



PEGUIS FIRST NATION

HONOURING OUR CHILDREN, FAMILIES AND NATION ACT

COMING INTO EFFECT JANUARY 21, 2022

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PREAMBLE

Peguis First Nation, led by Chief and Council, who are directed by membership, acknowledges and continues its inherent and sacred right to provide care for our Nation's children and families through our Indigenous Legal Traditions, Customs and Governance in contemporary times. This sacred and inherent right includes jurisdiction in relation to child and family services.

Peguis First Nation ("PFN") shall provide notice to Canada and the province of Manitoba of its intention to implement its own child and family services law and regulations. This ***Peguis First Nation Honouring our Children, Families and Nation Act***, (the "Act") will serve as the legislative basis for caring for our children and families both on and off reserve. The Act has been drafted in accordance with the federal act, *An Act respecting First Nations, Inuit and Metis children, youth and families*, S.C. 2019, c. 24. Canada has recognized the inherent rights of self-determination of Indigenous peoples, and the corresponding right of First Nations to exercise jurisdiction and authority over matters involving First Nation children and families.

PFN has inherent authority to create this Act and in doing so, enhances our Nation-to-Nation relationship with the Crown in Right of Canada. The late Chief Peguis' son, Henry Prince, was the first Chief to place his mark as signatory to Treaty 1, on behalf of what would become the Peguis First Nation. Treaty rights have been afforded constitutional protection through section 35 of the *Constitution Act, 1982* which serves as another source of authority to develop, create and implement this Act.

Intertwined between the Act and *An Act respecting First Nations, Inuit and Metis children, youth and families* is the principle of relationships. These Acts each highlight and affirm the importance of relationships between the child, siblings, parents, extended family, the community and the land, with a special focus on the best interests of the child, cultural continuity, an equitable provision of services and emphasis on cultural enhancement and teachings.

Peguis First Nation and Peguis Child and Family Services (the "Agency") both acknowledge the inter-generational traumas faced by many parents today which may result in challenges within families. Due to inter-generational traumas our families have been left to re-learn and revitalize traditional parenting. The Agency will do its best not to displace parents but to supplement and support their efforts to healing from inter-generational traumas so that they can raise their children in a healthy and supportive manner. The Agency recognizes that at times, parents may need someone to stand with them, and will therefore cultivate relationships with parents requiring assistance. These relationships shall endeavour to include, culture, language, ceremony and the land.

The Act is a living law, derived from Inaakonigewin, laws given to Anishinaabe. Pipes have been lifted and the drum has been sounded and guidance from Spirit has been sought for this journey. Our people have been called together to lift up those children and families in need, by collectively supporting their journey to wellness.

“...it is the family, people and community that have the responsibility to care for the child...” Peguis First Nation Elder Garry McCorrister

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Through this law the Peguis First Nation Child has the ascribed and inherent right:

To their Spirit Name	Anishinaabe anoozoowin
To their Clan	Dodem
To be with the Parents	Gitziimak
To be with Family (your relations)	Nawendaagnak
To cultural & ceremonial practices	Anishinaabe Miiniggisiwin
To their identity & lifestyle	Anishinaabe Aadzewin
To their language	Anishinaabemowin
To a purposeful & good life	Mino Bimatiziwin
To their traditional land	Anishinaabe Akiing
To a good education	Kinamaatiwin
To protection within that Child	Wiikawaabmind
To membership (where the roots are)	Dabendaagziwin

1.0 TITLE

- 1.1 This law shall be known as the ***Peguis First Nation Honouring our Children, Families and Nation Act*** (the “Act”).

2.0 DEFINITIONS AND INTERPRETATION

2.1 In this Act, “shall” is mandatory and “may” is discretionary, the following terms shall have the following meanings ascribed to them:

- (a) “Abuse” means where an act or omission by any person where that act or omission results in physical injury to a Child, emotional disability of a permanent nature in the Child or is likely to result in such a disability, or results in sexual exploitation of the Child with or without the Child’s consent.
- (b) “Act” means the *Peguis First Nation Honouring our Children, Families and Nation Act*;
- (c) “Agency” means the Peguis Child and Family Services, whose mandate was established on April 1, 1999;
- (d) “Band Council Resolution” or “BCR” or “Resolution” means a written resolution signed by a quorum of Council and passed at a duly convened meeting of the Council;
- (e) “Best Interests of the Child” has the meaning ascribed in section 6.1 of this Act;
- (f) “Board” means the Board of Directors for the Agency as appointed by Council from time to time;
- (g) “Care Provider” means an adult person who has the primary responsibility for providing the day-to-day care of a Child or Youth, other than the Child or Youth’s Parents, including in accordance with the customs or traditions of the First Nation;
- (h) “Child” means any Member, or is entitled, or eligible to be a Member, who is under the age of 18 years;
- (i) “Child and Family Services” means the programs and services provided by the Agency;
- (j) “Child Protection Services” means any program or service provided to a Child or Youth who is in the care of, or who is receiving services from the Agency;

- (k) “Community Circle of Care” means a Peguis First Nation system of care led by an Elders Council and comprised of a coordinated network of community-based services and supports organized to meet the challenges of the Child, Youth and Family that require Child and Family Services as well as other services provided by other First Nation departments and collaterals;
- (l) “Coordination Agreement” means an agreement referred to at subsection 20(2) of *An Act respecting First Nations, Inuit, Metis children, youth and families*, S.C. 2019, c. 24;
- (m) “Council” means the Chief and Council of the Peguis First Nation;
- (n) “Court” means the Manitoba Court of Queen’s Bench, the Provincial Court of Manitoba and appellate courts or any Indigenous tribunal or court that may be established that would deal with child protection matters;
- (o) “Customary Care” means care provided to a Child in a way that recognizes and reflects the unique aspects and customs of the First Nation;
- (p) “Customary Care Agreement” means an agreement that meets the requirements of Customary Care;
- (q) “Customary Care Home” means a home or other place where a Child or children reside with a Customary Caregiver under a Customary Care Agreement;
- (r) “Customary Caregiver” means a person, other than the Child’s Parents or Caregiver, who has entered into a Customary Care Agreement that provides for a Child to reside with that person;
- (s) “Day” means a calendar day ending at midnight, Central Standard Time;
- (t) “Director” means a member of the Board for the Agency;
- (u) “Early Intervention Services” means any programs and services, including Child Protection Services provided to a Child, Youth or Family under this Act that avoids apprehension;
- (v) “Elders Council” includes a group of individual Members who are recognized as Elders by the First Nation and appointed by Council to assist with the Community Circle of Care and the customary adoption practices of the First Nation;
- (w) “Emergency Placement” means a facility that provides residential care to a Child, Youth or Family on an emergency basis, which may also include a secure services facility, a Foster Home and a Place of Safety home, but shall

not include a facility that provides medical care, educational services or correctional services;

- (x) “Essential Services” means services that are necessary to enable the Agency and its employees to prevent danger to life, health or safety of a Child or Youth;
- (y) “Executive Director” means the individual hired by the Board to oversee the day-to-day activities of the Agency;
- (z) “Extension of Services” means where programs or services are provided to a Youth by the Agency;
- (aa) “Family” means the Child, siblings, mother, father, step-parents, grandparents, aunts, and uncles whether by blood, cultural adoption, custom or marriage, or a person considered to be a close relative to the family;
- (bb) “Family Enhancement” means programs and services offered by the Agency to a Child and their Family for support by targeting and developing programs that address child protection concerns;
- (cc) “Family Sharing Circle” means a process that brings together Family and the people who work with them to make decisions or develop service plans to address a Child’s needs for safety, security and well-being by enabling the Family to solve problems by creating an environment to work collaboratively with the support of the Agency;
- (dd) “Family Sharing Circle Coordinator” means an employee of the Agency whose role is to facilitate the Family Sharing Circle process;
- (ee) “First Nation” or “Peguis First Nation” means the Peguis First Nation, also referred to as the Peguis Indian Band;
- (ff) “Foster Home” means a residence licenced pursuant to section 8.25 of this Act and any regulations made thereto;
- (gg) “Foster Parent” means a person approved as a Foster Parent by the Agency to care for a Child;
- (hh) “Indigenous Agency” means an agency that provides Child and Family Services which is identified as an Indigenous Agency by Peguis First Nation;
- (ii) “ISC” means Indigenous Services Canada, including their predecessor and successor iterations;
- (jj) “Kinship Home” means the care, nurturing and protection of a Child by Family, extended relatives, and Members of the First Nation who have a kinship

with the Child and has been licenced pursuant to section 8.25 of this Act and any regulations made thereto;

