

Changes to the Family Law Act regarding First Nations Families & Discussion

Host: Joanne Law



TUESDAY | 28 MAY | 1.00PM (AEST) | ONLINE



THE DISPUTE RESOLUTION
TRAINING AND
MEMBERSHIP SPECIALISTS



Mediation Institute acknowledges Traditional Owners of Country throughout Australia.

We recognize the continuing connection to land, waters and communities and pay our respect to Elders past, present and to emerging leaders.

I COME TO YOU TODAY FROM THE LANDS OF THE GUNAIKURNAI PEOPLES IN VICTORIA.

#NRW2024

NOW MORE THAN EVER

NATIONAL RECONCILIATION WEEK 2024 27 MAY – 3 JUNE #NRW2024 RECONCILIATION.ORG.AU



AGENDA

1. Welcome
2. What are the changes to definition of family?
3. What are the changes to best interests of the child?
4. What is the FDR service for ATSI families?
5. Where does FGC fit in?
6. Discussion

NOTE: We will be recording this session and making it publicly available on the Mediation Institute YouTube channel.

Please be mindful to keep your camera off if you are not comfortable with that when we reach the discussion part of the session.

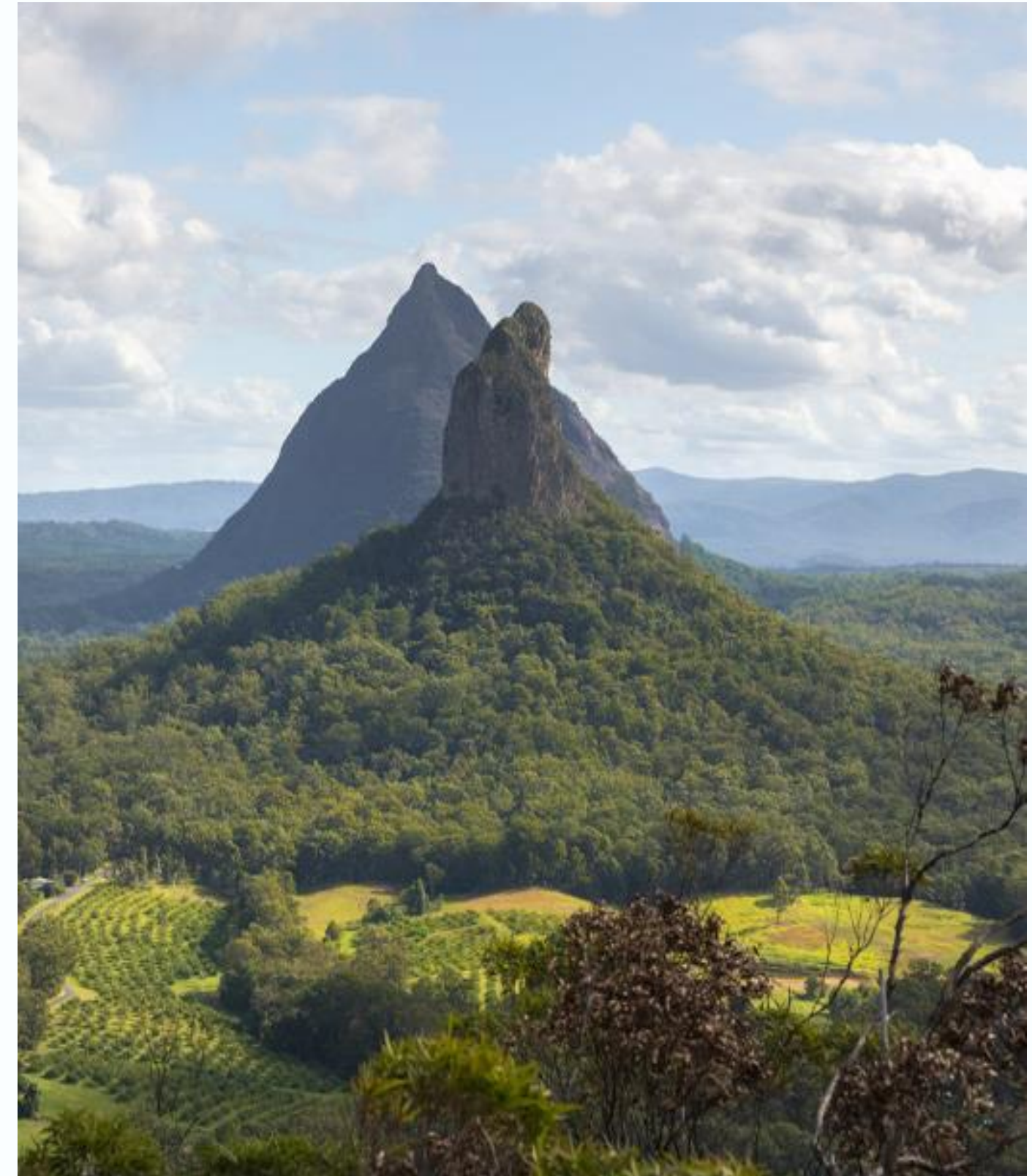
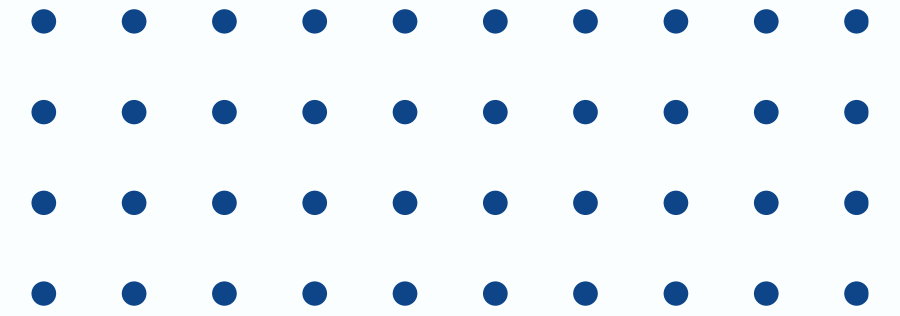


