# Decision Making

**Direction to staff**

This document provides overarching principles by which Child and Youth Protection Services (CYPS) conducts its business. All staff must comply with it.

Note: Unless otherwise indicated, the term 'child' or 'children' also refers to 'young person' or 'young people'. The term 'children in care' refers to 'children in out of home care'.

## Purpose of this document

This policy outlines the range and nature of decisions made by CYPS staff in exercising functions pursuant to the *Children and Young People Act 2008* (the Act). In addition, it articulates which of those decisions should be made in close collaboration with members of a child's Care Team including the child or young person, their parent/s, carers and involved service providers.

## Scope

This policy applies to all staff within CYPS who are exercising a function under the Act.

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## Policy statement

All decisions made by CYPS staff will be made in consideration of the 'best interests' of the child or young person, to whom they relate. For an Aboriginal and/or Torres Strait Islander child or young person, it is understood that s10 as well as s8 and s349 are explicitly applicable.

CYPS staff are required to make a range of key decisions in close collaboration and consultation with the child's Care Team including; the child or young person, the parent/s, carers/s and involved support services including ACT Together.

CYPS staff will facilitate and encourage submissions to decisions in respect of Aboriginal and/or Torres Strait Islander children and young people, consistent with statutory obligations at s10 of the Act.

CYPS staff have a statutory responsibility pursuant to s351 'helping families understand care and protection procedures', with particular regard to decision making.

### Decision making authority

A range of decisions that are made in CYPS find their authority from various sources including but not limited to the powers and functions conferred by the *Children and Young People Act 2008* (the Act):

- decisions which involve the exercise of general functions under the Act, such as the sharing of protected information and sensitive information;
- decisions which involve the exercise of specific powers under the Act, such as decisions relating to the assessment of suitable entities;
- decisions which involve the exercise of specific powers under the Act *and* care orders by the Childrens Court, such as decisions relating to placement, contact, restoration;
- decisions which involve the exercise of parental responsibility under care orders made under the Act, including decisions on matters relating to health, culture, religion or education
- decisions which support the exercise of parental responsibility under those care orders including decisions on matters relating to therapeutic assessments or safety planning;
- decisions which involve financial delegations, including the provision of supports to carers.

All decisions made by CYPS staff must uphold the principles in the Act. Specifically:

<u>Best Interests</u>:

In its processes and its decision, staff must have regard to the fact that the best interests of the child or young person are the paramount consideration (s 8).

Under section 349 of the Act, this includes consideration of:

a. The need to ensure child or young person is not at risk of abuse or neglect
b. The views and wishes expressed by a child or young person

c. The nature of the child or young person's relationship with each parent and anyone else

d. The likely effect on the child of changes to their circumstances including separation from a person with parental responsibility or anyone else with whom the child has been living

e. The effect on maintaining contact with each person with parental responsibility or anyone else with whom the child has been living or is a significant relationship

f. The capacity of anyone with parental responsibility to provide for the child's needs including their emotional and intellectual needs

g. For Aboriginal and Torres Strait Islander children:

    i. The need for the child or to maintain a connection with the lifestyle, culture and traditions of the child's Aboriginal or Torres Strait Islander community

    ii. Submissions about the child made by, or on behalf of any Aboriginal or Torres Strait Islander people or organisations providing support services to the child and/or family,

    iii. The traditions and cultural values (including kinship rules) of Aboriginal or Torres Strait Islander people as identified by reference to the child's family, kinship relationships and community.

h. The importance of settled and stable, permanent arrangements

i. For placement decisions, the need to ensure that the earliest possible decisions are made about a safe, supportive and stable placement

j. The attitude to the child or the young person, and to parental responsibilities, demonstrated by each of the child's or young person's parents or anyone else;

k. Any abuse or neglect of the child or young person, or a family member of the child or young person;

l. Any court order that applies to the child or young person.

In addition:

<u>Identity and Wellbeing</u>:

CYPS staff must make decisions which respect and promote the growth and development of the individual child or young person.

Under section 9 of the Act, this includes consideration of:

a) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced;
b) the child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption;
c) the child's or young person's age, maturity, developmental capacity, sex, background and other relevant characteristics should be considered;
d) delay in decision-making processes under the Act should be avoided because delay is likely to prejudice the child's or young person's wellbeing.

