



**ORANGA
TAMARIKI**
Ministry for Children

EVIDENCE CENTRE
TE POKAPŪ TAUNAKITANGA
New Zealand Government

Decentralisation

Evidence brief

Acknowledgements

The Oranga Tamariki Evidence Centre works to build the evidence base that helps us better understand wellbeing and what works to improve outcomes for Aotearoa New Zealand's children, young people, and their whānau.

Email

research@ot.govt.nz

Author

James McIlraith (Oranga Tamariki Evidence Centre)

Published

June 2021

ISBN

978-0-9951443-1-6

Citation guidance

This report can be referenced as Evidence Centre (2021). *Decentralisation: Evidence brief*. Wellington, New Zealand: Oranga Tamariki—Ministry for Children.

Copyright

This document *Decentralisation: Evidence Brief* is licensed under the Creative Commons Attribution 4.0 International License <http://creativecommons.org/licenses/by/4.0/>.

Please attribute © New Zealand Government, Oranga Tamariki—Ministry for Children 2021.

Disclaimer

This evidence brief was drafted in late-2020. It does not include subsequent developments from 2021 (prior to publication). Oranga Tamariki has made every effort to ensure the information in this report is reliable but does not guarantee its accuracy and does not accept liability for any errors.

Acknowledgements

Thank you to the Oranga Tamariki Policy team for their patience and helpful comments and to the report's peer reviewers.

Contents

Summary	3
Introduction	6
Purpose.....	8
Evidence	8
Decentralisation.....	10
Background	11
Decentralisation approaches.....	21
Foundations for decentralisation success.....	39
Conclusion	47
Appendices	51
Selected examples.....	52
References.....	59

List of figures

Figure 1: What is important for Aboriginal and Torres Strait Islander partnerships ..	29
Figure 2: The Noongar Settlement's Community Development Framework.....	31

List of tables

Table 1: General child welfare arrangements in comparable jurisdictions.....	22
Table 2: Canadian child welfare models	33
Table 3: Barriers that hold First Nations back from achieving jurisdiction in child welfare	36
Table 4: The important parts of governance.....	43
Table 5: Selected examples of self-determination and self-government.....	52

Summary



1. This evidence brief provides a description and narrative summary of literature into decentralisation approaches overseas focusing especially on Indigenous peoples and groups. It particularly references Australia, Canada, and the United States (US), given their somewhat similar colonial experience and Indigenous heritage to Aotearoa New Zealand, and notes where possible child welfare examples.
2. The evidence brief does not address in any depth the profound impacts of historical trauma in these countries, nor indeed, in the Aotearoa New Zealand context. Some of the commonalities and trajectories Indigenous people in these countries have experienced are described. There has been an on-going struggle for greater self-determination and self-government in these countries, particularly in relation to child welfare. These struggles have progressed in different ways and with different results.
3. Indigenous peoples have since time immemorial been sovereign and governed their own affairs. Indigenous people's sovereignty, as such, was subsumed and limited within the extraordinary powers of colonial states. Consequently, Indigenous peoples in colonised states were only ever able to exercise limited forms of sovereignty and self-government. There has been within these countries a continued unwillingness to deal with difference.
4. Only more recently have Indigenous peoples and collective political efforts resulted in greater support for self-determination (and self-governance). Self-determination understood in a deeper sense includes the "right of all people to participate freely and fully in the sharing of all values (e.g., power, well-being, enlightenment, respect, wealth, skill, rectitude, and affection)" (Alexander and Friedlander, 2019). This is seen visibility internationally in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
5. UNDRIP emphasises autonomy (or self-government) in connection with self-determination. Autonomy involves the transfer of certain powers from a central government to that of the autonomous entity (thereby creating 'self-government'). It is viewed as a promising model for group protection and empowerment given it opens a space for self-government within a nation-state. Several forms of non-territorial autonomy (NTA) offer potential governance mechanisms.
6. **Decentralisation** itself refers to moving decision-making away from centralised control and closer to those who are most affected to improve responsiveness and performance. Decentralisation is a multi-dimensional concept with inter-related and inter-dependent dimensions. There are four main decentralisation components: political, administrative, fiscal, and market. Much of the debate and progress overseas focuses on **administrative decentralisation**, of which there are three forms: deconcentration, delegation, and devolution.
7. In the US with the passing of the Indian Child Welfare Act (ICWA) in 1978, most American Indian and Alaskan Natives tribes now operate some form of child welfare services, many with their own tribal codes, court systems, and child welfare programmes. The IWCA is held up as a progressive example of

enacting legislation that supports Indigenous self-determination. Despite this support in the US more broadly has been lacking.

8. In Australia, the child welfare legislative context has changed considerably over the past two decades. All Australian states have been through one or more child welfare reviews (and reform processes) in this time. Progress towards greater Aboriginal and Torres Strait Islander self-determination has arguably fallen short. There has generally been less acceptance of the idea of self-determination and self-government in Australia. There has instead been more of a focus on the concept and practice of governance. Cultural care has also come to the fore of child welfare reforms in Australia, and a change in the understanding of Indigenous culture and appropriate responses within government agencies and community organisations.
9. In Canada, Aboriginal rights and treaty rights are recognised by the Constitution Act (1982). Canadian provinces largely look after child welfare. Indigenous child welfare, including through delegated services, remains somewhat patchwork given different provincial legislative environments and histories. Some of the more progressive approaches to child welfare by Indigenous people have nonetheless occurred in Canada. Recently, the Federal Government put in place the 'Act Respecting First Nations, Inuit and Métis Children, Youth and Families'. The Act affirms among other matters the rights of First Nations, Inuit, and Métis peoples to exercise jurisdiction over child and family services.
10. Overseas examples show self-determination through mechanisms and structures of decentralisation are necessary, but not sufficient conditions for improving Indigenous child welfare. Successful decentralisation involves a "**whole-of-community**" approach and **empowers Indigenous communities**. Fundamentally decentralisation must support **readiness and development**.
11. **Participation and self-determination** in designing and deciding the most appropriate government structures and governance mechanisms are critical. Evidence demonstrates policies that support the development of these mechanisms and structures, such that they are **capable and effective institutions**, and **articulate Indigenous people's values and aspirations**, are more likely to succeed.
12. In partnerships there are also important questions about how to ensure **accountability** (both vertical and horizontal) and **sustainability** (financial and otherwise). Success necessitates critical investments in the **building of capacity** within Indigenous communities. This covers the spectrum of support from Indigenous community governance and institutional capacities to ensuring specific child welfare staffing capacities.

Introduction



13. Oranga Tamariki—Ministry for Children is embarking on a multi-year journey to transform how the Ministry and its partners better meet the needs and improves the outcomes of those tamariki and whānau involved with the child welfare system. As part of that transformation Oranga Tamariki is investigating the decentralisation of responsibilities and services to improve outcomes for tamariki Māori and whānau and support strategic partnerships with Māori.
14. There have been consistent calls and a long-standing recognition in government about the need for Māori to play a role in child welfare decision-making and service provision. The seminal Puaoteata (1988) report referred to decentralisation and devolution possibilities and argued for “Maori people to be given the resources to control their own programmes” and that local communities should have greater responsibilities for local institutions and resources (Ministerial Advisory Committee, 1988).
15. The Expert Advisory Panel (EAP) report (2015), which led to the establishment of Oranga Tamariki in 2017, noted that successive reviews had failed to empower or deliver change for tamariki Māori, and that successful future change required strategic Māori leadership, direction, and influence. Central to this discussion was sharing governance and effective governance. The EAP report (2015) recommendations reference the importance of strategic partnerships with Māori and innovation in the future department as vehicles for change (Expert Panel, 2015).
16. The recent Whānau Ora Commissioning Agency (2019) report ‘Ko Te Wā Whakawhiti, It’s Time for Change’ delivered a strong indictment of Oranga Tamariki and a challenge to how child welfare is provided in Aotearoa New Zealand. It affirmed the importance of sustainable ‘by Māori – for Māori – with Māori’ solutions, saying:

whānau with lived experience need to drive the solutions collectively with whānau, hapū, iwi, and hāpori having control over, and involvement in, the way services and support for tamariki and whānau are designed, delivered, implemented and funded, and where localised solutions are crucial (Kaiwai et al., 2020).
17. The Office of the Children’s Commissioner, in their report ‘Te Kuku O Te Manawa’, said that as part of several recommended changes the “system needs to work in partnership with whānau, hapū and iwi so they can exercise tino rangatiratanga”. The report goes on to note that this was one of the common themes found in research for the report – that the system “needs to recognise whānau, hapū, and iwi” and that “Māori self-determination needs to be central to any changes in order to be effective” (OCC, 2020).

Purpose

18. The **purpose** of this evidence brief is to provide a description and narrative summary of literature into decentralisation approaches overseas, specifically in relation to Indigenous peoples and child welfare. The evidence brief focuses particularly on examples from Australia, Canada, and the United States (US), given their somewhat comparable circumstances. Innovative examples are highlighted where there are applicable insights.
19. One opportunity to achieve greater realisation of Māori self-determination and the exercising of tino rangatiratanga is through Crown delegation and/or devolution (what is generally described in this evidence brief as decentralisation). Decentralisation and the pathways towards its achievement merit attention as they pose considerable opportunities and challenges. Arguably, unless the appropriate balance and partnerships are found it would undermine the aspirations of the Crown and Māori and continue to diminish Māori self-determination and exercising of tino rangatiratanga. Costs would continue to be imposed on tamariki Māori and whānau into the future.¹
20. Oranga Tamariki can currently delegate statutory powers to organisations outside of government with the agreement of the Minister for Children (under section 7AA(2)(c)(iv)). This could support Māori taking a greater role in the provision of services for tamariki Māori and whānau. Oranga Tamariki has taken some early steps to delegate services and is actively pursuing further opportunities. For delegated statutory powers, overall accountability remains with the Oranga Tamariki Chief Executive. The more significant devolution of statutory powers would require substantial legislative change (Oranga Tamariki, 2020).

Evidence

21. A narrative review of the literature was carried out to identify key decentralisation concepts, developments, and practices. The narrative review approach gathers information about a subject from many sources. It is considered appropriate for summarising and synthesising literature to draw conclusions on 'what is known' about a subject. The narrative review helps collate diverse and plural understandings.
22. This evidence brief largely draws on overseas literature, supplemented with insights from Aotearoa New Zealand. The reporting seeks to provide a clear understanding of decentralisation. It discusses the international 'historical' transformation as well as going into specifics of decentralisation approaches. The international literature on decentralisation is sizable and points to numerous hopeful developments over the past several decades.

¹ Mason Durie provides an authoritative discussion of Māori self-determination and surrounding issues in his book 'Te Mana, Te Kāwanatanga: The Politics of Self Determination' (Durie, 1998).

23. The evidence brief design followed from the commissioning of the evidence brief by Policy and was informed by subsequent discussions.² A draft structure was developed and within that scope a set of search terms (strings) was utilised in select databases, repositories, and search engines. This includes search terms such as 'Indigenous', 'autonomy', 'devolution', 'delegation', 'decentralisation', and 'self-government. Other search terms were used when specific insights were sought, or themes developed. The literature was reviewed and analysed in Nvivo before being structured into this document.
24. The evidence brief is comprehensive. However, it is not an exhaustive search of the literature, nor can it be given the limitations, do justice to all the relevant considerations. The evidence brief sought out a wide range of literature from a variety of sources. This includes materials from researchers, Indigenous organisations, NGOs, and government sources. The materials have not been rated for quality in the sense that the underlying methodologies assessed for rigour and findings for validity. It is acknowledged that much Indigenous knowledge sits outside the body of materials that are accessible – such as with mātauranga Māori – and is therefore unable to be included.

² It is acknowledged that the primary author of this work is a Pākehā researcher within the Oranga Tamariki Evidence Centre. The narrative review of the literature is consequently confined in its considerations and interpretation.

Decentralisation



Background

25. This evidence brief refers to Australia, Canada, and the United States (US). Along with Aotearoa New Zealand, these so-called CANZUS countries have a shared colonial experience and Indigenous heritage, although the circumstances and consequences of that history may in some respects be dissimilar.³ Attendant to that history is a legacy of historical and contemporary collective trauma as described by Pihama et al (2017) in relation to Aotearoa New Zealand:

For Māori, historical colonisation is marked by land alienation, a breakdown of social structures, disruption of gender relationships, violence at the hands of colonial forces, and extreme depopulation. Contemporary colonisation is seen in systemic, institutional and interpersonal racism including the ongoing negative stereotyping of Māori (Pihama et al., 2017).

26. This evidence brief is not tasked with looking at the depth or profound impacts of this trauma, however, this short description provides context for the position we now find ourselves. It also highlights the critical opportunity and the demonstrable need for change in Aotearoa New Zealand and more specifically in child welfare for tamariki Māori and whānau.⁴ A great deal can be learnt in this respect from the history and experiences of Indigenous peoples overseas.

Indigenous peoples and self-determination

27. Given the diversity of descriptions, the United Nations (UN) has not adopted an official definition of 'Indigenous'. The UN estimates there are more than 370 million Indigenous people spread across 70 countries worldwide. The UN recommends the appellation as Indigenous peoples be based on the following:

- 27.1 Self-identification as Indigenous peoples at the individual level and accepted by the community as their member.
- 27.2 Historical continuity with pre-colonial and/or pre-settler societies.
- 27.3 Strong link to territories and surrounding natural resources.
- 27.4 Distinct social, economic, or political systems.
- 27.5 Distinct language, culture, and beliefs.
- 27.6 Form non-dominant groups of society.

³ The International Work Group for Indigenous Affairs (IWGIA) provides a wider review of indigenous rights issues and examples of where greater autonomy and self-government have been sought (IWGIA, 2019).

⁴ This evidence brief talks about 'child welfare'. It is shorthand and is taken to include 'care and protection' and 'youth justice' unless specifically indicated otherwise.

- 27.7 Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities (UNPFII, 2006).
28. Indigenous peoples are therefore distinguished by their established occupancy of territories and attachment to their lands, and by the preservation of at least some of their traditional practices, institutions, and systems (Binder and Binder, 2016). It is notable that in part Indigenous peoples are referred to as such because of their pre-colonial experiences i.e., referential to the later imposition of colonial structures and trauma.
29. Indigenous peoples have since time immemorial been sovereign and governed their own affairs. As described in the Uluru Statement from the Heart (2017), by delegates to an Aboriginal and Torres Strait Islander Referendum Convention in Australia, and similarly elsewhere by Indigenous nations:
- Our Aboriginal and Torres Strait Islander tribes were the first sovereign Nations of the Australian continent and its adjacent islands, and possessed it under our own laws and customs. This our ancestors did, according to the reckoning of our culture, from the Creation, according to the common law from ‘time immemorial’, and according to science more than 60,000 years ago.
- This sovereignty is a spiritual notion: the ancestral tie between the land, or ‘mother nature’, and the Aboriginal and Torres Strait Islander peoples who were born therefrom, remain attached thereto, and must one day return thither to be united with our ancestors. This link is the basis of the ownership of the soil, or better, of sovereignty. It has never been ceded or extinguished, and co-exists with the sovereignty of the Crown.*
- How could it be otherwise? That peoples possessed a land for sixty millennia and this sacred link disappears from world history in merely the last two hundred years (Referendum Council, 2017)?
30. From the Aboriginal and Torres Strait Islander Referendum Convention (2017) came calls for a "First Nations Voice" in the Australian Constitution and a "Makarrata Commission" to supervise a process of "agreement-making" and "truth-telling" between government and Aboriginal and Torres Strait Islander peoples.⁵ These discussions are on-going and are canvassed in the 2018 report of the Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples (Australian Parliament, 2018).
31. It is this notion of sovereignty and governing their own affairs, however, that was displaced in CANZUS countries with the imposition of European colonial structures. These structures persist and remain dominant today. The history of colonisation in CANZUS countries is well known.

