

# Submission on the Review of Child Protection Decisions in the ACT

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# About CREATE Foundation

CREATE Foundation is the national consumer body representing the voices of almost 46,000 children and young people in the out-of-home care system, as well as those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential, in line with our mission to:

- **CONNECT** children and young people to each other, CREATE and their community; to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard; to
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by providing a variety of programs and services for children and young people in care.

## Introduction

### **Review of Child Protection Decisions in the ACT: Submission**

CREATE Foundation welcomes the opportunity to provide comment on the *Review of Child Protection Decisions in the ACT* discussion paper (the Discussion Paper). CREATE encourages the working group to consult directly with children and young people in regard to changes that are required, as they have the expertise in these areas due to their lived experience. CREATE has utilised for this submission prior relevant consultations, group discussions and research with young people with an Out-of-Home Care (OOHC) experience.

CREATE acknowledges the significant work in refocussing on the participation of children and young people in the OOHC system in the ACT by both community and government stakeholders. We wish to reiterate the need for priority to be given to ensuring that children and young people are being directly consulted and asked about decisions in their lives. Children and young people in OOHC systems must be given a voice, and listened to, the significance of which has been highlighted again through the work of the *Royal Commission into Institutional Responses to Child Sexual Abuse* (Commonwealth of Australia, 2017).

## DISCUSSION POINT 1:

### WHAT PRINCIPLES SHOULD UNDERPIN ANY FUTURE DECISION REVIEW PROCESS?

The ACT Children and Young People Act (2008) (the Act) provides significant guidance in relation to the factors which need to be considered when making decisions in relation to children and young people under the Act. Whilst the Act provides this guidance through stated principles, we believe it is important to support and monitor how these principles are being enacted in current practices and in any future processes. It is our experience that it is often the translation of principles to practice that presents the biggest challenge and requires attention; the ‘how’ of implementation, in relation to each child or young person.

CREATE recognises the best interests principle as the paramount consideration, and the matters that must be considered as stated in Section 349 (1) of the ACT, including taking into account the views and wishes expressed by the child or young person. Effective articulation of this principle requires future review of decision making processes to ensure that children and young people are meaningfully involved, and have sufficient support to participate in decisions impacting them, such as opting to progress a review of a decision.


Research by the CREATE Foundation has found that nationally, 67.5% of young people in care report being able to have a say about important issues such as placement, education, and family contact “reasonably often”; yet 15.7% report they “rarely” or “never” have an opportunity to have a say (McDowall, 2018).

*I don't want to go to residential care but they say there's nothing else. Because it's all they have got, I have to go. No one tells me what to expect. No one cares that I don't want to go. I like the carers I'm with now, but they are old and I have to leave at the end of March. (Male, 14 years; McDowall, 2018)*

It is noted that the Act states that delays in decision-making processes should be avoided because these may negatively affect a young person’s well-being. While efforts should be made to streamline processes, CREATE argues that there are, at times, benefits to progressing review decision processes that may be lengthy, for example where a young person has initiated this process. Respecting the young person’s decision and autonomy can have numerous benefits to the individual’s self-esteem and self-efficacy. However, this is predicated on children and young people being provided with sufficient, developmentally appropriate information with which to make informed decisions, including details of the timelines that may be involved. Young people must have information as to why certain outcomes have been decided within the timeframes, how these are sensitive to the needs of the individual young person, and presented in a way that they can understand. Upholding young people’s best interests must be paramount; however, so too should respect for young people’s resilience.

Recognition and inclusion of Aboriginal and Torres Strait Islander children and young people principles as stated within the Act (Section 10) are also paramount, as are mechanisms to ensure that these are embedded in practice in relation to each child or young person, their family, and community. CREATE recognises the commitment to the work being undertaken by the Our Booris, Our Way Steering working group, which will no doubt provide guidance around application of principles into practice, as well as that provided through SNAICC resources which support embedding the Aboriginal and Torres Strait Islander Placement Principle in practice at different, key decision making points (SNAICC, 2018).

CREATE further recommends inclusion of child-centred practice as another means to support the application in practice of the best interests principle, and directs the working group’s attention to the work of Winkworth (2006), emphasising the need for flexibility, genuine participation, collaboration, and information sharing, and strengthening existing support networks.



