

“We don’t want you to come in and make a decision for us”: Traversing cultural authority and responsive regulation in Australian child protection systems

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Abstract

The Ngunluk Koolunga Ngunluk Koort (Our Children Our Heart) project conducted extensive Elder and community consultation to develop principles and practice recommendations for child protection governance in Western Australia. We explore these principles and practice recommendations and highlight the need for culturally safe community consultation and governance with a focus on repairing damage incurred by the Aboriginal and Torres Strait Islander community from past child protection policies. We argue that using principles of responsive regulation and the inclusion of Elder voices in child protection decision making is critical to closing the gap between current practice and what is “best practice” for Aboriginal children and families. We also identify important considerations for preventing further harm through consultation processes, and issues of authority.

KEYWORDS

child welfare, cultural governance, elder-led decision making, responsive regulation

1 | INTRODUCTION

Currently, over 50,000 children are living in out-of-home care services around Australia. Aboriginal and Torres Strait Islander children and their families are disproportionately affected, with 17,664 Aboriginal children in out-of-home care across Australia, almost 10 times the national rate for non-Aboriginal and Torres Strait Islander children (AIHW, 2019). These children carry the additional burden of trauma that has been passed on over generations as a result of Stolen Generations policies (Hamilton et al. 2020b; Newton, 2017; O'Donnell et al. 2019). In WA, almost half of the Aboriginal children in care are placed with non-Aboriginal carers, despite the fact that there has been an emphasis over decades (Sommerland, 1977) on keeping Aboriginal children with their families and communities and ongoing calls for adherence to the Aboriginal Child Placement principle (Arney et al., 2015). The over-representation of Aboriginal and Torres Strait Islander children in the child protection system is unlikely to improve without full consideration of the contributing historical harm and without placing Aboriginal and Torres Strait Islander voices at the centre of decisions that are being made about individuals, families and communities (Gordon, Dew & Dowse, 2019; Maslen & Hamilton, 2020; McGlade, 2020; Robbins, 2015; Sherwood, 2013). Doing so assists with trauma and grief and has self-protective properties for individuals and communities (Black, Frederico & Bamblett, 2019; Chandler & Lalonde, 2004).

The voices and freedoms of Aboriginal and Torres Strait Islander people have long been denied and silenced in the management of their own affairs. Calls for truth-telling and constitutional reform to provide a place for Aboriginal and Torres Strait Islander voices in decision making about their own affairs have increased over time, two of the most prominent calls being the Redfern statement (National Congress of Australia's First Peoples, 2016) and the Uluru Statement from the Heart (Referendum Council, 2017). Both of these statements persuasively promote self-determination for Aboriginal and Torres Strait Islander communities. The Redfern statement called for a commitment to resourcing Aboriginal and Torres Strait Islander leadership in policy development, creating opportunities for independent senior management of Aboriginal and Torres Strait Islander affairs and a commitment to consultation with Aboriginal and Torres Strait Islander communities in future policymaking and service delivery (Jordan et al., 2020). The Uluru statement saw Aboriginal and Torres Strait Islander nations come together and call for constitutional reform to embed an Indigenous "voice" in parliament, and to deal with the increasing disadvantage and marginalisation of Aboriginal and Torres Strait Islander children and families, and the establishment of a Makarrata, or Peace-making Commission to oversee agreements between government and Aboriginal and Torres Strait Islander people to confront the reality of the violent settler colonial history (Jordan et al., 2020). It was succinctly described as bringing "together the will of the people and the deliberative wisdom of the elders" (Davis et al., 2018 online).

These statements have been largely ignored by Australian governments and the voices of Aboriginal and Torres Strait Islander people continue to be silenced. In the child protection domain on which this article focuses, Australian child protection agencies have been heavily criticised as being overly dominating and oppressive, lacking national leadership and lacking co-ordinated, inclusive responses (Braithwaite, 2015; Ivec, Braithwaite & Harris, 2012). A major focus of the recommendations of the recent Australian Royal Commission on Institutional Responses to Child Sexual Abuse (Australian Government, 2017) was the development of the National Framework for Child Safety to address these shortcomings. The report called for a co-ordinated, multisectorial response from governments in relation to child protection, justice, health, education, disabilities and the community sector (Australian Government, 2017). These calls are not new and are evident in the more than 50 reports and inquiries into failures of child protection services over the last 50 years (for example, HEREOC, 1997, Senate Community Affairs References Committee, 2004; Australian Government, 2017).

