The Council for the Care of Children

Children and Young People (Safety) Bill 2016

SUBMISSION

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The Council for the CareofChildren

Government of South Australia

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1. Key Messages

1.1. Overview

The Council recognises that the Children and Young People (Safety) Bill 2016 (the Bill) is but one element of a package of new legislation for the health, wellbeing and safety of children and young people in South Australia (SA) as part of the Government of SA's overall response to the Nyland Report.

Aspects of the Bill such as the Guiding principles, the Parliamentary declaration and the Duty to safeguard and promote the welfare of children and young people are visionary, rights-focused and broad eg that children and young people should benefit from '(at least)...all levels of learning...enjoy a healthy lifestyle...have a voice and influence' etc. These aspects of the Bill reflect a more holistic and comprehensive perspective of SA's children and young people and the Council commends their inclusion. Chapter 2 sets out noble, yet unrealistic aspirations. The Bill also leaves much to be done by regulation and this makes the challenge of providing informed comment especially difficult.

The nuts and bolts provisions of the Bill overwhelmingly provide for the placement of children and young people in out of home care (with particular attention on long term placement or permanency, excluding adoption). The 'safety' Bill is not about preventing harm to children or young people or keeping them safe at home and/or in the community through prevention, early intervention and/or family support; it is actually about preventing 'further harm' and regulating the placement of children and young people who are removed from their families. This is a disappointment.

Per capita SA spends more on out of home care than other Australian jurisdictions and very little on support services for children, young people and families. Whilst legislation can play a key role in reform, unless it is aligned with targeted strategies and funding, the likelihood of it influencing cultural change or reversing the trend of children and young people entering out of home care is miniscule. Sadly, the Bill will not 'protect children and young people from harm' or improve their outcomes, especially not Aboriginal children and young people who are so significantly over-represented in the child protection system.

The inclusion of the Charter of Rights for children and young people in care and the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) is strongly supported. However, the principles should be tied to, and reflect, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The UNDRIP is an agreement between countries and explains how the rights of indigenous peoples are to be protected by governments around the world. The 46 articles of the UNDRIP apply to *individuals* as well as to *groups*. Broadly, the rights fall into four categories:

- Right to self-determination
- Decision making
- Respect for culture
- Protection from discrimination

The Bill should include principles specific to the UNDRIP.

1.2. A Plan for Children and Young People

South Australia lacks a point of reference for its youngest citizens in terms of their health and wellbeing, their outcomes and social inclusion eg a visionary master plan (similar to the SA Strategic Plan) to guide strategic and operational policy, legislation, resource allocation, service delivery and outcome measures.

The drafting of the current 'safety' Bill and other discrete pieces of new legislation in a lacuna ie without a strategic point of reference, will most likely exacerbate inconsistencies, a lack of vision and cohesion and frustrate disparate efforts on the ground. More alarming, the 'safety' Bill and other new bills or acts may be entirely ineffective in keeping children and young people safe or improving their outcomes.

A South Australian plan for children and young people, endorsed by the Parliament, would signal commitment at the highest level and provide leadership to government and non-government agencies. It could be used as a catalyst to effect targeted and enduring culture change in the service sector, effect greater accountability and community partnerships as envisaged in the Bill ie that 'it is the duty of every person in the State to safeguard and promote the outcomes…' of children and young people in SA.

In the longer term, a master plan for children and young people would result in greater consistency and complementary policy, legislation and services. However, in the short term, it would have ethical, economic and operational benefits including:

- Enshrining and upholding the rights of children and young people under statutory and common law and international human rights instruments
- Using population based data and outcome measurement to more effectively target investment and eliminate waste and non-evidence based initiatives
- Coordinating access and service delivery, reducing duplication of effort and improving communication, information sharing and cross-sector collaboration.

Australia has been a signatory to the UNCRC for 26 years and the United Nations International Covenant on Civil and Political Rights (ICCPR). The provisions of both conventions are relevant to the treatment of children and young people. The UNCRC acknowledges that children and young people need special protection due to their vulnerability to abuse and exploitation as well as their relative immaturity.