Guest

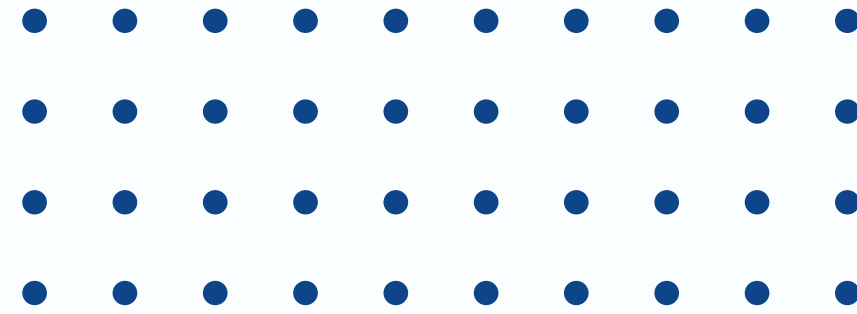
Gerry is an FDR Practitioner at Family Relationships Centre – Centacare

Gerry's Aboriginal heritage is from Cherbourg; the Wakka Wakka and Kabbi Kabbi Clans.

Gerry's Grandmother was part of the stolen generation.



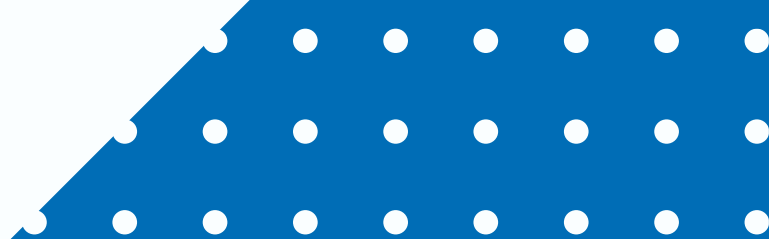
INTRODUCTIONS



Welcome.

Please use the chat to share.

1. Who are you and what traditional country are you joining us from?
2. What are you hoping to learn today?



WHO IS A RELATIVE?

The definition has changed for ATSI children.

