

QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY

STATEMENT OF WITNESS

I, William Hayward of the Aboriginal and Torres Strait Islander Legal Service (Ltd) Qld, PO Box 13035 George Street Brisbane, Law and Justice Advocacy Developmental officer, make oath and swear / affirm:

1. My name is William Hayward.
2. I am a Noongar man from Gorang/Minang clan groups. I have been raised to live with the integrity and honour of my people's culture, our customs and the strengths embedded in our family and community systems. In my experience, to be Aboriginal is not a deficiency, but a unique strength. My culture has formed the basis of foundation of stability in my life and this has been a testament of empowerment and resilience.

Acknowledgements and Respects

3. I acknowledge the traditional owners of this country and their sacred country upon which we meet on today. I acknowledge their elders past and present. I acknowledge all Aboriginal peoples including their families, children and young people.
4. I humbly request the spirit of this sacred country and its people to bestow blessing over the current Queensland Child Protection Commission of Inquiry; to enable this Inquiry to manifest a beacon of truth and wisdom for positive outcomes and futures for all Aboriginal and Torres Strait Islander peoples.
5. I acknowledge the unique and independent culture of Torres Strait Islander peoples who formed a part of our first nation people within Queensland and Australia. I acknowledge their elders past and present. I acknowledge all Torres Strait Islander peoples their families, children and young people.
6. I acknowledge all Aboriginal and Torres Strait Islander women and men, and I call for us to stand in unity, integrity and honour. Together, we hold the responsibility and authority as the primary providers, nurturers and role models that our children and young people seek guidance from in order to reach their full potential as future adults, as Queenslanders and as Australians.
7. In these important times, I ask our Grandparents, Aunties, Uncles, Extended kin and Parents to turn their hearts to their children and young people.

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8. I respectfully and humbly acknowledge Aboriginal and Torres Strait Islander women who ultimately form the foundation and backbone of our family lore system in their role as the key providers for, and keepers of, our children and young people.
9. I stress the importance in hearing the collective voices of Aboriginal and Torres Strait Islander communities which is found in the individual testimonials of Aboriginal and Torres Strait Islander professionals, community members, families, children and young people.

Professional Credentials

10. It is with the cultural grounding outlined above and professional credentials below that I will inform the inquiry.
11. I hold a Bachelor of Social Work from James Cook University, conferred in 2008.
12. An outline of my work experience and responsibilities are as follows:

- Aug 2009 to Sep 2011: *Member Support Services Officer* - Queensland Aboriginal & Torres Strait Islander Child Protection Peak Ltd
- Dec 2010 to Feb 2011: *Community Resource Officer* - Department of Communities, CCSQ,
- Feb 2009 to Aug 2009: *Senior Policy Officer, Policy and Practice Development* - Child Safety Services
- Oct 2008 to Feb 2009: *Child Safety Officer* - Redcliffe Child Safety Service Centre
- Dec 2006 to Oct 2008: *Child Safety Indigenous Support Officer* - Redcliffe Child Safety Service Centre
- Jan 2006 to Mar 2007: *Volunteer* - Vital Connection (Homeless Emergency Relief)
- Jan 2004 to Dec 2006: *Subcontractor* - Cultural & Performing Arts Consultation
- Jan 2000 to Dec 2004: *Cultural Consultation and Dance coordinator*- Wardarn Aboriginal Cultural Centre, Indigup Western Australia
- Nov 1998 to Jan 1999: *Youth Worker*- Family and Children services Western Australia

13. Awards and Achievements:

2012

- *Facilitator* – ATSILS Child Protection Community Legal Education
- Submission on the Development, Implementation and Review of Queensland Aboriginal & Torres Strait Islander Cultural Support Plans within the Child Protection System to the Commission for Children, Young People and Child Guardian

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- *Judging Panel Member* - Commission for Children and Young People and Child Guardian Awards
- *Presenter* - QCOSS Conference Combined Voices
- *QATSCIPP Project Manager* - QAIHC/QATSICPP Collaborative Partnership - Certificate III Community Services Alcohol and other Drugs
- *Facilitator* - Aboriginal and Torres Strait Islander Family Support Conference
- *Member Support Services* - Implementation of Quarterly Sector Network Forums & Quarterly Member Support Visits

