

31 January 2024

Ms Rachel Stephen-Smith MLA  
Minister for Children, Youth and Families  
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Canberra, ACT 2601  
Email: [stephen-smith@act.gov.au](mailto:stephen-smith@act.gov.au)

CC: [budgetconsultation@act.gov.au](mailto:budgetconsultation@act.gov.au)

Dear Minister,

As you know, the CREATE Foundation is the national peak body representing the voices of children and young people with a care experience. In this capacity, we engage with children and young people across a range of programs and services to understand the issues of importance to them and translate these insights into priorities for reforming child protection and care systems. As such, we welcomed the ACT Government's call for submissions to inform the direction of the 2024-25 State Budget.


We hope that the ACT Government will also use the Budget to fully resource legislative amendments to the *Children and Young People Act 2008*. CREATE's view, as outlined in our [submission to the ACT Government on the proposed Children and Young People Amendment Bill 2, 2024](#) (see attachment 1), is that practice reform must occur alongside these important legislative amendments to ensure the reforms succeed in both diverting vulnerable families from contact with the child protection system and in improving experiences and ensuring the wellbeing of those already engaged with the system. CREATE also sees the upcoming 2024-25 Budget as an opportunity to provide further and more targeted investment to meet the needs of children and young people in care, to support kinship and foster carers, and to support young care leavers in the face of ACT's cost of living crisis.

CREATE would like to highlight the following priority areas for investment:

### **Resourcing critical reforms to the ACT's child protection system**

CREATE strongly urges the ACT Government to leverage the 2024-25 Budget to ensure that proposed legislative reforms to the *Children and Young People Act 2008* can be translated into positive outcomes for children, young people and families. This will require considerable resource allocation, including investment, workforce development and robust and transparent monitoring and evaluation of reform implementation and impact. These are outlined in more detail in [CREATE's submission](#) on the proposed changes. Further, we encourage the ACT Government to build on its commitment to participation by including the voices of children, young people and families with lived experience as a vital source of evidence in relation to how the system is operating.

The release of the recent *Counting the Costs* report documented pressures on the existing community services workforce. *Counting the Costs* tells a story of increasing demand and complexity of needs that compound broader sustainability concerns across the community services sector, including chronic underfunding that has not kept pace with the true cost of delivering services (Cortis, Blaxland, & Adamson, 2021). While CREATE is supportive of changes that will reorient the



system to prioritise early support as proposed in the *Children and Young People Amendment Bill 2, 2024*, such changes require time to be fully embedded and to realise diversionary impacts. In this context, CREATE urges the ACT Government to use the upcoming Budget to plan for how additional family preservation supports will be delivered in practice, including the practice frameworks that will underpin family preservation models. Consideration should also be given to balancing resourcing for these reforms (both now and into the future) with funding required to ensure support is provided to those children, young people and families who are already deeply engaged with the child protection system in an effort to improve experiences and support their wellbeing.

### **Improving outcomes for young people transitioning from care to independence**

Research has shown that young people with a care experience have poorer outcomes compared to peers across all major life domains. They are less likely to graduate from high school or enrol in tertiary education. They experience greater difficulty securing employment and housing. They are more likely to be involved with the justice system. And they experience a greater incidence of mental health and substance use problems (McDowall, 2020; Stein, 2016). The Australian Institute of Health and Welfare's (AIHW) *Young people in out-of-home care study*' (2021) showed 56% of young people with an out-of-home care experience were on income support, which is three times higher than the general population.

Further, in 2022 CREATE Foundation asked 25 young people with a care experience aged 17–21 years and living in the ACT about their thoughts and experiences of finding housing after leaving care.

Young people told us:

- 58% didn't know where to start when finding a place to live
- 47% had experienced homelessness at some point since leaving care
- 89% thought it helpful to some degree to be able to return to a supported place
- 32% were concerned about inadequate caseworker support.

Young people's experiences are also set against a social housing safety net that is under significant pressure, pushed almost to the brink. As of 1 January 2024, the ACT Government indicated there are currently 140 wait-listed priority housing applications, with an average wait time of 256 days; 2,029 wait-listed high needs housing applications, with an average wait time of over 3 years (1207 days); and 976 waited listed standard housing applications; with an average wait time of over 5 years (1,946 days) (Housing ACT, 2024).

Safe, secure and affordable housing is necessary for safety and wellbeing, sense of security, physical and mental health, engagement in education and employment, and social and community connectedness. It is one of the critical building blocks for young people transitioning from care. The 2024-25 Budget presents the ACT Government with an opportunity to strengthen the package of support available to young care leavers. CREATE urges the ACT Government to commit funding and resourcing to extend transition supports, making them available to all young people leaving care until the age of 25. To do this, the ACT Government must remove discretionary principles and caveats around providing support and services only when considered reasonably necessary in the circumstances. Such revisions should also be supported by enhanced financial allowances for young care leavers up to age 25, including:

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- A specific 'Independent Living Allowance' offered to all young people leaving care of \$16,000 per year to better support their transition from the care system and cover the true costs of independent living. This allowance should be opt-out rather than opt-in to ensure young people do not miss out on the support available and to reduce the administrative burden of processing applications. Further, the ACT Government should systematically review this allowance to appropriately index this payment to increases to the cost of living.
- In recognition of the difficulties young people transitioning from care in the ACT face in securing safe and affordable housing, the ACT Government should consider a rental subsidy that is targeted for young people leaving care up to age 25 to help them enter the private rental market and maintain their tenancies. This should form part of a broader commitment from the ACT Government to provide guaranteed housing placements for young people with a care experience up to the age of 25.

