



Secretariat National Aboriginal and Islander Child Care

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

Introduction:

In 2011, 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.



Secretariat National Aboriginal and Islander Child Care

Sections of state and territory legislation incorporating the Aboriginal and Torres Strait Islander Child Placement Principle.

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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).

...

(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.

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:

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- (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;
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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.

1 New South Wales ('NSW')

1.1 Fostering

Children and Young Persons (Care and Protection) Act 1998 (NSW) (the 'Act')

Section 9 of the Act states that the safety, welfare and well-being of the child or young person are paramount and sets out the principles to be applied in the administration of the Act. The elements of the Aboriginal child placement principle concerning placement are addressed in s 13(1)(a)-(d). Chapter 2, Part 2 of the Act concerns Aboriginal and Torres Strait Islander principles, with the self determination principle found in s 11, and importantly, Aboriginal and Torres Strait Islander participation in decision making outlined in s 12. Care plans, while not culturally specific, are found in Part 3, Division 1 of the Act. Relevant provisions of the Act include:

4 Children and young persons to whom this Act applies

The functions conferred or imposed by this Act and the regulations may be exercised in respect of children and young persons:

- (a) who ordinarily live in New South Wales, or
- (b) who do not ordinarily live in New South Wales, but who are present in New South Wales, or
- (c) who are subject to an event or circumstances occurring in New South Wales that gives or give rise to a report.

5 Meaning of "Aboriginal" and "Torres Strait Islander"

(1) In this Act:

Aboriginal has the same meaning as Aboriginal person has in the *Aboriginal Land Rights Act 1983*.

Aboriginal child or young person means a child or young person descended from an Aboriginal and includes a child or young person who is the subject of a determination under subsection (2).

Torres Strait Islander means a person who:

- (a) is descended from a Torres Strait Islander, and
- (b) identifies as a Torres Strait Islander, and
- (c) is accepted as a Torres Strait Islander by a Torres Strait Islander community.

Torres Strait Islander child or young person means a child or young person descended from a Torres Strait Islander and includes a child or young person who is the subject of a determination under subsection (3).

(2) Despite the definition of **Aboriginal person** in the *Aboriginal Land Rights Act 1983*, the Children's Court may determine that a child or young person is an Aboriginal for the purposes of this Act if the Children's Court is satisfied that the child or young person is of Aboriginal descent.

(3) Despite the definition of *Torres Strait Islander* in subsection (1), the Children's Court may determine that a child or young person is a Torres Strait Islander for the purposes of this Act if the Children's Court is satisfied that the child or young person is of Torres Strait Islander descent.

8 What are the objects of this Act?

The objects of this Act are to provide:

(a) that children and young persons receive such care and protection as is necessary for their safety, welfare and well-being, having regard to the capacity of their parents or other persons responsible for them, and

(b) that all institutions, services and facilities responsible for the care and protection of children and young persons provide an environment for them that is free of violence and exploitation and provide services that foster their health, developmental needs, spirituality, self-respect and dignity, and

(c) that appropriate assistance is rendered to parents and other persons responsible for children and young persons in the performance of their child-rearing responsibilities in order to promote a safe and nurturing environment.

9 Principles for administration of Act

(1) This Act is to be administered under the principle that, in any action or decision concerning a particular child or young person, the safety, welfare and well-being of the child or young person are paramount.

(2) Subject to subsection (1), the other principles to be applied in the administration of this Act are as follows:

(a) Wherever a child or young person is able to form his or her own views on a matter concerning his or her safety, welfare and well-being, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child or young person and the circumstances.

(b) In all actions and decisions made under this Act (whether by legal or administrative process) that significantly affect a child or young person, account must be taken of the culture, disability, language, religion and sexuality of the child or young person and, if relevant, those with parental responsibility for the child or young person.

(c) In deciding what action it is necessary to take (whether by legal or administrative process) in order to protect a child or young person from harm, the course to be followed must be the least intrusive intervention in the life of the child or young person and his or her family that is consistent with the paramount concern to protect the child or young person from harm and promote the child's or young person's development.

(d) If a child or young person is temporarily or permanently deprived of his or her family environment, or cannot be allowed to remain in that environment in his or her own best interests, the child or young person is entitled to special protection and assistance from the State, and his

or her name, identity, language, cultural and religious ties should, as far as possible, be preserved.

(e) If a child or young person is placed in out-of-home care, arrangements should be made, in a timely manner, to ensure the provision of a safe, nurturing, stable and secure environment, recognising the child's or young person's circumstances and that, the younger the age of the child, the greater the need for early decisions to be made in relation to a permanent placement.

(f) If a child or young person is placed in out-of-home care, the child or young person is entitled to a safe, nurturing, stable and secure environment. Unless it is contrary to his or her best interests, and taking into account the wishes of the child or young person, this will include the retention by the child or young person of relationships with people significant to the child or young person, including birth or adoptive parents, siblings, extended family, peers, family friends and community.

Part 2 – Aboriginal and Torres Strait Islander principles

11 Aboriginal and Torres Strait Islander self-determination

(1) It is a principle to be applied in the administration of this Act that Aboriginal and Torres Strait Islander people are to participate in the care and protection of their children and young persons with as much self-determination as is possible.

(2) To assist in the implementation of the principle in subsection (1), the Minister may negotiate and agree with Aboriginal and Torres Strait Islander people to the implementation of programs and strategies that promote self-determination.

12 Aboriginal and Torres Strait Islander participation in decision-making

Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities are to be given the opportunity, by means approved by the Minister, to participate in decisions made concerning the placement of their children and young persons and in other significant decisions made under this Act that concern their children and young persons.

13 Aboriginal and Torres Strait Islander Child and Young Person Placement Principle

(1) The general order for placement

Subject to the objects in section 8 and the principles of section 9, an Aboriginal or Torres Strait Islander child or young person who needs to be placed in statutory out-of-home care is to be placed with:

(a) a member of the child's or young person's extended family or kinship group, as recognised by the Aboriginal and Torres Strait Islander community to which the child or young person belongs, or

(b) if it is not practicable for the child or young person to be placed in accordance with paragraph (a) or it would not be in the best interest of the child or young person to be so placed - a member of the Aboriginal

or Torres Strait Islander community to which the child or young person belongs, or

(c) if it is not practicable for the child or young person to be placed in accordance with paragraph (a) or (b) or it would not be in the best interests of the child or young person to be so placed - a member of some other Aboriginal or Torres Strait Islander family residing in the vicinity of the child's or young person's usual place of residence, or

(d) if it is not practicable for the child or young person to be placed in accordance with paragraph (a), (b) or (c) or it would be detrimental to the safety, welfare and well-being of the child or young person to be so placed - a suitable person approved by the Director-General after consultation with:

(i) members of the child's or young person's extended family or kinship group, as recognised by the Aboriginal or Torres Strait Islander community to which the child or young person belongs, and

(ii) such Aboriginal and Torres Strait Islander organisations as are appropriate to the child or young person.

(2) Relevance of self-identification and expressed wishes of child or young person

In determining where a child or young person is to be placed, account is to be taken of whether the child or young person identifies as an Aboriginal or Torres Strait Islander and the expressed wishes of the child or young person.

(3) Child or young person with parents from different Aboriginal or Torres Strait Islander communities

If a child or young person has parents from different Aboriginal or Torres Strait Islander communities, the order for placement established by paragraphs (a), (b), (c) and (d) of subsection (1) applies, but the choice of a member or person referred to in those paragraphs is to be made so that the best interests of the child or young person will be served having regard to the principles of this Act.

(4) Child or young person with one Aboriginal or Torres Strait Islander parent and one non-Aboriginal and Torres Strait Islander parent

If a child or young person has one Aboriginal or Torres Strait Islander parent and one non-Aboriginal and Torres Strait Islander parent, the child or young person may be placed with the person with whom the best interests of the child or young person will be served having regard to the principles of this Act.

(5) If a child or young person to whom subsection (4) applies:

(a) is placed with a person who is not within an Aboriginal or Torres Strait Islander family or community, arrangements must be made to ensure that the child or young person has the opportunity for continuing contact with his or her Aboriginal or Torres Strait Islander family, community and culture, or

(b) is placed with a person who is within an Aboriginal or Torres Strait Islander family or community, arrangements must be made to ensure that the child or young person has the opportunity for continuing contact with his or her non-Aboriginal and Torres Strait Islander family,

community and culture.

(6) Placement of child or young person in care of person who is not an Aboriginal or Torres Strait Islander

The following principles are to determine the choice of a carer if an Aboriginal or Torres Strait Islander child or young person is placed with a carer who is not an Aboriginal or Torres Strait Islander:

(a) Subject to the best interests of the child or young person, a fundamental objective is to be the reunion of the child or young person with his or her family or Aboriginal or Torres Strait Islander community.

(b) Continuing contact must be ensured between the child or young person and his or her Aboriginal or Torres Strait Islander family, community and culture.

These principles are subject to subsection (2).

(7) Exceptions: emergency placements and placements of short duration

Subsection (1) does not apply to:

(a) an emergency placement made to protect a child or young person from serious risk of immediate harm, or

(b) a placement for a duration of less than 2 weeks.

(8) Where an emergency placement is made to protect an Aboriginal or Torres Strait Islander child or young person from serious risk of immediate harm, the Director-General must consult with the appropriate Aboriginal or Torres Strait Islander community as soon as practicable after the safety of the child or young person has been secured.

In the course of any consultation under this Part, the Director-General must have regard to the right of Aboriginal or Torres Strait Islander children and young persons and their families to confidentiality.

Note In the course of any consultation under this Part, the Director-General must have regard to the right of Aboriginal or Torres Strait Islander children and young persons and their families to confidentiality

"care plan" means a plan to meet the needs of a child or young person:

(a) that is developed through agreement with the parents of the child or young person, or

(b) that represents a set of proposals for consideration by the Children's Court.

A care plan is not enforceable except to the extent to which aspects of it are endorsed by an order of the Children's Court.

14 Records relating to Aboriginals and Torres Strait Islanders

(1) All records made within the Department relating to the placement in statutory or supported out-of-home care of Aboriginal and Torres Strait

Islander children and young persons are to be kept permanently.

(2) If an Aboriginal or Torres Strait Islander child or young person has been placed in statutory or supported out-of-home care:

(a) the child or young person, and

(b) a birth or adoptive parent of the child or young person, and

(c) a person authorised in writing by the child, young person or parent,

is entitled to have access, in accordance with the regulations, to all records kept by the Department that relate to the placement.

(3) (Repealed)

(4) Subsection (2) does not confer a right or entitlement to information that is subject to the *Adoption Information Act 1990*.

(5) The regulations may make provision for or with respect to the keeping of and access to records to which this section applies.

32 Initial identification—Aboriginals and Torres Strait Islanders

If the Director-General has reason to believe that a child or young person who is the subject of a report may be an Aboriginal or Torres Strait Islander, the Director-General is to make such inquiries as are reasonable in the circumstances to determine whether the child or young person is in fact an Aboriginal or Torres Strait Islander.

Part 3 – Care plans and parent responsibility contracts

Division 1 – Care plans

38 Development and enforcement of care plans

(1) A care plan, developed by agreement in the course of alternative dispute resolution, may be registered with the Children's Court and may be used as evidence of an attempt to resolve the matter without bringing a care application in accordance with Part 2 of Chapter 5. Section 38F provides that a care plan or parent responsibility contract is taken to be registered with the Children's Court when it is filed with the registry of the Court without the need for any order or other further action by the Court.

(2) A care plan that allocates parental responsibility, or aspects of parental responsibility, to any person other than the parents of the child or young person, takes effect only if the Children's Court makes an order by consent to give effect to the proposed changes in parental responsibility.

(3) The Children's Court may make such other orders by consent for the purpose of giving effect to a care plan (being orders of the same kind as it could make in a care application that is duly made under Part 2 of Chapter 5) without the need for a care application under that Part and without the need to be satisfied of the existence of any of the grounds under section 71 if the Court is satisfied that:

- (a) the proposed order will not contravene the principles of this Act, and
- (b) the parties to the care plan understand its provisions and have freely entered into it, and
- (c) in the case of a party other than the Director-General, the party has received independent advice concerning the provisions to which the proposed order will give effect.

78 Care plans

(1) If the Director-General applies to the Children's Court for an order, not being an emergency protection order, for the removal of a child or young person from the care of his or her parents, the Director-General must present a care plan to the Children's Court before final orders are made.

(2) The care plan must make provision for the following:

- (a) the allocation of parental responsibility between the Minister and the parents of the child or young person for the duration of any period for which the child or young person is removed from the care of his or her parents,

- (b) the kind of placement proposed to be sought for the child or young person, including:

- (i) how it relates in general terms to permanency planning for the child or young person, and

- (ii) any interim arrangements that are proposed for the child or young person pending permanent placement and the timetable proposed for achieving a permanent placement,

- (c) the arrangements for contact between the child or young person and his or her parents, relatives, friends and other persons connected with the child or young person,

- (d) the agency designated to supervise the placement in out-of-home care,

- (e) the services that need to be provided to the child or young person.

(3) The care plan is to be made as far as possible with the agreement of the parents of the child or young person concerned.

(4) The care plan is only enforceable to the extent to which its provisions are embodied in or approved by orders of the Children's Court.

(5) Other requirements and the form of a care plan under this section may be prescribed by the regulations.

