

**Protocol for the Transfer of  
Care and Protection Orders  
and Proceedings  
and Interstate Assistance**

**Protocol for the Transfer of Care and Protection Orders and Proceedings and  
Interstate Assistance**

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## Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance

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### Preamble

*The Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance (the Protocol), provides the framework for parties to work together in order to promote the interests and well-being of children. Parties recognise the desirability of working collaboratively as fundamental to achieving this goal. The Protocol is therefore based on the principle that all parties to it operate on a basis of mutual respect and co-operation for the benefit of the children to whom it applies.*

### Introduction

#### 1. Purpose of Protocol

The purpose of this Protocol is to:

- a) Improve the provision of care and protection services to children and young people who
  - i. are the subject of a child protection order or proceeding which is proposed to be transferred interstate; or
  - ii. are the subject of a child protection intervention where there is a proposal for the child to move interstate, without involving the transfer of an order.
- b) Provide guidance for Departmental workers and improve the co-ordination of the operations of the relevant Department to facilitate:
  - i. the protection of children in need of care; and
  - ii. the promotion of the best interests of such children.
- c) Provide for cooperation between jurisdictions to facilitate the care and protection of children and young people.

#### 2. Legislative Basis

In each participating State the basis for transfer of Orders and Proceedings are contained in the relevant child protection legislation of that State. This Protocol should be read in conjunction with provisions contained within each State's respective legislation and the processes contained therein be adhered to.

#### 3. Definitions

For the purposes of this Protocol:

“Child” means children and young people under the age of 18;

“Child Welfare Law” means State child protection legislation;

“Co-ordinating Interstate Liaison Officer” has the meaning given to it in paragraph 5 below;

“Department” means a State Department, Ministry or agency however described which has responsibility for administering the child protection legislation of the State or has officers with such responsibility;

“Indigenous child” means a child identified as being of Aboriginal or Torres Strait Islander ancestry in Australia, and Māori ancestry in New Zealand

“Interstate Liaison Officer” has the meaning given to it in paragraph 5 below;

“National Co-ordinating Interstate Liaison Officer” has the meaning given to it in Paragraph 6 below;

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“receiving State” means the State which receives a request for:

- a) transfer of child protection order;
- b) transfer of child protection proceeding;
- c) transfer of child without transferring orders (casework transfer);
- d) assessment
- e) assistance in locating a placement

from the sending State;

“sending State” means the State which sends a request for:

- a) transfer of child protection order;
- b) transfer of child protection proceeding;
- c) transfer of child without transferring orders (casework transfer);
- d) assessment;
- e) assistance in locating a placement

to the receiving State;

“Senior Officer” means a very senior officer nominated by the Chief Executive Officer or equivalent of a Department as the Senior Officer for the purpose of this Protocol;

“State” means New Zealand or any State or Territory of Australia and “interstate” has the corresponding meaning.

“Welfare benefits” includes Australian Commonwealth and New Zealand government supports, payments, entitlements and other benefits.

“Whānau, hapū, iwi” are New Zealand Māori words to describe family groups:

- Whānau is a wider concept than just immediate family made up of parents and siblings. Whānau links families to a common ancestor/tīpuna.
- Hapū is a sub-tribe or cluster of family/whānau groups that have a common ancestor.
- Iwi is a tribal group composed of many hapū led by an Ariki or paramount chief.

#### 4. *Operating Procedures*

The Operating Procedures exist as a separate document to provide support and guidance for implementation of this protocol. They are guidelines for practice and are not enforceable provisions.

The operating procedures may be varied from time to time as necessary.

### Interstate Liaison Structure

#### 5. *Interstate Liaison Officers*

Each State shall appoint one or more officers who are referred to as “**Interstate Liaison Officers**”. If there are a number of Interstate Liaison Officers in a State, there must be an officer who has the role of **Co-ordinating Interstate Liaison Officer**.

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If Interstate Liaison Officers are appointed for distinct regions, a reference to the Interstate Liaison Officer of a State shall be read as the Interstate Liaison Officer of the relevant region.

