



Secretariat National Aboriginal and Islander Child Care

State and territory legislation incorporating the Aboriginal and Torres Strait Islander Child Placement Principle

AUSTRALIAN CAPITAL TERRITORY (ACT)

Introduction

SNAICC is undertaking research and resource development work in support of improving compliance with the Aboriginal and Torres Strait Islander Child Placement Principle. SNAICC is therefore pleased that in support of this, Arnold Bloch Liebler a law firm in Melbourne has documented the sections of state and territory legislation that incorporate the Principle.

The Aboriginal or Torres Strait Islander child placement principle (ATSICPP) recognises the importance of Aboriginal and Torres Strait Islander children in out of home care staying connected to family and culture. It also recognises of the destructive impact of historic policies of assimilation and forced and unjustified removal of children on Aboriginal and Torres Strait Islander peoples.

In each jurisdiction the ATSICPP is part of child protection legislation and requires a similar descending order of placement for children who need to be in out of home care. The first preference under the principle is to place the child with their extended family or kinship group, the second preference with their local community and the third preference with another Aboriginal and Torres Strait Islander family in the area. Once all of these options have been fully explored, the fourth preference is a non-family and non-Aboriginal or Torres Strait Islander placement. Implementation of the Principle also requires that relevant Aboriginal or Torres Strait Islander organisations be consulted about the child's placement and that children are assisted to keep in contact with their family, language and culture.

SNAICC extends a warm thanks to ABL for documenting the legislation within which the Principle is embedded in each state and territory and is pleased to make this available on our web site at www.snaicc.asn.au

Other information and analysis of the Aboriginal and Torres Strait Islander Child Placement Principle will be published by SNAICC in coming months.

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1 Australian Capital Territory ('ACT')

1.1 Fostering

Children and Young People Act 2008 (ACT) (the 'Act')

Section 8 of the Act states the best interests of the child or young person are paramount. According to the principles applying to the Act, among other things, 'the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced' (s 9). In addition, principles relating to Aboriginal and Torres Strait Islander children and young people are found in s 10 of the Act. Section 513 of the Act deals with priorities for placement with out-of-home carer - Aboriginal or Torres Strait Islander child or young person. Section 349 of the Act outlines what must be considered in deciding what is in the best interests of the child or young person, in particular s 349(1)(g). Part 13.1 of the Act deals with emergency action. Division 14.3.4 of the Act concerns care plans, with specific considerations for Aboriginal or Torres Strait Islander child or young person in s 455(b)(ii). Aboriginal or Torres Strait Islander cultural plan is defined in s 513(3) of the Act. Relevant provisions of the Act include:

7 Main object of Act

The objects of this Act include -

(a) providing for, and promoting, the wellbeing, care and protection of children and young people in a way that -

(i) recognises their right to grow in a safe and stable environment; and

(ii) takes into account the responsibilities of parents, families, the community and the whole of government for them; and

(b) ensuring that children and young people are provided with a safe and nurturing environment by organisations and people who, directly and indirectly, provide for their wellbeing, care and protection; and

(c) preventing abuse and neglect of children and young people by providing whole of government assistance to children and young people, their parents and families, the community, and others who have responsibility for them; and

(d) ensuring that Aboriginal and Torres Strait Islander people are included and participate in -

(i) providing for, and promoting, the wellbeing, care and protection of Aboriginal and Torres Strait Islander children and young people; and

(ii) preventing the abuse and neglect of Aboriginal and Torres Strait Islander children and young people; and

(iii) rehabilitating and reintegrating Aboriginal and Torres Strait Islander Young offenders; and

(e) ensuring that services provided by, or for, government for the wellbeing, care and protection of children and young people -

- (i) are centred on the needs of children and young people; and
- (ii) are informed by processes which engage children and young people, wherever possible, and take their views and wishes into account; and
- (iii) foster and promote the health, education, developmental needs, spirituality, self-respect, self-reliance and dignity of children and young people; and
- (iv) respect the individual race, ethnicity, religion, disability, sexuality and culture of children and young people; and

(f) ensuring that young offenders -

- (i) receive positive support and opportunities to become rehabilitated and reintegrated community members; and
- (ii) share responsibility for rehabilitation and reintegration with their parents and families, the community and the government in partnership; and

(g) imposing standards that must be complied with for the delivery of services to children and young people; and

(h) ensuring the protection of children and young people in employment.

8 Best interests of children and young people paramount consideration

(1) In making a decision under this Act in relation to a particular child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration.

(2) In making a decision under this Act otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people.

Note 1 For the criminal matters chapters (see s 91), there are further provisions about how a decision-maker decides what is in the best interests of a child or young person, see s 94 (Youth justice principles).

