Government of South Australia

The Council for the Care of Children

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25 October 2016

The Hon John Rau MP
Minister for Child Protection Reform
GPO Box 464
Adelaide SA 5001

Dear Minister

Re *Child Protection Systems Royal Commission Report: The life they deserve*

The Council for the Care of Children (Council) is responding to the Child protection systems Royal Commission Report: The life they deserve (Nyland Report) and recommendations in two separate submissions.

The focus of the first submission was 'the voice of the child' and this second submission addresses other aspects of the Nyland Report together with a position on where the attention for reform and improvements should be directed.

I may be contacted by mobile (0411 643 132) or via email ChildrenSA@sa.gov.au.

With kind regards,

Yours sincerely

Simon Schrapel
Chair
Council for the Care of Children

The Council for the Care of Children

Submission No 2 (of 2)

Child protection systems Royal Commission Report: *The life they deserve*

25 October 2016

The Council for the CareofChildren

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Contents

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Child protection systems Royal Commission: *The life they deserve*

Council for the Care of Children submission No 2 (of 2)

The Council for the Care of Children (Council) is responding to the *Child protection systems Royal Commission Report: The life they deserve* (Nyland Report) and recommendations in two separate submissions.

The focus of the first submission was 'the voice of the child' and this second submission addresses other aspects of the Nyland Report together with a position on where the attention for reform and improvements should be directed.

Preliminary

There is a clear and compelling case to use the Nyland Report as an opportunity to undertake a fundamental overhaul of the current child protection system in South Australia including to respond early to provide children, young people, their families and communities with proactive and preventative services.

It presents an opportunity for a bold approach in genuine partnership with a range of stakeholders to ensure a bipartisan approach for sustainable and evidence-based reform. The stakeholders include, but are not limited to, families and non-government organisations, the academic and community sectors and the Parliament of South Australia (SA).

Children and young people (children) are the most important stakeholders and their expert views *must* inform the process from beginning to end. Because children and young people mostly lack the opportunity, means and political power to represent their interests, it is incumbent upon those heading up the reform process to proactively seek their genuine participation and to respectfully facilitate and resource their involvement.

The outcomes of all children in SA in terms of their safety, protection, health, development, wellbeing, social inclusion, citizenship and connection to culture are inextricably linked to all South Australians. A crucial building block of success is the need to have mature and respectful conversations about community and family responsibilities.

In recognition of the over-representation of Aboriginal children, it is important to have them front and centre in any reform. This submission responds to Part 6 of the Nyland Report in that it specifically refers to Aboriginal and Torres Strait Islander children however, Aboriginal children should be at the core of SA's reformed child protection system.

Rather than considering Aboriginal children as a separate cohort that requires a 'specialist service response' outside of the 'mainstream' response (particularly where Aboriginal children arguably are the 'mainstream') it is critical that a child protection service model is developed to be flexible enough to ensure it is inclusive of, and responsive to, Aboriginal children.

Successfully reforming the current child protection system in SA requires that we:

- fundamentally change the current paradigm of action
- ask the community to be proactive champions and advocates for children and young people on the ground
- provide the community with opportunities to respond in meaningful ways to promote the care of children and young people in our State.

Current evidence suggests that the new South Australian child protection service should be founded on a public health model. This is because the services span the continuum from primary intervention services that target everyone, to secondary interventions that target families in need, through to tertiary services that constitute the current focus of Families SA.

A level of caution is advised in narrowly considering individual recommendations of the Nyland Report in the absence of a clear vision of a new child protection service as a whole. Arguably, a narrow approach to the Layton and Mulligan reports failed to conceive of the paradigm shift required for real systems change and resulted in an ad hoc response lacking in cohesion and context.

The reformation of SA's current child protection system should be informed by a comprehensive interrogation of the data, with the measurement of success being built in with an agreed set of indicators and the capacity to report to inform continuous improvement without impacting service delivery.

Anything less would be open to criticism of a hurried response to appease vocal critics and risk disenfranchising many crucial partners whose goodwill and cooperation is required.

Ominously, it would risk being a squandered opportunity for meaningful change, the enduring poor consequences of which would be measurable in individual outcomes and in economic and intangible outcomes for all South Australians in decades to come.

Introduction

The Nyland Report points to a need for a new approach to both the prevention and reporting of child abuse and neglect and for the provision of care for children unable to remain living safely at home.

The Council for the Care of Children (Council) contends that the new approach needs to be bold and able to shift the current paradigm in which the community expects the Government of South Australia (Government) to lead and manage the protection of children from harm and abuse.

We need to not only welcome but facilitate community voices into the conversation and ask all South Australians to engage with issues of children's safety and protection. To continue enjoying the social and economic benefits of living in SA we must work together and have regular and respectful dialogue to make children and young people more visible and to ensure that all young South Australians have fair chances at every stage of their lives to help them realise their full potential.

