

# Principles of the Act

The [Child Protection Act 1999](#) is the legal framework guiding Child Safety in child protection.

The **paramount Principle** of the Act is: the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are paramount. (**section 5A**)

## Other general principles (section 5B)

The following are general principles for ensuring the safety, wellbeing and best interests of a child include:

- a) a child has a right to be protected from harm or risk of harm
- b) a child's family has the primary responsibility for the child's upbringing, protection and development
- c) the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family
- d) if a child does not have a parent who is able and willing to protect the child, the State is responsible for protecting the child
- e) in protecting a child, the State should only take action that is warranted in the circumstances
- f) if a child is removed from the child's family, support should be given to the child and the child's family for the purpose of allowing the child to return to the child's family if the return is in the child's best interests
- g) if a child does not have a parent able and willing to give the child ongoing protection in the foreseeable future, the child should have long-term alternative care
- h) if a child is removed from the child's family, consideration should be given to placing the child, as a first option, in the care of kin
- i) if a child is removed from the child's family, the child should be placed with the child's siblings, to the extent that is possible
- j) a child should only be placed in the care of a parent or other person who has the capacity and is willing to care for the child (including a parent or other person with capacity to care for the child with assistance or support)
- k) a child should be able to maintain relationships with the child's parents and kin, if it is appropriate for the child
- l) a child should be able to know, explore and maintain the child's identity and values, including their cultural, ethnic and religious identity and values
- m) a delay in making a decision in relation to a child should be avoided, unless appropriate for the child.

## Principles for achieving permanency for a child (section 5BA)

The principles in this section are relevant to making decision about actions to be taken, or order to be made under the *Child Protection Act 1999* and ensuring the wellbeing and best interests of a child, the action or order that should be preferred, having regard to the principles mentioned in sections 5B and 5C, is the action or order that best ensures the child experiences or has -

- (a) ongoing positive, trusting and nurturing relationships with persons of significance to the child, including the child's parents, siblings, extended family members and carers; and
- (b) stable living arrangements, with connections to the child's community, that meet the child's developmental, educational, emotional, health, intellectual and physical needs; and
- (c) legal arrangements for the child's care that provide the child with a sense of permanence and long-term stability, including, for example, a long-term guardianship order, a permanent care order or an adoption order for the child.

For deciding whether an action or order best achieves permanency for a child, the following principles also apply, in order of priority:

- (a) the first preference is for the child to be cared for by the child's family;
- (b) the second preference is for the child to be cared for under the guardianship of a person who is a member of the child's family, other than a parent of the child, or another suitable person;
- (c) the third preference is for the child to be cared for under the guardianship of the chief executive.

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## Additional principles for Aboriginal or Torres Strait Islander children (section 5C)

The following additional principles apply for administering this Act in relation to Aboriginal or Torres Strait Islander children:

- (a) Aboriginal and Torres Strait Islander people have the right to self-determination.
- (b) the long-term effect of a decision on the child's identity and connection with the child's family and community must be taken into account.

The following principles (the **child placement principles**) also apply in relation to Aboriginal or Torres Strait Islander children:

- (a) the principle (the **prevention principle**) that a child has the right to be brought up within the child's own family and community
- (b) the principle (the **partnership principle**) that Aboriginal or Torres Strait Islander persons have the right to participate in significant decisions under this Act about Aboriginal or Torres Strait Islander children;
- (c) the principle (the **placement principle**) that, if a child is to be placed in care, the child has a right to be placed with a member of the child's family group;
- (d) the principle (the **participation principle**) that a child and the child's parents and family members have a right to participate, and be enabled to participate, in an administrative or judicial process for making a significant decision about the child;
- (e) the principle (the **connection principle**) that a child has a right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language, particularly when the child is in the care of a person who is not an Aboriginal or Torres Strait Islander person.

## Principles about exercising powers and making decisions (section 5D)

1. The following principles are relevant to exercising a power or making a decision under this Act—
  - (a) a power under this Act should be exercised in a way that is open, fair and respectful of the rights of each person affected by the exercise of the power;
  - (b) to the extent that it is appropriate, the views of relevant persons should be sought and taken into account before a decision is made under this Act;
  - (c) if a relevant person for a decision under this Act needs help to participate in or understand the decision-making process, or to understand a statutory right relevant to the decision, the relevant person should be given help;
  - (d) a relevant person for a decision under this Act may obtain their own legal advice, or be represented by a lawyer or supported by another person, in relation to the decision-making process;
  - (e) information about a child affected by a decision under this Act should be shared—
  - (f) only to the extent necessary for the purposes of this Act; and
    - i. in a way that protects the child's privacy.
2. This section does not apply to a court.
3. In this section—
 

**relevant person**, for a decision, means each of the following persons—

  - (a) the child to whom the decision relates;
  - (b) a person who is a parent or sibling of the child and is affected by the decision;
  - (c) any long-term guardian of the child.

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## Obtaining child's views (section 5E)

1. When giving a child an opportunity to express their views under this Act—
  - (a) language appropriate to the age, maturity and capacity of the child should be used; and
  - (b) communication with the child should be in a way that is appropriate to the child's circumstances; and
  - (c) if the child requires help to express their views, the child should be given help; and
  - (d) the child should be given an appropriate explanation of any decision affecting the child, including a decision about the development of a case plan or the effect of the decision or the case plan; and
  - (e) the child should be given an opportunity, and any help if needed, to respond to any decision affecting the child.
2. Nothing in this section requires a child to express a view about a matter.
3. This section does not apply to a court.