



**YOUR SAY**

# Children and Young People Amendment Bill 2 2024

## Listening Report

March 2024

Community Services Directorate

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# CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2024

Delivering significant, tangible, positive change for children, young people, families, carers and workers who intersect with the child protection system through legislative change.

## REPORT ON WHAT WE HEARD

The ACT Government is reforming child, youth and family services to ensure we strengthen families and keep children and young people safe and connected. Legislative change is one part of this [plan for reform](#).

The ACT Government made a commitment to establish a responsive, high-functioning legal framework for the ACT's child protection and family support system. This reform will align the *Children and Young People Act 2008* (the CYP Act) with [Next Steps for Our Kids 2022–2030](#) – the ACT's strategy for strengthening families and keeping children and young people safe. It will also address recommendations from key reviews and reports regarding the ACT's child protection and family support system requiring legislative change.

Modernising the CYP Act will lead to necessary reform of the ACT's child protection and family support system.

Due to the complexity of this reform, legislative amendments are happening in 2 stages:

- > [Stage 1 – The Children and Young People Amendment Bill 1 2023 \(Bill 1\)](#)
  - Legislation was passed by the ACT Legislative Assembly in November 2023.
- > [Stage 2 – The Children and Young People Amendment Bill 2 2024 \(Bill 2\)](#)
  - The proposed second stage of reform to the CYP Act builds on stage 1 and was the subject of this consultation period.

This purpose of the consultation was to:

- > **Inform** – Ensuring impacted people and organisations have a comprehensive understanding of the proposed changes, their consequences and their role in implementing the change.
- > **Test** – Reviewing the detail of the proposed changes to ensure they deliver the intended purpose.
- > **Assess readiness** – Testing the preparations required by stakeholders for the new system to inform the commencement date for the new Act and inform any implementation support required.

This listening report presents what we heard in response to the stage 2 proposed changes.

## THE CONVERSATION

We asked for your feedback on proposed changes to the CYP Act. We wanted to know:

- > Will the proposed changes deliver the intended purpose of the reforms?
- > What will you need, as someone impacted by the changes, to prepare for and put them into your practice?
- > What opportunities or potential risks do you see for your sector in performing these changes as part of your practice?

Our information paper and additional resources published on the YourSay platform aimed to help respondents to frame their feedback. The topics covered in the information paper were:

- > The legislative framework: Guiding principles
- > Promoting shared responsibility for child protection
- > Earlier support within the statutory system
- > Care and protection orders: Better and more accountable case management
- > Keeping children and young people in out of home care safe and connected
- > External merits review.

The main consultation period ran from 3 October to 21 November 2023.

## WHO WE ENGAGED

It was important for us to hear from individuals and organisations who would be directly impacted by the proposed changes.

To do this we ran the YourSay consultation calling for your written submissions alongside a series of workshops and information briefings tailored to specific groups. These were held online, face to face and directly with stakeholders including:

- > children and young people with lived experiences of out of home care
- > families and carers
- > government and non-government organisations
- > child, youth and family service providers
- > organisations representing Aboriginal and Torres Strait Islander groups including Aboriginal Community Controlled Organisations
- > peak bodies and advocacy groups
- > the legal sector
- > human rights and justice organisations

We got two kinds of feedback: one we can share publicly and another we can't (for example, where details of individual experiences have been provided in confidence or may identify a child or young person). Feedback that's approved for publication has been included in the *Listening Report*. It's the thoughts and ideas our stakeholders are comfortable with sharing with the wider community. The feedback that could not be published in the *Listening Report* is also informing the proposed legislative changes.

## KEY INSIGHTS FROM THE COMMUNITY

Overall, we heard:

1. Strong support for the scope of the proposed changes.
2. Agreement that the direction of change is aligned to the ACT Government's reform agenda as outlined in [Next Steps for Our Kids 2022–2030](#).
3. A lack of trust in the ACT child protection system.
4. A strong call for further consultation and detail.