2010

- *Presenter* - National SNAICC Conference –Combined Voices
- *Presenter* - National Access to Justice and Pro bono Law conference
- *QATSCIPP Project Manager* - Triple P International Pty Ltd Collaborative training and professional development proposal & project
- *QATSCIPP Project Manager* - Centre for Domestic and Family Violence Research Accredited Responding to Domestic Violence training proposal & project
- *QATSCIPP Project Manager* - Workforce Council Sector Manuals and Induction project
- *Member Support Services* - Change Management Team (Aboriginal and Torres Strait Islander Child Protection Community Controlled Reform)
- *Winner* - Child Safety Support Officer Inaugural Quality Child Protection Practice Award
- *Founder* - Redcliffe CSSC Child Safety Parent Support Group
- *Founder* - Redcliffe CSSC Cultural Retention Program
- *Recipient* - Foster Care Queensland Certificate of Recognition

1999

- *Awarded* - South West Regional College Human Services Award

14. I respectfully acknowledge the Aboriginal and Torres Strait Islander professionals within the Queensland government and non-government child protection system, and the Aboriginal and Torres Strait Islander community who I have been privileged to serve for the past seven years.

15. I respectfully acknowledge the Non-Indigenous professionals within the Queensland government and non-government child protection system who I have been privileged to serve alongside for the past seven years.

16. In my opinion and experience, child protection professionals have consistently given their best efforts to respond to children, young people and families. Unfortunately, those efforts are often limited because of the constraints and systematic issues of the current child

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protection system. In the duration of the Inquiry we should recognize the dedication of child protection professionals.

Aboriginal and Torres Strait Islander rights and over-representation within the Child Protection Jurisdiction

17. I refer to the United Nations Declaration on the Rights of Indigenous Peoples¹ and the United Nations Convention on the Rights of the Child² and I call attention to the direct linkages and authority of international law and its relationship to, and effect on, the unique cultural rights of Aboriginal and Torres Strait Islander children in out of home care³.
18. I recognise the national authority provided by the Council of Australian Governments (COAG) under the National Child Protection Framework in articulating a commitment to reduce Aboriginal and Torres Strait Islander over-representation.⁴
19. In my opinion, within the Queensland Child Protection Jurisdiction we should draw on the national apology to the Stolen Generations delivered by then Prime Minister Kevin Rudd in February 2008.⁵ In particular we should recognise the important role we have to achieve reconciliation and family healing in the performance of our roles and responsibilities within Child Protection practice.
20. In a child protection context, I have practiced for the best interest rights of Aboriginal and Torres Strait Islander children and young people. These rights are best captured in the Child Protection Act 1999⁶:

- **5A Paramount principle**
- **5B Other general principles**
- **5C Additional principles for Aboriginal or Torres Strait Islander children**
- **83 Additional provisions for placing Aboriginal and Torres Strait**

¹ United Nations Declaration on the Rights of Indigenous Peoples. The Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly on Thursday 13 September 2007 http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf and endorsed in Australia on the 3 April 2009 by the Rudd government. <http://www.un.org/apps/news/story.asp?NewsID=30382>

² Convention on the Rights of the Child. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, Entry into force 2 September 1990, in accordance with article 49. <http://www2.ohchr.org/english/law/crc.htm>

³ ATSIILS February 2012; Submission on the Development, Implementation and Review of Queensland Aboriginal & Torres Strait Islander Cultural Support Plans within the Child Protection System.

⁴ COAG Protecting Children is Everyone's Business, National Framework for Protecting Australia's Children 2009–2020; Supporting outcome 5: Indigenous children are supported and safe in their families and communities. In order to provide culturally appropriate responses, strategies developed under the National Framework need to be based on partnerships between Indigenous families and communities, and between Indigenous agencies, mainstream service providers and governments. Strategies should build on existing strengths, match expectations with appropriate supports, and recognise the importance of Indigenous-led and managed solutions (Higgins 2005).p.28.

⁵ National Sorry Day Committee website, http://www.nsdcc.org.au/index.php?option=com_content&view=category&layout=blog&id=23&Itemid=64

⁶ Child Protection Act 1999 Reprinted as in force on 1 July 2012 Reprint No. 7D

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- **88 Chief executive to provide contact between Aboriginal or Torres Strait Islander child and child's community or language group**
- **122 Statement of standards**
- **Schedule 1 Charter of rights for a child in Care**