When children and young people flourish and prosper, the whole community benefits socially and economically.

Unless community attitudes and involvement in listening to and supporting children change we will be forced to continue to rely more heavily upon formal systems to respond to abuse and neglect of children and young people. These systems will never be sufficient on their own to ensure the protection and wellbeing of South Australian children.

The bold approach to reform SA's new child protection service requires:

- A change to the public discourse about how South Australians should be responding in homes, communities and across the State to the challenges, this being about a total community responsibility about rights and the place of children (beyond protection issues) and what South Australians should be expecting Government to do to support families and to keep children safe. To date, SA has failed to create a climate in which child wellbeing and protection is a community responsibility. The mere implementation of Nyland's 260 recommendations will also not achieve this.
- An understanding that the design and delivery of the new child protection service must be truly collaborative if expectations are to be shifted and a system is to be built that really is based on child protection being everyone's responsibility. At present our current approach is a long way from being collaborative.
- A response which is based on maintaining children living safely in families unless this is not available/possible and acknowledging that the removal of children is for the most

part ie in an overwhelming number of cases, a system failure not a successful end point (whilst acknowledging that where removal is necessary one needs to provide the best and most stable care possible which enables children to achieve their potential).

- An acknowledgment that many families struggle with significant social, psychological, health and relationship issues which impair their capacity to provide adequate care and nurture. It is the collective responsibility of all in SA to ensure that every effort is made to enable families to meet their obligations, as by and large children want to be cared for in a loving and caring family.

The ingredients of a reformation requires more than tinkering with the architecture in place for notification, assessment, statutory response and provision of care where needed.

It requires a fundamental re-think and an altogether different approach that includes:

1. A major level of new investment in early intervention including targeted secondary intervention programs which are community based and delivered in family homes where appropriate.

   These responses should be available to every family who needs such assistance for as long as it is necessary, based on available evidence about successful interventions. It should be available both on a voluntary community or self-referral basis as well as directed through referrals from assessed notifications.

   This may require some reorganisation of existing programs delivered across early childhood, health and community service settings. Unless one can provide this comprehensive platform to an extent never previously delivered one should not expect any major change to the demands being placed on the State's reformed child protection service.

   Investment is needed as a priority before any tinkering with existing statutory responses. Without real, sustained interventions, nothing will change. One cannot wait for new bureaucratic structures to manage this into the future with five-year plans.
   SA needs to address the shortfall in effective interventions at a primary and secondary level as the main crisis in child welfare that requires action. These responses need to be delivered across a spectrum of entry points including children's centres, schools, health services, community and in home settings.

2. South Australia needs a complete rebuild of the child protection service intake process.

   This is not so much about waiting times, screening tools, feedback loops and worker qualifications (although these will also need to be addressed to re-build an effective system).

To achieve real collaboration, SA needs to develop a fresh collaborative intake and assessment portal.

Rather than establishing a dual path intake system where referrers determine the right pathway the aim should be to create one functional and comprehensive portal through which any referral, concern or notification can be made.

This should not be the responsibility of a new child protection service agency alone. Rather, SA should aim to establish this as a truly collaborative venture as a conglomerate of several bodies including the child protection service agency, SA Health, the Department for Education and Child Development (DECD), Youth Justice, NGOs, gazetted agencies and Aboriginal-specific services.

Whilst a challenge from an industrial and governance perspective, this is not insurmountable and would establish from the outset a system which shares responsibility for assessment and the determination of what action is then required. Examples of multi-agency reform include the Ceduna Service Reform or Multi-Agency Protection Service domestic violence (DV) initiative (which brings together staff from the SA Police, DECD, SA Health, Housing SA and the Department for Corrections to ensure coordinated responses to high risk DV cases).

Every referral/notification would require a response, and the responsibility for who responds, and how, would be shared across a ‘multi-agency’ intake team.

The new child protection service agency would still be required to undertake investigations and lead the response where imminent harm is identified and an urgent statutory response required. However, a range of other interventions, supported by a rebuilt and better resourced early and secondary intervention services platform, would be available with different parties taking the lead.

Every notification, unless agreed with the notifier as being unnecessary or unhelpful, would receive a real response and an offer of assistance.

This approach would truly revolutionise the current silo response. It would build collaboration at the heart of the system at intake.

It would make all key stakeholders jointly responsible and fully engaged in managing demand, assessing priority for responding and activating a suitable response aimed at keeping children safe and enabling families to undertake their responsibilities as primary caregivers.

3. The third plank in a major reform of SA's child protection system revolves around family preservation and reunification.

   The Nyland Report rightly critiques the efficacy of some of the current programs and the timing of their delivery (and subsequent impacts on placement 'drift'). The solution is not in reducing their application but being prepared to invest in a more comprehensive suite of such services which can be delivered intensively.

   There will always be risks in delivering such interventions and not all will be successful. Yet the current levels of investment are poor, consigning many children to an almost inevitable pathway into out-of-home-care (OOHC) in both the medium and long term.

