

## ‘Best Interests’ of Children – an Aboriginal Perspective

The phrase ‘best interests of the child’ is used frequently in the Permanency Support Program (PSP), but it is complex and has no single definition. The history of the term ‘best interest of the child’ is fraught and was used to justify racist interventions and policies that aimed to erase Aboriginal and Torres Strait Islander people and their culture. Today, is it a term used to ensure the safety, health, and wellbeing of a child is at the centre of the decisions we make.

For more information, see: [History of Aboriginal People and the Child Protection System.](#)

### Convention on the Rights of the Child

Modern framework for the term ‘best interests of the child’ comes from the [United Nations Convention on the Rights of the Child](#) (CRC). The convention, ratified in Australia in 1990, incorporates the full spectrum of human of rights, including social, economic, and cultural rights. The convention is guided by principles of:

- Respect for the best interests of the child as a key consideration
- The right to survival and development
- The right of all children to express their views freely on matters that affect them
- That all children can enjoy the rights set out in the convention without discrimination of any kind.

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“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”

- United Nations Convention on the Rights of the Child, [article 3](#).

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The Committee on the Rights of the Child (the Committee) provide further context and guidance regarding the implementation of the CRC. The Committee published a [general comment regarding the right of the child to have their best interests taken as a primary consideration](#). The comment notes that in determining the best interests of a child, the following elements should be considered:

- the child’s views and identity
- the care, protection, and safety of the child
- the child’s right to health and education
- the child’s situation of vulnerability, i.e. factors that may make a child more vulnerable such as disability or belonging to a minority group
- the preservation of the family environment and maintaining relationships.

The United Nations Children’s Fund (UNICEF) have also published an [implementation handbook for the Convention on the Rights of the Child](#).

## Indigenous Children

While the CRC provides general guidance, the Committee recognises that the rights of [Indigenous](#) children require additional attention. In [General Comment No. 11 Indigenous Children and their rights under the Convention](#), the Committee acknowledges that indigenous children “have not always received the distinct consideration they deserve”. Regarding the best interests of Indigenous children, the comment notes considerations and guidance such as:

- The best interest of the child is both an individual and collective right and, in practice, the collective cultural right of indigenous children needs to be considered. However, the rights of one child cannot be violated or neglected in preference of the best interests of the group.
- When the best interest of an indigenous child is being assessed, the child’s cultural rights and the need to exercise their rights together with members of their group should be considered.
- Indigenous communities should be consulted and given the opportunity to participate in the decision-making process on how the best interest of the child can be decided in culturally sensitive way.
- To ensure the best interests and rights of indigenous children are being considered, relevant professionals should be trained and aware about the

importance of collective cultural rights regarding the best interests of the child.

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“The right of our children to their culture, along with the other core human rights of children – to life, to family, to protection – are non-negotiable.”

- [Andrew Jackomos](#), former Victorian Commissioner for Aboriginal Children and Young People – [Family Matters: empowering families, protecting children in Queensland](#)

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## Factors to Consider

When making decisions about what is in the best interests of a child, there are several factors to consider:

- The individual short and long-term needs of the child. You need to consider the child’s age, any relevant diagnosis, their family’s circumstance i.e. the location/placement of their siblings and other family members
- The over-representation of Aboriginal children in out-of-home care and not enough Aboriginal (and non-Aboriginal) carers
- The child’s cultural needs as well as their immediate needs will be met
- How your own biases and personal preferences can influence decisions
- The family’s decisions, suggestions, and preferences
- The application of Active Efforts whilst working with the child’s family
- The child’s cultural identity and how that will be nurtured and supported to grow through connection to country, community, and family.

## Social and Emotional Wellbeing

In line with the CRC, [the National Strategic Framework for Aboriginal and Torres Strait Islander Peoples’ Mental Health and Social and Emotional Wellbeing](#) emphasises

connection to family and kin, community, and culture as foundational to an Aboriginal person's wellbeing throughout their life.

Below is the Australian government's proposed model of Social and Emotional Wellbeing and the Domains of Social and Emotional Wellbeing with Risk and Protective Factors.



