10.1 Decision-making about Aboriginal and Torres Strait Islander children

Purpose

This procedure outlines the process for decision making about Aboriginal and Torres Strait Islander children, including:

- application of the five elements of the Child Placement Principle
- arranging an independent Aboriginal or Torres Strait Islander entity for a child (known as an independent person) to help the child and family participate in making decisions that are likely to have a significant impact on the child’s life
- arranging family-led decision making at key points to enable collaborative, family-led processes for making decisions and plans for Aboriginal and Torres Strait Islander children.

Key steps

1. Enable meaningful participation in decision-making
2. Arrange for an independent person to facilitate the child’s and family’s participation
3. Refer the family for family-led decision-making

What if s – responding to specific matters

Standards

1. The child and family is provided with the opportunity to have an independent person help them participate in the decision-making for all ‘significant decisions’ about an Aboriginal or Torres Strait Islander child.

2. Child Safety, in consultation and with the consent of an Aboriginal or Torres Strait Islander child and their family, will arrange for an independent person to help the child and family’s participation in decision-making for all other decisions about the child, where requested and practicable.

Authority

- Child Protection Act 1999
- Policy No: 641 Decisions about Aboriginal and Torres Strait Islander children and young people
- Policy No: 598 Child Related Costs – client support and family contact
Key steps - Decision-making about Aboriginal and Torres Strait Islander Children

1. Enable meaningful participation in decision-making

2. Arrange for an independent person to facilitate the child’s and family’s participation
   2.1 Determine whether a matter is a ‘significant decision’
   2.2 Make arrangements for an independent person
   2.3 Complete the independent entity form

3. Refer the family for family-led decision-making

What ifs – responding to specific decision-making about Aboriginal or Torres Strait Islander children

1. What if the child and family want an individual who is not Aboriginal or Torres Strait Islander to be their independent person?
2. What if financial assistance is required for the independent person to attend a meeting?
3. What if the Director of Child Protection Litigation seeks advice regarding person’s suitability to be an independent person?
4. What if a matter involves an Aboriginal or Torres Strait Islander unborn child?
5. What if a child or family wants an independent person to attend court?
1. Enable meaningful participation in decision-making

Due to the over-representation of Aboriginal and Torres Strait Islander children subject to Child Safety intervention, and the enduring impact of past government policy on Aboriginal and Torres Strait Islander peoples, communities and families, Child Safety is responsible for and committed to making all decisions about Aboriginal and Torres Strait Islander children in active collaboration with Aboriginal and Torres Strait Islander families and their community.

The *Child Protection Act 1999*, sections 5C and 6AA, reflect the importance of providing Aboriginal and Torres Strait Islander people with the opportunity to meaningfully participate in child protection decision-making to ensure that:

- Aboriginal and Torres Strait Islander people can exercise their right to self-determination and agency over their lives
- child protection services provided to Aboriginal and Torres Strait Islander children are culturally appropriate and support their safe care and connection with family, community, culture and country
- active efforts are made to address the over-representation of Aboriginal and Torres Strait Islander children in the child protection system.

The *Child Protection Act 1999* requires that, when making a decision about an Aboriginal or Torres Strait Islander child, Child Safety considers the long-term effect of the decision on the child’s identity and connection with their family and community. The decision must also be made:

- in a way that allows the full participation of the child and the child’s family group
- in a place that is appropriate to Aboriginal tradition or Island custom
- in a way that upholds the following five elements of the Child Placement Principle:
  - *prevention* - Aboriginal and Torres Strait Islander children have a right to be brought up within their own family and community
  - *partnership* - Aboriginal and Torres Strait Islander persons have the right to participate in significant decisions about Aboriginal and Torres Strait Islander children
  - *placement* - Aboriginal and Torres Strait Islander children subject to a child protection care agreement or child protection order, granting custody or guardianship to the chief executive, have a right to be placed with a member of their family group
  - *participation* - Aboriginal and Torres Strait Islander children and their parents and family members have a right to participate, and be enabled to participate, in administrative and judicial decision making processes
  - *connection* - Aboriginal and Torres Strait Islander children have a right to be supported to develop and maintain a connection with the child’s family, community, culture, traditions and language, particularly where a child is in the care of a person who is not an Aboriginal or Torres Strait Islander person.
2. Arrange for an independent person to facilitate the child’s and family’s participation