1.2 Adoption

Adoption Act 2000 (NSW) (the 'Act')

Section 7 of the Act states that the best interests of the child are paramount. Section 8 of the Act outlines the principles to be applied. Section 33 concerns Aboriginal participation in decision making with respect to who must be consulted about the placement of an Aboriginal child and s 34 requires the Aboriginal child placement principles to be applied, with the principles outlined in s 35. Relevant provisions of the Act include:

4 Meaning of “Aboriginal” and “Torres Strait Islander”

(1) In this Act:

Aboriginal has the same meaning as Aboriginal person has in the *Aboriginal Land Rights Act 1983*.

Aboriginal child means a child descended from an Aboriginal and includes a child who is the subject of a determination under subsection (2).

Torres Strait Islander means a person who:

- (a) is descended from a Torres Strait Islander, and
- (b) identifies as a Torres Strait Islander, and
- (c) is accepted as a Torres Strait Islander by a Torres Strait Islander community.

Torres Strait Islander child means a child descended from a Torres Strait Islander and includes a child who is the subject of a determination under subsection (3).

(2) Despite the definition of **Aboriginal** in subsection (1), the Court may determine that a child is an Aboriginal for the purposes of this Act if the Court is satisfied that the child is of Aboriginal descent.

(3) Despite the definition of **Torres Strait Islander** in subsection (1), the Court may determine that a child is a Torres Strait Islander for the purposes of this Act if the Court is satisfied that the child is of Torres Strait Islander descent.

7 What are the objects of this Act?

The objects of this Act are as follows:

- (a) to emphasise that the best interests of the child concerned, both in childhood and later life, must be the paramount consideration in adoption law and practice,
- (b) to make it clear that adoption is to be regarded as a service for the child concerned,
- (c) to ensure that adoption law and practice assist a child to know and have access to his or her birth family and cultural heritage,
- (d) to recognise the changing nature of practices of adoption,

(e) to ensure that equivalent safeguards and standards to those that apply to children from New South Wales apply to children adopted from overseas,

(f) to ensure that adoption law and practice complies with Australia's obligations under treaties and other international agreements,

(g) to encourage openness in adoption,

(h) to allow access to certain information relating to adoptions,

(i) to provide for the giving in certain circumstances of post-adoption financial and other assistance to adopted children and their birth and adoptive parents.

8 What principles are to be applied by persons making decisions about the adoption of a child?

(1) In making a decision about the adoption of a child, a decision maker is to have regard (as far as is practicable or appropriate) to the following principles:

(a) the best interests of the child, both in childhood and in later life, must be the paramount consideration,

(b) adoption is to be regarded as a service for the child,

(c) no adult has a right to adopt the child,

(d) if the child is able to form his or her own views on a matter concerning his or her adoption, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child and the circumstances,

(e) the child's given name or names, identity, language and cultural and religious ties should, as far as possible, be identified and preserved,

(e1) undue delay in making a decision in relation to the adoption of a child is likely to prejudice the child's welfare,

(f) if the child is Aboriginal—the Aboriginal child placement principles are to be applied,

(g) if the child is a Torres Strait Islander—the Torres Strait Islander child placement principles are to be applied.

(2) In determining the best interests of the child, the decision maker is to have regard to the following:

(a) any wishes expressed by the child,

(b) the child's age, maturity, level of understanding, gender, background and family relationships and any other characteristics of the child that the decision maker thinks are relevant,

- (c) the child's physical, emotional and educational needs, including the child's sense of personal, family and cultural identity,
- (d) any disability that the child has,
- (e) any wishes expressed by either or both of the parents of the child,
- (f) the relationship that the child has with his or her parents and siblings (if any) and any significant other people (including relatives) in relation to whom the decision maker considers the question to be relevant,
- (g) the attitude of each proposed adoptive parent to the child and to the responsibilities of parenthood,
- (h) the nature of the relationship of the child with each proposed adoptive parent,
- (i) the suitability and capacity of each proposed adoptive parent, or any other person, to provide for the needs of the child, including the emotional and intellectual needs of the child,
- (j) the need to protect the child from physical or psychological harm caused, or that may be caused, by being subjected or exposed to abuse, ill-treatment, violence or other behaviour, or being present while a third person is subjected or exposed to abuse, ill-treatment, violence or other behaviour,
- (k) the alternatives to the making of an adoption order and the likely effect on the child in both the short and longer term of changes in the child's circumstances caused by an adoption, so that adoption is determined among all alternative forms of care to best meet the needs of the child.

9 Participation of child in decisions

(1) To ensure that a child is able to participate in any decision made under this Act that has a significant impact on his or her life, the decision maker is responsible for providing the child with the following:

- (a) adequate information, in a manner and language that the child can understand, concerning the decision,
- (b) the opportunity to express his or her views freely, according to his or her abilities,
- (c) information about the outcome of the decision and an explanation of the reasons for the decision,
- (d) any assistance that is necessary for the child to understand the information and to express his or her views,
- (e) appropriate counselling when the child's consent is required to his or her adoption.

(2) In the application of this principle, due regard must be had to the age and developmental capacity of the child.

(3) Decisions about the adoption of a child that have a significant impact on the life of the child include, but are not limited to, decisions relating to the following:

- (a) the placement for adoption of the child,
- (b) the development of any adoption plan concerning the child and the views of the child's parents about the plan,
- (c) an application for an order for the adoption of the child,
- (d) contact with birth parents or others connected with the child.

24 Who can be adopted?

(1) An adoption order may be made in relation to a child who:

- (a) was less than 18 years of age on the date on which the application for the order was made, or
- (b) was 18 or more years of age on that date and was cared for by the applicant or applicants for the order.

(2) For the purposes of subsection (1) (b), a child was cared for if the child:

- (a) has been cared for by the applicant or applicants, or by the applicant and a deceased spouse of the applicant, as his or her or their child prior to reaching the age of 18 years, or
- (b) has, as a ward within the meaning of the *Children (Care and Protection) Act 1987* or a person under the parental responsibility of the Minister administering the *Children and Young Persons (Care and Protection) Act 1998*, been in the care responsibility of the applicant or applicants or of the applicant and a deceased spouse of the applicant.

Note Spouse is defined in the Dictionary.

33 Aboriginal participation in decision making

(1) The Director-General or appropriate principal officer must ensure that the following are consulted about the placement of an Aboriginal child:

- (a) a person approved in accordance with section 195, or
- (b) a person nominated by the child's parents, extended family or kinship group, as recognised by the Aboriginal community to which the child belongs, or by that community, with expertise in relation to the adoption or substitute care of Aboriginal children.

(2) In addition, the Director-General or appropriate principal officer must ensure that the placement of the child is made in consultation with a local, community-based and relevant Aboriginal organisation.

34 Application of Aboriginal child placement principles

(1) The Director-General or appropriate principal officer is to make reasonable inquiries as to whether a child to be placed for adoption is an Aboriginal child.

(2) The Aboriginal child placement principles are to be applied in placing a child that the Director-General or principal officer is satisfied is an Aboriginal child for adoption.

35 Aboriginal child placement principles

(1) General principle

It is a principle to be applied in the administration of this Act that Aboriginal people should be given the opportunity to participate with as much self-determination as possible in decisions relating to the placement for adoption of Aboriginal children (which is a concept that is absent in customary Aboriginal child care arrangements).

(2) The general order for placement

The Aboriginal child placement principles are as follows:

(a) The first preference for placement of an Aboriginal child is for the child to be placed for adoption with a prospective adoptive parent or parents belonging to the Aboriginal community, or one of the communities, to which the birth parent or birth parents of the child belongs.

(b) If it is not practicable or in the best interests of the child for the child to be placed in accordance with paragraph (a), the child is to be placed with a prospective adoptive parent or parents from another Aboriginal community.

(c) If it is not practicable or in the best interests of the child for the child to be placed in accordance with paragraph (a) or (b), the child is to be placed with a non-Aboriginal prospective adoptive parent or parents.

(3) Placement of child with person who is not Aboriginal

An Aboriginal child is not to be placed with a non-Aboriginal prospective adoptive parent unless the Court is satisfied that the prospective adoptive parent:

(a) has the capacity to assist the child to develop a healthy and positive cultural identity, and

(b) has knowledge of or is willing to learn about, and teach the child about, the child's Aboriginal heritage and to foster links with that heritage in the child's upbringing, and

(c) has the capacity to help the child if the child encounters racism or discrimination in the wider community,

and that the Aboriginal child placement principles have been properly applied.

Note Placement with a non-Aboriginal prospective adoptive parent requires an application to the Court for a preliminary hearing—see section 80.

(4) Child with one Aboriginal parent and one non-Aboriginal parent

If a child has one Aboriginal parent and one non-Aboriginal parent, the child may be placed with the person with whom the best interests of the child will be served having regard to the objects of this Act.

(5) If a child to whom subsection (4) applies:

(a) is placed with a person who is not within an Aboriginal family or community, an adoption plan must provide for the child to have the opportunity to develop an identity with the Aboriginal community to which the child belongs, or

(b) is placed with a person who is within an Aboriginal community, an adoption plan must provide for the child to have the opportunity to develop an identity with the non-Aboriginal community to which the child belongs.

36 Alternatives to placement for adoption to be considered

An Aboriginal child is not to be placed for adoption unless the Director-General is satisfied that the making of the adoption order is clearly preferable in the best interests of the child to any other action that could be taken by law in relation to the care of the child.

Note Examples of other action that may be taken by law are the making of a care order under the *Children and Young Persons (Care and Protection) Act 1998* or a parenting order under the *Family Law Act 1975* of the Commonwealth.

37 Torres Strait Islander participation in decision making

(1) The Director-General or appropriate principal officer must ensure that the following are consulted about the placement of a Torres Strait Islander child:

(a) a person approved in accordance with section 196, or

(b) a person nominated by the child's parents, extended family or kinship group, as recognised by the Torres Strait Islander community to which the child belongs, or by that community, with expertise in relation to the adoption or substitute care of Torres Strait Islander children.

(2) In addition, the Director-General or appropriate principal officer must ensure that the placement of the child is made in consultation with a local, community-based and relevant Torres Strait Islander organisation.

38 Application of Torres Strait Islander child placement principles

(1) The Director-General or appropriate principal officer is to make reasonable inquiries as to whether a child to be placed for adoption is a Torres Strait Islander child.

(2) The Torres Strait Islander child placement principles are to be applied in placing a child that the Director-General or principal officer is satisfied is a Torres Strait Islander for adoption.

39 Torres Strait Islander child placement principles

(1) The general order for placement

The Torres Strait Islander child placement principles are as follows:

(a) The first preference for placement of a Torres Strait Islander child is for the child to be placed for adoption with a prospective adoptive parent or parents within the child's extended family.

(b) If it is not practicable or in the best interests of the child for the child to be placed in accordance with paragraph (a), the child is to be placed with a prospective adoptive parent or parents within the community, or one of the communities, to which the birth parent or birth parents of the child belongs.

(c) If it is not practicable or in the best interests of the child for the child to be placed in accordance with paragraph (a) or (b), the child is to be placed with a prospective adoptive parent or parents from another Torres Strait Islander community.

(d) If it is not practicable or in the best interests of the child for the child to be placed in accordance with paragraph (a), (b) or (c), the child is to be placed with a non-Torres Strait Islander prospective adoptive parent or parents.

(2) A Torres Strait Islander child is not to be placed with a prospective adoptive parent who is not a Torres Strait Islander unless the Court is satisfied that the prospective parent:

(a) has the capacity to assist the child to develop a healthy and positive cultural identity, and

(b) is willing to learn about, and teach the child about, the child's Torres Strait Islander heritage and foster links with that heritage in the child's upbringing, and

(c) has the capacity to help the child if the child encounters racism or discrimination in the wider community,

and that the Torres Strait Islander child placement principles have been properly applied.

Note Placement with a non-Torres Strait Islander prospective adoptive parent requires an application to the Court for a preliminary hearing—see section 80.

(3) Child with one Torres Strait Islander parent and one non-Torres Strait Islander parent

If a child has one Torres Strait Islander parent and one non-Torres Strait Islander parent, the child may be placed with the person with whom the best interests of the child will be served having regard to the objects of this Act.

(4) If a child to whom subsection (3) applies:

(a) is placed with a person who is not within a Torres Strait Islander family or community, an adoption plan must provide for the child to have the opportunity to develop an identity with the Torres Strait Islander community to which the child belongs, or

(b) is placed with a person who is within a Torres Strait Islander community, an adoption plan must provide for the child to have the opportunity to develop an identity with the non-Torres Strait Islander community to which the child belongs.

64 Consent to adoption of Aboriginal child

(1) Before a person gives consent to the adoption of an Aboriginal child:

(a) he or she is to be given adoption counselling by a person approved in accordance with section 195, or

(b) if he or she is offered, but refuses, adoption counselling by such a person he or she must:

(i) be provided by the Director-General or appropriate principal officer with written information on Aboriginal customs and culture and any other matters the Director-General or principal officer considers would have been raised by the person, and

(ii) sign an acknowledgement that he or she has read (or, if he or she cannot read, had read to) and understood the information.

(2) A person who refuses adoption counselling cannot consent to the adoption until at least 7 days after being given the information referred to in subsection (1) (b).

(3) In this section:

adoption counselling means consultation that includes consideration of the possibility of a child being cared for in accordance with Aboriginal customs and culture.