   Only in extraordinary circumstances where child safety cannot be guaranteed should one fail to offer families, and demand their involvement in, intensive support to improve their parenting and care responsibilities.

   There are well researched and evaluated interventions in this space which should be supported. Such interventions should be undertaken in partnership with the statutory agency's case managers following the collaborative assessment process identified in Item 2 above.

   Longer term orders offering greater stability and certainty for children should only be sought where genuine efforts of family prevention and/or reunification have been demonstrated to be ineffective or inappropriate.

   This is not to suggest that clear obligations and expectation about parental behaviours and responsibilities should not be established. Families should be held to account for meeting such requirements. Indeed these are the hallmarks of effective, therapeutic family preservation and reunification programs aimed at not only restoring positive and safe family relationships but sustaining them over time.

Workforce (Part II)

The exhaustive and comprehensive Nyland Report alludes to the lack of investment 'in managing this complex work' and that the child protection system has 'developed with little reliance on understanding and developing the evidence base for interventions and strategies'. Further, 'workforce planning should be guided by the overarching principle that child protection is complex work requiring appropriately qualified staff. The professional base could be expanded by employing professionally qualified staff from disciplines other than social work.'

The Council concurs with this lack of investment in skilling the workers adequately for this onerous work in assessing families and the risks to children referred to them. The assessment of families where children are at risk or experiencing neglect or abuse comprises a challenge for all practitioners. The role for FSA staff is further complicated by their statutory obligations, and the dilemma is that the academic literature and experience determines that where 'forensic' obligations prevail, encounters do not fall into the domain of therapy *per se*.

The goal of a focus on the family should be to obtain timely evidence as to the safety and wellbeing of children, to enable certainty for them, and prevent drift in placements or inappropriate reunification attempts. It is suggested that discrete referrals to services in a scatter gun approach do not progress the best interests of children.

Families may present with restraints across many domains, encompassing mainly:

- social and economic factors; poverty
- belief systems re parenting
- marital and/or parenting relationship issues (including fragmented extended family relationships and a lack of community connections and/or supports)
- drug and/or alcohol problems; DV
- mental health and/or disability issues
- a lack of knowledge about the critical importance of hierarchies, and boundary issues as critical for children's' wellbeing in families. This is often accompanied by a strong sense of ownership and denial of the child as a person with rights to own their personhood
- histories and backgrounds more often than not informed by disrespect.

Assessment thus needs to attend to all these factors and not just describe them but make clinical judgments about which 'domains' to focus on and highlight initially. In a sense a

clinical judgment must be made about the primary restraints, which pose most immediate risk and harm to the children.
It is critical that early opportunities are taken to develop an enhanced and coherent assessment and therapeutic approach with statewide clinical governance to ensure the needs of children are addressed and integrated into an holistic therapeutic care framework.

The Nyland Report should be used as a catalyst for the development of a comprehensive therapeutic intake, assessment and service provision framework founded on interagency partnership and collaboration (in partnership with an Early Intervention Research Directorate and other research institutions to evaluate the model and establish measurable outcomes for children.

Early Intervention (Part III)

High levels of adversity including poverty, young parental age, substance abuse, mental ill-health, intellectual disability, domestic/interpersonal violence, and homelessness are relevant to the topic of early intervention. Such risks for parents must be identified during the antenatal period. Compelling evidence supports that these factors increase the risk of harm for parents and that when multiple factors coexist, the risk increases exponentially. Identification of these parental risk factors should also include a history of contact with the child protection and/or youth justice systems (as children and/or as parents).

Antenatal pathways have been established within the major birthing hospitals in Adelaide and across regional SA. However, these pathways need to be strengthened with identification occurring at the earliest time possible during pregnancy.

Comprehensive assessment of women in high risk situations needs to be undertaken during the critical antenatal period, followed by a range of interventions including service delivery eg by the Child and Family Health Service (CaFHS), SA Health's Child Protection Services (CPS), Child and Adolescent Mental Health Services (CAMHS) and Metropolitan Youth Health (MYH). Many of these services are not available in regional SA and where clinically appropriate similar services should be established. Consideration could/should be given to DECD as a potential partner to support and provide pre- and antenatal interventions.

Currently therapies are delivered by the Women's and Children's Health Network (WCHN) through CAMHS, SA Health's CPS and the Youth & Women's Safety and Wellbeing Service (YWSWS). Additional funding was provided by the Keeping Them Safe Initiatives following the 2003 Layton Report. However, it would be appropriate to develop a service model that integrates these services and expands them to emphasise the imperatives of treatment across the age range from prenatal, infancy and early childhood, school age adolescence to early adulthood.

In partnership, CAMHS and FSA have a small service located in the Women's and Children's Hospital (WCH). The treatment and assessment model developed by the Infant Therapeutic Reunification Service, and recently recognised at the Australia and New Zealand Mental Health Service awards, should be expanded.

The Nyland report:

- recommends an expanded mobile assertive service for high risk children and for those transitioning from care. CAMHS and YWSWS can enhance their current service delivery to encompass this. However, service development is required particularly for children aged 0-12 years because a majority of children are now entering care before their fifth birthday and additional resourcing of a more comprehensive service is required.

- gave some direction to the utilisation of psychologists within FSA but there would be distinct advantages in incorporating some of this existing workforce into a statewide therapeutic service model given their knowledge and expertise in child protection.

There is an opportunity to establish smaller services linking current service providers in regional locations, supported via telehealth and training and supervision structures.

Intervention where there is Imminent Risk (Chapter 9)

Recommendation 65

The Council supports the establishment of a third SA Health CPS at the Lyell McEwin Hospital (LMH). Such a service should be supported by perinatal mental health services and the availability of perinatal/child and adolescent psychiatric expertise because once it is established that harm has occurred then appropriate specialist assessment needs to be provided to determine the family's/carer(s)' capacity to provide a safe and nurturing environment and what they may require in order to ensure this.

Arguably, the development of a third SA Health CPS at the LMH presents a strategic opportunity to develop and include a focus on delivering an Aboriginal culturally-appropriate child protection service.

Recommendation 66

This is a recommendation to amend the *Children's Protection Act 1993* (the CPA) to provide an independent model of expert assessment, given the need to have independence from the statutory system in line with the evidence that the dual roles of therapist and statutory worker are at odds with therapy/assessment processes.[1] It would also enable a family to have the possibility of working therapeutically with such an independent professional to gain clarity of the parents' commitment to change and assist in permanency planning for the children.

While it is acknowledged that all helping professions have valuable theoretical bases to assist individuals, given the multiple domains and restraints for families outlined in the introduction that the learning bases need to be extended to encompass all those interfaces and the accompanying techniques to intervene. It is recommended that in addition to the tertiary qualifications, these professionals in social work, psychology, psychiatry etc should have further qualifications in family therapy.[2] Also, given the focus is on family assessment and/therapy it seems logically imperative that such expertise is essential.

1 The Child Development and Well Being Bill clearly imposes a 'statutory duty' on state authorities thus highlighting this role.

2 Family therapy, as its title suggests, is focused on the systems and subsystems that comprise a family and is based on systems and cybernetic theories and thus avoids dormitive principles. Interventions .focus on patterns and the systems, rather than 'labelling or diagnosing the individuals' in the system which closes off intervention options. Instead therapists offer 'higher' descriptions of problems, which highlight the patterns of interaction that are problematic.

A brief overview clarifies that there are many schools of family therapy that offer relevant and powerful theory and techniques in working with families and individuals. The early Milan's group of systemic therapists principles of circularity, neutrality and hypothesising, comprise effective techniques to both join with families, as well as gain information in ways that do not alienate family members. The Milan family therapy model is the dominant systems family therapy model, which continues to inform practices in family therapy across models. Their work was based on Gregory Bateson's seminal work in cybernetics, and shifted emphasis from a reductionist focus on discrete events to an holistic understanding of patterns, how the family as a system constructs its own social reality, and the focus of therapy is to intervene to change these patterns.

Michael White, the prominent Adelaide family therapist, coined the term 'vicious cycles' and discussed with families how to turn them into 'virtuous cycles', and all systems practitioners recognise the usefulness of working with a circular (cybernetic) framework instead of a linear (cause and effect) epistemology.

The structural family therapists (Minuchin et al) operate with a belief that for families to function they must have clear boundaries and hierarchies. Similarly Jay Haley's strategic model of therapy suggests that all abuse and neglect stems from 'incongruent hierarchies' and poor boundaries within families. His focus is on the repetitive sequences of behaviour[3] *between two or more individuals, which may include the therapist and the social or familial contexts.*

Bradford Keeney's brief summary of Bateson's complex work on learning is relevant to this process in assessment and intervention, so is included, and it should be noted that each level is meta to the preceding level:

> *Learning 1 - Learning where the perceived choices are within a particular set of alternatives eg rote learning, or the learning of a particular simple action within a given context (in the context of families this would be the level of learning if attending a parenting class).*
>
> *Learning 2 - Learning about a particular context of learning, eg a dog recognising learning new tricks are not just discrete events but part of the context of the relationship with the trainer, often referred to as contextual punctuation.*
>
> *Learning 3 – Rare; sometimes occurs in therapy or religious conversion; results in a change of epistemology and refers to a change of the premises underlying our way of viewing the world and 'the order of being stuck determines the required order solution.*[4]

It is important to note a Level 1 intervention is therefore not going to make a difference to parents whose belief systems do not embrace the rights of the child in cases of abuse and neglect. Caution should also be taken in untimely referrals of the children to individual therapy whereby the parents' definition of a child means the responsibility for change is implicitly placed on the most powerless subsystem (the child or sibling subsystem) in the family. This comprises a 'parallel process' that mirrors the parents' definition in denying the adults' responsibility for the behavior (eg triangulating the child in the marital or parenting conflictual subsystems) that precludes them from securing and containing a child.