Indigenous populations were displaced and removed from their traditional lands; they were dramatically reduced in size and strength through

⁵ Makarrata is a word that comes from the Yolngu people, of north-east Arnhem Land in Australia describing a process of conflict resolution, peace-making, and justice.

disease, war, and the consequences of European settlement and forced removals; and their legal and moral rights to exercise self-government over their territories were subsumed under the authority of the newly established states (Iverson, 2008).

32. Indigenous sovereignty as such, was subsumed and limited within the extraordinary powers of colonial states. Iverson (2008) writes that Indigenous nations in CANZUS countries are only able to exercise “limited forms of self-government (if any) and are able to claim ownership (“aboriginal” or “native” title) over an extremely small proportion of their former territories”. Moreover, Indigenous people in these locations tend to suffer significant absolute and relative social and economic hardship (Iverson, 2008).
33. The **community and social impacts of colonisation** have been felt within Indigenous populations overseas for generations due to the consequences of child removal, community and social dislocation, resulting mental health problems and marginalisation from health, housing, education, social services, and policing. It has also had a wider impact on community cohesion and loss of group autonomy. Indigenous groups note the impact colonisation and historical trauma has had on child maltreatment with one Canadian child welfare service saying:

We understand the child welfare system as a system, which has evolved in the dominant culture, to deal with the problems of industrial society. Within the Native community, the child welfare system is a system that deals with the symptoms of larger social problems – racism, poverty, underdevelopment, unemployment, etc. [We regard] child welfare problems as the result of the colonial nature of relations between the aboriginal people and the Euro-Canadian majority (cited in Libesman, 2004).
34. Colonial states have over time taken various positions on the ‘sovereignty’ of Indigenous people within their territorial borders: from the denial of Indigenous rights, accepting their previous existence, but that they were extinguished historically, to Indigenous independent rights being made contingent rights within the colonial state system. These positions have been documented by researchers as manifesting in various colonial state policies: domestication, termination, and assimilation (Alfred, 2001).
35. Cornell (2006) writes in a comparative discussion of ‘Indigenous peoples, poverty and self-determination in Australia, New Zealand, Canada and the United States’ that emergent from these legacies of diminution are struggles for greater self-determination. Cornell (2006) recounts the challenge by way of a recalled conversation with an official that suggested equality involving Indigenous people could be addressed in Canada, but there was a fundamental unwillingness to deal with difference as it challenged state concerns about societal cohesion and universality (i.e., “we are all the same”) (Cornell, 2006).
36. There is increasing recognition of Indigenous people’s rights worldwide by governments with Indigenous populations. From a Western perspective, this

is most visibly seen in the growing body of international human rights (and Indigenous peoples rights). From an Indigenous perspective, this is articulated in the “priority and continuity of Indigenous ties to the land and in the personhood that is substantially derivative of those ties, of shared cultural practice and of collective memory”. As argued by Cornell (2006), both views support the right of Indigenous peoples to determine their own futures and control their own affairs (Cornell, 2006).

37. This focus on Indigenous rights over the past several decades is underlined by the work of Indigenous nations and collective political efforts supporting self-determination and self-governance. This encompasses work to shape the political order of which Indigenous groups are a part and to improve their autonomy over land and resources; civil and cultural affairs; and the character of community life. Rarely though, says Cornell (2006), has this involved effort at complete separation. Rather it has involved seeking “nations within” status or what is described as “on the one hand autonomy and on the other participatory engagement” in the wider whole where Indigenous groups “are appropriately viewed as simultaneously distinct from yet parts of larger units of social and political interaction” (Cornell, 2006).
38. Self-determination understood in a deeper sense includes the “right of all people to participate freely and fully in the sharing of all values (e.g., power, well-being, enlightenment, respect, wealth, skill, rectitude, and affection).” Collective self-determination with respect to the self-determination of Indigenous people (and other minorities) focuses further on the right of groups to pursue political demands and share power appropriately (Alexander and Friedlander, 2019).
39. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the United Nations on 13 September 2007.⁶ The Declaration aims to “enhance harmonious and cooperative relations between the State and Indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith” (HRC, 2010). UNDRIP is broad in its scope. It includes guarantees towards Indigenous access to education and health services, protection of Indigenous people’s rights to control their own development, and to exercise self-determination and self-governance. Most of the collective Indigenous rights set out in UNDRIP accord with the principles of equality underpinning wider existing international human rights frameworks (Gover, 2015).
40. The UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous peoples, S. James Anaya wrote about self-determination post-UNDRIP that:

⁶ Aotearoa New Zealand became a signatory to UNDRIP in 2010. Aotearoa New Zealand has not ratified ILO Convention 169, an international convention concerning indigenous peoples and tribal peoples, and a forerunner of UNDRIP (see for background IWGIA, 2020).

It is perhaps best to understand the Declaration and the right of self-determination it affirms as instruments of reconciliation. Properly understood, self-determination is an animating force for efforts toward reconciliation—or, perhaps more accurately, conciliation—with peoples that have suffered oppression at the hands of others. Self-determination requires confronting and reversing the legacies of empire, discrimination, and cultural suffocation. It does not do so to condone vengefulness or spite for past evils, or to foster divisiveness but rather to build a social and political order based on relations of mutual understanding and respect. That is what the right of self-determination of indigenous peoples, and all other peoples, is about (Anaya, 2009).

41. UNDRIP gives a prominent place to autonomy (or self-government), in connection with self-determination, saying in Article 4 “Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions”. UNDRIP codifies this generally recognised right to autonomy further with respect to Indigenous peoples’ distinct institutions (Art. 5, 20), cultural and religious traditions (Art. 11, 12), educational systems (Art. 14), development strategies (Art. 23), cultural heritage (Art. 31), and lands and territories (Art. 32) (HRC, 2010).
42. The discussion of self-determination falls within the wider domain of autonomy (or self-government). As describe by Weller and Wolff (2005), although there is no generally agreed ‘stable’ definition of autonomy, it is recognised that autonomy shares the common characteristic of the transfer of certain powers from a central government to that of the autonomous entity (thereby creating ‘self-government’). Autonomous arrangements in practice occur within broader constitutional and legislative frameworks and involve the handover to differing degrees of executive, legislative, and judicial powers. There is general agreement that autonomy entails that continuing political and economic connection with the larger state (Arthur, 2001). Weller and Wolff (2005) thus arrive at this definition of autonomy:

the legally entrenched power of ethnic or territorial communities to exercise public policy functions (legislative, executive and adjudicative) independently of other sources of authority in the state, but subject to the overall legal order of the state (Weller and Wolff, 2005).
43. Weller and Wolff (2005) discuss with reference to Latin America the emergence of Indigenous people’s rights and the subsequent moves by some states in the region to acknowledge collective rights and implement autonomy measures that involve territoriality and proper self-government arrangements. They say that the success of Indigenous peoples’ movements has promoted them to move beyond initial demands for compensation over historical grievances to “forge new alliances and articulate new visions of the state and the nation”. In this way Indigenous peoples’ demand for change (and the responses) has played an important part in state transformations in Latin America. Weller and Wolff (2005) say:

As the implementation of autonomy does not imply separatism or isolationism but is conceived as a basic condition for participating in the wider polity, the emergence of autonomy regimes has consequently involved a strengthening of subnational processes as well as supranational integration. The emergence of so-called 'network states' thus has profound implications for the current model of the 'nation-state' and the concepts of self-determination, citizenship, democracy, human rights and development predicated upon it (Weller and Wolff, 2005).

44. Autonomy then is viewed as a promising model for group protection and empowerment. It opens a space for self-government within a nation-state. In such autonomies, minority groups can better preserve historical, sociological, and cultural features given they hold the decision-making authority covered by the autonomous arrangement. Binder and Binder (2016) say that the case for Indigenous peoples' having autonomous arrangements is particularly strong given their rights and needs. They also argue that the group rights aspect, which is especially important to Indigenous peoples, seems to be well protected by autonomous models of collective governance (Binder and Binder, 2016).
45. It is perhaps useful to specify more than just territorial autonomy as it is characteristically observed in international affairs.⁷ There are many other forms of autonomy besides. Several forms of non-territorial autonomy (NTA) offer possible governance mechanisms. Coakley (2016) discusses early NTA theory elaborated by Karl Renner. He writes that for Renner, non-territorial (or cultural) autonomy was exactly analogous to (if functionally different from) territorial autonomy.

Non-territorial autonomy would, then, resemble territorial autonomy, but with a different criterion of membership (personal rather than territorial) and functional focus (on cultural rather than material matters) (Coakley, 2016).

46. Examples of NTA for Indigenous peoples are relatively common. Breen (2018) points out that it is somewhat counterintuitive to consider NTA when Indigenous peoples associate themselves in such a close way with their traditional lands and waters. He notes though that NTA can be combined with territorial autonomy (or NTA rights with territorial rights). Breen (2018) suggests that non-territorial solutions alone are not reasonable, even where, and perhaps particularly where, the Indigenous population are in the minority, given traditional land and waters are so intrinsic to Indigenous peoples' identity. Breen (2018) writes that most post-colonial forms of Indigenous self-determination partly involve NTA, based on the personality principle, and partly involve territorial autonomy (including land rights). Breen (2018) gives

⁷ It is noted that the term 'political autonomy' although in widespread usage is persistently vague and inconsistently used. This evidence brief tries to avoid using it given its wider 'political' connotations in the international sphere. The term 'territorial autonomy' similarly suffers from varied usage, and often in the context of political conflict overseas, so is also used reasonably sparingly. As noted by Tkacik (2008), the general usage of territorial autonomy excludes other possible forms of developed autonomy, and limits the depth and scope of autonomy discussions (see for discussion Tkacik, 2008).

examples of NTA in Indigenous nations in Canada, Norway, and the US, and notes instances of NTA in New Zealand e.g., through traditional tribal structures and contemporary Urban Māori Authorities (Breen, 2018).

47. Most concerns and perhaps challenges for NTA focus on the importance of lands and waters for Indigenous peoples and in some case that it might lead to or perpetuate exclusion. NTA though should in such cases be thought of as a supplement to territorial autonomy with appropriate arrangements put in place. NTA in some instances can come close to approximating territorial autonomy depending on the scope and depth of the decision-making authority given. Where NTA is in place making ‘membership’ available regardless of location and voluntary mitigates against exclusion risks. It is also more democratic. NTA provides a space for voice and balance alongside other groups within any given area. Breen (2018) says:

The risks and criticisms of non-territorial federalism or autonomy are valid and important considerations for the design. In particular... non-territorial federalism needs to be combined with territorial sovereignty, be flexible, take advantage of, and consolidate where possible existing structures, and balance independence and interdependence such that autonomy is real, but shared purposes are institutionalised (Breen, 2018).

48. The extent to which such autonomy is shared in self-government form can vary significantly (in the decentralisation of powers), which can vary across hierarchies of government, and be far-reaching or very limited. Commonly for Indigenous peoples, areas of self-governance include cultural and educational subjects, and may include land and resource management, and increasingly child welfare and criminal matters. The scope of autonomy has implications for the potential benefits that are likely for affected Indigenous groups. Of concern and to be avoided are ‘**paper guarantees**’, where autonomy is effectively only granted on paper, but its implementation is inadequate (Binder and Binder, 2016).
49. In practice, and this is important to acknowledge, there is usually a sharing of responsibilities across different levels of government and the community in most countries, and as the OECD (2019) notes, there has been a trend towards the increased sharing of responsibilities over the past decade (OECD, 2019). Decentralisation is one significant common strategy for achieving this sharing of responsibilities, and with-it autonomy, among different levels of government and community. It is suggested that decentralisation can ultimately contribute to improved governance, increased transparency and accountability, and more effective and efficient production and delivery of public goods and services (Cohen and Peterson, 1997; OECD, 2019).

Framing decentralisation

50. This evidence brief now turns to a more concentrated discussion of decentralisation. This construct and practice build on the understanding

developed in the previous section and should be considered in relation to self-determination, and the pursuit of greater autonomy and self-government. It can be thought of as the functional conceptualisation or representation of these subjects. And to a greater or lesser degree, as noted, elements of decentralisation have been adopted in numerous countries worldwide vis-à-vis Indigenous peoples.

51. Decentralisation refers to moving decision-making away from centralised control and closer to those who are most affected to improve responsiveness and performance.⁸ Decentralisation is a multi-dimensional concept with inter-related and inter-dependent dimensions. There are four main decentralisation components: political, administrative, fiscal, and market.
 - 51.1 Political decentralisation: aims to give people a greater say in public decision-making – including through more participatory forms of governance. Political decentralisation may involve political devolution and often necessitates statutory reform.
 - 51.2 Administrative decentralisation: involves the redistribution of authority responsibility, and/or financial resources for public service provision to sub-national government or public organisations. There are three main forms of administrative decentralisation (deconcentration, delegation, and devolution, discussed further below).
 - 51.3 Fiscal decentralisation: involves the transfer of fiscal appropriations along with the authority to make decisions about them to sub-national government or public organisations. Law changes may be required for fiscal devolution, which involves the authority to collect and use revenues.
 - 51.4 Market decentralisation: entails the shifting of responsibility (and activity) from the public to the private sector, including business and non-governmental organisations (NGOs). Market decentralisation needs to ensure appropriate regulatory frameworks (World Bank, 2001; WHO, 2020).
52. A significant portion of the discussion overseas concentrates on **administrative decentralisation**, which exists on an autonomy continuum (lesser > greater administrative control). The main forms include deconcentration, delegation, and devolution.
 - 52.1 Deconcentration: usually involves the redistribution of existing decision-making authority, financial, and management responsibilities to

⁸ It is acknowledged that 'decentralisation' and its attendant components are Western concepts that exist within the Westernised system that brokers how we have historically acted and engaged on these subjects. Indigenous peoples have since time immemorial had their own comparable and varied concepts around government and governance that arose from their language, history, and understandings. Arguably, critical engagement with the decentralisation process should also involve restoration of the indigenous cultural values embodied in these concepts and their attendant components (see for discussion Alfred, 2001).

different government levels. It may for example, involve the shifting of offices and resources to local or regional areas. Law changes are not usually needed to bring about the changes.

- 52.2 Delegation: involves the transfer of some decision-making and administrative responsibility to semi-autonomous organisations or groups. These organisations can have a separate legal status and have significant decision-making autonomy. Delegation may necessitate some law changes, to establish their mandates, accountabilities, and relationships to national government. It may also include setting up regulatory boundaries to ensure consistency with the original intent, and where relevant, national policy direction.
- 52.3 Devolution: is where national government devolves functions to sub-national organisations or groups. In a devolved situation, the boundaries of activity and responsibility are usually very clearly defined, within which authority and functions are performed. Devolution may require substantial changes to the law. It is this type of administrative decentralisation that underpins most political decentralisation (World Bank, 2001; WHO, 2020).
53. It is important to highlight which of these approaches is being utilised. The answer to this question relies to some degree upon the purpose of decentralisation (and the degree of self-determination, autonomy, and self-governance). Decentralisation is perhaps most successful when it is a 'mix and match' to ensure the best fit for any given circumstance (Cornell and Kalt, 2003). This evidence brief notes the earlier reference to the importance of Māori playing a greater role in decision-making and service provision i.e., 'by Māori – for Māori – with Māori'. This includes through strategic partnerships and innovative approaches.
54. Decentralisation in the Oranga Tamariki context largely suggests from a national Ministry level to sub-national groups, specifically, strategic iwi partners, Māori service providers, and Māori or iwi affiliated organisations. This would involve greater autonomy (and self-governance). It also suggests that any changes would take place within the context of existing legislation ('delegation'), or require revised legislation ('devolution'), to better enable the sharing of Crown functions with Māori i.e. more extensive forms of political and/or administrative decentralisation.
55. Decentralisation then is about the transfer of powers away from central government allowing for the opening of critical spaces for greater autonomy and action elsewhere. In such spaces, there must also be concurrent accountabilities. This can be described as an interlinked web of accountabilities that supports decentralisation.