Definition of Relative – Family Law Act 1975

(vii) for an **Aboriginal child or Torres Strait Islander child**—a person who, in accordance with the child's Aboriginal or Torres Strait Islander culture (including but not limited to any kinship systems of that culture), is related to the child;

**How are we going to understand this?
When do we need to?**



BEST INTERESTS OF THE CHILD

Section 60CC – How a court determines what is in a child’s best interests

2 (a) what arrangements would promote the safety (including safety from being subjected to, or exposed to, family violence, abuse, neglect, or other harm) of:

(i) the child; and

(ii) each person who has care of the child (whether or not a person has parental responsibility for the child);

2(b) any views expressed by the child;

2(c) the developmental, psychological, emotional and cultural needs of the child;

2(d) the capacity of each person who has or is proposed to have parental responsibility for the child to provide for the child's developmental, psychological, emotional and cultural needs;

2(e) the benefit to the child of being able to have a relationship with the child’s parents, and other people who are significant to the child, where it is safe to do so;

2(f) anything else that is relevant to the particular circumstances of the child.

Plus ...

Safety for the child and care givers

Any views expressed by the child

The developmental, psychological, emotional and cultural needs of the child

The capacity each person with parental responsibility to provide for the child’s needs

The benefits to the child of being able to have a relationship with their parents and other people who are significant to the child

Anything else that is relevant to the particular child.

