



**YACWA response to the review of The Children and
Community Services Act**

March 2017

Executive Summary

The Youth Affairs Council of Western Australia (YACWA) welcomes the opportunity to provide a submission in response to the review of the *Children and Community Services Act 2004* (the Act)

In doing so, it is noted that this review is being conducted as part of a statutory requirement, and at a time where there has been significant change in the Child Protection portfolio over the last 3 years. A new State Government has recently been elected, major reforms have been undertaken, the Department has developed new strategies, undergone consultations, and public campaigns have gained momentum in relation to elements of the portfolio.

This submission aims to take all of this into account, and respond to the relevant Terms of Reference, as well as additional measures, that pertain to the YACWA remit of representing members and young people between the ages of 12 and 25.

In writing this submission, YACWA has chosen to specifically focus on numbers 2, 3, and 4 of the terms of reference. However, given this review has a broader statutory scope, combined with recent changes in the Child Protection portfolio, YACWA has raised several other legislative amendments within this submission that would be broadly welcomed by young people and the sector.

These include:

- Raising Leaving Care Age
- Leaving Care Plans
- Child Participation
- Guardian Consent
- Independent Advocate and Oversight

Underpinning YACWA's response to the Terms of Reference and additional measures is a comprehensive research and comparative analysis of the child protection portfolio in other jurisdictions. There have been several recent reviews, and subsequent legislative changes from other jurisdictions within Australia which in YACWA's view should be considered.

When this research is combined with consistent feedback from members compiled over the last five years since the previous legislative review, YACWA is of the primary premise that *The Children and Community Services Act* could be strengthened in some areas to achieve better outcomes for young people in care.

In this regard, 20 recommendations have been made pertaining to strengthening the legislation, a summary of which can be found on page 4 and 5, with further explanation provided within the submission. Should you have any questions regarding this submission please do not hesitate to contact the YACWA office for further feedback or input.

Yours faithfully,



Ross Wortham
CEO
Youth Affairs Council of WA

Contents

Executive Summary	1
Preliminary Pages	3
About YACWA	3
YACWAs involvement in Child Protection	3
Recommendations	4
YACWA support for other submissions	5
Previous Reviews of the Act	6
Statutory Required Reviews of the Act	6
Considering the Reforms	6
What we have learnt from recent Consultations	8
Out of Home Care Sector Summit	8
YACWA Pre-Budget Submission	8
Commissioner for Children and Young People Report	9
Responding to Terms of Reference	11
2. the principles relating to Aboriginal and Torres Strait Islander children in sections 12 to 14 and the consultation requirement in section 81	11
3. any changes necessary to support the safety and wellbeing of adults and children subject to family and domestic violence	20
4. the provisions relating to secure care arrangements for children at high-risk, and	23
Additional measures not considered in this review	25
Raising Leaving Care Age	25
Leaving Care Plans	27
Child Participation and Rights	28
Guardian Consent	30
Independent Advocate and Oversight	31
Attachments	33
References	34

Preliminary Pages

About YACWA

The Youth Affairs Council of Western Australia (YACWA) is the peak non-government youth organisation in Western Australia with a membership comprised of youth service organisations, community organisations, academics, individuals and most importantly young people themselves. Established in 1980, YACWA has worked tirelessly for over 35 years to deliver high-level representation and advocacy for the Western Australian youth sector and young people to address the exclusion of young people in a rapidly changing society.

YACWA considers it our responsibility to:

- act as a lobbying group for the non-government youth sector and Western Australian young people aged 12-25
- provide information and support to the non-government youth sector
- work to promote fair and positive outcomes for young people in our community
- promote equity, equality, access and participation for young people in Western Australia
- advocate to all levels of government on the best interests of Western Australia's young people
- encourage the active participation of young people in identifying and dealing with issues that are important to them
- improve youth services by exchanging ideas, information, skills and resources
- provide a strong, united and informed voice capable of effectively advocating for the non-government youth sector and the young people with whom they work

YACWAs involvement in Child Protection

As the peak body representing young people and the workforce that supports them, YACWA has been involved in the Child Protection portfolio over the last thirty-five years. Some of YACWAs most recent work has included, but is not limited to: Hosting sector gatherings, advocating around policy issues, involvement on policy committees, consulting with the sector and providing advice to *the Department of Child Protection and Family Support* (the Department). YACWA also consulted with the sector to guide recommendations in its pre-budget submission, *Forging a Fair Path Forward in relation to child protection issues*. YACWA maintains strong connections to service providers and young people across the child protection portfolio, and has been tracking the Out of Home Care reforms as implementation of them has begun.

Recommendations

Throughout our submission we have made a number of recommendations. They are provided within the body of the submission alongside research and consultation feedback, as well as in summary below for reference:

1. Consider altering S.149 of the Children and Community Services Act by adding an additional provision requiring the Minister to provide a report to parliament on the status of recommendations made as part of previous legislative reviews.
2. Declare the incoming Government's position in relation to the reforms as soon as practicable.
3. Explore adding provisions similar to those contained in the *Children, Youth and Families Act 2005* (Victorian Act) and *Children and Young Persons (Care and Protection) Act 1998* (New South Wales Act) relating to children's parents.
4. Consider strengthening the language used in S.13 and S.14 through amending the word 'should' to 'must'
5. Explore adding specific provisions relating to the inclusion of Aboriginal and Torres Strait Islander in specific decisions, particularly in placement, but not only limited to placement.
6. Explore strengthening the wording in S.12(2)(d) to ensure that carers will commit to maintaining cultural connections.
7. Consider re-wording section 81(l) to ensure that consultation is not limited to an officer who is Aboriginal or Torres Strait Islander, but both an officer who is Aboriginal or Torres Strait Islander as well as an Aboriginal or Torres Strait Islander person or agency that knows the child.
8. Explore the option of giving the CEO power to provide under regulations further consultation groups in deciding the placement of Aboriginal and Torres Strait Islander children.
9. Consider introducing provisions similar to section 176 of the *Children, Youth and Families Act 2005* (Victorian Act) to ensure that a cultural care plan is a requirement, separate to the care plan that must be generated and held on record for relevant parties to access.
10. Consider introducing similar provisions in the Act in comparison to S.14 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to include a permanent record of placement consultations and compliance with the placement principles.
11. Have the Department report annually as to the number of Aboriginal and Torres Strait Islander Children who have a cultural plan in place.