Decentralization is leading to the dispersion of political, fiscal, and administrative responsibilities across different tiers of government and between the public and the private sector. In terms of delivery of services, for example, responsibility may lie with all or some tiers of government,

with community groups, or the private sector. The challenge is to design the decentralization process so that it creates incentives that will hold each entity accountable for its responsibilities as well as make explicit the institutional relations between each entity (Litvack, Ahmad and Bird, 1998).

56. Decentralisation is also about reconfiguring the relationship between central government and the actors in these critical spaces. The OECD (2019) writes that this involves central government taking a more cooperative and strategic approach saying:

the role of central governments has evolved. Being more strategic, this role is focused on setting the conditions for proper co-ordination and alignment of policy objectives, monitoring the performance of regions and cities, and ensuring balanced development of all parts of the national territory, through active regional development policies. Decentralisation reforms involve a shift from a direct role in service delivery to one of enabling, advising and assisting, ensuring consistency, and facilitating the work of subnational governments. This requires building new capacity at central government level, able to cope with these new functions, which cover a large area of sectors. Impacts of decentralisation on the central government are often underestimated. Failing to take full measure of this issue may be detrimental to the reforms, slowing down or modifying the reform process (OECD, 2019).

57. The OECD (2019) highlights some of the critical general challenges related to decentralisation, some of which will also be discussed later. They say that the success of decentralisation, as it is generally understood, relates to the whether it can promote local democracy, efficient public services, and regional development. Insufficient administrative, technical, or strategic capacities are perhaps one of the more significant decentralisation challenges. They argue for building such capacities through ‘learning-by-doing’ in the context of a long-term commitment to decentralisation. The other specific challenges highlighted include ensuring enough fiscal resources to carry out decentralised responsibilities, something that is frequently absent in overseas cases, and ensuring cooperation to minimise any loss to economies of scale, particularly in cognate fields. One role of central government is to support cooperation by establishing the appropriate incentives and legal and regulatory parameters (OECD, 2019).
58. Decentralisation and devolution are often muddled in the terminology and overseas literature. One author points out for example that “devolution is about who has responsibility for decisions; decentralization is about who carries them out” (Pereira et al., 1999). Devolution particularly has political implications and involves political decisions. This evidence brief has chosen with few amendments to utilise long-standing definitions of decentralisation originating in the research literature and employed by organisations such as the World Health Organisation (WHO) and World Bank. These definitions largely use decentralisation as an overarching term, of which varying levels of devolution are a characteristic i.e., a functional definition of purpose – political, administrative, fiscal, and/or market – that may have differing levels of decision-making authority and/or other aspects attached.

59. While it is correct to say that decentralisation could proceed without devolution and vice versa the implications would be it was either a strongly held central government still or a situation where authority was given without the requisite resources and support i.e., the paper guarantee situation noted earlier. Effective decentralisation (and devolution) requires a balanced approach (Pereira et al., 1999).

Decentralisation approaches

60. The following section provides a summary of the circumstances in Australia, Canada, and the US. Libesman (2013) provides an informative summary of child welfare legislative structures for Indigenous people in these countries and the degree to which self-determination is afforded. CANZUS countries share several similarities, notably the shared history of European colonisation that had profound impacts on the Indigenous people. Some of the actions taken at the time and steps since in terms of norms and legislation allows for a comparative assessment.
61. The legislative models generally applicable to Indigenous populations in these countries and briefly set out in **Table 1** below ranges from:
- 61.1 complete autonomy with the recognition of Indigenous jurisdiction over legislative, judicial, and administrative matters pertaining to Indigenous children
 - 61.2 shared jurisdiction with the transfer of some functions to Indigenous communities
 - 61.3 delegated authority with jurisdiction over child protection matters retained by the State, but delegation of some child protection functions to Indigenous communities
 - 61.4 mainstream legislation that integrates Indigenous input into existing structures
 - 61.5 paternalistic control over communities (Libesman, 2013).
62. Libesman (2013) writes that Indigenous people worldwide have continued to seek insights from comparable (colonial) jurisdictions to understand the child welfare reforms taking place and to improve child welfare systems. She affirms the importance of more holistic, community-driven, and inclusive responses to better meet the aspirations and human rights of Indigenous people (Libesman, 2013).

Table 1: General child welfare arrangements in comparable jurisdictions

Description	
United States	The United States legislative environment is set out in the Indian Child Welfare Act (ICWA) (1978). The Act provides for concurrent State (off-reserve) and Indian (on-reserve) jurisdiction. Child welfare services are provided by the State or tribe depending on the child's location. This allows for the full decentralisation of child welfare services.
Australia	Child welfare is the responsibility States and Territories in Australia. There is also some Federal coordination. Victoria has provision to allow for the delegation of child welfare services to Aboriginal and Torres Strait Islander (ATSI) organisations and has done so on a limited basis. The focus in Australia is more on meaningful ATSI governance and involvement in child welfare.
Canada	In Canada, legislations historically meant the Provinces, Territories, or Federal governments funded and managed child welfare services (on and off reserves) (with some exceptions). Delegated authorities and services have become more prominent over the past several decades and there have been more recent steps to allow for First Nations, Inuit, and Métis jurisdiction over child welfare.

United States: The Indian Child Welfare Act (1978)

63. American Indians and Alaskan Natives have been profoundly impacted since European colonisation in what is now the US. The US had a policy of assimilation during the 19th and 20th centuries, resulting in the removal of thousands of American Indian and Alaskan Native children and alienation from their parents, families, communities, and culture. This destruction led to enormous distrust and historical trauma that continues to affect American Indians and Native Alaskans today (Children's Bureau, 2012).
64. Most American Indian and Alaskan Natives tribes now operate some form of child welfare services, many with their own tribal codes, court systems, and child welfare programmes. The passing of the Indian Child Welfare Act (ICWA) in 1978 was significant. The ICWA is a federal law that sets the requirements around the removal and out-of-home placements for American Indian or Alaskan Native children who are a member of or eligible for membership in a federally recognised tribe. The ICWA response to the large number of American Indian and Alaskan Native children being removed by state child welfare and private adoption agencies, with research estimating 25-35% of children were being removed, at the time of the Act's ratification, and of those 85% were placed outside their families and communities (Children's Bureau, 2012; NICWA, 2020).
65. The ICWA provides for exclusive tribal jurisdiction ("exclusive as to any State") when the child is living within tribal territory (or when they are a ward of the tribal court). This involves the transfer of legislative, administrative, and judicial decision-making powers to the tribe. The ICWA has concurrent jurisdiction between state and tribal courts when a child is living outside tribal territory. It is often described as an exemplar for child welfare practice that should be considered elsewhere (Libesman, 2013).

66. The IWCA remains a progressive example of enacting legislation that supports Indigenous self-determination. According to the National Indian Child Welfare Association (NICWA), the imperative of the IWCA was to address some of the “most longstanding and egregious removal practices specifically targeting Native children” (NICWA, 2020).
67. The NICWA in describing the ICWA highlights that it empowers child welfare and adoption systems to follow best practices and treat American Indian and Alaskan Native children fairly. The NICWA writes, the ICWA:
- 67.1 Lessens the trauma of removal by promoting placement with family and community.
 - 67.2 Mandates that families receive intensive services (“active efforts”) to prevent child abuse and neglect and keep children safely in their homes.
 - 67.3 Promotes the best interest of Indian children by keeping them connected to their culture, extended family, and community, which are proven protective factors.
 - 67.4 Brings to bear critical information and resources when emergencies arise.
 - 67.5 Promotes placement stability by ensuring that voluntary adoptions are truly voluntary. It disincentivises adoption deals that fall outside accepted standards of practice.
 - 67.6 Encourages states to develop effective relationships and procedures with tribes to carefully coordinate the care of American Indian and Alaskan Native children and families (NICWA, 2015).
68. Tribal child welfare agencies typically provide services in three main categories: a) supportive services (e.g., parenting support), b) supplemental services (e.g., childcare or respite services), and c) substitute care services (e.g., family placement). In many ways these are like traditional child welfare services. The challenge noted is to find the balance between the necessities of a child welfare system and the values and culture of the tribal community. Important child welfare infrastructure for tribal child welfare agencies includes child welfare standards, service descriptions, practice models, and appropriate policies and procedures (Cross, 2017).
69. There are many examples of innovative decentralisation approaches under the auspices of the ICWA. Challenges though remain; in particular, there are still higher numbers of out-of-home placements occurring for American Indian and Native Alaskan children, than for the general population.⁹ Much of this

⁹ The ICWA has also faced legal challenges and for a period was briefly struck down for being unconstitutional by a federal district court judge in Texas (Brackeen v. Bernhardt). The Fifth Circuit on appeal reversed that decision in 2019. The full 16-member Fifth Circuit court is currently re-hearing

can be attributed to on-going non-compliance with the ICWA, including the historical lack of Federal oversight, national data collection, or an enforcement authority. Other common non-compliance with key IWCA provisions includes:

- 69.1 Failure to identify ICWA-eligible children early on and ensure they are receiving the protections of the law.
 - 69.2 Providing inadequate or no notice of proceedings to key parties.
 - 69.3 Placing children outside their family and away from community without good cause or placing children in a more restrictive setting than necessary (NICWA, 2015).
70. This non-compliance has generally been accompanied by inconsistency in implementation and interpretation of the ICWA. The introduction of guidelines and regulations by the Bureau of Indian Affairs (BIA) sought to rectify this (NICWA, 2020).¹⁰ The inconsistency of interpretation and differing application of the ICWA across the US has in some cases led to arbitrary outcomes and resulted in American Indian children, families, and communities losing the protections afforded by the ICWA (and self-determination). This is particularly the case given the large majority of American Indian's live outside tribal reservations (some 78% lived outside tribal lands in 2012). (Bureau of Indian Affairs, 2016a).
 71. Several factors also continue to affect tribe-state relationships and the provision of child welfare, in addition to Federal Trust responsibilities, Federal policies (historical and contemporary), and state jurisdiction over tribal affairs. This includes child welfare funding, tribal-state differences in child welfare practices and values, and the continuing disproportionality of American Indian children in the child welfare system (Children's Bureau, 2012).
 72. Despite the potential of the IWCA, it has been highlighted that IWCA implementation and support more broadly has often also been lacking. The ICWA allows for tribes and states to enter into agreements that facilitate better coordination and relationships. However, in a survey carried out in 2017, of Tribal-State ICWA agreements, only 39 Tribal-State IWCA agreements involving 37 tribes and 10 states were in place. There were in 2017, 567 federally recognised tribes (Shannon Keller O'Loughlin, 2017).
 73. Broader lessons can be learnt from other American Indian and Native Alaskan self-determination efforts within states. For example, the Osage Nation Governmental Reform Initiative (2008) in northeast Oklahoma, involved a reform initiative and new constitution followed by an assertion of citizenship

the case with a decision expected in sometime in mid-late 2020 (NICWA, 2018; see for commentary Anagha Srikanth, 2020; Litman and Fletcher, 2020).

¹⁰ Full guidelines and regulations for the ICWA were produced by the Bureau of Indian Affairs in 2016 (Bureau of Indian Affairs, 2016a, 2016b).

and government. Lessons that have emerged through the process of realising sovereignty and government include:

- 73.1 Inclusive, community-driven processes that build trust and ownership are critical for successful constitutional reform.
 - 73.2 The right to self-design the system of government is the most basic right of nationhood. A nation's right to determine who its citizens are is a central power of self-governance.
 - 73.3 Throughout the constitutional reform process, an independent and autonomous reform commission is best positioned to identify and implement the governance aspirations of the nation (HPAIED, 2010).¹¹
74. Finally, there are numerous promising approaches that support the strengthening of tribal-state relationships in child welfare. Some of those highlighted include:
- 74.1 using tribal-state advisory committees, forums, and collaborative groups
 - 74.2 using culturally adapted evidence-based practices
 - 74.3 developing tribal-state court forums and partnerships
 - 74.4 developing culturally competent permanency alternatives (Children's Bureau, 2012).

Australia: A focus on governance and cultural care

- 75. In Australia, state and territory governments are responsible for child welfare provision, although leading Indigenous groups have for many years called for national legislation, inspired in part by the ICWA in the US. This includes calls for greater cultural recognition and self-determination (Libesman, 2013).
- 76. The 1997 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families report 'Bringing them home' outlined the catastrophic history of colonial policies on Aboriginal and Torres Strait Islander people and the subsequent devastation from disease and violence, dispossession from lands and resources, and suppression of traditional cultures. Layered upon these harms was the forcible removal of Aboriginal and Torres Strait Islander children from their families as part of a systematic assimilation policy adopted by Australia. These children became known as the Stolen Generations. It is estimated that between one in three and one in 10 Indigenous children were removed from their families and communities in the period 1910-1970 (Tilton and Anderson, 2016).

¹¹ The Harvard Project on American Indian Economic Development provides a 'What Works, Where, and Why?' findings overview of the conditions under which sustained, self-determined social and economic development is achieved among American Indian nations (see HPAIED, 2015).

77. The report 'Bringing Them Home' comprehensively documented the Stolen Generations experience. It found that a deliberate policy of assimilation underlay the removal process, and that the forcible removal of Indigenous children was a gross human rights violation and an act of genocide. It concluded that those affected had a right to reparations, including an acknowledgment of the truth and an apology; guarantees these human rights would never be breached again; the return of what had been lost where possible; and rehabilitation and compensation. The report also provided findings on the contemporary over-representation and removal of Aboriginal and Torres Strait Islander children from their families (Commonwealth of Australia, 1997; Tilton and Anderson, 2016).
78. 'Bringing Them Home' put forward a set of key principles to inform and direct the government response to those affected Aboriginal and Torres Strait Islanders.
- 78.1 Self-determination: the right of Aboriginal and Torres Strait Islander people, Stolen Generations members and their families to exercise autonomy in their own affairs and make their own decisions.
- 78.2 Non-discrimination: the right to be free of racial discrimination, and to be able to access services, which are appropriate to their particular needs.
- 78.3 Cultural renewal: the right to participate in cultural activities, recognising the diversity of Aboriginal and Torres Strait Islander cultures and the need to repair the damaged family and cultural ties resulting from the removal of children.
- 78.4 A coherent policy base: the need for an agreed set of services to begin the process of healing and redress, with agreed objectives and goals.
- 78.5 Adequate resources: appropriate funding to enable services to address the diverse effects of removal on individuals, families, and communities (Commonwealth of Australia, 1997; Tilton and Anderson, 2016).
79. The child welfare legislative context in Australia has changed significantly over the past two decades, and all Australian states have been through one or more child welfare reviews (and reform processes). Arguably, for Aboriginal and Torres Strait Islander peoples progress has fallen short of aspiration. The reviews have all generally contained investigations into the circumstances of Aboriginal and Torres Strait Islanders. Assessments of the 'Bringing Them Home' principles and recommendations, however, found very limited implementation (less than one in 10 of the recommendations) (Tilton and Anderson, 2016).
80. Where reforms have occurred much of the changes are directed towards Aboriginal and Torres Strait Islander peoples' having greater recognition and involvement in decision-making. The reforms to child welfare in Australia reflect to differing degrees the impact of 'Bringing Them Home', the

importance of pluralised international human rights standards, the influence and exchange of idea with other Indigenous peoples' worldwide, and the on-going advocacy by Aboriginal and Torres Strait Islander children's organisation. There has also been considerable on-going debate and disagreement in Australia about child welfare reform (Libesman, 2013).