In this article, we address child protection regulatory futures focusing on the intersections between responsive regulation and the cultural authority of Aboriginal Elders in Western Australia. We report on findings from the Ngulluk Koolunga Ngulluk Koort (Our Children Our Heart) study, a programme of research working with the Aboriginal community(s) of Perth to improve outcomes for young Aboriginal children and their families (Farrant et al., 2019; Scrine et al., 2020). Situated in the responsive regulation literature, we examine the Ngulluk Koolunga Ngulluk Koort child protection principles and practice recommendations, including the inclusion of the deep knowledge held by Elders; a focus on recovery strategies from harm incurred by historical child protection interventions; and community empowerment. Our analysis provides important considerations for preventing further harm through consultation processes and by addressing divergent views and understandings of authority.

2 | CALLING FOR A GREATER FOCUS ON RESPONSIVE REGULATION

Child protection services have consistently been delivered with procedural unfairness (Tyler & Blader, 2000), which, particularly for Aboriginal and Torres Strait Islander people, has resulted in deep distrust and fear of the child protection system (Bessant, Hill & Watts, 2005; Ivec, Braithwaite & Harris, 2012; Maslen & Hamilton, 2020). With priority given to following legal procedures, child protection workers are preoccupied with defensible rather than helpful practice, and the effects on everybody involved are deleterious (Burford, 2005; Burford, Braithwaite & Braithwaite, 2019; Harris, 2011; Pennell, 2004; Pennell & Burford, 2000). Addressing these issues requires innovative and collaborative approaches to changing the way child protection authorities regulate Aboriginal and Torres Strait Islander families in Australia. Scholars have called for approaches that adopt the principles of responsive regulation. As articulated by Braithwaite (2002: 29), the concept of responsive regulation implies that “Governments should be responsive to the conduct of those they seek to regulate in deciding whether a more or less interventionist response is needed”. Such approaches offer a balance to arbitrary authority and prevailing formalistic approaches like mandatory reporting, forensic investigations, court hearings, timelines for termination of parental rights and the adoption of children in out-of-home care (Braithwaite, 2015; Harris, 2008; Harries, 2009; Maslen & Hamilton, 2020; Melton & Thompson, 2002; Parton, 2014).

The underlying tenet of responsive regulation is that those who regulate need to holistically take account of cultures, behaviours and the environments of those they are regulating when deciding on the type of intervention that is needed. As described by Braithwaite and colleagues (2005, V11), there is a need to use “soft words before hard words, and carrots before sticks”. Responsive regulation has been expressed through a pyramid model (Ayres & Braithwaite, 1992). The base of the model offers advisory and persuasive measures of control, moving to administrative sanctions and, where compliance is not achieved, to a top level of punitive actions such as legal sanctions. The greatest focus in this model is eliciting co-operation and self-regulation, that is the base of the model. Where these soft regulatory responses fail, regulators progress up the pyramid to enforce results and should move back down the regulatory pyramid as compliance is achieved (Cunningham, 2007). By using both advice and persuasion, it is argued that the regulatory pyramid offers economically viable and more respectful options first, while costly and punitive attempts at gaining control are kept for cases where advice is disregarded, and persuasion fails (Braithwaite, 2016). Pyramids have been extensively used and specifically designed for the regulatory task of particular sectors (Braithwaite, 2016).

