



POLICY NUMBER		Page 1
DES 1-92-03		
CHAPTER	ARTICLE	
1 Department of Economic Security	92 Office of Intergovernmental Operations	
SUBJECT	EFFECTIVE DATE	REVISION
03 Tribal Government Consultation	<b>10/06/2014</b>	1

**DES 1-92-03  
Tribal Government Consultation**

**I. POLICY STATEMENT**

The Department is committed to working with American Indian Tribes to improve the quality, availability, and accessibility of human services to children, youth, and adults. This policy ensures that DES engages in open, continuous, and meaningful consultation with the 22 Arizona Tribal Nations consisting of information exchange and mutual understanding prior to taking actions that will likely have a direct impact on the American Indian Tribes in Arizona.

**II. APPLICABILITY**

This policy applies to all division, administration, and program staff that collaborates with or coordinates service delivery to any of Arizona’s 22 Tribal Nations.

**III. PROCEDURES**

This policy is supported by a single departmental procedure identifying how action related to this policy will be conducted including responsibilities, time frames, and required actions. To view this procedure, access the link below.

[DES 1-92-03-01](#)      [Tribal Government Consultation Procedures](#)

**IV. AUTHORITY**

The special relationship with American Indian/Alaska Natives is affirmed in statues and various Presidential Executive Orders including, but not limited to:

- State of Arizona Executive Order 2006-14 Consultation and Cooperation with Arizona Tribes
- Presidential Executive Order 13084 Consultation and Coordination with Indian Tribal Governments (May 14, 1998)
- Presidential Executive Order 13175 Consultation and Coordination with Indian Tribal Governments (November 6, 2000)
- Presidential Memorandum Government-to-Government Relationship with Tribal Governments (September 23, 2004)
- Presidential Memorandum Tribal Consultation (November 5, 2009)
- Social Security Act Titles XIX, XX, XXI

Public Law 67-85	The Snyder Act
Public Law 89-73 as amended	Older Americans Act of 1965
Public Law 93-638, as amended	Indian Self-Determination and Education Assistance Act
Public Law 93-638, as amended	Native American Programs Act of 1974
Public Law 93-644, as amended	Indian Health Care Improvement Act
Public Law 94-437, as amended	Indian Health Care Improvement Act (25 U.S.C. 1601 <i>et seq.</i> )
Public Law 95-608	Indian Child Welfare Act (ICWA) of 1978
Public Law 104-4	Unfunded Mandates Reform Act of 1995
Public Law 104-193	Personal Responsibility and Work Opportunity Reconciliation Act of 1996
Public Law 105-220	Wagner-Peyser Act, as amended by the Workforce Investment Act of 1998
Public Law 110-134, as amended	Head Start for School Readiness Act of 2007 (42 U.S.C. 9801 <i>et seq.</i> )
Public Law 110-351	Fostering Connections to Success and Increasing Adoptions Act of 2008 (42 U.S.C. 1305 <i>et seq.</i> )
Public Law 111-3, 123 Stat 8	Children’s Health Insurance Program Reauthorization Act of 2009 (February 4, 2009)
Public Law 111-5, 124 Stat. 119	American Recovery and Reinvestment Act of 2009 (February 17, 2009)
Public Law 111-148, 124	Patient Protection and Affordable Care Act of 2010 (42 U.S.C. 18001 <i>et seq.</i> ) (March 23, 2010)
	Presidential Executive Memorandum to the Heads of Executive Departments (April 29, 1994)

## V. DEFINITIONS

American Indian/Tribes/Nations: Any federally-recognized American Indian/Alaska Native located wholly or partially within the boundaries of the State of Arizona. It is understood that “Tribes” in the plural form means the tribe(s) upon which programmatic actions have tribal implications. These terms may be used interchangeably in the document.

- Federally Recognized Tribes: American Indian Tribes with whom the federal government maintains an official government-to-government relationship, usually established by a federal treaty, statute, court order, federal administrative action, congressional legislation, or executive order. The Bureau of Indian Affairs maintains and regularly publishes the list of federally-recognized Indian Tribes.