21. The Aboriginal and Torres Strait Islander specific child protection legislated sections exist to support Aboriginal and Torres Strait Islander children to reach their full potential and to develop into strong and secure adults. It speaks of the right for Aboriginal and Torres Strait Islander children to be supported and grounded in a foundation of cultural identity and a relationship with their immediate family, extended kin and community that creates the linkages of their traditional and modern innate belonging.
22. In my assessment the legislative intent speaks of children's cultural identity being supported by the holistic life concepts of Aboriginal and Torres Strait Island traditions which their ancestors, elders, kin and immediate families have accomplished and embedded within their cultural heritage. It speaks of utilising this legacy that has survived the test of time and is a pathway to understanding and an imperative guide supportive of Aboriginal and Torres Strait Islander children unique lived experience in out of home care.
23. It is this legislative intention that could assist Aboriginal and Torres Strait Islander children as a foundation of cultural strength to successfully navigate the unintended detrimental experiences related to statutory out of home care.⁷ This cultural strength can support the creation of an environment of resilience, supportive of the child's development stages and transition to adulthood and long term development of relationships with immediate and extended family and community members creating a supportive safety network.
24. Aboriginal and Torres Strait Islander peoples are over-represented in all aspects of the child protection continuum.⁸ This gross and alarming rate of over-representation is a social and economic crisis which deserves diligent care and attention. This is not just an Aboriginal and Torres Strait Islander issue, it is a Queensland issue. This is most evident due to the fact that the main harm and risk indicators for Aboriginal and Torres Strait Islander children are often grounded in neglect which can be directly linked to poverty and the low socio-economic status of many Aboriginal and Torres Strait Islander children and young people.⁹ As a

⁷ Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd. Losing Ground 2011, Costs of non-adherence to the Child Placement Principle (2011,p.10).

⁸ ATSILS .2012 Submission on the Development, Implementation and Review of Queensland Aboriginal & Torres Strait Islander Cultural Support Plans within the Child Protection System. 3.1 Over-Representation p.3.

⁹ The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples; Executive Summary (Updated 22/05/2012) <http://www.abs.gov.au/AUSSTATS/abs@.nsf/lookup/4704.0Chapter100Oct+2010>

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consistent trend domestic violence, substance misuse and parenting capacity continue to be the main parental harm and risk indicators.¹⁰

Practice Experience

25. In the duration of my Child Safety employment as an Aboriginal Child Safety Support Officer, which is a dedicated Aboriginal position, I was privileged to be supported by the Redcliffe Child Safety Service Centre Management Team to respond appropriately to Aboriginal and Torres Strait Islander children and family needs.
26. In particular a fundamental decision by the Management Team was to allow the role to be dedicated to cultural assistance and support whilst balancing other child protection duties. One of the challenges of this role being used effectively is that the actioning of the position description is left to a manager's discretion which can lead to the role being overloaded with standard child protection duties. This is often restricted and limited effective engagement with Aboriginal and Torres Strait Islander clients which ultimately impacted the level of positive outcomes. It was unfortunate to hear similar experiences of other Aboriginal and Torres Strait Islander Child Safety Support Officers not being assisted to be integral in service delivery and outcomes for Aboriginal and Torres Strait Islander children and young peoples.
27. I would strongly recommend that Aboriginal and Torres Strait Islander Child Safety Support Officer roles and responsibilities be determined and implemented as a State-wide standard. The role should provide a balance between assisting Aboriginal and Torres Strait Islander families' understanding and engagement, the specific needs of Aboriginal and Torres Strait Islander children and other core child protection work.
28. In my practice experience, having the corporate will and support of the Redcliffe Child Safety Service Centre Management Team allowed for innovative assistance to be provided to Aboriginal and Torres Strait Islander families. I outline two examples below:
- In 2007 the Redcliffe Child Safety Service Centre Child Safety Indigenous Parent Support Group was developed which was aimed at resourcing, educating and equipping parents to meet child safety requirements for safe reunification. The purpose of the Child Safety Parent Support Group is to educate parents and build their understanding of the Department of Child Safety. Parents were encouraged to draw on their existing

¹⁰ Department of Communities, Child Safety ; Our performance; Representation of Indigenous children; S.6: Children subject to a substantiation, by most serious harm type and Indigenous status, Queensland <http://www.communities.qld.gov.au/childsafety/about-us/our-performance/investigation-and-assessment-phase/substantiations>

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knowledge and experiences in their life and involvement in child protection. The facilitators explained the differing roles within child safety, what constitute child protection concerns, the requirements of child safety case plans, and they explored possible services in Redcliffe area aimed at addressing Child Protection concerns and local Aboriginal organisations spoke of their services. Recognised Entities also presented on their consultation roles in child protection. Guest speakers presented on a variety of child protection concerns such as domestic violence, substance abuse and parenting capacity. The group program concluded with a group discussion of possible strategies to address child protection concerns and a group evaluation of program. Families received individual follow up and support to work towards reunification.