12. Explore how the CCSA intersects with other legislation relating to family and domestic violence the newly passed Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016 and consider the Family Law Council Report²⁷ in any proposed legislative changes.
13. Explore Engaging the state ombudsman, in partnership with relevant stakeholders to investigate the Secure Care Facility and provide a report to Government before any legislative changes.
14. Consider expanding the annual report requirements of the department in relation to the secure care facility
15. 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.
16. Section 89 (Care plans, preparation etc. of) (1) is amended to require a distinct and separate plan for young people leaving care starting at the age of 15.
17. That provisions are included in Section 89 (Care plans, preparation etc. of) (1) to state explicitly that a young person is supported to be involved in the development of their leaving care plan, and that there are regular reviews of the leaving care plan and its implementation.
18. Consider rewording Section 10 (1) to the following: If a decision under this Act is likely to have a significant impact on a child's life then, for the purpose of ensuring that the child is able to participate in the decision making process, the child must be given –
19. Incorporate provisions similar to the *Children, Youth and Families Act 2005* (Victorian Act) to allow the CEO to grant powers to caregivers to provide consent for certain things via use of regulations.
20. Explore creating an independent advocacy and oversight service by legislating a guardianship role with adequate resourcing and investigative powers similar to that contained in the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.

YACWA support for other submissions

YACWA would like to acknowledge its broad support of the Create Foundation Submission of which YACWA was able to review in draft format.

YACWA would also like to acknowledge our broad support of the Aboriginal Health Council of Western Australia submission of which YACWA was able to review in draft format.

Previous Reviews of the Act

Statutory Required Reviews of the Act

The Children and Community Services Act came into effect in 2006. As provided for in S.249(1), the Minister has a statutory requirement to carry out a review “of the operation and effectiveness of this Act” after 1 January 2012 and periodically every five years following.¹

Legislative amendments have been implemented since, with major provisions added pertaining to mandatory reporting of child sexual abuse and Secure Care arrangements to name a few.

A statutory legislative review was conducted as required in 2012, with a report outlining the findings of the review and recommendations tabled in parliament. YACWA provided advice to the Department in relation to the review.

The 2012 review found areas where the legislation would benefit from being amended to address gaps or provide greater clarity, or where existing provisions could be strengthened.² It outlined 28 recommendations to guide legislative amendments of the Act in response to the review. However, without going through previous Bills passed by the WA Parliament, it is unclear as to the progress of some of the recommendations status. In that regard, YACWA is of the view that a legislative change should be made to the current Act that requires the Minister to provide a report outlining the progress made in relation to previous recommendations made.

Recommendation 1: Consider altering S.149 of the Children and Community Services Act by adding an additional provision requiring the Minister to provide a report to parliament on the status of recommendations made as part of previous legislative reviews.

Considering the Reforms

The Department announced a suite of reforms to take place across the Child Protection portfolio in 2016. The *Building a Better Future: Out-of-Home Care Reform in Western Australia* report outlines these reforms and the processes undertaken to recommend them. In all, 72 reform actions were identified through The Out of Home Care report³, and have since been planned through 31 reform projects⁴. These range in scope and complexity from district structure realignment, to policy and practice directions, to procurement processes and the creation of new strategies and tools.

Some of these elements relate to legislative change, with a legislative review being conducted in 2015. This legislative review was not a statutory requirement, and had the objective of ensuring that the reforms happening in the portfolio would meet the legislative requirements of the Act. The results of which, to YACWA's knowledge, have not been made public and have elements that are yet to be implemented. They are provided in summary in the report launched in 2016: *Building a Better Future Out-of-Home Care Reform in Western Australia*, and alluded to in the

consultation paper. However, YACWA is of the belief that the findings and recommendations from the 2015 review should be made public.

YACWA also takes this opportunity to note the sheer size of the reforms, and the complexity of implementing vast amounts of change over a short period of time without ensuring that the not-for-profit sector is kept informed of progress. YACWA holds concern regarding the uncertainty that the reforms are creating amongst the community services sector, and the flow on affect to the service delivery for young people.

Recommendation 2: Declare the incoming Government's position in relation to the reforms as soon as practicable.

What we have learnt from Recent Consultations

One of YACWA's core functions as a peak body is to ensure that we act on behalf of our members, and ensure that their views and opinions are considered in policy decisions that affect them. Whilst we did not hold specific consultations relating to this legislative review, YACWA has hosted and is aware of several consultations within the last 6 months, which are outlined below.

Further to this, YACWA members were invited to provide feedback in relation to the review, YACWA consulted other organisations working in the child protection portfolio, and individual experts were sought out to provide specific feedback. An extensive legislative comparative analysis, and research element was also incorporated in the formation of this submission.

Given the legislative review requires The Minister must carry out a review "of the operation and effectiveness of this Act",⁵ YACWA has endeavoured to summarise additional measures captured through consultations that it contends should be considered in this review. They are explored in the submission in the Additional Measures section.

Out of Home Care Sector Summit

In November 2016, YACWA hosted a sector summit on the topic of Young People in Care in partnership with the Create Foundation. The event brought together young people, workers from Child Protection, youth workers, as well as academics and sector leaders. Held over a day in Perth, discussions on topics relevant to working with young people in care were had with several issues being raised and discussed at length such as: Leaving care age, Guardian consent and Relationships between CPFS and Youth Services.

