



EFFECTIVE LAW IN AN EFFECTIVE STATE

*Local conditions in the global context in the face
of 21st century challenges of fighting crime.*

Department for Child Protection as an Example of Australian Legislation Strengthening the Role of the Child in the Court Process

Author of the analysis:

Dr Grzegorz Skrobotowicz

Translated by:

Dariusz Sala



Fundusz
Sprawiedliwości



Ministerstwo
Sprawiedliwości



FUNDACJA
INSTYTUT PRAWA
USTROJOWEGO

„Financed by the Justice Fund administered by the Minister of Justice”

The analysis was prepared as part of the project:

Effective law in an effective state. Local conditions in the global context, in the face of 21st century challenges of fighting crime.

**FUNDACJA
INSTYTUT
PRAWA
USTROJOWEGO**



www.ipu.org.pl
<https://efektywne-prawo.org.pl/>



<https://www.facebook.com/fundaciaipu>



fundacja@ipu.org.pl



Ministerstwo
Sprawiedliwości



FUNDACJA
INSTYTUT PRAWA
USTROJOWEGO

„Financed by the Justice Fund administered by the Minister of Justice”

Table of contents

Abstract	4
Preface	5
1. <i>Department for Child Protection</i> as an example of Australian legislation strengthening the role of the child in the court process	6
Summary	12
Bibliography	13

Abstract

The *Department of Child Protection* (DCP), which was formed in November 2016 in response to recommendations from the *Child Protection Systems Royal Commission*, is led by Margaret Nyland AM. The DCP works in partnership with families, government and non-government organisations, carers and the community to care for and protect vulnerable children and young people by addressing harm and keeping them safe. Where children and young people cannot safely remain in the family home, the DCP will find a place for them to live, seeking it primarily with family and kinship carers or foster carers strengthening the position of the child in the court process. The aim of the DCP is to ensure that young South Australians under the DCP's care have every opportunity to reach their full potential and provide them with developmental opportunities and legal security, including before the courts. Importantly, the DCP values the voice of children and young people and takes their views into account¹.

¹ <https://www.childprotection.sa.gov.au/> (accessed on: 24.09.2023, 10:00).

Preface

The *Department of Child Protection* (DCP) provides an integrated and modern Practice Approach that supports the vision where all children and young people grow up safe, healthy, in contact with their peers and feel loved, so that they reach their full potential. This is a unique practice in the legislative and cultural context of South Australia.

The above approach was developed and continues to be improved in partnership with staff, young people, carers and service providers, as well as during court processes in which minors are active participants. A number of Australians willingly shared their experiences and knowledge to collaboratively build an approach that strives to be culturally safe. The Practice Approach supports staff and other stakeholders to work together to ensure safety and positive outcomes for children and young people. This is particularly important for juveniles who come into contact with the justice system and are often unable to function within it. The approach promotes building strong relationships with children and young people, families, carers and service providers in a safe legal environment. Skilful assessment, timely intervention and collaborative practice are emphasised by the approach².

² <https://www.findandconnect.gov.au/guide/sa/SE01667> (accessed on: 24.09.2023, 09:00).

1. *Department for Child Protection* as an example of Australian legislation strengthening the role of the child in the court process

The *Department of Child Protection* administers the following legislation:

- *Children and Young People (Safety) Act 2017*³;
- *Children and Young People (Safety) Regulations 2017*⁴;
- *Family and Community Services Act 1972*⁵.

The *Department for Child Protection* takes a child centred and trauma informed approach that focuses on cultural safety, strengthening families, supporting carers and working in partnership to meet children and young people's need for safety. All these activities are undertaken many times during the pending court process in which a child or young person, cannot find their place. The DCP is responsible for:

- responding to concerns about children and young people who have experienced harm or are at risk of harm;
- placing children and young people in care when they are unable to live safely with their families;
- providing case management and support for children and young people under the custody or guardianship of the Chief Executive;
- supporting the reunification of children and young people with their families where it is safe to do so;
- managing the adoption process;
- supporting children and young people from a refugee background through the Commonwealth Guardianship team;
- providing legal aid and strengthening the child's position during the justice process⁶.