We recognise the trauma-informed context within which care and protection and out of home care services seek to operate, and believe that the underpinning principles of trauma-informed care should be enshrined in any future decision review processes. Trauma-informed principles provide a sound base if we are to have review mechanisms which are accessible, and are a necessary requirement in this system if we are to do no further harm and appropriately engage 'vulnerable' individuals within systems to provide fair, intelligent, and just processes and responses (Kezelman & Stavropoulos, 2012). As such, we direct the working group's attention to the trauma-informed principles outlined by Centre for Disease Control and Prevention & SAMHSA's National Centre for Trauma-Informed Care (2018).

A commitment to embedding child-centred and trauma-informed principles would support and strengthen processes and practices to enable application of the best interest and the Aboriginal and Torres Strait Islander children and young people placements principles. Further, the application of trauma-informed understanding to any decision review process, with supporting policy and practice documents, would also ensure that processes of inclusion, open communication, transparency and accountability are enhanced.

## **DISCUSSION POINT 2:**

### **HOW CAN THE ACCESSIBILITY OF INTERNAL MERITS REVIEW INFORMATION BE IMPROVED?**

Internal merits review processes are an important part of an organisation's commitment to ongoing quality improvement, and as such, it is important to examine how children and young people's voices can be heard in these review processes.

Article 2 of the United Nations Convention on the Rights of the Child (United Nations, 1989) requires that children and young people are given the opportunity to participate in decisions that affect them, and that governments take into account the views of children in the laws and policies that impact on their lives.


Organisations which are open to the participation of children and young people at all levels, and which actively seek the input and views of children and young people on an ongoing basis, and respond positively to these views, will create a culture in which children and young people are more willing and enabled to access complaints and review mechanisms (McDowall, 2013). These are all essential components of Child Safe Organisations.

*When young people feel that people won't listen to them, they're scared to speak up.*

*Young people test out adults to see whether they're really listening. There's a difference between people who think they listen to and understand, and those who really do. (Mitchell, 2016)*

Accessing formal decision-review processes can involve complicated, bureaucratic processes that potentially alienate both young people and their advocates. Research conducted by CREATE also found young people generally lack knowledge of complaint processes and that current avenues for review of care and protection decisions, including complaints mechanisms, are not readily known or accessible (McDowall, 2018), and that a great deal of persistence is required to be able to navigate these systems (Kennan, Brady, & Forkan, 2016).

How the voice of the child or young person is heard within existing review mechanisms, both internal and external, must be a matter of ongoing inquiry. The Discussion Paper (p. 4) states that that decision-making about day-to-day issues should sit within the context of the child or young person's Declared Care Team (DCT), a vehicle to support shared decision-making. Whilst the value of the DCT is



recognised, how members are both selected and supported to participate meaningfully, particularly children and young people, needs ongoing attention.

Research undertaken by the CREATE Foundation has found that children and young people are often excluded from key decision-making forums, such as case-plan meetings. For example, young people self-report participating in meetings 38.3% of the time. Of the young people who had attended meetings (n = 903 of total N= 1275), they felt their views were considered only 52.4% of the time (McDowall, 2018).

Given the important role of the DCT, its intent as a mechanism for shared decision-making can become problematic when significant people are not included, and decisions are not clearly articulated. Furthermore, it is not clear what avenues exist to resolve disagreement amongst members of the DCT about key decisions.


To ensure accountability and transparency, the significant power imbalance between the children and young people and other members of the DCT needs to be recognised. Attending to how DCTs are currently operating in terms of identifying members (ensuring children and young people are asked about who they wish to attend), and supporting members to be empowered to participate on an equal footing, also requires an ongoing focus on increasing inclusion, communication, and collaboration within DCTs. Particular attention to engaging children, young people, and birth family members would reduce the need for review of certain decisions. Informing DCT members of how they can proceed if they disagree with a decision should guide the structure of every DCT meeting.

Article 17 of the UNCROC recognises children and young people's right to information, an important companion to the right to be heard. In our experience, articulating the "why" of a decision is critical, as young people often report that they do not understand why a decision was made, including information about significant decisions, such as removal from birth family, placement, and separation from siblings.