Some key take away messages from the Summit about what attendants wanted to see changed can be summarised as:

- Organisations need to work together to achieve the greater goal
- Consistency is crucial in working with young people
- Leaving care plans need to be separated from the basic plan
- More work is required to address Guardian Consent
- More support is required for young people exiting care
- Cultural change in the approach taken to each young person in an out of care which ensures that each young person gets the most support & not just focuses on crisis

YACWA Pre-Budget Submission

As part of YACWA's Pre-Budget Submission, 431 people were consulted in relation to the key priorities that need to be addressed to support young people living in Western Australia (**See attachment 1**). The consultations consistently came back to children involved in the Out of Home Care sector, as the complex issues they face whilst in

the care of the state, and even after, mean that young people are often intersecting with other services such as health, mental health, justice and homelessness. The issues raised in the report included:

- The large amount of young people exiting the Out of Home Care system into homelessness or the justice system due to a lack of support
- The lack of early intervention funding to support the Early Intervention and Family Support Strategy (part of the reforms)
- The lack of funding to support Aboriginal Community Controlled Organisations
- The need for an independent advocacy service to support young people in the Out of Home Care system

Whilst these issues were considered the highest priority for young people by those we consulted, several other issues were also raised over the course of our consultations pertaining to Out of Home Care. These additional issues included:

- Funding issues and support for young people in care.
- Case workers caseloads potentially leaving a pool of 'cases' (YP) unallocated and possibly sitting outside reporting figures
- Resourcing and information for young people about leaving Out of Home Care being inadequate
- Lack of accommodation support for young people transitioning from out of home care
- Guardian consent and the barriers for young people
- Leaving Care plans being inconsistently applied

Commissioner for Children and Young People Report

The Commissioner for Children and Young People, in partnership with Create Foundation and The Department, released a report in late 2016 regarding an extensive consultation with young people who were or had been living in care (**see attachment 2**). Whilst the consultation focused specifically on young people speaking up about their concerns, it also captured additional concerns that they have with the system and their experiences in care. These included:

- Family contact
- Supporting families
- Opportunities in care
- Challenges of living in care
 - Moving house and changing schools (instability)
 - Wanting to feel like a 'normal kid'
 - Fitting in to a new and different family
- Resilience
- Role of the Department
- Participation
- Aboriginal and Torres Strait Islander children and young people

As stated in the report:

“The diversity of views, ideas and personal narratives shared through the consultation and report highlights that children and young people with experience of out-of-home care (OOHC) are not a homogenous group. Young people’s personal histories, OOHC experiences, needs and opinions are varied. There is a clear need for service providers and community members to be sensitive to these differences and to be flexible and responsive in the support provided to each individual child and young person to maximise their potential and wellbeing.”⁶

Responding to Terms of Reference

The Terms of Reference YACWA has responded to are outlined below. YACWA has chosen to respond to Terms of Reference which best fall within our remit, of representing members who are young people aged 12-25 and organisations that work with them.

2. the principles relating to Aboriginal and Torres Strait Islander children in sections 12 to 14 and the consultation requirement in section 81

The Aboriginal Child Placement Principle, located in the Community Services Act 2004, Part 4, Division 3 (s.12)⁷, was introduced in 2010 as a means to address the historic policy failures relating to the removal of Aboriginal and Torres Strait Islander children from their families. Implemented across all states and territories, and reported against annually by all jurisdictions at a federal level, this principle is important to ensuring young Aboriginal and Torres Strait Islander children are placed in protection that allows them to maintain connection to family and culture.

However, the emphasis in reporting and measuring the outcomes of compliance with the principle has largely been focused on the placement type that States adhere to. However, this is misleading, and does not capture the entire objective of the principle.

This is explored, as identified in the Department's discussion paper, by the by the Secretariat of National Aboriginal and Islander (SNAIC). The paper, titled Aboriginal and Torres Strait Islander Child Placement Principle: Aims and Core Elements, states:

“the Aboriginal and Torres Strait Islander Child Placement Principle is not simply about where or with whom a child is placed in out of home care. The History and intention of the child placement principle is about keeping Aboriginal and Torres Strait Islander children connected to their family, community, culture, and country.”⁸

In this regard, SNAICC identifies five key elements that the placement principle should address to meet its objective, which can be summarised as: prevention, partnership, placement, participation, and connections. YACWA contends that there are legislative changes which should be considered to address these elements as, currently, too much emphasis has been given to the placement element.

Currently, the Department is required to report against the child placement principles compliance with the first three of the four placement options in its annual report, and nationally through an established reporting framework.⁹

Data found in the 2017 Report on Government Services in Volume F, identifies through Table 16A.23 that WA's total children placed in accordance with Aboriginal child placement principle as of June 30 2016 was 62.6%. Comparatively, NSW was 81% and Victoria was 74.8%.¹⁰

Whilst this comparison at first might indicate that Western Australia is failing in relation to complying with the child placement principles, it in fact is misleading as it does not provide for the reasons as to why the figure is lower in WA.

This topic is explored in a paper released by the Australian Institute of Family Studies,¹¹ which states that:

“Barriers to implementation [of the principle] include the over-representation of Aboriginal and Torres Strait Islander children in the child protection system, a shortage of Indigenous carers, poor identification and assessment of carers, inconsistent involvement of Indigenous people and organisations in decision-making, deficiencies in the provision of cultural care, and inconsistent quantification and monitoring of the Principle.”

YACWA contends that these barriers have an impact on the placement principle in a Western Australian setting, and further work is required to address these issues. YACWA believes that the intended outcomes of the principle could be strengthened by:

1. Expanding elements of the principles in line with other jurisdictions
2. Strengthening the wording of the principle
3. Expanding the consultation requirements of the Principle
4. Increasing the accountability of the principles by expanding reporting and data collection
5. Providing additional legislative measures outside of the principles

All these options are explored in further detail below. However, in exploring them and providing recommendations, YACWA must note that this submission was not written by an Aboriginal or Torres Strait Islander, and stress the importance of further consultation with the Aboriginal and Torres Strait Islander community in relation to this matter.