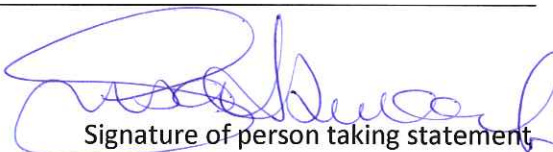
- The Redcliffe Child Safety Service Centre Cultural Retention Program was founded in 2007. In partnership with local Aboriginal and Torres Strait Islander community groups, significant Elders and appropriate role models, the Cultural Retention Program was established under the Murrijabree organization. The aim of this program was to provide Aboriginal and Torres Strait Islander children in care with the opportunity to participate in their modern and traditional culture. The program implemented regular weekly strategies to meet the requirements of then *Child protection Act 1999* sections 5A, 5B, 83 and 88 of the Child Protection Act. In my opinion, this program achieved the legislative intention of assisting families, foster and kinship carers to support children to achieve resilience through strong and positive identify development.

29. In my practice experience, the role of the Indigenous Child Safety Support Officer could be better supported and more highly valued to ensure effective child protection engagement of families and assisting children with the preservation and enhancement of their cultural identity. This will require a directive and corporate commitment from a policy and practice position throughout Child Safety Service Centres.

30. Whilst employed in a Senior Policy Officer position the two Aboriginal and Torres Strait Islander projects I assisted with were the department's Practice guide – Developing a Cultural Support Plan developed by Mark Budd, and co-facilitation of the 2008 Aboriginal and Torres Strait Islander Child Placement Principle Internal Audit and Report developed by Bill Ivinson. In my experience, Child Safety has a reasonable policy framework however, this is limited in its implementation at a regional and local level and the results are minimal for children and young people. An example is the Child Safety Working with Aboriginal and Torres Strait Islander Children, Families and Communities Practice Paper. Given the current

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pressures on frontline child protection professionals, the guidance within the Practice Paper is often difficult to action.¹¹

31. Given the significant rates of over-representation of Aboriginal and Torres Strait Islander children and young people within the Child Protection system, it is important to maintain a level of internal practical assistance for Aboriginal and Torres Strait Islander children and families within the statutory system whilst transitioning towards a balanced universal, secondary and statutory system.
32. In the duration of my employment at the Queensland Aboriginal and Torres Strait Islander Child Protection Peak, as a Member Support Services Officer, I held responsibility for assisting Aboriginal and Torres Strait Islander organisations delivering Recognised Entity family support, Family Intervention Services and Foster and Kinship Care services. The majority of the sector are paraprofessionals relevant to their specific service delivery. Ideally, the paraprofessional workforce should be supported to increase its knowledge base and proficiency by providing an accessible pathway to tertiary qualifications.
33. In my practice experience, I assisted the Queensland Aboriginal and Torres Strait Islander Child Protection Peak in the 2010/2011 Aboriginal and Torres Strait Islander Child Protection community controlled agencies reform and service delivery. This was a challenging and essential process to ensure Queensland benefited from a more comprehensive Aboriginal and Torres Strait Islander community controlled response. The reform reduced the number of local Recognised Entity services to 11 regional hubs and beneficially allowed a necessary investment into 11 regional family support services.¹² I strongly assert that this has delivered a proficient and effective service delivery model to capitalise on any future reforms.
34. The Queensland Aboriginal and Torres Strait Child Protection Peak worked in partnership with Child Safety Services, in particular Child Safety NGO Programs, Queensland Centre for Domestic and Family Violence Research, and Triple P International Pty Ltd to implement a targeted training strategy to assist in the significant and positive reform to ensure balanced service delivery is accessible to Aboriginal and Torres Strait Islander children and families.

In particular, the Child Safety funded initiatives:

- Primary, Standard and Indigenous Triple Positive Parenting Training and Accreditation.
- Nationally Accredited Certificate IV in Responding to Domestic Violence.

¹¹ POLICY STATEMENT; Working with Aboriginal and Torres Strait Islander children, families and communities, CPD610, Date of operation: 8 November 2010

¹² Secretariat National Aboriginal and Islander Child Care (SNAICC) website; Policy and Advocacy; Queensland Combined Voices (2011) <http://www.snaicc.asn.au/policy-advocacy/dsp-landing-policyarea.cfm?loadref=36&txnid=566&txnctype=article&txnctype=>

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- A Minimal implementation of Circle of Security Training (strengthen attachment)
35. The Queensland Aboriginal and Torres Strait Islander Child Protection Peak was awarded an ARC University of Queensland/Queensland Aboriginal and Torres Strait Islander Research Grant. This partnership between the University of Queensland, Parenting & Family Support Centre School of Psychology and the Queensland Aboriginal and Torres Strait Islander Child Protection Peak and sector will greatly benefit from the research outcomes and learning in relation to parent capacity.
36. The Aboriginal and Torres Strait Islander Child Protection Peak independently worked in partnership with the Queensland Workforce Council to develop a reform change management approach to further assist Recognised Entity and Family support services.