Note 2 For the care and protection chapters (see s 336), there are further provisions about how a decision-maker decides what is in the best interests of a child or young person (see s 349).

(3) To remove any doubt, a reference in any section of this Act to the best interests of a child or young person does not limit this section.

9 Principles applying to Act

(1) In making a decision under this Act in relation to a child or young person, a decision-maker must have regard to the following principles where relevant,

except when it is, or would be, contrary to the best interests of a child or young person:

- (a) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced;
- (b) the child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption;
- (c) the child's or young person's age, maturity, developmental capacity, sex, background and other relevant characteristics should be considered;
- (d) delay in decision-making processes under the Act should be avoided because delay is likely to prejudice the child's or young person's wellbeing.

Note In addition to these general principles, the following principles also apply:

- (a) for the care and protection chapters - care and protection (see s 350);
- (b) for ch 20 - childcare services principles (see s 730).

(2) A decision-maker exercising a function under this Act must, where practicable and appropriate, have qualifications, experience or skills suitable to apply the principles in subsection (1) in making decisions under the Act in relation to children and young people.

10 Aboriginal and Torres Strait Islander children and young people principle

In making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person, in addition to the matters in section 8 and 9, the decision-maker must take into account the following:

- (a) the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child's or young person's Aboriginal or Torres Strait Islander community;
- (b) submissions about the child or young person made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the chief executive as providing ongoing support services to the child or young person or the child's or young person's family;
- (c) Aboriginal and Torres Strait Islander traditions and cultural values (including kinship rules) as identified by reference to the child's or young person's family and kinship relationships and the community with which the child or young person has the strongest affiliation.

Note For decisions about placement of an Aboriginal or Torres Strait Islander child or young person with an out-of-home carer, see s 513 (Priorities for placement with out-of-home carer - Aboriginal or Torres Strait Islander child or young person).

14 Who is a significant person for a child or young person?

In this Act:

significant person, for a child or young person, means a person, (other than a family member) who the child or young person, a family member of the child or young person or the chief executive considers is significant in the child's or young person's life.

Examples—people who may be significant people

1 a father-in-law, mother-in-law, brother-in-law or sister-in-law of a young person

2 a long-term friend of a child or young person

3 a person who normally lives with the child or young person

4 a domestic partner of a young person

5 a domestic partner of a parent of a child or young person

6 a boyfriend or girlfriend of a young person

7 a person who has responsibility for the child or young person in accordance with the cultural traditions and customs of the child's or young person's community

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

15 What is parental responsibility?

In this Act:

parental responsibility, for a child or young person, means all the duties, powers, responsibilities and authority parents have by law in relation to their children, including the following aspects of parental responsibility:

(a) daily care responsibility for the child or young person;

(b) long-term care responsibility for the child or young person.

Note Daily care responsibility is dealt with in s 19.

Long-term care responsibility is dealt with in s 20.

17 Aspects of parental responsibility may be transferred

(1) Parental responsibility may be transferred from a person to someone else under -

(a) a family group conference agreement; or

Note Family group conferences are dealt with in ch 3 and ch 12.

(b) an appraisal order including a temporary parental responsibility provision; or

Note Appraisal orders and temporary parental responsibility provisions are dealt with in s 372 and s 373.

(c) emergency action; or

Note Emergency action is dealt with in pt 13.1.

(d) a care and protection order including a parental responsibility provision; or

Note Care and protection orders are dealt with in ch 14.

(e) a safe custody warrant; or

(f) a court order (under this Act or another law in force in the Territory); or

Example - court order under another law

a parenting order under the *Family Law Act 1975* (Cwlth)

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(g) a provision of another law in force in the Territory.

(2) If parental responsibility is transferred from a person to someone else -

(a) only the aspect of parental responsibility expressly stated to be transferred is transferred; and

(b) no-one else's parental responsibility, or aspect of parental responsibility, for the child or young person is diminished except to the extent expressly stated or necessary to give effect to the transfer.

19 Daily care responsibility for children and young people

(1) A person who has **daily care responsibility** for a child or young person has responsibility for, and may make decisions about, the child's or young person's daily care.

Examples - daily care responsibilities and decisions

1 where and with whom the child or young person lives

2 people with whom the child or young person may, or must not, have contact

3 arrangements for temporary care of the child or young person by someone else

4 everyday decisions, including, for example, about the personal appearance of the child or young person

5 daily care decisions about education, training and employment

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132)

(2) A person who has daily care responsibility for a child or young person may do any of the following:

(a) consent to a health care assessment of the child or young person's physical or mental wellbeing and have access to the assessment report;

(b) on the advice of a health practitioner or health professional - consent to health care treatment, not including surgery (other than surgery mentioned in paragraph (c)), for the child or young person;

(c) on the advice of a dentist or dental therapist - consent to dental treatment, including minor dental surgery, for the child or young person.