### Adequately resourcing Aboriginal-led child and family support services

CREATE strongly supports strengthening and increasing capacity in the Aboriginal community-controlled sector. In June 2022, 216 (31%) of the 688 children and young people in out of home care in the ACT identified as Aboriginal or Torres Strait Islander (Australian Institute of Health and Wellbeing, 2023). This is particularly concerning given that only 9,000 people identified as Aboriginal and/or Torres Strait Islander in the ACT in the 2021 Australian Bureau of Statistics (ABS) Census; making up only 2.0% of the ACT population (ABS, 2022). Further, in 2021-2022 the rate of Indigenous children admitted to out-of-home care in the ACT was 13.9 per 1,000 while the rate of non-Indigenous children was 1.1 per 1,000 (AIHW, 2023). More needs to be done to interrupt cycles of contact with child protection and care systems for Aboriginal and Torres Strait Islander children, young people and families that have resulted in the enduring over-representation of Aboriginal children.

The *Our Booris, Our Way Review* report called for meaningful early family supports and services delivered by Aboriginal Community Controlled Organisations (ACCOs) to reduce the need for entries to care (Our Booris, Our Way Steering Committee, 2019). The need for this was subsequently reiterated by Natalie Brown, Chair of the *Our Booris, Our Way* Implementation Oversight Committee in its July-December 2022 update (ACT Government, 2022). Despite some prevention efforts, including the Functional Family Therapy – Child Welfare Program (FFT-CW), rates of overrepresentation remain unacceptably high (SNAICC, 2023). SNAICC's *Family Matters* Report (2023) paints a disappointing picture, highlighting a lack of resources for ACCOs to support families to participate in child protection processes, the proportion of expenditure on family support and intensive family support below the national average, and a continuing level of distrust between Aboriginal sector and the Government, despite progress made to increase investment in ACCOs.

In the spirit of self-determination, the CREATE Foundation strongly believes that the care and protection of Aboriginal and Torres Strait Islander children and young people should be led by Aboriginal and Torres Strait Islander organisations and communities. We urge the ACT Government to use the 2024-25 Budget to genuinely engage with and provide meaningful and proportional funding for Aboriginal-led and self-determined approaches to keeping Aboriginal and Torres Strait Islander children safe, well and connected to culture.

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## Improving carer supports

The rising cost of living for carers in the ACT is likely to place pressures on and impact carers' ability to keep caring for children and young people in foster and kinship arrangements. In 2022, 93.4% of children and young people in out-of-home care were either in foster (34.7%) or relative/kinship (58.7%) care (AIHW, 2023). While the ACT Government provides the *Foster and Kinship Care Subsidy* to assist with the costs associated with the care and support of children in their care, this subsidy is falling behind the cost of living. Between December 2017 and December 2022, Canberra experienced significant increases in prices for fuel (37%), transport (23%), electricity (25%), medical and hospital services (19%), housing (21%), education (20%) and food (18%) (ACTCOSS, 2023). Without further revisions to allowances, carers will be challenged in their ability to cover the cost of essentials and meet the needs of children and young people in their care.

We hope to see the ACT Government prioritise these initiatives to improve the lives of children, young people, carers and families in contact with child protection and out-of-home care systems. Embedding change will require adequate resourcing of reform efforts, both now and into the future. This is what children in the ACT deserve.

We look forward to discussing these priority areas for investment with you further and we appreciate your continued efforts to reform child protection and care systems in the ACT to keep kids safe, well and connected to culture.

Should your team have any questions about this submission, please do not hesitate to contact Imogen Edeson, National Advocacy and Influencing Manager on 0466 850 867 or at [imogen.edeson@create.org.au](mailto:imogen.edeson@create.org.au).

Yours faithfully,



Jacqui Reed  
**Chief Executive Officer**  
**CREATE Foundation**

### Attachment 1:

[CREATE submission to the ACT Government on the proposed Children and Young People Amendment Bill 2, 2024](#)

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# Submission to the ACT Government on the proposed Children and Young People Amendment Bill 2, 2024

*"If kids really participate, they get a better life."*  
(Young person, ACT) (CREATE Foundation, 2023b)

*"Understanding our needs is so important. Get to know what we really want..."*  
(Young person, ACT) (CREATE Foundation, 2022)

**November 2023**

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# About CREATE Foundation

The CREATE Foundation is the national consumer peak body for children and young people with an out-of-home care experience. We represent the voices of over 45,000 children and young people currently in care, and 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. Our mission is to create a better life for children and young people in care.

To do this we:

- **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 facilitating a variety of programs and services for children and young people with a statutory care experience and developing policy and research to advocate for a better care system.

## Introduction

Thank you for the opportunity to provide feedback on the proposed *Children and Young People Amendment Bill 2 2024* (Bill 2). We are pleased to see that the Australian Capital Territory (ACT) Government is committed to delivering significant legislative reform to align the *Children and Young People Act 2008* with *Next Steps for Our Kids 2022-2030* (Next Steps).

As part of this legislative reform process, CREATE welcomed the opportunity to support young people to participate in consultation workshops on the proposed reforms, especially in relation to measures that seek to strengthen young people's involvement in decisions that affect their lives. CREATE believes that young people are experts on their own lives and are experts by experience. As such, it is critically important that their voices are engaged in the design, implementation and evaluation of reforms.

