



Module one: Context of foster care Handouts for participants

Historical overview of legislation and past practices impacting on Aboriginal and Torres Strait Islander children

Historically in Queensland, the Department of Aboriginal and Torres Strait Islander Policy and its predecessors had the mandate for service provision to Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander people were subject to two sets of legislation – legislation addressed at ‘mainstream’ Queenslanders and legislation specifically drafted for Aboriginal and Torres Strait Islander people in Queensland.

Legislation impacting upon Aboriginal and Torres Strait Islander peoples historically has shaped Aboriginal and Torres Strait Islander child welfare practices today.

In 1865, the *Industrial and Reformatory Schools Act* defined “any child born of an Aboriginal or half-caste* mother” as a “neglected child” and thus Aboriginality constituted neglect and provided the justification for removal, institutionalisation and resocialisation. Aboriginal and Torres Strait Islander children were subjected to separation from their families and to institutionalisation in the ‘dormitory system’ on mission stations and in industrial schools, homes and reformatories.

The next major legislation in 1884, *The Native Labourers Protection Act*, was the first legislation to specifically regulate conditions under which Aboriginal and Torres Strait Islander people could be employed.

The 1897 *Aboriginal Protection and Restriction of Sale of Opium Act* was a policy based on segregation and protection and effectively abolished the legal rights of Aboriginal and Torres Strait Islander people. This legislation established regional positions of Protectors of Aboriginals and gave these Protectors control over almost every facet of Aboriginal and Torres Strait Islander people’s lives e.g. residence, movement, employment, child rearing practices and personal finances. The legislation allowed for the removal of individuals and whole families on a statewide scale and relocation to reserves regardless of homelands. Reserves segregated Aboriginal or Torres Strait Islander people from white society and enabled their lifestyle to be altered primarily by concentrating on the ‘socialisation’ of children. Children were required to live in separate dormitories from adults and siblings of the opposite gender. Both children and adults were moved from dormitories to different reserves or missions as punishment resulting in further separation.

The 1934 *Aboriginals Protection and Restriction of the Sale of Opium Act Amendment Act* extended the provisions of the 1897 Act by expanding the definition of ‘half-caste*’ and the powers of the Chief Protector in relation to ‘half-caste*’ children.

The 1939 *Aboriginal Preservation and Protection Act* established the Office of the Director of Native Affairs and the policies of preservation and protection. The practices outlined under the 1897 Act continued with an increase in the powers of the Director of



Native Affairs over Aboriginal property, Aboriginal courts, Aboriginal police and Aboriginal jails, and Aboriginal and Torres Strait Islander children. The Director was the “legal guardian of every Aboriginal child in the State while such a child is under the age of twenty-one years and may exercise all or any powers of a guardian”.

The 1965 *Aborigines and Torres Strait Islander Affairs Act* established the Department of Aboriginal and Islander Affairs and the policy of assimilation. This legislation repealed both the ***Aboriginal Preservation and Protection Act and the Torres Strait Islander Act*** of 1939. Guardianship of Aboriginal and Torres Strait Islander children was returned to their parents but this legislation introduced the regulation of Aboriginal and Torres Strait Islander people as “assisted persons” which effectively maintained the system of centralised bureaucratic control established by the previous legislation.

The 1965 *Children’s Services Act* was the first major piece of child welfare legislation enacted since the State Children’s Services Act in 1911. The legislation established the Department of Children’s Service with a focus on the needs of children as opposed to the former inspectorial and custodial role. Even though the Children’s Services Act provided a wider framework for child protection work it was not until the seventies that the Department developed its role in what it is now considered child protection work. Prior to this the police undertook most child protection investigations. Despite the fact that the Department of Children’s Services now had statutory responsibility for children in ‘need’ of care, the overriding care and control of Aboriginal and Torres Strait Islander people remained with the Department of Aboriginal and Islander Affairs.

The 1971 *Aborigines Act and the 1971 Torres Strait Islander Act* repealed the Director’s powers of removal and abolished the status of ‘assisted Aborigine’ and ‘assisted Islander’ but continued the system of Aboriginal reserves managed by government appointees and established Aboriginal local government councils and courts on reserves.

