



**Child and Family Focus SA Submission to the**

***2022 Review of the Children and Young People (Safety) Act 2017***

*November 2022*

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## Acknowledgement

*We acknowledge the traditional lands of the Kurna people and acknowledge the Kurna people as the custodians of the Adelaide region and the Greater Adelaide Plains. We pay our respects to Kurna Elders past, present and emerging.*

*We acknowledge the traditional custodians of land beyond Adelaide and the Adelaide Plains, and pay our respects to all Aboriginal Elders past, present and emerging.*

*We acknowledge and pay our respects to the cultural authority of our Aboriginal and Torres Strait Islander colleagues and are grateful for the cultural expertise that they represent.*

## Summary of recommendations

**Recommendation 1:** CAFFSA recommends the title of the Act be amended to *The Children, Young People and Family (Best Interests, Safety and Support) Act 2022*.

**Recommendation 2:** CAFFSA recommends that the legislation to make it clear that the Aboriginal and Torres Strait Islander Child Placement Principle is the paramount consideration – aside from best interests and safety – in all decision-making involving Aboriginal children and young people.

**Recommendation 3:** CAFFSA recommends that provisions be incorporated into the legislation for regular, independent reviews of case files to determine adherence to the ATSI CPP in practice.

**Recommendation 4:** CAFFSA recommends that the Child Placement Principle be implemented to the standard of active efforts.

**Recommendation 5:** CAFFSA recommends that all of examples developed by SNAICC and appearing in the DCP Discussion Paper be enshrined in the legislation to the standard of ‘active efforts’, noting the requisite expansion and resourcing required for the ACCO sector to give effect to this legislative amendment.

**Recommendation 6:** CAFFSA recommends that a more detailed definition of ‘active efforts’, such as that of Cornell Law School’s Legal Information Institute (with appropriate amendment in relation to the cultural references) be incorporated into the legislation.

**Recommendation 7:** CAFFSA recommends that legislation governing other government agencies, such as health, education and housing be reviewed to incorporate ‘active efforts’ provisions for the assessment and response to all children and young people and their families or carers engaged with, or at risk of engagement with, the child protection system prior to removal, during care, in the promotion of reunification and at the time of leaving care.

**Recommendation 8:** CAFFSA recommends that the legislation be explicit and directive about the need for DCP to refer families for supportive services that could prevent removal or enhance the possibility of preservation and/or reunification both pre and post removal, as well as during the care period.

**Recommendation 9:** CAFFSA recommends that the South Australian Law Reform Institute be advised immediately of the recommendation to insert provisions for the delivery of mental health services and care to the standard of ‘active efforts’ for children, young people and families

in contact with the child protection system or at risk of such contact as part of their 5 yearly review of South Australia's Mental Health Act 2009 on behalf of the South Australian Government.

**Recommendation 10:** CAFFSA recommends that the CYPS Act should explicitly recognise Aboriginal children's and families' right to self-determination and cultural authority.

**Recommendation 11:** CAFFSA recommends legislative reform that will explicitly provide for the progressive delegation of legislative functions to recognised Aboriginal entities.

**Recommendation 12:** CAFFSA recommends that there be legislative provision for the delegation of legislative functions to non-Aboriginal non-Government agencies for the provision of delegated case management and/or guardianship of non-Aboriginal children and young people, for those agencies that have an interest in exploring this.

**Recommendation 13:** CAFFSA recommends the legislation make provisions the role, location and powers of DCP's Principal Aboriginal Consultants be reviewed and for the creation of independent Aboriginal Children's Community Liaison Roles.

**Recommendation 14:** CAFFSA recommends that Aboriginal Family-Led Decision-Making be embedded in the CYPS Act (Question 8).

**Recommendation 15:** CAFFSA recommends the amended Act require that all Aboriginal families engaged with child protection are able to access Family Group Conferencing or an alternative form of ALDM at the earliest opportunity, but also during the child, young person and their family's statutory journey and when they are preparing for or leaving care.

**Recommendation 16:** CAFFSA recommends that the Act explicitly state that no orders can be sought in the Youth Court in relation to assumption of care orders of an Aboriginal child or young person without the convening of a Family Group Conference or another Family Led Decision Making process agreed between the Aboriginal community and DCP.

**Recommendation 17:** CAFFSA recommends that Family Group Conferencing in South Australia be independently evaluated and that formal consultation occur with the Family Matters Leadership Group and broader grass-roots community members to ensure that the voices of Aboriginal children, people and families are heard and acted upon in relation to additional mechanisms that could embed Family Led Decision Making (Question 10).

**Recommendation 18:** CAFFSA recommends that in addition to safety as the paramount consideration, the legislation should be explicit that the best interests of the child is a matter to be considered in decision-making and that there must be a framework developed to ensure it is culturally safe.

**Recommendation 19:** CAFFSA recommends changes to the legislation to make it clear that the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) is the paramount consideration - aside from safety – in all decision-making involving Aboriginal children and young people (Question 13) and proposes the ATSICPP inform or comprise the ‘Best Interests Framework’ discussed above.

**Recommendation 20:** CAFFSA recommends that a public health approach be taken to child protection that addresses the need for primary, secondary and tertiary services for vulnerable families.

**Recommendation 21:** CAFFSA recommends inserting ‘active efforts’ in the governing legislation of both DCP and other relevant agencies in relation to referral to and provision of services to vulnerable children, young people and families.

**Recommendation 22:** CAFFSA recommends that the legislation set out the roles and responsibilities of relevant government and non-government agencies for children’s safety (Question 16) and that 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 (Question 17).

**Recommendation 23:** CAFFSA recommends that ‘risk of significant harm’ be adopted as the legal threshold in the new legislation, without reference to the term ‘imminent’, to ensure the identification and management of cumulative harm is not impacted.

**Recommendation 24:** CAFFSA recommends that an alternative definition of psychological harm that gives due consideration of children’s experiences of trauma and complex trauma be incorporated in the legislation.

**Recommendation 25:** CAFFSA recommends that lack of supervision be incorporated in the indicators of neglect in the proposed elements of Risk of Significant Harm.

**Recommendation 26:** CAFFSA recommends a facilitated process where DCP and member agencies can consider alternatives from interstate and internationally to consider the complexities of reforming mandatory notification prior to decisions about amendment to the legislation.

**Recommendation 27:** CAFFSA recommends a Practice Framework for the Participation of Children and Young People be developed through a co-design process with children and young people, DCP, CREATE, CAFFSA, the Commissioner for Children and Young People, the Commissioner for Aboriginal Children and Young People, and the SA Guardian for Children and Young People.

**Recommendation 28:** CAFFSA recommends that the Aboriginal and Torres Strait Islander Child Placement Principle guides the development of a co-designed Practice Framework, co-designed with Aboriginal children and young people.

**Recommendation 29:** CAFFSA recommends the Principles of the Practice Framework for the Participation of Children and Young People be referenced in the new legislation.

**Recommendation 30:** Information sharing provisions such as Sect 150 and 152 should be redrafted to put the onus on DCP to seek and incorporate information about supports family members have sought/are using/have used in any assessments and decisions regarding statutory intervention with children, young people and their families.

**Recommendation 31:** The legislation should be amended to make specific reference to the use of funded providers such as IFSS and Reunification Services as possible assessors or, at the very least, make clear that their opinions or assessments must be incorporated into the Parental Capacity Assessments.

**Recommendation 32:** CAFFSA recommends that the Contact Arrangement Review Panel be convened in a manner independent from DPC, sitting separately from the agency and that the ability of all parties, including parents, carers, children and DCP to provide information to the review is prescribed in the legislation.

**Recommendation 33:** CAFFSA recommends the legislation incorporate the relocation of the Contact Arrangement Review Panel to the jurisdiction of SACAT.

**Recommendation 34:** CAFFSA recommends that the legislation be amended to extend the formal care leaving age to 26 years. This does not mean that the young person does not attain the age of maturity by age 18, but that their needs are met, via appropriate family-based care and support



or supported independent living until they attain the age of 26. Similar support provisions should be made available for young people who reach the age of 18 in residential care settings, who then have the option of leaving this setting, or transitioning in to supported independent living until they reach the age of 26.

**Recommendation 35:** CAFFSA suggests legislating for a joint panel to review assessments (NGO and government). Such a panel would include a member of CARU, DCP, placement services unit (PSU), and the agency.

**Recommendation 36:** CAFFSA recommends a change in the Act to provide for a three yearly re-licencing process for Family Based Care and 12 monthly process for Residential Care, or that both are re-licenced at three yearly intervals.

**Recommendation 37:** CAFFSA recommends the legislation include provisions for fair, transparent and timely communication of detailed policy and practice directions to NGO partners, families and carers in order to ensure everyone understands the decision-making parameters and can work towards family preservation and/or reunification in the most consistent and evidence-based manner.

**Recommendation 38:** CAFFSA recommends embedding reunification as an explicit principle of intervention and/or placement under the CYPS Act.

**Recommendation 39:** CAFFSA recommends providing a legislative framework for the reunification process that includes specific legislative provision for the reunification of Aboriginal children and young people.

**Recommendation 40:** CAFFSA recommends that the '*onus on the objector*' be reversed, so that it is the responsibility of the Department / Crown to prove that a family does not have the capacity to care for their child.

**Recommendation 41:** CAFFSA recommends that the requirement for psychometric testing for all staff working in residential care facilities be removed from the Act.

**Recommendation 42:** CAFFSA recommends the Act incorporate sanctions for media outlets that breach the privacy of a child or young person.

## Summary

CAFFSA is the South Australian peak body and industry association for child safety and child protection, representing the needs of South Australian children, young people, families, and the non-government, not-for-profit organizations who support them.

CAFFSA undertook a broad consultation with its Board, Policy and Advocacy Committee, networks and broader membership on the review of the Children and Young Person (Safety) Act 2017 (the Act) announced by Minister for Child Protection, the Hon. Katrine Hildyard on 6<sup>th</sup> September 2022. Over 100 people from more than 30 agencies and offices contributed to this submission. They attended consultation sessions held for metropolitan Adelaide, Mt Gambier, Port Lincoln, Whyalla and Port Pirie and Port Augusta. A range of virtual consultations were also convened, as well as some individual meetings.

This submission provides a structured response to the questions in the discussion paper prepared by the Department for Child Protection (DCP) which is found [here](#). CAFFSA also prepared a discussion paper that can be found [here](#) to facilitate the series of conversations between CAFFSA staff, members, academics and community representatives. CAFFSA's paper focused on legislative changes previously deemed important and worthy of consideration and incorporated new issues members raised in the context of the current legislative review. This submission makes an extra three recommendations based on issues that are not identified in the DCP Discussion Paper.

CAFFSA gratefully acknowledges the funding made available by DCP to enable the preparation and consultation with our metropolitan and regional members. The funding allowed CAFFSA's response to be informed by a much broader range of our members than would otherwise have been possible.

## The case for change

### ***The SA Government knows what it will take:***

Across Australia, increasing numbers of children and young people are being removed from their families and placed in care in response to significant safety concerns. This is a deeply traumatising experience that can continue to impact health and wellbeing throughout life and across generations.

For Aboriginal families, the numbers of children and young people in care continues to rise at a shocking and utterly unacceptable rate. This is compounded by the intergenerational trauma from children being forcefully taken from their communities and culture. The continuing over-representation of Aboriginal and Torres Strait Islander children in out-of-home care demands major changes to the governance, design, practice, and workforce of early intervention services. We need to work together to address the impacts of intergenerational trauma from experiences of colonisation, the Stolen Generations, and other past discriminatory government policies.

Currently, it is well known that one in three children born in South Australia are reported to the Department for Child Protection (DCP) by age ten. A SA Government publication states that these reports ‘...relate to matters of genuine concern. Many of these families have multiple and complex needs that make it difficult to provide safe and nurturing environments for their children. Some of the common challenges which can impact on parenting are domestic and family violence, parental alcohol and other drug abuse, unaddressed or poorly managed mental health needs, disability, homelessness, as well as financial stress and long-term unemployment.’<sup>1</sup>

The same document advises:

“We know that in 2019-20 there were approximately 8,600 families at high risk of continued and escalating contact with the tertiary child protection system. At this stage of the reform, the service system must be strongly focused on these families and be flexible, to enable them to shift between services of varying levels of intensity as their needs change over time.”

CAFFSA understands from private discussions that around 4,500 of those families won’t receive an intensive family support service due to capacity demands on current resources available.

Until there is a funding framework that refocusses efforts to early intervention and intensive family support, Governments will continue to preside over lost opportunities to preserve or reunify a proportion of vulnerable families and incur ever-spiralling costs in providing alternative care

Despite a growing body of local, Australian and international evidence demonstrating that intensive family support services can prevent some placements of children in statutory care, South Australian spending on protective intervention, family support, and intensive family support services continues to be lower than the national average. SA real expenditure on intensive family support services per child in the population in was 29.8 % lower than national average in 2020-21. Unsurprisingly, given the lack of investment in strategies known to reduce the removal of children,

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<sup>1</sup> Roadmap for reforming the Child and Family Support System 2021-2023 Practitioner Version, Government of South Australia <https://dhs.sa.gov.au/services/cfss/resources/reports-and-publications/roadmap-for-reforming-the-cfss-practitioner-version#title0> Accessed 11/10/22 at 2.47pm

the amount of money spent per capita on looking after children who have been removed from their homes in SA is the second highest in the country.<sup>2</sup>

Evidence tells us if we want to change the outcomes for children entering the statutory care system, we need to change the decision-making processes, both in the legislation and in practice. For example, evidence from around the world tells us that wherever Family Group Conferencing is practiced, care numbers have dropped and yet South Australia is still funding them as trials, on a case-by-case basis.

If family preservation and restoration are the priority and focus for all families where this is possible, it should be reflected in funding allocations above guardianship and adoption. And yet, in 2020-21, 78.1 per cent of all South Australian child protection services expenditure was committed to care services.<sup>3</sup>

Real expenditure per child aged 0-17 on protective intervention services was 30.2 per cent less than the national average in 2020-21.<sup>4</sup> South Australian real expenditure on intensive family support services per child aged 0-17 in 2020-21 was 29.8 per cent lower than the national average in 2020-21.<sup>5</sup>

Despite the significantly lower investment in programs that support families to stay together or reunify safely, the SA Government knows what works. As one example, it is already making modest investments in programs like Newpin, and clearly needs to increase the funding substantially to bring the benefits to scale.