There is a substantial literature that endorses responsive regulation across sectors and industries including human services and social work (Burford & Adams, 2004; Burford, Braithwaite & Braithwaite, 2019), taxation (Braithwaite, 2007; Job et al., 2007), the pharmaceutical industry

(Mulinari et al., 2020), criminology (Braithwaite, 1989), corporate crime (Braithwaite, 2008; Schell-Busey et al., 2016; Tombs, 2015) and child welfare/child protection (Burford, Braithwaite & Braithwaite, 2019; Harris, 2011). Responsive regulation has also proven appealing to regulators and policymakers (Job et al., 2007; Parker, 2013), and efforts to decentralise governments (Tombs & Whyte, 2013). The conceptual foundations of responsive regulation have not directly been challenged; however, there has been some scholarly critique highlighting challenges to implementing the model. Different strategies need to be adopted according to the precise circumstances. Poor outcomes have been linked to the selection of strategies, rather than the responsiveness of the parties involved (Braithwaite, 2016).

In the child protection/child welfare context, families are more effective in informally enforcing voluntary agreements than authorities are in enforcing orders and, as such, responsive regulation is considered a superior vehicle for delivering effective rehabilitation programmes (Braithwaite, 2002). Responsive regulation uses restorative practices that are relationship-centred, geared to solve problems, and use future-focused conversation and planning, drawing on the skills and insights identified within families and support networks. Restorative practices promote active responsibility, healing, healthy relationships and positive networks and build community capacity for preventing future harms or injustice (Braithwaite, 2002). Responsive regulation locates conferencing as just one strategy in a hierarchy of strategies for regulating problems (Burford, 2005; Burford, Braithwaite & Braithwaite, 2019; Harris, 2011; Pennell, 2004; Pennell & Burford, 2000). Conferencing in child welfare is not directly focused on the wrongdoing and the harm done, but instead focuses on the future safety and well-being of the children involved. It involves core values as well as processes regarding healing, social learning, community and kin participation, respectful dialogue, and assuming responsibility (Braithwaite, 2002). Such family-led decision making enables families to make decisions about the safety and futures of their children from the beginning of the child protection process (Nixon, Burford, & Quinn, 2005). With their origins in Indigenous movements that opposed government interventions estranging children from their families and communities (Hassall, 1996), such approaches are a form of participatory decision making that have the potential to address unsafe environments before the need for a court-mandated child protection order.

There has been a sporadic and inconsistent application in both the form conferencing takes, and its implementation across Australian child protection services (Harris, 2007). Mandatory family group conferencing was legislated in Aotearoa/New Zealand in 1989 and has been successful (Lupton & Nixon, 1999). In their approach, conferencing comprises three phases. The first phase highlights information sharing between all parties, the second allows private time for family discussion and deliberation, and the third considers those deliberations and decides on solutions that are positive and acceptable to all those present (Harris, 2007). Conferencing models assume that families have a right to participate in decisions that affect them and that when families are properly and transparently engaged and provided with information, they can competently direct their own futures (Adams & Chandler, 2004). Although managing the relationships of trust and power (or distrust and powerlessness) between statutory authorities and families can be challenging, conferencing has the potential to strengthen decision making to ensure collective responsibility and collective accountability.

Responsive regulation offers an effective mechanism to bring child protection stakeholders together to share problem solving (Adams & Chandler, 2004; Braithwaite, 2002; Burford & Adams, 2004). The model offers a way to “reset the relationship” (Ivec, Braithwaite & Harris, 2012) between the Aboriginal and Torres Strait Islander community and child protection authorities (Braithwaite, 2002; Burford & Adams, 2004). To our knowledge, no studies have investigated the potential of responsive regulation using an Aboriginal co-designed regulatory pyramid model to address child safety concerns, despite the evidence that they have the potential to provide a fundamentally different response to children deemed in need of protection

and at risk of removal from their kin, culture and communities. We examine such an approach in our coming analysis.

3 | NGULLUK KOOLUNGA NGULLUK KOORT PROJECT

The Ngulluk Koolunga Ngulluk Koort (Our Children Our Heart) project is a participatory action research (Cornwall & Jewkes, 1995) project led by the Aboriginal community of Perth. The research has identified three priority areas that are of concern to the community: (1) child protection system involvement and the impact of child removal; (2) the importance of early childhood education and care, and early schooling; and (3) housing security and homelessness for Aboriginal families. The research recognises the important role Elders play in Aboriginal culture and communities. Along with local Elders and community members, eight Elders serve as “co-researchers”, guiding the research focus, evaluation and translation. The research received all relevant ethics board approvals.