Examples of the UNCRC articles below include (emphases added):

Article 3

1. *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the* ***best interests of the child shall be a primary consideration****.*

Article 19

1. *States Parties shall take all appropriate legislative, administrative, social and education measures to* ***protect the child*** *from all forms of physical or mental violence, injury or abuse, neglect treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child.*
2. *Such protective measures should, as appropriate, include effective procedures for the establishment of* ***social programmes to provide necessary support for the child and for those who have the care of the child****, as well as for*

other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 27

1. *States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*
3. *States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall* ***in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.***

1.3. Prevention and Early Intervention

Beyond the enlightened, aspirational provisions of Chapter 2, the Bill is focused on 'safety' and 'risk' and responding to 'harm' as opposed to taking a more holistic, broad approach (similar to a public health approach). As it is currently constructed, the Bill is limited to protecting children and young people from *further* harm rather than *preventing* harm.

The Bill does not provide a legislative base for prevention and early intervention (P&EI). If Chapter 4 'Managing risks without removing child or young person from their home' is intended to represent a mandate for P&EI, then it is falls short. Unless the Bill commissions P&EI, reactive and retrospective responses will continue to drive operational policy and consume ever more resources.

Section 8B of the *Children's Protection Act 1993* provides for *child safe environments*. These provisions lend themselves to P&EI initiatives. The term *child safe environments* is missing from the new Bill.

The Council recommends that consideration be given to including concise and specific provisions that would compel service providers to proactively provide child safe environments.

In singling out 'Child and Family Assessment Referral Networks' (C-FARNs) as a mechanism to the exclusion of other mechanisms such as a multi-agency gateway into service provision Chapter 4 effectively limits the State's response to one possible structural mechanism whereas there remains a multitude of means through which harm to children could be addressed.

Chapter 4 should be retitled to 'Preventing harm and further harm without removing child or young person from their home'. Chapter 4 should also include a new Part 1, clearly focused on P&EI. The chapter should commence with P&EI provisions (prior to providing for removal). The provisions should go well beyond C-FARNs and in doing so the Bill would be more faithful to its Guiding principles as articulated in Chapter 2, Part 1, Clause (3)(1)-(2).

In addition to bolstering the provisions for P&EI in the Bill, the Council recommends that the *Family and Community Services Act 1972* be reviewed and strengthened to incorporate a comprehensive legislative commitment to supporting families to care and to protect children and young people, and to prevent harm. The review should be undertaken as a priority.

1.4. Mandatory Notification

Medical professionals, teachers and service providers have a particular role and as such they are well placed to report without a formal legislative requirement. Therefore, is it time to ask if SA should move beyond MN?

Mandatory notification (MN) uses up significant resources and results in people taking less personal responsibility to look out for children and young people. One way to have greater community buy-in in terms of children and young people's safety is to consider an agreed community risk assessment that is broadly available and promoted. In stating this, the Council is cognizant of the need to invest in a level of public education around the rights of children and young people as well as adults' responsibilities to effect culture change and to create a culture of child safety being everyone's responsibility. Investment in MN should be redirected into public education and tangible mechanisms for information and advice as well as services.

1.4.1. The case against mandated notification includes:

- All citizens have a responsibility for children's safety – but only certain groups are mandated due to their professional roles. Maintaining this inconsistency only continues to provide a mixed message to the community about who is responsible for keeping children and young people safe.
- Child abuse/neglect is now a much better understood public issue, as opposed to when mandatory notification was introduced. The public should be entrusted to make judgements about when a 'statutory' intervention is warranted; ie there is no need to continue to compel certain groups to report.
- Most professions captured under the mandated notification provisions would through their own professional ethics and obligations understand when there is a need to refer a matter of concern about a child or young person's safety or wellbeing to an appropriate third party for intervention without a statutory requirement and a threat of fines for failure to do so.
- Reporting (despite views to the contrary) diminishes the responsibility of a reporter to be proactive in ensuring a child or young person's safety or to play a role in keeping a child or young person safe. It immediately shifts responsibility to a government authority to assume the lead if not the primary role in keeping children and young people safe even though this may not be intentional.
- A reporting culture creates workload pressures and resource demands at the investigative point of 'intervention' and has served to drag resources away from supporting children and families at risk. This may not be the intention but is the reality.

1.4.2. What's needed?

- A bold narrative and approach where SA leads the way with a new dialogue with the community about its role in keeping children and young people safe and free from harm. This narrative would not be driven by compliance or legislated mandates, backed by threats of penalties, but a deeper and more broadly accepted sense of citizen responsibility to doing what is possible and within each individual's capacity to support parents and caregivers in their role to maintain safety for children and young people.