The Child Protection Act 1999, also requires Child Safety, in consultation and with the consent of the child and their family, to arrange an independent Aboriginal or Torres Strait Islander entity for the child (known as an “independent person”) to facilitate the child’s and family’s participation in decision-making processes:

- when making a significant decision for an Aboriginal or Torres Strait Islander child
- when deciding where and with whom an Aboriginal or Torres Strait Islander child will live – when the child is subject to a child protection care agreement, or an order granting custody or guardianship to the chief executive.

Where a significant decision is made and consultation with the family was not possible, the relevant CSSC or CSAHSC is responsible for advising the family of the decision as soon as practicable.

Where cultural advice is required to inform decision-making, planning or case work at any point from the decision to record a notification for an Aboriginal or Torres Strait Islander child, consult with one or more of the following:

- the child, child’s family or a person they nominate (unless advice is required for investigation and assessment planning)
- Child Safety staff who are able to provide cultural advice
- a local Aboriginal or Torres Strait Islander community representative (when consulting in relation to investigation and assessment planning - only non-identifying information about the child and family will be shared).

For further information about working with a child and family to arrange an independent person, refer to the practice resource: Working with an independent person. For further information about Child Safety staff working in a culturally capable way, refer to the practice resource: Culturally capable behaviours.

2.1. Determine whether a matter is a ‘significant decision’

Significant decisions

The Child Protection Act 1999, schedule 3, defines a significant decision about an Aboriginal or Torres Strait Islander child as one that is likely to have a significant impact on the child's life.

Child Safety staff will consider the following as key ‘significant decisions’ for an Aboriginal or Torres Strait Islander child:

- a decision about how to keep a child safe (immediate safety planning during an investigation and assessment and ongoing intervention)
- a decision about whether a child is in need of protection
- case planning decisions including the type of ongoing intervention that will be undertaken with a family and how the child’s safety, belonging and wellbeing needs will be met
- a decision to refer a matter about an application for a child protection order for the child to the Director of Child Protection Litigation (DCPL)
- a decision about where or with whom a child will live - for children subject to a child protection care agreement or an order granting custody or guardianship to the chief executive (Child Protection Act 1999, section 83(2))
- support service planning prior to the birth of an Aboriginal or Torres Strait Islander child.

There may be additional matters that are significant for an individual child, taking into account issues specific to them, their family and community. Use professional judgment and knowledge of the child’s circumstances to determine what decisions are significant for a child and respond accordingly.

For ease of reference, a poster for CSSC staff has been developed which lists significant decisions and how to record the ‘Independent entity’ form in ICMS. Refer to Information for staff: Significant decisions about Aboriginal and Torres Strait Islander children and young people. For further information about the ‘Independent entity’ form refer 2.3. Complete the independent entity form.

Other decisions

In addition to facilitating participation in decisions defined as ‘significant’, the child or the child’s family may choose to have an independent person facilitate the child and family’s participation in any decision under the Child Protection Act 1999 where they consider it would help them participate in the decision making process.

Also, a pregnant woman and the unborn child’s family may have an independent person help facilitate their participation in an investigation and assessment prior to the birth of an Aboriginal or Torres Strait Islander child, refer to What if a matter involves an Aboriginal or Torres Strait Islander unborn child?

For further information about the legislative requirements that impact on working with Aboriginal and Torres Strait Islander children and families, refer to the practice resource: Legislative provisions in relation to Aboriginal and Torres Strait Islander children.

2.2. Make arrangements for an independent person

Who may be an independent person?