In particular the Queensland Workforce Council funded

- Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd Recognised Entity Services Manual and Induction training kit (**Attachment A**)
 - Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd Family Support Services Manual and Induction training kit (**Attachment B**)
 - Induction Training Expenses
37. The Queensland Aboriginal and Torres Strait Islander Child Protection Peak independently worked with it's sister peak body, the Queensland Aboriginal and Islander Health Council, to further assist Aboriginal and Torres Strait Islander Family Support Services with the required professional development to engage families with experience with substance misuse.

In particular the Queensland Aboriginal and Islander Health Council funded and delivered

- Alcohol, Tobacco and Other Drugs Service (ATODS)
38. In partnership, Queensland Aboriginal and Torres Strait Islander Child Protection Peak and Child Safety Services co-facilitated a Family Support Service Conference to assist in establishing strengths based family support practices and adopting key learning's from the Referral for Active Intervention and Helping Out Families initiative.¹³
39. A partnership between Winangay Resources Stronger Ways with Aboriginal Children and Families Inc facilitated the enrolment of Foster and Kinship care professionals into culturally

¹³ Referral for Active Intervention; <http://www.communities.qld.gov.au/childsafety/protecting-children/how-to-prevent-abuse/referral-for-active-intervention> Helping Out Families initiative; <http://www.communities.qld.gov.au/resources/childsafety/partners/documents/helping-out-families.pdf>

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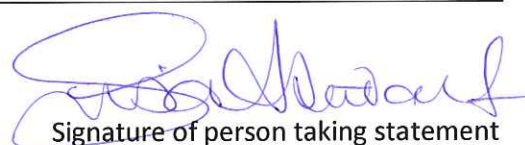
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competent assessment training. This was a pilot project and three South East Queensland agencies participated and completed the training.¹⁴ This was a direct response to the challenges faced recruiting Aboriginal and Torres Strait Islander carers which is less of an organisation capacity issue and more of a feature of over-representation.

40. The Queensland Aboriginal and Torres Strait Islander Child Protection Peak's training strategy in partnership with government and non-government agencies was a direct response to build capability and knowledge within Family Support Services to respond to the main harm and risk indicators experienced by Aboriginal and Torres Strait Islander families.
41. Member Support Service Officers facilitated Quarterly Recognised Entity, Family Support Services and Foster & Kinship Care meetings as a proactive forum to promote best practice approaches and inform sector development.
42. In my experience, prior to finalising my employment at Queensland Aboriginal and Torres Strait Islander Child Protection Peak, the Aboriginal and Torres Strait Islander Recognised Entity, Family Support Services and Foster and Kinship Care services consist of dedicated and significantly skilled professionals who are working for the best interest of Aboriginal and Torres Strait Islander children. I view the Aboriginal and Torres Strait Islander Child Protection Sector as a stable and logical investment to address alarming rates of over-representation. In addition the sector has demonstrated its ability to embrace positive reform for the benefit of children and young people.
43. I attended a significant number of strategic meetings assisting policy and practice development of Aboriginal and Torres Strait Islander child protection practices. In particular Quarterly meetings with Deputy Director General, Child Safety Directors and policy reference groups. In my view these meeting were productive in nature, however, in the future, a greater corporate commitment and mutual trust could benefit implementation at a state, regional and local level.
44. The Queensland Aboriginal and Torres Strait Islander Child Protection Peak is an essential agency in relation to:
- Developing and contributing to child protection policy, legislation and program development, implementation and evaluation;
 - Monitoring and influencing policies, legislation and programs that impact on Aboriginal and Torres Strait Islander children and young people;

¹⁴ <http://winangay.com/>

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- Identifying funding opportunities for applied research proposals;
- Setting strategic direction for Aboriginal and Torres Strait Islander Child Protection agencies;
- Assisting members in their operations, including best practice dissemination and take up of new programs;
- Developing state-wide best practice frameworks;
- Facilitating and providing training and professional development opportunities;
- Developing collaborative partnerships with relevant stakeholders; and
- Performing secretariat functions for Peak Body role.