The majority of stakeholders welcomed the changes as proposed in the Information Paper and the commitment to reforming the CYP Act. The most strong and consistent themes were:

- > the importance of aligning the positive legislative change with a clear focus on implementation; and
- > continuing to strengthen trust and confidence in the child and youth protection system, along with working with our community partners.

The majority of responses welcomed the actions aimed at addressing:

- > over representation of Aboriginal and Torres Strait Islander children and young people throughout the system; and
- > unacceptable levels of removal of Aboriginal and Torres Strait Islander children and young people from their families and the cultural disconnection that can result.

Many people raised the importance of building a therapeutic and trauma informed system at all stages.

There was strong support for the proposed approach to court orders and the additional oversight introduced through an external review of decisions process.

There were strong calls to strengthen the important role of carers and address the experience of limbo that children, young people, carers and families can experience when in out of home care.

There were key areas where stakeholders had mixed view, including:

- > how to deliver more effective information sharing;
- > changes to mandatory reporting; and
- > how the proposed principles of the Act should be applied in practice and in the courts.

Many respondents looked forward to more detail as the project progresses. Many wanted to have input to an exposure draft of the bill to understand and test the amendments in detail.

Below are the broad themes and more detail that emerged from your feedback.

## Intent of the reform

### Child Wellbeing Focus and Reform Scope

- > **Youth Coalition** summed up the views of many submissions. They told us ‘The proposed amendments outlined in the information paper aim to place the wellbeing of children and young people and their best interests at the core of the reforms, aligning with the intentions of Next Steps. These amendments reflect positive changes grounded in a review of evidence and of other jurisdictions’ legislation and practice. We would like to commend the ACT Government for putting together comprehensive, detailed and well considered amendments reforming The Act’.
- > Similarly, the **Conflict Resolution Service** said, ‘Placing the child or young person at the heart of decisions concerning their best care is the most promising way to achieve the intended goals of the reform’.
- > There was broad agreement among many submissions that the current child protection system needs significant change, and that the scope and focus of the changes outlined in the Information Paper will be effective in changing legislation to support fundamental changes in practice.
- > The **ACT Human Rights Commission** said, ‘there is urgent need to transform the child protection system in the ACT. Our submission strongly supports the intent of the proposed reforms to move from a risk-based adversarial approach to child protection to a proactive, trusted, family centred and culturally safe system that is firmly centred within a human rights framework’.
- > **Barnardos** ‘supports the guiding principles of the legislative framework and welcomes the concepts and proposals’.
- > **ACT Council of Social Service** was ‘supportive of these overarching objectives, and we recognise the need to reform the CYP Act to improve the care and support provided to children and young people involved with the child protection and out-of-home care system in the ACT. While we support most of the proposed amendments, we believe some aspects warrant further consideration to avoid unintended consequences that may work against the realisation of these core objectives.’
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** said ‘the care and protection system needs an overhaul. By and large, we are hopeful that the proposed changes will enable an effective shift from child protection and out of home care to earlier support, intervention, and diversion.’
- > However, we also heard different opinions. While many supported the changes, some strongly disagreed and pointed out things they think are not right or might be difficult.
- > The **Canberra Restorative Community** told us, ‘The legislation must create processes which fundamentally re-orient the way child protection works to focus first on helping families solve their problems in a restorative way. The current proposals in the information paper do not do this, whether it is in assessment, information, administrative fairness or accountability’.

### Strong support for the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)

- > We heard strong support for embedding the full intent of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP).
- > **SNAICC – National Voice for Our Children (SNAICC)** welcomed the implementation of the ATSICPP by telling us, ‘SNAICC commends the ACT Government’s commitment to legislate all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) across Bill 1 and Bill 2.’
- > **ACT Disability, Aged and Carer Advocacy Service and Advocacy for Inclusion, Aboriginal Legal Service NSW/ACT** and **Carers ACT** also supported proposed changes to strengthen recognition of the ATSICPP and

better meet the needs and interests of Aboriginal and Torres Strait Islander children, young people and families.

