

# **Independent Review of the Operation of the *National Disability Insurance Scheme Act 2013 (Cth)***

Children with Disability Australia  
Submission – October 2015

## INTRODUCTION

Children with Disability Australia (CDA) welcomes the opportunity to provide a submission to the independent review of the operation of *National Disability Insurance Scheme Act 2013 (Cth)* (the Act) and the National Disability Insurance Scheme Rules (the Rules).

CDA is the national disability representative persons organisation for children and young people aged 0 to 25 years. It receives its core funding from the Department of Social Services. CDA has 5200 members nationally with the majority being families. CDA's vision is that children and young people with disability living in Australia are afforded every opportunity to thrive, achieve their potential and that their rights and interests as individuals, members of a family and their community are met.

The National Disability Insurance Scheme (NDIS) represents an extremely complex and challenging reform. The legislative framework needs to effectively enable the significant expansion of the NDIS from a number of trial sites to full implementation by 2019. It needs to allow capacity for refinement and co-design while embedding long term structures to ensure the NDIS's viability into the future. The Act describes the fundamental cultural and policy shift towards inherent control and choice for people with disability, setting out a new regime for the funding and accountability of disability services where the individual is at the centre. The NDIS also needs to account for the diverse needs of people with disability, including children and young people, Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds. CDA acknowledges and commends the significant work that has occurred to date in progressing and implementing the NDIS.

This submission draws heavily from CDA's 2013 submission regarding the *National Disability Insurance Scheme Bill 2012 (Cth)*. It is important to note that many of the concerns raised by CDA in this submission were not addressed in the Act. Additional information is also provided to reflect changes and developments in subsequent years.

This submission focuses on issues of relevance to children and young people with disability. It commences with responses to relevant questions posed in the discussion paper and follows with general comments about the Act and Rules. A summary of recommendations is also provided.

## RESPONSES TO QUESTIONS POSED IN THE DISCUSSION PAPER

### **1. Do the Objects and Principles of the NDIS Act provide a sufficient basis for giving effect to Australia's obligations under the *Convention on the Rights of Persons with Disabilities (CRPD)*?**

- a) CDA believes that the objects and principles are more relevant to adults than children. In addition to the CRPD, the Act also aims to give effect to Australia's obligations under the *Convention on the Rights of the Child (CRC)*. It is therefore important that the unique rights and protections afforded to children are reflected in the objects and principles of the Act.

As a model, CDA believes the principles contained in the Victorian *Child, Youth and Families Act 2005* are comprehensive and relate to the activities of courts, the bureaucracy and service providers. CDA recommends that similarly styled principles be included in the Act to ensure relevance for children and families. A copy of the relevant section of the referred Act is contained in Appendix 1. This issue is discussed further under Question 18.

**2. Does the design of the legislative framework (i.e., high level primary legislation supported by detailed NDIS Rules) enable government to further the objects and principles of the NDIS Act?**

- a) In *Section 4 – General principles guiding actions under this Act*, Principle 10 states that “people with disability should have their privacy and dignity respected.” This principle is reflected in both the CRPD (article 22) and the CRC (article 16). This is an extremely important consideration in the context of the NDIS, given the personal information participants are required to provide in the planning process.

*Section 60 - Protection of information held by the Agency etc* provides a thorough account of the National Disability Insurance Agency’s (NDIA) legal obligations in terms of protecting personal information obtained for the purposes of the Act, including criminal penalties for unauthorised access, disclosure and use of protected information. These are seen as highly important measures.

However, the Act is relatively silent regarding what information is accessed about participants, including children and young people, during the planning process. Accessing disability services typically involves compromised privacy and additional responsibilities and accountability requirements. Any person accessing formal disability services and supports has individuals, organisations and systems in their life who have access to significant personal information about them. There is a careful balance to be achieved in providing necessary services and supports to enable equal opportunities for participation without unnecessary intrusion into people’s lives. This needs to be a key consideration when thinking about the privacy provisions in the Act.

**Recommendation 1:** Amendment of the Act to ensure a participant’s rights to privacy are afforded throughout the planning process. This could be included in *Section 36 – Information and reports for the purposes of preparing and approving a participant’s plan*.

