



## ATTACHMENT AJ -2

This is the attachment marked 'AJ-2' referred to in the witness statement of Andrew Jackomos dated "11 July 2019" .

# IN THE CHILD'S BEST INTERESTS

Inquiry into compliance with the intent of the  
Aboriginal Child Placement Principle in Victoria



COMMISSION FOR CHILDREN AND YOUNG PEOPLE





**Artwork © Coming Home (acrylic on canvas 2014)  
reproduced with permission of the artist, Eileen Harrison.**

*Eileen Harrison is a Gunai/Kurnai woman, artist and respected Elder from south-east Victoria.*

All the baby emus in this painting are coming home.  
The black emus depict the mothers and the larger emus depict Elders wearing their possum skin cloaks.  
This work represents people coming home to their ancestral lands, their place. Country is where you belong.



The Commission for Children and Young People respectfully acknowledges the Traditional Owners of the country throughout Victoria, pays respect to Elders past and present and celebrates the ongoing living cultures of First Peoples.

Throughout this report the term Aboriginal is used to refer to both Aboriginal and Torres Strait Islander peoples.

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# Letter to Legislative Council and the Legislative Assembly

Mr Andrew Young  
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Legislative Council  
Parliament House  
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Mr Ray Purdey  
Clerk of the  
Legislative Assembly  
Parliament House  
Spring Street  
East Melbourne 3002

Dear Sirs

**In the child's best interests –  
Inquiry into compliance with the intent of  
the Aboriginal Child Placement Principle in Victoria**

I hereby request that the Inquiry report produced by the Commission for Children and Young People be tabled in accordance with section 50 of the *Commission for Children and Young People Act 2012* (the Act).

I would be grateful if you could arrange for the Inquiry report to be tabled in both the Legislative Council and Legislative Assembly on the next sitting day.

I confirm that the Minister for Families and Children, the Secretary to the Department of Health and Human Services have each been provided with a copy of the Inquiry report in accordance with section 49 of the Act.

Yours sincerely

**Liana Buchanan**  
Principal Commissioner

10 October 2016



# Foreword

As a society, we have all witnessed the devastating impacts of historical practices that arose from the systematic removal of Aboriginal children from their families and communities. We have learned of the trauma and anguish associated with the abrupt severance of family ties, which was further exacerbated by grief arising from a loss of identity, culture and history.

Australian policy settings began to acknowledge the lessons of our history through greater recognition of the importance of children's connection to community and culture in the 1980s. At this time, the efforts of Aboriginal community-controlled organisations and advocates led to the establishment of the Aboriginal Child Placement Principle, which is now enshrined in *Victoria's Children, Youth and Families Act 2005* and is intended to guide decision-making in the best interests of Aboriginal children in out-of-home care.

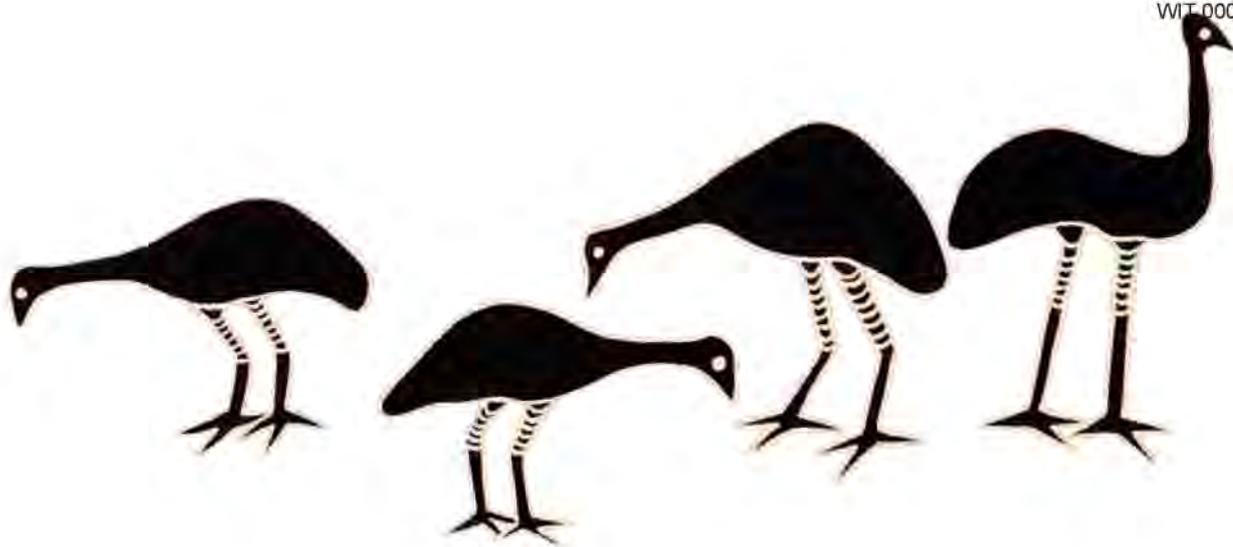
The Aboriginal Child Placement Principle requires that Aboriginal children should only be removed from their homes as a matter of last resort. Where out-of-home placement is deemed necessary, all efforts must be made to place children in accordance with a hierarchy favouring placement with relatives or Aboriginal carers within or in close proximity to community. Non-Aboriginal carers, whether in kinship or other care arrangements, must ensure the maintenance of the child's culture and identity by facilitating connection with culture where this cannot occur.

This Inquiry examines compliance with the intent of the Aboriginal Child Placement Principle over a two-year period (1 January 2013 to 31 December 2014) against the backdrop of a staggering and disproportionate increase in Aboriginal children in out-of-home care. In less than ten years, from 2005 to 2014, the number of Aboriginal children in care has increased by 149 per cent. In 2014, Aboriginal children in Victoria were nearly 12 times more likely to be placed in out-of-home-care than non-Aboriginal children – a rate that is amongst the highest in Australia. Aboriginal children represent 18 per cent of all children in out-of-home care. In light of this, the importance of adherence to the Aboriginal Child Placement Principle cannot be overstated.

The Inquiry's methodology comprised a literature review, a review of child protection and policy guidelines, data analysis, public submissions, direct consultations, a survey of child protection staff and the review of case files of 65 Aboriginal children placed into care during the review period. While finding strong and commendable compliance at the policy and program level, it also revealed that this compliance is too often failing to translate into the intended outcomes at the operational level. Without effective implementation, the real benefits of co-designed policies and programs will not be experienced by Aboriginal families.

The key compliance issues identified include systemic barriers to correctly determining Aboriginality, inadequate involvement and resourcing of the Aboriginal Child Specialist Advice and Support Service and a lack of evidence to demonstrate Aboriginal children are being placed at the highest level of the placement hierarchy. More significant compliance failures included the failure to convene timely Aboriginal Family-Led Decision-Making meetings when protective concerns relating to Aboriginal children are identified, and the lack of cultural support or case plans clearly identify ways to ensure continuing contact with community and culture.

Ensuring the safety and welfare of vulnerable children is an inherently fraught and complex exercise. In the course of the review, the Commissioner for Aboriginal Children and Young People heard from many dedicated and thoughtful community advocates and workers, child protection practitioners, Departmental staff and elected representatives who were wholly committed to the Aboriginal Child Placement Principle and to reducing the growing rates of out-of-home placement of Aboriginal children. However, the findings of the review clearly demonstrate a disconnect between this goodwill and commitment and the reality of how our Aboriginal children experience decision-making about their best interests. The state has a duty of care to all Aboriginal children in its care to ensure compliance with the Aboriginal Child Placement Principle and to ensure they grow strong in their cultural inheritance and community.



The Commission is pleased that there has been a greater focus on Aboriginal self-determination, transparency and accountability since 2014, with a stronger role proposed and being pursued for Aboriginal community-controlled organisations in the case management of Aboriginal children in care. The Aboriginal Children's Forum, established in 2015, ensures the conversation between government, Aboriginal organisations and service providers about the over-representation of Aboriginal children in out-of-home care remains an ongoing one.

It is essential that the child protection system becomes more Aboriginal-friendly and culturally competent. To support the government's commitment to self-determination, Aboriginal people must be represented at every level of the child protection sector, both within government and in the community. This representation should extend beyond casework roles to include management, leadership and executive positions. Aboriginal decision-makers should participate in all stages of child protection including the Aboriginal Children's Forum; the co-design of policies and programs; Area Panels that set local priorities; and Aboriginal community-controlled organisations that provide case management for Aboriginal children.

Legislative amendments effective from March this year saw an expansion of the circumstances in which a cultural plan must be developed to include all Aboriginal children in out-of-home care. We must ensure that the permanency changes arising from these legislative amendments strengthen rather than minimise compliance with the Aboriginal Child Placement Principle.

Additional budgeted investment for the Aboriginal Child Specialist Advice and Support Service and cultural planning in 2016-17 will help meet increased demand for support. The Department of Health and Human Services' Aboriginal Employment Strategy's focus on child protection is a step in the right direction. It is also encouraging to recently hear that Mallee District Aboriginal Services will now deliver their

Aboriginal Child Specialist Advice and Support Service program in Swan Hill. Further consideration should be given to other local Aboriginal Community Controlled Organisations delivering Aboriginal Child Specialist Advice and Support Services in their communities, building on local knowledge and strengthening self-determination. We welcome and commend these initiatives.

This Inquiry highlights, however, that lasting systemic change requires more than commitment, good intentions and investment. It requires clearly articulated common goals accompanied by concerted and consistent effort and increased oversight. We trust that the 54 recommendations arising from this Inquiry will ensure that the purpose and benefits of the Aboriginal Child Placement Principle are better understood, acknowledged, and in turn, more meaningfully implemented and enforced. Placing Aboriginal people and community-controlled organisations at the heart of decision-making and case management is an important way to ensure this occurs.

We can no longer pretend that we don't understand the deep impact that breaking links to family, clan and Country has on Aboriginal children's emotional, physical and spiritual wellbeing, whether that important link is broken for a short time or lost forever. Nor can we dismiss the deep concerns of Aboriginal communities about the removal of their children from their homes and communities as merely those of a bygone era.

We can, and must, reverse the alarming over-representation of Aboriginal children in our child protection system. We must also do better to nurture and support the cultural connections of those Aboriginal children who, despite our best efforts, enter it. For every policy formulated, decision made and action taken we must continually ask ourselves – are we truly serving the best interests of this Aboriginal child?

*Andrew Jackomos*

**Andrew Jackomos PSM**  
Commissioner for Aboriginal  
Children and Young People

*Liana Buchanan*

**Liana Buchanan**  
Principal Commissioner

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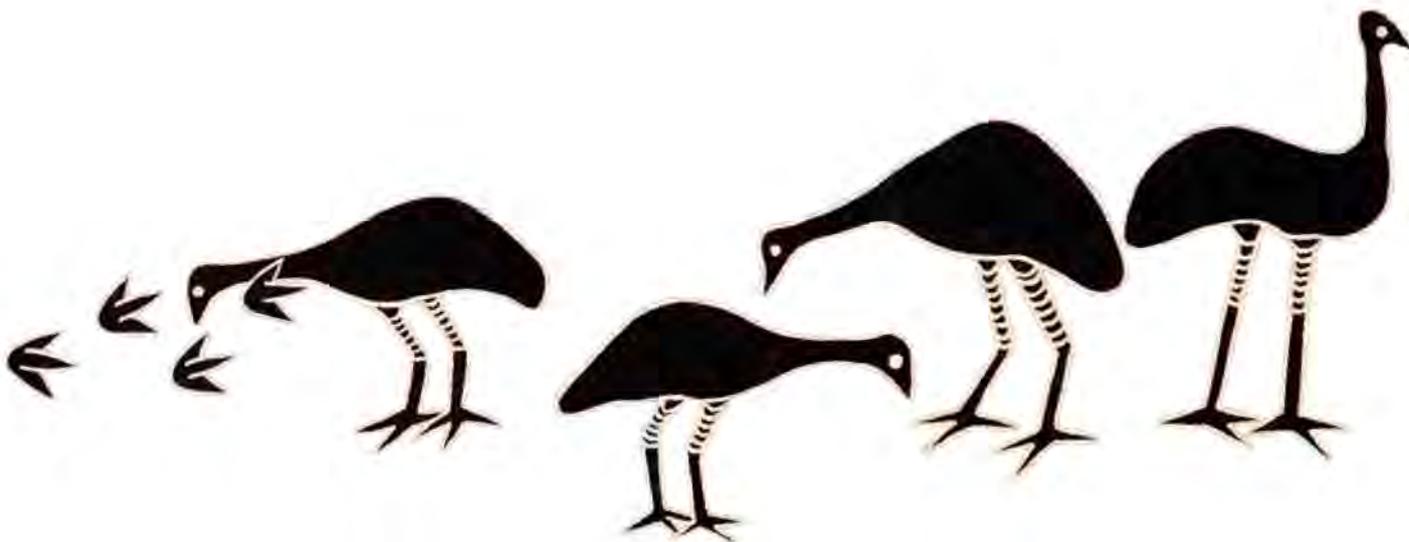
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# Abbreviations and acronyms

<b>Aboriginal</b>	This term refers to both Australian Aboriginal and Torres Strait Islander people	<b>CYFA 2005</b>	Children, Youth and Families Act 2005 (Vic)
<b>ACCO</b>	Aboriginal community-controlled organisation	<b>Department</b>	Department of Health and Human Services
<b>ACPP</b>	Aboriginal Child Placement Principle, which is contained in s 13 of the Children, Youth and Families Act 2005 (Vic)	<b>GSO</b>	Guardianship to the Secretary Order
<b>ACSASS</b>	Aboriginal Child Specialist Advice and Support Service	<b>Inquiry</b>	The Commission for Children and Young People's Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria
<b>AFLDM</b>	Aboriginal family-led decision making	<b>Inquiry period</b>	1 January 2013 to 31 December 2014
<b>AFPP</b>	Aboriginal Family Preservation Program	<b>Lakidjeka</b>	This term refers to ACSASS delivered by VACCA
<b>CCYP Act</b>	Commission for Children and Young People Act 2012 (Vic)	<b>LTGSO</b>	Long-term Guardianship to the Secretary Order
<b>Children</b>	The term children (or child) in this report refers to children and young people under the age of 18 years	<b>MDAS</b>	Mallee District Aboriginal Service
<b>Commission</b>	Commission for Children and Young People (Victoria)	<b>OOHC</b>	Out-of-home care
<b>CP</b>	Victorian child protection system	<b>PCU</b>	Placement Coordination Unit
<b>CP policy and practice guidance</b>	The suite of documentation that directs and guides CP and CSO staff through their responsibilities for complying with the ACPP	<b>PIC</b>	PwC Indigenous Consulting
<b>CP staff</b>	Workers, practitioners and professionals employed by the Department of Health and Human Services within the child protection system	<b>SNAICC</b>	Secretariat of National Aboriginal and Islander Child Care
<b>CRIS</b>	Client Relationship Information System	<b>Taskforce 1000</b>	The collaborative approach by the Department and the Commission to review and improve the current circumstances of the approximately 1,000 Aboriginal children and young people in out-of-home care.
<b>CSO</b>	Community service organisation	<b>VACCA</b>	Victorian Aboriginal Child Care Agency
<b>CSP</b>	Cultural support plan	<b>VACCHO</b>	Victorian Aboriginal Community Controlled Health Organisation
		<b>VCAMS</b>	Victorian Child and Adolescent Monitoring System

# Acknowledgements

The Commission acknowledges the cooperation and contribution of a number of people and organisations throughout this Inquiry.

- Aboriginal children and young people in Victoria
- The Aboriginal families and carers who contacted the Commission to share their stories
- Aboriginal community-controlled organisations and community service organisations
- Department of Health and Human Services, Child Protection Statutory and Forensic Services and both regional and central Child Protection staff
- Victorian Aboriginal Child Care Agency and Mallee and District Aboriginal Services who deliver the Aboriginal Child Specialist Advice and Support Service in Victoria
- The following organisations provided submissions to the Inquiry:
  - Berry Street
  - CREATE Foundation
  - MacKillop Family Services
  - Mallee and District Aboriginal Services
  - Secretariat of National Aboriginal and Torres Strait Islander Child Care
  - Victorian Aboriginal Child Care Agency
  - Victorian Council of Social Services
  - Wathaurong Aboriginal Cooperative



## PwC's Indigenous Consulting

PwC's Indigenous Consulting (PIC) as authorised officers of the Commission conducted the research that informed the Inquiry.

PIC is a national Indigenous consulting business. They exist to power positive change across the most important issues facing Aboriginal Australia.

PIC is majority-owned, led and staffed by Indigenous Australians. They employ over 30 staff and have offices in every mainland state and territory. PIC specialise in providing advice and developing strategies to help realise the commercial and community potential of Indigenous policies, programs, projects, organisations and businesses.

PIC is a unique partnership between a group of Indigenous Australians and PwC, one of the world's largest professional services firms. The unique power of PIC is the combination of Indigenous expertise and experience, with PwC's world-leading consulting capability and project management methodologies.

We believe that real change happens when it is created by Indigenous people, not for Indigenous people. Our desire to create this firm reflects our belief in the rights of our communities to create and determine their own futures.

### PIC Co-owners

PIC has a passionate belief that Indigenous people should have the opportunity to fulfil their aspirations. They use their professional expertise to assist communities, governments and businesses to achieve the outcomes they are looking for.

PICs culture is firmly grounded in their values and is guided by the following principles:

- Respect those who have walked this earth before us.
- Accountable to our clients, our communities and ourselves.
- Strive for excellence in Indigenous consulting and operate with integrity.
- Respect diversity and different points of view.



# 1. Executive summary

## 1.1 Purpose and scope

The Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria was conducted in accordance with Division 4, Part 5 of the *Commission for Children and Young People Act 2012*. In November 2014, the Commission for Children and Young People (the Commission) engaged PwC Indigenous Consulting to support the conduct of the Inquiry.

The Inquiry had four key objectives:

- define the intent of the Aboriginal Child Placement Principle (ACPP) and what should constitute compliance with this intent
- assess the level of compliance with the intent of the ACPP in Victoria over the period 1 January 2013 to 31 December 2014
- identify systemic barriers to compliance with the intent of the ACPP
- recommend changes to improve compliance with the intent of the ACPP.

The Commission initiated the Inquiry because there was reason to believe there are persistent and systemic issues in complying with the intent of the ACPP. The Commission sought to identify strategies to improve future levels of compliance.

## 1.2 Inquiry context

### The Aboriginal Child Placement Principle

The ACPP is a national principle first articulated in the 1980s. It was driven by Aboriginal community-controlled organisations (ACCO) who advocated strongly for the best interests of Aboriginal children and families, and for the abolishment and redress of past practices and policies of forced removal of Aboriginal children. All Australian states and territories have endorsed the ACPP and each jurisdiction has adopted its own legislative and policy approaches to shape practice.

The focus of this Inquiry is compliance with the intent of the ACPP, which is contained in s 13 of the *Children, Youth and Families Act 2005* (CYFA 2005). The ACPP is outlined in Table 2: ACPP Overview – legislation intent and responses.

The ACPP applies when a decision has been made to place an Aboriginal child in out-of-home care (OOHC). The ACPP was established to guide decision-making in these situations and applies to all decision-makers, including the Department of Health and Human Services (the Department), its child protection (CP) program, funded community service organisations (CSO), ACCOs and courts.

## Executive summary

### Aboriginal children and out-of-home care

Aboriginal children are over-represented in all areas of the CP system in every state and territory in Australia. In Victoria, Aboriginal children are dramatically over-represented in OOHC, in comparison with both non-Aboriginal children and Aboriginal children from other states and territories.

- Aboriginal children in Victoria were nearly 12 times more likely than non-Aboriginal children to have experienced an OOHC placement in 2014.
- The rate at which Victorian Aboriginal children experienced an OOHC placement in 2014 (79.7 per 1,000 children) is among the highest in Australia – exceeded only by ACT (80.9 per 1,000) and NSW (80.3 per 1,000).

The number of Aboriginal children in OOHC in Victoria is growing at an alarming rate – much more rapidly than the number of non-Aboriginal children.

- Between 30 June 2005 and 30 June 2014 the number of Aboriginal children in OOHC rose from 526 to 1,308 – an increase of 149 per cent.
- There were 375 more Aboriginal children in OOHC on 30 June 2014 than there were on 30 June 2013 – an increase of over 40 per cent.

The significant over-representation and rapid growth of Aboriginal children in Victoria's OOHC system amplifies the importance of complying with the mandatory requirements of the ACPP. As such a high proportion of Aboriginal children and families are directly affected by CP decisions, the impact will be profound and widespread if ACPP requirements are not fulfilled.



## 1.3 Methodology

A robust methodology incorporating both qualitative and quantitative data was needed to adequately address the key objectives of the Inquiry. Table 1 provides a high-level overview of the seven data sources used by the Inquiry.

**Table 1: Data sources used by the Inquiry**

Data Source	Description
<b>Literature review</b>	<ul style="list-style-type: none"> <li>State and national literature – publicly available, held by the Commission or the Department</li> </ul>
<b>Review of CP policy and practice guidelines</b>	<ul style="list-style-type: none"> <li>Provided by the Department</li> <li>Review of 29 documents relevant to ACPP</li> </ul>
<b>System-level data</b>	<ul style="list-style-type: none"> <li>Extracted by the department from the Client Relationship Information System (CRIS)</li> <li>Data comprised records of Aboriginal children placed in OOHC between 1 January 2013 and 31 December 2014</li> </ul>
<b>File reviews</b>	<ul style="list-style-type: none"> <li>Review of case files of 65 Aboriginal children (8.5 per cent of total cohort) who had an intake into CP and were placed in OOHC between 1 January 2013 and 31 December 2014</li> </ul>
<b>Public submissions</b>	<ul style="list-style-type: none"> <li>Call for public submissions from individuals, organisations and governments</li> <li>Seven submissions received (all from community organisations)</li> </ul>
<b>Consultations</b>	<ul style="list-style-type: none"> <li>Individual meetings and statewide workshops with relevant Departmental and community stakeholders (over 20 stakeholder groups consulted)</li> </ul>
<b>Online survey</b>	<ul style="list-style-type: none"> <li>Distributed to all relevant CP staff</li> <li>Understand their experiences and opinions of the ACPP</li> <li>79 respondents (about seven per cent response rate)</li> </ul>

### Compliance assessment rubric

A rubric was developed to allow a comparative assessment of compliance across key dimensions of the system. The rubric included criteria for each of six scale ratings: no compliance, minimal compliance, partial compliance, compliant, strong compliance and excellent compliance.

## Executive summary

### 1.4 Intent of the Aboriginal Child Placement Principle

There is extensive direction to the CP system on responsibilities for complying with the requirements of the ACPP; however, there is a lack of guidance about why the ACPP exists or what it is ultimately trying to achieve. A consistent and thorough understanding of the intent of the ACPP is important to ensure decisions and actions are consistent with that intent.

Three key system-level initiatives have been established in Victoria to support compliance:

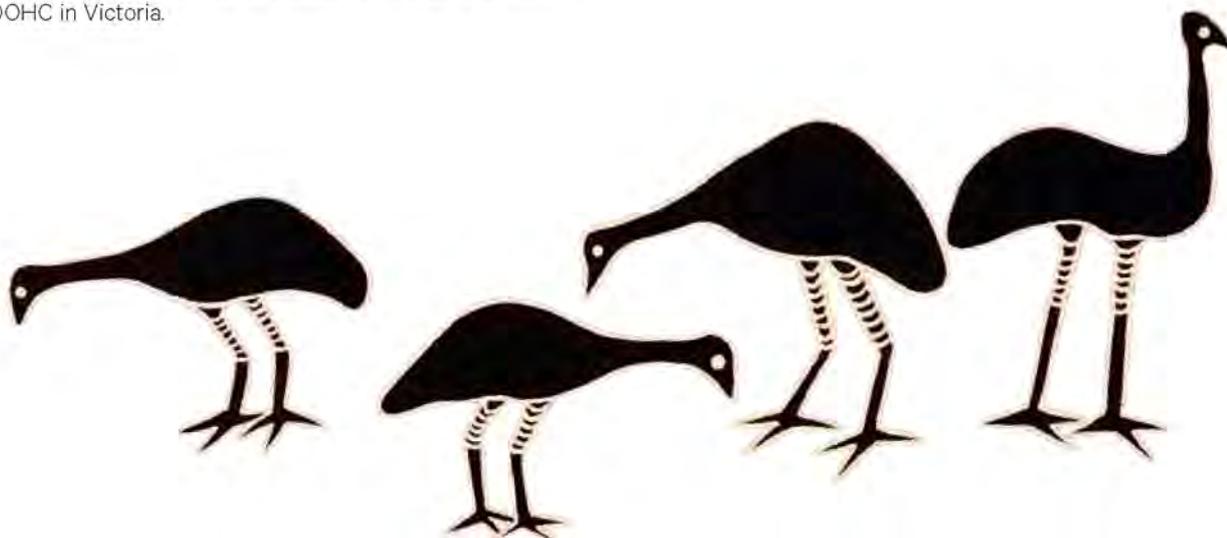
- Aboriginal Child Specialist Advice Support Service (ACSASS)
- Aboriginal family-led decision making (AFLDM) program
- Cultural support planning (CSP) program

Table 2 provides an overview of the wording of the legislated ACPP, the intent of the ACPP and the system-level policy and program responses to support ACPP compliance.

While the ACPP applies from the point that the child is placed in OOHC, it is an underlying intent of the ACPP that Aboriginal children should remain in the care of their families of origin wherever possible. The intention is for the system to give the child and their family as much support as possible, to allow them to live together safely. This consideration is particularly important when working with Aboriginal children and families, given the dramatic over-representation of Aboriginal children in OOHC in Victoria.

#### Recommendations relevant to defining practice compliance

Recommendation 1



**Table 2: ACCP overview – legislation, intent and responses**

CYFA 2005	Intent	Policy and program response
<p>s 13(1) <i>For the purposes of this Act the Aboriginal Child Placement Principle is that if it is in the best interests of an Aboriginal child to be placed in out of home care, in making that placement, regard must be had—</i></p> <p>a) <i>to the advice of the relevant Aboriginal agency; and</i></p> <p>b) <i>to the criteria in subsection (2); and</i></p> <p>c) <i>to the principles in section 14.</i></p>	<ul style="list-style-type: none"> <li>■ Australian welfare policies that removed children from their families have had, and continue to have, a destructive impact on Aboriginal people.</li> <li>■ Aboriginal people must play a key role in making placement decisions for Aboriginal children.</li> <li>■ Children do better in terms of their emotional, physical and psychological wellbeing if they have a strong connection to cultural identity.</li> </ul>	<p><b>ACSASS</b></p> <ul style="list-style-type: none"> <li>■ ACSASS was established to fulfil the role of the 'relevant Aboriginal agency'.</li> <li>■ ACSASS must be consulted about all significant decisions at all phases of CP intervention.</li> <li>■ Upon the report of an Aboriginal child to CP the relevant ACSASS service must be consulted.</li> <li>■ CP must consult with ACSASS during initial assessment of a report.</li> <li>■ ACSASS should jointly plan and attend the first home visit.<sup>1</sup></li> </ul>
<p>s 13(2) <i>The criteria are—</i></p> <p>a) <i>as a priority, wherever possible, the child must be placed within the Aboriginal extended family or relatives and where this is not possible other extended family or relatives;</i></p> <p>b) <i>if, after consultation with the relevant Aboriginal agency, placement with extended family or relatives is not feasible or possible, the child may be placed with—</i></p>	<ul style="list-style-type: none"> <li>■ Children have the right to grow up and be raised with an appreciation of their cultural identity.</li> <li>■ Aboriginal people have the knowledge and experience to determine what is right for them and for their children.</li> <li>■ ACCOs must be meaningfully engaged and participate in decision-making.</li> <li>■ Collaboration between CP and ACCOs will inform culturally relevant decisions that support the wellbeing of the child.</li> <li>■ Connection to extended family will maintain the child's sense of cultural identity and community connectedness.</li> </ul>	<p><b>ACSASS</b></p> <ul style="list-style-type: none"> <li>■ ACSASS assists in identifying members of the child's kinship or community network who may be suitable to provide a placement.</li> <li>■ ACSASS should be involved in AFLDM and all formal decision-making processes.</li> </ul> <p><b>AFLDM</b></p> <ul style="list-style-type: none"> <li>■ AFLDM assists in identifying a suitable placement with extended family or relatives.</li> <li>■ AFLDM and ACSASS contribute to case planning for the child.</li> </ul>
<p>i. <i>an Aboriginal family from the local community and within close geographical proximity to the child's natural family;</i></p> <p>ii. <i>an Aboriginal family from another Aboriginal community;</i></p>	<ul style="list-style-type: none"> <li>■ Placement of the child with an Aboriginal family that lives close in proximity to the natural family will ensure that the child maintains their sense of Aboriginal and their connection with community.</li> </ul>	<p><b>ACSASS</b></p> <ul style="list-style-type: none"> <li>■ ACSASS must be consulted about the decision to place the child with an Aboriginal family and assists in identifying a suitable placement.</li> </ul> <p><b>AFLDM</b></p> <ul style="list-style-type: none"> <li>■ AFLDM is recognised as an effective method for ensuring all potential carers are considered.</li> </ul>

CYFA 2005	Intent	Policy and program response
<p>iii. <i>as a last resort, a non-Aboriginal family living in close proximity to the child's natural family;</i></p>	<ul style="list-style-type: none"> <li>■ Placement of the child with a non-Aboriginal family may be the only safe option. Placement of an Aboriginal child with a non-Aboriginal family is less desirable as it may be more challenging for the child to maintain a strong sense of their Aboriginal identity. This does not imply that the care of non-Aboriginal families is inadequate, but that the capacity of the child to maintain strong cultural ties may be more challenging in such circumstances.</li> <li>■ An Aboriginal child should only be placed with a non-Aboriginal family where all options to place the child with an Aboriginal family have been exhausted.</li> <li>■ Any non-Aboriginal placement should be in close proximity to the child's natural family, to help ensure the child maintains contact with their Aboriginal culture, identity and community.</li> </ul>	<p><b>ACSASS</b></p> <ul style="list-style-type: none"> <li>■ ACSASS must also be consulted about this decision – CP must continue to consult with ACSASS throughout all phases of the process.</li> </ul> <p><b>AFLDM</b></p> <ul style="list-style-type: none"> <li>■ AFLDM meetings are recognised as an effective method for ensuring all potential carers are considered.</li> </ul>
<p>c) <i>any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community.</i></p>	<ul style="list-style-type: none"> <li>■ Aboriginal children have the right to be raised within their own culture and community. This right must be recognised and upheld, regardless of where the child is placed in OOHC.</li> <li>■ Non-Aboriginal parents and carers should be supported to seek opportunities to maintain the child's connection to their Aboriginality and the Aboriginal community.</li> <li>■ Aboriginal children must be kept safe and must also be culturally safe.</li> </ul>	<p><b>Cultural support plan</b></p> <ul style="list-style-type: none"> <li>■ A CSP is required for Aboriginal children who are subject to a Guardianship to the Secretary Order or a Long-Term Guardianship to the Secretary Order.</li> <li>■ The Department considers it best practice to have a CSP in place for all Aboriginal children in OOHC.</li> </ul> <p><b>Case plans</b></p> <ul style="list-style-type: none"> <li>■ Case plans are a mandatory requirement for all children in OOHC.</li> <li>■ Case plans must include consideration of identity and the desirability of the child retaining a connection with their culture.</li> </ul>

Source: CYFA 2005 departmental CP policy and program documentation; consultations conducted by the Inquiry.

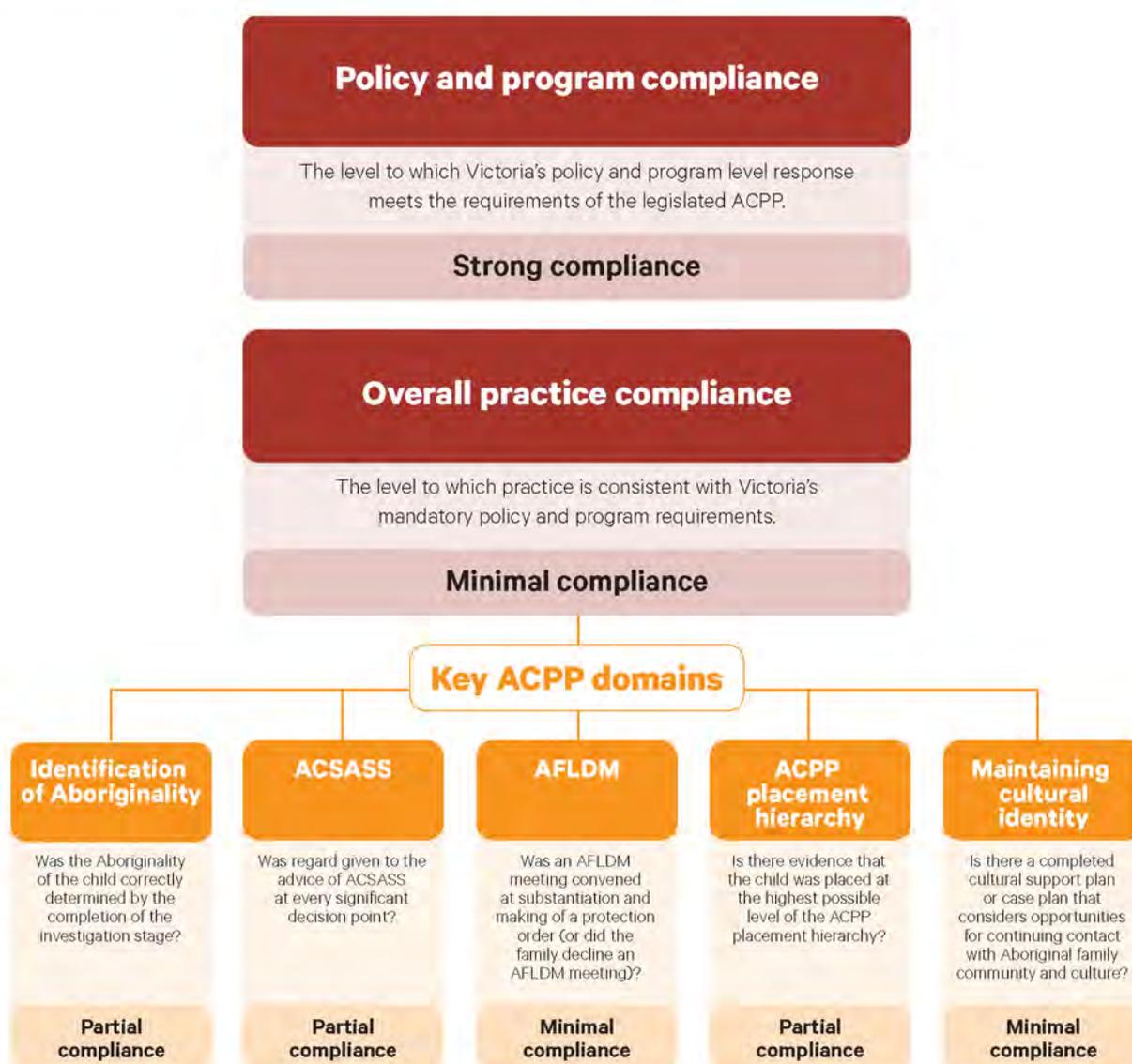
<sup>1</sup> When afforded an opportunity to respond to a draft report of this Inquiry, VACCA noted that ACSASS can only plan joint visits with CP if they are aware that CP cases have been actioned and a visit is needed. ACSASS rely on accurate and timely information from CP to plan joint visits.

## 1.5 Overview of compliance

Figure 1 provides an overview of the ratings determined by the Inquiry for policy and program compliance (what the system intends to occur) and practice compliance (what actually occurs). It also describes the key measures used by the Inquiry in

determining compliance. The overall practice compliance rating was informed by assessing practice compliance against five key ACCP domains.

Figure 1: Summary of compliance ratings



Source: This assessment was informed by the seven data sources detailed in Table 1 in addition to performance data provided by the two ACSASS providers for the purposes of this Inquiry.

Note: There was a high level of consistency in the themes across these seven points of evidence, indicating this assessment is likely to be reflective of the system-wide situation.

## Executive summary

### Defining practice compliance – the five key domains of the Aboriginal Child Placement Principle

There is no adequate definition, either nationally or in Victoria, of what constitutes compliance with the intent of the ACPP, or how compliance with the ACPP should be measured.

In the absence of an agreed definition, a rubric for assessing practice compliance with the ACPP was developed for the purposes of the Inquiry. The rubric comprises 20 compliance points, all of which are mandatory requirements in CP policy and practice guidance. These compliance points are associated with the five key ACPP domains (see Figure 1). This rubric was used to assess the level of practice compliance with each of the five key ACPP domains.

The Department and service sector accepted the ACPP compliance assessment rubric for the purposes of the Inquiry, but may choose to define compliance with the ACPP in a different manner for other assessment and reporting purposes.

### Current reporting measure

The Department reports annually on 'placements in accordance with the ACPP' to the Australian Institute of Health and Welfare and the Productivity Commission. However, this reporting is not an adequate measure of compliance with mandatory ACPP requirements.

This reporting is confined only to a proxy measure of the type of carer a child is placed with. This proxy measure:

- does not consider the other essential requirements (other than placement) necessary to comply with the ACPP, such as involvement of an Aboriginal agency and maintaining cultural identity
- does not differentiate between the levels of the legislated ACPP placement hierarchy. For example, the following placements are grouped together as 'placed in accordance with the ACPP': Aboriginal extended family, non-Aboriginal extended family, another Aboriginal carer and Aboriginal-operated residential care facilities
- does not indicate whether placement at higher levels of the ACPP placement hierarchy was considered.

The Department has never undertaken an evaluation or review (either internally or externally) to assess the level to which the Victorian system is complying with the requirements of the ACPP.

#### Recommendations relevant to defining practice compliance

Recommendations 6 and 7



## 1.6 Assessment of policy and program compliance

Compliance rating: Strong compliance

The most significant considerations in making this assessment are listed below:

- The policy and program response meets the mandatory legislative requirements of the ACPP. This is achieved largely through ACSASS and the AFLDM and CSP programs, and the requirement for children's case plans to consider identity and connection with culture.
- The requirement to consult with ACSASS 'at every significant decision point throughout all phases of CP intervention' exceeds the requirements of the ACPP legislation, which stipulates that regard must be given to the advice of the Aboriginal agency 'in making that placement' in OOHC.
- The recent amendments to s 18 of the CYFA 2005 to enable the transfer of certain CP powers to ACCOs is applauded as Australian best practice and a significant opportunity to improve outcomes for Aboriginal children. However, it is not yet known which powers will be transferred to ACCOs or when this will occur.
- In addition to the s 18 amendments the Department has commenced discussions with the sector through the Aboriginal Children's Forum to transfer case management of Aboriginal children in OOHC from CSOs and the Department to ACCOs.

### Opportunities for improvement

While the policy and program response was assessed as 'Strong compliance', three areas were identified where this response could be strengthened to more closely align with the intent of the ACPP.

#### Aboriginal stakeholders should assume a greater decision-making role

The current system-level policy and program response is impressive in its commitment to involve Aboriginal stakeholders in all significant decisions. However, Aboriginal people are involved in an advisory role, rather than in a decision-making capacity. Increasing the decision-making responsibilities of Aboriginal people would more closely align the response with

the intent of the ACPP and with the wider Victorian Government approach to Aboriginal Affairs. The Commission notes that the Aboriginal Children's Forum (ACF) was established and commenced in November 2015 towards the end of this Inquiry. The ACF meets quarterly and brings together ACCOs and CSOs with government agencies in a shared decision-making model. The ACF is working towards nine key priorities that have been jointly agreed upon.

The Victorian Government commitment to co-design is also engaging Aboriginal people in decision-making. It will take time and continued commitment for this approach to be fully realised.

#### Cultural support plans mandatory for all Aboriginal children

At the time of the Inquiry, CSPs were only mandatory for certain cohorts of Aboriginal children in OOHC. The Victorian Government has already taken significant action to address this issue and, from 1 March 2016, legislation requires that all Aboriginal children in OOHC have a CSP. If implementation is achieved, this legislative amendment will bring the system's policy and program response into greater alignment with the intent of the ACPP.

#### Greater clarity is needed in CP policy and practice guidance

The CP policy and practice guidance is not being consistently used by staff to guide practice, as it is complicated and difficult to navigate. This issue of complexity of documentation applies to many parts of CP intervention. However, this complexity is magnified for CP and CSO staff when complying with the requirements of the ACPP. This requires an understanding of the 'usual' CP requirements for all children, the Aboriginal-specific requirements of the ACPP, and the link between them. During the timeframe of the Inquiry, updates to the policy and practice guides have been made. The continuing challenge will be to consistently apply the practice for the benefit of the children they are designed for.

#### Recommendations relevant to defining practice compliance

Recommendations 3 to 5

## Executive summary

### 1.7 Assessment of practice compliance

The assessment of practice compliance considers compliance with each of the five key ACPP domains, followed by an assessment of overall practice compliance. At each of these components the most significant considerations in reaching the compliance rating are summarised, and systemic barriers to compliance are identified.

#### 1.7.1 Identification of Aboriginality: Was the Aboriginality of the child correctly determined by the completion of the investigation stage?

##### Compliance rating: Partial compliance

The most significant considerations in making an assessment of the level of practice compliance with this key ACPP domain are listed below.

- Incorrect and untimely identification of Aboriginality is resulting in a significant proportion of Aboriginal children missing out on ACPP services to which they are entitled by legislation.
- Consultations and file reviews suggest that in about 10 per cent of cases, Aboriginal children are not identified as Aboriginal either at intake or during investigation. In some cases it is several years before the Aboriginality of the child is known. Regular users of CRIS are unable to easily determine at which stage of the CP process the Aboriginality of the child was determined. The specialist data team at the central office of the Department can determine the date and time a child's Aboriginal status was changed using a coded search to produce a report.
- CP staff do not routinely comply with the mandatory requirement to check Aboriginal status with the child or family during the investigation. File reviews showed evidence of only 38 per cent (25 children) having their Aboriginality confirmed with the family at the first home visit.

- The system is placing an over-reliance on the reporter knowing the Aboriginality of the child. CRIS does not distinguish whether the recorded Aboriginal status is the opinion of the reporter (which may be incorrect) or if Aboriginal status has been confirmed with the child or family. CP staff are relying on the Aboriginal status recorded in CRIS being accurate.
- Identification of Aboriginality is an essential step in terms of applying the ACPP. Until Aboriginality is determined, no other ACPP requirement can be met.

#### Systemic barriers

The systemic barriers to correctly determining the Aboriginality of the child by the completion of the investigation are:

- CP staff relying on the Aboriginal status entered into CRIS
- misunderstanding of practice requirements by CP staff
- reluctance of CP staff to ask about a child's Aboriginal status.

#### Recommendations relevant to identification of Aboriginality

Recommendations 8 to 12



## 1.7.2 ACSASS: Was regard had to the advice of ACSASS at every significant decision point?

### Compliance rating: Partial compliance

The most significant considerations in making an assessment of the level of practice compliance with this key ACPP domain are listed below.

- The intent of ACSASS is a significant strength of the Victorian model. In many instances ACSASS is making a meaningful contribution to decision-making that is in the best interests of Aboriginal children in OOHC.
- Aboriginal children are not receiving the benefit of ACSASS involvement at every significant decision point. ACSASS involvement is lower than intended by the CP policy and practice guidance at each CP stage and at each significant decision point.
- File reviews reveal only about 50 per cent of Aboriginal children have the benefit of ACSASS involvement at any point during intake, during the investigation or during the protective intervention.<sup>2</sup>

CP do not make contact with ACSASS for every Aboriginal child, and certainly not at every significant decision point. ACSASS are not responding in all cases when they are contacted by CP.

- ACSASS advised they give the highest priority to attendance at first home visits. However, file reviews show that ACSASS attended first home visits for only 31 per cent of Aboriginal children. In 62 per cent of cases where ACSASS did not attend, there was no evidence that CP advised ACSASS of the first home visit.<sup>3</sup>

Appropriate regard is not being given to the advice of ACSASS when making significant decisions affecting Aboriginal children.

- File reviews showed that only 29 per cent of Aboriginal children had evidence of ACSASS's views being recorded in their case plans or case notes.

<sup>2</sup> When afforded an opportunity to respond to a draft report of this Inquiry, VACCA noted that the low rates of consultations at intake indicated in the extract are not supported by ACSASS data and are seen as incorrect. ACSASS is aware that CP often do not accurately record the contact with ACSASS. A number of CP intake documents that have been seen over the years have failed to record contact made as well as any advice given.

<sup>3</sup> When afforded an opportunity to respond to a draft report of this Inquiry, VACCA noted that in their experience, compliance at intake is reasonable. For first home visits VACCA relies on their partners, CP, being respectful enough to negotiate mutually available times.

The data kept by the Department about ACSASS is extremely limited. It provides little indication of how ACSASS is performing or the level of demand for the service.

### Systemic barriers

The systemic barriers to ACSASS involvement at every significant decision point can be broadly categorised into two key areas.

#### CP contacting ACSASS

The most significant barriers to CP staff contacting ACSASS at every significant decision point for every Aboriginal child are:

- lack of clarity on when to contact ACSASS
- lack of accountability when ACSASS is not contacted
- increasing numbers of Aboriginal children in OOHC
- previous negative experiences with ACSASS involvement
- lack of clarity regarding ACSASS involvement when child's placement is case contracted to a CSO.

#### ACSASS responding to CP

The following are the most significant barriers to ACSASS responding to CP in a timely and meaningful manner:

- the resourcing of ACSASS does not align with demand<sup>4</sup>, particularly given
  - the number and variety of responsibilities
  - the long distances to cover in regional areas
  - the number of Aboriginal children and CP staff in metropolitan areas
  - a significant recent increase in the number of reports to CP and the number of Aboriginal children in OOHC
- issues in recruiting and retaining ACSASS staff
- late notice by CP that ACSASS involvement is required.

<sup>4</sup> When afforded an opportunity to respond, VACCA noted that since 2003 there has been an increase in CP workers and an increase in reports, whereas the number of ACSASS staff has not changed.

## Executive summary

### Opportunities for improvement

In addition to improving compliance with mandatory ACPP requirements, there are other opportunities to strengthen ACSASS.

- increase the involvement of ACSASS in strategic decision-making
- increase information sharing between CP and ACSASS
- improve the resolution process when ACSASS and CP disagree
- improve linkages between ACSASS and local ACCOs.

Authorisations under s 18 of the CYFA 2005 will require the Secretary to authorise a principal officer to perform specified functions or exercise specified powers in relation to a protection order with respect to an Aboriginal child. Consultation between authorised ACCOs and the Department will determine delegated responsibilities under s 18 in specific cases.

The Department has begun work on s 18 implementation. A governance group has been established to oversee the development of a work plan, a rural pilot has commenced at Bendigo and District Aboriginal Services and funding has been provided to the Victorian Aboriginal Child Care Agency (VACCA) to continue its work in this area.

#### Recommendations relevant to defining practice compliance

Recommendations 13 to 27



### 1.7.3 AFLDM: Was an AFLDM meeting convened at substantiation and making of a protection order (or did the family decline an AFLDM meeting)?

#### Compliance rating: Minimal compliance

The most significant considerations in making an assessment of the level of practice compliance with this key ACPP domain are listed below.

The intent of the AFLDM program is a key strength in complying with the requirements of the ACPP. AFLDM meetings, when held, produce valuable outcomes that are in the best interests of Aboriginal children.

#### Low numbers of AFLDM meetings

There were disproportionately few AFLDM meetings in 2014–15 (250 referrals with 141 proceeding to meetings) compared with the number intended (1,250 AFLDM meetings). The low proportion of cases proceeding to an AFLDM meeting limits essential decision-making opportunities in relation to the safety and care of the high number of Aboriginal children subject to a protection order and where protective concerns have been substantiated.

#### Lengthy delays in convening AFLDM meetings

Some meetings occurred months or years after substantiation and initiation of a protection order. There is also evidence that in some cases meetings do not occur at all. File reviews indicated only one child had an AFLDM meeting within the required 21-day period while 51 children (78.5 per cent) did not have an AFLDM at all.

CP staff do not follow AFLDM referral and meeting practice requirements, which include notifying the Departmental convenor within 24 hours, completing the referral form within 48 hours and convening a meeting within 21 days.

## Systemic barriers

### Delays in holding AFLDM meetings

The delays in holding AFLDM meetings was acknowledged as a significant issue by all stakeholders. These delays may be caused by the following issues:

- Departmental and community convenors being on leave, or the roles being vacant, and the lack of contingency planning to fill these positions
- other responsibilities of Departmental and community convenors preventing them from convening an AFLDM
- a lack of training and understanding of the referral process
- a lack of clarity regarding the roles of CP staff, Departmental and community convenors and a lack of ownership and accountability of the process
- significant preparation time and workload for all participants, which can lead to an AFLDM meeting no longer being a high priority
- long distances between Departmental and community convenors, requiring extensive travel and inhibiting meeting opportunities
- limited availability of family and extended family members to participate in an AFLDM meeting.

### ACSASS involvement

The involvement of ACSASS in the AFLDM process was limited due to competing demands with high workloads, late notice of meetings, availability of staff, and confusion on the part of Departmental and community convenors about the legislative requirement to invite ACSASS.

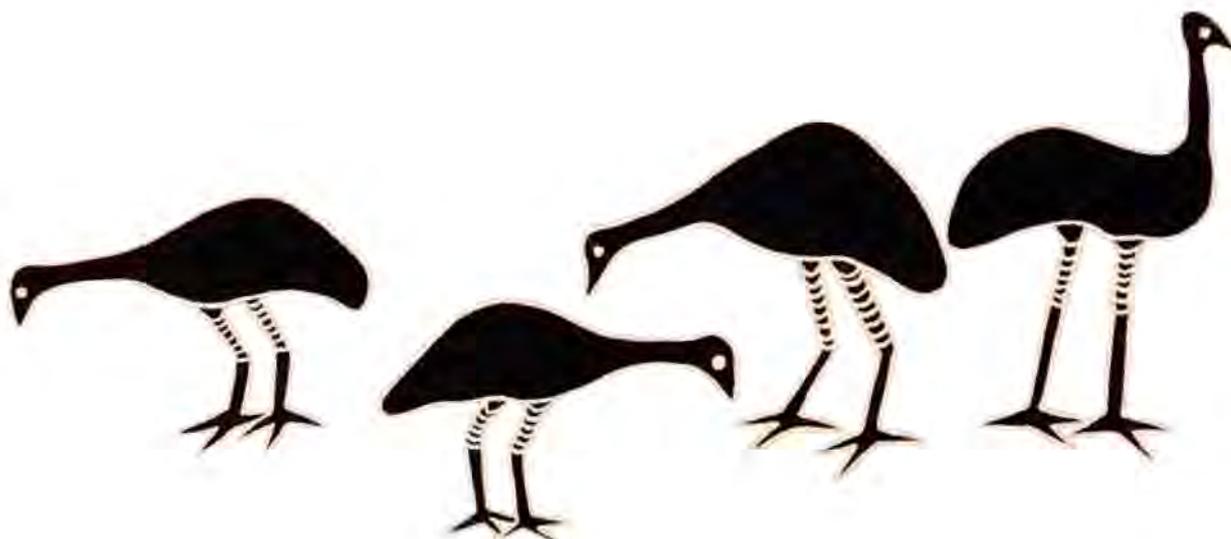
### Family-led process

While titled 'Aboriginal family-led' decision-making, consulted ACCOs did not regard AFLDM meetings as a truly family-led process for the following reasons:

- The over-representation of Departmental staff at meetings and in guiding the process prevents families from contributing equitably to decision-making.
- If Elders are in attendance, they are not always fully briefed on their role nor do they have enough information about the case to inform decisions.
- Families are often not well represented in the meetings.

### Recommendations relevant to defining practice compliance

Recommendations 28 to 32



## Executive summary

### 1.7.4 ACPP placement hierarchy: Is there evidence that the child was placed at the highest possible level of the ACPP placement hierarchy?

#### Compliance rating: Partial compliance

The most significant considerations in making this practice compliance rating are listed below:

- The Department cannot report on the level of the ACPP placement hierarchy at which Aboriginal children are placed.
- There are definitional issues between the ACPP placement hierarchy and CP placement types that need to be resolved before accurate reporting can be produced.
- The Department cannot produce evidence on a system-wide level to show whether appropriate consideration was given to placement at higher levels of the ACPP placement hierarchy. There are several indications that placement is not being made at the highest level 'as a priority, wherever possible' as required by legislation.

In making kinship placement decisions all potential Aboriginal extended family carers (Level 1 of the hierarchy) are not being identified before a placement is made. This indicates that CP is not placing appropriate value on the importance of the ACPP when making this decision. While there is a strong focus by the system on kinship over non-kinship placements, in practice only 56 per cent of Aboriginal children are actually placed in kinship placements.

In making non-kinship (home-based care) placements, the Placement Coordination Unit (PCU) processes prioritise Level 3 of the hierarchy (placement with a local Aboriginal carer) above lower levels of the hierarchy, but do not systematically prioritise placement at Level 4 (placement with an Aboriginal carer from another community) above Level 5 of the hierarchy (placement with a non-Aboriginal carer from the local community).

## Systemic barriers

### Insufficient number of Aboriginal carers

Across Australia, Aboriginal people are more likely to provide care than non-Aboriginal people. However, the most significant barrier to complying with the ACPP placement hierarchy is a lack of Aboriginal carers. This demonstrates a significant and urgent need to improve the recruitment and retention of Aboriginal carers.

The main contributors to the insufficient number of Aboriginal carers in Victoria are:

- the inability to identify all potential Aboriginal kinship carers
- the inability to identify and recruit Aboriginal home-based (non-kinship) carers
- hesitation among potential Aboriginal carers to engage with the CP system
- Aboriginal carers being assessed as unsuitable
- insufficient carer payments
- Aboriginal people's previous experiences of not receiving sufficient support as a carer.

The lack of Aboriginal carers is a long-standing and multi-faceted issue influenced by a number of complex factors. However, it should not be simply accepted as an ongoing fact, or the reason why compliance with the ACPP placement hierarchy cannot be achieved. There was frustration expressed that the Department has blamed the lack of Aboriginal carers for the system's inability to place Aboriginal children at higher levels of the hierarchy, yet there has not been a concerted effort to recruit and retain Aboriginal carers.

#### Recommendations relevant to defining practice compliance

Recommendations 33 to 45

### 1.7.5 Maintaining cultural identity: Is there a completed cultural support plan or a case plan that considers opportunities for continuing contact with Aboriginal family, community and culture?

#### Compliance rating: Minimal compliance

At the time of this Inquiry a CSP was mandatory only for Aboriginal children on a Guardianship to the Secretary Order (GSO) or a Long-Term Guardianship to Secretary Order (LTGSO). From 1 March 2016 legislation requires a CSP as mandatory for all Aboriginal children in OOHC. This assessment is made against the requirements in place at the time of the Inquiry.

The most significant considerations in making an assessment of the level of practice compliance with this key ACPP domain are listed below:

- Where a CSP is mandatory for Aboriginal children (on a GSO or LTGSO), there is low compliance with this requirement. Only 29 per cent of these Aboriginal children (of the 45 required) had a CSP on 31 December 2014.<sup>5</sup>
- It has always been considered best practice (prior to 1 March 2016) for all Aboriginal children on all orders to have a CSP. However, on 31 December 2014 only 6.7 per cent of the 864 Aboriginal children in OOHC had a CSP.<sup>6</sup>
- There is low compliance with Aboriginal children having a case plan that considers maintaining cultural identity, or having a case plan at all. File reviews indicated that for 54 per cent of children (32 children) there was no evidence of a case plan that considered the child's culture, while 24 per cent (14 children) did not have a case plan at all.

<sup>5</sup> CRIS data extracted by the Department and provided to the Inquiry in September 2015.

<sup>6</sup> CRIS data extracted by the Department and provided to the Inquiry in September 2015.

### Systemic barriers

The following systemic barriers to developing a CSP have been identified:

- there is lack of skill among CP staff in developing a meaningful CSP
- there is limited capacity of ACCOs to be available to jointly develop a CSP with Departmental staff
- the CSP template is problematic and there are difficulties in accessing and uploading a CSP to CRIS
- the family or child is disconnected from their culture or have only recently discovered their Aboriginality
- cultural connectedness is not prioritised by Departmental practice and management.

#### Recommendations relevant to defining practice compliance

##### Recommendation 46



## Executive summary

### 1.7.6 Overall practice compliance

#### Compliance rating: Minimal compliance

The most significant considerations in assessing the overall level of practice compliance with the five key ACPP domains were:

- the system-wide policy and program response has been assessed as having 'Strong compliance' with the legislated ACPP
- there is a large gap between the policy and program intent and the extent to which the intent is implemented (what occurs in practice).

At a practice level, none of the five key ACPP domains achieved a compliance rating of 'Compliant' (or higher). Practice compliance has been rated as either:

- 'Minimal compliance' (AFLDM, maintaining cultural identity)
- or
- 'Partial compliance' (Identification of Aboriginality, ACSASS and ACPP placement hierarchy).

There is no system-wide data that shows the number or proportion of Aboriginal children who have received mandatory ACPP services across all five key ACPP domains.

**File reviews showed that not one Aboriginal child experienced complete compliance with all ACPP requirements.**

File reviews also showed that not one Aboriginal child received the benefit of even the most basic level of service from all three of the most significant programs established to comply with the ACPP (ACSASS, AFLDM and CSP).

None of the 65 Aboriginal children whose files were reviewed, had the benefit of receiving all of the following services to which they were entitled:

- an AFLDM meeting at any stage
- ACSASS involvement in each of the first three CP stages
- a CSP or case plan that considers their cultural identity.

The wide gap between the rating for policy and program compliance ('Strong compliance') and the rating for practice compliance ('Minimal compliance') reflects the gap between Victoria's rigorous policy and program settings and poor current practice in applying the ACPP.

This is not to suggest that the Victorian policy and program requirements should be moderated. The Inquiry urges the Department to strive to achieve compliance with these requirements. Consulted stakeholders applauded Victoria for its sound policy and program response.



## Systemic barriers

### Lack of accountability for non-compliance

The system is not effectively addressing non-compliance with mandatory ACPP requirements at any of the five key ACPP domains. It is overly reliant on staff being personally responsible for compliance and does not have effective processes or procedures in place to identify or address non-compliance.

Three major areas were identified where improvement is required to strengthen accountability and compliance (across both CP and the funded community sector).

- Communicate requirements to staff** – in order to be accountable, staff must be aware of their responsibilities. There was substantial evidence that staff are not currently aware of their mandatory responsibilities for complying with the ACPP.
- Identify non-compliance** – in order to hold staff accountable, the system must identify whether ACPP responsibilities are being completed. The system does not currently have adequate oversight of the level of compliance with the ACPP.

The system cannot report sufficient data at any of the five key ACPP domains, or any of the 20 ACPP compliance points, to make a definitive assessment of system-wide compliance.

There has been no previous evaluation or review (internal or external) of ACPP compliance.

The only publicly reported indication of ACPP compliance is the type of carer a child is placed with – this is not an adequate measure of ACPP compliance.

- Address non-compliance** – once non-compliance is identified it must be effectively addressed. There are currently insufficient processes or procedures in place to address non-compliance, as evidenced by no key ACPP domain being assessed a rating of 'compliant' or above.

### Resourcing aligning with demand

The rapid growth of Aboriginal children in OOHC is placing a high level of demand across the CP service system. The number of Aboriginal children in OOHC has grown from 526 in 2005 to 1,308 in 2014. It appears that there has not been a commensurate increase in resourcing to cater for this greater demand.

The scope of this Inquiry did not include investigating whether current resources are sufficient to meet demand therefore a definitive assessment of this matter cannot be made. However, the Inquiry discovered sufficient evidence to suggest that this matter requires further investigation.



## Executive summary

### Opportunities for improvement

#### Greater Aboriginal self-determination

The system is not achieving a practice rating of 'compliant' or higher at any key ACP domain, which further supports the need for careful consideration of the staged transfer of responsibilities to ACCOs.

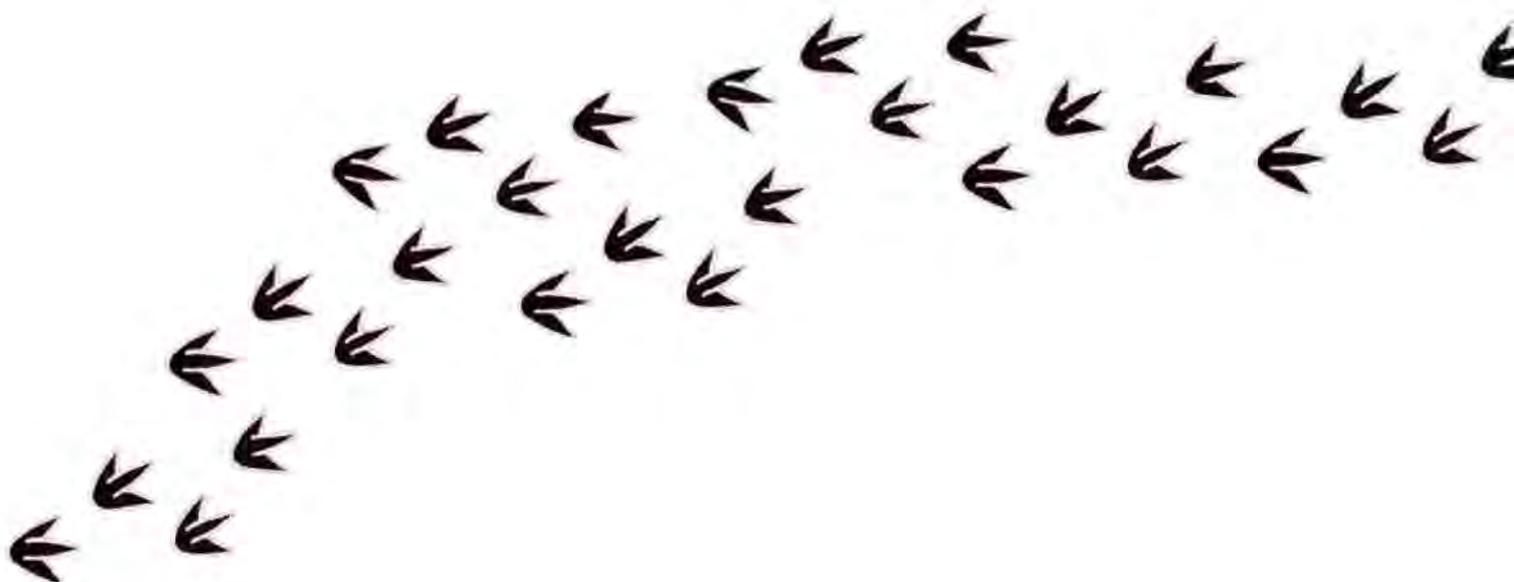
The *Beyond Good Intentions* discussion paper confirms a commitment by the sector to transfer case management of Aboriginal children from CSOs to ACCOs. A priority agreed by the Aboriginal Children's Forum is to transfer the case management of all Aboriginal Children in OOHC to ACCOs.

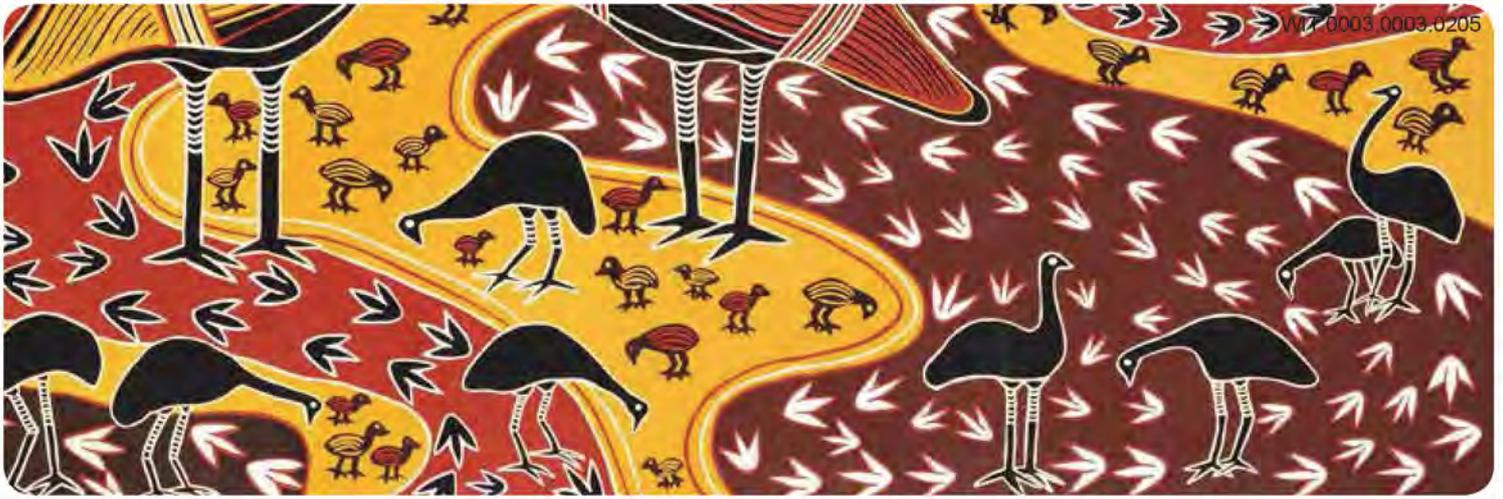
If implementation of s 18 is not achievable in the near future, there are other opportunities to increase Aboriginal self-determination in CP decisions.