Whether family therapists adopt or practise family therapy from structural, strategic, brief or systemic models, primarily they all provide 'maps for the territory' of family problems. In reality most family therapists draw intervention tools from all schools depending on the assessment of the families' issues, and thus employ a range of practice options from multiple theoretical family therapy models.

Assessment is critical in the process of prioritising, targeting and enabling service/supports that will provide timely evidence of what is in the best interests of children. Expertise is necessary to provide guidance for case managers to monitor parents' commitment to changes in behavior and/or belief systems. This would facilitate the best interests and rights of children in a proactive and rigorous manner that prevents drift in care, and subjecting children to further trauma and blighting their childhood with uncertainty, distress and ongoing damage in their adult lives.

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3 Gregory Bateson (1905-1980) - Gregory Bateson's seminal works include *'Mind and Nature, 1978; Steps to an Ecology of Mind, 1972; The Cybernetics of Self, 1971.* His work in cybernetics focused on 'form, pattern, and circularity, of ideas in circuits rather than linear exchanges of energy, information the 'difference that makes a difference' was the foundation of the new paradigm' (Brian Stagoll 1995) formed one of the central premises of the Milan school of systems therapy and underpins most therapeutic models that have evolved since then (in terms like 'double description, news of difference, parallel processes, patterns that connect'). All the therapeutic techniques are focused on creating change, enabling families to overcome their restraints or alternatively not choosing to do so, thus providing evidence that children's best interests and entitlement to a secure, safe and loving childhood cannot be met in that family context.

4 Keeney P.159 Aesthetics of Change

Recommendation 70

A child only has 'one shot at a childhood'.

Children's rights to childhood are predicated on permanency, security, and attachment and these rights must take priority. Therefore, it is important to note that the actions and/or goals delineated and/or negotiated with parents have to be couched explicitly within the timelines to prevent children drifting in care, their lives in limbo in situations where families have done the minimum to demonstrate their commitment to change, or not responded at all (noting that no response is a response).

A contractual agreement must highlight the time period allowed and what parents' reluctance to follow through with agreed goals signify about their commitment to their child's best interests. Workers must monitor this in their case management roles particularly if alternative placements appear secure during the process and the child's needs for attachment and certainty in their childhood are lost, thus mitigating against the child's best interests.

It must be made explicit that if parents are not following through with the services and supports in place in the early months that there may be earlier resolution and planning for the child prior to that 'outside' time limit in line with their indifferent efforts. Case management needs to be rigorous, as this window of opportunity is one that a child cannot revisit.

A child does not have the luxury of having other opportunities for a good childhood.

This would indicate that all professionals involved in the provisions of support, therapy and services should undertake meetings and/or phone conferencing on at least a three weekly basis to monitor this with either the inclusion of the adult family members or the minutes of such meetings if the latter prefer that option.

Services for children in Out-of-home Care (PART IV)

The Nyland Report highlights a correlation of placement stability with entry into care at an early age; a shorter exposure to an abusive environment before coming into care; clear and decisive actions regarding a child's long term future at an early age; and children in trusting, safe and stable relationships are generally safer.

This recognition is important however, what appears to be missing is how best to achieve stable, safe family-based care to optimise utility and wellbeing for a child. When required, referral to an interagency therapeutic panel is recommended. Treatment for children entering the reformed child protection service necessitates the development of a comprehensive and holistic therapeutic care plan that incorporates all aspects of a child's life and the care systems for that child. All the agencies around that child are a part of the plan and should share a common understanding of the child's circumstances.

A continuum of care must be created and regularly reviewed to match the level of complexity and acuity for a particular child with the right level of service delivery and appropriate level of specialisation and skill in the staff delivering this care. Linking with NDIS services under the National Disability Insurance Agency (NDIA) will also be necessary.

This also highlights the importance of developing appropriate models for children living in rural locations.

Recommendation 76

The Rapid Response policy should be made explicitly available to all in contact with those in a care situation, including in the community, NGO and government sectors (including Housing SA, Centrelink etc). This is a leading policy for the new child protection service agency and is currently promoted in an inadequate manner.

Recommendation 77

The Council broadly supports the intent of the recommendation for face-to-face contact however, highlights that challenges may emerge in the implementation eg the Nyland Report notes that:

- case worker turnover undermines children's ability to 'form trusting and stable relationships'
- 35% of children had been allocated five or more caseworkers during their time in OOHC
- some children in care were not allocated case workers
- '(s)ome children do not welcome the intrusion of the Agency into their lives as they do not wish to be identified as a child in care'.