Uniting Communities are funded in SA to operate the Newpin model, an intensive family restoration program. Newpin was the first program in Australia to be funded under a Social Benefit Bond (SBB) arrangement.

The Final Evaluation Report of a seven-year evaluation of the NSW Newpin program, commissioned by NSW Treasury in 2013, found that positive outcomes were achieved by a majority of families with almost 850 children from over 500 families have participated in Newpin with either restoration or preservation as their case plan goal.

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<sup>2</sup> Productivity Commission, Report on Government Services 2022 (2022) Part F, Section 16 (Chart 5)

<sup>3</sup> Productivity Commission, Report on Government Services 2022 (2022) (Chart 2)

<sup>4</sup> Productivity Commission, Report on Government Services 2022 (2022) Part F, Section 16: (Chart 4a)

<sup>5</sup> Productivity Commission, Report on Government Services 2022 (2022) Part F, Section 16 (Chart 4c)

- The net restoration rate for Newpin under this evaluation at 31 December 2019 is 59%. It is nearly three times higher than the Counterfactual Rate of Restoration that was used in the SBB arrangement (20%).
- Around two-thirds (65%) of children who were at risk of being removed from their families were able to remain with their parents and not enter OOHC.<sup>6</sup>

Reducing the rate of children in SA entering foster or residential care or returning them home safely to their families following a period in care would yield substantial savings to reinvest in further intensive support services, driving more savings, which is demonstrated by the two important studies in the next section.

## The Business Case for Prevention and Early Intervention

The two public policy strengths of early intervention are firstly that it is less expensive and second it is more effective than late intervention. It is no longer viable to take ever increasing amounts of taxation from the public to deal with the ever-increasing impact of failing to intervene early.

Effective prevention and early intervention is possibly the most promising strategy for changing the trajectories of children. There is clear evidence that children's life chances are influenced by their families and communities and that they are able to be changed for the better. Improving the wellbeing of children, young people and families at population-level requires flexible and responsive systems that are equipped to deliver preventive interventions and respond effectively early to emerging issues and challenges. There is a strong and growing evidence-base that supports the effectiveness of many prevention and early intervention programs and approaches, and consistent evidence about the features of service systems that contribute to poorer outcomes.<sup>7</sup>

A 2019 report regarding potential savings to Australian state and federal Governments by the Early Intervention Foundation<sup>8</sup> posed the question:

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<sup>6</sup> Urbis, Newpin Evaluation Final Report, p3

<sup>7</sup> Fox, S., Southwell, A., Stafford, N., Goodhue, R., Jackson, D. and Smith, C. (2015). Better Systems, Better Chances: A Review of Research and Practice for Prevention and Early Intervention. Canberra: Australian Research Alliance for Children and Youth (ARACY).

<sup>8</sup> Teager, William, Calculating the cost of late intervention in Australia, 2019, accessed 10.42 22/10/2022 at <https://www.eif.org.uk/blog/calculating-the-cost-of-late-intervention-in-australia>

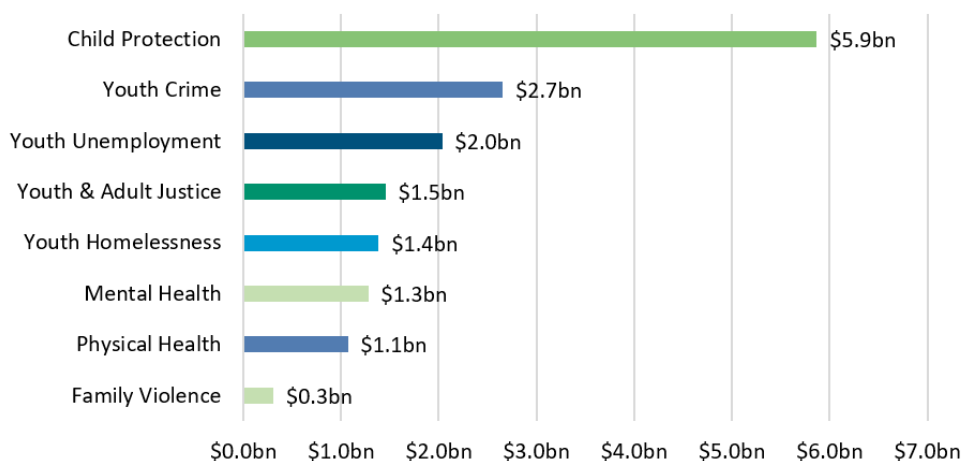
‘What is the impact of not intervening early enough in children’s lives when things start to go wrong?’ This is an impossible question to answer fully with a single, simple number. The consequences of not ensuring all children have the best possible start in life are far-reaching and profound, when unresolved challenges can adversely affect a young person’s future health, happiness and prosperity.

One way to make these impacts more tangible, however, is to consider what central and local government spends dealing with issues that could have been prevented or reduced earlier. This includes things like the cost of child protection services; the police, court and criminal justice costs from youth crime; and welfare expenditure related to supporting unemployed young people. Many of these costs have their roots in early childhood trauma and disadvantage.

They set out to calculate the annual costs of late intervention in Australia and made some important findings:

- The cost to government of late intervention is **\$15.2bn** each year (in 2019 dollars.) This equated to \$607 for every Australian or \$1,912 per child and young person
- The greatest costs were services for children in out-of-home care (39%); the police, court and health costs of youth crime (18%); and welfare payments for unemployed young people (13%)
- While it is to be expected that a large proportion of spending was on child protection and justice, other potentially preventable issues were also significant – government spends \$1bn per year on preventable health issues, \$1.4bn on youth homelessness, and \$1.3bn on youth mental health.

**Annual cost of late intervention in Australia by issue (2018/19 prices, A\$bn)**



Furthermore, a report commissioned by the Victorian Centre for Excellence in Child and Family Welfare, Berry Street and other agencies in the Victorian child and family services sector demonstrated the capacity for additional, long-term investment in targeted early intervention and intensive family preservation services using programs being trialed or implemented in Australia to contribute to preventing children and young people from entering out of home care (for example, SafeCare, Functional Family Therapy— Child Welfare, Multi-Systemic Therapy) and offset the fiscal impact of funding these services.<sup>9</sup>

The report found that over a 10-year period, significant savings can be achieved at a system-wide level, even when allowing for a six-month set up period in the first year before program delivery commences. An investment of approximately \$150 million per year (indexed) over a 10-year period delivers cumulative net savings (after deducting program establishment and delivery costs) of \$1.6 billion with breakeven occurring during the fifth year of implementation.

Most importantly, this represents approximately 1,200 children per year who could avoid entering out-of-home care, be placed in home-based care, or be reunited with their families, instead of being in residential care.<sup>10</sup>

Consider these figures in the context of the growth in the placement of children in out-of-home care in South Australia:

At 30 June 2017 there were 3484 children aged under 18 years in care. That number rose to 4740 by 30 June 2022. And by 31 August 2022 it rose to 4,793 – a further 53 children aged under 18 were taken into care within a month.<sup>11</sup>

The case to re-balance the legislation and practice to a focus on prevention and early intervention and commit to the funding framework to enact the legislation is clearly now urgent on both social justice and economic grounds.

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<sup>9</sup> Social Ventures Australia Consulting 2019, The economic case study for early intervention in the child protection and out-of-home care system in Victoria, retrieved from: [www.berrystreet.org.au](http://www.berrystreet.org.au)

<sup>10</sup> SVA Consulting, The economic case for early intervention in the child protection and out-of-home care system in Victoria, Research paper, 2019 p 10

<sup>11</sup> <https://www.childprotection.sa.gov.au/department/reporting-and-statistics>

## Introduction

The South Australian Government and Department for Child Protection's Discussion Paper: *Building the South Australian Child Protection System for the Future - Review of the Children and Young People (Safety) Act 2017* (hereafter referred to as the DCP Discussion Paper) states:

Together with the Department for Child Protection, NGO service providers share in the responsibility for service delivery to best meet the needs of the children, young people and families in contact with the child protection system.

Acknowledging it can be challenging work, quality service provision in this context has the genuine capacity to transform and improve the lives of children and young people and families, and to strengthen the community as a whole. (p. 19)

*DCP's discussion paper poses the question: What changes could be made to the CYPS Act that would improve the ability of NGO providers to deliver essential care and protection services to children and young people?*

This submission provides a structured response to the questions in the discussion paper prepared by the Department for Child Protection (DCP) which is found [here](#). CAFFSA also prepared a discussion paper that can be found [here](#) to facilitate the series of conversations between CAFFSA staff, members, academics and community representatives. CAFFSA's paper focused on legislative changes previously deemed important and worthy of consideration and incorporated new and emerging issues members raised in the context of the current legislative review.

CAFFSA undertook a broad consultation with its Board of Directors, Policy and Advocacy Advisory Committee, service provider and special interest networks and broader membership regarding the review of the *Children and Young Person (Safety) Act 2017* (the Act.) Over 100 people from more than 30 agencies and offices attended consultation sessions held for metropolitan Adelaide, Mt Gambier, Whyalla, Port Lincoln and Port Augusta. A range of virtual consultations were also convened, as well as meetings with individuals.

This submission responds to the questions posed in DCP's Discussion Paper and makes a further three recommendations on other matters of concern in relation to children, young people and families across South Australia.



## The context – an urgent need for change

In May 2022, prior to this legislative review process, CAFFSA held a forum with 68 participants from 28 member organizations, as well as young people who had been in care, the heads of interstate experts and other experts in their fields, to discuss the most urgent priorities for action to improve family wellbeing and child protection in South Australia.

Those priorities identified at the forum that could be addressed or partially addressed by legislative amendments substantially guide this submission.

### The cultural authority of Aboriginal people: Recognition, resourcing, and implementation

The urgent need for legislative reform in the context of the alarming growth in the removal of Aboriginal children and young people is the highest priority for the sector. There is strong acknowledgement of the role of Aboriginal people as the source of cultural authority in decision-making about the care and welfare of the children in their communities, alongside the promotion of the cultural safety and cultural identity of the Aboriginal children and young people in care.

Aboriginal professionals working in member organisations, young Aboriginal people who had been in care and non-Aboriginal staff members of member organisations who attended the forum raised some key concerns that can be addressed or ameliorated by changes in legislation. These included:

- the over-representation of Aboriginal children and young people in care;
- the powerful desire to keep families together, while addressing safety issues;
- the value and importance of Family Group Conferencing;
- the need to employ Aboriginal people in member organisations to promote cultural safety and cultural identity among families, children and young people receiving services;
- the need for more Aboriginal foster families; and
- the under-representation of Aboriginal people on the Child Death and Serious Injury Review Committee in South Australia.

## Resourcing early intervention, prevention of abuse and deaths and keeping families together

The urgent need for reorientation towards prevention and early intervention responses was a primary concern for everyone at the forum. Speakers discussed services that are achieving good results and there was a universal desire to see more resources invested in early intervention and prevention. A common demand, including from Aboriginal speakers, was the need for more time to be given to efforts to support families and build the capacity for positive change, before children were removed, and often removed for long periods of time.

## Value of all the voices of lived experience: children and young people; siblings; family; and foster carers

Participants emphasised the value of hearing the views of young people who had been in care. The key message from the young people was a profound yearning for stability. They spoke eloquently of the need for stability with their foster or other carers, support workers, schools, and community connections. They want support workers to telephone and visit regularly, listen, and develop relationships of trust and support. They want their concerns to be heard and investigated. They want to feel safe.

There was a keen interest in hearing how children and young people can participate and contribute to decision-making and improving services, both while they are in care, and also after they have left care. Representatives of the CREATE Foundation shared examples of the work they do to support young people as advocates for positive change.

## Family Led Decision Making and Family Group Conferencing

There is a great interest in Family-Led Decision Making and Family Group Conferencing for ensuring all voices are heard and that children and young people and their families actively participate in finding sustainable solutions based on the primacy of family relationships. The value of Family-Led Decision Making and the value of Family Group Conferencing as an Aboriginal approach to facilitating such decision making was also highlighted.

This submission seeks to honour these voices by recommending amendments to the legislation that could respond to the urgent calls for action.

## Sector responses to the questions posed in DCP's Discussion Paper

For ease of reference, the bulk of this submission follows the format of the DCP Discussion Paper, with additional recommendations at the end of the document. This initial recommendation, however, relates to the title of the legislation, in the context of the urgent need for a more balanced focus.

### Title of the legislation

**Recommendation 1: CAFFSA recommends the title of the Act be amended to *The Children, Young People and Family (Best Interests, Safety and Support) Act 2022***

Given that the focus of the Act must be on the best interests of children as a paramount concern (the 'paramountcy principle' in child protection and family law legislation), there is scope to better conceptualise the child in the context of their family and the need to retain connection with family wherever possible within the title of the Act.

Consultation yielded an alternative title for the Act that reflects both the paramountcy principle and the importance of conceptualising of children's wellbeing as being inter-dependent on broader family wellbeing and family cohesiveness.

The inclusion of the word *family* is consistent with the overall aim of CAFFSA's membership to see a balance in the legislation that incorporates the centrality of supporting the family to care for the child in the best possible way before, during and after statutory intervention. The inclusion of 'support' speaks to the assistance (to the level of 'active efforts') that must be made to invest in the capability of vulnerable parents and carers to provide for the needs of children and young people in ways that, in all but very few, would if they were not hampered by those vulnerabilities.

### Embedding the Aboriginal and Torres Strait Islander Child Placement Principle

#### **Aboriginal and Torres Strait Islander Child Placement Principle**

CAFFSA advises there is uniform sector support for changes to the legislation to make it clear that the Aboriginal and Torres Strait Islander Child Placement Principle is the paramount consideration

– aside from best interests and safety – in all decision-making involving Aboriginal children and young people. In consultations with over 100 staff from over 30 agencies and offices, there was overwhelming feedback that adherence to the Aboriginal Child Placement Principle as it currently appears in the current legislation is patchy. For this reason, it is also recommended that provisions be incorporated into the legislation for regular, independent reviews of case files to determine adherence to the ATSICPP in practice.

CAFFSA recommends that provisions be incorporated into the legislation for regular, independent reviews of case files to determine adherence to the ATSICPP in practice.

There was also uniform support for changing the way the child protection system values culture and embeds the right of Aboriginal people to be part of decision-making about Aboriginal children and young people’s care and protection and that the Child Placement Principle be implemented to the standard of **active efforts**.

**Recommendation 2: CAFFSA recommends that the legislation make it clear that the Aboriginal and Torres Strait Islander Child Placement Principle is the paramount consideration – aside from best interests and safety – in all decision-making involving Aboriginal children and young people.**

**Recommendation 3: CAFFSA recommends that provisions be incorporated into the legislation for regular, independent reviews of case files to determine adherence to the ATSICPP in practice.**

**Recommendation 4: CAFFSA recommends that the Child Placement Principle be implemented to the standard of active efforts.**

CAFFSA also endorses all of the examples developed by SNAICC that appear in DCP’s Discussion Paper, including:

- 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 choose to participate in Aboriginal Family-Led Decision-Making, including Family Group Conferencing where appropriate and where cultural safety can be assured;

- requiring an independent representative of Aboriginal Community Controlled Organisations (ACCOs), or other recognised Aboriginal entities, to participate in all significant decisions about Aboriginal children;
- requiring decision-makers to fully investigate all placement options at each level of the placement hierarchy (and to periodically review lower-priority placements for opportunities to reconnect with a higher-priority placement);
- requiring Aboriginal service providers to be resourced in proportion to the level of over-representation of Aboriginal children and young people in care; and
- requiring cultural care plans developed with the input of the child and family.

**Recommendation 5: CAFFSA recommends that all of examples developed by SNAICC and appearing in the DCP Discussion Paper be enshrined in the legislation to the standard of ‘active efforts’, noting the requisite expansion and resourcing required for the ACCO sector to give effect to this legislative amendment.**

## The Definition of Active Efforts

CAFFSA believes the intent of ‘active efforts’ should be utterly clear in the legislation if it is to have the intended outcomes for vulnerable children, young people, and families.

Cornell’s Law School’s Legal Information Institute defines ‘active efforts’ to mean:

affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family... Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

Active efforts are to be tailored to the facts and circumstances of the case and may include, for example:

1. Conducting a comprehensive assessment of the circumstances of the Indian child’s family, with a focus on safe reunification as the most desirable goal;

2. Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;
3. Identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues;
4. Conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents;
5. Offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe;
6. Taking steps to keep siblings together whenever possible;
7. Supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child;
8. Identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources;
9. Monitoring progress and participation in services;
10. Considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available;
11. Providing post-reunification services and monitoring.<sup>12</sup>

**Recommendation 6: CAFFSA recommends that a more detailed definition of 'active efforts', such as that of Cornell Law School's Legal Information Institute (with appropriate amendment in relation to the cultural references) be incorporated into the legislation.**

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<sup>12</sup>[law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def\\_id=485d98378e0f8f0ce930dc0f785bc06d&term\\_occur=2&term\\_src=Title:25:Chapter:I:Subchapter:D:Part:23:Subpart:A:23.2](http://law.cornell.edu/definitions/index.php?width=840&height=800&iframe=true&def_id=485d98378e0f8f0ce930dc0f785bc06d&term_occur=2&term_src=Title:25:Chapter:I:Subchapter:D:Part:23:Subpart:A:23.2)

Given the importance of services provided by other government agencies, such as health, education, and housing, CAFFSA recommends that the legislation require that all government agencies make active efforts to support Aboriginal children and young people (Question 3). CAFFSA also supports the legislation including the model of active efforts for all children and young people engaged with child protection (Question 4.)

The term 'active efforts' originates from the Indian Child Welfare Act (ICWA), which includes under Remedial services and rehabilitative programs; preventive measures the legislative mandate that "Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful."<sup>13</sup>

The United States Supreme Court confirmed that what this statute means is that the state has an obligation to provide services and other types of interventions to prevent the necessity of removing a child from parental care and, if removed, to assist in the reunification of the child with family.<sup>14</sup>

### Active Efforts versus Reasonable Efforts

An important distinction to make, both in the new legislation and in practice, is the difference between 'active efforts' and 'reasonable efforts.' US Federal law created the term 'active efforts' in 1978 as a part of the ICWA. Two years later, in 1980, the Adoption Assistance and Child Welfare Act was signed into law and created the term 'reasonable efforts.' That legislation mandated states to provide reasonable efforts to prevent removal of a child from parental care and reasonable efforts by the state to prevent the removal of a child from his or her home and to make it possible for a child to return home.

A practice manual regarding the ICWA states, 'a rule of thumb is that "active efforts" is to engage the family while "reasonable efforts" simply offers referrals to the family and leaves it to them to seek out assistance.'<sup>15</sup>

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<sup>13</sup> Judge Leonard Edwards (ret.), Defining Active Efforts in the Indian Child Welfare Act, The NACC Guardian, National Association of Counsel for Children, Vol 21, No 01, Jan/Feb 2019

<sup>14</sup> Ibid, p

<sup>15</sup> National Indian Law Library, Indian Child Welfare Act Guide Online | 12. Active Efforts Requirement <https://narf.org/nill/documents/icwa/faq/active.html>, accessed 7.10am, 20/9/2022

CAFFSA recommends that the South Australian legislation ought to be thoroughly clear that action has been taken to the level of 'active efforts' by the statutory body to address safety concerns within the family prior to the child or young person being removed, including the at the stages of proactive identification and provision of intensive family support and reunification services.

The legislation should also be explicit and directive about the need for DCP to refer families both pre and post removal, as well as during the care period, for supportive services that could prevent removal or enhance the possibility of reunification. The principle of active efforts should be incorporated in legislation governing other relevant services.

An onus on mental health, substance abuse, counselling, and housing services to provide assessment and response and will require agencies such as the Department of Health and Wellbeing, the Department of Human Services, and the South Australian Housing Authority SAHA), to take a much more active role in child protection and child safety matters. Substantial additional funding the requisite therapeutic responses for all eligible children, young people and families would be essential to operationalise the intent of the legislation, although the business case for doing so has already been outlined in this report. The will to provide assistance to vulnerable children and families is not lacking in other government departments. It is inadequate resourcing driving harsh prioritisation, with triaging out of needy children and families as the result.

**Recommendation 7: CAFFSA recommends that legislation governing other government agencies, such as health, education and housing be reviewed to incorporate 'active efforts' provisions for the assessment and response to all children and young people and their families or carers engaged with, or at risk of engagement with, the child protection system prior to removal, during care, in the promotion of reunification and at the time of leaving care.**

**Recommendation 8: CAFFSA recommends that the legislation be explicit and directive about the need for DCP to refer families for supportive services that could prevent removal or enhance the possibility of preservation and/or reunification both pre and post removal, as well as during the care period.**

**Recommendation 9: CAFFSA recommends that the South Australian Law Reform Institute be advised immediately of the recommendation to insert provisions for the delivery of mental health services and care to the standard of 'active efforts' for children, young people and families in contact with the child protection system or at risk of such contact as part of their 5 yearly review of South Australia's Mental Health Act 2009 on behalf of the South Australian Government.**



CAFFSA is aware of the resource constraints arising from the recommendation to embed service responses across the system to the level of 'active efforts.' We would, however, highlight that new models being trialled by agencies in our sector point to possible ways to ensure families are actively assisted to access the services and supports they need.

One example of this is a research project by Uniting Country SA and Catherine McKenzie from Flinders University. Children with complex needs who have experienced (often multiple) breakdowns in foster care and have been unable to be placed in residential care generally must move away from their community, breaking their established social networks and making implementing an ecological approach unachievable from the start. Their project aims to address this gap in care by using a critical realist approach to find out what has worked elsewhere, and what might work in South Australian country areas.

The research is examining a System Navigator Approach that includes therapeutic as well as social and community elements such as:

- A community development approach, ensuring effective community-based programs and services
- The Wraparound Approach - a designated 'navigator' working with the child and family to assemble a team that systematically links the child and their family to community-based care, services, and programs.
- Positive outcomes for young people that include reduced likelihood of young people in a care experience, reduced foster or kinship care breakdown and entry into residential care.

The use of navigators to assist children, young people and families can actually access and attend networks of support could be explored as a method of ensuring 'active efforts' rather than 'reasonable efforts' are being applied.

### Enabling self-determination and the exercise of legislative authority

The DCP Discussion Paper notes that the CYPs Act currently establishes an authority for the Chief Executive of the Department for Child Protection to undertake intervention, care and protection activities for children and young people and that the South Australian Government has committed to work with Aboriginal people and stakeholders to delegate legislative authority to recognised Aboriginal entities (e.g. ACCOs), and to enable the exercise of self-determination by Aboriginal people in child protection.

In other jurisdictions in Australia (notably NSW and VIC) legal guardianship is transferred or 'shared' with the community services/NGO sector, effectively allowing non-government organisations to discharge statutory guardianship responsibilities in such a manner that is timely and responsive to the needs of children and young people. There has been a particular focus on delegating responsibility to Aboriginal organisations, in order to advance the Aboriginal and Torres Strait Islander Child Placement Principle. CAFFSA strongly supports these aims.

The Victorian Aboriginal Child Care Agency (VACCA) operated a pilot project, essentially operationalising transfer of guardianship from 2013 to 2015, allowing for an Aboriginal controlled organisation to have a pivotal role in assessing children's safety, stability, and development through the specificity of their cultural lens. While the project worked with a small number of Aboriginal children, the results were highly encouraging. Despite most children being in care for very long periods – most for more than eight years – almost half went 'home' from residential or foster care to their parents or extended family members. These are children who were considered to have limited prospects of returning home.<sup>16</sup>

CAFFSA is of the view that the Act should make provisions for the transfer or sharing of guardianship and formal case management responsibilities with ACCOs for Aboriginal children and young people.

There was a strong view that the government needs to expand the number of gazetted Aboriginal agencies as delegation of guardianship requires a strong and viable sector with good governance capability and enough capacity across the sector to effectively manage the delegation of functions. Adequate risk mitigation strategies such as insurances and proper partnerships with government will be required to facilitate transfer of guardianship. Commitment to invest in organizational training, support and mentorship for Aboriginal Board members was suggested as critical if the government wants to ensure this transfer is managed fairly, responsibly, ethically and in a manner that upholds cultural safety.

Overseas experience of delegation with *non-Indigenous populations* is also instructive. Findings include that poor planning around delegation of authority can delay decision making and lead to children missing out on opportunities that children living with their birth families have natural and easy access to. It can also prevent the child or young person feeling part of the foster carer's family or the daily life of their home because of problems obtaining consent to everyday activities, making them feel different from their peers and cause them embarrassment and upset.

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<sup>16</sup> [www.deadlystory.com/icms\\_docs/279200\\_a-step-closer-to-aboriginal-guardianship.pdf](http://www.deadlystory.com/icms_docs/279200_a-step-closer-to-aboriginal-guardianship.pdf)

Failure to delegate appropriately, or to make clear who has the authority to decide what, can make it more difficult for foster carers and residential workers to carry out their caring role and form appropriate relationships with the children in their care.<sup>17</sup>

The majority of those consulted agreed that inserting legislative provisions that broadens delegated guardianship (or delegated case management) for non-Aboriginal children to non-Aboriginal NGOs and service providers was an effective mechanism to explore the possibilities in the future. CAFFSA was very clear during the consultations that this provision would need to be managed sensitively, so as to prevent non-Aboriginal services moving into the space of delegated guardianship/case management for Aboriginal children and young people because they were more resourced and therefore had greater capacity. This perverse outcome is not the intent of the proposal or the agreements with the proposal during consultations.

Both proposals would allow the agencies, should they choose, to apply to the Minister for Child Protection for such a transfer, to assume legal guardianship upon an order being made by the Youth Court and facilitate the outcomes of a more culturally appropriate and responsive environment for the Aboriginal children and young people in the care of Aboriginal organisations, as well as a more responsive one for non-Aboriginal children and young people. In response to questions 5, 6 and 7 in DCP's Discussion Paper:

**Recommendation 10: CAFFSA recommends that the CYPs Act should explicitly recognise Aboriginal children's and families' right to self-determination and cultural authority.**

**Recommendation 11: CAFFSA recommends legislative reform that will explicitly provide for the progressive delegation of legislative functions to recognised Aboriginal entities.**

CAFFSA provides no commentary on the detail of the roles and functions recognised Aboriginal entities could hold under the legislation as it should be determined via close consultation with Aboriginal organisations and the Aboriginal community.

**Recommendation 12: CAFFSA recommends that there be legislative provision for the delegation of legislative functions to non-Aboriginal non-Government agencies for the provision of delegated case management and/or guardianship of non-Aboriginal children and young people, for those agencies that have an interest in exploring this.**

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<sup>17</sup> <http://hscchildcareprocedures.gov.gg/article/118361/Delegated-Authority>, accessed 28 September 2022, 1.12pm

## Aboriginal Children's Community Liaison Roles

In view of the significant over-representation of Aboriginal children and families in the child protection system and the stated goals of the Aboriginal Child Placement Principle, it has been previously suggested to CAFFSA by an ACCO that legislative provision for and investment in *Aboriginal Community and/or Carer Liaison* roles is important to consider. CAFFSA incorporated this proposal in our Discussion Paper.

These roles would assist Aboriginal families and communities understand and navigate the statutory system. They would provide access to safe, community-based experts who can provide advice and direction, as well as brokering key conversations in relation to the longstanding tensions between Aboriginal and the dominant western culture child rearing practices, especially as it relates to child safety and wellbeing.

In acknowledging that our past (and, in some cases, present) policies, practices and wrongs have created fear and distrust amongst Aboriginal people in services that have a child focus, CAFFSA believes that we need to continually work towards an environment and approach that builds trust with Aboriginal families and community, so they are more likely to access assistance and guidance in a safe, culturally appropriate way.

There was almost uniform support for this suggestion during the consultations. Participants in one consultation noted the similarities between the proposed Aboriginal Children's Community Liaison role and the Principal Aboriginal Consultants (PACs.) Discussions about this recommendation yielded strong views about the PAC roles located in the Department for Child Protection.

Both regional and metropolitan agency staff raised the lack of decision-making power in the PAC roles. The problem that recommendations made by the PACs are sometimes not listened to was raised consistently. A number of consultations recommended that PACs be moved from DCP to give them more independence, with the recommendation that the amended legislation ensure the advice of the PAC role is incorporated in any decisions taken about the child or young person and their family. A range of suggestions were made about where the roles could be placed, including within the Office of the Commissioner for Aboriginal Children and Young People, Aboriginal Health Centres, or other Aboriginal Community Controlled Organisations.

Recommendation 13: CAFFSA recommends the legislation make provisions the role, location, and powers of DCP's Principal Aboriginal Consultants be reviewed and for the creation of independent Aboriginal Children's Community Liaison Roles.

## Legislating Aboriginal Family-Led Decision-Making

*'You can't change the outcomes if you don't change the decision-making.'*

*Individual respondent to CAFFSA's call for input*

**Recommendation 14: CAFFSA recommends that Aboriginal Family-Led Decision-Making be embedded in the CYPS Act (Question 8)**

There was uniform support for embedding the principles of Aboriginal Family-Led Decision Making into the legislation, and a recognition that this could potentially support the full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP).

CAFFSA agrees with that position in DCP's Discussion Paper that Aboriginal Family-Led Decision-Making (AFLDM) is a critical element of improved child protection decision-making and supporting safety within a child or young person's own family, community, and culture.

CAFFSA notes that while the Department for Child Protection has an AFLDM policy in place, which is supported by practice guidance, there is very little publicly facing information. The Courts SA website provides much greater detail (see <https://www.courts.sa.gov.au/going-to-court/court-locations/youth-court/family-group-conferences/>) The limited public information from DCP prevents non-Government agencies and family members themselves from being clear about the principles of the program. In contrast, other jurisdictions, such as Victoria, have socialised their principles, policies, and practice frameworks in detail, making them available to everyone on line.<sup>18</sup> Their principles for Family Led Decision Making could be considered in the newly drafted South Australian legislation:

### FLDM model principles

*The following core principles underpin and provide guidance for the FLDM model. These principles are additional to the legislated best interests and decision-making principles and build upon the Best Interests Case Practice Model and the SAFER Children framework.*

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<sup>18</sup> <https://www.cpmanual.vic.gov.au/advice-and-protocols/advice/case-planning/family-led-decision-making-program-guidelines>

- *Family is recognized as having a pivotal role in the care and protection of the child and is supported and empowered to lead decision-making in partnership with Child Protection.*
- *A child's connection to family is critical and wherever possible should be maintained.*
- *FLDM is a collective decision-making process.*
- *Culture is respected and integrated into the FLDM program. FLDM provides a safe environment to engage in discussions of culture and supports family traditions.*
- *Children have the widest possible family group around them.*
- *The family group is entitled to information about what has happened to the child and family because of their decision-making role. FLDM is a transparent process with all information necessary for planning for the child's safety, wellbeing and development being shared with the family group.<sup>19</sup>*

## Family Group Conferences

Since its inception, Family Group Conferences (FGC) have been developed and implemented in a number of Australian jurisdictions and internationally. The FGC model (and associated models of family decision-making) has spread widely because of the ideological appeal of family decision-making models. This includes the promotion of families' rights to participate in decision-making about their children, and children's rights to be involved with their family, the congruence of the model with the Aboriginal Child Placement Principle, participant satisfaction with the elements of the model, and the perceived adaptability of the model to different contexts.<sup>20</sup>

SNAICC, in partnership with other ACCOs, conducted trials of AFLDM in several sites across the state in 2016–17. The trials provided an opportunity for families to meaningfully participate in child protection decision making affecting their and their children's lives; with an independent evaluation of the trials finding that successful outcomes for families were achieved when Aboriginal and/or Torres Strait Islander conveners and the AFLDM service providers were truly empowered to do things their way. At one trial site, 16 out of 20 families who participated in AFLDM experienced improvements in safety and protection from harm.<sup>21</sup>

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<sup>19</sup> Victorian Government Department of Families, Fairness and Housing, Melbourne, Victoria, Family-led decision making (FLDM) model – Practice guidance, Version 2, 2021, accessed at <https://www.cpmanual.vic.gov.au/fldm-model-v2> on 28/11/2022, 3.47pm

<sup>20</sup> A/Prof Fiona Arney, Kate McGuinness and Mark Westby, Report on the Implementation of Family Group Conferencing in Alice Springs, 2012, Centre for Child Development and Education Menzies School of Health Research, page 8

<sup>21</sup> ACT Government, Next Steps for Our Kids 2022–2030: Appendix B—Review of contemporary practice in out of home care, 2022, accessed at [www.parliament.act.gov.au/\\_\\_data/assets/pdf\\_file/0005/2026724/5\\_Appendix-B-Review-of-contemporary-practice-in-our-of-home-care.PDF](http://www.parliament.act.gov.au/__data/assets/pdf_file/0005/2026724/5_Appendix-B-Review-of-contemporary-practice-in-our-of-home-care.PDF)

Research conducted in 2008, however, concluded that in the prior fifteen years 'Australian jurisdictions have implemented conferencing in ways that fall short of the systematic empowerment of families that is envisaged in the New Zealand model.'<sup>22</sup> This is still the case in South Australia. Most participants we consulted during this process that advised none of their clients had been offered or participated in a Family Group Conference (particularly in regional areas.) One parent advocacy organization advised of an assessment of 50 clients they conducted from January to September 2022, revealing that of the fifty clients that had their children removed, only one family was engaged in a family group conference. This one case did have a successful outcome - the baby was not removed at birth as the family were able to come together and create a family led plan that mitigated the child protection concerns.

Additionally, the funding paradigm for FGCs, as a fee-for-service structure, does not indicate a commitment to building the capacity of organizations and their staff to develop the model as an integral part of child protection work and the organization's business. Changing the funding structure to block funding is a first step in embedding Family Led Decision Making in South Australian practice.

The funding framework and quantum will also need to be reviewed if the Family Group Conferencing is used as it should be, and therefore used much more extensively. Whilst a Conference should be held prior to the removal of a child or young person from their family or their home, FGCs are also very useful mechanisms for addressing concerns for the child or young person during the placement, for reunification planning, and for transition planning when the child or young person is leaving care.

Although CAFFSA is endorsing the suggestion in the DCP Discussion Paper that the CYPS Act should ensure that all Aboriginal families engaged with child protection can access Family Group Conferencing at the earliest opportunity, we also believe ensuring cultural safety is of the utmost importance.

An evaluation of the use of FGCs in Queensland outlined some of the key components of cultural safety in this regard, as follows:

*When families have a say in the process, in a culturally safe space, and things are done in an Aboriginal and Torres Strait Islander way, this is what they see:*

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<sup>22</sup> Harris, N. "Family group conferencing in Australia: 15 years on." Youth Studies Australia, vol. 27, no. 2, June 2008, p. 62. Gale Academic OneFile Select, [link.gale.com/apps/doc/A180969271/EAIM?u=flinders&sid=bookmark-EAIM&xid=4421d812](https://link.gale.com/apps/doc/A180969271/EAIM?u=flinders&sid=bookmark-EAIM&xid=4421d812). Accessed 6 Nov. 2022.

- *I am provided with the choice of my convenor. Their choice could include working with an internal departmental convenor who identifies as an Aboriginal and/or Torres Strait Islander person or working with an external Aboriginal and/or Torres Strait Islander convenor. Having the fundamental right to access culturally appropriate convenors of their choice would contribute to the restoration of social justice.*
- *I can choose a convenor that I feel comfortable with. Convenors may differ according to age, gender, clan, and language group. The availability of more than one convenor or one organization will enable families to make a choice about who they feel comfortable with, which may mean the sector needs to be resourced and funded to meet demand.*
- *I see trust between our local Aboriginal and/or Torres Strait Islander organizations and the department. The department needs to trust the local level Aboriginal and/or Torres Strait Islander community-controlled organizations to develop different ways of working, because they are the appropriate authority who knows best how to work with their families.<sup>23</sup>*

***What it means to do things in an Aboriginal and Torres Strait Islander way.***

*It is important to have a whole of community response to child safety. Each child belongs to a family group and each family group is part of a community or communities. When families have independence, choice, privacy, and time they can draw on the strengths and supports of their whole family and community to identify responses that will keep children safe and cared for in family, community, and culture. This collectivist approach differs from the government process to date that functions in accordance with an individualized 'client' system. There are deeper connections, spirituality and cultural knowledge needed to support families in decision making.*

*These ways of knowing transcend a lived experience that cannot be taught to non-Indigenous convenors or developed into cultural competency tools.*

*The trial has demonstrated that when given the opportunity, Aboriginal and Torres Strait Islander communities can have a culturally safe response to child safety. When safe spaces are created, the strength of the collectivist culture will ensure that children and young people have their family and community leading decisions about their safety and wellbeing*

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<sup>23</sup> Evaluation of the Aboriginal and Torres Strait Islander Family Led Decision Making Trial, Department of Communities, Child Safety and Disability Services, 2017, page 3-4



*that are focused on their connection to culture and family (even if not placed in their own family). The trial acknowledged and strengthened the role of whole of community to supporting families to keep children safe and challenged the status quo thinking built into the existing processes and procedures. If resourcing supported the availability of culturally safe spaces across Queensland it would facilitate the application of the Aboriginal and Torres Strait Islander child placement principle. The intent would be to reduce rates of removal and strengthen cultural connectedness.<sup>24</sup>*

During consultations, it was noted that in South Australia, the use of family group conferencing (FGC) is currently the only mechanism for engaging Aboriginal families in Aboriginal Family Led Decision Making processes that aim to establish and support child and family safety.

The South Australian Family Matters Leadership Group and some members of the Aboriginal community agree that for some families, where there are strengths and supports within the family and the community (including financial capacity to support children), FGC can work very well and provide positive outcomes. It has been suggested, however, that FGC should be a choice as FGC is not always an effective model for families who are experiencing complex and severe socio-economic care and protection concerns (which are largely poverty driven.) There are Aboriginal families who have been adversely affected by inter-generational poverty and disadvantage to such an extent that a process of FGC may not be successful. In these cases, alternatives must be considered for these families and choice of support must be a foremost consideration. Accordingly, FGC also needs to be independently evaluated as a tool for use in the South Australian context.

The Family Matters Leadership Group also suggested that each Aboriginal community in South Australia needs to be consulted about who or which organisation in their own communities are best positioned to facilitate Aboriginal Family-Led Decision Making.

Training for a range of Aboriginal community Elders or community Leaders as facilitators or advocates could be a consideration in the implementation of Family-Led Decision Making. As it is of great importance that families be given a choice about who convenes the FGC, increasing the number of FGC facilitators or advocates would be an important step.

Therefore, whilst Family Group Conferencing is strongly supported by CAFFSA members as a model of practice for engaging Aboriginal families in decision making about children and family safety and wellbeing, there is a view from some Aboriginal members of the Family Matters Leadership Group

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<sup>24</sup> Evaluation of the Aboriginal and Torres Strait Islander Family Led Decision Making Trial, Department of Communities, Child Safety and Disability Services, 2017, page 4

and the broader grassroots community in South Australia that they also need further exploration and evaluation for long term outcomes given that FGC is not always an effective model.

As will be explored in the next section (Getting the settings right), understandings of neglect and emotional abuse are subject to interpretation by child protection practitioners. These are the same practitioners who decide if the family subject to an FGC has met the Department's threshold to be able to care for their children. The DCP (and DHS) interpretations of "risk" commonly do not account for the impacts of material poverty when raising children. There is minimal (if any) support from FGC providers in South Australia currently to supply much needed material resources needed for parents to feed, clothe, and house their children. **This, in response to Question 9 in DCP's Discussion paper:**

**Recommendation 15: CAFFSA recommends the amended Act require that all Aboriginal families engaged with child protection are able to access Family Group Conferencing or an alternative form of ALDM at the earliest opportunity, but also during the child, young person, and their family's statutory journey and when they are preparing for or leaving care.**

**Recommendation 16: CAFFSA recommends that the Act explicitly state that no orders can be sought in the Youth Court in relation to assumption of care orders of an Aboriginal child or young person without the convening of a Family Group Conference or another Family Led Decision Making process agreed between the Aboriginal community and DCP.**

**Recommendation 17: CAFFSA recommends that Family Group Conferencing in South Australia be independently evaluated and that formal consultation occur with the Family Matters Leadership Group and broader grass-roots community members to ensure that the voices of Aboriginal children people and families are heard and acted upon in relation to additional mechanisms that could embed Family Led Decision Making (Question 10)**

## Getting the settings right: Priorities and principles to guide decision-making

The DCP Discussion Paper notes that it is clear in South Australia's child protection legislation that the paramount consideration in the administration of the Act must always be to ensure that children and young people are protected from harm.

CAFFSA notes the decision to prioritise safety followed the findings of the coronial inquest into the death of Chloe Valentine and the resulting report of the Nyland Royal Commission.

CAFFSA does not believe we have the right principles in place to guide decision making in South Australia's child protection legislation (Question 11). In response to Question 12:

**Recommendation 18: CAFFSA recommends that in addition to safety as the paramount consideration, the legislation should be explicit that the best interests of the child is a matter to be considered in decision-making and that there must be a framework developed to ensure it is culturally safe.**

## Best Interests of the Child

CAFFSA retains its position from its original submission on the *Children and Young Person (Safety) Bill* in 2016 that the best interests principle (otherwise known as the paramountcy principle) should be the overarching principle of the legislation. Feedback from the sector also indicates that absolute clarity about the elements of 'best interests' should appear in the Act, and that a cultural lens over 'best interests' is vital.

*The way in which the best interests of Aboriginal children have been understood and acted upon in Australia has been the cause of much pain and shame in our history...*

*Using the guise of the principle, acts of colonization were carried out through successive policies and practices that, according to the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (1997), resulted in the forcible removal of 10 to 30% of Aboriginal children between 1910 and 1970. The belief that it was in the best interests of Aboriginal children to be removed from their families and assimilated into "white" society is a clear indication of the way the principle can be interpreted by the values of a decision maker or society at any given time.<sup>25</sup>*

One way to overcome the dangers of a culturally blind application of the 'best interests principle' is to legislate for a holistic approach that focuses on the physical, emotional, cultural, and spiritual needs of the child, as they are understood in Aboriginal culture. This includes an appreciation of Aboriginal child-rearing practices which, occurring as it does within a collectivist culture, has implications for matters such as 'the collective attachment patterns of Aboriginal children (Yeo, 2003), the fluidity of childcare arrangements in Aboriginal child-rearing (Lynch, 2001), and the emphasis on the independence and autonomy of Aboriginal children (Malin et al., 1996).'<sup>26</sup>

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<sup>25</sup> Maureen Long & Rene Sephton (2011) Rethinking the "Best Interests" of the Child: Voices from Aboriginal Child and Family Welfare Practitioners, *Australian Social Work*, 64:1, p 96-97,

<sup>26</sup> *Ibid.* p 109

Other matters raised during the consultation were co-sleeping as an example of a Western taboo that is often normative in Aboriginal families and overcrowding being assessed as a risk to safety where it may not be a risk and may, in fact, be occurring within an extremely loving extended family. For these reasons, alongside strong support for embedding all aspects of the ATSI CPP in the legislation, CAFFSA recommends the inclusion of a Best Interests Framework that clearly articulates cultural principles and practices that must be considered in the application of the best interest principle for Aboriginal children.

If the 'best interests' principle is to extend matters to be considered to beyond safety, the definition of social and emotional wellbeing must be considered within the Aboriginal context.

This definition is about being well and being able to grow and develop within the context of family, community, culture, and broader society to achieve optimal potential and balance in life. From the Aboriginal and Torres Strait Islander view, it must also incorporate a strengths approach, recognizing the importance of connection to land, culture, spirituality, ancestry, family, and community. Also, acknowledging the inherent resilience in surviving profound and ongoing adversity – yet retaining a sense of integrity, commitment to family, humour, compassion, and respect for humanity.<sup>27</sup>

Other suggested changes include:

#### **Section 4 (1) (a)<sup>28</sup>**

Add as the first acknowledgment (a) that 'This Act shall be guided by the Principles and Articles of the United Nations Declaration on the Rights of the Child (1989)<sup>29</sup>

Add as the second acknowledgement (b) that 'This Act shall recognise and enforce so far as practicable Article 3 of the United Nations Declaration on the Rights of the Child (1989), including the provision that *the best interests of the child shall be a primary consideration*<sup>30</sup> and have regard for the 'best interests framework' to ensure the application of the principle is culturally responsive and culturally safe.

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<sup>27</sup> Dudgeon, P Milroy, H & Walker, R 2014, Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practices, 2nd edition, Canberra, Australia

<sup>28</sup> Children and Young Person (Safety) Act 2017 (SA) s 4 (1) (a), p.8

<sup>29</sup> The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. It entered into force on 2 September 1990, in accordance with article 49.

<sup>30</sup> United Nations Declaration on the Rights of the Child (1989) s 3 (1)

## **Section 4 (1) (a)31**

Add as the first acknowledgment (a) that ‘This Act shall be guided by the Principles and Articles of the United Nations Declaration on the Rights of the Child (1989)<sup>32</sup>

Add as the second acknowledgement (b) that ‘This Act shall recognise and enforce so far as practicable Article 3 of the United Nations Declaration on the Rights of the Child (1989), including the provision that *the best interests of the child shall be a primary consideration*<sup>33</sup> and have regard for the ‘best interests’ framework’ to ensure the application of the principle is culturally responsive and culturally safe.

**Recommendation 19: CAFFSA recommends changes to the legislation to make it clear that the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) is the paramount consideration - aside from safety – in all decision-making involving Aboriginal children and young people (Question 13) and proposes the ATSICPP inform or comprise the ‘Best Interests Framework’ discussed above.**

## Responsibility for children and young people

*Without clear remits, ‘everybody’s business’ becomes ‘nobody’s business’*

- *comment from a one-on-one consultation.*

The first National Framework for Protecting Australia’s Children (2009-2020) was entitled ‘*Protecting Children is Everyone’s Business*.’<sup>34</sup> It clearly outlined the joint responsibilities of national and state governments in driving improvements across all systems and all jurisdictions. It also stated the different roles that ‘everyone’ has to play in protecting children.

This theme and policy approach was reiterated and supported by Commissioner Nyland, and she made it very clear that child protection is ‘everybody’s business’. This review allows us to improve the existing legislative framework to better enable us all to uphold our respective responsibility for protecting children and young people in our community.<sup>35</sup>

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<sup>31</sup> Children and Young Person (Safety) Act 2017 (SA) s 4 (1) (a), p.8

<sup>32</sup> The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. It entered into force on 2 September 1990, in accordance with article 49.

<sup>33</sup> United Nations Declaration on the Rights of the Child (1989) s 3 (1)

<sup>34</sup> [https://www.dss.gov.au/sites/default/files/documents/child\\_protection\\_framework.pdf](https://www.dss.gov.au/sites/default/files/documents/child_protection_framework.pdf)

<sup>35</sup> Govt of South Australia, Review of the Children and Young People (Safety) Act 2017 Discussion Paper, 2022,

The DCP Discussion Paper proposes a public health approach to child protection. A public health approach aims to prevent or reduce a particular illness or social problem in a population by identifying risk indicators. It is an approach that aims to prevent problems occurring in the first place, quickly respond to problems if they do occur, and minimize any long-term effects – and prevent reoccurrence.

According to a public health model, primary, secondary, and tertiary services are all critical elements in the child welfare and protection system. However, a well-balanced system has primary services as the largest component of the service system, with secondary and tertiary services comprising progressively smaller components of the service system. Investment in primary prevention programs has the greatest likelihood of preventing progression along the service continuum and sparing children and families from the harmful consequences of abuse and neglect.<sup>36</sup>

Many of the services that can address the drivers of abuse and neglect, such as substance misuse and mental health services, housing, and homelessness services etc, are not administered by DCP and cannot therefore be compelled to prioritize families vulnerable to abuse and neglect.

CAFFSA acknowledges that early intervention and child reunification or family preservation is a priority for the South Australian government and the Department for Child Protection, however the legislative base for such provisions needs to be substantially strengthened for this to occur.

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 should they require them and for those services to be compelled to respond.

This is not clear in the legislation, and the provision that this is the intention is also opaque. The opportunity to provide ameliorative early intervention is lost, and children may suffer harm that could have been prevented or removed where that may not be necessary or required.

The system is difficult to navigate independently, and the child or young person's family is only visible if they are referred by the state/DCP. This diminishes the probability of successful reunification. Following a child's removal, the biological family needs ongoing support to address the issues that impaired their parenting capacity, improve family functioning and their relationship

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<sup>36</sup> <https://aifs.gov.au/resources/short-articles/public-health-approach-preventing-child-maltreatment>, Accessed 11.05am 15/9/2022

with their child in order to improve readiness for reunification. When a decision is made to remove a child from their family home, the response to both the child and family must immediately prioritise stability and support as both an outcome and a platform for change. Interventions could also act as protective factors against the removal of future children, while investment could mitigate one of the great harms of the current system - multiple placements.

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 prescribed for in legislated. The kinds of family support services that need to be assertively 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.

Research tells us that identifying children at risk of placement moves and putting effective interventions in place can help promote the resilience of carers, children, and families of origin.<sup>37</sup>

CAFFSA believes that the 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 early intervention and intensive family support services. It was the lack of legislative provisions for the requirement that these services be offered that allowed funding for them to be so drastically cut in 2017/18. South Australian expenditure on intensive family support services per child aged 0-17 in the population more than halved from 2016-17 to 2017-18, and although it has increased steadily in the following years, it still accounts for only just over two-thirds of the Australian average in 2020-21 (\$64.7 compared to \$92.1)<sup>38</sup>

As stated, 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. This would incorporate an onus on services such as mental health, substance abuse, counselling, family violence and homelessness services to provide assessment and response and would also require agencies such as the Department of Health and Wellbeing to take a much more active role in child protection and child safety matters. Funding the required therapeutic responses arising from these actions would be essential to enact the intent of the legislation. The will to provide assistance to vulnerable children and families is not lacking in other

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<sup>37</sup> Vreeland, A., Ebert, J. S., Kuhn, T. M., Gracey, K. A., Shaffer, A. M., Watson, K. H. et al. (2020). Predictors of placement disruptions in foster care. *Child Abuse & Neglect*, 99, 104283.

<sup>38</sup> Productivity Commission, Report on Government Services 2022 (2022) Part F, Section 16 (Chart 13c)

government departments. It is inadequate resourcing driving harsh prioritisation and triaging out of needy children and families is the result. In response to questions 14, 15 and 16 in the DCP Discussion Paper:

**Recommendation 20: CAFFSA recommends that a public health approach be taken to child protection that addresses the need for primary, secondary, and tertiary services for vulnerable families.**

**Recommendation 21: CAFFSA recommends inserting ‘active efforts’ in the governing legislation of both DCP and other relevant agencies in relation to referral to and provision of services to vulnerable children, young people, and families.**

In addition:

**Recommendation 22: CAFFSA recommends that the legislation set out the roles and responsibilities of relevant government and non-government agencies for children’s safety (Question 16) and that 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. (Question 17)**

### Thresholds for reporting and response

CAFFSA notes that it is estimated that in South Australia, 1 in 3 children over the course of their childhood will be the subject of a child protection report as families deal with complex issues including domestic and family violence, substance misuse and mental ill-health.<sup>39</sup> We also recognise that between 2017-18 and 2021-22, the number of screened-in notifications dealt with by investigation or referral increased by 141% – from 10,643 to 25,658 and that, on average, around 200 notifications are received each day with 100 being screened-in for a response.<sup>40</sup> In response to questions 18 and 19 in the DCP Discussion Paper:

**CAFFSA does not believe South Australia has the legal threshold right for child protection, but also does not support changes to the threshold to focus on children and young people at *imminent risk of significant harm*.**

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<sup>39</sup> Govt of South Australia, Review of the Children and Young People (Safety) Act 2017 Discussion Paper, 2022, p 15.

<sup>40</sup> Ibid, p 15



There was overwhelming support during our consultations for the threshold to be elevated 'Risk of Significant Harm' and equally strong rejection of the inclusion of the concept of 'imminent' in the threshold.

CAFFSA notes that a definition of 'unacceptable risk of harm' is provided for in NSW for the purposes of judicial decision making in cases where issues such as removal, restoration, custody, placement, and contact are to be determined under the Children and Young Persons (Care and Protection) Act 1998 (NSW).<sup>41</sup> This highlights the centrality of a clear definition that guides decision-making.<sup>42</sup>

Legislative thresholds of harm which are objectively verifiable, and which minimize subjective decision-making error and confirmation biases of child protection assessments are clearly essential. An example is clarifying 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.'

In NSW, the law says a child or young person is at risk of significant harm (ROSH) if there are current concerns for their safety, welfare, or wellbeing because of one or more of the following:

- if their basic needs are not met — for example, they don't have enough food or clothing, or don't have a safe or secure place to live
- parents or caregivers aren't arranging necessary medical care — for example, a child is very sick, but is not taken to a doctor
- a child or young person being physically abused or ill-treated — for example, where a child has bruises, fractures or other injuries from excessive discipline or other non-accidental actions
- a child or young person being sexually abused — for example, sexual activity between the child and an older child or adult
- risk of serious physical or psychological harm resulting from domestic violence — where a child could be injured by a punch intended for their mother, or a child can't sleep at night because of the fear there will be violence in the home
- risk of the child or young person suffering serious psychological harm — for example, a child having to take care of his parent, or a child being continually ignored, threatened, or humiliated.<sup>43</sup>

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<sup>41</sup> [https://www.judcom.nsw.gov.au/publications/benchbks/local/care\\_and\\_protection\\_jurisdiction.html](https://www.judcom.nsw.gov.au/publications/benchbks/local/care_and_protection_jurisdiction.html)

<sup>42</sup> It is noted that the *Children and Young Persons (Care and Protection) Regulations (NSW)* were updated in 2012

<sup>43</sup> [www.facs.nsw.gov.au/families/Protecting-kids/reporting-child-at-risk/should-i-call/chapters](http://www.facs.nsw.gov.au/families/Protecting-kids/reporting-child-at-risk/should-i-call/chapters)

Importantly, NSW legislated for 'significant harm' but not 'imminent risk.' CAFFSA suggests that including imminent risk is problematic because it may dissuade people from considering cumulative harm. In 2009 the threshold for legislative statutory authority intervention was amended from 'risk of harm' to 'risk of significant harm'. The NSW Interagency Guidelines outlines what is meant by 'significant' in 'risk of significant harm'.

"This means the concern is sufficiently serious to warrant a response by a statutory authority (such as NSW Police Force or Community Services) irrespective of a family's consent. What is significant is not minor or trivial and may reasonably be expected to produce a substantial and demonstrably adverse impact on the child or young person's safety, welfare, or wellbeing, or in the case of an unborn child, after the child's birth. The significance can result from a single act or omission or an accumulation of these."<sup>44</sup>

**Recommendation 23: CAFFSA recommends that 'risk of significant harm' be adopted as the legal threshold in the new legislation, without reference to the term 'imminent', to ensure the identification and management of cumulative harm is not impacted.**

Section 17 of the Act deals with the meaning of 'harm' and makes a distinction between both physical and psychological harm.<sup>45</sup> The conceptualization and definition of psychological harm' in this section is provided thus:

*psychological harm does not include emotional reactions such as distress, grief, fear, or anger that are a response to the ordinary vicissitudes of life.*<sup>46</sup>

CAFFSA is of the view that this definition lacks enough clarity to be easily interpreted or applied, is subjectively oriented and difficult to understand. CAFFSA proposes that an alternative definition of psychological harm is required that incorporates due consideration of children's experiences of trauma and complex trauma:<sup>47</sup>

*'psychological harm is taken to exist where the child suffers psychological or emotional deprivation or trauma, or where there exist factors known to cause overwhelming psychological or emotional distress, trauma or complex trauma.'*

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<sup>44</sup> <https://reporter.childstory.nsw.gov.au/s/article/Significant-harm-policy-definition>

<sup>45</sup> *Ibid* s 17, p.17

<sup>46</sup> *Ibid*, s 17 (2), p.17

<sup>47</sup> This definition is broadly based on the AIFS definition of 'emotional abuse' accessed at <https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/glossary#ea>

Further consideration could be given to the definition of psychological harm provided for by the *Children, Youth and Families Act 2005 (Vic.)*.<sup>48</sup>

*'...the child has suffered, or is likely to suffer, emotional or psychological harm of such a kind that the child's emotional or intellectual development is, or is likely to be, significantly damaged.'*

**Recommendation 24: CAFFSA recommends that an alternative definition of psychological harm that gives due consideration of children's experiences of trauma and complex trauma be incorporated in the legislation.**

The harmful effects of the lack of supervision of infants and young people were also specifically raised during the consultation period.

**Recommendation 25: CAFFSA recommends that lack of supervision be incorporated in the indicators of neglect in the proposed elements of Risk of Significant Harm.**

## Mandatory Notification

The CAFFSA consultations considered the questions about changes or exemptions to the existing mandatory reporting requirements and other ways mandatory reporters could discharge their obligations (Question 20)

There is a danger that 'Everybody's business becomes nobody's business' without clear remits. We need clarity on who has what remit. Mandatory reporting can let people off the hook if they take the view they have notified and have therefore discharged their responsibilities.

On the other hand, many NGOs funded by the state to provide continuous assessment and support of vulnerable families and children reported frustration at the difficulties they experience trying to re-engage DCP when they deem the risk is too great to manage the family alone. There were a number of queries about whether the Act could make provision for ease of referral of a child and family are being managed by Intensive Family Support Services funded by the government such as Safer Families back to DCP if they deem the child no longer safe.

While many agencies were sympathetic to the need to find ways to ensure mandatory reporters can discharge their obligations, they had some concerns about the suggestion in DCP's Discussion

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<sup>48</sup> Children, Youth and Families Act 2005 (Vic.) s 162(1)(e)

Paper that this may occur where support is already in place.<sup>49</sup> Agencies were keen to ensure that we don't inadvertently move risk to services that have neither the legislative power nor adequate resources to hold this risk if they are already providing support. Eroding the capacity to report concerns that the risk may still be unacceptable, despite supportive interventions, to a statutory authority was a concern shared in most consultations.

Some agencies felt that a different notification pathway for children and young people in care (rather than through CARL) could be considered – the child's case worker could be notified rather than calling a formal case conference as the child already has the support of the caseworker, social worker etc. Under this system, care concerns deemed as minor would still be referred for case management, moderate to a formal case management meeting, with serious determinations referred to a full case management investigation. It is understood this was raised extensively in submissions to the Carers Inquiry led by Dr. Fiona Arney.

The need to include some form of dual-track system was also raised in two of the consultations, where lower-level risk that could be contributing to cumulative harm is registered with DCP and monitored by them. Consultation participants were cognisant, however, that this could compound, rather than ameliorate, the growing number of reports received.

Given the complexity of the mandatory notification space, CAFFSA members felt they would like more information about the models used in other jurisdictions and any intended and unintended consequences of the changes, along with the results of any evaluations. Members felt that further information and time with DCP to consider how we can change this element of the child protection system was very important.

**Recommendation 26: CAFFSA recommends a facilitated process where DCP and member agencies can consider alternatives from interstate and internationally to consider the complexities of reforming mandatory notification prior to decisions about amendment to the legislation.**

CAFFSA members felt the section on inserting active efforts into the governing legislation of other government agencies and government funded NGOs will accommodate the need for more timely and comprehensive services to families where a child has been the subject of a screened-in notification (Question 21).

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<sup>49</sup> Department for Child Protection, Government of South Australia, Review of the Children and Young People (Safety) Act 2017, Discussion Paper, 2022, p 15.

## Children at the centre

### Participation

CAFFSA members whole-heartedly supported clarity in the legislation that children and young people are at the centre of everything we do (Question 21) and supports DCP's intention to consult directly with children and young people and with CREATE about the legislation as a whole, and about what meaningful participation in decision-making means in practice for children and young people.<sup>50</sup>

CAFFSA believes the development of a co-designed Practice Framework, with its principles enshrined in the legislation will better support children of all ages to express their views and wishes and uphold their right to participate in important decision-making processes that affect them (Question 23).

CAFFSA also agrees that the Aboriginal and Torres Strait Islander Child Placement Principle is well placed to guide what *participation* looks like for Aboriginal children and young people (Question 24) but reinforces the importance of a co-designed Practice Framework developed in conjunction with Aboriginal children and young people to address this issue, alongside a diverse range of other children and young people.

Children's participation is essential to achieve good outcomes for children involved in child protection systems. Despite this, research has consistently found children report low levels of participation, are poorly consulted, and feel inadequately involved in decisions about their lives. Australian research shows practitioners conceptualize children as rights holders and believe it is essential to hear directly from children about their needs and wishes to keep them safe.

Practitioners identified the importance of transparent processes and decisions. Different understandings of participation emerged, with some participants talking about children as their central focus but not discussing meaningful participation of the child. It appeared that children's participation relied largely on the views and skills of individual workers, as well as their ability to incorporate meaningful participation in limited time and in complex practice environments where children's safety is a primary concern. Systemic changes to address time barriers, training

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<sup>50</sup> Department for Child Protection, Government of South Australia, Review of the Children and Young People (Safety) Act 2017, Discussion Paper, 2022, p 16.

practitioners to understand and implement participatory practice, and seeking children's input into service design, will support consistent and meaningful participation.<sup>51</sup>

Bouma et al (2018) identify dimensions for effective children's participation specific to child protection including 'informing', 'hearing' and 'involving'. Informing captures children knowing about their rights to safety and participation, the reasons for and processes involved in investigation, the options to participate, the focus and potential consequences of participation and the decisions made, including how the child influenced decisions. Hearing is about supporting children to express their views using individual meetings, child-friendly dialogue, genuine interest, and effective listening. Involving is about children's role in decision-making, where their perspectives are considered and heard before decision-making, they understand the decision-making process and are involved throughout.<sup>52</sup>

It is recognised that most of these elements will be borne out through practice, rather than legislative reform.

**Recommendation 27: CAFFSA recommends a Practice Framework for the Participation of Children and Young People be developed through a co-design process with children and young people, DCP, CREATE, CAFFSA, the Commissioner for Children and Young People, the Commissioner for Aboriginal Children and Young People, and the SA Guardian for Children and Young People.**

**Recommendation 28: CAFFSA recommends that the Aboriginal and Torres Strait Islander Child Placement Principle guides the development of a co-designed Practice Framework, co-designed with Aboriginal children and young people.**

**Recommendation 29: CAFFSA recommends the Principles of the Practice Framework for the Participation of Children and Young People be referenced in the new legislation.**

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<sup>51</sup> Woodman, E; Roche, S and ,McArthur,M, Children's participation in child protection—How do practitioners understand children's participation in practice?, 2022, Child and Family Social Work, accessed at <https://onlinelibrary.wiley.com/doi/full/10.1111/cfs.12947>

<sup>52</sup> Bouma, H., López, M. L., Knorth, E. J., & Grietens, H. (2018). Meaningful participation for children in the Dutch child protection system: A critical analysis of relevant provisions in policy documents. *Child Abuse & Neglect*, 79, 279–292. <https://doi.org/10.1016/j.chiabu.2018.02.016>

## Timely decision-making

CAFFSA agrees that child protection decision-making is complex and requires the careful navigation of the interests and rights of all parties to a decision. CAFFSA also acknowledges that it can be stressful for everyone involved – children and young people, parents, carers, service providers and child protection practitioners.<sup>53</sup>

Whilst there were some mixed views about the suggestions to re-insert Investigation and Assessment Orders, to re-introduce the 10-week rule and to re-consider avenues for review, CAFFSA provides overall support for them.

CAFFSA heard from many people during the consultations that the timeframes currently operating in South Australia do not give parents or caregivers long enough to address the circumstances that may be impairing their ability to parent well or reunify with their child.

There are sometimes unintended consequences for service provision and the likelihood of desired outcomes when timeframes are mandatory. For example, in NSW, during the extensive evaluation of Newpin, findings included:

*The two-year timeframe for permanency planning established through the PSP reforms has increased the number of families being referred soon after having their children removed. This is presenting challenges regarding the motivation and focus of parents to work towards restoration. Interviews identified that parents starting at NEWPIN are increasingly dealing with other immediate issues, such as substance abuse or domestic and family violence. This has increased the complexity of the needs of families and influenced the ability of these families to fully engage with the therapeutic nature of the program.*<sup>54</sup>

Any legislative changes, however, must have regard for the following issues identified by the sector.

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<sup>53</sup> Department for Child Protection, Government of South Australia, Review of the Children and Young People (Safety) Act 2017, Discussion Paper, 2022, p 16.

<sup>54</sup> Urbis, Newpin Evaluation Final Report, 2020

## Ensuring appropriate information is given in a timely manner

Prior to children and young people being removed, active efforts should be undertaken by DCP to incorporate all information about supportive interventions the family have sought or are seeking or using, including (for example) counselling, drug and alcohol treatment, violence prevention, other mental health supports, and parenting assistance, from the Intensive Family Support Services and Reunification Services and other like services. This should be incorporated as a standard part of the information sharing provisions such as the current Section 150 and 152. This information must be considered in decisions made by DCP about the child and family.

**Recommendation 30: Information sharing provisions such as Sect 150 and 152 should be redrafted to put the onus on DCP to seek and incorporate information about supports family members have sought/are using/have used in any assessments and decisions regarding statutory intervention with children, young people, and their families.**

Contact with decision-making processes needs to be therapeutic, rather than punitive. For example, Parenting Capacity Assessments being undertaken by a psychologist at a DCP office that the family have never met and with whom they have no relationship is not therapeutic and could in fact be traumatising and triggering. Agencies have reported that 6-7 months of therapeutic engagement with a family can be completely overridden by a DCP psychologist's single assessment. It can also take 3-4 months to obtain a Parenting Capacity Assessment. The result is that DCP are funding agencies to provide continuous professional assessment of the capacity of parents and then not using that assessment information.

**Recommendation 31: The legislation should be amended to make specific reference to the use of funded providers such as IFSS and Reunification Services as possible assessors or, at the very least, make clear that their opinions or assessments must be incorporated into the Parental Capacity Assessments.**

Decision making processes include review processes, and the consultations heard a range of concerns about the conduct and timeliness of reviews. This was particularly the case in relation to the Contact Arrangement Review Panel (CARP).

Under current arrangements, CARP is to be external to case management and should include the Chairperson and two other panel members that are independent of the agency. We heard during our consultations that parents have no ability to put forward their perspective and provide



documentation that can guide the decision. We were advised only a very small number of the decisions by CARP were in favour of the parent. Given that CARP relies on DCP case notes, and parents have been unable to provide their own evidence, this is perhaps not surprising. There is no way to appeal a decision at CARP, with further changes to contact occurs at the Departments discretion.

There have also been issues with the timeliness of letters parents receive (allowing 14 days from the date of the letter to request a review.) We heard at the consultation that some parents were distressed to receive the correspondence well after the letter was dated, leading to a significantly shorter timeframe to request a review.

**Recommendation 32: CAFFSA recommends that the Contact Arrangement Review Panel be convened in a manner independent from DPC, sitting separately from the agency and that the ability of all parties, including parents, carers, children and DCP to provide information to the review is prescribed in the legislation.**

**Recommendation 33: CAFFSA recommends the legislation incorporate the relocation of the Contact Arrangement Review Panel to the jurisdiction of SACAT.**

## Ensuring access to supports

There was overwhelming support for 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. (Question 26)

Before addressing the services children should have access to, CAFFSA would point out that family members and other adults are the most important supports a child or young person can have in the longer term. NSW currently funds a model that recognises and addressed this issue.

Family Finding is a model developed by Kevin Campbell and colleagues in the United States and is a process which seeks to connect children with family and other supportive adults who will love and care for them now and across their lifespan.

Family Finding asserts the importance of emotional permanency for children and that stable relationships can provide a sense of security and belonging which builds resilience and coping skills for children and young people, better preparing them for adulthood.

Family Finding encourages practitioners to consider the urgency for children to have a support network and the poor outcomes for children across their life span when they do not.

#### Central Beliefs of Family Finding:

- All children have family members who can be found if we try.
- Children have a right to know the whereabouts and well-being of family members.
- A sense of identity, belonging and being loved unconditionally are essential to a child's health, development, and dignity.
- Connection is a prerequisite to healing.
- Successful support for traumatised children relies on respectful, collaborative engagement with family members.
- Parents and families generally want the best for their children and need connections and supports to be able to provide adequate care for them.

#### The Six Goals of the Family Finding Model:

- Support children and young people in Out of Home Care (OOHC) to develop meaningful and enduring connections with adults who will support them across their lifespan.
- Ensure safe and stable family-based living arrangements where possible. For children and young people in OOHC, ensure a timely and permanent exit from the formal service system through the development of a resilient and comprehensive network of supportive adults.
- Support children and young people develop a healthy sense of identity, regain their dignity, and provide family members with the opportunity to meet the needs of those within their family system.
- Enable young adults transitioning from care to live safely and productively within their communities.
- Decrease dependence on the formal service system and enhance family-driven decision making.

- For all individuals, prevent re-entry within and between formal service systems, including “graduation” of young people into the adult correctional systems.<sup>55</sup>

Whilst CAFFSA understands and applauds the introduction of the Taikurtirna Warri – apinthe program – a Family Finding model adapted to have an Aboriginal focus, we understand it is small and limited in capacity and recommend it be expanded and that the Family Finding model be extended to non-Aboriginal children and young people as well.

Traumatic experiences are common for children and young people involved with child protection systems, with people often having multiple adverse experiences across their lifetime. Children and young people involved in child welfare services often have a complex range of symptoms and behaviours related to their trauma exposure. Trauma informed care is a framework for human service delivery that is based on knowledge and understanding of how trauma affects people’s lives. Trauma informed practice is widely recognised in human service delivery sectors within Australia. There is a growing awareness of the need, and a strong rationale for the value of implementing trauma informed approaches within human services. However, there is no overarching policy to mandate trauma informed care and no framework to guide evidence-based practice to transition in a systemic way to trauma informed care in Australia.<sup>56</sup>

The issue of access to mental health care both during and post-care was one of the most commonly raised issues during our consultations. Participants consistently raised the issue that children, young people, and their families were commonly deemed ‘too unwell or ‘not unwell enough’ Children and young people being turned away from specialise services because their issues were deemed ‘behavioural’ rather than ‘psychological’ or ‘psychiatric’ was also raised in a number of forums.

The feedback we heard was almost identical to finding in a major Victorian study of young people leaving care. Over a third of young people in the study indicated that they had not been able to access all the services they needed when in care, with many indicating that they lacked help with mental health issues. Caseworkers also indicated that there were important gaps in the service network and that these gaps hindered their ability to provide essential services to young people when they needed them. In particular, workers identified leaving care and mental health services as frequently having restrictive eligibility requirements, long waiting lists and a limited capacity to

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<sup>55</sup> <https://www.cwpracticelive.facs.nsw.gov.au/@family-finding/2016/03/02/37611/the-family-finding-model>

<sup>56</sup> Australian Institute of Family Studies (AIFS) 2016, Trauma-informed care in child/ family welfare services, retrieved from: [aifs.gov.au/cfca/sites/default/files/publication-documents/cfca37trauma-informed-practice.pdf](http://aifs.gov.au/cfca/sites/default/files/publication-documents/cfca37trauma-informed-practice.pdf)

work with clients with high needs. These gaps were described as a serious barrier to workers' ability to help young people prepare for their post-care life.<sup>57</sup>

Parents and other caregivers with mental health problems could also receive better care in SA. Intensive clinical interventions and support programs offer promising opportunities to mitigate the impacts of adult mental illness on child well-being. Children of mothers with chronic depression, for example, are most likely to benefit from services that focus on both treating the mother's primary illness and strengthening her responsiveness to her child. Extensive evidence also indicates that many adults who experience depression often face other significant adversities. This is particularly true for mothers who are young, socially isolated, economically, or educationally disadvantaged, and burdened by conflict, intimate partner violence, and/or poor health.

When co-existing difficulties are detected, treatment strategies must address those concerns as well as the underlying mental health problem. It's also important to note that, despite growing recognition of compromised fathering as a public health issue, very few programs in the early childhood arena have sufficient expertise to address mental health problems or substance abuse in fathers—and new intervention strategies are clearly needed.<sup>58</sup>

CAFFSA notes that the Department for Child Protection is currently working with other government and non-government services providers through *Investing in their future* to make sure children and young people in care have priority access to the services they need such as health, mental health, disability, and education support, as well as to other services that will support them to pursue their personal interests and aspirations.<sup>59</sup>

CAFFSA argues, however, that *Investing in their Future* is a policy initiative that is subject to change and is the equivalent of an 'optional' set of provisions. If priority access to services is to be provided in accordance with the spirit and intent of active efforts, then it should be enshrined in legislation to ensure that all government departments responsible for priority service provision are compelled to deliver them.

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<sup>57</sup> Muir, Stewart & Hand, Kelly. (2018). Beyond 18: The Longitudinal Study on Leaving Care, Wave 1 Research report - Transition planning and preparation. Out of home care; foster care; transitions from state care

<sup>58</sup> Center on the Developing Child at Harvard University (2016). From Best Practices to Breakthrough Impacts: A Science-Based Approach to Building a More Promising Future for Young Children and Families. P22 Accessed at 28/10/2022 at 7.47am

<sup>59</sup> Department for Child Protection, Government of South Australia, Review of the Children and Young People (Safety) Act 2017, Discussion Paper, 2022, p 17.

## The Support Needs for Young People Leaving Care

During the consultation for this legislative review process, and indeed in every other consultation CAAFFSA has undertaken, there has been deep and persistent advocacy in relation to the issue of support needs of young people in care enduring beyond the age of 18.

### The Age of Leaving Care and Supports for Young People Leaving Care

CAFFSA posed the question in the consultations about whether the Government's current provision for young people in family-based care to stay in care until 21 should be extended to young people who live in residential and emergency care and whether resourcing for support services should be available for young people in family-based care until they are 21 years of age. Instead, ***the sector gave overwhelming feedback that the age should be raised to 24 or 26 years of age.***

Young people who are, or have been, in out-of-home care (OOHC), such as foster, relative/kinship or residential care, face greater vulnerability and a higher risk of experiencing poor outcomes in key areas important to wellbeing. These areas include housing, education, employment, and involvement in the criminal justice system. This may reflect the significant life disruptions that led to their placement in care, wider exposure to disadvantage and trauma during their childhood, the quality, security and stability of their placements, and the lack of family and support networks to assist their transition from OOHC to independence.<sup>60</sup> Young people may be particularly vulnerable in the time after they leave care, as they adjust to independent living, often with limited support networks.<sup>61</sup>

Findings from recent Australian research were echoed by participants in the South Australian consultations and emphasises the extraordinary need for more available and responsive health and welfare services for young people leaving care. *Beyond 18: The Longitudinal Study on Leaving Care* was commissioned by the Victorian Department of Health and Human Services to increase understanding of young people's experiences of leaving out-of-home care (OOHC). Key findings included that a significant proportion of participants were struggling with post-care life. There were also indications that many would continue to struggle in the future. This was consistent with other

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<sup>60</sup> Mendes P & McCurdy S, (2019) Policy and practice supports for young people transitioning from out of home care: an analysis of six recent inquiries in Australia. *Journal of Social Work* 20(5):599-619.

<sup>61</sup> Australian Institute of Health and Welfare 2022. Income support receipt for young people transitioning from out-of-home care 2022, catalogue number CWS 90, AIHW, Australian Government.

Australian and international research. Participants had lower than average levels of school attainment, low levels of employment, low incomes, and high levels of financial stress.

There was a high prevalence of responses indicating mental health issues and reported rates of self-harm and suicidality were two to three times higher than those reported in other studies of Australian young people. They also reported relatively high rates of physical disability or chronic health issues, intellectual disability or learning difficulty or both chronic illness or disability and an intellectual disability or learning difficulty. Participant responses also indicated that young people were not always obtaining the support they needed for these health issues, with 37% of those with a physical disability or chronic health issue and 57% of those with an intellectual disability or learning difficulty reporting that they had little or no support in living with these health issues.

Care leavers in the qualitative interviews commonly reported difficulties building or maintaining positive and supportive social relationships. Around half of all participants were not engaged in education or employment. They had slightly higher levels of psychological distress, a lower sense of life mastery and lower levels of life satisfaction than other participants.<sup>62</sup>

The need for a longer arc of support is further demonstrated by AIHW research published in October 2022, showing that young people leaving care were 3 times as likely to receive income support as the Australian population of the same age, and this disparity increased with age. Importantly, income support receipt was highest for both populations at 19 years of age (64% for the OOHC study population and 25% for the Australian population). Receipt then gradually declined and stabilised at around 55% between ages 25 and 30 for the OOHC study population and around 15% for the Australian population at the same ages.

Receipt of the Crisis Payment is 13 times as high for the young people leaving care than the Australian population of the same age. A Crisis Payment is a one-off payment for those experiencing challenging or unstable personal circumstances analysis indicated much higher receipt of Crisis Payment for the OOHC study population as compared to the Australian population of the same age.<sup>63</sup>

In terms of the age, defining young people as those aged between 15 and 24 years is a widely accepted statistical convention and ‘...it is acknowledged that the period of transition from

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<sup>62</sup> Muir, Purtell, Hand, & Carroll, *Beyond 18: The Longitudinal Study on Leaving Care*, 2019, accessed at <https://aifs.gov.au/research/research-reports/beyond-18-longitudinal-study-leaving-care-wave-3-research-report>

<sup>63</sup>[https://apo.org.au/node/320044?utm\\_source=APO+Subscribers&utm\\_campaign=e595ad51a6-EMAIL\\_CAMPAIGN\\_2022\\_10\\_25\\_10\\_07&utm\\_medium=email&utm\\_term=0\\_1452ee3b6b-e595ad51a6-84499060&mc\\_cid=e595ad51a6&mc\\_eid=ea1dd60b41](https://apo.org.au/node/320044?utm_source=APO+Subscribers&utm_campaign=e595ad51a6-EMAIL_CAMPAIGN_2022_10_25_10_07&utm_medium=email&utm_term=0_1452ee3b6b-e595ad51a6-84499060&mc_cid=e595ad51a6&mc_eid=ea1dd60b41)

childhood to adulthood varies greatly between societies and even within the same society. This critical stage in the life cycle may begin as early as age 10 (for street children, for example) and may in some cases continue into the mid to late 30s, suggesting that the process of achieving an independent, sustaining livelihood can take a relatively long time, depending on the society (United Nations. Department of Economic and Social Affairs 2005).<sup>64</sup>

The definition of youth health in Australia ranges from 24 - 26 years of age. Those aged from 10 to 24 years have specific health care needs. These health needs are distinct from the health needs of children and the health needs of adults.<sup>65</sup> The transition from adolescence to adulthood—emerging adulthood—is a significant social and developmental stage as well as a period of substantial brain development. Young people leaving care face this transition without the same social support systems or family safety nets as their peers.

Experiences of early trauma and abuse or mental health issues may further place young people leaving care at a disadvantage during the transition to adulthood and independence.

Stability of care and emotional security during time in care are significant predictors of young people's outcomes..... Research suggests the leaving care transition needs to be flexible, gradual, and well planned. This includes individual transition planning based on the young person's needs, flexible post-care options and ongoing emotional and financial support until young people reach 25 years of age.<sup>66</sup>

As such, CAFFSA believes that **all** young people in care should have the choice to stay in care or be supported until the age of 24 or 26. The Government's current provision for young people in family-based care to stay in care until the age of 21 should be extended to the age of 26, and to all young people in care, particularly those who live in residential and emergency care. This group often experiences the most complex needs, and the poorest life outcomes, which are compounded by the pressures of leaving care at the age of 18 – many into homelessness. Additionally, whilst CAFFSA notes the recent provision of support for foster and family-based carers for young people until the age of 21 which we welcome, the cessation of resourcing of support agencies for the young person at 18 is of great concern.

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<sup>64</sup> [www.aihw.gov.au/getmedia/288c1939-a365-433d-a0a1-c7a4e1a83e99/yathaw07-c01.pdf.aspx](http://www.aihw.gov.au/getmedia/288c1939-a365-433d-a0a1-c7a4e1a83e99/yathaw07-c01.pdf.aspx) - accessed 30 Sept 2024, 10.37am

<sup>65</sup> <https://www.ama.com.au/position-statement/health-young-people-1998-revised-2013> - accessed 30 Sept 2024, 10.37am

<sup>66</sup> <https://aifs.gov.au/resources/policy-and-practice-papers/supporting-young-people-leaving-out-home-care> - accessed 30 September 2022, 12.35pm

In relation to CAFFSA's original call for an increase to the age of 21, a report published by Deloitte Access Economics in 2018<sup>67</sup> documented a federal and state cost benefit analysis of extending the leaving care age to 21 years and found that the benefit to cost ratio was 2.0, indicating that every \$1 spent on the program of supporting young people between the ages of 18 to 21 years would generate a return of \$2. The savings to governments resulted from lower usage of Commonwealth and state government services by care leavers over a 40-year period (between the ages of 18 and 57 years). The intangible benefits of increasing the care-leaving age to 21 years include improved wellbeing and prevention of hospitalisation, alcohol and other drug use and mental illness, improved physical health outcomes, better outcomes for the children of care leavers and higher levels of social connectedness.

CAFFSA has observed that the Act's current provision 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 practicable", including "the provision of information about Government and other resources" (etc) is quite vague and currently equates to the provision of a service directory for young people and the development of a number of commendable but small pilot programs run by DCP and CREATE.

Characteristics of continuation of support services to the age of 24 or 26 in SA could include:

- Continuity of care from the organisation they have an established relationship with where a significant history of trust is a factor
- Formalising continued support until the age of 24 or 26 as young people transition in to adulthood and increasing independence
- Continued support to stabilise housing, health, education, and employment until the age of 24 or 26
- Person-centred brokerage systems, with young people having agency in how they spend the funds and are actively involved in decision making
- Peer mentoring and peer support

**Recommendation 34: CAFFSA recommends that the legislation be amended to extend the formal care leaving age to 26 years. This does not mean that the young person does not attain the age of maturity by age 18, but that their needs are met, via appropriate family-based care and support or supported independent living until they attain the age of 26. Similar support provisions should be made available for young people who reach the age of 18 in residential care settings, who then**

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<sup>67</sup> Deloitte Access Economics. (2018). 'A federal and state cost benefit analysis: Extending care to 21 years', Home Stretch Campaign, Anglicare Victoria



**have the option of leaving this setting, or transitioning in to supported independent living until they reach the age of 26.**

## Kinship and Foster Carers

There was broad based commitment during the consultations to endorsing the recommendations made by both CAFFSA and Connecting Foster and Kinship Carers SA's (CFKC-SA) submission to the Arney review. Those recommendations were extensive and will not be replicated here.

In summary, the primary focus on feedback was an agreement that the care concerns process (including timeframes for investigations and outcomes) needs to be prescribed in the legislation and that the processes for undertaking care concerns investigations are detailed in the Act.

The existing processes in relation to care concerns impacts significantly on recruitment and retention of carers and is seen as one of the greatest disincentives to becoming a carer.

In the CFKC-SA recommendations, the call for an applicant to make an application for external review within 30 days of an internal review application (regardless of whether the internal review has been completed) is too short and needs to be lengthened.

The current provisions for participation in decision-making (currently page 48 of the Act) also needs attention. By way of example, a recent decision was made by the Department to cease all NDIS supports for a young person who was deemed to have an intellectual disability by the support agency and deemed to not have a disability by the DCP psychologist. The decision was taken unilaterally and had substantial effects on quality of life of the young person and the carer.

## Approval of carers

Carer approval processes are detailed in Section 72 of the Act.<sup>68</sup> Section 72 (1) makes the provisions that 'The Chief Executive may, on an application under this section and by notice in writing, approve a person as an approved carer for the purposes of this Act.'<sup>69</sup>

CAFFSA notes that in practice, delays in the accreditation of new Foster Carers once the assessment process is completed by the assessor can occur because of the length of time for review and approval. This can be dependent on several factors such as the capacity of CARU at the time of

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<sup>68</sup> Children and Young Person (Safety) Act 2017 (SA) s 72, p.45

<sup>69</sup> *Ibid*, s 72 (1), p.45

submission and the level at which the assessment is prioritised within the current workload. This can cause unnecessary delays in the placement of young people and could have impacts such as young people remaining in residential facilities longer than required. The pressure on all approvals sitting with CARU could also be a factor in delays.

**Recommendation 35: CAFFSA suggests legislating for a joint panel to review assessments (NGO and government). Such a panel would include a member of CARU, DCP, placement services unit (PSU), and the agency.**

Assessments would be submitted to the panel members once completed by the assessor, approximately 1-2 weeks before the panel meets. Members would review the applications, come together for the panel, and make the decision on the day to approve and make recommendations around carer registration (e.g., 2 placements, aged 2-12yrs). This would facilitate a more holistic and potentially swifter approval and placement process. Some agency representatives at the consultations felt that the delay was actually at the DCP approval stage of the process, and the Panel structure may not address that. This would need to be closely monitored.

## NGO Service providers

CAFFSA notes that the Department for Child Protection, other government departments such as the Departments of Health and Wellbeing, Human Services and Housing and their respective NGO partners comprise the complex system that responds to vulnerable children, young people, and families in South Australia.