The Interstate Liaison Officer, or if there is more than one Interstate Liaison Officer, the Co-ordinating Interstate Liaison Officer, is responsible for:

- a) ensuring that paragraph 7 is complied with in relation to his or her State; and
- b) promoting knowledge of, and compliance with, this Protocol.

### *6. National Coordinating Interstate Liaison Officer*

The National Coordinating Interstate Liaison Officer has the role of compiling, maintaining and distributing on a regular basis:

- a) The Interstate Liaison Officer contact register
- b) The register of Senior Officers
- c) Any other information which may be of assistance to the other Interstate Liaison officers

The National Coordinating Interstate Liaison Officer will be appointed annually from the membership of the respective state Interstate Liaison Officers.

### *7. Providing Information Regarding Officers*

Each State must provide the following information to the National Coordinating Interstate Liaison Officer:

- a) the contact details of the Interstate Liaison Officer(s), and, if applicable, the National Co-ordinating Interstate Liaison Officer;
- b) details of the Senior Officer or officers of each respective state; and
- c) if any of the above details change, the new details within 10 working days of the change.

## **General Provisions for the Interstate Transfer of Child Protection Orders and Proceedings**

### *8. General Principles*

Decisions regarding the interstate transfer of child protection orders and proceedings and the interstate placement of children will be made in accordance with each State's interstate transfer legislative provisions and case planning principles and include the following principles:

- a) The best interests of the child are paramount.
- b) States must respect the nature and duration of another State's child protection orders, and recognise that such orders are made within the legislative requirements of that State.
- c) It is the responsibility of the sending State to ensure that all legislative requirements necessary for the transfer of child protection orders or proceedings from that state are complied with for the purpose of the transfer, including required consents.
- d) Delay is contrary to the interests of a child and should, where possible, be minimised. Accordingly, all requests and responses must be made promptly. As a general observation, a transfer of an order and all

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associated tasks should commence within 6 months of a child being placed interstate and would often be done more quickly.

- e) Settled care and protection arrangements are considered to be in the best interests of a child and to this end the orders to be transferred should, dependent on the specific needs of the child, have not less than 6 months remaining before expiry of such order.
- f) Planning an interstate placement, where the child is subject to a child protection order, should include the involvement of the receiving State prior to the interstate placement.
- g) A child protection order should be enforceable and effective pursuant to the child protection legislation of the State where the child resides.

### 9. *Relocating Children Between New Zealand and Australia: Immigration Officials*

Where a State is considering relocating a child between New Zealand and Australia, the sending State must contact the Immigration Officials of the receiving State and seek information regarding any immigration issues/ entitlement to welfare benefits that relate to the child prior to:

- a) relocating a child between New Zealand and Australia; or
- b) seeking a judicial or administrative transfer of a child protection order or proceeding between Australia and New Zealand.

### 10. *Interstate Placement of Indigenous Children*

- a) Subject to paragraph 11 below, where the transfer of a child protection order or proceeding occurs or is proposed, a State should comply with the Indigenous Child Placement Principle in its own jurisdiction.
- b) The planning of an interstate placement of an Indigenous child, whether the child is subject to a child protection order or not, should involve one or more relevant Indigenous organisations.
- c) If there is no organisation with the appropriate knowledge or expertise, consultation should occur with an appropriate Indigenous Departmental/Ministry officer or employee and/or an appropriate representative of the Indigenous community to which the child belongs.

### 11. *Interstate Placement of Indigenous Children Between New Zealand and Australia*

- a) Where a transfer of a child protection order or proceeding between New Zealand and an Australian State occurs or is proposed, this paragraph applies to the following States:
  - i. New Zealand, if the child is an Aboriginal or Torres Strait Islander child; and
  - ii. an Australian State, if the child is a Māori child.
- b) Subject to sub-paragraph (c) below, a State to which this paragraph applies must:
  - i. apply the Indigenous Child Placement Principle, either as carried out within that State's jurisdiction, or, if there is no Indigenous Child Placement Principle for the Indigenous child, in accordance with Schedule A to this Protocol

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- ii. where practicable, maintain and strengthen the relationship between the child and his or her family, whānau, hapū, iwi, family groups and/or community group.
- c) If a State to which this paragraph applies is a Sending State, the State may:
  - i. contact the receiving State; and
  - ii. subject to the paramount interests of the child and any provisions in the law of the sending State, comply with the Indigenous Child Placement Principle in the receiving State in relation to the placement of the child.