Where a child or young person is in a long term, stable placement any prescribed contact with a case worker that is not tailored to the child's needs and expressed wishes may leave unintentional and harmful emotional, social, behavioural and educational impacts that could destabilise a placement and be confusing for the child.

A more flexible and individually tailored approach is preferred with respect to face-to-face contact, particularly where the child attends a school, is in a stable, long-term placement and where there is a high level of turnover amongst caseworkers.

Recommendation 80

The Council provides in principle support for this recommendation so long as the annual review is a meaningful exercise to optimise the utility, wellbeing and placement of a child and does not become a box-ticking exercise.

Pursuant to best practice guides and the community's expectations, such sharing of information must respect the integrity of a child and take into consideration the usefulness, purpose and the need for the sharing of the information in accordance with the *Information Sharing Guidelines* (ISG). Where appropriate, a child should have a say in who and under what circumstances people should have access to their personal information. Furthermore, such information should be provided in a way that the particular child can understand and engage with in a meaningful manner.

Recommendation 82

An opportunity has been missed to highlight and emphasise concurrent planning, not only for children who may be unified with their biological family but also for other scenarios. Noting the prescribed times in recommendation 70 (above), if a court is to make an order regarding guardianship, there would appear to be no obvious reason preventing the making of an order resulting in the carer of the child being made the guardian of the child at that time, if appropriate under the circumstances. If adoption from OOHC is being considered, then adoption from foster care should also be considered. In making this statement, the Council emphasises that Aboriginal children have exceptional circumstances in terms of adoption, given the legacy of the Stolen Generations and other policies and practices.

Recommendation 83

The Nyland Report has not been prescriptive about how this should occur – particularly regarding the terms 'review' and 'system deficits'. Any such reviews or analysis of a placement breakdown should be used as a means to collect data, produce evidence, identify trends and thus inform amended best practice in the future.

Recommendation 84

The Nyland Report has not been prescriptive, specific or direct with how this should occur – particularly regarding the terms 'therapeutic support', 'being at risk' and 'under stress'.

Recommendations 86 and 87

There needs to be a comprehensive therapeutic framework of wrap-around care for children as soon as they enter the new child protection service. The current process is based on an inaccurate assumption that psychological and developmental harm has yet to occur in a child's life and waiting for problems to manifest. The reality is that children enter care and protection as a result of trauma and/or neglect. Psychological and developmental harm has already occurred and is compounded by a loss of family and home upon entering care.

Recommendation 90

A lack of prescriptive and specific direction within this recommendation represents a missed opportunity to consider the impact for foster care placements. It is often left to foster carers to care for children who are suspended or expelled from school, which can place an additional stress on caring families and place placements at risk, especially if the child concerned has a functional diagnosed and/or undiagnosed disability.

Information must be provided and made available to children in a way that they can engage with, and understand, in a safe and comfortable space. The Council further notes that a child must be included in all decisions that affect their lives 'to the extent that they are capable and willing and that the views of the child are given due weight in accordance with the age and maturity of the child.'

It can be surmised that all children in residential settings may be traumatised and may have experienced multiple placement breakdowns. Therefore, every residential setting must be required to operate from a therapeutic framework. Staff training must go beyond the six week orientation program for new staff and be tailored to the needs and circumstances of children living in the household. A continuous training focus for all staff who have the responsibility of caring for children in OOHC is an imperative, with particular emphasis on:

- trauma and its impact as well as grief and loss and their impact on young lives
- intellectual disability and other cognitive impairments
- foetal alcohol syndrome
- Autism spectrum disorders
- positive behavioural support.

The support must have a professional oversight and be proactive rather than reactive when critical incidents occur.

Caring for Children in Home-based Care (Chapter 11)

Recommendations 102 and 103

The Council supports the development of a 'comprehensive kinship assessment tool for assessing the safety and appropriateness of kinship placements.'

The issue of the potential risk of kin placements in terms of divided loyalties and conflict within extended families, or currencies of violence and disrespect across generations within families, has to be rigorously assessed. For Aboriginal children, suitable carers in a child's cultural, skin and community groups are already being considered and the Council suggests these two recommendations should be considered as coterminous to enable children to have the choice of requesting a placement which enables them to stay in their community[5] and to explicitly offer more options for placement as part of an empowering and respectful process for a child.

Recommendation 112

The Council notes that merely providing a training session is not a panacea for supporting carers to assist and cope with caring for children who have suffered trauma. Neither does it acknowledge the significant energy investment required for carers supporting children that have suffered trauma. In addition to stating the need for investment in a training portfolio what is needed is clear direction and initiatives to lessen or reduce trauma and specifically how to support both a child and their carer.

Recommendation 115

A written document about the 'role and duties of the supporters of carers', must include a trigger and strategies to address any issues that arise with respect to care concerns and to report on how such concerns have been addressed and/or resolved as well as the timelines for finalisation of concerns.

Recommendation 117

Any funding for the provision of advice on legal matters to foster and/or kinship carers without formally recognising their lack of legal status is unfortunate.