- (kk) “Main Reserve” means the Peguis Indian Reserve 1B;
- (ll) “Member” means any person whose name appears or is entitled to appear on the Band Membership List as maintained by the First Nation or the Band List maintained by the Indian Registry Administrator for the First Nation and the registrar of ISC pursuant to the provisions of the *Indian Act*, R.S.C. 1985 c. I-5;
- (mm) “Minister” means the Minister of ISC;
- (nn) “Non-Indigenous Agency” means an agency that provides Child and Family Services which is identified as a Non-Indigenous Agency by Peguis First Nation;
- (oo) “Order” means any order pronounced by the Court;
- (pp) “Parent” means
- i. the mother and father or a step-mother or step-father, as the case may be, of a Child or Youth;
 - ii. a person who, by Court order or agreement with the Parent, has custody of the Child or Youth;
 - iii. a person who has been recognized as the parent by custom of the First Nation;
- but does not include a Foster Parent;
- (qq) “Peace Officer” means a member of a Police Service;
- (rr) “Place of Safety” means a residence or facility that has been deemed a safe placement for a Child or Youth by the Agency;
- (ss) “Police Service” means
- i. the Royal Canadian Mounted Police; or
 - ii. any other First Nation, provincial or municipal police service established by statute; and
 - iii. Peguis First Nation Safety Officers, where requested by the Agency to assist on the Main Reserve.

(tt) “Prenatal Services” means programs and services provided to expectant parents;

(uu) “Prevention Services” means programs and services provided to a Child, Youth, or Family in need of intervention in order to keep families together, and may include financial support and supervision by the Agency;

(vv) “Voluntary Guardianship Agreement” means an agreement made pursuant to section 8.8 of this Act.

(ww) “Youth” means a Member, or is entitled to become a Member, who is between the ages of 18 and 26 years and was a Child in care of the Agency;

2.2 In this Act, unless the context otherwise requires:

(a) The singular includes the plural;

(b) A reference to one gender includes a reference to other genders, including two-spirited and non-binary individuals who may not ascribe to any gender identification and that the implementation of this Act requires that all individuals are to be treated respectfully and equally; and

(c) This Act and any activities or objectives outlined herein, shall not abrogate nor derogate from any rights of the Peguis First Nation or its Members, including inherent rights and aboriginal rights, and those rights under sections 25 and 35 of the *Constitution Act, 1982*.

2.3 This Act shall be in compliance with the *Canadian Charter of Rights and Freedoms*.

2.4 This Act is to be interpreted and administered in accordance with the Best Interests of the Child.

3.0 PURPOSE OF THE ACT

3.1 The purposes of this Act include:

(a) Affirms the inherent rights and jurisdiction of the Peguis First Nation over Child and Family Services for its Members;

(b) Affirms the Agency is to provide Child and Family Services on behalf the First Nation;

(c) Sets out the principles that apply to the interpretation of this Act and the provision of Child and Family Services;

- (d) Outlines the components of programs and services which establish Child and Family Services;
- (e) Provides for the execution of any Coordination Agreement;
- (f) Provision of culturally appropriate services; and
- (g) The provision of services that strengthen the Family and work towards reunification with a focus on preventative services.

4.0 PEGUIS FIRST NATION RIGHTS AND JURISDICTION

Affirmation

- 4.1 The inherent right to self-determination is exercised by the Peguis First Nation and recognised by the United Nations Declaration on the Rights of Indigenous Peoples and section 35 of the *Constitution Act, 1982* and includes the jurisdiction related to Child and Family Services as well as legislative authority for these services and authority to administer and enforce this Act.

Dispute Resolution

- 4.2 For greater certainty and for the purposes of section 4.1, the authority to administer and enforce this Act, includes the authority to provide for dispute resolution mechanisms.

Scope

- 4.3 This Act shall apply to all Members, their Child(ren), Youth and Family whether they live on the Main Reserve or elsewhere in Canada.

5.0 PEGUIS CHILD AND FAMILY SERVICES

Agency Continuation

- 5.1 The Agency was established on April 1, 1999 when its Articles of Incorporation were filed and has the capacity, rights and powers of a natural person. The Agency is also registered as a non-profit organization.
- 5.2 The Agency maintains its home and registered office on the Main Reserve.
- 5.3 Subject to this Act, Council may pass Resolutions that:

- (a) Expand or clarify the powers, duties or functions to be exercised or performed by the Agency where such Resolution respects the Best Interests of the Child; or
- (b) Impose limits on the powers, duties or functions to be exercised or performed by the Agency where such Resolution respects the Best Interests of the Child.

Agency Objectives

5.4 The objectives of the Agency include, but are not limited to:

- (a) Advocate for, develop and deliver a culturally appropriate Child and Family Services Program, including Child and Family Services and licensing of Foster Homes, Kinship Homes and Customary Care Homes for the Child, Youth or Family both on and off the Main Reserve, in accordance with this Act and in a manner that is First Nation specific and community-based;
- (b) Negotiate, enter into, administer and generally deal with Child and Family Services agreements affecting the Child, Youth and Family, with the provincial and federal governments as well as the private sector;
- (c) Act as the representative of the Peguis First Nation, relating to Child and Family Services, before a Court, tribunal, and with all levels of governments for the review, advocacy, development and implementation of:
 - i. This Act;
 - ii. The Truth and Reconciliation Commission's Calls To Action and the Missing and Murdered Indigenous Women and Girls Commission Recommendations;
 - iii. The United Nations Declaration on the Rights of Indigenous Peoples and Canada having enacted *An Act respecting the United Nations Declaration on the rights of Indigenous Peoples* further acknowledging that the Declaration provides a framework for reconciliation, and specifically that Indigenous peoples, in exercising their right to self-determination, have the right to self-govern on matters relating to their affairs, including Indigenous children and families;
 - iv. The United Nations Convention on the Rights of the Child;
 - v. The existing and any future rulings and orders of the Canadian Human Rights Tribunal including, and not limited to Decision 2016 CHRT-2; and
 - vi. Other findings, principles, recommendations and declarations as supported by Peguis First Nation through Band Council Resolution.

- (d) Liaise with non-Indigenous, and non-Status Indigenous people as individuals or groups to improve Child and Family Service programs and services;
- (e) Liaise and collaborate with Peguis First Nation entities, such as Peguis Jordan's Principle, to enhance services to Members;
- (f) Acquire property by purchase or otherwise, and provide buildings for office, social and community purposes both on and off the Main Reserve;
- (g) Provide all necessary equipment, furniture, including hardware and software for carrying on its various day-to-day business;
- (h) Accept donations and raise funds by any lawful means to assist in achieving the objectives of the Agency;
- (i) Conduct these activities and achieve these objectives in a not for profit basis;
- (j) Work to deal with the impacts and challenges of colonization within the scope of the Agency's mandate, and
- (k) Do everything reasonably necessary, suitable, proper, convenient or incidental to these activities and objectives.

Agency Funding

- 5.5 For all operations, child maintenance, programming and services provided by the Agency and based on the principles of Treaty 1, equity and investment in children,
- (a) The Agency will receive funding directly from the federal and provincial governments as agreed to pursuant to the Coordination Agreement to be negotiated from time to time;
 - (b) The Agency shall receive direct funding for child maintenance, programming and services, and for capital and infrastructure from the federal government;
 - (c) For further clarity, any funding received by the Agency from the federal and provincial governments shall not be used for debt reduction of the Peguis First Nation;
 - (d) The Minister may seek to obtain contribution from the provincial government for operations, child maintenance, programming and services and capital and infrastructure, for the Agency at no financial penalty to the Agency;

- (e) Any funding provided by Canada through the Act and any funding agreement derived from the Coordination Agreement shall not limit, prevent, prohibit nor disallow Peguis and the Agency from accessing any other funding program or services available from Canada and Manitoba; and
- (f) The Agency may also accept funding directly from any other agencies, entities, trusts, individuals, or First Nation organizations.

