

Protocol between the Department
of Human Services Child Protection
Service and the Victorian Aboriginal
Child Care Agency

INDEX

1. Introduction

1.1 Definitions 3

1.2 National Context

1.1.1 The United Nations Convention
on the Rights of the Child 4

1.1.2 The Aboriginal Child Placement Principle 4

1.3 The Victorian Context

1.3.1 The Children and Young Persons Act 1989 5

1.4 Principles Underlying the Protocol 6

2. Roles and Responsibilities

2.1 Child Protection Service 6

2.2 Child Protection Referrals to VACCA 6

2.3 The Victorian Aboriginal Child Care Agency 7

2.4 VACCA Response to
Child Protection Referrals 8

3. Guidelines and Memorandums of Understanding 8

3.1 Guidelines for the Child Protection Service 8

3.2 Memorandums of Understanding 8

4. Endorsement 9

PROTOCOL BETWEEN THE DEPARTMENT OF HUMAN SERVICES CHILD PROTECTION SERVICE AND THE VICTORIAN ABORIGINAL CHILD CARE AGENCY

1. INTRODUCTION

This protocol has been established to facilitate contact between the Department of Human Services (DHS) and the Victorian Aboriginal Child Care Agency (VACCA) to ensure that a culturally appropriate and effective response to protecting Aboriginal children from harm is provided.

The purpose of this protocol is to establish mechanisms for ensuring the Child Protection Service is fully informed of all cultural needs and issues including knowledge of extended family, in reaching decisions in regard to Aboriginal children.

The protocol will set out broad roles and responsibilities of DHS and VACCA in responding to Aboriginal children notified to the Child Protection Service.

1.1 Definitions

Where appearing in this document the following words and phrases have the meanings given in this section.

“Aboriginal”	includes Aboriginal and Torres Strait Islander.
“Indigenous”	has the same meaning as “Aboriginal”
“Family”	includes the extended family.
“Care arrangements”	means arrangements concerning the voluntary or statutory placement, including care, custody or guardianship.
“Child”	means a person who is under the age of 17 years or, if a protection order continues in force in respect of him or her, a person who is under the age of 18 years.

1.2 National Context:

□ 1.2.1 The United Nations Convention on the Rights of the Child

DHS and VACCA acknowledge the ratification by the Commonwealth Government of the United Nations Convention of the Rights of the Child.

The Convention on the Rights of the Child, adopted by the United Nations in 1989, sets out the undertakings of the international community in recognising children as independent persons with their own integrity and human rights.

The Convention refers to the best interests of the child being the primary consideration when government intervenes in family life, and to the government respecting and providing support for the responsibilities, rights and duties of parents, extended family or where applicable, the community.

The Convention states that children have a right to an identity; young people who are capable should be able to speak for themselves in matters that effect them; Indigenous children shall not be denied the right, in community with other members of the group, to enjoy their own culture; and that attention shall be paid to the cultural background of children in out-of-home care.

□ 1.2.2 The Aboriginal Child Placement Principle

DHS and VACCA acknowledge the endorsement by the Victorian Government, along with all other States and Territories and the Commonwealth, of the Aboriginal Child Placement Principle prepared by the Secretariat of National Aboriginal and Islander Child Care (SNAICC)

The Aboriginal Child Placement Principles states:

1. *Removal of any Aboriginal child from their community and family environment by any welfare or government authority or other persons must be a last resort.*
2. *In the event, after consultation with community controlled Aboriginal welfare organisation, of separation or removal of a child from its family being unavoidable then the courts or authorities¹ must have regard to the direction of the Aboriginal Child Care Agencies and the following criteria:*
 - (a) *The child must be placed within the extended family or relatives.*
 - (b) *If the above is not feasible or possible after consultation with the community's welfare/child organisation, the child may be placed with:*
 - (i) *an Aboriginal family from the local community and within close geographical proximity to the child's natural family;*
 - (ii) *as a last resort the child may be placed, after consultation with the local ACCA, with a non Aboriginal family in close proximity to the child's natural family;*
 - (iii) *any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community.*

¹The Children and Young Persons Act 1989 contains no reference to the Aboriginal Child Placement Principle and as such Victorian courts are not legally compelled to comply with it.