**3. How well do the access criteria enable government to further the objects and principles of the NDIS Act?**

- a) This section focuses on the early intervention requirements contained in the Act. CDA understands that in many cases children will enter the NDIS under the early intervention requirements. CDA believes that the definition of early intervention in Section 25(1)(c) does not capture the purpose of early intervention in relation to children. It currently says it is to:

*mitigate, alleviate or prevent the deterioration of the functional capacity of the person.*

This definition needs to be amended to include that early intervention for children aims to build personal capacity and skills, as well as facilitate development.

**Recommendation 2:** Amendment of Section 25(1)(c) of the Act to state that the benefit of early intervention is to build personal capacity and skills and facilitate development.

- b) Section 25(1)(c)(iv) refers to strengthening the capacity of informal supports and the person’s carer. For greater relevance, this section needs to be revised to incorporate the function of families, noting that the delivery of disability supports where children usually occurs in a family context, and that families are much more than just informal supports.

**Recommendation 3:** Amendment of Section of 25(1)(c)(iv) to recognise the important role of families in providing supports to children with disability.

**6. How well does the legislative framework’s definition of what constitutes ‘reasonable and necessary supports’ support the independence and social and economic participation of people with disability?**

- a) The recent case before the Administrative Appeals Tribunal, *McCutcheon v National Disability Insurance Agency* (2015) reflects how Section 34(d) does not provide a clear definition of what constitutes reasonable and necessary support. This case allowed the funding of chiropractic treatment on a criteria of evidence, based primarily on the participant’s feedback on effect of the chiropractic treatment.

The Act states that that for supports to be provided through the NDIS, the CEO must be satisfied that “the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice.” ‘Effective,’ ‘beneficial’ and ‘good practice’ are, however, not defined. This raises questions regarding what criteria and process exist to assess what constitutes ‘reasonable and necessary’ support.

**Recommendation 4:** Amendment of Section 34(d) to define ‘effective,’ ‘beneficial’ and ‘good practice.’ ‘Good practice’ should require a basis in research and peer reviewed evidence as a service, support or intervention.

**7. What amendments could be made to the legislative framework (if any) to:**

**a. Improve the effectiveness and/or efficiency of the participant planning and assessment process (including review)?**

**b. Ensure the NDIA has the required capacity to control costs in relation to participant plans?**

- a) In general CDA believes that the planning process is highly prescriptive and potentially inflexible. Life is complex, unpredictable, particularly in the support of children, young people and families, and flexibility is a must. Tying down support plans so tightly to funding agreements and limiting service substitution may not provide the autonomy and choice intended in the NDIS.
- b) In *Section 31 – Principles relating to plans*, most of the principles are relevant to adults and not many are directly relevant to young children and infants. There is no wording in these principles to reference how they would apply in these circumstances, such as principles (b), (g), (h) and (i).
- c) Section 31(c) should give much greater recognition of the primacy of families in relation to participants who are children and young people than ‘consider and respect the role of families, carers...’ In addition, in Section 31(d), CDA recommends removing the words ‘who are children.’

**Recommendation 5:** Amendment of Section 31(c) of the Act to strengthen the recognition of the role of families in planning for supports for children accessing the NDIS as participants. This should include working in partnership with families and recognising the expertise of families regarding the support needs of children.

**Recommendation 6:** Amendment of Section 31(d) to remove the words ‘who are children.’

- d) The absolute requirement in *Section 33 – Matters that must be included in a participant’s plan* for all participants to prepare a participant’s statement of goals and aspirations is problematic, particularly for children. For young children entering the NDIS there will be a great deal that is unknown and unclear about the future that would make such a statement nigh impossible. These strenuous requirements would rarely be requested of people without disability.

For school age children, goals and aspirations may be related ongoing health issues or educational attainment, which are not the primary role of the NDIS. The formal setting of goals is viewed by CDA as a highly contrived and unnatural activity.

CDA accepts that there needs to be a service plan in order to activate funding, however the relevance and purpose of this additional layer is highly questionable. Even the most basic of planning processes would incorporate goals, so it would be better that the NDIS rules detail the requirements for the planning and review processes for NDIS operatives rather than place an unreasonable expectation on participants and families. As such we would recommend the removal of this requirement for participants.

