



Review of the
Children and Young People
(Safety) Act 2017

Report

February 2023

Building the South Australian
child protection system for the future



Government of South Australia
Department for Child Protection

Acknowledgement of Country

Aboriginal people have made and continue to make a unique and irreplaceable contribution to the state of South Australia.

The South Australian Government acknowledges and respects Aboriginal people as the state's First People and Nations, and recognises Aboriginal people as Traditional Owners and occupants of South Australian Land and Waters.

The South Australian Government acknowledges that the spiritual, social, cultural and economic practices of Aboriginal people come from their Traditional Lands and Waters, and that Aboriginal people maintain cultural and heritage beliefs, languages and laws which are of ongoing importance today.

We acknowledge that Aboriginal peoples have endured past injustice and dispossession of their traditional lands and waters.

Note regarding language: This report uses the term 'Aboriginal' to refer to people who identify as Aboriginal, Torres Strait Islander, or both Aboriginal and Torres Strait Islander.



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About this report

This report outlines the findings of the scheduled review of the *Children and Young People (Safety) Act 2017* (the CYPS Act). It has been prepared for the Minister for Child Protection, the Hon Katrine Hildyard, as required by section 169 of the Act.

Legislative reviews, like this one, provide an opportunity to reflect on the current law, consider how effectively it is delivering on its objectives and if it continues to meet community expectations.

The report summarises the key themes arising from the review and across the extensive public consultation process, through which over 900 Aboriginal and non-Aboriginal people engaged from across South Australia. A range of opportunities and forums were provided for people to share their experiences of the CYPS Act and to provide comment on what is working well, and what they would like the government to consider improving in the legislation.

South Australia's child protection legislation

The CYPS Act is the primary instrument by which South Australia's Parliament has established the key directions and settings for the child protection system in South Australia, including the powers and functions of the relevant Minister and Chief Executive.

In 2018, the CYPS Act commenced in two parts to provide a new legislative framework for the child protection system in South Australia. The new legislation formed part of the State Government's response to recommendations made by the Child Protection Systems Royal Commission and key coronial recommendations.

The CYPS Act provides for the protection of children and young people from abuse and harm and enables the provision of care for children and young people in South Australia, when living at home is no longer a safe option. It describes the role of the Minister as extending to the well-being of children and young people and early intervention where they may be a risk of harm, including a range of specific functions in this regard.

When first established, the CYPS Act was described as introducing a child-focused legislative framework with a greater emphasis on safety. It was intended to enable multiple agencies to respond to screened-in notifications through dedicated pathways and sought to increase the participation of families and carers, while ensuring children and young people were at the centre of decision-making.

The review

Section 169 of the CYPS Act requires the Minister for Child Protection to initiate a review of the operation of the CYPS Act following the fourth anniversary of the commencement of the Act. A report on the review must be submitted to the Minister before the fifth anniversary of the commencement of the CYPS Act. The Minister is then required to table the report in Parliament.

The review approach

On 5 September 2022, the Minister announced the government was commencing the review of the CYPS Act.

This review was undertaken by a team within the Department for Child Protection (DCP), and engaged an independent Aboriginal facilitator and non-Aboriginal facilitator to support the consultation process.

The review has considered the operation of the CYPS Act through:

- Seeking feedback from stakeholders including children, young people and family members with experience of the child protection system, foster and kinship carers, people who work within, and interact with, the child protection system, non-government and government partners, the legal profession, peak bodies and the oversight bodies.
- Undertaking targeted consultation with Aboriginal people including community members, leaders and representatives from Aboriginal organisations.
- Responding to specific policy issues, as identified by stakeholders in previous submissions about the CYPS Act since it commenced in 2018.
- Considering best practice evidence, including exemplars from other jurisdictions.

The review has also taken into account relevant findings from:

- the external review of all coronial and other recommendations relating to child protection in South Australia, led by Ms Kate Alexander.
- the review into the multiple government agencies involved with the families of two children who died, led by former South Australian Police Commissioner Mr Malcolm Hyde AO.
- the Inquiry into Foster and Kinship Care, led by Dr Fiona Arney.
- other historical reviews, including the Child Protection Systems Royal Commission and the Royal Commission into Institutional Responses to Child Sexual Abuse.

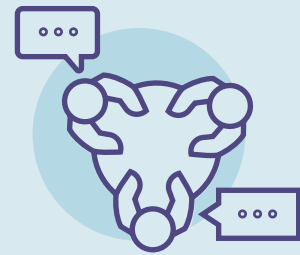
The findings and recommendations relevant to the CYPS Act, within the first three of the reviews mentioned above, are included in Appendix 1. The review has considered these to the extent appropriate, acknowledging the government will consider these in the context of the broader suite of recommendations.

The review also notes the Inquiry of the Commissioner for Aboriginal Children and Young People into the application of the Aboriginal Child Placement Principle is ongoing. The final report had not been completed at the time of this review, however the Commissioner has made submissions and will be closely consulted on any future amendments.

900

people engaged
with the review

8 metro +
8 regional
forums



Over
300



people registered
to attend

83



written
responses

102



survey
responses

Our consultation

On 5 September 2022, the government published details of the CYPs Act Review on the government's online consultation hub — yoursay.sa.gov.au. This included a Discussion Paper to support stakeholder feedback, an online survey and a dedicated email address to receive written submissions.

The Discussion Paper highlighted some key themes for consideration:

- embedding the Aboriginal Child Placement Principle to the standard of active efforts and enabling self-determination for Aboriginal people
- getting the settings right, including principles to guide decision-making, thresholds for reporting and responding to risks to children's safety
- keeping children at the centre, supporting their participation, timely decision-making and enabling access to supports and services
- supporting the department's non-government partners and its valued foster and kinship carers.

The review team held public consultation sessions between 19 September and 22 November 2022. DCP advertised sessions on YourSAy, Eventbrite, Facebook, Twitter, LinkedIn, regional newspapers, the Partner and Caring Together newsletters and directly to partner agencies and government departments. Acknowledging the criticality of ensuring Aboriginal voices were central to this review, targeted consultation sessions with Aboriginal community members, leaders and representatives from Aboriginal organisations were convened.



Over 300 people registered to attend one of the following 16 sessions:

- 4 general sessions in metropolitan and greater metropolitan locations
- 4 sessions targeted to Aboriginal stakeholders in metropolitan and greater metropolitan locations
- 5 general sessions in regional South Australia including Berri, Port Pirie, Port Lincoln, Whyalla and Mount Gambier
- 3 sessions targeted to Aboriginal stakeholders in regional South Australia including Ceduna, Port Augusta and Mount Gambier.

Interested stakeholders were invited to make written submissions to the review between 5 September and 11 November 2022. The review team received 83 written submissions, including:

- 6 from government agencies
- 13 from non-government organisations
- 9 from carers
- 9 from oversight and peak bodies
- 7 from the legal profession
- 39 from others, including the general public.

The online survey received 102 responses, including:

- 22 from the child protection sector
- 19 from the non-government sector and service providers
- 30 from carers
- 15 from people with lived experience of the child protection system
- 6 academics
- 29 from the general public and others¹.

¹ Total is greater than 102, as respondents to the survey were able to select multiple options that best represented their experience.

The review team was keen to ensure children and young people's voices were included in the consultation and that we privileged their ideas about improving the child protection legislation. CREATE Foundation was engaged to provide a submission reflecting the voices of children and young people in care and who have transitioned from care. The Guardian for Children and Young People, Commissioner for Children and Young People and Commissioner for Aboriginal Children and Young People each provided a submission.