Information should be provided both verbally and in writing, in a language which is easily understood (free from 'professional jargon') within the structure of a shared decision-making tool. This would enable members of the DCT to take this away, re-read content within their own time and to ask further questions. This is important as young people report that they need time to consider and process information, and that their response following consideration or explanation may be very different from their initial response (ACT Government, 2018). We are aware that a Decision Making Statement (DMS) can be requested (Working Together for Kids, Guide 4; ACT Government & Red Cross, 2017) and support this mechanism as a valuable way of ensuring that decisions are clearly articulated, demonstrating how the best interests principles have been considered. CREATE recommends that a DMS is provided following the making of any decision, not just if requested.

On a practical measure, young people may not have access to internet or phones to initiate a decision review process, and may lack the literacy skills to navigate forms and documented evidence. This indicates a need for the working group to consider diverse means of distributing information (e.g., through flyers, 1800 numbers, social media campaigns, etc.), and using child-friendly language. Delivering information in a safe environment, and giving young people space and privacy to process the information and raise questions, is also important. This includes consideration of whether or not conversations in the presence of carers is the most appropriate process for a particular young person.

*No because I didn't have a phone at the time. The home phone was right next to them [carers] and if I had told them about the carers then they [carers] would have questioned me. We weren't allowed any internet or allowed to phone people, they just had to phone us. (Female, 15; Commissioner for Children and Young People WA, 2016)*



*There is a lot of support out there but you don't hear about any of them, you don't know about them. So it's hard to reach out and call someone for help when you don't even know there's support out there. (Female, 20; Commissioner for Children and Young People WA, 2016)*

Caseworkers must also be cognisant of the other ways children and young people use to communicate their needs and wishes around key issues, such as within their placement or through birth family contact. For example:

- a young person persistently being absent from placement should provide a catalyst for conversations about reviewing their circumstances;
- persistent and consistent requests for change in circumstances should also be triggers for more formal review processes to be initiated; and
- repeated requests by children and young people to carers and caseworkers for contact with family members, which may be denied or receive no response, speaks to the need for children and young people to access reviews of decisions, independently of relying on their caseworker.

Caseworkers, carers, parents, and workers within the community are recognised as key conduits of information, and have a role to play in informing children and young people about the avenues of seeking decision reviews. The importance of caseworker relationships has been identified by children and young people throughout research (McDowall, 2018; McLeod, 2010; Strolin-Goltzman, Kollar, & Trinkle, 2010). Strong, stable, trusting relationships with caseworkers and carers are essential for children and young people, as these were the most frequently cited people they could speak to about their concerns (Commissioner for Children and Young People WA, 2016). Such relationships of trust, however, take time to establish. Additionally, practitioners must have the skills to communicate effectively with children of all ages and abilities, as well as knowledge of how to engage and prepare young people to contribute to decision-making.

In addition, a recurring message from children and young people is the importance of a trusted adult (other than, and in addition to a carer) to help them access information available from the decision-making process, and through whom they can access complaints and review mechanisms (Kennan et al., 2016; Winkworth, 2006). This requires caseworkers and carers to support children and young people to identify significant people in their lives, through engaging children and young people in exercises such as eco-mapping and life-story work, and to prioritise and support young people's connections. Once these people are identified, they should also be equipped with information to support the child or young person to have their voice heard in decision-making forums.

The work of Kennan et al. (2016) also demonstrates the value of children and young people using an advocate to bring their views to the attention of decision-makers, whilst stressing that this advocate must be independent of social work services to be effective.

CREATE recommends that the working group considers how to convey information to children and young people that addresses the common barriers to their ability to speak up. The particular 'vulnerabilities' of children and young people in OOHC must be acknowledged when we recognise the barriers, which include fear of consequences, e.g., getting into "trouble" or not being believed, fears which may be increased for children and young people in OOHC who may have already experienced this prior to entry into care. These barriers demonstrate the need for clear articulation of (a) how children and young people's information is going to be used, including with whom the information is going to be shared, (b) the next steps to be followed in the process, and (c) and who could be contacted to help address questions as they arise.

