



Secretariat National Aboriginal and Islander Child Care

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

COMMONWEALTH

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.

March 2011

SNAICC: Secretariat of National Aboriginal and Islander Child Care
The national peak body for Aboriginal and Torres Strait Islander child and family services
Suite 8, Level 1, 252 – 260 St. Georges Rd. North Fitzroy VIC 3068
PO Box 1445, North Fitzroy VIC 3068
Ph: 03 9489 8099 Fax: 03 9489 8044 snaicc@vicnet.net.au www.snaicc.asn.au

1 Commonwealth ('CTH')

While the *Family Law Act 1975* (Cth) does not implement an Aboriginal placement principle, the court must have regard to the child's Aboriginal background and is receptive to the underlying sociological rationale on which the principle is based where relevant to the child's particular circumstances.

Family Law Act 1975 (CTH)

4 Interpretation

(1) In this Act, the standard Rules of Court and the related Federal Magistrates Rules, unless the contrary intention appears:

Aboriginal child means a child who is a descendant of the Aboriginal people of Australia.

60B Objects of Part and principles underlying it

(1) The objects of this Part are to ensure that the best interests of children are met by:

(a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and

(b) protecting children from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence; and

(c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and

(d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

(2) The principles underlying these objects are that (except when it is or would be contrary to a child's best interests):

...

(e) children have a right to enjoy their culture (including the right to enjoy that culture with other people who share that culture).

(3) For the purposes of subparagraph (2)(e), an Aboriginal child's or Torres Strait Islander child's right to enjoy his or her Aboriginal or Torres Strait Islander culture includes the right:

(a) to maintain a connection with that culture; and

(b) to have the support, opportunity and encouragement necessary:

(i) to explore the full extent of that culture, consistent with the child's age and development level and the child's views; and

(ii) to develop a positive appreciation of that culture.

60CC How a court determines what is in a child's best interests

...

(3) Additional considerations are:

...

(h) if the child is an Aboriginal child or a Torres Strait Islander child:

(i) the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and

(ii) the likely impact any proposed parenting order under this Part will have on that right;

61F Application to Aboriginal or Torres Strait Islander children

In:

(a) applying this Part to the circumstances of an Aboriginal or Torres Strait Islander child; or

(b) identifying a person or persons who have exercised, or who may exercise, parental responsibility for such a child;

the court must have regard to any kinship obligations, and child-rearing practices, of the child's Aboriginal or Torres Strait Islander culture.