With the 1984 *Community Services (Aborigines) Act and Community Services (Torres Strait Islanders) Act*, ‘self-management’ replaced ‘integration’ as the policy of the Queensland Government. This Act established incorporated Community Councils to govern trust areas (formerly reserves) and gave the Councils greater administrative and financial responsibilities.

The Aboriginal and Torres Strait Islander Child Placement Principle was implemented by the Department in 1986 and incorporated into legislation in the ***Child Protection Act 1999***. The Act also requires the Department to consult with a recognised Aboriginal and Torres Strait Islander entity before making any decision about an Aboriginal or Torres Strait Islander child. If urgent action is required and it is not possible to consult with a recognised agency, then consultation must occur as soon as possible afterwards. A recognised entity is defined in the Act as an individual who is Aboriginal or Torres Strait Islander person, who has appropriate knowledge of, or expertise in, child protection or a service that provides services to Aboriginal or Torres Strait Islander people.



Amendments to the *Child Protection Act 1999* in 2006 strengthened:

- the working relationship between the government and the Indigenous community in relation to Aboriginal and Torres Strait Islander children within the child protection system,
- requirements to ensure the unique cultural identity needs of Aboriginal and Torres Strait Islander children are met when they require placement away from their parents and family, Section 6 of the Act was amended to implement the intent of CMC recommendation 8.11 that stipulated child protection legislation reflect the importance of Indigenous participation in decision making. Section 246 recognises the importance of these entities in decision-making for Aboriginal and Torres Strait Islander children and seeks to ensure that the Child Safety Services works with appropriate organisations and individuals. Section 83 was amended to provide for the situation where the department cannot place a child in accordance with the placement hierarchy for Aboriginal and Torres Strait Islander children.

For more information, view the Carer Information Sheets:

Aboriginal and Torres Strait Islander Child Placement Principle and Recognised Entities available at:

<http://www.communities.qld.gov.au/childsafety/foster-care/resources-and-publications/carer-info-sheets>

* This terminology is not considered acceptable today.



Case Study 1

Part 1

Sam is a 16 month old boy. Sam has an older brother, Allan, who is 4 years old. The parents, Jenny and Steve, both have a mild intellectual disability. Steve works as a chef's assistant while Jenny stays home to look after the children. They have been able to provide excellent care for the children and Allan attends a local pre-school. No previous concerns have been identified at all.

A hospital staff member has referred the case to the department following admission of Sam to the local hospital with an arm injury. At first it was assumed that this had been an accident. Jenny had left Sam asleep in his cot while she went to the local shops. Steve had come home from work after a night shift and had agreed to keep an eye on Sam before having a rest. Sam had been fretful during the night and had a bit of a temperature.

When Jenny returned an hour later she found Sam and Steve in an extremely distressed state. Sam's arm was twisted at an ugly angle and Steve was sobbing uncontrollably. She immediately rang an ambulance and both she and Steve accompanied Sam to the hospital. When Steve calmed down he told her that Sam had been crying and he had picked him up. He had been trying to stop him crying by rocking him above his head. Somehow Sam had slipped and Steve caught him at an unusual angle by the arm.

Both parents were very concerned about Sam and stayed during an operation on Sam's arm. Jenny then slept at the hospital with Sam.

The next day Steve told one of the doctors that he had not known how to stop Sam crying and he thought he might have broken Sam's arm by twisting it when he was angry. He was very remorseful about this.

Jenny found it almost impossible to accept that this was what had happened. She was very protective of Sam but was clearly unsure of what to do. After discussions with the Department, both parents agreed that Sam's safety was the main concern, and that they needed some time to resolve Steve's anger and subsequent remorse. They also agreed to have some joint counselling to deal with stresses to their relationship. Both were very anxious to remain in close contact with Sam and to get their family back to normal. There were no relatives in Brisbane who could assist with a placement.

The Department arranged a short term placement with foster carers and Steve and Jenny agreed to this.



Case Study 2 - Tyrone's story

Part 1

Tyrone is a shy 7 year old boy. His parents, John and Mannie, have no other children together, but Mannie has 3 older children who live with their father, and John has two boys in New Zealand from two previous relationships.