- Removing a mandated notification requirement, but retaining a provision for anyone to notify if they have concerns about a child or young person's safety or wellbeing (which they assess warrants the attention and involvement of a child protection authority), would send a clearer message that;
    1) The Government of SA isn't the sole (or even the primary) answer to keeping children and young people in our State safe
    2) People can make sensible judgements about safety and wellbeing and risk for children and young people. This would allow them to report matters that require an additional, statutory managed response to ensure safety, and to also respond in other more appropriate and responsive ways to protecting children and young people including through their own 'intervention' or involvement with a child or young person and their family
    3) It places responsibility back on every member of the public to play a greater and more active role in keeping children and young people safe and allows resources to be freed up to provide enhanced public education and support around how to do this.

1.4.3. Removing mandated notification would:

- effectively strengthen the community response to keeping children and young people safe by legitimising a truly shared responsibility.
- help to 'unclog' a system dominated by a screening/assessment/ investigation culture which has proven to do little to keep children and young people safer since its implementation.

2. SPECIFIC COMMENTS ABOUT THE BILL

2.1. Long title

The long title does not adequately reflect the holistic aspects of Chapter 2 of the Bill as it narrowly reflects 'protection...from harm'. The Bill is aimed at protecting children from 'further' harm since it does not contain provisions aimed at preventing harm to children and young people. It is understood that a long title can only reflect the content of legislation. It would be preferable if the long title were able to reflect a more holistic content or emphasis in the Bill, including provisions aimed at preventing harm.

2.2. Chapter 2 - Guiding principles for the purposes of this Act

Part 1 - The importance to the State of children and young people

The Parliamentary declaration is wholeheartedly endorsed and the Regulations should expand on how the Parliament of SA will commit to promoting the stated outcomes for children and young people.

The Council recommends the inclusion in the Guiding principles specific provision about the best interest of the child in accordance with Article 3, UNCRC.

The Duty to safeguard and promote the welfare of children and young people is supported although it is unclear how this will be achieved ie how a duty will be imposed on 'every person in the State' to safeguard and promote the outcomes in clause 3(2). In fact due to a lack of explanatory or accompanying notes this section and many other provisions of the Bill are unclear and lack detail or are not sufficiently supported through the provisions of the Bill.

To ensure that the provisions in clause 3(2) are holistic, broad and consistent with other recent legislation, the Council recommends that the drafters refer to, and/or include in this Bill, the definitions of 'rights', 'development' and 'wellbeing' in the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.

Part 2 - Priorities in the operation of this Act

The inclusion of the section regarding '(o)ther needs of children and young people' is also strongly supported, especially the provisions for children and young people to be heard, their views to be considered including by the Court and the recognition of their needs for love, attachment, self-esteem and to achieve their full potential.

The Council recommends the inclusion of 'connections' at clause 7(1) in addition to 'love and attachment'. This is especially important in terms of respectful acknowledgement and accommodation of cultural beliefs and arrangements. Language is important. Using terms such as 'kinship' and 'connection' may be more inclusive and respectful.

Part 3 - Principles to be applied in operation of this Act

The Council strongly supports the provisions for:

- children and young people to have the opportunity to express their views and for those views to be given due weight
- carers to be involved in decision-making for children and young people in their care in clause 8(1)(b).

With reference to clause 8(1)(c), the provision that account should be taken of those persons 'in whose care children and young people have been placed'. However, timely decisions should not be made only to promote permanence and stability but also with a view to a young child's optimal developmental outcomes. The Council recommends a more holistic provision in terms of a young child's best interests and long term outcomes in addition to more immediate practical needs for permanence and stability.

The retention of the ATSICPP in the Bill is commendable. However, without explanatory notes the potential implication of clause 10(4) cannot be ascertained. Clause 10(4) provides that the ATSICPP does 'not displace, and cannot be used to justify the displacement of, section 6' (which provides that the safety of children and young people ie to be protected from harm, is the paramount consideration in the administration, operation and enforcement of this legislation).

In order to provide greater weight to the ATSICPP, the full set of principles should be encompassed in the legislation namely; prevention, partnership, placement, participation and connection. This would honour the full intent and meaning of ATSICPP as accepted and practiced across all Australian jurisdictions and reflect SA's commitment, as part of Australia, to the UNDRIP.

The Council recommends that the ATSICPP should not only provide for the maintenance of connection with culture, kinship and community, but also for reconnecting or re-establishing connection where it has been disrupted.