### Implementation and further consultation

- > While many people strongly support the ideas behind the proposed law changes, we also heard changes won't work well without appropriate implementation. We heard we need a lot of pieces in place, like better policy and guidance material, training, new ways of doing things, and more funding for Aboriginal Community Controlled Organisations (ACCOs) to achieve the intent behind the legislative changes.
- > We heard a strong call for further consultation, more detailed information about the proposed changes and an exposure draft of the proposed second Bill.
- > We also heard calls for an independent review to be conducted after the legislative changes take effect.
- > For example, the **Human Rights Commission** commented 'meaningful changes in the outcomes for children, young people and their families will depend on meaningful administrative, budgetary and cultural change. Although legislative reforms of statutory intake and referral pathways have the potential to provide key platforms for a therapeutic approach based in family support, there are clear limits to what can be achieved by amendments alone...'
- > **SNAICC** noted 'many of the proposed provisions will require a significant increase in resourcing for Aboriginal Community Controlled Organisations (ACCOs) and fundamental practice changes to the Community Services Directorate. Without an indication of how the ACT intends to couple these legislative reforms with policy and funding change, it is difficult to assess what the intended or unintended consequences of the proposed amendments may be.'
- > **ACT Council of Social Services** told us, 'the sheer complexity, significance and scale of reforms included in the omnibus Bill, along with the limited timeframe for consultation, ultimately limited the scope for meaningful engagement with local community members and organisations. We recognise the limitations of incremental adjustments and the pressing need for transformational change to the ACT's child protection system. Such change, however, needs to be implemented in a manner that enables meaningful engagement with the communities.'

### The voices of children and young people – what they told us

- > There was overwhelming support for strengthening the voices of children and young people.
- > In speaking with children and young people, many felt hopeless and excluded from decision-making. This also led to feelings of anger. One **young person** told us, '*You shouldn't have to fight to be heard, they should just be hearing you*'. **Another** told us, '*[You have] no control where you get placed, where you end up, how much notice you get given ... they are not building a life around you – you are building a life around them*'.
- > Children and young people told us how important it was to be heard and to participate, and clarified participation was about choice and providing the right mechanisms, support, and time to do this. They told us it's important to recognise a child or young person who may seem disengaged often isn't and instead just needs time to breathe and to care for their mental health.
- > We also heard participation is more than just words. Children and young people also communicate their views in non-verbal ways.
- > We heard strong views from older young people about decision-making and the participation of others in those decisions. While agreeing it was important for biological parents to be involved, there was clear consensus that it should not be at the expense of the children and young people. One set of siblings talked about their fear of

- being returned to their birth parents in a different state. They said their parents would not consent to adoption, and the fear was exacerbated as they had new siblings who remained with their parents.
- > Children and young people told us very clearly about the importance of sibling relationships and the need for these to be protected and nurtured. It was evident how much care and concern young people had for their siblings, whether living in the same placement or elsewhere. We heard sibling groups were sometimes not considered as a whole when decisions were made, and that siblings should be considered as important and valuable participants when decisions were made about their brothers and sisters.
  - > We also heard how children and young people value the long-term parenting relationships they can develop with their carers. One **young person** told us, *'I think it's heavily outdated that the parents – after you've been with other carers or parents for so long [are prioritised]. We need to look at the kid's rights, like [a] squatter's rights in a house... Why can't a similar thing happen when another parent cares for kids for an extended period of time...'*
  - > Children and young people also told us they must be given information about their lives, and it must be factual, timely and not opinion based. It must be given in a way that can be understood, recognising literacy levels and age and stage of development.
  - > The young people we spoke to expressed frustration because they felt decision-makers didn't have all the information they needed. In their own words, a **young person** said, *'they just don't have the full picture or get the right information.'*
  - > Another young person stressed the need for better communication between different agencies and places. They were worried about mistakes in basic information, like getting names wrong, and the chance people causing harm could move around. A **young person** said, *'If you guys would just talk to each other, you'd know what was going on.'*
  - > Young people spoke a lot about accountability and oversight. One **young person** talked about an independent body having oversight over a young person's access to their information and asked why there were not more regulators. They told us, *'Accountability would be great ... the higherups that were neglectful should be held accountable and charged as such'* and *'Official visitors and public advocates need more power'*.

