

Adoption of an Aboriginal Person: Procedure for Consulting with a Recognised Organisation

1. Purpose

This document relates to local adoptions that take place under the *Adoption Act 1988* (the Act). **It is noted that Aboriginal¹ children will not be adopted from care.** The Aboriginal Child Placement Principle must be observed, including by the Court as specified in the Act (Section 11 (1 b)).

The document describes the procedure to be followed to ensure that the Chief Executive's obligations under section 11 and section 22 of the *Adoption Act 1988* (the Act) are fulfilled when an application to adopt an Aboriginal person is proposed. This document sets out the legislative context for the required consultation and outlines the steps to be followed that will assist Department for Child Protection (DCP) staff to meet these obligations.

2. Scope

This procedure applies to the adoption of both children under the age of 18 years and to adults over the age of 18 years.

This procedure applies to all DCP staff responsible for ensuring DCP's obligations under the Act are met in relation to the proposed adoption of an Aboriginal person. This will generally be staff of Adoption Services in the Out of Home Care Directorate.

The process of consultation will engage Aboriginal Family Support Services (AFSS) and the parties to the proposed adoption. The parties are the intended adoptive parent/s, the person to be adopted, and their parents and/or guardians.

Note:

It should be noted that in all cases, an application to adopt a child must be made (lodged in the Court) by the person/s seeking to adopt the child. The Chief Executive cannot make an application to the Court for an adoption order on behalf of the prospective adoptive parent/s.

3. Authority

3.1 Legislative context

Section 11(1a) of the Act requires the Court to consider a report from the CE setting out consultation that has occurred with a recognised Aboriginal organisation before determining whether to make an order for the adoption of an Aboriginal child. Section 11(1a) provides that:

¹ Please note that in this document, the term *Aboriginal*, refers to all people who identify as Aboriginal, Torres Strait Islander or both Aboriginal and Torres Strait Islander. This term is used as the First Nations Peoples of South Australia are predominantly Aboriginal peoples and it is their preferred term. We acknowledge and respect that it is preferable to identify Aboriginal peoples, where possible, by their specific Language group or Nation.

(1a) The Court must, before determining whether to make an order for the adoption of an Aboriginal child, consider—

- (a) a report from the Chief Executive setting out consultation that has occurred with a recognised Aboriginal organisation (as the case requires); and*
- (b) any submissions made by or on behalf of a recognised Aboriginal organisation consulted in relation to the child.*

By notice published in the Gazette on 26 September 2019, the Minister declared AFSS to be recognised as an Aboriginal organisation for the purposes of section 11 of the Adoption Act.

In addition, section 22(1) requires the Court to consider a report from or on behalf of the Chief Executive regarding the suitability of the prospective parents and their capacity to adequately care for the child to be adopted. Section 22(1) provides that:

- (1) Before making an order for the adoption of a child, the Court will consider any report prepared by or on behalf of the Chief Executive and submitted to the Court as to —*
- (b) in any case—the suitability of the prospective adoptive parents and their capacity to care adequately for the child.*

Any report prepared for the adoption of an Aboriginal child under section 22 of the Act **must be approved** by the Chief Executive or Deputy Chief Executive. A section 22 report will only be prepared for the adoption of an Aboriginal adult on direction from the Court.

3.2 Whole of Government requirements

Not applicable.

3.3 DCP requirements

Not applicable.

4. Procedure requirements

4.1 Adoption Services

Adoption Services' role in applications for the adoption of an Aboriginal person is to:

- manage the process of obtaining consent or dispensing with the consent of those persons who are required to consent to the adoption (parents, guardians, person to be adopted aged 12 years and over) under section 15 and section 16 of the Act. This includes ensuring that counselling as required under section 15(5) is provided
- consult with AFSS
- provide a report to the Chief Executive or Deputy Chief Executive for approval that incorporates the requirements under section 11(1a) and section 22(1) of the Act
- submit the report to the Court once approval from the Chief Executive is obtained.

4.2 Initial considerations

Practice in relation to the adoption of an Aboriginal person is consistent with the standard practices performed by Adoption Services for the purposes of the Adoption Act. Standard practices performed by Adoption Services staff relate to counselling for and witnessing of the consent of persons who must consent

to an adoption, dispensation of parental consent and the provision of certain reports to the Court in relation to an application to adopt a child.

Before determining whether to make an order for the adoption of an Aboriginal person, section 11(1a) of the Act requires the Youth Court of South Australia (the Court) to consider a report from the Chief Executive setting out consultation that has occurred with a recognised Aboriginal organisation and any submissions made by or on behalf of a recognised Aboriginal organisation.

The Chief Executive's obligation to provide a report to the Court under section 11(1a) of the Act is delegated to the Deputy Chief Executive.

The Act provides for the adoption of children under the age of 18 years and adults 18 years and older.² Therefore, this procedure governs **all applications to adopt** Aboriginal persons.

AFSS is the recognised Aboriginal organisation which must be consulted for the purposes of section 11(1a)(a) of the Act.

The DCP Practice Guide entitled "Aboriginal Child Placement Principle – consulting with a recognised organisation" covers the placement of children and young people under the *Children and Young People (Safety) Act 2017* and **does not apply** to adoption matters.

