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Date 9/11/2022

Children and Young People (Safety) Act Review Submission Uniting Communities

Uniting Communities' response to the review of the Act is underpinned by the following key principles:

- The legislation should seek to provide a basis for ensuring children and young people's best interests and well-being are maximised which incorporates, but is not restricted to, safety and protection from harm
- The best interests of children and young people are served when they are able to remain safely living within their family and community. Legislation should be framed to achieve this outcome
- The best interests, well-being and safety of children and young people are achieved when the community is empowered to play its role in keeping children safe and supporting families

These objectives and provisions are important in creating legislation that will best serve the interests, well-being and safety of children and young people in South Australia. It is only when there is a shared understanding of these priorities that legislation will meet community expectations of what is necessary to keep children and young people safe and their well-being and best interests protected.

Embedding the Aboriginal and Torres Strait Islander Child Placement Principle

Question 1: Do you support the Aboriginal and Torres Strait Islander Child Placement Principle being embedded in the legislation to the standard of active efforts?

We fully support the principle being embedded in the legislation to the standard of active efforts. How it is embedded should be determined by Aboriginal Community Controlled Organisations in South Australia, who have the cultural authority to decide how the principle should be enshrined and applied. Uniting Communities supports the definition of active efforts as articulated by SNAICC and in particular the following elements:

- Setting minimum requirements for the identification of Aboriginal children and young people, to occur at least by the completion of any investigation
- Setting minimum requirements for the provision of family preservation and reunification supports
- Providing every Aboriginal family with the opportunity to participate in Aboriginal Family-Led Decision-Making, including Family Group Conferencing
- Requiring an independent representative of Aboriginal Community Controlled Organisations (ACCOs), or other recognised Aboriginal entities, to participate in all significant decisions about Aboriginal children

The Aboriginal and Torres Strait Islander Child Placement Principle is a nationally recognised basis for promoting the safety, well-being and cultural interests of First Nations children. In the interests of meeting commitments to closing the gap in relation to the over-representation of Aboriginal

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children in our child protection and out-of-home care systems, the Placement Principle (in all of its elements) should be reflected in the legislation.

Question 3: Should the legislation require that all government agencies make active efforts to support Aboriginal children and young people?
It is important that government agencies be required to make active efforts to support Aboriginal children, young people and families within their respective remits and responsibilities to address the overrepresentation of Aboriginal and Torres Strait Islander children in care. It is only through such collective responsibility that we can begin to overturn the over-representation of Aboriginal children and young people in our child protection and care systems. This includes pre- and post-removal support to ensure active effort has been made to prevent children and young people from entering care and increasing chances of reunification.

Requiring all government agencies to identify and report on efforts to support Aboriginal children and families is an important means of creating a culture of collective responsibility for children's safety and well-being. As with other legislation (such as the recent *Suicide Prevention Act 2021*) having government agencies identify what responsibilities they will be held accountable for through a published plan is an effective means of securing engagement.

Enabling self-determination and the exercise of legislative authority

We welcome the government's commitment to enable self-determination and the exercise of legislative authority by Aboriginal people, communities and organisations in child protection.

Question 5. Should the CYPS Act explicitly recognise Aboriginal children's and families' right to self-determination and cultural authority?
We fully support Aboriginal children's and families' right to self-determination and cultural authority and believe this should be reflected within the Act. Consideration should be given to adopting the following elements of the Victorian *Children, Youth and Families Act 2005, '*Division 4 Additional decision-making principles for Aboriginal children,' which involves recognition of Aboriginal self-management and self-determination in making a decision or taking an action in relation to an Aboriginal child.[1]

Question 6. Do you support legislative reform that will explicitly provide for the progressive delegation of legislative functions to recognised Aboriginal entities?
We fully support this legislative reform. We welcome the government's commitment to work with Aboriginal people and stakeholders to delegate legislative authority to recognised Aboriginal entities (e.g. approved/registered ACCOs). It is vital to involve the voice of ACCOs in the implementation process of the Act. Consideration should be given to the Victorian *Children, Youth and Families Act 2005,* Section 18 which allows the Secretary of the Department of Health and Human Services (DHHS) to authorise the principal officer of an Aboriginal agency to undertake specified functions and powers in relation to a Children's Court protection order for an Aboriginal child or young person.[2] We believe this provides a workable framework for inclusion in South Australian legislation

[1] *Children, Youth and Families Act 2005*, version 132, p. 45, <https://www.legislation.vic.gov.au/in-force/acts/children-youth-and-families-act-2005/121>.

[2] *Children, Youth and Families Act 2005*, version 132, p. 55, <https://www.legislation.vic.gov.au/in-force/acts/children-youth-and-families-act-2005/121>.

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to empower and entrust Aboriginal-led organisations with the protection of children and support of families.

Legislating Aboriginal Family-Led Decision-Making

Question 8: Should the CYPS Act embed the commitment to Aboriginal Family-Led Decision-Making?