81. One of the central achievements of Indigenous children's organisations in Australia was the 'Aboriginal and Torres Strait Islander Child Placement Principle' (ATSICPP). The principle acknowledges the importance of connections to culture and family for Indigenous children. It also recognises the destructive impact policies of assimilation and forced removals had on Aboriginal and Torres Strait Islanders. ATSICPP has developed from practice where Indigenous children live in OOHC to a foundation for recognising the inclusion of Aboriginal and Torres Strait Islander peoples in decision-making and children's wellbeing when contact is made with the child welfare system. ATSICPP is included in Australian state and territory legislation regarding placement and to differing degrees Aboriginal and Torres Strait Islander involvement in decision-making. The placement principle is subject in most states and territories to tests of the 'best interests of the child' or similar (Libesman, 2013).
82. Several Australian states have provision for the gazetting or designating of Aboriginal and Torres Strait Islander organisations (Queensland, South Australia, Victoria, and Western Australia). This allows for the formalising of their roles. New South Wales (NSW) legislation for example, makes specific reference to Indigenous organisations participation in decisions about Aboriginal and Torres Strait Islander children predicated on as much self-determination as possible. Victoria also offers insights as it provides for the more in-depth involvement of Indigenous organisations in the administration and provision of child welfare (via delegated powers). The Victorian Aboriginal Child Care Agency (VACCA) plays a strong advocacy and care support role for Indigenous children who are unable to live at home. Victoria, in their more recent 'Roadmap for reform: strong families, safe children' (2016) strategy include a central principle of "ensuring Aboriginal self-determination around decision-making and care for Aboriginal children and families" (Libesman, 2013; Department of Health and Human Services, 2016).
83. It is argued by Libesman (2013) that cultural care is at the centre of child welfare reform in Australia and a consequential change in the understanding of Indigenous cultures within mainstream government agencies and community organisations. What has burgeoned is recognition of the:

strength of Indigenous culture, the complexity of Indigenous peoples' contemporary experience and the recognition that non-Indigenous peoples' and organisations require education and ongoing work to attain degrees of cultural competence (Libesman, 2013).
84. The Victorian and VACCA example illustrates an emerging trend in Australia where Indigenous agencies and/or organisations are playing a best practice

role and providing advice as well as in some cases gradually assuming greater jurisdiction over Indigenous children’s welfare and wellbeing. This has also brought about a change in how child maltreatment is understood within Aboriginal and Torres Strait Islander communities and consequently how services are most appropriately provided. Libesman (2013, 2015) contends however, that there are still “homogenous and paternalistic understandings” in policy and practice in Australia, which can coercive and maintain inequities, and stand in contrast to the pluralised human rights understandings that have been developing in Australia and overseas. The aspirations of self-determination and community control contained in the ‘Bringing Them Home’ report have not been fulfilled by the incremental steps to date towards legal recognition of Indigenous peoples’ role in their children’s welfare (Libesman, 2013, 2015).

85. Cornell (2015) also argues that there has generally been less acceptance of, and therefore progress towards, Indigenous self-determination and self-government in Australia (as opposed to self-administration or self-management). Although this he notes has not stopped some Indigenous groups from embarking on their own governance journeys (Cornell, 2015). Harris-Short (2016) writes that political opposition to self-government remains strong in Australia decreasing its likelihood (Harris-Short, 2016). The Australian Indigenous Governance Institute describes this in terms of the “governments retreat from self-determination as a policy platform”. Saying instead, the “concept of governance has become a major topic of discussion amongst Indigenous peoples in Australia over the last 15 years” (Wighton and Smith, 2018).

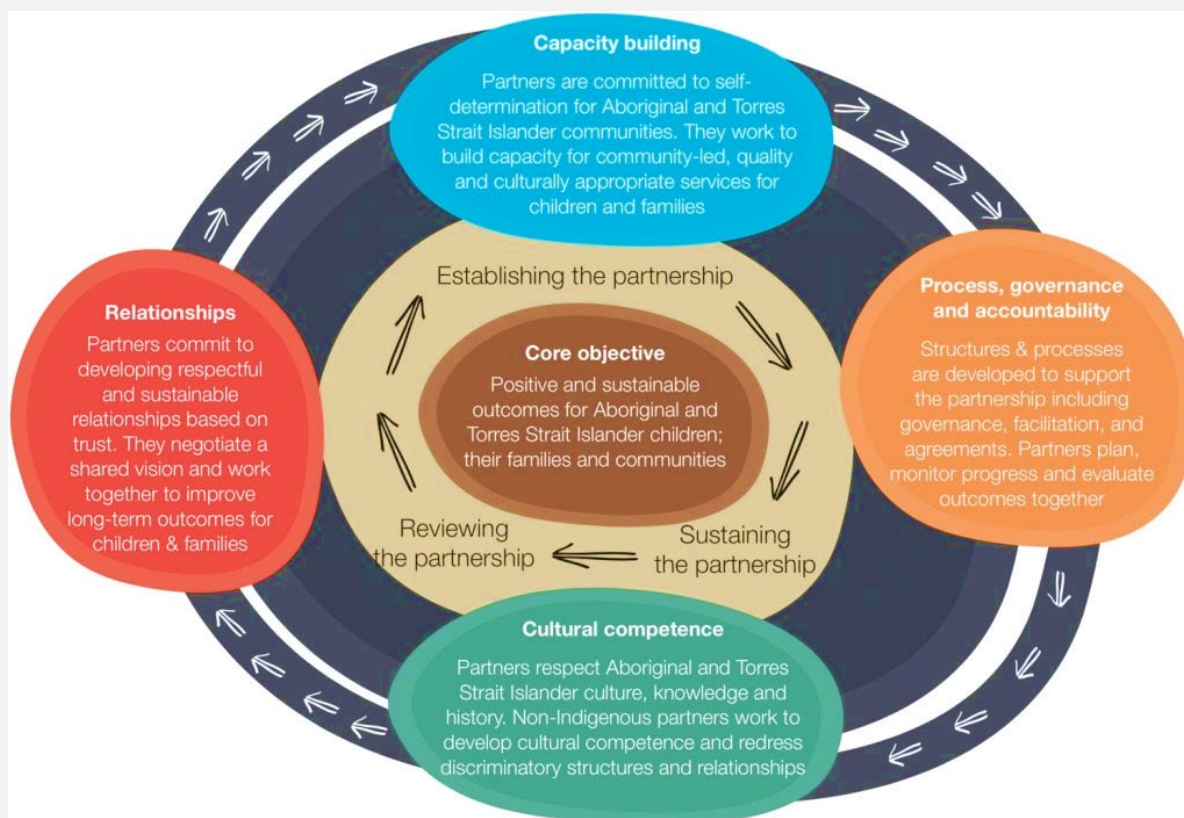
86. Diverse articulations and formulations of Indigenous governance have emerged in Australia over the past decades in response. Governance incorporates the “evolving processes, relationships, institutions and structures by which a group of people, community or society organise themselves collectively to achieve the things that matter to them”. There is also recognition that beyond these basic considerations, Indigenous governance encapsulates specific qualities and conditions, and reflects contemporary realities. Former Australian Indigenous Social Justice Commissioner Mick Good said:

While Indigenous peoples have governed ourselves since time immemorial in accordance with our traditional laws and customs, when we speak of Indigenous governance we are not referring to the pre-colonial state. Rather, we are referring to contemporary Indigenous governance: the more recent melding of our traditional governance with the requirement to effectively respond to the wider governance environment (Wighton and Smith, 2018).

87. The Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples highlighted the Centre for Excellence in Child and Family Welfare submission, which said that strong local Indigenous governance, results in greater Indigenous empowerment and

improved outcomes for Aboriginal and Torres Strait Islander peoples. This also has deeper flow-on effects for Indigenous children when through these efforts they are connected to their culture and community, which results in health, social, and educational outcomes improvements (Australian Parliament, 2018).

Figure 1: What is important for Aboriginal and Torres Strait Islander partnerships



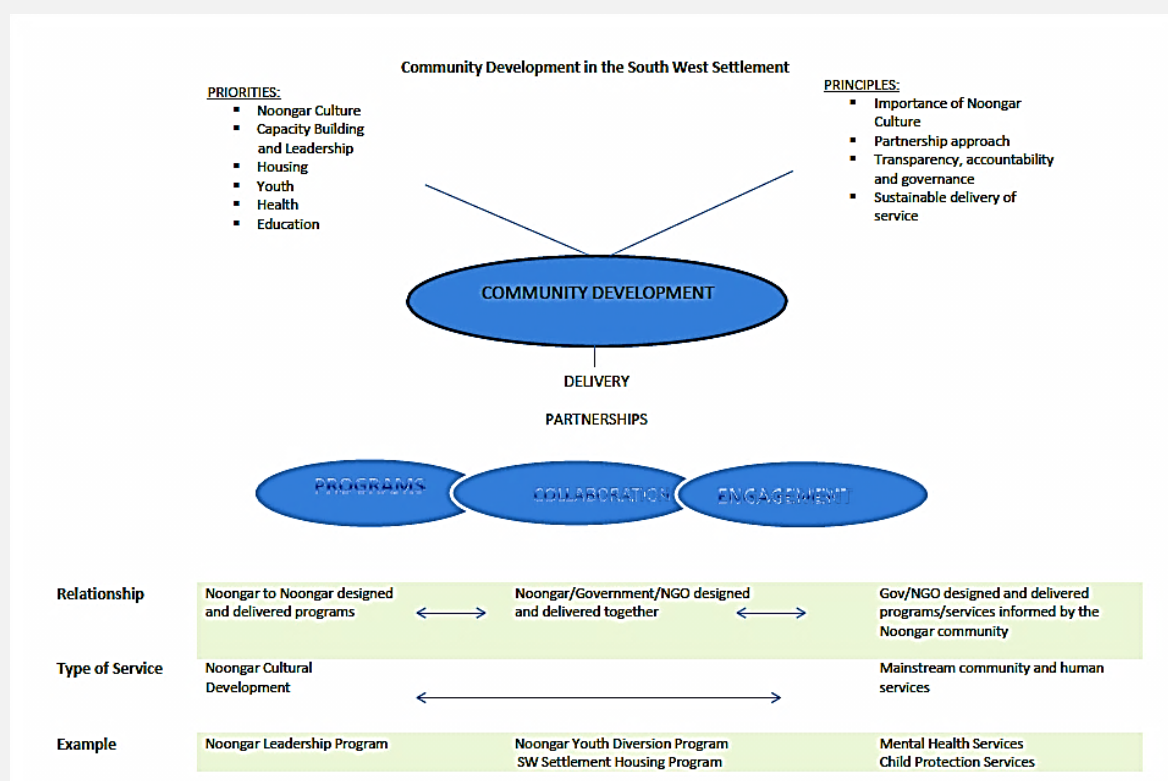
Source: (SNAICC, 2020)

88. It is in this respect that much can be understood and learnt from the importance of collaborative processes that support local Indigenous governance as also being necessary for success. The Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples described several advisory bodies and structures that might inform the development of a 'Voice' in Australian government.¹² Among the example suggestions was the Empowered Communities initiative that supports Aboriginal and Torres Strait Islander peoples having a greater say in decisions that affect them. Implementation of the Empowered Communities Initiative is underway in eight regions across Australia. The Committee writes that the governance arrangements for the initiative builds on "local and regional coalitions to drive reform" and while they all vary, they also share several common elements:

¹² The primary task of this Committee was to consider in greater detail the proposal made in the Statement from the Heart for a First Nations Voice (the 'Voice') enshrined in the Australian Constitution (see for description Australian Parliament, 2018).

- 88.1 Indigenous-led opt-in organisations playing a key leadership role.
 - 88.2 A leadership group selected or elected and comprised of a mix of organisational, cultural, natural, and educated leaders from the region.
 - 88.3 An interface, or partnership, mechanism (such as a ‘meeting place’ or ‘negotiation table’) for negotiations between Indigenous and government partners.
 - 88.4 A backbone team driving delivery and performing support functions (Australian Parliament, 2018).
89. One additional exemplar of decentralisation in Australia comes from the recent ‘Noongar Settlement’ in Western Australia. In June 2015, the Western Australian Government signed six South West Native Title Settlement Agreements with the Ballardong, Gnaala Karla Booja, South West Boojarah, Wagyl Kaip & Southern Noongar, Whadjuk and Yued groups (collectively known as the Noongar people). The landmark Noongar Settlement is the most comprehensive and largest agreement settling Aboriginal interests over land in Australia. The Settlement covers 200,000 square kilometres and involves a substantial shared investment in the social and economic future of the Noongar people and Western Australia (Government of Western Australia, 2017). It has been described as “Australia’s first treaty” (Hobbs and Williams, 2018).
90. The Noongar Settlement set a new benchmark in Australia and has the potential to serve as a model for Indigenous claims overseas. De Villiers (2019) explains that the Settlement not only “recognises the traditional ownership of the land of the Noongar people, but then it goes on to establish for the Noongar people self-governing corporations”. These corporations form what de Villiers (2019) calls a fourth level of government that provides services to the Noongar people. And they can exercise powers and functions in relation to traditional laws and customs as well as socio-economic matters such as housing, welfare, land management, conservation, and tourism (de Villiers, 2019).
91. There is a Community Development Framework as part of the Noongar Settlement. The Framework describes and establishes the foundation for Noongar peoples and Western Australian Government collaboration. The six Noongar Regional Corporations set up under the Settlement will implement the Framework (and others) in partnership with the Western Australian Government. Among several focus areas the Community Development Framework identifies “improvements in economic independence, leadership and governance, and self-esteem across the Noongar community” (Government of Western Australia, 2017).

Figure 2: The Noongar Settlement's Community Development Framework



Source: (Government of Western Australia, 2015)

92. The Australian Government and States also recently came to collective agreement with the Coalition of Aboriginal and Torres Strait Islander Peak Organisations to replace the 2008 ‘Closing the Gaps’, which had failed to be include and achieve the desired targets. The new agreement is described as “historic and a game changer” and includes child welfare targets (Higgins, Collard and Ryan, 2020).
93. The agreement commits to far greater Indigenous involvement and partnership in its implementation and measuring progress. This includes improving ‘shared decision-making’ and building the Aboriginal and Torres Strait Islander community-controlled sector. Under the agreement there are two forms of partnerships – “policy partnerships” and “place-based partnerships”.
- 93.1 Policy partnerships are partnerships created for the purpose of working on discrete policy areas, such as education, health, or housing.
- 93.2 Place-based partnerships are partnerships based on a specific region, between government and Aboriginal and Torres Strait Islander representatives, and others by agreement, from those specific areas (Australian Governments, 2020).

Canada: From delegation to devolution

94. Indigenous peoples of Canada include First Nations, Inuit, and Métis. Like Indigenous people elsewhere in Australia and the US, Indigenous people in Canada experienced a long history of children being forcibly removed from families and communities, to be placed in 'residential schools', the last of which were closed in the 1960s. Continuing assimilative practices led to what is often referred to as the "Sixties Scoop" when thousands of Indigenous children were removed by child welfare agencies from their families and communities. Indigenous children continued to be removed at disproportionate rates throughout the 1970s and 1980s (Libesman, 2013).
95. Canada has a federal structure with Canadian provinces largely having jurisdiction over child welfare. In Canada, Section 35 of the Constitution Act, 1982 recognises and affirms Aboriginal rights and treaty rights. In the absence of definition these rights are broadly interpreted by the Courts and in policy to include a wide range of cultural, social, political, and economic rights, including the right to land, practice their culture, and establish treaties. Self-government provisions have varied widely between Indigenous groups and provinces. Despite continued calls from Indigenous people in Canada for greater self-determination in child welfare, for the most part it has continued to be mandated by government through legislation. Self-government draws on delegated legislative powers. This means child welfare services are administered under the authority of mainstream legislation, rather than under their own jurisdiction and legislative framework (Libesman, 2013).
96. The Truth and Reconciliation Commission (TRC) of Canada was established in 2008 to examine the workings and impact of residential schools on Indigenous people in Canada. The TRC concluded the establishment and operation of residential schools amounted to what is described as "cultural genocide" and from its report provided "94 Calls to Action". The TRC noted in its findings that there is "now considerable Aboriginal control of child-welfare services", however, asserted that "recognition of the Aboriginal right to self-determination, more appropriate funding allocations for services from governments, and methodical tracking of progress" were essential preconditions for redressing the legacy of residential schools in Canada and for long-term reconciliation (Truth and Reconciliation Commission, 2015).
97. Delegated Indigenous child welfare services remain to date somewhat patchwork given the different provincial legislative environments and histories. Nevertheless, some of the most detailed and progressive Indigenous approaches to child welfare have been developed in Canada. Several Indigenous communities in Canada have developed proposals and reached agreement within provinces transferring departmental responsibility for child welfare to Indigenous agencies. These responsibilities range from a full range of care and protection services, including statutory responsibilities, to more limited or in partnership agreements with provincial authorities (Libesman, 2013).