To be an independent Aboriginal or Torres Strait Islander entity (independent person) for a child, the entity must be:
- an individual who is an Aboriginal or Torres Strait Islander person, or
- a group whose members includes Aboriginal or Torres Strait Islander persons.

In addition, Child Safety must be satisfied that the independent person must either:
- provide services to Aboriginal or Torres Strait Islander persons (this could include an entity funded by the department), or
- be a representative of the child’s community or language group, or
- be a person who:
  - is of significance to the child or child’s family, and
is a suitable person for associating on a daily basis with the child, and
has appropriate authority to speak about Aboriginal or Torres Strait Islander culture in relation to the child or the child’s family, and
is not an officer or employee of Child Safety.

Child Safety must also be satisfied that they are a suitable person to be an independent person.

As children and families are the best source of information regarding their own kin and community, where a child and family nominates an individual to be an independent person, Child Safety will be informed about whether the individual is an Aboriginal or Torres Strait Islander person by the child, family and the individual. In certain circumstances, a non-Aboriginal or Torres Strait Islander person may meet the criteria for being an independent person – refer to What if the child and family want an individual who is not Aboriginal or Torres Strait Islander to be their independent person?

In addition, Child Safety will be satisfied that the following criteria has been met, when the child, family and the person nominated advise that they are satisfied it has been met:

- a representative of the child’s community or language group
- a person of significance to the child or child’s family
- a person with appropriate authority to speak about Aboriginal or Torres Strait Islander culture in relation to the child or the child’s family.
- For ease of reference, a poster for CSSC staff outlining who can be an independent person has been developed. Refer to Information for staff: Who can be an independent person for an Aboriginal and Torres Strait Islander child and/or family?

Consult the child and family

The steps outlined below will assist workers to meet the obligation to arrange an independent person, in consultation and with the consent of the child and their family, each time a significant decision is to be made.

When making a significant decision for a child, advise the child and their parents:

- of their right to have an independent person help them participate in the significant decision
- that their family may choose to have more than one independent person help facilitate their participation in a decision - for example, when parents are from different community or language groups, or where there is family conflict
- that they have the right to choose not to have an independent person to help facilitate their participation in decision-making, including if they change their mind once the decision-making process has commenced
- that someone they nominate to be an independent person for one significant decision may differ from the person they nominate for another significant decision
- that if they want to have an independent person but do not have someone to nominate, a local Aboriginal or Torres Strait Islander community organisation may be able to help them identify someone – provide assistance in contacting the community organisation, where requested
- about the purpose of the role – refer to ‘Discuss the role with the nominated person’ below
• that a person they choose must meet the criteria for being an independent person - refer to ‘Who may be an independent person’, above
• how suitability will be determined - refer to ‘Determining suitability’ below
• of resources available which provide information about being an independent person – refer to brochure Support for children and families to have their say in decisions, YouTube video - Information for families about an independent person, brochure Independent person: Information for Aboriginal and Torres Strait Islander children and young people and additional resources at www.qld.gov.au/independentperson.

When the child and family agree to have an independent person, arrange for the independent person, by:
• advising the person of the role requirements
• determining their suitability, and
• arranging their involvement in the decision, with the child and family, unless it is:
  • not practicable because an independent person is not available or because the decision must be made urgently
  • likely to have a significant adverse effect on the safety or emotional wellbeing of the child or another person
  • not in the child’s best interest.

To ensure the child and family can have an independent person support their participation in decision-making throughout the duration of Child Safety’s involvement, a child and family may choose to nominate multiple people who they wish to be an independent person. Where the family identifies people in advance, it will enable CSSC staff to contact the nominated people and determine their suitability prior to the child and family requiring their assistance. This aims to maximise flexibility for the child and family and the instances in which their participation in decisions is support by an independent person and negate the need to delay decisions for the purpose of arranging an independent person.