Taking into account the provisions of the UNDRIP, reconnection with culture, kinship and community would be in the best interest of a child or young person unless, after careful consideration, a decision is taken and documented that reconnection at a particular time would not be in the best interest of a particular child or young person. Where such a decision is made and documented, there should be a requirement to regularly revisit and review that decision with the child or young person in question.

The Council strongly supports the inclusion of '(i)n assessing whether there is a likelihood that a child or young person will suffer harm, regard must be had not only to the current circumstances of their care but also the history of their care and the likely cumulative effect on the child or young person of that history.'

With reference to children and young people being at risk if they are of no fixed address, it is puzzling why only those under 15 years of age would be considered to be at risk. Those at risk should include all children and young people under 18 years of age. To not do so, effectively sanctions homelessness as not presenting a risk to young people who are aged 15 years or more.

Part 3 – Placement principles

The inclusion of the placement principles including reference to a 'stable and secure environment' and that an 'existing relationship' is considered of importance is supported in principle. However, planned removals also need to be consistent with the spirit of the Guiding principles and it is not readily apparent how that will occur.

Part 4 - Charter of Rights for Children and Young People in Care

The Council supports the retention of the Charter of Rights in legislation.

2.3. Chapter 3 - Interpretation

The Council welcomes the extension of the meaning of harm to include 'mental and emotional abuse'. However, it would be difficult to prove 'harm against which a child or young person is ordinarily protected'. The Council recommends changing this provision to 'harm against which a child should be protected, having regard to the Guiding principles' and other provisions in Chapter 2 of the Bill.

The definition of 'at risk' appears to be more limited than the definition in the *Children's Protection Act 1993*. The definitions of 'harm' and 'at risk' should adequately capture abuse, neglect and family violence for all children. The definitions should be clear and explicit so as to be readily understood by lay people. The definitions should proactively exclude notifications that arise from a lack of understanding about cultural differences alone.

2.4. Chapter 4 - Managing risks without removing child or young person from their home

It is recognised that the inclusion of C-FARNs is in response to the Nyland Report however, it is not clear why the provisions in this section – especially if they are intended to enable P&EI - are confined to C-FARNs, ie narrowly rather than broadly, to include a whole raft of P&EI services.

If the Bill is aimed at keeping children and young people safe and free from harm then a range of other provisions which support the prevention of harm should also be included or at least envisaged.

Part 2 - Family group conferences

The Council:

- supports the provision that a child's or young person's advocate may attend including that the advocate does not have to be a legal practitioner
- welcomes the inclusion of 'persons who have a close association with the child or young person' to an entitlement to attend a family group conference.

However, when a family group conference is held and if due process has been followed then in addition to a decision being 'valid' (see clause 20(4)(c) then any decision made should be binding on all parties to the decision.

Part 3 – Case planning

The inclusion of cultural maintenance plans etc. in children and young people's plans is strongly supported.

It is absolutely imperative to replace the term 'case planning' with 'care planning'. If necessary, the Bill should refer to short or long term care planning or care plans for children and young people or words less stigmatising than 'case' planning.

Clause 25 sets out a noble aspiration in terms of giving effect to plans however, lacks prescription and detail, reducing it to being merely a guideline or good advice.

2.5. Chapter 5 – Children and young people at risk

One way to have greater community buy-in in terms of children and young people's safety is to consider an agreed community risk assessment that is broadly available and promoted.

The Council strongly supports challenging the requirement for MN provisions in new legislation and proposes it be replaced with provisions for all South Australians to notify risk but without a mandatory obligation to do so (refer to separate notes outlining rationale and benefits of removing mandated notification provisions).

Part 2 – Assessment of risk to child or young person

The Council supports the notion at clause 28(7) of direction or guidance being given to a State authority however, there may not be sufficient imperatives for State authorities to receive and to respond especially as it is unclear how they will be called to account and/or monitored.

With reference to examination and assessment, without explanatory notes it is difficult to comment on the potential implications of clause 30(5).

Under the *Consent to Medical Treatment and Palliative Care Act 1995* a young person aged 16 years or more can consent to medical treatment. Should this provision in the Bill override that right? At the very least, the Bill should require that any such treatment must be reported to the Minister/CE (and annually).

Part 3 – Removal of child or young person

These are very strong 'break and enter' powers ie the Bill enables authorised officers to do whatever it takes to remove a child or young person from different settings eg from a family or from a group setting.