98. Indigenous child welfare models and types of agencies are somewhat varied and unique to Canada. The various child welfare models vary in their decentralisation, while there are both mainstream child welfare services and specific agencies dedicated solely to Indigenous peoples (First Nations and Métis) (National Collaborating Centre for Aboriginal Health, 2017). The child welfare models are summarised in **Table 2** below.

Table 2: Canadian child welfare models

Child welfare models	Description
Provincial / territorial	Services are delivered directly by jurisdictions or through funding/contracts with non-mandated, non-profit community-based agencies that may be Aboriginal. In these scenarios, provincial / territorial Child Welfare Agencies or provincial or territorial governments are responsible for service provision, governance, legislation, and a portion of the funding for child welfare services.
Delegated	Services are delivered through delegated transfers of responsibilities to mandated Aboriginal child welfare agencies. Indigenous service agencies assume governance under provincial / territorial legislation. Many Indigenous child and family service agencies provide delegated child welfare service delivery, either as full or partial delegation.
Integrated	Services are delivered through regional Aboriginal authorities that share responsibility with the province / territory. Under this model, Indigenous authorities direct the child welfare agencies under their control, while the province / territory determines policies, objectives and standards, and monitors (or shares in the monitoring of) performance. Like delegated agencies, Indigenous child welfare agencies provide services, but governance is split between the province / territory and Indigenous communities under provincial / territorial legislation
Individual agreements	Involving individual First Nations, the province / territory, and the Federal government. British Columbia provides one of the few examples of this model, in the agreement with Spallumcheen First Nation to operate child welfare services under band bylaws, and the treaty with Nisga'a First Nation that recognises its law-making authority respecting children and family services so long as they are comparable to provincial standards. Service delivery, governance, and legislative responsibility resides with the Indigenous party.

Source: (Aboriginal Children in Care Working Group, 2015)

99. Manitoba is an early Canadian example of Indigenous people seeking greater self-determination in child welfare. However, it also seems to be a case study in the challenges of child welfare; challenges shared by other Canadian provinces, where there are legacies of colonisation and residential schools, difficult conditions on reserves, cultural dislocation, and loss of identity, as well as other socio-structural inequities. Manitoba has been going through child welfare reform for the past several decades. Many of the aspirations for change, however, are still to be realised (Legislative Review Committee, 2018). There are 1,240,695 people Indigenous people in Manitoba, comprising 18% of the overall population. Indigenous children comprise 88% of the 10,258 children in care. Manitoba has one of the highest rates of

children in care among the Canadian provinces (Statistics Canada, 2017; Manitoba Families, 2019).

100. In the 1980s, First Nations Indigenous communities started providing on-reserve child welfare services in Manitoba under a tripartite agreement with the Provincial and Federal Government. Seventeen First Nations child welfare agencies were started between 1981 and 1991. First Nations groups and the Manitoba Government subsequently established the Aboriginal Justice Inquiry (AJI) in 1988 to investigate the 'relationship between the administration of justice and aboriginal peoples of Manitoba'. The AJI report, released in 1991, noted the province's systemic failings of Indigenous people. The AJI also considered child welfare and detailed comparative improvements. However, the report highlighted continued shortcoming in Indigenous child welfare funding, service provision, and Indigenous control over the future of Indigenous children and communities. It also outlined the underlying causes of colonisation, the residential school system, and 1960s expansion of child welfare into Indigenous communities. The AJI wrote of the need to strengthen existing Aboriginal agencies and afford Indigenous people in the province not served by Aboriginal agencies the opportunity (Aboriginal Justice Inquiry, 1991; Kozlowski et al., 2011).
101. Significant child welfare system reform took place in Manitoba in the early 2000s, involving a devolution process, which included expanded Indigenous jurisdiction and child welfare administrative restructuring. The Child and Family Services Authorities Act (2003) established four designated child welfare authorities that would provide oversight over child welfare agencies (the First Nations Authority of Northern Manitoba, First Nations Authority of Southern Manitoba, Metis Authority and General Authority). The Authorities Act also specified that a board of directors manage each Authority, and the legislation set out how the boards were to be appointed (Kozlowski et al., 2011; Hughes, 2013; Milne, Kozlowski and Sinha, 2014).
102. The Authorities were empowered by the Authorities Act in Manitoba to mandate child welfare agencies to exercise the duties and powers of the Child and Family Services Act and other Acts (Provincial and Federal legislation). The Authorities have mandated 23 legally distinct agencies, of which 17 are First Nations child welfare agencies; three are non-Aboriginal, private child welfare agencies; two are Métis child welfare agencies; and one is the Department of Family Services (of which there are multiple offices in five areas of the province) (Milne, Kozlowski and Sinha, 2014). Accordingly, the main features of the child welfare system in Manitoba after the devolution process in the early 2000s were:
 - 102.1 **Delegation of powers:** the delegation of power to Indigenous people in Manitoba is considerable. The Authorities have taken on in large part what were the powers formerly vested in the Director of Child Welfare. The Authorities have the mandate power, are ostensibly the funders and provide oversight, and are governed by boards of directors

appointed through their respective political bodies. Accountability though remains with the Crown, through the Minister, and the Authorities remain subject to Provincial and Federal legislation.

102.2 **Concurrent jurisdiction:** Manitoba previously had a single agency providing child welfare services to all citizens across different geographical areas within the province. Following the changes each of the Authorities has province-wide jurisdiction. This means there may be several child welfare agencies operating at any one time in the same area.

102.3 **Intake services:** it was known that concurrent jurisdiction would require a central intake and coordination to avoid confusion among the public and wider social sector. Fourteen child welfare agencies are Designated Intake Agencies (DIAs), whose role is to act as intake services in the various province areas before transferring cases to an Authority (agency) chosen by the family. In the capital of Manitoba, Winnipeg, an agency was created specifically for this purpose (the Child and Family All Nations Coordinated Response Network).¹³

102.4 **Authority determination and family choice:** an intake agency will carry out a family interview to support a determination of which Authority is the most culturally appropriate to provide needed services. However, families can choose in most circumstances from which Authority they would like to receive services regardless of where they live in the province. Children who are able can make this choice for themselves (Kozlowski et al., 2011; Hughes, 2013; Milne, Kozlowski and Sinha, 2014).

103. Since this devolution process took place in the early 2000s, there have been several significant inquiries and reports on the child welfare situation in Manitoba, including the 'Inquiry into the Circumstances Surrounding the Death of Phoenix Sinclair' (the 'Hughes' report). The Hughes report was critical of the child welfare system in Manitoba and emphasised the importance of shared responsibility and effective partnership.¹⁴ More recently, the Manitoban Government looked at 'Opportunities to Improve Outcomes for Children and Youth' (2018). In that report, they recognised the need for a review related to accountability and governance with the goal of developing more effective governance models for services. The report stated the models needed to be Indigenous led, reflect the reality of care in Manitoba, and continue to be a devolved system of authority. It was also affirmed that the

¹³ See for further information the Child and Family All Nations Coordinated Response Network (<https://www.ancr.ca/>).

¹⁴ It is important to note, as the Hughes report does, that the difference in the rates of serious abuse among indigenous and non-indigenous families is not significant; rather, the substantiated reports of neglect are much higher. Research on this point shows that indigenous children in Canada are removed from their homes at far higher rates because of poverty and living circumstances (Hughes, 2013; see for comment Hyslop, 2018).

long-term goal for child welfare in Manitoba is to “create legislation that enables Indigenous peoples to have their own child welfare system that respects their right to self-determination” (Hughes, 2013; Legislative Review Committee, 2018).

104. First Nations in Manitoba – as elsewhere in Canada – have continued to challenge the child welfare system and critically engage with change processes, arguing for a more just and respectful system based on First Nations’ principles (Assembly of Manitoba Chiefs, 2016). In 2018, the Assembly of Manitoba Chiefs (AMC) proposed a strategy for child welfare reform in their report ‘Setting the foundation for change: A strategy towards First Nations’ jurisdiction of child welfare in Manitoba’. The AMC report noted the child welfare system in Manitoba did not meet the needs of First Nations, children, families, or communities, and that it did not reflect First Nation values or support the whole family as a resource. While the report noted some progress, it also identified numerous constraints, affecting the potential for First Nations to assert jurisdiction in child welfare. **Table 3** sets out the barriers described in the report (Assembly of Manitoba Chiefs and Women’s Council, 2018).

Table 3: Barriers that hold First Nations back from achieving jurisdiction in child welfare

Role of federal and provincial legislation and policy	Too many children are apprehended because of systematic factors	Power imbalances in the current child welfare system	Lack of accountability, coordination, and First Nation inclusion
Provincial/federal policies Governments think they know what is best for us! Jurisdiction Federal government legislation needs change Provincial government legislation and discriminatory policies Boundaries on/off reserve Agencies and authorities are controlled and conditioned by policy and legislation Child and Family All Nations Coordinated Response Network (ANCR)	Historical trauma, residential schools, Sixties Scoop, etc. Sixties Scoop, residential school mentality (lesser people) Lack of traditional and cultural teaching Misappropriation of our traditional knowledge, values, teachings, and practices Discrimination Lack of funding to address social issues/prevention Kids in hotels Poverty Social determinants to health Safety	Imposing on families and making unfair restrictions Too much power to foster parents/need to believe in family unity No, or lack of, participation by First Nations Not enough supports for our families (legal) when children apprehended Supports needed for parents! Supports not punish! Lack of supports in the community We are not worthy Apathy as grassroots people feel they are not being heard	First Nation leadership not understanding system Lack of common vision No communication, or lack of, [between] Provincial / Territorial organisations (PTOs), Leadership, Assembly First Nations Regional Chief No unity amongst Manitoba PTOs Ego Fear in agency workers of losing their jobs

Role of federal and provincial legislation and policy	Too many children are apprehended because of systematic factors	Power imbalances in the current child welfare system	Lack of accountability, coordination, and First Nation inclusion
Justice system Permanent wards	Housing Isolation Language Trauma Birth alerts and children apprehended at birth		

Source: (Assembly of Manitoba Chiefs and Women’s Council, 2018)

105. Libesman (2013) writes in an overview of the Canadian context that while child welfare for Indigenous children in Canada is still subject to provincial and federal legislation, much has been done to recognise Indigenous peoples’ rights in Canada and accord them with greater decision-making authority and self-determination in child welfare (Libesman, 2013). Albeit much of the changes have taken place within ‘delegation frameworks’ where accountability and primary authority has remained with the Crown.
106. The Federal ‘Act Respecting First Nations, Inuit and Métis Children, Youth and Families’ (previously known as Bill C-92) became law in Canada on 21 June 2019 and came into force on 1 January 2020. The Federal Government had spoken of the child welfare system and the high rates of Indigenous children and family involvement as being a ‘humanitarian crisis’. Given this child welfare crisis and amidst broader thinking on Indigenous rights in Canada, the Federal Government has moved to open up the potential for the further devolution of child welfare and greater Indigenous self-determination (Kassam, 2017; Tasker, 2018a, 2018b).¹⁵
107. The ‘Act Respecting First Nations, Inuit and Métis Children, Youth and Families’ is a milestone step: it is the first time the federal government has exercised its jurisdiction to legislate Indigenous child welfare.¹⁶ The Canadian Government writing about the current rules and systems says:

Currently, Indigenous families are bound by rules and systems that are generally not reflective of their cultures and identities. The goal of the Act is to change that by affirming the right to self-government of Indigenous peoples to freely determine their laws, policies and practices in relation to Indigenous child and family services (Government of Canada, 2019).

¹⁵ One example of decentralisation in Canada that is considered landmark is the Anishinabek Nation Education Agreement, which was concluded after 20 years of negotiation and involves indigenous self-government in education (see for background Government of Canada, 2017).

¹⁶ For full details on the Act see the ‘technical information package’ (Government of Canada, 2020a).

108. The Act was developed in partnership with Indigenous groups, provinces, and territories. The Act:
- 108.1 affirms the rights of First Nations, Inuit, and Métis peoples to exercise jurisdiction over child and family services
 - 108.2 establishes national principles such as the best interests of the child, cultural continuity, and substantive equality
 - 108.3 contributes to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples
 - 108.4 provides an opportunity for Indigenous peoples to choose their own solutions for their children and families (Government of Canada, 2019, 2020b).
109. After 1 January 2020, Indigenous groups in Canada can, if they would like, design and deliver child welfare services to best suit their requirements. The process enabled by the Act is not a “one-size-fits-all” approach and each Indigenous group or community can take their own path. The Act provides for transition and implementation processes and structures. It also accommodates any future need for regulation-making authority. Two options are available for exercising jurisdiction:
- 109.1 Give notice of their intent to exercise their jurisdiction to the Government of Canada and the government of each province or territory in which the Indigenous group, community or people are located.
 - i) Having submitted a notice of their intent, the Indigenous group would exercise their jurisdiction. However, it would not prevail over federal, provincial, and territorial laws.
 - 109.2 Make a request to the Government of Canada and the government of each province in which the Indigenous group, community or people are located to enter into a tripartite coordination agreement to exercise their jurisdiction on child and family services, and have their law prevail over federal, provincial, and territorial laws.
 - ii) Within 12 months following the request, if a tripartite coordination agreement is reached, or no agreement is reached but reasonable efforts were made to reach an agreement, the laws of the Indigenous group and community would have force of law as federal law and would prevail over federal, provincial, and territorial laws (Government of Canada, 2019).
110. There are still outstanding concerns about the Act raised in the lead-up to the adoption of the legislation. This included the adequacy of national standards to improve child welfare, given they act as a floor, rather than a ceiling; jurisdictional concerns over the concurrent law model, where Federal, Provincial, and Indigenous law could potentially all apply at the same time to a

situation, causing further jurisdictional confusion; and the funding provisions of the Act and any resulting Indigenous services, as funding mechanisms were not clearly articulated in the legislation. It has been argued that the Federal level should take the primary responsibility to fund Indigenous child welfare services. The lack of funding provisions could potentially undermine the Act's practical implementation among Indigenous groups (Metallic, Friedland and Morales, 2019).¹⁷

Foundations for decentralisation success

111. Based on the descriptions thus far there are several avenues that avail themselves in terms of decentralisation, understood as administrative decentralisation or devolution proper. The latter has more significant political implications, although arguably, the steps towards devolution proper in child welfare in our overseas examples are ongoing and remain of significance.¹⁸ Administrative decentralisation, in its different forms, remains to varying degrees, steps on the pathway to devolution proper in child welfare. What also seems evident is that decentralisation is a necessary, but not sufficient condition, for improving Indigenous child welfare. There must be structural and sustainable socio-cultural and economic changes to support improvements (Cornell and Kalt, 2003; Cornell, 2006).¹⁹
112. Drawing on the discussed examples of Indigenous self-determination and self-government from overseas, there are several apparent elements of 'successful' decentralisation approaches. Cornell and Kalt (2003) through the work of the Harvard Project identify three key factors in the case of Native Alaskans that contributes to their development success. The three factors also offer insights for Indigenous groups in relation to child welfare.
- 112.1 Practical self-rule: an important precursor condition for success. Practical self-rule allows Indigenous groups to promote citizen engagement and participation in community welfare; ensures responsibility of the Indigenous group or community for decision-making and their own development agenda (rather than being influence by outside factors); and supports better decision-making as the success of the Indigenous groups or communities is directly linked to the outcomes.