65 Consent to adoption of Torres Strait Islander child

(1) Before a person gives consent to the adoption of a Torres Strait Islander child:

(a) he or she must receive adoption counselling from a person approved in accordance with section 196, or

(b) if he or she has been offered, but has refused, adoption counselling by such a person he or she must:

(i) be provided by the Director-General or appropriate principal officer with written information on Torres Strait Islander customs and culture and on any other matters that the

Director-General or principal officer considers would have been raised by the person, and

(ii) sign an acknowledgement that he or she has read (or, if he or she cannot read, had read to) and understood the information.

(2) A person who refuses adoption counselling cannot consent to the adoption until at least 7 days after being given the information referred to in subsection (1) (b).

(3) In this section:

adoption counselling means consultation that includes consideration of the possibility of a child being cared for in accordance with Torres Strait Islander customs and culture.

195 Consultation with Aboriginal persons

(1) The Director-General may approve an Aboriginal person as a person who may provide advice and assistance to Aboriginal families or kinship groups in relation to care options for Aboriginal children for the purposes of this Act.

(2) The Director-General must not approve a person under this section unless the Director-General is satisfied that the person has relevant experience in working with Aboriginal children, whether or not in connection with their families or kinship groups.

1 Northern Territory ('NT')

1.1 Fostering

Care and Protection of Children Act 2007 (NT)

Section 10 of the Act states that the best interest of the child are paramount and lists the relevant considerations. Section 12 concerns the placement of Aboriginal children and the relevant priorities when making a placement for an Aboriginal child. Division 2 of the Act concerns care plans. Relevant provisions of the Act include:

4 Objects of Act

The objects of this Act are:

(a) to promote the wellbeing of children, including:

(i) to protect children from harm and exploitation; and

(ii) to maximise the opportunities for children to realise their full potential; and

(b) to assist families to achieve the object in paragraph (a); and

(c) to ensure anyone having responsibilities for children have regard to the objects in paragraphs (a) and (b) in fulfilling those responsibilities.

Part 1.3 Principles underlying this Act

6 Principles

(1) The underlying principles of this Act are set out in sections 7 to 12.

(2) Anyone exercising a power or performing a function under this Act must, as far as practicable, uphold those principles.

(3) However, those principles do not affect the operation of any law in force in the Territory.

7 Responsibility of Territory Government

The Northern Territory Government has responsibility for promoting and safeguarding the wellbeing of children and supporting families in fulfilling their role in relation to children.

8 Role of family

(1) The family of a child has the primary responsibility for the care, upbringing and development of the child.

(2) In fulfilling that responsibility, the family should be able to bring up the child in any language or tradition and foster in the child any cultural, ethnic or religious values.

(3) A child may be removed from the child's family only if there is no other reasonable way to safeguard the wellbeing of the child.

(4) As far as practicable, and consistent with section 10, if a child is removed from the child's family:

(a) contact between the child and the family should be encouraged and supported; and

(b) the child should eventually be returned to the family.

9 Treating child with respect

(1) Each child is a valued member of society and is entitled to be treated in a way that respects the child's dignity and privacy.

(2) Decisions involving a child should be made:

(a) promptly having regard to the child's circumstances; and

(b) in a way that is consistent with the cultural, ethnic and religious values and traditions relevant to the child; and

(c) with the informed participation of the child, the child's family and other people who are significant in the child's life.

10 Best interests of child

(1) When a decision involving a child is made, the best interests of the child are the paramount concern.

(2) Without limiting subsection (1), consideration should be given to the following matters in determining the best interests of a child:

(a) the need to protect the child from harm and exploitation;

(b) the capacity and willingness of the child's parents or other family members to care for the child;

(c) the nature of the child's relationship with the child's family and other persons who are significant in the child's life;

(d) the wishes and views of the child, having regard to the maturity and understanding of the child;

(e) the child's need for permanency in the child's living arrangements;

(f) the child's need for stable and nurturing relationships;

(g) the child's physical, emotional, intellectual, spiritual, developmental and educational needs;

(h) the child's age, maturity, gender, sexuality and cultural, ethnic and religious backgrounds;

(i) other special characteristics of the child;

(j) the likely effect on the child of any changes in the child's circumstances.

11 Child participation

When a decision involving a child is made:

(a) the child:

(i) should be given adequate information and explanation in a way that the child can understand; and

(ii) should be given the opportunity to respond to the proposed decision; and

12 Aboriginal children

(1) Kinship grounds, representative organisations and communities of Aboriginal people have a major role, through self-determination, in promoting the wellbeing of Aboriginal child.

(2) In particular, a kinship group, representative organisation or community of Aboriginal people nominated by an Aboriginal child's family should be able to participate in the making of a decision involving the child.

(3) An Aboriginal child should, as far as practicable, be placed with a person in the following order of priority:

(a) a member of the child's family;

(b) an Aboriginal person in the child's community in accordance with local community practice;

(c) any other Aboriginal person;

(d) a person who:

(i) is not an Aboriginal person; but

(ii) in the CEO's opinion, is sensitive to the child's needs and capable of promoting the child's ongoing affiliation with the culture of the child's community (and, if possible, ongoing contact with the child's family).

(4) In addition, an Aboriginal child should, as far as practicable, be placed in close proximity to the child's family and community.

14 Wellbeing of child

The wellbeing of a child includes the child's physical, psychological and emotional wellbeing.

20 When child is in need of care and protection

A child is in need of care and protection (child is in need of protection) if:

(a) the child has suffered or is likely to suffer harm or exploitation because of an act or omission of a parent of the child; or

(b) the child is abandoned and no family member of the child is willing and able to care for the child; or

(c) the parents of the child are dead or unable or unwilling to care for the child and no other family member of the child is able and willing to do so; or

(d) the child is not under the control of any person and is engaged in conduct that causes or is likely to cause harm to the child or other persons.

Division 2 Care plans

69 Application

This Division applies to a child who is in the CEO's care if:

(a) a protection order for the child is in force; or

(b) the CEO has daily care and control of the child under a court order prescribed by regulation.

70 CEO must prepare care plan

(1) As soon as practicable after the child is taken into the CEO's care, the CEO must prepare and implement a care plan for the child.

(2) The care plan is a written plan that:

(a) identifies the needs of the child; and

(b) outlines measures that must be taken to address those needs; and

(c) sets out decisions about daily care and control of the child, including, for example:

(i) decisions about the placement arrangement for the child; and

(ii) decisions about contact between the child and other persons.

72 Child's wishes to be taken into account

In preparing or modifying the plan, the CEO must have regard to the wishes of the child as the CEO considers reasonable and appropriate in the circumstances.

73 Provision of care plan to interested parties

(1) As soon as practicable after the CEO has prepared or modified the plan, the CEO must ensure a copy of it is given to the following persons:

- (a) the child;
- (b) each parent of the child;
- (c) the carer of the child;
- (d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

(2) However, the CEO is not required to do so for a person if the CEO considers it inappropriate or impracticable in the circumstances, having regard to:

- (a) the wishes of the child; and
- (b) any risk of harm to the child; and
- (c) any other matters the CEO considers relevant.

1.2 Adoption

Adoption of Children Act 1994 (NT) (the 'Act')

Section 8 of the Act states that the welfare and interests of the child are of paramount consideration. Section 12 of the Act concerns the adoption of Aboriginal children. Relevant provisions of the Act include:

8 Welfare and interests of child to be paramount

(1) For the purposes of the administration of this Act, adoption shall be regarded as a service for the child concerned, and the welfare and interests of the child shall be the paramount consideration.

(2) In determining the welfare and interests of a child referred to in subsection (1), regard shall be had, *inter alia*, to the ethnicity and religion of the birth parents of the child and, in so doing, the matters set out in Schedule 1 shall be taken into account.

9 Responsibilities of Minister

The Minister is, under and in accordance with this Act, responsible for:

- (a) the assessment of the suitability of a person or persons to adopt a child (including a non-citizen child);
- (b) the arrangements for and in relation to the allocation of a citizen-child to a person or persons wishing to adopt such a child;
- (c) the transfer of the care and custody of a child (including a non-citizen child) to the person or persons who will adopt him or her; and
- (d) the giving of his or her consent to the adoption of a child (including a non-citizen child) of whom he or she has guardianship.

10 Wishes of child

(1) Subject to this Part, an order for the adoption of a child shall not be made unless the Court is satisfied that, as far as practicable and having regard to the age and understanding of the child, the wishes and feelings of the child have been ascertained and due consideration given to them.

(2) Subject to this Part, an order for the adoption of a child who has attained the age of 12 years shall not be made unless:

(a) the child has consented to the adoption; or

(b) notwithstanding that the child has not consented to the adoption, the Court is satisfied that there are special reasons related to the welfare and interests of the child why the order should be made.

(3) Notwithstanding subsections (1) and (2)(b), an order for the adoption of a child who, on the date the order is made, has attained the age of 18 years shall not be made unless the child consents to the adoption.

11 Adoption of Aboriginal Children

(1) Where an order for the adoption of an Aboriginal child is to be made, the Court shall satisfy itself that every effort has been made (including consultation with the child's parents, with other persons who have responsibility for the welfare of the child in accordance with Aboriginal customary law and with such Aboriginal welfare organisation as are appropriate in the case of the particular child) to arrange appropriate custody -

(a) within the child's extended family; or

(b) where that cannot be arranged, with Aboriginal people who have the correct relationship with the child in accordance with Aboriginal customary law

(2) In making an order for the adoption of an Aboriginal child, where, in the opinion of the Court, the custody referred to in subsection (1) is not possible or would not be consistent with the welfare and interests of the child, the Court shall ensure that a placement is made that is consistent with the best interests and welfare of the child and in so doing shall -

(a) give preference to the adoption of the child by applicants one or both of whom are Aboriginal persons who are, in the opinion of the Minister, suitable to adopt the child;

(b) take into consideration the placement of the child in geographical proximity to the family or other relative of the child who have an interest in, and a responsibility for, the welfare of the child; and

(c) take into consideration undertakings, if any, by the persons who will have the care and custody of the child to encourage and facilitate the maintenance of contact between the child and its own kin and with its own culture.

26 No adoption without consent

Subject to this Act, the Court shall not make an order for the adoption of a child unless:

(a) consent (not being consent that has been revoked) to the adoption is given by the appropriate person or persons ascertained in accordance with this Division; or

(b) the Court has, by order under section 35, dispensed with the giving of a consent to the adoption by such a person.

1 Queensland ('QLD')

1.1 Fostering

Child Protection Act 1999 (Qld) (the 'Act')

The main principle for administering this Act is that the safety, wellbeing and best interests of a child are paramount (s 5A). The principles to be applied are outlined in s 5B, with additional principles for Aboriginal and Torres Strait Islander children in s 5C. The elements of the Principle concerning placement are in s 83, which also states that a recognised entity must be given an opportunity to participate in the process for making a decision about where and with whom the child will live. Section 6 outlines who may participate in the placement of children, specifically Aboriginal and Torres Strait Islander children in s 6(4). Case planning is detailed in Part 3A. Relevant provisions of the Act include:

4 Purpose of Act

The purpose of this Act is to provide for the protection of children.

5 Application of principles

(1) This Act is to be administered under the principles stated in this division.

(2) All other principles stated in this Act are subject to the principle stated in section 5A.

5A Paramount principle

The main principle for administering this Act is that the safety, wellbeing and best interests of a child are paramount.

Example—

If the chief executive is making a decision under this Act about a child where there is a conflict between the child's safety, wellbeing and best interests, and the interests of an adult caring for the child, the conflict must be resolved in favour of the child's safety, wellbeing and best interests.

5B Other general principles

The following are general principles for ensuring the safety, wellbeing and best interests of a child—

(a) a child has a right to be protected from harm or risk of harm;

(b) a child's family has the primary responsibility for the child's upbringing, protection and development;

(c) the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family;

(d) if a child does not have a parent who is able and willing to protect the child, the State is responsible for protecting the child;

(e) in protecting a child, the State should only take action that is warranted in the circumstances;

(f) if a child is removed from the child's family, support should be given to the child and the child's family for the purpose of allowing the child to return to the child's family if the return is in the child's best interests;

(g) if a child does not have a parent able and willing to give the child ongoing protection in the foreseeable future, the child should have long-term alternative care;

(h) if a child is removed from the child's family, consideration should be given to placing the child, as a first option, in the care of kin;

(i) if a child is removed from the child's family, the child should be placed with the child's siblings, to the extent that is possible;

(j) a child should only be placed in the care of a parent or other person who has the capacity and is willing to care for the child (including a parent or other person with capacity to care for the child with assistance or support);

(k) a child should have stable living arrangements, including arrangements that provide—

(i) for a stable connection with the child's family and community, to the extent that is in the child's best interests; and

(ii) for the child's developmental, educational, emotional, health, intellectual and physical needs to be met;

(l) a child should be able to maintain relationships with the child's parents and kin, if it is appropriate for the child;

(m) a child should be able to know, explore and maintain the child's identity and values, including their cultural, ethnic and religious identity and values;

(n) a delay in making a decision in relation to a child should be avoided, unless appropriate for the child.

5C Additional principles for Aboriginal or Torres Strait Islander children

The following additional principles apply in relation to an Aboriginal or Torres Strait Islander child—

(a) the child should be allowed to develop and maintain a connection with the child's family, culture, traditions, language and community;

(b) the long-term effect of a decision on the child's identity and connection with their family and community should be taken into account.

