

ENDURING PARENTAL RESPONSIBILITY FOR ABORIGINAL CHILDREN IN NON-ABORIGINAL CARE ARRANGEMENTS

Yerrabi Yurwang holds significant concerns about the ACT Government's use of *Enduring Parental Responsibility* (EPR) orders for Aboriginal and Torres Strait Islander Children in Out of Home Care (OoHC), and in particular the 3/2024 ACT Government Child and Youth Protection Services (CYPS) Interim Policy on EPR for Aboriginal and Torres Strait Islander Children and Young People (C&YP) in non-Aboriginal care arrangements. EPR orders transfer full parental responsibility from the government to carers until the child turns 18, which inherently contradicts the Elements of the *Aboriginal and Torres Strait Islander Child Placement Principles* (the Principles) of maintaining cultural connections.

What is an Enduring Parental Responsibility (EPR) order?

ACT Together defines EPR as: “A type of Care and Protection Order that allows carers to hold full parental responsibility for a child and make decisions on the child’s behalf. CYPS has no role in the monitoring or case management of these orders.” (p.150) EPR was first introduced to the Children and Young People Act in 2008 as a permanency arrangement alternative to adoptions. It gives carers full parental responsibility until the child is 18 years of age.

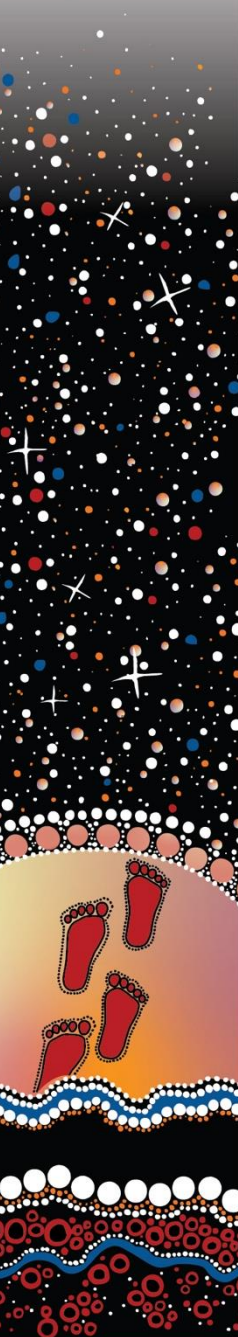
EPR & Aboriginal & Torres Strait Islander Children & Families: Policy Context

The Principles are five core elements that prioritise maintaining connections to family, community, culture, and country for Aboriginal children placed in out-of-home care. These connections are fundamental to the rights, well-being, and identity of all Aboriginal C&YP in OoHC. EPR arrangements for Aboriginal C&YP with non-Aboriginal carers are inherently contradictory to the principle of “*Connection: maintaining and supporting connections to family, community, culture and country for children in out-of-home care*”.

In the ACT, *Our Booris Our Way* report (2019) recommendation 26 restates the need to ensure that Aboriginal C&YP are not adopted by non-Aboriginal families. Regarding EPR, the report notes that “*work is underway to prepare the government’s policy position on Enduring Parental Responsibility orders supports the view that EPR should only be available to Aboriginal and Torres Strait Islander blood kin of the child.*”

The right of a child for due considerations for continuity in cultural and family connections while in foster arrangements is also bounded in the *United Nations Convention on the Rights of the Child* (article 20, subsection 3) and commitments to supporting cultural rights and due protections as detailed in the *UN Declaration on the Rights of Indigenous Peoples* and the *International Covenant on Economic, Social and Cultural Rights*, to which Australia is signatory.

The detailed key issues below raise serious concerns regarding ACT and Australia’s commitments as set out in these agreements and international human rights conventions.



Key issues with the ACT Interim EPR policy and practice

- A key concern is the lack of mechanisms that help ensure compliance with these principles after an EPR order is granted, including maintaining connection with blood kin culture and community, and lack of oversight on cultural plans post-EPR order. Policies in this area should focus on how best to implement the Principles rather than how to circumvent them.
- Creating new pathways for disconnection circumnavigating the Principles: In an Interim Policy on ERP For Aboriginal and Torres Strait Islander C&YP in non-Aboriginal care arrangements (2/2024), the ACT Government's Child and Youth Protection Service detail how EPR can be applied for Aboriginal and Torres Strait Islander C&YP living in-Aboriginal care arrangements. The policy details 4 stages of the approval process. While the document mentions in several points the need to apply the Principles, the process is fundamentally incompatible with the Principles as it builds new pathways to disconnect Aboriginal C&YP from their Aboriginal Families and Community.
- The role of Aboriginal Community Controlled Organisations (ACCO s): The policy document does not mention the role for ACCOs in relation to EPR, despite the commitment to ensure ACCOs sign-off on any EPR arrangement for Aboriginal C&YP with non-Aboriginal carers. ACCOs play a vital role in advocating for the inherent rights, needs, well-being and aspirations of Aboriginal C&YP and their Families, and our sector's continued absence from the EPR decision-making process is in direct contradiction to the Principles and guidance from SNAICC.
- Disconnection from Family, Community, Culture, and Country: EPR orders transfer full parental responsibility to carers, including non-Aboriginal carers, until the child is 18 years old. This places Aboriginal C&YP at risk of sustained disconnection from their family, community, culture, identity, and Country. These detrimental impacts directly undermine the core purpose of the Principles, which is to prioritise maintaining these vital connections and the distinct rights of Aboriginal and Torres Strait Islander children and young people in OoHC.
- Prioritising non-Aboriginal permanent care over reunification, cultural rights & cultural connections: The Interim Policy outlines a step-by-step process for non-Aboriginal carers to apply for EPR orders for Aboriginal children in their care. It prioritises the creation of permanent care arrangements over maintaining cultural connections, upholding cultural rights and pursuing reunification with the child's Aboriginal family, contradicting the core principles of the Aboriginal & Torres Strait Islander Principles.
- Failure to comply with the ATSI CPP Hierarchy & failure to acknowledge Aboriginal Child-Rearing Practices: The existing requirement for early placement decisions fails to acknowledge Aboriginal attachment, well-being, and child-rearing practices. CYPS do not undertake adequate family finding and/or review placement decisions to adhere to the Principles in accordance with the hierarchy. For example, if an Aboriginal CYP enters care under Emergency Action and is placed in a non-Aboriginal foster care arrangement due to CYPS not obtaining family details or making active efforts to contact blood kin. After a placement is made, case managers do not conduct further attempts as care plans are focussed on managing day-to-day needs of the child and working towards the next set of care orders (i.e long term orders).
- Undue Emphasis on Attachment to Carers over Reunification: CYPS puts undue emphasis on a child's attachment to their carer at the expense of reunification and fails to review parenting capacity and/or revisit reunification throughout long-term orders. Subsequently, CYPS and affiliated NGO agencies aggressively pursue EPR orders for Aboriginal children with non-Aboriginal Carers. The limited timeframes for Aboriginal parents to demonstrate change are unrealistic and fail to account for intergenerational trauma and disadvantage imposed by the system since invasion and colonisation.