[5] The Kith and Kin program in Victoria effects such placements with the child/ young person identifying a family in his/her community in this way.

Recommendation 118

With reference to this recommendation about the removal of children from long-term home-based placements, in view of the criticisms in the Nyland Report of the existing mechanisms, consideration should be given to empowering an autonomous and independent body to make these decisions rather than an internal expert panel. Consideration should also be given to such decisions being appealable.

Recommendation 121

Carers should be provided with equitable, evidence-based responses.

Recommendations 122 and 124

These two recommendations lack scope and detail for suitable application in their current form and should be carefully considered and developed with a commitment to implementing professional foster care options.

Recommendations 126 and 127

The Council notes a potential missed opportunity for greater investigation into creative solutions and services to support placements than respite care and complaints systems. The Nyland Report has negatively reflected on FSA in relation to handling complaints and empowering an external body to hear complaints or to receive applications from carers might offer a constructive way forward.

Caring for Children in Other Environments (Chapter 12)

Recommendation 128

The Council supports this recommendation yet questions the capacity for this to occur without new funding and proactive and targeted recruitment given the steady escalation in children entering into care and protection, small numbers of carers being recruited and/or approved and carers leaving the system.

Recommendation 133

The Council supports the intent of this recommendation in seeking to reform the manner in which force is used against children in residential care facilities.

Recommendation 141

The Council notes that there must be some guidance with respect to appropriate touching of children. However, it would be misguided to draft guidelines with respect to human touch, particularly of small children who require care and comfort. The difficult truth is that those seeking to exploit children will not abide by guidelines even if they do exist, whereas a caring worker or carer could purposely avoid touching a child to avoid any perception of

wrongdoing or ambiguity. The recommendation is too broad and lacks the necessary prescription for suitable application in its current form.

Recommendation 143

An opportunity has been missed for guidance on how information should be stored and used, how long it can be retained (eg separate guidelines or per the State Records process); and whether third parties should be immune from persecution/defamation for making such reports.

Recommendation 145

A prescription of the need for early, decisive intervention as well as appropriate placement matching would have further enhanced this recommendation.

Recommendation 149

The Council questions if capacity exists within the system for this to occur.

Leaving Care (Chapter 14)

Recommendation 161

Such payments should not be dependent on whether care leavers are in tertiary education, apprenticeships or post-high school training.

To continue support on that basis alone would be inequitable and lead to further stigmatisation and alienation of already marginalised care leavers.

Investigating Abuse and Neglect in Out-of-home Care (Chapter 15)

Recommendation 172

This recommendation about documentation for training, roles and responsibilities and care concern needs to be carefully considered to determine how it may be applied in a prescriptive manner.

Recommendation 177

The intent of this recommendation about investigating care concerns in a timely manner is supported and it could be strengthened by replacing ‘should’ with ‘must’ regarding the investigation timelines.

Recommendation 183

An option of recording an outcome as ‘undetermined’ has the potential for unintended consequences including it being used for triaging purposes and/or in response to a lack of

workforce capacity. In line with the Housing SA model of investigation of concerns, the test of substantiation (ie substantiated or unsubstantiated) is preferred.

Recommendation 184

It would be optimal if those empowered to make a decision that affects the legal rights of an individual were independent of the new child protection service agency.

Children With Diverse Needs (PART V)

Aboriginal and Torres Strait Islander Children (Chapter 16)

The discussion on Aboriginal children is not a comprehensive overview of the experience of Aboriginal children in the current child protection system and arguably the Nyland Report had no intention of providing one. However, to then rely on its observations and recommendations as a road map for reform risks repeating the mistakes of the past.

The Nyland Report also identifies a series of challenges faced by Aboriginal people in navigating the child protection system. While many of these challenges are legitimate, taking a series of discrete challenges as the starting point without considering the system as whole is not a useful approach. For example, a focus on very remote communities denies the reality that well over 90% of Aboriginal South Australians live in urban and regional areas.

Further, the Nyland Report's identification of a range of challenges in the system without further interrogation of these challenges has resulted in some recommendations that arguably conflict, and other recommendations which to an outsider may seem to provide a solution but are arguably divorced from the 'working' realities of the system and the necessary interplay of all stakeholders working in this space.

By way of example, there are assumptions about the capacity of the NGO sector; further there are proposals for models such as the LAN which have little evidence of success in other jurisdictions. This is not to suggest that individual recommendations are without merit, but instead that they will have little chance of effecting change in the absence of a comprehensive vision and commitment to whole-of-system change.

The Council is aware there is a significant data project underway which will no doubt provide comprehensive evidence for action.

It would seem a critical error if government agrees to proceed on the Nyland Report implementation in the absence of this data (eg that 87/100 of all Aboriginal children born in SA are currently notified to the child protection system and that 15% of these children will enter the current child protection system – noting by contrast that the Nyland Report references under reporting for Aboriginal children in this state), and at odds with its commitment to partially fund its development to support Government decision making.