5.6 **Borrowing and Guarantees**

- (a) The Agency shall not give any guarantees nor borrow from or lend any money to any entity, Member, person, member of Council, Director or any Peguis First Nation department.
- (b) The Agency shall not provide any bridge financing to support the debt, programs or services of the First Nation, and any department of the First Nation.

5.7 **Indemnification**

- (a) The Agency shall, indemnify;
 - i. A present or former Director or officer of the Agency;
 - ii. A person who has acted or acts at the request of the Agency;
 - iii. An employee or former employee of the Agency, unless that employee has not acted honestly and in good faith and with a view to the best interests of the Agency; and
 - iv. The heirs, estate and trustees of a person referred to in sub-clauses (i) to (iii) against costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, reasonably incurred by that person with respect to a civil, criminal or administrative action or proceeding to which that person is made a party by reason of holding such position, if that person acted honestly, in good faith and with a view to the best interests of the Agency, and in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, if that person had reasonable grounds for believing that the conduct that is the subject of the action or proceeding was lawful.
- (b) The Agency shall not provide indemnities other than those:
 - i. Authorized by subsection (a).

Employees

- 5.8 (a) The Agency shall hire a person who is qualified to act as the Executive Director for the purposes of this Act and ensures that the day-to-day business of the Agency continues and designates that person as the Executive Director for those purposes.
- (b) The Executive Director reports to the Board pursuant to the Board of Directors Policy Manual. The Executive Director may also provide quarterly reporting to Council and annual reporting to the First Nation.
- (c) The Agency shall hire employees for the purposes of carrying on the day-to-day business of the Agency and may determine their conditions of service.
- (d) The employees shall adhere to the Agency's Code of Conduct and Employee Policy Manual, amongst other Agency policies.

Board of Directors

- 5.9 The Agency shall have a Board of Directors, where
- (a) The Board shall consist of 5 Members appointed by Band Council Resolution;
- (b) The Board shall designate one of the Directors as Chairperson;
- (c) The Board shall operate in accordance with the Board of Directors Policy Manual and Governance policies;
- (d) A Director holds office for a term fixed in the Resolution appointing the Director;
and
- (e) Board succession planning as outlined in the Board of Directors Policy Manual outlines how a Director may cease to hold office or is replaced.

Board Powers

- 5.10 (a) The Board shall supervise the management of the business and affairs of the Agency.
- (b) Board Bylaws are made pursuant to the Board of Directors Policy Manual and Governance policies.
- (c) The roles and responsibilities of the Directors and chairperson are outlined in the Board of Directors Policy Manual and Governance policies.

Duty of Care

- 5.11 (a) In addition to the statutory duty of care where the Agency is a corporate entity, every Director, officer and employee of the Agency shall comply with this Act, and any Peguis First Nation bylaw, BCR and policy related to the Agency and such instrument is in the Best Interest of the Child.
- (b) No provision in any contract, resolution, or bylaw relieves any Director, officer or employee of the Agency from the duty to act in accordance with this Act and any Peguis First Nation bylaw or policy related to the Agency.

Disclosure of Information

- 5.12 (a) Council may request from the Agency any information, excluding personal information, that the Council deems necessary, and the Agency shall disclose the information in the form and manner that the Agency determines in confidence.
- (b) The Agency acknowledges that its disclosure requires that records are confidential and shall remain confidential except,
- (i) Where giving evidence in Court; or
 - (ii) By Order of a Court; or
 - (iii) To another agency; or
 - (iv) To a person employed, retained, or consulted by an agency; or
 - (v) The children's advocate; or
 - (vi) By the Agency to another agency including entities out of province which perform substantially the same functions as the Agency where reasonably required by that agency or entity
 - a. To provide service to the person who is subject of the record; or
 - b. To protect a child; or
 - (vii) To a student placed with the Agency by contract or agreement with an educational institution; or
 - (viii) Where a disclosure or communication is required for the purposes of this Act, and where the recipient of the disclosure agrees to maintain the confidentiality of that disclosure.

For greater clarity disclosure shall be in the form and manner the Agency determines requiring the recipient to receive such disclosure in confidence and under a trust condition at the Agency's discretion.

- (c) An adult who was a former child in care is entitled to be given access to his or her records except for any record that deals with child protection services.
- (d) The Agency may refuse to give a person access to any part of a record referred to in subsection (c) where
 - (i) There are reasonable grounds to believe that disclosure of that part might result in physical or serious psychological harm to another person; or
 - (ii) That part contains information which was provided by a person not employed by the Agency or appointed under this Act; or
 - (iii) That part discloses the identity of a person who is not employed by the Agency or appointed under this Act, and who has supplied information in confidence to the Agency for any purpose related to the administration or enforcement of this Act or its regulations;

and the Agency shall notify the person in writing of the reasons for refusing access to the part of the record.

Source of Referral

- 5.13 The Agency and its directors, officers and employees shall not reveal any source of referral or information that identifies any individual who provided a referral to the Agency.

Essential Service

- 5.14 The Agency and its employees provide essential services for the Peguis First Nation. These services may be required during times of pandemic, floods or other natural disasters. Every employee of the Agency is deemed to be an essential services employee.

Engagement of Consultants

- 5.15 (a) The Board may appoint or engage experts or persons having specialized knowledge or technical and legal knowledge to advise the Board when it performs its duties and functions under this Act.
- (b) A person appointed under subsection (a) may be paid remuneration and expenses that the Board agrees to.

6 PRINCIPLES AND MINIMUM STANDARDS OF PEGUIS CHILD AND FAMILY SERVICES

Best Interests of the Child

- 6.1 This Act is to be interpreted and administered in accordance with the Best Interests of the Child, in particular:
- (a) The Best Interests of the Child must be the paramount consideration in the decision-making process in the context of Child and Family Services in relation to the Child, and in the case of decision making relating to apprehension, the Best Interests of the Child must be the paramount consideration; and
 - (b) Primary consideration must be given to the Child's physical, emotional and psychological development, safety, security, well-being and the Child's sense of continuity and need for permanency with the least possible disruption, as well as the importance of that Child having an ongoing relationship with the Child's Family and the Peguis First Nation or people to which the Child belongs and of preserving that Child's connection to culture, heritage and the First Nation's traditional territory.

Determining the Best Interests of the Child

- 6.2 To determine the Best Interests of a Child, all factors related to the circumstances must be considered, including:
- (a) The Child's cultural, linguistic, spiritual and religious upbringing and heritage;
 - (b) The Child's needs, given the Child's age, verbalization and stage of development, such as the Child's need for stability;
 - (c) The nature and strength of the Child's relationship with the Child's Parent(s), Care Provider and any Family member who plays an important role in the Child's life;
 - (d) The importance to the Child of preserving the Child's cultural identity and connections to the language and territory of the First Nation or people to which the Child belongs;
 - (e) The Child's views and preferences, giving due weight to the Child's age and maturity, unless such views cannot be ascertained;
 - (f) Any plans for the Child's care, including care in accordance with the customs and traditions of the First Nation or people to which the Child belongs;

- (g) Any family violence and its impact on the Child, including whether the Child is directly or indirectly exposed to the family violence as well as the physical, emotional and psychological harm or risk of harm to the Child; and
- (h) Any civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the Child.

Cultural Continuity

- 6.3 This Act is to be interpreted and administered in accordance with the principle of cultural continuity reflected in the following concepts:
- (a) Cultural continuity is essential to the well-being of a Child, a Family and the general welfare of the Peguis First Nation;
 - (b) The transmission of the languages, cultures, practices, customs, healing practices, ceremonies, traditions and knowledge of the First Nation is integral to cultural continuity;
 - (c) A Child's best interests are often promoted when the Child resides with members of the Child's Family and the culture of the First Nation is taught and respected;
 - (d) Child and Family Services provided in relation to a Child are to be provided in a manner that does not contribute to the assimilation of the First Nation or to the destruction of the culture of the First Nation; and
 - (e) The characteristics and challenges of the region in which a Child and Family are located is to be considered.

