

Division 2—Best interests principles

10 Best interests principles

- (1) For the purposes of this Act the best interests of the child must always be paramount.
- (2) When determining whether a decision or action is in the best interests of the child, the need to protect the child from harm, to protect his or her rights and to promote his or her development (taking into account his or her age and stage of development) must always be considered.
- (3) In addition to subsections (1) and (2), in determining what decision to make or action to take in the best interests of the child, consideration must be given to the following, where they are relevant to the decision or action—
 - (a) the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child;
 - (b) the need to strengthen, preserve and promote positive relationships between the child and the child's parent, family members and persons significant to the child;
 - (c) the need, in relation to an Aboriginal child, to protect and promote his or her Aboriginal cultural and spiritual identity and development by, wherever possible, maintaining and building their connections to their Aboriginal family and community;

S. 10(3)(f)
amended by
No. 61/2014
s. 6(1),
substituted by
No. 6/2026
s. 4.

S. 10(3)(fa)
inserted by
No. 61/2014
s. 6(2).

- (d) the child's views and wishes, if they can be reasonably ascertained, and they should be given such weight as is appropriate in the circumstances;
- (e) the effects of cumulative patterns of harm on a child's safety and development;
- (f) the desirability of—
 - (i) continuity and stability in the child's care, including stable and enduring arrangements for care and parental responsibility; and
 - (ii) the child having physical stability, cultural stability and relational stability;
- (fa) the desirability of making decisions as expeditiously as possible and the possible harmful effect of delay in making a decision or taking an action;
- (g) that a child is only to be removed from the care of his or her parent if there is an unacceptable risk of harm to the child;
- (h) if the child is to be removed from the care of his or her parent, that consideration is to be given first to the child being placed with an appropriate family member or other appropriate person significant to the child, before any other placement option is considered;
- (i) the desirability, when a child is removed from the care of his or her parent, to plan the reunification of the child with his or her parent;
- (j) the capacity of each parent or other adult relative or potential care giver to provide for the child's needs and any action taken by the

- parent to give effect to the goals set out in the case plan relating to the child;
- (k) contact arrangements between the child and the child's parents, siblings, family members and other persons significant to the child;
 - (l) the child's social, individual and cultural identity and religious faith (if any) and the child's age, maturity, sex and sexual identity;
 - (m) where a child with a particular cultural identity is placed in out of home care with a care giver who is not a member of that cultural community, the desirability of the child retaining a connection with their culture;
 - (n) the desirability of the child being supported to gain access to appropriate educational services, health services and accommodation and to participate in appropriate social opportunities;
 - (o) the desirability of allowing the education, training or employment of the child to continue without interruption or disturbance;
- * * * * *
- (q) the desirability of siblings being placed together when they are placed in out of home care;
 - (r) any other relevant consideration.

S. 10(3)(k)
amended by
No. 52/2013
s. 5.

S. 10(3)(p)
repealed by
No. 61/2014
s. 6(3).

Division 3—Decision-making principles

11 Decision-making principles

S. 11
amended by
No. 6/2024
s. 69.

In making a decision or taking an action in relation to a child, the Secretary or a community service provider must also give consideration to the following principles—

- (a) the child's parent should be assisted and supported in reaching decisions and taking actions to promote the child's safety and wellbeing;
- (b) where a child is placed in out of home care, the child's care giver should be consulted as part of the decision-making process and given an opportunity to contribute to the process;
- (c) the decision-making process should be fair and transparent;
- (d) the views of all persons who are directly involved in the decision should be taken into account;
- (e) decisions are to be reached by collaboration and consensus, wherever practicable;
- (f) the child and all relevant family members (except if their participation would be detrimental to the safety or wellbeing of the child) should be encouraged and given adequate opportunity to participate fully in the decision-making process;
- (g) the decision-making process should be conducted in such a way that the persons involved are able to participate in and understand the process, including any meetings that are held and decisions that are made;

- (h) persons involved in the decision-making process should be—
 - (i) provided with sufficient information, in a language and by a method that they can understand, and through an interpreter if necessary, to allow them to participate fully in the process; and
 - (ii) given a copy of any proposed case plan and sufficient notice of any meeting proposed to be held; and
 - (iii) provided with the opportunity to involve other persons to assist them to participate fully in the process; and
- (i) if the child has a particular cultural identity, a member of the appropriate cultural community who is chosen or agreed to by the child or by his or her parent should be permitted to attend meetings held as part of the decision-making process.

Division 4—Additional decision-making principles for Aboriginal children

12 Additional decision-making principles

- (1) In recognition of the principle of Aboriginal self-management and self-determination, in making a decision or taking an action in relation to an Aboriginal child, the Secretary or a community service provider must also give consideration to the following principles—
 - (a) in making a decision or taking an action in relation to an Aboriginal child, an opportunity should be given, where relevant, to members of the Aboriginal community to

S. 12
amended by
No. 48/2006
s. 4(2) (LA
s. 39B(1)).

S. 12(1)
amended by
No. 6/2024
s. 70.

S. 12(b)
amended by
No. 48/2006
s. 4(1).

- which the child belongs and other respected Aboriginal persons to contribute their views;
- (b) a decision in relation to the placement of an Aboriginal child or other significant decision in relation to an Aboriginal child, should involve a meeting convened by an Aboriginal convener who has been approved by an Aboriginal agency or by an Aboriginal organisation approved by the Secretary and, wherever possible, attended by—
- (i) the child; and
 - (ii) the child's parent; and
 - (iii) members of the extended family of the child; and
 - (iv) other appropriate members of the Aboriginal community as determined by the child's parent;
- (c) in making a decision to place an Aboriginal child in out of home care, an Aboriginal agency must first be consulted and the Aboriginal Child Placement Principle must be applied.