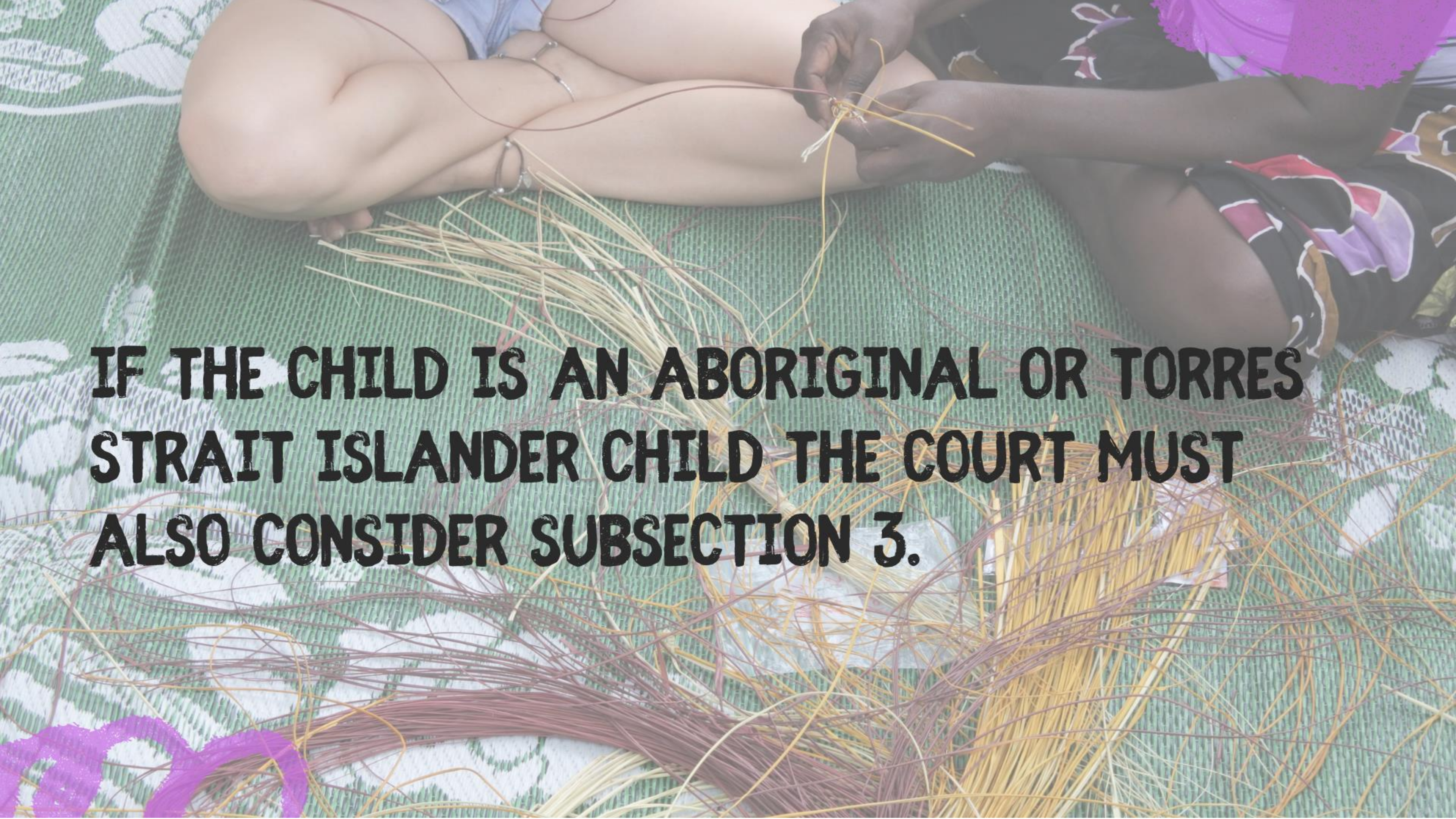
FAMILY VIOLENCE

(2A) In considering the matters set out in paragraph (2)(a), the court must include consideration of:

(a) any history of family violence, abuse or neglect involving the child or a person caring for the child (whether or not the person had parental responsibility for the child); and

(b) any family violence order that applies or has applied to the child or a member of the child's family.





IF THE CHILD IS AN ABORIGINAL OR TORRES STRAIT ISLANDER CHILD THE COURT MUST ALSO CONSIDER SUBSECTION 3.

60CC(3)(A) CHILD'S RIGHT TO ENJOY CULTURE

In addition to the 6 general best interest factors 60cc(3)(a)



60CC(3)(A) THE CHILDS RIGHT TO ENJOY THE CHILD'S ABORIGINAL OR TORRES STRAIT ISLANDER CULTURE BY HAVING THE SUPPORT, OPPORTUNITY AND ENCOURAGEMENT NECESSARY:

SAFETY

VIEWS OF THE CHILD

DEVELOPMENTAL, PSYCHOLOGICAL, EMOTIONAL AND CULTURAL NEEDS

PARENTS CAPACITY TO PROVIDE FOR THE CHILD'S NEEDS

BENEFIT OF SIGNIFICANT RELATIONSHIPS

ANYTHING ELSE RELIVANT TO THE CHILD



60CC(3)(A)(1) TO CONNECT WITH, AND MAINTAIN THEIR CONNECTION WITH MEMBERS OF THEIR FAMILY AND WITH THEIR COMMUNITY, CULTURE, COUNTRY AND LANGUAGE



60CC(3)(A)(2) TO EXPLORE THE FULL EXTENT OF THAT CHILDS CULTURE, CONSISTENT WITH THE CHILD'S AGE AND DEVELOPMENTAL LEVEL AND THE CHILD'S VIEWS.

60CC(3)(A)(3) TO DEVELOP A POSITIVE APPRECIATION OF THAT CULTURE



60CC(3)(B) THE LIKELY IMPACT OF ANY PROPOSED PARENTING ORDER ...
WILL HAVE ON THAT RIGHT.



FAMILY DISPUTE RESOLUTION

FDR services help family to negotiate a resolution for parenting disputes regarding care arrangements for children and property settlement agreements.

Once agreement is reached parenting plans or consent orders can be put in place.

- There are some first nations people working in mainstream FDR services and more being trained.
- Sometimes they are considered culturally unsafe.
- Where there are first nations FDR Practitioners, they are usually heavily booked out but mainstream services are underutilised by ATSI people.
- The AG's Department has recognised an unmet need and selected 9 ACCO's to be funded to train FDR practitioners and establish FDR services for their communities [Family Dispute Resolution |](#)

[Attorney-General's Department \(ag.gov.au\)](#) 1 in NT, 2 in WA, 4 in NSW, 2 in QLD – none in Vic, SA or Tas.