## The legislative framework: guiding principles

- > We heard strong support for the introduction of a legislative framework driven by guiding principles, provided it was clear how and when to apply them in practice.
- > **Youth Coalition** told us, *'A shift towards principles-based legislation is at the core of these reforms. This approach allows for more flexible practice into the future that is less rigid and prescriptive. We support this shift and endorse all five guiding principles.'*
- > **Families ACT** told us they strongly support *'a legislative framework driven by principles rather than rules. We hope that this change will make space for and encourage reflective practice, promoting child-centred and family focused work.'*
- > **Barnardos** told us *'Barnardos supports the guiding principles of the legislative framework and welcomes the concepts and proposals.'*
- > **ACT Council of Social Services** was *'broadly supportive of the ACT Government adopting a principle-based legislative framework in place of a heavy reliance on rule-based and prescriptive provisions. We are also supportive of the five foundational principles articulated in the Children and Young Peoples Amendment Bill 2 2024.'*

- > While there was strong support, we also heard mixed views on the suite of principles, hearing some confusion on how they would be applied in decision-making.
- > **Women's Legal Centre ACT** and **Legal Aid ACT** told us they 'support the introduction of guiding principles as they will guide and inform how decisions are made within the system, including by reporters, caseworkers, and judicial officers. The principles should provide greater structure and clarity for parents who are engaged with the care and protection system, allowing them to better understand the system's priorities, and why decisions are made.' However, they qualified their support by telling us, 'we observe there to be a lack of clarity about how the principles interact with each other. Beyond the best interests principle being paramount and the other principles being 'non-hierarchical', it remains unclear as to how the other principles interact.'
- > **CREATE** told us they are '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. 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.'

### Best interests

- > There was strong support for keeping and emphasising the best interests principle.
- > **Uniting NSW/ACT** told us, 'We strongly agree that the best interests principle should underpin all areas of the child protection system'.
- > **Women's Legal Centre ACT** and **Legal Aid ACT** told us, 'We support the introduction of the best interests principle, and this being the paramount consideration. It brings the Children and Young People Act into line with the Family Law Act 1975, which will promote a more consistent understanding and application between the jurisdictions.'
- > While there was overall support, some groups raised concerns that the specific considerations for the best interests principle may need adjustment.
- > The **ACT Human Rights Commission** told us, 'Amendments to relocate, and reduce the complexity of, the best interests principle for care and protection decisions made under the CYP Act do not inherently raise concern'. However, the ACT Human Rights Commission qualified its support by telling us, 'Not all of the seven elements identified by the UNCRC currently feature among the eleven 'best interests' criteria ... Of particular concern is that the CYP Act does not expressly recognise the principle of prioritising support to preserve the family environment and relations.'
- > The **Canberra Restorative Community** told us 'the expanded definition of 'best interests' ... does not include the consideration of the risk(s) of CYPS intervention. Harm of removal is likely to be even more significant than risk to the child in the family in most cases.'
- > We also heard that it would be important to train decision-makers to consistently and effectively implement the best interests principle.
- > **Carers ACT** told us 'it is imperative that decision-makers undergo comprehensive training to understand what the best interests of the child must consider, as specified in the CYP Act, including relationships with carers. Furthermore, we stress the importance of decision-makers providing clear and well documented reasoning for their decisions in regard to the best interest principle. This will ensure transparency and accountability, ultimately leading to the best possible outcomes for the children and young people, while providing reassurance to carers that there is structured reasoning behind the otherwise subjective sounding terminology.'