45. In my employment at the Aboriginal and Torres Strait Islander Legal Service (Qld) as Law and Justice Advocacy Development Officer, I have been privileged to serve the community including in relation to:

- Providing a submission on the Development, Implementation and Review of Queensland Aboriginal and Torres Strait Islander Cultural Support Plans within the Child Protection System to the Commission for Children, Young People and Child Guardian;
- Informing submissions to the United Nations Permanent Forum on Indigenous Issues in relation to the nexus between child protection and youth justice; and
- Delivering Child Protection Community Legal Education that provides comprehensive information related to:
 - * The Queensland Child Protection Act 1999 and Regulations
 - * Stages of child protection - Intake, Investigation and Assessment and Ongoing intervention
 - * Queensland child protection model
 - * Aboriginal and Torres Strait Islander specific child protection legislation and achieving culturally competency

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- * Legal rights framework for immediate family, extended family and children.
- * Family Group Meetings/Case plan review meeting
- * Reviews, appeals and complaints processes
- * Benefits of legal representation and collaborative partnerships.

Towards a Balanced Child Protection System

Universal Services

46. A community development and capacity building approach is required to create community ownership of, and community responses to, their identified needs. I have experienced countless requests for assistance to develop local responses but have been limited by lack of resources and the inability of Child Safety to support such approaches due to their restricted mandate. Whilst these approaches may be hard for governments to initially measure it is essential that Aboriginal and Torres Strait Islander peoples have ownership of issues and solutions through a community development model within a universal preventive initiative.¹⁵
47. There is a real need for Aboriginal and Torres Strait Islander communities to be able to access information and awareness programs in relation to what is harm and risk, establishing protective factors, creating acceptable community norms such as appropriate parenting, and promoting safer and stronger environments. Communities must be afforded ownership to develop responses to local and individual issues which impact child wellbeing and safety. It is fundamentally important that this is delivered independently of the statutory system.¹⁶

Early Intervention system

48. In my experience the current early intervention model is actually responding after the fact, often when harm or risk is already entrenched within a family. Whilst the current investment into the Helping Out Families pilot, Referral for Active Intervention and Aboriginal and Torres Strait Islander Family Support systems is welcomed, the reality is that in the majority of case referrals there are linkages to the statutory system. If we are serious about early

¹⁵ Harris-Short, S. (2012, pp 123-124) Aboriginal Child Welfare, Self Government and the Rights of Indigenous Children: Protecting the vulnerable under International Law. "Essentially, the solutions to the problems surrounding Aboriginal child welfare will have to come from within the communities themselves and that can only be achieved by truly empowering those communities and recognising that they have the ultimate responsibility for their own children." Ashgate Publishing, Ltd., 01/01/2012

¹⁶ United Nations Declaration on the Rights of Indigenous Peoples. Article 3: Indigenous peoples have the right to self-determination.

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intervention a family support service model should be developed independent and removed from the statutory system, or at the very least families should have access to a non-stigma based right of self-referral that is not restricted by the requirement of a previous referral from Child Safety. It is essential that a non-stigma referral pathway is created within the Aboriginal and Torres Strait Islander family support services to promote more effective engagement and responses prior to harm and risk reaching a significant level of concern.¹⁷

49. It is my view that current models of funding may only hold the overwhelming tide of gross Aboriginal and Torres Strait Islander over-representation at bay for a limited period and that it is essential that a non-stigma based referral pathway is created within Aboriginal and Torres Strait Islander family support services to promote more effective engagement and responses prior to harm and risk reaching a significant level of concern.¹⁸
50. Within Queensland a significant issue and limitation for service delivery planning and implementation is the fact that to date Aboriginal and Torres Strait Islander dual youth justice and child protection order data breakdown is unavailable. I acknowledge current efforts by the Commission for Children, Young People and Child Guardian to make this information available in future reporting.
51. The relationship between the two is well documented in the "Bringing Them Home Report" (of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families). This report identified the significant correlation between removal and subsequent contact with the criminal justice system. The underlying causes associated with Aboriginal and Torres Strait Islander over-representation in both the child protection system and the criminal justice system are often the same. In Queensland for example, it has been found that 54 per cent of Aboriginal and Torres Strait Islander males, and 29 per cent of Aboriginal and Torres Strait Islander females, involved in the child protection system go on to criminally offend both as juveniles and adults.¹⁹ Such evidence, in addition to the fact that

¹⁷ Higgins, D., & Katz, I. (2008, p.47) Enhancing service systems for protecting children-Promoting child wellbeing and child protection reform in Australia.

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

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

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

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

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

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

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

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

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

¹⁹ Anna Stewart, *Transitions and Turning Points: Examining the Links Between Child Maltreatment and Juvenile Offending* (2005) Office of Crime Statistics and Research <www.ocsar.sa.gov.au/docs/other_publications/papers/AS.pdf> at 24 May 2010.