Modernising the *Children and Young People Act 2008* is a critical step in improving the care and support provided to children and young people involved with the child protection and out-of-home care system in the ACT. However, practice reform, including adequate resourcing, must occur in tandem with implementing these important legislative amendments to ensure the reforms succeed in both diverting vulnerable families from contact with the child protection system and in improving experiences for those already engaged with the system.

Please find below CREATE Foundation's feedback on the *Children and Young People Amendment Bill 2 2024*, including some of the potential unintended consequences of proposed reforms, as outlined in the [information paper](#).

### The legislative framework: guiding principles

CREATE Foundation is broadly supportive of the ACT Government adopting a principle-based approach to provide flexibility to practitioners and ensure Bill 2 can evolve to meet societal norms and best practice in child protection, both now and in the future. However, it will be important to ensure that there are clear policy expectations and guidance material in place to safeguard the quality and standards of care for children and young people.

## 1.1. Best interests principle

CREATE Foundation is supportive of the new *'Best interests principle'* contained within Bill 2, especially the inclusion of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP). Implementation of ATSICPP is an important step in the pathway to embedding self-determination within the ACT child protection system and elevating the importance of connections to family, kin, community, culture and country in child and family welfare legislation. CREATE sees this move by the ACT Government as critical to dismantling practices that have resulted in the over-representation of Aboriginal and Torres Strait Islander children and young people in the ACT's child protection system.

In 2021-2022, the rate of Indigenous children admitted to out-of-home care in the ACT was 13.9 per 1,000 while the rate of non-Indigenous children was 1.1 per 1,000 (Australian Institute of Health and Welfare [AIHW], 2023). This was above the national rate of Indigenous children admitted to out-of-home care of 12 per 1,000 (AIHW, 2023). Further, as of 30 June 2022, in the ACT the rate of Indigenous children in long term out-of-home care was 59 per 1000 (AIHW, 2023). This is dramatically higher than the rate for non-Indigenous children of 4.1 per 1,000 in the ACT (AIHW, 2023). This is also above the national rate of Indigenous children in long term out-of-home care of 46.1 per 1000 (AIHW, 2023). This is particularly concerning given that only 9,000 people identified as Aboriginal and/or Torres Strait Islander in the ACT in the 2021 Australian Bureau of Statistics (ABS) Census; making up only 2.0% of the ACT population (ABS, 2022). These statistics indicate that Aboriginal and Torres Strait Islander children and young people continue to be over-represented, despite the ACT Government's strong commitment to reducing the over-representation rate.

Over-representation is compounded by the lack of cultural safety in the child protection system (SNAICC, 2022). Cultural awareness was identified as an important element of trusting relationships between the young people and their caseworkers, in CREATE's 2022-23 consultation on caseworker support in the ACT. Young people told us:

*"Become culturally aware and make sure you have done some cultural awareness training."* (Young person, ACT) (CREATE Foundation, 2022)

*"It is important that a caseworker understands my cultural needs. They can be offensive to culture and not even realise they are doing it."* (Young person, ACT) (CREATE Foundation, 2022)

While enshrining the ATSICPP in legislation is a welcome step, CREATE joins with SNAICC in calling for the full implementation of the *Our Booris, Our Way Review* recommendations. Lack of progress in implementing the review means that Aboriginal and Torres Strait Islander children and families interacting with the child protection system continue to be exposed to unsafe and at times racially discriminatory practices (SNAICC, 2022).

The introduction of a provision within Bill 2 that prioritises the participation of the child or young person in best interests considerations is also a welcome step forward. Young people in the ACT consulted as part of CREATE's 2022-23 caseworker support consultation highly valued being listened to and having a say in case planning and decisions affecting them. Young people told us:

*"I never feel like I am listened to and certainly don't feel like I have a voice."* (Young person, ACT) (CREATE Foundation, 2022)

*"They are not invested in what I have to say."* (Young person, ACT) (CREATE Foundation, 2022)

*"Rushing me to make decisions is never good. Give me space and don't coerce me."* (Young person, ACT) (CREATE Foundation, 2022)



## CREATE recommends:

- Proposed reforms contained in Bill 2 in relation to the *'Best interests principle'* must be supported with practice reforms that prioritise considerations included in the [information paper](#). This includes the development of a practice framework for child protection workers that embeds the new proposed principle-based approach and ensures this is routinely applied in interactions with children, young people and vulnerable families. Practice guidance should also include culturally safe practice and be supplemented by training.
- To support the 'best interests' of Aboriginal and Torres Strait Islander children and young people, the ACT Government must expediate progress towards full implementation of the 28 recommendations and 8 sub-recommendations from the *Our Booris, Our Way* review. These recommendations provide a roadmap for reforming the child protection system. Full implementation of these recommendation will improve cultural safety and ensure access to support that is provided by Aboriginal Community Controlled Organisations (ACCOs) in the spirit of self-determination and in recognition of the need to transfer control and decision-making to ACCOs. This will also support implementation of the *'Active efforts principle'* (see section 1.6 of the [information paper](#)) proposed in Bill 2. As such, the ACT Government must hasten implementation efforts as a deliberate step to interrupt the over-representation of Aboriginal and Torres Strait Islander children in contact with child protection and care systems.
- To support the active participation of children in young people as per the *'Best interests principle'*, the ACT Government should ensure that all children and young people are supported to fully participate in decisions that affect them. This should be done by providing children and young people with developmentally appropriate information to support their involvement in discussions, and building a culture around young people where they feel their voices are being listened to and in which they can provide feedback in self-defined ways. Additionally, the ACT Government should consider providing appropriate feedback loops around how children and young people's concerns will be addressed.