- **Increase involvement of ACCOs in placement and support** – as at December 2015, 14 per cent of Aboriginal children in OOHC (223 of 1,579 children) were in placements managed by an ACCO.
- **Increase the role of ACCOs in strategic decision making** – the current role of ACCOs is primarily at an operational level.
- **Increase the number of Aboriginal people working in CP** – in late 2015 the Department employed 16 Aboriginal staff in a total CP workforce of about 1,300.
- **Transfer client case management and case contracting from CSOs to ACCOs** – in December 2015, ACCOs were funded to deliver 275 placements. This is less than 18 per cent of the 1,579 Aboriginal children in OOHC at that time

#### Recommendations relevant to defining practice compliance

Recommendations 47 to 54





## 2. Recommendations

This section consolidates the 54 recommendations of the Inquiry. A detailed discussion of each recommendation is provided in the relevant section of the report.

No.	Description
1	<p>The Department, in partnership with the ACCOS defines the intent of the ACPP. The Department promotes this intent to the CP workforce and community sector stakeholders, to guide resource allocation and actions that align with the intent of the ACPP.</p> <p>a) In developing the definition of intent, the underlying intent (unstated in current legislation) is that Aboriginal children should remain in the care of their families of origin wherever possible and safe, and that</p> <ul style="list-style-type: none"><li>– it is incumbent on the CP system to provide assistance to Aboriginal families (where required) to allow them to live together in a safe environment. This includes a responsibility to provide assistance aimed at both preventing removal and reunifying families where removal has occurred</li><li>– an ultimate aim of the ACPP is to reduce the number and over-representation of Aboriginal children in OOHC.</li></ul> <p>b) Any future amendments to the legislation should articulate this underlying intent of the ACPP.</p>



## Recommendations

No.	Description
<b>Policy and program compliance (Section 7)</b>	
2	<p>Prioritise the development of an implementation plan and timetable that provides for a staged approach to the enactment of s 18 powers that transfer specific CP responsibilities to eligible and willing ACCOs.</p> <p>As a matter of urgency the Aboriginal Children's Forum commits to transfer the case management of Aboriginal children from CSOs and the Department to ACCOs.</p>
3	<p>Review and refresh the suite of CP policy and practice guidance relevant to the ACPP, with a focus on ensuring ease of use by staff through greater clarity and consistency regarding mandatory responsibilities. This should be undertaken in partnership with users of the documentation. The Department to develop guidelines and key performance indicators for implementation of the ACPP.</p>
4	<p>Develop a single document that provides a consolidated and succinct overview of mandatory ACPP responsibilities.</p>
5	<p>Future reviews of the CYFA 2005 should articulate the links between s 13 (the ACPP), s 10 (Best Interest Principles) and s 176 (Cultural Plan for Aboriginal Child).</p>
<b>Defining practice compliance (Section 8)</b>	
6	<p>Define what constitutes compliance with the intent of the ACPP in the Victorian context. This definition should be reached in partnership with CSOS, particularly from the Aboriginal family and child sector.</p>
7	<p>The Department commits to regular reporting or external review of the system's compliance with the intent of the ACPP. This will significantly improve understanding of the level of practice compliance, and will enable better decision-making to ensure Aboriginal children receive the ACPP services to which they are entitled by legislation.</p>
<b>Assessing practice compliance</b>	
<b>Identification of Aboriginality (Section 9.1)</b>	
8	<p>Monitor the outcomes of the Indigenous Status, Aboriginal Identity Working Group to ensure progress is made in improving the early identification of Aboriginal children in OOHC, through an external group such as the Aboriginal Children's Forum.</p>
9	<p>Update the 'Aboriginal and/or Torres Strait Islander' field in CRIS to clearly distinguish when the child is 'believed to be Aboriginal' by a third party, and when Aboriginality has been confirmed by the family.</p>
10	<p>Ensure that CP staff confirm Aboriginality with the family or child in the early stages of a report being taken and that they record the status in mandated fields in CRIS.</p>

No.	Description
11	Support and hold CP staff accountable for completing their mandatory responsibilities to confirm Aboriginality. This could be achieved by regular reports to the Aboriginal Children's Forum, greater management support and scrutiny, better performance evaluation, and training to address the competencies outlined in practice advice from 2016.
12	The Department must consult with and seek approval from the Commissioner for Aboriginal Children and Young People and the Chief Practitioner for Aboriginal Children in relation to any decision to change the identification of an Aboriginal child to 'non-Aboriginal'. CRIS enhancements must be made to ensure that a child's Aboriginal status cannot be reversed without this approval.
<b>Aboriginal Child Specialist Advice and Support Service (Section 9.2)</b>	
13	Review and strengthen data requirements about the level of performance of ACSASS to better inform decisions about compliance.
14	Develop protocols and procedures that require: <ul style="list-style-type: none"> <li>a) CP staff to record how they have given regard to the advice of ACSASS in making significant decisions</li> <li>b) CP staff to provide greater feedback to ACSASS about how their advice contributed to decision-making and what decision or action was ultimately taken.</li> </ul>
15	Ensure greater management scrutiny and accountability of how and when CP staff consult with ACSASS as outlined in the Child Protection manual.
16	Place a higher level of accountability on complying with the mandatory requirement to involve ACSASS.
17	Consider and address past concerns between CP and ACSASS so that ACSASS can operate more effectively in the future.
18	The decision to contract case management responsibilities for an Aboriginal child to a CSO is considered a 'significant decision point'. CP must consider the advice of ACSASS in making a decision about whether to contract case management responsibilities to a CSO.



## Recommendations

No.	Description
19	<p>Ensure that:</p> <ul style="list-style-type: none"> <li>a) CSO staff who are responsible for a child's case management fully understand how to apply the Child Protection manual practice requirement to consult ACSASS at every significant decision point</li> <li>b) staff are resourced appropriately to do so</li> <li>c) the roles and responsibilities of each party are discussed and recorded, for example, through a protocol between ACSASS and CSOs, or in funding agreements between the Department and CSOs.</li> </ul>
20	<p>Undertake an economic analysis to determine whether the funding provided to ACSASS is sufficient to provide for the required activities to be undertaken. If current funding is not sufficient there should be:</p> <ul style="list-style-type: none"> <li>a) an increase in funding to ensure the funding provided to ACSASS is commensurate with its responsibilities or</li> <li>b) an agreed system-wide approach to prioritising activities of ACSASS.</li> </ul>
21	<p>Develop a plan to improve recruitment and retention in ACSASS roles. This plan should identify:</p> <ul style="list-style-type: none"> <li>a) barriers to recruitment and retention</li> <li>b) strategies to increase the size of the available talent pool to fill vacant ACSASS positions</li> <li>c) opportunities to link with other parts of the system to increase the number of Aboriginal staff employed by CP and CSOs</li> <li>d) training that is specifically targeted at equipping ACSASS workers with knowledge of CP processes and procedures that are relevant to ACSASS responsibilities.</li> </ul>
22	<p>CP staff to negotiate with ACSASS in a timely way to provide ACSASS with reasonable opportunity to respond and be meaningfully involved in significant decision-making. Record barriers to involvement to inform future practice and resource decisions.</p>
23	<p>Resource ACSASS to be involved in high-level strategic decision-making in relation to Aboriginal children in OOHC.</p>
24	<p>In implementing Recommendation 2 regarding the staged transfer of specific decision-making powers to ACCOs, give specific consideration to the points at which ACSASS currently provide advice to CP.</p>
25	<p>Explore opportunities to improve sharing of information between CP and ACSASS, including considering opportunities for a shared electronic data system.</p>
26	<p>Introduce a process to resolve matters that cannot be appropriately resolved between CP and ACSASS staff.</p>
27	<p>Explore opportunities to better leverage the knowledge and expertise of local ACCOs to inform ACSASS activities and decisions – particularly where ACSASS staff are not based in the local community or do not have existing knowledge of the child or family.</p>

No.	Description
<b>Aboriginal family-led decision-making (Section 9.3)</b>	
28	Review reporting practices and data collection mechanisms to improve reporting and determine the true number of AFLDM meetings.
29	Develop a reporting mechanism or amend CRIS so Departmental convenors can capture pre-meeting preparation and any changes in the circumstance of the child that eliminate the requirement for an AFLDM.
30	Hold AFLDM meetings for Aboriginal children in a timely manner.
31	<p>Develop an ongoing program of training and professional development for both Departmental and community convenors. The training program should:</p> <ul style="list-style-type: none"> <li>a) target existing and new convenors and provide a forum to address emerging issues</li> <li>b) be developed in conjunction with the Office of Professional Practice and should provide an understanding of the CP system and processes, as well as reporting and recording processes</li> <li>c) be supported by a regular statewide forum for both Departmental and community convenors to provide support, create partnership approaches and share strategies.</li> </ul> <p>Training for CP staff, to improve their understanding of roles and responsibilities, and when and how to initiate an AFLDM meeting, should be considered.</p>
32	<p>Place greater priority on the existing AFLDM program and practice guidelines to ensure increased involvement of the family.</p> <ul style="list-style-type: none"> <li>a) Ensure all parties are clear about the purpose of the AFLDM meeting, and understand their role in supporting the process and taking responsibility for following up on the decisions that are made.</li> <li>b) Support family members to prepare adequately so they can fully engage in the process and are equipped for decision-making.</li> <li>c) Encourage private family deliberations prior to or during the AFLDM meeting to allow family members to process information, talk among themselves, respond and ask questions.</li> <li>d) Invite extended family to maximise family representation, and include those with a connection to the child or with other members of the family group.</li> <li>e) Encourage active participation by family members in organising the practical details of the AFLDM meeting, such as the venue, date, transport and childcare arrangements.</li> <li>f) Strengthen the process for families to provide feedback about the quality of the AFLDM process, to assist with continuous improvement.</li> </ul>

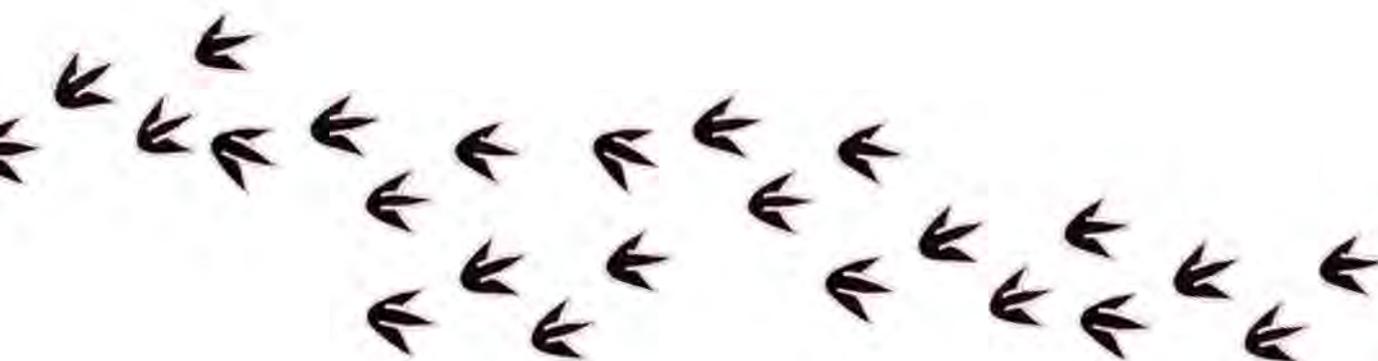
## Recommendations

No.	Description
<b>ACPP placement hierarchy (Section 9.4)</b>	
33	Develop a mechanism to make it mandatory that staff responsible for placement decisions record evidence of why placement was not made at each higher level of the ACPP placement hierarchy.
34	Through consultation between the sector and the Department, clarify guidance in CP policy and practice about whether placement with 'Aboriginal friends or existing social networks' should be classified as: <ol style="list-style-type: none"> <li>a) placement at the highest level of the ACPP placement hierarchy ('placement with Aboriginal extended family or relatives') align with the CP definition of a kinship placement</li> <li>or</li> <li>b) placement at Level 3 of the ACPP placement hierarchy ('placement with an Aboriginal family from the local community').</li> </ol>
35	Develop and implement mechanisms to ensure that CP staff who are responsible for making kinship placements (including kith placements) have a deep understanding of the critical importance of the ACPP in making placement decisions that are in the best interests of Aboriginal children.
36	Place a greater level of accountability on CP staff when a kinship placement is made that is not at the highest level of the ACPP placement hierarchy.
37	Significantly expand the Aboriginal Kinship Care Model to provide more Aboriginal placements and establishment support services, in consideration that the demand for Aboriginal kinship care placements far exceeds the number of placements that ACCOs are currently funded to provide. The ultimate aim must be for all Aboriginal children, families and carers to have the opportunity to receive support from an ACCO.
38	Amend the PCU process to ensure that the best interests of the child, informed by Aboriginal perspectives, are paramount. The child's best interests should guide application of the ACPP placement hierarchy.
39	Clarify the following definitional issues with the ACPP placement hierarchy to allow accurate reporting. <ul style="list-style-type: none"> <li>■ What constitutes 'close geographical proximity to the child's natural family' (Level 3 of hierarchy) and 'close proximity to the child's natural family' (Level 5 of the hierarchy)?</li> <li>■ At which level of the ACPP placement hierarchy should placements made in Aboriginal-operated residential care and non-Aboriginal residential care be recorded?</li> </ul>
40	The Department, in partnership with the community sector, to develop a comprehensive recruitment and retention strategy to increase the number of Aboriginal carers.

No.	Description
41	<p>The recruitment and retention strategy for Aboriginal carers considers:</p> <ul style="list-style-type: none"> <li>a) increasing the number of placements that ACCOs are funded to provide – including resourcing for an extensive recruitment campaign, if required</li> <li>b) a recruitment campaign by CSOs that is culturally inclusive and specifically targeted at recruiting Aboriginal carers</li> <li>c) establishing targets for CSOs on the number of placements with Aboriginal carers that they provide</li> <li>d) a marketing approach that promotes the value and positive benefits of becoming a carer and includes outreach activities hosted at local ACCOs.</li> </ul>
42	<p>Ensure that independent reviewers of the Human Services Standards have the skill and knowledge to review the sections relating to Aboriginal competency. At a minimum, reviewers should demonstrate that they employ Aboriginal people or partner with an Aboriginal organisation to undertake that part of the audit which relates to Aboriginal inclusion and cultural competency.</p>
43	<p>Ensure that engagement with potential Aboriginal carers is inclusive, respectful and maximises the likelihood they will be willing to participate in the carer assessment.</p>
44	<p>The recruitment and retention strategy for Aboriginal carers should include:</p> <ul style="list-style-type: none"> <li>a) a review of the carer assessment process (for both kinship and non-kinship carers) with a focus on ensuring it is not unnecessarily eliminating potential Aboriginal carers who could provide a suitable level of care</li> <li>b) increased support for Aboriginal carers to acknowledge that the socioeconomic disadvantage faced by Aboriginal communities is contributing to Aboriginal carers being assessed as unsuitable.</li> </ul>
45	<p>The recruitment and retention strategy for Aboriginal carers gives consideration to carer payments, including:</p> <ul style="list-style-type: none"> <li>a) aligning kinship reimbursement for carers of Aboriginal children with home-based carer rates.</li> </ul>
<b>Maintaining cultural identity (Section 9.5)</b>	
46	<p>Support the implementation of the new CSP model, and actively monitor and report on the number and quality of cultural plans produced.</p>
<b>Overall practice compliance (Section 9.6)</b>	
47	<p>Better communicate the expectations that CP and CSO staff comply with the mandatory requirements of the ACPP. Strategies to achieve this include:</p> <ul style="list-style-type: none"> <li>a) greater clarity in CP policy and practice guidance, including that governing the funded community sector (see Recommendations 3 and 4 regarding improvements to CP policy and practice guidance)</li> <li>b) training for all CP and CSO staff who have ACPP responsibilities – especially where these responsibilities are not currently being met</li> <li>c) greater focus by CP and CSO managers on ensuring staff are aware of their mandatory ACPP responsibilities.</li> </ul>

## Recommendations

No.	Description
48	Better identify non-compliance with the ACPP, in order to effectively address it. This should include improved processes for recording, reporting and monitoring compliance (see Section 9: Assessing practice compliance, Recommendation 7).
49	Better address non-compliance with the ACPP (by both CP and CSOs).
50	<p>Review the resources provided to the service system (including CP and CSOs) to determine whether they are sufficient to meet the mandatory requirements of the ACPP. This review should consider:</p> <ul style="list-style-type: none"> <li>■ the demand placed on the system by the rapid growth in the number of Aboriginal children in OOHC</li> <li>■ the adequacy of existing resources to meet this increased demand</li> <li>■ how the demand on the system can be addressed by additional resourcing, developing strategies and system-wide approaches to prioritisation of duties.</li> </ul>
51	Significantly increase the number of Aboriginal children and their carers who have ACCO involvement in their placement and support. The ultimate aim should be for all Aboriginal children to have the opportunity for their placement to be supported by an ACCO.
52	Increase the role of ACPP-related programs delivered by ACCOs (such as ACSASS and the AFLDM and CSP Programs) in strategic decision-making.
53	Increase the connection between the ACPP-related programs delivered by ACCOs. A strategy to achieve this could be providing opportunities for ACPP-related programs (such as ACSASS, AFLDM and CSP) to come together at a regional level to share good practice and improve service linkages.
54	Increase the number of Aboriginal staff employed in CP roles, particularly in management, leadership and executive positions.





## 3. Background and context

### 3.1 Purpose and scope

The Commission for Children and Young People is conducting an Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria (the Inquiry). The Inquiry is being conducted in accordance to Division 4, Part 5 of the CCYP Act. The object of an Inquiry, conducted by the Commission under Part 5 of the CCYP Act, is to promote continuous improvement and innovation in policies and practices relating to child protection and the safety and wellbeing of vulnerable children and young persons and children and young persons generally.

The Inquiry is investigating compliance with the intent of the ACPP as articulated in the CYFA 2005 from 1 January 2013 to 31 December 2014. The report also notes reforms to the system initiated during the Inquiry and up until July 2016.

In November 2014, the Commission engaged PIC to support the conduct of the Inquiry. PIC was commissioned to inquire into and report on:

- compliance with the intent of the ACPP at all stages from all initial reports to the Department
- decision-making processes and criteria for moving through the priorities of the ACPP to determine a non-Aboriginal placement

- barriers to implementation of the ACPP, including capacity and funding of agencies, legislative, policy and practice guides, training of CP practitioners and monitoring and reporting of placements in OOH<sup>7</sup>.

The key outcomes sought were:

- a definition of the intent of the ACPP and a definition of what should constitute compliance with the intent of the ACPP for the purposes of this Inquiry
- assessment of the level of compliance with the intent of the ACPP in Victoria over the period 1 January 2013 to 31 December 2014
- identification of systemic barriers to compliance with the intent of the ACPP in Victoria
- recommendations for changes to improve compliance with the intent of the ACPP in Victoria.

The Commission will monitor the consideration, acceptance and implementation of the Inquiry recommendations by government departments and community sector agencies.

<sup>7</sup> Commissioner for Children and Young People, Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria, Terms of Reference, 29 May 2014.

## Background and context



### 3.2 Key parameters

#### Demonstrated need for the ACPP

The Inquiry focused on assessing and improving compliance with the intent of the ACPP. It did not seek to re-establish the fact that the ACPP is needed or that successful implementation of the ACPP leads to improved outcomes for Aboriginal children and families. These facts are already well established.

The ACPP is:

- enshrined in Victorian legislation and a range of supporting policy and practice documents
- endorsed nationally and individually by all Australian states and territories – in either legislation or policy
- recommended for inclusion in the legislation of all Australian jurisdictions by the Royal Commission into Aboriginal Deaths in Custody (1991)<sup>8</sup> and in *Bringing them home: report of the national Inquiry into the separation of Aboriginal Torres Strait Islander children and their families*
- acknowledged as aligning with Article 30 of the United Nations Convention on the rights of the child, which states: 'In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language

ACPP commences once it is in the child's best interests to be in OOHC

**The parameters of the Inquiry are to consider compliance with the ACPP 'from all initial reports to the Department'<sup>9</sup> where it was later determined it was 'in the best interests of an Aboriginal child to be placed in out-of-home care'.<sup>10</sup>**

As the Inquiry is focused on the placement in OOHC when this is in the child's best interests, it did not consider earlier preventative actions aimed at preventing removal nor did it focus on interventions designed to reunify the child with their family of origin. This is not to suggest that the application of the ACPP is of a higher priority than Aboriginal children living with their immediate family – it is simply not the focus of this particular Inquiry.

8 The Royal Commission also noted the long-term negative impact on Aboriginal children who were removed from their families, with 66 of the 99 deaths investigated involving people who were removed from their families as children.

9 Commissioner for Children and Young People, Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria, Terms of Reference, 29 May 2014.

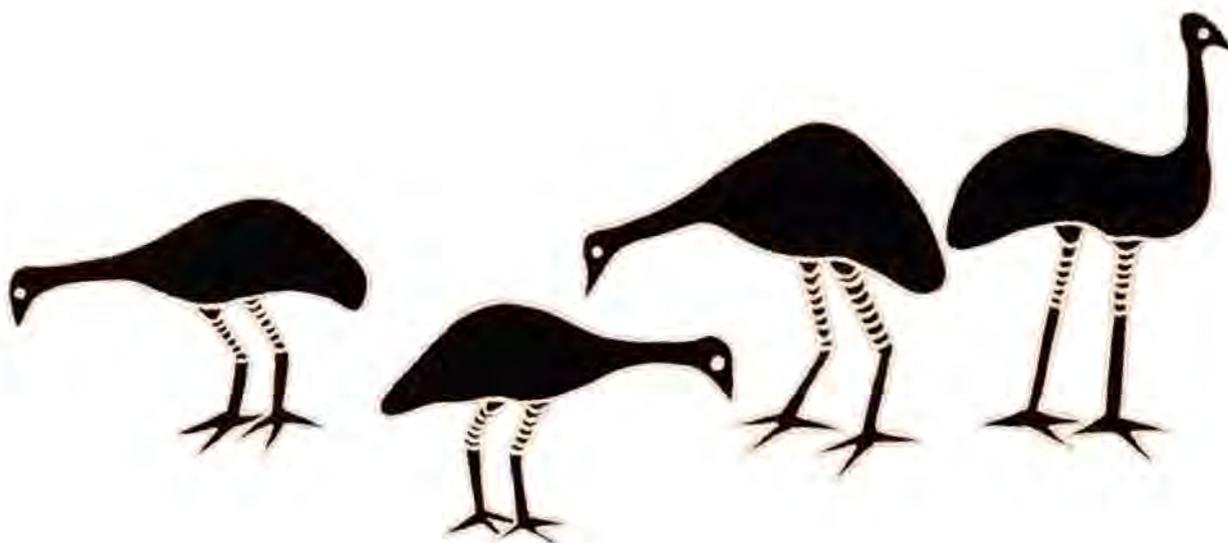
10 Aboriginal Child Placement Principle CYFA 2005, s 13.

## Systemic inquiry

The Inquiry intention was to synthesise evidence to inform a systemic review into compliance with the intent of the ACPP in Victoria. Consistent with the Terms of Reference, this Inquiry did not include considering or making recommendations regarding the circumstances of individual cases nor was it in scope to review individual organisations.

## Inquiry period

The decision of the Inquiry to assess compliance over the two-year period 1 January 2013 to 31 December 2014 was made on the basis of a number of considerations. The two-year time period allowed the opportunity to consider children's trajectory through all stages of the OOHC system and at all points that the ACPP should be applied. The two-year time period also produced a sufficiently sized cohort group to draw conclusions about systemic trends in the application of the ACPP. The decision not to assess compliance pre-January 2013 was made because of the significant changes to the Victorian CP system in November 2012 with the introduction of the CP Operating Model, one of the most significant reforms ever made to the Victorian CP system<sup>11</sup>. It was therefore determined that considering the application of the ACPP prior to January 2013 would not be an accurate reflection of current levels of compliance with the intent of the ACPP.



<sup>11</sup> The Child Protection Operating Model reforms involved a large-scale restructure of the statutory CP workforce and a range of measures designed to improve outcomes for children and families.



## 4. Inquiry context

### 4.1 Drivers of the Inquiry

The Commission initiated the Inquiry because it had reason to believe that there were persistent and systemic issues in complying with the intent of the ACPP across the service system. Further, the Commission sought a review in order to assist in identifying strategies to improve future levels of compliance.

A range of existing evidence raised the Commission's concerns about compliance with the ACPP.

#### Report of the Protecting Victoria's Vulnerable Children Inquiry

The *Report of the Protecting Victoria's Vulnerable Children Inquiry*<sup>12</sup> noted the following:

- There has been little progress in Victoria in improving the percentage of children placed in accordance with the ACPP over recent years (p. 295).
- Victoria rates fifth compared with other states and territories in complying with the ACPP (p. 295).
- Significant improvement is required in the performance of systems intended to support vulnerable Aboriginal children and families. There is a need to develop specific Aboriginal responses to identify different ways to improve the situation of vulnerable Aboriginal children in Victoria (p. 272).

- First, the implementation of specific provisions of the CFYA 2005 – including CSPs, the ACPP and s 18 – requires greater transparency.<sup>13</sup> Second, in key areas such as education and statutory CP services, where progress is slow or hard to achieve, service development and performance reporting requires a consistent and sustained focus (p. 309).

#### Direct representations from Aboriginal children and families

The Commission, and particularly the Commissioner for Aboriginal Children and Young People, is in regular contact with Aboriginal children and families about the matters that affect them. The Commissioner became aware of a number of instances where it appeared that compliance with the ACPP had not occurred.

#### Representations from Aboriginal community-controlled organisations

The Commission, and particularly the Commissioner for Aboriginal Children and Young People, is in regular contact with a range of ACCOs, many of whom have direct roles in relation to Aboriginal children in OOHHC. Over time a number of ACCOs have raised concerns about compliance with the ACPP. ACCOs have also raised these concerns through other avenues – for example, in VACCA's submission to the Protecting Victoria's Vulnerable Children Inquiry, which noted 'Legislation that mandates consultation with an Aboriginal organisation about the protection of an Aboriginal child, adherence to the ACPP and development of CSPs for Aboriginal children in OOHHC have not translated well into practice' (p. 19).

<sup>12</sup> The Inquiry panel members were the Hon Phillip Cummins (Chair), Emeritus Professor Dorothy Scott OAM and Mr Bill Scales AO.

<sup>13</sup> When afforded the opportunity to respond, the Department noted the establishment of a governance group to oversee the planned implementation of s 18 that includes relevant stakeholders. The Commission notes this group was established in 2016 to plan a rural s 18 pilot and next steps for implementation.

## Early findings of Taskforce 1000

Taskforce 1000 was a collaborative approach by the Department and the Commission to review and improve the current circumstances of approximately 1,000 Aboriginal children and young people in OOHC. Taskforce 1000 began in 2014 and child reviews ended in February 2016. Its early findings raised significant concerns about the extent to which the ACPP was being applied in Victoria.

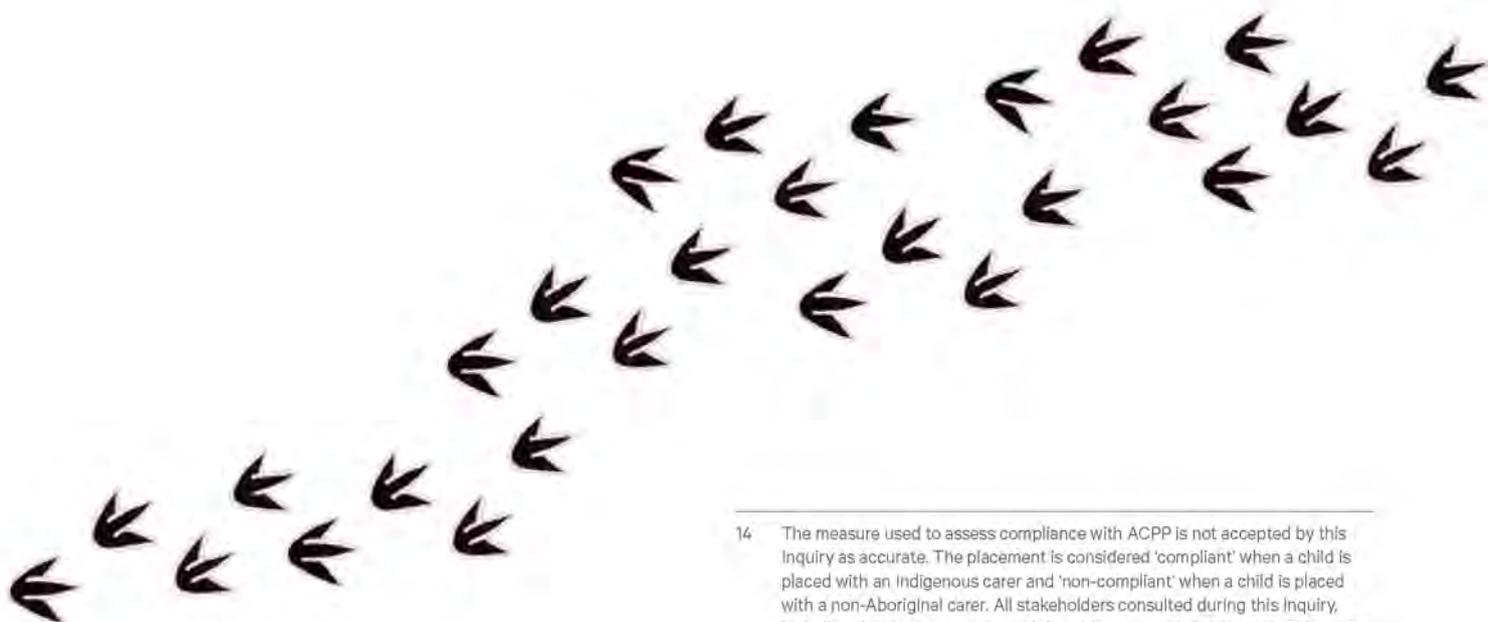
## Our children are our future

*Our children are our future: improving outcomes for children and young people in out-of-home care* is a 2005 report of the Auditor-General Victoria. The report notes, 'difficulties in recruiting Aboriginal carers ... impacts on the ability to meet the requirement of the Aboriginal Child Placement Principle' (p. 91) and recommends that '[the Department] regularly review the progress of its current work to address gaps in the Out of Home Care service system (including those related to the needs of Aboriginal children and young people) to ensure timely completion' (p. 102).

## Performance reporting by the Department

The Department reports on the OOHC system in a number of public documents. The following data caused the Commission concern about the level of compliance with the ACPP:<sup>14</sup>

- 56.1 per cent of Aboriginal children in OOHC in 2012 were placed in accordance with the ACPP.<sup>15</sup>
- 60.9 per cent of Aboriginal children in OOHC in 2013 were placed in accordance with the ACPP.<sup>16</sup>
- Only eight per cent of the 21 per cent of Aboriginal children in OOHC who were required to have a CSP had a completed plan.<sup>17</sup>



<sup>14</sup> The measure used to assess compliance with ACPP is not accepted by this Inquiry as accurate. The placement is considered 'compliant' when a child is placed with an Indigenous carer and 'non-compliant' when a child is placed with a non-Aboriginal carer. All stakeholders consulted during this Inquiry, including the Department, agreed that this measure is inadequate. This matter is explored in detail in this report.

<sup>15</sup> This represents 575 of the 1,025 Aboriginal children in OOHC on 30 June 2012. Source: Victorian Child and Adolescent Monitoring System.

<sup>16</sup> This represents 560 of the 919 Aboriginal children in OOHC on 30 June 2013. Source: Productivity Commission, *Report on government services, 2015*.

<sup>17</sup> At this time there was a legislative requirement for 194 children (21 per cent) (of about 920 Aboriginal children in OOHC) to have a CSP. Fifteen of these children had a completed CSP. Source: *Information about cultural support plans for child protection clients*, Department of Human Services, August 2013.

## Inquiry context

### National and international evidence of non-compliance

Other key stakeholders in Australia and overseas have documented concerns that compliance with the ACPP is unsatisfactory across all Australian jurisdictions.

- The United Nations Committee on the Rights of the Child specified poor implementation of the principle as of particular concern to the rights of Aboriginal and Torres Strait Islander children being placed in care.<sup>18</sup>
- The Australian Institute of Family Studies noted, 'Recent estimates suggest the Principle has been fully applied in as few as 13 per cent of CP cases involving Aboriginal and Torres Strait Islander children'.<sup>19</sup>
- A key finding of a 2012–13 audit of compliance with ACPP in Queensland – the only systematic audit in any jurisdiction aimed at exploring systemic and practice issues affecting compliance – found that full compliance was achieved in only 12.5 per cent of cases.<sup>20</sup>

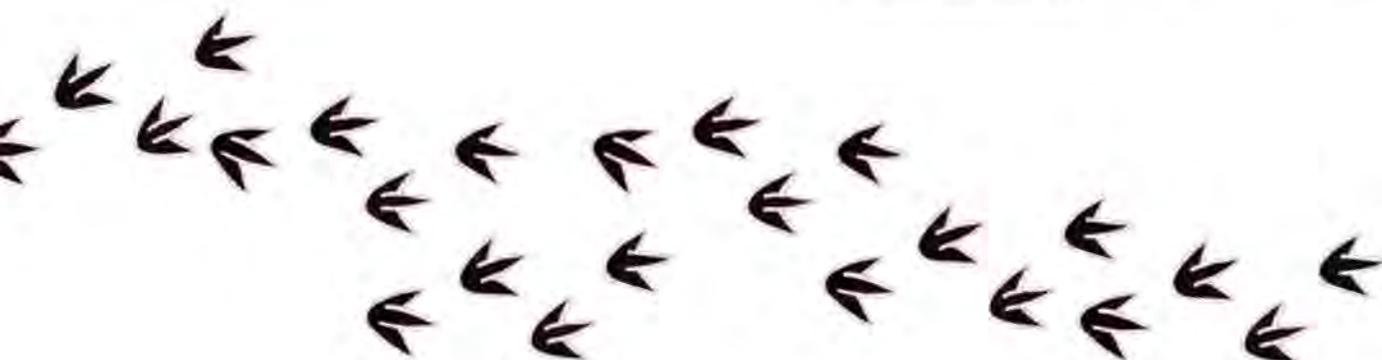
### Over-representation of Aboriginal children in OOHC in Victoria

The number and proportion of Aboriginal children in OOHC makes compliance with the ACPP even more important, as it affects so many Aboriginal children and families across Victoria. *Koorie kids: growing strong in their culture* captured the gravity of this over-representation and its potential impact:

*The rate of Aboriginal child removal in Victoria exceeds levels seen at any time since white settlement ... exceeds that seen during the Stolen Generation era ... There were an estimated 150 Aboriginal children in out-of-home care in Victoria in 1956–57. On June 30 2012, 1027 Aboriginal children were in out-of-home care ... In 2011–12 one in 10 Aboriginal children in Victoria experienced an out-of-home care placement, compared to one in 164 for non-Aboriginal children ...*

*While the sad, shameful legacy of the Stolen Generation is well documented, there is now a clear risk of an emerging Second Stolen Generation of Victorian Aboriginal children and young people through placement decisions that do not take into account all potential Aboriginal kin and by the low priority given to the development and monitoring of plans to ensure that the culture and heritage of Aboriginal children in out-of-home care is recognised and nurtured ...*

*The implications for this generation of Aboriginal children are potentially as profound as the Stolen Generation – lost culture, lost family, lost community.<sup>21</sup>*



18 United Nations Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention*, 28 August 2012

19 Australian Institute of Family Studies, *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: policy and practice considerations*, August 2015

20 This is the third audit conducted by the Queensland Commissioner for Children and Young People and Child Guardian. The 2008 audit sample had 0 per cent compliance, and the 2010–11 audit sample had 15 per cent compliance. Source: Commission for Children and Young People and Child Guardian, *Indigenous Child Placement Principle audit report 2012/13, 2013*.

21 *Koorie kids: growing strong in their culture – five year plan for Aboriginal children in out of home care – a Joint submission from Victorian Aboriginal community controlled organisations and community services organisations*, November 2013 and updated 22 October 2014.

## 4.2 What is the Aboriginal Child Placement Principle?

The ACPP is a national principle that was first articulated in the 1980s. It was driven by ACCOs who strongly advocated for the best interests of Aboriginal children and families, and for the abolition of and redress for past practices and policies of forced removal of Aboriginal children. All Australian states and territories have endorsed the ACPP; however each jurisdiction has adopted its own legislative and policy approaches to incorporate it in practice.

Although the ACPP is clearly articulated in the CYFA 2005 (and in other legislation and policy across Australia) there is currently no consistent definition, either nationally or in Victoria, of the intent of the ACPP or of how to measure compliance with the intent of the ACPP. The conduct of the Inquiry has therefore included developing definitions of these matters that will be used by the Inquiry. These definitions are detailed in Section 8: Defining practice compliance.<sup>22</sup>

The focus of this Inquiry is compliance with the intent of the ACPP as the ACPP is articulated in the CYFA 2005.



### CYFA 2005, Section 13 – Aboriginal Child Placement Principle

- (1) For the purposes of this Act the Aboriginal Child Placement Principle is that if it is in the best interests of an Aboriginal child to be placed in out-of-home care, in making that placement, regard must be had—
  - (a) to the advice of the relevant Aboriginal agency, and
  - (b) to the criteria in subsection (2), and
  - (c) to the principles in section 14.
- (2) The criteria are—
  - (a) as a priority, wherever possible, the child must be placed within the Aboriginal extended family or relatives and where this is not possible other extended family or relatives,
  - (b) if, after consultation with the relevant Aboriginal agency, placement with extended family or relatives is not feasible or possible, the child may be placed with—
    - (i) an Aboriginal family from the local community and within close geographical proximity to the child's natural family,
    - (ii) an Aboriginal family from another Aboriginal community,
    - (iii) as a last resort, a non-Aboriginal family living in close proximity to the child's natural family,
  - (c) any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community.
- (3) The requirements under subsection (1)(a) to have regard to the advice of the relevant Aboriginal agency and under subsection (2)(b) to consult with the relevant Aboriginal agency do not apply to the making of a decision or the taking of an action under Part 3.5<sup>23</sup>.

The Victorian ACPP, as articulated above, must be considered in the context of the rest of the CYFA 2005. All elements of the CYFA 2005 apply to Aboriginal children, and the ACPP applies in addition to these requirements. That is, the application of the ACPP does not remove any of the other responsibilities detailed in the rest of the CYFA 2005.

Appendix A provides extracts of the other sections of the CYFA 2005 that are of most relevance to the ACPP.

<sup>22</sup> These definitions were reached through a review of available literature (national and Victorian) and consultations with key stakeholders – including the Department, relevant Victorian ACCOs and the Secretariat for National Aboriginal and Islander Child Care (SNAICC).

<sup>23</sup> Part 3.5 of the CYFA 2005 details requirements with respect to voluntary child-care arrangements to place children in OOH. Source: CYFA 2005.

## Inquiry context

### 4.3 How the principle is applied in Victoria

The ACPP as expressed in the CYFA 2005 applies to all Aboriginal children in Victoria where a decision has been made for the child to be placed in OOHC. The ACPP was established to guide decision-making in these situations. As per s 8 of the CYFA 2005, the ACPP applies to all decision-makers, including the statutory agency (the Department), courts, community services and others involved in making decisions about the placement of Aboriginal children in OOHC.

The Department has established a number of programs, policies and procedures to comply with the specific requirements of the ACPP. This includes detailed guidance to staff and funded CSOs – including ACCOs – about their responsibilities for complying with the ACPP.

**Responsibility for complying with the ACPP sits within and across all elements of the service system.**

In Victoria, three Aboriginal-specific programs have been established that align directly with the requirements of the ACPP:

- Aboriginal Child Specialist Advice and Support Services
- Aboriginal family-led decision making program
- Cultural support planning program.

These programs sit within the overall CP framework that the best interests of the child must always be paramount. These programs do not replace or contradict any of the existing responsibilities CP have towards any child in the CP system. Instead, they are designed to enhance the capabilities of the system to make decisions that are in the best interests of Aboriginal children. The programs are an explicit acknowledgment that making decisions in the best interests of Aboriginal children occur when due consideration is given to their Aboriginal culture, community and identity.

A brief summary of each of the three programs and their relationship to the ACPP follows.

#### 4.3.1 Aboriginal Child Specialist Advice and Support Service

The ACPP requires that 'in making that placement regard must be had ... to the advice of the relevant Aboriginal agency' and that 'if after consultation with the relevant Aboriginal agency, placement with extended family or relatives is not feasible or possible, the child may be placed ... [in accordance with the ACPP placement hierarchy]'.<sup>24</sup>

ACSASS has been established to fulfil the role of the 'relevant Aboriginal agency'. ACSASS is a statewide service provided by Mallee District Aboriginal Services (MDAS) in Mildura and by the Victorian Aboriginal Child Care Agency (VACCA) in all other areas. VACCA's service is named Lakidjeka ACSASS Program – in this Inquiry 'ACSASS's is used to include both MDAS ACSASS and Lakidjeka ACSASS Program.

Consultation with ACSASS is designed to assist child welfare workers in making culturally informed decisions, and to draw on local knowledge of the family and extended family to support placement. This role is particularly important in complying with the ACPP placement hierarchy and in maintaining the child's culture and identity through contact with the child's community.

ACSASS has responsibilities throughout all phases of CP intervention. The service provides CP with specialist advice, information and assistance in relation to significant decisions, and supports Aboriginal children and families to understand CP processes and requirements.

Appendix B provides an overview of the 19 ACSASS responsibilities defined in the *Program requirements for the Aboriginal Child Specialist Advice and Support Service*.

<sup>24</sup> Section 13 of the *Children, Youth and Families Act 2005* (Vic.)

The Department provides about six million dollars per annum<sup>25</sup> to the two ACCOs to deliver ACSASS statewide.<sup>26</sup> The ACCOs use this allocation to fund 30 equivalent full-time positions across Victoria. The staffing profile is primarily case workers (who work directly with CP, children and families) and some administrative and management positions.

The Department sets targets for service provision, measured in 'annualised clients'.<sup>27</sup> An annualised client equates to a child or sibling group<sup>28</sup> who is counted once, regardless of the number of times during the year that ACSASS is consulted about that child or sibling group.<sup>29</sup> VACCA's target for 2014–15 was 2,514 annualised clients<sup>30</sup> and MDAS had a target of 217.

### 4.3.2 Aboriginal family-led decision-making

The AFLDM program links directly to the requirements of the ACPP, by identifying potential extended family and other kinship carers, and maintaining the child's culture and identity through contact with the child's community.

AFLDM gives effect to case planning for Aboriginal children in OOH. AFLDM is a collaborative process that brings together family members, extended family members, relevant organisations and Aboriginal community members to make decisions and develop a case plan for Aboriginal children placed in OOH.<sup>31</sup>

The goal of AFLDM is to deliver culturally based decision-making within CP. The AFLDM model provides Aboriginal families with the opportunity to meet and explore options to improve their family situation in a context that supports their cultural background and heritage. It also allows families to gain an understanding around the risks of harm towards the child and how the family can be supported to overcome any difficulties they may be facing.<sup>32</sup>

The family-led decision making program guidelines<sup>33</sup> state that families of Aboriginal children will be offered an AFLDM where protective concerns have been substantiated and also when the child is subject to a protection order. The guidelines go on to require that where a case plan requires review, whether planned or unplanned, another AFLDM meeting will be considered. *CP practice advice number 1434: permanent care for Aboriginal children, 5 November 2012* requires that an AFLDM meeting should also be convened and conducted in instances where the permanent placement of an Aboriginal child with a non-Aboriginal family is being considered.<sup>34</sup>

A range of case planning decisions can be made at an AFLDM meeting, including:

- how the family can be supported in caring for the child
- what involvement family members are to have in a child's life
- what needs to change so a child can remain at home
- what needs to change so a child can return home
- where the child is to live – including identifying extended family and other kinship carer options that may be suitable.

25 The 2016–17 state budget allocated an additional \$3.608 million, which is included in this approximate figure. Source: Department of Health and Human Services.

26 The amount of funding is subject to CPI increases. Advice from the Department about the exact amount of funding provided differs slightly from advice provided by the funded ACCOs. The Department declined the Inquiry's request to provide copies of the relevant funding agreements, but when afforded the opportunity to respond to the draft report of the Inquiry, the Department provided the total funding for each service for 2014–15.

27 *Program requirements for the Aboriginal Child Specialist Advice and Support Service*, Department of Human Services, July 2012, p. 22.

28 The ACCOs advised that a sibling group is recorded as one annualised client.

29 Verbal advice from the Department, confirmed by funded ACCOs.

30 The Department advises that VACCA has an overall target of 2,514 annualised clients, while VACCA advises the target is split into 324 after-hours clients and 2,190 regular clients.

31 *CP practice advice number 1432: Aboriginal Child Placement Principle, 5 November 2012*, p. 3.

32 Department of Human Services, *CP practice advice number 1061: the Aboriginal child and family service system, 5 November 2012*.

33 Department of Human Services, *Family-Led Decision Making Program guidelines: including program requirements and practice guidance – version 2*, November 2013, p. 17.

34 Department of Human Services, *CP practice advice number 1434: permanent care for Aboriginal children, 5 November 2012*.

## Inquiry context

AFLDM meetings are co-convened and facilitated by a Departmental and community convenor. The co-convenor model is a key design feature of the program. It is intended to demonstrate effective collaborative practices between CP and ACCOs, ensure cultural integrity of the process while maintaining a focus on the safety needs of the child and provide cross-skilling opportunities for co-convenors. Co-convenors prepare and assist children, family and professionals through the AFLDM process, with the aim of empowering the family to take the lead in making decisions and plans. The Departmental convenor brings knowledge and skills of the CP system, legislation and Departmental processes, and is an advocate for culturally appropriate service delivery within CP. The community convenor provides cultural knowledge and leads the facilitation of the conference for Aboriginal children and families. The community convenor possesses skills in working with vulnerable Aboriginal families and assists the Departmental convenor in culturally competent service delivery.<sup>35</sup>

There are 16.5 community convenor positions located in ACCOs and 11.5 Departmental convenor positions. The Department does not prescribe targets for the number of AFLDM meetings that must be held (either for Departmental or community convenors). In 2012 a funding increase to the AFLDM program resulted in funding for about 1,250 AFLDM meetings per year.<sup>36</sup>



35 Department of Human Services, *Family-Led Decision Making Program guidelines: including program requirements and practice guidance – version 2*, November 2013, p. 17.

36 The Department advised the Inquiry that the new funding model allowed Departmental convenors to conduct 1,294 AFLDM meetings per year and community convenors to conduct 1,238 AFLDM meetings per year. It is unclear why there is a difference when both convenors are required for an AFLDM meeting to be held.

### 4.3.3 Cultural support plan

The ACPP requires that 'any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community'. In Victoria, the CSP program was established in response to this requirement.

A CSP sets out how an Aboriginal child is to remain connected to their Aboriginal community and culture. A CSP is a part of the child's overall case plan. The CSP program recognises that promoting a child's connectedness to their culture requires plans and specific strategies to connect and strengthen the child's ties to the extended family and community that they belong to. It also acknowledges that following the ACPP placement hierarchy alone does not ensure that Aboriginal children will remain connected to their culture.

CP is responsible to lead and coordinate the CSP as part of the overall best interests case planning, with the planning function contracted to ACCOs since 2010. ACSASS and AFLDM meetings both also have roles in the development of CSP. According to CP practice advice, practitioners are required to consult with ACSASS about the preparation of a CSP and that, where opportunity exists, CSPs should be developed through the AFLDM process. CSPs must be reviewed regularly and CP must consult with ACSASS when compliance with the plan has not been achieved.<sup>37</sup>

Legislation provides that CSPs are mandatory for Aboriginal children who are in OOHC and subject to a GSO or a LTGSO.<sup>38</sup> This requirement is stipulated in s 176 of the CYFA 2005, not in s 13, which articulates the ACPP. At the time of the Inquiry, this meant about 21 per cent of Aboriginal children in OOHC were required have a CSP.<sup>39</sup> In addition, the Children's Court can require a CSP to be developed, and the Department considered it good practice to develop a CSP for all Aboriginal children in OOHC.

37 Department of Human Services, *CP practice advice number 1060: cultural support plans*, 5 November 2012.

38 CP practice advice is contradictory. Despite advice in *CP practice advice number 1432: Aboriginal Child Placement Principle*, 5 November 2012 that 'The Secretary must prepare a cultural plan for each Aboriginal child in out-of-home care', the Department has advised that CSPs are only mandatory for Aboriginal children on GSOs and LTGSOs.

39 Of the 920 Aboriginal children in OOHC at that time, 194 children were on GSOs or LTGSOs and required a CSP.

At the time of this Inquiry there was also a requirement for every child in OOHC (Aboriginal and non-Aboriginal) to have a case plan. There are two elements of every case plan that could give effect to the ACPD requirement to 'ensure the maintenance of the child's culture and identity through contact with the child's community':<sup>40</sup>

- The case plan will document the child's needs in the seven domains of the Looking After Children framework, one of which is identity (the other six domains are health, emotional and behavioural development, education, family and social relationships, social presentation and self-care skills).
- Best Interest case practice notes 'where a child with a particular cultural identity is placed in OOHC with a caregiver who is not a member of that cultural community, the desirability of the child retaining a connection with their culture'.

In 2013–14 the total allocation of funding to the CSP program was just over \$0.5 million. The funding was based on the projected number of Aboriginal children on a GSO or LTGSO and provided in two streams:

- an allocation of funding to 10 ACCOs to create the CSPs.
- since 2011, a further allocation of client expenses funding to implement CSPs.

### Significant change to CSP requirements

It is important to note that during the course of this Inquiry a significant change occurred that substantially affects the CSP program. Following the introduction of new obligations in the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014 (CYF Amendment Act), a new approach to CSP was legislated from 1 March 2016. The CYF Amendment Act represents a positive improvement on the previous requirement to prepare a CSP for Aboriginal children subject to a GSO or LTGSO. A CSP is now required for all Aboriginal children in OOHC – including in every instance where a permanent care order is sought.<sup>41</sup>

### 4.3.4 Other programs for Aboriginal children in OOHC

The initiatives described above link directly with the legislated requirements of the ACPD; however, they are not the only initiatives in Victoria to support Aboriginal children and families in contact with the OOHC system. Other initiatives that have not been considered in detail are not within the scope of the Inquiry as they are not directly related to the legislated requirements of the ACPD. However, it is important to acknowledge these initiatives, as they contribute to the context of the OOHC system's commitment to improving outcomes for Aboriginal families and children and to reducing the over-representation of Aboriginal children in OOHC.

#### Section 18 of the CYFA 2005 – Aboriginal guardianship

Section 18 of the CYFA 2005 is intended to provide the Secretary to the Department authority to authorise the Principal Officer of an Aboriginal agency to perform specified functions in relation to a protection order with respect to an Aboriginal child. Until recently, there were a small number of legislative constraints that prevented the powers under s 18 being implemented.<sup>42</sup> On 12 November 2015, legislative amendments were made that removed these constraints, and consideration is now being given to the planning and preparation that will be required to the exercise these powers.

While the powers of s 18 have not yet been exercised, VACCA operated a Section 18 Aboriginal Guardianship Pilot Program between August 2013 and June 2015 to better understand and prepare for the implementation of s 18 powers. The pilot operated as if s 18 authorisation was in effect for a group of 13 Aboriginal children on Children's Court protection orders. The Department signed off on decisions for children, while VACCA played a pivotal role in decision-making – including assessing the child's safety, stability and development through the lens of age and stage, gender and culture, and using family-led decision-making to plan and make decisions. The pilot concluded in July 2015 and an evaluation has been conducted.

40 Department of Human Services, *CP practice advice number 1284: case planning for children in out-of-home care*, 5 November 2012.

41 Previously this was only requested for children placed with non-Aboriginal carers.

42 These constraints included clarifying that 'Principal Officer' is the Chief Executive Officer of an ACCO and empowering the principal officer to delegate to suitable employees of their agency.

## Inquiry context



On 28 February 2016, the Minister for Families and Children announced the first regional pilot program, to be delivered by Bendigo and District Aboriginal Co-operative. The Bendigo pilot program will employ three staff members who will manage the cases of local Aboriginal children in the CP system.

The Section 18 pilot program was not assessed as part of this Inquiry, due to the systemic nature of the Inquiry. However, it is clear that s 18 powers align closely with the intent of the ACPP of Aboriginal people playing an active and critical role in decisions about Aboriginal children. It also complements the commitment to recognising the principles of Aboriginal self-management and self-determination in taking actions in relation to an Aboriginal child, as articulated in s 12 of the CYFA 2005.

### Aboriginal kinship care model

The department describes the Victorian Aboriginal kinship care model, which was developed in 2009–10, as comprising four components:

- Aboriginal information and advice
- Aboriginal family services
- Aboriginal placement and establishment support services
- Aboriginal case contracting.

The Aboriginal model differs from the mainstream kinship care services with the inclusion of cultural connection activities that enable ACCOs to provide cultural advice, assistance and support to families and mainstream organisations where Aboriginal children are not living with an Aboriginal family or kin.

As part of the rollout of the mainstream kinship care services in March 2010, the Department allocated recurrent funding directly to ACCOs to provide contracted case management for Aboriginal kinship care placements. The allocation of funding was based on the proportion of Aboriginal children in kinship care in the former Departmental regions. The Department recommitted funding in 2014–15 providing \$5.5 million over four years. The Department currently funds nine ACCOs to provide 114 case contracted targets.

This model is of some interest to the Inquiry, as it can contribute to ACPP requirement that 'any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community'. However, it has not been assessed in detail as it applies only to a maximum of 114 Aboriginal children at any one time, so does not contribute to the systemic compliance that is a focus of the Inquiry.

### Family preservation and reunification programs

A number of processes and initiatives are aimed at supporting Aboriginal families to stay living together safely and to safely reunify families with children who have been placed in OOHC. *CP practice advice number 1061: the Aboriginal child and family service system, 5 November 2012* describes three key Aboriginal-specific prevention and reunification programs: Aboriginal Family Preservation Program (AFPP), Integrated Family Services – Indigenous, and Aboriginal family restoration services. Appendix C provides a brief description of these three programs.

These family preservation and reunification programs were not considered by this Inquiry, as the Victorian legislation specifies that the ACPP is applied from the decision to place the child in OOHC, and the considerations that must be had in making that placement.

The fact that these family preservation and reunification programs are not included in the scope of this Inquiry should in no way be considered a comment on their importance in comparison to compliance with the ACPP. In many ways family preservation and reunification programs (despite not being directly referenced in the ACPP of the CYFA 2005) are the highest level of compliance with the underlying intent of the ACPP. Keeping Aboriginal families living together in a safe and nurturing environment is the best way to ensure Aboriginal children are living with Aboriginal carers and have a strong and ongoing connection to their culture, identity, family and Aboriginal community.

Some key stakeholders – including the Secretariat of National Aboriginal and Islander Child Care (SNAICC), the Australian Institute of Family Studies and VACCA – assert that the ACPP is intended to apply at the front end, and that authorities and service providers have an obligation to help strengthen and support Aboriginal families, to reduce the likelihood that removal from their family will ever be in the best interests of the child. This is a fundamental principle underpinning the OOHC system. Another principle is that 'a child should only be removed from the care of their parents if there is an unacceptable risk to the harm of that child' and that 'there is a need to give widest possible assistance to parent and child as the fundamental group unit of society and ensure that the intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child'.<sup>43</sup>

<sup>43</sup> Section 10 of CYFA 2005, referenced in numerous Departmental CP policy and practice guidance documents.

## VACCA permanent care team

Permanent care provides security and stability for children who have entered the CP system and are unable to live safely within their birth family in the long term. Permanent care aims to provide secure and lasting family placements by placing children with approved carers who accept custody and guardianship responsibilities for the child by way of a permanent care order.

All legislated requirements of the ACPP apply to permanent care, as do Department policy and practice requirements relating to Aboriginal children in OOHC, including the need to consult with ACSASS at all significant decision points, hold an AFLDM and have a plan – a CSP or details in the case plan – outlining how the child will maintain their Aboriginal identity.

This Inquiry did not consider any special requirements that apply only to permanent care since the ACPP of the CYFA 2005 applies equally to a permanent care placement and because only three of the 768 children of particular interest to this Inquiry were in permanent care on 31 December 2014.<sup>44</sup>

The VACCA permanent care team was established in acknowledgment of concerns that the permanent placement of Aboriginal child with non-Aboriginal families will lead to Aboriginal children losing their connectedness to their Aboriginal community and culture. *CP practice advice number 1434: permanent care for Aboriginal children, November 2012* provides specific direction and guidance for staff to follow when considering permanent care for Aboriginal children.

This practice advice confirms the requirements to comply with the ACPP and relevant Departmental policy and practice guidance (including ACSASS, AFLDM, CSPs and abiding by the ACPP placement hierarchy). It also outlines the requirements to involve the VACCA permanent care team where consideration is being given to a permanent care placement with a non-Aboriginal family. Appendix D outlines these requirements in more detail.

It is noted that the number of children, including Aboriginal children, in permanent care is expected to increase with the introduction of the new obligations in the CYF Amendment Act. The relationship between permanent care and compliance with the ACPP is therefore likely to become a more significant issue to address in the near future.

44. Aboriginal children who experienced a CP intake during the period 1 January 2013 to 31 December 2014. Source: Data provided by the Department to Inform the Inquiry, 24 July 2015.

## 4.4 Aboriginal children and the out-of-home care system

All Australian states and territories have state government departments with a statutory responsibility for ensuring children are protected from harm caused by abuse and neglect. In Victoria, this responsibility is exercised by CP in the Department. CP receives reports of suspected child abuse and neglect and, where appropriate, further investigates these. Where the risk of harm is assessed as too great for children to remain living at home with parents, CP may need to place a child in OOHC.

OOHC is the last option in the hierarchy available to CP to ensure a child's safety or welfare. CP places an emphasis on keeping the child with the family where it is possible and in the child's best interests. Assessment of a reported concern about a child's welfare can result in a referral to a range of specialist support services aimed at strengthening the capacity of the family to safely care for their child, or it may result in keeping the child at home with the involvement of CP.<sup>45</sup>

OOHC is the term used to describe the placement of children (under 18 years of age) away from their parents, due to concern that they are at risk of significant harm and are in need of protection. The purpose of OOHC is to provide children who are unable to live at home due to significant risk of harm with a placement that ensures safety, healthy development and stability.<sup>46</sup> OOHC is a critical and central part of the broader CP placement and support system. CP administers the OOHC service and delivers it in conjunction with the non-government sector that is funded to provide the service.

The department employs over 1,000 professionals in the Victorian CP system, across four divisions and one central office. The predominant qualification groups for practitioners are in social work, welfare work and psychology.

45. As noted in Section 1.4: Purpose and scope, the Inquiry has considered compliance from the point it is determined that 'it is in the best interests of an Aboriginal child to be placed in out-of-home care'. This Inquiry therefore does not include consideration of the range of preventative or reunification actions (such as family strengthening) that may be taken to ensure that it remains in the best interests of children to remain with their family.

46. Department of Health and Human Services, *CP practice advice number 1395: definition and purpose of out-of-home care, 5 November 2012*.

## Inquiry context

A distinct characteristic of the Victorian OOHC system is the significant involvement of CSOs in providing care and services for these children. Nearly all OOHC in Victoria is provided and managed by CSOs – many of whom have long and extensive histories of providing care to vulnerable children. The CSOs are subject to service agreements with, and monitoring by the Department.

OOHC placements vary in duration from overnight to several years, depending on the needs and circumstances of the child. Children may be placed in the following types of care:<sup>47</sup>

- **Kinship care** – the placement is with the child’s extended family, friends or existing social network.
- **Home-based care** – foster care or other placement options which occur within a family environment, but not from within the family kinship network.
- **Residential care** – paid staff provide care, usually in a community setting or group home.

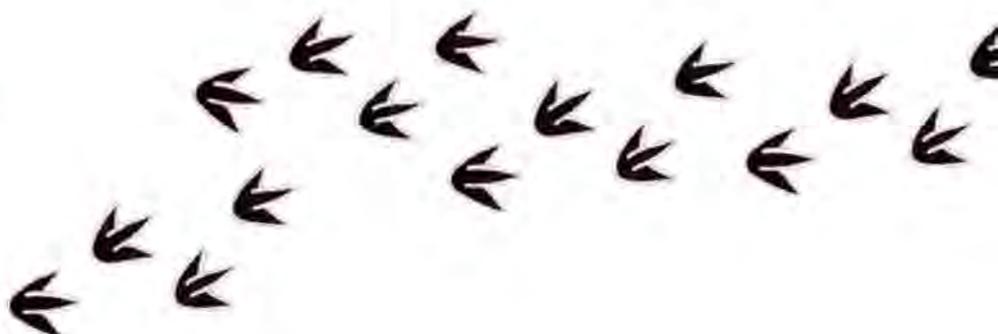
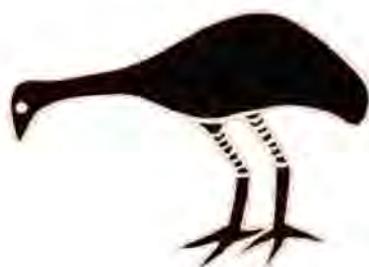
### 4.4.1 Aboriginal contact with the OOHC system

#### Over-representation of Aboriginal children

Aboriginal children are over-represented in all areas of the CP system in every state and territory in Australia. In 2014, Aboriginal children were nearly 10 times more likely to be in OOHC care than other children.<sup>48</sup>

In Victoria there were 7,710 children in OOHC on 30 June 2014, comprising 1,308 Aboriginal children and 6,393 non-Aboriginal children.<sup>49</sup> This means that Aboriginal children make up over 16.9 per cent of children in OOHC in Victoria, yet Aboriginal people only make up about 0.7 per cent of the total Victorian population.<sup>50</sup>

The Victorian rate of Aboriginal children in OOHC is among the highest in Australia and is significantly higher than comparable international jurisdictions. Aboriginal children in Victoria were nearly 12 times more likely than non-Aboriginal children to have experienced an OOHC placement in 2014. At a rate of 79.7 per 1,000 Aboriginal children, compared to 6.7 per 1,000 non-Aboriginal children.<sup>51</sup> Only ACT (80.9 per 1,000) and NSW (80.3 per 1,000) had higher rates of Aboriginal children experiencing an OOHC placement in 2014. By contrast the next highest jurisdiction was Western Australia, which had a rate of 59.6 per 1,000 Aboriginal children.



<sup>47</sup> Department of Health and Human Services, *CP practice advice number 1411: placement roles and responsibilities*, 24 February 2014, p. 2.