**Provide information to the person nominated to be the independent person**

When the child and family nominate someone to be their independent person, confirm whether the child and family wish to approach the person about the role in the first instance or prefer Child Safety to do so. Once the initial contact with the nominated person has been made, provide them with the following information to help them decide whether to take on the role:
• the purpose of the independent person’s role being to help the child and family:
  • have their say in decisions
  • feel stronger and supported to say everything they wish to say to Child Safety during a decision-making process
  • provide contextual cultural information about things impacting on the child and family, to help Child Safety understand the child and family’s views, motivations or actions
  • explain cultural factors that may be impacting on the child or family and their capacity to fully participate in discussions and decisions
• the purpose of an independent person is **not** to:
  • make decisions
• provide their own views on the decision being made
• speak on behalf of the child or family, unless with agreement of the child or family
• they do not need experience or knowledge in child protection, as relevant processes will be explained to them, the child and family members
• the requirement to maintain confidentiality as outlined in the Child Protection Act 1999, chapter 6, part 6
• that where they have been nominated by the child and family to be the independent person for multiple decisions, they may decide to agree, decline or agree to take on the role for some decisions and not others
• the chief executive’s obligation to consider their suitability to take on the role – refer to ‘Determine suitability’ below
• that where required, practical assistance may be available to assist the person to participate in decision-making - for example, use of an interpreter and video-conferencing
• the possibility of reasonable out-of-pocket expenses associated with travel or accommodation being available from:
  • a local Aboriginal or Torres Strait Islander community agency or other family support service
  • the CSSC (at the discretion of the Manager) – where the decision relates to a child subject to ongoing intervention, refer to What if the independent person requests financial assistance to attend meetings?
• that, if the matter results in a proceeding in the Childrens Court, they may be asked to present their views to the court about Aboriginal tradition or Island custom in relation to the child, although the court cannot compel them to do so
• of resources available which provide information about the independent person – refer to brochure Supporting children and families to have their say in decisions, YouTube video - Information about being an independent person and additional resources at www.qld.gov.au/independentperson.

**Determine suitability**

When a child and family nominate someone who they believe meets the definition of an independent person, is suitable to be an independent person, and has the capacity to fulfil the role, take into account the following factors to determine the person’s suitability:

• whether the person is someone who can be an independent person, refer to 2.2 Make arrangements for an independent person
• whether the person poses a risk to children’s safety or to the safety of the particular child
• whether a conflict of interest exists that adversely impacts on the independent person’s ability to facilitate the child or family’s participation in decision-making. For example, a conflict would exist where a person who is party to proceedings relating to the child in the Childrens Court or Family Court is to be the child and family’s independent person
• whether factors specific to the circumstances of the decision mean the person nominated is not suitable - for example the person nominated has strong views about the decision, that differ to the views of the child and family, and is unable to put those aside to help the child and family participate in the decision.
A senior team leader will decide a person’s suitability, taking into account the following sources of information:

- information about the nominated person provided by the child and family and the person themselves
- existing information recorded in ICMS relating to the child protection history of the nominated person. Note: many people have a child protection history - the relevance of the history impacting on someone’s ability to undertake the role of independent person will be determined on a case-by-case basis. It will depend on whether the history relates to a serious matter that is likely to pose a risk of harm to a child in the current circumstances.

Do not request a criminal or domestic and family violence history check on the person nominated. The Child Protection Act 1999 does not provide authority to seek this information for the purpose of determining the suitability of an independent person.

When information is identified in the person’s child protection history that may indicate the person is not suitable to take on the role, discuss the concerns with the person. Where the level of concern is not sufficiently reduced, based on information provided by the person, advise them and the child and family that the person is not considered suitable and record the decision and rationale in the ‘Independent entity’ form in ICMS.

Where a decision is made that a person is not suitable and the child and family or person nominated wishes to discuss the matter with a senior officer, provide them with details for contacting the CSSC Manager.

**Before meeting to make the decision about the child**

Where the independent person is to help the family to participate in a decision in the future and time allows, formally invite the independent person to the meeting using the ‘Letter to the Independent person’ template, confirming details of the meeting, as agreed with the family and independent person, including the purpose of the meeting and a reminder of the role of an independent person and confidentiality requirements.