Note See also sections 6 (Recognised entities and decisions about

Aboriginal and Torres Strait Islander children) and 83 (Additional provisions for placing Aboriginal and Torres Strait Islander children in care).

6 Recognised entities and decisions about Aboriginal and Torres Strait Islander children

(1) When making a significant decision about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must give an opportunity to a recognised entity for the child to participate in the decision-making process.

(2) When making a decision, other than a significant decision, about an Aboriginal or Torres Strait Islander child, the chief executive or an authorised officer must consult with a recognised entity for the child before making the decision.

(3) However, if compliance with subsection (1) or (2) is not practicable because a recognised entity for the child is not available or urgent action is required to protect the child, the chief executive or an authorised officer must consult with a recognised entity for the child as soon as practicable after making the decision.

(4) If the Children's Court exercises a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the court must have regard to—

(a) the views, about the child and about Aboriginal tradition and Island custom relating to the child, of—

(i) a recognised entity for the child; or

(ii) if it is not practicable to obtain the views of a recognised entity for the child—members of the community to whom the child belongs; and

(b) the general principle that an Aboriginal or Torres Strait Islander child should be cared for within an Aboriginal or Torres Strait Islander community.

Editor's note— The Acts Interpretation Act 1954, section 36, contains definitions of Aboriginal tradition and Island custom.

(5) As far as is reasonably practicable, the chief executive or an authorised officer must try to conduct consultations, negotiations, family group meetings and other proceedings involving an Aboriginal person or Torres Strait Islander (whether a child or not) in a way and in a place that is appropriate to Aboriginal tradition or Island custom.

(6) In this section— significant decision, about an Aboriginal or Torres Strait Islander child, means a decision likely to have a significant impact on the child's life.

Examples of decisions relating to an Aboriginal or Torres Strait Islander child that may be significant decisions—

1 a decision made in the course of investigating an allegation of harm to the child

2 a decision about placing the child in care

Schedule 3 Dictionary

recognised entity—

(a) in relation to Aboriginal or Torres Strait Islander children generally, means an entity on the list kept under section 246I; and

(b) for a particular Aboriginal or Torres Strait Islander child, means an entity on the list kept under section 246I that the chief executive is satisfied is an appropriate entity to consult about the child's protection.

246I Recognised entities

(1) The chief executive must keep a list of entities with whom to consult about issues relating to the protection and care of Aboriginal or Torres Strait Islander children.

(2) The chief executive must not include an entity on the list unless the entity is—

(a) an individual—

(i) who is an Aboriginal or Torres Strait Islander person; and

(ii) who has appropriate knowledge of, or expertise in, child protection; and

(iii) who is not an officer or employee of the department; or

(b) an entity—

(i) whose members include individuals mentioned in paragraph (a); and

(ii) that has a function of providing services to Aboriginal persons or Torres Strait Islanders.

(3) The chief executive must make the list available for public inspection.

8 Who is a child

A child is an individual under 18 years.

9 What is harm

(1) Harm, to a child, is any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.

(2) It is immaterial how the harm is caused.

(3) Harm can be caused by—

- (a) physical, psychological or emotional abuse or neglect; or
- (b) sexual abuse or exploitation.

10 Who is a child in need of protection

A child in need of protection is a child who—

- (a) has suffered harm, is suffering harm, or is at unacceptable risk of suffering harm; and
- (b) does not have a parent able and willing to protect the child from the harm.

Part 3A Case planning (see **attached** for entire Pt 3A Case Planning)

Division 1 Preliminary

51A What is case planning

Case planning is the process of developing a case plan for a child and then regularly reviewing it.

51B What is a case plan

- (1) A case plan for a child is a written plan for meeting the child's protection and care needs.
- (2) A case plan may include any of the following matters—

...

- (f) arrangements for maintaining the child's ethnic and cultural identity;

51C Children for whom case plans are required

The chief executive must ensure a case plan is developed for each child who the chief executive is satisfied—

- (a) is a child in need of protection; and
- (b) needs ongoing help under this Act.

...

51D How case planning must be carried out

- (1) The chief executive must ensure case planning for a child is carried out in a way—

...

- (c) that encourages and facilitates the participation of—

...

(iv) for an Aboriginal or Torres Strait Islander child—Aboriginal or Torres Strait Islander agencies and persons; and

Note— Section 6(5) requires consultations, negotiations, family group meetings and other proceedings involving an Aboriginal person or Torres Strait Islander to be conducted in a way and in a place that is appropriate to Aboriginal tradition or Island custom.

...

51E Who is a child's family group

For this part, a child's family group includes—

- (a) members of the child's extended family; and
- (b) if the child belongs to a clan, tribe or similar group—members of that group; and
- (c) anyone else recognised by persons mentioned in paragraph (a) or (b) as belonging to the child's family.

82 Placing child in care

(1) The chief executive may place the child in the care of—

- (a) an approved kinship carer for the child; or
- (b) an approved foster carer; or
- (c) an entity conducting a departmental care service; or
- (d) a licensee; or
- (e) if it is not possible, or not in the child's best interests, for the child to be placed in the care of an entity mentioned in paragraphs (a) to (d)—a provisionally approved carer for the child; or
- (f) if the chief executive is satisfied another entity would be the most appropriate for meeting the child's particular protection and care needs—that entity.

Example for paragraph (f)—

A particular medical or residential facility may be the most appropriate entity for a child with a disability.

(2) Also, if the child is in the chief executive's custody or guardianship under a child protection order, the chief executive may place the child in the care of a parent of the child.

83 Additional provisions for placing Aboriginal and Torres Strait Islander children in care

- (1) This section applies if the child is an Aboriginal or a Torres Strait Islander child.
- (2) The chief executive must ensure a recognised entity for the child is given an opportunity to participate in the process for making a decision about where or with whom the child will live.

(3) However, if because of urgent circumstances the chief executive makes the decision without the participation of a recognised entity for the child, the chief executive must consult with a recognised entity for the child as soon as practicable after making the decision.

(4) In making a decision about the person in whose care the child should be placed, the chief executive must give proper consideration to placing the child, in order of priority, with -

- (a) a member of the child's family; or
- (b) a member of the child's community or language group; or
- (c) another Aboriginal person or Torres Strait Islander who is compatible with the child's community or language group; or
- (d) another Aboriginal person or Torres Strait Islander.

(5) Also, the chief executive must give proper consideration to -

- (a) the views of a recognised entity for the child; and
- (b) ensuring the decision provides for the optimal retention of the child's relationship with parents, siblings and other people of significance under Aboriginal tradition or Island custom.

(6) If the chief executive decides there is no appropriate person mentioned in subsection (4)(a) to (d) in whose care the child may be placed, the chief executive must give proper consideration to placing the child, in order of priority, with -

- (a) a person who lives near the child's family; or
- (b) a person who lives near the child's community or language group.

(7) Before placing the child in the care of a family member or other person who is not an Aboriginal person or Torres Strait Islander, the chief executive must give proper consideration to whether the person is committed to -

- (a) facilitating contact between the child and the child's parents and other family members, subject to any limitations on the contact under section 87; and
- (b) helping the child to maintain contact with the child's community or language group; and
- (c) helping the child to maintain a connection with the child's Aboriginal or Torres Strait Islander culture; and
- (d) preserving and enhancing the child's sense of Aboriginal or Torres Strait Islander Identity.

88 Chief executive to provide contact between Aboriginal or Torres Strait Islander child and child's community or language group

(1) This section applies if the child is an Aboriginal or a Torres Strait Islander child.

(2) The chief executive must provide opportunity for contact, as often as is appropriate in the circumstances, between the child and appropriate members of the child's community or language group.

1.2 Adoption

Adoption Act 2009 (QLD)

The guiding principle of the Act is set out in s 6, with additional principles concerning Aboriginal and Torres Strait Islander persons in s 7. Relevant provisions of the Act include:

5 Main object of Act

The main object of this Act is to provide for the adoption of children in Queensland, and for access to information about parties to adoptions in Queensland, in a way that—

- (a) promotes the wellbeing and best interests of adopted persons throughout their lives; and
- (b) supports efficient and accountable practice in the delivery of adoption services; and
- (c) complies with Australia's obligations under the Hague convention.

6 Guiding principles

(1) This Act is to be administered under the principle that the wellbeing and best interests of an adopted child, both through childhood and the rest of his or her life, are paramount.

(2) Subject to subsection (1), this Act is to be administered under the following principles—

(a) the purpose of an adoption is to provide for a child's long-term care, wellbeing and development by creating a permanent parent-child relationship between the child and the adoptive parents;

(b) adoption is an appropriate long-term care option for a child if—

(i) the child's parents choose adoption for the child's long-term care; or

(ii) the child does not have a parent who is willing and able to protect the child from harm and meet the child's need for long-term stable care;

(c) each of the parties to an adoption or proposed adoption should be given the information he or she reasonably needs to participate effectively in processes under this Act;

(d) a child should be kept informed of matters affecting him or her in a way and to an extent that is appropriate, having regard to the child's age and ability to understand;

(e) the process for a child's adoption should include considering the views of—

(i) the child's parents; and

(ii) the child, if he or she is able to form and express views about the adoption, having regard to the child's age and ability to understand;

(f) an adopted child of a particular ethnic or other cultural background should have—

(i) access to information about the child's ethnic or cultural heritage; and

- (ii) opportunities to develop and maintain a connection with the child's ethnicity or culture; and
- (iii) opportunities to maintain contact with the child's community or language group;
- (g) a child's adoptive parents have the primary responsibility for the child's upbringing, protection and development;
- (h) an adopted child should be cared for in a way that—
 - (i) ensures a safe, stable and nurturing family and home life; and
 - (ii) promotes openness and honesty about the child's adoption; and
 - (iii) promotes the development of the child's emotional, mental, physical and social wellbeing;
- (i) the same protection, support and resources should be available to an adopted person regardless of whether the adoption was a local adoption, intercountry adoption or adoption by a step-parent;
- (j) although a final adoption order changes legal relationships, it may be in an adopted child's best interests for—
 - (i) the child's emotional connections with members of the child's birth family to continue; or
 - (ii) the child to have ongoing contact with members of the child's birth family; or
 - (iii) the child or the child's adoptive parents to exchange information with members of the child's birth family.

7 Additional principles concerning Aboriginal and Torres Strait Islander persons

- (1) This Act is also to be administered under the following principles -
- (a) because adoption (as provided for in this Act) is not part of Aboriginal tradition or Island custom, adoption of an Aboriginal or Torres Strait Islander child should be considered as a way of meeting the child's need for long-term stable care only if there is no better available option;
- Note* Island custom includes a customary child-rearing practice that is similar to adoption in so far as parental responsibility for a child is permanently transferred to someone other than the child's parents. This practice referred to as either 'customary adoption' or 'traditional adoption'.
- (b) it is in the best interests of an Aboriginal or Torres Strait Islander child -
 - (i) to be cared for within an Aboriginal or Torres Strait Islander community; and
 - (ii) to maintain contact with the child's community or language group; and

(iii) to develop and maintain a connection with the child's Aboriginal tradition or Island custom; and

(iv) for the child's sense of Aboriginal or Torres Strait Islander identity to be preserved and enhanced.

(2) If the Children's Court exercises a power under this Act in relation to an Aboriginal or Torres Strait Islander child, the court must have regard to the views, about the child and about Aboriginal tradition or Island custom relating to the child, of an appropriate Aboriginal or Torres Strait Islander person.

(3) As far as is reasonably practicable, the chief executive and other officers of the department must try to conduct consultations, counselling, negotiations and other proceedings involving an Aboriginal person or Torres Strait Islander in a way and in a place that is appropriate to Aboriginal tradition or Island custom.

9 References to child's wellbeing or best interests

Unless a contrary intention appears, a reference in this Act to a child's wellbeing or best interests is a reference to the child's wellbeing or best interests through both childhood and the rest of his or her life.

10 Who may be adopted

(1) A child may be adopted by an order of the Childrens Court under this Act.

(2) A child may be adopted whether or not the child has been previously adopted.

(3) An adult may not be adopted.

18 Form of consent

(1) A parent's consent to the child's adoption must be in the approved form, signed by the parent and witnessed by an authorised person.

(2) The approved form must include provision for—

(a) information to identify the child; and

(b) information to identify the parent; and

(c) a signed statement by the witness that the witness has sighted the documents, relating to proof of the parent's identity, prescribed under a regulation.

(3) The approved form may also include provision for other matters relevant to the child's adoption that may be, but are not required to be, completed.

Example of other matters—

details of another parent of the child to the extent the details are known by the parent giving the consent

(4) A single document must not contain—

(a) consent to the adoption of more than 1 child; or

(b) more than 1 parent's consent to the adoption of the child.

(5) In this section—

authorised person means a public service employee, or other appropriate person in Queensland or elsewhere, authorised by the chief executive to witness a consent for this Act.

21 Obligation to enable understanding

The chief executive must ensure information is given to each of the child's parents under this division, and counselling of the parent is carried out under this division, in a way that enables the parent to understand.

22 Parents to be given consent documents

The chief executive must give to each of the child's parents—

- (a) a document showing the contents of the approved form for section 18; and
- (b) a document that the parent may use to revoke consent given by the parent to the child's adoption.