## Child and youth participation

- > We heard strong support for the principle of child and youth participation as well as suggestions of what it should incorporate.
- > **Uniting NSW/ACT** told us ‘to include the importance of accessible and appropriate communication tools to facilitate the involvement of the child or young person.’
- > **CREATE** told us to ‘incorporate a feedback loop for children and young people that best explains how their views or concerns have been considered and, where they have not been addressed, any reasoning behind why this occurred.’ The incorporation of a feedback loop ‘should be provided in a way that is developmentally appropriate and culturally safe.’
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** expressed general support for the principle, but recommended, ‘In order to ensure that children and young people are able to participate in the process, but also be protected from the trauma of decision making, a specific requirement should be included which prohibits them from being required to express their view/opinion.’
- > **ACT Council of Social Services** told us ‘we support the creation of a ‘child and youth participation’ principle, recognising the importance of listening to children and young people and ensuring they have a say in case planning and decisions affecting them. Despite this, there is an overall lack of clarity regarding the ability for children and young people to have their voice heard and responded to.’
- > **Youth Coalition** also highlighted the complex interaction between the child and youth participation principle and parental consent, stating *‘the parents’ rights seem to over-ride the young person’s consent to seek support in the community. For fear of legal risk, community organisations avoid working with young people who cannot get their parents’ consent due to lack of clarity regarding whose consent is necessary. As a result, young people often run away from home and remain unsupported by services until they are 16 years of age and able to consent. Therefore, no matter how seriously we are taking the voice of the young person or how much we aim to support their best interests, the lack of clarity regarding consent prevents young people from receiving support.’*
- > This was echoed by the **ACT Council of Social Services** which stated that ‘under certain provisions in Bill 2, it appears parents’ rights can override young people who are under the age of consent (16 years old) and who want to consent to seeking voluntary community support. To rectify this, some ACTCOSS members have suggested a ‘mature minor’ policy be implemented to enable young people under 16 to make decisions without the need for an order to be made.’

## Family preservation

- > We heard support for the principle of family preservation.
- > **Uniting NSW/ACT** told us ‘We strongly agree with the proposed family preservation principle and the recognition that this principle extends across all areas of the child protection system.’
- > **Youth Coalition** qualified its support by referring to the concept of ‘least intrusive intervention’ and telling us ‘We need to ensure that the ‘least harmful and safest’ intervention is used, rather than deferring to the least intrusive.’
- > **ACT Council of Social Services** said ‘the inclusion of ‘family preservation’ as a foundational principle is also welcome. Implementing this principle will require greater focus on the factors contributing to involvement with the child protection system, including intervening earlier with intensive supports to keep families together when it is safe and to avoid entries to care.’
- > While there was general support, we heard that effectively implementing the family preservation principle will require sufficient support and resources.

## Permanency and stability

- > We heard support for the principle of permanency and stability, as well as suggestions of what it should incorporate. This included recognition of:
  - connection to culture;
  - sibling connections; and
  - staying connected with former carers where it is in a child or young person's best interest.
- > **SNAICC** welcomed the proposed approach to recognise broader concepts of relational permanence for children and young people in the ACT, however, noted for Aboriginal and/or Torres Strait Islander children, it is important to recognise and weigh cultural permanence equally with the three existing dimensions of permanence. SNAICC highlighted that placement decisions and extension requests informed by the stability and permanence principles in their current iteration may accelerate the use of adoption and EPR applications for Aboriginal and/or Torres Strait Islander children by non-Indigenous carers. SNAICC recommended CSD revise the wording of the principle as it applies to Aboriginal and Torres Strait Islander children and support them to remain consistently connected to their cultural identity.
- > **Aboriginal Legal Service NSW/ACT** echoed SNAICC's qualification of its support for the principle and told us *'there is an additional aspect of cultural permanency that needs to be considered.'*
- > **Women's Legal Centre ACT** and **Legal Aid ACT** support the implementation of this principle, stating 'this principle better enables CYPS and the Court to consider creative solutions that promote a child or young person staying and/or maintaining connection with their parents. This principle may also better equip the court to consider the appropriateness of a proposed out of home care placement.'
- > We also heard concerns from carers about the restoration component of permanency and stability.
- > **Carers ACT** told us we should 'Exercise caution in overemphasising restoration, particularly where it may place undue stress on families and/or make a child or young person feel coerced into returning to their biological parents'. Carers ACT also told us we should 'Develop specific supports and training for foster and kinship carers that facilitates their participation in restoration efforts'. Carers ACT proposed a limit to restoration recommending we should 'Legislate a fixed time period after which restoration will not be pursued to promote permanency and stability'.
- > A **diverse range of carers** attended the Carers' Forum and shared their perspectives. One carer told us, 'There are lots of points about permanency and stability being important. But many of the amendments are the complete opposite to this. There is a forever open door for restoration. This is the exact opposite for stability. This will do irreparable damage to carers in the system and the recruitment of carers. It's very harmful.' Another carer added, 'It's also harmful for birth families. It will lead to it always being a battle. Once it's settled (where the child is living, the orders) the birth families can become part of our family.'
- > Some stakeholders advocated for establishing clearly defined timeframes for permanency and stability to offer children and young people more certainty regarding their future and to set more distinct boundaries for determining when active efforts toward reunification should cease. These stakeholders emphasised the importance of having a specific timeframe that aligns with the attachment and developmental needs of children to create a window of opportunity for viable restoration. We heard consensus among these stakeholders that the proposed principle of stability and permanency does not adequately address children and young people's need for permanency and stability.