1.3 The Victorian Context:

In Victoria the *Children and Young Persons Act 1989* (the Act) provides the mandate for the Child Protection and Juvenile Justice programs of the Department of Human Services. The section on case planning principles (section 119) contains specific reference to how decisions involving Aboriginal children should be made.

1.3.1 The Children and Young Persons Act 1989:

Section 119 Principles of case planning

(1) Decisions made by the Secretary as part of the case planning process must, as far as possible, be made according to the following principles:

(a) The welfare and interests of the child must be given paramount importance;

(m) In the case of an Aboriginal child-

(i) decision-making should involve relevant members of the Aboriginal community to which the child belongs; and

(ii) in recognition of the principle of Aboriginal self-management and self-determination, arrangements concerning the child, and his or her care, supervision, custody or guardianship, or access to the child, must be made in accordance with the principles listed in sub section (2).

(2) For the purposes of sub-section (1)(m)(ii) the principles are:

(a) Persons involved in the arrangements mentioned in sub-section (1)(m)(ii) must be, or at least one of them must be, a member of the Aboriginal community to which the child belongs; or

(b) If a person or persons of the class mentioned in paragraph (a) is or are not reasonably available for that purpose, the persons involved in those arrangements must be members of, or at least one of them must be a member of, an Aboriginal community; or

(c) If a person or persons of the classes mentioned in paragraphs (a) and (b) is or are not reasonably available for that purpose, the persons involved in those arrangements must be persons approved by the Secretary and by an Aboriginal agency as suitable persons for that purpose.

1.4 Principles Underlying the Protocol

- A Shared Responsibility
Protecting children from harm is a shared responsibility between the family, the general community, Aboriginal community, community agencies, and professionals working with children, police and government. Each has a

significant role to play in ensuring the safety and well being of children and young people, and in helping prevent harm from occurring.

- DHS and VACCA agree that every Aboriginal child has the right to have his or her cultural needs considered and that the provision of culturally relevant services is necessary to achieve this.
- The Child Protection Service will actively consider cultural issues and extended family information in all decisions concerning Aboriginal children.

2. ROLES AND RESPONSIBILITIES²

2.1 Child Protection Service

The Child Protection Service works to ensure that children are protected from significant harm when their parent or caregiver is unable or unlikely to provide that protection. Services are based on the principle that normally, the best protection for children is within the family. The Child Protection Service will, in the first instance, as required under the *Children and Young Persons Act* 1989, take every reasonable step to enable the child or young person to remain in the care of their family by strengthening the family's capacity to protect them.

The Child Protection Service recognises that all Aboriginal Child Protection cases require informed consideration of cultural and kinship arrangements. The Child Protection Service agrees to seek advice to ensure they provide a culturally relevant service to Aboriginal children and their families.

2.2 The Child Protection Service Referrals to VACCA.

The Child Protection Service will consult with the VACCA on all Aboriginal notifications and investigation decisions, including notifications that do not proceed to direct investigation as follows:

1. The Child Protection Service will seek to identify the Indigenous status of all notifications. Where the child is identified as Aboriginal, the Child Protection Service will provide VACCA with identifying client information and details of the notification concerns.
2. The Child Protection Service will seek information and cultural advice in assessing if the case is to be directly investigated.
3. Where it is determined that a case is to be directly investigated, the Child Protection Service will inform and involve VACCA in the investigation and in providing an Indigenous perspective in the risk assessment and case planning.

² Where an MOU has been signed, DHS will refer to the roles and responsibilities outlined therein to determine which agency has the responsibilities set out in Section 2 of this Protocol.

4. The Child Protection Service and VACCA will discuss how to identify and involve relevant members of the Aboriginal community to which the child belongs in all decisions.
5. Where case planning decisions involve care arrangements of the child, the Child Protection Service will consult with VACCA. The purpose of the consultation will be to ensure that the persons involved in these care arrangements are or at least one of them is, a member of the Aboriginal community to which the child belongs; or if this is not reasonably possible that the persons involved, or at least one of them must be members of an Aboriginal community.
6. Where it has not been reasonably possible to make care arrangements for the child within their family, their Aboriginal community or with an Aboriginal person, the Child Protection Service will seek the assistance of VACCA in ensuring a cultural support plan is developed for these placements, until such time as the child can be placed within their family or more culturally appropriate care arrangements identified.
7. When, in the course of a direct investigation or during any subsequent case planning, the Child Protection Service becomes aware that a child is Aboriginal, the Child Protection Service will follow points 3 through 6 above. In undertaking the consultation set out in this section, the Child Protection Service will at all times comply with the provisions of the *Children and Young Persons Act 1989*, for example, by authorising release of information under sections 66(2)(b) and 66(2A) and by ensuring that all decision making is in accordance with section 119(1)(a) set out above.

