LAGs- Guiding Documents

1. **Guiding Principles for strengthening the participation of Aboriginal community in child- protection decision making.**GMAR NSW *(Nov 2015)*

See link for full document: <https://www.facs.nsw.gov.au/__data/assets/file/0003/373233/gmar_facs_guiding_principles_Nov2015.pdf>

**2.** **Children and Young Persons (Care and Protection) Act-**

**Section 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.

See link for full document: [http://www.legislation.nsw.gov.au/#/view/act/1998/157/chap2/part2/sec13](http://www.legislation.nsw.gov.au/)

**3.** **Convention on the Rights of the Child** (Articles 20, 30 and 31)

**Article 20**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

**Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

**Article 31**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

See link for full document: <https://www.humanrights.gov.au/convention-rights-child>

**4.** **United Nations Declaration on the Rights of Indigenous Peoples** (Articles 8, 11, 13, 18, 31 and 33)

**Article 8**

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

1. Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
2. Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
3. Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
4. Any form of forced assimilation or integration;
5. Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

**Article 11**

1. Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

**Article 13**

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

**Article 18**

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

**Article 31**

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

**Article 33**

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

See link for full document: <https://www.humanrights.gov.au/publications/un-declaration-rights-indigenous-peoples-1>

1. **Children and Young Persons (Care and Protection) Act 1988-**

**Section 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.

See link for full document: [http://www.legislation.nsw.gov.au/#/view/act/1998/157/chap2/part2/sec12](http://www.legislation.nsw.gov.au/)