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the rates of over-representation in both systems continue to rise, makes it clear that neither system is effectively addressing the causes of contact.

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

Attachment B is a copy of the 'United Nations Permanent Forum on Indigenous Issues Eleventh Session – New York'.

Attachment C is a copy of the 'Shadow Report to the UN Committee on the Rights of the Child'

Statutory System

52. In my experience, the statutory power and authority imbalances significantly hinder the engagement of families and the recognition of alternative responses to risk and harm experienced by children and young people. Given these statutory powers are necessary to protect children, there is a significant opportunity to reform the family group and case plan review meeting process to create a more respectful and inclusive process. In my view a more inclusive process delivered independently from Child Safety could facilitate a reduction in out of home care rates, increased compliance with the Aboriginal and Torres Strait Islander Child Placement Principle, increased cultural preservation and further positive outcomes for children. I would strongly recommend a reconsideration of the original New Zealand approach which aligns with a more inclusive family restoration model.
53. In my view structured decision making tools are an important aspect of decision making that keeps children safe. However, these tools focus on deficiencies and risks. It would be highly beneficial for Child Safety to explore a more therapeutic and balanced framework by exploring strengths and need as a tool for beneficial outcomes. In essence, Child Safety could transition to a framework similar to Helping Out Families to create a cultural shift in statutory intervention. Given that Aboriginal and Torres Strait Islander over-representation with the Child Protection system is predicted to reach approximately 60%, cultural competency should feature strongly throughout any assessment and decision making framework.

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54. The innovative and strength based Practice Framework adopted by the New Zealand child welfare statutory system in recognition of its increased focus towards risk adverse intervention, integrates three perspectives: child-centred; family-led and culturally responsive; and strengths and evidence-based.²⁰ These perspectives are woven throughout all practice phases including assessment and engagement, finding solutions, and securing safety and belonging.²¹
55. The statutory child protection system has systematically failed to consistently adhere to the unique cultural and legal rights of Aboriginal and Torres Strait Islander children and young people.²² It must be considered whether the state is the appropriate agency to deliver these essential requirements for Aboriginal and Torres Strait Islander children, or if it is more effective to outsource through statutory delegation to best placed Aboriginal and Torres Strait Islander agencies and community groups. I would argue that the legislated cultural and legal rights of Aboriginal and Torres Strait Islander children may be more appropriately delivered by the Aboriginal and Torres Strait Islander community and its agencies.
56. The current Recognised Entity professionals produce meaningful advice and recommendations within significant and non significant decision making which supports culturally acceptable and safe outcomes. The important legislated Recognised Entity role should be maintained as a component of Aboriginal and Torres Strait Islander practice currently outlined in the *Queensland Child Protection Act 1999*.

Recognised Entities and Decisions About Aboriginal and Torres Strait Islander Children

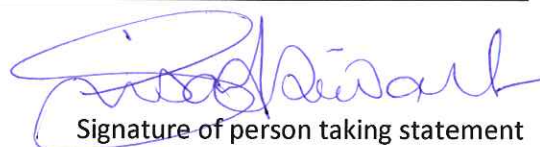
57. One of the fundamental flaws of the Recognised Entity model is that professionals have been limited to participation and consultation roles in decision-making. In my view, the role is defined and administrated through legislation, policy and procedural and service agreement. I have observed the role to have significant limitations in relation to the level of engagement and information gathering with family, kin and community to inform their participation in decision making. This impacts levels of meaningful cultural and practical support for immediate family, extended family and significant community members on whom children and young people in care are ultimately reliant upon for adequate case management. It is clear that Aboriginal and Torres Strait Islander Recognised Entity professionals would be more efficiently utilised in a more practical statutory role with

²⁰ Connolly, M. (2006,p.825) Practice Frameworks: Conceptual Maps to Guide Interventions in Child Welfare. British Association of Social Workers. Oxford University Press.

²¹ Ibid.(2006,p.829)

²² Commission for Children and Young People and Child Guardian- Indigenous Child Placement Principle Audit Report 2010/11 39 ; 4.4 Overall compliance with each step; " The absence of sufficient records for more than 12% of the placement decisions comprising the audit sample limits the Commission's ability to assess the Department of Communities' compliance with the steps required by section 83 of the Child Protection Act 1999. It also raises questions about the Department of Communities' ability to make appropriate decisions about service delivery and support gaps."p.39

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authority to deliver case work in key points in practice. In my view, legislative amendments could delegate enhanced responsibility to Recognised Entity professionals to deliver targeted case work assistance in family group meeting conferencing, cultural support planning and implementation, assisting children through mentoring/transition to adulthood and a court advisory role. Whilst professionals may argue this is currently occurring I suggest a strengthening of legislation would better support the intention of the legislated Recognised Entity model.