The Commissioner for Children and Young People also provided a separate submission, informed by a series of conversations held with 88 children and young people aged between 3 and 25 years old, all with diverse care experiences. Additionally, the Commissioner received 40 postcards from children and young people sharing their experiences of being in care, and these were also reflected in the submission.

Alongside the review's targeted consultations and engagement with approximately 150 Aboriginal people and stakeholders, DCP has partnered with the South Australian Aboriginal Community Controlled Organisation Network (SAACCON) to consider how best to embed the Aboriginal Child Placement Principle to the standard of active efforts within the South Australian legislative framework. The review team gratefully acknowledges the time, feedback and cultural authority generously shared by the SAACCON members and other Aboriginal partners including the Commissioner for Aboriginal Children and Young People and SNAICC. DCP is committed to continue to work with SAACCON, the Commissioner for Aboriginal Children and Young People, SNAICC and other Aboriginal partners on the drafting of any related amendments following this review.

Child and Family Focus SA (CAFFSA) was engaged to provide a submission as the peak body and industry association for non-government and not-for-profit organisations representing the needs of South Australian children, young people and families. As part of its submission, CAFFSA indicated it consulted its Board of Directors, Policy and Advocacy Advisory Committee, service provider and special interest networks and broader membership, with over 100 people from more than 30 agencies and offices contributing.

In addition, members of the review team met directly with:

- No Capes for Change – a peak body of young people with a care experience
- Guardian for Children and Young People
- Commissioner for Children and Young People
- Commissioner for Aboriginal Children and Young People
- Out of Home Care Heads of Industry
- Aboriginal Health Council of South Australia
- members of the Karen Fitzgerald Foundation.

Recognising the significant child protection expertise that sits within DCP, the review team attended five state-wide staff forums to collect specific input about what works well and what could be improved in the legislation from the 190 attendees.

We thank all the organisations and individuals who have engaged with the review by attending a consultation session, speaking with the review team, making a submission or completing the survey. Many people provided detailed responses, generously sharing their personal insights and experiences of the child protection system. We acknowledge the time and effort taken in making these submissions and the commitment to children and young people that has driven these submissions.



Review findings

This section outlines what the review team heard through the consultation about key considerations and options to improve South Australia's child protection legislation.

We have sought to identify the broad emerging themes from the consultation about the legislation. While not every proposal and idea can be reflected in a report of this nature, the review team has considered each of the ideas, suggestions and recommendations made to the review. Themes outside the scope of this review, including those best addressed through policy, practice guidance or other approaches, have been referred to the department for consideration.



Principles for Aboriginal children, young people and families

All Australian jurisdictions have agreed to embed the Aboriginal and Torres Strait Islander Child Placement Principle in legislation to the standard of active efforts. Embedding the Child Placement Principle is widely recognised as a critical element of achieving the shared goal of reducing the over-representation of Aboriginal children and young people in care. This includes the full articulation of the five elements within the Child Placement Principle – prevention, partnership, placement, participation and connection. Jurisdictions, including South Australia, have also agreed to pursue amendments that recognise the right of Aboriginal people to self-determination in child protection decision-making and to enable the progressive delegation of legislative authority to Aboriginal people and/or organisations.

“[This is an opportunity for] changing the narrative of the Act to value Aboriginal people and culture”

– Port Augusta targeted consultation session with Aboriginal stakeholders

In South Australia’s implementation plan for Target 12 under the National Agreement on Closing the Gap, the government has articulated its commitment to work with Aboriginal stakeholders to design these amendments. In particular, government has committed to partner with the South Australian Aboriginal Community Controlled Organisation Network (SAACCON) in leading this work. To support this, the review has paid particular attention to the submissions made by the Commissioner for Aboriginal Children and Young People, SNAICC – National Voice for Our Children and SNAICC’s documented recommendations for best practice².

The review team acknowledge the cultural authority of the many Aboriginal people and Aboriginal stakeholders who have contributed to this work so far. We recognise the importance of privileging Aboriginal voices and leadership in future discussions about the detail of legislative change, including continuing engagement with SAACCON and the Commissioner for Aboriginal Children and Young People.

² SNAICC, *The Aboriginal and Torres Strait Islander Child Placement Principle: A guide to support implementation*, 2018

Embedding the Aboriginal Child Placement Principle to the standard of active efforts

As part of this review, we asked people for their views on the importance of embedding the Aboriginal Child Placement Principle in the legislation to the standard of active efforts.

- The majority of stakeholders indicated an exceptionally high level of support for embedding the Principle, including all five elements, to the standard of active efforts within the legislation.
- The significant majority of respondents supported changing the legislation to reflect the Child Placement Principle as the paramount consideration – aside from safety – in all decision-making for Aboriginal children.
- A small number of stakeholders suggested that the name of the Aboriginal Child Placement Principle should change to make sure everyone understood it was more than a ‘placement hierarchy’.

Aboriginal stakeholders, advocates, non-government organisations (NGOs) and respondents across the consultation suggested ways the legislation could help demonstrate a commitment to active efforts for Aboriginal children and young people.

SNAICC describe active efforts as “thorough, timely and purposeful efforts that aim to ensure an Aboriginal and Torres Strait Islander children’s connection to family, community, culture and Country is maintained at every stage of a child’s engagement with child protection services.”

We asked what this might look like in legislation and whether people thought all government agencies should be required to make active efforts to support Aboriginal children and young people.

- We heard a number of suggestions about how to include active efforts in the legislation. People told us it was important to include an overarching definition and commitment to active efforts, as well as requiring specific actions to demonstrate active efforts.
- We also received feedback in support of making clear that the requirement to make ‘active efforts’ extended to prevent children entering care through the provision of intensive family supports, family group conferencing, cultural plans and investment in Aboriginal-led service delivery and Aboriginal family-led decision-making.
- There was strong support for a requirement for active efforts to be made by all relevant government agencies, particularly including health, human services, education, and housing.
“[...] anyone who undertakes functions under the Act, whether that be government agencies or funded services, [should] show that active, thorough and timely efforts have been made to apply the Child Placement Principle.” – Government agency
- Many people wanted to see accountability for active efforts built into the legislation. Suggestions included regular reporting on efforts and requiring the department to provide documentation to the court to detail the active efforts taken before a long-term order could be made.

Interstate example

The NSW Parliament passed the Children and Young Persons (Care and Protection) Amendment (Family is Culture) Bill 2022 in November 2022, which embeds all elements of the Principle and a requirement to act in accordance with the principle of active efforts. Specific provisions are included to require active efforts to:

- prevent a child from entering out of home care
- restore a child to their parents, or where not in their best interests, to place a child with family, kin or community.

It further requires the government to provide evidence to the court when seeking a guardianship order of all the active steps taken to prevent a child being removed from their family.

The review also took the opportunity to ask if the model of active efforts should be in place for all children and young people.

- The majority of people told us, including the Commissioner for Children and Young People, that this concept should apply to all children at all stages of contact with the child protection system, especially in relation to targeted interventions to prevent children coming into care.

Self-determination

It is well recognised that foundational change is needed to transform the system and improve outcomes for Aboriginal children by ensuring Aboriginal people can exercise self-determination in decision-making for Aboriginal children and families, and in delivering child protection services and supports to Aboriginal children, young people and families.

We asked people to tell us if the legislation should explicitly recognise Aboriginal children and families' right to self-determination and cultural authority.

- There were high levels of support, including from Aboriginal stakeholders, for the legislation to include an explicit recognition of Aboriginal people's right to self-determination.
- Most people were keen for practical actions within the legislation to give effect to this, including many stakeholders who suggested the need to expand the role of recognised Aboriginal organisations to require consultation on all significant decisions about Aboriginal children and young people as well as placement.