Such removals can be traumatising, compounding any trauma a child or young person may have suffered in life. Therefore, the Bill should be explicit that planned removals must be consistent with the spirit of the principles of the legislation. Removals should be done to ensure that no additional harm is caused to a child or young person.

With reference to custody of children and young people who have been removed and their return, without explanatory notes it is not possible to comment on the proposal to return a child or young person at 'the end of the fifth business day…' ie could this result in a child or young person being returned even if they are still at risk under clause 33?

What if there are waiting lists/delays? Anecdotal evidence suggests that nominating an arbitrary number of days in legislation is risky as it often becomes the norm or default (rather than the maximum timeframe in which to respond as intended in the legislation).

2.6. Chapter 6 - Applications for court orders

The Council supports the provisions in clause 40(a) that only the Minister, the Chief Executive (CE) or a person authorised by the CE ie a person named in a written authorisation may apply for such orders. This is sufficiently narrow and clearly defined to prevent a generic delegation to the incumbent of a position that may be occupied by different people from time to time.

The Council recommends the inclusion of a provision to ensure that the views of children and young people must be sought in terms of making a decision under clause 41.

Clause 42(3), should be amended to provide that 'the Court ***must***, unless the Court is of the opinion that it would not be in the ***best*** interests of the child to do so…' ie replace 'should' with 'must' and include the word 'best' before 'interests of the child…'?

Clause 43 provides for copies of an application to be served on parties, including children and young people aged 10 years or above. Without explanatory notes it is alarming that this may be done on a child or young person who is unaccompanied. The Bill, or at the very least, the Regulations, must specify how this will be done eg with children and young people having a support person present.

Discretion for the courts to reduce the time between service and hearing is supported.

Part 2 – Orders that can be made by Court

Should the provisions for Court orders apply to carers eg at clause 44(1)(a)?

Clause 48 provides for adjournments. Does the term 'person' include children and young people, ie if a child and young person contravenes or fails to comply with an order, are they guilty of an offence? Without explanatory notes it is impossible to be confident that it does not. In the absence of clear evidence that these provisions do not apply to children and young people, the potential for a child or a young person to be guilty of an offence as a result of an omission to comply with an order, is alarming.

Part 3 – Child or young people (should people read 'person') to be heard in proceedings

The Council applauds the inclusion of these explicit provisions for the views of children and young people to be heard, ie for children and young people to personally present to the Court.

Part 4 – Representation of children and young people

These explicit provisions for legal representation are excellent however, some legal practitioners' 'own view of the best interest of the child or young person…' will definitely be inadequate.

There could be many factors that would jeopardize a lawyer being able to rely on his/her own view of a child or young person's best interests eg language and/or a communication difficulties. Even a lawyer with specialist training may be prevented from being able to form a reliable view of the best interest of a child or young person. Should a legal practitioner be required to seek expert advice?

The provisions in clause 55 on p35 provide for the interaction of legal practitioners with children and young people. This section should include provisions for children and young people to have a support person present when talking to a legal practitioner should they wish to have one. This should greatly assist children and young people with poor verbal communication skills who cannot articulate clear instructions.

In recognition of a diverse workplace, the regulations should specify that legal practitioners who have any involvement with children and young people, must undergo specific training and/or regular training in relation to taking instructions from children and young people.

Clause 56(2) provides for applications to be heard as a matter of urgency. This is supported however, there should be earlier review of an order made as a matter of urgency.

Part 5 – Miscellaneous

Clause 57 (Conference of parties) is supported in principle yet the Council suggests these provisions may result in delays in placing children and young people due to challenges to convene a conference with all of the relevant parties. The administrative requirements and cancellations or rescheduling etc. are likely to result in delays and waiting lists over time.

Clause 58 provides for other interested persons to be heard in court proceedings. This is supported.

2.7. Chapter 7 – Children and young people in care

Part 1 - Approved carers

The Council is aware that these provisions respond to the Nyland Report recommendations however, they are likely to be controversial in practice primarily because of different pay scales. Such a scheme will also most likely be administratively burdensome. Will carers be able to change from one category to another and back again etc?

The Council supports the provisions for cancellation of approval (clause 66) on the assumption that a child or young person will have been removed well prior to the expiry of the 28 days' notice in writing.