(3) If the person makes a decision about the people with whom the child or young person may have contact, the person is also responsible for arrangements to give effect to the decision.

(4) This section does not limit the matters for which the person has responsibility to make decisions for the child or young person, but is subject to -

(a) a court order (under this Act or another law); and

Examples

1 A decision by a person who has daily care responsibility for a child about people with whom the child may or may not have contact is subject to a care and protection order that includes a contact provision about who may, or must not, have contact with the child.

2 A decision by a person who has daily care responsibility for a child or young person about where and with whom the child or young person lives is subject to a care and protection order that includes a residence provision.

3 The Childrens Court makes a care and protection order for a young person that includes a parental responsibility provision that a stated person who has daily care responsibility for the young person must exercise it in a stated way. The person's exercise of daily care responsibility for the young person is subject to the order.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(b) if there is a care plan in force for the child or young person - the care plan.

Note A care plan for a child or young person is a written plan of the chief executive's proposals for the care and protection of the child or young person (see s 455).

(5) To remove any doubt, this section does not affect any right of a child or young person to consent to their own health care treatment.

(6) In this section:

dental therapist -

(a) means a person registered under the *Health Practitioner Regulation National Law (ACT) Act 2010* to practice the health profession of dental therapist (other than as a student); and

(b) for an activity, includes a person mentioned in paragraph (a) holding limited or provision registration, to the extent that the person is allowed to do the activity under the person's registration.

20 Long-term care responsibility for children and young people

(1) A person who has ***long-term care responsibility*** for a child or young person has -

(a) responsibility for the long-term care, protection and development of the child or young person; and

(b) all the powers, responsibilities and authority a guardian of a child or young person has by law in relation to the child or young person.

Examples - long-term care responsibilities

1 administration, management and control of the child's or young person's property

2 religion and observance of racial, ethnic, religious or cultural traditions

3 obtaining or opposing the issuing of a passport for the child or young person

4 long-term decisions about education, training and employment

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132)

(2) A person who has long-term care responsibility for a child or young person may, on the advice of a health practitioner or health professional, consent to health care treatment that involves surgery for the child or young person.

Note Consent to minor dental surgery may be given by a person who has daily care responsibility for the child or young person (see s 19 (2) (c)).

(3) This section does not limit the matters for which the person has responsibility in relation to the child or young person, but is subject to -

- (a) a court order (under this Act or another law); and
- (b) if there is a care plan in force for the child or young person - the care plan.

Note 1 The Childrens Court may make a care and protection order for a child or young person that includes a parental responsibility provision giving long-term care responsibility for the child or young person to someone, or removing the responsibility from someone, or stating how someone may exercise the responsibility (see pt 14.6).

Note 2 A care plan for a child or young person is a written plan of the chief executive's proposals for the care and protection of the child or young person (see s 455).

(4) To remove any doubt, this section does not affect any right of a child or young person to consent to their own health care treatment.

349 What is in best interests of child or young person?

(1) For the care and protection chapters, in deciding what is in the best interests of a child or young person, a decision-maker must consider each of the following matters that are relevant to the child or young person:

- (a) the need to ensure that the child or young person is not at risk of abuse or neglect;
- (b) any views or wishes expressed by the child or young person;
- (c) the nature of the child's or young person's relationship with each parent and anyone else;
- (d) the likely effect on the child or young person of changes to the child's or young person's circumstances, including separation from a parent or anyone else with whom the child has been living;
- (e) the practicalities of the child or young person maintaining contact with each parent and anyone else with whom the child or young person has been living or with whom the child or young person has been having substantial contact;
- (f) the capacity of the child's or young person's parents, or anyone else, to provide for the child's or young person's needs including emotional and intellectual needs;
- (g) for an Aboriginal or Torres Strait Islander child or young person—that it is a high priority to protect and promote the child's or young person's cultural and spiritual identity and development by, wherever possible, maintaining and building the child's or young person's connections to family, community and culture;
- (h) that it is important for the child or young person to have settled, stable and permanent living arrangements;

(i) for decisions about placement of a child or young person—the need to ensure that the earliest possible decisions are made about a safe, supportive and stable placement;

(j) the attitude to the child or young person, and to parental responsibilities, demonstrated by each of the child's or young person's parents or anyone else;

(k) any abuse or neglect of the child or young person, or a family member of the child or young person;

(l) any court order that applies to the child or young person, or a family member of the child or young person.