*It comes down to the repercussion of what will happen. I was terrified of moving placement so I didn't talk about it until I left. I felt like I didn't get a say. I wouldn't feel like I would have*



*control over what would happen. (Female, 24; Commissioner for Children and Young People WA, 2016)*

*At the time I was scared of what my foster carers would do because they always got angry if we spoke up about things. So I knew they would get angry and they'd say that we were lying. It would look like I'm the bad person, so I was too scared to say anything. (Female, 15; Commissioner for Children and Young People WA, 2016)*

*And like having that whole shame thing. When I was younger I thought if I call the Kids Helpline they will come to my house and take me away and I will bring shame on my [family], my whole community will be shamed and it will be all my fault and I will be out of the house. (Female, 21; Commissioner for Children and Young People WA, 2016)*

A significant way of building access to current or future review mechanisms is to not only ensure that they are known and accessible, but also to ensure that these mechanisms include processes that empower and build trust, i.e., are they making a difference in the eyes of children and young people?

*Knowing that you have someone to talk to and knowing that they will do something and actually listen is the most important thing for me. (Female, 21; Commissioner for Children and Young People WA, 2016)*

Children and young people have consistently highlighted both the need and importance of ongoing communication throughout processes, i.e., to enable them to relate in 'everyday' language how their wishes or concerns have been heard, to check what is happening (now) and what will happen next, and once a decision has been reached, to provide a clear articulation of the 'why.' The need for this level of communication has been particularly highlighted in situations where young people have taken considerable time, shown persistence, and used emotional energy to make a complaint and then hear nothing back in response. We urge that there be a sensible approach taken between balancing privacy of other involved parties with the need for information to be provided to the complainant, so that children and young people can be assured that their concerns have been taken seriously and appropriate action taken. Without such information, the concerns of children and young people cannot be allayed, which may act as a barrier to accessing the 'next level' of review or complaint, or may preclude young people ever raising a concern in the future.

In short, there is a plethora of information about children and young people's engagement in social welfare systems and processes, in which children and young people identify the barriers to participation and offer a range of solutions. We urge the working group to draw upon this research to seek to improve access by children and young people to any decision-making and review mechanisms (Allcock, 2018; Commissioner for Children and Young People WA, 2013; Kennan et al., 2016; McDowall, 2018; Street, Anderson, Allan, Katz, Webb, & Roberson, 2012).

#### **DISCUSSION POINT 4:**

##### **SHOULD THERE BE EXTERNAL REVIEW MECHANISMS FOR CERTAIN CYPS DECISIONS AND, IF SO, WOULD DECISIONS SUCH AS RESIDENCY AND CONTACT BENEFIT FROM EXTERNAL REVIEW?**

External review mechanisms provide another valuable way to effect practice improvement for children and young people in the OOH system. Fundamentally, implementing external review mechanisms can be a means of ensuring decisions are not unfairly influenced by bias or a loss of objectivity. Young people in consultation with CREATE have raised concerns with the independence of their caseworkers when stating concerns regarding carers, for example:

*Having someone totally independent, just like a case manager, one for you and one for your carer and they are not linked. And they know you. You never knew what the case manager was*



*talking to your carers about; this was a big fear of mine. (Female, 23; Commissioner for Children and Young People WA, 2016)*

In determining what decisions may benefit from external review, we note that the Glanfield Report (Recommendation 12), whilst recommending a review be undertaken of which decisions made by Children and Youth Protection Services (CYPS) should be subject to internal or external review, does not limit the scope of decisions to be reviewed to those impacting children and young people for whom the Director General has parental responsibility.

CREATE proposes that if external reviews are implemented as a means to address the shortcomings of current internal reviews, decisions made by both CYPS and delegated services (including ACT Together) which are able to be reviewed should not be restricted, and suggest that the scope of decisions which are reviewable should cover the range of CYPS contacts with a child or young person.

CREATE further advises that it is vital that if the working group must determine which decisions could benefit from external review, children and young people should be consulted as to their opinions on what issues are important to them. Children and young people have expressed a desire to participate in decisions regarding placement, family contact (including sibling contact), schooling, and leaving care planning, including decisions around continuum of care applications (McDowall, 2018).