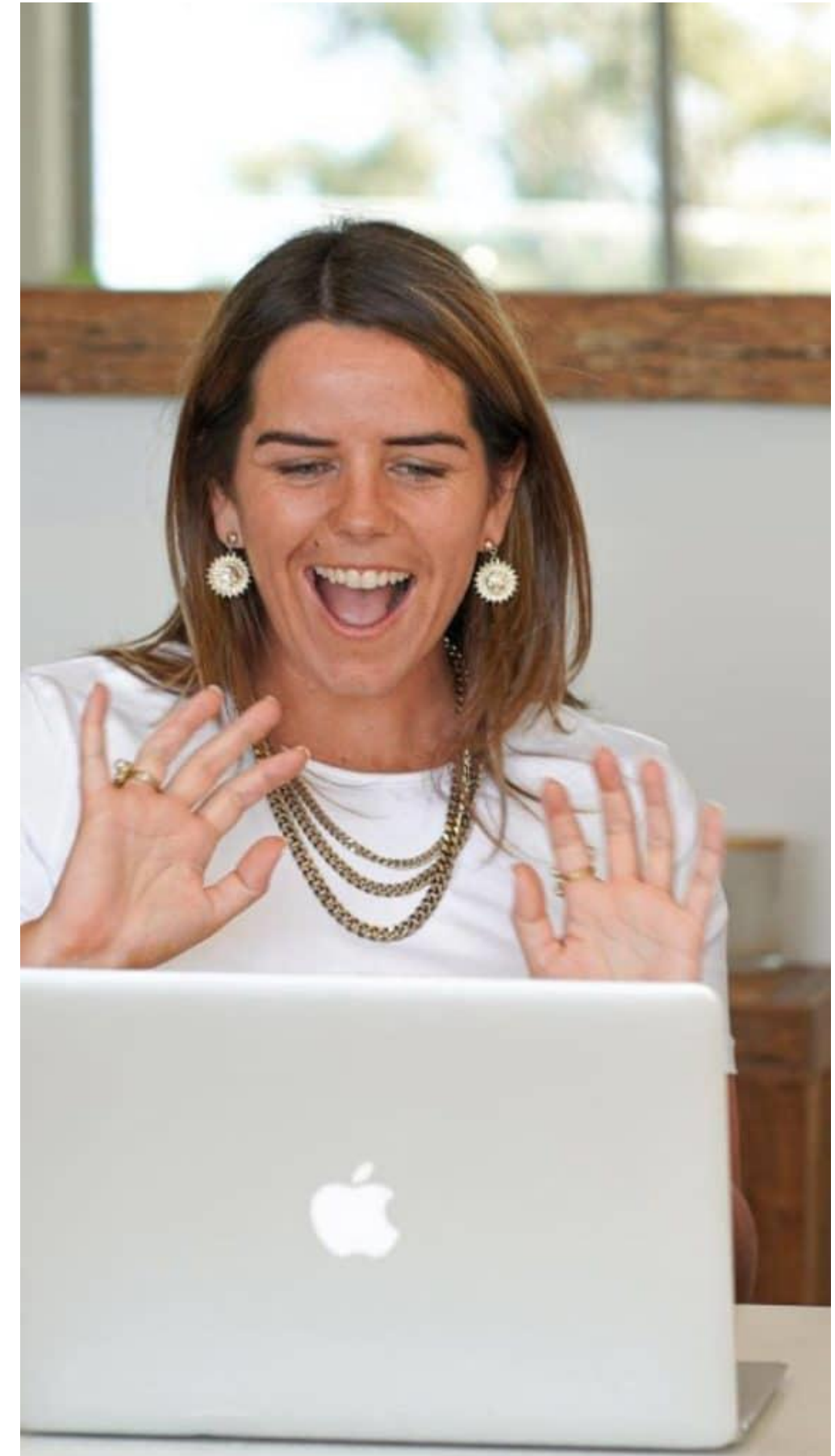
FAMILY GROUP CONFERENCING

FGC is an inclusive and restorative approach to family led decision making that involves family members making a plan for the care and welfare of a child or young person. Often the child or young person is present and part of the process.

Many of the FGC facilitators are first nations people and NSW has an indigenous panel.