### 12. Information Provided When Requesting a Transfer

Prior to the transfer of a child protection order or proceeding or interstate placement of a child, the Interstate Liaison Officer of the sending State must provide to the Interstate Liaison Officer of the receiving State all information necessary for the request to be considered. The Interstate Liaison Officer of the sending state should ensure that the request contains information that is comprehensive, accurate and up to date.

### 13. Exchange of Information & Obtaining Consent to a Transfer from a Receiving State

- a) When considering an interstate transfer of a child protection order or proceeding, the Interstate Liaison Officers will communicate as required, including:
  - i. discussing what further information (if any) is required;
  - ii. the Interstate Liaison Officer in the receiving State informing the sending State that it intends to accept the proposed transfer of the child protection order or proceeding, as soon as practicable after forming that intention; and
  - iii. the Interstate Liaison Officer in the receiving State notifying the sending State as soon as practicable after the court in the receiving State:
    1. registers or files a transferred child protection order or proceeding;
    2. revokes the registration of a registered child protection order; or
    3. orders that a child protection proceeding should be returned to the sending State.
- b) Unless there are exceptional circumstances, a decision by the receiving State whether to accept or decline a transfer of a child protection order or proceeding will be made within 3 months of the receipt of the request for transfer provided all required documentation has been provided by the sending State.
- c) If a decision to accept or decline a transfer of a child protection order or proceeding is not made within 3 months of the receipt of the request for transfer, the sending State may request the decision proceed to the dispute resolution process.
- d) Where, because of exceptional circumstances, there is a delay in acceptance of the transfer of a child protection order, the receiving state should, wherever possible, offer to provide casework assistance until such time as formal transfer occurs.



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- e) If a child protection order or proceeding is transferred the sending State must provide a copy of the Departmental file, including a hard copy of any electronic files, to the Department in the receiving State within 28 days of receipt of advice of finalisation of the transfer. In many cases the Departmental file could be forwarded to the receiving State upon the receiving State advising that they consent to the transfer of the child protection order or proceedings.
- f) Until such time as the a child protection order or proceeding transfers to a receiving State the sending State is responsible for all case management decisions.

### 14. *Declining to Accept Transfer*

- a) The receiving State must agree to the transfer of the child protection order or proceeding unless it:
  - i. would be contrary to the interests of the child; or
  - ii. is an exceptional case where it is clearly impracticable to accept the transfer; or
  - iii. is not legally possible.
- b) Where the receiving State declines to accept transfer of a child protection order or proceeding, the receiving State will provide a written statement outlining the reasons why the transfer cannot be accepted.
- c) If the receiving State declines a proposed transfer, the sending State may subsequently request the Senior Officer to review that decision.

### 15. *Costs*

- a) If a child protection order or proceeding is transferred to a receiving State, the receiving State must generally bear all costs associated with the administration of the matter after the transfer of the child protection order or proceeding has occurred.
- b) In special cases, the receiving and sending States may agree that the sending State makes some payments during a specified transition period. The specified transition period should be agreed prior to acceptance of the transfer.
- c) If a sending State requests a transfer of orders for a child where the costs required to be met by the receiving State will be highly in excess of the norm, the receiving State Interstate Liaison Officer will refer the issue of costs directly to the Senior Officer of that State to negotiate an agreement with the Senior Officer of the sending State prior to acceptance of the transfer.
- d) Until such time as the a child protection order or proceeding transfers to a receiving State, the sending State is responsible for all costs associated with that child.
- e) Unless otherwise agreed, where a Department provides assistance to the State that retains case management responsibility, any costs external to the Department are borne by the State with the case management responsibility.