Substantive Equality

- 6.4 This Act is to be interpreted and administered in accordance with the principle of substantive equality as reflected in the following concepts:
- (a) The rights and distinct needs of a Child with a disability are to be considered in order to promote the Child's participation, to the same extent as other children, in the activities of the Child's Family or the First Nation;
 - (b) A Child must be able to exercise their rights under this Act, including the right to have their views and preferences considered in decisions that affect the Child, and the Child must be able to do so without discrimination, including discrimination based on sex or gender identity or expression;
 - (c) A Child's Family member must be able to exercise their rights under this Act, including the right to have their views and preferences considered in decisions

- that affect the Family member, and they must be able to do so without discrimination, including discrimination based on sex or gender identity or expression;
- (d) The Agency must be able to exercise without discrimination the rights of the First Nation under this Act, including the right to have the views and preferences of the Members considered in decisions that affect the Members; and
 - (e) In order to promote substantive equality between a First Nation Child and other children, a jurisdictional dispute must not result in a gap in the Child and Family Services that are provided in relation to the First Nation Child.

Provision of Services

- 6.5 Child and Family Services provided in relation to a Child are to be provided in a manner that takes in account:
- (a) The Child's needs, including with respect for the Child's physical, emotional and psychological safety, security and well-being;
 - (b) The Child's culture;
 - (c) The opportunity for the Child to know their family origins; and
 - (d) The promotion of substantive equality between the Child and other children.

Notice

- 6.6 (a) In the context of providing Child and Family Services in relation to a Child, to the extent that doing so is consistent with the Best Interests of the Child, before taking any significant measure in relation to the Child, the Agency must undertake best efforts to provide notice of the measure to the Child's Parent(s), Care Provider and Council.
- (b) The Agency must ensure that the notice provided in subsection (a) does not contain personal information about the Child, a member of the Child's Family or Care Provider, other than information that is necessary to explain the proposed significant measure, or that is required by a Coordination Agreement.
- (c) In the context of a civil proceeding of any kind in front of a Court in respect of Child and Family Services in relation to a Child:
- i. The Child's Parent(s) and Care Provider have the right to make representations and have party status and for further clarity section 45

of *The Manitoba Child and Family Services Act* shall not apply in this context; and

- ii. Council has the right to make representations.

Priority to Preventative Services

6.7 (a) In the context of providing Child and Family Services in relation to a Child, and to the extent that providing Preventative Services to support the Child's Family is consistent with the Best Interests of the Child, the provision of those services are to be given paramount consideration before other services and programming.

(b) the Agency shall consider Early Intervention Services as further support for the Child's Family in order to avoid apprehension.

(c) the Agency will coordinate with other First Nation service providers, such as Peguis Jordan's Principle, to ensure that there is no duplication of services and to ensure that substantive equality principles are met.

Priority to Prenatal Services

6.8 (a) Prenatal services are to be given priority over other services in order to prevent the apprehension of the Child at birth. The Agency shall coordinate with other First Nation service providers and non-Indigenous service providers to ensure that Prenatal services can be accessed, taking into consideration that duplication of services does not occur.

(b) the Agency shall not apprehend a Child at birth, unless the Agency deems that it is in the Best Interests of the Child.

Socio-Economic Condition

6.9 In the context of providing Child and Family Services in relation to a Child, to the extent that it is consistent with the Best Interests of the Child, the Child must not be apprehended solely on the basis of the Family's socio-economic conditions, including poverty, lack of adequate housing or infrastructure or state of health of the Parent(s) or Care Provider.

Reasonable Efforts

6.10 In the context of providing Child and Family Services in relation to a Child, unless immediate apprehension is consistent with the Best Interests of the Child, before apprehending a Child who resides with one of the Parents or another adult member of the Child's Family, the Agency must demonstrate that it made reasonable efforts to have the Child continue to reside with that person, taking into consideration Priority to Prevention Services.

7 PLACEMENT OF THE CHILD

Priority Placement

7.1 The placement of a Child in the context of providing Child and Family Services relating to that Child, to the extent that it is consistent with the Best Interests of the Child, is to occur in the following order of priority:

(a) With one of the Child's Parents; or

(b) With another adult member of the Child's Family; or

(c) With an adult who is a Member of the Peguis First Nation; or

(d) With an adult who belongs to an Indigenous group, community or people other than the Peguis First Nation; or

(e) With any other adult,

if a Child is to be placed with any person pursuant to subsection (e), approval of the placement by the Executive Director is required before such placement occurs.

Placement with Siblings

7.2 Taking into consideration the priority placement in section 7.1, the possibility of placing the Child with or near siblings, or who are otherwise members of the Child's Family, must be considered in the determination of whether a placement would be consistent with the Best Interests of the Child.

Customs and Traditions

7.3 The placement of a Child under section 7.1 must take into account the customs and traditions of the Peguis First Nation such as regards to customary acceptance practices.

Reunification and Assessment

7.4 In the context of providing Child and Family Services in relation to a Child, there must be ongoing assessment taking into consideration the Best Interests of the Child, conducted at least on an annual basis, as to whether it would be appropriate to place the Child with:

(a) the Child's Parent(s) if the Child does not reside with such a person; or

- (b) an adult member of the Child's Family if the Child does not reside with such a person.

Attachment and Emotional Ties

- 7.5 In the context of providing Child and Family Services in relation to a Child, if the Child is not placed with a member of their Family pursuant to sections 7.1(a) or (b), to the extent that it is in the Best Interests of the Child, the Child's attachment and emotional ties to the Family and the First Nation are to be promoted.

8 COMPONENTS OF PEGUIS CHILD AND FAMILY SERVICES

Determining When a Child is in Need of Intervention

- 8.1 For the purposes of this Act, and in the Best Interests of the Child, a Child is in need of intervention if there are reasonable and probable grounds to believe that the safety, security or well-being or development of the Child is endangered because of any of the following:
 - (a) The Child has been abandoned or lost;
 - (b) The Parent(s) of the Child is deceased, and the Child has no other Parent;
 - (c) The Child is neglected by the Parent(s) or Care Provider;
 - (d) The Child has been abused, or there is risk of Abuse by a person;
 - (e) The Child has been or there is a risk of physical or emotional injury or sexual abuse by the Parent, Family member, Care Provider or Foster Parent, or any other person in contact with the Child;
 - (f) The Parent(s) or Care Provider of the Child is unable or unwilling to protect the Child from physical injury or sexual abuse;
 - (g) The Child has been or there is a risk of emotional injury pursuant to subsection 8.3, by the Parent(s), Care Provider or Family member of the Child; or
 - (h) The Parent(s), Care Provider or Family member of the Child are unable or unwilling to protect the Child from emotional injury.

Determination of Neglect

- 8.2 For the purposes of subsection 8(1)(c), a Child is neglected if the Parent(s) or Care Provider:

- (a) are unable or unwilling to obtain for the Child, or to permit the Child to receive essential medical, surgical or other remedial treatment, including traditional and cultural services that are necessary for the health and well-being of the Child; or
- (b) are unable or unwilling to provide the Child with adequate care, supervision and overall global needs of the Child.

Determination of Emotional Injury

8.3 For the purposes of this Act, a Child is emotionally injured:

- (a) if there is impairment of the Child's mental or emotional functioning or development; and
- (b) if the Agency has reasonable and probable grounds to believe that a Child has been emotionally injured as a result of one or more of the following:
 - i. rejection;
 - ii. emotional, social, cognitive or psychological neglect;
 - iii. deprivation of affection or cognitive stimulation;
 - iv. exposure to family violence or severe domestic disharmony;
 - v. inappropriate criticism, threats, accusations or expectations of or towards the Child;
 - vi. the mental or emotional condition of the Parent of the Child or of anyone living in the same residence as the Child; or
 - vii. exposure to criminal behaviour.

Child Abuse

8.4 (a) For the purposes of this Act, a Child has been subjected to sexual abuse if the Child has been, or is likely to be, exposed to harmful interaction for a sexual purpose, including involvement in sexual exploitation pursuant to section 153 of the *Criminal Code of Canada* or involvement in conduct that may amount to an offence pursuant to the *Criminal Code of Canada*.

(b) All forms of Abuse, including sexual abuse, shall be investigated when a report is received by the Agency and are to be reported to the Child Abuse Committee.