(2) For the care and protection chapters, in deciding what is in the best interests of a child or young person, a decision-maker may also consider any other fact or circumstance the decision-maker considers relevant.

350 Care and protection principles

(1) In making a decision under the care and protection chapters in relation to a child or young person, a decision-maker must apply the following principles (the care and protection principles) except when it is, or would be, contrary to the best interests of a child or young person—

(a) the primary responsibility for providing care and protection for the child or young person lies with the child's or young person's parents and other family members;

(b) priority must be given to supporting the child's or young person's parents and other family members to provide for the wellbeing, care and protection of the child or young person;

(c) if the child or young person does not live with his or her family because of the operation of this Act—contact with his or her family, and significant people, must be encouraged, if practicable and appropriate;

(d) if the child or young person is in need of care and protection and the child's or young person's parents and other family members are unwilling or unable to provide the child or young person with adequate care and protection (whether temporarily or permanently)—it is the responsibility of the government to share or take over their responsibility;

(e) if the child or young person does not live with the child's or young person's parents because of the operation of this Act—the safety and wellbeing of the child are more important than the interests of the parents;

(f) a court should make an order for a child or young person only if the court considers that making the order would be better for the child or young person than making no order at all.

(2) The care and protection principles must be applied in addition to the principles under section 9 (Principles applying to Act) and section 10 (Aboriginal and Torres Strait Islander children and young people principle).

Note The Maori children and young people principle may also apply if an order or proceeding is transferred to the ACT from New Zealand (see s 678).

351 Helping families understand care and protection procedures

(1) A decision-maker making a decision under the care and protection chapters in relation to a child or young person must endeavour to ensure that the relevant people for the decision—

(a) understand what the decision is going to be about; and

(b) understand the decision-making process; and

(c) know that the child or young person, and people with parental responsibility for the child or young person, may take part in the decision-making process and have their views and wishes heard; and

(d) are informed of, and understand, the decision.

Note 1 If a child or young person is the subject of a proceeding under this Act, the chief executive must give the child or young person sufficient information about the proceeding, in language and a way that the child or young person can understand, to allow the child or young person to take part fully in the proceeding (see Court Procedures Act 2004, s 74A (Participation of children and young people in proceedings)).

Note 2 If the decision-maker is a court, the court must also endeavour to ensure that the child or young person, and any other party present at the hearing of the proceeding, understands the nature and purpose of the proceeding and any orders and knows of their appeal rights (see Court Procedures Act 2004, s 74B (Court must ensure children and young people etc understand proceedings)).

(2) The decision-maker must give the relevant people for the decision sufficient information about the decision-making process, in language and a way that they can understand, to allow the child or young person, and people with parental responsibility for the child or young person to take part fully in the decision-making process.

(3) In this section:

relevant people, for a decision in relation to a child or young person, means—

(a) the child or young person or, if the child is represented, the representative of the child or young person; and

Note Representation of children and young people is dealt with in the Court Procedures Act 2004, pt 7A (Procedural provisions—proceedings involving children).

(b) each person with parental responsibility for the child or young person.

Note 1 A child or young person has a right to take part in a proceeding under this Act in relation to the child or young person (see Court Procedures Act 2004, s 74A (Participation of children and young people in proceedings)).

Note 2 A court must also take steps to ensure that the child or young person and other people understand proceedings etc (see Court Procedures Act 2004, s 74B (Court must ensure children and young people etc understand proceedings)).

352 Views and wishes of children and young people

(1) A decision-maker making a decision in relation to a child or young person under the care and protection chapters must give the child or young person a reasonable opportunity to express his or her views and wishes personally to the decision-maker, unless the decision-maker is satisfied that the child or young person does not have sufficient developmental capacity to express his or her views or wishes.

(2) A decision-maker may find out the views and wishes of a child or young person—

(a) by having regard to—

(i) anything said personally by the child or young person to the decision-maker; or

(ii) anything said by a representative of the child or young person about the child's or young person's views or wishes; or

Note Representation of children and young people is dealt with in the Court Procedures Act 2004, pt 7A (Procedural provisions—proceedings involving children).

(iii) anything about the child's or young person's views or wishes contained in a report given to the decision-maker; or

(b) in any other way the decision-maker considers appropriate.

(3) A decision-maker must not require a child or young person to express the child's or young person's views or wishes about anything.

Chapter 13 Care and protection and therapeutic protection—

emergency situations

Part 13.1 Emergency action

403 When are children and young people in need of emergency care and protection?

For the care and protection chapters, a child or young person is in need of emergency care and protection if the child or young person—

(a) is in immediate need of care and protection; or

(b) is likely to be in immediate need of care and protection if emergency action is not taken.