- Nation: For the purposes of this policy, a nation is any present or historical tribe or band, or other group or community of indigenous peoples in the United States often associated with the land or territory of a reservation. These nations usually possess tribal sovereignty and retain their inherent powers of self-government, the degree of which may vary from one tribal nation to another.
- Native American: Broadly describes the people considered indigenous to North America.
- Sovereignty: The inherent authority of indigenous tribes to govern themselves within the borders of the United States of America. Though sovereign, the federal government recognizes tribal nations as “domestic dependent nations” and grants local sovereignty to tribal nations, but does not grant full sovereignty equivalent to that of foreign lands.
- State-Recognized Tribes: Tribes that maintain a special relationship with the state government and whose lands and rights are usually recognized by the state. State-recognized tribes may or may not be federally-recognized.

Communication: The exchange of ideas, messages, or information by speech, signals, writing, or other means.

Consultation: A process used to facilitate communications, interaction, and the exchange of views and perspectives between the Department of Economic Security (DES) and each of the federally-recognized tribes or their designees in Arizona. The process should be a meaningful and timely dialogue with appropriate officials and representatives of tribal governments. Consultation emphasizes trust and respect, encourages the open exchange of information, full and candid expressions of views, and a commitment to fully consider other views during decision-making. Consultation seeks mutually acceptable resolutions to the greatest extent possible.

Critical Event: A planned or unplanned event that has or may have a substantial impact on American Indian Tribe(s) (e.g. issues, policies, or budgets) which may come from any level within state or federal government.

Department: The Arizona Department of Economic Security.

Department Tribal Relations Liaison: The DES Tribal Relations Liaison, under the direction of the Office of the Director, shall act as the DES contact person with American Indians and shall assist in building a positive relationship between the state and American Indian Tribes in Arizona.

Division: Functional sections of the Department that report to either an Assistant Director or, where there is no responsible Assistant Director, report directly to the Director or a Deputy Director.

Division Tribal Liaisons: The Division Tribal Liaisons are selected within each of the program division. Supervision remains within each division to address day-to-day issues and contract-related issues or successes with each of the 22 Arizona Tribes as appropriate.

Government-to-Government Relationship: A unique legal and political relationship that is grounded in the U.S. Constitution between federally-recognized tribes and the federal government. Implicit in this relationship is the recognition of tribal sovereignty as individual nations within the U.S., and the U.S. government’s obligation to protect tribal self-governance, assets, resources, lands, and treaty rights. While federally-recognized tribes generally are not subordinate to states, they can have a government-to-government relationship. It is important that both tribes and state recognize the benefits of understanding intergovernmental processes and potential avenues for collaboration.

Indian Child Welfare Act: A policy of the United States enacted and declared by Congress to protect the best interests of Indian children and to prevent the breakup of American Indian families. Minimum Federal standards were established to promote the stability and security of American Indian Tribes by providing standards for the removal of American Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Joint Tribal/State/Federal Workgroups and/or Task Forces: A group composed of individuals who are elected tribal officials or their designees, appointed by federally-recognized American Indian Tribes and/or federal or state agencies, to represent their interests while working on a particular policy, practice, issue, and/or concern.

Timely Response/Notice: When the Department is notified of an issue by an American Indian Tribe, the Department will respond within ten (10) work days. This response will, at a minimum, acknowledge receipt of notification of the issue and indicate the Department Tribal Relations Liaison or the appropriate DES division staff as contact person for follow-up.

Treaty: A legally binding and written agreement that affirms the government-to-government relationship between two or more nations.

Tribal Officials: Elected or duly-appointed officials of American Indian Tribes or designees.

## VI. STANDARDS

A unique government-to-government relationship exists between American Indian Tribes and federal and state governments. Since the formation of the Union, the United States has recognized American Indian Tribes as sovereign nations. As a State agency responsible for administering federal programs, these regulations play a significant role in this *Tribal Government Consultation* policy. This relationship is grounded in the U.S. Constitution, numerous treaties, statutes, federal case law, regulations, and executive orders; as well as political, legal, moral, and ethical principles, and is derived from the political relationship that American Indian Tribes have with the federal government.