3.1 | Consultations

An extensive community engagement and data collection process for this research began in 2016, including an inaugural “Big Elder meeting” that was attended by 51 Elders from across the Perth metropolitan region. Two further Big Elder meetings were hosted, one in October 2017 attended by 60 Elders and the other in 2019 attended by 65 Elders. The meetings were held to seek endorsement of the research activity across time and worked closely with service providers and community organisations to bring about the changes to policy and practice in line with the community-identified priorities. In addition, the community engagement involved four community forums with Aboriginal Elders and senior community members. Participants were recruited using a snowball sampling technique, through the Elder/Co-researchers’ and community networks and organisations. Discussions with the community(s) focused on child development (0–6) and community perspectives of the important things that make Aboriginal children strong, that protect young Aboriginal children and what is needed for Aboriginal children to grow up happy and healthy. Aboriginal Elders, parents and other community members were encouraged to attend one of the four community forums and share their views, experiences and opinions regarding these issues.

The community forums, with oversight from the Elder/Co-researchers, were led by Aboriginal researchers and employed an Aboriginal facilitator. Overall, the aim of undertaking this extensive community engagement was to develop a better understanding of early childhood development from Aboriginal perspectives. In total, the forums involved 138 participants, ranging from 18 through to over 80 years of age.

3.2 | Data collection and analysis

With permission from participants, the discussions at the community forums were digitally recorded. The data were transcribed, and conventional thematic content analysis was applied to identify broad themes. These themes were presented to the Elder/Co-researchers for discussion to ensure that the findings represented a true reflection of the context and reality of peoples’ lives, values and beliefs. The final set of key factors and their pictorial representations (Farrant et al., 2019) were agreed to by the Elder/Co-researchers as an accurate reflection of Noongar/Aboriginal values regarding child-rearing and development along with the unique strengths of Aboriginal culture and family for children.

The co-design process for finalising the principles and practice recommendations involved extensive community engagement and input. The data were regularly presented to the Elder/Co-researchers and yarning circles were undertaken to finalise the main areas which would shape the Elder/Co-researcher's set of principles and practice recommendations for change in the child protection system. Formulating the principles and practice recommendations involved an extensive iterative process between the research team and the Elder/Co-researchers.

The co-design process resulted in the following principles and practice recommendations:

3.2.1 | Principles

- Recognise the impact that increasing rates of child removal and inappropriate placements are having on family functioning, sibling relationships and children's connection to culture and family.
- Recognise the need for a child protection system that is attuned and responsive to the specific needs of Aboriginal children and their families.
- Recognise that the fear of child removal is intergenerational because of both historical and contemporary practices and is negatively impacting on many parents' decisions and behaviour with their children, including not accessing health services and other support in case they are judged or reported.
- Recognise the important role of the extended family network for Aboriginal children's development, learning and access to and experience of cultural knowledge and kinship.
- Recognise that Aboriginal families provide children with a large network of people who care about them and that this gives kids a sense of belonging and security.
- Commitment from relevant organisations and agencies to adhere to the Aboriginal and Torres Strait Islander Child Placement Principle that asserts the importance of family, cultural and community connections to the identity and well-being of Aboriginal and Torres Strait Islander children who come into contact with the statutory child protection system.
- Commitment from organisations and agencies to a holistic and preventative approach to child protection endorsed by the National Framework for Protecting Australia's Children 2009–2020.

3.2.2 | Practice recommendations

- Ensure that the Aboriginal community/Elders are given a real and powerful voice in the child protection system and its decision making regarding Aboriginal children.
- Provide systems that support rather than punish parents and work with families (including extended family) to prevent removal of children or have them placed with an Aboriginal family.
- Ensure that, wherever possible, Aboriginal children remain with family, are reunified where they have been removed, and stay connected to their Aboriginal culture and community. Provision of effective community-controlled strategies to prevent and respond to family violence.
- Provide earlier intervention and targeted support for Aboriginal families in crisis to prevent child removal.
- Ensure ongoing cross-cultural skill development for all non-Indigenous staff, particularly frontline staff.
- Provide culturally appropriate early intervention drug and alcohol programmes for affected parents and other caregivers as well as providing support to other family members.
- Provide targeted support (programmes and services) for grandparents who are primary

caregivers to Aboriginal children.

These recommendations have important implications for governance in the child protection space. The Elder/Co-researchers have significantly influenced early childhood and housing and homelessness policy, meeting with Western Australian peak bodies and securing an ongoing dialogue in partnership with Ministers and senior officials. They hold advisory roles with peak bodies and contribute to the development and implementation of local and national strategies, working with the Federal Minister for Indigenous Australians and with the Assistant Federal Minister for Community Housing, Homelessness and Community Services, working to address the housing needs of Aboriginal people, the challenges facing Aboriginal Community Controlled Organisations (ACCOs) in the housing sector and the barriers Aboriginal people experience in accessing appropriate housing.

In the following, we present participant perspectives from the Elders and senior Aboriginal community members who attended the community forums. We do so in three sections: first “harm recognition”, second “respect, cultural authority and knowledge” and third “working together, empowering the community”.

4 | HARM RECOGNITION

The consultations first and foremost highlighted the critical importance of recognising past and continuing harm as a foundation for all future work. The Elders pointed to the impact that increasing rates of child removal is having on families and communities, and how contemporary fears of child removal are directly linked to historical child welfare practices such as those implemented during the Stolen Generations. These historical practices negatively impact on many aspects of parenting and engagement with services (Hamilton et al., 2020b; Hamilton et al., 2020a; Maslen & Hamilton 2020; Newton, 2017; O’Donnell et al. 2019). The Elders also emphasised the critical importance of recognising the harm that culturally inappropriate placements have on the ability of families to function safely, on the relationships with their parents and siblings while separated and lifetime harms incurred as a result of the overall disconnection from extended kin and culture.

Overwhelmingly, the participants highlighted that there is a gross misunderstanding within the Department of Communities (DoC) about the injury being continuously incurred, as articulated by one participant: “It is so numbing that they don’t know how much damage they are doing”. During the consultation process, participants in the community forums described their own experience of being removed from their family to foster care and the subsequent impact on their parenting. All of the Elder/Co-researchers have direct and/or indirect experiences of child protection/removal, from being members of stolen generations through to caring for their own grandchildren. This means that the role of Elders is multilayered and multidimensional. It also means that the impact of child protection interventions on the lives of Aboriginal families is intensely personal to Aboriginal Elders. As identified in the consultations:

We stayed out. We were in town all night, like just going from house to house. There was no one cared about me. You know, you explain to your kids that you only did that because no one loved you ‘like how I love you’ ... you try and explain to your kids that the only reason that you did it was that no one looked after you.

They looked after you, but they didn’t look after you where you felt loved. They just looked after you because they got paid for you. That’s how I felt.

One Elder, discussing the harm incurred by child removal:

But when you look at these sorts of things, there is no change from the stolen generation because they are still taking the kids away. Once Welfare got them, there is no one [family] involved. And once they get them, they don't want you to be involved. Believe me, they don't want you to be there. They won't even tell you where those kids are.

During the consultations, participants displayed a range of emotions consistent with trauma; from apathy and helplessness to anger and a strong desire for change. This could have major implications for future engagement with the Aboriginal community as conversations may be re-traumatising. Care must be taken in the design and support offered when undertaking consultation. Despite the trauma involved and difficulty having these conversations, they are essential to healing (Black, Frederico & Bamblett, 2019; Chandler & Lalonde, 2004), particularly against a backdrop in which these conversations have not happened.

5 | RESPECT, CULTURAL AUTHORITY AND KNOWLEDGE

Any engagement with Elders and senior Aboriginal people needs to be done in a culturally safe and respectful space in which there is an equal sharing of power between Elders and the DoC. The Ngulluk Koolunga Ngulluk Koort research has been conducted to find new ways to confront community-identified social issues and promote community-identified solutions. The origins of authority differ markedly in Aboriginal and Western cultures and worldviews (Fernando & Bennett, 2019). Authority in Western systems is given through roles and bureaucracy, whereas in Aboriginal and Torres Strait Islander communities authority is based on age, cultural knowledge and relationships. Elders are the Birdiyas (Bosses) in Noongar culture. Considering history, balancing these two very different systems of knowledge and balancing differences in authority and power are vital for equitable shared decision making.

During consultations, Elders highlighted past relations with the DoC in which their voices have been subordinate. Participants often expressed experiences of disrespect and concern at the lack of autonomy for making decisions about their own lives.

It is only common decency that you go and talk to the people before you start doing it. And these barriers, government departments will always put a barrier. If you don't come up to their standard, you have got to knock them barriers down.

As grannies and that we will take the kids in, because there is this fear if we do approach a service, it is going to be, you know, there is this final thing and there is a decision that is made, and it is taken out of everybody's hands. That is not what we want. When people do want help they are saying, 'We want help, but we want help. We don't want you to come in and make a decision for us.'

The government, they come out with all these policies and guidelines. Why don't they come and sit down with us, and then they can go back and make these decisions? They come out with all these policies and guidelines and then they go back and say, 'It is not working with these Aboriginal people'.

These are calls for Elders and other senior Aboriginal people and community members to be provided with a platform as respected voices in the child protection system, particularly when decisions are being made about Aboriginal children, families and communities (Davis et al., 2018; Morris, 2018; National Congress of Australia's First Peoples, 2016). Essentially, the findings

highlight that it is only through radical change to contemporary child protection governance that change can be envisioned. It is essential to place Elders and senior Aboriginal people in decision-making roles (both through employment and on mainstream and cultural bodies) at all levels of government and non-government organisations. By including the deep knowledge of Aboriginal Elders and by allowing and resourcing communities to design place-based solutions to child protection concerns, positive change can be effected.

6 | WORKING TOGETHER, EMPOWERING THE COMMUNITY

Redesigning collaborative systems must be more than “ticking the box” on consultation. The child protection system is viewed as a significant barrier to raising strong Aboriginal children. In the words of one Elder: “We need to challenge the systems that impact how we live and how we raise our kids, because they are the things that are stopping us”. The findings highlight the need for the DoC to establish a forum to work with Elders “Birdiya with Birdiya” (boss with boss) on ways to work with the families and communities toward recovery, which are solution-focused and culturally relevant.

The Elder/Co-researchers recommend Aboriginal community-controlled strategies and organisations be supported to prevent and respond to family violence, provide culturally appropriate AOD programmes for affected parents and other caregivers, provide support to other family members and provide targeted supports and service for grandparents who are primary caregivers to Aboriginal children. To bolster systems and combat systemic racism, the Elder/Co-researchers recommend continuous cross-cultural skill development for all non-Aboriginal staff, particularly those on the frontline and interacting with families. One Elder said: “the ones [interventions] that really work are when they are run by locally based Aboriginal entities”. Others concurred:

The true test of a large mainstream non-government organisation is for them to say, ‘Yeah, we can run Aboriginal programs but at the end of the day it is still a non-Aboriginal run organisation’. Would they be willing, and similar types of large NGOs, to say, ‘What we will do is we are going to give all our expertise and support to setting up an Aboriginal owned and managed entity to deliver their own services’.

Our race is the most researched humans on earth and yet the government still doesn’t understand us ... it is like, ‘Yeah, you should be working with us’, but we should be able to control our own destiny. We should have that choice. And people aren’t going to be able to succeed until they have that opportunity and that choice. So starting from the ground roots and working our way up, we’ll start educating the rest of the community.

The Elder/Co-researchers emphasise the strength of Aboriginal families and are focused on decreasing the harmful impacts of contact with the statutory child protection system.

There is nothing stronger than being with family. Everything that you want to learn about your culture, respect, even how to be a decent person, it is passed down from generation to generation.

In a Western world, they say it is overcrowding and it is unhealthy, where in actual fact when I reflected back yesterday about all the culture and the love and the support

that I had living with my Nanna, you know, and my cousins and aunties and uncles, you know, you could never put a price on that or a value on that.