- Insufficient Oversight and Empowerment of Non-Aboriginal Carers: Once EPR is granted, there is insufficient oversight to ensure children's cultural needs are met. Non-Aboriginal carers are empowered to make unilateral decisions about a child's upbringing, severing their identity and rights to connection with their family, community and Country. CYPs & ACTT uphold a priority of a concerning focus on the attachment between the child and the carer, at the expense of efforts to reunite the child with their family.

What is Yerrabi Yurwang's Position on EPR?

1. Given its inherent inconsistency with the Aboriginal & Torres Strait Islander Placement Principles, Yerrabi Yurwang does not support EPR for Aboriginal children and young people in non-Aboriginal care arrangements, in principle.
2. EPR orders inherently fail to adequately safeguard the rights and well-being of Aboriginal C&YP in OoHC. Contrary to the Principles, these orders do not effectively promote the best interests of these children and young people, including their fundamental rights to:
 - a. Safety and decisions made in accordance with the best interest principle.
 - b. Self-determination and participation of their Aboriginal families
 - c. Maintaining family kin connections
 - d. Remaining connected to their community
 - e. Promoting and protecting their cultural identity
 - f. Receiving ongoing quality support culturally appropriate support
 - g. Periodic review of their placement against the ATSICPP Placement Hierarchy
 - h. All 5 core elements of the ATSICPP.
3. In particular, the need to maintain oversight to ensure the wellbeing of Aboriginal C&YP and their connection to family, culture, and community remain at the heart of the process.
4. Yerrabi rejects any policy changes that creates new pathways to disconnect Aboriginal C&YP from their culture and community. Current arrangements allow for non-Aboriginal carers to initiate the EPR process. The new policy mentioned above provides a process map to support EPR applications for Aboriginal C&YP by non-Aboriginal carers.
5. Extraordinary circumstances: If there are extraordinary circumstances and an EPR is initiated, in cases where all family reunification efforts have been exhausted and the child is at risk, EPR with a non-Aboriginal carer may be considered with stringent oversight by an independent Aboriginal community panel. Yerrabi requires the following elements of the process as being prerequisite:
 - a. An Aboriginal community panel, made up of CAPO ACCOs / community representatives should make any determinations regarding EPR arrangements. A committee made up of internal department staff is extremely inappropriate for this significant issue / process.
 - b. Key elements in care arrangements that support implementation of the Principles must be regularly maintained and monitored even after EPR is granted, including compulsory cultural plans and appropriate oversight, and mandate a requirement for periodic reviews (e.g. annually) of EPR orders to assess cultural connections.
6. Incompatible with ACT Commitments: The updated EPR Policy contradicts both key sets of principles in this area, the five principles of the ATSICPP, as well as Our Booris Our Way commitments (especially recommendation 26), and international agreements to which Australia is signatory.

References:

1. ACT Government Community Services. 2024. Child and Youth Protection Services Interim Policy: Enduring Parental Responsibility for Aboriginal and Torres Strait Islander children and young people in non-Aboriginal care arrangements.
2. SNAICC. 2018. Understanding and applying the Aboriginal and Torres Strait Islander Child Placement Principles. Available from: https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding_applying_ATSICCP.pdf
3. Our Booris, Our Way Steering Committee. 2019. Our Booris, Our Way: Final Report. Available from: https://www.act.gov.au/_data/assets/pdf_file/0004/2380936/Our-Booris-Our-Way-final-report-December-2019.pdf
4. United Nations. 1966. International Covenant on Economic, Social and Cultural Rights. Available from: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en
5. United Nations. 1989. Convention on the Rights of the Child. Resolution 44/25 of 20 November 1989. Available from: <https://www.ohchr.org/sites/default/files/crc.pdf>
6. United Nations. 2007. United Nations Declaration on the Rights of Indigenous Peoples. 61/295. September 2007. Available from: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf