
Appendix two – The Aboriginal and Torres Strait Islander Principles (extract from the *Children and Young Persons (Care and Protection) Act 1998*)

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.

12A Aboriginal and Torres Strait Islander Children and Young Persons Principle

(1) This section sets out the Aboriginal and Torres Strait Islander Children and Young Persons Principle, which applies to the administration of this Act in relation to Aboriginal and Torres Strait Islander children and young persons.

(2) The Aboriginal and Torres Strait Islander Children and Young Persons Principle consists of the following 5 elements—

(a) prevention—recognising that a child or young person has a right to be brought up within the child's or young person's own family, community and culture,

(b) partnership—recognising that Aboriginal and Torres Strait Islander community representatives should participate in the design and delivery of services for children and young persons and in individual decisions about children and young persons,

(c) placement—recognising that, if a child is to be placed in out-of-home care, the child's placement is to be in accordance with the placement principles for Aboriginal and Torres Strait Islander children and young persons in section 13,

(d) participation—recognising that a child or young person, and the child's or young person's parents and family members, should participate in decisions about the care and protection of the child or young person,

(e) connection—recognising that a child or young person has a right to be supported to maintain connections to family, community, culture and country.

(3) In making a decision under this Act in relation to a matter involving an Aboriginal or Torres Strait Islander child or young person, a decision maker must apply each of the elements of the Aboriginal and Torres Strait Islander Children and Young Persons Principle that are relevant to the decision being made.

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

(1) The general order for placement Subject to the objects in section 8 and the principles in 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 or 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 interests 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 Secretary 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 or Torres Strait Islander organisations as are appropriate to the child or young person.

Note—

The placement principles set out in this section also apply to the making of guardianship orders in relation to Aboriginal and Torres Strait Islander children and young persons (see section 79A(3)(c)).

(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 Secretary 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.

Note—

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

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 Chapter 8 of the *Adoption Act 2000*.

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