"Aboriginal community need to be involved in the design and delivery of programs."
– Port Augusta targeted consultation session with Aboriginal stakeholders

- Stakeholders suggested a range of options to engage an Aboriginal representative based on the individual needs for each child or young person and their community, or embedding formal mechanisms for family and communities to take an active role in case planning and significant decision-making.
- The Commissioner for Aboriginal Children and Young People suggested the role should be expanded to include the assembly of an Aboriginal Family Care Program, constituted of Aboriginal people from the child's community, who are holders of authority in the community by custom and practice or authorised by those who are.

Nearly all government agencies, child protection practitioners, NGO service providers, advocates and peaks told us there is considerable opportunity for more responsive legislation regarding the needs of Aboriginal children, young people and families engaged with the child protection system. It was made clear across the feedback that, as a minimum, including an acknowledgment of Aboriginal people's right to self-determination is an important first step.

Delegation of legislative powers and authority

The review asked people if they supported changes to enable the progressive delegation of legislative authority to recognised Aboriginal entities and to share their ideas about the roles or functions recognised Aboriginal entities could hold under the legislation.

- The majority of stakeholders and people attending community consultations agreed that the legislation should explicitly provide for the progressive delegation of legislative functions to recognised Aboriginal entities.
- People supported the idea that recognised Aboriginal entities should include Aboriginal people and groups as well as Aboriginal Community Controlled Organisations (ACCOs). As a minimum, we heard that the Act should require that the recognised entities are to be decided in consultation with the Aboriginal community.
- Many stakeholders, including particularly Aboriginal stakeholders, shared their apprehension about enabling delegation without concurrent investment in capacity building and proportionate funding for ACCOs. It was widely suggested that specific protections and supports need to be in place for any recognised entity, including staged implementation, requiring consent before a delegation is provided and the option to only exercise certain functions (for example, case management only).

"It is imperative that the Department does not merely delegate legislative authority to ACCOs, transferring the risk without actively supporting ACCOs to design a purpose built system for Aboriginal children coming into contact with the child protection system."
– Aboriginal-led service provider

- Across the consultation forums, Aboriginal people told us how important it was for children and families to have choice about working with an ACCO or Aboriginal entity. We heard that while the legislation should require the department to offer the option of working with an ACCO, it should not require an Aboriginal child or family member to engage with an ACCO.

Interstate example

In Victoria, child protection legislation includes provisions to authorise an Aboriginal agency to provide care, case planning and case management to Aboriginal children on protection orders (under guardianship). The Victorian Parliament is currently considering amendments to expand these provisions to include protective investigation and assessment functions, enabling an Aboriginal entity to respond when a report is first made about an Aboriginal child.

In 2017, the Victorian Aboriginal Child Care Agency (VACCA) commenced their Nugal Program and started to receive delegations for the guardianship of Aboriginal children. The program has since demonstrated positive outcomes and cultural empowerment for Aboriginal children, families and communities. This includes contributing to higher reunification rates of children with their families and greater engagement through practice that is viewed as more culturally appropriate, trauma-informed, timely and responsive to Aboriginal children and their family's needs.

Importantly, the government has already committed to pursue legislative changes to ensure Aboriginal people, including ACCOs, can be delegated the powers and functions established in the child protection legislation and exercise that authority in relation to the safety and wellbeing of Aboriginal children and young people. The review notes that the Queensland and Victorian legislation were regularly identified as providing useful examples for this framework. Further Aboriginal-led conversations are critical to getting the detail right.

Family-led decision-making

We asked how the legislation could ensure the voice of Aboriginal children, young people and families are heard and acted upon, and if the model of Aboriginal family-led decision-making (AFLDM) should be embedded in the legislation.

- **We received consistently positive feedback about embedding AFLDM in the legislation and requiring active efforts to apply to this model for all significant decisions relating to Aboriginal children and young people.**
- It was noted by the review that AFLDM can be informal or highly structured, depending on what might best support each family to lead decision-making. There was a range of suggestions about how the legislation might embed AFLDM.
- A small number of stakeholders said it was important to be clear that AFLDM included, but was not limited to, family group conferencing.
- In discussing this, stakeholders suggested a number of best practice principles, including that AFLDM should:
 - › be facilitated by an ACCO or independent Aboriginal person
 - › provide for an ACCO representative to attend for the purposes of providing family support
 - › seek to involve wider family and kinship networks.
- Child protection practitioners specifically told the review they would like to see AFLDM embedded as a clearly defined approach to support how they work with Aboriginal families. Other stakeholders told us it was important that the detail of this approach sits in policy and practice guidance to enable flexibility and responsiveness to the individual needs of each family.

“We need to have Aboriginal people leading decisions for Aboriginal children and young people to make a difference in the over-representation for better outcomes.”

– Murray Bridge targeted consultation session with Aboriginal stakeholders

As a minimum, the review heard that embedding a commitment to AFLDM within the legislation is a critical element of embedding the Child Placement Principle and recognising the right of Aboriginal children, young people and families to self-determination across child protection engagement.

Family group conferencing

The CYPS Act includes provisions to offer a family group conference (FGC) as a way for a child or young person and members of their family and community to make arrangements for the care of their child or young person. We asked if the legislation should reflect a stronger obligation for an offer of, and access to, FGC for all Aboriginal families at the earliest opportunity following contact with the child protection system.

- **The majority of stakeholders**, including the Commissioner for Aboriginal Children and Young People, the Commissioner for Children and Young People, SNAICC, CAFFSA and SACOSS, **agreed the legislation should enable Aboriginal families to access FGC at the earliest opportunity.**
- Many people told us that the offer of FGC should be mandatory, rather than at the discretion of the delegate, but that people should have choice about whether they access this support. We also heard that FGC should go ahead even if a biological parent is unwilling to participate.
- For Aboriginal children, we heard how important it is to use a broad cultural definition of Aboriginal families and kinship when deciding who should attend the FGC.

“This is what I know to be true: the Aboriginal people that are best equipped to make decisions that cement connection to family, community and culture into the Aboriginal child’s life are the child’s Aboriginal family and community.”

– Commissioner for Aboriginal Children and Young People

The review also took the opportunity to ask whether expanding the requirements for FGC should extend to non-Aboriginal families. A number of submissions were received indicating support for all families to be able to access FGC where a child’s safety is at risk and prior to entering care.

“To enshrine the right for all families to engage in Family Group Conferencing where consideration is being given to child removal is perhaps one of the single most important reforms that could be introduced to reduce the number of child removals and maintain children living safely at home.” – Non-government organisation

In considering any future changes to the legislation, and building on the considerable support across all stakeholder groups for expanding the requirement for FGC, the review notes the evidence that FGC has delivered positive outcomes in South Australia and interstate, for both Aboriginal and non-Aboriginal families.

Of further note, Kate Alexander reiterated calls for more investment in FGC in her 2022 report. Specifically, Alexander proposed that the legislation make FGC mandatory for all families where Aboriginal children are assessed as being unsafe, and that this be a requirement before seeking a court order to place a child in care³.

³ Kate Alexander, *Trust in culture: A review of child protection in South Australia*, November 2022, page 21.



Getting the settings right

Priorities and principles to guide decision-making

Guiding principles for the purposes of the Act are included in Chapter 2, providing for a paramount focus on ensuring that children and young people are protected from harm. In addition to safety as a paramount consideration, section 8 of the Act lists additional needs of children and young people that are to be considered.

