



**Secretariat National Aboriginal and Islander Child Care**

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

### **NORTHERN TERRITORY**

#### **Introduction**

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

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

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

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

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

**March 2011**

## **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.