We agree that the Act should embed the commitment to Aboriginal Family-Led Decision-Making (FLDM) which is an important step in addressing the overrepresentation of Aboriginal children and young people in care. Legislating the commitment will prioritise the objectives of the 'FLDM for Aboriginal Families Framework' and ensure that all Aboriginal children, young people, parents, family members and community representatives are consistently given the opportunity to be involved in significant decision-making.[3] The framework is crucial in fulfilling the Aboriginal and Torres Strait Islander Child Placement Principle in the practices of the DCP. The approach is an active effort to uphold the rights of Aboriginal children and young people to grow up safe with their families and communities, on their Country and immersed in their culture.[4]

Question 9: Should the CYPS Act require that all Aboriginal families engaged with child protection can access Family Group Conferencing at the earliest opportunity?

We support this proposal as it is important in reducing the number of Aboriginal Children and Young People in care. Family Group Conferencing is an effective means of not only engaging families in decision-making but also establishing an essential 'partnership' approach to child well-being and safety. 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.

Priorities and principles to guide decision-making

Uniting Communities contests the statement that "it is clear that the South Australian community continues to expect that safety will be first and foremost in decision-making."[5] We are unsure about the evidence supporting this statement. Whilst this belief has underpinned the current Act and its application, there are many voices in the community that have argued that safety is but one of the considerations in decision-making in relation to child protection responses. Child safety is one, albeit important, element in relation to children's interests and well-being; however, all dimensions of well-being (including the sometimes harmful impacts of removal) should be considered to ensure robust, defensible and evidence-based decisions are made in the context of child protection legislation. The current legislation's framing of safety being the paramount importance has in large part led to the current parlous state of our child protection response in South Australia. This premise of safety being the first and foremost consideration must be challenged to effect positive change.

[3] Department of Child Protection, *Family Led Decision Making for Aboriginal Families Framework*, 2021, p. 1, <https://www.childprotection.sa.gov.au/documents/foi/policies/family-led-decision-making-for-aboriginal-families-framework.pdf>.

[4] Department of Child Protection, *Family Led Decision Making for Aboriginal Families Framework*, 2021, p. 1, <https://www.childprotection.sa.gov.au/documents/foi/policies/family-led-decision-making-for-aboriginal-families-framework.pdf>.

[5] Department of Child Protection, *Discussion paper*, 2022, p. 13.

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In 2018, a panel of everyday South Australians were assembled to review what the state needed to do to protect children and young people. They released the *People's Policy and Children's Well-being 2018* paper. This paper didn't call for a tougher regime for struggling families or for greater numbers of children to be removed and taken into state care. Instead, it argued for an expansion of in-home support for families with children in their first 1000 days, improving the capacity and coordination of current services and more Aboriginal-led and delivered family and community-based programs.

Question 11: Do we have the right principles in place to guide decision-making in South Australia's child protection legislation?

Update legislation to include the 'best interest' of children and young people as the paramount consideration

The primary principle in the legislation must focus on the 'best interest' of children and young people as the paramount consideration in decision-making and processes. When the focus is solely on 'safety' the 'best interest' of children and young people is not being considered or applied in decision-making. The term 'safety' alters the perception of risk and how to approach risk. This results in decisions made by DCP workers being impacted by fear they will violate the Act. Any perceived safety risk to the child leads to fear-based decision-making and bias to removals rather than an evidence-based assessment of risk and best interests in its broader construct. This is a principal reason for high removal rates and limiting chances for reunification.

Safety should not be the paramount consideration as it skews decisions on removal. Best interest, which incorporates a more holistic view of a child's circumstances, development, attachment, health and well-being should be the basis for decision-making. This allows professionals to make informed decisions in terms of intervention and removal. We are not, unfortunately, guaranteeing the safety of children through their removal in many cases and often not guaranteeing the best interests of the child.

Safety would still be a significant consideration but should not be viewed in isolation from other factors impacting the best interest of the child. It is vital that the best interest of the child is not limited to safety but considers the range of factors impacting the child's well-being. Fundamentally, the objective of the Act must not limit decisions to "protect{ing} children and young people from harm" but instead seek to promote the child's overall well-being and quality of life. Decisions made in this context will drive a better outcome for children and young people.

Interstate examples:

In Queensland, *the Child Protection Act 1999* (the legal framework guiding the Department of Children, Youth Justice and Multicultural Affairs in child protection) outlines in Division 1-part 5A that 'the main principle for administering this Act is that the safety, well-being and *best interests* of a child, both through childhood and for the rest of the child's life, are paramount.'[6]

[6] *Child Protection Act 1999*, current version, <https://www.legislation.qld.gov.au/view/html/inforce/current/act-1999-010#sec.5A>.