Note In need of care and protection is defined in s 345.

404 When are children and young people in need of emergency therapeutic protection?

For the care and protection chapters, a child or young person is in need of emergency therapeutic protection if—

(a) the child or young person meets the criteria for a therapeutic protection order; and

(b) the immediate placement of the child or young person in a therapeutic protection place is necessary to ensure the child or young person's safety.

405 What is emergency action?

In this Act:

emergency action, taken by the chief executive or a police officer, for a child or young person—

(a) means transferring daily care responsibility for the child or young person to the chief executive or police officer; and

(b) includes arranging for the child's or young person's care and protection by keeping the child or young person at a place or by moving the child or young person from a place to another place.

Note 1 If the chief executive has daily care responsibility for a child or young person, the chief executive must place the child or young person with an out-of-home carer (see pt 15.4) unless the child or young person is in therapeutic protection.

Note 2 An authorised person or police officer may at any time enter premises if the authorised person or police officer believes on reasonable grounds that a child or young person at the premises is in need of emergency care and protection and the purpose of the entry is to take emergency action for the child or young person (including using force that is reasonable and necessary to obtain entry to safeguard the wellbeing of the child or young person) (see s 814).

406 Emergency action—criteria for taking emergency action

(1) The chief executive or a police officer may take emergency action for a child or young person if the chief executive or police officer believes on reasonable grounds that the child or young person is in need of emergency care and protection or emergency therapeutic protection.

(2) To remove any doubt, the chief executive or police officer may take emergency action for a child or young person if the child or young person is in the care of—

(a) a parent of the child or young person; or

(b) someone else who has daily care responsibility for the child or young person.

Note Daily care responsibility for a child or young person is dealt with in s 19.

407 Emergency action—assistance

The chief executive or police officer may use whatever assistance is necessary and reasonable to take emergency action. *Note* The chief executive may ask the chief police officer for assistance in carrying out emergency action and the chief police officer must assign police officers to assist the chief executive (see pt 18.1).

408 Emergency action—certain people must be told

(1) If a police officer takes emergency action for a child or young person, the police officer must—

(a) immediately tell the chief executive, in writing—

(i) the name of the child or young person; and

(ii) why the emergency action was taken; and

(b) if practicable—tell the following people about the emergency action as soon as practicable:

(i) the parents of the child or young person;

(ii) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person; and

(c) deliver the child or young person to the place or person advised by the chief executive.

(2) However, if it is not practicable for the police officer to tell the chief executive in writing immediately, the police officer may tell the chief executive orally immediately and then in writing as soon as practicable.

(3) If the chief executive takes emergency action for a child or young person, or is told that a police officer has taken emergency action for a child or young person, the chief executive must, as soon as practicable, tell the following people that emergency action has been taken for the child or young person:

(a) if not already told about the emergency action—

(i) the parents of the child or young person; and

(ii) each other person (if any) who has daily care responsibility, or long-term care responsibility, for the child or young person;

(b) the public advocate;

(c) the Childrens Court.

409 Emergency action—daily care responsibility after action

(1) If the chief executive takes emergency action for a child or young person, the chief executive has daily care responsibility for the child or young person.

(2) If a police officer takes emergency action for a child or young person, the police officer has daily care responsibility for the child or young person until the police officer tells the chief executive about the emergency action under section 408.

Note The police officer must tell the chief executive immediately in writing, or, if that is not practicable, immediately orally and as soon as practicable in writing (see s 408 (1) and (2)).

(3) After the police officer tells the chief executive about the emergency action, the chief executive has daily care responsibility for the child or young person.

(4) The chief executive may authorise a police officer to exercise daily care responsibility for a child or young person on behalf of the chief executive.

Note If 2 or more people have parental responsibility for a child or young person, either of them may discharge the responsibility. However, if the chief executive is 1 of the people, no-one else may discharge the responsibility in a way that would be incompatible with the chief executive's discharge of the responsibility (see s 18 and s 475 (2)).

410 Emergency action—length of daily care responsibility

If the chief executive or a police officer takes emergency action for a child or young person, the chief executive or police officer may keep daily care responsibility for the child or young person without an order of the Childrens Court—

(a) for not longer than 2 working days after the day the emergency action was taken; or

(b) if the 2 working days are interrupted by a Saturday, a Sunday and a public holiday—until the matter can be brought before the court on the next sitting day of the court.

411 Care and protection appraisal and placement

If the chief executive has daily care responsibility for a child or young person under this division, the chief executive may make arrangements for the care and protection of the child or young person including—

(a) arranging a care and protection appraisal that includes an examination of the circumstance that led to the taking of the emergency action; and

Note Care and protection appraisals are dealt with in pt 11.2.