4.3 Referral for consultation

Consultation with AFSS about a proposed adoption or an adoption application must occur as soon as practicable after DCP has been either:

- approached by a person wishing to place their child who is Aboriginal for adoption
- notified that an application for an adoption order has been lodged in the Court. In such a case, the Court will notify the Crown Solicitor's Office (CSO) that an application for an adoption order has been filed and the CSO will then notify the Supervisor, Adoption Services.

Adoption Services must facilitate the completion of the appropriate form [Consent to the Release of Information – Adoption of an Aboriginal person](#). A separate consent form for each of the parties to an adoption application must be completed before the referral is sent to AFSS.

Adoption Services must also complete the AFSS referral form (either (1) [Aboriginal Person – Child Adoption Recognised organisation consultation](#) or (2) [Aboriginal Person – Adult Adoption Recognised organisation consultation](#)). Once the AFSS referral form is completed, it must be approved by the Supervisor, Adoption Services before it is sent to AFSS.

Adoption Services must email the completed AFSS referral form, information sharing consent forms and associated documentation to AFSS at: ycr@afss.com.au with attachments being password protected and the password supplied separately.

4.4 Consultation

AFSS will provide a response within **six (6) weeks** from receipt of the referral, unless negotiated otherwise.

² "Child" is defined in the *Adoption Act 1988* as '(a) a person who is less than 18 years of age; and (b) a person who is aged 18 years or more in respect of whom an order for adoption under this Act is sought or has been made' (section 4).

AFSS will consider the circumstances relating to the proposal or application for the adoption order and all information supplied by Adoption Services through the referral process.

AFSS will provide advice on the relevant sections of the referral form. This will include information, if relevant, about whether:

- the proposal or application is in compliance with the Aboriginal Child Placement Principle placement hierarchy
- it is in accordance with the five core elements of Participation, Partnership, Placement, Prevention, and Connection
- the recognised organisation supports the application.

Once AFSS has finished the consultation process, AFSS will complete their response to the referral document and return it to the person who originally sent the referral or to the Supervisor, Adoption Services.

AFSS will send an invoice for the consultation to the Supervisor, Adoption Services, who will ensure payment approval against the [Financial authorisation register](#) and the [Financial Authorisation Procedure](#). The Supervisor, Adoption Services, will facilitate the payment to AFSS by forwarding the invoice to “SharedServicesSA:APIInvoices” at APIInvoices@sharedservices.sa.gov.au.

4.5 Record the outcome of consultation in the report to Court

Adoption Services will provide the Chief Executive with a report within **three weeks** of receiving AFSS’ response to the referral, as delegated by the Supervisor. The report will be provided alongside a short briefing which will specify the date of the next court hearing.

For a child adoption, the [report](#) will outline the outcome of the consultation and any submissions from AFSS as per section 11(1a) of the Act as well as the suitability of the prospective adoptive parents as per section 22(1)(b) of the Act.

For an adult adoption, the [report](#) will outline the outcome of the consultations and any submissions from AFSS as per section 11(1a) of the Act. A section 22 report will only be provided on direction from the Court.

The Chief Executive or Deputy Chief Executive will determine whether or not to approve the report. Once the Chief Executive or Deputy Chief Executive approves the report, Adoption Services will submit it to the Court within **three days** of its receipt, as delegated by the Supervisor.

The Chief Executive’s obligation to approve the report is delegated to the Deputy Chief Executive.

5. Compliance, monitoring and evaluation

This procedure will be reviewed in three years, or sooner if the process needs to change.

6. Related documents

Related documents, forms and templates	
Aboriginal Person – Child Adoption Recognised organisation consultation	https://dcpintranet.adds.cp.sa.gov.au/files/Templates/atsi-child-adoption-recognised-organisation-consultation.docx
Aboriginal Person – Adult Adoption Recognised organisation consultation	https://dcpintranet.adds.cp.sa.gov.au/files/Templates/atsi-person-adult-adoption-recognised-organisation-consultation.docx
Aboriginal Child – Adoption Combined section 11 and section 22 report	https://dcpintranet.adds.cp.sa.gov.au/files/Templates/atsi-child-adoption-combined-section-11-22-report.docx
Aboriginal Adult – Adoption Combined section 11 and section 22 report	https://dcpintranet.adds.cp.sa.gov.au/files/Templates/atsi-adult-adoption-combined-section-11-22-report.docx
Consent to the Release of Information – Adoption of an Aboriginal person	https://dcpintranet.adds.cp.sa.gov.au/files/Templates/consent-release-info-adoption-atsi-person.docx

7. Glossary

Term	Meaning
AFSS	Aboriginal Family Support Services
CSO	Crown Solicitor's Office
DCP	Department for Child Protection

Document control

Reference No./ File No.			
Document Owner		Lead Writer (name, position)	
Directorate/Unit: Strategy, Partnerships and Reform		Senior Project Officer, Strategy, Partnerships and Reform	
Accountable Director: Executive Director Strategy, Partnerships and Reform			
Commencement date	19 June 2023	Review date	30 June 2026
Risk rating	Consequence Rating	Likelihood	Risk Rating
Risk Assessment Matrix	Minor	Low	Low

REVISION RECORD		
Approval Date	Version	Revision description
4 December 2020	1.0	First version
2 June 2023	2.0	Review as part of the policy review cycle including revision of template formatting and updated Aboriginal person terminology to align with the Department's consistent wording.