Where time does not allow for the letter to be sent, prior to the meeting inform the independent person of information contained in the letter template regarding their role, confidentiality requirements and the decision in which the child and family are participating.

**Following involvement of an independent person**

Where an independent person has helped the child or family to participate, talk to the independent person and:

- acknowledge their contribution to the process
- remind them of the ongoing confidentiality requirements of their role, in relation to information provided to them verbally and in writing.

In addition, seek feedback from the child and family and the independent person about the decision-making process and, where relevant, future opportunities to enhance the child and family’s meaningful participation in decision-making.
2.3. Complete the independent entity form

For each significant decision regarding an Aboriginal or Torres Strait Islander child, record details of the child and family’s choice to have an independent person help facilitate their participation in the decision, whether a person who was nominated was suitable and whether they participated in the decision-making process, in the ‘Independent entity’ form in ICMS.

In addition, also complete the ‘Independent entity’ form for decisions about an Aboriginal or Torres Strait Islander child that are not considered significant decisions, but where the child or family requested the assistance of an independent person to help facilitate their participation in the decision.

This will include:

- details of participants in the decision-making process
- information about whether the child and family agreed or declined the involvement of the independent person in the decision regarding an Aboriginal or Torres Strait Islander child
- whether each person nominated by the child and family to be the independent person was suitable and if not, the rationale for why they were not considered suitable
- where applicable, the rationale for why involvement of the independent person in the decision was not practicable
- the contact details for each independent person and their relationship to the child.

Note: A client profile will not be created for an independent person. Where the person has an existing client profile related to another role, this will not be added to the relationship table in the event, unless doing so is relevant to the person’s other role and not their role as the independent person.

3. Refer the family for family-led decision-making

To support Aboriginal and Torres Strait Islander children and families to meaningfully participate and exercise self-determination in regards to significant decisions, Child Safety will refer a family for family-led decision-making processes, when it is practicable and in the best interests of the child:

- when deciding the outcome of an investigation and assessment, where an outcome of ‘child in need of protection’ is likely, and, if appropriate, the type of ongoing intervention required to provide for the child or young person’s protection and care
- when developing a case plan.

Family-led decision-making during the investigation and assessment phase is aimed at providing a culturally inclusive decision-making process where a child’s family group collaboratively identify and address safety concerns, with the intent of forming alternative plans to ongoing intervention. Where it is determined the child is in need of protection, family-led decision-making is focused on identifying strategies to minimise the degree and length of necessary ongoing intervention, including keeping the child connected with family, community and culture where the child cannot remain safely at home.
The *Child Protection Act 1999*, provides for family group meetings to facilitate family-based responses to children’s protection and care needs. It allows for a family group meeting to be convened by a delegated officer (usually the family group meeting convenor) or by a private convenor. Family group meetings for an Aboriginal or Torres Strait Islander child will be family-led processes as far as possible, facilitated by the Family Participation Program or the family group meeting convenor.

**Facilitation by the Family Participation Program**

The Family Participation Program, comprises services delivered by Aboriginal and Torres Strait Islander community-controlled organisations to support a child’s family group to participate in child protection processes. Families are assisted to develop family-based solutions, with the aim of ensuring the safety of Aboriginal and Torres Strait Islander children within family, community and culture. The Family Participation Program recognises that children and families have the best knowledge about the strengths and risks that exist in their own families and communities.

Staff from the Family Participation Program facilitate Aboriginal and Torres Strait Islander family-led decision-making processes, where authority is given to children, parents and their family to identify solutions to problems and lead decision-making about their family, in a culturally safe space. Importantly, the process is facilitated independently of Child Safety.

The purpose of the Family Participation Program facilitating Aboriginal and Torres Strait Islander family-led decision-making:

- is for the child’s family to fully participate in a **significant** decision, for example:
  - the decision about whether a child is in need of protection
  - the decision about what is included in the child’s case plan
- is to enable the collective resources and protective capabilities of the extended family to be taken into account to ensure the best decisions are made for the child
- is to identify and explore the extent of possibilities that the family can offer
- seeks to give effect to Aboriginal and Torres Strait Islander people’s right to self-determination.