This policy does not supersede any contract or intergovernmental agreement (IGA) between the Department and an American Indian Tribe which provides rights or time frames conflicting with those contained herein.

### A. General Requirements

1. Pursuant to the special relationship between the American Indian Tribes and federal and state governments, the guiding principle of this policy is to ensure that the Department provides consultation prior to taking actions that will likely have a direct effect on American Indian Tribes in Arizona. Either the Department or a Tribe may identify that an action may significantly affect one or more American Indian Tribes.
  - a. Such actions refer to policies that have tribal implications and direct effects on one or more American Indian Tribes, the relationship between the State of Arizona and American Indian Tribes, or the distribution of power and responsibilities between the State of Arizona and American Indian Tribes.
  - b. As a part of the consultation process, Department staff shall make every effort to allow at least 30 days for an American Indian Tribe to respond to notifications of Department plans prior to taking further action.

Note: Additional time may be required in the event that the Department has a contract or IGA with an Arizona Tribe which may stipulate different time requirements.

- c. Every effort shall be made within reason and, whenever possible, to solicit feedback and recommendations regarding department issues (e.g., legislative changes, contract changes, changes in intergovernmental agreements).
2. Trust among the Department and Arizona's 22 Indian Tribes is an indispensable element in establishing a good consultative relationship. To establish and maintain trust, consultation must occur on an ongoing basis.
3. The Department Tribal Relations Liaison, with assistance from the delegated Division Tribal Liaisons, or designee, is responsible for the Department's implementation and ongoing operation related to the requirements of this policy and shall act as the principle point of contact for tribal issues.
4. Department or division staff with a role in the development or implementation of policy substantially affecting American Indians in the State of Arizona shall coordinate with the Department Tribal Relations Liaison to ensure the required consultation takes place in a timely and effective manner.
5. The Department shall ensure that the consultation process and activities are conducted within the scope of this policy completed for the purpose of resulting in a meaningful outcome for both the Department and American Indian Tribes. Prior to the adoption of any final policy decisions that significantly affect American Indian Tribes in Arizona, the proposed outcome of a consultation shall be publicized statewide and circulated for review and comment to affected American Indian Tribes, Inter-Tribal Organizations, and within the State, and when appropriate, practicable, and permitted by law.
6. This policy shall not waive or diminish any tribal government rights, including treaty rights, sovereignty immunities, or jurisdiction.

## **B. Responsibilities**

It is the intent of the Department to increase the knowledge and understanding that American Indian Tribes have of the Department's programs and policies, while at the same time increasing the awareness that Department staff have of tribal programs and policies. To ensure consistent application of *Tribal Government Consultation* process and in order to fully effectuate this policy, the Department shall, through the Department Tribal Relations Liaison and Division Tribal Liaisons:

1. Establish effective communication channels with Tribal Officials and their appointed leadership of the Social Services Department, the Workforce Investment/Jobs Department, the Tribal Native Employment Workforce (NEW) Department, the Health Department, the Child Support Services Department, the Aging Department, and any other necessary tribal program leaders for each American Indian Tribe in Arizona.
2. Seek dialogue with American Indian Tribes to discuss potential changes to policy that will have a significant impact on the American Indian Tribes in Arizona, particularly any critical event that may occur.
3. Allow for consultation with American Indian Tribes in the development of new policy with substantial tribal implications.

4. Build meaningful relationships with state- and federally-recognized tribes by engaging in open, continuous, and relevant consultation.

### **C. Consultation Philosophy**

Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinions among parties which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process that results in effective collaboration and informed decision-making with the ultimate goal of reaching consensus on issues. True consultation shall lead to information exchange, mutual understanding, and informed decision making. Examples of actions that may trigger consultation include any legislative proposal, new rule adoption, or a policy change that the Department or an American Indian Tribe determines may significantly affect Tribes in Arizona.