I think one of the moorditj [good] things about raising kids with that strong sense of who they are and where they come from, you know ... 'I know who I am and I know where I am from and I can feel comfortable about seeing people and developing, you know, better relationships with family mob. So I think that is definitely important in raising kids. It is really instilling in them at a young age those kinships. It [family] gives them a sense of belonging, knowing who they are, who their family are, who they can turn to in their time of need.

The Elder/Co-researchers recommend systems improvement, and they call for supportive rather than punitive practice, and for child protection authorities to work holistically with families. This call is particularly in relation to early intervention and the prevention of child removal.

But what then should happen is the department rather than removing the child putting resources into the family, so you build the capacity of the family.

A shitload of money that goes into all that taking kids away, and put some of that into keeping families together, you know. If mum needs help, okay, let's organise that. If dad needs help with these kids, let's get some help.

In the event that a child does need to be removed from their parents, the Elder/Co-researchers call for adherence to the Aboriginal and Torres Strait Islander Child Placement principle. Further, where a removal is necessary, this must be for the shortest period of time with a focus on reunification and maintaining connection to their cultural and community ties.

Participants in the community forums spoke to the disregard of the system about adhering to the Aboriginal and Torres Strait Islander child placement principle.

Because I have asked them before. I said, 'Look, the boys can get respite from another Aboriginal family as well, if it needs to be, if my other cousin can't do it and that' and more or less it is like, 'Oh, we've got to do the ringing around' but they won't take that effort to ring around to other families as well. That's the way I feel anyway.

They also spoke of the importance of abiding by the Aboriginal and Torres Strait Islander child placement principle:

I have got nephews that I am looking after and everything, and that is through DCP, they have gained another family, because with my family I've got a strong network around me with my mum's side and everything, so with the boys, I try to teach them as much knowledge of my dad's side and them knowing who their family is on that side.

Although enshrined in legislation, participants observed that there is little effort made to connect Aboriginal children with Aboriginal families.

Another consideration will be the provision of preventive and earlier intervention, and targeted support for Aboriginal families in crisis to prevent child removal.

If a child is taken away and given to a white family, they have got nothing. They might have a home and they might have clothes and they might have schooling, but that Nyoongar culture is lost. That part of them, they don't get back, and even when they come back at the age of 18 they have lost it.

7 | DISCUSSION

The Ngulluk Koolunga Ngulluk Koort project gives us plenty of information about what we need to consider in “resetting the relationship” (Ivec, Braithwaite & Harris, 2012) between the Aboriginal and Torres Strait Islander community and government systems to work together toward shared solutions. Providing a place for a cultural authority and a voice would yield great advantages both for the child protection authority and for the Aboriginal and Torres Strait Islander community (Davis et al., 2018; Morris, 2018; National Congress of Australia’s First Peoples, 2016). New ideas and solutions can be found (Edelenbos & Klijn, 2006; Gray, 1989) and working together can lead to changes in understandings and ways of working, both personally and professionally (Thomson & Perry, 2006).

For the Aboriginal and Torres Strait Islander community, this is about healing the deep wounds which have been incurred from relentless child removal practices and an unwillingness to move away from punitive responses to the complex social issues of families. The research findings suggest that there is little practice and policy linkage to historical trauma from loss of kin culture and community and suffering while in care (Australian Government, 2017; HEREOC, 1997). Yet, these historical practices have negatively impacted on many aspects of contemporary parenting, help-seeking and service engagement. The findings highlight that until such time as leaders are able to acknowledge the legacy of past policies and practices and the connections with contemporary practices and problems, ongoing harm is perpetuated against Aboriginal and Torres Strait Islander children and their families.