23 Parents to be given prescribed information

(1) The chief executive must give each of the child's parents a document containing information about the following matters (the prescribed information)—

- (a) options other than adoption for the child's long-term care;
- (b) support (financial and otherwise) that may be available to the parent whether or not adoption of the child proceeds;
- (c) possible psychological effects for the parent, both short and long-term, of consenting to the adoption;
- (d) possible psychological effects for the child, both short and long-term, of being adopted;
- (e) how and when the parent's consent to the adoption may be revoked;
- (f) how the parent may give the chief executive the parent's preferences relating to the child's adoption including, for example, preferences about—
 - (i) the child's religious upbringing; or
 - (ii) the characteristics of the child's adoptive parents and adoptive family; or
 - (iii) the degree of openness in the adoption;
- (g) the adoption process under this Act, including—
 - (i) the consents required for an adoption; and
 - (ii) the process for recruiting, assessing and selecting prospective adoptive parents; and
 - (iii) the chief executive's functions and powers relating to the child's adoption; and
 - (iv) the role of the Childrens Court;
- (h) the legal effect of adoption;
- (i) the rights and responsibilities of the parties to an adoption, including those relating to—
 - (i) adoption plans; and
 - (ii) access to information about, and contact with, other parties to an adoption throughout the life of the adopted person;

(j) the requirement for pre-consent counselling and how it will be arranged;

(k) if the child to be adopted is an Aboriginal person or Torres Strait Islander—

(i) options other than adoption for the child's long-term care in accordance with Aboriginal tradition or Island custom; and

(ii) the importance of the child being cared for in a way that—

(A) helps the child to develop and maintain a connection with the child's Aboriginal tradition or Island custom; and

(B) preserves and enhances the child's sense of Aboriginal or Torres Strait Islander identity.

(2) The chief executive must arrange for the prescribed information to be explained to the parent.

24 Parents to be given pre-consent counselling

(1) The chief executive must arrange for each of the child's parents to receive counselling about the prescribed information under section 23.

(2) The counselling must be carried out by a counsellor nominated by the chief executive.

(3) The nominated counsellor may be an officer of the department.

(4) However, if the nominated counsellor is an officer of the department, the chief executive must—

(a) advise the parent that he or she may ask for further counselling by someone who is not an officer of the department; and

(b) if the parent makes a request under paragraph (a), nominate another counsellor who is not an officer of the department to carry out the further counselling.

(5) The counselling must be carried out in a way that allows the parent to ask questions and discuss the prescribed information and matters arising from the information.

(6) If the counsellor reasonably suspects the parent does not have capacity to consent to the adoption, the counsellor must notify the chief executive.

(7) The counsellor may offer to meet with other persons.

Example—

The counsellor may offer to meet other family members to help the parent to consider other options for the child's long-term care.

(8) The counselling may be carried out in 1 or more sessions and by 1 or more counsellors.

(9) In this section—

counsellor means a person who the chief executive is satisfied has appropriate qualifications or experience to carry out counselling under this section.

25 Pre-consent information and counselling for Aboriginal or Torres Strait Islander child

- (1) This section applies if the child to be adopted is an Aboriginal person or Torres Strait Islander.
- (2) The counselling under section 24 must be carried out in a way and at a place that is appropriate to Aboriginal tradition or Island custom.
- (3) The person who explains the prescribed information mentioned in section 23(1)(k)—
- (a) need not be a counsellor under section 24; but
 - (b) must be an appropriate Aboriginal or Torres Strait Islander person.
- (4) This section does not apply to the counselling of a parent to the extent the parent, by giving the chief executive a signed notice in the approved form, declines to receive counselling in a way, or by a person, required by this section.
- (5) The approved form for subsection (4) must state—
- (a) that the chief executive has offered the parent counselling under this section; and
 - (b) the extent to which the counselling is declined; and
 - (c) that the chief executive has given the parent a document containing the information mentioned in subsection (3).

26 Parents' access to legal advice

The chief executive must ensure each of the child's parents is told that the parent may wish to seek legal advice and is given the details of at least 1 entity that generally provides free legal services.

44 Child must be given information

- (1) The chief executive must ensure the child is given the prescribed information before an application for an adoption order for the child is made.
- (2) The information must be given in a way and to an extent that is reasonable, having regard to the child's age and ability to understand.
- (3) In this section--
- prescribed information means information about the following matters--
- (a) options other than adoption for the child's long-term care;
 - (b) possible psychological effects for the child, both short and long-term, of being adopted;
 - (c) how the child's parents may give the chief executive their preferences relating to the child's adoption including, for example, preferences about--
 - (i) the child's religious upbringing; or
 - (ii) the characteristics of the child's adoptive parents and adoptive family; or
 - (iii) the degree of openness in the adoption;
 - (d) the adoption process under this Act, including--
 - (i) the consents required for an adoption; and

- (ii) the process for recruiting, assessing and selecting prospective adoptive parents; and
- (iii) the chief executive's functions and powers relating to the child's adoption; and
- (iv) the role of the Childrens Court;
- (e) support that may be available to the child under sections 47, 235 and 236;
- (f) the legal effect of adoption;
- (g) the rights and responsibilities of the parties to an adoption, including those relating to--
 - (i) adoption plans; and
 - (ii) access to information about, and contact with, other parties to an adoption throughout the life of the adopted person;
- (h) the requirement for counselling under section 45 and how it will be arranged;
- (i) if the child to be adopted is an Aboriginal person or Torres Strait Islander--
 - (i) options other than adoption for the child's long-term care in accordance with Aboriginal tradition or Island custom; and
 - (ii) the importance of the child being cared for in a way that--
 - (A) helps the child to develop and maintain a connection with the child's Aboriginal tradition or Island custom; and
 - (B) preserves and enhances the child's sense of Aboriginal or Torres Strait Islander identity;
- (j) the guiding principles that--
 - (i) the child should be kept informed of matters affecting him or her in a way and to an extent that is appropriate, having regard to the child's age and ability to understand; and
 - (ii) the child's views must be given consideration, having regard to the child's age or ability to understand.

45 Child must be given counselling

- (1) The chief executive must ensure the child receives counselling about the proposed adoption, from a counsellor nominated by the chief executive, before an application for an adoption order for the child is made.
- (2) The counselling must be carried out in a way and to an extent that is reasonable, having regard to the child's age and ability to understand.
- (3) The counselling may be carried out in 1 or more sessions and by 1 or more counsellors.
- (4) In this section—

counsellor means a person who the chief executive is satisfied has appropriate qualifications or experience to carry out counselling under this section.

46 Counselling for Aboriginal or Torres Strait Islander child

- (1) This section applies to the counselling under section 45 if the child is an Aboriginal person or Torres Strait Islander.
- (2) The counselling must be carried out in a way and at a place that is appropriate to Aboriginal tradition or Island custom.
- (3) A person who, as part of the counselling, explains the information under section 44(3), definition prescribed information, paragraph (i)—
 - (a) need not be a counsellor under section 45; but
 - (b) must be an appropriate Aboriginal or Torres Strait Islander person.
- (4) This section does not apply to the extent the child declines to receive counselling in a way, or by a person, required by this section.

118 Consultation with appropriate Aboriginal or Torres Strait Islander person

- (1) This section applies if the person is being assessed for suitability to be an adoptive parent of a child who is, or children who include, an Aboriginal or Torres Strait Islander child.
- (2) The chief executive must consult with an appropriate Aboriginal or Torres Strait Islander person about—
 - (a) Aboriginal tradition or Island custom relating to the child; and
 - (b) the person's suitability.

131 Aboriginal or Torres Strait Islander children

- (1) This section applies if the chief executive is making a decision about the person's suitability to be an adoptive parent of a child who is, or children who include, an Aboriginal or Torres Strait Islander child.
- (2) The chief executive must have regard to the person's ability and willingness to—
 - (a) help the child to maintain contact with the child's community or language group; and
 - (b) help the child to develop and maintain a connection with the child's Aboriginal tradition or Island custom; and
 - (c) preserve and enhance the child's sense of Aboriginal or Torres Strait Islander identity.
- (3) If the chief executive is making a decision about the person's suitability to be an adoptive parent of a particular Aboriginal or Torres Strait Islander child, the chief executive must have regard to the person's links with, and standing in, the child's community or language group.

1 South Australia ('SA')

1.1 Fostering

Children's Protection Act 1993 (SA) (the 'Act')

The fundamental principles of the Act are set out in s 4, with specific reference to Aboriginal and Torres Strait Islander children in s 4(5)-(6) and s 5. The relevant provisions of the Act include:

3 Objects of Act

The objects of this Act are—

- (a) to ensure that all children are safe from harm; and
- (b) to ensure as far as practicable that all children are cared for in a way that allows them to reach their full potential; and
- (c) to promote caring attitudes and responses towards children among all sections of the community so that the need for appropriate nurture, care and protection (including protection of the child's cultural identity) is understood, risks to a child's wellbeing are quickly identified, and any necessary support, protection or care is promptly provided; and
- (d) to recognise the family as the primary means of providing for the nurture, care and protection of children and to accord a high priority to supporting and assisting the family to carry out its responsibilities to children.

4 Fundamental principles

- (1) Every child has a right to be safe from harm.
- (2) Every child has a right to care in a safe and stable family environment or, if such a family environment cannot for some reason be provided, in some alternative form of care in which the child has every opportunity that can be reasonably provided to develop to his or her full potential.
- (3) In the exercise of powers under this Act, the above principles and the child's wellbeing and best interests are to be the paramount considerations.
- (4) In determining a child's best interests, consideration must be given to the following:
 - (a) the desirability of keeping the child within the child's own family and the undesirability of withdrawing the child unnecessarily from a neighbourhood or environment with which the child has an established sense of connection;
 - (b) the need to preserve and strengthen relationships between the child, the child's parents and grandparents and other members of the child's family (whether or not the child is to reside with those parents, grandparents or other family members);
 - (c) the need to encourage, preserve and enhance the child's sense of racial, ethnic, religious, spiritual and cultural identity and to respect traditions and values of the community into which the child was born;
 - (d) if the child is able to form and express his or her own views as to his or her best interests—those views;

(e) the undesirability of interrupting the child's education or employment unnecessarily.

(5) In relation to an Aboriginal or Torres Strait Islander child, the Aboriginal and Torres Strait Islander Child Placement Principle is to be observed.

(6) A child who is placed or about to be placed in alternative care—

(a) must be provided with—

(i) a nurturing, safe and stable living environment; and

(ii) care that is, as far as practicable, appropriate to the child's needs and culturally appropriate; and

(b) must be allowed to maintain relationships with the child's family (including the child's grandparents) and community, to the extent that such relationships can be maintained without serious risk of harm; and

(c) must be consulted about, and (if the child is reasonably able to do so) take part in making, decisions affecting the child's life, particularly decisions about the child's ongoing care, where the child is to live, contact with the child's family and the child's health and schooling; and

(d) must be given information that is appropriate, having regard to the child's age and ability to understand, about plans and decisions concerning the child's future; and

(e) is entitled to have his or her privacy respected; and

(f) if the child is in alternative care and under the guardianship, or in the custody, of the Minister—is entitled to regular review of the child's circumstances and the arrangements for the child's care.

(7) All proceedings under this Act must be dealt with expeditiously, with due regard to the degree of urgency of each particular case.

5 Provisions relating to dealing with Aboriginal or Torres Strait Islander children

(1) No decision or order may be made under this Act as to where or with whom an Aboriginal or Torres Strait Islander child will reside unless consultation has first been had with a recognised Aboriginal organisation, or a recognised Torres Strait Islander organisation, as the case may require.

(2) A person or court, in making any decision or order under this Act in relation to an Aboriginal or Torres Strait Islander child, must, in addition to complying with the requirements of section 4, have regard -

(a) to the submissions made by or on behalf of a recognised Aboriginal or Torres Strait Islander organisation consulted in relation to the child; and

(b) if there has been no such consultation - to Aboriginal traditions and cultural values (including kinship rules) as generally expressed by the Aboriginal community, or to Torres Strait Islander traditions and cultural values (including kinship rules) as generally expressed by the Torres Strait Islander community, as the case may require; and

(c) to the general principle that an Aboriginal child should be kept within the Aboriginal community and a Torres Strait Islander child should be kept within the Torres Strait Islander community

(3) For the purposes of this Act, a recognised Aboriginal or Torres Strait Islander organisation is an organisation that the Minister, after consulting with the Aboriginal community or a section of the Aboriginal community, or the Torres Strait Islander community or a section of the Torres Strait Islander community,

as the case may require, declares by notice in the Gazette to be a recognised Aboriginal organisation, or a recognised Torres Strait Islander organisation, for the purposes of this Act.

(4) The Minister may, by notice in the Gazette, after consulting with the relevant community or a section of the relevant community, vary or revoke a declaration under subsection (3).

(5) All reasonable endeavours should be made when conducting consultations, negotiations, meetings or proceedings of any kind under this Act involving an Aboriginal person (where a child or not) to do so in a manner and in a venue that is as sympathetic to Aboriginal traditions as is reasonably practicable.

(6) All reasonable endeavours should be made when conducting consultations, negotiations, meetings or proceedings of any kind under this Act involving an Aboriginal person (where a child or not) to do so in a manner and in a venue that is as sympathetic to Aboriginal traditions as is reasonably practicable.

