



Submission to the Standing Committee on Legislation
Inquiry into the Children and Community Services Amendment Bill
2019

Youth Affairs Council of Western Australia
July 2020

Acknowledgement of Country

The Youth Affairs Council of Western Australia acknowledges the traditional custodians of country on which this report was based, the Wadjuk people of the Noongar Nation, and their continuing connection to land, sea and community. We pay our respect to them and their cultures, and to their Elders both past and present, as well as acknowledge and celebrate the ongoing contributions of their young people in our communities.

About the Youth Affairs Council of Western Australia

The Youth Affairs Council of Western Australia (YACWA) is the peak non-government youth organisation in Western Australia. YACWA operated primarily as a human rights organisation that seeks to address the exclusion of young people in a rapidly changing society.

Our vision for Western Australia is one that celebrates and engages young people in all aspects of the community. Our role is to strengthen the trust, cooperation, collaboration, professionalism, and voice of the non-government youth service sector to better serve the young people of Western Australia.

YACWA is widely acknowledged as a leader in the field of current youth participation best practice. This reputation has a national profile and is supported by academic research, proven training and project management, and—most importantly—extensive engagement with young people. YACWA strongly believes that children and young people are the experts in their own experiences and wellbeing, and we are dedicated to ensuring that expertise is represented through equal access to community decision-making processes.

Executive Summary

The Youth Affairs Council of Western Australia (YACWA) welcomes the opportunity to provide a submission to the Standing Committee on Legislation for further input into the *Children and Community Services Amendment Bill 2019* (the Bill).

As the peak body representing young people and the youth sector, YACWA has been significantly involved in providing insight and guidance to the management of the State Government's Child Protection portfolio over the last 40 years. In the last three years we have been fortunate to have had input into key processes of reform in the Child Protection system which have in turn shaped the development of this Bill.

These have included:

- a. **2017** – A submission to the review of the *Children and Community Services Act 2004* (the Act).
- b. **2017** - Sitting on the committee tasked with analysing submissions into the review of the Act, providing advice to the minister about the required course of action through a report tabled in parliament.
- c. **2019** - Written Submission to the *Inquiry into the Monitoring and Enforcement of Child Safe Standards*
- d. **2020** – Oral Submission to the *Inquiry into the Monitoring and Enforcing of Child Safe Standards*.

YACWA is supportive of some of the positive amendments that have been provided by the Bill, including strengthening mandatory reporting laws, requirements for cultural support plans and ensuring connection to support services is included in Leaving Care Plans.

However many elements of this Bill are not strong enough to adequately improve outcomes for children and young people in the Western Australian Child Protection system and safeguard their rights.

Our Child Protection system is impacted through significant gaps in service provision, inconsistency in adherence to existing policy approaches, and poor engagement of young people in decision-making processes and we believe the Bill leaves gaps in addressing these issues.

The following submission sets out key areas where the Bill can improve to ensure that the requirements contained within that safeguard the rights of children and young people in and leaving care are consistent in implementation.

Summary of Recommendations

The following recommendations comprise required amendments to the *Children and Community Services Act 2004* that must be addressed through the *Children and Community Services Amendment Bill 2019* under review.

For consistency, references to legislative amendments refer to the 2004 Act unless otherwise specified to refer to the 2019 Bill.

1. Amend S.89(B) to state explicitly that a young person is supported to be involved in the development of their leaving care plan.
2. Amend S.90 to state explicitly that there must be regular reviews of the leaving care plan and its implementation, separate to broader care plans.
3. Remove the provision in S.99 that stipulates that a young person must 'seek' out assistance to access support to access, accommodation, employment, education/training, legal advice, health and counselling services to ensure that it is the responsibility of the CEO to provide information the young person of all available services.
4. Amend S.100(A) to include direct reference to the responsibility of the CEO to verbally engage children and young people in care around access to supports as well as incorporate a multi-channel approach to communicating with individuals about their entitlements, including using mediums such as videos, social media, visual media and other channels.
5. Develop and legislatively mandate adherence to policy, practice guides, training and education, and a consistent approach to leaving care through the Department of Communities to ensure that all young people are able to access their rights and entitlements to support leaving care and post-care. Explore how the Raid Response Framework can be empowered to achieve this through a legislative mandate.
6. Explore and commit to providing provisions within the Act that make it optional for young people to leave care arrangements up until the age of 25. Provisions would need to be written into the legislation to respect young people's rights to make decisions as an adult once they turn 18;
7. Remove the part of the amendment to Section 14 that directs that the requirements for family and community participation do not apply to decisions about placement and cultural support plans;
8. Strengthen S.14 participation requirements to specify that an opportunity and assistance must be given to each of a child's family, a community of which the child is a member **and** an approved Aboriginal and Torres Strait Islander representative organisation, to participate in decision-making processes under the Act (Note that the current proposed amendment only requires that the child's family, community **or** a representative organisation participates);
9. Remove S.14(3) which states 'This section does not apply to a decision for an Aboriginal or Torres Strait Islander child about a placement arrangement or cultural support plan' and update S.89 and S.90(2A) around cultural support plans and care plans to reflect the Improved wording of S.14

10. Include additional provisions that require families to be given support to participate in child protection decisions by means of an independently facilitated Aboriginal Family-led Decision Making process;
11. Amend the proposed section 81 to require consultation with a child's extended family prior to placement rather than only with one family member; and
12. Include additional principles requiring decisions under the Act to align with each of the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle.
13. Explore creating an independent advocacy and oversight service by legislating a guardianship role with adequate resourcing investigative powers and oversight over the Child Protection System
14. Ensure that any oversight of the Child Protection system exists within an overarching entity that is statutorily empowered and resourced to provide institutional oversight and organisational compliance through the following key functions:
 - a. Oversight of organisational facilities and compliance monitoring for the Child Safe Standards;
 - b. Systemic advocacy functions with the power to monitor laws, policies and practices that concern children and young people and provide recommendations to Parliament for reform; and
 - c. Investigative powers to support individual advocacy and complaints management relevant to the implementation (or lack thereof) of the Child Safe Standards.

Submission

Leaving Care Plans and Policy

Requirements for the State Government to provide supports to young people post-care must be strengthened

The addition of a clear and separate definition of Leaving Care Plans is a positive step to improving the quality of care for young people in our Child Protection system.

However, in order for this to be effective is that we have legislative requirements for child protection workers and service providers to adhere to the development and maintenance of these plans, and for young people themselves to be jointly involved in their development.

It is widely known that adherence to the Leaving Care Policy is inconsistent across the sector, despite a strong policy framework underpinning their use. Many young people report little-to-no choice in the planning of their exit or recognition of their strengths and desires in setting goals and supports under these plans.

Similarly, many service providers report young people accessing their services with no ongoing contact with leaving care services, and no understanding of the services and supports available and to which they are entitled. That this information is not understood by young people points to a lack of adherence to the Leaving Care process and presents a failed opportunity to support and intervene early when young people experience difficulty.

These issues will be difficult address when the definition of Leaving Care Plans as identified in the Bill fails to stipulate that young people must be involved in their development.

Despite previous iterations of the Act stating that the CEO must develop plans to support young people leaving care, ongoing evidence shows that this is not consistently put into practice. According to the Auditor General's Audit Report on the effectiveness of leaving care support, 65% of young people who are eligible for transitional support do not receive it early enough or at all, putting them at higher risk of being homeless, unemployed, missing out on education and training, and not getting the physical and mental health care they need.

YACWA is concerned that the updated provisions outlined in the Bill fail to ensure that leaving care plans are consistently applied and adequately address young people's needs when leaving care. The Bill contains very little provisions for enforcement of its requirements, and as such we do not believe it will improve supports for young people leaving care in its current form. The application of the legislation would be further strengthened through legislatively mandated policy, practice guides, training and education, and a consistent approach to leaving care through the Department of Communities to ensure that all young people are able to access their rights and entitlements leaving care and post-care.

The Rapid Response Framework (the Framework) is a mechanism in which this can be achieved however there currently is no reference to it in the Bill, thus missing a significant opportunity to mandate its implementation. The disconnect between the current rebranding of the Framework and the amendments made in this Bill undermines the intent to improve implementation of the Framework as outlined in the Department of Communities' Response to Out-of-Home Care Strategic Directions in Western Australia 2015-2020 Discussion Paper. It is critical that compliance and accountability to the Framework is mandated and enforced

through amendments to the Bill. Robust guidelines for Leaving Care Plans must also be developed within or alongside the Framework to ensure consistent and thorough implementation in practice.

Legislation must enable proactive provision of supports for those leaving care

Access to leaving care support is weakened in the Bill by the inclusion of a specific clause that specifies a young people must seek assistance in order to be provided it, as follows:

*S.99 – The CEO must ensure that a person **who qualifies for, and seeks,** assistance is provided with services to assist the person to do any one or more of the following -*

- a. obtain accommodation;*
- b. undertake education and training;*
- c. obtain employment;*
- d. obtain legal advice;*
- e. access health services;*
- f. access counselling services.*

While we understand this wording may be intended to ensure the young person consents to engaging with supports, this requirement implies the burden of responsibility for initiating access to supports is on the individual in care. In practice, this may mean the CEO is not under any obligation to provide access to the specified leaving care supports if this not overtly sought after.

Young people vary in their confidence, awareness, and capacity to access supports. For young people leaving care, barriers to mainstream services may be higher due to stigma and lack of understanding of what is available. They may have limited knowledge of how to access these critical supports when transitioning to independent living. During consultations, many have reported fear of engaging with services or asking for assistance.

We believe that this is an unnecessary addition that is counter to other provisions mandating a proactive approach to supports for young people leaving care. It must be the responsibility of the CEO to provide children and young people with information about the broader support options available when leaving care as well as much support as possible to ensure that young leaving care have access to safe and secure accommodation, education, employment and other opportunities.

Young people require appropriate information on their rights and available supports in leaving care

Whilst S.100(A) states that ‘The CEO must ensure that, before a child leaves the CEO’s care, the child is provided with a written explanation of the assistance that may or must be provided to the child under this Division’ there is no guarantee that the young person may understand the information that is provided to them. Young people, especially those with educational disruption and neurodevelopmental delays or impairments, vary in their literacy and communication skills, and so information provided in a written format must be supplemented with adequate checks to ensure the young person fully understands the information provided to them.

YACWA believes it is the responsibility of the Department to directly engage with children and young people around access to supports, as well as incorporating a multi-channel approach

to communicating with care leavers about their entitlements including using mediums such as videos, social media, visual media and other channels.

Recommendation 1:

Amend S.89(B) to state explicitly that a young person is supported to be involved in the development of their leaving care plan.

Recommendation 2:

Amend S.90 to state explicitly that there must be regular reviews of the leaving care plan and its implementation, separate to broader care plans.

Recommendation 3:

Amend the provision in S.99 that stipulates that a young person must 'seek' out assistance to access support to access, accommodation, employment, education/training, legal advice, health and counselling services to ensure that it is the responsibility of the CEO to provide information the young person of all available services where there might be reasonable belief that they are required, without compromising a young person's agency.

Recommendation 4:

Amend S.100(A) to include direct reference to the responsibility of the CEO to directly engage children and young people in care around access to supports and ensure this information is understood as well as incorporate a multi-channel approach to communicating with individuals about their entitlements, including using mediums such as videos, social media, visual media and other channels.

Recommendation 5:

Develop and legislatively mandate adherence to policy, practice guides, training and education, and a consistent approach to leaving care through the Department of Communities to ensure that all young people are able to access their rights and entitlements to support leaving care and post-care. Explore how the Raid Response Framework can be empowered to achieve this through a legislative mandate.

Age of Leaving Care

Legislatively mandating an increase to the leaving care age for those who need it

YACWA has been consistent in its position that 18 is an insufficient age for many young people in care to leave the system and their supports. It is essential that we provide young people in our Child Protection system the choice and opportunity to remain in care past the age of 18 when they wish to.

Young people leaving the Child Protection system are at significant risk of lifelong negative outcomes and impacts on their health and wellbeing. Young people who have left the care system are 19 times more likely to have contact with the youth justice system nationally¹. Similarly, a separate report involving young homeless people found that 63% of those

¹ CREATE Foundation. (2018) *Youth Justice Report*. Retrieved from: <https://create.org.au/wpcontent/uploads/2018/10/CREATEs-Youth-Justice-Report-Young-Persons-Version-2018.pdf>

surveyed had been involved with the Out of Home Care (OHC) system², indicating the long-term prospects of young people leaving care are not being addressed. ~ It is essential that legislation focuses on ensuring positive outcomes for young people after leaving care by providing a sense of security, stability and continuity of support.

We commend the State Government for funding the Homestretch trial which provides much needed extended support for vulnerable young people in care aged 18-21. This trial affords the State Government the opportunity to partner with Homestretch to understand how we can improve our processes and supports available to young people during the critical transition period of 18-21 years of age. Pending evaluation of outcomes, this trial could act as a guiding point to inform future frameworks around extending the care support beyond the age of 18.

However, we reiterate our belief that the State has a requirement to care for young people post the age of 18 should they need the help, and therefore this requirement should be legislatively addressed.

Recommendation 6:

Explore and commit to provisions within the Act that enable young people to remain in care arrangements up until the age of 25 where they consent. Provisions would need to be written into the legislation to respect young people's rights to make decisions as an adult once they turn 18.

Supporting Aboriginal children and young people

Improving adherence to the Aboriginal Child Placement Principle

Youth service providers at YACWA's 2019 State of the Youth Sector Forum identified significant gaps in service provision particularly for Aboriginal young people (full report available [here](#)).

This included limited engagement with Aboriginal Community Controlled Organisations, Aboriginal and/or Torres Strait Islander staff, as well as insufficient or ineffective efforts to prevent Aboriginal young people from entering the care system. In particular, the need for relevant Aboriginal family and parenting support delivered by ACCOs was noted, with Aboriginal young people entering care increasing. YACWA reiterates concerns that the Bill fails to adequately address these issues and ensure comprehensive engagement with the families and communities of Aboriginal children and young people engaged in the Child Protection system.

We reaffirm the [statement of concern](#) from the Secretariat of National Aboriginal and Islander Child Care (SNAICC) and the Noongar Family Safety Council. We also endorse their recommendations which highlight how the Bill can be strengthened to better enshrine Aboriginal and Torres Strait Islander family-led decision making and self-determination in the Child Protection system well as better align the Bill to the five elements of the Aboriginal and

² Paul Flatau; Monica Thielking; David MacKenzie; Adam Steen. 2016. THE COST OF YOUTH HOMELESSNESS

IN AUSTRALIA . [ONLINE] Available at:

<http://www.salvationarmy.org.au/Global/News%20and%20Media/Reports/2016/The%20Cost%20of%20Youth%20Homelessness/The%20Cost%20of%20Youth%20Homelessness%20-%20Interim%20Report.pdf>.

Torres Strait Islander Child Placement Principle (prevention, partnership, placement, participation, and connections).

Recommendation 7:

Remove the part of the amendment to Section 14 that directs that the requirements for family and community participation do not apply to decisions about placement and cultural support plans.

Recommendation 8:

Strengthen S.14 participation requirements to specify that an opportunity and assistance must be given to each of a child's family, a community of which the child is a member **and** an approved Aboriginal and Torres Strait Islander representative organisation, to participate in decision-making processes under the Act (note that the current proposed amendment only requires that the child's family, community **or** a representative organisation participates).

Recommendation 9:

Remove S.14(3) which states 'This section does not apply to a decision for an Aboriginal or Torres Strait Islander child about a placement arrangement or cultural support plan' and update S.89 and S.90(2A) regarding cultural support plans and care plans to reflect the Improved wording of S.14

Recommendation 10:

Include additional provisions that require the provision of support to families to participate in child protections decisions by means of an independently facilitated Aboriginal Family-led Decision-Making process.

Recommendation 11:

Amend the proposed S.81 to require consultation with a child's extended family prior to placement rather than only with one family member.

Recommendation 12:

Include additional principles requiring decisions under the Act to align with each of the five elements of the Aboriginal and Torres Strait Islander Child Placement Principle.

Improving quality of care and independent oversight

Ensuring young people have a strong voice in their out of home care experience and know their rights

Children and young people's participation in the decisions and processes that affect them is integral to the relevance and effectiveness of those processes to benefit their lives. We see it in our day-to-day work. If young people are given a voice and can participate in decisions that affect them, it leads to stronger more suitable decisions being made. This right is also enshrined in the UN Convention on the Rights of the Child, to which Australia is a signatory³.

Young people have reported feelings of disempowerment in the circumstances of their care. Limited choices in their care arrangements have been linked to poorer mental health by the young people YACWA has engaged and consulted, including through consultation as part of the upcoming WA Youth Strategy and the Action Plan for At-Risk Youth.

Providing independent oversight to the CP system

In our 2019/20 Pre-Budget Submission, we noted that *"the lack of independent oversight of Western Australia's out of home care system is grossly inadequate. Young people are exceptionally vulnerable to abuse in residential settings, so an independent advocate is essential to support young people especially in addressing issues of abuse"*⁴.

Only one Child Advocate position exists for all children and young people in care across Western Australia and monitoring of care systems has been largely reactive rather than preventative. The Child Advocate is also not widely known amongst children in care, with only 35% of young people aware the role existed according to the Commissioner for Children and Young People's report *Speaking Out About Raising Concerns in Care*⁵. This is only one such example of the many gaps that currently exist in Western Australia's systems of institutional oversight and as such the importance of this inquiry's conclusions in this regard cannot be understated.

The findings of the Royal Commission into Institutional Responses to Child Sexual Abuse highlighted the critical need for ongoing, independent monitoring and advocacy to ensure that young people are listened to and supported to respond to abuse. As of yet, this monitoring has not been enshrined in the proposed Bill.

YACWA's [written](#) and [oral](#) submissions to the Inquiry into the Monitoring and Enforcing of Child Safe Standards provides an overview of our recommendations regarding our views over independent oversight of child safety in institutional setting, and so we reaffirm those recommendations in regards to the Child Protection system.

Traditional oversight bodies have been hampered by a lack of coordination across multiple siloed service systems, as well as a lack of legislated power to compel change and enforce penalties for non-compliance. Whilst we recommend that an independent oversight and

³ The United Nations (1989). *The Convention on the Rights of a Child*. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁴ The Youth Affairs Council of WA. (2018). *YACWA Pre-Budget Submission 2019-20*. Retrieved from <https://www.yacwa.org.au/pbs/YACWA-budget-2018-19-ONLINE.pdf>

⁵ The Commissioner for Children and Young People (2016). *Speaking Out About Raising Concerns in Care: The views of Western Australian children with experience on out of home care*. Retrieved from <https://www.cyp.wa.gov.au/media/2327/speaking-out-about-raising-concerns-in-care-website-version.pdf>

advocacy body must be developed for the Child Protection system, it must exist an independent overarching entity that is statutorily empowered and resourced to provide institutional oversight and organisational compliance to the Child Safe Standards. This function could be considerably strengthened by also providing the power and resourced for systemic advocacy, routine site visits, and individual support for all children and young people in institutional settings or accessing services.

Of note in relation to this matter is the South Australian Royal Commission that was held in 2013 into the practices of child protection services. In South Australia, like New South Wales and Queensland, they had in place a Guardian of Children and Young People (GCYP). The Royal Commission made recommendations to creating the role of Commissioner for Children and Young People in an overarching fashion to the GCYP, and expanding the role of the GCYP. These recommendations included⁶:

247: Empower GCYP and the Child Death and Serious Injury Review Committee to refer matters to the Children's Commissioner, where they are of the view that escalation through processes available to the Children's Commissioner is appropriate.

248: Empower the Children's Commissioner to exercise its statutory powers and functions in relation to such matters, including employing the regime to monitor government responses to recommendations, and escalate the matter to the Minister and Parliament where necessary, at his or her sole discretion.

251: Amend legislation to empower the Children's Commissioner or GCYP to make complaints to the Ombudsman and HCSCC on behalf of a child.

Subsequently, a new bill was put into the South Australian parliament and passed late last year legislatively requiring that a Children's Commissioner be established, and the independent guardian be appointed to represent and protect children in care, with a resourced office put in place, as well as advocacy and oversight powers in relation to child protection.

YACWA recommends that continued explorations of independent oversight and monitoring of Child Safe Standards must consider how independent oversight of the Child Protection can be legislated through further reform of the Children and Community Services Act. YACWA believes that the ongoing failure to provide a statutorily independent child advocate thoroughly detracts from attempts in the Bill to implement findings from The Royal Commission into Institutional Responses to Child Sexual Abuse.

Recommendation 13:

Explore creating an independent advocacy and oversight service by legislating a guardianship role with adequate resourcing investigative powers and oversight over the Child Protection System.

Recommendation 14:

Ensure that any oversight of the Child Protection system exists within an overarching entity that is statutorily empowered and resourced to provide institutional oversight and organisational compliance through the following key functions:

⁶ The Hon Margaret Nyland AM (2016). *Child Protection Systems Royal Commission Report Volume 1: Summary and Report*. Retrieved from http://www.agd.sa.gov.au/sites/agd.sa.gov.au/files/documents/CPRC/CPSRC_VOLUME%201_preface%2C%20summary%26recommendations.pdf.

i. Oversight of organisational facilities and compliance monitoring for the Child Safe Standards;

ii. Systemic advocacy functions with the power to monitor laws, policies and practices that concern children and young people and provide recommendations to Parliament for reform; and

iii. Investigative powers to support individual advocacy and complaints management relevant to the implementation (or lack thereof) of the Child Safe Standards.

Concluding Remarks

YACWA is optimistic that some of the Amendments contained within the Bill can bring about positive change to the Child Protection system in Western Australia, however we believe that it needs to be strengthened even further to ensure the rights and safety of children and young people in out of home care are upheld to the fullest extent possible, and that they get the supports needed to positively transition out of care into independent living.

In this submission, YACWA has outlined clear steps and requirements for the State Government to create a safer and more effective Child protection system in Western Australia by improving in areas including:

- Enhancing leaving care supports
- Extending the maximum age for children and young to be able to remain in care
- Strengthening adherence to the Aboriginal Child Placement Principle
- Legislatively mandating independent oversight to maintain the human rights of children and young people in care

Specifically enshrining these principles into legislation will ensure that they are strongly reflected in practice. Through robust efforts to coordinate legislation, policy, practice guides, resourcing, service delivery, training and education we can ensure that the Western Australian children and young people in care are well supported by the Child Protection system to foster a lifelong trajectory of positive health and wellbeing outcomes.

We look forward to supporting the Committee as it carries out its inquiry.

Yours sincerely,



Ross Wortham
Chief Executive Officer
24 July 2020