Carers

The approval of Long-Term Guardianship (LTG-SO) and Permanent Care Orders (PCOs) for Aboriginal and Torres Strait Islander children continues to reveal systemic shortcomings in Queensland's child protection system. Despite the clear requirements under the *Child Protection Act 1999 (Qld)* (s.5C, s.5F, s.83) and the *Human Rights Act 2019 (Qld)* (s.28, cultural rights), practice has frequently privileged expediency and assimilationist approaches over genuine self-determination and cultural continuity.

In many cases guardianship is granted to non-Indigenous carers on the presumption that kinship and family restoration options have been actively pursued and exhausted and without ongoing evidence that children are being connected to their kin, culture, and community, despite this being a mandated standard of care. Instead, carers stated intention to connect a child to culture is often accepted at face value in assessments, without mechanisms to monitor or enforce these commitments. This has effectively lowered the threshold for compliance and left Aboriginal and Torres Strait Islander children at risk of cultural disconnection.

Problematic practices are also evident in cases where carers' recent discovery of their own Aboriginal or Torres Strait Islander ancestry is treated as sufficient to meet cultural support needs. While such personal identity journeys may be meaningful for carers, they cannot replace community-based and kin-led cultural authority, nor do they absolve the Department of Child Safety of its obligations to ensure children's right to cultural identity under domestic and international law (*UNDRIP*, Articles 3, 7, 8, 14, 19).

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[21] Chandler, M. J., & Lalonde, C. (1998). *Cultural continuity as a hedge against suicide in Canada's First Nations.* Transcultural Psychiatry, 35(2), 191–219. https://doi.org/10.1177/136346159803500202

[22] Gibson, M., Stuart, J., & Leske, S. (2021). *Cultural connection may help lower youth suicide in First Nations communities.* Australian and New Zealand Journal of Public Health, 45(3), 241–247. https://doi.org/10.1111/1753-6405.13164

[23] Kirmayer, L. J., Dandeneau, S., Marshall, E., Phillips, M. K., & Williamson, K. J. (2011). *Rethinking resilience from Indigenous perspectives.* The Canadian Journal of Psychiatry, 56(2), 84–91. https://doi.org/10.1177/070674371105600203

Most concerningly, children, their families and kin are often excluded from decision-making about long-term care. Families are not given adequate opportunities to inform plans for ongoing contact, identity-building, and cultural connection when children transition into LTG-SO or PCO arrangements. This exclusion breaches the principle of Aboriginal and Torres Strait Islander self-determination repeatedly affirmed in inquiries from the *Royal Commission into Aboriginal Deaths in Custody* (1991), the *Bringing Them Home Report* (1997), through to the *Carmody Inquiry* (2013).

If LTG-SO and PCO approvals are to genuinely serve the best interests of Aboriginal and Torres Strait Islander children, they must embed enforceable quality cultural support plans, require demonstrable evidence of action (not just intention) to support relational and cultural continuity, and prioritise family and community participation in decision-making. Anything less risks perpetuating assimilationist child protection practices that have caused intergenerational harm.

Implementation of Active Efforts (AE) and the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)

The lack of accountability in the implementation of Active Efforts (AE) and the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) within Queensland's child protection system continues to undermine the rights of Aboriginal and Torres Strait Islander children and families. Despite clear statutory obligations under the *Child Protection Act 1999 (Qld)*, the *Human Rights Act 2019 (Qld)*, and commitments under *UNDRIP*, significant decision-making processes routinely fail to uphold these rights in practice. This is extended to the Department of Child Protection and Litigation (DCPL) as a "relevant authority who are legislated ensure the application of ATSICPP to the standard of Active Efforts are evident in order to proceed in court-based matters.

Aboriginal and Torres Strait Islander Child and Family Community Controlled Organisations (ATSICCOs) consistently report that their advocacy for families through Child Safety Service Centres (CSSCs) is obstructed. Escalations regarding breaches of the ATSICPP frequently encounter systemic barriers, delayed responses, or complete inaction. This reflects an entrenched culture of gatekeeping, where departmental staff hold decision-making power without transparent accountability or genuine partnership.