**Recommendation 7:** Removal of the requirement for all NDIS participants to have a statement of goals and aspirations (Section 33(1)) from the Act.

- e) The Act needs to create the framework to allow for flexibility and substitution within packages to ensure that supports are relevant and useful. People with disability (particularly children) should not be expected to live orderly and artificially planned lives. Services and supports need to be those things that follow participants and their families around in their life not lead them to pre-determined destinations.

*Section 37 – When plan is in effect (2)* states that a plan cannot be varied or amended. Rather, plans and participants' statements of goals and aspirations can be reviewed, after which a plan may be replaced. However, this places potentially unnecessary and arduous bureaucratic processes on participants and families, who would understandably seek to adapt plans to the variations that are a part of life. It is conceivable that a child participant may change programs or providers at various times because a short term program (such as a speech therapy program) ceases or is not getting anywhere, or leads to an additional recommendations or referral that needs to be followed up. Alternatively, a child may change schools for educational reasons and although the basic community based NDIS program may not change, there could be different timing, therapists or home based goals that require differently skilled workers.

Parents need the flexibility to change, limit or extend programs without having to get a new plan. These changes should not place additional assessment or bureaucratic burdens on participants or families.

**Recommendation 8:** Amendment of Section 37(2) of the Act to allow plans to be amended or varied, as well as replaced, to ensure flexibility in supports provided.

- f) For those who self-manage plans, there is complete control and choice over services and supports. This is matched by responsibility for all areas of employment, purchasing, financial management and location of services and supports, with cash advances for services and supports being built into the NDIS as opposed to a claims management process.

The NDIS (Plan Management) Rules provide a broad criteria by which decisions are made to deny participant requests to self-manage. For example, self-management can be refused if the "CEO is satisfied that it would present an unreasonable risk to the participant." CDA recommends strengthening the obligations of the CEO in this area. In *Section 44(c) – Circumstance in which participant must not manage plan to specified extent*, the NDIS must, not 'may', prescribe a criteria for the CEO to have regard to when considering whether a participant managing the funding for supports under the plan would present an unreasonable risk to the participant.

**Recommendation 9:** Amendment of Section 44(c) of the Act to state the “National Disability Insurance Scheme rules *must* prescribe criteria to which the CEO is to have regard in considering whether a participant managing the funding for supports under the plan would present an unreasonable risk to the participant.”

- g) *Section 48 – Review of participant’s plan* states that participants are able to request a review of their plan at any time. It also states that the CEO can decide not to conduct the review and that if the CEO does not provide a response to the request within 14 days, it is taken that a decision has been made not to conduct the review. While participants are able to review this decision under Section 100(1) of the Act, this process would be difficult for many participants and families. It is important that participants are able to have plans reviewed and altered where necessary to meet changing needs and preferences and that reasons are given if a decision is taken not to review plans.

**Recommendation 10:** Amendment of Section 48 of the Act to ensure that participants are always provided with reasons if a decision is made not to review their plan upon request.

**17. What amendments could be made to the legislative framework (if any) to enhance the effectiveness and/or efficiency of the NDIS’s administration?**

- a) It is the view of CDA that Board members of the NDIS should be people who are board members or who hold senior management positions with disability service providing organisations, regardless of whether they meet the other criteria. Due to the move towards a market system for disability services, there will be untenable conflicts of interest that must be avoided.

**Recommendation 11:** Amendment of Section 127(2) specify that Board members of the NDIS cannot be people who are board members or who hold senior management positions with disability service providing organisations.