Where the child and family choose to have an independent person help facilitate their participation in decisions being considered at an Aboriginal and Torres Strait Islander family-led decision-making process, arrange for the independent person, refer to 2. **Arrange for an independent person to facilitate the child's and family's participation.**

At an Aboriginal and Torres Strait Islander family-led decision-making process during the **investigation and assessment**, the CSO will explain the child protection concerns and the possible outcomes of the investigation and assessment and their implications for the child and family. The family will have private family time to develop a proposed plan for keeping the child safe. Depending on the level of concern for the child and the resources of the particular family, at times the family’s plan may propose that support and monitoring by the child’s safety and support network may sufficiently mitigate risk of harm to the child. At other times, the family’s plan may identify that ongoing intervention by Child Safety is needed to keep the child safe.
The facilitator from the Family Participation Program will provide the family’s plan to the Child Safety staff present to help inform Child Safety’s decision about whether the child is in need of protection.

At an Aboriginal and Torres Strait Islander family-led decision-making process during ongoing intervention, for example to develop an initial case plan, the family will propose a plan about how they think the child’s protection and care needs can be addressed, whether at home or in care. Where a child cannot remain safely at home, the aim is for the family to identify family-based care options. The family’s plan informs the goals and actions identified in the child’s case plan. As the delegated officer for approving the case plan, the senior team leader is ultimately responsible for the decision about what is included in a child’s case plan. Where an Aboriginal and Torres Strait Islander family-led decision-making process is facilitated by the Family Participation Program for the purpose of developing a case plan, the facilitator from the Family Participation Program will fulfil the functions of a private convenor and together with Child Safety staff, will ensure the meeting complies with the requirements of a family group meeting as outlined in the Child Protection Act 1999, section 51.

As the delegated officer for approving the investigation and assessment outcome and for approving the case plan, the senior team leader will consider the family’s plan to help inform these decisions. The responsibility of the senior team leader to finalise these decisions will be explained to the family in advance of the family-led decision-making process. Where the senior team leader is not able to be present at the family-led decision-making meeting, the family will be told in advance and be prepared that the final endorsed plan may not be able to be confirmed on the day of the meeting and either:

- participants will be contacted to discuss the final plan or
- participants may need to continue the family-led decision-making process at another time.

**Facilitation by a Family Group Meeting convenor**

At times a child and family may choose to participate in a family-led decision making process, facilitated by the family group meeting convenor.

As it is not facilitated independently of Child Safety, it differs to the model of ‘Aboriginal and Torres Strait Islander family-led decision-making’, which is undertaken exclusively by the Family Participation Program or other Aboriginal or Torres Strait Islander service.

**Make a referral**

A referral for either an Aboriginal and Torres Strait Islander family-led decision-making process or a family-led decision-making process may be made:

- while an investigation and assessment regarding an Aboriginal or Torres Strait Islander child is in progress and it appears likely the outcome of the investigation and assessment will be that the child is in need of protection
- to develop or review a case plan for an Aboriginal or Torres Strait Islander child.

To make the referral:

- discuss with the parents and child, depending on the child’s age and ability to understand:
  - the purpose of family-led decision-making
that where they wish to participate in an Aboriginal and Torres Strait Islander family-led decision making process, wherever possible will be facilitated by the Family Participation Program or a similar process facilitated by a Child Safety family group meeting convenor.

where the parents wish to participate in Aboriginal and Torres Strait Islander family-led decision making process, refer the family to the Family Participation Program, outlining the:

- child protection concerns
- purpose of the meeting
- the child and parents’ details
- contact details of relevant family members, if known, and any relevant timeframes.

where the parents wish to participate in a process facilitated by the family group meeting convenor, make a referral to the family group meeting convenor.

