



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

Introduction

The Youth Affairs Council of South Australia (YACSA) is pleased to provide a submission to the review of the *Children and Young People (Safety) Act 2017*.

YACSA is the peak body in South Australia representing young people aged 12 - 25 years and organisations and networks throughout the non-government youth sector. YACSA is an independent member-based organisation, and our policy positions are not aligned with any political party or movement. YACSA supports the fundamental right of all young people to participate in and contribute to all aspects of community life, particularly in decision-making processes that impact them.

South Australia has a substantial history of child protection system reviews and reforms to consider and YACSA has contributed to these processes in the pastⁱ. YACSA advocates for a child protection system that holds the best interests of children and young people, as articulated in the UN Convention on the Rights of the Child (UNCRC), as the paramountcy principleⁱⁱ. We remain concerned that reform to date in South Australia has failed to deliver the "fresh start" outlined in the Government's response to the 2016 Nyland Royal Commission report & its recommendationsⁱⁱⁱ. Past reviews have detailed various interconnected challenges faced by South Australia's child protection system that operates beyond capacity with a distinct focus on crisis-based intervention. Gaps in prevention and early intervention have been identified as lost opportunities to support families in need along with reliance on tertiary responses like removal of children and high use of residential care facilities^{iv}. YACSA believes the child protection system has maintained a long-term crisis-based response at the expense of developing the supports needed to prevent abuse and neglect.

Key points

- The current system is over stretched and focussed primarily on crisis-based responses.
- Best interests must be prioritised as the guiding principle of legislation.
- Investment in prevention and early intervention responses is urgently needed.
- Accountability must be improved.

Best interests

The Nyland Royal Commission report (Nyland report) clearly outlined the importance of prioritising the best interests of the child or young person within a child protection context^v. While the Government's response to the Nyland report included a commitment to centre children and young people within the child protection system and to ensure children and young people participate in

decisions that affect them, this was not effectively incorporated in the resulting legislation of the *Children and Young People (Safety) Act 2017* or its implementation.

Government needs to consider the broader social environment of family and community, strength and capacity building, the health and wellbeing of families, and the development of happy and healthy children and young people through the funding of a continuum of services that support the rights of children and young people. YACSA advocates for a stronger commitment to the engagement of children and young people in the child protection system. This would demonstrate that children and young people are valued as experts in their own lives while also fulfilling our international obligations to uphold the rights of children and young people. YACSA also advocates strongly for the participation of children and young people in the child protection system to be meaningful, so their views are given consideration in informing and influencing their care. This change would require a shift in priority away from merely protecting children and young people from harm to holding the best interests of children and young people as the utmost concern and the paramountcy principle of any child protection legislation, allowing safety to be considered in conjunction with other rights in the UNCRC including rights of identity, nationality, and family relationships^{vi}.

Properly prioritising the best interests of children and young people within legislation would allow for improved ability to provide timely decision-making in relation to reunification. Recognition of the Government's responsibility to provide immediate and ongoing support to children, young people, and importantly their families, especially post-removal, is needed to ensure the consideration of the long-term best interests of children and young people. These efforts would also address insecurity and reduced positive outcomes experienced by children and young people who have multiple placements which is too common an experience in South Australia, especially for children and young people who spend five or more years in the child protection system^{vii}.

Various sections of the current Act need to be amended to ensure our obligations to the rights of children and young people are adhered to including additions to section 4 that acknowledge the Act will be guided by Principles and Articles of the UNCRC and Article 3 – *the best interests of the child shall be a primary consideration*^{viii}.

Section 7 of the current legislation must be amended to replace safety with best interests of children and young people as the paramount consideration. Legislation should also include the Aboriginal and Torres Strait Islander Child Placement Principle, making clear it is the principal consideration in decision-making for matters relating to Aboriginal and Torres Strait Islander children and young people.

Prevention and early intervention

The Government's response to the Nyland report highlighted the importance of primary, secondary, and tertiary services and support in preventing abuse and neglect but this was not adequately translated into the current legislation^{ix}. The current Act focuses on responding to children and young people at immediate risk of abuse and neglect or those who have already experienced harm, but evidence has demonstrated that to prevent abuse and neglect, governments must provide intervention that strengthens families particularly those who are most vulnerable. Prevention of abuse and neglect is vital, and the current review of child protection legislation is an opportunity for a government-led response that develops primary, secondary, and tertiary responses and services.

An increased focus on prevention and early intervention can support a reduction in the number of children and young people experiencing abuse and neglect but only if these efforts are provided

equal attention as current crisis driven responses. This can be achieved through reformed legislation, regulations, and service delivery.