(c) If the Agency receives information that causes the Agency to suspect that a Child is in need of protection, the Agency shall immediately investigate the matter and where, upon investigation, the Agency concludes that the Child is in need of protection, the Agency shall take such steps as are required by this Act as the Agency considers necessary for the protection of the Child.

Child Abuse Committee

(d) The Agency has established a Child Abuse Committee, the committee members shall include:

- i. The Agency's Child Abuse Coordinator;
- ii. A duly qualified medical practitioner consulted by the Agency to review cases of suspected Child abuse;
- iii. A Peace Officer representing a Police Service operating within the Agency's jurisdiction;
- iv. A representative from the Peguis Central School;
- v. A staff member of the Agency, other than the Child Abuse Coordinator, and
- vi. A respected community member.

(e) The Agency may develop policy from time to time to address child sexual abuse concerns for the Child Abuse Committee.

Reporting and Investigation of a Child in Need

8.5 (a) a source of referral who has reasonable and probable grounds to believe that a Child is in need of intervention, including a Peace Officer, shall forthwith report the matter to the Agency;

(b) Subsection (a) applies notwithstanding that the information on which the belief is founded is confidential and its disclosure is prohibited under any other legislation;

(c) This section does not apply to information that is privileged as a result of a solicitor-client relationship;

(d) No action lies against a person reporting pursuant to this section, including a person who reports information referred to in subsection (c), unless the

reporting is done maliciously or without reasonable and probable grounds for the belief.

Investigation and Response

8.6 (a) If the Agency receives information in the form of:

- (i) A request for intervention;
- (ii) a report under section 8.5; or
- (iii) Any other allegation or evidence that a Child may be in need of intervention,

the Agency must investigate the Child's need for intervention unless the Agency is satisfied that the information was provided maliciously or is unfounded or that the report or allegation was made without reasonable or probable grounds.

(b) During an investigation, taking into consideration the Best Interest of the Child, the Agency:

- (i) may request the assistance of a Peace Officer; and
- (ii) may convey a Child to any place in order to complete the investigation.

(c) If, after an investigation, the Agency is of the opinion that the Child is in need of intervention, the Agency must:

- (i) if the Agency is satisfied that it is consistent with the Child's need for protection, provide Prevention Services to the Child or to the Child's Family in accordance with this Act; or
- (ii) If the Agency is not satisfied that the Child's need for intervention can be met under subclause (i), take whatever action under this Act that the Agency considers appropriate, including the provision of Child Protection Services in accordance with this Act.

(d) The Agency may, if the Agency is satisfied that it is consistent with the Child's need for intervention, convey the Child to the person who has custody of the Child or to a person who is temporarily caring for the Child.

(e) If Prevention Services are provided to the Child or the Child's Family, the person or a member of the organization providing those services must report to the Agency any matter respecting the Child that may require further investigation by the Agency.

Emergency Care

8.7 (a) If the Agency is satisfied that without the provision of emergency care a Child may be in need of intervention because the Parent(s) of the Child cannot be located after a reasonable search or has died or become incapacitated, the Agency may appoint a person to care for the Child until the Parent can be located or other satisfactory arrangements can be made for the care of the Child, and the Agency may convey the Child for the purpose of placing the Child in the care of that person.

(b) The person appointed under subsection (a) may care for the Child in the Child's home residence and for that purpose may;

- i. Enter the residence;
- ii. Live in the residence;
- iii. Carry on normal housekeeping activities in the residence that are necessary for the care of the Child; and
- iv. Exercise reasonable control over the Child residing in the residence.

(c) The person appointed under subsection (a) may care for the Child in the person's own residence for the amount of time that the Agency directs;

(d) When a person is appointed under subsection (a), no liability attaches to that person in the course of carrying out that person's duties under subsection (b) or to the Agency assisting that person in carrying out those duties by reason only of the entry into and occupation of the residence without the consent of the owner or occupier;

(e) Alternatively, the Child may be placed in a Place of Safety.

Prevention Services

8.8 (a) The Agency may enter into an agreement with the Parent(s) or Care Provider of a Child or with another person who, with the express or implied consent of the Parent(s) or Care Provider, or pursuant to a Court Order or an agreement, in the view of the Agency;

- i. The Child is in need of intervention; and
- ii. As a result of the provision of Prevention Services, the Child's safety, security or development will be adequately protected if the Child remains with the Child's Parent(s), Care Provider or the person who has custody of the Child, as the case may be pursuant to that agreement.

Voluntary Guardianship Agreement

- 8.9 (a) The Agency may enter into an agreement with both Parents, if both Parents are known, of a Child under which guardianship of the Child is given to the Agency if, in the view of the Agency that:
- (i) the Child is in need of intervention; and
 - (ii) the safety, security or development of the Child cannot be adequately protected if the Child remains with the Child's Parent(s).
- (b) The agreement considered in subsection (a) may include the following:
- (i) the visits or other access to be provided between the Child and the Parent(s) and Family and any other person with whom the Child has a significant relationship;
 - (ii) the conditions, if any, under which the Agency will consult with the Parent(s) on matters affecting the Child; and
 - (iii) Any other matter relating to the parenting of the Child.
- (c) The agreement may be made for whatever period of time the parties agree is in the Best Interests of the Child. Any agreements beyond one year are to be assessed on an annual basis until the Child reaches age of majority.
- (d) The Agency must make best efforts to find a culturally appropriate kinship placement in a timely manner.

Access Agreements

- 8.10 The Agency may enter into an access agreement with a Parent(s), grandparents or Care Provider of a Child who is the subject to a Voluntary Guardianship Agreement or anyone who has a significant relationship with the Child.

Agreement with Minor

- 8.11 (a) Any agreement entered into under this Act by a person between the ages of 16 years and 18 years of age is valid as if that person had attained the age of 18. The Agency shall conduct an assessment to determine if it is in the Best Interest of the Child to enter into such an agreement;
- (b) Any agreement entered into under this Act by a person who is under 16 years of age also requires the consent of the Child's Parent(s) or Care Provider. The Agency shall conduct an assessment to determine if it is in the Best Interest of the Child to enter into such an agreement.

Termination of Agreement

- 8.12 The Agency may terminate a Voluntary Guardianship Agreement or access agreement and return the Child to the Parent(s) or Care Provider at any time if in the Agency's view the Parent(s) or Care Provider are ready, willing and able to resume parenting the Child, and it is in the Best Interests of the Child.

Apprehension of a Child

- 8.13 If all Prevention Services have been exhausted, and apprehension is the only alternative available, the Agency,
- (a) May, having reasonable and probable grounds to believe that a Child is in need of protection, apprehend the Child, and may request the assistance of a Peace Officer in order to do so;
 - (b) May, request the Peace Officer called for assistance, who may, by reasonable force if necessary, enter a place or premises and search for and apprehend the Child in need of protection;
 - (c) May, with the assistance of a Peace Officer, apprehend a Child in need of protection and, as soon as possible thereafter, place the Child under the care of the Agency;
 - (d) If a Child is apprehended in Manitoba or another province under the authority of that province's or other child welfare legislation and placed in the care of an agency or child welfare authority of that province, shall deem the Child to be apprehended under this Act as well, effective on that date the Child is so placed.

Notice of Apprehension

- 8.14 (a) If a Child has been apprehended, the Agency shall notify the Parent(s) or Care Provider of the Child forthwith that the Child has been apprehended, the reasons for apprehension and contact information for the representative of the Agency.
- (b) Notice under subsection (a) may be made verbally or in writing.
 - (c) The validity of the proceedings pursuant to this Act are not affected if the Agency is unable, after reasonable efforts, to give notice in accordance with this section.
 - (d) The Agency shall inform the Parent(s) or Care Provider of the Child that they may opt to utilize the Court process or alternatives to the Court process to dispute the apprehension of the Child.

Parents Bill of Rights

- 8.15 Upon apprehension of a Child, the Parent(s) or Care Provider must be notified of the following, if the Parent(s) or Care Provider can be located, that they
- (a) can identify a safe person to care for their Child(ren);
 - (b) can bring their own supports when meeting with Agency representatives;
 - (c) can receive services in a culturally appropriate way;
 - (d) can receive help and resources to support family preservation, as long as it is in the Best Interests of the Child;
 - (e) can attend court proceedings and provide input to the judge regarding their Child; and
 - (f) can provide input on their case plan and receive notification pursuant to section 6.6 and 8.14(a) of this Act.