¹⁷ Jordan's Principle is of relevance to the child welfare funding situation in Canada. Jordan's Principle applies where a jurisdictional dispute arises in Canada between two government agencies (at any level) over payment for child welfare services for indigenous children. This means the agency of first contact must pay for the services without delay or disruption. For more information see <https://fncaringsociety.com/jordans-principle>.

¹⁸ Devolution proper in these instances refers to 'political' and 'administrative' devolution in the context of child welfare.

¹⁹ Differences in reported levels of maltreatment between countries are consistent with lower levels of child poverty and parent risk factors. It is also consistent with policies providing higher levels of universal supports (see for example Gilbert *et al.*, 2012).

- 112.2 Capable governing institutions: the ability and authority to make decisions on behalf of one's community is not enough to significantly improve wellbeing. The Harvard Project found that capable governing institutions, including effective decision-making mechanisms, capable bureaucracies, and sound economic and social policies, helps with positive community development. Institutions support good decision-making and their capable implementation in the context of wider accountabilities and responsibilities.
- 112.3 Cultural match: while self-rule and capable institutions are important there is no "one-size-fits-all". Governing institutions must have the support of people if they are to mobilise community energies and resources. This means there must be a "cultural match" between formal governance institutions and informal understandings of how authority should be organised and exercised. Indigenous governing institutions should build, perhaps innovatively, upon their own conceptions of Indigenous governance and institutions to increase their chances of being successful (Cornell and Kalt, 2003).
113. The Harvard Project findings are influential and ostensibly sound, however, should be viewed critically. Particularly given the different circumstances of Indigenous groups generally, and those outside the US specifically. Numerous factors play a part in realising decentralisation success. And Indigenous groups success – conveyed in learning to others – may emerge from and be contingent upon many different factors. Continuing research and evaluation into what can contribute to decentralisation success and that of Indigenous groups is important (Mowbray, 2006; Sullivan, 2007).
114. The OECD (2019) more broadly specifies ten guidelines for effective decentralisation in the context of regional development. Again, there are implications for understanding decentralisation with respect to Indigenous groups. The OECD (2019) writes that when decentralisation is properly designed and implemented that evidence shows it provides several benefits. Their ten guidelines for effective decentralisation include:
- 114.1 clarify the responsibilities assigned to different government levels
 - 114.2 ensure that all responsibilities are sufficiently funded
 - 114.3 strengthen subnational fiscal autonomy to enhance accountability
 - 114.4 support subnational capacity building
 - 114.5 build adequate coordination mechanisms across levels of government
 - 114.6 support cross-jurisdictional cooperation
 - 114.7 strengthen innovative and experimental governance, and promote citizens' engagement
 - 114.8 allow and make the most of asymmetric decentralisation arrangements

- 114.9 consistently improve transparency, enhance data collection, and strengthen performance monitoring
- 114.10 strengthen fiscal equalisation systems and national regional development policies to reduce territorial disparities (OECD, 2019).
115. Successful decentralisation in an Indigenous context lends itself to taking a “whole-of-community” approach that incorporates an understanding of communal identity. Research has found that Indigenous communities prefer holistic responses that heals the entire community and deals with the underlying causes of health and social problems. Important factors here include services that have a holistic healing approach, autonomy and flexibility in service provision, and a collaborative service provision approach (Libesman, 2004).
116. The empowerment of Indigenous communities is crucial to decentralisation. This may involve taking a phased approach to decentralisation to ensure appropriate readiness and resourcing levels (Libesman, 2004). Critical also to success is participation and self-determination in designing and deciding the appropriate governance mechanisms and structure of governing institutions. For central government this entails an acceptance of the variety of relationships and governance solutions that may result. Conversely, governance solutions and institutions that are imposed are unlikely to receive the support they need from local communities. The Australian Indigenous Governance Institute carried out a five-year study that showed inferior results from top-down approaches to Indigenous policy. The evidence gathered from Indigenous communities around the world demonstrated that when:
- governments engage Indigenous peoples and communities as equal partners, vesting real decision-making powers in Indigenous communities and Indigenous-led organisations, meaningful improvements in the health, wellbeing and general livelihoods of Indigenous peoples and communities are realised (Australian Parliament, 2018).
117. Equal partnerships are essential to decentralisation and empowerment processes. This is especially the case for child welfare. Often there is a power imbalance, requiring government to give up some of its power, and recognise the authority of Indigenous groups. For partnerships to succeed power must be shared. This power sharing should be broadly understood, and may involve for example, legislative recognition, contracting and procurement models, and a re-evaluation of the power structures underlying traditional social work practices (Libesman, 2004). Where power sharing takes place there is the possibility of “transformational change based on substantive engagement, empowerment and consensus” (Macdonald and Lévassaur, 2014). Ultimately though, as Smith (2004) writes, the legitimacy of Indigenous governance solutions depends in large measure on a “process of Indigenous choice” (Smith, 2004).
118. To fully realise decentralisation efforts there are numerous institutional and practical considerations partners need to consider. In particular, the institution

forms and governance provisions i.e., self-government and how they work. The UNDP summarises these from a central government perspective (on regional decentralisation):

Several aspects of decentralized governance are critically influenced, if not determined, by central frameworks and policies. It is therefore necessary to take account particularly of the following elements of the national framework for decentralization. The constitutional / statutory basis defining the systems, the levels, their respective jurisdictions and their complementary roles according to the principle of subsidiarity. The incorporation of the institutional forms of governance, with defined constitutional provisions with regard to authorities, structure, composition, representation, elections, procedures, modes of operation, regulations, and so on. Definition of accountabilities and co-responsibilities between levels and their publics. Institutional provisions for transparency: definition of access to information, reporting responsibilities, the sharing of data and information on a dis-aggregated basis through decentralized, modular information systems. Definition of the sharing of fiscal authorities and responsibilities and the creation of special instruments to ensure national capacity to address regional inequities and disparities, such as funds or partnership facilities (UNDP, 1997).

119. The constitutional / statutory basis for defining the system is an on-going process and one that ultimately recognises the need for more profound change. This is often viewed today through the lens of shared jurisdiction. The incorporation of institutional forms of governance – to the point where a form of self-government is realised – is increasingly seen in our overseas examples. There is a distinction to be made between governance as a process and self-government as a realised form of self-determination. The former speaks to the ways of working, while the latter speaks to the holders of decision-making authority (and capacity).
120. Cornell (2015) writes that Indigenous people are increasingly organising governing structures capable of effectively pursuing their goals. He says of initial barriers:

Among the challenges some of these efforts face is persuading central government to recognize Indigenous groups as collective political actors, to treat Indigenously generated or determined governing structures as legitimate, and to grant to those structures enough jurisdiction so that the communities they serve have real power (Cornell, 2015).
121. The Australian Indigenous Governance Institute says that governing meaningfully and well relies on several factors, including power, leadership, participation, genuine decision-making power, cultural legitimacy, accountability, governing institutions and structures, practical capacity, including resources and human capabilities, among others. Important wide-ranging governance factors are set out in more detail in **Table 4**. The development of governance capacity in CANZUS countries has focused on:
 - 121.1 leadership, representation, and succession
 - 121.2 roles and responsibilities of elected members, management, and staff

- 121.3 cultural governance skills and models
- 121.4 communication and negotiation with members
- 121.5 resource governance
- 121.6 dispute resolution and mediation
- 121.7 organisational structures and procedures
- 121.8 governing information and data systems
- 121.9 new technologies for governing (Wighton and Smith, 2018).

Table 4: The important parts of governance

Your people (who does it)	<ul style="list-style-type: none"> • Community, members, nation, families, leaders, managers, staff
Your processes (how you do it)	<ul style="list-style-type: none"> • Rules, laws, powers, procedures, roles, and responsibilities
Your strategies (what you do)	<ul style="list-style-type: none"> • Plans, goals, milestones, programs, functions
Your resources (what you need)	<ul style="list-style-type: none"> • Infrastructure, technology, funding, capital (cultural, social, economic), natural assets
Your culture (the way you do things)	<ul style="list-style-type: none"> • Values, worldview, traditions, behaviour
Your wider environment (outside influences)	<ul style="list-style-type: none"> • Networks, other groups, other communities, government organisations, institutions

Source: (AIGI, 2020)

122. Jurisdictional powers have often been limited where self-government has been put in place overseas. This can undermine the intention and success of such efforts. It represents a limited idea of what self-government is and might achieve. It also means that self-government effectively becomes self-administration. Indigenous groups become service providers with major decisions still made elsewhere. Genuine and productive self-government aspires to more than this and requires attentiveness from partners to this potential shortcoming. It requires genuine jurisdiction (Cornell, Curtis and Jorgensen, 2004). Similarly, attentiveness is required to the scope of jurisdiction itself. In Canada for example, where the implementation of self-government is generally described as “unfinished business”, there are also specific “missing pathways to self-governance” involving the likes of urban Indigenous communities. Meaningful action is also required in these areas to be successful (Lavoie et al., 2015).
123. There are the critical accountability and sustainability (financial and otherwise) questions for partners and partnerships. Accountability has traditionally referred to vertical accountability, where there exists some superior-subordinate relationship that entails subordinate accountability to the superior in a hierarchical structure. Vertical accountability is based on the constitutional principle of ministerial responsibility. Accountability is directed upwards from the civil service to the minister who is accountable to the parliament, and then

in turn, to the public. When there is collaborative governance there is horizontal accountability that emphasises partnership. For horizontal accountability to work, parties must share authority and responsibility. They are considered accountable to one another: they hold one another accountable in constructive and meaningful ways through learning and enduring relationships. That accountability too extends to the communities served. Horizontal accountability should shadow vertical accountability. However, accountability structures in child welfare overseas have more often heavily emphasised vertical accountability (Macdonald and Levasseur, 2014).

124. Beyond broadly understanding that accountability is a condition for success, there are several critical accountability issues that have been encountered in child welfare overseas. Interference for personal or political reasons in Indigenous child welfare is a serious issue. Libesman (2004) writes that it compromises the effectiveness and fairness of Indigenous agencies, where it occurs, and women and children are often the most adversely affected. Libesman (2004) also notes difficulties with decentralisation including determining specific responsibilities among the multiple (fragmented) levels of authority and accountability, and ensuring local services have the capacity to provide safe and confidential child protection services (Libesman, 2004).
125. The specific challenge of addressing gender violence and power differentials within Indigenous communities overseas is considerable. Kuokkanen (2019) notes that Indigenous women in Canada were among the first to raise the problem of gendered violence in the context of self-government. Kuokkanen (2019) writes:
- There was a broadly shared concern among Indigenous women that they would be marginalized in self-government and community development in the same vein as they were excluded from their communities by the Indian Act. Many asserted that patriarchal values had been internalized and naturalized to the extent that they will be carried into self-governing institutions and practices and as a result, women’s concerns and realities, especially gender violence, will be overlooked and ignored (Kuokkanen, 2019).
126. Indigenous women in Canada called for making self-government subject to gender equality provisions. For decentralisation to succeed, involving greater self-determination to varying degree, it must be just, relevant, meaningful to all, and entail the “recognition and dismantling of existing patriarchal social relations, eliminating discriminatory policies and the continuous commitment to Indigenous women’s rights in all Indigenous institutions and at all levels” (Kuokkanen, 2019).
127. Sustainability of decentralisation efforts, whether ambitious or delimited, requires adequate funding and resources. There is a potential risk that the decentralisation of responsibilities is insufficiently funded and resourced. This imposes a burden on the Indigenous communities involved and reduces the overall opportunities for success. In some respects, it also undermines the opportunities for greater self-determination – where decentralisation

arrangements are made without the concomitant support. This often occurs in the broader context of decentralisation efforts that still largely maintain the political, legal, and economic status quo. Drawing on overseas examples, Libesman (2016) writes that such “delegations of responsibility risks excising the most vulnerable and difficult of child welfare clients from government to Aboriginal, and other non-government agencies, without addressing the systemic and historical factors which underpin child welfare needs” (Libesman, 2015). There are also risks for central government that overspending may necessarily occur and that faults will be attributable to the decentralisation arrangements (Faguet, 2011).

128. Success also necessitates the building of capacity within Indigenous communities. This covers the spectrum from Indigenous community governance and institutional capacities to specific child welfare staffing capacities. As the Australian Indigenous Governance Institute comments:

Governance capabilities are essential to delivering genuine decision-making power to Indigenous peoples, and to being able to transform hard-won Indigenous rights into improved lived realities. However, such skills are often gained in the ongoing contexts of colonisation, denial of rights and complex community circumstances which pose significant challenges to (re)building Indigenous governance structures and capabilities (Wighton and Smith, 2018).

129. Cornell (2004) notes several areas of capacity building, such as developing case studies in successful Indigenous self-governance, highlighting different models of governance that reflect Indigenous culture and preferences and are proving effective, providing technical advice, and helping to establish institutional and organisational mechanisms (Cornell, Curtis, and Jorgensen, 2004). Experience of some First Nations groups in Canada is illustrative. Natcher and Davis (2007) write about Yukon First Nations, who having completed comprehensive land settlements, and having an intimate knowledge of the land, faced problems related to organisational skills and knowledge of government regulations as well as other technical capacities. And often smaller Indigenous communities struggle to gather such capacities given their remoteness or size. Natcher and Davis (2007) go on to comment that this has often lent support to the argument of some government officials on the ground that First Nations communities lack the necessary skills to manage resources effectively (Natcher and Davis, 2007).
130. A review of delegated services in Canada addressed child welfare staffing capacities. Staff in these delegated Indigenous agencies often face the challenge of holding culturally based worldviews that are at odds with provincial or Canadian child welfare standards that may minimise cultural differences or are inconsistent with Indigenous teachings and practices. Delegated Indigenous agency staff also frequently lack wage and benefit parity with comparable government staff and experience consistently high workloads. There were also regularly seen challenges of working in small tightknit communities, where staff often felt under scrutiny, and had to have

good working relationships with the local community to succeed (RCYBC, 2017).

Conclusion



131. **Decentralisation** refers to moving decision-making away from centralised control and closer to those who are most affected to improve responsiveness and performance. Decentralisation is a multi-dimensional concept with inter-related and inter-dependent dimensions. The most common focus overseas is on **administrative decentralisation**, of which there are three main forms: deconcentration, delegation, and devolution.
132. For the most part Indigenous self-determination has been limited to delegated authority. The exception being the ICWA. There have also been some exceptions in Canada e.g., the Spallumcheen by-law. The Federal ‘Act Respecting First Nations, Inuit and Métis Children, Youth and Families’ represents a recent landmark change. These overseas examples are stories of Indigenous child welfare struggle and advancement. They demonstrate many key factors that need to be in place if decentralisation is to progress.
133. What overseas examples show is that self-determination through decentralisation mechanisms and structures are a necessary, but not sufficient conditions for improving Indigenous child welfare. Successful decentralisation involves a “whole-of-community” approach and empowers Indigenous communities. Fundamentally decentralisation must support readiness and development.
134. Although there may be common starting points there is no one-way for decentralisation to proceed and develop. Participation and self-determination in designing and deciding the most appropriate government structures and governance mechanisms are vital. Policies that support the development of these mechanisms and structures, such that they help establish capable and effective institutions, and articulate Indigenous people’s values and aspirations, are more likely to succeed.
135. In partnerships, there are also important questions about how to ensure accountability (both vertical and horizontal) and sustainability (financial and otherwise). Investments in the building of capacity within Indigenous communities are foundational to successful decentralisation. This covers the spectrum of support from Indigenous community’s governance and institutional capacities to ensuring specific Indigenous child welfare staffing capacities.
136. Several key conclusions can be drawn from the literature discussion. These include:
- 136.1 Self-government and self-governance in child welfare matters are increasingly visible overseas after decades of advocacy and struggle by Indigenous communities and associated developments in political and Indigenous rights understandings.
- 136.2 Decentralisation must be grounded in the concept of self-determination and rooted in greater practical autonomy for Indigenous communities. Administrative decentralisation is the most understood way to proceed with decentralisation efforts.

