

Principles to guide practice and decision making fact sheet

every child every chance

a good childhood is in everyone's best interests

Introduction

This is part of a series of fact sheets that will support you in gaining familiarity with the new *Children, Youth and Families Act 2005*, and the *Child Wellbeing and Safety Act 2005*. These Acts are key building blocks to support the *every child every chance* reform strategy to promote children's safety, wellbeing and development.

This fact sheet provides a description of the principles contained in the legislation, the key role they play in shaping the way the service system works and how they will affect practice and service delivery.

Where can I get more information?

For more information on training opportunities and a wide range of other resources, visit: www.dhs.vic.gov.au/everychildeverychance

The blue boxes contain references to the Sections in the relevant Act so you can refer to them for more detail.

Promoting wellbeing as well as protection: an important step in giving every child every chance

Working to protect children is very complex work as each child and family's circumstances are unique.

It is simply not possible to legislate for every specific question. The role of principles in legislation is to guide professionals in their decision making. Principles are statements that are made at a very broad level, and establish a common set of reference points, which professionals are to use when making decisions or taking actions that relate to children and their families.

The government's new *Children, Youth and Families Act 2005* (CYFA) focuses on the needs of vulnerable children and young people. It does this through the articulation of a range of best interests and decision making principles.

These principles take a holistic view of the key components of a healthy childhood—including safety, health, learning, wellbeing and development. The CYFA provides a consistent set of principles to guide the delivery of child and family services, out-of-home care services and Child Protection services.

This fact sheet includes the following information:

- Best interests principles explained
- Decision making principles explained
- *The Child Wellbeing and Safety Act 2005* principles explained
- How will these principles impact upon practice?
- The principles contained in the *Children, Youth and Families Act 2005*
- The principles contained in the *Child Wellbeing and Safety Act 2005*
- The new principles—a snap shot.

CYFA s10(1)
Child's best interests are paramount

CYFA s10(2)
Factors to always consider

CYFA s10(3)
Other factors to consider where relevant

Best interests principles explained

The best interests principles in section 10 provide a unifying framework. Community services, Child Protection and the Children's Court must comply with the best interest principles in taking any action or making any decision.

The Act states that the child's best interests must always be paramount.

In addition, when determining whether a decision or action is in the best interests of the child, there are a number of needs which must always be considered:

- the need to protect the child from harm
- the need to protect the child's rights
- the need to promote the child's development (taking into account his or her age and stage of development).

These considerations apply in all instances and put an emphasis on the child's developmental needs.

The best interests principles also cover a wide range of other issues that must be considered where relevant. These include:

- the need to support and maintain families, where possible, and limit any intervention necessary to secure the child's safety and wellbeing
- the desirability of strengthening relationships between the child, parents, family and other significant people, and of maintaining these relationships where a child is removed from the family because of an unacceptable risk of harm
- the desirability of planning for family reunification where children are placed in care
- the desirability of children in care being placed within their kinship networks or communities, where possible, and of community links being maintained as well as all aspects of the child's individual and social identity
- the child's views and wishes
- the capacity of the child's parents or care givers to meet the child's needs and carry out case plan goals
- the desirability of stability and continuity in care arrangements, relationships, education, training and work
- the effects of cumulative patterns of harm on a child
- the possible harmful effects of delays in decision making
- the desirability of supporting children (particularly young people) to gain access to education, health and other services, and to social activities and opportunities
- the desirability of placing siblings in care together.

Some of these principles have existed in previous legislation in piecemeal form and applied to the Children's Court or Child Protection. Until now, they have not been used as a unifying framework or applied to community services.

Some of the principles are entirely new, such as the emphasis on promoting children's development, stability in care arrangements, the effects of cumulative harm, and the desirability of placing siblings in care together.

Applying principles to all parts of the system provides a foundation on which to build a system where the parts work together to promote children's development, protect them from harm and protect their rights.

CYFA s11
Decision making principles

Decision making principles explained

Some of the decision making principles also existed in previous legislation and applied only to Child Protection case planning processes. The new decision making principles apply to decision making by family services, out-of-home care services and Child Protection services.

The decision making principles emphasise the desirability of transparency in decision making processes and the need to assist the child, the parents and other family members to actively participate in a meaningful way.

Participation can be maximised through the use of family group conferences, where appropriate. Where a more formal decision making meeting occurs, it may be necessary to include a support person or interpreter to assist people to participate.

Where children are in out-of-home care, their care giver is to be consulted and given the opportunity to participate in the decision making process.

The Child Wellbeing and Safety Act 2005 principles explained

The CWSA provides general principles as to why and how services should be provided. These principles apply not only to services for vulnerable children and families provided under the *CYFA*, but also to primary or 'universal' services such as child care and maternal and child health, which all families use or are eligible to use.

In this way, the principles in the CWSA provide a unifying framework for all services provided, regulated or funded by the Office for Children.

How will these principles impact upon practice?

Practice should be:

- child focussed
- based on a partnership approach and shared responsibility for children's safety, wellbeing and development.

Child focussed practice requires that decisions and actions are founded on an understanding of how they will affect the child, and the child's safety, wellbeing and development.

For instance, intervention or service provision should not cease on the basis that there is an absence of a risk of harm to a child. The best interests principles require far more than consideration of safety issues.

The CWSA principles for children state that 'those who develop and provide services, as well as parents, should give the highest priority to the promotion and protection of a child's safety, health, development, education and wellbeing'.

Partnership based practice also requires a positive sharing of problems. There is a danger, when several agencies are involved with a child and family, that no agency takes clear responsibility for actions that will promote the child's best interests.

The CWSA principles for children state that 'the providers of services to children and families should cooperate with other services or professionals to work in the interests of the child and family'.