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In Victoria, *the Children, Youth and Families Act 2005*, includes in part 1 division 2 the best interests' principles, 'for the purposes of this Act the best interests of the child must always be paramount.'[7] The best interest of the child is the overarching principle of the Act.

Question 13: Do you support changes to the legislation to make it clear that the Aboriginal and Torres Strait Islander Child Placement Principle is the paramount consideration - aside from safety – in all decision-making involving Aboriginal children and young people?

Whilst we believe this is ultimately a decision for Aboriginal-led and controlled organisations and Aboriginal Communities, we support the application of the Aboriginal and Torres Strait Islander Child Placement Principle as a key decision-making tool for interventions. This principle applies a broader and more considered approach to children's and young people's interests including the importance of their cultural and spiritual ties.

Responsibility for children and young people

Question 14: Should a public health approach be taken to child protection, and if so, how can the legislation support this?

A public health approach should be the primary lens for child protection legislation and policy. A public health approach focuses on assisting families early enough to prevent abuse and neglect from occurring by providing the appropriate support for vulnerable families.[8] A public health model emphasises the need for universal and targeted services that reduce the need for statutory intervention.[9] The legislation can support this by requiring investment into early intervention and support for at-risk families.[10] The legislation should be explicit and directive about the need for DCP to refer families pre-removal for supportive services that could prevent removal from occurring.[11] Legislation ought to provide that all reasonable action has been taken by the statutory body to address safety concerns within the family prior to the child or young person being removed, including the pro-active identification and provision of intensive family support services.[12] Under this public health framework, the legislation must emphasise that statutory intervention is a last resort.

Ensuring the best effort has been made to support families to fulfil their responsibilities to keep children safe and thriving prior to removal would shift the focus of child protection interventions. It would enable more children and young people to remain safely living within their families with the necessary support and supervision. This would reduce the over-representation of children and young people in our care system in comparison to other Australian and international jurisdictions. Refer to figure 1 below for a public health model for protecting Australia's children. This diagram was used back in 2009 in the launch of the National Framework for Protecting Australia's Children and Young

[7] *Children, Youth and Families Act 2005*, version 132, p. 39, <https://www.legislation.vic.gov.au/in-force/acts/children-youth-and-families-act-2005/121>.

[8] *Protecting Children is Everyone's Business,* An initiative of the Council of Australian Governments, 2009, P. 8.

[9] *Protecting Children is Everyone's Business*, An initiative of the Council of Australian Governments, 2012, P. 20.

[10] *Child and Family Focus SA (CAFFSA)* Discussion Paper, *2022 Review of the Children and Young People (Safety) Act 2017*, September 2022, p. 16.

[11] *Child and Family Focus SA (CAFFSA)* Discussion Paper, *2022 Review of the Children and Young People (Safety) Act 2017*, September 2022, p. 16.

[12] *Child and Family Focus SA (CAFFSA)* Discussion Paper, *2022 Review of the Children and Young People (Safety) Act 2017*, September 2022, p. 16.

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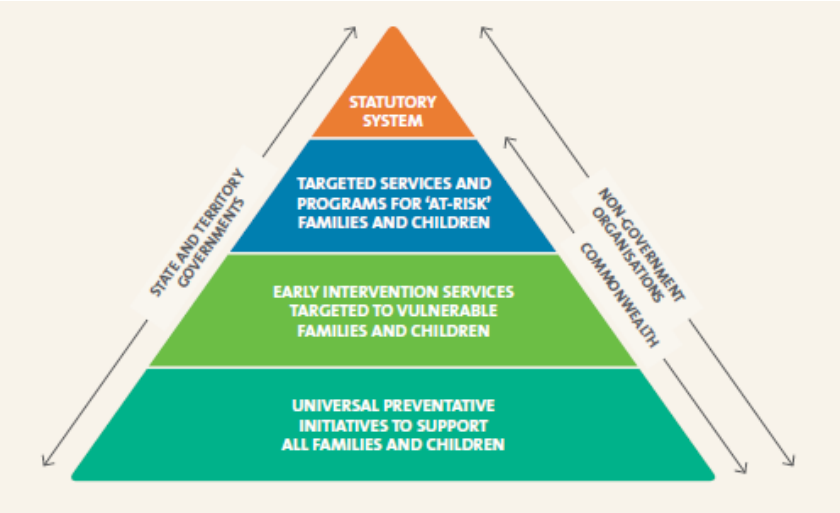
People. It is a widely accepted basis for defining how interventions should be framed. It includes a strong emphasis on preventing the need for statutory intervention which is the most costly and intrusive of available interventions.

Figure 1: Source: Protecting Children is Everyone's Business 2009



Question 15: How can the legislation enable everyone to take responsibility for the safety and well-being of children?