Domain	Description	Examples of risk factors	Examples of protective factors
<b>Connection to Body</b>	Physical health – feeling strong and healthy and able to physically participate as fully as possible in life.	<ul style="list-style-type: none"> <li>Chronic and communicable diseases</li> <li>Poor diet</li> <li>Smoking</li> </ul>	<ul style="list-style-type: none"> <li>Access to good healthy food</li> <li>Exercise</li> <li>Access to culturally safe, culturally competent and effective health services and professionals</li> </ul>
<b>Connection to Mind and Emotions</b>	Mental health - ability to manage thoughts and feelings.	<ul style="list-style-type: none"> <li>Developmental/ cognitive impairments and disability</li> <li>Racism</li> <li>Mental illness</li> <li>Unemployment</li> <li>Trauma including childhood trauma</li> </ul>	<ul style="list-style-type: none"> <li>Education</li> <li>Agency: assertiveness, confidence and control over life</li> <li>Strong identity</li> </ul>
<b>Connection to Family and Kinship</b>	Connections to family and kinship systems are central to the functioning of Aboriginal and Torres Strait Islander societies.	<ul style="list-style-type: none"> <li>Absence of family members</li> <li>Family violence</li> <li>Child neglect and abuse</li> <li>Children in out-of-home care</li> </ul>	<ul style="list-style-type: none"> <li>Loving, stable accepting and supportive family</li> <li>Adequate income</li> <li>Culturally appropriate family-focused programs and services</li> </ul>
<b>Connection to Community</b>	Community can take many forms. A connection to community provides opportunities for individuals and families to connect with each other, support each other and work together.	<ul style="list-style-type: none"> <li>Family feuding</li> <li>Lateral violence</li> <li>Lack of local services</li> <li>Isolation</li> <li>Disengagement from community</li> <li>Lack of opportunities for employment in community settings</li> </ul>	<ul style="list-style-type: none"> <li>Support networks</li> <li>Community controlled services</li> <li>Self-governance</li> </ul>
<b>Connection to Culture</b>	A connection to a culture provides a sense of continuity with the past and helps underpin a strong identity.	<ul style="list-style-type: none"> <li>Elders passing on without full opportunities to transmit culture</li> <li>Services that are not culturally safe</li> <li>Languages under threat</li> </ul>	<ul style="list-style-type: none"> <li>Contemporary expressions of culture</li> <li>Attending national and local cultural events</li> <li>Cultural institutions</li> <li>Cultural education</li> <li>Cultural involvement and participation</li> </ul>
<b>Connection to Country</b>	Connection to country helps underpin identity and a sense of belonging.	<ul style="list-style-type: none"> <li>Restrictions on access to country</li> </ul>	<ul style="list-style-type: none"> <li>Time spent on country</li> </ul>
<b>Connection to Spirituality and Ancestors</b>	Spirituality provides a sense of purpose and meaning	<ul style="list-style-type: none"> <li>No connection to the spiritual dimension of life</li> </ul>	<ul style="list-style-type: none"> <li>Opportunities to attend cultural events and ceremonies</li> <li>Contemporary expressions of spirituality</li> </ul>

## References

Australian Human Rights Commission, About Children's Rights. <https://humanrights.gov.au/our-work/childrens-rights/about-childrens-rights>

Childrens Rights poster

[https://humanrights.gov.au/sites/default/files/AHRC.2030.The%20Big%20Banter%20A3%20poster%20-%20web%20version.pdf?\\_ga=2.237037056.1829291609.1697583787-1417901019.1606369659](https://humanrights.gov.au/sites/default/files/AHRC.2030.The%20Big%20Banter%20A3%20poster%20-%20web%20version.pdf?_ga=2.237037056.1829291609.1697583787-1417901019.1606369659)

Cripps, K. (2012). Indigenous Children's 'Best Interests' at the Crossroads: Citizenship Right, Indigenous Mothers and Children Protection Authorities. *International Journal of Critical Indigenous Studies*. vol. 5(2) p.g. 25-35  
<https://ijcis.qut.edu.au/article/view/88/88>

Long, M. and Sephton, R. (2011). Rethinking the "Best Interests" of the Child: Voices from Aboriginal Child and Family Welfare Practitioners. *Australian Social Work*. Vol. 64(1), pg. 96-112.  
<https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1105&context=aprci>

Victoria State Government, Commission for Children and Young People. (2016). In the Child's Best Interests Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria

<https://ccyp.vic.gov.au/assets/Publications-inquiries/In-the-childs-best-interests-inquiry-report.pdf>