³ *Children and Young People (Safety) Act 2017* - [https://www.legislation.sa.gov.au/lz/path=%2FC%2FA%2FChildren%20and%20Young%20People%20\(Safety\)%20Act%202017](https://www.legislation.sa.gov.au/lz/path=%2FC%2FA%2FChildren%20and%20Young%20People%20(Safety)%20Act%202017) (accessed on: 24.09.2023, 10:00).

⁴ *Children and Young People (Safety) Regulations 2017* - [https://www.legislation.sa.gov.au/lz/path=%2FC%2FR%2FChildren%20and%20Young%20People%20\(Safety\)%20Regulations%202017](https://www.legislation.sa.gov.au/lz/path=%2FC%2FR%2FChildren%20and%20Young%20People%20(Safety)%20Regulations%202017) (accessed on: 24.09.2023, 10:00).

⁵ *Family and Community Services Act 1972* - <https://www.legislation.sa.gov.au/lz/path=%2FC%2FA%2FFamily%20and%20Community%20Services%20Act%201972> (accessed on: 24.09.2023, 10:00).

⁶ <https://www.childprotection.sa.gov.au/children-care> (accessed on: 24.09.2023, 13:00).

The *Department for Child Protection* supports *Family Matters*, Australia's national campaign to ensure Aboriginal and Torres Strait Islander children and young people grow up safe and cared for in family, community and culture, as well as support and help minors to go through the court process conducted in connection with, e.g. divorce of parents or legal carers. The *Family Matters* campaign, with the tagline 'strong communities - strong culture', aims to eliminate the over-representation of Aboriginal and Torres Strait Islander children in care by 2040. The *Family Matters* campaign is led by SNAICC - *National Voice for our Children* and is supported by a strategic alliance of more than 150 Aboriginal and Torres Strait Islander and non-Indigenous organisations, leading academics and prominent educational institutions and lawyers from a range of specialties. The *Family Matters* is managed by a group of Aboriginal and Torres Strait Islander leaders, ensuring the authenticity of the campaign and the range of skills required to implement the real changes.

The *Department of Child Protection*, along with *Family Matters*, has a very specific vision, according to which all Aboriginal and Torres Strait Islander children and young people grow up safe in their homes, receive a good education, grow up healthy and are proud of who they are, and are provided with free legal assistance in crisis situations. In order to realise this vision, a specific target has been identified to eliminate the over-representation of Aboriginal and Torres Strait Islander children in Australia's child protection systems by 2040. To achieve it, all families have access to high quality, culturally safe, universal and targeted services necessary for the proper development of Australian, Aboriginal and Torres Strait Islander children. Additionally, Aboriginal and Torres Strait Islander people participate in and have control over decisions that affect their children. Child and family welfare laws, policies and practices are culturally safe and responsive. Governments and services are responsible to Aboriginal and Torres Strait Islander people. The Statement of Commitment reflects the intention to work with local people and Aboriginal and Torres Strait Islander representatives and their organisations in order to achieve the goal of the *Family Matters* campaign. The Statement of Commitment requires all signatories to act in accordance with the key principles and to implement appropriate activities. The six campaign's key principles are:

- Applying a child-focused approach.
- Ensuring that Aboriginal and Torres Strait Islander people and organisations participate in and have control over decisions that affect their children.

- Protecting Aboriginal and Torres Strait Islander children’s right to live in culture.
- Pursuing evidence-based responses.
- Supporting, healing and strengthening families.
- Challenging systemic racism and inequities⁷.

Child centred practice is crucial to ensuring children and young people’s safety and that their long-term needs are met. Decision making responds to the unique needs of the child or young person and recognises critical developmental timeframes in childhood. Decision making should incorporate a rights-based approach to ensure the child or young person’s rights are respected, including their right to have their voices heard and to participate meaningfully in decision making concerning their care. Child centred practice also recognises the fundamental right of children and young people to be connected to family and culture⁸.

What child centred practice looks like:

- The safety of children and young people is paramount.
- Children and young people’s rights are respected.
- The importance of cultural, social and emotional wellbeing is reflected in decision making.
- The voice and behavioural cues of children and young people are listened to, recognised, and respected.
- Children and young people with developmental delays and disability are appropriately supported to express their views.
- The unique needs of all children and young people are identified and responded to.
- The critical need of children and young people to develop secure attachments in early childhood is reflected in case planning and timely decision making.
- Connection to family, culture and community is valued and actively promoted.
- Consistent with the Aboriginal and Torres Strait Islander Child Placement Principle, urgent efforts are undertaken to identify the best placement for Aboriginal children and young people when safety at home cannot be achieved.