The Council strongly supports the provision of relevant information to carers prior to placement. Having explicit provisions for this is helpful as is the need to take into account children's and young people's wishes regarding the provision of information. Even if a child or young person refuses, the relevant information to enable a carer to provide care for a child or young person must be provided.

Clause 73 provides for approved carers' participation in decision-making. This provision is supported.

Clause 75 sets out the CE's powers re children and young people in his/her custody or guardianship.

The provision at clause 75(2)(b) about being in the CE's custody or guardianship being the least preferred option is a good safeguard.

The provision at clause 75(3) for children and young people to be included in decision making is strongly supported.

Clause 76 – Review of circumstances of child…under long term guardianship…

- With reference to the provision at clause 76 for 12 monthly review, 12 months is a VERY LONG TIME in the life of a child or young person.
- Safeguards should include that a review can be requested by a child or young person or a person with a legitimate interest eg a statutory official or a service provider etc.
- Reviews are not being done well currently even though there are legislative requirements for them to occur. The failures have been highlighted by the

Guardian for Children and Young People. There must be penalties for not meeting the legislative requirements for each and every child or young person to have a review at least every 12 months.

- Given the current numbers of children and young people whose circumstances need to be reviewed at least annually, without additional and dedicated resources the child protection system will continue to be in breach of the legislative requirements. The Council recommends that consideration is given as to whom or which bodies should carry out the annual reviews eg should reviews be carried out by dedicated officers?
- At clause 76(2)(iii), there should be a provision for children and young people to be able to have a support person or their choice present if they so wish.

The Council supports the provisions and penalties for the offence of *knowingly* or *willingly* harbouring or concealing a child or young person at clause 78.

Part 3 – Transition to long-term guardianship

A waiting period of two years is a good safeguard, especially in relation to cultural considerations and kinship requirements eg for Aboriginal and Torres Strait Islander children and young people. Indeed, consideration should be given to require consultation with an Aboriginal community controlled child welfare authority before transition to long-term guardianship of an Aboriginal and Torres Strait Islander child or young person.

Although the Council supports in principle the provision for the CE to specify a shorter period, there should be a minimum period before the CE can make that decision. It must be in the best interest of a child or young person and any such decision must be reported to the Minister (and in an annual report).

Part 4 - Contact arrangements

The Council recognises these provisions as responding to the Nyland Report recommendations however, setting up a contact arrangements review panel, even a multidisciplinary MAPS-like panel will build in delay and result in waiting lists. Is a panel necessary given that the CE's decisions are reviewable by SACAT?

The inclusion of the provisions in clause 84(3)(b) regarding reunification is welcomed however, the provision lacks prescription and will be difficult to implement, enforce and report on in a consistent manner.

Part 5 - Voluntary custody agreements

Consent provisions in clause 87(4) is consistent with the provisions in the *Consent to Medical Treatment and Palliative Care Act 1995*. This is supported.

Clause 87(5) is a good provision re children and young people under 16 years as is clause 87(8) re terminating an agreement at the request of a young person 16 years and above. Will there be a record of such decisions eg will consent be recorded in a database? Such decisions should be recorded.

Voluntary custody agreements should also be recorded including those made, changed, revoked etc. These should also be reported in an annual report.

Part 6 – Foster care agencies

With reference to the cancellation of licences (of foster care agencies), there should be equity between government and non-government organisations, not only in terms of standards, eg national standards, but also in terms of notice given and the basis on which a licence may be cancelled.

Clause 91(1)(a) is a very strong power and there is no explanatory note about what would constitute a 'reasonable' suspicion on the CE's behalf ie the CE doesn't need to be *convinced* or *have evidence* that a child or young person is not being adequately cared for; it is suffice to *reasonably suspect*…

Part 7 – Licensed children's residential facilities

With reference to the exceptions listed in clause 94(c)-(f), should hospitals (including mental health facilities) be listed?

The Bill should specify that a children's residential facility must demonstrate compliance with the National Standards for Out of Home Care. With reference to the provisions to cancel a licence, without explanatory notes it is not possible to have an assurance that children and young people will be removed prior to the expiry of the 28 days' notice.

The provision for the CE to hear complaints is supported. The Council supports these provisions being narrow as opposed to being broad however, at clause 100(1), should it be possible for a person with a legitimate interest to complain eg an NDIS service provider?