Notifications have created a culture that once the notification is completed, the reporter no longer has any responsibility to the child or young person and the onus sits with the DCP (despite DCP clearly not having the capacity to assess all reports). This currently exists for all reporters, whether they have a mandate to report or not. However, everyone has a role beyond reporting. Stipulating responsibilities for those who are aware of a risk is difficult to prescribe given the myriad of circumstances a reporter may experience. However, the current reference in Section 30 (2) to a report "not necessarily exhausting a duty of care" is insufficient to encourage a greater sense of community responsibility for children's safety and well-being. As a minimum, consideration should be given to expanding this clause to place a greater expectation - if not obligation - on those who detect risk or possible harm to act within the context of their relationship or powers to protect the interests of a child or young person. This should include providing necessary support or information to children or young people and/or families/parents/caregivers to facilitate the safety of a child or to enhance or protect their well-being.

Legislation that requires both mandatory and non-mandatory notifiers to consider practical actions they may take to help protect children using their existing resources would lead to progressive reform.[13] It would be valuable for the legislation to explicitly state that members of the public, as well as those in a professional or caring relationship for children, have a responsibility to take action (that they deem necessary to keep a child safe or is otherwise in their best interests). This would provide an invaluable signal that everyone has a responsibility and can take action for children's safety and well-being. The legislation should provide protections for those who endeavour to use their own resource or relationships to protect and promote the interests of children including action to secure their safety.

[13] *People's Policy on Children's Wellbeing*, 2018, p. 11.

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Question 17: Should the legislation explicitly require the government to fund therapeutic interventions targeted to support families whose children have been identified as at risk of harm or abuse?

A legislative commitment to fund therapeutic interventions will ensure that support services are provided to at-risk families before the child or young person is removed. These interventions should be a requirement before the decision is made to remove a child. Only through making such interventions universally available as a pre-cursor to removal, will all families be offered the best opportunity to keep children living safely with their family. Ultimately, ensuring a right to therapeutic or other evidence-based intervention and support will reduce the growing need to fund more care services at a high cost when children could safely be maintained within their own families and communities. Other than where a significant imminent risk of harm is present, all families and parents should be provided with an opportunity to receive an evidence-based family support intervention. Such interventions should be offered in a timely manner and for a duration that the family deems is required to enable them to demonstrate their ability to safely care, protect and nurture their children.

Thresholds for reporting and response

Mandatory Reporting: Ending Mandatory reporting or changing the threshold for reporting

Question 18: Does South Australia have the legal threshold right for child protection? If not, what is the right threshold?

The current threshold is too low which has resulted in high rates of reporting and investigation. This has resulted in a skewing of precious resources for detection and investigation and away from providing timely and sufficient responses for those children and young people at greatest risk of harm including support for families to fulfil their care responsibilities.

Question 19: Would you support changes to the threshold that enables the Department for Child Protection to focus on children and young people at imminent risk of significant harm?

We believe that imminent risk of significant harm, with appropriate definitions to provide guidance, is a more reasonable and functional threshold. It will deliver the required protective responses for those at greatest risk and help to divert others to more appropriate services or responses.

Question 20: Should there be any changes or exemptions to the existing mandatory reporting requirements? How else could mandatory reporters discharge their obligations (e.g. where support is already in place)?

The sheer volume of notifications congests the child protection system and the ability to respond in a timely and appropriate manner. In 2010/11 the number of notifications made to CARL was 12,189 of which 3,145 were investigated and 1,810 substantiated (that's 14.8% of notifications resulting in a substantiation). In 2020/21 substantiations were 21,351 in SA with 4,519 investigations and 2,444 substantiations (down to 11.4%).

The current legislation requires the following test to be applied to determining an obligation to report – 31 (1)the person suspects on reasonable grounds that a child or young person is, or may be, at risk; the Act defines at risk in a variety of ways but one of these is the following 18 (1) (b) there is

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a likelihood that the child or young person will suffer harm (being harm of a kind against which a child or young person is ordinarily protected). This provides an excessively broad net in which people are required to make a report and in a risk-averse environment contributes to the overload in reports being made which the Chief Executive of the Department is required to assess.

Ending mandatory reporting would send a strong signal that DCP should only be engaged where there is a higher threshold of harm as assessed by those who know the circumstances of the child and their family best. Where such matters are reported there is heightened expectation that the reporter and the DCP jointly find an agreed way to respond with the aim of keeping the child living safely in their family and community as a priority.

Rather than creating a culture of shared responsibility for those required to make such reports and the community more broadly (who can but are not mandated to make such reports) this reporting framework has facilitated a prevailing view that it is the State (through its statutory Child Protection Department) that has a responsibility to keep children safe from harm and it is the responsibility of others (reporters) to merely make a notification on the basis of a likelihood that a child might suffer harm. We have created a reporting and then a blame culture (where children fall through the assessment and investigative net) which is the antithesis of what the Act and policy settings set out to achieve.