⁷ <https://www.childprotection.sa.gov.au/child-protection-initiatives/family-matters> (accessed on: 24.09.2023, 13:00).

⁸ <https://www.childprotection.sa.gov.au/child-protection-initiatives/national-framework-for-protecting-australias-children> (accessed on: 24.09.2023, 19:00).

- Contemporary knowledge of child protection practice and awareness of cultural implications of decision making underpins professional judgement.
- Ongoing assessment considers the child or young person and family's changing needs.
- Decision making and case planning reflects an understanding of the importance of stability, permanence, attachment relationships, culture, identity and belonging to children and young people's wellbeing.
- Decisions about the care of Aboriginal children and young people consider Aboriginal people's cultural values, needs and belief systems.
- Genuine commitment is demonstrated to improving outcomes for children and young people⁹.

The DCP is committed to ensuring practice is culturally safe when working with children and young people, families and communities. Culturally safe practice recognises the strength of culture in helping children and young people develop a positive identity, and promoting their health, wellbeing, self-esteem and development. Active work to ensure children and young people have an ongoing connection to culture, family, kin, community and country is recognised as a pivotal role of the DCP. It is acknowledged that the overrepresentation of Aboriginal children and young people within the child protection system results from a history of injustice embedded within laws, policies and practices of the society, systems and institutions. The DCP recognises that culturally safe and responsive practice is essential to reduce this overrepresentation. The DCP recognises the strengths of Aboriginal approaches to parenting, Aboriginal family led decision making, and the importance of ensuring Aboriginal children and young people in care maintain connections to culture.

What culturally safe practice looks like:

- The precursor and the elements of the Aboriginal and Torres Strait Islander Child Placement Principle: Identification, Prevention, Partnership, Placement, Participation and Connection are implemented through active efforts.
- Openness, honesty and a desire to understand how culture influences practice, and a willingness to enhance the cultural responsiveness of the practice.

⁹ <https://www.childprotection.sa.gov.au/> (accessed on: 24.09.2023, 10:00).

- Cultural connection and participation are acknowledged as essential for ensuring good health, wellbeing and positive outcomes for children and young people, including identity and self-esteem.
- The impact of intergenerational trauma on Aboriginal children and young people, families and communities is recognised and understood.
- Ongoing reflection upon cultural differences and how this impacts engagement and decision making is actively undertaken.
- Partnership is demonstrated in planning and critical decision making with children and young people, families, kinship carers, the non-government sector (including Aboriginal Community Controlled Organisations) and communities.
- Children and young people’s right to know about and experience their family, culture and country is actively supported.
- Internal and external cultural collaboration and consultation strengthens decision making.
- The diversity of Aboriginal communities is recognised and respected.
- The cultural knowledge, authority and leadership of Aboriginal staff is valued and respected.
- The Aboriginal Cultural Identity Support Tool (ACIST¹⁰), genograms and Life Story Books are used as living documents to support children and young people’s knowledge of and connection with their family, culture and community.
- The CALD Identity Support Tool (CALD IST) is completed to ensure children and young people’s connections to family, culture, kin and community.
- Accountability for culturally safe practice and identifying and challenging unsafe practice is shared by all staff.
- All staff working with Aboriginal children and young people and families have a high level of knowledge and skill in relation to cultural competence.
- Aboriginal staff members are assisted to manage the unique considerations involved in being part of a community that they support¹¹.

¹⁰ *The Aboriginal Cultural Identity Support Tool.*

¹¹ <https://www.childprotection.sa.gov.au/child-protection-initiatives/south-australian-child-protection-expert-group> (accessed on: 25.09.2023, 18:00).

The DCP knows that children and young people experience better outcomes across their life domains when they are safely cared for within their family and community. The DCP also recognises the significant outcomes which can be achieved by enabling family led decision making. The main commitment of the DCP is to do all they can to support families and prevent children and young people entering care. The DCP Practice Approach recognises that collaboration with and the full participation of families is critical in every case. The DCP also recognises that due to intergenerational trauma, power imbalances, and experiences of racism and discrimination, some families may be reluctant to engage with the department. This is why the DCP works to build and re-build relationships centred on empathy, transparency, respect, trust and shared power¹².