### 1.2. Child and youth participation principle

We are particularly pleased to see the creation of a separate principle of *'Child and youth participation'* in Bill 2. In a recent CREATE Youth Advisory Group (YAG), young people in the ACT indicated that they received minimal information before they entered care. For some, this went as far as only being told they were entering care on the day it happened (CREATE Foundation, 2023c). The young people also advised that they were not provided with information about why they were entering care, how long it might be for, any support services that were available, and what happens when they turn 18 (CREATE Foundation, 2023c). They felt that how much they were told was limited by their age, meaning they didn't get all their questions answered (CREATE Foundation, 2023c).

## CREATE recommends:

That the *'Child and youth participation'* principle:

- include a list of decisions likely to have significant impact on the life of a child or young person modelled on section 10 of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)*,
- have due consideration for the child or young person's right to and right not to exercise their power of participation modelled on section 5E of the *Child Protection Act 1999 (Qld)*,
- incorporate a feedback loop for children and young people that explains how their views or concerns have been considered and, where they have not been addressed, any reasoning behind why this occurred. This should be provided in a way that is developmentally appropriate and culturally safe,
- include a guide on co-design of participation with children and young people in the ACT to ensure a consistent approach is employed across government departments, building off



CREATE's *Best Practice Guide on Encouraging Participation in Out-of-home care* (see CREATE, 2020), and in line with the ACT Office of Youth Engagement's *Youth InterACT Strategy*.

### 1.3. Family preservation principle

The CREATE Foundation welcomes proposed incorporation of a 'Family preservation' principle in Bill 2, which encompasses key elements of early support and that prioritises the least intrusive intervention. We acknowledge this as a critical step forwards to align the *Children and Young People Act* with Article 8 of the *United Nations Convention on the Rights of the Child* (see United Nations, 1989).

Young people in the ACT have told us about the importance of family relationships and the impact that lack of family connection has on them:

*"[Not being able to know my family] is starting to make life feel very small".* (Young person, ACT)  
(CREATE Foundation, 2023a)


*"We were born in different states so we were separated and now I don't have connection, I have seen her once. Now I'm over 18 I have curiosity about my family and I can't find my family and can't get support [to work through the process of doing so]."* (Young person, ACT) (CREATE Foundation, 2023c).

In principle, such measures will better consider the factors contributing to contact with the child protection system and any opportunities to intervene earlier with intensive supports to keep families together when this is safe, and avoid entries to care. CREATE is seeking clarification around how family preservation supports will be delivered in practice, including the practice frameworks that will underpin family preservation models, the mix, intensity, flexibility and length of time / number of hours of supports, and the degree to which the supports are evidence-informed and delivered by teams that are enabled to work in relational and whole-of-family ways.

The evidence suggests that best practice approaches to family preservation should be provided through trauma-informed approaches that:

- are grounded by a theory of change that consider key interventions, types of support provided and proposed outcomes to be achieved
- work in partnership with families to build trusting relationships and meet families where they are at, and seek their insights around what supports are needed
- adopt a child-centred approach within a whole-of-family context
- enable flexibility to provide support for the length of time required by the unique circumstances of each individual family unit, with the ability to scale intensity based on need
- are strengths-based, build parental capacity and facilitate the development of resilience within children and their families
- use flexible funding to help families meet their goals
- incorporate a network of wrap around supports and services
- facilitate positive engagement by deploying a flexible mix of supports based on the particular needs of the child and family (McArthur & Thomson, 2011).

Evidence suggests that best practice provision of such family preservation interventions require a specific skill set and appropriate training for caseworkers providing these interventions. Recent research in Australia highlighted that staff working within the child protection system are inadequately prepared for the complex and skilled work required (Russ et al., 2022). As such, in principle commitments to provide greater and earlier support for families must be accompanied by workforce planning to ensure that caseworkers can provide family preservation support that meets the needs of children and families. CREATE also notes that early intervention strategies must also occur in tandem with efforts to address the downstream crisis responses, the combination of which will increase workforce pressures on an already strained system.



The release of the recent *Counting the Costs* report documented pressures on the existing community services workforce. The *Counting the Costs* report tells a story of increasing demand and increased complexity of community service user cohorts that add to broader concerns around sustainability across the community services sector, including chronic underfunding that has not kept pace with the true cost of delivering services (Cortis, Blaxland, & Adamson, 2021). While the report points to the need to prioritise early intervention and prevention models as a solution to reduce subsequent resource requirements and pressures into the future, these approaches must also be adequately resourced in order to achieve the proposed outcomes and will take time to implement and fully realise diversionary impacts.

Further, the *Our Booris, Our Way Review* report called for meaningful early family supports and services delivered by ACCOs to reduce the need for entries to care (ACT Government, 2022). The need for this was subsequently reiterated by Natalie Brown, Chair of the *Our Booris, Our Way* Implementation Oversight Committee in its July-December 2022 update. Despite some prevention efforts, including the Functional Family Therapy - Child Welfare Program (FFT-CW), rates of overrepresentation remain unacceptably high (SNAICC, 2022). SNAICC's *Family Matters Report* (2022) paints a disappointing picture of low expenditure on family support and intensive family support, with the ACT having the third lowest (10.7%) expenditure rate in Australia. This is compounded by a very low proportional funding for ACCO-delivered child protection and family services (1.3%) (SNAICC, 2022).