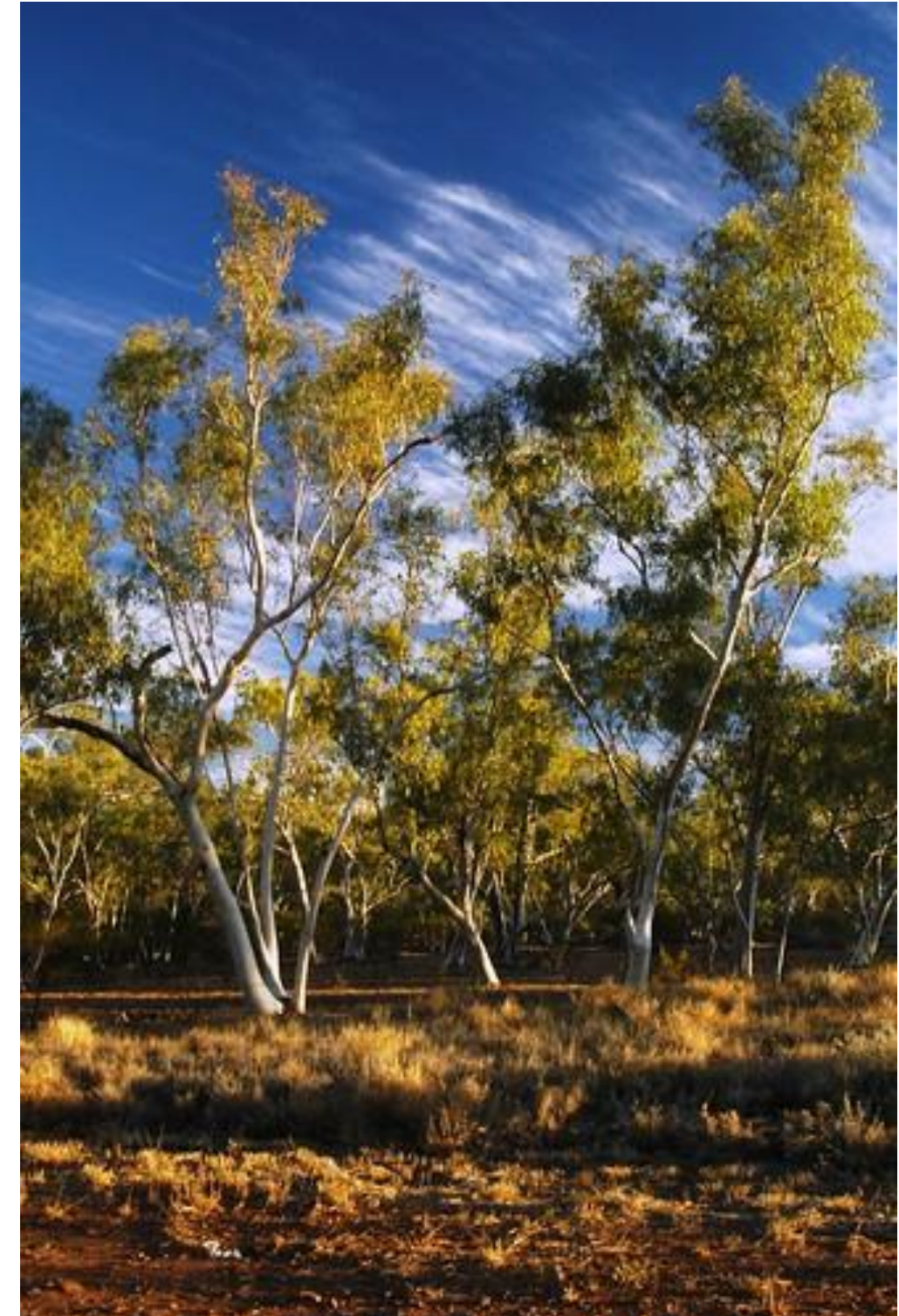
www.facs.nsw.gov.au/families/out-of-home-care/parents-with-kids-in-oohc/caseworker/chapters/family-group-conferencing

Many of our first nations students have trained in both and are working on or planning a FGC-FDR model that is more culturally appropriate for non-nuclear families.



DISCUSSION

- **Family** - What difference will changing the definition of member of the family make for ATSI children?
- **Cultural Safety** - How can non-indigenous FDRPs and other professionals working with ATSI children, and their families be culturally safe?
- **Connection** - What does connection to family, community, culture, country and language look like?
- **Child Protection** – Should family law best interest considerations be used for ATSI children when parental responsibility is held by the state?
- **Family Led Decision Making** – Does family group conferencing belong in family law? Is so how do we support it's use?



FIND OUT MORE

Find out more about the two qualifications discussed

www.mediationinstitute.edu.au/chc81115-grad-dip-family-dispute-resolution

www.mediationinstitute.edu.au/family-group-conference-facilitator-training/



www.mediationinstitute.edu.au



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