Mannie has occasional contact with her extended family, although John actively opposes this.

Mannie has a long history of drug and alcohol abuse and was only able to care for her 3 older children with the help of her mother, who lived with them and provided most of the daily care. She was more like a mother to the children. She passed away 4 years ago when Tyrone was 3.

Mannie continued with the care of the 4 children for a while, but her relationship with John was domestically violent and she had ongoing problems with substance abuse and alcoholism. The father of the older 3 children took them back to live with him after neighbours reported that the children were neglected, often without supervision, food and clothing.

Neighbours continued to report that Tyrone often had little supervision during Mannie's drinking bouts and he was often looking for food. Additionally John and Mannie had violent clashes in the home, sometimes resulting in hospital admissions for Mannie. Allegations from neighbours and teachers resulted in notifications being recorded by the Department, and it was recorded that neglect was substantiated. Attempts were made to secure counselling for Mannie and to link John to anger management programs. On one occasion, it was negotiated for Tyrone to go and live with his Aunt for several months but Mannie resumed his care when the Aunt moved interstate.

Mannie and John have moved numerous times and Tyrone has attended 4 schools in the 2 years.

Recently, in a particularly violent clash at home, Tyrone attempted to intervene when his father tried to hit his mother with a piece of wood. John turned on Tyrone and thrashed him with the wood. Tyrone required 8 stitches in his head and suffered multiple bruising and a broken arm.

The matter was reported to the Department by the hospital where Tyrone was taken by Mannie. During assessment by departmental workers, Mannie indicated that she would not leave John, and that she wanted them to find somewhere else for Tyrone to live. John was violent and aggressive towards the workers and would not agree to Tyrone going anywhere else. A short term custody order was made for 1 year to allow the department to secure Tyrone's safety, while attempts were made to seek extended family support and work with the parents towards meeting Tyrone's needs.



Case Study 3 - Jess

Part 1

Jess is a 13 year old girl. She has been on a long term guardianship order since she was 6 years old. Jess has an older brother, Tim, who is now 17 and living independently.

Jess's mother, Anita, has schizophrenia. She has never been consistent with taking her medication and Jess and Tim experienced extremes of behaviour during their first few years. Anita suffered periods of paranoia during which she would make wild claims of persecution and hide the children from imaginary threats. She would sometimes lock them in a cupboard for up to 3 to 4 hours and once was found sleeping with them in a park. When she took her medication, she was able to provide good quality care.

Until Jess was 6 years old she and her brother were able to remain with their parents because Jess's father, John, was around, and he did most of the household tasks.

In her first year of school, Jess disclosed to her teacher that her father was sexually abusing her. This resulted in a Court case and John went to jail. It was revealed that this had been occurring for a couple of years.

Tim and Jess were then taken into care under a long term guardianship order.

They went to live with foster carers, and remained with the same carers for 4 years. They continued to see their mother on supervised visits when she was deemed fit by the Mental Health Unit. If she was not medicated, visits would cease.

This placement ended when Tim, who was then 14, began to exhibit violent aggressive behaviours. He was excluded from school and began to engage in stealing. He was in frequent trouble with Police.

By this stage Jess was also exhibiting difficult behaviours. She was also stealing from classmates and foster carers, and was defiant and easily distracted. She too was suspended from school.

Tim and Jess had 3 further placements in fairly quick succession and when Jess was 12 her brother left the placement and refused to return. He now lives in independent supported accommodation. After Tim left, Jess's behaviour escalated alarmingly – she refused to come home some nights, refused to go to school, and was openly defiant to the foster carers. This placement also broke down.

Six months ago Jess went to live with new foster carers and is still there. Every attempt is being made to stabilise this placement.



Fostering Allowances Rates Schedule

Trainer to fill in the amounts required for handouts as amounts change annually. Up to date information can be located in the Carer Handbook or on Infonet.

Carer payments (as at January 20)	Frequency of payment	0 – 5 years	6 – 10 years	11+ years
Fortnightly caring allowance	fortnightly			
Start-up allowance	one-off			
Establishment payment	one-off			
High support needs allowance	fortnightly			
Regional remote loading (10 per cent)	fortnightly			