In the spirit of self-determination, the CREATE Foundation strongly believes that the care and protection of Aboriginal and Torres Strait Islander children, young people and families should be led by Aboriginal and Torres Strait Islander organisations and communities. We urge the ACT Government to embed a commitment within the 'Family preservation' principle to resource ACCOs to flexibly deliver intensive family supports, based on local community needs. This would also align with proposed reforms noted in the [information paper](#) under the provisions relating to the 'Delegation of statutory powers'. This provision will allow the ACT Government to delegate all statutory child protection functions relating to Aboriginal and Torres Strait Islander children and young people to the chief executive of an ACCO that provides out-of-home care services.

#### **CREATE recommends:**

- Proposed reforms within Bill 2 to implement a 'Family preservation' principle require workforce planning and strong practice frameworks to underpin evidence-informed family preservation models, designed to flexibly scale the mix, intensity and length of time that supports are provided, and deploying relationship-based practice.
- In line with recommendations from *Our Booris, Our Way Review*, early supports and services for Aboriginal and Torres Strait Islander children and families must be funded by the ACT Government and delivered by ACCOs to families in an effort to reduce rates of overrepresentation of Aboriginal and Torres Strait Islander children and young people in care.

#### **Other considerations**

Overall CREATE recommends the ACT Government ensure sibling connections are enshrined into legislation across all six principles proposed in the [information paper](#), with a particular focus on siblings to be included in the 'Permanency and stability' principle. Young people in the ACT have told CREATE about the importance of maintaining connections with their siblings and the frustrations they have as a result of bureaucratic/administrative barriers to them building and maintaining connections:

*"We were born in different states so we were separated and now I don't have connection, I have seen her once. Now I'm over 18 I have curiosity about my family and I can't find my family and can't get support [to work through the process of doing so]. (Young person, ACT) (CREATE Foundation, 2023c)*

## CREATE recommends:

- Enshrining sibling connections within Bill 2, particularly in the context of the ‘*Permanency and stability*’ principle.
- This should be complemented by practice guidance for caseworkers on supporting children and young people to establish meaningful and regular sibling contact where it is safe to do so. Guidance material should at a minimum:
  - ensure sibling rights are a priority and decisions about siblings in out-of-home care are child-centred
  - prioritise sibling co-placements to keep families together where it is safe to do so
  - where sibling co-placement is not possible, establish a framework for ongoing sibling connection.

## Earlier support within the statutory system

### 3.1. Legislation delivered in practice: Introduction of Structured Decision Making® tools

While CREATE is pleased to see that the ACT Government is committed to delivering a package of practice updates in addition to proposed legislative changes contained in Bill 2, we highlight concerns around the use of the Structured Decision Making (SDM) tool that have been raised by ACCOs across Australia.

CREATE understands that concerns raised by ACCOs in other jurisdictions have highlighted a level of racial bias that such tools hold. In their submission to the New South Wales Parliamentary Committee on Children and Young People’s *Inquiry into the child protection and social services system*, the Aboriginal Legal Service (NSW/ACT) (ALS) raised concerns at how the tool has been used in practice and suggested that:

*“Many Aboriginal parents and families are assessed by caseworkers from a non-Aboriginal background and are thus vulnerable to negative beliefs and stereotypes of Aboriginal people and cultures in child protection decision-making.”* (ALS, 2021, p. 25).

These concerns have been echoed by the Waminda South Coast Women’s Health and Welfare Aboriginal Corporation (see Branco, 2023). Research also confirms the need for such tools to be assessed on the extent to which they operate equitably for people from different cultural and racial backgrounds, including:

- where they recommend services that are not suitable for some groups (Russell, 2015)
- when practitioners using such tools favour intervention for moderate risk cases, while others favour family preservation for these cases (Harnett & Featherstone, 2020)
- when the way risk scores are calculated or the way risk categories are defined, systematically disadvantage children of a particular race (Baird, Ereth, & Wagner, 1999; Coohy et al., 2013; and Russell, 2015).

SNAICC has also raised concerns around the lack of culturally safe and responsive practice within Child and Youth Protection Services (CYPS) in the ACT, with Aboriginal and Torres Strait Islander families in the ACT continuing to experience various forms racism and discrimination at different touch points with the child protection system (SNAICC, 2022). Such sentiments point to critical issues around the urgent need for culturally safe practice at all levels of CYPS (SNAICC, 2022).

## CREATE recommends:

- In the context of concerns raised by ACCOs in other jurisdictions, that the ACT Government work with ACCOs based in the ACT including Gugan Gulwan, Yerrabi Yurwang, Sisters in Spirit and the Aboriginal Legal Service (NSW/ACT) to better understand any unintended consequences related to the use of Structured Decision-Making tools for Aboriginal and Torres Strait Islander children, families and communities. If Aboriginal sector partners advise against the use of these tools for Aboriginal children and families, action this advice.
- Resource Aboriginal-led approaches to understanding and responding to needs and risk for Aboriginal children, young people and families. This includes resourcing the Aboriginal Community Controlled sector to develop culturally safe assessment tools for Aboriginal and Torres Strait Islander children and young people.

### 3.4. Immediate and urgent medical examinations

Building off the approach the ACT Government is proposing in Bill 2 (see section 3.4 of the [information paper](#)) is that due consideration be given to the child or young person's capacity to consent to health examinations. CREATE notes that child protection authorities in Queensland (Department of Children, Youth Justice and Multicultural Affairs) and Victoria (Department of Fairness, Families and Housing), as part of their respective child safety practice manuals, build in practice guidance that upholds the child or young person's right to provide or deny consent to such procedures (see *The State of Queensland, 2010-2023*; *Victoria State Government, 2022*). In this context, CREATE urges the ACT Government to develop accompanying practice guidance that specifies that consent must be provided by the child or young person to such procedures prior to the examination taking place.