Manitoba Provincial Court and Queen's Bench

- 8.16 (a) The Provincial Court and Court of Queen's Bench of Manitoba shall have concurrent jurisdiction in child protection cases and this Act referentially incorporates subsection 38(1) of *The Manitoba Child and Family Services Act* for the following purposes outlined herein.
- (b) Both the Provincial Court and Queen's Bench of Manitoba will serve as the Court for dispensing with Orders and proceedings under this Act, incorporating subsections 38(1)(a), (b), (c), (d) and (e) of *The Manitoba Child and Family Services Act*, however the time limits for temporary orders shall have fixed terms as requested by the Agency or be open-ended until further order of the Court. Other necessary sections of this statute to obtain an Order under subsection 38(1) shall apply. For added clarity, the Agency shall not seek any permanent Orders under subsection 38(1)(f).
- (c) Subsections (a) and (b) will continue to apply until such time that Peguis First Nation, or another First Nation entity establishes an Indigenous court in the future to deal with child protection matters and Council has agreed to attorn to such an Indigenous court.
- (d) No one may publish the name or photograph of a Child, or of the Child's Parent, Care Provider or guardian, in a manner that reveals that the Child is receiving, or has received, intervention services.
- (e) All child protection court proceedings shall be closed to the public as well as to representatives of the press, radio, television and digital media.

Legal Guardianship

- 8.17 If a Child has been apprehended, the Agency has legal guardianship of the Child and is responsible for the Child's care, maintenance and well-being until such time an Order of the Court is pronounced or a decision from an alternative to the court process is granted pursuant to section 9 of this Act.

Health Care on Apprehension

- 8.18 (a) if the Parent(s) or Care Provider of a Child who has been apprehended is unable, unavailable or refuses to cooperate and consent to the provision of essential medical, dental or surgical or other remedial treatment for the Child that is recommended by a physician, dentist or other qualified medical professional, the Agency may authorize the provision of any recommended treatment for the Child.
- (b) If a Child is treated under this section, no liability attaches to the person treating the Child by reason only that the Parent(s) or Care Provider of the Child did not consent to the treatment.
- (c) Any physician, dentist or other qualified medical professional is not indemnified from any medical malpractice liability that may arise in in the treatment and therapy of a Child.
- (d) The Agency may apply to Court for an Order
- (i) authorizing a medical examination of an apprehended Child where the Child is 16 years of age or older and refuses to consent to the examination; or
 - (ii) authorizing medical or dental treatment for an apprehended Child where
 - (A) the Parents or Care Provider of the Child refuse to consent to the treatment, or
 - (B) the Child is 16 years of age or older and refuses to consent to the treatment.

Access after Apprehension

- 8.19 (a) The Agency may decide who has access to a Child who has been apprehended. Taking into consideration the Best Interests of the Child, an access agreement may be entered into by the Child's Parent(s), grandparent's, Care Provider or any other person who has a significant relationship with the Child.

(b) On a case-by-case basis, the Agency shall determine if supervised access and visitation with a Child can occur with a Parent who is incarcerated, taking into consideration the Best Interests of the Child.

Guardianship of the Child by the Agency

8.20 Subject to the terms of any applicable Coordination Agreement, when the Child is in the care of the Agency, Agency guardianship of a Child takes precedence over any agreement not made pursuant to this Act respecting guardianship, access, contact, parenting time or the Child's placement, whether that agreement was:

- (a) Granted to a person who is a party to the proceedings under this Act or not; or
- (b) Granted before or after the Child came into guardianship of the Agency.

Death of Child

8.21 When a Child who is in guardianship of the Agency becomes deceased, the Agency shall forthwith:

- (a) Notify the Parents;
- (b) Notify the Council and the Board;
- (c) Notify the local Police Service and Provincial Coroner;
- (d) Conduct an investigation into the circumstances of the Child's death and report to Council and the Board and assist any Police Service with any investigation it conducts;
- (e) Consent to an autopsy of the body of the Child; and
- (f) In consultation with the Family, arrange for the burial or other disposition of the body of the Child.

Placement - Secured Services

8.22 If a Child or the Child's Family is receiving Child and Family Services under this Act, or the Child is under guardianship of the Agency and the Agency has reasonable and probable grounds to believe that:

- (a) The Child is in a condition presenting an immediate danger to the Child or others;
- (b) It is necessary to confine the Child in order to stabilize and assess the Child; and

(c) Less intrusive measures are not adequate to sufficiently reduce the danger to the Child or others,

the Agency may convey the Child, and may detain the Child while the Child is being conveyed, to a secured services facility and may confine the Child in a secured services facility as long as it is in the Best Interests of the Child.

Placement Generally

8.23 (a) The Agency shall place any Child who is under guardianship of the Agency applying the priorities set out in section 7.1 of this Act.

(b) All Foster Parents shall be notified upon placement that any Child placed in the Foster Home will be actively sought to be reunified with the Child's Parent(s) or Family as long as it is the Best Interests of the Child.

Licence Required for Foster Home or Kinship Home

8.24 (a) No person shall operate a Foster Home or Kinship Home unless that person holds an existing Foster Home or Kinship Home licenced by the Agency, or is in the process of obtaining a licence and has been deemed a Place of Safety by the Agency.

(b) The First Nation may under the authority of this Act, draft, enact and implement regulations concerning Foster Homes, Kinship Homes or any other aspect of this Act.

Application for a Foster Home or Kinship Home Licence

8.25 (a) An application for a Foster Home or Kinship Home licence or renewal must:

(i) be made to the Agency in a form prescribed by the Agency; and

(ii) state the maximum number of persons intended to be accommodated or cared for in the Foster Home or Kinship Home.

(b) In considering an application for or a renewal of a Foster Home or Kinship Home licence, the Agency may issue a licence and impose terms and conditions in the licence.

(c) Unless otherwise specified in the licence, the term of a Foster Home or Kinship Home licence shall be one year from date of issue.

(d) A Foster Home or Kinship Home licence issued under this section must indicate:

- (i) the Foster or Kinship Home that may be operated under the licence;
- (ii) who may operate the Foster Home or Kinship Home;
- (iii) The maximum number of children, other than the children of the Foster Parent(s) or Care Providers, who may reside in the Foster Home;
- (iv) The term of the Foster Home or Kinship Home licence if the term is other than one year from the date of issuance;
- (v) That the Foster Home or Kinship Home licence is not transferable or assignable to another Foster or Kinship Home;
- (vi) The Foster Home or Kinship Home's address; and
- (vii) Any conditions to which the Foster Home or Kinship Home licence is subject to.

Varying a Foster Home or Kinship Home Licence

- 8.26 The Agency may, on the application by a Foster Home or Kinship Home licensee, in a form acceptable to the Agency, vary the terms or conditions to which the licence is subject to.

Standards

- 8.27 A holder of a Foster Home or Kinship Home licence must ensure that the home meets the requirements and standards established by the Agency and the Foster Home or Kinship Home licence holder may not charge more for Foster Home or Kinship Home services than the rates provided for and established by the Agency.

Inspection

- 8.28 (a) Subject to subsection (b), for the purposes of ensuring compliance with this Act, the regulations and any conditions to which a Foster Home or Kinship Home licence is subject to, the Agency may, with the appropriate personal protective equipment:
- (i) at any reasonable hour enter into a home and inspect it, with the consent of the Foster Parent(s) or Care Providers;
 - (ii) inspect and take samples of any material, food, medication or equipment being used in the home;

(iii) perform tests, take photographs or make recordings in respect of a Foster Home or Kinship Home; and

(iv) conduct any other reasonable analysis for the purposes of assessment.

(b) When an Agency representative takes samples of any material, food, medication or equipment under subsection (a)(ii), the Agency representative must:

(i) give to the person from whom those items were taken a receipt for those items; and

(ii) on that persons request, return those items to that person when those items have served the purposes for which they were taken.