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### ***Where Child is Placed Interstate and until the Child Protection Order is Transferred***

#### *16. Relocating Child Without Transferring the Order*

- a) If a child subject to a child protection order is placed interstate, the receiving and sending States would generally negotiate the transfer of the child protection order in accordance with paragraphs 8 - 15 above. If a sending State is unable to transfer a child protection order or the transfer of the order (at that time) is contrary to the interests of the child, the sending State may place the child interstate without transferring the order.
- b) Until the transfer of a child protection order has been finalised, the sending State may request the receiving State to undertake casework tasks on its behalf.

When a receiving State is requested to undertake casework tasks:

- i. the receiving State, to the best of their ability, shall co-operate with the sending State and provide all services reasonably requested or negotiated with the sending State. Such services would include support and supervision/monitoring of the placement; and
  - ii. the sending State must provide the receiving State with all information that is required by the receiving State.
  - iii. if a receiving State does not accept or decline a request to undertake casework tasks within 3 months of receiving the request the sending State may refer the matter in accordance with the dispute resolution process.
- c) Where the receiving State has agreed to provide services for a child without transfer of the order, the sending State will request transfer of order to the receiving State within 12 months of the original request except in exceptional circumstances.
  - d) In cases where the transfer of the order is not legally possible, the sending State may request the receiving State to undertake casework tasks on its behalf.

Under these circumstances, when a receiving State is requested to undertake casework tasks:

- i. the receiving State, to the best of their ability, shall co-operate with the sending State and provide all services reasonably requested or negotiated with the sending State. Such services would include support and supervision/monitoring of the placement; and
- ii. the sending State must provide the receiving State with all information that is required by the receiving State.
- iii. if the receiving State does not accept or decline a request to undertake casework tasks within 3 months of receiving the request, the sending State may refer the matter in accordance with the dispute resolution process.
- iv. the capacity of the receiving State to continue to provide the requested assistance, without transfer of the order, should be reviewed every two years, by consultation between the two offices involved.

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- e) Where the child protection order is not transferable because there is no compatible order in the receiving State, the sending State should act in the best interest of the child and vary the order such that it can be transferred.
- f) Where guardianship/parental responsibility has been conferred solely upon a carer and the carer is located in the receiving State, the sending State may as necessary request specific time limited casework tasks of the receiving State subject to discussion with and agreement by the receiving State Interstate Liaison Officer.
- g) The State holding the child protection order will maintain full case management and financial responsibility for the child or young person until such time as the order has been transferred.

### 17. *Interstate Placement or Movement of a Child Who is Not on a Child Protection Order*

- a) ***Within or from Australia:*** If a State is involved in a child being placed interstate due to protective concerns, where there is not a child protection order or proceeding, the sending State must, prior to the placement being made, inform the receiving State of the placement. The sending State must provide sufficient information, including the child protection concerns, so that the receiving State can determine whether to take any action, under relevant child protection legislation, in relation to the welfare of the child. If the child is an Indigenous child, the information provided must include an outline of any prior involvement of any organisation with expertise in the child welfare matters of the relevant Indigenous community.
- b) ***From New Zealand:*** If a child is not the subject of a child protection order, but:
  - i) a Family Group Conference (FGC) has made decisions or recommendations and plans in relation to a child; and
  - ii) a recommendation of the FGC is that the child is placed with caregivers in another state; and
  - iii) where the necessary agreements to the FGC decisions or recommendations or plans have been obtained,

then, if the child is or will be placed interstate, the receiving State shall where possible provide an assessment of the proposed caregivers and the provision of a report on the placement if it is reasonably requested by New Zealand. If the child is Māori, the receiving State shall where possible include with the assessment, an outline of the proposed involvement of any organisation with relevant cultural and social work expertise. The provision of other support and services would be provided by negotiation being mindful of the principles noted in paragraph 8 above and the obligations that are placed on New Zealand.

## Assessments

### 18. *Placement Assessments*

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- a) A sending State may request a receiving State to undertake an assessment of a proposed caregiver located in the receiving State.
- b) The sending State is responsible for such checks as they require as part of the assessment, unless otherwise negotiated.
- c) Provided the receiving state is satisfied that the information provided by the sending State is sufficient to undertake the assessment, the receiving State should complete the assessment within 8 weeks of receipt of the request unless other wise agreed between the relevant states.
- d) If the receiving State is unable to complete the requested assessment internally within the above timeframe it will meet the costs of contracting an appropriately qualified private practitioner/agency to undertake the assessment.
- e) The assessment writer must make a recommendation as to the suitability of the proposed placement but any decision whether to proceed with the placement rests solely with sending State.