Further, proposed reforms must also be supported by practice guidance to ensure children and young people presenting for such examinations receive appropriate care from trauma-informed medical practitioners and paediatric health professionals. The Royal Australasian College of Physicians (RACP) has highlighted the role that health services can play in supporting children and young people who have experienced trauma while simultaneously acknowledging the significant risk for health services to cause re-traumatisation (RACP, 2023). This is particularly concerning in the context of immediate and urgent medical examinations. As such, concerted effort must be directed at ensuring children and young people's physical and psychological safety throughout the process.

Further consideration should also be given to the accessibility and availability of trauma-informed and disability-informed medical practitioners to conduct these examinations. While CREATE understands the need for urgency in attending to immediate medical needs and to preserve evidence, such examinations should only be conducted by an appropriate medical practitioner and should not prioritise expediency over the need to ensure that no further harm is caused to children and young people.

## CREATE recommends:

- The ACT Government develop practice guidance to uphold the child or young person's right to provide or deny consent to such procedures, modelled off practice considerations included in both the Queensland and Victorian child protection manuals. At a minimum, such guidance must consider:
  - explaining the need for and urgency of the medical examination to the child or young person, including what the examination will involve
  - in all cases where the child or young person displays sufficient capacity to consent, consulting the child or young person and asking for consent to conduct the examination. If consent is denied by a child or young person with capacity to consent, then the examination should not proceed

- providing the child or young person with other supports they might need or request in order to proceed with the examination
  - balancing the child or young person’s concerns around/objection to consent with the need to provide treatment of immediate medical issues.
- That practice guidance applies a safety lens to ensure that safety is considered throughout the process of such examinations, and that medical practitioners safeguard the child or young person’s physical and psychological safety. Paramount within this process is taking a trauma-informed approach that considers the impacts of trauma, is child-centred, culturally appropriate and provided by culturally competent medical practitioners. It should also prioritise the voices of children and young people to raise any concerns and ask questions, enable healing, and provide wrap-around support, including referral to appropriate support services upon conclusion of the examination (RACP, 2023).
- The child or young person’s consent must also be obtained prior to medical examinations conducted as part of care and protection assessments required as per [section 367 \(a\)\(i\)](#) of the *Children and Young People Act 2008*. These assessments should also apply safety lens as outlined above.

## Enhancing judicial oversight for greater accountability

### 5.3. New reports on suitability of care arrangements

CREATE welcomes the creation of a new mechanism for monitoring and providing accountability on the suitability of care arrangements and allowing courts to utilise discretionary powers to order suitability reports in relation to deciding on final long-term orders for children or young people. These processes must provide for consultation with the child or young person as the expert on their own lives and to ensure their right to be involved in decisions that affect them at every touch point with the child protection system. In the case of family preservation orders or family reunification orders, CREATE reiterates the need for support and engagement with families, guided by trauma-informed care practices that recognises the unique circumstances of each individual family.

We know from the ACT Youth Roundtable for young people in care (2018) that was co-facilitated by CREATE, that young people can identify times in their lives when they felt important decisions had been made without their involvement (ACT Government, 2018). This was the case for all young people in attendance, with most young people sharing stories of confusion, hurt, distress and frustration when they felt they hadn’t been consulted, or where the reasons for key decisions had not been properly explained.


#### CREATE recommends:

- Provisions contained in Bill 2 that create of a new mechanism for monitoring and providing accountability on the suitability of care arrangements should build in consultation with children and young people to ascertain their views on the appropriateness of their care arrangements, and in the case of family preservation orders or family reunification orders, reflection on their feelings of safety and sense of wellbeing.

## Keeping children and young people in out-of-home care safe and connected

### 6.1. Case management and connection with children and young people in out-of-home care

CREATE Foundation is concerned that the insertion of a provision only requiring children and young people to be “*visited and spoken to directly by the child protection case manager on at least 2 occasions per year*” (ACT Government, 2023a, p. 39) sets a dangerous minimum standard. CREATE’s 2023 consultation with young people in the ACT on caseworker support revealed that almost 50% of young people who participated in the consultation were in contact with their caseworker either monthly or every 3-6 months (23.1% [n = 6/26] and 26.9% [n = 7/26], respectively) (CREATE



Foundation, 2022). While a further 38.4% either had no scheduled contact or were unsure about the frequency of contact (3.8% [n = 1/26] and 34.6% [n = 9/26] respectively). These results indicate that a significant proportion of young people were in contact with caseworkers/managers much more than twice a year.

CREATE is concerned that the proposed approach will set a lower minimum requirement that may result in significantly less contact for some young people. While CREATE acknowledges that the ACT Government is seeking to fully embed the ‘*Child and Youth participation*’ principle (see section 1.2 of the [information paper](#)), reduction in contact is likely to damage trusting relationships that have been built overtime and exacerbate existing concerns around a lack of care displayed by caseworkers. Young people in the ACT have told us about their negative experiences with caseworkers which resulted in young people not feeling listened to and cared for, which diminished the support they were able to receive and which meant that many of their issues or concerns remained unaddressed:

*“We are yet to really have a decent caseworker. One we can trust. We have not really had great support.”* (Young person, ACT) (CREATE Foundation, 2022).

*“I have nothing positive to say. They have not really addressed my needs.”* (Young person, ACT) (CREATE Foundation, 2022).

*“There was no rapport with me at all. They did not seem to care.”* (Young person, ACT) (CREATE Foundation, 2022).