(7) The Minister will cause discussions to be held from time to time between the Department and the relevant community for the purposes of implementing subsections (5) and (6).

1.2 Adoption

Adoption Act 1988 (SA) (the 'Act')

Under the Act, the welfare of the child is of paramount consideration. The requirements for the adoption of an Aboriginal child are set out in s 11. Relevant provisions of the Act include:

7—General principle

In all proceedings under this Act, the welfare of the child to whom the proceedings relate must be regarded as the paramount consideration.

11 Adoption of Aboriginal child

(1) The Court will not make an order for the adoption of an Aboriginal child unless satisfied that adoption is clearly preferable, in the interest of the child, to any alternative order that may be made under the laws of the State or the Commonwealth.

(2) Subject to subsection (3), an order for the adoption of an Aboriginal child will not be made except in favour of a member of the child's Aboriginal community who has the correct relationship with the child in accordance with Aboriginal customary law or, if there is no such person seeking to adopt the child, some other Aboriginal person.

(3) An order for the adoption of an Aboriginal child may be made in favour of a person who is not an Aboriginal person if the Court is satisfied -

(a) that there are special circumstances justifying the making of the order; and

(b) that the child's cultural identity with the Aboriginal people will not be lost in consequence of the adoption.

1 Tasmania ('TAS')

1.1 *Fostering*

Children, Young Persons and Their Families Act 1997 (TAS) (the 'Act')

The relevant principles to be observed are found in s 8 of the Act, with the best interests of the child a paramount consideration. Principles relating to Aboriginal children are detailed in s 9 of the Act. Relevant provisions of the Act include:

3 Interpretation

(1) In this Act, unless the contrary intention appears –

"Aboriginal child" means a child who is an Aboriginal person within the meaning of the *Aboriginal Lands Act 1995*;

4 Meaning of "at risk"

(1) For the purposes of this Act, a child is at risk if –

(a) the child has been, is being, or is likely to be, abused or neglected; or

(b) any person with whom the child resides or who has frequent contact with the child (whether the person is or is not a guardian of the child) –

(i) has threatened to kill or abuse or neglect the child and there is a reasonable likelihood of the threat being carried out; or

(ii) has killed or abused or neglected some other child or an adult and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person; or

(ba) the child is an affected child within the meaning of the *Family Violence Act 2004*; or

(c) the guardians of the child are –

(i) unable to maintain the child; or

(ii) unable to exercise adequate supervision and control over the child; or

(iii) unwilling to maintain the child; or

(iv) unwilling to exercise adequate supervision and control over the child; or

(v) dead, have abandoned the child or cannot be found after reasonable inquiry; or

(vi) are unwilling or unable to prevent the child from suffering abuse or neglect; or

(d) the child is under 16 years of age and does not, without lawful excuse, attend a school, or other educational or training institution, regularly.

(2) For the purposes of subsection (1), it does not matter whether the conduct that puts a child at risk occurred or, as the case requires, is likely to occur wholly or partly outside Tasmania.

8 Principles to be observed in dealing with children

(1) The administration of this Act is to be founded on the following principles:

- (a) the primary responsibility for a child's care and protection lies with the child's family;
 - (b) a high priority is to be given to supporting and assisting the family to carry out that primary responsibility in preference to commencing proceedings under Division 2 of Part 5;
 - (c) if a family is not able to meet its responsibilities to the child and the child is at risk, the Secretary may accept those responsibilities.
- (2) In any exercise of powers under this Act in relation to a child –
- (a) the best interests of the child must be the paramount consideration; and
 - (b) serious consideration must be given to the desirability of –
 - (i) keeping the child within his or her family; and
 - (ii) preserving and strengthening family relationships between the child and the child's guardians and other family members, whether or not the child is to reside within his or her family; and
 - (iii) not withdrawing the child unnecessarily from the child's familiar environment, culture or neighbourhood; and
 - (iv) not interrupting unnecessarily the child's education or employment; and
 - (v) preserving and enhancing the child's sense of ethnic, religious or cultural identity, and making decisions and orders that are consistent with ethnic traditions or religious or cultural values; and
 - (vi) preserving the child's name; and
 - (vii) not subjecting the child to unnecessary, intrusive or repeated assessments; and
 - (c) the powers, wherever practicable and reasonable, must be exercised in a manner that takes into account the views of all persons concerned with the welfare of the child.
- (3) In any exercise of powers under this Act in relation to a child, if a child is able to form and express views as to his or her ongoing care and protection, those views must be sought and given serious consideration, taking into account the child's age and maturity.
- (4) In any proceeding under this Act that may lead to any separation of a child from his or her family, other than a proceeding under Part 4, the child's family and other persons interested in the child's wellbeing must be given the opportunity to present their views in respect of the child's wellbeing.
- (5) In any proceeding under this Act in relation to a child, the child's family and other persons interested in the child's wellbeing should be provided with information sufficient to enable them to participate fully in the proceeding.
- (6) All proceedings under this Act must be dealt with expeditiously, with due regard to the degree of urgency of each particular case.

9 Principles relating to dealing with Aboriginal children

- (1) A decision or order as to where or with whom an Aboriginal child will reside may not be made under this Act except where a recognised Aboriginal organisation has first been consulted.

(2) In making any decision or order under this Act in relation to an Aboriginal child, a person or the Court must, in addition to complying with the principles set out in section 8 -

(a) have regard to any submissions made by or on behalf of a recognised Aboriginal organisation consulted in relation to the child; and

(b) if a recognised Aboriginal organisation has not made any submissions, have regard to Aboriginal traditions and cultural values (including kinship rules) as generally held by the Aboriginal community; and

(c) have regard to the general principles that an Aboriginal child should remain within the Aboriginal community.

32 Convening family group conference

(1) If a family group conference is to be held, the Secretary must consult with the child and the child's immediate family in relation to the assignment of a facilitator.

(2) After consulting with the child and the child's immediate family, the Secretary must assign a facilitator to convene and facilitate the family group conference.

(3) Except where the facilitator is satisfied that the child is mature enough to make, and has made, an independent decision to waive his or her right to be represented by a suitable person at the family group conference, the facilitator must ensure that a person whom the facilitator considers suitable is representing the child as his or her advocate.

(4) The facilitator –

(a) must consult with the child, the child's guardians and, in the case of an Aboriginal child, with an appropriate recognised Aboriginal organisation as to who should be invited to attend the family group conference and the time and place of the meeting; and

(b) must fix a time and place for the family group conference; and

(c) must issue a notice specifying the time and place of the family group conference.

(5) If reasonably practicable, the time fixed for a family group conference must be within 3 weeks after the Secretary has determined that the conference is to be held.

(6) The facilitator must invite the following persons to attend the family group conference and provide each of them with a copy of the notice issued under subsection (4)(c):

(a) the child;

(b) the guardians of the child;

(c) the child's advocate, if one has been appointed;

(d) an employee of the Department authorised by the Secretary, either generally or in respect of that child, to present a report into the child's circumstances to the conference;

(e) if the conference is convened as a result of an order of the Court, any person whom the order specifies is to be invited.

(7) Despite subsection (6), the facilitator is not required to invite any person specified in that subsection to the family group conference if the attendance of that person at the conference could result in the contravention of a restraint order made under the *Justices Act 1959* or any other order of a court.

(8) Despite subsection (6)(a) and (b), the facilitator is not required to invite the child or any guardian of the child to the family group conference if the facilitator is of the opinion that it would not be in the best interests of the child for the child or that other person to attend.

(9) Despite subsection (6)(a), the facilitator is not required to invite the child to the family group conference if the facilitator is of the opinion that the child is unable to understand or participate in the proceedings of the conference by reason of his or her age or for any other reason.

(10) The facilitator may invite one or more of the following persons to attend the family group conference and provide them with a copy of the notice issued under subsection (4)(c):

(a) members of the child's immediate family whom the facilitator considers should attend;

(b) members of the child's extended family whom the child or the child's guardians have requested the facilitator to invite;

(c) other members of the child's extended family whom the facilitator considers should attend;

(d) any other person who has had a close association with the child and whom the facilitator considers should attend;

(e) any person who has been counselling, advising or aiding the child or the child's guardians and whom the facilitator considers should attend;

(f) if the child is an Aboriginal child, a person nominated by a recognised Aboriginal organisation;

(g) any person who has examined, assessed, counselled or treated the child in the course of the assessment of the child's circumstances and whom the facilitator considers should attend;

(h) if there are concerns about the child's education and the child attends a Government school, a person nominated by the Secretary of the responsible Department in relation to the *Education Act 1994*;

(i) if there are concerns about the child's education and the child attends a non-Government school, a person nominated by the principal of the school;

(j) if there are concerns about the child's education and the child attends the Tasmanian Academy established by the *Education and Training (Tasmanian Academy) Act 2008*, a person nominated by the Tasmanian Academy;

(k) if there are concerns about the child's education and the child attends the Tasmanian Polytechnic established by the *Education and Training (Tasmanian Polytechnic) Act 2008*, a person nominated by the Tasmanian Polytechnic.

(11) In determining whether a person is to be invited or not to be invited to a family group conference under subsection (10), the facilitator must take into account any relevant restraint order made under the *Justices Act 1959* or any other relevant order of a court.

51 Right of other interested persons to be heard

In any proceedings under this Division, on the application of –

(a) a member of a child's family; or

(b) a person who has at any time had care of a child; or

- (c) a person who has counselled, advised or aided a child; or
- (d) if the child is an Aboriginal child, a recognised Aboriginal organisation or a representative of such an organisation; or
- (e) any other person who appears to the Court to have a proper interest in the matter –

the Court may hear submissions and take evidence from the applicant in respect of the child, even though the applicant is not a party to the proceedings.

55 Determining what is child's best interests

(1) In determining what is in the child's best interests, the Court must consider the following matters:

- (a) any wishes expressed by the child and any factors (such as the child's maturity or level of understanding) that the Court considers relevant to the weight it should give to the child's wishes;
- (b) the nature of the relationship of the child with each of the child's guardians and with other persons;
- (c) the likely effect of any changes in the child's circumstances, including the likely effect on the child of any separation from –
 - (i) either of his or her guardians; and
 - (ii) any other child, or other person, with whom he or she has been living;
- (d) the practical difficulty and expense of a child having contact with a guardian and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with each guardian on a regular basis;
- (e) the capacity of each guardian, or of any other person, to provide for the needs of the child, including emotional and intellectual needs;
- (f) the child's maturity, sex, background and culture (including any need to maintain a connection with the lifestyle, culture and traditions of the Aboriginal community) and any other characteristics of the child that the Court considers relevant;
- (g) the need to protect the child from physical or psychological harm;
- (h) the attitude to the child, and to the responsibilities of parenthood, demonstrated by each of the child's guardians;
- (i) any other fact or circumstance that the Court considers relevant.

(2) If the Court is considering whether to make an order with the consent of all the parties to the proceedings, the Court may, but is not required to, have regard to all or any of the matters set out in subsection (1).

1.2 Adoption

Adoption Act 1988 (the 'Act')

There is no specific reference in the Act to Aboriginal or Torres Strait Islander children.

8 Welfare and interests of child to be paramount

In the administration of this Act, the welfare and interests of the child or adopted person concerned shall be regarded as the paramount consideration at all times.

1 Victoria ('VIC')

1.1 Fostering

Children, Youth and Families Act 2005 (VIC) (the 'Act')

The best interests of the child are paramount under this Act, with the relevant considerations that must be given outlined in s 10 and 11 of the Act. Additional decision making principles for Aboriginal children are outlined in s 12 of the Act, specifically s 12(c), which states that 'an Aboriginal agency must first be consulted and the Aboriginal Child Placement Principle must be applied' prior to the placement of the child. The Aboriginal Child Placement Principle is outlined in s 13 of the Act, with further principles for the placement of an Aboriginal child in s 14 of the Act. Section 176 of the Act outlines the cultural plan requirements for an Aboriginal child. Relevant provisions of the Act include:

1 Purposes

The main purposes of this Act are—

- (a) to provide for community services to support children and families; and
- (b) to provide for the protection of children; and
- (c) to make provision in relation to children who have been charged with, or who have been found guilty of, offences; and
- (d) to continue The Children's Court of Victoria as a specialist court dealing with matters relating to children.

3 Definitions

(1) In this Act—

Aboriginal agency means an organisation declared to be an Aboriginal agency under section 6;

Aboriginal person means a person who—

- (a) is descended from an Aborigine or Torres Strait Islander; and
- (b) identifies as an Aborigine or Torres Strait Islander; and
- (c) is accepted as an Aborigine or Torres Strait Islander by an Aboriginal or Torres Strait Island community;

PART 1.2—PRINCIPLES

Division 2—Best interests principles

10 Best interests principles

(1) For the purposes of this Act the best interests of the child must always be paramount.

(2) When determining whether a decision or action is in the best interests of the child, the need to protect the child from harm, to protect his or her rights and to promote his or her development (taking into account his or her age and stage of development) must always be considered.