Moreover, the ability of ATSICCO Family Participation Program (FPP) Services to proactively support families is severely curtailed. While these services are entrusted with sensitive notifications, most cannot access or act on this information in real time. Without such access, ATSICCOs are unable to triage, plan, or support families during critical stages of the Immediate Action (IA) Child in Need of Protection (CINOP) and Child Not in Need of Protection (CNINOP) decision-making spaces—moments that represent significant, life-altering decisions for children and families. This exclusion undermines the intent of AE, which requires agencies to take proactive and sustained measures to support families before removal becomes necessary.

Currently, exceptions exist in limited regional initiatives—such as North Queensland (Mount Isa and parts of Townsville), Southeast Queensland (HALT), and the Moreton Bay (ERIC)—where information-sharing enables timelier, rights-based practice. Unfortunately, these remain the exception, not the rule. In the majority of regions, Aboriginal and Torres Strait Islander children and families are denied meaningful participation in decisions that determine their future care, safety, and cultural identity.

We previously reported other examples of self-determined approaches by local ATSICCOs have effective programs for pregnant women, such as Birthing in Our Community (Institute of Urban Indigenous Health) and Unborn Pilot Project (HALT). These programs support mothers and keep children with their families. HALT's program has kept at least 12 babies with their mothers. This has generational impacts, as subsequent children and the next generation are unlikely to enter the system. IUHI's Birthing in Our Community receives no funding from Child Safety. Yet, it is highly successful in keeping unborn children out of the child protection system and reducing pre-term birth rates.

This systemic gatekeeping directly contravenes the principles of self-determination and participation embedded in the ATSICPP, as well as the broader human rights obligations of the State. Decisions cannot be said to be in the "best interests of the child" when the child's family and community are excluded from informing and shaping those decisions. Genuine accountability requires not only clear legislative mandates but enforceable mechanisms to ensure departmental staff implement AE and the ATSICPP with integrity and transparency.

Placement Decisions

The Department's approach to placement decisions for Aboriginal and Torres Strait Islander children continues to demonstrate systemic disregard for both the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) and the rights of children and families to participate in significant decisions under the *Child Protection Act 1999 (Qld)*.

Families frequently identify kinship carers or kinship considerations for their children, yet these options are not given priority. Provisional approvals for kinship carers, which were designed to facilitate timely placement with family, have reduced significantly and are no longer a departmental priority. Instead, provisional approvals often shift into a general carer assessment process—on the assumption of potential "blue card issues" or with the intent that assessors will determine unsuitability. This practice results in extended delays, with general assessments taking up to nine months to complete, during which children remain outside their family network.

Even when assessments ultimately confirm the suitability of kinship carers, children are often not transitioned to them. Departmental reasoning defers to the "stability" of existing placements with non-kin carers, even though these placements are inconsistent with the Placement element of the ATSICPP and fail to uphold children's cultural rights. During these delays, children lose opportunities to build and sustain relationships with kin, making eventual transitions more complex and traumatic.

The Department's practice also routinely excludes families from participating in placement decisions despite placement being clearly defined as a *significant decision* in the Act, and therefore a decision that families and communities have a right to inform. This exclusion entrenches systemic disempowerment and perpetuates intergenerational mistrust of the child protection system.

Connection to kin, culture, and community is rarely prioritised as an active right of Aboriginal and Torres Strait Islander children. Instead, the Department's application of sections 5A (paramount principle – best interests of the child) and 5BA (permanency) creates structural conflict. In practice, this conflict is not between the ATSICPP and the paramount principle, but rather in how departmental decision-makers apply these provisions. The paramount principle is routinely invoked to override ATSICPP obligations, effectively limiting its application. This creates a legal and procedural imbalance where children's cultural and family rights are sidelined in favour of short-term placement stability.

When disputes or concerns arise, the Department commonly diverts families into the complaints process. However, if a formal complaint is not lodged, there is no record of how informal concerns are addressed, nor any accountability for breaches of the ATSICPP. This reliance on a complaints mechanism to resolve systemic conflicts avoids responsibility and obscures the Department's failure to embed self-determination and cultural safety into everyday placement decisions.

The current system therefore reflects a non-genuine implementation of the ATSICPP, but a constrained interpretation that prioritises administrative convenience and departmental risk management over children's cultural rights, family participation, and long-term wellbeing.

