



## Summary Statement of Investigation Published pursuant to section 26 of the *Ombudsman Act 1972*

This investigation arose from a complaint to the Ombudsman's Office by the Aboriginal Legal Rights Movement (**ALRM**) on behalf of one of its clients. The complaint raised various concerns about the Department for Child Protection (**the department**) and its handling of a complaint, the department's decision making in the placement of a First Nations child with a carer who was not First Nations, and the department's adherence to the Aboriginal and Torres Strait Islander Child Placement Principle (**the ATSICPP**), legislated in section 12 of the *Children and Young People (Safety) Act 2017* (**the Act**).

When the department places a First Nations child or young person in out-of-home care, the department must consider a 'hierarchy' of placement options provided for in the ATSICPP. This hierarchy aims to ensure a placement that supports the closest connection to family, community, and culture. If a child or young person cannot be placed within this hierarchy, or it is not considered in the child or young person's best interest, the ATSICPP requires the department to provide opportunity for the child's continuing contact with family, community and culture. The ATSICPP also requires that, before placing a First Nations child or young person, the department consult with a recognised Aboriginal or Torres Strait Islander organisation (**a recognised organisation**). At all times, per section 7 of the Act, the department must give paramount consideration to ensuring that children and young people are protected from harm.

In this matter, the Ombudsman concluded that while the department met its statutory obligations under section 12 of the Act in its placement of the child, there were failings in the department's handling of the placement that amounted to administrative error, specifically that:

- the department did not formally assess a relative of the child as a potential kinship carer, meaning that it did not explore whether a placement more compatible with the ATSICPP could be achieved
- the department relied on psychological advice about the risks in changing the child's placement to be with kin; in doing so, it did not appear to sufficiently consider factors, such as the potential harm caused by not placing the child with kin, and the consequences of the child's potential dislocation from family, community and culture
- the department did not consult with a recognised organisation at the time of applying for a long-term care order for the child; while this was arguably not legislatively required because the child was already in an established placement, doing so could have supported the intended outcomes of the ATSICPP
- while the department arranged contact between the child and their parent, it did not actively arrange contact between the child and their extended family for months.

While not legislatively incorrect, the department's actions and omissions created a risk of the child being disconnected from family and culture long term, contrary to the intended outcomes of the ATSICPP. This matter highlights the risks associated with superficial compliance with the ATSICPP. Consistent with the Ombudsman's submission to the recent review of the Act, the Ombudsman considers that embedding active efforts within the Act will better support the department's meaningful consideration of the ATSICPP.

The Ombudsman also concluded that the department erred in its handling of ALRM's complaint, and incorrectly applied its complaint handling policy, which resulted in ALRM's client being denied the right to an internal review of the department's placement decisions.

The Ombudsman made four recommendations to address some of the issues identified, which the department accepted.