Mandated notification and the sheer weight of reports have already destroyed any confidence in our system in SA that we are directing our efforts to protecting those children at greatest risk of suffering harm. Removing mandatory reporting would provide an opportunity for a reset in what is reported but also how we can take greater joint responsibility for action in keeping children safe and able to thrive.

We could adopt a substantially different diversion approach for families to receive support for a larger number of families where children are not receiving optimum care but for whom a notification under the current system only serves to clog up our child protection system and undermine confidence in the department. Whereas once DCP was seen as service able to genuinely support families under stress to better manage their responsibilities to provide care for their children it is now seen as a punitive body akin to a policing response simply involved in assessing risk and determining thresholds for removal.

In June 2017 there were 3484 children in care compared to 4740 in June 2022. Since the Act was introduced with its lower threshold of risk, more children have been removed from families and are in care. Under different legislative frameworks such as in New Zealand, there has been an overall decrease in entries to care over a similar reporting period (2011-2020)[14] What this New Zealand study shows is that systems geared to supporting families to keep children living safely in their homes as opposed to a risk-based reporting and investigative approach to child safety and well-being delivers substantially different outcomes.[15]

[14] *Analysis of the decrease in the number of children entering care*, Oranga Tamasiki Ministry for Children, June 2021, <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Research/Latest-research/Entries-into-care/Analysis-of-the-decrease-in-the-number-of-children-entering-care.pdf>.

[15] *Analysis of the decrease in the number of children entering care*, Oranga Tamasiki Ministry for Children, June 2021, <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Research/Latest-research/Entries-into-care/Analysis-of-the-decrease-in-the-number-of-children-entering-care.pdf>.

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Children at the centre

Amplifying the voices of children, young people and families is an important part of decision-making both at the individual and system level. The Act would benefit from the inclusion of wording that better reflects this commitment. An example of this expression can be found in the Prevention and Early Intervention for the Development and Well-being of Children and Young People Bill 2017 (Section 11: 1-5) that was introduced to Parliament in late 2017.

Question 22: Should the legislation be clear that children and young people are at the centre of everything we do
Children, young people, **and** families should be at the centre of everything that is undertaken and should drive decision-making under the Act. Specific measures to enshrine this principle should be considered.

Question 25: Are there parts of the legislation that could be changed to improve the timeliness of child protection decision-making and support better outcomes for children and young people?
Legislation should embed a commitment to timely decision-making, including to re-insert Investigation and Assessment Orders, re-introduce the 10-week rule and to reconsider avenues for review. Timeliness of decisions reduces stress and ambiguity for all parties and helps to reduce the risk of interventions in themselves creating greater harm.

Question 26: Could the CYPS Act be strengthened to enable all young people in care, and leaving care, to access the services they need to heal from trauma, to grow up healthy and strong, and to be supported as they transition into independence?
The evidence shows that having had a care experience increases the risk for parents that their children will also experience child protection intervention. Therefore, the provision of support, including transition support represents a key prevention strategy and should be appropriately and adequately referenced in the Act.

Section 112 of the Act says that "The Minister must cause such assistance as the Minister thinks appropriate to be offered to each eligible care leaver for the purposes of making their transition from care as easy as is reasonably practical," including, "the provision of information about Government and other resources and services available." This is too vague and can equate to the provision of not much more than a service directory for young people leaving care. Additionally, the wording "such assistance **may** include **one or more** of the following,' could be strengthened to enable eligible care leavers to access all the assistance they require under section 112 (2) to provide holistic support including, health services, employment assistance and accommodation. Such provision should be a right for all young people leaving care although not all young people will require or avail themselves of such support.

Give young people the opportunity to stay in care until 21 years of age

The government's current provision for young people in family-based care to stay in care until 21 should be extended to all young people, particularly those who live in residential and emergency care.[16] Young people in care who have gone through some of the most traumatic experiences are expected to be capable financially and emotionally to care for themselves at the age of 18. They are

[16] Child and Family Focus SA (CAFFSA) Discussion Paper, *2022 Review of the Children and Young People (Safety) Act 2017*, September 2022, p. 19.

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often not ready to leave care at 18 and should have the option to remain in care. Ongoing support creates opportunities young people usually have such as attending University without the pressures of having to financially provide for themselves. Currently, those leaving care at 18 are faced with many barriers including a shortage of housing that often results in homelessness.

Kinship and Foster Carers

Question 27: Can changes be made to the legislation which help us to further bring to life the 'Statement of Commitment'?

Legislative changes should involve embedding the DCP's 'Statement of Commitment' within the Act. The statement of commitment objectives includes ensuring carers are informed, supported, consulted, valued, and respected. There are discrepancies in the level of support and responsibilities given to the carer, which are vastly different depending on the DCP office and sometimes individual DCP case managers. The majority of challenges relating to being a foster carer stem from this discrepancy. The objectives of the Statement of Commitment include empowering 'carers to make decisions for children to take part in everyday activities,' and 'involve carers in decisions about the children and young people in their care.' Despite this being a commitment, many carers are not feeling supported and experience difficulties having to fight DCP on every aspect of the decision-making for the child. The statement in these circumstances is not helpful in day-to-day decision-making and care provision as it is not being implemented. The statement of commitment is not an active document that carers feel they can refer to in their regular interactions with DCP. In short, the legislation is not providing sufficient weight and power to the Statement of Commitment and further powers are required to ensure a level of operational accountability to the statement in practice.