*“I don't have a lot of positives to say about our last one. They were rude and dismissive of my needs. I could not open up to them.”* (Young person, ACT) (CREATE Foundation, 2022).


Rather than setting bare minimum thresholds for number of visits, proposed reforms should provide clear advice around case management, relational practice and connection with children and young people in out-of-home care to support the trusting relationships to keep kids safe and well. This requires skills robust practice frameworks and workforce development for caseworkers. Regular contact and continuity of relationships also facilitates meaningful and genuine participation of children and young people, ensuring their views and wishes are heard and responded to.

#### **CREATE recommends:**

- Insertion in Bill 2 of a provision requiring frequency of contact with case managers to be guided by the child or young person’s support needs. This should occur in person once per quarter and be supported by regular contact in between visits via another method of contact (i.e., email, phone call, video call or text message).
- Practice guidance for caseworkers to ensure young people’s participation is actively sought and valued by case managers.
- Workforce planning and development should privilege and resource relationship-based practice in all work with children.
- Practice guidance for case workers should promote relational practice given the criticality of relationships for children and young people. Guidance should promote open communication, active listening, involvement in decision-making, trust that is built through consistency of caseworkers over time, respect, mutuality, and rapport developed by engaging children and young people with a sense of fun.

#### **6.2. Retaining personal records: Life story work**

CREATE welcomes proposals in Bill 2 to enhance child protection’s life story work. However, we urge the ACT Government to include additional principles for such work to be grounded in relational practice that supports children and young people to make meaning of their life and world. In its current form, the reforms proposed in Bill 2 will embed:



*“A requirement for child protection to update the records of a child or young person and provide them to the child or young person (or their carer) each year.” (ACT Government, 2023a, p. 40)*

Such an approach, misses the opportunity to actively engage with children and young people through the therapeutic life story work (TLSW) or similar models. While ACT Government’s *Next Steps* reforms committed to improving life story work, it must also use restorative and trauma-informed practice principles. Rose’s model of TLSW (2012, cited in Lucas et al., 2022) provides children and young people (and where relevant caregivers) with the space to actively explore significant life events, and that of their wider family, to understand how they have come to be in care. Rather than passive recipients of records, children and young people are empowered and supported to attach meaning to their life experiences and recover/heal from trauma and experiences of loss (Lucas et al., 2022).

Further, delivery of therapeutic forms of life story work is grounded in relational practice that allows for flexibility to adapt/modify processes to the developmental needs or abilities of the child/young person and to ensure activities are relevant and meaningful for them. Lucas et al. (2022) in their evaluation of MacKillop’s TLSW pilot program, found that children and young people had an increased sense of self-identity, strengthened attachment with their caregiver, increased positive social behaviours, and decreased negative behaviours and emotions.

**CREATE recommends:**

- As a key strategy to support the trauma recovery of children and young people in care, expand on proposed reforms contained within Bill 2 to map and align life story work to therapeutic approaches. This should include building in a requirement for child protection workers to support the active participation of children and young people in life story work.
- This must also be complemented by practice frameworks underpinned by trauma-informed, attachment-informed knowledge and skills for those involved in providing therapeutic life story work with children and young people.


### **6.7. Support for young people transitioning from care**

CREATE is supportive in principle of any changes under Bill 2 aimed at strengthening the level of support for young people transitioning from care. However, we disagree with the proposal to ‘broaden and simplify’ (see ACT Government, 2023a, p. 41) wording around the types of supports offered to care leavers and are concerned that such proposals will not support the ACT Government to achieve its proposed goal.

The proposed amendments to broaden and simplify provisions relating to transition support for young people leaving care under a discretionary model are likely to perpetuate and exacerbate existing inequities in support provided to young people in the ACT.

In its current state, part 15.5 of the *Children and Young People Act 2008* provides a comprehensive list of considerations in regards to planning for transitions to independence and services the Director-General may provide to young people, noting that the section does not require the Director-General to pay for any service. Such considerations are reflected in the literature as critical features of adequate transition support for young people leaving care, including: planning across all life domains; real choices for young people in relation to their accommodation options, which include staying in placement, supported accommodation, and being able to return to carers if they left care at 18 years; adequate financial supports to cover basic needs; mentoring that attends to relational needs and life skills support; priority access to universal services, including health, education, and employment support; and supports that connect young people to family and culture (McDowall, 2022, p. 14; Rhodes, 2020 & Cameron et al., 2019). However, CREATE is concerned that the current provision of transition supports is discretionary, which undermines young people’s access to support.





Further, provisions under [section 529J](#), relating to financial support create a narrow scope for the provision of financial assistance to young people transitioning from care, with the Director-General required to be ‘reasonably satisfied on reasonable grounds’ that the assistance is for an appropriate purpose and necessary considering the young person’s circumstances. In practice, it appears that financial supports and funding of services under ‘After Care Support’ are only available to young adults (up to 21 years) with high and complex needs, identified via an assessment. This results in inequitable and discretionary access. Further, while the ACT’s ‘After Care Support’ suggests that there are practice supports offered to young people, including assistance with housing applications, more targeted support is required. Lack of clarity around what each domain should address results in a lack of adequate support for young people transitioning from care across all the critical domains required through transitions to independence. CREATE supports comprehensive, non-discretionary extended care packages and supports, including guaranteed housing, till 25 years.