(b) placing the child or young person with a person including—

(i) a parent of the child or young person; or

(ii) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person; or

(iii) a former caregiver of the child or young person.

412 Emergency action—contact with family

(1) If the chief executive or a police officer has daily care responsibility for a child or young person under this division, the chief executive or police officer must, as far as practicable, allow reasonable contact between the child or young person and his or her family members and significant people.

(2) However, the chief executive or police officer is not required to allow contact if the contact would create a risk of harm to the child or young person.

413 Emergency action—application for orders

(1) This section applies if—

(a) the chief executive or a police officer has daily care responsibility for a child or young person under this division; and

(b) the chief executive applies for any of the following orders for the child or young person:

(i) an appraisal order;

(ii) a care and protection order;

(iii) an assessment order;

(iv) a therapeutic protection order.

(2) The chief executive need only give a copy of the application to people under the following sections before the application is heard by the Childrens Court:

(a) section 379 (Appraisal orders—who must be given application);

(b) section 427 (Care and protection orders—who must be given application);

(c) section 445 (Assessment orders—who must be given application);

(d) section 541 (Therapeutic protection orders—who must be given application).

(3) The Childrens Court must give initial consideration to the application on the day it is filed.

414 Emergency action—end of daily care responsibility

(1) This section applies if the chief executive or a police officer has daily care responsibility for a child or young person under this division.

(2) The chief executive or police officer stops having daily care responsibility for the child or young person if—

(a) the child or young person is returned to someone mentioned in section 415 (2); or

(b) the Childrens Court makes an order giving daily care responsibility for the child or young person to someone else.

415 Emergency action—return of child or young person

(1) This section applies if the chief executive or a police officer has daily care responsibility for a child or young person under this division and, at the end of the period for which the chief executive or police officer may keep responsibility—

(a) none of the following orders have been made for the child or young person:

(i) an appraisal order with a temporary parental responsibility provision;

(ii) an interim care and protection order with a parental responsibility provision;

(iii) a care and protection order with a parental responsibility provision;

(iv) an interim therapeutic protection order;

(v) a therapeutic protection order; and

(b) the chief executive or police officer still has daily care responsibility for the child or young person.

(2) The chief executive or police officer must deliver the child or young person into the care of 1 of the following people:

(a) a parent of the child or young person who has parental responsibility for the child or young person;

(b) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;

(c) a former caregiver of the child or young person.

Division 14.3.4 Care plans

455 What is a *care plan*?

In this Act:

care plan, for a child or young person who is, or is proposed to be, subject to a care and protection order or interim care and protection order—

(a) means a written plan for meeting the child's or young person's protection or care needs; and

(b) may include proposals for the purposes of case planning about the following:

(i) who the chief executive considers would be the best person to have a stated aspect of parental responsibility for the child or young person;

(ii) for an Aboriginal or Torres Strait Islander child or young person—the preservation and enhancement of the identity of the child or young person as an Aboriginal or Torres Strait Islander person;

(iii) if the chief executive proposes to place the child or young person in kinship care or foster care—the kind of placement that will be sought or provided for the child or young person including any interim placement arrangements;

Note Placement of children and young people in kinship care and foster care is dealt with in div 15.4.1.

(iv) how the chief executive proposes to ensure the living arrangements for the child or young person are as stable as possible;

(v) contact arrangements for the child or young person with family members and significant people as appropriate;

(vi) services to be provided for the child or young person;

(vii) if the child or young person is or is proposed to be placed in out-of-home care—planning and services to be provided for the child or young person when leaving out of home care.

456 Care plans—stability proposals

(1) This section applies if a care plan includes a proposal mentioned in section 455 (b) (iii) in relation to a child or young person's living arrangements.

(2) The chief executive must prepare a proposal (a stability proposal) that outlines how the chief executive proposes to ensure long-term placement in a safe, nurturing and secure environment.

(3) A stability proposal may include—

(a) for a child or young person who lives with his or her parents—strategies to ensure stable and long-term living arrangements; and

(b) for a child or young person who does not live with his or her parents—

(i) an assessment of whether restoration of the child or young person to his or her parents is a realistic possibility; or

(ii) a proposal for restoration that includes changes at the home or by the parents that the chief executive believes would need to occur before the chief executive would consider it safe for the child or young person to return to his or her parents; or

(iii) a proposal for long-term placement that the chief executive considers to be in the best interests of the child or young person.

(c) anything else the chief executive considers necessary to ensure a long-term placement in a safe, nurturing and secure environment.