**18. Are there any other aspects of the NDIS legislative framework that you believe are impacting on:**

- a. Government’s ability to further the objects and principles of the NDIS Act?**
- b. The efficiency of the NDIS’s administration?**
- c. The capacity of the NDIA to control costs?**
- d. Other legislation, including State and Territory legislation?**
- e. The effectiveness of information sharing between the NDIA, jurisdictions and providers?**

- a) This section will discuss *Part 4– Children*. CDA strongly supports that the primary consideration at all times where children are concerned needs to be a child’s best interest (Section 76 of the Act and NDIS (Children) Rules Section 1(4)). CDA also believes that consideration needs to be provided to the views and opinions of the child and believes that legislation around the NDIS should reflect the CRC. Particular consideration needs to be given to Article 12 which states:

*Parties shall assure to the child who is capable of forming his or her own views the rights to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

- b) There are some specific references to children with disability throughout the Act (namely Part 4). Largely however, the legislation is seen to apply to both adults and children. In some instances,

the relevance and appropriateness is seen as questionable. In addition to the principles listed in Part 2 of the Act, CDA believes that children and families would be best served by a separate set of principles that would guide the NDIS approach to working with this cohort. The Act should create a context in which it allows the NDIS to facilitate the role of families to maximise development and social participation of the child participant. Again, the principles in the *Victorian Children, Youth and Families Act 2005* make a good reference point for specific principles in this Act (see Appendix A).

**Recommendation 12:** Amendment of the Act to include a separate set of principles to underpin the NDIS approach to working with children and families, with a focus on social development of children. CDA recommends consulting the *Victorian Children, Youth and Families Act 2005* when developing these principles.

- c) CDA also recommends the specific inclusion of principles in *Section 31 – Principles relating to plans* that directly relate to children and families that recognise the way families make decisions and are not defined totally by the presence of disability.

**Recommendation 13:** Amendment of Section 31 of the Act to include principles that directly relate to children and families that recognise the way families make decisions. CDA recommends examining the *Child, Youth and Families Act 2005 (Vic)* as an example of how these principles can be worded.

- d) Our community values and instils within families considerable responsibility for making decisions in the best interests of their children. This community structure is supported and promoted extensively. It is only when there are significant concerns regarding a child's wellbeing or safety that intervention regarding parental decision making occurs. In the first instance, extensive services and supports are available to children and families, except in extremely exceptional circumstances, which are less restrictive interventions or methods of conflict resolution. This model of service provision and community value of children and families should be consistent, and reflected, in the NDIS.

CDA is therefore concerned about the power that Section 74(1)(b) provides to the CEO to decide whether parents are appropriate decision makers for their children. It is unusual for a bureaucracy to take decision making away from parents without reference to existing systems. It is unclear as to why, in the event that there are questions regarding the capacity of parents, that the matter is not referred and assessed under existing child protection systems and relevant legislation. CDA recommends therefore that the CEO's power to decide whether parents are appropriate decision makers for their children is removed. Referrals should be made to existing processes in the event a review of circumstances is required in this instance.

**Recommendation 14:** Amendment of Section 74(1)(b) of the Act ensure that the CEO cannot decide whether parents are appropriate decision makers for children without reference to existing child protection systems and relevant legislation. Amendments to the relevant sections of the NDIS (Children) Rules will also be required.

- e) It is also noted that the Act provides the CEO the power to decide whether a child is capable of making decision for him or herself in Section 74(5)(a). CDA also notes that in such circumstances, for example where conflict may exist between children and parents or guardians regarding the decision of children regarding medical treatment for cancer or decisions around terminations, there are established processes which look at the competency and capacity of the child to make an independent decision within the relevant legal context and parameters. It is believed that

these processes should be examined and applicability to similar scenarios within the NDIS ascertained and referred to if the need arises.

**Recommendation 15:** Amendment of Section 74(5)(a) to ensure that decisions regarding whether children are able to make decisions for him or herself are made with reference to existing systems and legislation relating to independent decision making of children.

## GENERAL COMMENTS ON THE NDIS ACT AND RULES

### Co-design

- a) One of the core underlying principles guiding the development and implementation of the NDIS is 'co-design.' As defined by the NDIA, co-design is "an approach that brings those affected by the NDIS into the design process to help find the right balance between what is desirable, possible and viable."<sup>1</sup> The principle of co-design has been adopted to ensure the NDIS can be refined and fine-tuned to reflect the needs of participants, and in doing so meet its objectives of supporting "social and economic participation of people with disability."