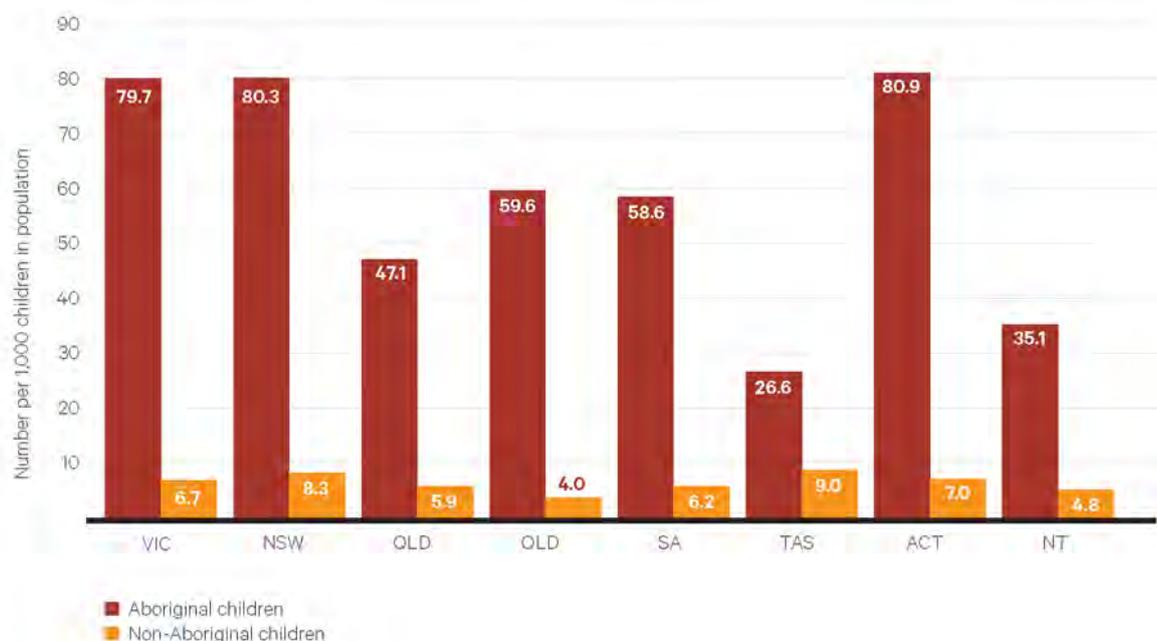
<sup>48</sup> Australian Institute of Family Studies, *Child abuse and neglect statistics: CFCA resource sheet – July 2015*.

<sup>49</sup> Productivity Commission, *Report of government services, 2015*, Table 15A.19.

<sup>50</sup> The 2011 Census counted 37,991 Aboriginal people living in Victoria and the total Victorian population was 5,354,039 people. Source: Australian Bureau of Statistics.

<sup>51</sup> Productivity Commission, *Report on government services, 2015*, Table 15A.18.

Figure 2: Rate of children who experienced an OOHC placement in 2014, by Aboriginal status and state or territory



Source: Productivity Commission, *Report on government services*, 2015, Table 15A.18

The Victorian rate of Aboriginal children represented in OOHC (79.7 per 1,000) is more than double the rate of Indigenous children in Canada (36 per 1,000)<sup>52</sup> and more than 10 times the rate of Maori children in New Zealand (7.1 per 1,000).<sup>53</sup>

Figure 3 shows the dramatic growth from 2005 to 2014 in the rate per 1,000 of Aboriginal children in OOHC in Victoria – an increase of 33.8 per cent (from 28.9 per cent to 62.7 per cent) – compared to non-Aboriginal children, which has remained relatively consistent (from 3.4 per cent to 5.1 per cent).

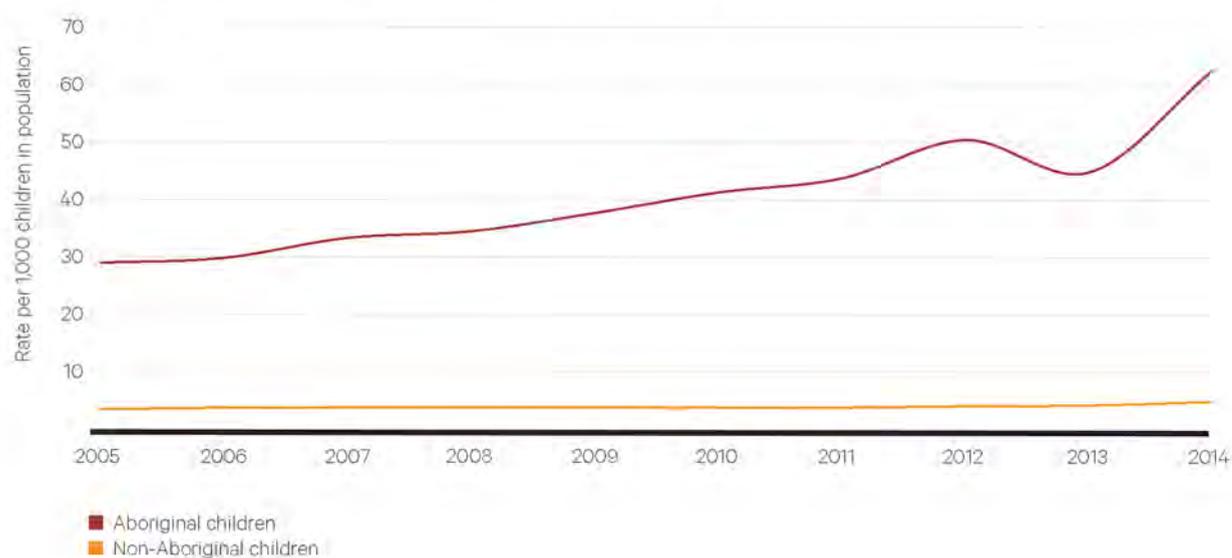


52 Statistics Canada, *Aboriginal Peoples in Canada: First Nations people, Métis and Inuit: national household survey, 2011*.

53 Estimate based on reported incidence of Maori children in OOHC in 2012 (1,942 or 50 per cent of total population in care) and New Zealand Maori population of 273,770 in 2012.

## Inquiry context

Figure 3: Rate of children in OOHC in Victoria on 30 June, by Aboriginal status and year (2005 to 2014)



Source: Productivity Commission, *Report on government services*, 2015, Table 15A.18.

### The number of Aboriginal children in OOHC has increased at a much higher rate than non-Aboriginal children

The number of children in OOHC in Victoria has grown dramatically over the last decade. Report on government data services data notes between 30 June 2005 and 30 June 2014 there was a 72 per cent increase in the number of non-Aboriginal children in OOHC (from 3,882 to 6,393 children). Over this same period the number of Aboriginal children in OOHC grew at a much higher rate, an increase of 149 per cent (from 526 to 1,308 children).<sup>54</sup> Aboriginal children therefore account for nearly 24 per cent (782 of 3,293) of the overall increase in children in OOHC in Victoria from 2005 to 2014.

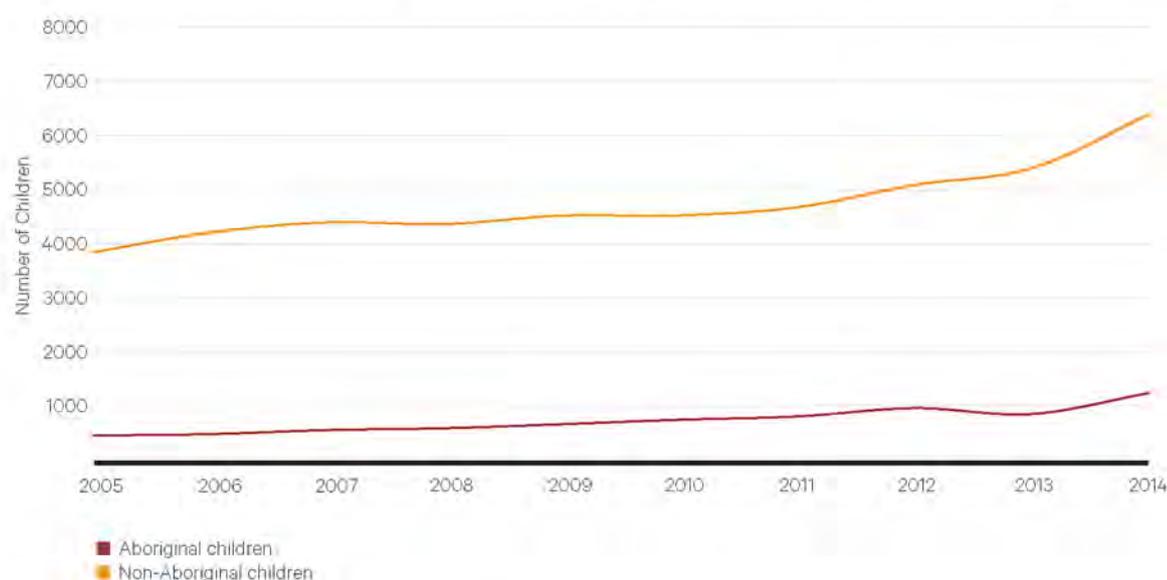
The growth in number of Aboriginal children in OOHC has been experienced differently across Victoria. Department data from 2016 notes between 30 June 2000 and 30 June 2015 the number of Aboriginal children in OOHC increased by:<sup>55</sup>

- 574 per cent in the Goulburn area – an increase of 109 Aboriginal children, the largest increase in any area
- 333 per cent in the Loddon area – an increase of 100 Aboriginal children, the second largest increase in any area
- 215 per cent in the Brimbank Melton area – an increase of 28 children, the second smallest increase in any area
- 140 per cent in the Inner Eastern Melbourne area – an increase of 14 children, the smallest increase in any area.

Over this decade the proportion of Aboriginal children in OOHC also increased. On 30 June 2005 Aboriginal children comprised 13.5 per cent of the total Victorian OOHC population (526 out of 3,882 children), but by 30 June 2014 this figure had risen to 16.9 per cent (1,308 of 6,393 children).

<sup>54</sup> Productivity Commission, *Report on government services*, 2015, Table 15A.19

<sup>55</sup> Data provided by the Department in response to request from CCYP (request number PRRB1888, 17 February 2016)

**Figure 4: Number of children in OOHC in Victoria on 30 June, by Aboriginal status and year (2005 & 2014)**

Source: Services, OOHC data 30 June 2000 to 30 June 2015

## Majority of Aboriginal children in OOHC are in kinship care

The Productivity Commission's *Report on government services* provides a snapshot of children in OOHC on 30 June each year. Table 3 shows that, in 2013 and 2014, about 55 per cent of Aboriginal children in OOHC were in a kinship care placement. Nearly seven per cent of Aboriginal children were in residential care, and about 92 per cent were in a home-based care (including kinship care and foster care).

**Table 3: Aboriginal children in OOHC by type of care, 2013-14**

Type of Care	2013 Number	Per cent of total	2014 Number	Per cent of total
<b>Residential care</b>	64	6.8%	90	6.8%
<b>Home-based care</b>	854	91.5%	1,214	92.8%
a) Foster care	239	25.6%	325	24.8%
b) Relative/kinship care	512	54.9%	709	54.2%
c) Other home-based care	103	11.0%	180	13.7%
<b>Independent living</b>	3	0.3%	4	0.3%
<b>Unknown</b>	1	0.1%	0	0%
<b>Total</b>	<b>933</b>	<b>100%</b>	<b>1,308</b>	<b>100%</b>

Source: Productivity Commission's *Report on government services*, 2015, Table 15A.19.

This data also shows an alarming increase in the number of Aboriginal children in OOHC over the 12-month period. There were 375 more Aboriginal children in OOHC on 30 June 2014 than there were on 30 June 2013 – an increase of over 40 per cent in one year.

## Inquiry context

### Key finding 1

Aboriginal children are dramatically over-represented in the Victorian OOHC system compared with both non-Aboriginal children in Victoria and Aboriginal children from other states and territories.

- Aboriginal children comprise about 17 per cent of children in OOHC in Victoria, yet Aboriginal people comprise only 0.7 per cent of the total Victorian population.
- Aboriginal children in Victoria were nearly 12 times more likely than non-Aboriginal children to have experienced an OOHC placement in 2014.
- The rate at which Aboriginal children experienced an OOHC placement in Victoria in 2014 (79.7 per 1,000 children) is among the highest rate that Aboriginal children experience OOHC across Australia – exceeded only by ACT (80.9 per 1,000) and NSW (80.3 per 1,000).
- The Victorian rate is also significantly higher than comparable international jurisdictions. It is more than double the rate that Indigenous children in Canada are represented in OOHC, and more than 10 times the rate for Maori children in New Zealand.

The number of Aboriginal children in OOHC in Victoria is growing at an alarming rate, and growing much more rapidly than the number of non-Aboriginal children in OOHC in Victoria.

- Aboriginal children accounted for nearly 24 per cent of the overall increase in children in OOHC in Victoria from 2005 to 2014.
- Between 30 June 2005 and 2014 the number of Aboriginal children in OOHC increased from 526 to 1,308 – an increase of 149 per cent.
- By local area, the most dramatic increase in the number of Aboriginal children in OOHC was experienced in the Goulburn and Loddon areas. Between 30 June 2000 and 2015 there was a 574 per cent increase in the Goulburn area (109 more Aboriginal children) and a 333 per cent increase in the Loddon area (100 more Aboriginal children).
- There were 375 more Aboriginal children in OOHC on 30 June 2014 than there were on 30 June 2013 – an increase of over 40 per cent in one year.

The enormous over-representation and rapid growth of Aboriginal children in OOHC in Victoria magnifies the importance of complying with the mandatory requirements of the ACPP. Because such a high proportion of Aboriginal children and families are directly affected by CP decisions, the impact will be profound and widespread if ACPP requirements are not fulfilled.

#### 4.4.2 Placements reported in accordance with the ACPP

The Department reports each year on the number and proportion of Aboriginal children who were placed in accordance with the ACPP. This information is reported publicly in both the *Report on government services* and in the Victorian Child and Adolescent Monitoring System.

#### Limitations of current reporting measure

**The Department acknowledges that the measure used in these reports to determine whether a placement was in accordance with the ACPP is a proxy measure, and that it is not an accurate measure of compliance with the ACPP.**

The measure used to assess whether the child was placed in accordance with the ACPP is only a reflection of the type of carer that a child was placed with. It does not include the following considerations: whether there was consultation with an Aboriginal agency, whether there is a CSP in place to maintain the child's cultural identity, or whether opportunities were explored to place the child at a higher level in the ACPP placement hierarchy.

The following proxy measure is used in this reporting to assess whether the placement was in accordance with the ACPP.

**Placed in accordance with ACPP** is defined as the child being placed with relatives or kin (either Aboriginal or non-Aboriginal relatives of kin), another Aboriginal carer, or in Aboriginal residential care.

**Not placed in accordance with ACPP** is defined as the child not being placed with relatives/kin, another Aboriginal carer, or Aboriginal residential care.

This proxy measure is the mandatory definition that all Australian states and territories must use when reporting ACPP compliance in the annual *Report on government services*, which itself notes its limitations:

*This indicator should be interpreted with care as it is a proxy for compliance with the principle. This indicator reports the placement outcomes of Aboriginal and Torres Strait Islander children rather than compliance with the principle. The indicator does not reflect whether the hierarchy was followed in the consideration of the best placement for the child, nor whether appropriate Aboriginal and Torres Strait Islander individuals or organisations were consulted (page 15.37).*

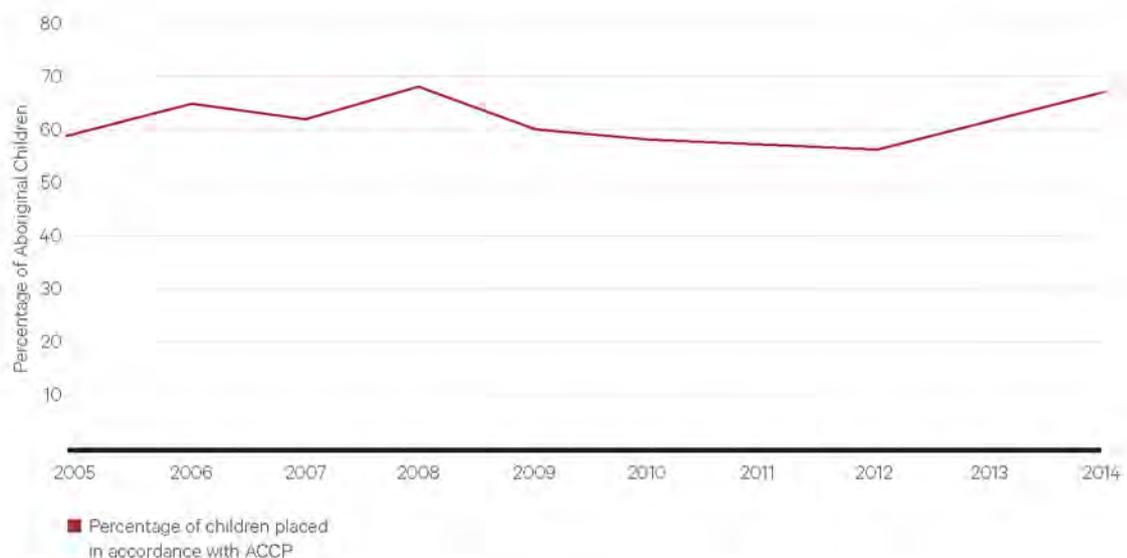
The limitations with this proxy reporting measure are discussed in Section 8: Defining practice compliance.

### Reported compliance

Given the limitations discussed above, the reported figures should be viewed with extreme caution and should not be interpreted as a reliable indicator of compliance with the ACPP. However, as this is the current nationally accepted reporting measure and the only publicly reported information about compliance with the ACPP in Victoria, an overview of the results are provided below.

On a percentage basis, the number of Aboriginal children in OOHC that were placed in accordance with the ACPP has remained relatively consistent over the last decade. On 30 June 2005 it was reported at 58.8 per cent. This fluctuated to a low of 56.3 per cent in 2012 and a high of 67.9 per cent in 2008, closing at 66.9 per cent on 30 June 2014.

**Figure 5: Aboriginal children in OOHC in Victoria who are reported as being placed in accordance with the ACPP on 30 June, by year (2005 to 2014)**



Source: Productivity Commission, *Report on government services*, 2015, Table 15A.24.

Note: The figures reported for 30 June 2014 should be interpreted with caution, as 290 Aboriginal children were reported as being in an 'unknown' or 'independent living' placement at this time. The calculation used to arrive at the percentage of children placed in accordance does not account for these children. In the four years prior to 2014 there were a total of six Aboriginal children reported as being in 'unknown or independent living'.

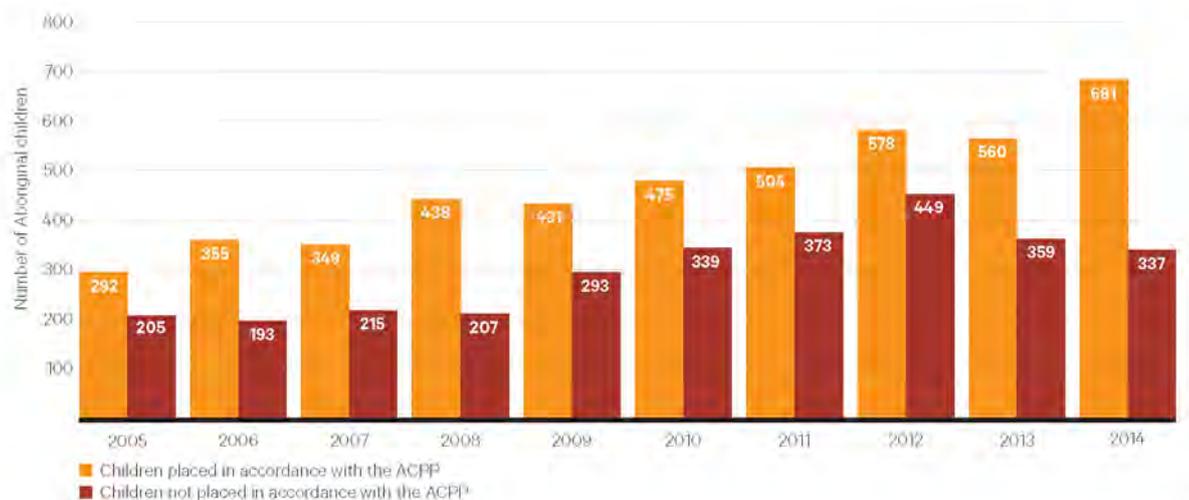


## Inquiry context

The measure used to assess whether the child was placed in accordance with the ACPP, is only a reflection of the type of carer that a child was placed with.

The percentage of children reported as being placed in accordance with the ACPP should be considered in the context of the rapidly growing number of Aboriginal children in OOHC. Figure 6 compares the number of Aboriginal children who are reported as being placed in accordance with the ACPP.

**Figure 6: Number of Aboriginal children in OOHC in Victoria who are reported as being placed in accordance with the ACPP on 30 June, by year (2005 to 2014)**



Source: Productivity Commission, *Report on government services, 2015*, Table 15A.24.

Note: The figures reported for 30 June 2014 should be interpreted with caution, as 290 Aboriginal children were reported as being in an 'unknown' or 'independent living' placement at this time. The calculation used to arrive at the percentage of children placed in accordance, does not account for these children. In the four years prior to 2014 there were a total of six Aboriginal children reported as being in 'unknown or independent living'.

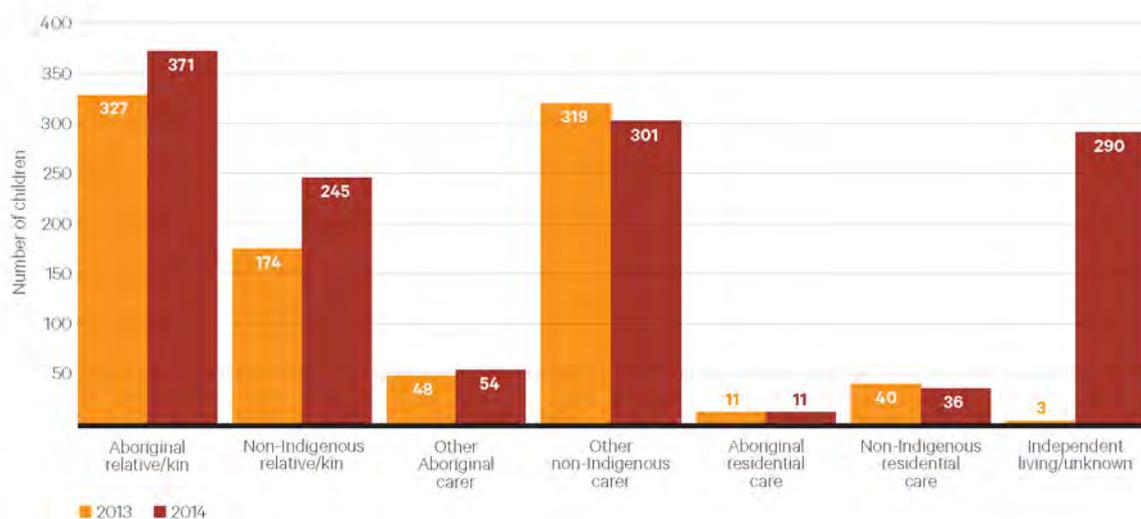
The reported 'number of children placed in accordance with ACPP' is directly linked to the relationship that the child has with their caregiver.<sup>56</sup> A more detailed look at the caregivers of Aboriginal children in OOHC in 2013 and 2014 reveals that:

- about 30 per cent of Aboriginal children are placed with Aboriginal relatives or kin (the highest level of the ACPP placement hierarchy)
- other non-Aboriginal carers (other than non-Aboriginal relatives or kin) are the caregivers for the next largest proportion of Aboriginal children, caring for nearly as many children as Aboriginal relatives or kin
- non-Aboriginal relatives or kin are the caregivers for a significant proportion, about 20 per cent of Aboriginal children in OOHC
- about 10 per cent of children are placed with other Aboriginal carers or in residential care.

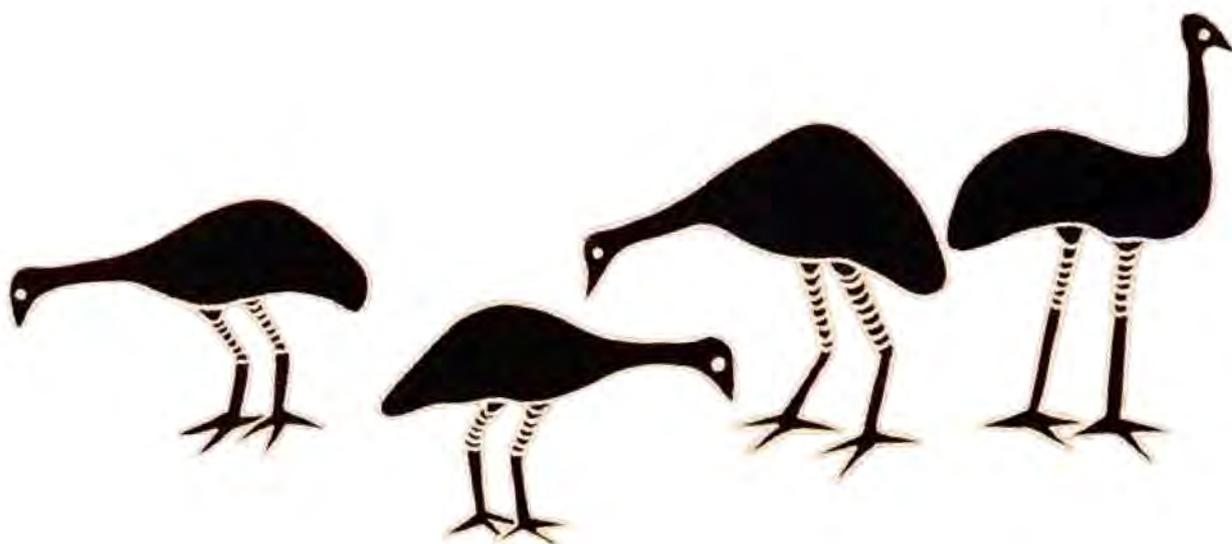
All results for 2014 need to be treated with caution given the high number of children – over 20 per cent of total – who are in independent living or whose placement is unknown.

<sup>56</sup> If the child is placed with a relative or kin (either Aboriginal or non-Aboriginal) or with another Aboriginal carer (including in Aboriginal residential care), the placement is deemed to be in accordance with the ACPP.

Figure 7: Number of Aboriginal children in OOHC in Victoria by relationship to caregiver, at 30 June 2013 and 30 June 2014



Source: Productivity Commission, *Report on government services, 2015*, Table 15A.24.





## 5. Methodology

The Inquiry was to generate evidence about the extent of compliance with the ACPP in Victoria, and to make recommendations for systemic changes to improve compliance with the intent of the ACPP.

The key objectives of the Inquiry were to:

- define the intent of the ACPP and what constitutes compliance with the intent of the ACPP
- assess the level of compliance with the intent of the ACPP over the period 1 January 2013 to 31 December 2014
- identify systemic barriers to compliance with the intent of the ACPP
- recommend changes to improve compliance with the intent of the ACPP.

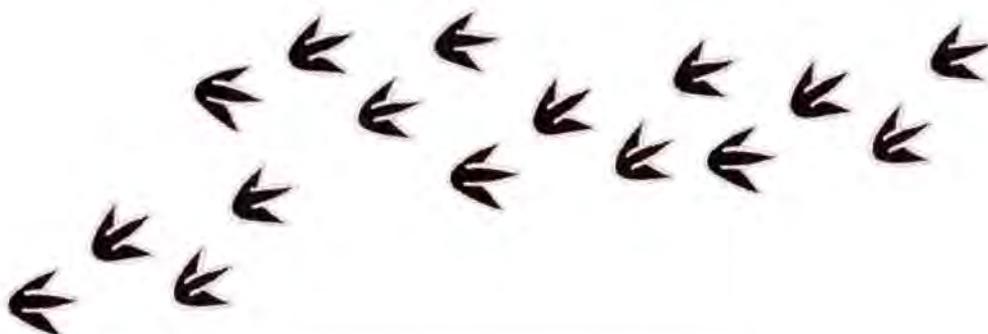
### 5.1 Approach

A steering committee was formed early in the Inquiry to provide guidance to PIC and to facilitate progress reporting and updates. Each component of the methodology was agreed to by the steering committee before proceeding.

The collection and analysis of both qualitative and quantitative data was needed to address these four objectives. Quantitative data in the form of system-wide reports and review of files was required to assess the level of compliance. Definitional issues and identification of systemic barriers required an understanding of the perspectives and experiences of those who are responsible for placement of children in OOHC, including Aboriginal agency representatives, managers of CSOs and Departmental staff.

Documentation of the pathway of Aboriginal children and their families involved in OOHC was outside of the scope of this Inquiry. Taskforce 1000, a complementary project undertaken by the Commission, was conducted in parallel to better understand the trajectory of Aboriginal children placed in care.

The triangulation of information from consultations and interviews, and analysis of system-wide data, file reviews and the online survey, provided a comprehensive picture of ACPP implementation in Victoria. Details of the data retrieval and analysis are presented below.



## 5.2 Inquiry phases

The Inquiry was divided into three phases that broadly correspond to the first three objectives:

- Phase 1: Framing
- Phase 2: Assessment
- Phase 3: Synthesis and recommendations.

Each phase incorporated a range of data collection and analysis activities, which are presented in the figure below.

**Figure 8: Data collection and analysis activities**



Source: Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria

# Methodology

## Phase 1: Framing

The steering committee for the Inquiry clarified the intended purpose and requirements of the Inquiry. An advisory group was established to monitor the Inquiry, provide guidance and as a key mechanism to share emergent findings.

A preliminary step in the Inquiry was to establish a clear understanding of the meaning and rationale for the ACPP. It was evident from initial Inquiry meetings that while the legislation was clear, the implications of the ACPP in practice and the intent of compliance was not clear.

It was agreed that there was a need to clarify understandings of the ACPP. While the CYFA 2005 specifies what must be done, the intent behind the ACPP is critical in understanding and assessing compliance.

Three key activities were conducted in this stage of the Inquiry. A literature review was undertaken that resulted in an Intent Paper, which clarified the parameters of the ACPP, a review of policy and practice guidelines, and an ACCO workshop to clarify intent and identify perspectives from ACCOs about what happens in practice.

### Literature review

The purpose of the literature review was threefold:

- to further understand the information available to the Inquiry – particularly the information accessible through Departmental records and data systems
- to begin to build evidence to respond to the key questions of the Inquiry
- to identify matters for deeper exploration in the latter stages of the Inquiry – particularly to inform the consultations with key stakeholders.

Relevant literature, both state-based and national was sourced to inform the literature review:

- Aboriginal and Torres Strait Islander Child Placement Principle: aims and core elements (SNAICC, June 2013)
- ACPP keeping families and communities together (SNAICC presentation)
- CYFA 2005
- Enhancing implementation of the ACPP: next steps (SNAICC discussion paper, January 2014)
- suite of CP policy and practice guidance provided by the Department as relevant to ACPP compliance.

Other relevant publications held by the Commission, the Department, or were publicly available – including review of jurisdictional and national publications regarding the implementation of the ACPP – were retrieved and identified as relevant to the Inquiry. This documentation is referenced throughout this report, and a reference list is provided at the end of this report.

The literature review focused on the definition and compliance aspects of the Inquiry and was conducted between October 2014 and January 2015.

### Review of policy and practice guidelines

The second part of the framing and definitional phase was to outline the Victorian model, service delivery and implementation processes of the ACPP. Departmental policy and practice guidelines were reviewed, and consultations were held with Departmental representatives.

Every policy and practice guideline provided by the Department and relevant to the ACPP was reviewed. Some were general and others were specific to the process of placement. A content analysis of documents was undertaken. The focus was on policy and practices that related to the ACPP. Particular attention was made to any reference to Aboriginal children, processes of placement for Aboriginal children, compliance criteria (such as maintenance of cultural identity and involvement of Aboriginal agencies). Twenty-nine documents were reviewed, which included practice advice, program guidelines, program requirements, practitioners' responsibilities, service agreements and other relevant papers that guide and direct the operations of staff of CP and CSOS. Collectively these documents are referred to in this Inquiry as 'CP policy and practice guidance'.

### Consultations

In December 2014 the Inquiry convened a full-day workshop for ACCOs. Representatives from the ACCOs that comprise the Victorian Aboriginal Children and Young Persons Alliance, SNAICC, VACCA, AFVPLS, the Commission and the Department's Aboriginal Health and Wellbeing Branch attended the workshop. The purpose of the workshop was to identify these stakeholders' perspectives on the intent of the ACPP. The paper was circulated to key stakeholders for comment and review and tabled at the ACCO consultation.

Initial consultations were also held with the Department and VACCA leadership to obtain their insights on the intent of the ACPP.

## Phase 2: Assessment

The second phase of the Inquiry focused on addressing questions about compliance with the ACPP over the period 1 January 2013 to 31 December 2014.

A key component of the assessment phase was to develop the ACPP compliance assessment rubric to ensure evidence generated was relevant to the assessment of the ACPP. This rubric aligned each element of the ACPP with a documented decision. For example, identification of the child as Aboriginal is a critical first stage that will affect compliance with the ACPP. The compliance points for identification of the child as Aboriginal are the child's Aboriginal status is recorded prior to the intake outcome being recorded, and their Aboriginality is confirmed by the family or child during investigation and assessment.

The ACPP compliance assessment rubric links directly to the wording of mandatory ACPP requirements articulated in CP policy and practice guidance, and outlines five key ACPP domains, the most significant compliance measure for each key ACPP domain, 20 specific compliance points and the relationship between the three compliance measures. The ACPP compliance assessment rubric is provided in Section 8.2: Definition of compliance for the Inquiry.

A key overarching question and three key sub-questions guided selection of methods in this phase.

- What is the current level of compliance with the intent of the ACPP?
  - Is policy consistent with legislation?
  - Is practice consistent with policy?
  - What are the systemic barriers within the Victorian system that inhibit compliance with the ACPP?

To address these questions both qualitative and quantitative data were required. A range of data sources and methods were drawn on to assess compliance and to identify the strengths and weaknesses of implementation of the ACPP. Methods adopted in Phase 2 included data analysis, file reviews, public submissions, consultations and an online survey.

Secondary analysis of Departmental records of Aboriginal children placed in OOHC between 1 January 2013 and 31 December 2014 and file reviews were important data sources that were supplemented with qualitative data from consultations and interviews with key stakeholders. Each data component is briefly outlined below and followed by a table aligning methods to guiding Inquiry questions.

### System-level data

System-level data relating to compliance with the ACPP was a key element in assessing system performance. Departmental data held in CRIS was reviewed to determine available reporting on the application of ACPP to all Aboriginal children placed in OOHC between 1 January 2013 and 31 December 2014.

Preparatory meetings with the data team within the Department were convened to identify the scope of the data request. A formal request was then made and system data was made available to the PIC team.

The data available from CRIS with respect to each key ACPP domain is discussed in detail at Section 10: Assessing practice compliance. CRIS produced very little evidence that was relevant to ACPP compliance. In fact, CRIS could not produce system-wide data that addressed any of the 20 compliance points in the ACPP compliance assessment rubric.

The Department advised that a key reason that required information on compliance points could not be retrieved was that CRIS is not a reporting tool, but was designed to be a case management tool for CP staff. The Department further advised that CRIS is the best system-wide reporting tool available to CP.

### File reviews

Given the limitations of CRIS outlined above, file reviews were undertaken. It was clear that a review of files of Aboriginal children in OOHC would provide a better understanding of compliance with mandatory ACPP requirements. A template to guide the file reviews was prepared to identify whether or not the recorded decisions aligned with the mandatory requirements of the ACPP.

A stratified random sample<sup>57</sup> of the files of 65 Aboriginal children who had an intake into CP and were placed in OOHC between 1 January 2013 and 31 December 2014 was undertaken. These 65 children represented 8.5 per cent of the total number of Aboriginal children who met this criterion (768 children). The file reviews considered activities that occurred within this two-year period only. The file reviews were undertaken by Commission staff experienced in using CRIS and who have previously been employed in CP roles. The file reviews involving reviewing the parts of the file where the information should be recorded (and if not found there, other parts of file where the information is likely to be recorded).

<sup>57</sup> The files were chosen to ensure the sample was representative of the wider cohort of children in the key criteria of: Aboriginal placement type, placement area, CP placement type, age and gender.

## Methodology

### Public submissions

The scope and timing of the Inquiry did not allow for face-to-face engagement with the full range of stakeholders. A call for public submissions was made to ensure key stakeholders who could not be consulted with personally could still contribute their perspectives.

The Commission held the call for public submissions from October 2014 to January 2015. The call was advertised through the *Koori Mail*, *National Indigenous Times* and the other media used by the Commission to engage with stakeholders and the community, including the Commission's website, Facebook and Twitter pages.

The Commission sought written contributions from any relevant stakeholders, including individuals, organisations and governments. Four key questions were provided to frame submissions.

- What is the underlying intent of the ACPP?
- What should constitute 'compliance with the intent of the ACPP' in Victoria?
- What are the strengths and weaknesses of the current Victorian system in complying with the intent of the ACPP?
- What can be done to improve compliance with the intent of the ACPP in Victoria?

Submissions were received from VACCA, MDAS, Wathaurong Aboriginal Co-operative, Berry Street, MacKillop Family Services, CREATE Foundation and Victorian Council of Social Services.

### Consultations

The consultation process engaged a range of stakeholders and included those with significant experience and expertise in implementation of the ACPP, as well as policy officers from the Department. The consultation process was important for two reasons.

- It ensured that the Inquiry captured the experience and voice of CP staff, ACCOs and CSOs as well as policymakers.
- It provided an opportunity to identify issues with implementation of the ACPP and strategies to improve compliance.

A combination of individual interviews and group meetings were incorporated which collectively comprised consultation with the following key stakeholders.

### Statewide workshops

- ACCOs – VACCA, Victorian Aboriginal Children and Young People's Alliance (The Alliance – comprised of 13 Victorian ACCOs), SNAICC, Aboriginal Family Violence Prevention Legal Service and the Department's Aboriginal Health and Wellbeing Unit
- VACCA ACSASS (Lakidjeka) management and staff
- CP practitioners – The Department coordinated the process for selecting the 20 CP staff to participate in the workshop. CP managers from the four Departmental divisions nominated five representatives each. The attendees had experience working with Aboriginal children in OOHC during the Inquiry period and represented metropolitan and rural locations, investigation teams, case management teams and team managers with case planning responsibility.
- CSOs

### Consultations

- MDAS ACSASS management and staff
- Management from the Department's Child Protection Unit
- Management from the Department's Performance, Regulation and Reporting Unit
- VACCA leadership
- VACCA ACSASS management
- Placement Coordination Unit
- Selected Aboriginal staff of CP
- Selected ACCOs delivering the Aboriginal Kinship Care Program

### Statewide meetings

- AFLDM co-convenors – both Departmental and community convenors

A series of key questions guided the consultations, but the structure was sufficiently flexible to allow participants to share their perspectives. The questions focused on barriers and strengths in complying with the requirements of each of the five key ACPP domains.

The discussions were documented and key messages collated for thematic analysis.

### Online survey

An online survey was administered to capture individual responses of CP staff about key elements of the ACP. This component of the Inquiry was additional to the original data collection plan, but was included to document perspectives of CP staff unable to attend consultations or interviews.

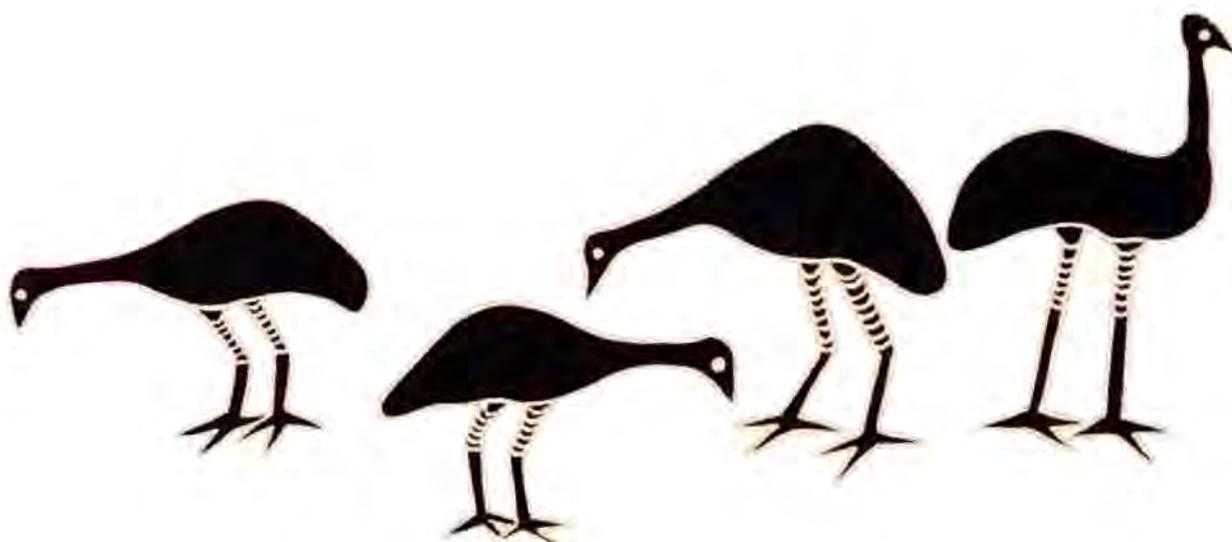
The survey was brief and included a simple Likert scale of agreement to statements about key aspects (content and format) of the ACP. Demographic questions generated information about profile of participants providing feedback, and the questions provided a global picture of the strengths and weaknesses of the ACP from the perspective of practitioners.

Respondents completed the survey online through a direct link (posted in email communications distributed by CP divisional managers). The survey was distributed to all CP staff members and management with responsibilities that included

investigations, case planning, case management, contracted case management or court. About 1,100 CP staff met this criteria and were eligible to complete the survey. Seventy-nine CP staff responded to the survey (a seven per cent response rate).

Data was analysed using descriptive statistics. The analysis provided information on current strengths and weaknesses of the ACP and identified areas for improvement. The findings captured both the quantitative and qualitative data. The open-ended questions were analysed using content analysis. The report of survey findings complements thematic analysis of face-to-face interviews and consultations.

Table 4 summarises the methods according to each key Inquiry question.



# Methodology

Table 4: Overview of key inquiry questions and associated data sources

Key Inquiry questions	Information required	Data source and method
<b>Phase 1: Framing</b>		
Definitional issues: <b>What is the intent of the ACPP?</b>	<ul style="list-style-type: none"> <li>■ Definition of intent</li> <li>■ Historical drivers of the ACPP</li> <li>■ Purpose and influence of the ACPP</li> </ul>	<ul style="list-style-type: none"> <li>■ Literature review</li> <li>■ Consultations</li> <li>■ Public submissions</li> </ul>
Definitional issues: <b>What constitutes compliance with ACPP?</b>	<ul style="list-style-type: none"> <li>■ Information about how compliance is defined/consistency across stakeholder groups</li> </ul>	<ul style="list-style-type: none"> <li>■ Literature review</li> <li>■ Consultations</li> <li>■ Public submissions</li> </ul>
<b>Phase 2: Assessment</b>		
Policy relevance: <b>Is Departmental policy consistent with the CYFA 2005?</b>	<ul style="list-style-type: none"> <li>■ Consistency of policy documents and practice guidelines with CYFA 2005</li> <li>■ Clarity and integrity of information provided to CP staff and funded sector</li> </ul>	<ul style="list-style-type: none"> <li>■ Review of documentation provided by the Department</li> <li>■ Consultations</li> </ul>
Implementation: <b>What does the system-wide data document about compliance?</b>	<ul style="list-style-type: none"> <li>■ All system-level data for two-year period that relates to ACPP requirements</li> </ul>	<ul style="list-style-type: none"> <li>■ System-wide data request from the Department</li> <li>■ Publicly available data</li> </ul>
Implementation: <b>What happens in practice?</b>	<ul style="list-style-type: none"> <li>■ Compliance by five key ACPP domains and associated most significant compliance measure</li> </ul>	<ul style="list-style-type: none"> <li>■ File reviews</li> <li>■ Consultations</li> <li>■ CP online survey</li> <li>■ Public submissions</li> </ul>
<b>Phase 3: Synthesis and recommendations</b>		
Barriers and recommendations: <b>What are the barriers (system level and practice level) that inhibit compliance? What can be done to improve compliance?</b>	<ul style="list-style-type: none"> <li>■ Information on the barriers to compliance</li> <li>■ ACCP compliance assessment rubric</li> </ul>	<ul style="list-style-type: none"> <li>■ Synthesis of all data and a Commission review workshop</li> <li>■ Development of recommendations and testing with a Commission review workshop</li> </ul>

Source: Commission for Children and Young People, Inquiry into Compliance with the Intent of the Aboriginal Child Placement Principle in Victoria, 2016.

## Phase 3: Synthesis and recommendations

The synthesis and recommendations phase of the Inquiry brought together findings from each data collection component. Analysis of quantitative data informed answers to questions relating to compliance and performance of the system. A thematic analysis of perspectives generated from the qualitative data (interviews and consultations) informed an understanding of perspectives within and across stakeholder groups about compliance with the ACPP and barriers to compliance.

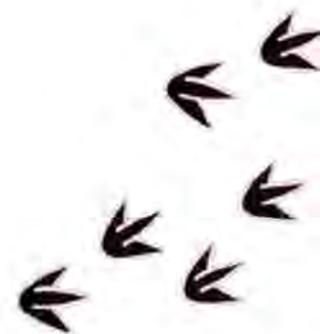
A compliance assessment rubric was developed to ensure a comparable basis for assessment of compliance with each ACPP domain, and to support a synthesised judgement of overall compliance. The components ranged from 'no compliance' to 'excellent compliance'. The rubric is presented below in Table 5.

A consistent assessment of each element of the ACPP compliance assessment rubric in Victoria was made using the criteria as a basis for the assessment (see Section 8.2: Definition of compliance for the Inquiry). It was agreed that the Victorian system may be stronger on some elements than others and that an overall assessment of compliance was needed to take into account the strengths and weaknesses of the system to identify areas most in need of attention.

Table 5: ACPP compliance assessment rubric

Scale	Assessment criteria	Action required
<b>No compliance</b>	No evidence of compliance with any mandatory requirement	Significant improvement required in all areas to achieve compliance
<b>Minimal compliance</b>	Evidence of compliance with some mandatory requirements	Significant improvement required in most areas to achieve compliance
<b>Partial compliance</b>	Evidence of compliance with most mandatory requirements	Some improvement required to achieve compliance
<b>Compliant</b>	Evidence of compliance with all mandatory requirements	Fully compliant, but opportunity for further improvement
<b>Strong compliance</b>	Evidence of compliance with all mandatory requirements and exceeding expectations in some areas	Exceeding expectations, but some opportunity for further improvement
<b>Excellent compliance</b>	Evidence of compliance with all mandatory requirements and demonstrating best practice in complying with intent of ACPP	No action required

Source: Commission for Children and Young People, Inquiry into Compliance with the Intent of the Aboriginal Child Placement Principle in Victoria, 2016.





## 6. Intent of the Aboriginal Child Placement Principle

### 6.1 Context

Although the ACPP is contained within legislation and policy across Australia, there is no consistent definition of the intent of the ACPP. In Victoria there is extensive documentation about complying with the requirements of the ACPP, including guidance on what needs to occur, when it needs to be, how it needs to be done and who needs to do it. However, there is a lack of documentation about **why** the ACPP exists or what it is trying to achieve.

Therefore, a key component of this Inquiry was defining the intent of the ACPP to be used by this Inquiry. It is essential to understand this intent, in order to inform deliberations about Victorian compliance with the intent. These definitions have been informed by a range of available literature<sup>58</sup>, consultations with key stakeholders and public submissions received by this Inquiry.

This section describes the purpose and intent of the ACPP and assesses whether the system-level response implemented in Victoria accords with this intent.

### 6.2 Defining the intent

According to common definition, a principle is intended to serve as a foundation for a belief or action. The rationale for the establishment of the ACPP is understood to be two fold:

- to ensure that the destructive impact of prior assimilationist welfare policies<sup>59</sup> are not repeated
- to ensure placements support Aboriginal children's cultural, emotional and physical wellbeing.

This rationale is considered especially important in the current Victorian context, given the immense and growing over-representation of Aboriginal children in OOHC.<sup>60</sup>

The ACPP is based on the value that every Aboriginal child has the right to be raised within their own culture and community. It recognises the critical importance of cultural identity and connectedness to development and wellbeing. Aboriginal children do better if they remain connected to their culture, community and Country. In practice, decisions about placement may be focused on an immediate need to place the child with another family as soon as possible.



58 Including both national and Victorian literature published by CP authorities and other stakeholders. See References.

59 Australian Human Rights Commission, *Bringing them home: report of the National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from Their Families*, April 1997.

60 As discussed in Section 5: Inquiry context.

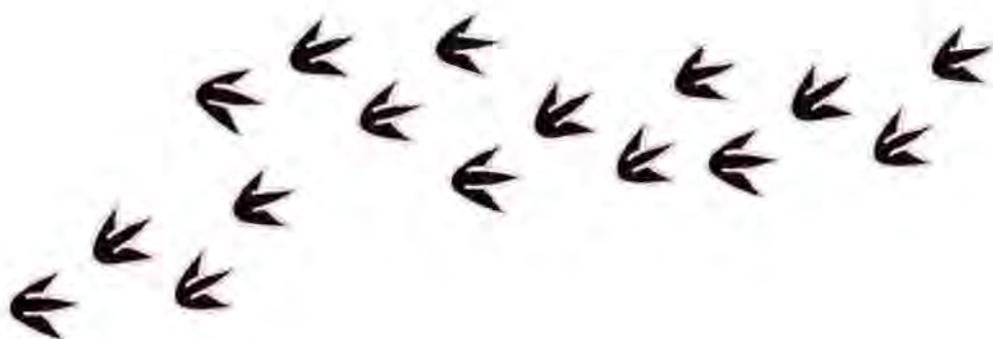
A second, but not secondary value underpinning the ACPP, is the promotion of self-determination. The ACPP and the protocols that guide implementation ensure the ongoing involvement and control of Aboriginal people in decision-making. A review of Australia's past welfare policies reveals that cultural knowledge and meaningful participation of Aboriginal people in decisions that affect Aboriginal children has historically not been acknowledged. The effective implementation of the ACPP will ensure that the rights of future generations of children and young people are recognised and protected.<sup>61</sup>

This value acknowledges that CP decisions that are in the best interests of Aboriginal children cannot be made in isolation by the statutory authority. These decisions must be made in consultation with relevant Aboriginal community members, and regard must be given to their advice. It recognises that Aboriginal people have the knowledge, experience, capacity and right to make decisions about the care of Aboriginal children.

The key outcomes of implementing the ACPP follow from the intent and values:

- the rights of Aboriginal children, young people, families and communities are recognised and protected
- increased self-determination for Aboriginal people in child welfare matters
- connection to their Aboriginal culture and identity increases the wellbeing of Aboriginal children in OOHC.

Table 6 provides a description of the underlying intent of each element of the ACPP, as the ACPP is articulated in the CYFA 2005.



<sup>61</sup> Secretariat of National Aboriginal and Islander Child Care, *Aboriginal and Torres Strait Islander Child Placement Principle: aims and core elements* – June 2013

## Intent of the Aboriginal Child Placement Principle

Table 6: Intent of the Aboriginal Child Placement Principle

CYFA 2005	Intent
<p>s 13(1) <i>For the purposes of this Act the Aboriginal Child Placement Principle is that <b>if it is in the best interests of an Aboriginal child to be placed in out of home care, in making that placement, regard must be had—</b></i></p> <p>a) <b>to the advice of the relevant Aboriginal agency; and</b></p> <p>b) <b>to the criteria in subsection (2); and</b></p> <p>c) <b>to the principles in section 14.</b></p>	<ul style="list-style-type: none"> <li>■ Australian welfare policies that removed children from their families have had, and continue to have, a destructive impact on Aboriginal people.</li> <li>■ Aboriginal people must play a key role in making placement decisions for Aboriginal children.</li> <li>■ Children do better in terms of their emotional, physical and psychological wellbeing if they have a strong connection to cultural identity.</li> </ul>
<p>s 13(2) <i>The criteria are—</i></p> <p>a) <i>as a priority, wherever possible, the child <b>must be placed within the Aboriginal extended family or relatives and where this is not possible other extended family or relatives;</b></i></p> <p>b) <i>if, after consultation with the relevant Aboriginal agency, placement with extended family or relatives is not feasible or possible, the child may be placed with—</i></p>	<ul style="list-style-type: none"> <li>■ Children have the right to grow up and be raised with an appreciation of their cultural identity.</li> <li>■ Aboriginal people have the knowledge and experience to determine what is right for them and for their children.</li> <li>■ ACCOs must be meaningfully engaged and participate in decision-making.</li> <li>■ Collaboration between CP and ACCOs will inform culturally relevant decisions that support the wellbeing of the child.</li> <li>■ Connection to extended family will maintain the child's sense of cultural identity and community connectedness.</li> </ul>
<p>i. <b>an Aboriginal family from the local community and within close geographical proximity to the child's natural family;</b></p> <p>ii. <b>an Aboriginal family from another Aboriginal community;</b></p>	<ul style="list-style-type: none"> <li>■ Placement of the child with an Aboriginal family that lives in close proximity to the natural family will ensure that the child maintains their sense of Aboriginal identity, and will maintain the child's connections with the wider Aboriginal community.</li> </ul>

CYFA 2005	Intent
<p>iii. <b><i>as a last resort, a non-Aboriginal family living in close proximity to the child's natural family;</i></b></p>	<ul style="list-style-type: none"> <li>■ Placement of the child with a non-Aboriginal family may be the only safe option. Placement of an Aboriginal child with a non-Aboriginal family is less desirable as it may be more challenging for the child to maintain a strong sense of their Aboriginal identity. This does not imply that the care of non-Aboriginal families is inadequate, but that the capacity of the child to maintain strong cultural ties may be more challenging in such circumstances.</li> <li>■ An Aboriginal child should only be placed with a non-Aboriginal family where all options to place the child with an Aboriginal family have been exhausted. Any non-Aboriginal placement should be in close proximity to the child's natural family, to help ensure the child maintains contact with their Aboriginal culture, identity and community.</li> </ul>
<p>c) <b><i>any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community.</i></b></p>	<ul style="list-style-type: none"> <li>■ Aboriginal children have the right to be raised within their own culture and community. This right must be recognised and upheld, regardless of where the child is placed in OOHC.</li> <li>■ Non-Aboriginal parents and carers should be supported to seek opportunities to maintain the child's connection to their Aboriginality and the Aboriginal community.</li> </ul>

Source: CYFA 2005, evidence gathered by the Inquiry through the literature review and consultations with stakeholders



## Intent of the Aboriginal Child Placement Principle

### 6.2.1 Underlying intent of the ACPP

There was unanimous agreement from consulted stakeholders of an intent underlying the ACPP: Aboriginal children should remain in the care of their families of origin wherever possible. The Victorian ACPP does not express this explicitly.

This underlying intent has a number of related considerations:

- every option should be explored before a decision is made to remove a child from their family of origin
- families may require support to provide adequate care for their children, and it is incumbent upon the system to provide this support – either to prevent removal, or to quickly reunify families where removal has occurred
- the ACPP specifically intends to reduce the number and over-representation of Aboriginal children in OOHC.

This intent and its related considerations cannot be linked directly to the wording of the Victorian ACPP, as it states that the ACPP commences from the point ‘it is the best interests of an Aboriginal child to be placed in out-of-home care’ and then directs that ‘in making that placement regards must be had to’ the ACPP.

However, there is broad agreement from a number of sources that this is a key underlying intent of the ACPP. This was expressed in the following ways:

- unanimous agreement from all consulted stakeholders – including CP and Departmental staff and community sector representatives who were involved in the discussions that led to including the ACPP in the Victorian legislation
- a consistent theme across all the key ACPP literature reviewed for this Inquiry – and a particularly prominent feature of SNAICC publications regarding the ACPP
- references in a range of CP policy and practice guidance (including *CP practice advice number 1432: Aboriginal Child Placement Principle*, 5 November 2012) of the significant over-representation of Aboriginal children in CP being a contextual factor in the implementation of Aboriginal-specific programs and services.

It is speculated that there is no direct reference in the ACPP to reflect this intent as it is a key premise that guides the entire CP system for all children. For example, this intent is explicitly evident in the wider CYFA 2005 legislation, which states in s 10, ‘there is a need to give widest possible assistance to parent and child as the fundamental group unit of society and ensure that the intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child’, and ‘a child should only be removed from the care of their parents if there is an unacceptable risk to the harm of that child’.

### Key finding 2

There is extensive direction to the CP system (including staff and the funded sectors) about responsibilities for complying with the requirements of the ACPP – including who must do what by when and how they must do it. However, there is a lack of guidance about why the ACPP exists or what it is ultimately trying to achieve.

A consistent and thorough understanding of the intent of the ACPP is important to guide prioritisation of resources (at both the system level and for individual workers) and to ensure decisions and actions are consistent with the intent.

### Key finding 3

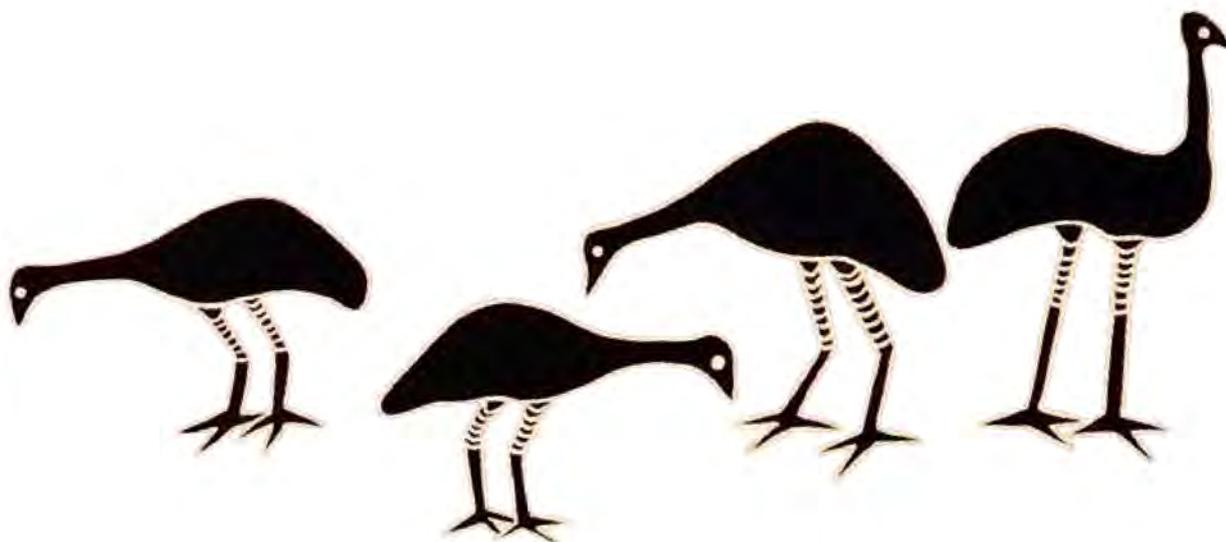
While the ACPP legislation applies from the point ‘it is in the best interests of an Aboriginal child to be placed in OOHC’, it is an underlying intent of the ACPP that Aboriginal children should remain in the care of their families of origin wherever possible and safe.

This underlying intent reinforces the direction of the wider CP system that there is the need to give the widest possible assistance to the parent and child to live safely together. This consideration is particularly important when working with Aboriginal children and families, given the dramatic over-representation of Aboriginal children in OOHC in Victoria.

## Recommendation 1

The Department, in partnership with the ACCOS defines the intent of the ACPP. The Department promotes this intent to the CP workforce and community sector stakeholders, to guide resource allocation and actions that align with the intent of the ACPP.

- a) In developing the definition of intent, the underlying intent (unstated in current legislation) is that Aboriginal children should remain in the care of their families of origin wherever possible and safe, and that
  - it is incumbent on the CP system to provide assistance to Aboriginal families (where required) to allow them to live together in a safe environment. This includes a responsibility to provide assistance aimed at both preventing removal and reunifying families where removal has occurred
  - an ultimate aim of the ACPP is to reduce the number and over-representation of Aboriginal children in OOHHC.
- b) Any future amendments to the legislation should articulate this underlying intent of the ACPP.





## 7. Policy and program compliance

Is the system-wide policy and program response in Victoria compliant with the intent of the ACPP?

This section considers the adequacy of Victoria's policy and program response to the legislated ACPP (what is intended to occur). An assessment of how these policies and programs are implemented in practice (what actually occurs) is the key feature of Section 9: Assessing practice compliance.

### 7.1 Compliance rating

The most significant considerations in making this assessment are:

- The policy and program level response meets the mandatory legislative requirements of the ACPP. This is achieved largely through ACSASS, the AFLDM program, the CSP program and the requirement for case plans for all children to consider identity and the desirability of the child retaining a connection with their culture.
- The requirement to consult with ACSASS 'at every significant decision point throughout all phases of CP intervention' exceeds the requirements of the ACPP legislation, which stipulates that regard must be had to the advice of the Aboriginal agency in making the placement.
- The recent amendments to s 18 of the CYFA 2005 to enable the transfer of certain CP powers to ACCOs is applauded as Australian best practice, and is a significant opportunity to improve outcomes for Aboriginal children.

There are opportunities for improvement by:

- Aboriginal stakeholders assuming a greater decision-making role in CP matters
- Extending the CSP Program to all Aboriginal children in OOHC – which has already been significantly progressed by the Department following the introduction of new obligations in the CYF Amendment Act from 1 March 2016.
- Providing greater clarity and consistency in CP policy and practice guidance regarding ACPP requirements – with CP staff reporting the current documentation to be overly complex, contradictory and difficult to navigate.

According to the available evidence, Victoria's policy and program compliance with the ACPP is assessed as **'Strong compliance'**.



## Policy and program compliance

### 7.2 Detailed compliance assessment

In Victoria there has been a significant system-level response to complying with the requirements of the ACPP. The following are the most significant system-level initiatives:

- Aboriginal Child and Specialist Advice Service
- Aboriginal family-led decision making program
- Cultural support planning program

A description of each of these three programs is included in Section 4: Inquiry context.

A review of CP documentation was undertaken to determine how the Victorian system response complies with the requirements of the ACPP legislation. This review involved considering 29 documents which were provided by the Department in response to a request to provide the Inquiry with any documentation which provides guidance or direction to Departmental staff and stakeholders (such as CSOs and ACCOs) on the practices to be followed when a child is Aboriginal in order to comply with the ACPP. These documents included a range of practice advice, program guidelines, program requirements, practitioner responsibilities, service agreements and other relevant papers. This suite of documentation is collectively referred to in this Inquiry as 'CP policy and practice guidance'.

Given the complexity in consolidating numerous documentation into a succinct overview of the system-level response, consultations were conducted<sup>62</sup> which confirmed that this overview was an accurate representation of the system-level response. Table 7 provides a summary of the system-level policy and program response and shows the direct relationship between that response and the wording of the ACPP.



<sup>62</sup> Consultations with the Department, CP, CCYP and community service sector representatives

Table 7: Overview of policy and program response to the requirements of the Aboriginal Child Placement Principle

CYFA 2005	Key system-level response
<p>s 13(1) For the purposes of this Act the Aboriginal Child Placement Principle is that if it is in the best interests of an Aboriginal child to be placed in out of home care, <b>in making that placement, regard must be had—</b></p> <p>a) to <b>the advice of the relevant Aboriginal agency</b>; and</p> <p>b) to the criteria in subsection (2); and</p> <p>c) to the principles in section 14.</p>	<p><b>ACSASS</b></p> <ul style="list-style-type: none"> <li>■ ACSASS was established to fulfil the role of the 'relevant Aboriginal agency'.</li> <li>■ ACSASS must be consulted about all significant decisions at all phases of CP intervention.</li> <li>■ Upon the report of an Aboriginal child to CP the relevant ACSASS service must be consulted.</li> <li>■ CP must consult with ACSASS during initial assessment of a report.</li> <li>■ ACSASS should jointly plan and attend the first home visit.</li> </ul>
<p>s 13(2) The criteria are—</p> <p>a) as a priority, wherever possible, <b>the child must be placed within the Aboriginal extended family or relatives and where this is not possible other extended family or relatives;</b></p> <p>b) <b>if, after consultation with the relevant Aboriginal agency, placement with extended family or relatives is not feasible or possible,</b> the child may be placed with—</p>	<p><b>ACSASS</b></p> <ul style="list-style-type: none"> <li>■ ACSASS's assists in identifying members of the child's kinship or community network who may be suitable to provide a placement.</li> <li>■ ACSASS should be involved in AFLDM and all formal decision-making processes.</li> </ul> <p><b>AFLDM</b></p> <ul style="list-style-type: none"> <li>■ AFLDM assists in identifying a suitable placement with extended family or relatives.</li> <li>■ AFLDM and ACSASS contribute to case planning for the child.</li> </ul>
<p>i. an <b>Aboriginal family from the local community and within close geographical proximity</b> to the child's natural family;</p> <p>ii. <b>an Aboriginal family from another Aboriginal community;</b></p>	<p><b>ACSASS</b></p> <ul style="list-style-type: none"> <li>■ ACSASS must be consulted about the decision to place the child with an Aboriginal family and assists in identifying a suitable placement.</li> </ul> <p><b>AFLDM</b></p> <ul style="list-style-type: none"> <li>■ AFLDM is recognised as an effective method for ensuring all potential carers are considered.</li> </ul>
<p>iii. <b>as a last resort, a non-Aboriginal family living in close proximity to the child's natural family;</b></p>	<p><b>ACSASS</b></p> <ul style="list-style-type: none"> <li>■ ACSASS must be consulted about this decision – CP must continue to consult with ACSASS throughout all phases of the process.</li> </ul> <p><b>AFLDM</b></p> <ul style="list-style-type: none"> <li>■ AFLDM meetings are recognised as an effective method for ensuring all potential carers are considered.</li> </ul>

## Policy and program compliance

### CYFA 2005

- c) *any non-Aboriginal placement **must ensure the maintenance of the child's culture and identity through contact with the child's community.***

### Key system-level response

#### Cultural support plan

- A CSP is required for Aboriginal children who are subject to a Guardianship to the Secretary Order or a Long-Term Guardianship to the Secretary Order.
- The Department considers it best practice to have a CSP in place for all Aboriginal children in OOHC.