Cultural Safety[24]

Summary

- Assimilation is a problem of paradigms
- To achieve equal child protection outcomes, the enabling environment must be free of racism and bias
- Substantive self-determination is more than inclusion; enabling environments embed Aboriginal paradigms and have a motivation to achieve justice and fairness.

Definitions and Clarifications

Cultural safety values justice and refers to the need to redress racism and unconscious bias within the enabling environment delivering policy and services to Indigenous Peoples (e.g., law, policies, practice, funding drivers, measures of success, etc).[25] [26] In Queensland, Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.[27] Cultural safety, as a concept and term, originates from Aotearoa/New Zealand, where it was first used by Māori nurses to describe both the training non-Māori nurses required about Māori people as well as the process of decolonising the whole of the nursing profession and health system.[28] Phillips has extended the meaning and clarified the application of cultural safety in an Australian context, and on that basis, proposes that culturally safety within systems and institutions requires efforts across the following five key elements:[29]

1. Individual awareness, competencies, and responsiveness of and to 'the other'
2. Individual awareness, competencies, responsiveness of and to 'self'

[24] Question 36 -
What is meant by the term "culturally safe" when used in the context of the provision of child safety services, pathways and processes, and against what criteria is this concept measured by: a. The Department; and
b. Aboriginal and Torres Strait Islander peak bodies and their members?
[25] Gregory Phillips, (2015). Dancing With Power: Aboriginal Health, Cultural Safety and Medical Education. PhD thesis.
[26] **Aboriginal and Torres Strait Islander cultural safety (health.vic.gov.au)**
[27] **QHRA** (2019). S 28 (3)
[28] Papps, E., and Ramsden, I., (1996). Cultural Safety in Nursing: The New Zealand Experience.
[29] Gregory Phillips, (2015). Dancing With Power: Aboriginal Health, Cultural Safety and Medical Education. PhD thesis.

3. Institutional policies, procedures, procurement - rebalancing of power and money
4. Continual learning – continuous quality improvement of process and outcomes
5. Paradigm - Aboriginal and Torres Strait Islander sovereignty, values, and ways of knowing, being, doing.

A paradigm problem

An Indigenous paradigm centres Indigenous knowledges.[30] Paradigm in this sense is about the frameworks through which Aboriginal and Torres Strait Islander worldviews might be understood, shaped by those ways of knowing, being and doing which are distinctive and vital to their existence and survival. These paradigms are central to identity, specific to place, recognise the historical and political context, are deeply relational and grounded in spiritual inter-relatedness and interdependence with whole-of-environment.

"The policy of assimilation was directed towards the eradication of Aboriginality and its replacement by non-Aboriginal culture… Its consequences have been disastrous for Aboriginal people. The legacy of that policy continues to affect Aboriginal society in many destructive ways."[31]
In this way the assimilation policy aimed to eliminate the Indigenous paradigm.

The Commission (RCIADC) emphasised that true progress required respect for Aboriginal self-determination, identity, culture, and community-controlled institutions—not forced integration. Past assimilation policies have had devastating impacts on Aboriginal peoples, particularly through the forced removal of children and suppression of culture. Assimilation as a policy tried to eliminate Aboriginal identity, culture, and rights, often by coercing Aboriginal people into adopting non-Indigenous ways of life. It stressed that assimilationist thinking persisted in institutions (including justice and child protection systems), even after the policy was officially abandoned.

Applying Cultural Safety within the child protection context requires three clear strategies. Firstly, non-Indigenous people within the organisation must be empowered, capable and responsible for removing barriers (systemic and operational) in the enabling environment (i.e., systemic racism and assimilationist mechanisms).[32] Secondly, Aboriginal and Torres Strait Islander People are empowered and responsible for leading governance and the development of Aboriginal and Torres Strait Islander child protection responses based on their own values, paradigms and measures of success and accountability (self-determination).[33] A qualification here is Aboriginal and Torres Strait Islander people should develop, lead, and ensure quality (strategic direction), but everyone in the system is responsible for doing (implementing cultural safety). Finally, both strategies must be based on Aboriginal paradigms, terms of references, cultures, sovereignty, and contexts, with reference to local mobs and traditional owners (pedagogy of place). In culturally unsafe environments, addressing issues occur at the programmatic level rather than at the governance level (paradigm, values, vision, decision making).[34]