Embedding the statement within the legislation will strengthen the importance that these principles are implemented consistently into DCP practices and policies. It is important that all carers feel the statement is being acknowledged and most importantly implemented to ensure they feel respected and included in all aspects of the statement in relation to the care they are providing.

Reunification Approaches

Question 29. Should a reunification approach be provided for in the CYPS Act legislative framework?

- ***Setting minimum requirements for the provision of family preservation and reunification supports***
- ***Embed reunification as an explicit principle of intervention and/or placement under the CYPS Act***

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. It is important to view reunification as a process rather than a placement event. Reunification does require careful planning and breadth of services and supports from when a child first enters care and well beyond the child's return home, to meet the child's and their family's needs.

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Reunification should be an explicit provision within the legislation. It is one of the most important tools in helping to reduce South Australia's over-representation of children and young people in our care system and as such should have its own specific statutory reference.

Legislation is not set up for long-term reunification work

Active efforts should be required under the legislation for every child to be reunified, including those on long-term orders. Families have a right to receive support, at the point they have been identified as being at risk of removal and through the process of reunification. Reunification should be considered at any point in a child's time in care, particularly when the parents have worked through previous concerns and the child still has a strong connection and attachment with the family of origin. For children who wish to reconnect with their parents, ongoing support should be provided to both the family and the child in care to increase the chances of reunification. Ongoing assessments are required on long-term orders to determine reunification options with the family of origin. This recognises that circumstances change for the family and the need to support both the child and their family to have the best possible chance of reunification.

Where reunification is not possible the legislation should also acknowledge the rights of children to maintain safe and appropriate contact with family members including (where separated) siblings. This should be a fundamental right for all children and young people who have been removed and are in care and services made available to facilitate such safe and purposeful contact and connection.

Early intervention and reunification

Strengthen the legislative base for early intervention and child reunification by including an 'active effort' to support families pre and post-removal

Section 33 of the Act allows for the Chief Executive of DCP to 'refer a matter following notification to a more appropriate state authority.' This could be clarified and strengthened so that there is a legislative base which compels statutory child protection staff to refer families to supportive services and for those services to be compelled to respond.[17] This is not clear in the legislation, thus the opportunity to provide immediate early intervention is lost, and children may suffer harm that could have been prevented or removed where this may not be necessary or required.[18]

The legislation should be explicit and directive about the need for DCP to refer families both pre and post-removal for supportive services that could prevent removal or enhance the possibility of reunification. Legislation ought to provide that all reasonable action has been taken by the statutory body to address safety concerns within the family prior to the child or young person being removed, including the pro-active identification and provision of intensive family support services.[19]

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[17] Child and Family Focus SA (CAFFSA) Discussion Paper, *2022 Review of the Children and Young People (Safety) Act 2017*, September 2022, p. 15.

[18] Child and Family Focus SA (CAFFSA) Discussion Paper, *2022 Review of the Children and Young People (Safety) Act 2017*, September 2022, p. 15.

[19] Child and Family Focus SA (CAFFSA) Discussion Paper, *2022 Review of the Children and Young People (Safety) Act 2017*, September 2022, p. 16.

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In Queensland, the *Child Protection Act 1999*, Division 1, 5B outlines general principles of the Act that includes 'the preferred way of ensuring a child's safety and well-being is through *supporting the child's family.*'[20] The legislation should ensure that every family is offered the necessary support required to keep the child with their family.

Post-removal obligation to provide ongoing support to parents to improve their parenting capacity and readiness for reunification

Additionally, once a child or young person is under guardianship, neither DCP, DHS or any external agency assumes responsibility for the family of the child or young person. Whilst services may be offered, they are not mandated in legislation. The kinds of family support services that need to be offered to families post-removal are only alluded to in Section 9 of the Act, whereby early intervention is identified as a priority. This is in the context of pre-removal and should be extended to all families either before or after their child has been removed from the state.[21]

Funding the required therapeutic responses arising from these actions is essential to operationalising the intent of the legislation. This will involve a substantial redirection of investments into supporting more families when help is most needed and for longer to reduce the number of children and young people entering and languishing in care.