The NDIA's Strategic Plan includes measures related to co-design, including the goal that the "community has ownership, confidence and pride in the National Disability Insurance Scheme and the National Disability Insurance Agency," with the related deliverable that the NDIA involve "people with disability, their families, carers and other significant persons in the design and evaluation of supports and services to participants."<sup>2</sup>

Co-design is therefore fundamental to realising the intent of the NDIS, however CDA is concerned that consultation with participants and stakeholders on different aspects has been limited and inconsistent to date. The issue of co-design still needs further definition, articulation and it is critical that a clear and meaningful processes of collaboration be developed. On an operational level, it would be useful to commence with a mapping of all existing pathways, identification of gaps, identified areas and priorities where co-design should be occurring and establishment of clear and transparent consultation and feedback mechanisms.

A recent example was the consultation regarding the Information, Linkages and Capacity Building (ILC) framework, a significant policy document that will impact the majority of people accessing the NDIS. Consultations were invited less than one month after the release of the draft Framework and an easy read version was released late in the process. There was also limited promotion of the consultation through the channels available to the NDIA.

Another example of limited consultation is this present process for the independent review of the NDIS Act and Rules, given the short time frame provided for stakeholders to make submissions. Further, given the key consultation mechanism utilised in this review appears to be stakeholder engagement through the discussion paper,<sup>3</sup> it is unclear how learnings from the trial sites and participant experiences will be able to feed in to the review process.

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<sup>1</sup> National Disability Insurance Agency 2014, *Building the National Disability Insurance Scheme PROGRESS REPORT: YEAR ONE*, Geelong, viewed 9 October 2015, <http://goo.gl/UoEJCO>, p. 27.

<sup>2</sup> National Disability Insurance Agency 2013, *National Disability Insurance Agency 2013-2016 Strategic Plan*, Geelong, p. 8.

<sup>3</sup> National Disability Insurance Agency 2015, *Independent review of the NDIS Act*, Geelong, viewed 9 October 2015, <http://goo.gl/J1GbVR>.

Co-design is a fundamental tenant of the NDIS that has implication for the operations, policy, evaluation, as well as the legislative framework of the NDIS. There is potential for the Act and/or Rules to be amended to more clearly articulate this obligation of the Agency.

**Recommendation 16:** Amendment of *Section 118 – Functions of the Agency* to include a requirement for the NDIA to articulate and embed meaningful and ongoing process of collaboration and co-design of the NDIS.

### **NDIS Interface Areas**

a) A significant gap in the Act and indeed in the general NDIS design to date is how the NDIS will interface with other relevant areas. It is common for children to be using services from multiple programs in different portfolios. From the point of view of the child and their family, these various supports are all part of a system that is in place to support the development of the child on many levels. At any one time, a child and their family could be using services from a range of areas including:

- Early childhood
- Education;
- Health;
- Disability Services;
- Community Programs; and
- Family Support Programs.

Using the example of education, there is a need for coordination regarding roles and funding between schools and the NDIS. Children accessing the NDIS may require aids and equipment, therapies or other services and supports in schools. It is important to both delineate and coordinate the provision of these services as the NDIS rolls out in a way that is flexible to the needs of each students, ensuring that the education system maintains responsibility for student learning and that this is not shifted to the NDIS.

To date there has been a lack of a clear understanding regarding the role of the NDIS in relation to other mainstream areas. For example, *McCutcheon v National Disability Insurance Agency (2015)* found that chiropractic treatment was most appropriately funded by the NDIS for the participant concerned.<sup>4</sup> This case set an early precedent regarding the role of the NDIS in funding supports available through mainstream programs.

Having a heavy-duty planning and accountability responsibility for NDIS disability services (including the current participant statement) that does not actively take account and integrate these other services into the plan will undermine the intent of the NDIS. The Act sets out in great detail the process for planning, purchasing and accounting for disability services, but is largely silent on how these will be integrated into the wider service system, at either the individual or systems level.