YACSA maintains the position outlined in our submission on the *Children and Young People (Safety) Bill 2016*, that a greater emphasis on prevention and early intervention is required.

The Department for Child Protection's (DCP) discussion paper asks for contributions on whether a public health approach to child protection is needed and how legislation could support this approach^x. An approach utilising a public health model would recognise primary, secondary, and tertiary services as equally important components of child protection and would give prominence to primary services as the most significant component of the system^{xi}. Primary services are acknowledged as the most successful and efficient way to prevent children, young people, and their families from requiring escalating intervention as well as protecting children and young people from experiencing abuse and neglect.

A public health approach could include strengthening of legislation for statutory staff requirements to refer children, young people, and their families to support services and to require services to respond to these needs. Legislation that includes the explicit direction of DCP to refer children, young people, and their families to support services pre- and post-removal, as well as direction to proactively provide intensive support and take all reasonable actions prior to removal, would better provide for a whole of government and non-government public health approach to supporting families to stay together safely as was identified in the Nyland Royal Commission report and the DCP discussion paper^{xii}.

Young people leaving care

Transitioning into adulthood regardless of circumstances is a challenging period in a young person's life. For young people within South Australia's child protection system, this period can be a difficult time and evidence demonstrates that government provided support continuing beyond 18 years of age has significant benefits for young people and the community^{xiii}. Providing support to young people in care until the age of 21 improves wellbeing, physical health, and social connectedness while also reducing risks of hospitalisation, substance misuse and poor mental health.

Currently in South Australia young people in family-based care are provided provisions to remain in care until the age of 21 years but those in other types of care including residential care, who often have the most complex needs and are at risk of experiencing negative outcomes, are not supported beyond the age of 18 years. At a minimum, provisions that allow young people in family-based care to continue to be supported must be extended to allow all young people in care to be supported until the age of 21 years.

Current legislation on transitions from care is ambiguous and results in little practical support outside of existing pilot programs. Support for young people in care from the age of 18 to 21 years needs to be formalised in legislation including the need for young people to be centred in decision-making about their transition from care.

Government responsibility & accountability

YACSA maintains the position outlined in our *Children and Young People (Safety) Bill 2016* submission regarding responsibility for guardianship for children and young people. Accountability and transparency as well as reporting requirements of the Chief Executive remain a concerning issue.

YACSA supports a return to guardianship of children and young people being the responsibility of the Minister for Child Protection rather than the Chief Executive. This would be consistent with an understanding that the wellbeing and rights of children and young people removed from their family should be provided by the state in the form of guardianship assumed by the Minister for Child Protection to ensure the highest level of government consideration and responsibility.

Conclusion

YACSA believes significant adjustment in the State Government's focus is needed to achieve the extent of systematic change needed in the child protection system. Government must consider the broad social environment of family and community, various levels of intervention needed to support capacity building, and the health and wellbeing of families through the acknowledgement that guiding principles and primary consideration within child protection and any relevant legislation must be the best interests of children and young people.

The changes needed, if recognised and implemented, will assist in moving away from a system overloaded with crisis-based responses and a concentration on tertiary services to a system that prioritises the best interests of children and young people through an adequately resourced continuum of effective primary services.

ⁱ Youth Affairs Council of South Australia (YACSA) (2017). 'Submission on the Children and Young People (Safety) Bill 2016', YACSA.

ⁱⁱ United Nations (UN) Declaration on the Rights of the Child (1989), S. 3 (1)

ⁱⁱⁱ South Australian Attorney-General's Department (AGD) (2016). 'Government of South Australia's Response to the Child Protection System Royal Commission Report: The Life They Deserve – Child Protection: A Fresh Start', Government of South Australia.

^{iv} Child Protection Systems Royal Commission (2016). 'Report: Volume 1 – Summary and Report', Government of South Australia.

^v *ibid*, p. 22

^{vi} *Children and Young People (Safety) Act 2017 (SA)*, s. 4 (1) (a), p. 8

^{vii} Productivity Commission (2018). 'Report on Government Services', Commonwealth Government of Australia.

^{viii} UN, Rights of the Child, s. 3 (1)

^{ix} AGD, A Fresh Start, p. 2

^x Department of Child Protection (DCP) (2022). 'Children and Young People (Safety) Act Review Discussion Paper', Government of South Australia, p. 11

^{xi} Productivity Commission (2019). 'Consultation Paper: What Is Known About Systems that Enable the 'Public Health Approach' to Protecting Children', Commonwealth Government of Australia.

^{xii} DCP, Discussion Paper, p. 14

^{xiii} Deloitte Access Economics (2018). 'A Federal and State Cost Benefit Analysis: Extending Care to 21-Years', Anglicare Victoria.