Transitions to independence are also set against the rising cost of living and the housing crisis. The recent ACT Council of Social Service Inc (ACTCOSS) 2023 *Cost of Living Report* highlighted quite concerning trend data in relation to the cost of living in the ACT. Between December 2017 and December 2022, Canberra experienced significant increases in prices for fuel (37%), transport (23%), electricity (25%), medical and hospital services (19%), housing (21%), education (20%) and food (18%) (ACTCOSS, 2023). The rising cost of living is having a disproportionate impact on young people. Finder’s recent *Cost of Living Report 2023* highlighted that:


- costs are mainly impacting younger people, with 90% of gen Z reducing their spending compared to only 59% of baby boomers,
- 70% of gen Z said they experienced financial stress, followed by 60% and 45% for generation Y and X, and
- baby boomers (29%) were the least likely to report financial stress (Cooke, 2023).

In this context, more targeted investment and independent living allowances are required to meet the needs of young people transitioning from care in the face of the ACT’s cost of living crisis. Additionally, there are considerable systemic issues around both the availability and wait times for accessing social housing support. As of 11 September 2023, the ACT Government indicated the following (ACT Government, 2023b):

- 134 wait listed priority housing applications; with an average wait time of 253 days
- 2,065 wait listed high needs housing applications; with an average wait time of **over 3 years** (1,215 days)
- 972 waited listed standard housing applications; with an average wait time of **over 5 years** (1,894 days).

These wait times are unacceptable given that housing is one of the critical building blocks for young people transitioning from care and is linked to better health and wellbeing outcomes in general (Rolfe et al., 2020). Safe, secure and affordable housing is necessary for wellbeing, sense of security, physical and mental health, engagement in education and employment, and social and community connectedness. Young people need timely support and guaranteed housing, given the limited supply of social housing properties in the ACT and significant wait times associated, such support will help to promote improved life outcomes for these young people and address the risk of homelessness.

Further, we urge the ACT Government to consider extending support for care leavers up until the age of 25 years. The proposed reforms in Bill 2 which suggest that child protection maintains discretionary power to provide support and services considered reasonably necessary in the circumstances for young people aged 21-24, will perpetuate inequities that already exist within the current package of transition supports. Young people in the ACT have told us about feeling unsupported, disappointed and frustrated when seeking support after aging out of arbitrary transition support age brackets:



*“Being 22, I’m at the bottom of the list to help. I’m feeling very isolated and not supported. Recently they helped me to move and broke a lot of my furniture and just said to replace it. I’ve never felt supported by my caseworkers, but even more so after I turned 18.” (Young person) (CREATE Foundation, 2023a)*

In CREATE’s view, a comprehensive package of support is required for young people transitioning from care up to the age of 25, including guaranteed housing. Research suggests that throughout the transition to adulthood, young people may make several attempts towards independence, with many having the option to return to their family homes in the face of adversity or when they encounter major problems (Campo & Commerford, 2016). This is not the case for young people leaving care and transitioning to independence, as they do not always have access to a parental/family safety net (Mendes et al., 2011). As such, it is critical that there is some level of support to 25 for young people leaving care.

**CREATE recommends:**

- In place of proposals to simplify and broaden wording around the type of services child protection can provide, that Bill 2 consider expansion of [section 529I](#) – ‘Assistance generally’ to include explanatory information around each life domain including:
  - section 529I (2)(b) accommodation which could include supported accommodation options, housing allowances, and being able to return to carers if they left care at 18 years.
  - section 529I (2)(c) education and training support that involves targeted personal support, builds on young people’s strengths and is culturally informed (Cameron et al., 2019).
  - section 529I (2)(d) employment support including access/referral to specialist services, skills training and work experience that builds on young people’s strengths and is culturally informed
  - section 529I (2)(e) financial assistance provided to all young people leaving care to meet their needs and basic expenses and with consideration given to cost of living pressures (and reviewed where necessary).
  - section 529I (2)(g) social support that connects young people to family and culture
  - section 529I (2)(k) health care, including facilitation of priority access to such services.
- That Bill 2 amend [section 529J](#) to include provisions for flexible funding to support achievement of goals that directly relate to transition plans and to support access to and maintain safe, secure and affordable housing. This would support young people to access the private housing market given the existing systemic issues around both the availability and wait times for accessing social housing support.
- That the ACT Government commit to providing transition supports for young people leaving care up until the age of 25 and remove discretionary principles and caveats around providing the support and services only when considered reasonably necessary in the circumstances. This should also include assurances that are not discretionary in nature around providing financial allowances for young care leavers up to age 25, including guaranteed housing or support to access the private housing market.



## Conclusion

Thank you again for the opportunity to provide feedback on the proposed *Children and Young People Amendment Bill 2 2024*. CREATE welcomes the ACT Government's ambitious reform agenda and the inclusion of the voices of children and young people as part of this process. Many of the concerns raised by the CREATE Foundation in this submission relate directly to how proposed reforms will be operationalised and supported by practice reforms needed to better divert children, young people and families from contact with the child protection system and improve experiences for those already in contact with the system. This includes meaningfully engaging children and young people as experts by experience.

CREATE is also concerned that the proposed changes to the *Children and Young People Act 2008* may have unintended consequences. CREATE reiterates the importance of the *Children and Young People Act 2008* in protecting the rights and safety of children and young people in the ACT.


Ensuring that legislative reform can be translated into real outcomes for children, young people and families will require considerable resource allocation. This should include investment, workforce development and robust and transparent monitoring and evaluation of reform implementation and impact. This should include the voices of children, young people and families with lived experience as a vital source of evidence in relation to how the system is operating.


Should you have any questions or require additional information, please contact Imogen Edeson, National Advocacy and Influencing Manager, CREATE Foundation.

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