### *19. Requests for urgent assessments*

- a) Should the sending State require an urgent assessment to be completed in less than 4 weeks, the receiving state may elect to have the assessment completed by an appropriately qualified private practitioner and the sending State will bear any cost involved in completing the assessment.

### *20. Holiday/Contact Assessments*

- a) A sending State may request a receiving State to undertake an assessment of a proposed caregiver located in the receiving State (for the purpose of a holiday/contact visit).
- b) The sending and receiving states are each individually responsible for such checks as they require as part of the assessment, unless otherwise negotiated.
- c) For requests for a holiday/placement over the Christmas/ summer school holiday period, the request should be forwarded to the receiving State's Interstate Liaison Officer by the end of October. For holidays at other times of the year, the request should be with the receiving State's Interstate Liaison Officer two months before the proposed holiday/contact visit.
- d) Provided the receiving state is satisfied that the information provided by the sending State is sufficient to undertake the assessment, the receiving State should complete the assessment within 4 weeks of receipt of the request unless other wise agreed between the relevant states at the time of the request.

## **Other Interstate Assistance**

### *21. Assistance with Locating Interstate Placement*

- a) A sending State may request a receiving State to assist in locating a suitable long term non-relative placement when the sending State considers that locating the child in the receiving State is in the best long term interests of the child. Particulars of the request will be subject to

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negotiation and agreement between the Interstate Liaison Officers of the respective States.

- b) A request for locating a suitable long term placement should be treated by the receiving State as though it were a request for placement made within the receiving State and reasonable and active efforts should be made to locate a placement.
- c) If, after 6 months of receipt of the request, a placement is not located, the Interstate Liaison Officer of the receiving State will advise the sending State in writing that no placement has been located and advise of the attempts that have been made to locate a suitable placement. Should the sending State still desire a suitable placement to be sought, it will renew the request providing reasons why it remains in the best interests of the child for the placement to be sought.

### 22. *Interstate Notification of a Child in Need of Protection*

A Department (“**Notifying Department**”) may believe that a child known to them has gone interstate, and that it would be appropriate for the Department in the State where the child is believed to be located to be aware of child protection concerns relating to that child. The Notifying Department should provide an outline of these concerns and any other information to the state where the child is now located for the Department of that state to take such action as it considers appropriate.

### 23. *Child Temporarily in Non Resident State*

This provision applies where a child who:

- i. is normally resident in one state, (the resident State) or, in the case of a newborn child, where the parents normally reside in the resident State; and
- ii. is temporarily present in another state (the non resident State), eg. for reason of medical attention in a regional hospital; and
- iii. is subject to statutory child protection intervention by the non resident State.

If the family indicate they wish to immediately return to the resident State, the non resident State may request the resident State to assume responsibility for the care and protection of the child. Where the resident State receives such a request the resident State will do whatever is necessary to assume responsibility, unless it is not in the interests of the child to do so or there are statutory limitations preventing the requested assistance. It is noted however that it is always the responsibility of the state where the child is located to take action to secure the immediate care and protection of the child if necessary.

### 24. *General Assistance*

- a) In the spirit of co-operation agreed to under this Protocol, a State may at any time request another State to provide specific assistance in regard to a child protection matter and, where required, the other State should provide such assistance as is practicable.
- b) If a child subject to an interstate child protection order is located interstate, the State which holds the order will maintain financial responsibility for the child, and will be responsible for all costs associated with the return of the child to resident state

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### **Information Sharing**

#### 25. Interstate Provision of Information

Subject to confidentiality/privacy provisions in a State's legislation:

- a) A Department will provide information it holds relevant to a particular child if requested to do so by another interstate Department for the purpose of enabling the interstate Department to undertake its responsibilities under that State's child protection legislation.
- b) A Department will provide information it holds relevant to the safety, welfare and wellbeing of a child or children to any or all States party to this protocol as agreed between the Departments of the respective States.