Key statements made by the Parliament of South Australia are also included to recognise and acknowledge children and young people as valued citizens, along with a range of outcomes the Parliament commit to promoting.

We asked for people's views on the principles that should be in place to guide decision-making and whether the legislation should include a requirement to consider a child's best interests, while retaining safety as the paramount consideration.

- **A broad range of stakeholders told us that this review was an opportunity to revisit the principles in place in the legislation** with support for a focus on the following themes – safety, best interests, children at the centre of decision-making wellbeing, the Aboriginal Child Placement Principle, whole-of-government and community responsibility for children, and supporting families to stay safely together.
- Acknowledging the range of views across the consultation, many told the review it was important to maintain safety as the paramount consideration in the Act.
- **There was overwhelming support across the majority of stakeholders to include the best interests of a child as a key principle to consider in decision-making about children and young people.** This included support from the Commissioner for Aboriginal Children and Young People, the Guardian for Children and Young People, CREATE and key peaks. A number of submissions said the Act should be specific about what it means to consider a child's best interests, including providing support for children to remain safely within their family and community.
- In considering the Principles, many people proposed the Act include reference to the United Nations Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples, particularly the right to self-determination. Others suggested the Act reference particular rights of children, like a child's right to enjoy culture with their community, the right to maintain contact with siblings and friends as part of contact arrangements, and the right to meaningful and genuine engagement in decision-making processes.

“Protecting children and young people from harm is not an adequate ambition for our child protection system or community. While safety is important, the objectives of any amendment of the current Act or a new Act must set higher aspirations and ensure that processes, assessments and decisions are based on a holistic view of a child’s best interests, incorporating their wellbeing, voice, relationships, safety and circumstances.”

– Commissioner for Children and Young People

- The review heard some suggestions that, amongst the Principles, the Act should include recognition of the harm that inevitably arises when a child is removed from family, and specifically for Aboriginal children, the cultural harm this causes.
- As referenced above, the significant majority of respondents supported changing the legislation to embed the Aboriginal Child Placement Principle as the paramount consideration – aside from safety – in all decision-making for Aboriginal children.

Responsibility for children and young people

The CYPs Act guides child protection responses from the point of a notification that a child is at risk of harm from abuse and/or neglect, and with provisions for investigations and assessment, and children in care. The Act does include broad additional functions for the Minister for Child Protection in relation to early intervention for children and young people where they may be at risk of harm. However, unlike in some comparable jurisdictions, the Act does not extend to acknowledging the role that broader social determinants have in making it more likely that a child will experience abuse or neglect or outlining the responsibility of government to address these as part of its child protection response.

The Productivity Commission describes a public health approach to protecting children as a focus on preventing child abuse and neglect from occurring in the first place by addressing underlying risk factors that increase the likelihood that a child will experience abuse or neglect, or where problems do occur, to intervene as early as possible to minimise harm⁴.

The review asked whether adopting a public health approach to child protection could be an effective framework to address the safety and wellbeing of children and how legislation could support this.

- **The significant majority of stakeholders indicated strong support for applying a public health framework to child protection** and most stakeholders agreed that this should be embedded in legislation.
- As a minimum, the review heard this could be included as a key principle or set of principles to which the government is committed, while others suggested it should extend to specific requirements for the provision of support and accountability mechanisms.

“A public health model emphasises the need for universal and targeted services that reduce the need for statutory intervention.” – Non-government organisation

- Many submissions recognised the importance of drawing attention to the value of primary and secondary responses in providing support to vulnerable families and children. Across community and targeted consultation forums, a great number of people spoke about the need to recognise non-tertiary responses as part of the solution to keeping children and young people safe.
- Some people also suggested a change in the title of the legislation to reflect — variously — families, safety, support and wellbeing.

⁴ Productivity Commission, *Enabling the public health approach to protecting children*, December 2021.

“A more balanced and effective child protection system would have primary intervention as the largest component of the service system, with secondary and tertiary services as progressively smaller components of the service system.”

– Peak body

Since the CYPs Act was introduced, the system has continued to see increasing numbers of children and families requiring a response following a child protection notification and, within these families, increasing complexity and need. At the same time, through the work of the Early Intervention Research Directorate, we have significantly improved our understanding of the families reported to child protection and of what works to support these families.

Relevantly, this work provided the government with critical learnings about the system, the level and complexity of need in the community, and evidence about which supports might work to support families engaged with child protection. In particular, traditional notions of what works and the concept of ‘early intervention’ in the context of this newly understood complexity, were quickly dispelled. It became clear that the significant majority of families engaged with the child protection system, including Aboriginal families, require intensive, therapeutic interventions and supports, delivered by skilled practitioners as part of a connected continuum of care, if we are to keep children and young people safely at home.

In this context, and in discussing what the public health approach might look like, we asked people to tell us if the legislation should set out the roles and responsibilities of relevant government and non-government agencies who contribute to child safety. We also inquired about whether the legislation should explicitly require the government to fund therapeutic interventions to support families where the safety of their children is an identified issue.

- **The majority of stakeholders agreed that, as part of a public health approach, the legislation should set out the roles and responsibilities of relevant government and non-government agencies for all children’s safety.**
- In addition, many stakeholders suggested the legislation should make key government agencies accountable for providing priority access to services to vulnerable children and their families to keep them safe in the community.
- **A significant majority of people supported introducing an explicit legislative requirement for government to fund therapeutic interventions for children at risk**, with some suggesting the Chief Executive should be able to direct other agencies to implement targeted intervention strategies.
- The review also heard strong support for the inclusion of provisions in the Act for families to receive targeted, intensive therapeutic support to address underlying risk factors including poverty, mental illness, domestic and family violence and drug and alcohol misuse.

“The Act positions the role of the State to assess and screen and intervene around risk, which is largely a reactive role, rather than outlining requirements to identify families and children needing support and strengthening their circumstances, wellbeing and relationships.”

– Non-government organisation

The review notes that the need for legislation to acknowledge the role and responsibility of the broader child protection system in keeping children safe, along with the need to require government investment in therapeutic interventions targeted to support families whose children are identified as at risk, was one of the most common themes emerging across the consultation. In addition, the review identified that the majority of Australian jurisdictions have their intensive family support services and child protection investigatory responses in the same statutory framework.

Thresholds for reporting

The CYPS Act requires a wide range of employees and volunteers who work with children to notify DCP if they suspect that a child is, or is at risk of, being abused or neglected. Over 80,000 notifications were received in 2021-22. Of these, over 34,700 of the notifications were screened-in for a child protection response.

As part of the review, we asked for feedback on whether South Australia has the right legal thresholds in place in the legislation. In particular, we sought people's views about changing the notification threshold, for example, to focus on children and young people at imminent risk of significant harm.

- Only a minority of respondents felt South Australia has the right legal threshold in place. The review heard different views about what is the right threshold to make sure we can best keep children safe from harm.
- **A majority of stakeholders indicated the threshold should be higher**, with moderate support for a focus on 'significant harm'. The review notes, increasing the threshold would also be consistent with the recommendation of Malcolm Hyde⁵.
- Many stakeholders agreed a threshold of 'at risk of significant harm' would create consistency with interstate models (for example, New South Wales, the Northern Territory, Queensland and Victoria) and enable a focus on those children most at risk.
- A small number of stakeholders raised concerns that lifting the threshold to significant harm may limit service referral pathways for vulnerable families. Others expressed concern that narrowing the threshold to 'imminent risk' would impact on the department's ability to collect information on a child experiencing cumulative harm.

In addition to this feedback, many stakeholders suggested that the legislation could provide greater clarity about interpreting risk and harm, and in considering cumulative harm. Many saw the review as an opportunity to reconsider the definitions in the Act and introduce a definition of cumulative harm.