#### Case plans

- Case plans are a mandatory requirement for all children in OOHC.
- Case plans must include consideration of identity and the desirability of the child retaining a connection with their culture.

Source: CYFA 2005, Departmental policy and program advice relating to CP and the ACPP.

A unanimous theme across consultations was that Victoria's policy and program compliance with the ACPP was very strong. Many stakeholders reported that Victoria is commonly regarded as Australia's leading jurisdiction in regard to implementing the ACPP, particularly acknowledging the structures for involving ACCOs and Aboriginal families at key decision points. Many stakeholders believed that other Australian states and territories look to Victoria for best practice examples when attempting to improve their own compliance with the ACPP.

The review of CP policy and practice guidance and the consultations identified ACSASS and the AFLDM and CSP programs as excellent examples of how Victoria involves Aboriginal people in decision-making processes and supports Aboriginal children to maintain their culture and identity while in OOHC.

All stakeholders consulted, however, advised that there are significant differences between the program and policy intent and implementation (what actually occurs in practice). An assessment of practice compliance is in Section 9: Assessing practice compliance.

## Key finding 4

There has been a significant system-level response to complying with the requirements of the ACPP in Victoria. ACSASS and the AFLDM program are designed to ensure that Aboriginal views are considered at each key point of CP intervention for all Aboriginal children. The CSP program is designed to ensure that children maintain their cultural identity, although at the time of this Inquiry this was only mandatory for specific cohorts of Aboriginal children in OOHC.

### 7.2.1 Opportunities for improvement

The review of CP policy and practice guidance identified three areas where Victoria's policy and program response to the requirements of the ACPP could be improved:

- Aboriginal stakeholders should assume a greater decision-making role
- CSPs should be mandatory for all Aboriginal children
- greater clarity is needed in the CP policy and practice guidance on the application of the ACPP.

### Aboriginal stakeholders should assume a greater decision-making role

Aboriginal self-determination is a key intent and value underpinning the ACPP. Aboriginal self-determination is also recognised as a key principle guiding decision-making for Aboriginal children in the rest of CYFA 2005 (s 12.1) and is reinforced as a standard in CP practice advice. A definition of self-determination is not provided in the legislation or in CP policy and practice guidance.

**Aboriginal self-determination is generally agreed to rest on the foundation that Aboriginal people have the right to control and freely pursue their destiny.**

The system-level response is impressive in terms of its commitment to involving Aboriginal stakeholders in all key decision-making. However, the role of Aboriginal stakeholders is restricted to an advisory role to CP, rather than in a decision-making capacity. The following are key examples of this.

- The role of ACSASS is expansive, in that it must be consulted at significant decisions at all phases of CP intervention. However, CP has ultimate responsibility for making decisions at every one of these points.
- ACSASS and AFLDM both have roles in identifying potentially suitable Aboriginal kinship carers. However, CP is responsible for assessing the prospective kinship carer's capacity and making a decision on their suitability to provide safe and stable care.
- AFLDM meetings are the primary case planning process for all Aboriginal children on protection orders. AFLDM meetings allow family, Aboriginal stakeholders (including ACSASS) and others to contribute to the case plan. However, CP is responsible for endorsing the plan, and the convening of an AFLDM meeting relies on CP making a referral.
- It would be in keeping with the intent of the ACPP (and the rest of the CYFA 2005 and the Victorian Government's approach to Aboriginal affairs<sup>63</sup>) if Aboriginal people played a greater role in decision-making.
- Section 18 of the CYFA 2005 now specifically provides powers for the Secretary to Department to authorise the principal officer of some ACCOs to perform specified functions in relation to a protection order.<sup>64</sup> This legislation provides an enormous opportunity for increased self-determination and thus for absolute compliance with the true intent of the ACPP, through the transfer of decision-making powers to ACCOs. While the CYFA 2005 provides for these powers, it is not yet known which powers will be transferred to ACCOs or when this will occur.

<sup>63</sup> Department of Premier and Cabinet, *Victorian Government Aboriginal affairs report 2014–15, 2015* (pp. 9–14).

<sup>64</sup> Legislative amendments on 12 November 2015 removed minor constraints to the implementation of s 18 of the CFYA 2015.

## Policy and program compliance

- It is considered that more effective outcomes for Aboriginal children in OOHC are likely to be achieved with greater Aboriginal self-determination. However, the transfer of powers under s 18 is a complex and important matter that will require rigorous and coordinated planning. A number of ACCOs have previously indicated their strong support for the enactment of s 18 – including VACCA, the Alliance, VACCHO, AFVPLS and VACSAL. ACCOs have also acknowledged the complexities of implementing s 18 and indicated their willingness to help resolve these issues.
- The primary issue that has been raised by ACCOs is the need for any transfer of powers to be resourced appropriately, particularly in light of the constrained funding environment that many ACCOs currently operate in. VACCHO articulated specific issues that require further consideration in its submission to the Protecting Victoria's Vulnerable Children Inquiry:
  - The community governance of ACCOs leaves them vulnerable to community backlash at a local level.
  - There are potential difficulties in protecting the privacy of the individuals concerned.
  - Conflicts may arise about the obligations as a service provider to the family and the policing role of statutory CP services.
  - The service often can't speak publicly about its decisions in order to maintain integrity and confidentiality while critics are able to speak with impunity.
  - For a service provider, taking on responsibilities under s 18 may discourage parents from seeking support when they are in need, for fear of removal of their children.

According to some stakeholders, some ACCOs expressed that they do not want to assume responsibility for some CP responsibilities. The most prominent example of this was determining the need for a child to be removed when this decision is against the wishes of their family. The s 18 legislation already allows for this by providing for ACCOs to 'perform specified functions' (not 'all functions'); therefore, consideration should be given to a staged approach of the gradual transfer of specific powers. This also raises the important consideration that ACCOs must willingly agree to take on these functions. No ACCO should be forced to take on any CP function that they are not willing to accept.

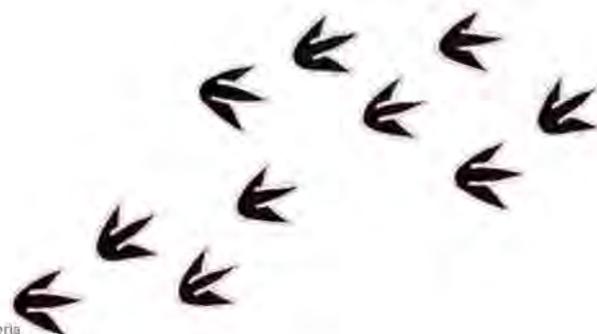
The issues above are not insurmountable. They provide an indication of the comprehensive planning that will be required to effectively implement s 18.

Stakeholders suggested that a key mechanism in preparing for the transfer of s 18 responsibilities is first increasing the involvement of ACCOs under the current CP arrangements. A particular example provided by stakeholders was the need to dramatically increase the number of Aboriginal children who have their placement supported by an ACCO. Information provided by the Department to the Aboriginal Children's Forum showed that, as of December 2015, ACCOs were funded to deliver 275 placements and that there were 1,579 Aboriginal children in OOHC. This represents ACCOs being funded to provide placements to less than 18 per cent of Aboriginal children in OOHC.

Given the low level of current practice compliance with the requirements of the ACPP (as discussed in detail in Section 9: Assessing practice compliance) a strong argument can be made that increased resources be devoted to implementation of s 18 powers.

However, the implementation of s 18 powers will undoubtedly require significant time to plan and effectively enact, so immediate improvements to the current system are also required.

**Every child matters and every Aboriginal child matters – the system must strive for both immediate improvements in outcomes for Aboriginal children while also planning for a significant system shift towards improved outcomes through increased Aboriginal self-determination.**



## Key finding 5

Victoria's current system-level policy and program response is impressive in its commitment to involving Aboriginal stakeholders in significant decisions. However, the response envisages Aboriginal people in an advisory role, rather than in a decision-making capacity. Increasing the decision-making responsibilities of Aboriginal people would more closely align with the intent of the ACPP and with the broader Victorian Government approach to Aboriginal affairs.

Section 18 provides a real opportunity for this increased level of Aboriginal self-determination in CP matters. Section 18 has the power to create a significant shift in the current system – a switch from ACCOs playing an advisory role to CP, to ACCOs assuming decision-making responsibilities for some matters. This shift, if planned and implemented effectively, will contribute to improved outcomes for Aboriginal children in OOHc.

- The best interests and safety of Aboriginal children must be **the** paramount consideration at all stages of planning, transfer, hand-over, ongoing implementation and review.
- An equal and transparent partnership should be established between the Department and relevant Aboriginal stakeholders, facilitated through the Aboriginal Children's Forum. Other key stakeholders may also be included, as agreed by the Department and relevant Aboriginal stakeholders.
- Decisions about which specific powers to transfer (noting that the full suite of CP responsibilities is unlikely to be transferred to ACCOs), and when to transfer them, should always be driven by consideration of 'what would be of the greatest benefit to vulnerable Aboriginal children in OOHc'. While matters such as available resourcing and organisational capacity are of key importance (and must be considered and fully resolved before any transfer of powers occurs), they should not be the primary driver of decision-making about what powers to transfer.

A sustainable funding model is an essential component of the transfer of powers. The model must recognise the importance of the powers transferred (noting the profound significance that CP decisions have on the lives of children and families) and ensure ACCOs are properly resourced to undertake the full suite of transferred responsibilities in a consistent, timely and transparent manner. This model must give proper consideration to ensuring the capacity of the organisation and enabling appropriate governance, workforce development (including recruitment, training and retention) operational, contingency and review mechanisms.

## Recommendation 2

Prioritize the development of an implementation plan and timetable that provides for a staged approach to the enactment of s 18 powers that transfer specific CP responsibilities to eligible and willing ACCOs.

As a matter of urgency the Aboriginal Children's Forum commits to transfer the case management of Aboriginal children from CSOs and the Department to ACCOs.

This will have immediate impact for Aboriginal children in care and may better position ACCOs who wish to assume s 18 responsibilities or to meet self-determination aspirations as determined by their boards. A comprehensive and robust approach must be taken to the development of the implementation plan, given the important and complex issues that need to be resolved. Planning and development should consider the following:

## Policy and program compliance

### Mandatory CSPs for all Aboriginal children

At the time of this Inquiry, a CSP was mandated by legislation only for Aboriginal children subject to a GSO or a LTGSO. Under the CYFA 2005 the Children's Court may also require a CSP to be developed as a condition on other protection orders. This meant that CSPs were not mandatory for a large number of Aboriginal children in OOHC.

The Victorian Government has already recognised this issue and recently, in partnership with the ACCO sector, has taken significant steps to develop a new approach to CSPs, as the Department determined it is unlikely that the system could cope with the increased demand for CSPs from within existing resources. Legislation has now been passed<sup>85</sup> that requires, from 1 March 2016, all Aboriginal children in OOHC to have a CSP. The Department estimates that this will result in approximately five times the number of Aboriginal children needing a CSP than under the previous legislation. A significant project has been undertaken to design a new approach to CSPs.

These reforms bring the system's policy and program response more in line with the intent of the ACPP, which requires that 'any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contacts with the child's community'.

Issues of practice compliance with the requirements of the CSP Program are addressed in Section 9.5: Maintaining cultural identity.

### Key finding 6

Legislative amendments now require all Aboriginal children in OOHC to have a CSP from 1 March 2016. This will increase the system-level compliance with the intent of the ACPP – which at the time of the Inquiry required mandatory CSPs for only some Aboriginal children in OOHC.

### Greater clarity is needed in CP policy and practice guidance

The review of CP policy and practice guidance revealed a significant need for greater clarity in the documentation that directs and guides the actions of CP staff and the funded community sector in complying with the ACPP. The review revealed that the current documentation was not consolidated, was contradictory in places, and could create confusion about ACPP responsibilities.

These themes were confirmed in consultations with staff from CP and the funded community sector. These consultations further revealed that there was a lack of clarity about who had responsibility for what actions, and whether responsibilities were mandatory requirements or good practice advice.

*Practice advice and program guidelines are a complex minefield to navigate. As a result, they are rarely used by practitioners.*

**CP practitioner**

*A recent review found that staff aren't using the practice guidance as we would hope. They are seen as a last resort for staff in need of guidance, rather than a first point of direction.*

**Departmental manager**

*Staff have reported that practice advice and guidelines are cumbersome to use and that it is confusing to differentiate between standards and guidance.*

**CP practitioner**

*Overall staff are aware of the intent of the ACPP, but the documentation is not clear about exactly how and when to apply it.*

**CP practitioner**

*There is a level of confusion about who is responsible for what whenever placement or case management is case contracted to CSOs. This is complicated further for Aboriginal children, with the introduction of additional Aboriginal-specific responsibilities and involvement of ACSASS and ACCOs.*

**CSO manager**



<sup>85</sup> Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014

A number of CSO managers advised that, despite their organisations' significant commitment and best intentions, they cannot be fully confident they are complying with all ACPD requirements, due to the confusion in roles and responsibilities between CP and CSOs when dealing with Aboriginal children (which are more confusing compared with non-Aboriginal children).

*In relation to the compliance with the ACPD of registered CSOs, our sense is that knowledge of the ACPD within the CSO sector is poor, and its applicability to the work of registered CSOs is not well defined, articulated or supported.*

### **Berry Street submission to the Inquiry, p. 3**

The need for greater clarity was identified by the Protecting Victoria's Vulnerable Children Inquiry, which stated, 'The Department of Human Services should simplify practice guidance and instructions for child protection practitioners. The Department of Human Services should reduce practice complexity by consolidating and simplifying the number of standards, guidelines, rules and instructions that child protection practitioners must follow.'<sup>66</sup>

Stakeholders emphasised that this complexity and confusion in guiding documentation particularly applied to their work with Aboriginal children. This is because when dealing with Aboriginal children they have to apply all the requirements and considerations that apply to all children, with the additional layer of the ACPD and other specific requirements that apply only to Aboriginal children.

It is a concern that staff are not drawing on the practice guidelines on a regular basis as this may increase inconsistencies in practice and inhibit compliance with the ACPD. It was reported by several stakeholders that, in the absence of clear and user-friendly documentation about how to implement the ACPD, staff (both in CP and in the funded community sector) refer to other colleagues or managers for advice and direction. It was further reported that in some cases these colleagues or managers would provide advice that is not in keeping with the documented requirements – as colleagues and managers were also not actively using these documents, due to the same concerns about the complexity and clarity of the documents. This approach could reinforce incorrect (or correct) actions throughout the staff group, which could compromise compliance with mandatory ACPD requirements. One CP practitioner commented, 'If a manager has misinterpreted a key requirement, then the wrong practice often spreads like wildfire throughout the whole team'.

The Department has already acknowledged the need for improvement in the policy and practice guidance provided to the CP system. The Department advised it had recently commissioned an Independent Review that confirmed the need for this action and has since undertaken a redraft of the Child Protection manual. Departmental stakeholders advised that the redraft has specifically focussed on improving the useability of this documentation, by improving the clarity about the mandatory requirements and the suggestions for good practice. The Department's revised Child Protection manual was released in December 2015<sup>67</sup> with an Aboriginal children policy, but it is yet to be determined if the guide is consistently followed and monitored.

Some specific issues discovered in the CP policy and practice guidance are provided to support the statements made above with respect to lack of clarity in current documentation. These examples are in no way intended to be an exhaustive list of the issues that need to be addressed in the current documentation, they simply provide an indication of the type of issues that need to be addressed. A full review of this guiding documentation, undertaken with key users of the documentation, is required.

### **Identification of Aboriginality**

*CP practice advice number 1059: responding to Aboriginal children, 5 November 2012* includes a standard that 'Intake practitioners must ask at the first opportunity whether the child who is the subject of a report is Aboriginal. The Aboriginal status of a child **must** be established by the completion of an investigation. The next paragraph states, 'The intake practitioner **should** ask if the reporter knows whether the child is Aboriginal and response or investigation practitioners should confirm or clarify the child's Aboriginality at the first visit with the child's parent' [emphasis ours]. The difference between 'must' and 'should' is important in the context of a resource-constrained environment where CP staff are continually prioritising activities. In these types of environments the 'musts' are often completed as a priority; the 'shoulds' may never get completed. The inconsistent application of this requirement (an issue explored in Section 9.1: Identification of Aboriginality) could be attributed in part to the inconsistency of wording in the CP policy and practice guidance.

<sup>66</sup> Department of Premier and Cabinet, *Report of the Protecting Victoria's Vulnerable Children Inquiry*, January 2012. The Department advised this Inquiry that the Child Protection manual was revised on 1 December 2015 and updated on 1 March 2016.

<sup>67</sup> The scope and timing of this Inquiry did not provide for a review of the revised Child Protection manual.

## Policy and program compliance

### Involvement of ACSASS

The specific points where CP must consult with ACSASS were spread across multiple documents and not consolidated in any one place. There is no CP practice advice that is specific to ACSASS. The most comprehensive overview of ACSASS's responsibilities was found in the *Program requirements for the Aboriginal Child Specialist Advice and Support Service*. The Department advised the purpose of program requirements is to guide community organisations in their delivery of funded programs and to describe how CP works in partnership with them on these matters. The program requirements for ACSASS outlined 15 responsibilities for ACSASS, in addition to their specific after-hours duties (see Appendix B). However, other CP policy and practice guidance articulated additional roles for ACSASS that were not in the program requirements:

- Consultation with ACSASS must be sought where placement in secure welfare is being considered for an Aboriginal child. Consultation must occur or be attempted prior to authorisation for admission to secure welfare.<sup>68</sup>
- Where consideration is being given to contracting case management or case functions to a CSO prior to the statutory case plan meeting, CP must consult with ACSASS.<sup>69</sup>
- In situations where an Aboriginal child cannot return home to live with their parents and a permanent care order is being considered, the ACSASS team must be involved in this decision.<sup>70</sup>
- Where appropriate, ACSASS workers may be requested to attend court as a witness. ACSASS workers may also attend court to provide support to the child and family, with regard to process and participation, or to provide information at the court's request.<sup>71</sup>
- In relation to residential placements contracted to CSOs, ACSASS will continue to provide consultation to CP regarding non-delegated decisions and actions, in accordance with the protocol between CP and the VACCA.<sup>72</sup>

In CP policy and practice guidance the role of ACSASS is usually described thus: 'ACSASS will be consulted at every significant decision point' or 'ACSASS will be directly involved in all formal decision-making processes'. However, there are few directions about what constitutes a significant decision point. Only two documents describe significant decisions, but these descriptions are contradictory in places and neither specifies ACSASS's role at these significant decision points, as demonstrated in Table 8.

<sup>68</sup> Department of Human Services, *CP practice advice number 1059: responding to Aboriginal children*, November 2012, p. 9.

<sup>69</sup> Department of Human Services, *CP practice advice number 1434: permanent care for Aboriginal children*, November 2012, p. 5.

<sup>70</sup> Department of Human Services, *CP practice advice number 1434: permanent care for Aboriginal children*, November 2012, p. 5.

<sup>71</sup> Department of Human Services, *CP practice advice number 1059: responding to Aboriginal children*, November 2012, p. 8.

<sup>72</sup> Department of Human Services, *CP practice advice number 1059: responding to Aboriginal children*, November 2012, p. 8.

**Table 8: Definition of 'significant decisions' in CP policy and practice guidance**

Significant decisions – as described in program requirements for ACSASS <sup>74</sup>	Significant decisions – additional requirements for Aboriginal children <sup>75</sup>
Protective investigation	Initial and ongoing assessments and provision of cultural advice
Conciliation counselling applications	Planning and conducting initial visits
Preparation of disposition reports	Removal of a child from their parents' care
Endorsement of best interest plans (statutory case plans)	Applications to the court and disposition
Significant decisions which require access that is outside the parameters of the current best interests plan	Preparation and review of the case plan and participation in reunification decisions
Significant changes to access arrangements	Placement in OOH or a secure welfare service
Change of placement	Changes to placements or access arrangements
Placement in secure welfare	Breaches, revocations, variations and extension of orders
Breach of an order	Reunification decisions and plans
Extension of a GSO	Case transfers between regions
The decision to place a child in permanent care	Case transfers into and out of Victoria
Specific guardianship responsibilities (such as overseas travel)	

Source: CP policy and practice guidance



<sup>73</sup> Department of Human Services, *Program requirements for the Aboriginal Child Specialist Advice and Support Service*, July 2012, p. 29.

<sup>74</sup> Department of Health and Human Services, 'Case planning for Aboriginal children,' *Child Protection manual*, 2015.

## Policy and program compliance

### Lack of consolidation of ACPP practice advice

At the time of the Inquiry being undertaken there was one CP practice advice specific to the ACPP – *CP practice advice number 1432: Aboriginal Child Placement Principle, 5 November 2012*. Numerous other CP policy and practice guidance make context-specific reference to ACPP requirements, but there is no other documentation (including practice advice, program guidelines, program requirements or practitioners responsibilities) that provides a consolidated overview of all ACPP requirements.

While *CP practice advice number 1432* is subtitled *Aboriginal Child Placement Principle*, it does not provide a consolidated overview of all ACPP requirements. There are a number of key ACPP requirements that are not well articulated in this practice advice:

- **AFLDM** – A brief overview of AFLDM (referred to as AFLDM, Aboriginal family decision-making) is provided. There is no standard applicable to AFLDM meetings. There is no mention of the points at which an AFLDM meeting must be convened or of how to initiate the process to convene an AFLDM meeting. No references are provided to other CP policy and practice guidance that contain further information about AFLDM meetings, although this additional documentation exists.
- **ACSASS** – The standard relevant to ACSASS is ‘The Secretary is required to consult with the relevant Aboriginal Agency when consideration is being given to placing an Aboriginal child in out-of-home care’. ACSASS’s role is further described: ‘Upon the report of an Aboriginal child to CP services the relevant ACSASS service must be consulted. A key role of the ACSASS worker is to participate in the decision-making and, should placement be required, assist in identifying members of the child’s kinship or community network who may be suitable’. These references do not adequately articulate the requirement to consult with ACSASS at every significant decision point throughout all stages of CP intervention, as articulated in numerous other CP policy and practice guides. The standard in particular does not acknowledge ACSASS’s ongoing role once an Aboriginal child is placed in OOH.

- **ACPP placement hierarchy** – There is no standard that stipulates that specific consideration must be given to the ACPP placement hierarchy when placing an Aboriginal child in OOH. The full ACPP placement hierarchy is not stated in the practice advice – although an overview of some key elements are provided, along with references to the relevant sections of the CYFA 2005. No definitions are provided of wording in the legislation that require further interpretation, such as what constitutes ‘in close geographical proximity’ to the child’s natural family.
- **Identification of Aboriginality** – No information is provided about when or how to determine the Aboriginality of a child. No information is provided about what action to take when the Aboriginality of a child is discovered later in the CP process.

It is not expected that ACPP practice advice should detail every specific requirement of the ACPP across all stages of CP intervention. However, it should at a minimum provide staff with a clear overview of their key mandatory responsibilities and provide accurate references to more detailed documentation where required. The current practice advice is missing critical information about mandatory ACPP requirements, as detailed above.

If the system’s policy and program response was being measured against the information contained in the ACPP practice advice, compliance would be assessed as very poor. The assessment provided in this Inquiry considers the information included in the entire suite of CP policy and practice guidance provided by the Department.

### Multiple documents

As discussed immediately above, there is no consolidated overview of ACPP requirements in any CP policy and practice guidance – the closest is *CP practice advice number 1432: Aboriginal Child Placement Principle*, but even this document is missing key minimum mandatory requirements.

It is considered a strength that ACPP requirements are built into both mainstream and Aboriginal specific documentation (although, as discussed above, at times these requirements are contradictory or lacking clarity). However, the lack of a consolidated overview is contributing to staff confusion about mandatory ACPP requirements.

This confusion and lack of consolidation was evident in the review of policy and practice guidance conducted for the Inquiry:

The Department provided 29 documents in response to a request to 'provide the Inquiry with any documentation which demonstrates the Department's definition of compliance with the intent of the ACPP – including guidance or direction to CP staff and key stakeholders'.

- In three of the 29 documents provided by the Department, no reference could be found to any ACPP requirement. When questioned about the relevance of these three documents, the Department confirmed that the documents 'do not contain any specific reference to Aboriginal children or any element of the ACPP'.
- Departmental representatives initially advised the key document guiding CP staff on ACPP requirements was the *Aboriginal Child Placement Principle guide* of August 2002. After questioning about discrepancies between this document and the legislation, the Department provided email advice that 'the document you refer to was developed in 2002 and is no longer current'. However, this document is still provided as a key reference document in several pieces of CP practice advice (including *CP practice advice number 1432: Aboriginal Child Placement Principle*).
- The confusion and lack of consolidation in this documentation made it difficult and time consuming to understand the various ACPP requirements. No doubt this issue would be greatly magnified for CP staff, who should be reviewing the document in detail (including to understand who is responsible for specific actions within what timeframe) and are often working to urgent timeframes with the pressure of making decisions that directly affect the lives and immediate safety of children and families. There is a clear need for more user-friendly documentation where ACPP responsibilities can be easily and quickly located by staff.

## Key finding 7

The documentation that directs and guides the service system is complex and difficult to navigate. As a result, this documentation is not being consistently used by staff to guide practice.

During the Inquiry the Department acknowledged this issue by updating the Child Protection manual to reflect amendments to the CYFA 2005 and including a new policy on Aboriginal children. Training entitled *Working with Aboriginal Children* has also been provided to CP staff to support the expansion of CSP for all Aboriginal children in OOHC.

This issue of complexity of documentation applies across many parts of CP intervention; however, this complexity is magnified for staff (both staff of CP and of the funded community sector) when complying with the requirements of the ACPP. This is because, to comply with the ACPP, staff must fully understand the 'usual' CP requirements for all children, the Aboriginal-specific requirements of the ACPP, and the linkages between the two. Ongoing supervision, reflective practice and training is necessary. Staff particularly reported confusion and contradiction in the documentation regarding what are mandatory ACPP requirements (versus what are suggestions for good practice) and who is responsible for what actions.

## Recommendation 3

Review and refresh the suite of CP policy and practice guidance relevant to the ACPP, and with a focus on ensuring ease of use by staff through greater clarity and consistency regarding mandatory responsibilities. This should be undertaken in partnership with users of the documentation. The Department to develop guidelines and key performance indicators for implementation of the ACPP.

This review and refresh should include, but not be limited to, the issues raised in this Inquiry regarding the lack of clarity in current CP policy and practice guidance<sup>75</sup>.

<sup>75</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department noted changes made to the Child Protection manual, and the Commission has acknowledged this in our findings. In addition, the Department stated, 'The ACPP is clearly stated in the Act, defining what needs to occur for the Department to comply with this principle. CP practitioners are all trained on the essential and central nature of the Act on CP practice. Compliance with the Act is critical, and practitioners are expected to have a sound working knowledge of the Act'.

## Policy and program compliance

### Recommendation 4

Develop a single document that provides a consolidated and succinct overview of mandatory ACPP responsibilities.

This document should include clear direction as to when these actions must be undertaken, who is accountable for completing these actions, and where to go for a more comprehensive guidance about how to undertake specific activities.

### Opportunity to strengthen legislation

The scope of the Inquiry did not include a review of the CYFA 2005. However, in conducting the Inquiry three opportunities were revealed where minor amendments to the legislation may strengthen ACPP compliance. These matters should be given consideration for amendment when future legal reviews of the legislation are undertaken.

The first of these opportunities is described in Section 6.2.1: Underlying intent of the ACPP, which proposes that any future amendments to the legislation articulate the underlying intent of the ACPP that Aboriginal children should remain in the care of their families of origin where ever possible.

The remaining two considerations for legislative amendment are with respect to the legislation acknowledging the linkages between the ACPP (s 13) and other relevant sections of the CFYA 2005. At present, the ACPP section stands alone – it is not linked with other sections of the legislation.<sup>76</sup> Two opportunities were identified to better link the ACPP with other relevant sections of the CFYA 2005:

- Section 10 – *Best interest principles* provides principles for determining whether an action is in the best interests of the child. This list does not specifically state the ACPP as a best interest principle.

- Section 176 – *Cultural plan for Aboriginal child* – provides requirements with respect to cultural plans for Aboriginal children in OOHC. The legislation does not specifically link this requirement with the ACPP, although in policy and practice the Department acknowledges the link between cultural plans and the legislated ACPP requirement to 'ensure the maintenance of the child's culture and identity through contact with the child's community'.

The link between the ACPP and best interest principles is considered particularly important, given the view by some CP staff that the ACPP can be contradictory to the best interests of an Aboriginal child (see Section 9.6: Overall practice compliance).

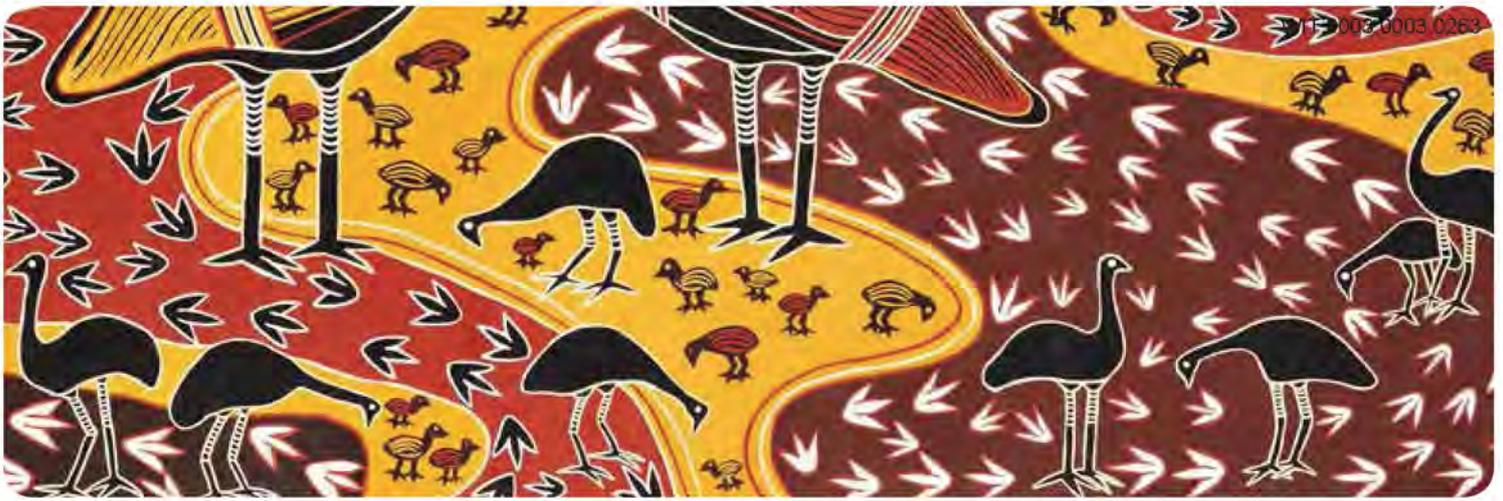
These legislative amendments would provide important guidance to CP, the funded community sector and courts in making decisions that are consistent with the legislation.

### Recommendation 5

Future reviews of the CYFA 2005 should articulate the links between s 13 (the ACPP), s 10 (Best Interest Principles) and s 176 (Cultural Plan for Aboriginal Child).

<sup>76</sup> The only exception to this is a link in the CYFA 2005 between the ACPP section and Part 3.5 Child Care Agreements, which relates to voluntary agreements to place children in OOHC. The ACPP section acknowledges that certain ACPP requirements do not apply when taking action under Part 3.5.





## 8. Defining practice compliance

There is no adequate definition, at either a national or Victorian level, of what constitutes compliance with the intent of the ACPP or how compliance with the ACPP should be measured. This issue was reinforced in a 2015 report by the Australian Institute of Family Studies called *Enhancing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle*, which concludes, 'At present, there is no Australia-wide systematic protocol in place to monitor and assess implementation of the ACPP'.<sup>77</sup>

There is no definition of compliance that gives consideration to Victoria's significant policy and program compliance with the requirements of the ACPP – such as involvement of ACSASS, convening of AFLDM meetings and development of CSPs.

It was essential that the Inquiry establish a definition of what constitutes compliance with the ACPP in the Victorian context. This section outlines the key considerations in developing this definition and concludes with a compliance assessment rubric that was used to assess practice compliance by the Inquiry.

### 8.1 Current reporting measure

As discussed in Section 4.4.2: Placements reported in accordance with the ACPP, the Department reports publicly on the number and proportion of Aboriginal children who were placed in accordance with the ACPP. This reporting is published in both the Productivity Commission's *Report on government services* and in the Victorian Child Adolescent Monitoring System. However, this reporting is widely acknowledged (including by the Department and in the *Report on government services*) as being a proxy measure and not an accurate representation of compliance with the ACPP.

The proxy measure used in this reporting to assess whether the placement was in accordance with the ACPP is as follows:

- A child is **placed in accordance with the ACPP** when they are placed with relatives or kin (either Aboriginal or non-Aboriginal), with another Aboriginal carer, or in Aboriginal residential care.
- A child is **not placed in accordance with the ACPP** when they are not placed with relatives or kin, with another Aboriginal carer, or in Aboriginal residential care.

This proxy measure is only a reflection of the type of carer a child was placed with. It does not consider the many other elements required to comply with the legislative requirements of the ACPP, such as whether opportunities were explored to place the child at a higher level in the ACPP placement hierarchy, whether there was consultation with an Aboriginal agency, or whether the child's culture and identity is being maintained through contact with their community.

77 Australian Institute of Family Studies, *Enhancing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle*, August 2015, p. 9.

## Defining practice compliance

The Australian Institute of Family Studies paper shared similar concerns:

*This type of measure of compliance with the Principle has been critiqued as it is an administrative measure that reports on the outcome of the placement decision-making process, without considering whether the process of achieving children's safety and familial and cultural connections outlined by the Principle has been followed.<sup>76</sup> That is, it does not identify the number of placement decisions that complied with all components of the decision-making process as specified in the Principle.*

This measure does not consider the ACPP placement hierarchy – whether the child was placed with an Aboriginal family within close geographical proximity to the child's natural family, or an Aboriginal family from another Aboriginal community, or a non-Aboriginal family living in close proximity to the child's natural family. It also does not indicate whether placement at higher levels of the ACPP placement hierarchy was considered and, if so, why these placements were not deemed appropriate.

Stakeholders consulted in this Inquiry raised concerns that, even as only a measure of the type of carer a child is placed with, this reporting is misleading. The two greatest concerns were as follows:

- **Placement with a non-Aboriginal relative or kin is reported as 'placed in accordance with ACPP'.** VACCA strongly argued that placement with any non-Aboriginal carer should be reported as 'not placed in accordance with ACPP'. Several other stakeholders, predominantly ACCOs, agreed that this reporting is misleading. The 2015 Australian Institute of Family Studies paper reinforced these concerns by noting, 'Some authors have identified that this kind of measurement actually legitimises the placement of Aboriginal and Torres Strait Islander children with non-Aboriginal caregivers.'<sup>79</sup>
- **Placement in an Aboriginal residential care unit is reported as 'placed in accordance with the ACPP'.** Representatives of CP, the PCU and other Departmental staff reported that they considered placement in a residential care unit as a last resort and that this would only be considered when all other caring options (including placement with a non-Aboriginal foster carer) had been exhausted. The legislated ACPP does not address this issue, as it makes no mention of residential care being a

<sup>78</sup> Australian Institute of Family Studies, *Enhancing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle*, August 2015, p. 9, referencing Higgins, D. J., Bromfield, L. M., & Richardson, N. (2005). *Enhancing out-of-home care for Aboriginal and Torres Strait Islander young people*. Melbourne: Australian Institute of Family Studies.

<sup>79</sup> Australian Institute of Family Studies, *Enhancing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle*, August 2015, p. 9, referencing Valentine, B., & Gray, M. (2006). International perspectives on foster care: Keeping them home. *Aboriginal out-of-home care in Australia*. *Families In Society*, 87(4), 537–545.

placement option. Victoria alone cannot directly change the proxy measure used in the national *Report on government services* and, like all Australian jurisdictions, the Department is obliged to report against this proxy measure. The Department could choose to provide more accurate reporting on compliance with the ACPP through other mechanisms, and may be able to advocate for change to the proxy measure used in the *Report on government services*.

### Key finding 8

There is no adequate definition of what constitutes compliance with the ACPP in the Victorian context.

### Key finding 9

Current reporting on compliance with the ACPP is inadequate, using a proxy measure of the type of carer a child is placed with.

This proxy measure:

- does not consider the other essential requirements (other than placement) necessary to comply with the ACPP, such as involvement of an Aboriginal agency
- does not differentiate among the levels of the legislated ACPP placement hierarchy. For example, placements with the following are all grouped together as 'placed in accordance with the ACPP' (Aboriginal extended family, non-Aboriginal extended family, another Aboriginal carer and Aboriginal-operated residential care facilities)
- does not indicate whether placement at higher levels of the ACPP placement hierarchy was considered.

The inadequacies in this reporting could be seen to legitimise placements with a non-Aboriginal carer or in an Aboriginal-operated residential care facility as compliant with the intent of the ACPP.



## 8.2 Definition of compliance for the Inquiry

It is clear that compliance with the ACPP cannot be accurately measured by the type of carer the child is placed with. All stakeholders consulted were in agreement that a more sophisticated definition is required in order to make an accurate assessment of compliance with the ACPP in practice.

### 8.2.1 Placement with a non-Aboriginal carer – compliance with the ACPP

There is agreement that being placed with an Aboriginal carer is not in itself a definitive indicator that all ACPP requirements have been met. A stakeholder asked whether placement with a non-Aboriginal carer can ever be considered compliant with the ACPP. There were two schools of thought on this matter.

**One view was that placement with a non-Aboriginal carer should never be considered as compliant, even if all other ACPP requirements have been met.** This view is most strongly held by VACCA. VACCA asserts that a core intent of the ACPP is to keep Aboriginal children strong in their culture by placing Aboriginal children with Aboriginal carers (preferably their Aboriginal families, but with other Aboriginal carers where this is not possible).

SNAICC states that the intent of the ACPP compels the system to undertake extensive 'front-end' work to ensure that Aboriginal children are raised with Aboriginal families. SNAICC believes that this front-end work should include increasing the number of Aboriginal carers and, most importantly, supporting Aboriginal families to care for their own children (so that it never becomes 'in the best interests' of the child to be removed from their natural family). If this front-end work was effectively completed, then a greater percentage of Aboriginal children would remain with their families or be placed with other Aboriginal carers. Therefore, 'placement with an Aboriginal carer' should be a core indicator of compliance with the ACPP. However, SNAICC indicated that a placement with a non-Aboriginal carer can be compliant with the ACPP, if there is evidence of compliance with all other elements of the ACPP, including evidence that appropriate support was offered to the family to continue to care for their child and that comprehensive efforts were made to identify suitable Aboriginal carers for the child.

**The view that was accepted for the purposes of the Inquiry was that placement with a non-Aboriginal carer can be compliant, if there is evidence that all ACPP decision-making and consultation processes were met.**

This view was shared by the majority of stakeholders consulted, including the ACCO members of the Aboriginal Children and Young People's Alliance, the Department, CP and CSOs.

A decision to use this second definition for the purposes of the Inquiry was reached after consideration of the views of stakeholders and a review of available literature. This decision was particularly informed by the wording of the ACPP, which provides that placement with non-Aboriginal extended family or relatives is actually the second highest level of the ACPP placement hierarchy (higher than placement with an Aboriginal carer from within close geographical proximity to the child's natural family).

### 8.2.2 Rubric for assessing practice compliance with the ACPP in Victoria

- The high-level definition of compliance determined for use by this Inquiry was 'All ACPP decision-making and consultation processes were undertaken'. Detailed work was then required to determine what constitutes 'all ACPP decision-making and consultation processes' in the Victorian context.
- The Department does not have a document that provides a consolidated, consistent version of all mandatory ACPP requirements across all stages of CP intervention.<sup>80</sup> There are also no other strong precedents to draw from regarding what should constitute compliance in the Victorian context, as the Department has never previously undertaken any evaluations, reviews or reporting (either internally or externally) that demonstrate the level to which the system is complying with the ACPP at a practice-level.



<sup>80</sup> As detailed in Section 7: Policy and program compliance.

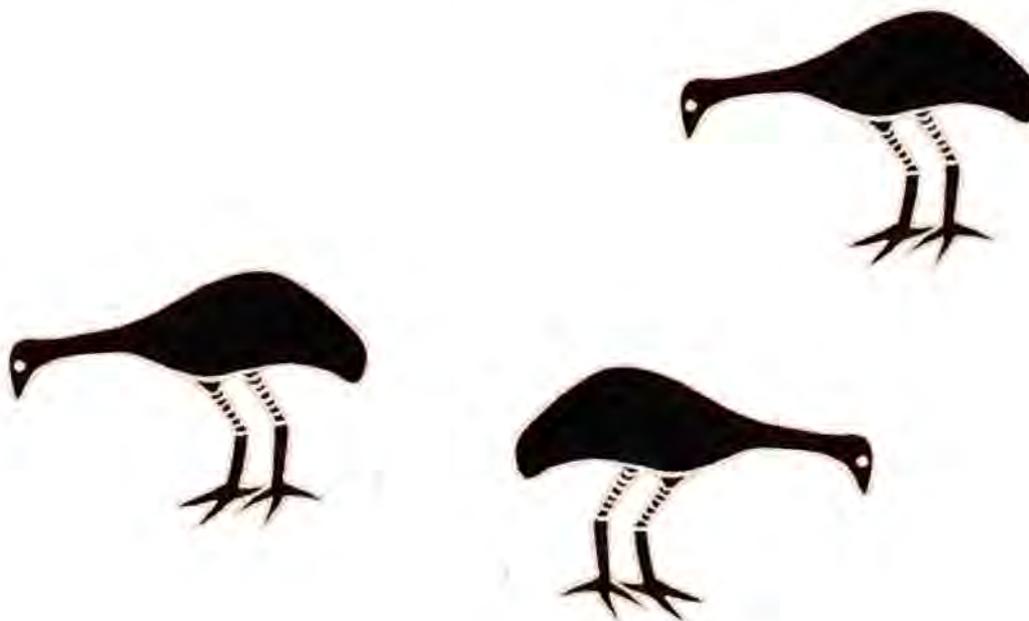
## Defining practice compliance

### Key finding 10

The Department has never undertaken an evaluation or review (either internally or externally) to assess the level to which the Victorian system is complying with the requirements of the ACPP.

In order to establish the mandatory ACPP decision-making and consultation processes, further review was undertaken of the 29 pieces of CP policy and practice guidance that were provided by the Department as relevant to the ACPP. This review established a set of 20 specific compliance measures that linked directly to the wording of mandatory ACPP requirements articulated in CP policy and practice guidance. These 20 compliance measures were then themed together and five key ACPP domains emerged. The ACPP compliance assessment rubric was developed which details the five key ACPP domains, the most significant compliance measure for each key ACPP domain, 20 specific compliance points, and the relationship between these three compliance measures.

Recognising the complexity and lack of precedent in developing a definition of 'the mandatory ACPP decision-making and consultation process in Victoria', the ACPP compliance assessment rubric was thoroughly tested with consulted stakeholders. All stakeholders including the Department, CP, ACSASS providers and CSOs<sup>81</sup> were provided with a copy of the ACPP compliance assessment rubric prior to consultation and given the opportunity to comment on the accuracy and relevance of the rubric. Consultation questions then focussed on compliance with the requirements outlined in the rubric. Stakeholders accepted the ACPP compliance assessment rubric and it was confirmed as the tool by which the Inquiry would measure the level of practice compliance with the requirements of the ACPP. Table 9 shows the ACPP compliance assessment rubric.



81 With the exception of the first ACCO workshop, which was held in December 2015 to seek input into the ACPP compliance assessment rubric.

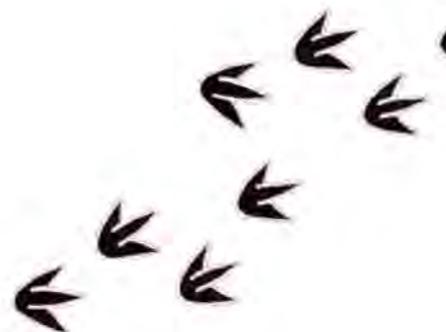
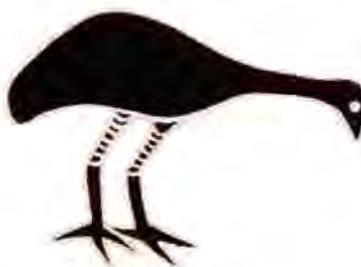
Table 9: ACPD compliance assessment rubric

Key ACPD domain	Most significant compliance measure	Compliance points
1. Identification of Aboriginality	Was the Aboriginality of the child correctly determined by the completion of the investigation stage?	<ol style="list-style-type: none"> <li>The child's Aboriginal status is recorded prior to the intake outcome being recorded.</li> <li>Aboriginality is confirmed by the family or child during the investigation and assessments.</li> </ol>
2. ACSASS	Was regard given to the advice of ACSASS at every significant decision point?	<ol style="list-style-type: none"> <li>ACSASS is contacted prior to the intake outcome being recorded (where investigation is notified to proceed).</li> <li>ACSASS is present or consulted during the initial investigation (first and subsequent family visits).</li> <li>There is timely contact with and response by ACSASS during investigation.</li> <li>ACSASS is involved in decision-making for removal.</li> <li>ACSASS is involved in AFLDM or other family meetings.</li> <li>ACSASS is involved in identifying members of the child's kinship or community network who may be suitable for placement.</li> <li>ACSASS is consulted regarding any change of placement.</li> <li>Court documents show that regard was given to the advice of ACSASS.</li> </ol>
3. AFLDM	Was an AFLDM meeting convened at substantiation and making of a protection order (or did the family decline an AFLDM meeting)?	<ol style="list-style-type: none"> <li>An AFLDM or other family conference is convened at substantiation.</li> <li>An AFLDM or other family conference is convened at the making of a protection order.</li> <li>Consultation occurs with the child's parents, extended family and other community members.</li> <li>An AFLDM meeting is considered whenever the case plan requires review, including when a new or different order is made.</li> <li>An AFLDM or other family meeting occurs and informs the child's case plan.</li> </ol>

## Defining practice compliance

Key ACPP domain	Most significant compliance measure	Compliance points
4. ACPP placement hierarchy	Is there evidence that the child was placed at the highest possible level of the ACPP placement hierarchy?	16. There is evidence of considering placement with each of following (in order, before moving to next level of ACPP placement hierarchy): <ol style="list-style-type: none"> <li>Aboriginal extended family or relatives</li> <li>non-Aboriginal extended family or relatives</li> <li>an Aboriginal family from the local community within close geographical proximity</li> <li>an Aboriginal family from another community</li> <li>a non-Aboriginal family living in close proximity.</li> </ol> 17. Court documents identify the child as Aboriginal. 18. Court documents record the child's family and Aboriginal community.
5. Maintaining cultural identity	Is there a completed cultural support plan or a case plan that considers opportunities for continuing contact with Aboriginal family, community and culture?	19. A CSP is completed, maintained and reviewed (considered mandatory for children on a GSO or LTGSO and best practice for children on other orders). 20. Case plans for Aboriginal children who do not have a CSP include consideration of cultural identity and maintenance of cultural connection.

Source: Commission for Children and Young People, Inquiry into Compliance with the Intent of the Aboriginal Child Placement Principle in Victoria, 2016.



The ACPP compliance assessment rubric is not an exhaustive list of all the mandatory ACPP requirements detailed in CP policy and practice guidance. For example, CP policy and practice guidance prescribes many more points where ACSASS must be consulted. In order to develop the rubric, informed judgments were made where CP policy and practice advice is contradictory. The rubric also brings in one point that is not stated in CP policy and practice guidance as being related to the ACPP, but is considered for the purposes of the Inquiry to be an essential part of the system's attempts to comply with the legislated ACPP requirements – that is Compliance Point 20 regarding case plans being required to consider cultural identity and maintenance of cultural connection.<sup>82</sup>

The compliance points in the rubric were selected as the most relevant for the purposes of the Inquiry, as the Inquiry is most interested in making a fair assessment of the current level of systemic practice compliance with the intent of the ACPP against the mandatory ACPP requirements detailed in CP policy and practice guidance. The Department and service sector accepted the ACPP compliance assessment rubric for the purposes of the Inquiry, but may choose to define 'compliance with the ACPP' in a different manner for other assessment and reporting purposes.

## Recommendation 6

Define what constitutes compliance with the intent of the ACPP in the Victorian context. This definition should be reached in partnership with CSOS, particularly from the Aboriginal family and child sector.<sup>83</sup>

## Recommendation 7

The Department commits to regular reporting or external review of the system's compliance with the intent of the ACPP. This will significantly improve understanding of the level of practice compliance, and will enable better decision-making to ensure Aboriginal children receive the ACPP services to which they are entitled by legislation.

In order to meet this obligation for regular reporting, the Department should immediately consider what data will be required to inform the assessment and take steps to ensure this data is collected. Some relevant data may be held by funded community organisations, and the Department could use funding agreements as the instrument to ensure this data is collected. All community organisations consulted during the Inquiry indicated a willingness to provide additional data to more accurately assess compliance with the ACPP, and many, most notably VACCA and MDAS, already collect much more data than is required by their reporting obligations to the Department.



<sup>82</sup> This matter is discussed in greater detail at Section 10.5, *Maintenance of cultural identity*.

<sup>83</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department noted that the five domains identified for this Inquiry go far beyond the requirements of s 13 of the CYFA 2005. In response, the Commission amended this recommendation. The full Departmental response is in Section 10: Opportunity to respond.



## 9. Assessing practice compliance

This section provides an assessment of the current level of practice compliance with the ACPP in Victoria. It assesses practice against the ACPP compliance assessment rubric (see Table 9) – that is, against the mandatory ACPP requirements stated in CP policy and practice guidance.

The assessment of practice compliance is provided against each of the five key ACPP domains, followed by an overall assessment of the level of practice compliance. At each of these six points:

- the current level of practice compliance is rated (using the ACPP compliance assessment rubric in Section 5: Methodology)
- a detailed description of the factors contributing to the compliance rating is provided
- systemic barriers to compliance (if any) are identified
- recommendations are made for how systemic compliance with the intent of the ACPP can be improved (where required).

The assessment of practice compliance focuses on systemic compliance with ‘the most significant compliance measure’, rather than with a specific assessment of compliance at each of the 20 compliance points (see Figure 10). This is a deliberate decision, as this approach provides the clearest indication of systematic compliance with the intent of the ACPP at a practice level. The ‘most significant compliance measure’ brings together the multiple ‘compliance points’ into one over-arching measure at each key ACPP domain. In some instances specific ‘compliance points’ are discussed in greater detail. This occurs where the ‘compliance point’ is of critical importance to the assessment against ‘the most significant compliance measure’, and where reliable information exists against the compliance point. The lack of relevant system-wide data was a significant impediment to making an assessment of the level of systemic compliance at each of the 20 ‘compliance points’. This matter is discussed at relevant points of the assessment below.

The assessment of compliance at each key ACPP domain draws on several sources, including:

- system-wide statistical data held by the Department
- file reviews of 65 Aboriginal children in OOHc
- the online survey of CP staff
- submissions received from ACCOs and CSOs
- review of internal Departmental documentation
- review of publicly available documentation
- consultations with a range of stakeholders.

The data sources and their limitations are detailed in Section 5: Methodology.

The level of practice compliance is of particular interest to the Inquiry in light of indications that there is a significant gap between program and policy intent and how it is applied in practice. Other policy reviews point to current weaknesses in the application of the ACPP.

*Victoria should be well placed to reduce the rate of Aboriginal child removal. It has sound legislation and generally sound strategy and policy settings but there is a recurring pattern of repeated failure to adequately resource and effectively implement these good intentions.<sup>84</sup>*

*The consultative group's experiences lead us to believe that the child protection legislation and program policies are often ignored, given cursory acknowledgement or in some cases draw discriminatory comments from child protection workers. This would indicate at least varying degrees of effective implementation of legislation and initiatives.<sup>85</sup>*

*A number of submissions specifically commented on the current gap between policy and legislation and practice.<sup>86</sup>*

84 *Koorie Kids: growing strong in their culture – five year plan for Aboriginal children in out of home care, 2013, page 4.*

85 *Extract of submission by the East Gippsland Discussion Group to the Protecting Victoria's Vulnerable Children Inquiry, 2012, page 303.*

86 *Report of the Protecting Victoria's Vulnerable Children Inquiry, 2012, page 303.*

## 9.1 Identification of Aboriginality

Was the Aboriginality of the child correctly determined by the completion of the investigation stage?

### 9.1.1 Compliance rating

The most significant considerations in making an assessment of the level of practice compliance with this key ACPP domain are listed below:

- Incorrect identification of Aboriginality is resulting in a significant proportion of Aboriginal children missing out on ACPP services to which they are entitled by legislation.
- Consultations and file reviews both suggest that in approximately 10 per cent of cases children are not being identified as Aboriginal either at intake or investigation, and in some cases it is several years before the Aboriginal status of the child is known. CRIS is unable to report at which stage of the CP process the Aboriginal status of the child was determined.
- CP staff do not routinely comply with the mandatory requirement to check Aboriginal status with the child or family during the investigation. File reviews showed evidence of only 38 per cent of children (25 children) having their Aboriginal status confirmed by the family at the first home visit.

- The system relies on the reporter knowing the Aboriginal status of the child. CRIS does not distinguish whether the Aboriginal status recorded is the reporter's determination (which may be incorrect) or whether the child or their family have confirmed the child's Aboriginal status. CP staff rely on the Aboriginal status recorded in CRIS being accurate.

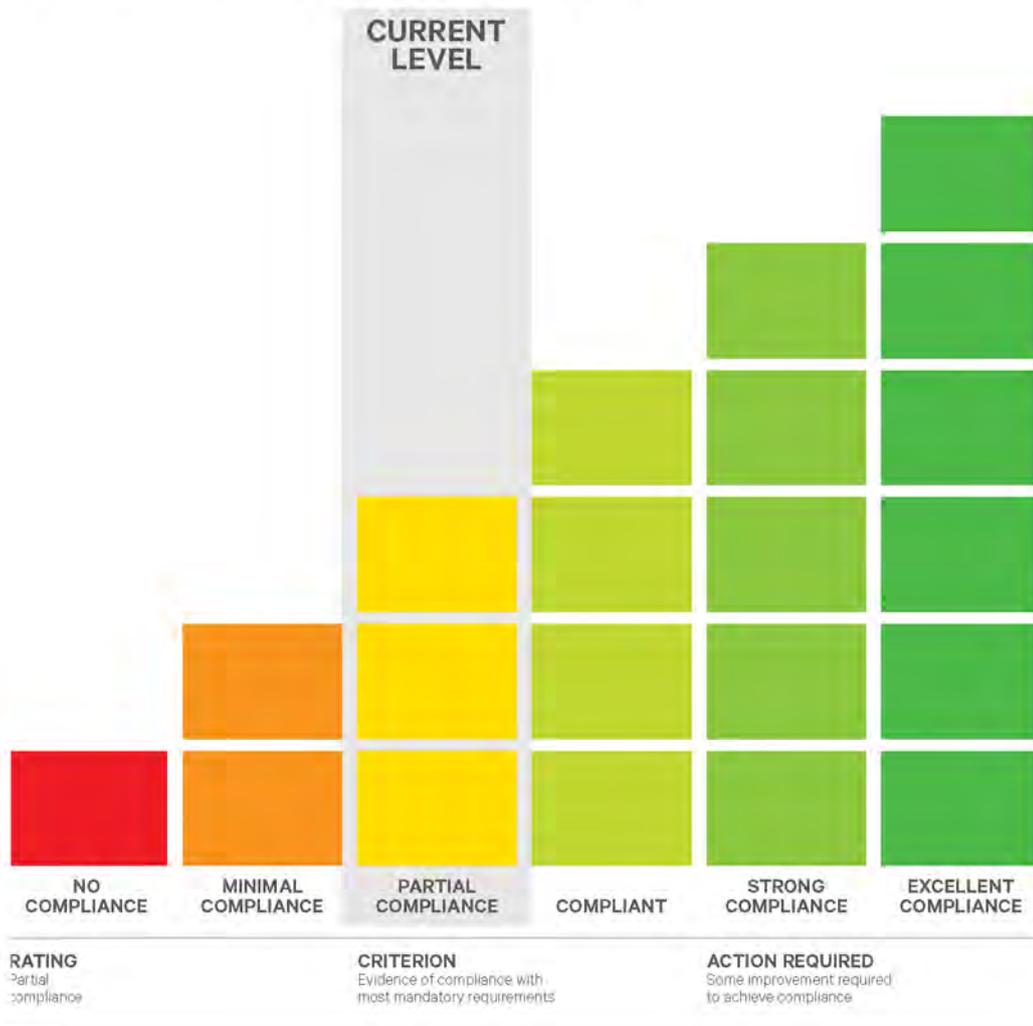
Identification of Aboriginal status is an essential step in applying the ACPP. Until the child's Aboriginal status is known, no other ACPP requirement can be met.

According to the available evidence, compliance with the requirement to correctly determine the Aboriginal status of the child by the completion of the investigation stage is **'Partial compliance'**.



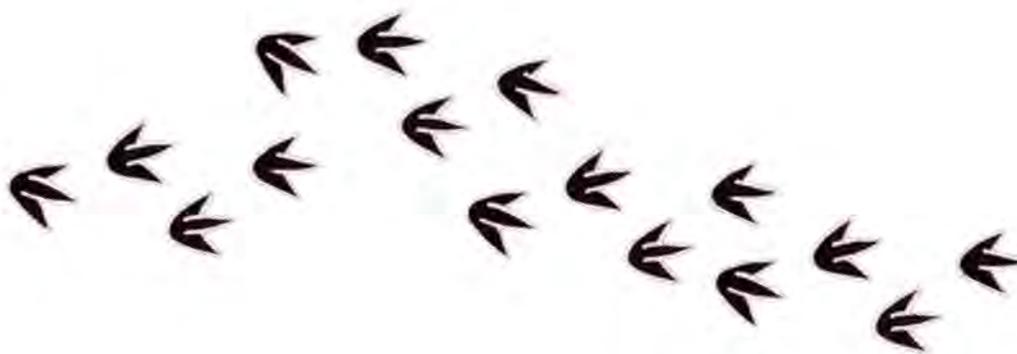
# Assessing practice compliance

Figure 10: Compliance rating – identification of Aboriginality



Source: This assessment was informed by seven data sources detailed in Table 1 in addition to performance data provided by the two ACSASS providers for the purposes of this Inquiry.

Note: There was a high level of consistency in the themes across these seven points of evidence, indicating this assessment is likely to be reflective of the system-wide situation.



## 9.1.2 Detailed compliance assessment

Correctly determining the Aboriginality of a child is one of the most crucial stages of the CP process for Aboriginal children. No other element of the ACPP can be considered or applied until Aboriginality is determined.

On 30 June 2014, there were 7,710 children in OOHC in Victoria, of which 1,308 were Aboriginal (16.96 per cent). The Aboriginal status was unknown for nine of the children (0.11 per cent)<sup>87</sup>. This low figure appears to indicate that there are very few children in OOHC whose Aboriginality is unknown, and a high rate of identifying the Aboriginal status of the children in OOHC.

However, consultations revealed that the Aboriginal status recorded in CRIS is frequently incorrect. CRIS is unable to report on the scale of this problem, as the system cannot identify at which point in the CP process a child's Aboriginal status was determined or whether the Aboriginal status changed at any point. As a result, file reviews and consultations were undertaken in order to assess compliance with the requirement to correctly determine the Aboriginality of the child by the completion of the investigation stage.

### Making a report

Upon making a report to CP, the reporter is asked whether they know the Aboriginal status of the child who is the subject of the report. The reporter's response is then recorded in CRIS.

### Aboriginality reported at intake

Upon taking an initial intake report, CP staff are required to ask the reporter at the first opportunity whether the child is Aboriginal. The file reviews revealed good compliance with this requirement, with an Aboriginal status being recorded at intake for 86 per cent of children (56 children).

Consultations revealed that the reporter frequently does not accurately identify the child's Aboriginal status, and an incorrect Aboriginal status may be entered into CRIS. The reporter is not expected to correctly identify a child's Aboriginal status (which they may not be aware of), and this should only be considered as an indication of whether the child is Aboriginal. A more important requirement is for CP staff to confirm the child's Aboriginal status with the child's family during the investigation.

### Aboriginality confirmed with family during investigation

At investigation stage, CP staff must confirm Aboriginality with the child or family at the first opportunity. File reviews revealed that only 38 per cent of the 65 children reviewed (25 children) had evidence of confirmation of their Aboriginal status at the first home visit.

The Aboriginal status of a child must be established upon the completion of the investigation stage. In some cases the Aboriginality of the child is determined during investigation. The file reviews revealed that 20 per cent (13 children) had a change of Aboriginal status during investigation. Of these 13 children, five children had their status changed from 'Unknown' to 'Aboriginal', and two children had their status changed from 'non-Aboriginal' to 'Aboriginal'.

File reviews also revealed that most changes in Aboriginal status occur when the child's status is initially recorded in CRIS as 'Unknown', but there are few changes when the child's status is recorded in CRIS as 'Aboriginal'.

The review demonstrates the importance of CP fulfilling the mandatory requirement to confirm Aboriginality with the child's family.

### Aboriginality being determined too late in CP process

The file reviews also revealed that the Aboriginality of 11 per cent of children (seven children) was still not determined at the completion of the investigation. This is of concern given the missed opportunities for the child to receive ACPP services at intake and during investigation. This demonstrates that CP staff are not complying with the requirement to establish the Aboriginality of a child by completion of investigation stage.

The number of Aboriginal children whose Aboriginality was not known at the completion of their investigation may actually be higher than 11 per cent. This is because the file reviews only included children who were identified as Aboriginal by 2 July 2015<sup>88</sup>. There may be other children in the cohort group who were not known to be Aboriginal at this date.

87 Productivity Commission, *Report on government services*, 2015.

88 The Department ran the CRIS report to select the children whose files were reviewed on 2 July 2015.

## Assessing practice compliance

Consultations also revealed many instances in which Aboriginal status was incorrectly identified and not determined until much later in the process – even following the placement of a child for an extended period of time. Consultations also indicated that if Aboriginality was determined after placement it was generally not considered a compelling reason to change placement, with a greater priority being put on considerations such as stability and potential rapport with the carer. The following quotes reinforce the perceived prevalence and impact of incorrect identification of a child's Aboriginality.