#### 26. *Confidentiality of Information Received by an Interstate Officer*

Subject to contrary provisions in a State's legislation, if a Departmental officer in a State receives information from an interstate Department pursuant to paragraph 25 above, the received information should be dealt with as if it was directly obtained by the Departmental officer in that State.

### **A State Amending its Child Protection Legislation**

27. If a State amends provisions relating to child protection orders and interstate matters, the Interstate Liaison Officer from that State must, as soon as possible, inform the National Co-ordinating Interstate Liaison Officer when the legislation comes into force. The National Co-ordinating Interstate Liaison Officer will subsequently advise the Interstate Liaison Officer/Co-ordinating Interstate Liaison Officer of each State.

### **Dispute Resolution**

#### 28. *Dispute Resolution Process*

- a) Any dispute or complaint should be dealt with, in the first instance, between the respective Interstate Liaison Officers/Co-ordinating Interstate Liaison Officers from the States which have the dispute.
- b) If the dispute is still unresolved the following process should be adopted:
  - i. The Interstate Liaison Officers involved will refer the matter to their respective line managers for resolution.
  - ii. If resolution of the problem is not achieved at this level, the matter will be dealt with by the Senior Officers from the respective Departments.

### **Review & Withdrawal**

#### 29. *Review of the Protocol*

The respective state Interstate Liaison Officers as a group will be responsible for review of the Protocol within each three-year period of the date of the last review.

#### 30. Withdrawal

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A party to this Protocol may withdraw from the Protocol with 12 months notice in writing. If a party withdraws from the Protocol, the Protocol continues to apply to all other parties.

### **Official Endorsement Process**

The Department Heads listed below in the table individually signed and endorsed the Protocol.

<b>Jurisdiction</b>	<b>Sign Off and Endorsed by:</b>	<b>Date</b>
NSW	Neil Shepherd, Director General, NSW Department of Community Services	07/06/2007
ACT	Sandra Lambert, Chief Executive, Department of Disability, Housing and Community Services	29/06/2007
TAS	Simon John Barnsley, Secretary, Department of Health and Human Services	13/06/2007
VIC	Gill Callister, Executive Director, Department of Human Services	26/06/2007
SA	Joslene Mazel Chief Executive, Department of Families and Communities	07/06/2007
WA	Judith Anne Hogben, A/Director General, Department for Child Protection	13/06/2007
NT	David Ashbridge, Chief Executive Officer, Department of Health and Community Services	15/06/2007
QLD	Robin Sullivan, Director General, Department of Child Safety	13/06/2007
NZ	Peter Stanley Hughes, Chief Executive, Ministry of Social Development. Child, Youth and Family	16/07/2007

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### SCHEDULE A

#### INDIGENOUS CHILD PLACEMENT PRINCIPLE

Placement is to be made in accordance with the paramount interests of the child. Subject to the paramount interests of the child, placement is to be made according to the following order of preference:

1. Placement with a member of the child's family (as defined by local custom and practice) in the correct relationship to the child in accordance with Aboriginal, Torres Strait Islander or Maori custom.
2. Placement with a member of the child's community, whanau, hapu or iwi in a relationship of responsibility for the child according to local custom and practice.
3. Placement with another member of the child's community, whanau, hapu or iwi.
4. Placement with another Indigenous carer.

The preferred placement may be displaced where:

- a. subject to an assessment of a child's best interests, and having regard to the maturity of the child, the child objects to that placement; or
- b. no carer in the preferred category is appropriate or currently available.

Where placement is with a non-Indigenous carer, the following principles must guide the choice of carer:

- i. continuing contact with the child's Indigenous family, community, whanau, hapu or iwi and the child's culture should be ensured;
- ii. proximity to the child's Indigenous family, community, whanau, hapu or iwi is desirable; and
- iii. there is regular review of the appropriateness of the placement.

Any placement should be made in consultation with an Indigenous organisation with expertise in the child welfare matters of the relevant Indigenous community. If there is no organisation with the appropriate knowledge or expertise, it may be appropriate to consult with an Indigenous Departmental officer or employee from any State who has such knowledge and expertise.