<u>Cultural and Spiritual Identity:</u>

In particular, for an Aboriginal or Torres Strait Islander child or young person, decision makers must protect and promote the cultural and spiritual identity and development of the child or young

person by, wherever possible, maintaining and building their connections to family, community and culture.

*Other Principles*

Decision makers must also consider the principles of:

- Participation:
  The CYPS delegate must consider the affected person's ability to participate meaningfully in the decision review process and explore any supports/reasonable adjustments that may be required.
- Restorative Practice:
  The CYPS delegate must recognise the importance of including parents and carers in decision-making and strengthening the relationship between families and the directorate so that a continued working relationship can be fostered.
- Natural Justice:
  The child/young person or affected person (e.g. parent/s) must be given enough information to be able to allow that person to participate meaningfully in the decision-making process.

  The child/young person or affected person (e.g. parent/s) is given a reasonable opportunity to 'speak or respond' and the decision-maker genuinely considers the affected person's submission in making the final decision.

  The decision maker must act impartially in considering the matter, acknowledging that bias can be actual or perceived.

## Types of decisions

Decisions made in respect of children and young people, will be categorised into 4 key types:

1. Decisions which rest exclusively with CYPS
2. Decisions which are delegated to sit with CYPS but must be made in collaboration
3. Decisions which rest with a delegated carer
4. Decisions which rest with ACT Childrens Court

These decisions are largely based on with whom the delegation and/or statutory power is located.

Where a decision is described as a Type 2 decision, it is necessary that active efforts are made to involve all members of a child's declared Care Team where one exists, or in the absence of a declared Care Team, all individuals who have a role to play in the life of a child or young person. Specifically;

- The child/young person
- Their biological parent/s
- Their carer/s (where the child is not living at home)
- Any extended family (as appropriate)
- Representatives of services who are working with the child and/or family (e.g. school teacher, service provider, counsellor)

To determine the type of decision, see the Decision Making Table.

### Records of decisions

All decisions will be recorded in accordance with the Decision Making Procedure.

Type 2 decisions will be made in a collaborative process, ideally a case conference or care team meeting convened by the CYPS case manager. Alternatively, they may be made through a series of meetings and/or discussions so that all Care Team member's views are known and shared.

### Communicating decisions

CYPS will communicate final decisions within appropriate timeframes and avoid unnecessary delays which may impact parties to a decision (refer to Decision Making Procedure).

Where a stakeholder to a decision is dissatisfied with the decision made by the delegate, a Decision Making Statement will be completed by the decision maker and provided to the dissatisfied party within 7 days.

Where a stakeholder remains dissatisfied with a decision after receiving the Decision Making Statement, they must be provided with advice about internal review application processes and/or complaints processes.

## Related materials

The following materials directly relate to this policy.

### Legislation

- *Children and Young People Act 2008*
- *Human Rights Act 2004*
- *Information Privacy Act 2014*
- *Territory Records Act 2002*

### Procedures and practice guides

- Procedure: Decision Making
- Procedure: Child Concern Report
- Procedure: Emergency Action
- Procedure: Appraisal
- Procedure: Contact
- Procedure: Information sharing in child protection
- Procedure: Cultural plans for Aboriginal and Torres Strait Islander children and young people
- Procedure: Annual Review
- Procedure: Family Group Conferencing for Aboriginal and Torres Strait Islander Children and Young People
- Practice Guide: Transferring case management to ACT Together
- Practice Guide: Transferring case management to ACT Together – roles and responsibilities
- Practice Guide: Working with Aboriginal and Torres Strait Islander Families: Providing Culturally Responsive Practice
- Practice Guide: Working with the Aboriginal and Torres Strait Islander Cultural Services Team
- Practice Guide: Involving children and young people in decision making
- Practice Guide: Engaging with children and young people

- Practice Guide: Engaging with Aboriginal or Torres Strait Islander children and young people
- Practice Guide: Case management – gather and review information
- Practice Guide: Case management – analyse and plan
- Practice Guide: Case management – implement and monitor
- Practice Guide: Case management – care plan, case plan and cultural plan
- Practice Guide: Case Conferencing team - referral
- Practice Guide: Case conferences
- Practice Guide: Case management overview
- Practice Guide: Specific Parental Authority (SPA)

## Document information

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## Version history

The following table details the published date and amendment details for this document.

| Date | Amendment details |
|---|---|
| 20/10/2022 | First publication of this policy. |

## Definitions

For definitions of terms used in this document, access the CYPS glossary.