- 136.3 Collaborative partnership and empowering processes are the best way to develop suitable ‘autonomies’ that manage child welfare matters. These autonomies can be developed in any number of ways. Pluralism is to be expected and encouraged. Partnerships can support cooperative mechanisms to reduce duplication.
- 136.4 Self-government and self-governance capacity building, including appropriate cultural and institutional development, must support decentralisation efforts. Suitable accountability mechanisms as well as finances and resources must also be put in place to ensure sustainability.
137. The most important consideration is whether decentralisation meets the aspirations of tamariki Māori and whānau. And whether partnership will be supported according to legislative obligations and Te Tiriti o Waitangi. Māori need to establish their pathway in partnership. Establishing the framework for this mahi is the most essential step to be carried out, setting out aspirations, principles of working, and the manner through which increased self-determination can be achieved. This would likely be an on-going process over the coming years.
138. In summary, the evidence brief identifies several possible considerations depending on the extent of decentralisation proposed.²⁰
- 138.1 Take a capability approach to better understand autonomy aspirations and identify the autonomy considerations of most importance to whānau Māori, hapū, and iwi (see for discussion Binder and Binder, 2016).
- 138.2 Based on what is most valued by whānau Māori, hapū, and iwi support through collaborative processes the institution of suitable autonomies, where whānau Māori, hapū, and iwi are responsible for child welfare i.e., delegated or devolved governance and services.
- 138.3 Territorial and NTA components of autonomies may be used. Unnecessary administrative and financial duplication and spending can be reduced through effective collaboration and employing a common system of enabling functions e.g., administration and technology.
- 138.4 Ensure there are appropriate guarantees around the establishment and funding of the autonomies and concurrent monitoring for effectiveness and implementation, including assuring needed resourcing and vertical and horizontal accountability for all the involved parties.
- 138.5 Consider the establishment or furtherance of a Māori child welfare representative body (or authority) to work for Māori collectively. Their aim would be to support the development and capacity of these

²⁰ Some legislative changes may be required depending on the extend of decentralisation proposed.

autonomies, especially where there is an absence of capacity and need for administrative and practical support.²¹

²¹ This may for example be like those indigenous child welfare authorities implemented overseas.

Appendices



Selected examples

This selection of examples from overseas demonstrates the variety of ways that Indigenous groups have sought to exercise self-determination and self-government (directly and indirectly). The cases were selected during the research as they arose as being especially relevant or models of self-determination or self-government. They are not fully representative of the wide variety of Indigenous self-determination or self-government. Web addresses are given for the reference source.

Table 5: Selected examples of self-determination and self-government

Country	Description
Australia	
Victorian Aboriginal Child Care Agency (Victoria)	<p>The Victorian Aboriginal Child Care Agency (VACCA) provides advocacy and a range of therapeutic supports for Aboriginal children who are unable to live at home. VACCA's role is to:</p> <ul style="list-style-type: none"> • Respond to the needs of the vulnerable Aboriginal people it serves. • Build social capital in Aboriginal families and communities, to which it remains accountable. • Reconnect children and families to each other, culture, Country, and Community. • Become a strong organisation that is well respected and well resourced, demonstrating the strength of Aboriginal community control to the Victorian community. • Provide excellence and accountability to the community we serve. • Advocate for systemic change to combat entrenched poverty and promote self-determination and the rights of Aboriginal people. <p>https://www.vacca.org/page/stories</p> <p>VACCA supports culturally strong, safe and thriving Aboriginal communities in Victoria. They effect several principles in their work:</p> <ul style="list-style-type: none"> • best interest of the child • aboriginal cultural observance • respect • self-determination • healing and empowerment • excellence <p>https://www.vacca.org/page/services/children-and-families/children-in-care</p>

Country	Description
	<p>Victoria also has in place ‘Balit Murrup: Aboriginal social and emotional wellbeing framework’, a companion document to ‘Korin Korin Balit-Djak: Aboriginal Health, Wellbeing and Safety Strategic Plan 2017–2027’.</p> <p>https://www.dhhs.vic.gov.au/publications/balit-murrup-aboriginal-social-and-emotional-wellbeing-framework</p>
<p>Interplay Wellbeing Framework (Northern Territory and Western Australia)</p>	<p>The Interplay Project came from a campaign by Aboriginal leaders in central Australian communities to empower desert knowledge.</p> <p>After securing funding the holistic Interplay Wellbeing Framework was designed from the ground-up, over six years in Aboriginal communities in remote Australia. This framework integrates Aboriginal priorities of culture, empowerment, and community, with the government priorities of education, employment, and health into a holistic wellbeing model.</p> <p>Several years asking people from different remote communities around Australia what they cared about and what they wanted out of life. Even with much cultural diversity, all groups voiced the same priorities – culture, empowerment, and community.</p> <p>The Interplay Project now empowers communities using research and the framework in the design of programmes that directly affect them.</p> <p>https://interplayproject.com/about</p>
<p>Empowered Communities (Australia)</p>	<p>Empowered Communities was initiated by Aboriginal leaders with a common vision:</p> <p>...for our children to have the same opportunities and choices other Australians expect for their children. We want them to succeed in mainstream Australia, achieving educational success, prospering in the economy and living long, safe and healthy lives. We want them to retain their distinct cultures, languages and identities as peoples and to be recognized as Indigenous Australians.</p> <p>Empowered Communities is an Aboriginal designed and led initiative working to reform the ‘top-down’ approach to Indigenous affairs. It is based on three pillars of empowerment, development, and productivity. It supports a fundamental shift away from the traditional social policy framework where Indigenous affairs have been conducted, to a comprehensive Indigenous Empowerment agenda. It is a long-term reform process requiring new partnerships between Indigenous leaders, governments, and corporate leaders.</p> <p>The Indigenous Empowerment framework used is based on the premise that Indigenous Australians have a right to development, including economic, social and cultural development as families, individuals, and communities, and as Indigenous peoples. The goals are to close the gap on the social and economic disadvantage of the Indigenous Australians in the Empowered Communities regions and enable the cultural recognition and determination of Indigenous Australians of the Empowered Communities regions in order preserve, maintain, renew and adapt cultural and linguistic heritage and transmit heritage to future generations.</p> <p>The Empowered Communities design report says:</p> <p>Indigenous empowerment incorporates the principle of self-determination. This covers the concept of self-determining individuals, as equal citizens recognised as the Indigenous peoples of Australia; and recognises the potential for the self-</p>

Country	Description
	<p>determination of Indigenous peoples, with special rights in relation to their territories, within the life of the Australian nation.</p> <p>Empowered Communities currently spans nine regions across urban, regional and remote Australia. Empowered Communities is about about facilitating place-based development. A critical component of this focus is a regional place-based approach covering the nine regions and including provisions for other regions to opt in down the track.</p> <p>https://empoweredcommunities.org.au/</p>
<p>Noongar Settlement (Western Australia)</p>	<p>The South West Native Title Settlement (Noongar Settlement) involves around 30,000 Noongar people, covers approximately 200,000 square kilometres and provides an opportunity for the Government of Western Australia (WA) to work in partnership with the Noongar Community to improve their economic, social, and cultural development. The Settlement resolves the Noongar native title claims in the South West of Western Australia in exchange for a package of benefits that includes (among other things):</p> <ul style="list-style-type: none"> • Recognition through an Act of Parliament - the Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Act 2016. • Noongar Boodja Trust - a perpetual trust, receiving yearly instalments of \$50 million for 12 years. • Noongar Corporations - the establishment of six Noongar Regional Corporations and one Central Services Corporation, with funding support of \$10 million a year for 12 years, and \$6.5m to establish the offices. <p>The Noongar governance structure comprises three major components:</p> <ul style="list-style-type: none"> • Noongar Boodja Trust - will hold and deliver assets for the Noongar Corporations. • Noongar Corporations - the representatives of the six Noongar Agreement Groups and the only beneficiaries of the Noongar Boodja Trust. • Noongar Committees - a range of committees and structures that provide support, direction, and influence over how the Noongar Boodja Trust is managed. <p>There is as part of the Settlement a Community Development Framework. The priorities of the Framework include safeguarding, developing, and transmitting Noongar culture; capacity building and leadership; housing; youth; health; and education.</p> <p>http://www.noongar.org.au/settlement-agreement</p> <p>https://www.wa.gov.au/organisation/department-of-the-premier-and-cabinet/south-west-native-title-settlement</p>
<p>Canada</p>	
<p>Anishinabe k Nation First</p>	<p>In August 2017, the Anishinabek Nation First Nations signed a historic self-government agreement on education. The Anishinabek Nation Education Agreement</p>

Country	Description
Nations (Ontario)	<p>was achieved after 20 years of negotiations and is described as an important step toward greater self-determination.</p> <p>From 2018 onwards the Anishinabek Nation Education Agreement impacted approximately 2,000 students on reserve. Participating First Nations will create the Anishinabek Education System. It recognises Anishinabek law-making powers and authority over education on reserve from Junior Kindergarten to Grade 12, as well as administrative control over funding for post-secondary education.</p> <p>The Anishinabek Education System:</p> <ul style="list-style-type: none"> • is designed by Anishinabek First Nations for Anishinabek students • promotes Anishinabe culture and language, which is vital to improving retention rates and academic achievement • establishes system-wide education standards that will support the transfer of students between the Anishinabek Education System and the provincial education system • creates clear roles and responsibilities for education matters and a system of accountability to First Nation members. <p>https://www.canada.ca/en/indigenous-northern-affairs/news/2017/12/anishinabek_nationeducationagreement.html</p>
Cowessess First Nation (Saskatchewan)	<p>Cowessess First Nation is working with the federal and provincial governments on implementation of its own child welfare legislation (Miyo Pimatisowan Act) under new federal legislation (Act respecting First Nations, Inuit and Métis children, youth and families). The Miyo Pimatisowan Act broadly sets out a devolution process and transfer of responsibilities. Specific purposes include:</p> <ul style="list-style-type: none"> • affirm the rights and jurisdiction of the Cowessess First Nation over child and family services for its citizens; • establish an agency to provide the Child and family services program on behalf of the First Nation; • set out the principles applicable to the interpretation of the Act and the provision of the Child and family services program; • Outline the components of the Child and family services program; • Provide for the execution of a Coordination Agreement; and • Other related purposes. <p>https://www.cowessessfn.com/</p>
Lii Michif Otipemisiwak (British Columbia)	<p>In October 2017, Lii Michif Otipemisiwak became the second Métis-run agency in British Columbia with full child protection powers, including being able to take children into care. The vision of vision Lii Michif Otipemisiwak Family and Community Services is that all Métis children, youth, and families live with love, honour, dignity, and respect knowing they belong to a strong, proud People with a unique heritage and cultural identity. the services offered include child and youth</p>

Country	Description
	<p>mental health, kinship and community caregivers, child protection services, and Indigenous youth and housing services.</p> <p>https://lmofcs.ca/</p>
<p>Splatsin Stsmamlt Services (British Columbia)</p>	<p>Splatsin Stsmamlt Services is an organisation of talkstaltln neglmucw (social workers) and family support workers who are responsible for carrying out our community's stsmamlt (child) and family service programme.</p> <p>The Splatsin have the only First Nation child welfare service that exists entirely outside the provincial system, operating under their child welfare bylaw.</p> <p>They have exercised exclusive jurisdiction over the welfare of their children through the powers of: A By-law for the Care of Our Indian child: Spallumcheen Indian Band By-law #3 – 1980. The Regulations of By-Law #3 apply to all Splatsin stsmamlt (children) no matter where they are living, even if they do not live on Splatsin reserve. Their jurisdiction has been recognised by both the provincial and federal government</p> <p>Splatsin Stsmamlt Services aim is to return the care of Splatsin children to the community. The long-term goal of the programme is to eliminate the need for foster care while maintaining preventative services. A major focus is to support individuals and family strength so that children can remain in the care of their own family.</p> <p>Splatsin Stsmamlt Services provide services to Splatsin children who are entitled to be registered with Aboriginal Affairs and Northern Development Canada. Parents are required to provide a letter of intent and initiate the application process to register their stsmamlt (child).</p> <p>https://www.splatsin.ca/departments/splatsin-stsmamlt-services</p>
<p>Tsawwassen First Nation (British Columbia)</p>	<p>The Tsawwassen First Nation Agreement is British Columbia's first modern urban treaty and the first treaty completed under the British Columbia Treaty Commission. It provided for the transfer of land and resolution of First Nation's title claim, and for the retention of hunting, fishing, and gathering rights in that territory; and self-government provisions, including jurisdiction over land management, and aspects of health care, education, post-secondary education, social assistance, and child and family services.</p> <p>Governance is set out in the Tsawwassen Constitution. Elected officials and bodies include the Chief, the Tsawwassen Legislature, the Executive Council, and the Advisory Council. The Tsawwassen First Nation 2009 <i>Children and Families Act</i>, is one of many laws this self-governing nation negotiated. The Act applies to child and family services on Tsawwassen Lands and sets out guiding principles and service delivery principles. Tsawwassen population membership was 491 in 2019.</p> <p>http://tsawwassenfirstnation.com/</p> <p>http://www.wetsuweten.com/files/MCFD_SERVICE_AGREEMENT_2017.pdf</p>
<p>Wet'suwet'en First Nation (British Columbia)</p>	<p>In 2017, British Columbia signed an agreement to work towards full Wet'suwet'en jurisdiction over their children and child welfare services. The 'Service and Jurisdiction Planning Agreement' acknowledges there is no agreed-on view of sovereignty and jurisdiction. It sets out to establish a consistent forum for parties to collaborate on improving the care, wellbeing, and outcomes for Wet'suwet'en children youth, families, and communities. Long-term goals included the</p>

Country	Description
	<p>development and implementation of a Wet'suwet'en child welfare services model, service delivery, and jurisdiction model.</p> <p>http://www.wetsuweten.com/</p>
United States	
Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission	<p>The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission (the Commission) led a truth-seeking process from February 2013 to June 2015 to uncover the truth about child-welfare practice with Maine's Native people. This was the first Commission to focus Native issues with child welfare in the US, the first known Commission that was collaboratively formed by "both sides" of the conflict, and this Commission's focus on healing was distinctive.</p> <p>http://www.mainewabanakireach.org/maine_wabanaki_state_child_welfare_truth_and_reconciliation_commission</p>
Cherokee Nation	<p>Indian Child Welfare provides a variety of protective and support services to Cherokee children and their families (under the ICWA). Their mission is "Remembering our past, protecting the present and securing our future for generations to come by providing an array of protective, supportive, and child focused services to families needing assistance in maintaining a self-sufficient and healthy environment".</p> <p>Cherokee Nation Child Protective Services accepts, investigates, and records all reports of alleged abuse and neglect of Cherokee children and provides protection to Indian children on Indian lands. Child Protective Services also works with the Department of Human Services to investigate the abuse or mistreatment of Cherokee children residing outside the Cherokee Nation. The primary responsibility of Child Protective Services is to assess the safety of the child and take the appropriate action to protect and promote the best interest of the child.</p> <p>https://icw.cherokee.org/</p>
Houlton Band of Maliseet Indians	<p>The Houlton Band of Maliseet Indians formed a Department of Indian Child Welfare Services. They subsequently developed a strategy to engage with the state child welfare authorities and to establish collaborative working relationships. In 2002, the Band and State signed an MOA establishing their partnership. They now both make appointments to a Child Protective Team that manages placements and services for Maliseet children. Through culturally and family appropriate solutions, the team's work has drastically reduced the number of children in out-of-home-care.</p> <p>http://www.maliseets.com/index.htm</p> <p>https://hpaied.org/sites/default/files/publications/Indian%20Child%20Welfare%20Services.pdf</p>
Port Gamble S'Klallam Tribal Child Welfare Program	<p>The Port Gamble S'Klallam Tribe (PGST) established its own Child Welfare Programme and in the early 2010s took control over federal funds for child welfare. This was a first among tribes in the US. PGST provides services that are culturally sensitive and integrated with tribal programs to protect children and strengthen families. S'Klallam believe that the entire tribe is the child's family. They make it a priority for its youngest citizens to participate in significant cultural events. And the tribal code requires that child custody determinations consider how children "will maintain significant contact with parents, siblings, grandparents, other extended</p>

Country	Description
	<p>family members and the Port Gamble S’Klallam community” and says that children should be given “an opportunity to learn about and participate in the S’Klallam way”. In its guardianship provisions, the code states, “the care of children is both a family and tribal responsibility”. Important lessons learnt during this process of reasserting sovereignty include:</p> <ul style="list-style-type: none"> • Community values must be at the core of tribal child welfare policies, as reflected in the PGST’s definition of “family” as “tribe”. • Interagency and intergovernmental relationships are fundamental to addressing child welfare and for increasing the legitimacy of the tribe’s actions with the county and state. • New mechanisms for the exercise of sovereignty provide for the welfare and protection of Native children. <p>https://www.pgst.nsn.us/tribal-programs/tribal-services/children-family-services</p> <p>https://hpaied.org/sites/default/files/publications/Port%20Gamble.pdf</p>

References



Aboriginal Children in Care Working Group (2015) *Aboriginal Children in Care: Report to Canada's Premiers*. Ottawa, Ontario.