*Aboriginal status is incorrectly identified in approximately one out of 10 cases.*

**ACCO staff**

*A sibling group of Aboriginal children were placed with an Aboriginal carer and 15 months later it was identified that the children were not Aboriginal – how do you remove them from that situation because they're not Aboriginal?*

**PCU manager**

*The intake staff do usually ask the reporter, but the reporter doesn't always know. If the reporter says 'no' then often we don't ask the child or family unless Aboriginality comes up in other discussions.*

**CP staff**

*Who gets to decide if the young child is Aboriginal – sometimes different family members have differing opinions on this as it is not like other systems where the individual identifies Aboriginality, as too often they are too young to do this.*

**CSO manager**

*Once Aboriginal status is determined, it is often not changed in CRIS. So we (ACSASS) continue to get contacted about non-Aboriginal children and continue not to get contacted about Aboriginal children.*

**ACCO staff**

*Incorrect identification is an issue as there are times when Aboriginality is not discovered until after placement which means no other parts of the ACP have been applied.*

**CSO manager**

### Key finding 11

The Aboriginal and Torres Strait Islander status recorded in CRIS is frequently incorrect<sup>89</sup>.

The file reviews showed that at the completion of the investigation, 11 per cent of children were not known to be Aboriginal and were subsequently identified later in the process. The number of Aboriginal children whose Aboriginality was not known at the completion of their investigation may be higher than 11 per cent – because the file reviews were dependent on the children being known to be Aboriginal by 2 July 2015, whereas some children's Aboriginality may have been determined later than this. Consultations also suggested incorrect instances of identification and lengthy periods of time in determining the Aboriginality of the child – sometimes months or even years.

### Key finding 12

Aboriginal children are not receiving mandatory ACP services as a result of CP staff not complying with mandatory requirements to confirm Aboriginality with family during investigation.

<sup>89</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department provided feedback on key finding 11. Their response is in Section 10: Opportunity to respond.

As an outcome of Taskforce 1000, the Department has acknowledged that early and accurate identification of Aboriginality is a significant issue. In December 2015, a fixed term working group, Indigenous Status, Aboriginal Identity was convened to strengthen practice in more effectively establishing Aboriginal identity. Membership of the working group included representatives from ACCOs, SNAICC, CP, the Department and the Commission.

The working group completed their task in June 2016 and developed guidelines for practitioners.

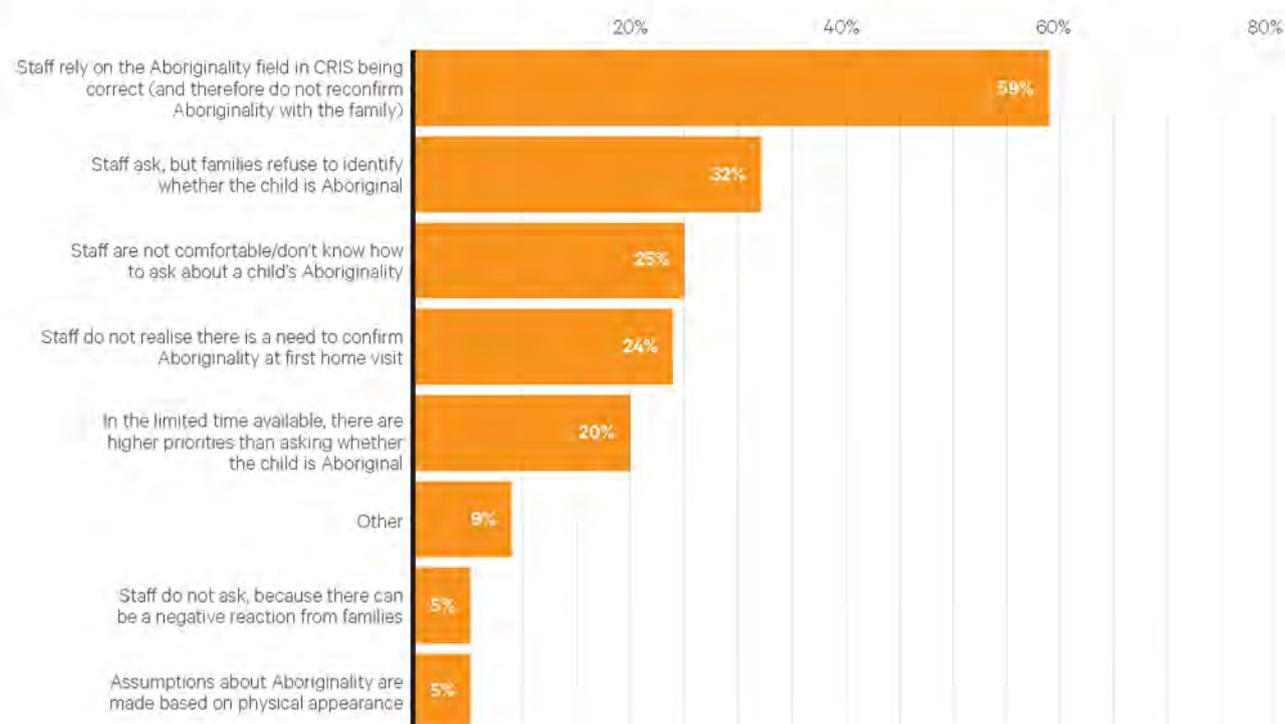
### Systemic barriers and recommendations

Correct identification is key to the enactment of every ACPP requirement and to the child receiving mandatory services. While it is a mandatory requirement for the Department to identify or clarify the child's Aboriginal status, this requirement is not always being met. The online survey and consultations revealed the following reasons for the delay and incorrect identification of the child's Aboriginal status:

## Recommendation 8

Monitor the outcomes of the Indigenous Status, Aboriginal Identity Working Group to ensure progress is made in improving the early identification of Aboriginal children in OOHC, through an external group such as the Aboriginal Children's Forum.

Figure 11: Reasons that a child's Aboriginal identity is not confirmed in the early stages of investigation



Source: Commission for Children and Young People, online survey commissioned as part of the Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria, 2016.

Note: a maximum of three options could be selected by survey respondents.

## Assessing practice compliance

### Over-reliance on CRIS and reporter's opinion

There is common agreement that CP staff rely on the Aboriginal status entered into CRIS and do not routinely confirm Aboriginality with family at the first opportunity. Fifty-nine per cent of respondents in the online survey of CP staff identified that the most common reason for a child's Aboriginal identity not being confirmed in the early stages of investigation was that staff assume the Aboriginality field in CRIS is correct.

The reliance on CRIS is problematic as it initially relies on the opinion of the reporter at intake, when the reporter will not necessarily be aware of the child's Aboriginal status. The reliance on the reporter's opinion as the basis for determining Aboriginality is insufficient, and there should be a greater emphasis on the Department to fulfil its requirement to confirm the child's Aboriginality with the family at the first opportunity during investigation. A likely cause of the over-reliance on information in CRIS is that, in recording Aboriginal status, the system cannot differentiate between when a third party (predominantly the reporter) determines the child's Aboriginal status, and when the family does so.

### Key finding 13

CP staff place an over-reliance on the Aboriginal status recorded in CRIS being correct, and CRIS relies on the reporter's assessment of Aboriginality. This is contributing to CP staff not routinely fulfilling the mandatory requirement to check Aboriginal status with the family.

### Recommendation 9

Update the 'Aboriginal and/or Torres Strait Islander' field in CRIS to clearly distinguish when the child is 'believed to be Aboriginal' by a third party, and when Aboriginality has been confirmed by the family.

### Misunderstanding of practice requirements

Consultations revealed various misunderstandings and a reluctance to ask about the child's Aboriginal status among CP staff due to:

- a belief that Aboriginal children should not be treated differently to other children, despite contrary direction from legislation and CP policy and practice guidance. An ACCO staff member reported it is common for CP staff tell ACSASS things like "We don't ask if they're Turkish, so why should we ask if they're Aboriginal?"
- unease in asking the question due to a lack of understanding or experience
- a lack of awareness of the mandatory requirement to confirm Aboriginality at the first home visit, with staff reporting that it was best practice, not mandatory, to confirm. According to the online survey, 24 per cent of CP operation managers do not realise there is a need to confirm Aboriginality at the first home visit
- difficulties in asking the question due to hostile situations and cases involving police where the safe removal of a child was considered a higher priority.

### Recommendation 10

Ensure that CP staff confirm Aboriginality with the family or child in the early stages of a report being taken and that they record the status in mandated fields in CRIS.

If status cannot be confirmed at the time of the report being made (during intake) the child's identity must be confirmed during investigation.

When the child's Aboriginal status is confirmed this should be recorded, including the date and who confirmed it, for example, the child's mother or father.



### Family or child reluctant to identify

Consultations with CP suggested that Aboriginal families and children are sometimes reluctant to identify due to a lack of understanding of why the identifier question is being asked, discomfort in the manner in which the identifier question is asked by CP staff, perceptions of negative consequences for the individual, reluctance to engage in associated services delivered by ACCOs due to a lack of confidentiality and trust, and conflicting opinions of identity among family, community and ACCOs. A consulted CP staff member said it is common for Aboriginal families to have the attitude: 'Don't tell authorities anything – especially Child Protection authorities'.

### Definition of Aboriginality

Although clear in principle, there is variability in how Aboriginality is determined across ACCOs and the Department. CP and ACSASS have a policy of asking the question of Aboriginal status and accepting the answer of the child or family as confirmation, while ACCOs use the following three criteria to confirm Aboriginality:

- being of Aboriginal or Torres Strait Islander descent
- identifying as an Aboriginal or Torres Strait Islander person
- being accepted as Aboriginal by the community in which a person lives, or formerly lived.

While this issue was not of great concern during the consultations, it may warrant further investigation should differences in the definition of Aboriginality cause issues for children and families accessing services provided by the Department and ACCOs.

## Recommendation 11

Support and hold CP staff accountable for completing their mandatory responsibilities to confirm Aboriginality. This could be achieved by regular reports to the Aboriginal Children's Forum, greater management support and scrutiny, better performance evaluation, and training to address the competencies outlined in practice advice from 2016<sup>90</sup>.

This could be achieved by regular reports to the Aboriginal Children's Forum, greater management support and scrutiny, better performance evaluation and training to address the following competencies so that workers:

- understand why it is important to collect and record Aboriginal status
- can ask the identifier questions correctly and in a culturally appropriate manner
- can explain the reasons for asking a person's Aboriginal status
- can conduct follow-up procedures to clarify an unknown Aboriginal status
- understand the person's right to decline to answer the identity question or change their recorded status.

## Recommendation 12

The Department must consult with and seek approval from the Commissioner for Aboriginal Children and Young People and the Chief Practitioner for Aboriginal Children in relation to any decision to change the identification of an Aboriginal child to 'non-Aboriginal'. CRIS enhancements must be made to ensure that a child's Aboriginal status cannot be reversed without this approval.

90 When afforded an opportunity to respond to a draft report of this Inquiry, the Department noted that a 2015-16 working group prepared information sheets for CP practitioners. Their full response is in Section 10: Opportunity to respond.

## Assessing practice compliance

### 9.2 Aboriginal Child Specialist Advice and Support Service

#### Was regard given to the advice of ACSASS at every significant decision point?

##### 9.2.1 Compliance rating

The most significant considerations in making an assessment of the level of practice compliance with this key ACPP domain are listed below:

- The intent of ACSASS is a significant strength, and in many instances ACSASS makes a meaningful contribution to decision-making that is in the best interests of Aboriginal children in OOHC.
- Aboriginal children are not receiving the benefit of ACSASS involvement at every significant decision point. ACSASS is less involved at each CP stage and significant decision point than is intended by CP policy and practice guidance. File reviews reveal only about 50 per cent of Aboriginal children have the benefit of ACSASS involvement at any point during intake, investigation and protective intervention.
- CP does not contact ACSASS about every Aboriginal child, and certainly not at every significant decision point. ACSASS does not respond in all cases when they are contacted by CP. ACSASS advised they give the highest priority to attending first home visits. However, file reviews show that ACSASS attended first home visits for only 31 per cent of Aboriginal children. In 62 per cent of cases where ACSASS did not attend, there was no evidence that CP informed ACSASS about the first home visit.

- Appropriate regard is not being given to the advice of ACSASS in making significant decisions affecting Aboriginal children. The Inquiry found evidence of ACSASS's views in only 29 per cent of the case files of Aboriginal children (in their case plans or case notes).
- The data recorded by the Department about ACSASS is extremely limited. It provides little indication of the performance of the service, nor does it indicate the level of demand.

According to the available evidence, practice compliance with 'having regard to the advice of ACSASS at every significant decision point' is assessed as **'Partial compliance'**.

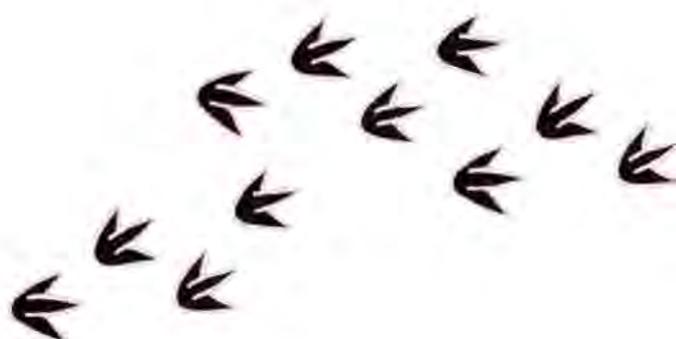
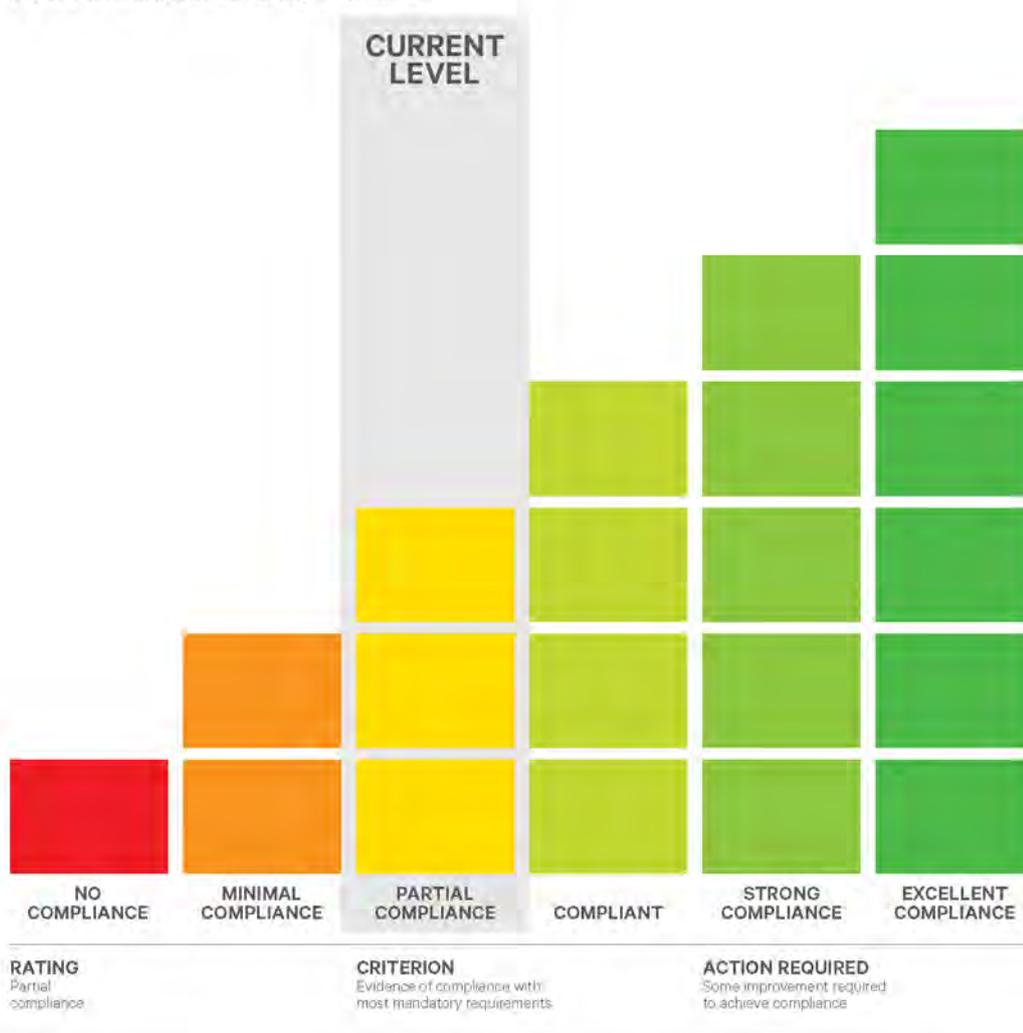


Figure 12: Compliance rating – ACSASS



Source: This assessment was informed by seven data sources detailed in Table 1 in addition to performance data provided by the two ACSASS providers for the purposes of this Inquiry.

Note: There was a high level of consistency in the themes across these seven points of evidence, indicating this assessment is likely to be reflective of the system-wide situation.



## Assessing practice compliance

### 9.2.2 Detailed compliance assessment

ACSASS has wide ranging and multiple responsibilities across every stage of CP (see Section 4: Inquiry context). However, there is no consolidated description of all ACSASS's responsibilities, a definition of 'every significant decision point' or priority given about the most important points for ACSASS involvement (see Section 7: Policy and program compliance).

#### Level of ACSASS involvement

There is no system-wide data kept that provides an overview of the level to which ACSASS are involved. For example, the Department cannot report information which shows at which points CP contact ACSASS, at which points ACSASS respond, how many times CP contact ACSASS, how many times ACSASS has involvement with CP, families, children or carers, or the outcomes that arise from ACSASS involvement.

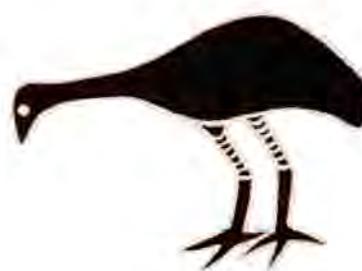
The only target the Department sets for ACSASS is the number of 'annualised clients' ACSASS is involved with. A child or sibling group is recorded once, regardless of the number of times in the year that ACSASS is involved with them.

Table 10 shows that the actual performance reported by ACSASS in 2014–15 was more than double the target set by the Department.

Table 10: ACSASS performance target and reported performance 2014–15, by provider

ACSASS provider	Annual performance target	Actual performance <sup>91</sup>
VACCA	2,514 annualised clients	5,623 annualised clients (including 436 out-of-hours clients)
MDAS	217 annualised clients	413 annualised clients
<b>Total</b>	<b>2,731 annualised clients</b>	<b>6,036 annualised clients</b>

Source: ACSASS targets provided by the Department; actual performance data provided by VACCA and MADS



<sup>91</sup> VACCA's actual performance is for the period October 2014 to September 2015. MDAS's actual performance is for the period 1 July 2014 to 30 June 2015.

Both ACSASS providers record data about performance in addition to the requirements of the Department. ACSASS keeps data on new reports, endorsed closures, consultations, case plan reviews, care team meetings, court attendance, home visits and case loads of staff members.

The data recorded in CRIS regarding ACSASS is even more limited than the performance target regarding annualised clients. This data records only the number of children for which the Department contacted ACSASS, for children who had an intake and also for children whose intake resulting in investigation. This data does not show whether ACSASS responded, when ACSASS responded or how many times ACSASS were contacted (ACSASS should be contacted multiple times per client). This data shows that during the period 1 January 2013 to 31 December 2014, ACSASS were contacted for 10,357 intakes and for 3,730 investigations. Given the significant limitations of this data, it is unclear why this data is recorded or what decisions it informs.

Although ACSASS's performance is double the targets set by the Department, the consultations, file reviews and online survey revealed a consensus view that ACSASS are not being involved with every Aboriginal child and certainly not at every significant decision point.

## Key finding 14

**The system-wide data held by the Department about ACSASS is extremely limited and does not provide an accurate reflection of the performance of the program.**

For example, the Department holds no data that shows at which significant decision points ACSASS are involved, how many contacts ACSASS has with CP or children (individually or collectively), or the outcomes from ACSASS involvement.

The performance targets set by the Department for ACSASS providers give very little insight into the level of performance of ACSASS. ACSASS records additional data about performance in addition to what is required by the Department

## Recommendation 13

**Review and strengthen data requirements about the level of performance of ACSASS to better inform decisions about compliance.**

In deciding what data to record and report on, the following should be considered:

- accurate data is necessary to allow informed decision-making about ACSASS, for example, resourcing, prioritising responsibilities and emerging trends
- recording data should not be overly burdensome on CP or ACSASS staff, to ensure the primary focus remains on the best interests of the Aboriginal child
- opportunities should be found to use the data that ACSASS providers are already recording above what is required by the Department.

As discussed in Section 7: Policy and program compliance, while CP policy and practice guidance is not definitive, it describes at least 15 specific decision-making points where ACSASS should be involved, including 'at every significant decision point at all stages of CP intervention'. It is clear that ACSASS should be contacted at intake and multiple times at every other stage.

The data collected from the file reviews indicates that, in practice, about half of Aboriginal children have involvement from ACSASS at intake, during investigation and protective intervention:

- 46 per cent (35 children) had at least one ACSASS involvement at intake
- 54 per cent (35 children) had at least one ACSASS involvement during investigation
- 46 per cent (30 children) had at least one ACSASS involvement during protective intervention.

## Assessing practice compliance

### Key finding 15

File reviews showed about 50 per cent of Aboriginal children have the benefit of ACSASS involvement at intake, during investigation and at protective intervention.<sup>92</sup>

Consultations with both ACSASS and CP staff confirmed that ACSASS are not involved with every Aboriginal child and are involved at only a few significant decision points. There was wide agreement among stakeholders that ACSASS is more involved at the earliest CP stages, then their involvement drops off dramatically in later stages.

- ACSASS is most involved at intake – the CP intake team telephones the ACSASS intake worker, who manages all intake contacts from across the state.
- ACSASS are often involved during the first home visit (during investigation), but are rarely involved in planning first home visits or other aspects of the investigation.
- ACSASS are sometimes involved in identifying potential kinship carers.
- ACSASS are rarely involved other key decision points – for example, placement decisions, AFLDM meetings and court decisions.
- ACSASS are almost never involved in placement changes or case closure.

CP policy and practice guidance identifies many points where ACSASS should be involved, but does not provide direction on which are the most important. ACSASS staff and management identified that ACSASS gives the highest priority to being involved at intake and attending the first home visit (in the event that competing priorities with other children prevent involvement with every child at every point).

### Intake

VACCA's ACSASS participated in 5,187 intakes in 2014–15. MDAS's ACSASS participated in 239 notifications in the six months from 1 July to 31 December 2015. The involvement of ACSASS at intake alone satisfies the Department's annualised targets. This is another demonstration that the current performance target is inadequate.

<sup>92</sup> When afforded an opportunity to respond to a draft report of this Inquiry, VACCA noted that the low rates of consultation with ACSASS at intake indicated in the extract are not supported by ACSASS data and are incorrect. ACSASS is aware that CP does not always accurately record contact with, or advice from, ACSASS.

### First home visit

File reviews showed that ACSASS attended the first home visit for only 31 per cent of children (20 children). Of the 45 first home visits that ACSASS did not attend, there was no evidence that CP notified ACSASS about the first home visit in 62 per cent of cases (28 children).

### Subsequent home visits

File reviews showed evidence that ACSASS attended a subsequent home visit in only 18 per cent of cases (12 children). However, in 41 per cent of cases (27 children) there was insufficient evidence on file to determine whether ACSASS attended, and in 12 per cent of cases (eight children) there were no subsequent home visits.

For the purposes of this Inquiry, two other points were considered particularly important for ACSASS involvement – where the child's placement changed (that is where the child was moved to a different carer) and at court.

### Placement change

ACSASS was contacted by CP prior to placement changes in only 23 per cent of cases (15 children) during the file review period. The data did not show how many times ACSASS responded when contacted regarding placement changes.

It should also be noted that 49 per cent (32 children) had two or less placement changes during this period. This indicates that ACSASS did not have extensive involvement in placement change decisions for these children – which could be the case for children who had multiple placement changes during period (eight per cent, or five children, had eight or more placement changes during this two-year period).

This is particularly concerning considering the impact on a child of a change in carer, and the prospect that ACSASS could assist CP to identify suitable Aboriginal carers at this point. It is considered that a placement change should be a 'significant decision point' – yet CP contacted ACSASS for less than a quarter of Aboriginal children who had a placement change.

When afforded an opportunity to respond to a draft report of this Inquiry, the Department noted that the Child Protection manual policy 'Additional requirements for Aboriginal children' (December 2015) lists a placement change as a significant decision and states that ACSASS should be consulted, even if this has not previously occurred.



## Courts

Court reports examined as part of the file reviews show that the court considered information provided by ACSASS in only 14 per cent of cases (eight children); and the court sought ACSASS's opinion in only 14 per cent of cases (eight children).<sup>93</sup> Six per cent of the children (four children) were not involved in a court case during the file review period.

The low rate at which ACSASS's opinion is sought and considered at court is also concerning. Given the important role of the court in decision-making, and independent oversight of CP decisions, court decisions should also be defined as significant decision points. The Child Protection manual policy 'Additional requirements for Aboriginal children' states that a court application is a significant decision and that staff should arrange for ACSASS to attend court hearings.

Consultation with ACSASS and CP staff both confirmed that ACSASS has little involvement in placement changes and court appearances.

*ACSASS are rarely told by the Department of courts that there is a court appearance, so we are rarely at court.*

**ACSASS staff**

*Sometimes ACSASS are present at court and have an active role – even taking the stand. Many other times, they will not even attend.*

**CP staff**

*Many courts are unaware that ACSASS exists or what ACSASS's role is. So they don't insist on ACSASS's views being heard.*

**ACSASS manager**

## Key finding 16

Aboriginal children are not receiving the benefit of ACSASS involvement at every significant decision point. ACSASS involvement is lower than expected at each CP stage and at each significant decision point.

For example, ACSASS give the highest priority to attendance at first home visits, yet ACSASS attended the first home visit for only 31 per cent of children whose files were reviewed. In 62 per cent of cases where ACSASS did not attend, there was no evidence that CP advised ACSASS of the first home visit.

The above analysis only indicates the level to which ACSASS are involved.

## Regard for ACSASS advice

The discussion above provides an insight into the level of ACSASS involvement. ACSASS's key role is providing specialist advice to CP, and the legislation requires that CP must have regard to that advice. This assessment must consider the level to which regard is given to ACSASS's advice.

There is no statewide data held by the Department that indicates whether, or how CP regards the advice of ACSASS in decision-making affecting Aboriginal children.

The file reviews revealed little evidence is held on file about how or whether CP is giving regard to ACSASS's opinion. Only 29 per cent of cases (19 children) had evidence of ACSASS views being recorded in their case plans or in case notes.

In the consultations ACSASS and CP staff had differing views about where the fault lies, but they lead to the same end result – Aboriginal children are not receiving the benefit of ACSASS's opinion. These differences are contributing to a tense working relationship between ACSASS and CP. The lack of evidence on system-wide performance or issues allows each side to maintain its own position. This is likely to contribute to the lack of significant action to address to this issue.

The first home visit was often an exception to the general rule according to ACSASS workers, who felt that CP staff valued both ACSASS's ability to safely and effectively engage with the family, and their input into the substantiation decision. CP staff agreed, and advised that families were often more receptive to engaging in a constructive manner at first home visits when ACSASS were present, which resulted in better outcomes for the child.

<sup>93</sup> The court reports were contained in electronic case files held by CP. The Inquiry did not review court documents or consult with magistrates or other court staff.

## Assessing practice compliance

### ACSASS staff views

In consultations ACSASS staff expressed frustration that they do not know if CP acts on the advice provided by ACSASS. There was a very strong sentiment from ACSASS staff that they believe many CP staff do not value ACSASS's opinion and do not act on their advice. A selection of quotes reflecting this frustration is presented below.

*A lot of the time the Department will just tell us (ACSASS) what is happening, rather than ask our opinion.*

*At best, we get a chance at end to add our advice – we do not get to actively participate in decision-making.*

*It's not a consult with the (ACSASS) worker; it's an update for the worker.*

*There is a big difference between 'contacted' and 'consulted'. They [CP] tick the box (in their system) for contacted, but they don't value our role or listen to us. For example, we are told of a first home visit that is a two-hour drive away, 30 minutes before it starts – and they tick the box as contacted ACSASS.*

*What they [CP] say is consultation, is actually dictation and updating!*

*We (ACSASS) are the voice of the child. But, just like the voice of the child, we don't get heard.*

*It's lip service if we (ACSASS) provide advice but don't know what action they [CP] took as a result of that.*

*We don't know what they [CP] write on their files. Do they take notice of our advice?*

*We don't know what action they [CP] take. We advise, but they might do the opposite.*

*They [CP] contact us when they know we agree with their decision. They don't contact us when they know we will disagree. Particularly at court – we never get told of a court case when we have a difference of opinion with what they [CP] are recommending to the court.*

### CP staff views

CP staff echoed the view of ACSASS staff that regard is often not given to ACSASS advice. However, they attributed this to different reasons – primarily that ACSASS are not available to provide advice and, to a lesser extent, that ACSASS advice is not meaningful when provided.

*Often there is no response from ACSASS, or the response is so delayed that the matter is no longer relevant.*

**CP staff**

*It is often difficult to get in contact with ACSASS to have discussions and gain endorsement of significant decisions.*

**CP respondent to online survey**

*Too often I feel [ACSASS] just agree and do not challenge or question CP decision-making.*

**CP respondent to online survey**

*ACSASS are so short-staffed that consultations are often not meaningful for the child – as the worker has no knowledge of the child or the family situation, they cannot offer suggestions or alternatives for the child.*

**CP respondent to online survey**

## Key finding 17

There is no system-wide data that shows whether CP is giving regard to the advice of ACSASS.

File reviews showed that 29 per cent (19 children) had evidence of ACSASS views being recorded in their case plans or in case notes.

ACSASS staff expressed doubt that CP give appropriate regard to their advice. They also pointed to a lack of information from CP about the outcomes of ACSASS advice. CP staff feel they often cannot give regard to ACSASS advice because ACSASS do not respond or do not provide meaningful advice.

While there is a lack of strong evidence about the level to which CP is giving regard to the advice of ACSASS – and there are differences of opinion as to why this is not systematically occurring – the result is that few Aboriginal children are receiving the benefit of ACSASS's contribution to significant decisions that affect them.



## Recommendation 14

Develop protocols and procedures that require:

- a) CP staff to record how they have given regard to the advice of ACSASS in making significant decisions
- b) CP staff to provide greater feedback to ACSASS about how their advice contributed to decision-making and what decision or action was ultimately taken.

### Strengths of ACSASS

The analysis above has necessarily focussed on the limitations of the system in systemically complying with the mandatory ACPP requirement to give regard to the advice of ACSASS at every significant decision point for every Aboriginal child.

It is important to acknowledge the strength of ACSASS and that in many instances the service is involved at significant points and is making a meaningful contribution to decision-making that is in the best interests of Aboriginal children. The fact that the Department acknowledges the need for Aboriginal input at every significant decision point is a strength in itself. The fact that the Department provides over \$6 million per annum<sup>94</sup> to ACCOs who employ about 30 staff to provide this advice and attend court hearings, is a further strength and testament to the commitment of both the Department and ACCOs to act in best interests of Aboriginal children. Stakeholders consulted during this Inquiry were not aware of any other Australian jurisdiction having such a comparatively well-resourced program that intends such comprehensive Aboriginal involvement in key decision points.

The consultations revealed numerous examples where ACSASS has worked well.

*Ballarat Lakidjeka (ACSASS) was the most effective visiting service the Wimmera region has had.*

**CP staff**

*Some ACSASS workers are very responsive. They do an impressive job considering their limited resources.*

**CP staff**

*Some ACSASS workers do a great job of being proactive and attending the Department office regularly. This really helps with relationship development (between CP and ACSASS staff).*

**CP staff**

*Where the worker is located nearby (geographic proximity to CP office), the response and attendance is much better.*

**CP staff**

*ACSASS works best where ACSASS have an existing relationship with the family.*

**CP staff**

*In some cases, ACSASS take a particular interest and are incredibly responsive.*

**CP staff**

*Where there is a good CP worker, there is no limit to what success is.*

**ACSASS staff**

This Inquiry acknowledges these significant strengths and is in no doubt that ACSASS has achieved many great successes for Aboriginal children. There are clearly opportunities to improve the service so that every Aboriginal child has the benefit of meaningful ACSASS involvement at significant decision points. VACCA reiterated that if consultation occurred with ACSASS at all key decision-making points it would not mean that compliance with ACPP would occur because the ACPP requires much more than consultations with ACSASS.

## Key finding 18

**The intent of ACSASS is a significant strength and in many instances ACSASS is making a meaningful contribution to decision-making that is in the best interests of Aboriginal children in OOH. However, there is a need to improve the systemic involvement of ACSASS at every significant decision point for every Aboriginal child.**

94 Prior to the 2016–17 Victorian state budget the amount was about \$3 million. An additional \$3,608 million in funding was allocated in the 2016–17 budget over two years to increase ACSASS's attendance at court hearings.

## Assessing practice compliance

### 9.2.3 Systemic barriers and recommendations

*It is great to say 'we have a specialist Aboriginal advice service at every significant decision point'. But if there is no accountability, varied use, no good key performance indicators, no quality measure, little monitoring and confusion over responsibility – we don't have that. What we have is lip service.*  
**CP practitioner**

The information presented above indicates that ACSASS is not involved at every significant decision point for every Aboriginal child, and that ACSASS involvement declines as a child progresses through CP stages. This section explores the issues and barriers that contribute to this weakness.

There were differing reasons provided for the limited involvement of ACSASS at significant decision points. Some stakeholders saw the low involvement as resulting from a failure of CP or AFLDM to contact ACSASS. Other stakeholders indicated it reflected a failure of ACSASS to respond.

Figure 13 depicts the result of the 65 file reviews and shows that there are failures at both points that are contributing to lower than expected levels of ACSASS involvement. ACSASS had some involvement at some point in each of the first three CP stages – but it is expected that ACSASS is involved with every Aboriginal child at every significant decision point at every stage. The discussion below considers the systemic issues relating to CP's failure to contact ACSASS and ACSASS's failure to respond.

Figure 13: ACSASS contact and response rates at the first three CP stages



Source: Departmental CP case files reviewed as part of the Inquiry.



In some cases the reason for ACSASS not being contacted was that the Aboriginality of the child was not yet established. This is considered a legitimate reason at intake where CP has not yet had an opportunity to check identity with the family. At later CP stages this is considered a failure of the system that is contributing to an Aboriginal child not getting the benefit of ACSASS involvement at significant decision points.

Figure 13 does not consider the timeliness of the CP contact or the ACSASS response, as there is no data available regarding timeliness. The lack of timely contact and response can have a negative impact on Aboriginal children. In some instances CP staff are faced with a choice of waiting for a response from ACSASS or making a decision without ACSASS involvement. CP staff reported that they feel open to criticism regardless of which of these two options they select. More importantly, a delay in decision-making could expose the child to unnecessary harm. This highlights the importance of timely contact by CP and timely response by ACSASS.

A CP respondent to the online survey commented:

*Aboriginal children suffer a double disadvantage where culturally sensitive services are not delivered in a timely manner – prolonging exposure of children to uncertainty (inhibiting) legal advocacy and (contributing to) placement drift.*  
**CP staff**

## Child protection contacting ACSASS

This section explores the five most salient issues that are influencing CP in contacting ACSASS at every significant decision point.

## Key finding 19

The most significant barriers to CP staff contacting ACSASS at every significant decision point for every Aboriginal child are:

- lack of clarity on when to contact ACSASS
- lack of accountability for not contacting ACSASS
- increasing numbers of Aboriginal children in OOHC
- previous experiences with ACSASS involvement
- case contracting to CSOs.

### Lack of clarity on when to contact ACSASS

The greatest contributing factor to CP not contacting ACSASS was a lack of clarity by CP staff on when ACSASS should be contacted.

Sixteen per cent of CP respondents to the online survey chose 'It is not clear at which points staff should contact ACSASS's as one of the three major barriers to involving ACSASS at every significant decision point. Another four per cent chose 'It is not clear how to contact ACSASS's.

The review of CP policy and practice guidance conducted for this Inquiry found no definitive list of all the points that ACSASS should be contacted or definitive definition of what constitutes a 'significant decision point' (see Section 7: Policy and program compliance).

This was also a strong theme through the consultations conducted with CP staff. CP staff felt the lack of clear direction meant that there was a high level of discretion left with individual staff and management to choose when to contact ACSASS. They advised this worked very well in some areas, but lead to inconsistent or poor results in other areas. They felt this issue was of particular significance to new CP staff, and noted there is a regular high turnover of CP staff.

*They say 'every significant decision point' – I don't believe there is an agreed definition of this.*

**CP respondent to online survey**



## Assessing practice compliance

ACSASS workers also indicated that greater clarity was needed about when CP is required to contact them. ACSASS workers expressed frustration that they weren't being contacted at significant decision points, when they were contacted about matters of little significance.

*Sometimes ACSASS are contacted about minor things like, 'Is it ok if the child goes to the doctor?' But [we] are left out of the significant decisions like removal or re-placement of a child.*

**ACSASS staff**

It is only after an event that ACSASS workers learn they should have been consulted earlier. This becomes evident when the family or other stakeholders bring the child's case to ACSASS's attention. CP do not provide ACSASS with any data on the number of Aboriginal children in contact with CP, so ACSASS cannot cross-check that they have been notified about every Aboriginal child.

*We have to constantly remind [CP staff] to contact us and to comply with the ACP.*

**ACSASS staff**

### Recommendation 15

Ensure greater management scrutiny and accountability of how and when CP staff consult with ACSASS as outlined in the Child Protection manual.

#### Lack of accountability when ACSASS is not contacted

The system does not place sufficient accountability on CP staff who do not follow the requirement to contact ACSASS. It was noted in consultations with CP staff that the system does not have inbuilt mechanisms that drive accountability (such as mandatory fields in CRIS, inclusion in a supervision template for managers, or any reporting on compliance with this measure). The onus is on CP staff and managers to ensure this is occurring for individual children, without the benefit of a mandatory system reminder or understanding of compliance at a wider level.

In fact, there were indications that the system not placing sufficient accountability or priority on contacting ACSASS was actually a driver of the poor practice in this area. Two quotes from stakeholder consultations reinforce this perspective.

*Good DHHS workers do great work. But they don't get recognised for it by the Department or their manager. So they learn not to do it, and focus on other priorities.*

**ACSASS staff**

*Good workers can learn not to comply with ACP, as it is not valued or measured by their managers or the system.*

**CP staff**

There were indications through stakeholder consultations and input that this was a particularly significant issue. Comments revealed a view that some CP staff were prioritising an individual belief that ACSASS should not be involved, overriding the mandatory system-wide direction to involve ACSASS. This was driven by a personal belief that the system should not treat Aboriginal children differently than other children. This point was primarily made by stakeholders other than CP staff. No consulted CP staff member advised that this was an issue for them personally; however, some advised they felt this was a barrier to some of their colleagues contacting ACSASS.

In the online survey 12 per cent of CP respondents either 'strongly disagreed', 'disagreed' or 'neither agreed nor disagreed' with the statement 'ACSASS should be consulted at every significant decision that involves an Aboriginal child'.

The following quotes from stakeholders show that they feel this may be an issue for some CP staff.

*The biggest issue is DHHS staff and managers. 75 per cent of them do not believe they should do anything differently for Aboriginal families, so they simply do not contact us.*

**ACSASS staff**

*A big barrier is that DHHS don't understand or don't believe that they should act differently for Aboriginal children – so they don't involve ACSASS or don't prioritise involving ACSASS. And the real issue is that the system does not respond to this.*

**ACSASS manager**

*Where ACSASS do get told (about an upcoming court appearance) it is usually where they support the Department decision. ACSASS are rarely informed of a court appearance when they oppose the Department decision.*

**ACSASS staff**

## Recommendation 16

Place a higher level of accountability on complying with the mandatory requirement to involve ACSASS.

This could be achieved through mechanisms such as mandatory fields in CRIS to confirm that ACSASS have been contacted at each relevant point, keeping and reporting data on cases where ACSASS was not contacted (including in management reporting from CP divisions to Departmental leadership) and mandatory discussions in supervision meetings about ACSASS involvement.

### Increasing numbers of Aboriginal children in OOHC

There has been a dramatic increase in the number of Aboriginal children in OOHC in recent years (see Section 4: Inquiry context).

It is speculated that this increase, coupled with the significant increase in non-Aboriginal children in OOHC over this same time, may have influenced the ability of the CP system to make contact with ACSASS at every significant decision point for every Aboriginal child. However, this increased case load was not specifically raised in any consultations or directly attributed as a reason in any responses to the online survey.

### Previous experiences with ACSASS

A regular theme arising from CP staff was that previous experiences with ACSASS were a primary reason for no longer prioritising contact with ACSASS. CP staff were unanimous in their frustration that ACSASS did not respond to every contact and that there were frequently long delays in ACSASS responding. A number of CP staff also indicated that previous experiences where ACSASS had not provided meaningful contributions, resulted in some staff no longer contacting ACSASS<sup>95</sup>

CP staff advised that, while the workforce largely accepted that the issues with ACSASS were driven by under-resourcing, it has led to a growing sentiment that you can 'tick the box' to show you tried to contact ACSASS rather than seeing ACSASS as a valuable step in ensuring the best interests of the child.

*ACSASS have struggled to meet demand, so don't provide a timely and meaningful response. So staff eventually learn to stop contacting and 'go through the motions' and 'tick the box'.*

**CP staff**

*We know ACSASS don't respond, so we have stopped contacting them. We now make all contacts by email, so we have evidence we tried to contact them.*

**CP staff**

The factors that have contributed to ACSASS's ability to provide timely and meaningful response are discussed below.

## Key finding 20

Previous experiences between CP and ACSASS are contributing to low levels of involvement of ACSASS in decision-making.

## Recommendation 17

Consider and address past concerns between CP and ACSASS so that ACSASS can operate more effectively in the future.

### Case contracting to CSOs

The involvement of ACSASS is least when the child's case management has been case contracted to a CSO. This fact was agreed in consultations by ACSASS, CSO and CP staff. These stakeholders advised that there was virtually no contact between ACSASS and CSOs.

The decision to contract cases is not regarded as a significant decision by CP and there is no real consideration as to whether the agency is one that is culturally safe. When afforded an opportunity to respond to a draft report of the Inquiry, VACCA was of the view that the decision to contract to a specific agency is a key decision and ACSASS should be consulted.

<sup>95</sup> When afforded an opportunity to respond to a draft report of this Inquiry, VACCA commented on the relationship between ACSASS and the Department. These comments are included in Section 10: Opportunity to respond.

## Assessing practice compliance

This is attributed to the lack of protocols or direction in place that states how, when or whether CSOs and ACSASS should work together. In the absence of a direction from the Department, there was an understanding from CSOs and ACSASS that CP retained responsibility for involving ACSASS at significant decision points once CP had chosen to case contract to a CSO. The fact that CP virtually never contact ACSASS once case management has been contracted to a CSO, suggests that CP may have a different opinion on this matter. CP policy and practice guidance does not provide direction about whether CP or CSOs should be responsible for involving ACSASS once the child's case management has been case contracted.

An example of how this arrangement currently works in practice is when a CSO identifies a need for a child's placement to be changed (a significant decision point). The CSO contacts CP and discusses the placement change, and a decision is made. ACSASS is not contacted by either CP or CSO, and a significant decision is made without ACSASS involvement.

The protocol between CP and ACSASS requires seeking advice and consultation of ACSASS regarding placement changes. However, the Commission was informed that neither CP nor the contracted agencies routinely seek ACSASS input.

*ACSASS is least involved when CSOs are involved, as there is no protocol between ACSASS and CSOs.*

**ACSASS staff**

*ACSASS has virtually no involvement with children who are case managed by CSOs. This is because there is no protocol between CSOs and ACSASS – and CP cease involving ACSASS once the case is contracted to a CSO.*

**ACSASS staff**

*We have more contact with Koori Engagement Support Officers, who are engaged through school support meetings, than ACSASS.*

**CSO manager**

## Key finding 21

**Involvement of ACSASS at every significant decision point is weakest when CP has contracted case management responsibility to a CSO.**

Consultations revealed that CP does not advise ACSASS when a child's placement is case contracted to a CSO. ACSASS and CSOs both considered this to be a significant decision point, and agreed that CP should consult ACSASS about the decision to case contract and advise ACSASS whenever case contracting occurs.

There was a desire from both CSOs and ACSASS to work more closely together, but an acknowledgment that the resource-constrained environment in which they operate means this is unlikely to occur without a specific protocol in place.

## Recommendation 18

The decision to contract case management responsibilities for an Aboriginal child to a CSO is considered a 'significant decision point'. CP must consider the advice of ACSASS in making a decision about whether to contract case management responsibilities to a CSO.

## Recommendation 19

Ensure that:

- a) CSO staff who are responsible for a child's case management fully understand how to apply the Child Protection manual practice requirement to consult ACSASS at every significant decision point
- b) staff are resourced appropriately to do so
- c) the roles and responsibilities of each party are discussed and recorded, for example, through a protocol between ACSASS and CSOs, or in funding agreements between the Department and CSOs.



## ACSASS responding to child protection

This section explores the three most significant issues that influence ACSASS's capacity to respond to CP in a timely and meaningful manner.

### Key finding 22

The following are the most significant barriers to ACSASS responding to CP in a timely and meaningful manner:

- Resourcing of ACSASS does not align with demand – particularly given the number and breadth of responsibilities, geographic distance in regional areas, the number of Aboriginal children and CP staff in metropolitan areas, and the recent significant increase in the number of Aboriginal children in OOHC.
- Recruitment and retention of ACSASS staff is challenging.
- CP often provides late notice that ACSASS involvement is required.

Following the Inquiry the 2016–17 Victorian state budget allocated an additional \$3608 million over a two-year period to expand ACSASS so that workers could attend court hearings. The impact of this allocation is yet to be understood, but it appears to have limited capacity to impact ACSASS input into other key decisions, for example, consultation when the report is made, advice regarding placement, agency contract allocation and placement changes. Reports to CP and intake into OOHC both continue to increase for Aboriginal children.

### Resourcing does not align with demand

The most significant barrier to ACSASS responding in a timely and efficient manner is insufficient resources to meet the demand for ACSASS involvement. This was a consistent theme emerging from consultations across the Inquiry, identified both by ACSASS workers and CP staff. Six of the seven public submissions received noted under-resourcing of ACSASS as an impediment to the system's ability to comply with the intent of the ACPD.

*ACSASS is also an essential service and like Child Protection and Victoria Police it needs to be funded as an essential service – not as a system enhancement.*

**Berry Street submission to the Inquiry, p. 5**

A range of factors were identified that contributed to ACSASS not being appropriately resourced to meet demand:

#### *Number and variety of responsibilities*

ACSASS has numerous and varied responsibilities that span all aspects of CP intervention. The review of CP policy and practice guidance revealed that there is no consolidated overview of all the points at which ACSASS should be involved (see Section 7: Policy and program compliance). It is clear that ACSASS has a large number and range of responsibilities and activities they are expected to fulfil. It is also clear that there is a diverse range of activities that ACSASS must undertake. For example, CP is structured to have teams that specialise in intake, investigation and case management, whereas one ACSASS worker has roles across all these CP stages. This requires ACSASS workers to develop an intimate knowledge of each child and family and of relevant CP procedures across the spectrum of CP intervention, in order to be able to provide meaningful and timely advice at all these points.

Both ACSASS and CP staff felt that the current resourcing of ACSASS was inadequate to meet the number and variety of responsibilities. Four quotes from stakeholders provide further evidence that the current ACSASS resourcing is inadequate to address demand.

*It is not physically possible for the number of ACSASS workers to cover all the duties they are supposed to.*

**CP staff**

*I understand ACSASS staff not responding, or not responding quickly enough is due to workload pressures and not poor work ethic/performance by ACSASS staff.*

**CP respondent to online survey**



## Assessing practice compliance

*Many courts do want to see evidence in CP case notes that ACSASS was contacted. But courts have come to accept that ACSASS responding is a resourcing issue, and that they often cannot respond.*

**CP staff**

*There are simply not enough ACSASS workers to get involved with every child at every significant decision point.*

**ACSASS staff**

### Long distances in regional areas

Many stakeholders spoke about the challenge of 30 staff having to service all of Victoria. The long distances covered by some ACSASS workers in regional areas was a challenge on a number of levels: the travel time required to attend appointments in person; the difficulty in getting to know and building rapport with children and families who were several hours drive from workers' home communities; and challenges in building relationships with CP staff in multiple office locations.

*Victoria's Western District has one ACSASS worker covering an area the size of Ireland.*

**CP staff**

*There are too few ACSASS practitioners. It makes it difficult for them to be available for all decision points. In our area our ACSASS practitioner is covering five offices.*

**CP respondent to online survey**

### Number of children and CP staff in metropolitan areas

Metropolitan staff do not have to travel the distances required by workers in regional areas. However, metropolitan staff do experience unique issues, primarily associated with the fact that there are many more Aboriginal children in OOHC and many more CP workers located in metropolitan Melbourne. Many stakeholders reported that ACSASS staffing in metropolitan areas is not sufficient to have involvement with every Aboriginal child (and certainly not at every significant decision point) or to establish effective working relationships with a large number of CP staff.

*It is incredibly difficult to actually arrange visits with Lakidjeka staff as there are only two workers to cover the metro area. More staff are needed to meet the demands of our growing population.*

**CP respondent to online survey**

*Maintaining effective working relationships in metro area is nearly impossible, given the huge number of CP workers and regular turnover of staff.*

**ACSASS staff**

### Increasing number of Aboriginal children in OOHC

The dramatic increase in the number of Aboriginal children (see Section 4: Inquiry context) has significantly increased the workload of ACSASS. However, funding to ACSASS is not linked to demand or performance, so there has been no commensurate increase of funding to ACSASS. There has also been no agreement between the Department and ACSASS providers about where ACSASS should focus its priorities when resources do not allow for all responsibilities to be undertaken.

VACCA notes that the number of intakes by ACSASS increased significantly from 1,184 in 2003–04 to 2,764 in 2010–11 and 5,187 in 2014–15.

*Funding for ACSASS was based on 1,000 contacts per annum, now we have around 5,000 contacts a year.*

**ACCO**

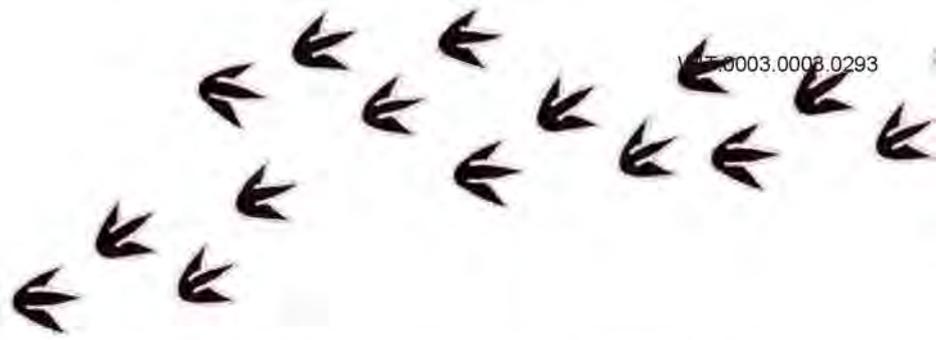
## Key finding 23

**At the time of the Inquiry there had not been an increase in funding to ACSASS commensurate with the additional workload created by the significant increase in the number of Aboriginal children being reported to CP and entering OOHC in recent years.**

ACSASS has acknowledged for some time that resourcing is insufficient to meet the demand for its service. As a result ACSASS staff prioritise their activities, giving highest priority to responding at intake and attending first home visits. This has not been well communicated or understood across the CP system. The Department has not issued any direction about where to prioritise activities when demand outstrips resourcing. CP staff are still directed by CP policy and practice guidance to have regard to the advice of ACSASS at every significant decision point.

In the 2016–17 Victorian state budget an additional \$3608 million funding was allocated to ACSASS over a two-year period to enable ACSASS to attend court and better meet increased demand.

Under-resourcing has impacted upon the relationship between CP and ACSASS staff. Some CP staff are frustrated that they cannot meet the mandatory requirements detailed in CP policy and practice guidance, as ACSASS do not respond in every circumstance. ACSASS staff are frustrated that the demand on their services is greater than resourcing allows the service to meet.



*There is currently a loss of confidence and trust between ACSASS and CP that is exacerbated by guidance that makes demands that VACCA are unable to deliver in sufficient quantity and quality and differing standards about what constitutes timeliness in responses.*

**CP respondent to online survey**

## Recommendation 20

Undertake an economic analysis to determine whether the funding provided to ACSASS is sufficient to provide for the required activities to be undertaken. If current funding is not sufficient there should be:

- a) an increase in funding to ensure the funding provided to ACSASS is commensurate with its responsibilities
- or
- b) an agreed system-wide approach to prioritising activities of ACSASS.<sup>96</sup>

### Recruitment and retention

An issue that is linked to but separate from resourcing is the challenge of recruiting and retaining appropriately skilled and experienced ACSASS workers, as it is for all of the CP sector. Consultations revealed that some funded ACSASS positions persistently remain vacant. The result is that existing staff try to cover the demand from the vacant positions, which then contributes to the resourcing versus demand issues experienced more widely across the state.

ACSASS strives to always have all positions filled, but has experienced challenges in recruiting and retaining appropriate people in these roles. The issue of ongoing vacancies in positions has been a challenge for several years, particularly for the VACCA ACSASS program, which employs 27 of the 30 ACSASS staff. VACCA reported that all its ACSASS positions have been filled only once in the last 13 years.

This Inquiry has not looked in detail at the reasons for the difficulties in recruitment and retention, but consultations suggested that there were a number of contributing factors:

- unwillingness to work in the CP sector – which was attributed largely to the enduring negative experiences from past policies of removal of Aboriginal children
- the emotionally challenging nature of role – particularly being involved in the removal of children from families, and being exposed to instances of neglect and abuse of children
- the demand placed on workers – the issues described above about the demand on the system is contributing to individual workers resigning from roles. This includes matters such as the vast number of responsibilities, travelling large distances and not being able to respond to all requests
- understanding CP procedures and processes – the CP system is large and complex. Few ACSASS workers have specific qualifications in the CP field, but bring extensive knowledge and experience from across the Aboriginal sector
- remuneration – not seen as equivalent to the responsibilities and demands of the job
- the role was not valued by CP – staff often felt they received little feedback about their role contributing to informed decision-making by CP.

Many of these issues are likely to be the same issues contributing to the high turnover of CP staff. There are comparatively few Aboriginal people currently employed by CP and CSOs. There may be opportunities to increase recruitment and retention of Aboriginal staff across the whole service system. CP advised in late 2015 that they employ 16 Aboriginal people in CP roles, of a total CP workforce of about 1,300 staff.

In relation to the issues regarding 'understanding CP procedures and processes', ACSASS provides an induction program (including training and shadowing of existing staff) to assist new staff to understand CP procedures. However, some ACSASS workers have expressed that a more comprehensive understanding of the CP system would better support them to fulfil their roles.

<sup>96</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department noted that the 2016–17 Victorian budget allocated an additional \$3.608 million over two years to expand ACSASS. The full response is in Section 10: Opportunity to respond. The Commission is not aware of any economic analysis that confirms whether funding will meet program requirements and the anticipated growth of CP reports and number of children entering care.

## Assessing practice compliance

ACSASS staff can also attend the Beginning Practice induction training for new CP staff. ACSASS workers who have participated in the Beginning Practice training have questioned its suitability for ACSASS workers:

- It is targeted specifically at CP staff, who have different responsibilities to ACSASS workers (this was the most significant issues raised by ACSASS staff).
- It is held in multi-day blocks in Melbourne, whereas many ACSASS positions are regionally based.
- Some training methods do not align with good practice Aboriginal adult learning principles.
- Not all the facilitators have a strong understanding of Aboriginal issues, and it is often left up to the ACSASS worker to address any Aboriginal-specific questions, or to justify the existence of Aboriginal-specific programs in CP.

### Recommendation 21

Develop a plan to improve recruitment and retention in ACSASS roles. This plan should identify:

- a) barriers to recruitment and retention
- b) strategies to increase the size of the available talent pool to fill vacant ACSASS positions
- c) opportunities to link with other parts of the system to increase the number of Aboriginal staff employed by CP and CSOs
- d) training that is specifically targeted at equipping ACSASS workers with knowledge of CP processes and procedures that are relevant to ACSASS responsibilities.

### Late notice from the Department about meetings

One of the main reasons ACSASS is not involved in every significant decision point is that CP does contact ACSASS at every significant decision point. This matter is discussed in detail above.

Consultations also revealed that the Department often provides notice to ACSASS that is too late for them to be involved in decision-making. This was a view held strongly held by ACSASS workers as a frequent occurrence, whereas CP staff felt it was less frequent and only occurred in urgent circumstances. The following quotes illustrate the concerns of ACSASS staff about the lack of timely notice.

*Many times we get called by DHHS when they are in the car driving to the first home visit.*

**ACSASS staff**

*I am asked to respond immediately over the phone to whether a placement option is suitable. I am not deciding on a child's life during a short phone conversation in my car.*

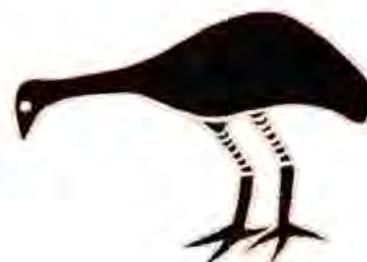
**ACSASS staff**

*Sometimes they (CP staff) tell us (about a first home visits) afterwards, sometimes they tell us when they are at the front door, and sometimes they go in before we can arrive.*

**ACSASS staff**

*Often we get very late notice of home visits. Often because DHHS left it to the 13th or 14th day and it is now urgent to comply with their timing guidelines.*

**ACSASS staff**



## Recommendation 22

CP staff to negotiate with ACSASS in a timely way to provide ACSASS with reasonable opportunity to respond and be meaningfully involved in significant decision-making. Record barriers to involvement to inform future practice and resource decisions<sup>97</sup>.

### Other opportunities for strengthening ACSASS

A number of other opportunities have been identified to strengthen ACSASS that are outside the scope of the current service. These issues don't affect compliance with the mandated responsibilities outlined in CP policy and practice guidance, but could result in further value from ACSASS. Careful consideration of each of these matters will be required, in the context of the resourced strained environment that sees ACSASS already prioritising the matters it can be involved in.

## Key finding 24

The following will strengthen ACSASS:

- Increase the involvement of ACSASS in strategic decision-making.
- Involve ACSASS in identifying responsibilities to be transferred to ACCOs under s 18 of the CYFA 2005.
- Increase information sharing between CP and ACSASS.
- Improve the resolution process when ACSASS and CP disagree.
- Provide clear and accessible guidance for CSOs about when to contact or involve ACSASS.
- Improve linkages between ACSASS and local ACCOs.

<sup>97</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department stated, 'ACSASS needs to be available in a timely way for urgent decisions'. The Inquiry's recommendation was reworded to encourage: negotiation between the Department and ACSASS in relation to the issues that preclude ACSASS from decision-making; and consideration of ways of working together and resourcing into the future.

### More involvement by ACSASS in strategic decision-making

ACSASS involvement is at the operational level, dealing with individual cases. There appears to be a strong opportunity to leverage ACSASS expertise and experience in higher-level strategic decision-making affecting Aboriginal children in OOH, particularly given ACSASS have perspective across multiple CP stages, whereas operational CP staff usually have responsibility for one CP stage.

ACSASS staff report frustration that they encounter the same issues in child after child and that these issues are not being resolved system wide.

## Recommendation 23

Resource ACSASS to be involved in high-level strategic decision-making in relation to Aboriginal children in OOH.

### ACSASS involvement in identifying responsibilities to be transferred to ACCOs under s 18

As is the primary recommendation of this Inquiry (see Recommendation 2) opportunities must be explored to transfer responsibilities for specific decisions to ACCOs through the enactment of s 18 of the CYFA 2005. ACSASS will be able to provide an informed Aboriginal perspective on the decisions that would be of the most benefit to be transferred to ACCOs, given their involvement at every significant decision point across CP intervention.



## Assessing practice compliance

### Recommendation 24

In implementing Recommendation 2 regarding the staged transfer of specific decision-making powers to ACCOs, give specific consideration to the points at which ACSASS currently provide advice to CP.

This information should be used to assist the determination of the specific decision-making powers that are most important and appropriate to be transferred to ACCOs under s 18.

#### Greater information sharing between CP and ACSASS

CP and ACSASS both keep their own records with respect to Aboriginal children they are working with, though they are dealing with the same children about largely the same issues. There is no cross-checking of the information held by CP and ACSASS. For example, ACSASS cannot determine what proportion of Aboriginal children in OOHC they have involvement with, as ACSASS do not receive a list of the names of all Aboriginal children entering OOHC (instead relying on individual contact from CP about each child). The sharing of information relies on individual contact among workers, rather than a shared electronic system where each can enter relevant information that can be accessed by the other. This can result in 'doubling up' of work in recording and then sharing the same information.

*The irony is that ACSASS is not given access to the information they need to complete their roles.*

**ACCO**

### Recommendation 25

Explore opportunities to improve sharing of information between CP and ACSASS, including considering opportunities for a shared electronic data system.

#### Clearer resolution process for when CP and ACSASS disagree

ACSASS staff reported there is no process for resolving an issue when ACSASS strongly disagree with a CP decision. They noted that in these instances, the final decision is always made by CP, by virtue of ACSASS's advisory role to CP's decision-making powers.

ACSASS also noted that where they are not contacted by CP at a significant decision point or where contact is not made in a timely manner, ACSASS has to address this matter directly with the worker who neglected to contact them. This worker is often not receptive to ACSASS's feedback, which can exacerbate an already tense or challenging working relationship. There is a need for ACSASS to be able to report continued under-performance by a CP worker to a higher authority than the worker themselves.

### Recommendation 26

Introduce a process to resolve matters that cannot be appropriately resolved between CP and ACSASS staff.

#### Improved linkages between ACSASS and local ACCOs

Several stakeholders reported that ACSASS involvement is most valuable when ACSASS staff have existing knowledge of the child and family, and that this occurs most regularly when they are based in the local community. It is not possible from current resourcing (which provides 30 full-time equivalent ACSASS staff) to have an ACSASS staff member based in every Victorian Aboriginal community, and it cannot reasonably be expected that ACSASS staff will know every Aboriginal child and family across the state.

As the primary deliverers of Aboriginal services in Victoria, local ACCOs bring an extensive knowledge of local Aboriginal communities and services. There are many examples of ACSASS and local ACCOs working effectively together, and there would undoubtedly be many instances where clients are involved with both ACSASS and local ACCOs.