Other Considerations

Implement clear legislative thresholds of harm that are objectively verifiable

This would reduce subjective decision-making and confirmation biases of child protection assessments. Legislative threshold includes definitions of 'significant risk of harm' and 'unacceptable risk of harm.' We support the definition provided by CAFFSA that 'imminent risk of harm' exists where the child or young person, unless immediately removed, would sustain life-threatening bodily injuries, overwhelming psychological trauma of a type not characterized by normative stress responses, or death.[22]

Currently, the Act does not define 'serious harm' or include thresholds of harm. Part 3 of the Act 'Removal of child or young people' – 'if a child protection officer believes on reasonable grounds that (a) a child or young people has suffered, or there is a significant possibility that a child or young people will suffer, serious harm.' In the absence of these definitions, too much subjectivity is involved and, in a risk-averse environment, the tendency is to over-respond in a statutory context when other non-statutory instructions are more likely to be effective.

[20] *Child Protection Act 1999*, current version, <https://www.legislation.qld.gov.au/view/html/inforce/current/act-1999-010#sec.5A>.

[21] Child and Family Focus SA (CAFFSA) Discussion Paper, *2022 Review of the Children and Young People (Safety) Act 2017*, September 2022, p. 15.

[22] Child and Family Focus SA (CAFFSA) Discussion Paper, *2022 Review of the Children and Young People (Safety) Act 2017*, September 2022, p. 10.

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Utilise provisions within the *Prevention and Early Intervention for the Development and Well-being of Children and Young People Bill 2017*, to enhance the CYPS Act or reinstate the Bill.

The impetus for this Bill introduced into the Legislative Council in October 2017 was to rebalance the policy response to ensure families and parents could access the help wanted and needed to keep children and young people safely living at home and to ensure their well-being. Titled the "Prevention and Early intervention for the Development and Well-being of Children and Young People" Bill, it offered a legislative framework designed to strengthen families and improve the well-being of children and young people.[23]

Sadly, this legislation became a casualty of the change of government and the opportunity to cement into our system a commitment to ensuring all families the right to receive the support and interventions needed to keep children safe and out of care was lost. It would have been a legislative first for Australia, enshrining the rights for children, young people and families to receive the support and interventions needed to optimise the well-being of our children. It was in many senses the ideal complementary legislation to the Children and Young People (Safety) Act. It is strongly recommended that either this Bill be reviewed and reintroduced into Parliament or that elements of this Bill be considered for incorporation into the Children and Young People (Safety) Act.

Implement an obligation in the Act to pursue a continued connection with siblings.

Active work is needed to support connection with siblings in care. There is currently no obligation to pursue a continued connection with siblings when children and young people enter care. In circumstances where it is not safe to keep a connection with siblings in person, alternative means of connection such as phone calls, letters or video calls could be implemented. A continued connection with siblings is so important to the well-being of children and young people in care. Adults who have previously been in care have reported that the most significant thing they missed was sibling connection. Siblings are often raising and looking after each other in some capacity. Maintaining relationships with siblings in care helps them develop the skills to learn how to have important relationships later in their life. When children have continued contact with their family it has a positive impact on how they see themselves, and their sense of self-value and identity.[24]

Interstate examples:

In Queensland's *Child Protection Act 1999*, section 5B (i) states that 'if a child is removed from the child's family, the child should be placed with the child's siblings, to the extent that is possible,' additionally section 5BA (a) says 'ongoing positive, trusting and nurturing relationships with persons of significance to the child, including the child's parents, **siblings**, **extended family members and carers.**'[25] Similarly, the NSW *Children and Young Persons (Care and Protection) Act 1998*, stipulates in section 9 that, 'If a child or young person is placed in out-of-home care, the child or young person is

[23] South Australian Legislation, *Prevention and Early Intervention for the Development and Wellbeing of Children and Young People Bill 2017,* as introduced in the Legislative Council, <https://www.legislation.sa.gov.au/lz?path=%2FB%2FARCHIVE%2FPREVENTION%20AND%20EARLY%20INTERVENTION%20FOR%20THE%20DEVELOPMENT%20AND%20WELLBEING%20OF%20CHILDREN%20AND%20YOUNG%20PEOPLE%20BILL%202017>.

[24] Queensland Government, *Maintaining family connections*, 2018, <https://www.qld.gov.au/community/caring-child/foster-kinship-care/information-for-carers/everyday-caring/maintaining-family-connections>.

[25] *Child Protection Act 1999*, current version, <https://www.legislation.qld.gov.au/view/html/inforce/current/act-1999-010#sec.5A>.

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entitled to a safe, nurturing, stable and secure environment. Unless it is contrary to his or her best interests, and taking into account the wishes of the child or young person, this will include the retention by the child or young person of relationships with people significant to the child or young person, including birth or adoptive parents, **siblings, extended family, peers, family friends and community.'**[26]

Implementation issues

In addition to recommended changes to the legislation, the following input is provided in relation to improving the implementation of the Act.