⁵ Malcolm Hyde, *Summary of Recommendations of the Independent Report of the Review of Child Deaths at Munno Para and Craigmare*, November 2022, page 2.

Responding to concerns about a child at risk

Across Australia, there are many different models of mandatory reporting in place. Some jurisdictions only require a few professions to report and others provide exemptions to reporting requirements in particular circumstances, including where a service is actively working with a family and there is no escalation in child protection risk.

As part of this review, we asked people to share their views on changes or exemptions to the mandatory reporting requirements or alternative ways a notifier could discharge their obligation to report. We also asked people how South Australia could more effectively access the capabilities of other government and non-government service providers to support more families, with a screened-in notification for their child, to stay safely together.

- Stakeholders told the review that the legislation should place a greater responsibility on mandated notifiers to discuss concerns with the family first and, where appropriate, respond and support the family to manage the concerns and mitigate risk.

“There seems to be a general view that once a matter has been identified as relating to child protection, the mandated notifier’s role has finished once they make the notification and all responsibility for following the matter up then rests with DCP.”

– Government agency

- The feedback re-enforced the support for embedding the public health approach across the legislation, and enabling the whole of government, the child protection sector and the community to recognise their roles in keeping children safe and where appropriate, take action to effectively intervene.
- A few individuals shared their concern about having the confidence and skills to navigate this safely, and about maintaining a working relationship with family members. They did not want the legislation to mandate them to respond first.
- While there was limited support for a broad exemption, many stakeholders, including service providers, suggested that a person should not need to continue to make reports where a child is already subject to a notification and where providers are actively providing services to the family to address the safety risk.
- Some stakeholders said that the legislation should require agencies who receive a formal referral under the Act to be obliged to provide a support response.



Children at the centre

Participation

The CYPS Act seeks to place children and young people at the centre of decision-making, with a firm focus on their safety and individual needs, while also supporting their participation across all aspects of their case planning, placement decisions and transition planning for adult life.

As part of the review, we asked people to tell us if the legislation should be clear that children and young people are at the centre of everything we do. We also asked how the legislation could better support all children to express their views and wishes, and uphold their right to participate in important decisions affecting them, including in court settings.

- **The significant majority of respondents agreed that children and young people should be at the centre of child protection decision-making and that the legislation should make this clear both as a key principle and in practice.**
- People told us that this should be clearly demonstrated in the Act by making sure there is a focus on the individual needs of the child, on timely decision-making, and in acknowledging a child's right to actively participate in decisions that affect them.
- Stakeholders made a range of suggestions about how the legislation can better support children of all ages to express their views.
- Young people told us they wanted support to participate in reviewing their case plans, and to be empowered to make decisions and have a say. One young person shared how important this is in supporting children to grow up knowing how to advocate for themselves as adults.
- We heard that while participation in decision-making is included in the Charter of Rights for Children and Young People in Care⁶, some stakeholders are concerned that the legislation does not explicitly require anyone to give children information about the Charter.
- CREATE put forward the idea of enshrining best practice principles to guide children and young people's active participation and for these principles to be co-designed with young people. This idea received positive support across a number of other submissions.
- The majority of stakeholders agreed that the Aboriginal Child Placement Principle should guide Aboriginal children and young people's participation.

⁶ Office of the Guardian for Children and Young People, *Charter of Rights for Children and Young People in Care*, available at <https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2021/04/Charter-of-Rights-FULL.pdf>

“When children talk about being safe, they talk about feeling valued, known, heard and understood, and about stable relationships with people who are kind and who they can trust.” – Commissioner for Aboriginal Children and Young People

“I wish I knew who was in the room when I was younger, why they were listening to me, what their role was.” – Young person with care experience

“All young people in care should be able to know why they’re in care and should always know their rights.” – Young person with care experience

The review heard that many stakeholders believe there is an opportunity to strengthen the commitment to children and young people participating in decisions affecting them. This includes the ongoing engagement of children and young people in the review itself, and in the finalisation of any changes to the legislation.

The review notes the overwhelming support for maintaining children at the centre of decision-making. By extension, it is suggested that children must also be at the centre of any decisions about changes to the legislation more broadly.

Timely decision-making

Decision-making can be complex in a child protection context. A first principle of intervention in the CYPs Act is that decisions and actions be taken in a timely manner and, particularly in the case of young children, should be made as early as possible to promote permanence and stability.

Timely decision-making is generally considered to be in the interests of the child, though the review acknowledges that what this looks like might change depending on the individual needs and circumstances of the child and their family.

We asked if changes to the legislation could improve the timeliness of child protection decision-making in a way that would support better outcomes for children and young people.

- The importance of timely decision-making, including concerns about the impacts of delays in court processes, came up frequently in the public consultation.
- Some stakeholders suggested the Act needed to make clear the expected timeframes for court processes and orders. We heard specific advocacy for the reintroduction of assessment orders available under the previous Children’s Protection Act, as well as suggestions to limit the number of adjournments.

*“[There needs to be] some parameters to ensure that cases can’t be in court for prolonged periods of time, as this provides unacceptable delays for children in decision-making.”
– Child Protection practitioner*

- A number of key stakeholders told the review that the reverse onus of proof provisions⁷ had created an unintended consequence, whereby parties were cautious to consent to the first court order resulting in considerable delays and a more adversarial process. There was considerable advocacy from key stakeholders to change the provisions, however a number of people said it made sense to maintain them for Long Term Guardianship (Specified Person) orders.

⁷ See section 59 of the CYPs Act.

- Many people, including particularly Aboriginal people, said that the emphasis on timely decision-making and permanency should not limit the ability of a worker to be flexible to respond to the particular needs and circumstances of the individual child and their families.

“Move away from department/service timeframes and be on the family/community-led pathway.” – Murray Bridge targeted consultation session with Aboriginal stakeholders

Ensuring access to supports – Children in care

When a child is placed in care, the state takes on a parental-like role for that child or young person. This is a significant responsibility and it takes a diverse network to support their healthy development and wellbeing. Foster, kinship and residential care carers are critical in providing young people with a place to call home, and with the supports, love and care they need. Many services and supports also need to work together with the child protection department, including the health, disability, housing and education sectors, to assist children to reach their full potential.

We asked people to tell us if the legislation needs strengthening to support children and young people in care to access the services and support they need to heal from trauma and to grow up healthy and happy. We also asked if all children and young people in care should be guaranteed minimum levels of services and supports.

- **Many people told us they wanted the legislation to reflect and invigorate a collective responsibility across all parts of government to meet the needs of children and young people in care.**
- In discussing the opportunities to strengthen the legislation to embed broader sector responsibility, stakeholders put forward international examples, including Scotland and New Zealand, and suggested key Ministerial portfolios should be jointly and directly responsible and accountable for developmental and wellbeing outcomes for children and young people in care.
- **There was strong support for the legislation to require certain levels of service provision for children and young people in care and leaving care,** particularly in areas like health and mental health services including dental care, education, disability and developmental support, and housing.
- Stakeholders consistently shared the view that when bringing a child into care, the responsibility to a child is greater than just keeping them safe – they described wanting the government to demonstrate parental responsibility and aspiration for each child to achieve their full potential.

In considering any future changes to the legislation, the review notes that Dr Fiona Arney also recommended the legislation be amended to recognise and enforce the rights of children and young people in care, including their rights to services and supports upholding these rights⁸.