Further to this, YACWA supports the views of the Aboriginal Health Council of WA, in recommending that further extensive consultations with the Aboriginal community and ACCOs in WA are required as this principle is changed and monitored in the future.

1 - Expanding elements of the Principle in line with other jurisdictions

One thing that is not clear from the Principle, is how the Act relates to a child who identifies as Aboriginal or Torres Strait Islander, and how the placement principles are applied in the instance that a child has one parent who is Aboriginal and Torres Strait Islander, and one who is not.

In comparison, the *Children, Youth and Families Act 2005* (Victorian Act) and *Children and Young Persons (Care and Protection) Act 1998* (New South Wales Act) cover this issue and in doing so outline significant areas that are missing from the Western Australian legislation.

The Victorian Act, under section 14¹², titled: *Further principles for placement of Aboriginal child* addresses the following elements are included and addressed legislatively:

- *Self-identification and expressed wishes of child*
- *Child with parents from different Aboriginal communities*
- *Child with one Aboriginal parent and one non-Aboriginal parent*
- *Placement of child in care of a non-Aboriginal person*

The New South Wales Legislation also addresses these issues, under Section 13¹³ titled: *Aboriginal and Torres Strait Islander Child and Young Person Placement Principles* with relevant subsections outlined below:

- (2) Relevance of self-identification and expressed wishes of child or young person
- (3) Child or young person with parents from different Aboriginal or Torres Strait Islander communities
- (4) Child or young person with one Aboriginal or Torres Strait Islander parent and one non-Aboriginal and Torres Strait Islander parent
- (6) Placement of child or young person in care of person who is not an Aboriginal or Torres Strait Islander
- (7) Exceptions: emergency placements and placements of short duration

YACWA believes that the Children and Community Services Act should be expanded to include relevant provisions in line with the Victorian and New South Wales Act.

Recommendation 3: Explore adding provisions similar to those contained in the *Children, Youth and Families Act 2005* (Victorian Act) and *Children and Young Persons (Care and Protection) Act 1998* (New South Wales Act) relating to children's parents.

2 – Strengthening the language

There are three areas of the Aboriginal Child Placement Principle that YACWA believes must be addressed as part of this legislative review if the principles effectiveness is to be increased. They pertain to the principles of self-determination, community participation, and sub section (d) of the placement principle in Section 12 itself.

There are multitudes of reports that indicate the need for Aboriginal and Torres Strait Islander people to be at the centre point of decision-making processes relating to Aboriginal and Torres Strait Islander people. The Family Matters Report, generated by SNAICC in 2016¹⁴, is but one example exploring this. It states:

“Participation of Aboriginal and Torres Strait Islander peoples in decisions that affect them is considered a core human right (SNAICC, 2012), and recognised as critical to decision-making that is based on the best interests of children from a cultural perspective (Committee on the Rights of the Child, 2009). Participation must extend beyond consultation to genuine inclusion of Aboriginal and Torres Strait Islander children, families and community representatives in the decisions that are made about children and youth at all stages of the child protection process.”

YACWA therefore joins the Aboriginal Health Council of WA in recommending that the Department amend the principle of self-determination and community participation within the Act, by strengthening the wording to ensure participation occurs at every level of decision-making.

In terms of how best this would be achieved, YACWA recommends that the Department engage in further consultations with ACCOs, as well as Aboriginal and Torres Strait Islander families and communities to further add specific provisions, throughout the Act, as well as in the Placement Principle similar to that of the provision contained with the New South Wales Legislation, which states¹⁵:

s.12: Aboriginal and Torres Strait Islander participation in decision-making

Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities are to be given the opportunity, by means approved by the Minister, to participate in decisions made concerning the placement of their children and young persons and in other significant decisions made under this Act that concern their children and young persons.

Further to this, YACWA also holds significant concern for the use of language in s.12(2)(d), which relates to the fourth placement option for Aboriginal and Torres Strait Islander children.¹⁶ It states:

“placement with a person who is not an Aboriginal person or a Torres Strait Islander but who, in the opinion of the CEO, is sensitive to the needs of the child and capable of promoting the child’s ongoing affiliation with the child’s culture, and where possible, the child’s family.”

YACWA believes firmly that this language should be strengthened from ‘capable of promoting’ to something more binding that ensures the child’s connection to culture in their placement. Given that according to the Department’s annual report, 34% of children were placed under this particular section,¹⁷ YACWA is of the view that the connection to culture under this placement option should be more strongly provided for in the legislation.

Recommendation 4: Consider strengthening the language used in S.13 and S.14 through amending the word 'should' to 'must'

Recommendation 5: Explore adding specific provisions relating to the inclusion of Aboriginal and Torres Strait Islander in specific decisions, particularly in placement, but not only limited to placement.

Recommendation 6: Explore strengthening the wording in S.12(4) to ensure that carers will commit to maintaining cultural connections.

3 - Expanding the consultation requirements of the Principle

YACWA intends to specifically address its concern for section 81(l), and the perceived lack of accountability legislatively speaking, of the Department to consult with people connected to the child. Currently, the legislation only requires that one of the following be consulted in determining the placement of a child¹⁸:

81. Consultation before placement of Aboriginal or Torres Strait Islander child

Before making a placement arrangement in respect of an Aboriginal child or a Torres Strait Islander child the CEO must consult with at least one of the following —

- (a) an officer who is an Aboriginal person or a Torres Strait Islander;
- (b) an Aboriginal person or a Torres Strait Islander who, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community;
- (c) an Aboriginal or Torres Strait Islander agency that, in the opinion of the CEO, has relevant knowledge of the child, the child's family or the child's community.

In comparison, the Victorian Legislation sets out the following principle in Section 12(1)(c) that:

- (c) in making a decision to place an Aboriginal child in out of home care, an Aboriginal agency must first be consulted and the Aboriginal Child Placement Principle must be applied.