(3) In addition to subsections (1) and (2), in determining what decision to make or action to take in the best interests of the child, consideration must be given to the following, where they are relevant to the decision or action—

(a) the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child;

(b) the need to strengthen, preserve and promote positive relationships between the child and the child's parent, family members and persons significant to the child;

(c) the need, in relation to an Aboriginal child, to protect and promote his or her Aboriginal cultural and spiritual identity and development by, wherever possible, maintaining and building their connections to their Aboriginal family and community;

(d) the child's views and wishes, if they can be reasonably ascertained, and they should be given such weight as is appropriate in the circumstances;

(e) the effects of cumulative patterns of harm on a child's safety and development;

(f) the desirability of continuity and stability in the child's care;

(g) that a child is only to be removed from the care of his or her parent if there is an unacceptable risk of harm to the child;

(h) if the child is to be removed from the care of his or her parent, that consideration is to be given first to the child being placed with an appropriate family member or other appropriate person significant to the child, before any other placement option is considered;

(i) the desirability, when a child is removed from the care of his or her parent, to plan the reunification of the child with his or her parent;

(j) the capacity of each parent or other adult relative or potential care giver to provide for the child's needs and any action taken by the parent to give effect to the goals set out in the case plan relating to the child;

(k) access arrangements between the child and the child's parents, siblings, family members and other persons significant to the child;

(l) the child's social, individual and cultural identity and religious faith (if any) and the child's age, maturity, sex and sexual identity;

Division 3—Decision-making principles

11 Decision-making principles

In making a decision or taking an action in relation to a child, the Secretary or a community service must also give consideration to the following principles—

- (a) the child's parent should be assisted and supported in reaching decisions and taking actions to promote the child's safety and wellbeing;
- (b) where a child is placed in out of home care, the child's care giver should be consulted as part of the decision-making process and given an opportunity to contribute to the process;
- (c) the decision-making process should be fair and transparent;
- (d) the views of all persons who are directly involved in the decision should be taken into account;
- (e) decisions are to be reached by collaboration and consensus, wherever practicable;
- (f) the child and all relevant family members (except if their participation would be detrimental to the safety or wellbeing of the child) should be encouraged and given adequate opportunity to participate fully in the decision-making process;

Division 4—Additional Decision-making Principles for Aboriginal Children

12 Additional decision-making principles

(1) In recognition of the principle of Aboriginal self-management and self-determination, in making a decision or taking an action in relation to an Aboriginal child, the Secretary or a community service must also give consideration to the following principles—

- (a) in making a decision or taking an action in relation to an Aboriginal child, an opportunity should be given, where relevant, to members of the Aboriginal community to which the child belongs and other respected Aboriginal persons to contribute their views;
- (b) a decision in relation to an Aboriginal child, should involve a meeting convened by an Aboriginal convener who has been approved by an Aboriginal agency and, wherever possible, attended by—
 - (i) the child; and
 - (ii) the child's parent; and
 - (iii) members of the extended family of the child; and
 - (iv) other appropriate members of the Aboriginal community as determined by the child's parent;
- (c) in making a decision to place an Aboriginal child in out of home care, an Aboriginal agency must first be consulted and the Aboriginal Child Placement Principle must be applied.

(2) The requirement under subsection (1)(c) to consult with an Aboriginal agency does not apply to the making of a decision or the taking of an action under Part 3.5.

(3) In this section **Aboriginal organisation** means an organisation that is managed by Aboriginal persons and that carries on its activities for the benefit of Aboriginal persons.

13 Aboriginal Child Placement Principle

(1) For the purposes of this Act the Aboriginal Child Placement Principle is that if it is in the best interests of an Aboriginal child to be placed in out of home care, in making that placement, regard must be had—

- (a) to the advice of the relevant Aboriginal agency; and
- (b) to the criteria in sub-section (2); and
- (c) to the principles in section 14.

(2) The criteria are—

(a) as a priority, wherever possible, the child must be placed within the Aboriginal extended family or relatives and where this is not possible other extended family or relatives;

(b) if, after consultation with the relevant Aboriginal agency, placement with extended family or relatives is not feasible or possible, the child may be placed with—

- (i) an Aboriginal family from the local community and within close geographical proximity to the child's natural family;
- (ii) an Aboriginal family from another Aboriginal community;
- (iii) as a last resort, a non-Aboriginal family living in close proximity to the child's natural family;

(c) any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community.

(3) The requirements under subsection (1)(a) to have regard to the advice of the relevant Aboriginal agency and under subsection (2)(b) to consult with the relevant Aboriginal agency do not apply to the making of a decision or the taking of an action under Part 3.5.

14 Further principles for placement of Aboriginal child

Self-identification and expressed wishes of child

(1) In determining where a child is to be placed, account is to be taken of whether the child identifies as Aboriginal and the expressed wishes of the child.

Child with parents from different Aboriginal communities

(2) If a child has parents from different Aboriginal communities, the order of placement set out in sections 13(2)(b)(i) and 13(2)(b)(ii) applies but consideration should also be given to the child's own sense of belonging.

(3) If a child with parents from different Aboriginal communities is placed with one parent's family or community, arrangements must be made to ensure that the

child has the opportunity for continuing contact with his or her other parent's family, community and culture.

Child with one Aboriginal parent and one non-Aboriginal parent

(4) If a child has one Aboriginal parent and one non-Aboriginal parent, the child must be placed with the parent with whom it is in the best interests of the child to be placed.

Placement of child in care of a non-Aboriginal person

(5) If an Aboriginal child is placed with a person who is not within an Aboriginal family or community, arrangements must be made to ensure that the child has the opportunity for continuing contact with his or her Aboriginal family, community and culture.

Cultural plan means a cultural plan prepared under section 176

162 When is a child in need of protection?

(1) For the purposes of this Act a child is in need of protection if any of the following grounds exist—

(a) the child has been abandoned by his or her parents and after reasonable inquiries—

(i) the parents cannot be found; and

(ii) no other suitable person can be found who is willing and able to care for the child;

(b) the child's parents are dead or incapacitated and there is no other suitable person willing and able to care for the child;

(c) the child has suffered, or is likely to suffer, significant harm as a result of physical injury and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;

(d) the child has suffered, or is likely to suffer, significant harm as a result of sexual abuse and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;

(e) the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged and the child's parents have not protected, or are unlikely to protect, the child from harm of that type;

(f) the child's physical development or health has been, or is likely to be, significantly harmed and the child's parents have not provided, arranged or allowed the provision of, or are unlikely to provide, arrange or allow the provision of, basic care or effective medical, surgical or other remedial care.

(2) For the purposes of subsections (1)(c) to (1)(f), the harm may be constituted by a single act, omission or circumstance or accumulate through a series of acts, omissions or circumstances.

176 Cultural plan for Aboriginal child

- (1) The Secretary must prepare a cultural plan for each Aboriginal child placed in out of home care under a guardianship to Secretary order or long-term guardianship to Secretary order.
- (2) A cultural plan must set out how the Aboriginal child placed in out of home care is to remain connected to his or her Aboriginal community and to his or her Aboriginal culture.
- (3) For the purposes of subsection (2), a child's Aboriginal community is—
- (a) the Aboriginal community to which the child has a sense of belonging, if this can be ascertained by the Secretary; or
 - (b) if paragraph (a) does not apply, the Aboriginal community in which the child has primarily lived; or
 - (c) if paragraphs (a) and (b) do not apply, the Aboriginal community of the child's parent or grandparent.
- (4) The Secretary must monitor compliance by the carer of a child with the cultural plan prepared for a child.

PART 1.2—PERMANENT CARE ORDERS

323 Restrictions on the making of a permanent care order in respect of an Aboriginal child

The Court must not make a permanent care order to place an Aboriginal child solely with a non-Aboriginal person or persons unless—

- (a) the disposition report states that—
 - (i) no suitable placement can be found with an Aboriginal person or persons; and
 - (ii) the decision to seek the order has been made in consultation with the child, where appropriate; and
 - (iii) the Secretary is satisfied that the order sought will accord with the Aboriginal Child Placement Principle; and
- (b) the Court has received a report from an Aboriginal agency that recommends the making of the order; and
- (c) if the Court so requires, a cultural plan has been prepared for the child.

1.2 Adoption

Adoption Act 1984 (VIC) (the 'Act')

The welfare and interest of the child are of paramount consideration in the administration of this Act. The requirements concerning the adoption of an Aboriginal child are set out in s 50 of the Act. Relevant provisions of the Act include:

4 Definitions

(1) In this Act, unless inconsistent with the context or subject-matter—

Aborigine means a person who—

- (a) is descended from an Aborigine or Torres Strait Islander;
- (b) identifies as an Aborigine or Torres Strait Islander; and
- (c) is accepted as an Aborigine or Torres Strait Islander by an Aboriginal or Torres Strait Island community;

9 Welfare and interests of child to be paramount

In the administration of this Act, the welfare and interests of the child concerned shall be regarded as the paramount consideration.

37 Consent subject to conditions

(1) A consent by a parent to the adoption of a child in which the wish is expressed under section 50 that the child be adopted within the Aboriginal community may be made subject to a condition that that parent, and such relative of the child as are specified in the consent and members of the Aboriginal community to which the child belongs have a right of access in accordance with the prescribed terms to the child.

50 Adoption of Aboriginal child

(1) The provision of this section are enacted in recognition of the principle of Aboriginal self-management and self-determination and that adoption is absent in customary Aboriginal child care arrangements.

(2) Where -

(a) consent is given to the adoption of a child by a parent -

(i) who is an Aborigine; or

(ii) who is not an Aborigine but, in the instrument of consent, states the belief that the other parent is an Aborigine -

and who, in the instrument of consent, expresses the wish that the child be adopted within the Aboriginal community; or

(b) the Court has dispensed with the consent of the parents and the Secretary or principal officer of an approved agency believes on reasonable grounds that the child has been accepted by an Aboriginal community as an Aborigine and so informs the Court -

the Court shall not make an order for the adoption of the child unless the Court is satisfied as to the matters referred to in section 15 and, where a parent has given consent, is satisfied that the parent has received, or has in writing expressed the wish not to receive, counselling from an Aboriginal agency and -

(c) that the proposed adoptive parents are members, or at least one of the proposed adoptive parents is a member, of the Aboriginal community to which a parent who gave consent belongs;

(d) that a person of a class referred to in paragraph (c) is not reasonably available as an adoptive parent and that the proposed adoptive parents,

or at least one of the proposed adoptive parents, is a member of an Aboriginal community; or

(e) that a person of a class referred to in paragraph (c) or (d) is not reasonably available as an adoptive parent and that the proposed adoptive parents are persons approved by or on behalf of the Secretary or the principal officer of an approved agency and by an Aboriginal agency as suitable persons to adopt an Aboriginal child.

(3) In this section, **Aboriginal agency** means an organisation declared by Order of the Governor in Council published in the Government Gazette to be an Aboriginal agency in accordance with subsection (4).

(4) An organisation shall not be declared under subsection (3) to be an Aboriginal agency unless the Secretary is satisfied that the organisation is managed by Aborigines, that its activities are carried on for the benefit of Aborigines and that it has experience in child and family welfare matters and the declaration includes a statement to that effect.

(5) The Governor in Council may, by Order published in the Government Gazette, revoke or vary an order made under subsection (3).

59 Certain adoption orders subject to condition

Where the consent of a parent to the adoption of an Aboriginal child was given subject to a condition in accordance with section 37, the adoption order may, subject to and in accordance with consents given to the adoption, be made subject to a condition that a parent or the parents, relatives of the child and members of the Aboriginal community to which the child belongs have such right to have access to the child as specified in the order.

70 Registration of orders

(1) The prescribed officer of the Court shall cause a memorandum, in accordance with the prescribed form, of each adoption order to be sent to the Registrar who shall register the adoption-

(a) by endorsing on the memorandum, an official number and placing the memorandum in a Register of Adoptions kept by the Registrar; and

(b) by making an entry in the Adopted Children Register kept by the Registrar of the prescribed particulars ascertained from the memorandum.

(2) Where an order for the adoption of a child to whom section 50 applies is made, the prescribed officer of the Court shall cause to be sent to the Registrar a memorandum giving the name of the Aboriginal agency (if any) concerned in the arrangements for the adoption and stating that the provisions of section 114 apply.

(3) The prescribed officer of the Court shall cause a copy of each order for the discharge of an adoption order to be sent to the Registrar who shall, where the order is for the discharge of an adoption order that has been registered in the Register of Adoptions, register the order-

(a) by placing it with the adoption order to which it relates in the Register of Adoptions kept by the Registrar; and

(b) by making a notation of the discharge in the entry in the Adopted Children Register kept by the Registrar and, where the order relates to a person whose birth is registered in Victoria, in the entry in the Register of Births relating to the birth.

114 Registrar to give notices concerning Aboriginal children

(1) Where a memorandum was sent to the Registrar under section 70(2) in relation to the adoption of a child, the Registrar shall, on or within the period of 28 days after the adopted child attains the age of twelve years, give notice in writing—

(a) to the Aboriginal agency (if any) named in the memorandum or, where it has ceased to exist, to such other agency (if any) as is prescribed for the purposes of this section; and

(b) to the Secretary—

stating that the adopted child has attained the age of twelve years.

(2) Where the Secretary receives a notice under subsection (1), the Secretary shall take reasonable steps to ensure that notice is given—

(a) to the adopted child; and

(b) to the adoptive parents of the adopted child or, where they cannot be found, to some other person in whose care the child is for the time being—

to the effect that the adopted child may be entitled to certain rights and privileges that exist for the benefit of the child.