S. 12(2)
inserted by
No. 48/2006
s. 4(2).

- (2) The requirement under subsection (1)(c) to consult with an Aboriginal agency does not apply to the making of a decision or the taking of an action under Part 3.5.

S. 12(3)
inserted by
No. 48/2006
s. 4(2).

- (3) In this section *Aboriginal organisation* means an organisation that is managed by Aboriginal persons and that carries on its activities for the benefit of Aboriginal persons.

13 Aboriginal Child Placement Principle

- (1) For the purposes of this Act the Aboriginal Child Placement Principle is that if it is in the best interests of an Aboriginal child to be placed in out

of home care, in making that placement, regard must be had—

- (a) to the advice of the relevant Aboriginal agency; and
- (b) to the criteria in subsection (2); and
- (c) to the principles in section 14.

(2) The criteria are—

- (a) as a priority, wherever possible, the child must be placed within the Aboriginal extended family or relatives and where this is not possible other extended family or relatives;
- (b) if, after consultation with the relevant Aboriginal agency, placement with extended family or relatives is not feasible or possible, 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) an Aboriginal family from another Aboriginal community;
 - (iii) as a last resort, a non-Aboriginal family living in close proximity to the child's natural family;
- (c) any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community.

(3) The requirements under subsection (1)(a) to have regard to the advice of the relevant Aboriginal agency and under subsection (2)(b) to consult with the relevant Aboriginal agency do not apply to the

S. 13(3)
inserted by
No. 48/2006
s. 4(3).

making of a decision or the taking of an action under Part 3.5.

S. 13(4)
inserted by
No. 17/2023
s. 4A.

- (4) For the avoidance of doubt, the Court or a bail justice (as the case may be) must have regard to the Aboriginal Child Placement Principle in making any decision or taking any action in respect of a child in need of protection under Chapter 4.

S. 14
(Heading)
amended by
No. 17/2023
s. 5(1).

14 Further principles for Aboriginal children

Self-identification and expressed wishes of child

- (1) In determining where a child is to be placed, account is to be taken of whether the child identifies as Aboriginal and the expressed wishes of the child.

Heading
preceding
s. 14(1A)
inserted by
No. 17/2023
s. 5(2).

Prevention principle

S. 14(1A)
inserted by
No. 17/2023
s. 5(2).

- (1A) An Aboriginal child has a right to be brought up within the child's family and community.

Heading
preceding
s. 14(1B)
inserted by
No. 17/2023
s. 5(2).

Partnership principle

S. 14(1B)
inserted by
No. 17/2023
s. 5(2).

- (1B) The Aboriginal community to which the child belongs and other respected Aboriginal persons have a right to participate in the making of a significant decision in relation to an Aboriginal child under this Act.

- (1C) Representatives of the Aboriginal community have the right to participate in the design and implementation of child protection and community services relating to Aboriginal children and their families under this Act.

S. 14(1C)
inserted by
No. 17/2023
s. 5(2).

Participation principle

Heading
preceding
s. 14(1D)
inserted by
No. 17/2023
s. 5(2).

- (1D) The parents and members of the extended family of an Aboriginal child have a right to participate, and to be enabled to participate in an administrative or judicial decision-making process under this Act that relates to that child.

S. 14(1D)
inserted by
No. 17/2023
s. 5(2).

Connection principle

Heading
preceding
s. 14(1E)
inserted by
No. 17/2023
s. 5(2).

- (1E) An Aboriginal child has a right to develop and maintain a connection with the child's family, community, culture, Country and language.

S. 14(1E)
inserted by
No. 17/2023
s. 5(2).

Child with parents from different Aboriginal communities

- (2) If a child has parents from different Aboriginal communities, the order of placement set out in sections 13(2)(b)(i) and 13(2)(b)(ii) applies but consideration should also be given to the child's own sense of belonging.
- (3) If a child with parents from different Aboriginal communities is placed with one parent's family or community, arrangements must be made to ensure that the child has the opportunity for continuing

contact with his or her other parent's family,
community and culture.

*Child with one Aboriginal parent and one
non-Aboriginal parent*

- (4) If a child has one Aboriginal parent and one non-Aboriginal parent, the child must be placed with the parent with whom it is in the best interests of the child to be placed.

Placement of child in care of a non-Aboriginal person

- (5) If an Aboriginal child is placed with a person who is not within an Aboriginal family or community, arrangements must be made to ensure that the child has the opportunity for continuing contact with his or her Aboriginal family, community and culture.