1. Consultation occurs whenever the Director and Tribal Official(s), and/or their designees, engage in oral or written correspondence to discuss an issue. Consultation with a single American Indian Tribe shall not substitute for consultation with other Tribes on issues that may affect more than one Tribe.
2. The Department, through the Department Tribal Relations Liaison, will consult with American Indian Tribes in Arizona about policy issues that may have a direct impact on the Tribe(s). Similarly, if a Tribe identifies a department issue that has a significant impact on American Indian Tribes in Arizona, the Tribe may bring that issue to the attention of the Department Tribal Relations Liaison. Consultation may occur at different levels through a variety of methods to facilitate tribal consultation.
3. The Department views tribal consultation as a joint effort between the American Indian Tribes, the Department Director, the Department Tribal Relations Liaison, and the Division Tribal Liaison(s) to promote the objectives of the *Tribal Government Consultation* policy. Together, these entities shall promote consistent implementation of the policy and work to ensure that the policy plays a meaningful role in addressing issues affecting American Indian Tribes in the State of Arizona.
4. The Department shall consistently work to establish open training sessions and to understand the beliefs, values, and communication styles that must be addressed to effectively provide products and services to American Indian Tribes.
5. The Department shall establish and cultivate working relationships with key persons in tribal governments, and acknowledge the unique relationship between the state government and tribes of Arizona to ensure consistency with the principles of tribal sovereignty as described by federal law.

### **D. Ongoing Consultation**

1. The Department shall participate in the U.S. Department of Health and Human Services (HHS) regional consultations; and, as requested, in consultation meetings sponsored by HHS agencies, U.S. Department of Labor, U.S. Department of Commerce, the Indian Health Service, the Inter Tribal Council of Arizona, or American Indian Tribes.

2. The Department shall provide an opportunity for American Indian Tribes to submit written comments during any period of ongoing consultation. Written comments may be submitted electronically or by mail in the format most conducive for the American Indian Tribe, American Indian organization, or other entity.
3. The Department shall continue to meet regularly with American Indian Tribes in Arizona. The Tribal Relations Liaison or other designated Department staff will provide follow-up, as appropriate, to the extent that issues of general application are discussed in such meetings.

**E. Joint Tribal/State/Federal Workgroups**

1. The Department may establish or participate in workgroups, task forces or other groups or committees with American Indian Tribes and others to address issues affecting American Indian Tribes in Arizona.
2. Interaction with joint tribal/state/federal workgroups will not take the place of tribal consultation. Instead, this interaction is intended to enhance the consultation process by gathering individuals with extensive knowledge of particular policy, practice, issues, or concerns to work collaboratively and offer recommendations for consideration by the Department.

**F. Reporting**

At the end of each state fiscal year, the Department shall report annually to the Governor and the Legislature.

1. The report shall include a description of all actions undertaken as a result of joint Department/tribal consultation activity.
2. The report shall be submitted electronically to the Governor and the Legislature with electronic copies to the Arizona Commission of Indian Affairs, who will make the report available to Arizona's tribal leaders.
3. The report shall be posted to the DES Internet at <https://www.azdes.gov>.

### **DES PROGRAM DIVISION AREAS**

The Department of Economic Security (DES) works with families, community organizations, advocates and state and federal partners to realize a collective vision that every child, adult, and family in the state of Arizona will be safe and economically secure. DES is comprised of approximately 7,000 employees who work in various divisions serving categorically separate populations, such as individuals with developmental disabilities, the aging community, and children.

This list represents some of the program areas administered by DES:

- Arizona Early Intervention Program (AzEIP)
- Division of Aging and Adult Services (DAAS)
- Division of Benefits and Medical Eligibility (DBME)
- Division of Child Support Services (DCSS)
- Division of Developmental Disabilities (DDD)
- Division of Employment and Rehabilitation Services (DERS)

Complete information regarding all of the Department's programs can be found on the [DES Web site](https://www.azdes.gov/) at <https://www.azdes.gov/>

The [DES organizational chart](#) is another resource that identifies the various programs operated by DES.