YACWA would support a similar approach to the Act in Western Australia, by either expanding the current consultation requirements to include consultation with more than one of the options currently provided, by adding specific provisions, or by exploring the opportunity for the CEO to provide under regulations further consultation methods.

Recommendation 7: Consider re-wording section 81(l) to ensure that consultation is not limited to an officer who is Aboriginal or Torres Strait Islander, but both an officer who is Aboriginal or Torres Strait Islander as well as an Aboriginal or Torres Strait Islander person or agency that knows the child.

Recommendation 8: Explore the option of giving the CEO power to provide under regulations further consultation groups in deciding the placement of Aboriginal and Torres Strait Islander children.

4 - Providing additional legislative measures outside of the Principles

One of the most important objectives of the Aboriginal Child Placement Principle is to maintain connection to family, culture and land. The importance of connection to culture is paramount in determining the best outcomes for Aboriginal and Torres Strait Islander children.

In 2011, The Western Australian Ombudsman investigated and found that¹⁹:

“The dimensions of health, education, emotional and behavioural development, and identity and culture were completed the least number of times[in care plans]. We observed that 34 (68 per cent) of the 50 care plans we examined in detail identified needs and included decisions and steps to address these needs for the identity and culture dimension.”

The above quote pertains to Care Plans, where currently, there are 8 elements that are considered in planning for the care of child. Of these, one is identity and culture. In addition to this report, YACWA has further heard anecdotally through our engagement with the sector that Care Plans are being inconsistently applied.

Therefore, the option to provide specific legislative requirement for a cultural plan to not only be implemented but separated from care plans could be explored as a way of ensuring the completion of this important element, which complies with the principles objectives. YACWA views the connection of children to culture as critical to any child's self-identity and development.

This approach is provided for legislatively in the Children, Youth and Families Act 2005 of Victoria, which provides specific measures relating to the creation of a distinct and separate cultural plan, with legislative provision²⁰. It is provided below for reference:

S.176 Cultural support for Aboriginal child

- (1) The case plan for an Aboriginal child placed in out of home care must address the cultural support needs of the child.
- (2) The Secretary must provide a cultural plan to each Aboriginal child in out of home care that is aligned with the case plan for the child.
- (3) The case plan must reflect and be consistent with the child's cultural support needs, having regard to the child's circumstances, so as to—
 - (a) maintain and develop the child's Aboriginal identity; and
 - (b) encourage the child's connection to the child's Aboriginal community and culture.
- (4) For the purposes of subsection (3), the child's cultural support needs may vary depending on—
 - (a) the length of time that the child has spent in out of home care; and
 - (b) the age of the child; and
 - (c) the length of time that the child is expected to remain in out of home care; and
 - (d) the extent of the child's contact with the child's Aboriginal family members; and
 - (e) whether the child is placed within the child's own Aboriginal community, another Aboriginal community or with non-Aboriginal carers.
- (5) For the purposes of subsection (4), a child's Aboriginal community is—

- (a) the Aboriginal community to which the child has a sense of belonging, if this can be ascertained by the Secretary; or
- (b) if paragraph (a) does not apply, the Aboriginal community in which the child has primarily lived; or
- (c) if paragraphs (a) and (b) do not apply, the Aboriginal community of the child's parent or grandparent.

YACWA supports this provision, and recommends that the Western Australian Government consider adopting a similar legislative measure.

Recommendation 9: Consider introducing provisions similar to section 176 of the *Children, Youth and Families Act 2005* (Victorian Act) to ensure that a cultural care plan is a requirement, separate to the care plan that must be generated and held on record for relevant parties to access.

5 - Increasing the accountability of the Principle

One way to increase the effectiveness of the Aboriginal Child Placement Principle, is to increase the transparency and the reporting elements required legislatively. YACWA is of the view that two elements could be considered in relation to this. The first, is observed in Section 14 of the Children, Youth and Families Act 2005 Victoria²¹ as identified below:

S.14 Records relating to Aboriginals and Torres Strait Islanders

- (1) All records made within the Department relating to the placement in statutory or supported out-of-home care of Aboriginal and Torres Strait Islander children and young persons are to be kept permanently.
- (2) If an Aboriginal or Torres Strait Islander child or young person has been placed in statutory or supported out-of-home care:
 - (a) the child or young person, and
 - (b) a birth or adoptive parent of the child or young person, and
 - (c) a person authorised in writing by the child, young person or parent, is entitled to have access, in accordance with the regulations, to all records kept by the Department that relate to the placement.
- (3) (Repealed)
- (4) Subsection (2) does not confer a right or entitlement to information that is subject to Chapter 8 of the *Adoption Act 2000*.
- (5) The regulations may make provision for or with respect to the keeping of and access to records to which this section applies.

The second option YACWA believes is worth considering, is requiring the department to report against how many cultural plans were put in place in relation to the number of Aboriginal and Torres Strait Islander children in care. As stated above, this goes to creating accountability against other aspects of the placement principle, which are likely to lead to better outcomes for the child.

YACWA would also like to indicate our support for the amendments arising out of the 2015 review that are alluded to in the consultation paper²². Namely being:

- A requirement for the Department to demonstrate its application of the section 12 child placement principle in the reports it is required to provide the Children's Court during protection proceedings. These are the reports required under section 61 in relation to applications for a special guardianship order, and section 143 of the Act in relation to applications for a protection order (time-limited) or protection order (until 18).
- A requirement that a plan for maintaining a child's culture and identity must accompany the reports the Department is required to provide to the Children's Court under the above sections of the Act. Amendments to the Regulations are also proposed to include a new assessment criterion for the approval of foster carers and family carers.

Recommendation 10: Consider introducing similar provisions in the Act in comparison to S.14 of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) to include a permanent record of placement consultations and compliance with the placement principles.