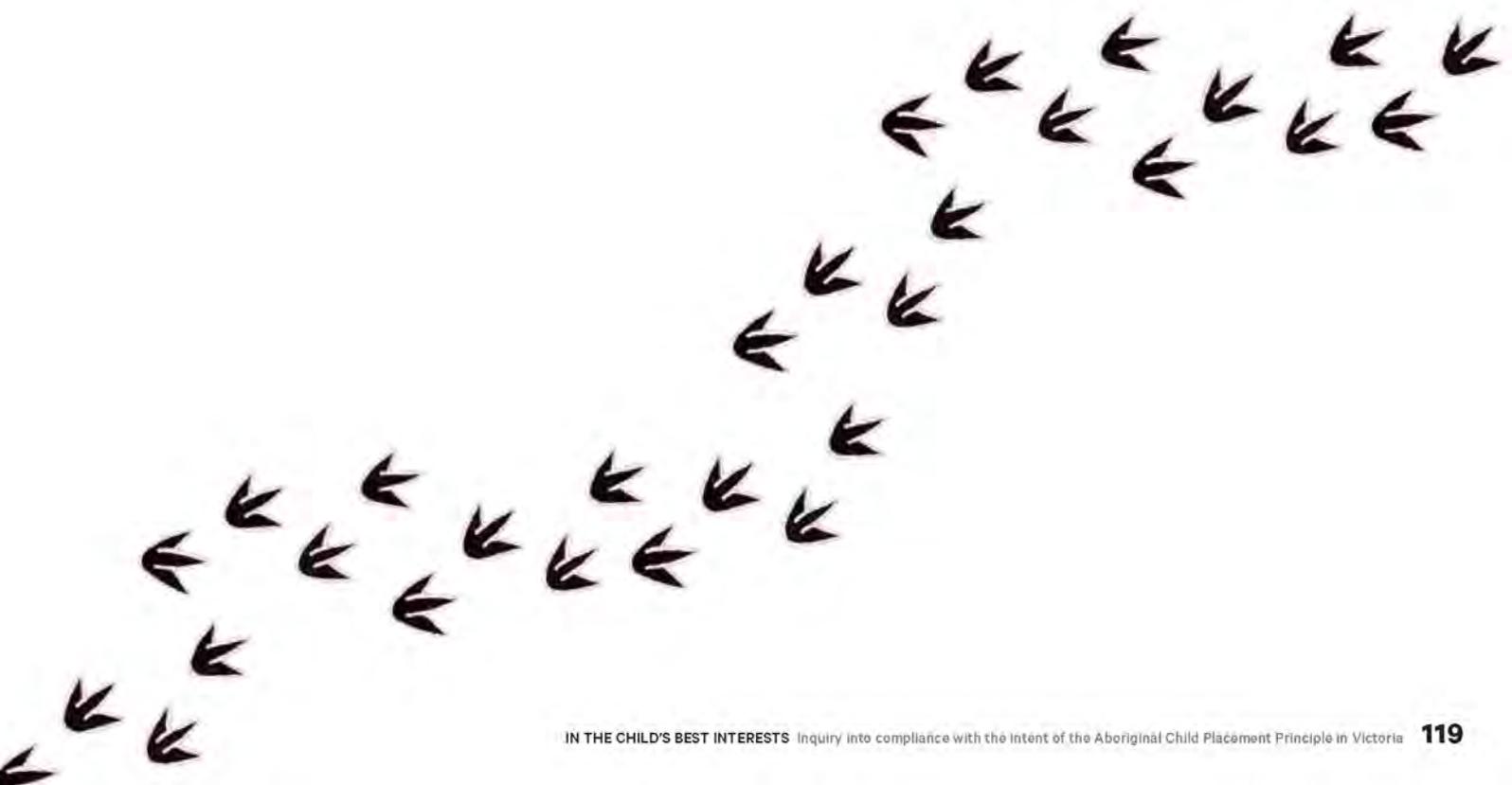
There appears to be an opportunity for ACSASS and local ACCOs to work together more consistently on CP matters. By better leveraging the combined expertise, skills and local knowledge of both entities, it is more likely that outcomes will consistently be achieved that are in the best interests of Aboriginal children in OOHC. One mechanism that could potentially assist a closer working relationship between ACSASS and local ACCOs, is through ACSASS staff being based in local ACCOs. This could occur on either a visiting or permanent basis (noting this applies only to VACCA ACSASS staff, as MDAS ACSASS is delivered by, and located in, the local ACCO).

This arrangement would need to be carefully planned, taking account of the following considerations:

- confidentiality requirements for sharing information between ACSASS and local ACCOs – which would presumably require the signed consent of clients
- resourcing requirements to support a formalised and consistent partnership between ACSASS and local ACCOs – for example, the availability of suitable office space in the local ACCO to co-locate ACSASS staff, and the need for local ACCOs to dedicate staff time to working with ACSASS.

## Recommendation 27

Explore opportunities to better leverage the knowledge and expertise of local ACCOs to inform ACSASS activities and decisions – particularly where ACSASS staff are not based in the local community or do not have existing knowledge of the child or family.



## Assessing practice compliance

### 9.3 Aboriginal family-led decision-making

**Was an AFLDM meeting convened at substantiation and making of a protection order (or did the family decline an AFLDM meeting)?**

#### 9.3.1 Compliance rating

The most significant considerations in making an assessment of the level of practice compliance with this key ACPP domain are listed below:

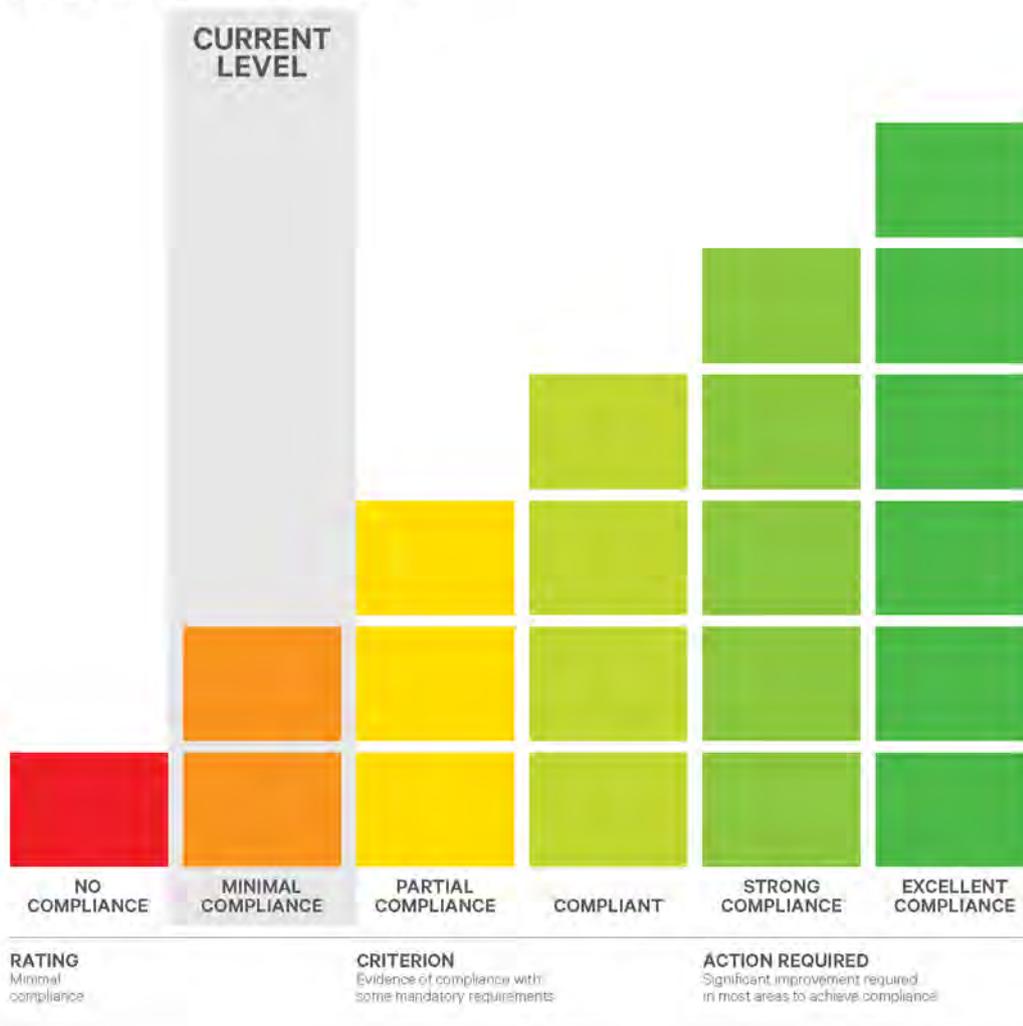
- The intent of the AFLDM program is a key strength – it provides opportunities for family decision-making to produce valuable outcomes that are in the best interests of Aboriginal children.
- There were disproportionately few AFLDM meetings in 2014–15 (250 referrals with 141 proceeding to meeting) compared with the number intended (1,250 AFLDM meetings). The low proportion of cases proceeding to an AFLDM meeting limits essential decision-making opportunities in relation to the safety and care of the high number of Aboriginal children subject to a protection order and where protective concerns have been substantiated.

- Some meetings occurred months, or years after substantiation and initiation of a protection order. There is also evidence that in some cases the meetings do not occur at all. File reviews indicated only one child had an AFLDM meeting within the required 21-day period while 51 children (78.5 per cent) did not have an AFLDM meeting at all.
- CP staff do not follow AFLDM referral and meeting practice requirements including notifying the Departmental convenor within 24 hours, completing the referral form within 48 hours and convening a meeting within 21 days.

According to the available evidence, compliance against the requirement to convene an AFLDM meeting at substantiation and making of a protection order is assessed as **'Minimal compliance'**.



Figure 14: Compliance rating – AFLDM



Source: This assessment was informed by seven data sources detailed in Table 1 in addition to performance data provided by the two ACSASS providers for the purposes of this Inquiry.

Note: There was a high level of consistency in the themes across these seven points of evidence, indicating this assessment is likely to be reflective of the system-wide situation.



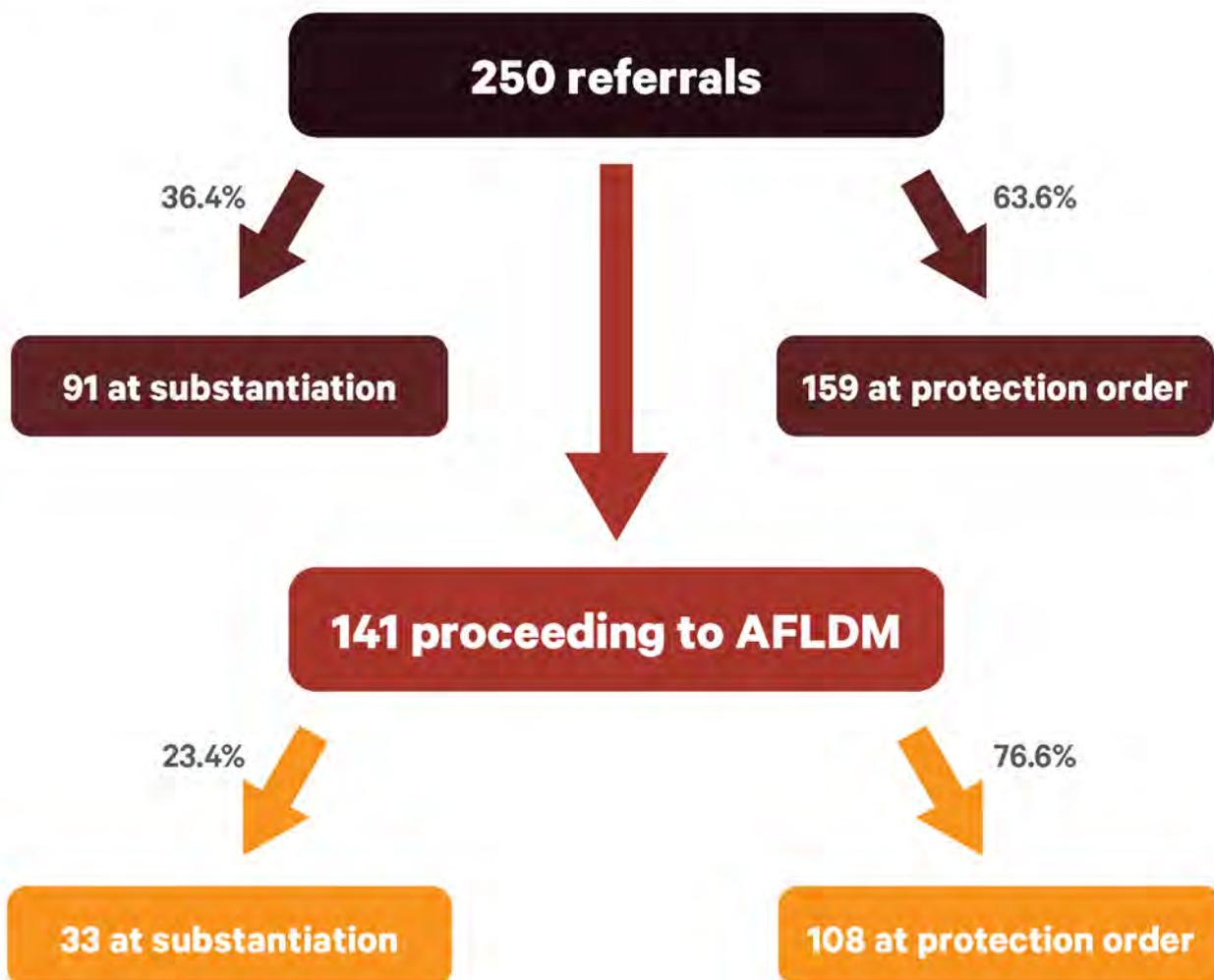
## Assessing practice compliance

### 9.3.2 Detailed compliance assessment

#### AFLDM meetings reported by Departmental convenors

For all Aboriginal children, an AFLDM is supposed to be initiated where protective concerns have been substantiated<sup>98</sup> and when the child is subject to a protection order. In 2014–15, according to statewide data provided by Departmental convenors, 250 referrals (91 at substantiation and 159 at protection order) were made for AFLDM meetings with 141 (56.4 per cent) proceeding to an AFLDM meeting (33 at substantiation and 108 at protection order).

Figure 15: Number of AFLDM referrals and proceedings held statewide, 2014–15



Source: Services statewide data by division, 2014–15. Total referrals and referrals proceeding to AFLDM do not include data from West Division in the third and fourth quarter of 2014–15.

98 In circumstances where protective concerns have been substantiated and the matter is proceeding to court, it is not appropriate to offer an AFLDM meeting due to the legal constraints on planning once a Protection Application has been made.



## AFLDM meetings recorded in CRIS

CRIS is limited in the ability to provide data on the number of AFLDM meetings held for Aboriginal children.<sup>99</sup> The system is unable to report if and when an AFLDM meeting has been initiated, who attended or, if an AFLDM meeting was not held, the reasons why. The consultations revealed that other fields within CRIS held information regarding the AFLDM program. The Department advised the Inquiry to interpret this data with caution, as they believed these fields were not widely used by Departmental convenors. Examination of CRIS data for the cohort<sup>100</sup> revealed the following:

- According to an AFLDM tick box in CRIS, 20 AFLDM meetings were held for 10 Aboriginal children. However, the free text 'meeting description' field for some children included alternative descriptions, for example, 'student support group meeting'.
- According to the free text 'meeting description' field, 92 AFLDM meetings were held for 14 Aboriginal children. However, the descriptions of these meetings suggested they were not entirely in line with the key purpose of an AFLDM, for example, 'AFLDM for sibling access purposes', 'AFLDM for information sharing', 'AFLDM review' and 'AFLDM review of plan'.

## AFLDM meetings reporting not required from funded ACCOs

The Department does not set targets or performance measures for funded ACCOs with respect to the AFLDM program, so there is no reporting on the number of AFLDM meetings that community convenors participate in.

The Department advised that the reason it does not set targets or performance measures for ACCOs regarding AFLDM meetings is the introduction of Flexible Funding Arrangements in 2009 as a component of the Victorian Government's Simplified Funding and Reporting for ACCOs. As a result of these arrangements the Department established one document, ACCO Family and Community Services 31260 (known as Activity 31260). Activity 31260 incorporates four activities that were previously funded as separate activities, including the AFLDM program. Activity 31260 does not set any targets or performance measures for ACCOs that are specific to AFLDM meetings.

## Reporting of AFLDM meetings

Consultations revealed issues in the reporting of AFLDM meetings with inconsistencies and under-reporting. Departmental staff indicated at a forum in December 2015, that the number of AFLDM meetings reported for 2014–15 (141) appeared to be significantly less than is currently being undertaken. This raises concerns about whether staff are not meeting their reporting responsibilities to accurately record the correct number of AFLDM meetings or whether the mechanism to collect the statewide data is flawed.

<sup>99</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department noted that CRIS was significantly enhanced from 1 March 2016, allowing greater flexibility to record AFLDM meetings, and capture all AFLDM meetings occurring across Victoria.

<sup>100</sup> The cohort comprises Aboriginal children with an intake or placement change during the two-year period between 1 January 2013 and 31 December 2014.

## Assessing practice compliance

### Key finding 25

Improvements are required in reporting and data collection to accurately reflect the true number of Aboriginal children being part of an AFLDM meeting.

### Recommendation 28

Review reporting practices and data collection mechanisms to improve reporting and determine the true number of AFLDM meetings.

Consultations also indicated that a lot of pre-meeting preparation work is undertaken. The child's circumstances may change, or families may make decisions during these preparations, and as a result the AFLDM meeting may not take place. The pre-meeting preparation work is unable to be quantified in CRIS so it remains 'unseen', or the change in circumstances as to why the AFLDM meeting did not proceed is not captured.

### Key finding 26

Significant pre-meeting preparation or a change in circumstances of the child that eliminates the perceived need for an AFLDM meeting is not being captured in CRIS or Departmental reports.

### Recommendation 29

Develop a reporting mechanism or amend CRIS so Departmental convenors can capture pre-meeting preparation and any changes in the circumstance of the child that eliminate the requirement for an AFLDM.

### Funding of the AFLDM program

In 2012, the funding provided for the AFLDM program was intended to provide about 1,250 AFLDM meetings per year statewide. While the Department does not set targets<sup>101</sup> for the number of AFLDM meetings to be held, the number of AFLDM meetings in 2014–15 represents just over one-tenth of the number anticipated in the funding model.

### Key finding 27

The number of AFLDM meetings held in 2014–2015, as reported by Departmental convenors, was just over 10 per cent of the number intended when the funding model was developed in 2012.

The low numbers of children being part of an AFLDM process is of concern as the non-occurrence of this meeting has consequences for the child, and also has implications for the future viability and funding allocated to the AFLDM program. In December 2015 the Department convened an AFLDM workshop to consider strategies to improve the performance and the low numbers of AFLDM meetings compared to the anticipated number in developing the funding model. This meeting was in recognition of the much lower than expected number of AFLDM meetings.

*The AFLDM program is under threat because of the low number of activity for the amount of money invested.*

**CSO staff member**

<sup>101</sup> The Department's *Family-Led Decision Making Program guidelines: including program requirements and practice guidance – version 2*, specify a series of performance measures to be reported against monthly (p. 13).

## Compliance at substantiation

File reviews highlighted scheduling delays and low numbers of Aboriginal children having an AFLDM meeting at substantiation and at making of protection order. A summary of the AFLDM initiation process at substantiation is shown in Table 11

**Table 11: Compliance assessment for initiating an AFLDM meeting at substantiation**

Intended process	Compliance assessment using file review results
<p>CP staff notifies the Departmental convenor via email <b>within 24 hours</b> after substantiation decision.</p> <p>The Departmental convenor notifies the community convenor.</p>	<p>The Departmental convenor was notified at substantiation for <b>12.3 per cent</b> of children (<b>eight children</b>).</p>
<p>CP staff and co-convenor(s) hold discussion to complete a referral <b>within 48 hours</b> of the Departmental convenor being notified.</p>	<p>CP notified the Departmental convenor within 24 hours in <b>1.7 per cent</b> of cases (one notification); <b>15.5 per cent</b> (nine notifications) took over a month, for <b>77.6 per cent</b> (45 notifications) the convenor was never notified, or it was unknown.</p>
<p>Meeting preparation with co-convenors, family members, children, supports, carers, Elders, CP staff and other professionals and agencies.</p> <p>A meeting is held within 21 days.</p>	<p>A meeting was held within 21 days for only <b>one child</b>, while for the majority of children (<b>51 children, 78.5 per cent</b>) there was no AFLDM meeting following substantiation.</p> <p>There was no evidence that an AFLDM meeting occurred at any stage for <b>18.5 per cent of children (12 children)</b>.</p> <p>There was an AFLDM meeting before placement for <b>3.1 per cent of children (two children)</b>.</p>

Source: Departmental CP case files and information gathered from consultations with Departmental staff.



## Assessing practice compliance

### Lengthy delays

Consultations also supported the lack of compliance in the process for initiating AFLDM meetings. There was widespread agreement about the extremely long delays with almost no AFLDM meetings proceeding in the 21-day time frame, most taking months and some taking over a year to convene.

*One scheduled for next week [December 2015], that I requested in June 2014.*

**CP staff**

*In the last three years, I have never seen a referral within the agreed 24 to 48-hour time frame. The delay in referral means we can't convene the meeting within the 21-day time frame. I have never seen an AFLDM held within the 21-day timeframe.*

**AFLDM community convenor**

*These delays [in convening AFLDM meetings] can have huge consequences. An AFLDM can be planned and scheduled, but in the time until it actually occurs a crisis can happen – such as a family violence incident.*

**CP staff**

### Key finding 28

File reviews (Table 1) and consultations indicate that Departmental staff are not meeting their responsibilities to refer and initiate an AFLDM meeting. The lack of compliance is a contributing factor to low numbers of Aboriginal children not having an AFLDM meeting (78.5 per cent of children in the file reviews did not have an AFLDM meeting)<sup>102</sup>

<sup>102</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department stated, 'the Commission has not produced enough evidence to support this finding that a lack of timely referrals is limiting the number of AFLDM meetings occurring. The evidence presented by the Commission suggests delays occur after the referral'. The full response is in Section 10: Opportunity to respond.

### 9.3.3 Systemic barriers and recommendations

#### Value of the AFLDM program

Throughout the consultations, there was unanimous agreement that the AFLDM program is extremely valuable in making important decisions to keep a child safe, and maintain the child's culture and identity through connection to their community. The AFLDM program presents one of the most significant opportunities to meaningfully involve families in decision-making and ensure that the process undertaken is led by Aboriginal people. Two quotes provide an indication of the importance and relevance of the AFLDM to culturally sensitive practices.

*I think AFLDM meetings are the most important aspect of any work I do with Aboriginal families and as a general rule, I try and schedule one for every substantiated case involving Aboriginal families.<sup>103</sup>*

**Departmental staff member**

*AFLDM meetings allow us to explore extended kinship placements that we otherwise would not have time to do.*

**CP staff**

#### Barriers to holding timely AFLDM meetings

While AFLDM meetings were seen as very important by most stakeholders, delays in holding meetings were acknowledged as a significant issue. The following issues were identified through consultations, the online survey and findings from the Task Force 1000<sup>104</sup> as contributing to delays.

##### Unavailability of co-convenor

Co-convening is a key part of the AFLDM process and aims to demonstrate effective partnerships between CP staff and ACCOs who deliver the AFLDM program. The coordination of the meetings by co-convenors has proven to be problematic. While co-convenors identified the imperative for both convenors to be available for meetings, this was not always possible. Staff absences and ongoing vacancies were common issues affecting the availability of co-convenors and their ability to co-convene an AFLDM meeting.

<sup>103</sup> Contrary to the impression created by this quote, it is mandated for all Aboriginal children to be referred for an AFLDM meeting at substantiation.

<sup>104</sup> As presented at a workshop on AFLDM meetings held by this Inquiry on 1 December 2015.

A lack of contingency planning affects the capacity to manage vacancies or leave arrangements. Thirty-two per cent of CP staff respondents to the online survey identified the biggest barrier to holding an AFLDM meeting in a timely manner was the availability of co-convenors to organise a meeting. Some stakeholders suggested that AFLDM meetings would proceed without a community convenor, with staff from other positions and in other regions undertaking the convenor role. This leads to lack of consistency in the approach to the meeting and also translates into poorer accountability of the AFLDM meeting being offered to the family and child.

## Key finding 29

The co-convenor's role is important in fostering effective partnerships and for ensuring that local knowledge is acknowledged and shared in making decisions about placement. However, the efficacy of this mechanism is limited due to delays in scheduling meetings, unavailability of key staff and lack of contingency planning.

A quote from an AFLDM workshop participant reinforces the need for attention to these issues:

*The policy is right, it's the practice that we need to get right. We cannot let it go years without an AFLDM because there is no worker. We cannot cancel an AFLDM because a worker is sick. We need a Plan B.*

**AFLDM workshop participant**

### Competing priorities

Departmental convenors reported that carrying a case load and other CP responsibilities limited their ability to focus on convening AFLDM meetings. While case loads varied in complexity, size and across regions, Departmental convenors reported that more often than not they were restricted in their capacity to convene AFLDM meetings. With Departmental convenors providing advice on other 'Aboriginal matters' to CP staff, such as CSPs and permanent care processes, this also contributed to an increased workload at times.

Community convenors also indicated heavy workloads and other duties requested of them outside of their role influenced their ability to schedule and hold AFLDM meetings. It was noted by one community convenor that the introduction of the requirement to hold an AFLDM meeting at substantiation was not accompanied by an increase in program funding, which added additional pressures to organisations involved. Consultations also suggested that some community convenors were seen as 'junior' to Departmental convenors.

*Kids are missing out because ACCOs and departments are letting them down – because departments and community convenors are being asked to do other roles.*

**AFLDM workshop participant**

### Lack of training and understanding of the referral process

Community and Departmental convenors advised they had insufficient skills in undertaking the role. While annual training sessions and central forums were scheduled to occur, they did not eventuate, with most convenors having training in 2013.<sup>105</sup> Community convenors are encouraged to attend Departmental basic practice training, but this training is not tailored to community convenor requirements and includes complex components that are not relevant to the role.

CP staff appear to misunderstand the purpose or need for a timely AFLDM meeting. Most CP staff consulted during this Inquiry indicated that a referral for an AFLDM meeting must be made at substantiation, while others understood that a referral was only required at the case management stage.

### Other reasons

Consultations participants reporting the following other reasons:

- There is a lack of clarity about the roles of CP staff, Departmental and community convenors and ownership of the AFLDM process.
- Fragmented relationships among ACCOs, the Department and ACSASS has caused partnerships to break down and restricted the flow of information in the service sector.
- CP policy<sup>106</sup> considers AFLDM meetings inappropriate where protective concerns have been substantiated and the matter is proceeding to court.

<sup>105</sup> When given an opportunity to respond to a draft report of this Inquiry, the Department noted that a forum was held for AFLDM convenors in December 2015 and a forum was scheduled for June 2016.

<sup>106</sup> 'In circumstances where protective concerns have been substantiated and the matter is proceeding to court, it is not appropriate to offer AFLDM meeting due to legal constraints on planning once a Protection Application has been made.' Source: Department of Human Services, *Family-Led Decision Making Program guidelines: including program requirements and practice guidance – version 2*, November 2013.

## Assessing practice compliance

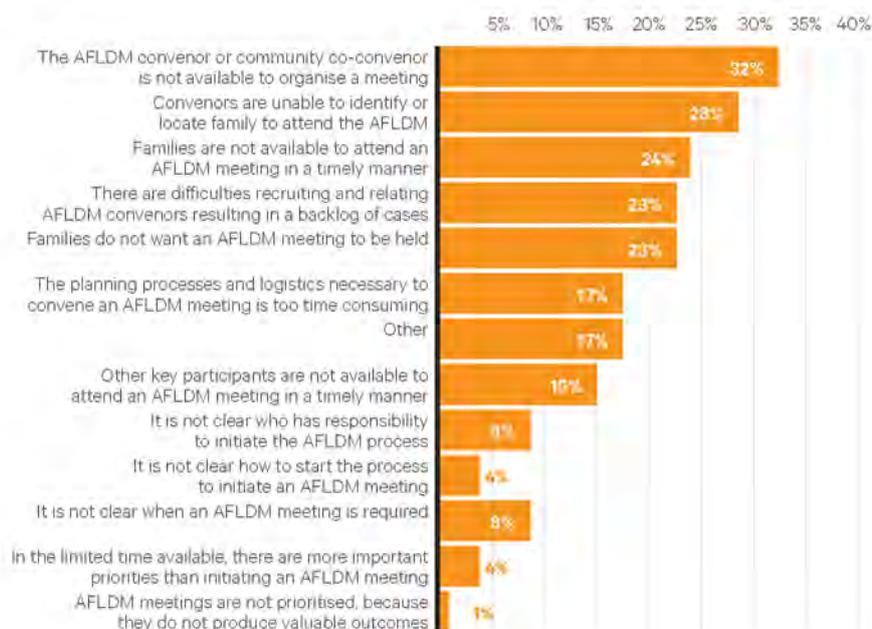
- Significant preparation time with all individual parties is required, and there is a misguided belief that an AFLDM meeting is not required following preparation work.
- Long distances between Departmental and community convenors means that meetings require extensive travel. For example, the Departmental convenor is located in Ballarat and the community convenor is located in Horsham – there is a two-hour drive between offices.
- There can be limited availability of family and extended family members to participate in an AFLDM meeting. In the online survey CP staff (28 per cent of respondents) identified the second biggest barrier was convenors not being able to identify or locate family to attend the AFLDM meeting (see Figure 16).

The 'Other' barriers (selected by 17 per cent of survey respondents) to holding an AFLDM meeting in a timely manner included:

- co-convenors being required to undertake other responsibilities
- limitations in what the co-convenors can achieve given their limited numbers
- ineffective use of technology to engage families
- difficulty engaging a community convenor from outside the region due to connections and potential preconceptions of the family
- lack of accountability of community convenors.

While one barrier identified by CP staff (see Figure 16) was that families were not available to attend the AFLDM meeting in a timely manner (24 per cent) or families did not want an AFLDM meeting to be held (23 per cent), there was no indication from Departmental or community convenors that families declining to participate or being unavailable to proceed was a factor. The statewide data provided by the Department does not indicate whether the family declined to participate in an AFLDM meeting, or indicate any reason why an AFLDM meeting did not proceed

Figure 16: Barriers to holding an AFLDM meeting in a timely manner, according to CP staff



Source: Commission for Children and Young People, online survey commissioned as part of the Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria, 2016.

Note: a maximum of three options could be selected by survey respondents.

## Key finding 30

When held, AFLDM meetings produce valuable outcomes in delivering culturally based decision-making within CP and provide the opportunity to meet and explore options to improve family situations in a supported cultural environment.

## Key finding 31

The significantly low numbers of AFLDM meetings and delays in referring and proceeding with an AFLDM meeting are due to the following barriers:

- ongoing vacancies in Departmental and community convenor roles and a lack of planning to fill them
- other responsibilities of Departmental and community convenors preventing them from convening AFLDM meetings
- a lack of training and understanding of the referral process
- confusion about the roles of CP staff, Departmental and community convenors and about ownership and accountability of the process
- significant preparation time and workload for all participants, which can lead to an AFLDM meeting no longer being a high priority
- long distances between Departmental and community convenors, requiring extensive travel and inhibiting meeting opportunities
- limited availability of family and extended family members to participate in an AFLDM meeting.

## Recommendation 30

Hold AFLDM meetings for Aboriginal children in a timely manner.

This could be achieved by:

- a) reviewing program accountability to ensure all Aboriginal children are offered and provided with an AFLDM meeting. This could be achieved through specific accountability mechanisms such as greater management scrutiny or regular audits/checks by a relevant party who is external to the local CP office (for example, CP staff from another division, Commission staff, or the principal practitioners)
- b) assessing the effectiveness of the co-convenor model
- c) reviewing the case loads, responsibilities and roles of Departmental and community convenors to explore how other duties are preventing their core role of convening AFLDM meetings
- d) transferring responsibility for AFLDM meetings to ACCOs as part of a staged process of transferring case management to ACCOs and implementing s 18, and in line with the notion of being Aboriginal led<sup>107</sup>
- e) strengthening contingency planning to include arrangements for the supply of trained Departmental and community convenors in the event of expected and unexpected absences
- f) providing better access to technology services such as video conferencing, to facilitate participation of those who are unable to attend in person. In the event that a participant wishes to attend the AFLDM using teleconferencing facilities, a suitable venue must be selected to support this.
- g) strengthening recruitment and retention of Departmental and community convenors by promoting career prospects, providing support and building a culturally responsive workforce.

<sup>107</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department stated, 'The notion of family-led "leading" does not relate to whether it is a Departmental or ACCO-run program'. The Commission believes that this Inquiry and the work of Taskforce 1000 have clearly illustrated that Aboriginal organisations have the best capacity to engage Aboriginal families and community in key decisions.

## Assessing practice compliance

### Recommendation 31

Develop an ongoing program of training and professional development for both Departmental and community convenors. The training program should:

- a) target existing and new convenors and provide a forum to address emerging issues
- b) be developed in conjunction with the Office of Professional Practice and should provide an understanding of the CP system and processes, as well as reporting and recording processes
- c) be supported by a regular statewide forum for both Departmental and community convenors to provide support, create partnership approaches and share strategies.

Training for CP staff, to improve their understanding of roles and responsibilities, and when and how to initiate an AFLDM meeting, should be considered.

Training for CP staff, to improve their understanding of roles and responsibilities, and when and how to initiate an AFLDM meeting, should be considered.

### Involvement of ACSASS in AFLDM meetings

Where appropriate and agreed to by the child and family, ACSASS must be involved in assisting CP staff to identify and involve the child's extended family and community members in decision-making as well as participate in these meetings, including those held as AFLDM meetings. ACSASS reported that they did not always assist CP staff to identify and involve the child's extended family and community members or participating in the AFLDM process. Difficulties in participating were as a result of the following:

- competing demands associated with high workload as discussed in further detail at Section 9.2: ACSASS
- not being invited to be part of the process
- not being able to attend due to late notice.

ACSASS workers indicated they were often informed about the meeting date, rather than invited to participate with mutual agreement of time and date. If ACSASS were unavailable to attend, an AFLDM meeting generally would still proceed. This was interpreted by ACSASS workers as a clear lack of regard by the Department for the role of ACSASS as an integral part of the decision-making process.

Misunderstanding by Departmental staff of the legislative need to seek the advice of the relevant Aboriginal agency (VACCCA and MDAS) may lead to staff instead including staff from other ACCOs. It is speculated that this practice may be due to the greater likelihood of available staff at ACCOs compared to a single ACSASS worker, or ACCO staff being more likely to agree with the Department decisions as they are not as familiar with the CP system and the influence they have in the AFLDM process.

*We are usually the last one on the list to take into account, given the role we play we should be the first cab off the rank.*

**ACSASS staff**

### Key finding 32

Aboriginal agencies are limited in their involvement in the AFLDM process<sup>108</sup> due to the competing demands of high workloads, late notice about meetings and people's availability, and CP staff misunderstanding the legislative requirement and excluding them.

<sup>108</sup> An Aboriginal agency as defined in the CYFA 2005 currently refers to VACCA and MDAS in their capacity as ACSASS providers.

## Family-led process

While the name of the AFLDM program may imply that the process is family-led with an opportunity for family members to actively participate, ACCOs did not regard AFLDM meetings as a truly family-led process for the following reasons:

- Generally, more Departmental workers and other professionals participate in the process than family members, which may inhibit family-led decision-making.
- Elders are mandated to attend; however, this was perceived as 'tokenistic' by some stakeholders as they were not always briefed on their role or of the details of the case prior to the process.
- Families did not always have the opportunity to invite other family members, which also influenced the capacity to source other potential carers and inhibited decision-making.

One stakeholder questioned the capacity for the meeting to be family-led, when it was dominated by Departmental processes.

*[It's] chaired by a Departmental worker with a pre-determined agenda, how is that a family-led meeting?*

**ACSASS staff**

## Key finding 33

The AFLDM program does not always appear to be truly family-led.

There are three key issues contributing to this situation:

- Departmental staff are over-represented at meetings, and having them guide the process inhibits families from contributing equitably to decision-making.
- Elders, if in attendance, are often not fully briefed by the ACCO on their role or don't have enough information about the case to inform their decision-making.
- Families are often not well-represented in the meetings.

## Recommendation 32

Place greater priority on the existing AFLDM program and practice guidelines to ensure increased involvement of the family.

- a) Ensure all parties are clear about the purpose of the AFLDM meeting, and understand their role in supporting the process and taking responsibility for following up on the decisions that are made.
- b) Support family members to prepare adequately so they can fully engage in the process and are equipped for decision-making.
- c) Encourage private family deliberations prior to or during the AFLDM meeting to allow family members to process information, talk among themselves, respond and ask questions.
- d) Invite extended family to maximise family representation, and include those with a connection to the child or with other members of the family group.
- e) Encourage active participation by family members in organising the practical details of the AFLDM meeting, such as the venue, date, transport and childcare arrangements.
- f) Strengthen the process for families to provide feedback about the quality of the AFLDM process, to assist with continuous improvement.<sup>109</sup>

<sup>109</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department confirmed that Recommendations 32a to 32e are already reflected in the program guidelines and that Recommendation 32f is additional.

## Assessing practice compliance

### 9.4 ACPP placement hierarchy

**Is there evidence that the child was placed at the highest possible level of the ACPP placement hierarchy?**

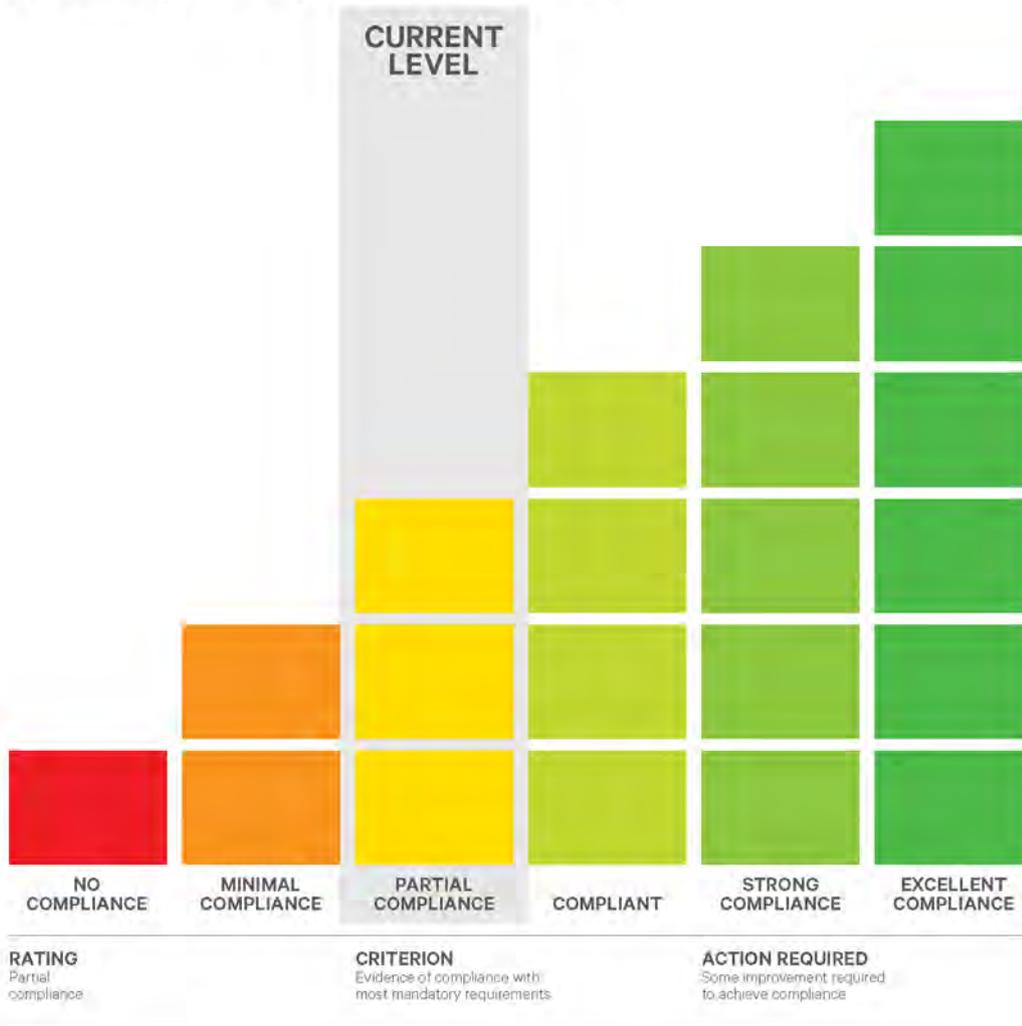
#### 9.4.1 Compliance rating

The most significant considerations in making this practice compliance rating are listed below:

- The Department cannot report on the level of the ACPP placement hierarchy at which Aboriginal children are placed.
- There are definitional issues between the ACPP placement hierarchy and CP placement types, which need to be resolved before accurate reporting can be produced.
- The Department cannot produce evidence on a system-wide level to show whether appropriate consideration was given to placement at higher levels of the ACPP placement hierarchy. There are several indications which suggest that placement is not being made at the highest level 'as a priority, wherever possible' (as required by legislation).
  - In making kinship placements
    - all potential Aboriginal extended family carers (Level 1 of the hierarchy) are not being identified before a placement is made at a lower level of the hierarchy
    - there are indications that CP staff are not placing appropriate value on the importance of the ACPP when making kinship placement decisions
  - While there is a strong focus by the system on kinship over non-kinship placements, in practice only 56 per cent of Aboriginal children are actually placed in kinship placements (31 per cent with Aboriginal extended family and 25 per cent with non-Aboriginal extended family).
  - In making non-kinship placements, PCU processes prioritise Level 3 of the hierarchy (placement with a local Aboriginal carer) above lower levels of the hierarchy, but does not systematically prioritise placement at Level 4 (placement with an Aboriginal carer from another community) above Level 5 of the hierarchy (placement with a non-Aboriginal carer from the local community).

According to the available evidence, compliance with the ACPP placement hierarchy suggests is assessed as **'Partial compliance'**.

Figure 17: Compliance rating – ACPP placement hierarchy



Source: This assessment was informed by seven data sources detailed in Table 1 in addition to performance data provided by the two ACSASS providers for the purposes of this Inquiry.

Note: There was a high level of consistency in the themes across these seven points of evidence, indicating this assessment is likely to be reflective of the system-wide situation.



## Assessing practice compliance

### 9.4.2 Context

The legislated ACPP placement hierarchy requires that, whenever possible, the child must be placed:

- within the Aboriginal extended family or relatives or, where this is not possible
- with other (non-Aboriginal) extended family or relatives.

If the above is not feasible or possible, the child may be placed with:

- an Aboriginal family from the local community and within close geographical proximity to the child's natural family
- an Aboriginal family from another Aboriginal community
- as a last resort, a non-Aboriginal family living in close proximity to the child's natural family.

The legislation is clear that the ACPP placement hierarchy is of critical importance and must be considered when placing an Aboriginal child in OOHC. Placement at the highest level must be considered 'as a priority, wherever possible' and other placement options may be considered only when a kinship placement 'is not feasible or possible'.

The ACPP is an essential component in complying with the over-arching CP framework that 'the best interests of the child must always be paramount'.<sup>110</sup> However, the ACPP is clearly not the only consideration in making decisions that are in the best interests of the child – for example, a placement should never be made at the highest level of the ACPP placement hierarchy where that placement would compromise the physical or emotional safety of the child.

The decision regarding an OOHC placement that is in the best interests of the child can be extremely complex and involve balancing a number of competing considerations. Consultations revealed that these considerations can be wide-ranging and include deliberations about the stability of the child with their carer, the maintenance of sibling relationships and co-placement with siblings, the child's wishes, distance from natural family, quality of care, access to education and physical safety. CP adopts a 'professional judgment model' to ensure placement decisions are in the best interests of the child – essentially this means placement decisions are made by appropriately skilled staff who must give appropriate consideration to all the elements that will ensure the 'best interests' of the child.

### 9.4.3 Detailed compliance assessment

Given the above context, placement at any level of the ACPP placement hierarchy could be compliant with the ACPP. The more important measures in considering whether compliance with the ACPP was achieved, is whether due consideration was first given to placement at the higher levels of the ACPP placement hierarchy.

The Department keeps extensive information about where children are placed in OOHC, but cannot report at a system-wide level whether priority was first given to higher levels of the ACPP placement hierarchy in making that placement. The file reviews also did not produce direct evidence to show whether CP fully explored all placement options at the higher levels of the ACPP placement hierarchy (with Aboriginal extended family) before consideration was given to a placement at a lower levels of the hierarchy. The public reporting by the Department on 'placed in accordance with the ACPP' does not provide any evidence of whether placements at higher levels were considered as a priority. As discussed at Section 4.4.2: Placements reported in accordance with the ACPP, this reporting only provides an indication of the type of carer that the child was placed with.

Other evidence is needed to make an assessment of compliance with this ACPP requirement. In consideration of the structure of the CP system, this issue is discussed at two levels: evidence of consideration of the two highest levels of ACPP placement hierarchy, and evidence of consideration of the lower levels of placement hierarchy.

<sup>110</sup> Section 10, CYFA 2005.

## Key finding 34

The Department cannot report at a system-wide level whether appropriate consideration was given to placement at higher levels of the ACPP placement hierarchy.

## Recommendation 33

Develop a mechanism to make it mandatory that staff responsible for placement decisions record evidence of why placement was not made at each higher level of the ACPP placement hierarchy.

This information would aid future reviews of ACCP compliance and allow identification of significant barriers or emerging trends in complying with the ACPP placement hierarchy.

This recommendation could be actioned in part by the inclusion of another field in CRIS or through a mandatory template that must be completed and attached to the file of every Aboriginal child who is not placed at the highest level of the hierarchy (similar to existing mandatory templates already in use in CP, such as the first home visit template).

### Evidence of consideration of two highest levels of the ACPP placement hierarchy (kinship placements)

The intention of the entire CP system is to prioritise kinship placements, above placements with other carers. This approach aligns with the two highest levels of the ACPP placement hierarchy: placement with Aboriginal extended family, and placement with non-Aboriginal extended family. The system achieves this by requiring CP staff to explore all possible kinship placements, before they can make a referral to the PCU for a non-kinship placement. The PCU is responsible for coordinating all non-kinship placements, through referrals to CSOs.

It was clear from consultations that this PCU process ensures kinship placements are systematically given the highest priority. In fact many CP staff expressed frustration that there were too many checks and balances to ensure kinship placements have been fully explored before a referral can be made to PCU. PCU management confirmed they return referrals to CP when there is not enough evidence that all kinship options have been explored. While some CP staff felt the process for making a PCU referral was cumbersome, it is considered to be a strength for the purposes of complying with the two highest levels of the ACPP placement hierarchy.

While this process is rigorous, it does not entirely ensure alignment.

CP defines kinship placement as placement with the 'extended family, friends or existing social networks'<sup>111</sup>, whereas the ACPP requires placement with 'extended family or relatives'. There is no specific direction in the ACPP placement hierarchy about the priority that should be given to placement with 'Aboriginal friends or existing social networks'. There is also no direction in CP policy and practice guidance about this matter.

Placement with Aboriginal friends or existing social networks could be considered a placement at either the highest level of the ACPP placement hierarchy – if the CP definition of a kinship placement is accepted – or the third highest level, 'placement with an Aboriginal family from the local community and within close geographical proximity to the child's natural family'. This question is whether priority should be given to placement with an Aboriginal friend or existing social networks over non-Aboriginal extended family.

CRIS records placements in accordance with CP placement types, not the ACPP placement hierarchy. There is no system-wide data available on whether Aboriginal children were placed with 'extended family' or with 'friends or existing social networks', although this could be determined from a child's case notes or in discussions with the relevant CP staff member.

This process alone does not distinguish between a placement at the highest level or the second highest level of the hierarchy. The responsibility for that decision sits with CP, not PCU, and is discussed immediately below.

<sup>111</sup> Department of Health and Human Services, *CP practice advice number 1411: placement roles and responsibilities*, 24 February 2014, p. 2.

## Assessing practice compliance

### Key finding 35

The CP system prioritises kinship placements above all other placements for all children. This aligns strongly with placement at the two highest levels of the ACPD placement hierarchy.

### Recommendation 34

Through consultation between the sector and the Department, clarify guidance in CP policy and practice about whether placement with 'Aboriginal friends or existing social networks' should be classified as:

- a) placement at the highest level of the ACPD placement hierarchy ('placement with Aboriginal extended family or relatives') align with the CP definition of a kinship placement
- or
- b) placement at Level 3 of the ACPD placement hierarchy ('placement with an Aboriginal family from the local community').

Consultation could be through the Aboriginal Children's Forum with the inclusion of SNAICC and other relevant community sector stakeholders.

This matter must be resolved in order to allow accurate reporting on placement by ACPD placement hierarchy level.

CP staff are responsible for making decisions about kinship placements, meaning they are responsible for determining whether the child will be placed at the highest level of the ACPD placement hierarchy (Aboriginal extended family) or the second-highest level (non-Aboriginal extended family). As discussed above, there is no data available to the Inquiry to confirm whether CP staff first gave consideration to the highest-level before considering a placement at the second-highest level.

However, there is other evidence available that provides an indication of the level to which this is occurring in practice.

### Identification of Aboriginal extended family

Identifying potential Aboriginal extended family carers is an essential enabler for making a placement at the highest level of the hierarchy. File reviews raised serious concerns about how often this is occurring:

- In 63 per cent of cases (41 children) there was evidence of immediate family<sup>112</sup> being identified.
- In 37 per cent of cases (24 children) there was evidence of extended family being identified.

CP policy and practice guidance recognises AFLDM meetings as an effective method for ensuring all potential carers are considered and that ACSASS's role includes assisting in identifying members of the child's kinship network who may be suitable carers. The file reviews also raised concerns about the extent to which AFLDM meetings and ACSASS are being utilised to help identify kinship carers:

- Three per cent (two children) had an AFLDM meeting before their initial placement.
- Three per cent (two children) had an AFLDM meeting before each placement change.
- 18 per cent (12 children) had an AFLDM meeting at any stage.
- In 54 per cent of cases (35 children) there was evidence that ACSASS were involved during investigation.
- In 46 per cent of cases (30 children) there was evidence ACSASS were involved during protective intervention and assessment.<sup>113</sup>
- In 23 per cent of cases (15 children) there was evidence that ACSASS were contacted prior to each placement change.

Section: 9.2 ACSASS and Section: 9.3 Aboriginal family-led decision-making explore the issues surrounding ACSASS involvement in AFLDM meetings in more detail. In summary, the data indicates that these two programs are not being effectively utilised to identify potential Aboriginal extended family carers.

<sup>112</sup> Immediate family is defined for these purposes as parents and siblings.

<sup>113</sup> Protective intervention and assessment occur before placement and would provide ACSASS with an opportunity to suggest kinship placements. This data does not indicate whether ACSASS identified potential kinship placements – this question was not addressed directly in the file reviews.

## Key finding 36

All potential Aboriginal kinship carers are not being identified prior to CP making a placement at a lower level of the ACPP placement hierarchy.

## Key finding 37

The AFLDM program and ACSASS are not being effectively utilised to assist CP staff in identifying potential Aboriginal kinship carers.<sup>114</sup>

### Valuing the ACPP placement hierarchy

CP staff should give due consideration to the hierarchy when balancing the numerous considerations in determining a kinship placement. In order to give due consideration to the ACPP placement hierarchy, CP staff must have a strong understanding of the importance of the hierarchy in making decisions that are in the best interests of Aboriginal children.

Neither the legislation nor CP policy and practice guidance give a weighting to the numerous placement considerations, but the legislation does place a clear priority on the ACPP placement hierarchy. It requires that placement at the highest level must be considered 'as a priority, wherever possible' and only where a placement with extended family 'is not feasible or possible' may other placement options be considered.

It is difficult to make a conclusive assessment of whether CP staff are giving appropriate consideration to the ACPP placement hierarchy and considering placement with Aboriginal extended family above non-Aboriginal extended family. System-wide data and the file review results could not provide insight into this matter, and CP staff are not required to record a weighting to their various considerations before determining the placement.

The consultations revealed that CP staff are well aware of the requirement to give priority to placement with Aboriginal extended family, and this awareness has increased as a result of the Taskforce 1000 area panels conducted in 2014 and 2015. However, consultations and online survey responses revealed a worrying trend. Some CP staff feel that the ACPP is contradictory to the best interests of the child, rather than an essential consideration in ensuring the best interests of the child are met. Fifteen per cent of respondents to the online survey regarded the major barrier to placing a child with an Aboriginal carer was that non-Aboriginal carers are often a more appropriate placement option than Aboriginal extended family or carers.

*Workers and management are (overly) concerned about compliance with the principle. Safety, stability and wellbeing trumps culture.*

**CP respondent to online survey**

*They (people who prioritise an Aboriginal placement) don't understand the complexity of moving a child from community when there is a non-Aboriginal grandparent/relative who can provide care.*

**CP respondent to online survey**

*It is becoming increasingly concerning to see children being removed from perfectly fine placements because 'culturally they are not safe'.*

**CP respondent to online survey**

*Overall, we apply the ACPP when all other things are equal – but often feel other considerations are more important than the ACPP.*

**CP staff**

*DHHS place much greater importance on stability of placement than they do on ACPP. That is very clear.*

**ACCO staff**

*Courts over-privilege cultural elements in a way that compromises safety.*

**CP staff**

*It is clear that they (CP staff) place a low value on Aboriginal culture and community. Our advice (ACSASS) is usually an afterthought – they consider a whole range of other things before the ACPP, because they feel other things are more important.*

**ACCO staff**

<sup>114</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department commented on this finding. Their response is included in Section 10: Opportunity to respond.

## Assessing practice compliance

The comments above demonstrate both the complexity of making a placement decision, and an apparent lack of understanding by CP staff of the importance of the ACPP in ensuring the best interests of Aboriginal children. The majority of CP staff are clearly aware of the direction from legislation and from CP policy and practice guidance to give priority to the ACPP placement hierarchy, but some staff appear to prioritise their personal belief that the ACPP is not in the best interests of the child. The comments by these staff imply that their personal assessment of the importance of the ACPP has more weight than the CYFA 2005, the courts, CP policy and practice guidance and ACSASS. This is particularly concerning given that the 'professional judgement model' relies on staff understanding the importance of the ACPP in order to give it appropriate consideration in making a placement decision that is in the best interests of the Aboriginal child. This evidence casts considerable doubt that all CP staff are placing an appropriate value on the ACPP placement hierarchy when making placement decisions.

### Victorian Aboriginal Kinship Care Model

Through the Victorian Aboriginal Kinship Care Model the Department funds nine ACCOs to provide Aboriginal placement and establishment support services, in addition to their other services.<sup>115</sup> This funding provides for a total of 114 placements per annum across Victoria. The 114 placements represent about one-tenth of the number of Aboriginal children in OOHC on 30 June 2014 (1,308 children) and one-seventh of the number of Aboriginal children in kinship care on that same date (709 children). The demand for Aboriginal kinship placements clearly far exceeds the number of placements funded through the Victorian Aboriginal Kinship Care Model.

<sup>115</sup> As described at Section 4.3.4: Other programs for Aboriginal children in OOHC.

## Key finding 38

There are several indicators that CP staff are not placing an appropriate value on the importance of the ACPP placement hierarchy when making decisions about kinship placements. Placement with Aboriginal extended family is not being prioritised above other kinship placements 'as a priority, wherever possible' (as required by legislation).

## Recommendation 35

Develop and implement mechanisms to ensure that CP staff who are responsible for making kinship placements (including kith placements) have a deep understanding of the critical importance of the ACPP in making placement decisions that are in the best interests of Aboriginal children.

CP staff cannot give appropriate priority to the ACPP without this deep understanding, given the numerous and complex considerations that affect placement decisions.

This deeper understanding could be achieved through mechanisms such as mandatory training, more definitive practice guidance, working more closely with Aboriginal stakeholders when making kinship placement decisions. These mechanisms should be continued until there is sufficient evidence that appropriate priority is being given to the ACPP placement hierarchy when making kinship or kith placements for all Aboriginal children.

## Recommendation 36

Place a greater level of accountability on CP staff when a kinship placement is made that is not at the highest level of the ACP placement hierarchy.<sup>116</sup>

This could be achieved through implementation of specific accountability mechanisms when placement is not made at the highest level, for example, more robust management; regular audits/checks by someone external to the local CP office (such as CP staff from another division, Commission staff or principal practitioners); a requirement for management approval to be recorded in CRIS; and a requirement for staff to document evidence of why placement at the highest level was not appropriate and what considerations were given higher priority than the ACP placement hierarchy.

## Recommendation 37

Significantly expand the Aboriginal Kinship Care Model to provide more Aboriginal placement and establishment support services, in consideration that the demand for Aboriginal kinship care placements far exceeds the number of placements that ACCOs are currently funded to provide. The ultimate aim must be for all Aboriginal children, families and carers to have the opportunity to receive support from an ACCO.

## Evidence of consideration of other levels of ACP placement hierarchy (non-kinship placements)

As discussed above, where a kinship placement is not possible, CP make a referral to the PCU to coordinate a home-based care or residential care placement through a CSO. Thus, PCU are responsible for coordinating placements Levels 3, 4 and 5 of the ACP placement hierarchy. PCU sits within a different Departmental business unit than CP.

Consultation with PCU revealed that the PCU's process for placing an Aboriginal child at the lower levels of the ACP placement hierarchy is generally consistent with the hierarchy. It must be noted that the exact process followed by PCU can vary in response to individual circumstances – such as if the child has previously been placed by PCU or has particular therapeutic needs. However, the 'general' PCU process<sup>117</sup> is outlined in Table 12. This table also shows the exact wording of Levels 3, 4 and 5 of the ACP placement hierarchy and provides commentary on the alignment between the hierarchy and the PCU process.



<sup>116</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department made comment on this recommendation. The response is in Section 10, *Opportunity to respond*.

<sup>117</sup> The general PCU process was described by PCU during consultations.

## Assessing practice compliance

Table 12: Alignment between PCU process and ACPP placement hierarchy

ACPP placement hierarchy	PCU process	Alignment between hierarchy and PCU process
Level 3: an Aboriginal family from the local community and within close geographical proximity to the child's natural family	PCU firstly contacts the funded ACCO in the division <sup>118</sup> to seek a placement.	<p>In theory, this process has a very high level of alignment with the hierarchy, as it gives priority to an ACCO from the local area to provide a placement for the child.</p> <p>In practice, the PCU advised that in the majority of instances the ACCO is not able to make a placement, as the demand for placement with an Aboriginal carer is much higher than the number of placements ACCOs are funded to provide.</p> <p>ACCOs provide the vast majority of Aboriginal carers (compared to non-Aboriginal CSOs). However, not all carers coordinated by ACCOs are Aboriginal.</p> <p>Policy and practice guidance does not provide direction on the definition of 'close geographical proximity'.</p>
Level 4: an Aboriginal family from another Aboriginal community	PCU do not generally seek a placement with an ACCO from another division.	<p>This process does not align with the hierarchy. It reflects the PCU process of prioritising placements by division to ensure close proximity to the family of origin. It may also reflect the fact that ACCOs are not able to provide a placement for the majority of Aboriginal children due to demand for Aboriginal carers being higher than the number of placements ACCOs are funded to provide.</p>
Level 5: as a last resort, a non-Aboriginal family living in close proximity to the child's natural family	PCU secondly contacts the CSO responsible for the relevant area to seek a placement.	<p>This process has a very high level of alignment with the hierarchy. It ensures, where a placement with a non-Aboriginal carer is required, that priority is given to non-Aboriginal carers in close proximity to the natural family.</p> <p>Policy and practice guidance does not define the meaning of 'close proximity'.</p>

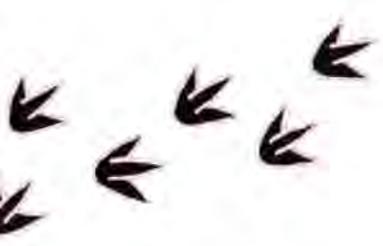
<sup>118</sup> There is a PCU in CP in each of the four Departmental divisions.



ACPP placement hierarchy	PCU process	Alignment between hierarchy and PCU process
No relevant ACPP level	PCU thirdly contacts CSOs in surrounding areas to seek a placement. Where placement is not possible, PCU then contacts CSOs from other areas.	<p>The ACPP placement hierarchy does not contemplate placement with a non-Aboriginal carer who does not live in close proximity to the child's natural family, yet, in some instances, this is the only placement option available to the child.</p> <p>While the ACPP placement hierarchy does not specifically mention this placement type, it is clear that this placement option would sit below Level 5 of the hierarchy (the last stated level of the hierarchy) and should only be considered when all other placement options have been exhausted.</p>
No relevant ACPP level	As a last resort, PCU seeks a placement in a residential care facility, giving preference to Aboriginal operated facilities.	<p>The ACPP placement hierarchy does not contemplate placement in a residential care facility, yet, in some instances, this is the only placement option available to the child.</p> <p>PCU considers residential care a last resort for all children, including Aboriginal children. However, CP reports placements in Aboriginal-operated residential care<sup>120</sup> as 'in accordance with the ACPP'<sup>121</sup>, and some stakeholders suggested in the consultations that any placement with an Aboriginal carer (including in Aboriginal-operated residential care) should be considered higher in the ACPP placement hierarchy than placement with a non-Aboriginal carer.</p>

Source: *Children, Youth and Families Act 2005* (Vic.) and consultation with PCU staff as part of the Inquiry.

Table 12 shows how the lack of available carers – particularly the lack of Aboriginal carers – drives the move down the ACPP placement hierarchy when making a non-kinship placement. In 2013 only seven per cent of all Aboriginal children in OOHC were in placements provided by an ACCO.<sup>122</sup>



<sup>119</sup> There are three residential care facilities in Victoria that are operated by ACCOs.

<sup>120</sup> As reported in the annual *Report on government services*.

<sup>121</sup> Department of Premier and Cabinet, 'Chapter 12: meeting the needs of Aboriginal children and young people', *Report of the Protecting Victoria's Vulnerable Children Inquiry, 2012*

## Assessing practice compliance

### Key finding 39

The PCU process for coordinating a non-kinship placement for Aboriginal children aligns strongly with Level 3 of the ACPP placement hierarchy ('Aboriginal family from local community') – where placement at Level 1 or 2 of the hierarchy was not possible by CP.

The PCU process does not prioritise placement at Level 4 ('Aboriginal family from another Aboriginal community') above Level 5 of the ACPP placement hierarchy ('a non-Aboriginal family living in close proximity to the child's natural family').

### Key finding 40

The lack of carers at higher levels of the ACPP Placement Hierarchy is the driver of PCU placing children at lower levels of the hierarchy.

### Recommendation 38

Amend the PCU process is to ensure that the best interests of the child, informed by Aboriginal perspectives, are paramount. The child's best interests should guide application of the ACPP placement hierarchy.<sup>122</sup>

<sup>122</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department raised concerns regarding this recommendation. The Departmental response and the Commission's reply are recorded in Section 10: Opportunity to respond.

### Recommendation 39

Clarify the following definitional issues with the ACPP placement hierarchy to allow accurate reporting.

- What constitutes 'close geographical proximity to the child's natural family' (Level 3 of hierarchy) and 'close proximity to the child's natural family' (Level 5 of the hierarchy)?
- At which level of the ACPP placement hierarchy should placements made in Aboriginal-operated residential care and non-Aboriginal residential care be recorded?

This clarification is required so that accurate reporting on placement by ACPP Placement Hierarchy level can occur.

### Level of ACPP placement hierarchy that Aboriginal children are placed

As discussed above, the level of the ACPP placement hierarchy at which a child is placed is not a definitive indicator of compliance with the hierarchy. A placement at any level can be compliant if placement at a higher level was not possible. However, looking at where all Aboriginal children are placed in OOHHC would provide some insight as to the level of compliance with the hierarchy.

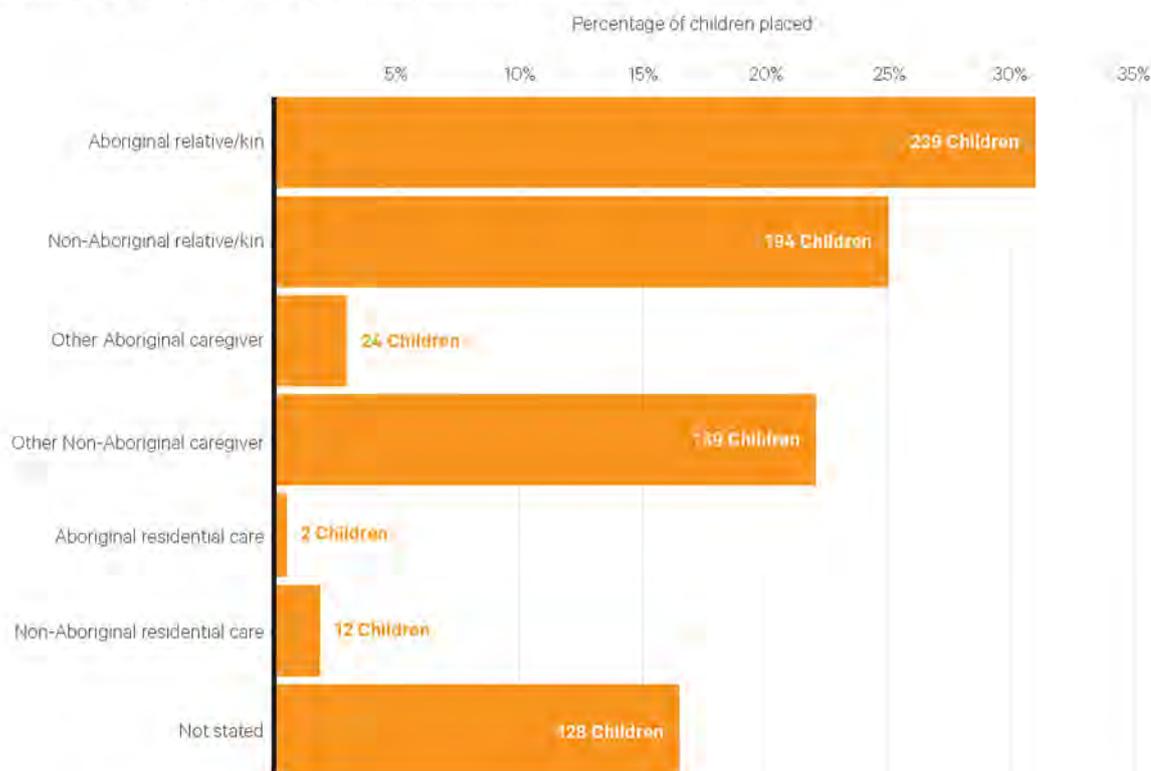
The Department is not able to produce system-wide reporting to demonstrate at which level of the ACPP placement hierarchy Aboriginal children are placed. As noted at Section 5.4.2: Placements reported in accordance with the ACPP, the data in the *Report on government services* and VCAMS regarding 'placed in accordance with ACPP' is not considered to provide a meaningful indication of the level of the ACPP placement hierarchy, as it groups all placements into two broad categories.