The Council submits that the starting point for reform is to work from this evidence and to agree the need for a fundamental shift in the narrative to acknowledge that Aboriginal children, families and communities require consideration as part of the core business of child protection.

This is required to inform a new and focused approach which places the needs of Aboriginal clients at its core rather than as an 'add-on' to any 'mainstream' policies, while at the same time acknowledging the need for a service response cognisant of the specific experience of Aboriginal South Australians.

The Council submits that positive change for all children and young people can only be expected where 'mainstream' policy development is inclusive of, and responsive to, the needs of each of its client groups, including those most vulnerable. Indeed, it might be said that it is government's success in responding appropriately to the most vulnerable of its population that should define its success in responding to all South Australians.

Recommendations: 212, 213, 215 and 216 (also linked to 65 and 218)

Please note that SA Health plays a crucial role in the assessment and investigation of child abuse and neglect. Both the SA Health CPS at WCHN and the Southern Area Local Health Network undertake forensic psychosocial assessments and medical assessments of children (including infants and adolescents) where there are allegations/concerns that they have been abused or neglected.

The establishment of a third SA Health CPS at the Lyell McEwin Hospital (as per recommendation 65) is supported. It is also noted that such services should be supported by perinatal mental health services and in particular the availability of perinatal, child and adolescent psychiatric expertise.

Children in Regional Areas (Chapter 17)

For rural SA, augmenting existing multi-disciplinary teams in three regional hubs (Berri, Mount Gambier and Port Augusta) would enable less complex health assessments to be undertaken. This would require the development of appropriate referral pathways, training for staff and clinical governance through SA Health's CPS.

Children with Disabilities (Chapter 18)

The Nyland Report accurately identifies some of the biggest issues that are faced by children with disability and their carers including:

- *'Children with disabilities are more vulnerable than their peers. They are at greater risk of harm and neglect. They are at greater risk of the child protection system not recognising, responding to and caring for them.'*
- *'Disability may not be immediately apparent to the untrained eye. It may not be observably physical or intellectual. It may be developmental or related to a psychiatric condition.'*

- *'The child protection system must account for the fact that for some children their disability is a product of their care environment. In other words, disability may be the product of trauma, stemming from abuse or neglect.'*

On page 508 of the Nyland Report there is consideration of how the families/carers of children with disability are also at risk. It is an important acknowledgement that caring for a child with disability can be extremely challenging and that the new child protection service must have the proactive capacity for early intervention and support for families/carers of children with disability.

Page 509 of the Nyland Report highlights that children with disability are at greater risk of experiencing abuse, as they may have great difficulty communicating, and therefore, struggle to report any abuse, or even understand what is happening to them. Pages 510/11 discuss how the National Disability Insurance Scheme (NDIS) might benefit children with disability and that practitioners should be proactive in informing families/carers.

The Nyland Report recommends that a reformed child protection service and other practitioners should inform families/carers of the NDIS and link them with the NDIS and points out that FSA does not currently track children according to their eligibility for the NDIS and that no distinction is drawn in C3MS between health conditions or a disability.

The Council supports the notion that case workers (or similar) must be involved in the process of clients' applications for NDIS services and supports the statement that the lack of specialist disability foster care placements should be specifically considered and addressed.

About the Council for the Care of Children

The Government of South Australia established the Council for the Care of Children in 2006 under the *Children's Protection Act 1993* and the Council's functions and responsibilities extend to all children and young people in SA from birth up to 18 years of age.

In looking out for children and young people across all communities and sectors in South Australia ('SA'), the Council advises government and others, and works collaboratively with state and national stakeholders, with the aim of ensuring children and young people in SA are cherished, nurtured and respected.

Broadly speaking, the Council's role in SA can be summarised as:

- advocating for and supporting the active participation of children and young people as valued citizens
- improving outcomes for children and young people by providing expert advice to government on their rights, needs and interests and the implications for policy, practice, and research
- raising awareness of issues impacting on children and young people
- monitoring the wellbeing of children and young people from birth to 18 years of age
- promoting the wellbeing, safe care and development of vulnerable children and young people (especially those with disability and/or under the guardianship of the Minister and/or who are Aboriginal or Torres Strait Islander).

One of the South Australian Government's seven key priorities is priority no 4, *Every chance for every child* which refers to all children and young people in SA up to 18 years of age. *Every chance for every child* aims to provide children and young people with the best possible start in life and to assist families to provide the best possible support for their children.

The Council supports *Every chance for every child*. This strategic direction is well-aligned with the Council's legislative mandate in SA and with the principles of the international human rights instruments which Australia upholds including the:

- United Nations Convention on the Rights of the Child
- United Nations Convention on the Rights of Persons with Disability
- United Nations Declaration on the Rights of Indigenous Peoples.

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