Recommendation 11: Have the Department report annually as to the number of Aboriginal and Torres Strait Islander Children who have a cultural plan in place.

3. any changes necessary to support the safety and wellbeing of adults and children subject to family and domestic violence

Family and Domestic Violence is a growing concern for the Western Australian Community –of which the statistics and effect on the community has been well documented. The Government has recognised the importance of this issue by installing a Minister for Prevention of Family and Domestic Violence which YACWA welcomes.

2015/16 crime data provided on the WA police website indicates that there were 21,162 instances of 46,259 Domestic Assault offences verified against a person.²³ This is further complicated when a child is placed in the middle of two parents, as is provided in the example given by the Department in their consultation paper.

The department itself has an Internal Policy²⁴ which identifies the departments role as:

When responding to cases of emotional abuse - family and domestic violence, the role of the Department is to increase safety for the child and adult victim by reducing or managing the risk posed by the perpetrator. To do this, a priority of all responses is:

- the safety of the child and the adult victim;
- a strong and ongoing working relationship with the adult victim;
- safe, respectful and culturally secure engagement with the child, family and community;
- rigorous ongoing assessments underpinned by evidence based risk factors; and
- coordinated responses involving family, community, government agencies and community sector services that are focused on increasing the safety and wellbeing of the child and the adult victim, and reducing or managing the risks posed by the person using violence. person using violence.

The Casework Practice Manual contains a chapter relating to domestic and family violence. In chapter Five, it covers²⁵:

- 5.1 Assessing Emotional Abuse - Family and Domestic Violence
- 5.2 Safety Planning - Emotional Abuse - Family and Domestic Violence
- 5.3 Responding to Perpetrators of Emotional Abuse - Family and Domestic Violence
- 5.4 Violence Restraining Orders
- 5.5 Family and Domestic Violence Response Team

Given that a suite of measures were passed by parliament late last year, through the passage of the Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016²⁶, further exploration of how children will be affected and how this Act will need to be amended accordingly is required. As far as YACWA can tell, there is no reference within the legislation to the new amendments passed in late 2016 and how the bill will intersect with them.

YACWA suggests that there is little to be amended in terms of the Children and Community services Legislation without extensive research and consultation, and until such time the objectives and principles of the act should guide work in this tricky area.

YACWA also supports WACOSS in their response to question 6 when they state that recommendations from the Family Law Council Report²⁷ should be taken into consideration in regard to any proposed legislative changes.

Recommendation 12: Explore how the CCSA intersects with other legislation relating to family and domestic violence the newly passed Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016 and consider the Family Law Council Report²⁷ in any proposed legislative changes.

4. the provisions relating to secure care arrangements for children at high-risk, and

YACWA holds a number of concerns in the proposal outlined in Question 7 of the discussion paper relating to the extension of time under the legislation children can be admitted to the current secure care facility and its operation. YACWA is doubtful as to whether a clear, evidence based answer is prominent.

Currently, the Department, in its annual report indicates the number of children and the cost of keeping them in the centre per day, but very little is in place regarding the effectiveness of the centre.²⁸ However, there appears to be a lack of evidence regarding the use of the centre and its effectiveness not only in WA, but across Australia.

The issue was explored in the South Australian Royal Commission into Child protection in 2013. It handed down a series of reports alongside its final report, one of which related to Secure Care. This report identified that:

“ There is a paucity of evidence either way regarding the effectiveness and the practice parameters of secure care for children in care, despite anecdotal support for its judicious use. Therefore, rigorous evaluation by independent research or consultancy body seems warranted with respect to critical factors such as alignment of therapeutic approach with client need, quality of clinical oversight and empirical evidence in favour of the therapeutic model operating and any associated therapies. Secure care cannot be expected to serve a therapeutic function in the absence of case management that includes clear conceptual model matched to client need, clear case planning, and the availability of a range of post-care options including semi-secure, disability, mental health and youth justice service options. Any secure care service needs to have clearly identified transition pathways as part of the service design (both ‘step down’ and ‘step across’ options, based on a child’s individual needs). Finally, it seems important to consider the needs of young people in designing secure care services. While trauma-informed models may be appropriate for some, other children’s behavioural challenges may be related to intellectual disability or substance use. Care should be taken to match children’s needs with therapeutic interventions that have demonstrated efficacy. This can only be achieved by having a sound understanding of the needs of this group of children and developing supports in response to these needs (Mansell, 2007).”

The lack of evidence indicates to YACWA that extending the time length available when a young person enters the facility, when an extension option is available, would be an error. Anecdotally however, YACWA has heard some positive outcomes do exist for children leaving the facility.

Given this anecdotal evidence, YACWA does not support the premise of extending the initial stay of children at the secure care facility and, instead, YACWA urges the Department to engage the State Ombudsman to investigate the matter further and provide a report based on the outcomes of the centre, and whether or not it should be extended if it is impacting on the treatment of young people within the centre.

YACWA does hold concern for the children leaving this centre, and their next steps towards safe and secure care. YACWA would recommend this be considered in the State Ombudsman’s investigation, should they be engaged to do so.

Recommendation 13: Explore engaging the state ombudsman, in partnership with relevant stakeholders to investigate the Secure Care Facility and provide a report to Government on the outcomes for young people leaving the centre, before any legislative changes.

Recommendation 14: Consider expanding the annual report requirements of the department in relation to the secure care facility

Additional measures not considered in this review

Given that this review is a statutory requirement of the Children and Community Services Act, YACWA has provided additional feedback relating to legislative amendments that would in our view, increase the operational effectiveness of the Act. These measures have been identified by previous consultations, as well as other organisations submitting to this review, and researched by YACWA to support recommendations.

Raising Leaving Care Age

YACWA has been an advocate in the past for providing additional support to young people who are leaving care by raising the age of those who can remain in their care situation, on an as needs/opt in basis. Current government policies require the child protection system to begin preparing a young person to leave care at the age of 15 (although anecdotally YACWA hears this is completed inconsistently), with legal guardianship, case management and regular support ceasing at the age of 18.