The Department has significant additional information on where children are placed, the most relevant of which is a CP report by 'Indigenous placement type' that shows the Aboriginal status of the carer a child was placed with.

Figure 18 provides an overview of this information for the 768 Aboriginal children who are of most interest to the Inquiry.<sup>123</sup>

<sup>123</sup> The cohort comprised Aboriginal children with an intake or placement change during the two-year period between 1 January 2013 and 31 December 2014. The sample of cases for the file reviews were chosen from this cohort.

Figure 18: Placement of Aboriginal children by Aboriginal status of carer



n = 768

Source: Services OOH data 1 January 2013 to 31 December 2014

Although the CP placement types above do not align exactly with the ACP placement hierarchy, they do appear to reinforce the strengths and weaknesses of the system that emerged from the consultations and review of CP policy and practice guidance (as detailed above). Most predominantly that:

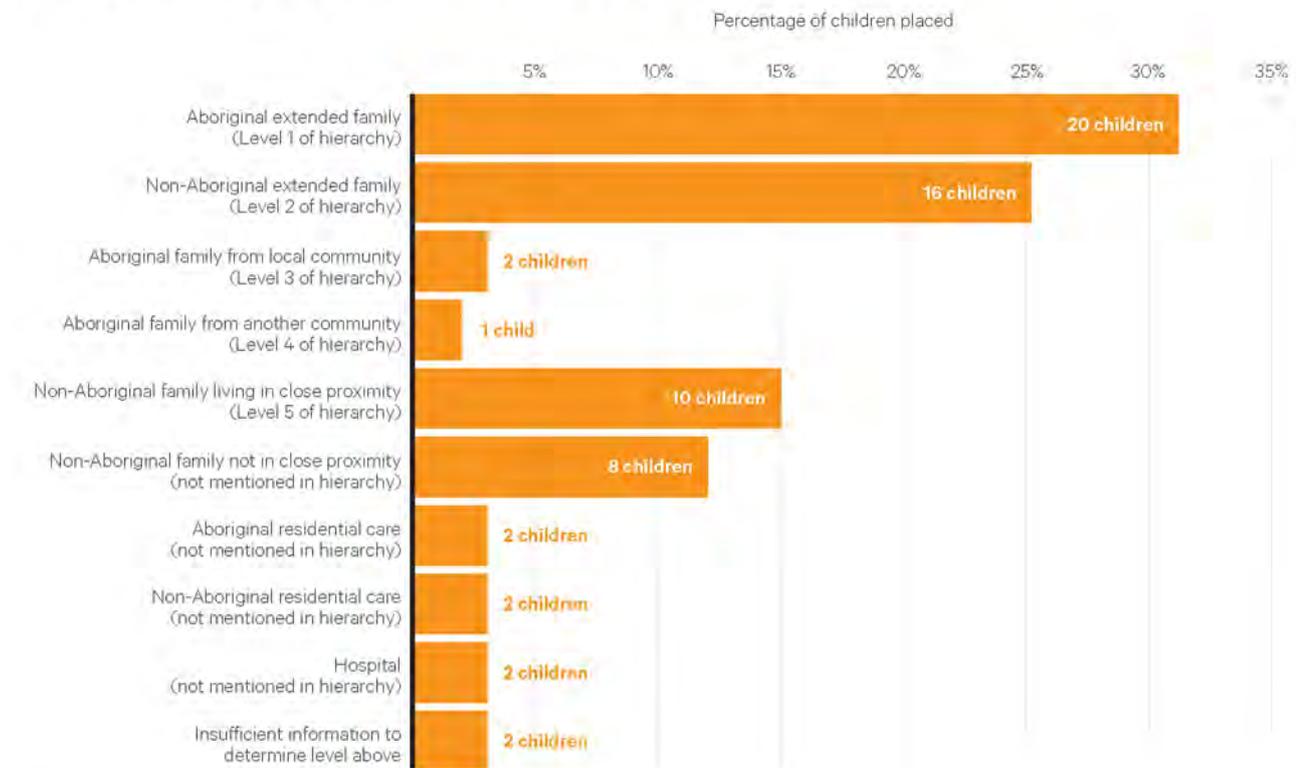
- the majority of Aboriginal children (56 per cent) are placed in kinship care (Levels 1 and 2 of the hierarchy)
- placement with Aboriginal extended family (Level 1 of the hierarchy) does not appear to be given sufficient preference over placement with a non-Aboriginal family (Level 2 of the hierarchy)
- there are either too few Aboriginal non-kinship carers, or placement at Level 5 of the hierarchy (with a non-Aboriginal family living in close proximity) is being given preference over Level 4 of the hierarchy (Aboriginal family not living in close proximity).

It is of concern that the Aboriginal status of the carer is not stated for 128 children (16 per cent of total group). Knowing their status could significantly change the overall findings.

File reviews looked at placement of Aboriginal children by level of the ACP placement hierarchy (at last placement during the period ending 31 December 2014). Figure 19 provides a summary of that information for each of the 65 children who were the subject of the file reviews.

## Assessing practice compliance

Figure 19: Placement of Aboriginal children by level of ACPP placement hierarchy



n = 65

Source: Child Protection case files

Figure 18 strongly reinforces the themes from Figure 19, the consultations and the review of CP policy and practice guidance. Of particular concern is that a proportion of children (22 per cent of total) are in placements that are not recognised by the ACPP placement hierarchy – most notably with a non-Aboriginal family who does not live in close proximity to child's natural family, or in residential care. It is also of concern that for two children there wasn't enough information in the file to determine at what level of the hierarchy they were placed.



## 9.4.4 Systemic barriers and recommendations

### Lack of suitable Aboriginal carers

A unanimous theme across all evidence collected and analysed for this Inquiry was that the greatest barrier to making placements in accordance with the ACPP placement hierarchy is a lack of Aboriginal carers for children to be placed with.

The lack of Aboriginal carers is a long-standing and multi-faceted issue contributed to by a number of complex factors. However, it should not be simply accepted as an ongoing fact or a reason why compliance with the ACPP placement hierarchy cannot be achieved. Frustration was expressed during consultations that for many years the Department has been blaming the lack of Aboriginal carers for the system's inability to place Aboriginal children at higher levels of the hierarchy, yet there has not been a concerted effort to recruit and retain Aboriginal carers over this same period.

Stakeholders advised they believe that the Department does not give sufficient attention to complying with other mandatory ACPP requirements, in part because of a belief that compliance with the ACPP can never be achieved due to the insufficient number of Aboriginal carers. Current public reporting by the Department on ACPP compliance, which only considers the type of carer a child is placed with, could be feeding into this belief. It is particularly concerning to consider that compliance with other key ACPP domains (which are mandatory regardless of where the child is eventually placed) is not being prioritised because of general acceptance that the ACPP cannot be complied with due to an insufficient number of Aboriginal carers, rather than using this reasoning to demonstrate the urgent and important need to increase the number of Aboriginal carers.

It is important that the current lack of Aboriginal carers is not construed as a lack of willingness by Aboriginal people to care for their families or community members. This issue is well articulated in a 2015 paper by the Australian Institute of Family Studies, *Enhancing the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle: policy and practice considerations*, which draws on multiple research papers<sup>124</sup> to conclude that:

*It should be emphasised that the problems in carer recruitment and retention are not caused by a lack of willingness to provide care. On the contrary, Aboriginal and Torres Strait Islander people are more likely to provide care than their non-Aboriginal counterparts and are often motivated by a sense of duty or obligation to meet the needs of children within their families and to preserve their families' and the child's identity, and legacy of shared care-giving with families.*

## Key finding 41

**Across Australia, Aboriginal people are more likely to provide care than non-Aboriginal people. However, the most significant barrier to complying with the ACPP placement hierarchy is a lack of Aboriginal carers. This demonstrates a significant and urgent need to improve the recruitment and retention of Aboriginal carers.**

Consultation revealed the following issues as main contributors to the insufficient number of Aboriginal carers in Victoria:

- the inability to identify potential Aboriginal kinship carers
- the inability to identify and recruit Aboriginal home-based (non-kinship) carers
- hesitation among potential Aboriginal carers to engage with the CP system
- Aboriginal carers being assessed as unsuitable
- current carer payments do not support the intention of the CP system or ACPP placement hierarchy to prioritise kinship placements over all other types of care
- Aboriginal people's previous experiences of not receiving sufficient support as a carer.

<sup>124</sup> Arney, F. (2010). 'Promoting the wellbeing of young Aboriginal children'. *Public Health Bulletin SA*, 7(3), 23–27; Bromfield, L. M., Higgins, J. R., Higgins, D. J., & Richardson, N. (2007). *Why is there a shortage of Aboriginal and Torres Strait Islander Carers?* Melbourne: Australian Institute of Family Studies; and Higgins, D. J., Bromfield, L. M., & Richardson, N. (2005). *Enhancing out-of-home care for Aboriginal and Torres Strait Islander young people*. Melbourne: Australian Institute of Family Studies.

## Assessing practice compliance

### Inability to identify all potential Aboriginal kinship carers

As discussed in the compliance section above, there is significant evidence that not all possible Aboriginal kinship carers are identified before a non-Aboriginal kinship placement is made.

CP staff advise that the urgency of the placement decision does not allow time to fully consider all kinship placement options. This theme was evident from consultations and from the online survey of CP staff, where 33 per cent of respondents identified this as one of the three major barriers to making a placement with Aboriginal carers.

While this may be true in many cases, it could also be a reflection of the lack of priority given by CP staff to identifying Aboriginal kinship carers in the limited time that is available. This Inquiry cannot make a conclusive finding on this matter as there is not sufficient evidence on what matters CP staff are prioritising in the available time. However, a quote from a funded ACCO staff member provides a perspective on the priorities given in placement decisions:

*Child protection asks the family if there are extended family who could care for the child, and that is all they do! If we are involved we actively go looking for extended family to identify carers, and we often already have a good knowledge of who the extended family is and of their suitability as carers.*

**ACCO staff member**

#### Lack of ACSASS and AFLDM meetings involvement in identifying potential Aboriginal kinship carers

CP policy and practice guidance states that the AFLDM program and ACSASS play a role in identifying extended Aboriginal family carers, but this rarely occurs in practice. The lack of involvement of ACSASS at every significant decision point for all Aboriginal children (as intended by CP policy and practice guidance) is explored extensively at Section 9.2: ACSASS. Issues related to the low numbers of AFLDM meetings being held and the lengthy delays in convening them (usually held many months after the child is placed) are explored extensively in Section 9.3: Aboriginal family-led decision-making.

#### Difficulties for CP staff in navigating Aboriginal family structures and engaging effectively with Aboriginal extended family

CP staff report they sometimes have difficulty in getting immediate family to identify potential Aboriginal extended family carers. This is sometimes due to the immediate family (often non-Aboriginal immediate family) stating a preference for the child to be placed with non-Aboriginal extended family. It was also speculated by stakeholders that this is because some Aboriginal extended family would be unwilling to engage with CP or participate in a carer assessment. This shows the benefits that could be achieved by having Aboriginal stakeholders (such as ACSASS, AFLDM, funded ACCOs or Aboriginal CP staff) more actively involved in these areas.

The online survey of CP staff confirmed this as a significant issue, with 32 per cent of respondents reporting 'difficulty in identifying Aboriginal extended family or other Aboriginal carers' as one of the three major barriers to placement with an Aboriginal family.

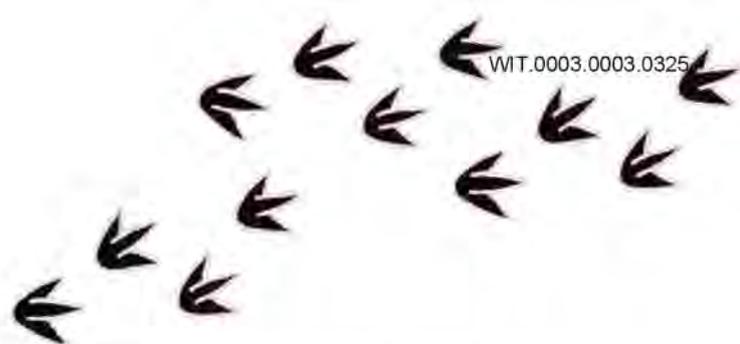
## Recommendation 40

The Department, in partnership with the community sector, to develop a comprehensive recruitment and retention strategy to increase the number of Aboriginal carers.<sup>125</sup>

A focus of that strategy is placing a greater priority on identifying all potential Aboriginal kinship carers before a placement decision is made. Key mechanisms to achieve this could include:

- greater involvement of Aboriginal stakeholders in identifying potential Aboriginal kinship carers – this may include ACSASS, AFLDM and Aboriginal CP staff
- increasing the capacity of CP staff to be inclusive and responsive of the needs of Aboriginal families when attempting to identify potential kinship carers. Aboriginal children must not be disadvantaged because of the inability of CP staff to effectively engage with Aboriginal families in identifying, recruiting or assessing kinship carers

<sup>125</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department commented on this recommendation. Their comments and the Commission's response are recorded in Section 10, *Opportunity to respond*.



- ensuring CP staff have enough time, and place sufficient priority in the time available, to more thoroughly identify Aboriginal kinship carers.

#### **Inability to identify and recruit Aboriginal home-based (non-kinship) carers**

Consultations revealed that there are far fewer Aboriginal home-based carers available than there are Aboriginal children needing placement. ACCOs provide most Aboriginal home-based carers; however, the number of placements provided by ACCOs is not an accurate reflection of the number of Aboriginal carers, since ACCOs also provide placements with non-Aboriginal carers. The Report of the Protecting Victoria's Vulnerable Young Children Inquiry identified a significant decline in the proportion of placements provided by ACCOs – 22 per cent of Aboriginal children were in placements provided by ACCOs in 2002, but by 2012 this figure had dropped to seven per cent.

CSOs reported they support an extremely low numbers of Aboriginal carers, with many CSOs reporting they were unaware of their organisation having any Aboriginal carers and other CSOs reporting they have very few Aboriginal carers.

*CSOs don't have Aboriginal carers – we are already resigned to this fact. We know that placing through a CSO means a non-Aboriginal carer.*

**PCU staff**

CSOs reported several reasons for difficulty in recruiting Aboriginal carers. Three of these reasons are explored in greater detail below (as they apply to both kinship and non-kinship carers): Aboriginal carers are sometimes assessed as unsuitable, Aboriginal carers are sometimes hesitant to engage with CP system, and carer payments are insufficient.

Many Aboriginal carers prefer to be supported by an ACCO rather than a 'mainstream' CSO. CSOs advised that when a potential carer registers their interest in becoming a non-kinship carer, they are offered the opportunity of being supported by an ACCO or CSO – and nearly all Aboriginal carers choose the ACCO option. The preference of most Aboriginal people to receive services from Aboriginal-operated services is well known across the spectrum of health and human services. This would have a genuine impact on the ability of the CSOs to recruit Aboriginal carers, but does not negate the need to ensure their recruitment and support services are inclusive of the needs of Aboriginal carers. This is particularly important considering that CSOs are funded to provide many more placements than ACCOs are, and that there are far more Aboriginal children in need of placement than placements that ACCOs are funded to provide.

CSOs reported that they were unaware of any previous significant approach to actively seeking to increase the number of Aboriginal non-kinship carers. They feel the primary reason this has not occurred is a belief by CSOs that this would be competing with ACCOs.

#### **Cultural competence of CSOs**

The information directly indicates that there is a need to both increase the number of placement that ACCOs are funded to provide and to increase the number of Aboriginal carers supported by CSOs. In increasing the number of Aboriginal carers supported by CSOs, some stakeholders noted successes that the Department of Justice and Regulation has had in increasing positive participation of Aboriginal people in justice services. They particularly noted the success of outreach activities that are hosted at local ACCOs (such as regular community barbecues that provide Aboriginal communities with information and opportunities for positive engagement with the justice system). These stakeholders suggested a similar approach could be successful in identifying and recruiting Aboriginal carers.

The substantial number of Aboriginal children in placements managed by CSOs, and the low numbers of Aboriginal carers managed by CSOs, is one indicator of the need for CSOs to consistently operate in a manner that is inclusive of the needs of Aboriginal children and people. The Department's *Human Services Standards*<sup>126</sup> requires CSOs (and other service providers) to demonstrate their compliance with a number of standards:

- People maintain and strengthen connection to their Aboriginal or Torres Strait Islander culture and community.
- People maintain and strengthen their cultural, spiritual and language connections.
- Service providers (including CSOs) are required to demonstrate their compliance with these standards by undertaking independent reviews and achieving and maintaining accreditations. Service providers are required to choose an independent review body, endorsed by the Department, to review and compile evidence about whether they are meeting the required standards.

<sup>126</sup> Department of Health and Human Services, *Human Services Standards policy*, September 2015.

## Assessing practice compliance

- Stakeholders felt that Aboriginal people must play a lead role in an independent review of the standards relating to Aboriginal inclusion and cultural competence. This approach would be in keeping with the direction of the Victorian Government, the Department, CP and CYFA 2005 in promoting Aboriginal self-determination.

### Recommendation 41

The recruitment and retention strategy for Aboriginal carers considers:

- increasing the number of placements that ACCOs are funded to provide – including resourcing for an extensive recruitment campaign, if required
- a recruitment campaign by CSOs that is culturally inclusive and specifically targeted at recruiting Aboriginal carers
- establishing targets for CSOs on the number of placements with Aboriginal carers that they provide
- a marketing approach that promotes the value and positive benefits of becoming a carer and includes outreach activities hosted at local ACCOs<sup>127</sup>

### Recommendation 42

Ensure that independent reviewers of the Human Services Standards have the skill and knowledge to review the sections relating to Aboriginal competency. At a minimum, reviewers should demonstrate that they employ Aboriginal people or partner with an Aboriginal organisation to undertake that part of the audit which relates to Aboriginal inclusion and cultural competency.

As with all procurements, the Department would monitor and record this through records of evidence in the selection and review process of contracted organisations.

#### Potential Aboriginal carers can be hesitant to engage with CP system

It is well understood that Aboriginal communities have had negative inter-generational experiences with CP and many other government services. The effects of the Stolen Generation are still felt profoundly in a multitude of ways across Aboriginal communities today. As a result of this enduring legacy of grief and trauma, many Aboriginal people continue to distrust CP. Consulted ACCOs advised that one way this distrust plays out is unwillingness by some potential carers to participate in the assessment required to become a carer. Potential carers have expressed fears that being assessed to become a carer may result in their own children being removed from them. They have declined to become carers, not because of an unwillingness or inability to care for the child, but because of a fear of the CP system.

*When they (potential Aboriginal carers) open the door (for a carer assessment), they are opening their families and homes to the Department. There is a real fear it may result in CP taking their kids away too.*

**ACCO staff**

The Victorian CP system well understands the challenges the past can play in forging trusting and effective relationships with Aboriginal families. This is the premise behind the impressive array of Aboriginal-specific initiatives that have been introduced across the Victorian CP system. This issue is another important demonstration of how past experiences continue to have a real impact today. It is incumbent upon the system to engage with Aboriginal people in an inclusive and respectful manner that gives Aboriginal families equal opportunity to be the carers of Aboriginal children in OOHC.

<sup>127</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department commented on this recommendation. Their comments and the Commission's response are recorded in Section 10: Opportunity to respond.

## Recommendation 43

Ensure that engagement with potential Aboriginal carers is inclusive, respectful and maximises the likelihood they will be willing to participate in the carer assessment.

A key mechanism to achieve this would be through greater involvement of Aboriginal stakeholders in the carer assessment process. It is well established that many Aboriginal people are more likely to engage with services that are delivered by Aboriginal people. This could be achieved through Aboriginal staff being employed in assessor roles, transferring carer assessment responsibilities to ACCOs under transfer of contract management or s 18 of the CYFA 2005 or expanding ACSASS to have greater involvement in the carer assessment process.

### Aboriginal carers are assessed as unsuitable

Consultations revealed that a proportionately higher number of potential Aboriginal carers – both kinship and non-kinship carers – are assessed as unsuitable. The online survey of CP staff confirmed this, with 44 per cent of respondents regarding a major barrier to placing children with Aboriginal carers being that Aboriginal carers often do not meet CP requirements (such as criminal history checks). This would undoubtedly contribute to the hesitation of potential Aboriginal carers to participate in the carer assessment process.

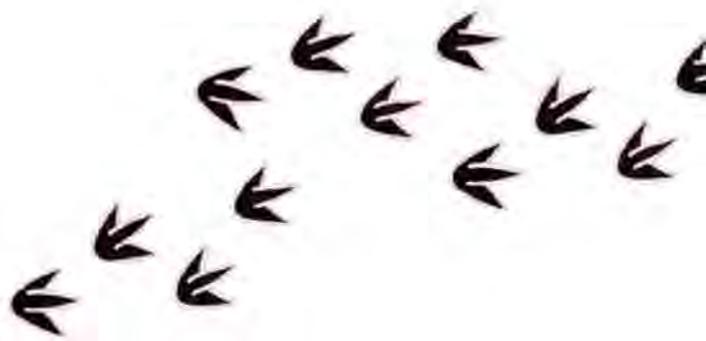
There was unanimous agreement across all consultations and all other data sources used by this Inquiry, that the primary consideration in making a placement must be the safety and best interests of the child. However, some stakeholders believed that the current carer assessment did not achieve this and was eliminating Aboriginal carers who could provide an excellent level of care.

The disadvantage that Aboriginal people face across every significant socio-economic indicator is a contributing factor to Aboriginal people being assessed as unsuitable. That is, the poorer outcomes and disadvantage that Aboriginal people already experience in a range of social and economic domains – including housing, health, justice contact, victimisation and wage parity are often the reasons they do not pass the carer assessment. This contributes to the further disadvantage Aboriginal children face when they are not placed with Aboriginal extended family or other Aboriginal carers.

There is a distinction between a carer experiencing disadvantage and a carer not being able to provide a safe and nurturing environment for a child. This needs careful consideration in the carer assessment, with a focus on how the system can provide support to carers to ensure disadvantage they may already be experiencing is not the reason they are assessed as unsuitable carers. There were many positive examples provided during consultations about how the system has supported carers in this way, such as providing carers with an additional bed, whitegoods or travel assistance. However, a clear theme across consultations was that more needs to be done in this area.

The number of Aboriginal carers that are being assessed as unsuitable is also a source of tension between CP and ACSASS staff. CP staff expressed frustration that ACSASS are identifying carers who are then assessed as unsuitable. ACSASS staff expressed frustration that the carers who are being assessed as unsuitable (who are often well-known to ACSASS staff) would actually be a highly suitable carer for the child. Highly suitable carers being assessed as unsuitable is also a deterrent for other Aboriginal people willing to become carers. This frustration was particularly evident with respect to criminal history checks, with carers failing the assessment based on prior offences. ACSASS considered some of these offences to be old, relatively minor and no longer relevant to the capability of the person to care for a child today.

Community representatives report that Aboriginal family members are often dismissed as unsuitable carers for reasons that are unclear or based on flawed assumptions.<sup>128</sup>



128 Victorian Council of Social Services, submission to the Inquiry, p. 3

## Assessing practice compliance

### Recommendation 44

The recruitment and retention strategy for Aboriginal carers should include:

- a) a review of the carer assessment process (for both kinship and non-kinship carers) with a focus on ensuring it is not unnecessarily eliminating potential Aboriginal carers who could provide a suitable level of care
- b) increased support for Aboriginal carers to acknowledge that the socioeconomic disadvantage faced by Aboriginal communities is contributing to Aboriginal carers being assessed as unsuitable.

#### Carer payments are insufficient

The issue of insufficient carer payments was raised in consultations as being a significant barrier for all carers – both Aboriginal and non-Aboriginal carers, and kinship and non-kinship carers. There was a strong sentiment that carer payments were not reflective of the vast and important responsibilities that carers fulfil, often caring for children with complex behaviours 24 hours a day, seven days a week. CP and PCU staff advised that carer payments usually only partially cover the actual costs incurred by the carer, and that they do not provide a financial incentive to be a carer.

*Carer payments would not even cover the cost of food that an adolescent eats – carers are out of pocket from taking on responsibility, there is certainly no financial incentive.*

**CP staff**

*Payments to carers are clearly not sufficient.*

**CP staff**

*Payments do not even cover the cost of caring for the child.*

**CSO manager**

Although the issue of carer payments applies to all carers, it has a more pronounced effect on Aboriginal carers. Given the economic disadvantage faced by many Aboriginal people, they are not always in a financial position to be able to incur the additional financial burden of becoming a carer, regardless of how willing and suitable they are.

*The limited payments are a particularly big issue for Aboriginal carers – many of who are not in a financial situation to cover these additional costs.*

**CP staff**

The issue of carer payments being insufficient was of particular concern to kinship carers. Kinship payments are set at base rate, whereas home-base care payments are higher and increase in consideration of matters such as the complexity of the needs of the child. Setting kinship carer payments at a lower rate than non-kinship carer payments seems to be in conflict with the overall intention of the CP system and the ACPP placement hierarchy to prioritise kinship care over all other types of care.

*Unlike foster carers, kinship carers are not reimbursed for supporting children with more intense and complex needs. There is a difference of about \$25,000 between the annual general allowance most kinship carers received, and the highest allowance a foster carer can receive.*

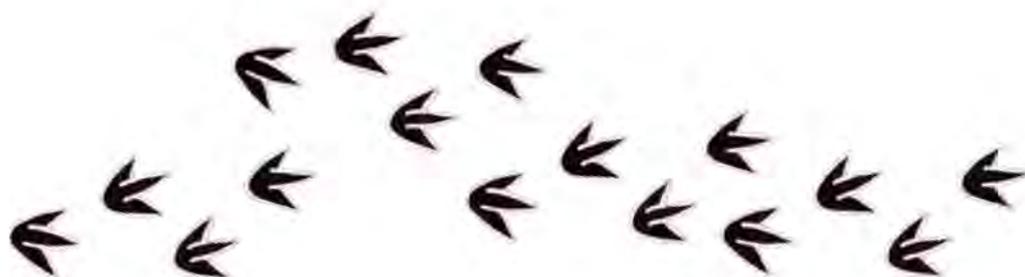
**VCOSS submission to the Inquiry, p. 4**

*The fact that kinship carers get less money and support than foster carers, is definitely an impediment to more people becoming kinship carer.*

**ACCO staff**

### Key finding 42

The current structure of carer payments does not reflect the intention of the CP system or the ACPP placement hierarchy to prioritise kinship placements over all other types of care.



## Recommendation 45

The recruitment and retention strategy for Aboriginal carers gives consideration to carer payments, including:

- a) aligning kinship reimbursement for carers of Aboriginal children with home-based carer rates.<sup>129</sup>

### Limited pool of potential Aboriginal carers

The Victorian Aboriginal community is a young and growing population. In 2011 the median age of the Victorian Aboriginal community was 22 years, compared with the national median age of 37 years.<sup>130</sup>

With the disproportionately high number of Aboriginal children in OOHC, coupled with the low median age of the Victorian Aboriginal population, there is a proportionately lower pool of Aboriginal adult carers available per Aboriginal child, otherwise known as the youth dependency ratio.<sup>131</sup> In 2013, nationally, the youth dependency ratio for the Aboriginal community was significantly higher (0.6) than for the non-Aboriginal population (0.27).<sup>132</sup>

## Key finding 43

There is a disproportionately smaller pool of potential Aboriginal adult carers, given the young age demographic of the Victorian Aboriginal population and the dramatic over-representation of Aboriginal children in OOHC. This disproportionately smaller pool of Aboriginal carers increases the importance of effective recruitment and retention strategies for Aboriginal carers.

### Previous experiences of not receiving sufficient support as a carer

Some consulted stakeholders were aware of Aboriginal people who had been carers of Aboriginal children in OOHC, but who were reluctant to become a carer again because of their experiences with the system. These stakeholders advised that these carers felt they had not been sufficiently supported by the system (which could be inclusive of CP, CSO and ACCO involvement) once the child had been placed with them.

This demonstrates a need to provide sufficient support and aftercare to Aboriginal carers, in order to improve the retention of Aboriginal carers. This is a particularly important consideration in light of the issues above regarding the proportionately limited pool of potential Aboriginal carers and the issues in identifying and recruiting Aboriginal carers.

<sup>129</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department commented on this recommendation. Their comments and the Commission's response are recorded in Section 10: Opportunity to respond.

<sup>130</sup> Australian Bureau of Statistics, 2011 Census.

<sup>131</sup> The youth dependency ratio is the percentage of the population under 15 relative to the total number of people aged 15 to 64 years.

<sup>132</sup> Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians, June 2013*.

## Assessing practice compliance

### 9.5 Maintaining cultural identity

**Is there a completed cultural support plan or a case plan that considers opportunities for continuing contact with Aboriginal family, community and culture?**

#### 9.5.1 Compliance rating

At the time of this Inquiry the CP policy and practice requirements regarding a CSP for Aboriginal children in OOHC were different to the current legislative requirements, which commenced on 1 March 2016.

For the purposes of assessing practice compliance against this key ACPP domain, an assessment has been made against the CP policy and practice requirements in place at the time of the Inquiry.

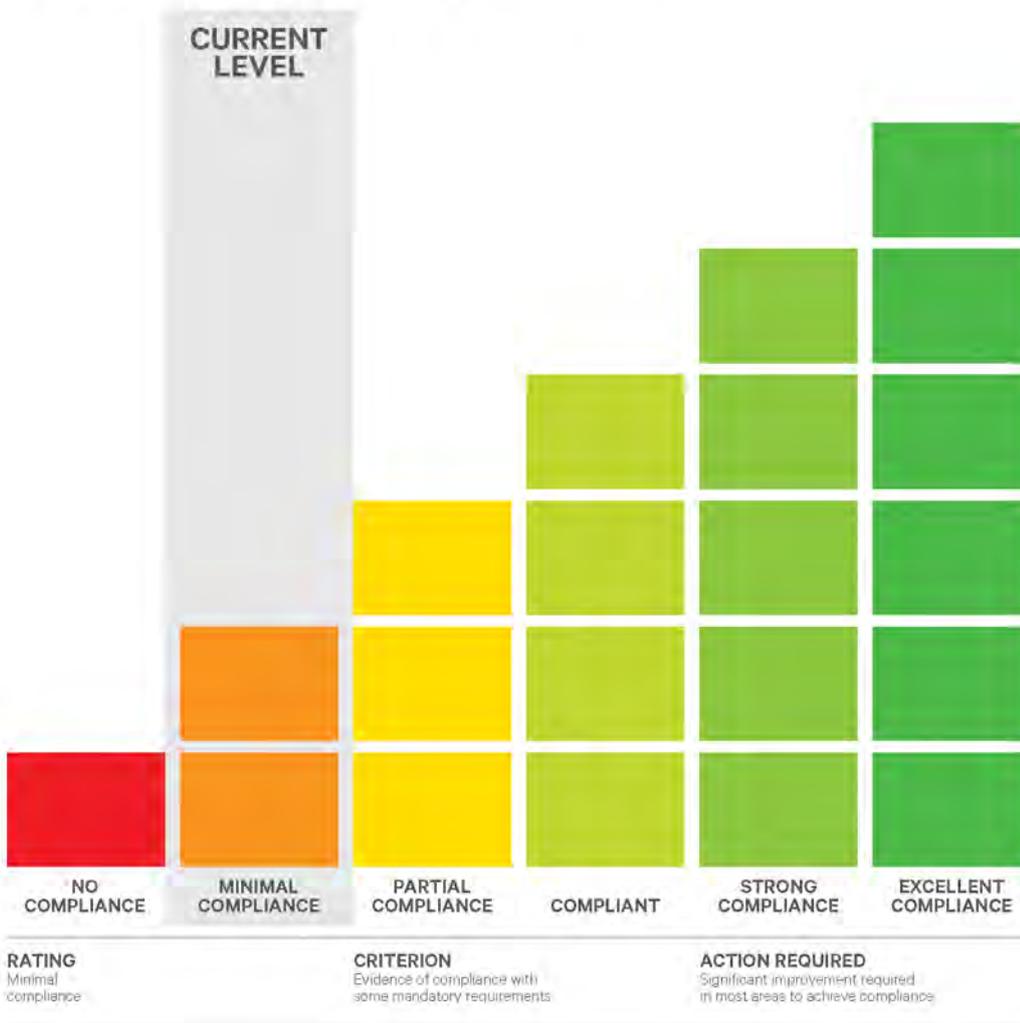
The most significant considerations in making an assessment of the level of practice compliance with this key ACPP domain are listed below:

- Where a CSP is mandatory for Aboriginal children (on a GSO or LTGSO), there is low compliance with this requirement. Only 29 per cent of Aboriginal children (of the 45 required) had a CSP on 31 December 2014.
- It has always been considered best practice (prior to 1 March 2016) for all Aboriginal children on all orders to have a CSP. However, on 31 December 2014 only 6.7 per cent of all Aboriginal children in OOHC (864) had a CSP.
- File reviews indicated that for 54 per cent of children (32 children) there was no evidence of a case plan that considered the child's cultural identity, while 24 per cent (14 children) did not have a case plan at all.

According to the available evidence, compliance against the requirement to complete a CSP or a case plan that considers opportunities for continuing contact with Aboriginal family, community and culture is assessed as **'Minimal Compliance'**.



Figure 20: Compliance rating – Maintaining cultural identity



Source: This assessment was informed by seven data sources detailed in Table 1 in addition to performance data provided by the two ACSASS providers for the purposes of this inquiry.

Note: There was a high level of consistency in the themes across these seven points of evidence, indicating this assessment is likely to be reflective of the system-wide situation.



## Assessing practice compliance

### 9.5.2 Context

A description of the previous CP policy and practice requirements at the time of this Inquiry (prior to 1 March 2016) is detailed below.

#### Cultural support plan program

The ACP requires that 'any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community'. In response to this requirement, the CSP program was established.

At the time of this Inquiry, the Department:

- identified CSP as mandatory for Aboriginal children who were in OOHC and subject to a GSO or LTGSO. The Children's Court can also require a CSP to be developed as a condition on other protection orders
- considered CSP as not mandatory for all children; however, considered it best practice for all Aboriginal children in OOHC
- funded 10 ACCOs to deliver the CSP function
- required a case plan to include consideration of cultural identity and maintenance of cultural connection.

#### New approach – 1 March 2016

Following the introduction of new obligations in the CYF Amendment Act, from 1 March 2016 a new approach to cultural support planning was introduced.

The amendments legislated that all Aboriginal children in OOHC must have a CSP. This was a significant expansion of the previous CP policy and practice requirements, and the Department estimated that this requirement would mean a fivefold increase in the number of children requiring a cultural plan. A case plan is also required for all children.

#### New model

In December 2015, to give effect to this new legislative requirement and the expected demand on the sector, a new model for cultural support planning was designed by department. The 2016–17 budget allocated \$5.5 million to implement the new approach.

### 9.5.3 Detailed compliance assessment

#### Mandatory requirement for CSP<sup>133</sup>

On 31 December 2014, a CSP was mandated by legislation for 45 of the 864 Aboriginal children in OOHC.<sup>133</sup> Of these, only 29 per cent (13) had a CSP (and a further three cases were reported as closed).

#### Best practice for CSP

While a CSP was not mandatory for all Aboriginal children, it was considered best practice for all Aboriginal children in OOHC to have a CSP. If considering CSP as best practice, 6.7 per cent (58) of 864 Aboriginal children in OOHC had a completed CSP on 31 December 2014.<sup>134</sup>

#### Case plans

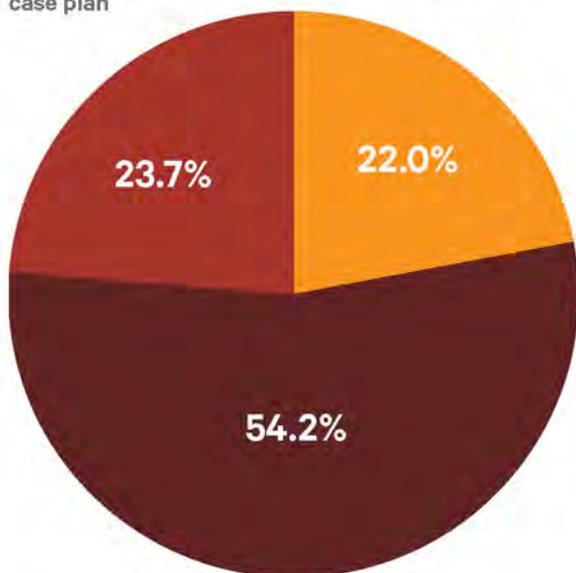
System-wide data is unable to demonstrate evidence of cultural connection in case plans for Aboriginal children. File reviews revealed the following:

- 22 per cent of files (13 children) showed evidence of considering the child's culture and identity in the case plan.
- 54 per cent of files (32 children) showed no evidence of considering the child's culture and identity in the case plan.
- 24 per cent of children (14 children) did not have a case plan.

<sup>133</sup> Aboriginal children on GSOs or LTGSOs who had a placement change within the Inquiry period of 1 January 2013 to 31 December 2014.

<sup>134</sup> Aboriginal children on all court orders who had a placement change within the Inquiry period of 1 January 2013 to 31 December 2014.

Figure 21: File reviews percentage of files with evidence that the child’s culture was considered in the child’s case plan



■ Yes  
■ No  
■ Child does not have a case plan

Source: Department of Health and Human Services CP case files.

Note: Six children did not require a case plan during the Inquiry period and as a result have been excluded from the findings.

## Key finding 44

As Department-wide data is unable to demonstrate evidence of cultural connection in case plans the Inquiry used a random sample of Aboriginal children’s files to review for trends. Only a few of these Aboriginal children had a case plan. File reviews showed that 24 per cent of Aboriginal children in OOHHC did not have a case plan. In addition, of the remainder that did have a case plan only 22 per cent included evidence of the child’s culture and identity.

### 9.5.4 Systemic barriers and recommendations

The Inquiry has not focused on the systemic barriers to meeting the need for CSP given the recent changes to legislative requirements (from March 2016) and the Department’s commitment to developing the new model.

#### Considering culture and identity in case plans

While ‘cultural connection’ is a section of the case plan, it appears this section is not receiving adequate attention by the Department. Departmental staff reported that completing the ‘cultural connection’ section of the case plan proved to be more difficult in the absence of a CSP as there was less guidance on what to include.



## Assessing practice compliance

### Lack of skills and support in developing a CSP

The biggest barriers reported by CP staff in the online survey in developing the CSP are:

- lack of skills or resources to identify cultural needs or develop plans that respond to these needs – 47 per cent of respondents
- insufficient support from Aboriginal organisations – 44 per cent of respondents
- insufficient guidance about what constitutes 'maintenance of culture and identity' – 37 per cent of respondents.

*We are largely a white, middle-class and female workforce – and we are expected to develop CSPs for Aboriginal children.*

**CP staff**

*ACCOs say that CP will never get the information they need to develop a good CSP. Yet it is our responsibility to write CSPs.*

**Departmental staff member**

Consultations indicated that the current resourcing of ACCOs in developing CSPs wasn't enough to meet the demands and provide necessary support to CP staff.

CP staff were also of the view that the initiation and development of a CSP is largely reliant on convening an AFLDM meeting whereby staff felt able to seek information from families through this process and also provided an opportunity to explain the rationale for a CSP rather than being seen as 'another task to complete'.

### Problematic template and system difficulties

CP staff reported that with inflexible fields and limited free text fields the CSP template is not user-friendly, and it is difficult to access and upload to CRIS. According to the online survey, 33 per cent of CP staff believed aspects of the template were difficult or cumbersome, and this was a contributing factor to CSPs not being developed.

### Family disconnected from culture

If the child or family is disconnected from their culture or have recently discovered their Aboriginality, the development of the CSP can be more challenging. CP staff reported that it was difficult to 'create a picture of cultural knowledge as the story is often unknown'. In this case, CP staff would attempt to establish a connection to culture within the local community and organisations.

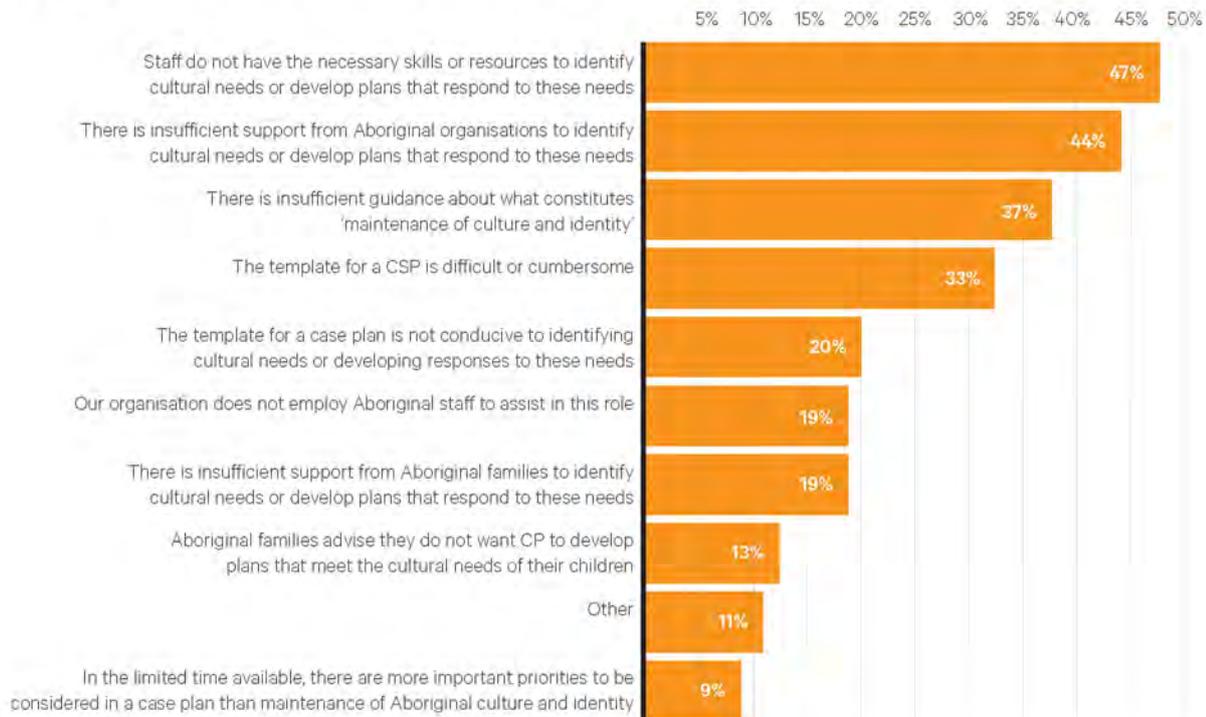
### Cultural connectedness not a priority for Departmental management

CP staff were of the view that considering Aboriginal children's connectedness to culture was not prioritised by Departmental practice as:

- CP responsibilities to Aboriginal children were not openly discussed and promoted
- best practice responsibilities were not promoted or integrated
- discussion about strengths, areas of improvement and improving processes was not encouraged.

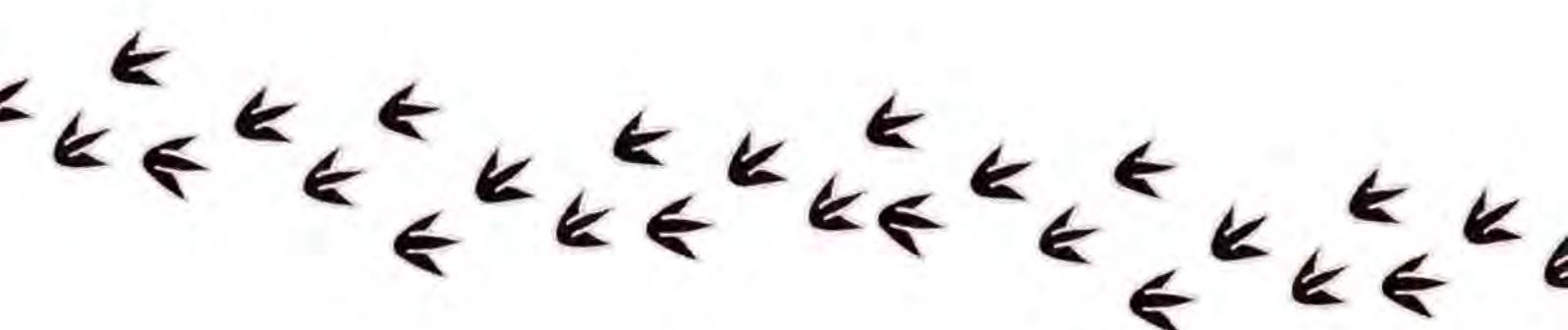


**Figure 22: Major barriers to developing a case plan or CSP**



Source: Commission for Children and Young People, online survey commissioned for the inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria, 2016.

Note: a maximum of three options could be selected by survey respondents. 'Other' reasons included parents/grandparents being disconnected from their culture, cultural connection not being considered a priority embedded in CP practice, process not being explained effectively to families, backlog and staff turnover at ACCOs who are responsible for creating the CSP.



## Assessing practice compliance

### Key finding 45

As reported by CP staff (via the online survey), the biggest barriers in developing the CSP is the lack of skills, resources or support to identify cultural needs or develop plans that respond to these needs.

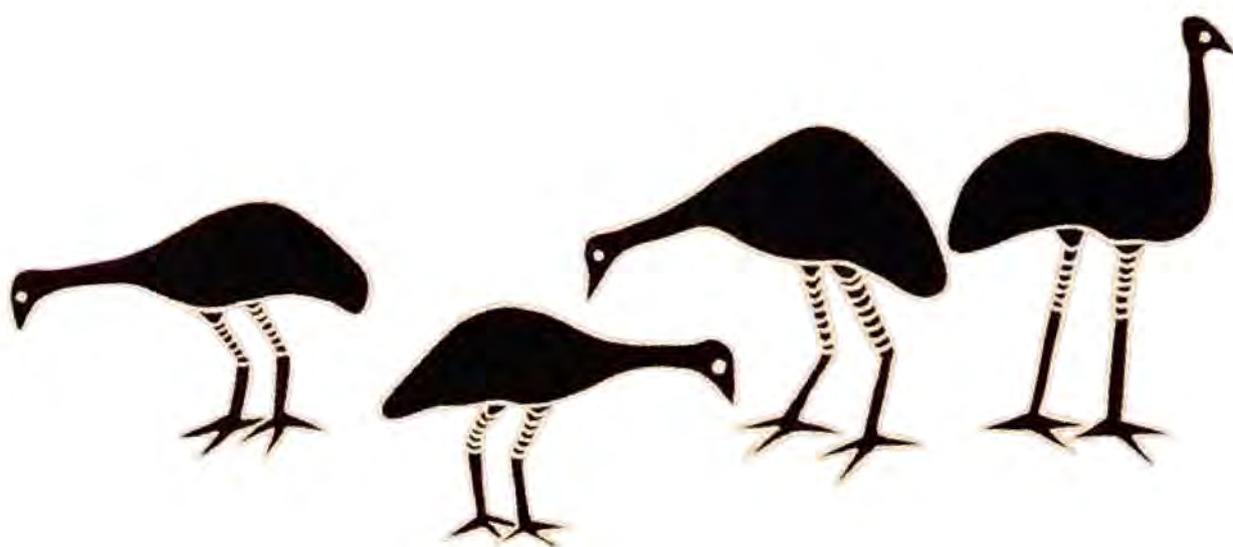
### Key finding 46

While the change in legislation is noted, the level of compliance against the previous legislative requirements is low. The new legislative requirement requires an increased number of Aboriginal children in OOHC to have a CSP.

A new approach to cultural planning in response to legislation changes in March 2016 supports Aboriginal children who are placed in OOHC remain connected to their cultural heritage, and maintain their Aboriginal identity.

### Recommendation 46

Support the implementation of the new CSP model, and actively monitor and report on the number and quality of cultural plans produced.





## 9.6 Overall practice compliance

This section considers the overall level of practice compliance with mandatory ACPP requirements across all stages of CP intervention. It draws on the findings of earlier sections of this Inquiry and assesses the level of compliance across all five of the key ACPP domains.

### 9.6.1 Compliance rating

The most significant considerations in making an assessment of the overall level of practice compliance with all key ACPP domains are listed below:

- The system-wide policy and program level response has been assessed as having 'strong compliance' with the legislated ACPP. There is a large gap between policy and program intent and what occurs in practice.
- At a practice level, none of the five key ACPP domains have achieved a compliance rating of Compliant (or higher). Practice compliance has been rated as either:
  - 'Minimal compliance' (AFLDM, Maintaining of cultural identity) or
  - 'Partial compliance' (Identification of Aboriginality, ACSASS, and ACPP placement hierarchy).
- There is no system-wide data that shows the number or proportion of Aboriginal children who have received mandatory ACPP services across all five key ACPP domains.
- None of the case files reviewed achieved full compliance with all ACPP requirements.

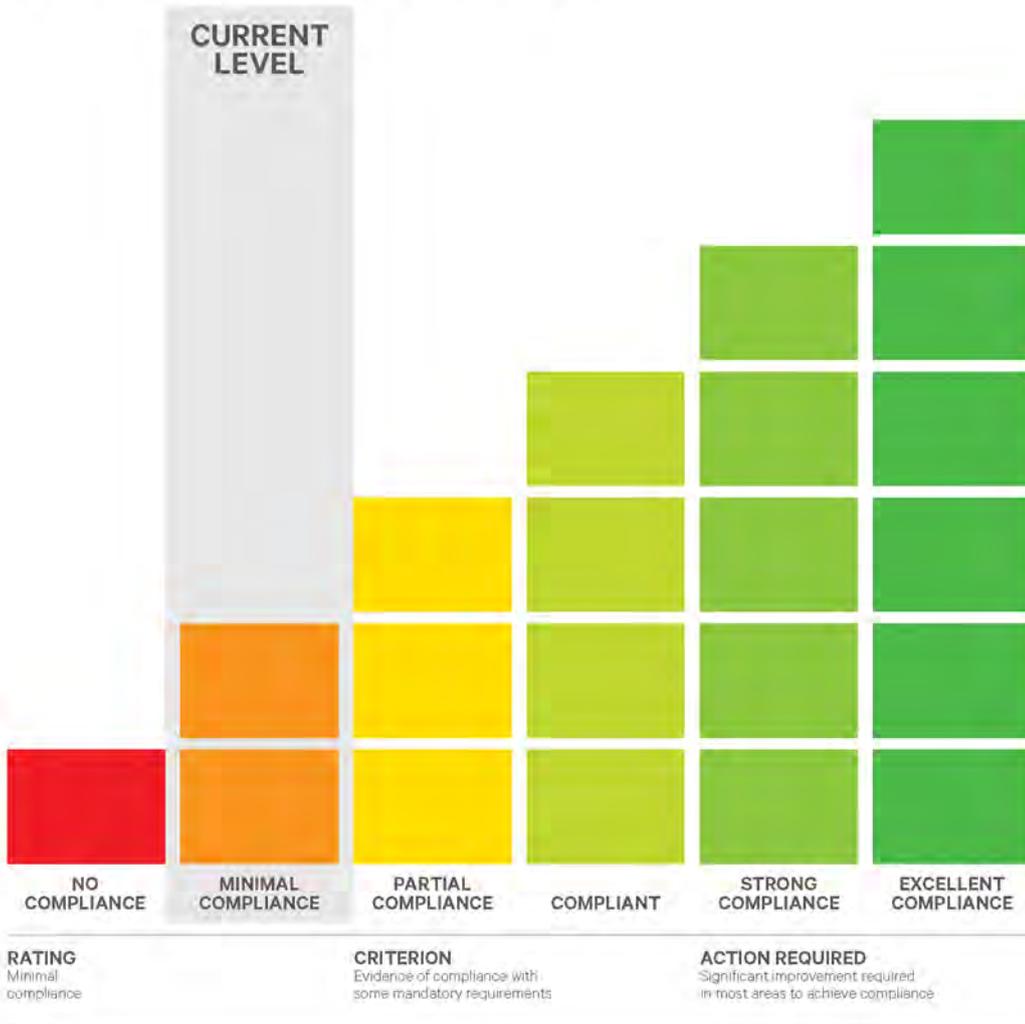
- File reviews also showed that not one of the 65 Aboriginal children whose cases were reviewed received even the most basic level of service from the three most significant programs established to comply with the ACPP. No child had the benefit of receiving:
  - an AFLDM meeting at any stage
  - ACSASS involvement in each of the first three CP stages
  - a CSP or case plan that considered their cultural identity.
- The policy and program response compliance rating of 'Strong compliance' is a contributing factor in practice compliance being assessed as 'Minimal compliance' – highlighting the gap between current practice and the strong Victorian policy and program requirements.

This is not to suggest that the Victorian policy and program requirements should be moderated. The Commission urges the system to strive to achieve compliance with these requirements. Consulted stakeholders applauded Victoria for its sound policy and program response.

According to the available evidence, overall practice compliance with the ACPP in Victoria is assessed as **'Minimal compliance'**.

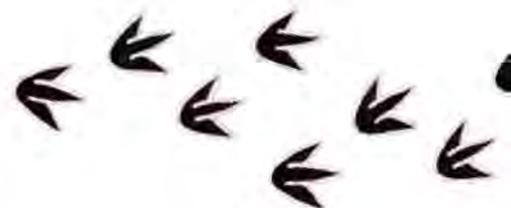
# Assessing practice compliance

Figure 23: Compliance rating – overall practice compliance



Source: This assessment was informed by seven data sources detailed in Table 1 in addition to performance data provided by the two ACSASS providers for the purposes of this Inquiry.

Note: There was a high level of consistency in the themes across these seven points of evidence, indicating this assessment is likely to be reflective of the system-wide situation.



## 9.6.2 Detailed compliance assessment

### Policy versus practice

As detailed in Section 7: Policy and program compliance, the policy and program response to meeting the mandatory legislative requirements of ACPP is assessed as Strong compliance.

Early stakeholder consultations together with the literature review undertaken at the commencement of the Inquiry indicated a gap between policy and program intent and the implementation of that intent in practice. The findings of this Inquiry have confirmed this.

### Compliance at each key ACPP domain

This Inquiry has considered in detail the level of practice compliance at each of the five key ACPP domains. A summary is in Table 13.

**Table 13: Summary of practice compliance by key ACPP domain**

Key ACPP domain	Compliance rating
Identification of Aboriginality	Partial Compliance
ACSASS	Partial Compliance
AFLDM	Minimal Compliance
ACPP placement hierarchy	Partial Compliance
Maintaining cultural identity	Minimal Compliance

Source: Commission for Children and Young People, Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria

The system was unable to produce sufficient statistical data to inform a definitive system-wide assessment of the current level of practice compliance at any of the five key ACPP domains, or at any of the 20 ACPP compliance points (see Table 9). The fact that the system does not properly record or monitor ACPP compliance is discussed later in this section. The lack of recording and monitoring is of concern for several reasons, including that it raises doubt that the system places sufficient priority on complying with the mandatory requirements of the ACPP.

In this context, it is important to note that the assessment made by this Inquiry is still considered robust, despite there being insufficient system-wide statistical data. This was achieved by analysis of the evidence collected across the seven data sources<sup>135</sup> used by the Inquiry, which showed a high level of consistency in key themes across all data sources.

### Compliance with every key ACPP domain

The assessment of practice compliance presented in this Inquiry addresses each key ACPP domain individually. This section considers the trajectory of service provision experienced by an Aboriginal child across all five of the key ACPP domains to determine whether Aboriginal children in OOHCC receive the benefits of the ACPP.

There is no system-wide data that shows the number or proportion of Aboriginal children who have received the benefit of mandatory ACPP services across all five key ACPP domains.

File reviews show that none of the 65 Aboriginal children whose files were reviewed experienced complete compliance with every ACPP requirement.

As compliance with all mandatory ACPP requirements did not occur, consideration was then given to the proportion of Aboriginal children who had experienced a more basic level of ACPP compliance. For this more basic compliance assessment, a high level measure was developed for each of the three most significant programs that have been established to comply with the ACPP in Victoria (ACSASS and the AFLDM and CSP programs). The basic compliance measure used at these three key points was based on assessing the answer to three key questions:

- Was an AFLDM meeting ever held?
- Was ACSASS involved in intake, investigation and protective intervention?
- Was a CSP or case plan that considers the child's cultural identity completed?

System-wide data is not available to show the number or proportion of Aboriginal children who received all three of the basic compliance measures above. However, the file reviews showed that no Aboriginal child (of those 65 files reviewed) had received all three of these basic compliance measures.

<sup>135</sup> As detailed in Section 5: Methodology these seven data sources are: file reviews of 65 Aboriginal children, online survey of CP staff, consultations with range of stakeholders, public submissions, review of Departmental documentation and review of publicly available documentation – in addition to the limited system-wide statistical data the Department could produce.

## Assessing practice compliance

The conclusion that follows from this assessment indicates a deficiency in the overall system's response, but not necessarily a deficiency of any of the programs individually. These programs are dependent on a number of factors to operate effectively, as outlined in earlier sections of this report, and include such matters as CP staff contacting ACSASS in a timely manner, Departmental convenors being available to co-convene the meeting, and appropriate resourcing of programs.

### Key finding 47

Practice compliance at each of the five key ACPP domains individually is either 'partial compliance' or 'minimal compliance' – none of the key ACPP domains were assessed as 'compliant' (or higher).

### Key finding 48

Full practice compliance against all five key ACPP domains does not occur.<sup>136</sup>

None of the 65 case files reviewed achieved full compliance with all ACPP requirements.

File reviews also showed that not one of the 65 Aboriginal children whose cases were reviewed received even the most basic level of service from the three most significant programs established to comply with the ACPP (ACSASS and the AFLDM and CSP programs).

## 9.6.3 Systemic barriers and recommendations

The information presented above indicates that the system does not meet the mandatory requirements across any of the five key ACPP domains. This section explores the systemic barriers contributing to non-compliance and the implications of non-compliance, and offers recommendations for improvement.

The three most significant opportunities for improvement are:

- accountability for non-compliance
- resourcing to align with demand for ACPP activities
- greater Aboriginal self-determination in ACPP decisions.

### Accountability for non-compliance

Organisations and programs rely on the actions of individual staff members to operate effectively. The CP system is no different, and relies on a high level of discretion among its staff through the 'professional judgement model' of decision-making.

Across all organisations and programs, there is a need for the system to act when individuals are not responding as required. In the case of the CP system, the system is not effectively responding to instances where mandatory ACPP responsibilities are not being fulfilled.

This is not to say that ACPP responsibilities are always being neglected, in many cases these responsibilities are being completed. There were many instances reported in consultations of the service system effectively meeting its ACPP obligations. However, the system does not have sufficient procedures or processes in place to identify and address non-compliance. It appears to be overly reliant on staff to be personally accountable for compliance, without adequate checks and balances in place. This approach has not achieved the intended results at any of the five key ACPP domains.

<sup>136</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department disagreed with Key findings 47 and 48. The department stated they are 'able to achieve compliance against the ACPP without AFLDM or ACSASS involvement at each of the first three phases of a CSP'. The full response is in Section 10: Opportunity to respond.

*Application [of the legislation] has been patchy and often largely dependent on individual practitioners' understanding and commitment, rather on a systemic approach achieving consistent standards.*

**VACCA submission to the Inquiry, p. 7**

There are indications that some staff have a personal belief that the ACPP is not important. In some cases, they are prioritising this personal belief over their mandatory ACPP obligations. There is little definitive evidence that this is occurring, and there are many other issues contributing to non-compliance by staff. However, there were indications from the consultations and online survey that this may be an issue. Two quotations highlight the current risk of relying on the professional judgement of CP staff.

*There is good practice where there is good relationships and good will. This is not good enough. It needs to be systemic, it shouldn't be the worker's choice whether they comply.*

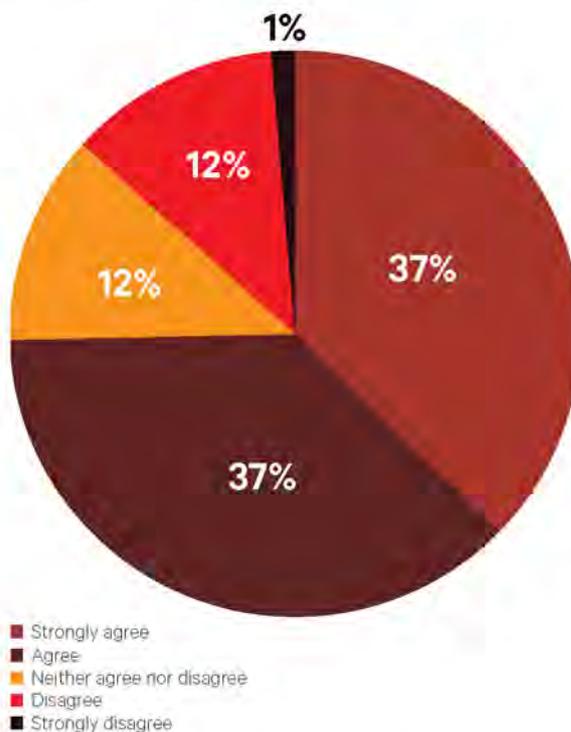
**CSO manager**

*It works, and doesn't work, based on the commitment and skill of individual CP workers. CP workers feel they have a choice in whether or not to apply the ACPP. They don't feel they have a choice in complying with other mandatory requirements.*

**ACCO staff**

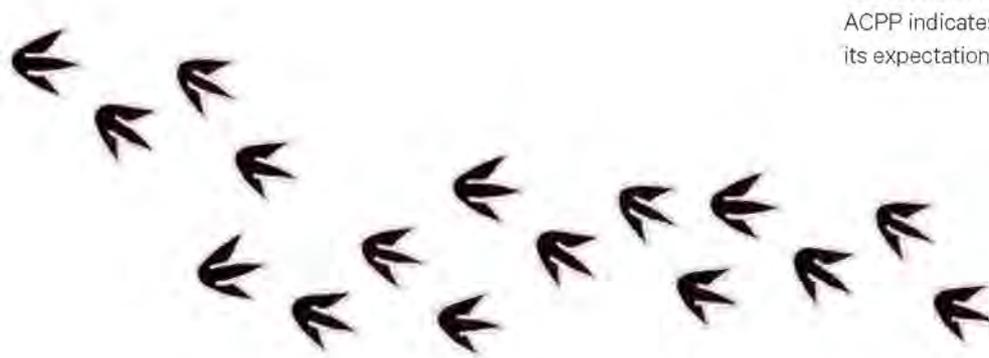
The online survey provided a further indication that this may be an issue, by showing that a concerning proportion of CP staff do not believe it is always in the best interests of an Aboriginal child to comply with the requirements of the ACPP. While 74 per cent of CP respondents to the online survey either 'agreed' or 'strongly agreed', 26 per cent did not agree or strongly agree with the statement, 'It is always in the best interests of an Aboriginal child to comply with the ACPP' (see Figure 24).

**Figure 24: Response to survey statement: It is always in the best interests of an Aboriginal child to comply with the requirements of the ACPP**



Source: Commission for Children and Young People, online survey commissioned as part of the Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria, 2016

The results in Figure 24 above could be influenced by a misunderstanding by CP staff of the meaning of 'comply with the requirements of the ACPP'. Throughout consultations it became clear that many CP staff incorrectly equate 'compliance with the ACPP' and 'placement with an Aboriginal carer'. This is incorrect, and this perception may be a result of the only ACPP-related reporting from the Department being the number of Aboriginal children who were 'placed in accordance with the ACPP' (which indicates the type of carer they are placed with). The fact that many CP staff misunderstand compliance with the ACPP indicates the system is not appropriately communicating its expectations about ACPP compliance.