1 Western Australia ('WA')

1.1 Fostering

Children and Community Services Act 2004 (WA) (as amended 24 Nov 2010) (the 'Act')

Under this Act, the best interests of the child are of paramount consideration. Section 8 sets out the requirements for determining what is in the best interests of the child and the guiding principles are found in s 9. Division 3 of the Act concerns the principles relating to Aboriginal and Torres Strait Islander children, with the Aboriginal and Torres Strait Island child placement principle outlined in s 12, principle of self-determination in s 13 and principle of community participation in s 14. Care plans are outlined in s 89. Relevant provisions of the Act include:

3 Terms used

In this Act, unless the contrary intention appears —

Aboriginal person means a person who is a descendant of Aboriginal people of Australia, and **Aboriginal child** has a corresponding meaning;

Part 2 — Objects and principles

Division 1 — Objects

6 Objects

The objects of this Act are —

- (a) to promote the wellbeing of children, other individuals, families and communities; and
- (b) to acknowledge the primary role of parents, families and communities in safeguarding and promoting the wellbeing of children; and
- (c) to encourage and support parents, families and communities in carrying out that role; and
- (d) to provide for the protection and care of children in circumstances where their parents have not given, or are unlikely or unable to give, that protection and care; and
- (e) to protect children from exploitation in employment.

[Section 6 amended by No. 19 of 2007 s. 64.]

Division 2 — General principles relating to children

7 Principle that best interests of child paramount

In performing a function or exercising a power under this Act in relation to a child, a person or the Court must regard the best interests of the child as the paramount consideration.

8 Determining the best interests of a child

(1) In determining for the purposes of this Act what is in a child's best interests the following matters must be taken into account —

- (a) the need to protect the child from harm;
- (b) the capacity of the child's parents to protect the child from harm;
- (c) the capacity of the child's parents, or of any other person, to provide for the child's needs;
- (d) the nature of the child's relationship with the child's parents, siblings and other relatives and with any other people who are significant in the child's life;
- (e) the attitude to the child, and to parental responsibility, demonstrated by the child's parents; (f) any wishes or views expressed by the child, having regard to the child's age and level of understanding in determining the weight to be given to those wishes or views;
- (g) the importance of continuity and stability in the child's living arrangements and the likely effect on the child of disruption of those living arrangements, including separation from —
 - (i) the child's parents;
 - (ii) a sibling or other relative of the child;
 - (iii) a carer or any other person (including a child) with whom the child is, or has recently been, living; or
 - (iv) any other person who is significant in the child's life;
- (h) the need for the child to maintain contact with the child's parents, siblings and other relatives and with any other people who are significant in the child's life;
- (i) the child's age, maturity, sex, sexuality, background and language;
- (j) the child's cultural, ethnic or religious identity (including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal people or Torres Strait Islanders);
- (k) the child's physical, emotional, intellectual, spiritual, developmental and educational needs;
- (l) any other relevant characteristics of the child;
- (m) the likely effect on the child of any change in the child's circumstances.

(2) Subsection (1) does not limit the matters that may be taken into account in determining what is in the best interests of a child.

9 Guiding principles

In the administration of this Act the following principles must be observed —

(a) the principle that the parents, family and community of a child have the primary role in safeguarding and promoting the child's wellbeing;

(b) the principle that the preferred way of safeguarding and promoting a child's wellbeing is to support the child's parents, family and community in the care of the child;

(c) the principle that every child should be cared for and protected from harm;

(d) the principle that every child should live in an environment free from violence;

(e) the principle that every child should have stable, secure and safe relationships and living arrangements;

(f) the principle that intervention action (as defined in section 32(2)) should be taken only in circumstances where there is no other reasonable way to safeguard and promote the child's wellbeing;

(g) the principle that if a child is removed from the child's family then, so far as is consistent with the child's best interests, the child should be given encouragement and support in maintaining contact with the child's parents, siblings and other relatives and with any other people who are significant in the child's life;

(h) the principle that decisions about a child should be made promptly having regard to the age, characteristics, circumstances and needs of the child;

(i) the principle that decisions about a child should be consistent with cultural, ethnic and religious values and traditions relevant to the child;

(j) the principle that a child's parents and any other people who are significant in the child's life should be given an opportunity and assistance to participate in decision-making processes under this Act that are likely to have a significant impact on the child's life;

(k) the principle that a child's parents and any other people who are significant in the child's life should be given adequate information, in a manner and language that they can understand, about —

(i) decision-making processes under this Act that are likely to have a significant impact on the child's life;

(ii) the outcome of any decision about the child, including an explanation of the reasons for the decision; and

(iii) any relevant complaint or review procedures;

(l) the principle set out in section 10(1).

10 Principle of child participation

(1) If a decision under this Act is likely to have a significant impact on a child's life then, for the purpose of ensuring that the child is able to participate in the decision-making process, the child should be given —

(a) adequate information, in a manner and language that the child can understand, about —

(i) the decision to be made;

(ii) the reasons for the Department's involvement;

(iii) the ways in which the child can participate in the decision-making process; and

(iv) any relevant complaint or review procedures;

(b) the opportunity to express the child's wishes and views freely, according to the child's abilities;

(c) any assistance that is necessary for the child to express those wishes and views;

(d) adequate information as to how the child's wishes and views will be recorded and taken into account;

(e) adequate information about the decision made and a full explanation of the reasons for the decision; and

(f) an opportunity to respond to the decision made.

(2) In the application of the principle set out in subsection (1), due regard must be had to the age and level of understanding of the child concerned.

(3) Decisions under this Act that are likely to have a significant impact on a child's life include but are not limited to —

(a) decisions about the placement of the child;

(b) decisions in the course of preparing, modifying or reviewing care plans or provisional care plans for the child;

(c) decisions about the provision of social services to the child; and

(d) decisions about contact with the child's parents, siblings and other relatives and with any other people who are significant in the child's life.

(4) In subsection (3)(b) —

care plan has the meaning given to that term in section 89(1);

provisional care plan has the meaning given to that term in section 39(1).

children

11 Relationship with principles in Division 2

The principles set out in this Division are in addition to, and do not derogate from, the principles set out in Division 2.

12 Aboriginal and Torres Strait Islander child placement principle

(1) The objective of the principle in subsection (2) is to maintain a connection with family and culture for Aboriginal children and Torres Strait Islander children who are the subject of placement arrangements.

(2) In making a decision under this Act about the placement of an Aboriginal child or a Torres Strait Islander child, a principle to be observed is that any placement of the child must be considered as far as is practicable in the following order of priority —

(a) placement with a member of the child's family;

(b) placement with a person who is an Aboriginal person or a Torres Strait Islander in the child's community in accordance with local customary practice;

(c) placement with a person who is an Aboriginal person or a Torres Strait Islander;

(d) placement with a person who is not an Aboriginal person or a Torres Strait Islander but who, in the opinion of the CEO, is sensitive to the needs of the child and capable of promoting the child's ongoing affiliation with the child's culture, and where possible, the child's family.

13 Principle of self-determination

In the administration of this Act a principle to be observed is that Aboriginal people and Torres Strait Islanders should be allowed to participate in the protection and care of their children with as much self-determination as possible.

14 Principle of community participation

In the administration of this Act a principle to be observed is that a kinship group, community or representative organisation of Aboriginal people or Torres Strait Islanders should be given, where appropriate, an opportunity and assistance to participate in decision-making processes under this Act that are likely to have a significant impact on the life of a child who is a member of, or represented by, the group, community or organisation.

Part 4 — Protection and care of children

Division 1 — Introductory matters

28. When child is in need of protection

(1) In this section —

harm, in relation to a child, means any detrimental effect of a significant nature on the child's wellbeing;

neglect includes failure by a child's parents to provide, arrange, or allow the provision of —

(a) adequate care for the child; or

(b) effective medical, therapeutic or remedial treatment for the child.

(2) For the purposes of this Part a child is in need of protection if —

(a) the child has been abandoned by his or her parents and, after reasonable inquiries —

(i) the parents cannot be found; and

(ii) no suitable adult relative or other suitable adult can be found who is willing and able to care for the child;

(b) the child's parents are dead or incapacitated and, after reasonable inquiries, no suitable adult relative or other suitable adult can be found who is willing and able to care for the child;

(c) the child has suffered, or is likely to suffer, harm as a result of any one or more of the following —

(i) physical abuse;

(ii) sexual abuse;

(iii) emotional abuse;

(iv) psychological abuse;

(v) neglect,

and the child's parents have not protected, or are unlikely or unable to protect, the child from harm, or further harm, of that kind; or

(d) the child has suffered, or is likely to suffer, harm as a result of —

(i) the child's parents being unable to provide, or arrange the provision of, adequate care for the child; or

(ii) the child's parents being unable to provide, or arrange the provision of, effective medical, therapeutic or other remedial treatment for the child.

81 Matters relevant to placement of Aboriginal or Torres Strait Islander children

(1) The CEO must ensure that an officer who is an Aboriginal person or a Torres Strait Islander is involved at all relevant times in the making of a placement arrangement in respect of an Aboriginal child or a Torres Strait Islander child.

(2) The CEO must consult with an Aboriginal or Torres Strait Islander agency, approved by the CEO for the purposes of this section, regarding the prospective placement of an Aboriginal child or a Torres Strait Islander child.

89 Care plan

(1) In this section —

care plan means a written plan that —

- (a) identifies the needs of the child;
- (b) outlines steps or measures to be taken in order to address those needs; and
- (c) sets out decisions about the care of the child including —
 - (i) decisions about placement; and
 - (ii) decisions about contact between the child and a parent, sibling or other relative of the child or any other person who is significant in the child's life.

(2) As soon as practicable after a child first comes into the CEO's care, the CEO must prepare and implement a care plan for the child.

(3) Subsection (2) does not apply in the case of a child taken into provisional protection and care.

Note Section 39 requires the CEO to prepare and implement a provisional care plan for a child taken into provisional protection and care.

(4) The CEO may modify a care plan at any time if the CEO considers that it is appropriate to do so.

(5) Without limiting subsection (4), the CEO must, in the case of a child who is about to leave the CEO's care, modify the care plan for the child so that it —

- (a) identifies the needs of the child in preparing to leave the CEO's care and in his or her transition to other living arrangements after leaving the CEO's care; and
- (b) outlines steps or measures designed to assist the child to meet those needs.

(6) As soon as practicable after the CEO prepares or modifies a care plan, the CEO must ensure that a copy of the care plan or modification, as the case requires, is given to —

- (a) the child;
- (b) each parent of the child;
- (c) any carer of the child; and
- (d) any other person considered by the CEO to have a direct and

significant interest in the wellbeing of the child.

Part 4, Division 5, Subdivision 3 - care plans outlines the implementation of care plans under the Act, however there is no provision that is culturally specific.

1.2 Adoption

Adoption Act 1994 (WA) (the 'Act')

The relevant principles of the Act are detailed in s 3 of the Act. Relevant provisions of the Act include:

3 Principles

(1) The paramount considerations to be taken into account in the administration of this Act are —

(a) the welfare and best interests of a child who is an adoptee or a prospective adoptee;

(b) the principle that adoption is a service for a child who is an adoptee or a prospective adoptee; and

(c) the adoption of a child should occur only in circumstances where there is no other appropriate alternative for the child.

(2) It is acknowledged that adoption is not part of Aboriginal or Torres Strait Island culture and that therefore the adoption of a child who is an Aboriginal person or a Torres Strait Islander should occur only in circumstances where there is no other appropriate alternative for that child.

[Section 3 inserted by No. 8 of 2003 s. 4.]

4 Terms used

(1) In this Act, unless the contrary intention appears —

Aboriginal person means a person who is a descendant of Aboriginal people of Australia;

16A Matters relevant to the adoption process for Aboriginal or Torres Strait Islander children

(1) The CEO is to ensure that an officer of the department who is an Aboriginal person or a Torres Strait Islander is involved at all relevant times to assist in the adoption process of a child who is an Aboriginal person or a Torres Strait Islander.

(2) The CEO is to consult with an Aboriginal or Torres Strait Islander agency that is approved by the CEO for the purposes of this section, regarding the prospective adoption of a child who is an Aboriginal person or a Torres Strait Islander.

[Section 16A inserted by No. 8 of 2003 s. 15; amended by No. 34 of 2004 Sch. 2 cl. 2(8).]

52 Restrictions on placement

(1) The CEO is not to place a child with a view to the child's adoption unless -

...

(ab) where the child is an Aboriginal or Torres Strait Islander, the placement with the Aboriginal or Torres Strait Islander children - placement for adoption principle as set out in Schedule 2A;

Schedule 2A - Aboriginal and Torres Strait Islander children - placement for adoption principle

The objective of this principle is to maintain a connection with family and culture for children who are Aboriginal persons or Torres Strait Islanders and who are to be placed with a person or persons with a view to adoption by the person or persons.

If there is no appropriate alternative to adoption for the child, the placement of the child for adoption is to be considered in the following order of priority.

1. The child be placed with a person who is an Aboriginal person or a Torres Strait Islander in the child's community in accordance with local customary practice.
2. The child be placed with a person who is an Aboriginal person or a Torres Strait Islander.
3. The child be placed with a person who is not an Aboriginal person or a Torres Strait Islander but who is sensitive to the needs of the child and capable of promoting the child's ongoing affiliation with the child's culture, and where possible, family.

[Schedule 2A inserted by No. 8 of 2003 s. 85.]