(c) If entry is refused or cannot be reasonably obtained under subsection (a) or a person interferes with the Agency in exercising the rights and performing duties under this section, a request for assistance from a Peace Officer may be sought.

Order after Inspection

8.29 If a Foster Home or Kinship Home has been inspected under section 8.28 and the Agency is of the view that:

(a) This Act, the regulations or a condition of the Foster Home or Kinship Home licence is not being complied with; or

(b) The Foster Home or Kinship Home is not providing proper care,

the Agency may, in writing, order the Foster Parent or Care Provider to take measures as specified in the order and within the time limits specified.

Suspension or Cancellation of Foster Home or Kinship Home Licence

8.30 (a) When the Agency is of the view that:

(i) A Foster Home or Kinship Home licence holder is not providing proper care to a Child who resides in the home; or

(ii) the premises described in the home have become unfit or unsuitable for a Foster Home or Kinship Home; or

(iii) a Foster Home or Kinship Home licence holder has not complied with:

A. this Act, regulation or condition of the Foster Home or Kinship Home licence, or an order after inspection; or

B. any other First Nation legislation that applies to a Foster Home or Kinship Home,

the Agency may, by notice in writing to the Foster Home or Kinship Home licensee, vary, suspend or cancel the applicable licence, and there shall be no right to appeal any variance, suspension or cancellation of the Foster Home or Kinship Home licence.

(b) If the Agency has entered into a contract with an owner or operator of a residential facility for the purposes a temporary placement of a Child, the contract is deemed to contain a provision that the Agency may terminate the contract without notice and without damages payable by the Agency to the owner or operator if the owner or operator fails to maintain the residential facility up to the Agency's standards and requirements or if the contract is varied, suspended, cancelled or expired, if it is in the Best Interests of the Child.

Agency Homes

8.31 The Agency may operate facilities to serve as temporary placements for a Child in care or for family reunification and transition purposes. Agency homes may be operated and located on the Main Reserve or elsewhere in Manitoba. The Agency shall take appropriate measures to ensure that these facilities are resourced and meet Agency standards.

9 ALTERNATIVES TO THE COURT PROCESS

Customary Care Agreement

9.1 A Customary Care Agreement is a voluntary process that may be entered into in respect of a Child for the purposes of

- (a) Providing Customary Care through the planning for Child and Family Services in a way that is sensitive to the needs and the cultural identity of the Child;
- (b) Recognizing the role of the First Nation in planning and providing Customary Care to the Child, and
- (c) Where a Child who is the subject of a Customary Care Agreement, the Parent(s) are still considered the legal guardian of the Child.

Parties to a Customary Care Agreement

9.2 The following must be parties to a Customary Care Agreement for a Child, taking into consideration the Best Interests of the Child:

- (a) The Child's Parent(s), Care Provider or guardian;
- (b) The Agency;
- (c) The Customary Caregiver if the agreement provides that the Child is to reside with the Customary Caregiver; and
- (d) The Child, if 12 years of age or older and is competent to understand and comprehend the nature of the Customary Care Agreement and must provide their informed consent.

Minor Parent

- 9.3 A Customary Care Agreement is valid notwithstanding that a Parent entering into the agreement is a minor 16 years of age or older. If the minor Parent is under the age of 16 years, the Parent(s) or guardian of the minor Parent will be required to consent to the Customary Care Agreement along with the minor Parent.

Views of the Child

- 9.4 When entering into a Customary Care Agreement, the parties must consider the views of a Child 12 years of age or older and may consider the views and preferences of a Child under 12 years of age.

Best Interests Apply

- 9.5 [left intentionally blank]

Customary Care Agreement Content

- 9.6 The terms of a Customary Care Agreement may include, without limitation, the following:
- (a) The details of the supports and Child and Family Services that are to be made available under the agreement;
 - (b) The details of a plan for the Child's safety and security; and
 - (c) The length of time that the agreement is to be in effect and the details how it may be terminated.

Customary Care Agreement Beyond Age of Majority

- 9.7 A Customary Care Agreement may be entered into for the purpose of assisting a Youth transition to independence if

- (a) The Youth had been receiving supports and services under a Customary Care Agreement immediately before the Youth attained the age of majority;
- (b) The Youth is a party to a new agreement along with those parties listed at subsection 9.2; and
- (c) The term of the agreement does not extend beyond the date the Youth attains the age of 26 years.

Residing in a Customary Care Home

- 9.8 The parties to a Customary Care Agreement may agree that a Child will reside with a Customary Caregiver in a Customary Care Home.

Requirements

- 9.9 The Agency must ensure that the Customary Caregiver and Customary Care Home meet the safety requirements set out in the Agency's prescribed requirements.

Review by the Agency

- 9.10 During each 12-month period that a Customary Care Agreement is in effect, the Agency must review the agreement and the supports and Child and Family Services provided under the agreement to determine whether they continue to reflect the Best Interests of the Child.

Continued Application of the Act

- 9.11 The fact that a Child is receiving supports and Child and Family Services under a Customary Care Agreement does not prevent
- (a) The Child or the Child's Family from receiving Child and Family Services;
 - (b) The Agency from being authorized from apprehending the Child; or
 - (c) A judge or master from finding the Child to be in need of protection.

Family Sharing Circle

- 9.12 The Family Sharing Circle is a process that can be accessed by the Child, Youth or Family to help deal with child protection and prevention challenges they may be facing. This process is meant to serve as an alternative to dealing with challenges through the Court process. A Family Sharing Circle is intended as a voluntary and inclusive process where the Family works together to solve issues and make a

plan to address the required care and support for the Child. The basic steps include, but are not limited to:

- (a) The Family works with the Family Sharing Circle Coordinator to decide who participates, and where and when the circle should take place. The Child's participation will also be determined and whether the Child should attend. The Family Sharing Circle Coordinator then arranges for the circle to occur;
- (b) At the circle, the Family Sharing Circle Coordinator makes sure everyone knows one another, and all are comfortable and understands the process, what is happening and the available supports. Participation is voluntary and not mandatory. Everything discussed at the circle is confidential, allowing participants to freely speak.
- (c) The Family then has private time to discuss and work out a plan for the future. The Family Sharing Circle Coordinator will be available in close proximity to assist if required. The Family Sharing Circle Coordinator shall collaborate with the Family to develop a case plan based on the discussion within the circle.
- (d) The participants will assist in helping the Child understand the plan, and that the Child will have had an opportunity to say on what the Child wants. The plan will also be reviewed by the Agency taking into consideration the Best Interests of the Child.
- (e) The First Nation will develop regulations and policy to reflect the Family Sharing Circle principles for implementation.

Community Circle of Care

9.13 The Community Circle of Care is another process that can be accessed by the Child, Youth or Family to help deal with child protection and prevention challenges they may be facing. This process is meant to serve as an alternative to dealing with challenges through the Court process.

- (a) The Community Circle of Care provides care coordination for community-based services and supports to the Child, Youth and Family which require Child and Family Services where such services can be provided by the Agency as well as other services that can be provided from other departments and collaterals within Peguis First Nation.
- (b) An Elders Council will be established to serve as the coordinating body that ensures that those departments, collaterals and the Agency have proper referrals to initiate the Community Circle of Care.

- (c) If the Child, Youth or Family volunteer to participate in the Community Circle of Care, the Elders Council will provide orientation and guidance for the process to assist in coming to a care plan for the Child, Youth or Family.
- (d) The Elders Council will collaborate with the Agency, departments and collaterals on policy that steers the Community Circle of Care.
- (e) The Community Circle of Care will meet to discuss the challenges facing the Child, Youth or Family with those impacted by the challenges and will collaboratively come up with a service plan to assist the Child, Youth or Family to overcome the challenges without having the need to utilize the Court process.
- (f) The Elders Council and the Agency shall review the service plan to ensure its implementation and is in line with the Best Interests of the Child.
- (g) The First Nation will develop regulations and policy to reflect the Community Circle of Care principles for implementation.