CWSA s5
Principles for children

CYFA s10.2
'...protect the child from harm, ... protect his or her rights and ... promote his or her development....'

CWSA s5.1.c
'...a child's safety, health, development, education and wellbeing'

CWSA s5.3.e
'...providers of services to children and families should co-operate with other services or professionals...'

CYFA s10.3.b

'...promote positive relationships between the child and the child's parent [and] family members...'

CYFA s10.3.k

'...access ... between the child and the child's parents...family members...'

CYFA s10.3.c and s10.3.m

Maintaining community and cultural connections

CYFA s10.3.d

The child's views and wishes

Rather than focussing on what is the limit of individual agency responsibilities with regard to a particular child, practitioners will need to come together and agree upon what needs to be done, and then agree on who is going to do it. Often this may result in a sharing of tasks.

For instance, contact between a child in care and their family is clearly in a child's best interests in nearly all cases. Yet the task of arranging and facilitating that contact, which may also include providing transport and supervising the contact, may be onerous.

No individual practitioner may be able to take on such a large commitment of time and effort and the amount of contact that occurs may therefore sometimes be less than ideal.

Sharing the task may make it much easier to ensure that an appropriate amount of contact occurs.

These are some fairly simple examples of how principles may affect practice. In reality, there may be many more factors to consider.

In the example above, the access between child and family may need to be strengthened by arrangements to ensure a broader level of contact with the child's community if the child is an Aboriginal child or from a particular cultural background.

Any access arrangements also need to take into account the child's views and wishes, where these can be determined.

The examples above give some idea of what is involved in applying principles to practice. It can be seen that the principles are a means of supporting what most practitioners would view as 'good' practice.

It is in the nature of the work that practitioners will sometimes need to make difficult decisions that are open to challenge. Practitioners will be able to defend such decisions if they are founded on a proper consideration of the principles provided in the legislation.

The principles contained in the *Children, Youth and Families Act 2005*

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 sub-sections (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;
 - (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 continuity and stability in the child's care;
 - (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) access 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;
- (p) the possible harmful effect of delay in making the decision or taking the action;
- (q) the desirability of siblings being placed together when they are placed in out of home care;
- (r) any other relevant consideration.

11. Decision making principles

In making a decision or taking an action in relation to a child, the Secretary or a community service 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
 - (iv) 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.

The principles contained in the *Child Wellbeing and Safety Act 2005*

5. Principles for children

- (1) The development and provision of services for children and families should be based upon the fundamental principles that –
 - (a) society as a whole shares responsibility for promoting the wellbeing and safety of children;
 - (b) all children should be given the opportunity to reach their full potential and participate in society irrespective of their family circumstances and background;
 - (c) those who develop and provide services, as well as parents, should give the highest priority to the promotion and protection of a child's safety, health, development, education and wellbeing;
 - (d) parents are the primary nurturers of a child and Government intervention into family life should be limited to that necessary to secure the child's safety and wellbeing, however, it is the responsibility of Government to meet the needs of the child when the child's family is unable to provide adequate care and protection.
- (2) Services for children and families should be designed and developed-
 - (a) to readily identify harm and damage to the child and to provide for intervention by providers of services to remove or ameliorate the causes of that harm or damage and to strengthen the capacity and efforts of parents, their families and communities to support the child as early as possible in the child's life;
 - (b) to accord with the needs of each local community with the active involvement of that community's cultural groups, and to be accessible and responsive to the particular cultures, languages and circumstances of the community and to be properly planned and co-ordinated with services provided by other local and regional communities;
 - (c) to give the highest priority to making appropriate and sufficient levels of assistance available to children and families in communities or population groups that are known to have the greatest need;
 - (d) to promote continuous improvement in the quality of those services, based on the best available knowledge of the needs of children and their stages of development.
- (3) The providers of services to children and families should –
 - (a) protect the rights of children and families and, to the greatest extent possible, encourage their participation in any decision making that affects their lives;
 - (b) acknowledge and be respectful of the child's individual identity, circumstances and cultural identity and be responsive to the particular needs of the child;
 - (c) make decisions about intervention by the providers of services into a child's or family's life and about access by a child or family to those services in a timely manner being mindful of any harmful effects that may be caused to the child by a delay in making decisions or providing services;
 - (d) ensure that families are made aware of the services available to them and of the benefits these services can provide, especially to those families in most need of assistance;
 - (e) cooperate with other services or professionals to work in the interests of the child and family.

The new principles—a snap shot

The **objective** of the new principles is to **provide a unified approach and common reference point for responding to and planning for children and young people.**

The CYFA contains two key sets of principles: the **best interests** principles and the **decision making** principles.

The best interests principles must be considered by community services, Child Protection and the Children's Court, when taking any action or making any decision.

The decision making principles must be complied with by Child Protection and community services.

The new principles promote the development needs of a child and earlier intervention. Service response is not limited to only safeguarding immediate and significant harm, but must consider a child's need for consistency and stability and aim to prevent the negative effects of recurrent lower-level harm throughout childhood.

They place the onus of care not with one service but promote a collaborative approach to sharing the important responsibility of a child's safety *and* wellbeing across an entire integrated service system.

This means that if someone in the community has concerns about a child (that aren't related to assault) they can contact any community-based service, not just Child Protection.

They also encourage collaboration between community services, enabling them to release and share information about a child or young person in order to develop a comprehensive view of his or her particular situation to make informed decisions.

They are applicable for all stages of service from early intervention through to the Children's Court.

The principles in the *Child Wellbeing and Safety Act 2005* (CWSA) provide a framework for determining what services are provided and how they should be delivered.

*NB. There are also additional principles (CYFA 2005, sections 12–14) which apply when considering **Aboriginal children**, which are further described and will be explained in the fact sheet on Aboriginal children and young people.*