Overseas example

In Scotland, Corporate Parents are individuals and organisations who have specific legislated duties and responsibilities for children and young people in care or with a care experience up to the age of 26. Corporate Parent responsibilities are intended to encourage people and organisations to do as much as they can towards improving the lives of children and young people. They are also required to report to Scottish Ministers on how they are carrying out their responsibilities, with Ministers then having to report every 3 years.

⁸ Fiona Arney, *Report of the Independent Inquiry into Foster and Kinship Care*, November 2022, page 138.

Ensuring access to supports - Transition to adulthood

The CYPS Act recognises a care leaver as a person who is more than 16 and less than 26 years of age and has, at any stage for a period of six months or more, been under the custody or guardianship of the Chief Executive. Care leavers are currently assisted through the provision of a Post Care Service. In addition, the department offers a program of extending payments to foster or kinship carers who continue to care for young people up to the age of 21, or to 25 if engaged in an education program. A new program supporting young people leaving residential care, known as Next Steps, is also in its first year.

We asked stakeholders to share their thoughts on whether the legislation should be strengthened to ensure young people leaving care can access the services and support they need as they transition to independence.

- We received considerable feedback about the opportunity to improve supports for young people in care as they approach adulthood and explore their independence, including feedback from young people with a care experience. **Many people told us they wanted to see legislative changes to support this.**
- A considerable number of stakeholders recommended extending the age that young people leave care, with suggested ages ranging from 21 to 26 and including options for a 'step-down' approach.

"Just remember, our wings aren't fully developed—so don't push us out and expect us to fly by ourselves." – Young person with care experience

- A significant number of stakeholders told us that when the government takes on the responsibility of becoming a child's guardian, they must be accountable for supporting young people to become healthy, capable and independent young adults. The main support needs identified were independent living skills, housing, navigating Centrelink and financial support, further study and employment, transport, and health services including accessing information related to physical, mental, sexual and dental health.
- Young people also expressed a need for improved support to understand their time in care and with obtaining key records about their history. This was described as being critical to validating their experiences and making sense of who they are.

"They did my transition when I was 17 and a half. Not when I was 15/16. Would not have hurt to plan it out earlier so we could cover more and also plan/change the plan a lot better." – Young person with care experience

Recognising the critical responsibility that the government takes on when children and young people come into care, the review notes that in addition to the proposals outlined above, there is an opportunity for formalising and strengthening the current 'Investing in their future' initiative. One option highlighted for consideration is to establish a legislative framework for children and young people with a care experience to access additional privileges or priority access to key services across government and the community.

Reunification approaches

DCP's framework to consider and plan a child's safe reunification with their family is currently included within policies and practice guidance.

The review asked if a reunification approach should be provided for in the legislation.

- **The majority of stakeholders indicated support for providing for safe reunification in the legislation.** The review heard from stakeholders, including young people, that it was important to make sure that the approach to reunification is flexible to accommodate the particular circumstances of a child or young person and acknowledges that a parent's capacity to provide safe care can shift significantly over a child's lifetime, especially with support.
- The review heard from a range of people, including key Aboriginal stakeholders, who called for the option of reunification to remain open, and for active efforts to support parents to seek reunification at all points of engagement with child protection, including connecting them with culturally safe and sustained support services.
- A small number of people, including the Youth Court and some child protection practitioners, specifically proposed formalising the Reunification Court approach within the CYPS Act. Others suggested that reunification was best considered as part of ongoing case management.
- For Aboriginal children in particular, many people recommended the child's case plan and Annual Review should include a specific section on reunification. We also heard from Aboriginal people that reunification needs broadening to consider opportunities for reunification of a child within their kinship network.

"We believe that whenever it is safe to do so, the best outcome for children and young people is to live with their families. As a result, early intervention, family preservation and reunification should be central to the legislation." – Non-government organisation

The review notes that the current CYPS Act's focus on establishing permanency and stability for children in care is well evidenced with these being foundational to a child's healthy development. While we did receive a lot of feedback about the current process at a policy and practice level, particularly including the need to ensure that the approach to reunification is tailored to the individual needs of the child.



Supporting our partners

Foster and kinship carers

The majority of children and young people in care are in family-based placements with either a foster carer or a kinship carer. In recognition of their critical role, DCP made a Statement of Commitment to carers – that they can expect to be informed, supported, consulted, valued and respected.

Before highlighting the key themes emerging from this consultation, the review notes that in 2022, the Inquiry into Foster and Kinship care commenced, led by Dr Fiona Arney. The Inquiry report has since been published and tabled in Parliament. Following its release, the government committed to a series of immediate actions in response. It also committed to consider implementation of the report's recommendations in consultation with carers, with a series of consultation mechanisms having commenced at the time of the review. We recognise that 149 individual foster and kinship carers made submissions to the Inquiry, and that Connecting Foster and Kinship Carers SA provided a detailed submission to that Inquiry as the independent peak representative body for carers.

The Inquiry report recommends a number of opportunities for changes across policy, practice and legislative reform to improve the way carers are engaged, supported and respected. This includes opportunities relating to complaint and review pathways, care concerns, information sharing, partnership and consultation with carers, rights of children and young people in care and supports for carers including respite and carer payments. Importantly, some recommendations suggest a need for legislative change and these should be considered in conjunction with this report as part of any legislative reform process.

The review also gratefully acknowledges the high level of engagement that carers had with the review of the CYPS Act, with carers in attendance at nearly all of the consultation forums. Along with written submissions and the surveys completed by carers, the review also received a comprehensive submission from Connecting Foster and Kinship Carers SA on behalf of their membership.

This review asked people to tell us about how the legislation could affirm the ‘Statement of Commitment’ and support its practical application in the ways the department works with carers.

- **Many stakeholders, including carers, told the review they would like to see the Statement of Commitment embedded in the legislation.** This included a suggestion to prescribe minimum requirements like reviewing the Commitment every 5 years, undertaking consultation to inform any changes, making it publicly available on the department’s website and regular reporting on outcomes.
- Some stakeholders suggested that there be the capacity for the statement to be co-signed by other government agencies, authorities and peak bodies, recognising the role of all partners – and in particular the NGOs responsible to deliver foster and kinship care supports – in supporting foster and kinship carers.
- The most common matter carers raised during the consultation was consistency in decision-making, particularly regarding financial requests. Carers also told the review they wanted to be involved, or invited to participate, in decision-making, spanning all areas of care and case planning including specific mention of schooling, disability service access, contact and access arrangements, and reunification.

“Kinship and foster carers need to be recognised and valued as key stakeholders in the administration and decision-making process for children in care.”

– Specialist foster carer

- A number of people suggested the legislation should establish greater transparency and independence for carers in complaints, reviews of decisions and the approach to care concerns.

“A Care Concern process that is transparent and inclusive of carers, not ‘done to’ carers.”
– Carer

The review notes Dr Fiona Arney’s report includes a proposal to embed the care concern process in the legislation, and an amendment to include foster carers in the Minister’s legislated function to promote a partnership approach between government, local government, non-government agencies and families, as set out in section 14(1)(a)⁹. As above, the government has committed to work with carers and the newly established Carer Council in considering the response to the report and any consequential legislative amendments. In considering any opportunity for legislative change in this regard, the review notes that there may be merit in awaiting the outcomes of the DCP care concern reform project that is currently underway.

⁹ Fiona Arney, *Report of the Independent Inquiry into Foster and Kinship Care*, November 2022, pages 51 and 115.

Non-government service providers

Every part of South Australia's child protection system is critically reliant on services provided by NGOs, from the intensive therapeutic services provided to vulnerable families, to kinship and foster carer support, residential care for children and young people, reunification and post care services. DCP engages in active and collaborative partnerships with these NGOs.