10 NOTICE OF LEGISLATIVE AUTHORITY AND COORDINATION AGREEMENT

10.1 The First Nation has inherent and legislative authority to create, amend and enact this Act and any regulations required,

(a) When the Peguis First Nation intends to exercise its legislative authority in relation to Child and Family Services, the First Nation shall give notice of that intent to Canada and Manitoba;

(b) The Peguis First Nation may also request that Canada and Manitoba enter into a Coordination Agreement with the First Nation in relation to the exercise of the First Nation's legislative authority, respecting, among others,

(i) the provision of emergency services to ensure the safety, security and well-being of children;

(ii) support measures to enable children to exercise their rights effectively;

(iii) fiscal arrangements, relating to the provision of Child and Family Services, that are sustainable, predictable, needs-based and consistent with the principles of substantive equality in order to secure long-term positive outcomes for Peguis children, families and the First Nation, and to support the capacity of the Peguis First Nation to exercise its legislative authority with maximum effectiveness; and

- (iv) Any other coordination measure related to the effective exercise of the Peguis First Nation legislative authority.

11 CUSTOMARY ACCEPTANCE

- 11.1 This Act provides for the Peguis First Nation to allow legal guardianship by way of customary acceptance with the consent of the Elder's Council,
- (a) A Child who is a permanent or temporary ward of the Agency may be accepted into a Family in accordance with the customary acceptance practices of the First Nation;
 - (b) Such a customary acceptance terminates any other Order, agreement or rights with respect to the Child;
 - (c) An Acceptance Commission shall be established and comprised of Elders, among other people;
 - (d) The Acceptance Commission shall issue certificates which confirm the Customary Acceptance application submitted to the Acceptance Commission;
 - (e) The certificate issued by the Acceptance Commission shall have the effect of an order of a court of competent jurisdiction in Manitoba and such certificate is to be recognized in every Canadian jurisdiction; and
 - (f) The First Nation may develop regulations and policy to reflect the customary acceptance principles for implementation.

12 FINANCIAL ASSISTANCE FOR A CHILD OR YOUTH FORMERLY IN CARE OF THE AGENCY

- 12.1 The Act allows for consideration of Extension of Services under the following circumstances,
- (a) The Agency may provide Child and Family Services, at the Agency's discretion, in respect of a Child who was in a guardianship relationship with the Agency, but is no longer in care of the Agency;
 - (b) If a Youth who was at one time in a guardianship relationship with the Agency, the Agency may enter into an agreement or an Extension of Services with a Youth to provide financial assistance with the transition to adulthood until the Youth reaches the age of 26; and
 - (c) The Agency or Youth may terminate the Extension of Services agreement at any time at each party's discretion.

13 GENERAL

Delegation from the Agency

- 13.1 (a) The Agency may delegate any power, duty or function of the Agency under this Act to any of the following:
- (i) A person employed by the Agency or engaged in the administration of this Act;
 - (ii) a person who is providing care to a Child in respect of that Child; or
 - (iii) any other person at the Agency's discretion.

Delegation to the Executive Director

- 13.2 The Executive Director is authorized to receive any authority delegated to an official by any government or child welfare authority relating to a Child who is under the guardianship of that government or authority.

Protection from Liability

- 13.3 (a) Subject to subsection (b), no action lies or may be commenced or maintained against any individual, the Agency, or Council in respect of anything done or omitted to be done in the exercise or intended exercise of any power under this Act or in the performance or intended performance of any duty or function under this Act.
- (b) Subsection (a) does not apply in relation to anything done or omitted to be done in bad faith.

Computation of Time

- 13.4 (a) If in this Act the time limited for doing the matter expires or falls on a holiday, it may be done on the next day that is not a holiday.
- (b) If in this Act the time limited for the doing of an act, expires or falls on a day which the Agency is not open for business, it may be addressed on the following business day when the Agency is open.

Regulations

- 13.5 For the purposes of carrying out this Act according to its intent, the Council may make regulations prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations and respecting any other matter or thing that the Council considers necessary to carry out the purposes of this Act.

14 REVIEW AND AMENDMENT OF THE ACT

Process of Amendment and Review

- 14.1 (a) this Act shall be amended firstly, by review and approval of the amendments by the Board; and
- (b) Secondly, by review and approval of the amendments by the Elders Council; and
- (c) Thirdly, by review and approval of the amendments by Council; and
- (d) Lastly, by approval of the Members, 18 years of age and over, at a meeting given with at least 30 days notice of the meeting, either in-person or virtually, to approve such amendments and where at least 200 Members are present to constitute a quorum to consider the amendments to the Act and that a majority of those Members present 18 years of age and older which constitute a quorum and vote by hand in-person, or by roll-call virtually or by another process to be determined, and by majority to approve the amendments, the amendments to the Act then become law.
- (e) Every 5 years after the day on which this Act comes into force, the Peguis First Nation must undertake a review of the provisions and operations of the Act.

Report

- 14.2 The Agency must prepare a report on the 5 year review that sets out their analysis, conclusions and recommendations on the provisions and operation of the Act.

Tabling of Report

- 14.3 The Council must cause the report to be tabled at the next General Band Meeting after the day on which the report was completed.

15 FIRST NATION RESOLUTIONS

- 15.1 (a) The Council may make any Resolution required to facilitate the operation of this Act, but such Resolutions are void if they conflict with any provisions of this Act and are not in the Best Interests of the Child.
- (b) If another First Nation requests the support of the Agency, Council may grant through Resolution such support to that requesting First Nation. The parameters of such support will be determined on a case-by-case basis.

16 CONFIDENTIALITY

- 16.1 (a) In accordance with this Act, the Agency and any person employed or assisting in the administration of this Act, including the Board, may disclose or communicate personal information that comes to the Agency's or Board's attention under this Act as follows:
- (i) to any person or organization, if the disclosure is necessary to plan services for or provide services to the Child or the Child's Family or to plan or provide for the day-to-day care or education of the Child;
 - (ii) to the Parents, Family or Care Provider of the Child to whom the information relates;
 - (iii) to the Child to whom the information relates;
 - (iv) to any person employed in the administration of child protection legislation in another province or treaty territory in Canada;
 - (v) to any person on an emergency basis in order to protect or ensure the safety and well-being of a Child; or
 - (vi) to any person with the written consent of the Agency.
- (b) The Agency or a person acting on behalf of the Agency, may collect and use personal information, including health information, for the purposes of conducting an assessment or an investigation or for providing services under this Act.
- (c) A hospital, medical care facility, Police Service, or other custodian of personal information shall provide personal information to the Agency on request of the Executive Director, as long as it is in the Best Interests of the Child.
- (d) No liability attaches to the Agency or any other person who discloses or communicates information in accordance with this section if the disclosure or communication is made in the administration of this Act or for the protection, safety and well-being of the Child.
- (e) Despite subsection (a), the name of a person who makes a report to the Agency about a Child who may be in need of intervention or apprehension and any information that would identify that person is privileged information of the person making the report and is not admissible in evidence in any action or proceeding or before any inquiry without the consent of the person.

17 COMING INTO FORCE

- 17.1 The provisions of this Act come into force on a date to be fixed by Coordination Agreement.
- 17.2 In the alternative, if the First Nation, Canada and Manitoba have, in good faith, attempted to negotiate and conclude a Coordination Agreement, but twelve months of negotiation have elapsed without the completion of an agreement, then the First Nation may then declare by Resolution, that the Act is in force.
- 17.3 If the First Nation declares by Resolution that the Act is in force, then Canada is obligated to pay all operating and child maintenance costs of the Agency as determined by the Agency.

18 TRANSITIONAL

- 18.1 Upon the coming into force of this Act, subject to the terms of any applicable Coordination Agreement,
- (a) The current status of a Child in the care of another jurisdiction beyond Manitoba continues; but
 - (b) The Agency must be consulted before any further decisions are made with respect to the Child.
- 18.2 The First Nation will assume jurisdiction of intake services, child abuse investigations, after hours services and early intervention services for Members who reside off and on reserve within Manitoba. The provision of these services shall become the responsibility of the Agency. Any Indigenous Agency and Non-Indigenous Agency who receives an intake involving any Child, Youth or Family shall forthwith inform the Agency so that the Agency can begin to provide required services to the Child, Youth or Family as the case may be.
- 18.3 Culturally appropriate assessment tools shall be phased in which will take into account the Residential School legacy and in the Agency's decision-making process for providing services to the Child, Youth and Family.