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## Family Law Council

Chairperson: Professor John Wade

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Federal Magistrate Norah Hartnett  
Mr Clive Price  
Federal Magistrate Robyn Sexton  
Justice Garry Watts

08/21028

3 October 2008

The Hon Robert McClelland MP  
Attorney-General  
Parliament House  
Canberra ACT 2600

Dear Attorney-General

***Family Law Council advice on kinship carers for indigenous children and support for adherence to the Indigenous Child Placement Principle***

In the context of the development of the National Child Protection Framework, the Family Law Council strongly supports the Indigenous Child Placement Principle. The Council recently heard concerns from invited guests who attended the Family Law Council meeting in August 2008 as to the extent of compliance with this principle across the States and Territories. The theme being considered by Council at that meeting was *Kinship carers of indigenous children and related family law issues*.

***The Indigenous Child Placement Principle<sup>1</sup>***

The best interests of the child are always paramount, and the intent of the Indigenous Child Placement Principle is to ensure that indigenous children

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<sup>1</sup> This Principle is also referred to as the Aboriginal Child Placement Principle and the Aboriginal and Torres Strait Islander Child Placement Principle.

can maintain contact with family and culture. The Principle prioritises the placement options that should be explored when an Aboriginal or Torres Strait Islander child is placed in care. They are in order of priority as follows:

- with a member of the child or young person's family
- with a member of the child or young person's community or language group
- with an Aboriginal person or Torres Strait Islander person that does not have a familial or kinship relationship to the child.

If a child cannot be placed with any of the above people, alternate placement choices can be made. Other options then include placing the child with:

- a carer who is not Aboriginal but is considered to be suitable to care for the child and who will promote and maintain the child's ongoing connections to their family and community.

The Government's discussion paper, *Australia's Children: Safe and Well, a National Framework for Protecting Australia's Children* identified the numbers of substantiated cases of child abuse and neglect as unacceptable and alarming. This is particularly true for Aboriginal and Torres Strait Islander children who are over five times more likely to be the subject of a substantiation and eight times more likely to be placed in out-of-home care.<sup>2</sup> Compounding the situation of an Aboriginal or Torres Strait Islander child will be the fact that they face a one in three chance of being removed to a non-indigenous care placement that disconnects them from their indigenous family, community, country and identity.<sup>3</sup>

The Queensland Crime and Misconduct Commission delivered the 2004 report *Protecting Children: An Inquiry into Abuse of Children in Foster Care* which recognised these problems and provided a set of recommendations that were specifically aimed at reforming the child protection system. While there was a blueprint for implementing the recommendations,<sup>4</sup> Council was advised that no plan was drafted that would ensure services were developed to respond to the legislation and to provide holistic services.<sup>5</sup>

The form of the Principle in both legislation and administrative policy, varies widely throughout Australia. As indigenous child welfare is a matter of State and Territory Government responsibility, responses to the needs of

<sup>2</sup> AIHW *Child protection Australia 2006-07*, [www.aihw.gov.au/publications/index.cfm/title/10566](http://www.aihw.gov.au/publications/index.cfm/title/10566)

<sup>3</sup> *Australia's Children: Safe and Well, a National Framework for Protecting Australia's Children* May 2008, pg 11

<sup>4</sup> Queensland Government, 'A Blueprint for Implementing the Recommendations of the January 2004 Crime and Misconduct Commission Report "Protecting Children: An Inquiry into Abuse of Children in Foster Care"' (2004).

<sup>5</sup> Davis, A, *Who's Minding the Kids? Child Protection in Queensland*, Indigenous Law Bulletin, Vol. 6(23), 2006

indigenous children vary markedly within and between jurisdictions. Each response provides for a different process by which the decision to place a child is reached. Each gives a different person the ultimate power to make the placement and none gives the ultimate power of placement to an Aboriginal and Torres Strait Islander community.

The invited guests who attended the Family Law Council meeting in August 2008 were of the view that implementation of the Indigenous Child Placement Principle by the States and Territories had not been effective and compliance was relatively low. It was also suggested that responses to indigenous children varied markedly between jurisdictions.

Council has so far only had the opportunity to hear from representatives of the indigenous community with experience in the child protection environment. Given the concerns raised regarding compliance with the Indigenous Child Placement Principle, Council recommends that the Commonwealth give priority to the principle in the development of the National Child Protection Framework.

Council also recommends that the Government consider the need for all children's issues to be dealt with in one federal court.

We await your response before the next meeting of Council which will be held on the 20-21 November 2008.

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Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Wade', written in a cursive style.

Professor John Wade  
Chairperson