Considering the importance of care plans in directing case work and day to day decisions, CREATE advises that care plans should also be reviewable, similar to the methods implemented in Western Australia (Government of Western Australia, Department of Communities, Care Plan Review Panel, 2018). Improvements in case management and care-planning practices, as noted above, would reduce the number of decisions needing review. Children and young people report they are often excluded from their case planning; for example, only 43.6% of young knew of their care plans, and only 57.1% who knew of their plans were involved in their development (McDowall, 2018). This calls into question how effectively these care plans can meet young people's needs if they are not engaged meaningfully in the plan's preparation. Caseworkers have expressed concerns around using language which stigmatises children and young people in OOHC. CREATE posits that conversations about plans (including providing children and young people with a copy of their care plan) can be had in ways which are sensitive to each child or young person's circumstances, and are empowering and necessary to ensure their right to participate is enabled.

#### **DISCUSSION POINT 5:**

#### **IF AN EXTERNAL MERITS REVIEW MECHANISM SHOULD BE IMPLEMENTED, WHAT IS THE MOST APPROPRIATE MECHANISM FOR THE ACT?**

CREATE is not in the position to suggest a model for an external merits review mechanism; however, it does offer support for a mechanism, once decided, which is underpinned by principles as noted above, and which demonstrates the following qualities:

- best interests of the child or young person are the paramount consideration;
- a child-centred approach where there is a commitment to hearing the voices of children and young people throughout the process, balanced with consideration of timeliness of decision making and developmental considerations;
- adequate resources are provided to achieve timely and expert review;
- review procedures are culturally informed, safe, and representative;
- review procedures are independent and impartial;



- review procedures are transparent and accountable (which includes reporting to the public the numbers of matters heard, outcomes, and themes as consistent with privacy laws);
- review procedures are empowered to seek information as required;
- review procedures are designed to allow reversal of decisions if necessary and to include mechanisms of appeal;
- Individuals selected to review decisions have the appropriate level of expertise;
- review procedures have inbuilt evaluation mechanisms which are informed by consumers in addition to other measures (once again, any evaluation should be informed by views expressed by children and young people in relevant research).

CREATE believes there would be merit in examining current mechanisms in other states and territories, as outlined in the Discussion paper, to see how these are currently accessed by children and young people to help understand what is working, and what is not, in regard to access and participation. For example, we note that the South Australian Civic Administrative Tribunal (SACAT), an external review mechanism for decisions made by the South Australian Department of Child Protection (DCP), provides in legislation that in these proceedings, "...a child or young person to whom the proceedings relate must be given a reasonable opportunity to personally present to the SACAT their views related to their ongoing care and protection." (Bleby, 2017, p. 91). It would be of value to the working group to understand how this is working in practice as well as the measures in place to support children and young people to access this review mechanism.

## ADDITIONAL CONSIDERATIONS

### **Caseworker practice and stability**

We recognise that ACT current legislation and policy documents provide for best practice, which supports the participation of children and young people. We believe it is timely to review how we can optimally support the embedding of best practice principles, and how the system can support caseworkers to engage meaningfully and directly with children and young people. This commitment requires reviewing the number of children and young people for whom caseworkers have responsibility to better support the development of stable and trusting relationships, as well as addressing staff training, support, and turnover.

### **Independent advocacy for children and young people in OOHC in the ACT**

The Glanfield Report notes that significant investment has been made in providing independent advocacy services for carers and birth family members in the ACT. CREATE calls attention to the need for similar investment for independent advocacy for children and young people in OOHC. There is also a need to review current resourcing of the Public Advocate's office.

Consideration should also be given to extending the current Official Visitor program in the ACT to include all children and young people in all care settings (not just residential care settings and Bimberi Youth Detention facility). CREATE suggests the working group consider the Community Visitor program in operation in Queensland, through the Office of the Public Guardian, ensuring that all children and young people have contact with an independent advocate upon entry into care as well as regular contacts during placement.

## Provision of information


It is our belief that any new review structure must be supported by a commitment to an inclusive 'education campaign' targeting children and young people, caseworkers, carers, birth-family, and independent advocates, with a focus on enabling access by children and young people and vulnerable members of the community. This should be informed by children and young people.


## CONCLUSION

CREATE recognises the potential benefits of an external mechanism for review of decisions made by CYPs and delegated services; however, we are cautious to ensure that we are not simply creating another level of bureaucracy, noting that excessive oversight mechanisms can also be counterproductive by drawing resources away from frontline services. It is critical that any new mechanism adds value to the outcomes sought for, and by, children and young people in OOHC, and ensures that children and young people's views, needs, and wishes are at the centre of services and systems.

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