The review asked if there were any legislative changes that could be made to improve the ability of non-government providers to deliver essential care and protection services to children and young people and ways the Act could support partners to play their role in the sector.

- The review received a number of submissions from NGOs and one peak body recommending the removal of psychological testing of residential care staff. The review notes Kate Alexander also put forward removing this legislative requirement for psychological testing. One submission provided detailed support for retaining the testing requirement.
- We received feedback about additional opportunities for information sharing with NGOs. This included options to use the expertise and knowledge that particular providers may have about a child and their family, such as explicitly requiring their opinions or assessments in parenting capacity assessments. It was also suggested that the legislation require the department to provide transparent and timely information about reunification and family preservation practices, including to NGOs, so they may be better placed to assist the child and family.
- Much of the other feedback the review heard from NGO providers was related to practices and administrative arrangements, including interest in continuing to build on current partnerships.

Relevantly, the review heard the key way for legislation to better enable service providers to deliver essential care and protection services to children and young people is to recognise their role and function in providing intensive family support and to expand the legislation to include the primary and secondary tiers of the public health approach.



Other matters

The Discussion Paper published to support the review was provided as a guide to invite stakeholder feedback. In addition to the matters identified above, the review also received feedback on the following issues.

- A small number of stakeholders proposed to change guardianship from the Chief Executive to the Minister with a view to elevate the responsibility to the ‘very highest level of government’. The review notes that the current guardianship approach is consistent with that in other Australian jurisdictions and responds to previous calls to embed decision-making powers close to the child.
- Stakeholders shared considerable feedback about the approach to contact arrangements for children in care. The concerns raised by carers echoed those highlighted in the report of the Inquiry into Foster and Kinship Care. While much of the feedback related to policy and practice and is outside the scope of the legislative review, the key themes were about also supporting children’s contact with siblings, ‘sibling-like’ relationships and friends, the ability to participate in the process and the approach to reviewing decisions.
- In line with Kate Alexander’s observation to consider a cross-agency approach for clinical reviews of child deaths or other significant adverse events, the Commissioner for Children and Young People also recommended establishing this approach with a focus on shared responsibility and understanding what could have made a difference.
- In relation to enabling additional avenues of review, some stakeholders advocated for the decisions of the Contact Arrangements Review Panel to be subject to external review. Others strongly advocated that this would limit the ability for timely, child-focussed decision-making, tailored and responsive to the individual and changing needs of the child and family.
- Building on feedback from NGO partners, some stakeholders told us about opportunities to improve the legislation’s information sharing and confidentiality provisions. While child protection practitioners and sector stakeholders told us that there had been significant improvements under the CYPs Act, we also received feedback about how current provisions might be improved. One key area of advocacy was the need to increase protections for children and young people, and the opportunity to sanction those who breach the privacy of a child or young person in care, or previously in care. The Guardian for Children and Young People proposed “exceptions to allow children and young people to make decisions, in accordance with their age and maturity, about publicly telling their story”.

- The SA Ombudsman specifically proposed an amendment to current provisions to authorise the disclosure of information where necessary to prevent a serious risk to the health and safety of a person, consistent with the Information Sharing Guidelines.
- The review notes that a previous amendment bill sought to introduce a discrete pathway to adoption for children and young people in care, with the exception of Aboriginal children and young people. While there was a strong focus on supporting stability and permanency for children and young people in care, there was very limited advocacy for a specific pathway for adoption to be created in the child protection legislative framework.

Summary table

To support the consideration of changes to the South Australian child protection legislative framework, a summary of key areas highlighted in the review is included below for consideration. The review notes that this is intended to identify high level themes only, rather than capture all issues raised across the review.

Principles for Aboriginal children, young people and families

Aboriginal Child Placement Principle

- Embed all 5 elements of the Aboriginal and Torres Strait Islander Child Placement Principle in the Act –
 - › prevention
 - › partnership
 - › placement
 - › participation
 - › connection.
- Consider the incorporation of ‘identification’ as a pre-cursor to application of the Principle.
- The Principle is to be the paramount consideration in the administration, operation and enforcement of the Act in relation to Aboriginal children, without displacing safety.

Active efforts

- Mandate the Aboriginal Child Placement Principle to be implemented to the standard of active efforts.
- Active efforts defined as thorough, timely and purposeful efforts that aim to ensure Aboriginal children’s connection to family, community, culture and Country is maintained at every stage of the child’s engagement with child protection.
- Create a new criteria for the Court to consider whether active efforts have been made to provide a Family Group Conference, prior to making a guardianship order in relation to a Aboriginal child.

Self-determination

- As a minimum, include an acknowledgement of Aboriginal people’s right to self-determination in the guiding principles.
- Make a requirement for full consideration to be given, when making significant decisions about Aboriginal children, to any impact on a child’s right to self-determination and a child’s right to cultural identity and connection.

Family Group Conferencing for Aboriginal children

- Require the CE to provide families of Aboriginal children with the opportunity to participate in a Family Group Conference, as early as possible and prior to making any significant decision with respect to their children.
- Consider strengthening provisions for all children and young people.
- Additional requirements for Family Group Conferences for Aboriginal children:
 - › Wherever possible, it must be facilitated by an ACCO, Recognised Aboriginal Organisation or another Aboriginal person independent of DCP
 - › Require active efforts to identify and enable the participation of members of the child's extended Aboriginal family and kinship network in the meeting/s.

Aboriginal Family-Led Decision-Making (AFLDM)

- As a minimum, embed the commitment to AFLDM to ensure the participation of Aboriginal families in decision-making about Aboriginal children.
- Identify principles to support best practice for AFLDM including:
 - › Where possible, participation is to be facilitated by an Aboriginal person
 - › Active efforts must be made to include children's voices
 - › Child and family members may each have an independent support person present.

Gazetted organisation's role

- Establish a broader role for Recognised Aboriginal Organisations in the system, including that they:
 - › Must be consulted in relation to significant decisions
 - › May be engaged to facilitate the child and family's involvement in decision-making
 - › May provide advice to the Court prior to order(s)
 - › Must provide a report with recommendations prior to an application for long term guardianship to a specified person.
- Require the government to support sufficient Recognised Aboriginal Organisations to ensure all Aboriginal children and young people can be appropriately represented, either directly by the organisation or through a demonstrated consultation mechanism.

Delegated authority to Aboriginal entities

- Enable the CE to authorise an Aboriginal entity to exercise powers and functions under the Act.
- Authorisation/delegation is to be issued with respect to an individual Aboriginal child.
- Authorisation/delegation may only be made:
 - › With written consent of the Aboriginal entity
 - › Following consultation with the Aboriginal child and their family.
- Authorisation will enable the Aboriginal entity to perform functions and powers in relation to the child as if they were the CE.

Cultural planning

- For Aboriginal children the cultural maintenance plan must address how the plan fulfils each of the five elements of the Child Placement Principle.
- A cultural maintenance plan for an Aboriginal child is required to be developed with input from the child, parents, family and Aboriginal community members.
- Require the cultural maintenance plan to be included as part of a child's annual review.

Getting the settings right

Public health approach

- As a minimum, embed a public health approach to child protection as a guiding principle.
- Include provisions recognising the roles and responsibilities of state authorities alongside DCP to keep children safe, reduce the number of children in care and break intergenerational cycles of child protection contact:
 - › Primary responses
 - assert a whole of community responsibility for the safety and wellbeing of children and young people
 - establish expectation that all relevant Ministers provide service responses that address risk factors of child abuse and neglect
 - consider embedding accountability mechanisms for primary intervention actions and outcomes
 - › Secondary responses
 - empower the CE to refer children and families for a service response to address underlying risk factors
 - › Tertiary responses
 - require state authorities to prioritise targeted therapeutic intensive family support for families whose children are the subject of screened in notifications
 - establish expectation that state authorities will meet the service needs of children in care, and young people who have transitioned from care.
 - › Agencies to report on service provision and outcomes for children in contact with child protection system.