58. In 2010, the Queensland Aboriginal and Torres Strait Islander Child Protection Peak was privileged to be hosted by Professor Muriel Bamblett AM, CEO of the Victorian Child Care Agency (VACCA). This important visit was to support the Peak's knowledge to then inform Aboriginal and Torres Strait Islander reform towards a balanced child protection system. In my view Queensland has a well-structured Aboriginal and Torres Strait Islander child protection NGO sector which requires integration and flexibility to achieve more proficient results. A fundamental learning which I gained through mapping Victorian service delivery was the significant delegation of case work activities to Aboriginal and Torres Strait Islander professionals and the efficiency in outcomes for children and young people. In my view, in terms of establishing this fundamental support within Queensland, it would be more economically viable and result in more effective statutory case work to explore integration of these concepts within the Recognised Entity model.
59. In my view, two Victorian program streams demonstrate greater authority for Aboriginal and Torres Strait Islander professionals which conceptually could inform future Recognised Entity reform:

Aboriginal and Torres Strait Islander Family Decision Making Program

- The establishment of an Aboriginal and Torres Strait Islander Family Decision Making (ATSIFDM) program within the Queensland parameters of the legislated Case planning context could be of benefit to children and young people. Aboriginal or Torres Strait Islander ATSIFDM conveners offer an opportunity for immediate, extended family and community members, and Elders to participate and have ownership of the decision making processes during case plan and Family Group Meetings in determining actions to address the care and protection needs identified and assessed by Child Safety services or Indigenous Family Support services.
- The ATSIFDM conveners could facilitate a culturally inclusive process of Aboriginal and Torres Strait Islander family participation. In my view the Recognised Entity is in

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an ideal position to convene due to the nature of their responsibilities in significant decision making and consultation in non-significant decisions.

- This approach could enhance the current Family Group and Case Plan review meeting process, and is significantly influenced by traditional and modern Aboriginal or Torres Strait Islander cultural values, principles and community systems. The ATSIFDM program draws on the fact that the care and protection of Aboriginal and Torres Strait Islander children and young people is best provided for, and achieved through, the involvement of family, extended family and community within culturally safe best practice models.²³

Cultural Retention Program

- The establishment of cultural retention and preservation case work responsibility could respond to children and young people needs by providing intensive cultural support for children within the statutory system. The approach will support children in identified care arrangements by enhancing the cultural safety and appropriateness of the placement and by developing, implementing and monitoring actions within the Aboriginal and Torres Strait Islander cultural support plan. The concerning inadequacies of current cultural support planning with the Queensland system was outlined by the Aboriginal and Torres Strait Islander Legal Service (Qld) in its submission to the Commission for Children, Young People and Child Guardian entitled *Development, Implementation and Review of Queensland Aboriginal and Torres Strait Islander Cultural Support Plans within the Child Protection System* (see attached).
- The approach could prioritise children placed outside the preferred legislated Aboriginal and Torres Strait Islander Child Placement Principle placement options. However, the cultural retention program should be available to all children subject to statutory intervention.²⁴

60. We must recognise Aboriginal and Torres Strait Islander culture is a tool for positive empowerment and that these approaches will have positive integrating influences across Aboriginal and Torres Strait Islander Child Placement Principle and cultural support planning functions. In my view, transferring greater responsibility to the Recognised Entity sector would create integration across core Aboriginal and Torres Strait Islander practices and

²³ Muriel Bamblett VACCA CEO 2010 agency visit and service delivery mapping

²⁴ Muriel Bamblett VACCA CEO 2010, & SNAICC Conference 2010 KARI OOHG Document- Presentation, Family Link initiative NSW 2010
<http://www.kari.com.au/resources/SNAICC%20Presentation%20Handout.pdf>

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improve the safety and wellbeing of children. Aboriginal and Torres Strait Islander children and young people should be our only measure and society can be measured by what status we give to our children.

61. In my view, the future Child Protection system must reflect the unique needs of Aboriginal and Torres Strait Islander children and young people. Aboriginal and Torres Strait Islander child protection practice and cultural competency must be embedded across strategic leadership, policy and program development and frontline practice within both government and non-government arenas.

AFFIRMED by William John Hayward on 24th August 2012 at Brisbane

in the presence of Lisa Stewart, Barrister.



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