For further information about family-led decision-making processes, refer to the practice resource: Family-led decision-making. For further information about Child Safety staff working in a culturally capable way, refer to the practice resource: Culturally capable behaviours.
What ifs – responding to specific matters

1. What if the child and family want an individual who is not Aboriginal or Torres Strait Islander to be their independent person?

The *Child Protection Act 1999*, section 6 outlines who may be an “independent Aboriginal or Torres Strait Islander entity for a child” (independent person) and specifically states that an entity is:

- an individual who is an Aboriginal or Torres Strait Islander person, or
- another entity whose members include individuals who are Aboriginal or Torres Strait Islander persons.

The *Child Protection Act 1999* also provides the following examples of who may be an independent person:

- an Aboriginal or Torres Strait Islander elder
- an entity funded by a State or the Commonwealth to provide cultural services, including cultural advice and support, to Aboriginal or Torres Strait Islander persons.

Therefore, when a child or family chooses an individual who they wish to be an independent person, it is a requirement for that person to be an Aboriginal or Torres Strait Islander person.

Where a child or family chooses someone to be an independent person who is from an entity whose members include Aboriginal and Torres Strait Islander members, for example, an employee of a Family Wellbeing Service or Family Participation Program, then it is not a requirement that the person is an Aboriginal or Torres Strait Islander person.

Where a child or family wishes to be supported in decision-making by an individual within their family or community who is not an Aboriginal or Torres Strait Islander person, then the child and family may request that the person still helps them to participate in decision-making processes. In deciding whether they want the person to be involved, the child and family should be advised that the person will not be undertaking the role of independent person as described in the legislation. In this case it may not always be possible for the child and family to have the person involved in the decision. Child Safety will accommodate the request with circumstances decided on a case-by-case basis.

2. What if financial assistance is required for the independent person to attend a meeting?

Where financial assistance is required to enable attendance of an independent person at a meeting to discuss a significant decision regarding an Aboriginal or Torres Strait Islander child, the CSSC manager may consider approval of funds through the *Child Related Costs – Client support and family contact* policy to cover reasonable out-of-pocket expenses for travel, accommodation or meals for an independent person to participate in the decision.

Prior to considering financial assistance, the CSSC manager must be satisfied that the following has occurred:
the use of electronic meeting arrangements such as skype or tele-conferencing has been considered, but are not available or appropriate in the circumstances

the CSO has discussed options with the independent person for seeking financial or other practical assistance from a local Aboriginal or Torres Strait Islander community organisation or other support service and where requested, the CSO has provided assistance in contacting those agencies, however, assistance was not possible or appropriate in the circumstances.

3. What if the Director of Child Protection Litigation seeks advice regarding a person’s suitability to be an independent person?

The Child Protection Act 1999 requires the Director of Child Protection Litigation (DCPL), when making a significant decision about an Aboriginal or Torres Strait Islander child, to, in consultation with the child and the child’s family, arrange for an independent person to facilitate the participation of the child and the child’s family in the decision-making process.

However, the DCPL is not required to arrange for an independent person if:

- it is not practicable because:
  - an independent person is not available
  - urgent action is required to protect the child
- it is likely to have a significant adverse effect on the safety or psychological or emotional wellbeing of the child or any other person,
- it is otherwise not in the child’s best interests
- the child or the child’s family does not consent to the independent person’s ongoing involvement in the decision-making process
- the DCPL is satisfied the chief executive or an authorised officer has already complied with the requirement in relation to the significant decision.

As the Child Protection Act 1999 requires that Child Safety must be satisfied of a person’s suitability before they can be an independent person, when the DCPL is arranging for an independent person to help facilitate a child and family’s participation in a decision, the DCPL will seek advice from Child Safety, through the OCFOS lawyer, about the person’s suitability.

When determining a nominated person’s suitability at the request of DCPL, the senior team leader will gather information about the person nominated and the specific decision from the following people:

- the DCPL
- the person nominated to be an independent person
- the child and family.