2.3 The Victorian Aboriginal Child Care Agency

VACCA was established as a statewide Aboriginal community controlled and operated service. VACCA operates within the context that Aboriginal children continue to be significantly over-represented in the protection and care system within Victoria. VACCA considers that it has the responsibility and the opportunity to promote, advocate for, and achieve positive changes in the lives of Indigenous children, their families and their community.

VACCA's objectives include the preservation, strengthening and protection of the cultural and spiritual identity of Indigenous children and to provide culturally appropriate and quality services, which are responsive to the needs of the Indigenous community.

VACCA, as lead agency in Aboriginal child and family services, has a proactive responsibility to provide quality services to reduce the number of Aboriginal child protection notifications and children living away from their families and communities, through empowering and strengthening families and communities to develop and reach their full potential.

2.4 VACCA's Response to Referrals from the Child Protection Service

VACCA considers the best interests of the child are of paramount importance, and will work in partnership with the Child Protection Service to ensure the provision of a culturally appropriate and effective response to all Aboriginal notifications and investigations by:

1. Providing the Child Protection Service with an Indigenous perspective in the assessment of risk and case planning processes.
2. Discussing with the Child Protection Service how to identify and involve relevant members of the Aboriginal community to which the child belongs in all decision making. The involvement of such persons will always be in accordance with the best interests and welfare of the child or young person.
3. Where case planning decisions involve care arrangements of the child, VACCA will provide advice and assistance to ensure that the persons involved in the care arrangements are or at least one of them is, a member of the Aboriginal community to which the child belongs; or if this is not reasonably possible that the persons involved, or at least one of them must be members of an Aboriginal community.
4. Providing assistance to the Child Protection Service on cases where it has not been reasonably possible to make care arrangements for the child within their family, their Aboriginal community or with an Aboriginal person. VACCA will provide the Child Protection Service assistance in ensuring a cultural support plan is developed for these placements until such time as the child can be placed within their family or more culturally appropriate care arrangements identified
5. Providing advice to the Child Protection Service and liaison assistance to children and their families in accessing relevant specialist or family support services.

3. GUIDELINES, AND MEMORANDUMS OF UNDERSTANDING

3.1 Guidelines for the Child Protection Service

A set of guidelines will be developed outlining the roles and responsibilities of the Child Protection Service workers in support of this protocol. The focus of the guidelines will be to ensure Child Protection workers know when to consult VACCA and what the purpose of the consultation is. Importantly the guidelines will further define the expectation that the Child Protection Service involve relevant members of the child's Aboriginal community in case planning decisions.

3.2 Memorandums of Understanding


3.2.1 The Department of Human Services will negotiate Memorandums Of Understanding (MOU) between Regional Child Protection Services, local Aboriginal Community Sector Organisations and VACCA to make clear respective roles and responsibilities.

3.2.2 The Department of Human Services and VACCA will negotiate a Memorandum of Understanding with the CWAV to ensure their member organisations are clear in relation to their role in consulting with VACCA on all decisions regarding the placement of an Aboriginal Child.

4. ENDORSEMENT


This agreement has been developed with the aim of enhancing and fostering the working relationship between the Victorian Aboriginal Child Care Agency and the Department of Human Services, by ensuring that the Child Protection system is better able to engage with Aboriginal children and families that come to the attention of Child Protection Service.

In accordance with the principles outlined in this protocol, we, the undersigned, on behalf of our respective Department and Organisation, agree to this protocol to ensure a cooperative framework necessary for effective and culturally appropriate intervention, where Aboriginal children are in need of protection.



Pam White
Director Community Care

Pam White
Director Community Care
Date 11 April 2002



Margaret Stewart
Chairperson VACCA

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Chairperson VACCA
Date: 11 April 2002