Need to inform service providers of notifications to DCP for at-risk children - a mechanism for information sharing

As part of creating a culture of shared responsibility, there needs to be a mechanism for DCP to share information about notifications of at-risk families with service providers. There is an expectation that DCP are making these referrals after receiving notifications but in practice, there is no mechanism to make this happen. Mandatory reporting was introduced when DCP still had some capacity to do family preservation work. A mechanism to ensure information is shared with the services doing this intervention work rather than just DCP is an essential gap that needs to be addressed.

Inconsistencies in the interpretation of the legislation by DCP workers

Currently, there is no universal understanding of the Act that exists within the DCP. Interpretation of the Act can be vastly different from worker to worker, team to team and office to office. Whether it's the removal of a child or reunification, there is inconsistency in practice due to varying interpretations of the legislation, particularly the assessment framework and decision-making.

For example, when removals have involved families with alcohol and other drug issues, some DCP workers say clearly that there needs to be abstinence to return the child home, whereas other workers take a harm minimisation approach, and for some continued use is accepted. Policy and practices at DCP must ensure that every worker has a consistent understanding of how to implement the Act. This includes new and existing employees.

Urgent need to ensure parents are educated on the implications of safety plans, child removals, family group conferences and long-term orders

Parents have been agreeing to safety plans, child removals, family group conferences and long-term orders without, at times, understanding what this means. For example, unclear language has been used by some DCP workers, particularly for long-term orders that imply that the order can be easily revoked. Parents then go through the process and soon realise that this is not the case. The lack of education and understanding and subsequent application of orders can feel like coercion at times.

[26] New South Wales Legislation, *Children and Young Persons (Care and Protection) Act 1998*, current version, <https://legislation.nsw.gov.au/view/html/inforce/current/act-1998-157>.

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Address resourcing and experience issues among DCP staff

Resources and experience are lacking in DCP, this is largely due to a high staff turnover. Families are ending up with multiple case managers which impacts decision-making and progress. Senior practitioners, supervisors and managers change regularly and often have minimal experience in the Department before becoming the main decision-makers. DCP workers are regularly reporting under-resourcing to service providers. As a result, the overload of work DCP workers are facing effects their ability to make adequate assessments. Changes proposed in relation to mandatory reporting and thresholds for reporting will help to reduce this burden and enable staff within DCP to better direct their efforts and work.

Reinstate reunification and family preservation teams within DCP

The structure of teams in DCP do not lend themselves to supporting families to achieve case plan goals. There used to be reunification and family preservation teams (to work with specialist non-government reunification services), as well as intake and assessment teams. This meant that families did not need to work with staff who did the removal of their child. Now DCP only have response and assessment teams and they are responsible for the reunification work. Families often can't build a rapport with the case manager who has removed their child. This can be triggering and unhelpful, plus DCP workers/teams involved in the initial removal often can't have an open mind about the family's ability to change and grow, as the parents have often been aggressive towards them at the point of removal. In addition, the response and assessment teams' priority is to respond to new intakes as a result the families in the reunification space receive very limited resources and support from DCP workers.

Case plans and readiness for reunification

Parents often come to reunification services or other services not knowing how to navigate case plans and readiness for reunification. They are in a stage of anger and grief and loss and are provided with a list of things to address with no knowledge of where to access support. If a family does not have a service working with them, it becomes overwhelming and unachievable. Families are expected to articulate what they have achieved when they often have little support or education on how to do this. From a cultural perspective, this also at times contradicts what they are told to do in Community. Some families do achieve the case plan goals and then subsequent assessments will identify other areas of concern, but often the case plans don't reflect this, and they hear about it in court or review meetings for the first time. Overall, parents require more support and education to navigate their case plans to increase their chances of reunification.

Allow reunification and family preservation services to make an informed assessment of parenting capacity.

Parenting capacity assessments are used to inform decision-making when this is a snapshot in time and reunification services usually have a better understanding of risk, parenting capacity and long-term safety and interests of the child. Reunification and family preservation services complete long-

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term intensive work with families, which puts them in a better position to comment on parenting capacity.

Greater understanding and trust from DCP towards the role and practices of reunification and family preservation services is needed. DCP don't always trust services to make an informed assessment of parenting capacity and are often accused of being too strengths-based. There appears to be a gap in understanding the role of DCP and identifying risk vs. the role of reunification services, which is to build on strengths, have a trauma-informed lens and family-centred practice. The child is at the centre of services such as our Newpin service, but in order to keep the child safe we have to focus our support toward the parents. Our services can still have a strengths-based approach while identifying and addressing risk.

The preference at DCP is for a psychologist to do the parenting capacity assessment, with long waitlists and no relationship with the family. Whereas reunification services have the relationship with and the knowledge of parents to be able to make these assessments appropriately and in a much shorter time frame (which is in the best interest of the child and in line with the Nyland Report recommendation on timely decision-making).[27]

Simon Schrapel

Chief Executive

[27] Child Protection Systems Royal Commission Report, The Hon Margaret Nyland AM Commissioner, *The life they deserve*.