## Administration of the Act

- > Stakeholders told us the introduction a Principle of Administration would bring the ACT in line with other states and territories.
- > **Youth Coalition** suggested the principle could also *'outline a commitment to ongoing reviewing of what constitutes the 'highest standard'*. This would assist in ensuring appropriate ongoing investment in maintaining practice of the 'highest standard'.

## Active Efforts

- > We heard strong support for the introduction of active efforts for all children and young people and support for the expectation that case workers would genuinely engage with children, young people and their families in reaching all decisions. Support of active efforts was particularly strong around prevention and restoration.
- > **SNAICC** specifically welcomed 'the enhanced powers of the ACT Children's Court to adjourn a decision based on whether active efforts have been made to keep Aboriginal and/or Torres Strait Islander children with their families' and the 'addition of legal services to the list of supported services within the principle of 'Active Efforts'.'
- > **Barnardos** told us 'We strongly support applying the active efforts principle ... to take proactive steps to prevent children's placement in out-of-home care or restore them to home if they have entered care. Where returning home is not feasible, or in their best interests, we strongly support placing them with family, kin or community'.
- > This view was reiterated by the **ACT Human Rights Commission** who told us they were 'strongly supportive in principle of the introduction of a principle of active efforts. We understand this principle would oblige those exercising functions under the CYP Act to make deliberate, evidenced and persistent attempts to prevent a child or young person from entering out of home care or else to restore them to their parents or family.'
- > We also heard recommendations for furthering the principle.
- > **SNAICC** recommended we 'Legislate the option for the ACT Children's Court to dismiss an application on the grounds that active efforts have not been met if it is in the best interests of the safety, welfare and wellbeing of the child or young person.' SNAICC also recommended including 'Aboriginal family-led decision-making' within the list of supported services.
- > The **ACT Human Rights Commission** recommended 'the Aboriginal and Torres Strait Islander Children and Young People Commissioner and ACCOs must be empowered to dispute evidence of active efforts and put forward their alternative proposals for reunification to the court.' They also queried whether 'legal services and other active efforts might extend to assistance regarding other risks of harm to a child or young person, such as a lack of stable housing or employment.'
- > **Aboriginal Legal Service NSW/ACT** supported the insertion of 'active efforts' but noted 'The insertion of 'active efforts' as a stand-alone principle does not embed the principle in other provisions within the legislation where evidence of active efforts is required.' Aboriginal Legal Service NSW/ACT also recommended we 'legislate that the ACT Children's Court can dismiss an application on the basis that active efforts have not been undertaken or the principle not met, where it is in the best interest of the safety, welfare, and wellbeing of the child to do so.'
- > Respondents also reinforced the importance of resourcing the implementation of active efforts at all points in the legislation.
- > **Barnardos** told us it was 'critically important that the active efforts principle be translated into concrete practice guidance accompanied by the necessary investment in training, support and data analysis to support timely, purposeful activity and consistent decision making.'

- > **SNAICC** told us ‘Legislative reform must be paired with commensurate investment in Aboriginal and Torres Strait Islander Legal Services.’
- > The **ACT Human Rights Commission** told us they ‘consider that realising ‘active efforts’ in practice will likely require far greater funding of Aboriginal Controlled Community Organisations (ACCOs), as a proportion of child protection and family services funding, than its current level of 1.3%.’