## Assessing practice compliance

### Key finding 49

Non-compliance is not being effectively addressed at any of the five key ACPP domains. There is opportunity to improve accountability, and thus compliance.

Regardless of why mandatory ACPP obligations are not always met, there is clearly a need for non-compliance to be more effectively addressed across the system. Three areas were identified where improvement could be made to strengthen accountability for ACPP compliance:

- communicate expectations and mandatory requirements more effectively to staff
- identify non-compliance
- address non-compliance.

### Communicate expectations and mandatory requirements to staff

In order to be accountable staff must be aware of their responsibilities. In consultation with CP, ACSASS and CSO staff a theme emerged that staff were unsure of their specific responsibilities in relation to the ACPP. For example, some staff incorrectly believe that ACPP compliance means that a child is placed with an Aboriginal carer.

*Overall staff are aware of the intent of the ACPP, but it's not clear exactly how and when to apply it. As a result, different practices have evolved locally.*

**CP staff**

*I sat in that room with all of the relevant workers there, the workers from CP and from the funded sector. I asked them 'Who is accountable? Who is accountable for letting years go past and this child never having an AFLDM?' No-one could answer me. No-one could tell me who should have responsibility and no-one took accountability for this child missing out on a key service. This lack of accountability is a problem I see across the system.*

**Taskforce 1000 panel member**

Stakeholders also advised that the processes and procedures for dealing with Aboriginal children are more complex than for other children. This is because all the 'usual' processes apply, with an additional overlay of Aboriginal-specific services and the ACPP.<sup>137</sup> They particularly highlighted the involvement of several additional workers and organisations above those services involved for other children in need of care. The specific services include ACSASS, CSP, Departmental and community AFLDM convenors and other ACCO services. Stakeholders felt a lack of clarity of the responsibilities of each of these numerous roles was contributing to compliance issues. It was not always clear who was accountable for a specific action.

*By making it everyone's responsibility (to comply with ACPP), it becomes no-one's responsibility.*

**CSO manager**

*There is confusion about who is responsible for what right across the system.*

**CP staff**

The online survey findings also showed that some CP staff need further guidance or training in relation to their ACPP responsibilities.

- 70 per cent of CP respondents in the online survey indicated they 'agreed' or 'strongly agreed' that they had received adequate information to allow them to comply with the requirements of the ACPP.
- 60 per cent of CP respondents to the online survey indicated they had not received training on their responsibilities for complying with ACPP, other than the training that was provided to them at induction (Beginning Practice training).

The extra programs and workers involved with Aboriginal children in OOHHC mean that it is even more important that the specific responsibilities of each worker/program are clearly communicated and understood. However, a proportion of CP staff do not feel they have received adequate information or training about their ACPP responsibilities.

<sup>137</sup> As described in Section 4: Inquiry context, there are a number of Aboriginal-specific services besides those related to the ACPP – for example, Aboriginal-specific prevention and reunification services.

## Recommendation 47

Better communicate the expectations that CP and CSO staff comply with the mandatory requirements of the ACPP. Strategies to achieve this include:

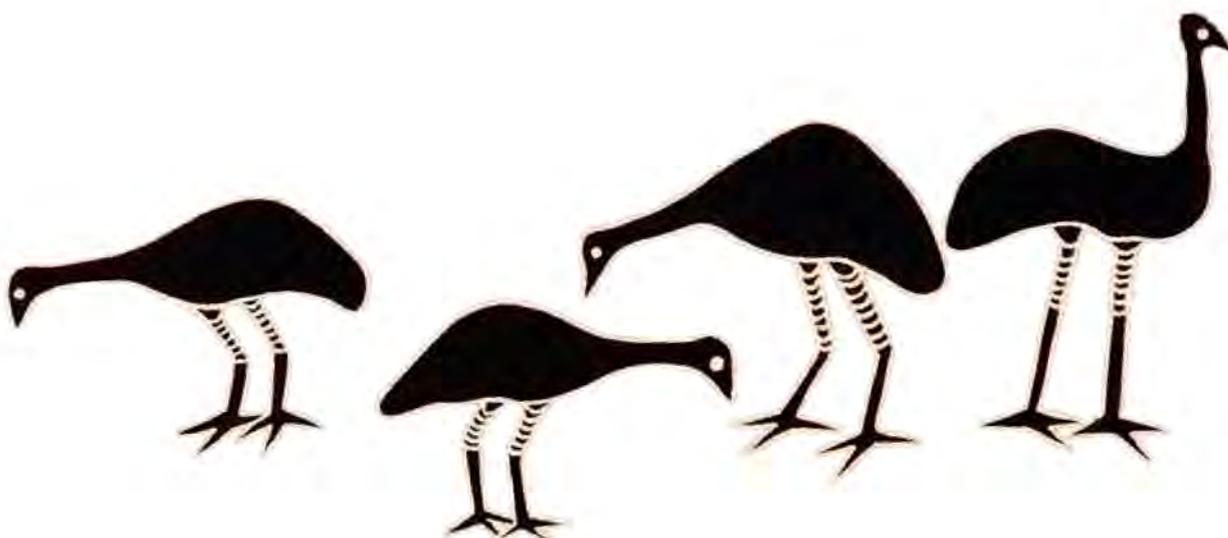
- a) greater clarity in CP policy and practice guidance, including that governing the funded community sector (see Recommendations 3 and 4 regarding improvements to CP policy and practice guidance)
- b) training for all CP and CSO staff who have ACPP responsibilities – especially where these responsibilities are not currently being met
- c) greater focus by CP and CSO managers on ensuring staff are aware of their mandatory ACPP responsibilities.

## Identify non-compliance

In order to hold staff accountable, the system must identify whether or not ACPP responsibilities are being completed. The CP system records and reports very little information about the level of ACPP compliance.

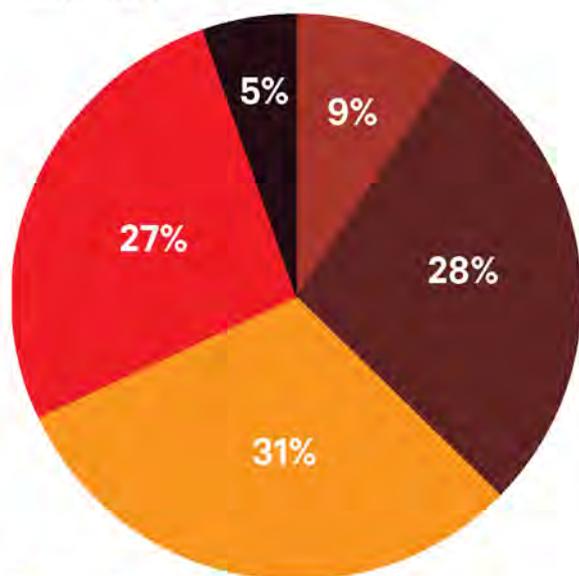
- There has been no previous evaluation or review (internal or external) of ACPP compliance.
- The only publicly reported indication of ACPP compliance is the type of carer a child is placed with. The limitations with this reporting are detailed at Section 8.1: Current reporting measure.
- The system cannot report sufficient data at any of the five key ACPP domains to make a definitive assessment of system-wide compliance.
- The system cannot report sufficient at any of the 20 compliance points (the specific points which combine to form the five key ACPP domains, in Section 8.2: Definition of compliance for the Inquiry) to make a definitive assessment of system-wide compliance.

The online survey of CP staff reinforced this issue, with only 37 per cent of respondents indicating they 'agree' or 'strongly agree' that the system has adequate processes in place to record and measure compliance with the ACPP.



## Assessing practice compliance

Figure 25: Response to survey statement: Adequate processes are in place to record and measure compliance with the ACPP



■ Strongly agree  
■ Agree  
■ Neither agree nor disagree  
■ Disagree  
■ Strongly disagree

Source: Commission for Children and Young People, online survey commissioned as part of the Inquiry into compliance with the Intent of the Aboriginal Child Placement Principle in Victoria, 2016.

The system does not have adequate oversight of the level of compliance with the ACPP. The recording, reporting and monitoring of compliance needs to improve.

### Key finding 50

The system does not have adequate oversight of the level of compliance with the mandatory requirements of the ACPP.

- The system cannot report sufficient data on any of the five key ACPP domains to make a definitive assessment of system-wide compliance.
- The system cannot report sufficient data on any of the 20 ACPP compliance points to make a definitive assessment of system-wide compliance.
- There has been no previous evaluation or review (internal or external) of ACPP compliance.
- The only publicly reported indicator of ACPP compliance is the type of carer a child is placed with. This is not an adequate measure of ACPP compliance.

### Recommendation 48

Better identify non-compliance with the ACPP, in order to effectively address it. This should include improved processes for recording, reporting and monitoring compliance (see Section 9: Assessing practice compliance, Recommendation 7).

### Address non-compliance

Once non-compliance has been identified it must be effectively addressed. The fact that no key ACPP domain is assessed as 'compliant' (or above) shows the need for improvement in this area.

The consultations conducted with CP staff revealed there were no processes in place to ensure non-compliance is systematically identified or addressed. Some CP staff advised that ACPP compliance is a consideration in their supervision meetings with management. However, the majority of CP staff consulted during this Inquiry advised that ACPP compliance is not routinely a component of their supervision meetings. CP staff were aware of no other systemic processes for identifying and addressing non-compliance.

Consultations with ACSASS, CSOs, AFLDM convenors and ACCOs did not address how organisations deal with non-compliance by staff. The Inquiry findings (for example, relating to ACSASS responsiveness, delays in convening AFLDM meetings and the low numbers of CSPs) suggest the funded sector needs to improve its effectiveness of addressing non-compliance by staff.

## Recommendation 49

**Better address non-compliance with the ACPD (by both CP and CSOs).**

The following strategies may achieve this:

- ACPD compliance should be a mandatory component of staff supervision meetings with managers.
- ACPD compliance should be a mandatory component of the annual performance development plans or performance reviews of all staff (including management and senior leadership).
- Ongoing non-compliance with the ACPD should be treated as an underperformance issue and addressed in accordance with Departmental and organisational procedures for managing underperformance.
- A selection of CP files should be regularly audited by an individual not involved in the case – for example, by a CP staff member from another division, a Commission staff member, or by a principal practitioner for Aboriginal children.

### Taskforce 1000

Taskforce 1000 – and the area panels convened in 2014 and 2015 – were consistently acknowledged in the consultations as having a significant positive impact in identifying and addressing non-compliance.

Taskforce 1000 highlighted the lack of accountability across the system. Some stakeholders believed it was the first time that the system was held to account for its actions with respect to Aboriginal children.

Taskforce 1000 is not an ongoing initiative. Further action is required to ensure that the increased accountability generated by Taskforce 1000 continues.

The following comments by staff from different stakeholder groups reinforce the importance of Taskforce 1000.

*Taskforce 1000 made everyone re-look and ensure ACPD has been complied with. It was a great education for workers and it has really raised the priority given to ACPD.*

**CP staff**

*Taskforce 1000 has really increased the work for DHHS, they've all had to go around and do lots of preparation for it. It should have been just a hand over of the files. This shows they weren't doing their job.*

**ACCO staff**

*Taskforce 1000 has won the hearts and minds of [CP] staff and leadership. It is an unprecedented call to arms, which creates a real opportunity to drive positive change.*

**Departmental staff**

*Taskforce 1000 has driven better practice in cultural connection.*

**CSO staff**

### Resourcing to align with demand

The over-representation and rapid growth of Aboriginal children in OOHC is placing a high level of demand on the CP system. As discussed in Section 4.4.1: Aboriginal contact with the OOHC system, there was a 149 per cent growth in the number of Aboriginal children in OOHC between 2005 and 2014 (from 526 to 1,308 children). Over this same period of time the number of non-Aboriginal children in OOHC grew by 72 per cent (from 3,882 to 6,393 children). From 30 June 2013 to 2014 there was a 40 per cent growth in the number of Aboriginal children in OOHC (375 more Aboriginal children in one year).

This growth in numbers has undoubtedly placed greater demand on the CP system, but there has not been a commensurate increase in resourcing. Many stakeholders reported that the current resources were inadequate to cope with the expectations placed on them and the service system.

The scope of this Inquiry did not include investigating whether current resources are sufficient to meet the increased demand for ACPD-related services. However, there are indications that the current system has been stretched. CP, ACSASS, CSO, AFLDM and ACCO staff all reported having to prioritise their activities because of resource and time constraints. Workers across the system believed there were insufficient resources to meet all the expectations placed on them.

CP staff and AFLDM co-convenors (both Departmental and community convenors) identified non-ACPD responsibilities as impeding their capacity to complete ACPD-related duties.

*Funding to support ACPD practice has not increased at the same rate of the numbers of Aboriginal children entering care.*

**MacKillop Family Services submission to the Inquiry, p. 6**

## Assessing practice compliance

While this Inquiry cannot definitively conclude that more resources are needed to meet increased demand, there is sufficient evidence to suggest that this matter requires further investigation.

### Recommendation 50

Review the resources provided to the service system (including CP and CSOs) to determine whether they are sufficient to meet the mandatory requirements of the ACPP. This review should consider:

- the demand placed on the system by the rapid growth in the number of Aboriginal children in OOHC
- the adequacy of existing resources to meet this increased demand
- how the demand on the system can be addressed by additional resourcing, developing strategies and system-wide approaches to prioritisation of duties.

### Greater Aboriginal self-determination

The opportunity for greater Aboriginal self-determination in CP decisions is explored in Section 7.1.1. This concept aligns with Recommendation 2.

The findings in regard to practice compliance – where compliance was not achieved at any key ACPP domain – further supports the need to carefully consider implementation of s 18. It would entail a substantial change to the service system, but if implemented effectively, may provide both better outcomes for Aboriginal children and better value for money. Previous investment in enhancing the cultural competence of the existing CP workforce is acknowledged, but this appears to have had minimal influence on compliance with the ACPP requirements mandated by legislation.

### Key finding 51

The fact that the system is not achieving a practice rating of 'compliant' or higher at any key ACPP domain, further supports the need for careful consideration increased self-determination.<sup>138</sup>

In the event that the transfer of s 18 responsibilities is not achievable in the near future, there are other opportunities to provide greater Aboriginal self-determination in CP decision-making that can be made more immediately: increasing involvement of ACCOs in placement and support, increasing role of ACCOs in strategic decision-making, and increasing the number of Aboriginal people working in CP.

### Key finding 52

If implementation of s 18 is not achievable in the near future, other opportunities to increase Aboriginal self-determination in CP decisions include:

- increasing the involvement of ACCOs in placement and support
- increasing the role of ACCOs in strategic decision-making
- increasing the number of Aboriginal people working in CP.

<sup>138</sup> When afforded an opportunity to respond to a draft report of this Inquiry, the Department noted that this finding 'relies on two assumptions, the constructed methodology that equates compliance to the use of ACSASS, AFLDM and so on, and the assumption that an ACCO would achieve better compliance under s 18 when this has yet to be tested'. The full response is recorded in Section 10: Opportunity to respond.

## Increase involvement of ACCOs in placement and support

The role of ACCOs in delivering direct ACPP services (such as ACSASS and AFLDM) has been explored in detail in this Inquiry. ACCOs also play a crucial role in placement and support of Aboriginal children and their carers. These roles can contribute to ACPP compliance across multiple key ACPP domains – including by helping to identify suitable Aboriginal carers and maintaining the child's culture and identity once placed.

It appears there is a strong opportunity to increase the number of Aboriginal children and their carers who receive the benefit of support from an ACCO:<sup>139</sup>

- On 31 December 2014, eight per cent of the Aboriginal children of most interest to this Inquiry<sup>140</sup> (67 of 864 children) had management of their case contracted to an ACCO.
- 22 per cent of Aboriginal children were in placements provided by an ACCO in 2002; by 2012 this figure had dropped to seven per cent.<sup>141</sup>
- ACCOs are funded to provide a total of 114 placements per annum under the Victorian Aboriginal Kinship Care Model. On 30 June 2014 there were 1,308 Aboriginal children in OOHC, and 709 of these children were in kinship placements.

This need is further supported by more recent figures provided by the Department to the Aboriginal Children's Forum on 14 March 2016:

- As at December 2015, 14 per cent of Aboriginal children in OOHC were in placements managed by an ACCO (223 of 1,579 Aboriginal children).
- As at December 2015, ACCOs were funded to deliver 275 placements, and there were 1,579 Aboriginal children in OOHC – meaning that ACCOs were funded to deliver placements for less than 18 per cent of Aboriginal children in OOHC.

The greater involvement of ACCOs in placement and support of Aboriginal children is seen as an important step in preparing for the staged transfer of CP responsibilities to ACCOs under s 18 of the CYFA 2015.

*While Berry Street are willing and readily do all we can to care for Aboriginal children we know that ideally Aboriginal children should be cared for through local Aboriginal agencies that have the cultural knowledge and relationships with Aboriginal families and communities to ensure these children grow with a strong and positive sense of their cultural identity.*

**Berry Street submission to the Inquiry, p. 6**

## Key finding 53

As at December 2015, 14 per cent of Aboriginal children in OOHC (223 of 1,579 children) were in placements managed by an ACCO.

## Recommendation 51

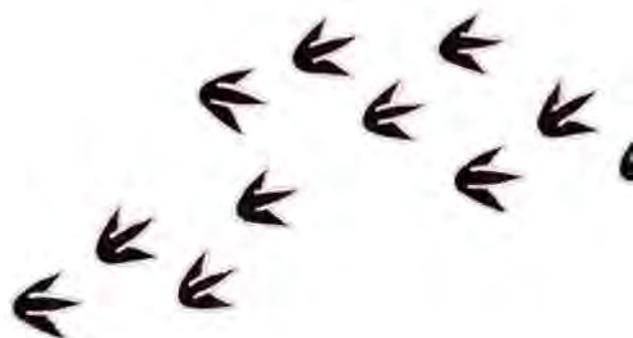
Significantly increase the number of Aboriginal children and their carers who have ACCO involvement in their placement and support. The ultimate aim should be for all Aboriginal children to have the opportunity for their placement to be supported by an ACCO.

This will be an important step towards the implementation of Recommendation 2 – the staged transfer of CP responsibilities to ACCOs under s 18 of the CYFA 2005.

139 The cohort of most interest comprised Aboriginal children who had a placement change within the Inquiry period of 1 January 2013 to 31 December 2014.

140 Data provided by the Department for the purposes of this Inquiry.

141 Department of Premier and Cabinet, *Report on the Protecting Victoria's Vulnerable Young People Inquiry*, 2012.



## Assessing practice compliance

### Increase the role of ACCOs in strategic decision-making

The ACPP programs delivered by ACCOs (such as ACSASS and the AFLDM and CSP programs) are primarily involved in dealing with individual cases at an operational level. They are encountering the same issues for a large number of Aboriginal children, and these issues are not being addressed at a system-wide level. There appears to be a strong opportunity to leverage the collective expertise and experience of these programs to influence high-level strategic decision-making. This issue is explored for ACSASS at Section 9.2.1: ACSASS.

These ACCO programs largely operate independently of each other. Benefit could be derived from bringing these programs together to consider the strategic issues across the system. Other benefits could include a stronger understanding of the roles of other programs, greater insight into the overall system and opportunities to share good practice across programs. It is considered that this would be particularly beneficial on a local or regional level, given the similarities that usually occur at this geographic level.

Given the resourcing constraints on these programs, consideration would have to be given to appropriate resourcing of this greater role in strategic decision-making.

*For the ACPP to be effective requires the community side of the equation to be boosted in recognition of the principle of the right of Aboriginal people to self-determination.*

**VACCA submission to the Inquiry, p. 11**

### Recommendation 52

Increase the role of ACPP-related programs delivered by ACCOs (such as ACSASS and the AFLDM and CSP Programs) in strategic decision-making.

### Recommendation 53

Increase the connection between the ACPP-related programs delivered by ACCOs. A strategy to achieve this could be providing opportunities for ACPP-related programs (such as ACSASS, AFLDM and CSP) to come together at a regional level to share good practice and improve service linkages.

### Increase the number of Aboriginal staff in CP

The policy and program response across the system sees Aboriginal programs providing advice to CP, but CP staff retaining decision-making authority. There is an opportunity to increase the level of Aboriginal self-determination in CP by increasing the number of Aboriginal people employed in CP.

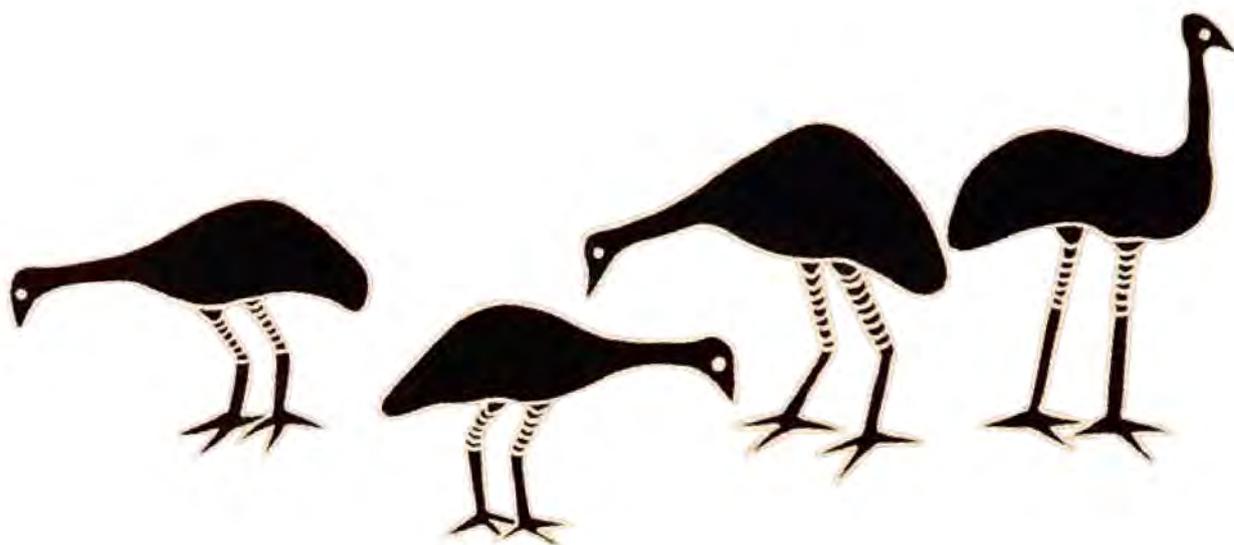
The Department advised that in late 2015 they employed 16 Aboriginal staff in CP, in a total workforce of about 1,300 CP staff.

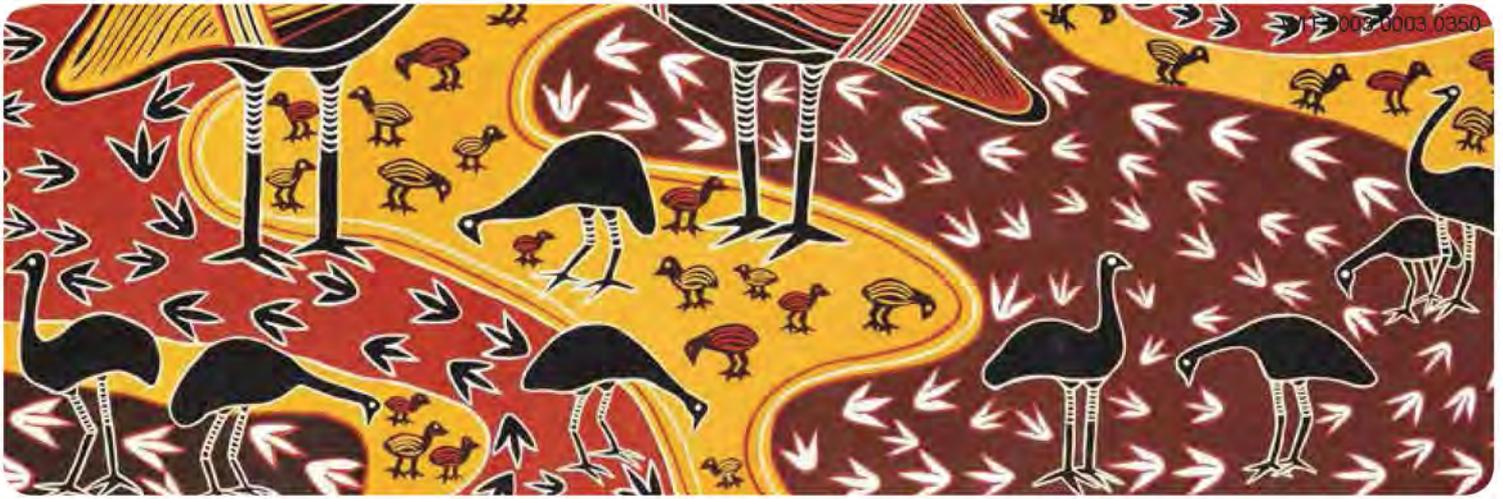
Stakeholders noted the under-representation of Aboriginal people in the CP workforce, particularly in management and leadership positions. Some stakeholders noted that other government departments had experienced success in Aboriginal recruitment when they had given priority to first recruiting Aboriginal people to senior leadership positions. Stakeholders believed that having Aboriginal people in senior leadership positions attracts other Aboriginal staff to seek employment in that organisation.

The Department recently launched its Aboriginal Employment Plan. This plan considers opportunities for improving recruitment and retention of Aboriginal staff across the Department, including in CP.

## Recommendation 54

Increase the number of Aboriginal staff employed in CP roles, particularly in management, leadership and executive positions.





## 10. Opportunity to respond

One of the key requirements of the CCYP Act is that natural justice be afforded to any community service about which adverse comment or opinion is contained in an inquiry report, before the report is provided to the Minister for Families and Children, the Secretary to the Department or any other minister, if the report considers matters that are the responsibility of that minister.

### Responses to the Inquiry report by the Department

The Department provided responses to statements, critical comments, findings and recommendations (see Table 14 and Table 15). These have been considered and issues of fact have been changed in the final report. Footnotes and the foreword acknowledge changes to policy, practice and funding after the timeframe of the Inquiry.

The Inquiry report states that CRIS is unable to report at what stage of the CP process the Aboriginal identity of the child was determined. The Department has replied that CRIS can determine the date a child's Aboriginal and/or Torres Strait Islander status was added or changed. This has been footnoted.

The Inquiry report notes the lack of protocols or direction about how, when or whether CSOs and ACSASS should work together. In response the Department clarified that agencies are expected to comply with the practice advice in the Child Protection manual in relation to case contracting. The Department also noted that the policy could provide greater clarity regarding consultation with ACSASS.

In response to the Inquiry's comments about recruitment and retention, the Department notes that introductory practice training includes specific sessions about working with Aboriginal children and families delivered by an Aboriginal facilitator and supported by ACSASS. Feedback from participants about the program and the Aboriginal content has been highly favourable.



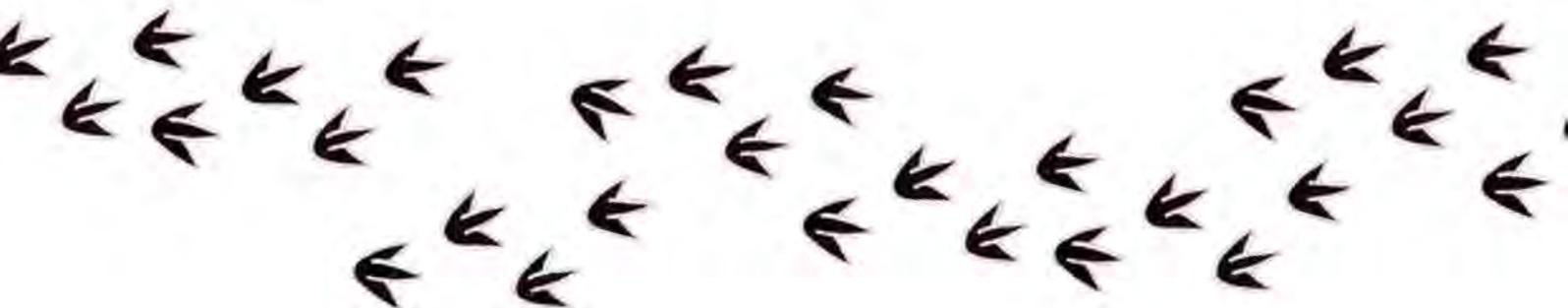
Table 14: Department's responses to the key findings of the Inquiry and the Commission's reply

Key finding	Department's response and Commission's reply
11	<p><b>Department's response</b></p> <p>The 'late' identification of Aboriginality demonstrates the Department's commitment to working with families and willingness to continue to ask questions to fully understand the child and their family.</p> <p><b>Commission's reply</b></p> <p>The exact time and date of status changes can be extracted from CRIS.</p>
13	<p><b>Department's response</b></p> <p>The Department has undertaken a project to assist with the identification of Aboriginal children in Child Protection. This work will improve future practice and ensure there is not an over-reliance on the CRIS record or the reporter's assessment.</p> <p><b>Commission's reply</b></p> <p>The Department's response is noted. No change to the text was made.</p>
18	<p><b>Department's response</b></p> <p>Refers to improving the systemic involvement of ACSASS at 'every significant decision point' for every Aboriginal child. The Department believe that this finding should be amended to reflect the fact that given existing resources it may not be possible to involve ACSASS at every significant decision point for all children (as acknowledged in Recommendation 20).</p> <p><b>Commission's reply</b></p> <p>The Commission stands by its recommendation that ACSASS should be involved at every significant decision point.</p>
19	<p><b>Department's response</b></p> <p>An additional barrier to CP staff consulting ACSASS at every decision point for every Aboriginal child has been funding for the service which has recently significantly increased, and the consequent lack of availability of ACSASS workers.</p>
23	<p><b>Department's response</b></p> <p>The Department believe that the finding should refer to the additional \$3608 million funding received in the 2016–17 Victorian state budget over a two-year period to expand ACSASS to meet increased demand.</p> <p><b>Commission's reply</b></p> <p>The Commission has made no change to the text but does acknowledge increased funding in the 2016/17 budget for ACSASS.</p>
27	<p><b>Department's response</b></p> <p>The department would agree that the number of meetings has been lower than expected.</p> <p><b>Commission's reply</b></p> <p>The Commission notes the Department's response with no change to the text.</p>
28	<p><b>Department's response</b></p> <p>The Department believe that the Commission has not produced strong evidence that a lack of timely referrals is limiting the number of AFLDM meetings occurring.</p> <p>The evidence presented by the Commission suggests delays occur after the referral. Departmental convenors are regularly provided with a report that identifies every substantiated case involving an Aboriginal child, so there should be no need for referral.</p> <p><b>Commission's reply</b></p> <p>The Commission notes that the finding draws upon the evidence of file reviews outlined in Table 10.</p>

## Opportunity to respond

### Key finding Department's response and Commission's reply

- 32**      **Department's response**  
The reference to the legislative requirement should be clarified. Section 13 of the CYFA 2005 states that if a child is to be placed in out-of-home care, regard must be given to the advice of an Aboriginal agency.
- Commission's reply**  
The Commission has changed the finding and defined Aboriginal agency as in the CYFA 2005 in the footnote.
- 
- 33**      **Department's response**  
It appears that the finding partly relates to the tasks and roles of ACCOs but this is not clearly stated and the claims have the appearance of being made against the Department.
- Commission's reply**  
The Commission agrees in respect of the point relating to fully informing participating Elders and has included ACCO's role in this.
- 
- 37**      **Department's response**  
Earlier in the report, there is criticism of the funding being provided to ACSASS as ACSASS is unable to meet demand. Evidence gathered by the Commission supports ACSASS being unable to meet demand, and the impact this has upon the service being able to be effective. The Commission criticises the Department for not effectively utilising ACSASS despite the service not being able to meet demand.
- Commission's reply**  
The Commission notes that there was no review by the Department of ACSASS and no additional funding for 10 years. The Department is responsible for monitoring its funded services.
- 
- 45**      **Department's response**  
Without knowing what phases these files were in, confirming if a case plan was required is difficult. The data presented contradicts reporting within the Department, suggesting the sample was somehow skewed or the interpretation of when a case plan is required is flawed.
- Commission's reply**  
System-wide data is unable to demonstrate evidence of cultural connection in case plans; therefore, the evidence was sourced in the file review. The report also identifies that of the sample group six children did not require case plans and were excluded from findings.
- 



**Key finding Department's response and Commission's reply**
**48 and 49**
**Department's response**

These findings are about compliance against a rubric that is far more demanding than the requirements of the ACPP. The ACPP is a principle with a scaling hierarchy and a requirement to consult in certain circumstances. Adhering to the principle requires the Department to take into consideration a number of key elements but does not dictate what the outcome will be.

The Department is able to achieve compliance against the ACPP without an AFLDM, ACSASS involvement at each of three first phases, or a CSP. It is noted elsewhere that about 30 per cent of Aboriginal children in OOHC are placed with family. Are these cases categorised as not compliant with the principle if, for example, an AFLDM meeting did not achieve this outcome? If so, this is a false conclusion.

The basis of how compliance is achieved against the ACPP uses a compliance assessment rubric that places higher demands than the actual requirements of s 13 of the CYFA 2005. The Department is able to achieve compliance against the ACPP without satisfying the requirements of the compliance assessment rubric. AFLDM or ACSASS involvement can be refused by the child and their family, and this will not result in the Department being non-compliant with the ACPP. At the time of the report, a CSP was only required for children subject to a GSD or LTGSO, consequently including the preparation of a CSP as a mandatory element is invalid. While the Department holds that preparing a CSP is best practice, it does not directly impact where a child is placed including best practice as a minimum standard is unreasonable.

**Commission's reply**

The Inquiry is about compliance with the intent of the ACPP. The Commission notes that reporting on Aboriginal children being placed with Aboriginal or non-Aboriginal kith or kin is inadequate to measure compliance with the legislation's intent or the relationship to other sections of the CYFA 2005.

**53**
**Department's response**

This relies on two assumptions: the constructed methodology that equates compliance to the use of ACSASS, AFLDM and so on, and the assumption that an ACCO would achieve better compliance under s 18 when this has yet to be tested.

**Commission's reply**

The Commission does believe that a well-funded and managed Aboriginal community sector will deliver better compliance under s 18 based on the initial 'What If' pilot findings.

Source: Services response to the draft report of the Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria, 2016.



## Opportunity to respond

Table 15: Department's responses to the Inquiry recommendations and the Commission's reply

Recommendation	Department's response and Commission's reply
6	<p><b>Department's response</b> Regarding the compliance assessment rubric used in the report. While compliance with requirements around each individual component is desirable where resources make this possible, the rubric establishes a compliance regime for the ACPP that goes far beyond the legislative requirements in s 13.</p> <p><b>Commission's reply</b> The Commission inquiry is about compliance with the intent of the legislative obligations of the ACPP. The process used to achieve the outcomes contributes to the intent being achieved.</p>
8	<p><b>Department's response</b> Refers to actively supporting the working group convened to strengthen practice in establishing Aboriginal identity. This should be removed as this work has been completed.</p> <p><b>Commission's reply</b> The recommendation also includes monitoring the outcomes of the working group to ensure progress is made in improving early identification; therefore, the Commission has not removed the recommendation.</p>
9	<p><b>Department's response</b> Refers to including a new field in CRIS to distinguish whether the change in status is based on information provided by a third party or family member. It is suggested this recommendation be changed to state the Department will undertake work to determine how best to record and document any change in a child's Aboriginal and/or Torres Strait Islander status in CRIS and capture whether information is being provided by a third party or family member.</p> <p><b>Commission's reply</b> The Commissioner for Aboriginal Children and Young People is engaged in a time-limited working group established by the Department relating to de-identification of Aboriginal children in CP (established May 2016 and in effect until the end of July 2016).</p>
11	<p><b>Department's response</b> Refers to supporting staff to confirm Aboriginality and developing a training program to address key competencies. As a result of the identification of Aboriginal children project, information sheets were prepared for Child Protection practitioners. The information sheets cover the bullet point competencies.</p> <p><b>Commission's reply</b> The Inquiry consistently notes the existence of good policy and procedures that are not consistently adhered to. The Commission applauds the development of information sheets to address key competencies but also recommends support of these through training and monitoring.</p>



Recommendation	Department's response and Commission's reply
12	<p><b>Department's response</b></p> <p>The recommendation refers to the Commission being notified if Child Protection de-identifies a child after a child's Aboriginal status is confirmed by a parent. An advisory group is considering the issue of de-identification, and it was agreed that if a change in Aboriginal status is to occur in intake phase and is required because of human error, the Commissioner would not need to be notified.</p> <p>It is suggested the recommendation be changed to state that the Department is to prepare policy, procedure and advice for Child Protection practitioners and contracted case managers about the process to be undertaken and the authority required if a child's status as Aboriginal is to be changed in CRIS. This will include considering when consultation with the Commissioner needs to occur. It should be noted this work is underway.</p> <p><b>Commission's reply</b></p> <p>The Commissioner for Aboriginal Children and Young People is engaged in a time-limited working group established by the Department relating to de-identification of Aboriginal children in CP (established May 2016 and in effect until the end of July 2016).</p>
15	<p><b>Department's response</b></p> <p>There is clear and consolidated advice in the Child Protection manual, 'Additional requirements for Aboriginal children'. This advice outlines when ACSASS should be consulted and their role.</p> <p><b>Commission's reply</b></p> <p>The Commission notes and welcomes the updated practice advice. The recommendation suggests that the advice be supported by greater management scrutiny and accountability as well as training.</p>
19	<p><b>Department's response</b></p> <p>The Child Protection manual contains a policy in relation to case contracting and outlines responsibilities the agency may have if the case is contracted, including compliance with practice advice.</p> <p><b>Commission's reply</b></p> <p>The Inquiry notes that adherence to practice advice is inconsistent. The recommendation has been altered to clearly articulate a solution to the issue identified.</p>
20	<p><b>Department's response</b></p> <p>The recommendation refers to a need for additional funding. \$3.608 million of funding was received in the 2016–17 Victorian state budget over a two-year period to expand ACSASS to meet increased demand. If this is deemed insufficient, the report should refer to the need for further funding.</p> <p><b>Commission's reply</b></p> <p>The Commission acknowledges the funding received after the Inquiry period. The new funding allocation has been noted. The recommendation also refers to an economic analysis as evidence for funding going forward.</p>
22	<p><b>Department's response</b></p> <p>Refers to ACSASS being meaningfully involved in significant decision-making. This should be clarified to state that ACSASS needs to be available in a timely way for urgent decisions.</p> <p><b>Commission's reply</b></p> <p>The Commission notes that both the Department and ACSASS have responsibilities to ACSASS operating as effectively as possible. Resourcing impacts timeliness. The Department has responsibility for this and oversight of the funded program.</p>

## Opportunity to respond

Recommendation	Department's response and Commission's reply
23	<p><b>Department's response</b> ACSASS is funded to provide a consultation and advisory service in relation to Aboriginal children, not higher-level strategic decision-making.</p> <p><b>Commission's reply</b> The Commission notes that ACSASS are currently not funded for strategic advice and recommends that they are integral to it and should be resourced to do so.</p>
30	<p><b>Department's response</b> The notion is family-led. 'Leading' does not relate to whether it is a Departmental or an ACCO-run program.</p> <p><b>Commission's reply</b> The Commission believes that this Inquiry and the work of Taskforce 1000 have clearly illustrated that Aboriginal organisations have the best capacity to engage Aboriginal family and community in key decisions to achieve the best outcomes for children.</p>
36	<p><b>Department's response</b> All placement decisions are made by a case planner, who is a manager. Delays in placing children may pose a significant risk that the child suffers further harm. The Department already has processes in place to record significant decisions, and enhancements introduced into CRIS are designed to enable better compliance with recording requirements.</p> <p><b>Commission's reply</b> The Commission is not recommending a delay but that greater oversight and emphasis is given to the ACPP placement hierarchy.</p>
38	<p><b>Department's response</b> Placing children in other divisions could sometimes be harmful. Victoria is divided into four divisions, and placing a child a considerable distance from their family and community would contradict the [CYF] Act in: s. 10(3)(c) (Aboriginal children's connection to their community), s. 10(3)(k) (contact arrangements) – this may result in children spending all day travelling back and forth from contact with their family, and s. 10(3)(o) (continuing education without interruption).</p> <p><b>Commission's reply</b> The Commission advocates that the best interests of the child, informed by Aboriginal perspectives, are paramount and the child's best interests should guide application of the placement hierarchy. Taskforce 1000 saw a number of children placed many kilometres away from family in placements that were detrimental to the child's wellbeing and cultural identity.</p>
40	<p><b>Department's response</b> This recommendation does not take adequate account of the sometimes urgent nature of child protection practice. Families are dynamic, and placement decisions often have to be made within a short timeframe to prevent vulnerable children and young people being exposed to further harm.</p> <p><b>Commission's reply</b> The Commission's expectation is that the child is safe while Aboriginal placements are explored. Promoting kinship care by Aboriginal people prior to crisis is anticipated to increase the potential pool of family willing to take on the responsibility understanding their important role.</p>

## Recommendation

## Department's response and Commission's reply

41

**Department's response**

The Commissioner writes, 'CSOs advised that when a potential [Aboriginal] carer registers their interest ... nearly all Aboriginal carers choose the ACCO option [to support them]'. This suggests that adoption of this recommendation may set up CSOs to fail.

As with Recommendation 40, the intent appears to be to create a complete register of potential Aboriginal carers for every vulnerable Aboriginal child. This is unlikely to be a practical activity. Most potential carers only come forward when a child has been removed from parental care, not at an earlier date in anticipation of a hypothetical situation.

**Commission's reply**

While the ultimate objective is to have ACCOs handle all case management for Aboriginal children, this will take some time to achieve across the state. In the interim it is important that CSOs also work to expand the pool of Aboriginal carers. This would be best achieved in partnership with the local ACCO.

42

**Department's response**

Auditing against the Human Services Standards is a highly regulated and confidential process as it directly impacts on agencies' income and potential income. Having a forum of competitors assess agencies would give those agencies assessing an unfair competitive advantage and may leave the Department open to litigation.

**Commission's reply**

The Commission has changed this recommendation to reflect the intent that Aboriginal people must be involved in assessing cultural competence and inclusion through a confidential process.

45

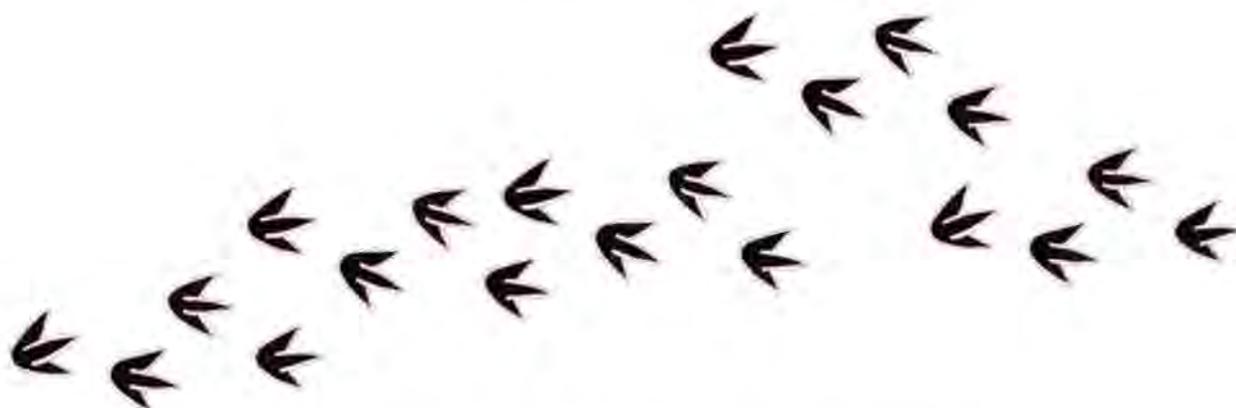
**Department's response**

Providing a financial incentive for a person to become a carer does not reflect the approach to care accepted by the community. This would lead to a 'professional care industry' and the community would rightly demand that the standard of care provided by carers who receive a financial incentive to provide care offer a more intensive and professional service. This also fails to recognise the inherent cost of such a proposal or the nature of care moving away from community and becoming a profession.

**Commission's reply**

The Commission recognises the entrenched poverty and disadvantage experienced by a significant percentage of the Aboriginal population and the intergenerational cycle for families in the CP and justice systems.

Source: Department response to the draft report of the Inquiry into compliance with the Intent of the Aboriginal Child Placement Principle in Victoria, 2018



## Opportunity to respond

### Response to the Inquiry report by the Victorian Aboriginal Child Care Agency

VACCA provided responses to extracts of the draft report. Changes have been made to areas of fact, critical comments have been footnoted and other comments are noted below.

#### Compliance

A compliance protocol formerly existed between ACSASS and CP whereby compliance at intake, first home visits, case planning and case closures would be jointly measured. This provided a regular way of comparing how well both parties worked together at these crucial points. About four years ago the Department made the decision to stop measuring compliance, which meant that ACSASS and the Department had no common data and evidence to look at the partnership, practice and system issues and themes. In the past Department regions were provided with statistics as to how they complied with the protocol.

The report states that CP is unclear of what to expect from ACSASS. There are clear key performance indicators outlined in our funding and service agreement and a formal protocol.

#### ACSASS and CP

The report concentrates on the relationship of ACSASS and CP and concludes in the main that it is not strong, that CP do not understand ACSASS and when it should consult and largely does not value its advice. There is no acknowledgement that it is not a fault of ACSASS that CP do not know the legislation requirements, its own CP practice instructions and standards and the protocol relating to working with ACSASS and Aboriginal children and families.

ACSASS staff provide training to CP staff in the Beginning Practice training in partnership with CP and training staff and have done so since 2002. In addition, ACSASS have attended joint training sessions with CP – particularly when there are significant legislation changes and roll outs of training, etc.

The extract does not fully explain the power inequities in the partnership relationship and the impact that this will have on such a relationship. There is also no mention of where good practice is evidenced and whether this improves decision-making in relation to the ACPP.

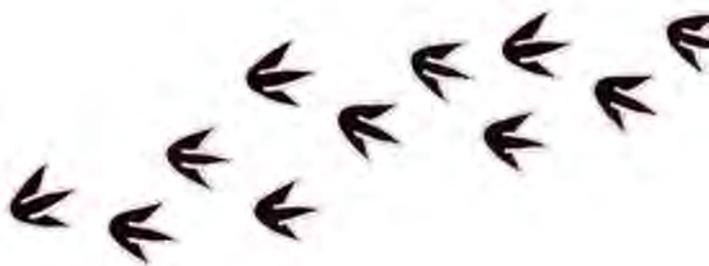
#### Contracted cases

The Inquiry report acknowledges that there are difficulties regarding contact with ACSASS once children are in placements with CSOs and particularly when cases are contracted. The decision to contract cases is not regarded as a significant decision by CP and there is no real consideration as to whether the agency is one that is culturally safe. However, ACSASS would disagree and views the decision to contract to a specific agency as a key decision and ACSASS should be consulted.

ACSASS's protocol with CP requires seeking advice from and consultation with ACSASS regarding placement changes. However, in practice, neither CP nor the contracted agencies routinely seek ACSASS input. ACSASS would like to know whether this was demonstrated at all in any of the cases reviewed by the consultants. Further guidelines for CSO in regard to their role with ACPP should be developed.

#### ACSASS responding to CP

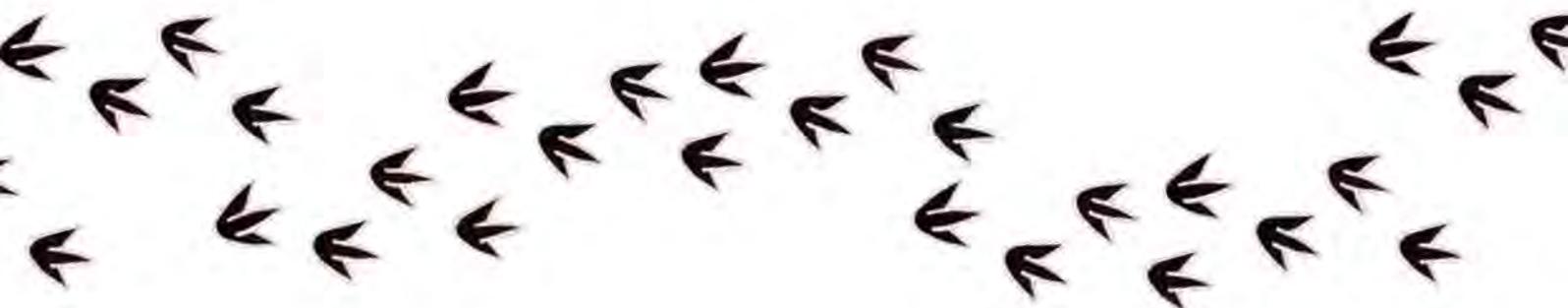
The report references ACSASS finding it difficult to recruit staff. CP also often find it difficult to recruit and retain staff. ACSASS recruitment and retention rates are generally reasonable given the nature of child protection (10–14 per cent vacancy) and in line with the industry.



## Other organisations invited to respond

In addition to respondents, the following agencies were afforded an opportunity to respond and elected not to.

- Ballarat & District Aboriginal Cooperative Limited
- Bendigo & District Aboriginal Cooperative Ltd
- Dandenong & District Aborigines Cooperative Limited
- Gippsland & East Gippsland Aboriginal Cooperative Ltd
- Goolum Goolum Aboriginal Cooperative Limited
- Gunditjmara Aboriginal Cooperative Ltd
- Mallee and District Aboriginal Services
- Mungabareena Aboriginal Corporation
- Murray Valley Aboriginal Cooperative Limited
- Njernda Aboriginal Corporation
- Ramahyuck District Aboriginal Corporation
- Rumbalara Aboriginal Cooperative Limited
- Wathaurong Aboriginal Cooperative Ltd
- Winda-Mara Aboriginal Corporation



# Appendix A

## Extracts from relevant sections of the CYFA 2005

The following extracts of relevant sections of the CYFA 2005 are particularly relevant to the application of the ACPPI.

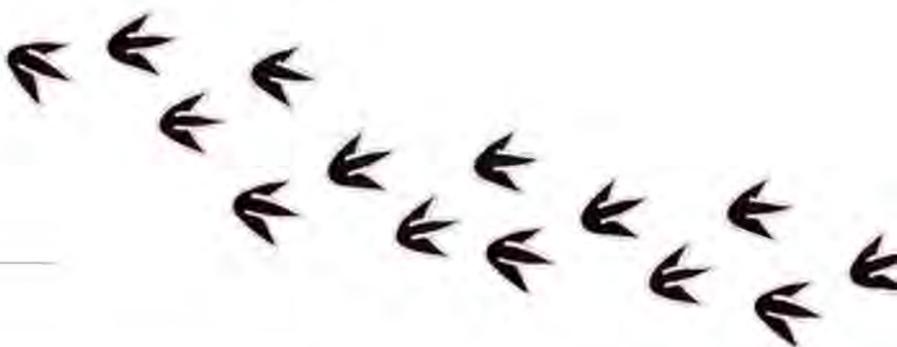
**Section 10** (as amended 2014) provides that the 'best interests of the child must always be paramount' and that 'when determining whether a decision or action is in the best interests of the child, the need to protect the child from harm, to protect his or her rights and to promote his or her development (taking into account his or her age and stage of development) must always be considered'. This section goes on to provide further guidance of the specific matters to be considered which include (but are not limited to):

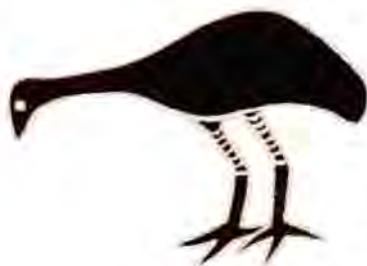
- the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child
- the principle that a child is only to be removed from the care of his or her parent if there is an unacceptable risk of harm to the child
- where a child with a particular cultural identity is placed in OOHC with a caregiver who is not a member of that cultural community, the desirability of the child retaining a connection with their culture
- the possible harmful effect of delay in making the decision or taking the action.<sup>142</sup>

**Section 11** provides that 'in making a decision or taking an action in relation to a child, the Secretary or a community service must also give consideration to the following principles':

- The child's parent should be assisted and supported in reaching decisions and taking actions to promote the child's safety and wellbeing.
- The views of all persons who are directly involved in the decision should be taken into account.
- Decisions are to be reached by collaboration and consensus, wherever practicable.
- If the child has a particular cultural identity, a member of the appropriate cultural community who is chosen or agreed to by the child or by his or her parent should be permitted to attend meetings held as part of the decision-making process.

<sup>142</sup> CYFA (2005) Sec 10 (B) (fa) amended 2014.





**Section 12** (as amended 2006) provides additional decision-making principles for Aboriginal children, specifically that 'in recognition of the principle of Aboriginal self-management and self-determination, in making a decision or taking an action in relation to an Aboriginal child, the Secretary or a community service must also give consideration to the following principles'

- An opportunity should be given, where relevant, to members of the Aboriginal community to which the child belongs and other respected Aboriginal persons to contribute their views.
- [Decision-making] should involve a meeting convened by an Aboriginal convenor who has been approved by an Aboriginal agency or by an Aboriginal organisation approved by the Secretary and, wherever possible, attended by: the child, the child's parent, members of the extended family of the child, and other appropriate members of the Aboriginal community as determined by the child's parents.
- In making a decision to place an Aboriginal child in OOHC, an Aboriginal agency must first be consulted and the ACP must be applied.

**Section 14** provides further principles of placement of an Aboriginal child and provides guidance on the interpretation of each of these elements:

- self-identification and expressed wishes of child
- children with parents from different Aboriginal backgrounds
- children with one Aboriginal parent and one non-Aboriginal parent
- placement of a child in the care of a non-Aboriginal family.

**Section 176** (as amended 2014) provides that 'The Secretary must prepare a cultural plan for each Aboriginal child placed in out of home care under a guardianship to Secretary order or long-term guardianship to Secretary order'. The CYFA 2005 stipulates requirements for cultural plans:

- A cultural plan must set out how the Aboriginal child placed in OOHC is to remain connected to his or her Aboriginal community and to his or her Aboriginal culture.
- The Secretary must monitor compliance by the carer of a child with the cultural plan prepared for a child.





# Appendix B

## ACSASS responsibilities

ACSASS responsibilities are defined in the Department's *Program requirements for the Aboriginal Child Specialist Advice and Support Service* (July 2012). ACSASS will:

- provide consultation to CP on all significant decisions and actions concerning Aboriginal children and young people, ensuring a culturally informed and effective response to the protection of Aboriginal children from harm
- provide an Aboriginal perspective on risk assessment and safety assessments for Aboriginal children and young people
- participate in the planning of an investigation including the first visit with CP
- attend joint visits with CP to investigate protective concerns, where there are no family objections
- assist children, young people and families to better understand the reasons for CP's involvement and the investigation processes
- provide information and advice to CP on the child's family and community, suitable local support services and community networks for the purpose of referral
- assist CP to identify and involve the child's extended family and community members in decision-making and best interests planning
- where appropriate and agreed to by the child and family, participate in best interests planning meetings, including those held as AFLDM meetings
- provide advice to CP on making a decision to place an Aboriginal child in OOHC and, where a decision has been made to place the child in OOHC provide advice to CP on placement options with regard to the ACP
- provide advice and, where appropriate, direct involvement in the assessment and investigation of quality of care concerns relating to Aboriginal children
- assist CP in cultural support planning for Aboriginal children in OOHC
- provide advice to CP on reports concerning unborn children (where the mother is Aboriginal or the family is known to be Aboriginal)
- provide advice to CP on irreconcilable differences applications concerning Aboriginal children
- provide advice to CP and, where appropriate, direct involvement in the investigation of therapeutic treatment reports concerning Aboriginal children
- provide advice to CP on the interstate movement of Aboriginal children subject to protection orders under the Transfer of CP Orders and Proceedings
- provide support to Aboriginal children, young people and families including
  - explaining CP processes, language or terminology
  - attending court to assist families understand and participate in court processes
  - facilitating family involvement in meetings

ACSASS also delivers an out-of-hours service, which provides:

- an on-call recall service outside normal business hours to ensure ACSASS is available to CP 24 hours a day, seven days a week
- a consultation service to the central After Hours Child Protection Emergency Services (CAHCPES) in relation to all reports and other significant decisions and actions as required by CAHCPES
- an outreach service, in conjunction with CAHCPES, that is available to attend emergency situations regarding an urgent and immediate response, within the confines of the Melbourne metropolitan regions only.

# Appendix C

## Prevention and reunification programs

*CP practice advice number 1061: the Aboriginal child and family service system* describes three key Aboriginal-specific prevention and reunification programs.

### Aboriginal Family Preservation Program

The AFPP works intensively with families referred by CP, with the aim of family preservation or reunification. The program is based on the Families First model and continues to develop a practice approach grounded in Aboriginal culture. AFPP uses intensive family support, practical assistance and parenting education to assist families to improve their parenting skills and address protective concerns, thereby reducing the need for the child to be placed in OOHC. Where it has been necessary for a child to be placed away from the family home, the program works to facilitate re-unification. There are five AFPPs in Mildura, Swan Hill, Shepparton, Dandenong and Morwell.

### Integrated Family Services – Indigenous

The aim of Integrated Family Services – Indigenous is to promote the safety, stability and development of vulnerable Aboriginal children, young people and their families, and to build capacity and resilience for these children, their families and their communities. Programs apply the Best Interest and Family Services principles to achieve improved parenting, strengthened relationships, positive development for children and young people and improved social connectedness and life skills. Integrated family services – Indigenous work collaboratively with CP to develop effective diversionary responses aiming to prevent families from progressing into the statutory CP system.

### Aboriginal family restoration services

Aboriginal family restoration services aim to prevent future harm and disadvantage for the most at-risk Aboriginal children by strengthening their parents' capacity to safely care for them and by reducing their over-representation in CP and OOHC. The programs are based upon a holistic approach to Aboriginal family breakdown to ensure the safety of Aboriginal children where there is a risk of the child being placed in OOHC.

The initial program is to provide in-home support 24 hours a day, seven days a week to families where there is an imminent risk of the children being placed in OOHC. Attached to these services will be a rapid support service for families to attempt reunification if a placement is made, and once it is safe for the child to return home, to divert children from OOHC.



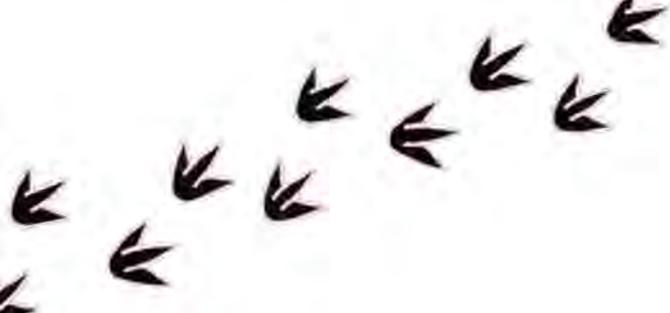


# Appendix D

## Permanent care for Aboriginal children

*CP practice advice number 1434: permanent care for Aboriginal children* outlines the following requirements to involve the VACCA Permanent Care Team where consideration is being given to a permanent care placement with a non-Aboriginal family.

- Where consideration is being given to a permanent care placement with a non-Aboriginal family, the practitioner or Adoption and Permanent Care (A&PC) team must contact the manager of the VACCA permanent care team and invite them to the next case planning meeting. The involvement of the VACCA permanent care team is in addition to the continued involvement of ACSASS.
- Where a case planning meeting recommends seeking a permanent care order for an Aboriginal child with a non-Aboriginal family, the case planning chairperson must write to inform the Chief Executive Officer, VACCA of the recommendation and formally request that VACCA's permanent care program provide a report, which includes a permanent care cultural assessment report, for the court.
- When the decision has been made to seek a permanent care order the CP practitioner or A&PC team are required to organise a meeting with the VACCA permanent care program to discuss the development of a permanent care cultural assessment report and to negotiate the allocation of tasks.
- It is important to note that the permanent care cultural assessment report is not an assessment of suitability of care. The permanent care cultural assessment will assess the carer's capacity to keep the child connected to their family and community. VACCA's permanent care program has a specific role of recommending or not recommending the making of a permanent care order in the favour of a non-Aboriginal carer for an Aboriginal child through the development of a permanent care cultural assessment report.
- Under the CYFA 2005 (s 323(b)) the court cannot make a permanent care order in the case of an Aboriginal child with a non-Aboriginal family, unless it has received a report from VACCA that recommends making the order and attaches a permanent care cultural assessment report. The child's cultural plan should also be attached to the report for the court.
- In completing the report to court the practitioner must have regard to the information required by the court. Section 323 of the CYFA 2005 states that the court must not make a permanent care order to place an Aboriginal child solely with a non-Aboriginal person or persons unless –
  - the disposition report states that: i) no suitable placement can be found with an Aboriginal person or persons and, ii) the decision to seek the order has been made in consultation with the child, where appropriate and, iii) the Secretary is satisfied that the order sought will accord with the Aboriginal child placement principle and
  - the court has received a report from an Aboriginal agency that recommends the making of the order and
  - if the court so requires, a cultural plan has been prepared for the child.
- If the VACCA permanent care program does not recommend the placement, the court cannot make a permanent care order with respect to an Aboriginal child. In the event that VACCA's permanent care programs does not recommend a particular permanent care placement, child protection or the A&PC team are required to convene a case planning meeting, with VACCA in attendance, to explore other options for the child. The above process is repeated in full.



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## Relevant legislation

*Children, Youth and Families Act 2005* (Vic.)

*Commission for Children and Young People Act 2012* (Vic.)

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*Aboriginal and Torres Strait Islander cultural support plan guide, 2005*

*Aboriginal Child Placement Principle*, 5 November 2012, Advice Number 1432

*Aboriginal Child Placement Principle Guide for Child Protection and Care Workers*, August 2002

*Aboriginal Child Specialist Advice and Support Services* (ACSASS), 31263

*Aboriginal community-controlled organisations services (ACCO) – Family and Community Services*, 31260 (including 31165, 31245, 31246 and 31301)

*Aboriginal family-led decision-making, Initiating an AFLDM meeting – practitioner's responsibilities*

*Aboriginal Family Services*, 31165

*Case contracting processes*, 5 November 2012, Advice Number 1315

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*Child Protection workforce – structure and roles*, 5 November 2012, Advice Number 1043

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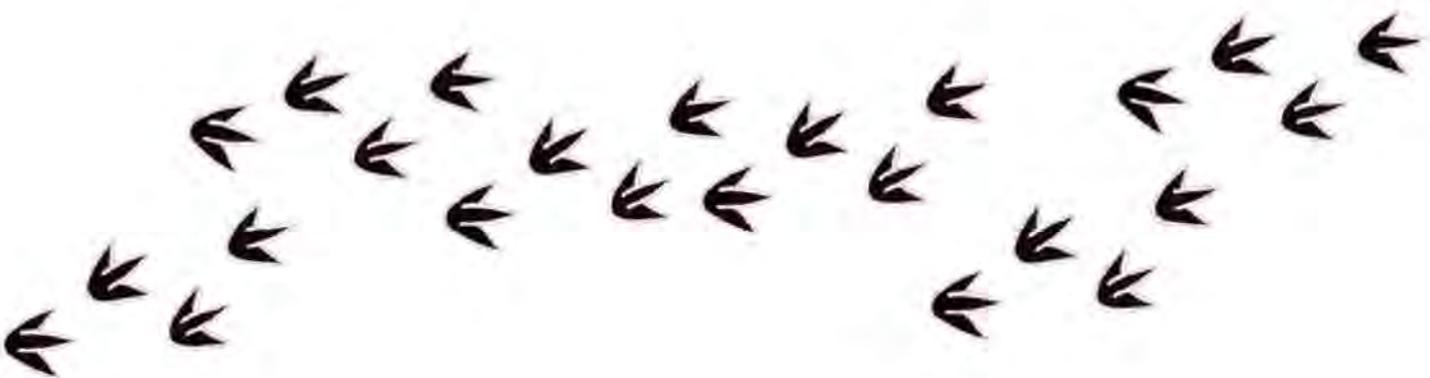
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*Family-led decision-making program guidelines, Version 2*, November 2013

*Human Services Standards, Aboriginal culturally informed resource tool*, 2015

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*Service Agreement Information Kit for Funded Organisations*, <[www.dhs.vic.gov.au/facs/bdb/fmu/service-agreement](http://www.dhs.vic.gov.au/facs/bdb/fmu/service-agreement)>

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*Summary of placement actions and timelines*, 1 December 2013, Advice Number 1421

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