While the individualised funding approach has to be seen as strength in the NDIS's design, transferring funding to individuals and families will on its own do little to confront and resolve the fragmentation that characterises our service system in Australia. This is one of the key problems the NDIS was charged with tackling. As stated in the final report of the Productivity Commission report on Disability Care and Support. The present disability system is “underfunded, fragmented and unfair” yet the Act limits itself very much to a single service area,

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<sup>4</sup> *McCutcheon v National Disability Insurance Agency [2015] AATA 624 (21 August 2015)*.

meaning that it risks foregoing a significant reform opportunity. Further, there is a concern that this will continue the siloing that has traditionally characterised the disability services sector.

The NDIS is clearly not responsible for funding services that are the responsibility of other programs. However there is a clear coordination and policy leadership role that is undefined in the Act, yet will be critical to the success of the NDIS.

**Recommendation 17:** Amendment of *Section 118 – Functions of the Agency* to include as a function of the NDIA to negotiate interface areas with other service systems in the community, including early childhood services, education, health et cetera.

### **Policy Development**

- a) The NDIS is a significant and challenging reform that required a monumental effort to launch and rollout in the time frame provided. To date, much focus has been dedicated to establishing and implementing the NDIS. There are still significant learnings to be had as the NDIS rolls out and encounters operational and policy challenges. It is currently a critical time to implement robust policies and processes to ensure continual improvement of the NDIS's operations and in outcomes for participants. It is therefore recommended that the NDIA develop a specific policy and research function that exists at the national level. It is envisaged that this would focus on evaluation and development of the NDIS, ensuring best practice in providing evidence-based supports, monitoring the operations of the NDIS and developing policy.

**Recommendation 18:** Amendment of *Section 118 – Functions of the Agency* to include policy development and research as a function of the NDIA and mandate the creation of a specific department within the Agency to perform this role.

### **CONTACT**

Please do not hesitate to contact CDA if you would like to discuss further any aspects of this submission. Thank you for the opportunity to provide a submission to this consultation.

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## SUMMARY OF RECOMMENDATIONS

**Recommendation 1:** Amendment of the Act to ensure a participant's rights to privacy are afforded throughout the planning process. This could be included in *Section 36 – Information and reports for the purposes of preparing and approving a participant's plan.*

**Recommendation 2:** Amendment of Section 25(1)(c) of the Act to state that the benefit of early intervention is to build personal capacity and skills and facilitate development.

**Recommendation 3:** Amendment of Section of 25(1)(c)(iv) to recognise the important role of families in providing supports to children with disability.

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**Recommendation 16:** Amendment of *Section 118 – Functions of the Agency* to include a requirement for the NDIA to articulate and embed meaningful and ongoing process of collaboration and co-design of the NDIS.

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**Recommendation 18:** Amendment of *Section 118 – Functions of the Agency* to include policy development and research as a function of the NDIA and mandate the creation of a specific department within the Agency to perform this role.

## **APPENDIX A – PRINCIPLES FROM THE CHILD, YOUTH AND FAMILIES ACT 2005 (VIC)**

### **Principles from the Child, Youth and Families Act 2005 (Vic)**

#### **Chapter 1**

#### **Part 1.2 — Principles**

#### **Division 1 — Decision makers to have regard to principles**

##### **8. Decision makers to have regard to principles**

(1) The Court must have regard to the principles set out in this Part (where relevant) in making any decision or taking any action under this Act.

(2) The Secretary must have regard to the principles set out in this Part (where relevant) in making any decision or taking any action under this Act or in providing any service under this Act to children and families.

(3) A community service must have regard to the principles set out in this Part (where relevant) in making any decision or taking any action in relation to a child for whom it is providing, or is to provide, services under this Act.

(4) This section does not apply in relation to any decision or action under Chapter 5 or Chapter 7 (in relation to any matter under Chapter 5).

##### **9. Role of principles**

(1) The principles set out in this Part are intended to give guidance in the administration of this Act.

(2) The principles do not apply to Chapter 5 or Chapter 7 (in relation to any matter under Chapter 5).

#### **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 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.

### **Division 3 — Decision-making principles**

#### **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—
  - a. 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
  - b. (ii) given a copy of any proposed case plan and sufficient notice of any meeting proposed to be held; and
  - c. (iii) provided with the opportunity to involve other persons to assist them to participate fully in the process; and
  - d. (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.