Part 8 – Provision of assistance to care leavers

The Council rejects in the firmest terms possible the notion that a young person must request assistance. It should be a given that assistance is provided for all young people who will be transitioning to independent living. The onus should be entirely on the CE to provide assistance and such assistance should commence as early as possible.

The Council strongly supports the broad age range at clause 102 to include young people up to 26 years.

The Council queries why assistance must be arranged for 'eligible' care leavers. Presumably ALL young people transitioning to independent living are automatically eligible for holistic and comprehensive assistance in accordance with their individual transition plan.

2.8. Chapter 8 – Child and Young Person's Visitor scheme

The above scheme must be linked to the Guardian for Children and Young People (who already has a similar mandate for children and young people in detention. Furthermore the clause should require such a scheme to be established rather than leave it as a discretionary matter by referring under clause 105(1) as 'may' establish a scheme.

At clause 106(2) the Bill specifies that particular attention must be paid by the Visitor to the needs and circumstances of Aboriginal and Torres Strait Islander children and young people and those with health issues/disability.

The Council suggests that different groups of children and young people may also face vulnerability. Needs and circumstances may vary from time to time and across the State and cultural groups, etc. This should be taken into account and accommodated.

The Council is very supportive of the provision for a child or young person to request a visit during or after a stay (as per clause 106(4)).

2.9. Chapter 9 – Transfer of certain orders and proceedings between South Australia and other jurisdictions

The Council supports the provisions for continuity of care and to encourage communication/ transfer of information in the best interest of children and young people. With reference to notification to a child, parent or guardians (clause 113), the Council has grave concerns that a notice may be served on a child of 10 years or older without any requirement for the child to have a support person present including to explain the 'rights of review' etc.

Part 6 – Miscellaneous

Clause 126(1)(a) and (b) give very short periods in which appeals must be lodged. An interstate transfer is a very significant event in the life of a child or young person. Should there be exceptions to these timelines eg if a person is abroad or in hospital or somehow misses out on the 10 business day period?

Clause 131 (Discretion of the CE to consent to transfer) is supported however, the Regulations should set out the grounds on which the CE may exercise discretion to consent or refuse consent to a transfer. Any such transfers must be reported, including for statistical purposes in an annual report.

Part 3 – Information gathering and sharing

As currently drafted, clause 140 is permissive rather than prescriptive. The provisions should be carefully reconsidered alongside the Information Sharing Guidelines with the Office of the Ombudsman to ensure that any potential confusion or inconsistency is eliminated.

Clause 141 sets up a process in this legislation for access to information that appears to be similar to the provisions of the *Freedom of Information Act 1991*. Clause 141 provides that certain persons will be provided with documents and information held by the Department. It is understood that these provisions are being included to make it easier for care leavers to access personal info and/or records about themselves for the purposes of passports, drivers licenses, bank accounts, Medicare cards etc and that they would not have to pay a fee. They fail to adequately make provision to assist recent care leavers to access such personal information and/or documentation without delay and without unnecessary administration.

The Council has strongly advocated for recent care leavers to have access to documentation and information without delay and/or stringent requirements however, these provisions appear to be similar to an alternative FOI application process. As per advice previously provided to the Department, the Council notes with disappointment and concern that these provisions are unlikely to adequately deal with the issues for recent care leavers of which the Council has previously advised the Minister for Education and Child Development and the Department for Education and Child Development.

The Bill must set out a requirement for the Department to proactively source particular documentation when children and young people are taken into care (especially long term care) at an early opportunity. the Department should be required to keep these documents safely and to provide these to a care leaver when they transition from care.

2.10. Chapter 10 – Administrative matters

The Council supports a provision for the CE to develop channels of communication and information sharing however, the provisions lack detail and may be difficult to monitor.

It is not readily apparent why the CE would define standards in addition to the provision in clause 15 of the Bill for the Minister to publish standards. It is not at all apparent how any such standards will interface with the National Standards for Out of Home Care. The Council recommends that these provisions are reconsidered and redefined eg perhaps it would be more appropriate for the CE to set out guidelines.

2.11. Chapter 11 – Reviews of decisions under Act

The inclusion of provisions for review is welcomed however, timelines for hearings should be amended to allow for urgent hearings in relation to smatters arising from this legislation.

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 South Australia (SA) from birth up to 18 years of age.

In looking out for children and young people across all communities and sectors in 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 (UNCRC)
- United Nations Convention on the Rights of Persons with Disability
- United Nations Declaration on the Rights of Indigenous Peoples.

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