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[30] Dudgeon, P., Bray, A., D'Costa, B., & Walker, R. (2017). *Decolonising Psychology: Validating social and emotional wellbeing. Australian Psychologist, 52*(4), 316–325. https://doi.org/10.1111/ap.12294
[31] RCIADIC National Report, Vol. 2, Ch. 10, *Aboriginal Society and Culture*
[32] Ibid
[33] Ibid
[34] Ibid

Safe enabling environments

The enabling environment is the broader political, social, and economic contexts within which Aboriginal and Torres Strait Islander peoples and their community-controlled organisations operate.[35] Focus on the enabling environment disrupts one-way scrutiny often placed on Aboriginal and Torres Strait Islander outcomes, through a broader view of the multifactorial effects that systems have on Aboriginal and Torres Strait Islander outcomes.[36] The systematic application of cultural safety acknowledges the structures in which people operate and how this often has a 'trickle down' effect on individuals and serve as the filters or lenses through which people interpret their own experiences. The support, or lack thereof, for cultural safety at a systems level plays an important role in defining the rules of play for sectors, organisations and the individuals who work in them.

For Aboriginal and Torres Strait Islander people to achieve equal child protection outcomes, the enabling environment must be free of racism and bias, substantively enable and support self-determination, embed Aboriginal paradigms, and have a motivation to achieve justice and fairness.

How is it measured

Being able to measure cultural safety is central to ensuring accountability and evaluation. The following eight cultural safety indicators provide a base line guidance for both applying and measuring cultural safety:[37]

1. Transformational unlearning – Does the child protection system must challenge unconscious bias, racism, and colonial thinking within their structures and workforce.
2. Negotiating values, motivations, and paradigm – Are policies and programs co-designed with Aboriginal and Torres Strait Islander communities to reflect their perspectives on child safety.
3. Prioritising social and emotional wellbeing and health – Is a holistic, strengths-based approach adopted to support the wellbeing of Aboriginal and Torres Strait Islander children, staff, and families.
4. Sharing power and decision-making – Decision-making processes should be led or co-led by Aboriginal and Torres Strait Islander peoples to ensure genuine partnerships.
5. Sharing resources – Does the system dedicate resources and funding (adequate to the magnitude of the disproportionate representation) to Aboriginal and Torres Strait Islander-led initiatives, research, and governance mechanisms.
6. Creating a strategic enabling environment – Does leadership set clear priorities and accountability structures to embed cultural safety into daily operations.

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[35] G Phillips, *Dancing with Power: Aboriginal Health, Cultural Safety and Medical Education* (PhD, Monash University) 2015.
[36] Ibid
[37] Adapted from QFCC (2025) Guidelines for implementing the Universal Principle and Child Safe Standards in Queensland.

7. Operating on Aboriginal and Torres Strait Islander terms of reference – Is service delivery grounded and operationalised on Aboriginal and Torres Strait Islander knowledge systems and self-determination principles.
8. Accountability and continuous quality improvement – Is progress measured using Aboriginal and Torres Strait Islander-defined success indicators, ensuring sustained improvement.

Conclusion

Queensland has established a strong legislative framework since the Carmody Inquiry, but poor implementation and entrenched bureaucratic practices continue to undermine its intent. The paramount principle is too often disingenuously applied to justify sidelining the Aboriginal and Torres Strait Islander Child Placement Principle. This situation reduces "best interests" to a narrow, short-term focus on safety while ignoring the enduring importance of cultural continuity. Connection to kin, country, and culture is integral to the long-term safety, wellbeing, and permanency of Aboriginal and Torres Strait Islander children.

Real reform requires a systemic recalibration toward family preservation and restoration, ensuring exits from out-of-home care exceed entries and reducing the duration of time children spend in care through safe reunification and long-term restoration. There must be clear evidence of embedding the five elements of the ATSICPP—prevention, partnership, placement, participation, and connection into every decision with clear accountability for failure to apply this to the level active efforts. The child protection system must continue to build a willingness and ability to substantively enable and support self-determination by establishing a system free of racism and bias, grounded in Aboriginal paradigms, and motivated by justice and fairness. This is essential to achieving equal child protection outcomes.