Whilst there are options for some young people to remain in their current care arrangements after they turn 18, many would leave their care placement during their 16th or 17th year, or are required to leave when they turn 18. In comparison, children residing at home with one or both parents are remaining at home longer, with almost 50 per cent of young people aged 18 to 24 having never left the family home.

As such, YACWA has given its support to the Home Stretch campaign, a national campaign aimed at addressing some of the issues that are arising out of inaction in this area. The numbers alone are staggering.

The Home Stretch Campaign, through its website²⁹ identifies that findings from a 2009 survey conducted by the CREATE foundation on care leavers (Department of Families, Housing, Community Services and Indigenous Affairs, 2010) which demonstrated that:

- 35% were homeless in the first year of leaving care;
- 46% of young men were involved in the juvenile justice system;
- 29% were unemployed;

Furthermore, the website states³⁰ that a study by the Care Leavers Australia Network (2008) reported that:

- 41% were pregnant during their adolescence;
- 43% – 65% of care leavers have poor mental health outcomes (including depression, Anxiety, PTSD, panic attacks and sleep disorders).

A separate report involving young homeless people found that 63% of those surveyed had been involved with the Out of Home Care (OHC) system³¹, indicating the long-term prospects of young people leaving care are not being addressed.

Economically, the argument of acting in this area makes sense also, with a recent Deloitte Access Economics study finding that in Western Australia, extending care from 18 to 21 years of age would result in an expected return of \$2.17 in either savings or increased income from every dollar invested in such a reform.³²

For these reasons, there is growing support³³ for addressing these issues by raising the age young people are required to leave Out of Home Care within the Act. Both WACOSS and YACWA provided recommendations pertaining to this issue in their Pre Budget Submissions. The recent South Australian Royal Commission, following an extensive inquiry, also provided the following recommendation:³⁴

Recommendation 158: Amend the Children’s Protection Act 1993 to require the Minister to provide or arrange assistance to care leavers aged between 18 and 25 years.

Having stated all of this, YACWA understands that some young people are more than capable of leaving the Out of Home Care system adequately, however the large number that are not require further support through an opt in system that provides further guidance than is currently given.

YACWA contends that the state has a requirement to care for these young people post the age of 18 should they need the help, and believes that by raising the leaving care age legislatively, this problem could be addressed.

Recommendation 15: 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.

Leaving Care Plans

Through YACWA's consultations, we heard that leaving care plans are inconsistently applied, with planning starting too late and young people in some cases not being made aware of what is involved in them.

A number of issues were raised at the sector summit (**see attachment 3**), as discussion was facilitated between young people, youth workers, and Department staff. Some of these issues included:

- Not having adequate leaving care plans and preparation, incomplete leaving care plans, leaving care plans not happening. Leaving care plans are not adequate and don't have a Plan B.
- Limited support/referral process that is often starting too late – it needs to start earlier (needs to start around 15)
- Lack of communication between agencies
- Housing: lack of options, nowhere to go. Some of this may be due to not having a thorough/missing leaving care plan, young people may not be engaged because resistant to leaving current provision, lack of transitional housing (short stay), no housing options for child with complex behaviours, still high level so homelessness
- Sudden take away of all supports and challenging with no remaining support
- Lack of consistent case management, not having ongoing support from a regular case worker
- Culture – Aboriginal young people and culturally appropriate placements and services
- Lack of independence skills, lack of independence and capacity of young people
- Trauma – impact on ability to make decisions
- Lack of understanding about leaving care services, not having referrals made to leaving care services
- Young People not knowing what they are entitled to

YACWA contends that these shortfalls lead to a fear of the unknown after leaving care for many young people, especially for children who have been in care for a long time. This can result in them falling through the gaps. Therefore, having leaving care plans in place, that include children in decision making is vital.

The Department of Child Protection and Family Support's annual report indicates that 16% of young people in care had no leaving care plan in place prior to exiting State care. Of the 84% that did, few monitoring or success measures were reported on the long-term outcomes for these young people.³⁵

Many young people exiting State care are at a much higher risk of facing unemployment, becoming homeless, living with mental illness, struggling with education, and have little or no support to face these challenges.

The application of the legislation would be further strengthened through clear policy, practice guides, training and education, and a consistent approach to leaving care through the Department for Child Protection and Family Support to ensure that all young people are able to access their rights and entitlements leaving care and post-care.

YACWA believes that this process needs to start with amending the legislation to cause a trickle down affect, and Therefore supports Create Foundation's recommendations in relation to Leaving Care Plans.

Recommendation 16: Section 89 (Care plans, preparation etc. of) (1) is amended to require a distinct and separate plan for young people leaving care starting at the age of 15.

Recommendation 17: That provisions are included in Section 89 (Care plans, preparation etc. of) (1) to state explicitly that a young person is supported to be involved in the development of their leaving care plan, and that there are regular reviews of the leaving care plan and its implementation.

Child Participation and Rights

In YACWA's view, child participation is integral to achieving good outcomes for children and young people. We see it in our day-to-day work. If young people are given a voice, and are able to participate in decisions that affect them, it can lead to stronger more suitable decisions being made.

Child protection is a space where this is particularly relevant. This theme was considered in the CCYP report, which contends that³⁶:

"Creating regular opportunities to listen to the views of, and concerns raised by, children and young people in OOHC, and taking these into account when making decisions, is essential to responsive policy and practice, to improve the quality of services and ultimately to achieve better outcomes for young people."

A lot of the discussion around Child Participation is also relevant to the rights of a child, which under ant Australian law should adhere to our international treaty obligations.