(4) A proposal for long-term placement may include—

(a) placement under a care and protection order with a long-term parental responsibility provision; or

(b) placement under a care and protection order with an enduring parental responsibility provision; or

(c) placement under a parenting order under the Family Law Act 1975 (Cwlth); or

(d) adoption under the Adoption Act 1993.

(5) The chief executive must not include adoption in a proposal for long-term placement for an Aboriginal or Torres Strait Islander child or young person under subsection (4) unless the chief executive has considered the Adoption Act 1993, section 39G.

457 Care plans—who must be consulted

(1) If the chief executive is preparing a care plan for a child or young person, the chief executive must—

(a) tell the following people about the proposals the chief executive intends to include in the care plan:

(i) the child or young person;

(ii) each person who has daily care responsibility for the child or young person;

(iii) anyone else who would be involved in implementing a proposal;

Examples—people who would be involved

1 an out-of-home carer for the child or young person

2 a community-based service that is providing services to the child or young person

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(iv) for a proposal prepared under section 455 (b) (ii)—

(A) Aboriginal or Torres Strait Islander people who have an interest in the wellbeing of the child or young person through family, kinship and cultural ties; and

(B) any Aboriginal or Torres Strait Islander people or organisation identified by the chief executive as providing ongoing support services to the child or young person or the child's or young person's family; and

(b) give the people opportunity to make submissions to the chief executive about the proposals.

(2) If a person makes a submission to the chief executive about a proposal, the chief executive must consider the submission.

512 Chief executive may place child or young person with out-of-home carer

(1) If the chief executive has daily care responsibility for a child or young person, the chief executive may place the child or young person with an out-of-home carer.

(2) If the chief executive is placing an Aboriginal or Torres Strait Islander child or young person with an out-of-home carer, the placement must be in accordance with section 513.

Note An authorised person may, at any reasonable time, enter premises where a child or young person is living if the chief executive has placed the child or young person with an out-of-home carer under this section and the purpose of the entry is to ensure that the child or young person is being properly cared for (see s 815).

513 Priorities for placement with out-of-home carer - Aboriginal or Torres Strait Islander child or young person

(1) If the chief executive is placing an Aboriginal or Torres Strait islander child or young person with an out-of-home carer under section 512, the chief executive must place the child or young person with the first of the options mentioned in subsection (2) that -

(a) is available; and

(b) to which the child or young person does not object; and

(c) is consistent with any Aboriginal or Torres Strait Islander cultural plan in force for the child or young person.

(2) The chief executive may place an Aboriginal or Torres Strait Islander child or young person with any of the following out-of-home carers:

(a) a kinship carer;

(b) a foster carer who is a member of the child's or young person's Aboriginal or Torres Strait Islander community in a relationship of responsibility for the child or young person according to local custom and practice;

(c) a foster carer who is a member of the child's or young person's community;

(d) an Aboriginal or Torres Strait Islander foster carer;

(e) a non-Aboriginal or Torres Strait Islander foster carer who -

(i) the chief executive believes on reasonable grounds is sensitive to the child's or young person's needs; and

(ii) the chief executive believes on reasonable grounds is capable of promoting the child's or young person's ongoing contact with the child's or young person's Aboriginal or Torres Strait Islander family, community and culture; and

(iii) if family reunion or continuing contact with the child's or young person's Aboriginal or Torres Strait Islander family, community or culture is a consideration in the placement - lives near the child's or young person's Aboriginal or Torres Strait Islander family or community.

(3) In this section:

Aboriginal or Torres Strait Islander cultural plan, for an Aboriginal or Torres Strait Islander child or young person, means a care plan developed for the child or young person by the chief executive under section 455 (What is a *care plan*?) that includes proposals for the

The relevant provision that concerns Aboriginal and Torres Strait Islander children or young people in relation to 'care plans' is s 457.

1.2 Adoption

Adoption Act 1993 (ACT) (the 'Act')

Relevant provisions of the Act include:

Section 4 of the Act states that the best interests of the child are paramount. Section 5 outlines the relevant considerations, with additional requirements for Aboriginal and Torres Strait Island child or young person in s 6. Section 4(b)(ii) recognises the child's or young person's right to 'know about family background and culture and

have the opportunity to maintain or develop cultural identity.’ The relevant provisions of this Act concerning the Aboriginal child placement principle include:

4 Objects of Act

The main objects of this Act include—

- (a) ensuring that the best interests of the child or young person are the paramount consideration in the adoption of a child or young person; and
- (b) providing an adoption process that promotes the wellbeing and care of children and young people in a way that recognises the child’s or young person’s right—
 - (i) to grow in a safe and stable environment; and
 - (ii) to be cared for by a suitable family and to establish enduring relationships; and
 - (iii) to know about family background and culture and have the opportunity to maintain or develop cultural identity; and
- (c) ensuring that the Aboriginal and Torres Strait Islander people are included and participate in any adoption of an Aboriginal or Torres Strait Islander child or young person; and
- (d) ensuring that adoption is centred on the needs of the child or young person rather than an adult wanting to care for a child or young person; and
- (e) consulting with the child or young person throughout the adoption process and, wherever possible, taking the child’s or young person’s views into account; and
- (f) recognising a birth parent’s involvement in making decisions about their child’s future; and
- (g) providing for adoption plans to recognise the intentions of parties in an adoption; and
- (h) ensuring that equivalent standards apply for a child or young person adopted from the ACT and a child or young person adopted from overseas; and
 - (i) ensuring that the adoption process in the ACT complies with Australia’s international obligations, in particular the obligations arising under the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

Note The text of the Convention is set out in sch 1.

5 Best interests of child or young person paramount consideration

(1) A person making a decision under this Act in relation to a child or young person, must regard the best interests of the child or young person as the paramount consideration.

(2) In forming a view about the best interests of a child or young person, a person making a decision under this Act must take into account the following:

(a) the likely effect of the decision on the life course of the child or young person;

(b) the child's or young person's age, level of understanding, level of maturity, gender, and personal characteristics;

(c) the child's or young person's physical, emotional and educational needs;

(d) the views expressed by the child or young person;

(e) the relationship the child or young person has with the parents, any siblings and any other relatives;

(f) the relationship the child or young person has with the adoptive parents;

(g) the suitability and capacity of the adoptive parents to meet the child's or young person's needs;

(h) the alternatives to adoption for the child or young person to secure permanent family arrangements.

6 Aboriginal and Torres Strait Islander child or young person - additional requirements

In addition to section 5, a person making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person must -

(a) take into account the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child's or young person's Aboriginal or Torres Strait Islander community; and

(b) seek and consider submissions about the child or young person made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the chief executive as providing ongoing support services to the child or young person or the child's or young person's family; and

(c) take into account Aboriginal and Torres Strait Islander traditions and cultural values (including kinship rules) as identified by reference to the child's or young person's family and kinship relationships and the community with which the child or young person has the strongest affiliation.

39F Deciding application for adoption order for child or young person

(1) The court must not make an adoption order for a child or young person unless—

- (a) each consent required under division 3.3 has been given; and
- (b) the period within which each required consent may be revoked has expired without the consent having been revoked; and
- (c) after considering the report or reports given to it under section 39D (Report on proposed adoption) or section 57A (Report on child for intercountry adoption) and any other evidence, the court considers that—
 - (i) each applicant is of good reputation and able to fulfil the responsibility of the parent of a child or young person (including protecting a child's or young person's physical and emotional well being); and
 - (ii) each applicant is suitable to adopt the particular child or young person having regard to—
 - (A) the applicant's age, education and attitude to adoption; and
 - (B) the applicant's physical, mental and emotional health, particularly as it impacts on capacity to nurture the child or young person; and
 - (C) any other relevant consideration; and
 - (iii) the adoption is in the best interests of the child or young person.

(2) In deciding whether or not to make an adoption order, the court must have regard to—

- (a) the views expressed by the child or young person in the consultation required under section 39E (Consultation with child or young person before adoption order made); and
- (b) any preferences expressed in an adoption plan given to the court as part of a report required under section 39D (Report on proposed adoption).

Note Additional requirements apply to certain intercountry adoptions. See the following sections:

- s 57 (3) (Adoption in ACT of ACT child or young person by parents from Convention country);
- s 57B (3) (Adoption in ACT of child or young person from Convention country by ACT parents);
- s 57J (2) (Adoption in ACT of child or young person from prescribed overseas jurisdiction by ACT parents).

39G Aboriginal or Torres Strait Islander child or young person

(1) This section is in addition to, and does not limit, section 39F.

(2) An adoption order must not be made for an Aboriginal or Torres Strait Islander child or young person unless the court is satisfied that—

(a) the additional requirements mentioned in section 6 (Aboriginal and Torres Strait Islander child or young person—additional requirements) have been complied with; and

(b) it is not practicable for the child or young person to remain in the care of the birth parents or a responsible person; and

(c) the choice of the adoptive parents has been made having regard to the desirability of the child or young person—

(i) being in the care of a person who is a member of an Aboriginal or Torres Strait Islander community; and

(ii) being able to establish and maintain contact with his or her birth parents, any responsible person and the Aboriginal or Torres Strait Islander community of which the child or young person is or was a member.