¹² <https://www.childprotection.sa.gov.au/reporting-child-abuse/responding-child-about-abuse-or-neglect> (accessed on: 25.09.2023, 18:00).

Summary

The *Department of Child Protection* (DCP) is focused on keeping South Australia's children and young people safe. The DCP works with families and government and non-government agencies to support the most vulnerable and at-risk children and young people in the community. Providing quality services to children and young people and their families is a crucial goal of the DCP. It is essential that professional judgement is based on a shared understanding of the essential elements of high-quality child protection practice. The Practice Principles encourage a focus on what is most important to achieve the best outcomes for children and young people as well as their families, and base ongoing court processes on child-friendly mechanisms and functionality that are understandable to minors¹³.

The Practice Principles are an important element of the DCP Practice Approach and reflect best practice aligned with the department's legislative mandate under the Children and Young People's (Safety) Act 2017. The Practice Principles of child centred, cultural safety, strengthening families, supporting carers, partnership and collaboration, and learning culture have been identified as crucial pillars of practice. The DCP understands the fundamental importance of working alongside Aboriginal children and young people, their families and communities to achieve lasting, positive change. The Practice Principles acknowledge that due to a history of injustice and dispossession, Aboriginal children and young people are overrepresented in every part of the child protection system. The Practice Principles recognise the strengths of Aboriginal approaches to parenting, Aboriginal family led decision making, and the importance of ensuring Aboriginal children and young people maintain connections to culture.

The Practice Principles are used across the DCP to guide operational practice and inform the development of policy and guidance. The Practice Principles are used in supervision to support reflective practice. The Practice Principles also assist partner agencies to work collaboratively with the DCP to achieve better outcomes for children and young people.

¹³ <https://services.dffh.vic.gov.au/child-protection> (accessed on: 25.09.2023, 18:00).

Bibliography

Literature:

1. Eska-Mikołajewska J., *Przemoc seksualna w cyberprzestrzeni: doświadczenia australijskie*, Fundacja Instytut Prawa Ustrojowego 2022, https://efektywne-prawo.org.pl/wp-content/uploads/2022/10/Przemoc_seksualna_w_cyb_Australia_dr_J_Eska_Mikolajewska_E-1.pdf (accessed on: 25.09.2023,18:00).

Internet sources:

1. <https://www.childprotection.sa.gov.au/> (accessed on: 24.09.2023, 10:00).
2. [https://www.legislation.sa.gov.au/lz?path=%2FC%2FA%2FChildren%20and%20Young%20People%20\(Safety\)%20Act%202017](https://www.legislation.sa.gov.au/lz?path=%2FC%2FA%2FChildren%20and%20Young%20People%20(Safety)%20Act%202017) (accessed on: 24.09.2023, 10:00).
3. [https://www.legislation.sa.gov.au/lz?path=%2FC%2FR%2FChildren%20and%20Young%20People%20\(Safety\)%20Regulations%202017](https://www.legislation.sa.gov.au/lz?path=%2FC%2FR%2FChildren%20and%20Young%20People%20(Safety)%20Regulations%202017) (accessed on: 24.09.2023, 10:00).
4. <https://www.legislation.sa.gov.au/lz?path=%2FC%2FA%2FFamily%20and%20Community%20Services%20Act%201972> (accessed on: 24.09.2023, 10:00).
5. <https://www.childprotection.sa.gov.au/children-care> (accessed on: 24.09.2023, 13:00).
6. <https://www.childprotection.sa.gov.au/child-protection-initiatives/family-matters> (accessed on: 24.09.2023, 13:00).
7. <https://www.childprotection.sa.gov.au/child-protection-initiatives/national-framework-for-protecting-australias-children> (accessed on: 24.09.2023, 19:00).
8. <https://www.childprotection.sa.gov.au/child-protection-initiatives/south-australian-child-protection-expert-group> (accessed on: 25.09.2023, 18:00).
9. <https://www.childprotection.sa.gov.au/reporting-child-abuse/responding-child-about-abuse-or-neglect> (accessed on: 25.09.2023, 18:00).
10. <https://www.findandconnect.gov.au/guide/sa/SE01667> (accessed on: 24.09.2023, 09:00).
11. <https://services.dffh.vic.gov.au/child-protection> (accessed on: 25.09.2023, 18:00).