YACWA holds concern over the use should in this section, and believes it should be changed to must, and all children in the care of the state must have the opportunity to be able to participate in decisions that affect them This would bring the legislation closer into line with our international treaty obligations as a signatory state of The *Convention on the Rights of the Child* (CRC), In the CRC, it clearly states in article 12³⁷:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Currently, the Act has a specific clause relating to child participation that states in subsection 1 that a number of things should be put in place to include the child in decision making processes³⁸:

S.10(1) If a decision under this Act is likely to have a significant impact on a child's life then, for the purpose of ensuring that the child is able to participate in the decision-making process, the child should be given –

YACWA holds concern that child participation is therefore not always completed, in contradiction to the Convention on the Rights of the Child, and therefore supports Create Foundations recommendation in relation to this matter.

Recommendation 18: Consider rewording Section 10 (1) to the following: If a decision under this Act is likely to have a significant impact on a child's life then, for the purpose of ensuring that the child is able to participate in the decision-making process, the child must be given –

Guardian Consent

We know that many children in care often feel ostracised, and different to their peers. This can be further complicated by processes that require them to go through additional processes to keep up with their peers, because of the situation that they find themselves in.

Unless a special Guardianship Order is granted to a young person, they are required to seek permission from the state as their guardian in relation to some matters, including permissions to attend school activities.

This topic was explored at the YACWA Sector Summit (**see attachment 4**), where participants discussed and raised a number of concerns relating to this issue, including:

- If there is only one person who can give consent (e.g. E.D or D.G) it can affect their capacity to respond
- There are communication barriers between young person and the Department case manager
- Workload priorities of case workers can sometimes cause delays
- Processes can be confusing when case workers are absent
- Workers are sometimes unavailable to sign the permission slip
- The requirement of birth parent input for some permissions is difficult
- Young People not feeling confident or knowing they can follow up to ask where the permission process is at, and/or carers not following up on their behalf
- How long it takes depends on who the case manager is and what district it's in

This is a problem that YACWA believes can be simply fixed by replicating the Victorian Act, and granting additional powers to the CEO to provide under regulations, certain consent that can be given by a designated group of people.

Section 175A of the Children, Youth and Families Act 2005 (Victorian Act) contains a specific provision to address this issue, titled: Secretary may specify certain issues³⁹. It states in subsection (1) that:

The Secretary may specify issues relating to a child in out of home care about which a person who has care of the child may be authorised to make decisions. Example The Secretary may specify issues including but not limited to—

- the signing of school consent forms; or
- obtaining routine medical care for the child; or
- the day to day treatment of a child who suffers from a chronic or serious health condition.

The Act then goes on to provide further legislative measures to ensure this is done safely and correctly. YACWA is of the view that this could be easily explored and replicated as part of this legislative review.

Recommendation 19: Incorporate provisions similar to the *Children, Youth and Families Act 2005* (Victorian Act) to allow the CEO to grant powers to caregivers to provide consent for certain things via use of regulations.

Independent Advocate and Oversight

The question of whether or not an independent advocate and oversight mechanism should exist within the child protection system is not a new question that has been considered. Currently, only one child advocate exists, and is employed by the department. This person has responsibility for representing the 4,658 children that are in care, with that number growing, as was identified in the Department's 2015/16 Annual Report.⁴⁰

The Child Advocate is also not widely known amongst children in care, with only 35% of young people, according to those interviewed as part of the WA Commissioner for Children and Young People's report *Speaking Out About Raising Concerns in Care*, were aware the role existed.⁴¹

This report, detailed above in the recent consultation section, consulted 96 young people with an experience of Out of Home Care, and the issues they had raising concerns. It indicated barriers that consistently emerged as to preventing young people from speaking up about concerns they had while in care.⁴² These included:

- fear of the consequences
- being told not to speak up
- not knowing how to or not having the words to articulate concerns
- not having anyone to speak to or anyone who would listen
- fear of not being believed
- isolation and lack of privacy
- a lack of confidence or feeling scared
- shame
- an imbalance of power

For these reasons, combined with consistent feedback from young people and the sector regarding the concern for situations young people sometimes find themselves in, and the inability and lack of support to speak up about it, community service peaks have been calling on the Western Australian Government to support further measures to ensuring young people are protected and have adequate advocacy.

Of particular 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, through the following recommendations⁴³:

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 creating legislative requirement 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.

In delivering the second reading speech, the minister in South Australia stated⁴⁴:

the Bill strengthens the ability of the Guardian and CDSIRC to not only perform said functions but to escalate matters for further action by referral to the Commissioner. For example, clause 55 of the Bill will empower the Commissioner, Guardian, or Council to require a specified person or body to provide information or documents as may be specified.

YACWA contends that the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*⁴⁵ sets a strong precedent, and example for Western Australia to model legislation upon.

The Western Australian Council for Social Services has called for an independent and oversight measure to be adopted by Government in its *Pre-Budget submission: The Future is in our Hands*.⁴⁶ YACWA also called for this in its *Pre-Budget Submission: Forging a Fair Path Forward*.⁴⁷ And both organisations, along with Create and AHCWA are calling for this measure to be explored as part of this legislative review.

Whilst YACWA understands that this legislative change cannot be implemented without a financial requirement, it does not take away from the fact that it still needs to happen. YACWA contends that this review should be used to provide recommendations to Government that support an expansion of advocacy services that are independent to Government, and place on record the importance of such a change, as well as provide a time frame for its implementation.

YACWA believes that not supplying an independent child advocate is in contradiction of the acts objective of looking after children.

Recommendation 20: Explore creating an independent advocacy and oversight service by legislating a guardianship role with adequate resourcing and investigative powers similar to that contained in the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.

Attachments

- 1 – Pre-Budget Submission: Forging a Fair Path Forward (YACWA)
- 2 – Speaking Out About Raising Concerns in Care (Commissioner for Children and Young People)
- 3 – YACWA Out of Home Care Sector Summit: Leaving Care Plans (notes)
- 4 – YACWA Out of Home Care Sector Summit: Guardian Consent (notes)

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