Once suitability has been determined using the process outlined in ‘Determine suitability’, the senior team leader will advise the OCFOS lawyer of the outcome and ensure details of the request and suitability of the person are recorded in the ‘Independent entity’ form in ICMS.
4. What if a matter involves an Aboriginal or Torres Strait Islander unborn child?

Child Safety will arrange for an independent person to help facilitate the participation of a pregnant woman and the unborn child’s family in:

- an investigation and assessment conducted prior to the birth of an Aboriginal and Torres Strait Islander child
- a support service case - where a pregnant woman agrees to receive help and support prior to the birth of an Aboriginal or Torres Strait Islander child, to reduce the likelihood of the child being in need of protection after he or she is born. \(\textit{Child Protection Act 1999, section 21A}\).

Prior to a child’s birth, the agreement of the pregnant woman is required before arranging:

- for an independent person to help a pregnant woman participate in an investigation and assessment or support service case
- for an unborn child’s family to be involved in an investigation and assessment or support service case
- for an independent person to help facilitate the participation of an unborn child’s family in an investigation and assessment or support service case.

Record whether an independent person helped facilitate the participation of a pregnant woman and an unborn child’s family in the ‘Independent entity’ form in ICMS, for each of the following:

- the decision about whether the unborn child will be in need of protection after he or she is born
- the development of a support service plan.

For further information, refer to, What if the investigation and assessment is for an unborn child? and chapter 7 Support Service Case.

5. What if a child or family wants an independent person to attend court?

The \textit{Child Protection Act 1999} states that the Childrens Court must have regard to Aboriginal tradition and Island custom relating to the child when:

- exercising a power under the \textit{Child Protection Act 1999} in relation to an Aboriginal or Torres Strait Islander child \(\textit{Child Protection Act 1999, section 6AB}\)
- deciding whether to make a permanent care order for an Aboriginal or Torres Strait Islander child \(\textit{Child Protection Act 1999, section 59A}\).

In order to inform itself about Aboriginal tradition and Island custom relating to the child, the court may have regard to the views of an independent person, as well as the views of the child or a member of the child’s family.

The \textit{Child Protection Act 1999} does not obligate an independent person to attend court or for Child Safety to arrange, with the child and family’s consent, for an independent person to attend court with the family. However, prior to a court date, talk with the child and family about whether they
wish to have an independent person attend court with them, if the person is available. Although not a requirement, the presence of an independent person at court will:

- ensure an independent person is available should the court wish to have regard to their views about Aboriginal tradition and Island custom, and
- enable the child and family to have an independent person help facilitate their participation in a significant decision, should such a decision need to be made on the day at court.

Where it is the child’s or family’s intention to have an independent person attend court, to be available should the court wish to have regard to their views about Aboriginal tradition and Island custom, include this information and relevant details of the independent person in the affidavit (using the affidavit template developed for Aboriginal and Torres Strait Islander children). Information about the person’s suitability to be an independent person is not required in the affidavit as this is not a matter on which the court can make a decision and is not relevant to the matters to be considered by the court.

There may also be times when a family wishes to have an independent person support them by providing information to the Childrens Court about Aboriginal tradition or Island custom in relation to the child, but Child Safety has not previously made a decision about the person’s suitability to be an independent person. In these instances, the DCPL will request advice from Child Safety about whether the person is suitable – refer to What if the Director of Child Protection Litigation seeks advice regarding a person’s suitability to be an independent person?

**Resources**

**Departmental resources**

- Letter to the Independent person’ template
- Practice resource: Culturally capable behaviours
- Poster - Information for staff: Who can be an independent person for an Aboriginal and Torres Strait Islander child and/or family?
- Poster - Information for staff: Significant decisions about Aboriginal and Torres Strait Islander children and young people
- Brochure for families - Support for children and families to have their say
- Brochure for children and young people - Independent person: Information for Aboriginal and Torres Strait Islander children and young people
- Brochure for an independent person - Supporting children and families to have their say in decisions
- YouTube video - Information for families about an independent person
- YouTube video - Information about being an independent person

**External resources**

- Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principle (SNAICC)