CAFFSA has addressed almost all of the changes that it argues should be made to the CYPs Act to 'improve the ability of NGO providers to deliver essential care and protection services to children and young people' (Question 28). The dominant theme arising from the consultations for providers was the consistent difficulty accessing the range of support services required to address the vulnerability of children, young people, and their families, with a particular focus of mental health, disability, and homelessness services. **Our recommendations in relation to the insertion of prioritising services to those in contact with, or vulnerable to contact with the child protection system at the level of 'active efforts' in the governing legislation, with the requisite funding to government and non-government services in order to enact these provisions, would largely address these issues.**

The other most common frustration for the sector was the inability to easily generate a response from DCP when a service is actively engaged with a child, young person or family and believes the

risk is becoming too high and, as previously recommended, **consideration should be given during deliberations about mandatory notification about measures to address this.**

At a more granular level, CAFFSA understands that DCP is aware of the issue with re-licencing timeframes.

Timeframes currently prescribed in the legislation at section 58 of the Act require re-licencing at 12 months for Family Based Care and three years for Residential Care. Many agencies have requested that these timeframes either be reversed, so that re-licencing occurs at three years for Family Based Care and 12 months for Residential Care, or that both are re-licenced at three yearly intervals.

**Recommendation 36: CAFFSA recommends a change in the Act to provide for a three yearly re-licencing process for Family Based Care and 12 monthly process for Residential Care, or that both are re-licenced at three yearly intervals.**

An issue that has been raised consistently by CAFFSA members is the need for more transparency in relation to how decisions are made within the Department. There was a common call, for example, for access to DCP's Practice Manuals, to better understand the principles upon which decisions are made, along with examples. Although DCP has made a commitment to the progressive public release of information, and has released some high-level documentation, people we consulted let us know that a range of documents comprising detailed practice guidance were either not available publicly or are heavily redacted.

CAFFSA believes that for DCP to work in genuine partnership with the sector, and with families and carers themselves, detailed information such as how decisions are made in relation to removal or reunification are vital. One example relates to the next section of this response, where CAFFSA responds to the question about whether a legislative framework for the reunification process should be provided for.

At the time of finalising this submission, the Assessment Framework for DCP staff is the only publicly available document that CAFFSA could locate that has *detailed, specific information* about how reunification prospects are assessed. This information (in a document that was Revised and Approved on 5 September 2022) is available on the internet because of a Freedom of Information request (<https://www.childprotection.sa.gov.au/documents/foi/policies/assessment-framework-for-dcp-staff.pdf>) The section entitled *Considerations when Assessing the Viability of Reunification* (pages 21 – 24) is almost entirely redacted. All of the fourteen considerations listed under the domain of *Assessing Cultural Context* are redacted. It is unclear how the basic principles of

administrative law such as the support of fair, consistent, lawful, and impartial decision making are being followed when such basic information is unavailable to NGO partners, let alone to families and carers. All of the eleven considerations listed under the domain of *Parents Progress to Addressing Child Protection Concerns and Reducing Further Risk* and all of the thirty considerations listed under the domain of *Parents Ability to Meet the Child or Young Persons Needs* are entirely redacted.

**Recommendation 37: CAFFSA recommends the legislation include provisions for fair, transparent, and timely communication of detailed policy and practice directions to NGO partners, families, and carers in order to ensure everyone understands the decision-making parameters and can work towards family preservation and/or reunification in the most consistent and evidence-based manner.**

### Reunification approaches

*'It's so easy to dismantle a family and there is so little attention in the Act and such scarce resources in the system to put them back together again...'* (Consultation participant)

Reunification is at the centre of meaningful child welfare practice. Whilst child protection systems are concerned with removal of children from their families in the interests of safety, the capacity of child welfare systems to return children safely to their families of origin is also considered to be of central importance. Yet reunification has tended to remain a largely invisible area of work.<sup>70</sup> Whilst this quote is referring to Australia as a whole, it is particularly apt for the current South Australian system.

As with funding for Family Group Conferencing, the funding paradigm for Reunification Services, as a fee-for-service structure, does not indicate a commitment to building the capacity of organizations and their staff to develop the model as an integral part of child protection work and as the organizations core business. Changing the funding structure to block funding is a first step in embedding reunification as an explicit principle of intervention and/or placement under the CYPS Act in South Australian practice.

In relation to whether a reunification approach should be provided for in the CYPS Act legislative framework (Question 29), our response is as follows:

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<sup>70</sup>E. Fernandez, J.-S. Lee, Accomplishing family reunification for children in care: An Australian study, *Children and Youth Services Review* 35 (2013) 1374–1384

**Recommendation 38: CAFFSA recommends embedding reunification as an explicit principle of intervention and/or placement under the CYPS Act.**

**Recommendation 39: CAFFSA recommends providing a legislative framework for the reunification process that includes specific legislative provision for the reunification of Aboriginal children and young people.**

#### Assessment of reunification capacity

Reunification has tended to remain a largely invisible area of work<sup>71</sup> and yet excellent results are emerging nationally and internationally. By way of example, in SA, an evaluation of the Breathing Space pilot program operated by Centacare demonstrated that the program resulted in positive unintended outcomes, such as reunifications.

Breathing Space consists of a multi-disciplinary team informed by a strong therapeutic framework, to provide specialist trauma therapy and a holistic approach to support young women up to 25 years of age, who have had their child/ren removed from their care. It utilises Narrative Exposure Therapy, Adult Exploration Attachment Interview, and therapeutic case management to work with the mothers in addressing their own complex/relational trauma experiences and the deep wounds left from the removal of their child. The evaluation, 'A strong support system: a final evaluation report of Breathing Space' by Dr Veronica Coram, Research Fellow, Flinders University found that 'by the end of their intervention, Breathing Space participants demonstrate greater insight into why their children were removed and the need for them to improve their personal circumstances, wellbeing and parenting capacity.'

The strong performance of the Newpin program, operated by Uniting Communities, in assisting with reunifications was also described earlier in this submission.

In terms of the background to the current legislation, recommendation 70 of the Nyland Report called for the Agency (DCP) to assess and determine the possibility of reunification within six months for a child under two years; and within 12 months for a child over two years. If reunification is not possible, the Agency is to immediately apply for a GOM under 18 Order.

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<sup>71</sup>E. Fernandez, J.-S. Lee, Accomplishing family reunification for children in care: An Australian study, *Children and Youth Services Review* 35 (2013) 1374–1384

The ability to establish a reliable triage of children and their families with greater likelihood to be reunified so that they are likely to be subject only to short-term orders has, until now, proven difficult to achieve.

Without ongoing support and engagement with the family, it is difficult to make an accurate assessment on 'best connection', and best interests of the child. Following statutory intervention, we believe the State has a responsibility to support families immediately once a child has been removed, doing so in the best and long-term interests of both the child and their family and the long-term outcomes of the child.

In South Australia, 25% of the children and young people who exited the Child Protection system in 2018 experienced six or more placements, and approximately 10%, eleven or more placements. This is significantly higher than the national average of 10% and 2% respectively and is particularly acute for children and young people who have been in the State's care system for five or more years - 25% experienced 11 or more placements compared to 8% nationally (Report on Government Services, 2018).<sup>72</sup>

The challenge of this level of movement is not only the insecurity felt by the child, but the reduced capacity for achieving or improving outcomes for the child and the family, in terms of reunification or 'best connection'.

### 'Onus of proof' on biological parents

CAFFSA continues to be concerned about the role of the 'onus of proof'<sup>73</sup> in unfairly placing the burden of responsibility on parents to demonstrate to the Court that they are fit parents if they object to an order being made. The reversal of the onus of responsibility means that there is a risk that parents who may be able to demonstrate capacity and capability to care for their children in a safe environment are not *actively* afforded the opportunity to do so.

Further, CAFFSA believes that the current arrangement hinders the State's ability to support families to work with the system in order to be reunified with their children post-removal.

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<sup>72</sup> Australian Productivity Commission. (2018). Chapter 16, Child Protection Services. *Report on Government Services*. Accessed at <https://www.pc.gov.au/ongoing/report-on-government-services/2018/community-services/child-protection>

<sup>73</sup> Section 59, 'Onus on objector to prove order should not be made', Children and Young Person (Safety) Act 2017 (SA) s 59 (2), p.41

CAFFSA are being told by our member agencies that there are more families trying to access legal support in efforts to reunify with their child, and whilst we understand the intent to support placement stability and positive attachment, current legislative provisions for 'onus on objector' do not reflect a commitment to family preservation and re-unification.

Some argued that parents need appropriate time to make informed decisions about the orders and seek legal advice if required and the greatest issue is that the current legislation does not allow for that. Access to appropriate legal representation and timeliness is what is important as the burden is still on the department to prove the case

The Act, however, places the burden of proof on the objector, essentially requiring that if a family objects to an order being sought by DCP they must provide proof to the court that this order is unnecessary.

This requires that a family, often a very vulnerable one, must understand legal processes at a high level, have the resources, skills, and capacity to engage with that system and the ability to collect and present evidence in a manner acceptable to that system.

Placing the onus on a family is not consistent with concepts of natural justice or fairness. This aspect of the legislation automatically assumes that the information and assessments being made by DCP are correct, fair, and unbiased in all cases.

When the cost and availability of legal representation for families is considered, the further disadvantage driven by this part of the Act becomes evident.

The history and experience of Aboriginal people within the child protection and legal systems, where instances of institutional racism still exist, means that the Onus of Proof is yet another layer of injustice that is highly likely to contribute to a continued escalation of the over representation of Aboriginal children in the care system.

Currently, CAFFSA has heard that the system appears to primarily engage families when the only 'intervention option' is to remove the child, and once a child is removed, families are often left unsupported for up to 12 months before being assessed for reunification. In this time, the relationship and attachment between the child/family often deteriorates, and in the absence of knowing 'how' families are expected to change, the child's removal exacerbates the issues triggering the child's removal in the first place.

Essentially, we are missing many opportunities to support the family to stay together; and it could be argued that 'onus of proof' legitimises this and can have the effect of absolving the responsibility of the State to support families post removal, particularly if a family has failed to demonstrate to the court its inability or otherwise to care for the child in a safe environment.

**Recommendation 40: CAFFSA recommends that the 'onus on the objector' be reversed, so that it is the responsibility of the Department / Crown to prove that a family does not have the capacity to care for their child.**

## Final recommendations on matters not raised in the DCP Discussion Paper

### Psychological / psychometric assessment of residential care staff

Section 107 (1) of the Act provides that:

*A person must not be employed in a licensed children's residential facility unless the person has undergone a psychological or psychometric assessment of a kind determined by the Chief Executive for the purposes of this section.<sup>74</sup>*

CAFFSA continues to be opposed to the inclusion in the legislation of these provisions on the basis that such tests are not predictive of predatory behavior and do not necessarily serve to safeguard children and young people in residential care facilities.

### Validity and reliability of tests and process

Psychometric processes need to demonstrate both reliability and validity of individual measures and actions. A measure is reliable when it consistently measures a construct across different participants. Whilst CAFFSA does not have information on the reliability of individual measures used in psychometric assessment, it is highly probable the online psychological measures have adequate levels of reliability. However, reliability within the interview process raises more concerns. CAFFSA understands that the assessment is conducted using structured interview questions (with two 'structured' interview questions increasing assessment reliability), but we are concerned that there is only one person conducting the interview, and NGO staff are reporting significant variation in

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<sup>74</sup> *Ibid*, s 107, (1), p.63



how the interviews are being conducted (e.g., degree of follow-up suggestions offered, how questions are being explored, prompting etc.).

This suggests to CAFFSA that these interviews are potentially not being conducted in a consistent manner across the interviewers or organizations conducting them. Research demonstrates there are significant issues related to reliability of interviews conducted by two or more people (inter-rater reliability is low). Ensuring that the interviews are being conducted in a reliable manner across interviewers in order to minimize inter-rater reliability is a crucial consideration.

When it comes to implementation, it is acknowledged that no psychological testing process is fool proof. On this basis, there is a need to balance the impact of false positives (a staff member is wrongly deemed non-suitable when they are actually suitable) and false negatives (a staff member is deemed suitable when they actually pose a risk to children).

There is overwhelming evidence that the current assessment process is placing significant stress and anxiety on individual staff, therefore, there is a high risk the assessment process is being confounded by these features (e.g., process is assessing situational anxiety). Based on this, there is an argument that psychometric does not offer reliable enough data on the suitability of an applicant to offset the stressful experiences applicants are required to undertake.

**Recommendation 41: CAFFSA recommends that the requirement for psychometric testing for all staff working in residential care facilities be removed from the Act.**

### Restrictions on the media

A number of people raised deep concerns about the conduct of the media in relation to child protection in South Australia. As an example, the Adelaide Advertiser published a photograph of a child at risk they nicknamed 'Little Jimmy' without pixelating the child's face – a gross invasion of privacy. The child will grow up with their face available on the internet in relation to tabloid-style coverage of child protection concerns. This is an issue that clearly should be considered in the re-drafting of the legislation.

**Recommendation 42: CAFFSA recommends the Act incorporate sanctions for media outlets that breach the privacy of a child or young person who is subject to statutory child protection intervention.**

It is recognized that the media plays a fundamental role in democracy. CAFFSA notes, however, that the challenges faced in the child protection system in South Australia are similar to those of other Australian jurisdictions and comparable nations internationally. Whilst cognizant of the principles of free speech and a free press, CAFFSA also notes the tendency of some media outlets to criticize, blame and name departmental staff and run campaigns calling, for example, for the sacking of senior staff. CAFFSA would like to place on record conversations we are aware of where young people on student placement and other potential staff have stated they were deterred from applying to work in the area of child protection because of such negative and dramatic coverage. This comes at a time when recruitment and retention of child protection workers and foster carers is a critical issue, making the placement of vulnerable children in alternative care more difficult. As a result, it is difficult to see how this coverage is in the public interest or helps children at risk and vulnerable families in any way.

### Guardianship to be assumed by the Minister for Child Protection

CAFFSA had supported the reversion to Guardianship of children and young people being assumed by the Minister for Child Protection. Consultation with the sector yielded mixed views and the fact that the Chief Executive, rather than the Minister, acts as the guardian in all other Australian jurisdictions, as well as in New Zealand was also considered.

It is noted that some CAFFSA members felt that it should be the Premier, rather than the Minister for Child Protection that assumes guardianship, in recognition of the whole-of-government response required for adequate prevention, early intervention and responses to child protection.

As such, while CAFFSA is not calling for a change to the guardianship arrangements, it does ***recommend that the legislation enshrines mechanisms to ensure the Minister and the Premier are advised of all matters of strategic and individual importance in relation to their wellbeing and safety of children whilst in care.***