For the Elders and for the Aboriginal community, child protection interventions are intensely personal, and any future consultation requires attention to this. It is critical that consultative forums are respectful of lived experience and knowledge, and allow voices to be heard, and for there to be visible actions and outcomes from consultations to prevent further harm. Despite this trauma, these conversations are essential to healing (Black, Frederico & Bamblett, 2019; Chandler & Lalonde, 2004; Davis et al., 2018; Morris, 2018; National Congress of Australia’s First Peoples, 2016) and are critical to promoting long-term healing and recovery. Given the intractability of the problem, and the difficulty for governments of all persuasion to ameliorate the ongoing harm being inflicted on Aboriginal and Torres Strait Islander people by child protection policies, Elders call for policies and practices that embrace networks of different types of knowledge to develop workable solutions (Huxham, 1993).

Responsive regulation provides a basis to reconceptualise relationships and collaborative governance of child protection services and offers an understanding of both the limits and the possibilities of embracing genuine, empowering partnerships between holders of different types of knowledge and ways of knowing (Feldman et al., 2006). This is consistent with the principles for child protection practice developed by the Elder/Co-researchers who argue that, by harnessing resources from the vast social networks that exist in the Aboriginal and Torres Strait Islander community, confidence and trust can begin to be restored to families, damaged relationships can be healed, and hope nourished, thereby lessening the need for next-generation child removal (Burford, 2005; Burford, Braithwaite & Braithwaite, 2019; Harris, 2011; Pennell, 2004; Pennell & Burford, 2000). The Elder/Co-researchers child protection principles and practice recommendations highlight the importance of kin, culture and community. When Aboriginal and Torres Strait Islander children are removed from their families, they are removed from the strengths and teachings passed down over generations. When they lose this, they struggle to get it back and it is lost to the next generation. This concern was mostly highlighted in the consultations by Elders who spoke of the importance of adhering to the Aboriginal and Torres Strait Islander Child Placement principle, and the disregard to the principle evidenced in the number of Aboriginal and Torres Strait Islander children still being placed in non-Indigenous care arrangements and away from their culture and country.

The child protection principles and practice recommendations developed by the Elders highlight the need for the child protection sector (government and non-government agencies) to focus on developing ACCOs and community-identified strategies to address the social issues faced by Aboriginal families. When services are delivered by non-Aboriginal staff, the research highlights the need for cross-cultural skill development and the employment of Aboriginal staff at all levels in services. ACCOs have been shown to be very effective in the development of communities, service provision and advocating need and empowering communities (Howard-Wagner, 2018). Using responsive regulation and the regulatory pyramid (Braithwaite, 2002) can serve to mitigate the procedural unfairness (Tyler & Blader, 2000) described by the participants, such as being excluded or not receiving information about their family. This can assist to address the issues of distrust, state legitimacy and consistent policy failures which continue to shape the relationship between the Aboriginal and Torres Strait Islander community and child protection authorities (Burford, Braithwaite & Braithwaite 2019; Hamilton et al., 2020b; Hamilton et al., 2020a; Maslen & Hamilton 2020; Newton, 2017).

8 | CONCLUSION

The Ngulluk Koolunga Ngulluk Koort child protection principles and practice recommendations provide practical lessons for improving current practice and ensuring “best practice” in the development of future cultural governance for child protection policy and practice. An emphasis of the Ngulluk Koolunga Ngulluk Koort framework is on understanding the value of collaborative work, the benefits to participants and influence on the success of policies and programmes that have been elusive in traditional child protection work (Fung & Wright, 2001; Hamilton, Cleland et al., 2020a; Hicks et al., 2008; Johnston et al., 2011; Maslen & Hamilton 2020; Skelcher & Sullivan, 2008). This demands recognition of the authority and knowledge of Elders and senior Aboriginal and Torres Strait Islander people and committing to their inclusion in decision-making roles at all stages of child protection process. It also requires careful consideration of past harm and trauma in engagement processes to prevent further harm.

We recommend that there be an Elder and community-led co-design of a responsive regulation pyramid to respond to child safety concerns before applying statutory interventions. This approach would contribute to respectful acknowledgement of the cultural authority of the Elders wisdom and their intimate knowledge about Aboriginal families and the available supports and community connections to assist in solving family problems. It also offers a way to repair historical harm, providing an alternative to the removal of children from culture, kin and networks. Most importantly, it offers a vessel for voice and self-determining the future of the Aboriginal community.

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