Best interests

- Introduce best interests as a guiding principle in the administration, operation and enforcement of the Act, including to guide decision-making.
- Embed a principled framework to guide practitioners in considering the child's best interests.
- Retain safety as the paramount consideration.

Reporting threshold

- Increase the threshold for matters that must be reported to the Child Abuse Report Line (CARL), such that a mandated notifier is required to report any suspicion that a child or young person is, or may be, at risk of significant harm.
- Further enable recognition of cumulative harm.
- Provide that a mandatory notifier, who is providing an ongoing service to families whose child is already the subject of a notification, is not required to make a further notification unless there has been a material change in circumstances or an increase in risk.

Children at the centre

Children's participation

- Establish new provisions for children and young people to participate in making any decision that is likely to have a significant impact on a child's life.
- Introduce a right for children to be provided with information and documentation that supports and enables their participation.
- Strengthen the requirement to include the child in their Annual Review and ensure their views are considered.
- Establish an obligation for the CE to provide a copy of the Charter of Rights to children and young people in care.

Care leavers

- Define an eligible care leaver as a young person over the age of 15 and up to and including 25 years.
- Require a case plan to be developed, and actions delivered, to support the young person moving to adulthood and living independently.
- Consider a statutory scheme whereby young people with a care experience are entitled to priority access to services including health, housing, education and employment – similar to the veterans card.
- Embed provisions for carers to receive carer payments where a young person continues to reside with them up to the age of 25.

Contact determinations

- Review the criteria that are to be considered when making a contact determination.
- Include a specific provision for Aboriginal children and young people emphasising that the elements of the Aboriginal Child Placement Principle must apply when making a contact determination.

Reunification

- Require the child's annual review to include consideration of whether the pursuit of safe reunification is in the interests of the individual child.

Supporting our partners

Statement of Commitment to carers

- Establish an obligation for the Minister/CE to prepare, maintain and publish a Statement of Commitment to foster and kinship carers and report regularly against it.

Care concerns

- Further consider the recommendation of the Inquiry into Foster and Kinship Care.

Carer participation

- Specify that a carer should be offered an opportunity to attend the annual review of the child in their care.

Other matters

Internal and external (SACAT) review

- Establish a new legislative schedule specifying which decisions may be the subject of an internal review and a SACAT review, and which persons or parties may apply for a review.
- Consider creating a new ability for an internal reviewer to refer a matter to an alternative dispute resolution process.
- Require a panel of the Tribunal to include:
 - › at least one member with social work qualifications or extensive child protection experience
 - › a member who is an Aboriginal person, where the proceedings relate to a decision about an Aboriginal child.

Court orders - Assessment Order

- Enable the Court to make an 'Assessment Order', granting custody to the CE for a period up to 8 weeks while further assessment of the circumstances of the child are carried out.
- Include additional provisions supporting timely decision-making, including limiting adjournments, requiring a 2 week timeframe for the application to be determined, not allowing appeals and only allowing the order to be extended for up to 4 weeks.

Contact Arrangements Review Panel (CARP)

- Consider additional administrative provisions for the CARP, including:
 - › New timeframe for conducting the review
 - › Where the determination relates to an Aboriginal child, the majority of the Panel members must be Aboriginal.

Reverse onus of proof

- Consider changes to the provisions to limit unintended consequences.

Cross-agency review panel

- Establish a framework to conduct cross-agency clinical reviews of adverse events, including confidentiality provisions.
- Draw on existing model applied in health care settings and supported by Part 8 of the *Health Care Act 2008*.

Psychological testing of residential care staff

- Consider removal of requirement for a person employed in a residential care facility to have undergone a psychological or psychometric assessment.

Confidentiality – authorising disclosure

- Include, among the exceptions permitting the disclosure of information, that information may be disclosed if it is reasonably required to lessen or prevent a serious threat to the life, health or safety of a person or persons.

Confidentiality – media restrictions

- Restrict the publication of names and identifying information in relation to certain children and young people.
- Consider avenues to sanction breaches.

Related legislative instruments

- Incorporate remaining active provisions from the *Family and Community Services Act 1972* and Regulations, and repeal that Act.
- Ensure alignment with reforms regarding coercive control in the context of domestic and family violence.
- Consider opportunities for child protection legislation to have interaction and alignment with the First Nations Voice Bill 2023.
- Pursue opportunities for offences committed against a child or young person in care to be characterised as an aggravated offence, acknowledging their vulnerability.

Appendix 1

Fiona Arney review – Government to consider consequent amendments in consultation with carers

Recommendation 6 – That the *Children and Young People (Safety) Act 2017* be amended to prescribe the care concern investigation process, including to:

- establish a clear and reasonable threshold for what is a care concern
- embed principles of natural justice and procedural fairness into the care concern investigation process
- prescribe the process by which care concerns are investigated, and the duties owed to Carers during investigations
- ensure that unsubstantiated care concerns are not recorded on carer files, and
- enable a review or appeals process for care concern outcomes.

Recommendation 13 – That the *Children and Young People (Safety) Act 2017* be amended to ensure foster carers are included in the partnership approach set out in Section 14 (1) (a).

Recommendation 15 – That the independent status of the peak body, Connecting Foster and Kinship Carers South Australia, be enshrined in legislation, or in their contract of service, or both.

Recommendation 18 – That legislation be amended to recognise and enforce the rights of children and young people in care, including their rights to services and supports that uphold these rights.

Malcolm Hyde review

Recommendation 1 – If there is concern whether referrals from DCP to another agency include a responsibility to provide child protection services as required by the *Children and Young People (Safety) Act 2017*, this should be clarified by legal opinion and amendment of the legislation sought accordingly.

Recommendation 6 – Section 35 of the *Children and Young People (Safety) Act 2017* is reviewed to determine whether there are any unnecessary impediments to prosecution.

Recommendation 11 – In dealing with squalor in child protection matters, consideration is given to the use of the provisions for court orders to require a carer with a medical, emotional or psychological condition to undergo suitable treatment.

Recommendation 15 – The suitability of the threshold description for mandated notifiers be examined in the review of the *Children and Young People (Safety) Act 2017*.

Recommendation 19 – The requirement for reporting data on section 32 of the *Children and Young People (Safety) Act 2017* be examined as part of the review of this legislation.

Kate Alexander review

Observation 1 – For the DCP Senior Executive Group to consider options to use the current review of the legislation to remove the requirement for residential staff to undergo psychological testing.

Observation 2 – For the DCP Senior Executive Group to consider opportunities to rely on the current review of the legislation to make mandatory the use of Family Group Conferences for all families where Aboriginal children have been assessed as unsafe. Importantly, this would mean that no Aboriginal children can be presented before for the Youth Court seeking assumption of care orders in the absence of a Family Group Conference having taken place.

– The following have indirect relevance to the legislative review –

Observation 3 – For the South Australian Child Protection Expert Group to consider a cross-agency approach to child death reviews relying on full disclosure and shared responsibility.

Observation 5 – For the South Australian Child Protection Expert Group to consider ways to gradually shift terminology to reflect developments of thinking in contemporary child protection work – including moving from investigation to assessment, and from incidents to chronicity and pattern of harm.





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