Aboriginal Justice Inquiry (1991) *Report of the Aboriginal Justice Inquiry of Manitoba*. Winnipeg, Manitoba. Available at: <http://www.ajic.mb.ca/volume.html>.

AGI (2020) *The important parts of governance, Indigenous Governance Toolkit*. Available at: <https://toolkit.aigi.com.au/toolkit/1-1-indigenous-governance-2> (Accessed: 1 July 2020).

Alexander, Y. and Friedlander, R. A. (2019) *Self-determination: National, Regional, And Global Dimensions*. Taylor & Francis.

Alfred, T. (2001) 'From sovereignty to freedom: Towards an indigenous political discourse', *Indigenous Affairs*, 01(03).

Anagha Srikanth (2020) *What's at stake with the Indian Child Welfare Act, The Hill*. Available at: <https://thehill.com/changing-america/respect/diversity-inclusion/479435-whats-at-stake-with-the-indian-child-welfare-act> (Accessed: 1 July 2020).

Anaya, S. J. (2009) 'The right of indigenous peoples to self-determination in the post-declaration era', in Charters, C. and Stavenhagen, R. (eds) *The right of indigenous peoples to self-determination in the post-declaration era*. Copenhagen, Denmark: International Work Group for Indigenous Affairs.

Arthur, W. S. (2001) *Indigenous autonomy in Australia: Some concepts, issues and examples*. Canberra.

Assembly of Manitoba Chiefs (2016) *Bringing our children home*. Long Plains First Nation, Manitoba.

Assembly of Manitoba Chiefs and Women's Council (2018) *Setting the foundation for change: A strategy towards First Nations' jurisdiction of child welfare in Manitoba*. Long Plains First Nation, Manitoba.

Australian Governments (2020) *National Agreement on Closing the Gaps*. Canberra, ACT.

Australian Parliament (2018) *Final report. Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples*. Canberra. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Constitutional_Recognition_2018/ConstRecognition/Final_Report.

Binder, Christina and Binder, Constanze (2016) 'A capability perspective on indigenous autonomy', *Oxford Development Studies*. Routledge, 44(3), pp. 297–314.

Breen, M. (2018) *Non-territorial federalism and its potential in Australia (submission 141 - attachment 1)*. Canberra.

Bureau of Indian Affairs (2016a) *Federal register: Indian Child Welfare Act Proceedings; Final Rule*. United States: Federal register.

Bureau of Indian Affairs (2016b) *Guidelines For Implementing the Indian Child Welfare Act*. Washington, DC. Available at: <https://www.bia.gov/cs/groups/public/documents/text/idc2-056831.pdf>.

Children's Bureau (2012) *Tribal-State Relations*. Washington, DC.

Coakley, J. (2016) 'Introduction: Dispersed Minorities and Non-Territorial Autonomy', *Ethnopolitics*. Taylor & Francis, 15(1), pp. 1–23.

Cohen, J. and Peterson, S. (1997) 'Administrative Decentralization: A New Framework for Improved Governance, Accountability, and Performance', *Development Discussion Paper*, 582, p. 39.

Commonwealth of Australia (1997) *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Sydney, Australia.

Cornell, S. (2006) *Indigenous peoples, poverty and self-determination in Australia, New Zealand, Canada and the United States, Joint Occasional Papers on Native Affairs*.

Cornell, S. (2015) "Wolves have a constitution:" Continuities in indigenous self-government', *International Indigenous Policy Journal*, 6(1).

Cornell, S., Curtis, C. and Jorgensen, M. (2004) *The concept of governance and its implications for First Nations*, *Native Nations Institute*.

Cornell, S. and Kalt, J. P. (2003) *Alaska Native Self-Government and Service Delivery: What Works?* Cambridge, Massachusetts; Tucson, Arizona.

Cross, T. L. (2017) *Effective Leadership for Tribal Child Welfare: An Overview for Tribal Leaders*. Portland, OR.

Department of Health and Human Services (2016) *Roadmap for Reform: Strong Families, Safe Children*. Melbourne, Australia.

Durie, M. H. (1998) *Te Mana, Te Kāwanatanga: the politics of self determination*. Auckland, Oxford University Press.

Faguet, J.-P. (2011) *Decentralization and governance, Economic Organisation and Public Policy Discussion Papers*. London.

Gilbert, R. *et al.* (2012) 'Child maltreatment: Variation in trends and policies in six developed countries', *The Lancet*, 379(9817), pp. 758–772.

Gover, K. (2015) 'Settler-state political theory, "CANZUS" and the UN declaration on the rights of indigenous peoples', *European Journal of International Law*, 26(2), pp. 345–373.

Government of Canada (2017) *Anishinabek Nation Education Agreement*. Available at: https://www.canada.ca/en/indigenous-northern-affairs/news/2017/12/anishinabek_nationeducationagreement.html (Accessed: 1 July

2020).

Government of Canada (2019) *Affirming and recognizing Indigenous jurisdiction over child and family services: An Act respecting First Nations, Inuit and Métis children, youth and families*. Available at: <https://www.canada.ca/en/indigenous-services-canada/news/2019/06/an-act-respecting-first-nations-inuit-and-metis-children-youth-and-families-has-received-royal-assent.html> (Accessed: 1 July 2020).

Government of Canada (2020a) *An Act respecting First Nations, Inuit and Métis children, youth and families. Technical Information Package*. Ottawa, Ontario.

Government of Canada (2020b) *Reducing the number of Indigenous children in care*. Available at: <https://www.sac-isc.gc.ca/eng/1541187352297/1541187392851> (Accessed: 1 July 2020).

Government of Western Australia (2015) *Community development framework: South West Native Title Settlement Indigenous Land Use Agreement (Annexure T)*. Perth, Western Australia.

Government of Western Australia (2017) *The South West Native Title Settlement: An Agreement reached between the Noongar People and the Western Australian Government (About the Settlement factsheet)*. Perth.

Harris-Short, S. (2016) *Aboriginal Child Welfare, Self-Government and the Rights of Indigenous Children: Protecting the Vulnerable Under International Law*. Taylor & Francis.

Higgins, I., Collard, S. and Ryan, B. (2020) *Closing the Gap agreement reset with 16 new targets to improve lives of Aboriginal and Torres Strait Islander Australians*, ABC News. Available at: <https://www.abc.net.au/news/2020-07-30/closing-gap-targets-agreement-aboriginal-torres-strait-islander/12506232> (Accessed: 1 August 2020).

Hobbs, H. and Williams, G. (2018) 'The Noongar Settlement: Australia's first treaty', *Sydney L. Rev.* HeinOnline, 40, p. 1.

HPAIED (2010) *Constitutions & Fundamental Governmental Reform: Lessons in Excellence in the Governance of American Indian Nations*. Cambridge, Massachusetts; Tucson, Arizona.

HPAIED (2015) *About us: The Harvard Project on American Indian Economic Development*.

HRC (2010) *The Rights of Indigenous Peoples: What you need to know*. Wellington, New Zealand.

Hughes, T. (2013) *The Legacy of Phoenix Sinclair: Achieving the Best for All Our Children*. Winnipeg, Manitoba.

Hyslop, K. (2018) 'How Poverty and Underfunding Land Indigenous Kids in Care', *The Tyee*, 14 May.

Iverson, D. (2008) 'Indigenous Rights and the history of colonization', in *International encyclopedia of the social & behavioral sciences*. 2nd edn. Macmillan.

IWGIA (2019) *Indigenous peoples' rights to autonomy and self-government as a manifestation of the right to self-determination*. Copenhagen, Denmark: International Work Group for Indigenous Affairs (IWGIA). Available at: www.iwgia.org.

IWGIA (2020) *International Work Group for Indigenous Affairs*. Available at: <https://www.iwgia.org/en> (Accessed: 1 July 2020).

Kassam, A. (2017) 'Ratio of indigenous children in Canada welfare system is "humanitarian crisis"', *The Guardian*, 4 November. Available at: <https://www.theguardian.com/world/2017/nov/04/indigenous-children-canada-welfare-system-humanitarian-crisis>.

Kozlowski, A. *et al.* (2011) *First Nations Child Welfare in Manitoba, Canadian Child Welfare Research Portal*.

Kuokkanen, R. (2019) *Restructuring Relations: Indigenous Self-Determination, Governance, and Gender*. Oxford University Press.

Lavoie, J. G. *et al.* (2015) 'Missing pathways to self-governance: Aboriginal health policy in British Columbia', *International Indigenous Policy Journal*, 6(1).

Legislative Review Committee (2018) *Transforming Child Welfare Legislation in Manitoba: Opportunities to Improve Outcomes for Children and Youth*. Winnipeg, Manitoba. Available at: https://www.gov.mb.ca/fs/child_welfare_reform/pubs/final_report.pdf.

Libesman, T. (2004) *Child welfare approaches for Indigenous communities: International perspectives*. Melbourne, Australia.

Libesman, T. (2013) *Decolonising Indigenous Child Welfare: Comparative Perspectives*. Taylor & Francis.

Libesman, T. (2015) 'Indigenous Child Welfare Post Bringing Them Home: From Aspirations for Self-Determination To Neoliberal Assimilation', *Australian Indigenous Law Review*, 19(1), pp. 46–61.

Litman, L. and Fletcher, M. L. M. (2020) *The Necessity of the Indian Child Welfare Act, The Atlantic*. Available at: <https://www.theatlantic.com/ideas/archive/2020/01/fifth-circuit-icwa/605167/> (Accessed: 1 July 2020).

Litvack, J., Ahmad, J. and Bird, R. (1998) *Rethinking decentralization at the World Bank*. Washington, DC.

Macdonald, F. and Lévassieur, K. (2014) 'Accountability insights from the devolution of Indigenous child welfare in Manitoba', *Canadian Public Administration*, 57(1), pp. 97–117. doi: 10.1111/capa.12052.

Manitoba Families (2019) *Manitoba Families Annual Report (2018-2019)*. Winnipeg,

Manitoba. Available at: http://www.gov.mb.ca/fs/about/annual_reports.html.

Metallic, N., Friedland, H. and Morales, S. (2019) *The promise and pitfalls of C-92: An act respecting first nations, inuit, and métis children, youth and families*. Toronto, Canada. Available at: <https://yellowheadinstitute.org/wp-content/uploads/2019/07/the-promise-and-pitfalls-of-c-92-report.pdf>.

Milne, L., Kozlowski, A. and Sinha, V. (2014) *Manitoba's Child Welfare System*. Winnipeg, Manitoba.

Mowbray, M. (2006) 'Localising responsibility: The application of the Harvard project on American Indian economic development to Australia', *The Australian Journal of Social Issues*. Australian Social Policy Association, 41(1), p. 87.

Natcher, D. C. and Davis, S. (2007) 'Rethinking devolution: Challenges for Aboriginal resource management in the Yukon Territory', *Society and Natural Resources*, 20(3), pp. 271–279.

National Collaborating Centre for Aboriginal Health (2017) *Indigenous Children and the Child Welfare System in Canada, Child, Youth, and Family Health*.

NICWA (2015) *Setting the Record Straight: The Indian Child Welfare Act (Fact Sheet)*. Portland, OR.

NICWA (2018) *Texas v. Zinke Case Summary*. Portland, OR. Available at: <https://www.nicwa.org/home-2/texas-v-zinke-case-summary/>.

NICWA (2020) *About ICWA*. Available at: <https://www.nicwa.org/about-icwa/> (Accessed: 1 July 2020).

OECD (2019) *Making Decentralisation Work: A Handbook for Policy-makers*. Paris.

Oranga Tamariki (2020) *Improving outcomes for tamariki Māori, their whānau, hapū and iwi (Section 7AA Report)*. Wellington, New Zealand.

Pereira, L. C. et al. (1999) *Reforming the State: Managerial Public Administration in Latin America*. Lynne Rienner Publishers.

Pihama, L. et al. (2017) 'Investigating Māori approaches to trauma informed care', *Journal of Indigenous Wellbeing: Te Mauri – Pimatisiwin*, 2(3), pp. 18–31.

RCYBC (2017) *Delegated Aboriginal Agencies: How resourcing affects service delivery*. Victoria, B.C.

Referendum Council (2017) *Uluru statement from the heart*. Uluru.

Shannon Keller O'Loughlin (2017) *A survey and analysis of tribal-state Indian Child Welfare Act agreements (including promising practices)*. New York.

Smith, D. E. (2004) *From Gove to governance: reshaping Indigenous governance in the Northern Territory*. Canberra, ACT.

SNAICC (2020) *Discuss and reflect on the principles that underpin your partnership, Monitoring and evaluation*. Available at: <https://www.snaicc.org.au/sector-development/audit-tool-2/> (Accessed: 1 August 2020).

Statistics Canada (2017) *Province of Manitoba: Focus on Geography Series, 2016 Census*. 98-404-X2016001. Ottawa, Ontario.

Sullivan, P. (2007) *Indigenous governance: The Harvard Project, Australian aboriginal organisations and cultural subsidiarity*. Alice Springs.

Tasker, J. P. (2018a) 'Ottawa to hand over child welfare services to Indigenous governments', *CBC*, 30 November.

Tasker, J. P. (2018b) 'Trudeau promises new legal framework for Indigenous people', *CBC*, 14 February.

Tilton, E. and Anderson, P. (2016) *Bringing Them Home 20 years on: an action plan for healing*. Barton, ACT.

Tkacik, M. (2008) 'Characteristics of Forms of Autonomy', *International Journal on Minority and Group Rights*, 15, pp. 369–401.

Truth and Reconciliation Commission (2015) *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*.

UNDP (1997) *The Global Research Framework Of The Decentralized Governance Programme*. New York.

UNPFII (2006) *Who are indigenous peoples*. New York. Available at: <http://www.un.org/esa/>.

de Villiers, B. (2019) 'Privatised Autonomy for the Noongar People of Australia: A New Model for Indigenous Self-Government', in *Indigenous, Aboriginal, Fugitive and Ethnic Groups Around the Globe*. IntechOpen.

Weller, M. and Wolff, S. (2005) *Autonomy, Self Governance and Conflict Resolution: Innovative Approaches to Institutional Design in Divided Societies*. Taylor & Francis (Routledge Advances in International Relations and Global Politics).

WHO (2020) *Decentralisation, Health laws and universal health coverage*. Available at: <https://www.who.int/health-laws/topics/governance-decentralisation/en/> (Accessed: 1 July 2020).

Wighton, A. and Smith, D. (2018) *Common Roots, Common Futures: Indigenous Pathways to Self-Determination (Preliminary Report into Indigenous Governance Education and Training in Australia)*. Canberra.

World Bank (2001) *Administrative Decentralization, Public sector governance*.