## Information sharing

- > We heard strong support for improving how information is shared. Many felt the current rules for sharing information in the *Children and Young People Act* are confusing and scattered, making it hard to understand and use them.
- > Many agreed with the idea of creating a system for other organisations to exchange information more easily. This is because there is a shared understanding that the current way of sharing information causes delays and creates isolated information, which is not good for the safety, welfare or wellbeing of children.
- > There was also agreement on the need to clarify information-sharing thresholds and many wanted the information-sharing process to be faster.
- > Discussions with carers focused on information sharing and privacy safeguards. Many carers told us they face challenges accessing important health and wellbeing information about the children in their care. Some stakeholders advocated for stronger mechanisms to safeguard carer privacy and wanted to include carers in the standalone principle of information sharing.
- > Despite this overall support, feedback also highlighted significant concerns regarding privacy, the ‘principles-based’ approach, and retaining Information Sharing Teams (formally Care Teams). We heard there is a need to carefully balance these important issues and ensure legislation does not unintentionally deter help-seeking behaviour.
- > Feedback also emphasised the importance of working together, considering the different laws and practices of organisations. This highlights the need for a unified approach for successful implementation and the need for further consultation.
- > **ACT Council of Social Services** told us ‘there has not yet been effective consultation with organisations that would be in scope for information sharing arrangements. This portion of the legislation ... should be delayed until this has occurred. This would enable a better understanding of the likely unintended consequences and planning how to mitigate them.’
- > Stakeholders told us the proposed framework should support integrated information-sharing systems with safeguards, cultural sensitivity, and collaborative methods. We heard that it is important any new model included clear guidance for respectful information exchange, record storage and retention, with particular attention to the unique needs of pregnant individuals.
- > A common theme was recognising the crucial role of information sharing for Aboriginal and Torres Strait Islander children and young people. There was strong support for creating rules that promote cultural safety and acknowledge cultural rights.
- > **SNAICC** told us ‘in theory, the early identification of risk factors enabled by the ACT information sharing scheme, should galvanise an integrated systems response that allows parents and caregivers to engage with the services they want and need to strengthen their parenting capabilities’.

## The role of consent

- > Many stakeholders were concerned about the proposed 'principles-based' approach and told us there was a need for clear guidance and protocols to protect human rights. Some stakeholders called for a consent and exception-based model in the legislation.
- > The **ACT Human Rights Commission** said that 'without diminishing the importance of timely, collaborative, coordinated and informed responses to the needs of children and young people, our preliminary view is that a 'principles-based' approach would not provide sufficient protection against arbitrary or unreasonable collection, use or disclosures of personal information.'
- > **Carers ACT** said the language regarding consent 'needs to be strengthened if it is to be included in legislation, particularly if there is to be a broad offence provision relating to unauthorised use and disclosure of information'.
- > **SNAICC** stated that 'without a sufficiently strong emphasis on consent, SNAICC is concerned the proposed amendments to the ACT information sharing scheme will compound the historic surveillance of Aboriginal and/or Torres Strait Islander families and scrutiny of their parenting capabilities.'
- > The **Women's Legal Centre ACT** and **Legal Aid ACT** said 'Information sharing between agencies, with client consent wherever possible, can and should reduce the need for CYPs involvement, by enhancing safety and reducing the number of mandatory reports.'
- > Despite these concerns, many were also open to and supportive of the suggested 'principles-based' approach. They highlighted it could provide more flexibility, adaptability, and a better understanding of the complex issues at hand. Additionally, stakeholders gave useful ideas on how a principles-based model could balance different needs effectively and expressed willingness to work together on creating a more detailed model.
- > **Barnardos Australia** 'welcomes the ACT Government's recognition of the pivotal role of information sharing when working with vulnerable children, young people and their families, and we support the new information sharing model that has been proposed'.
- > **CREATE** said 'by strengthening information sharing and collaborative efforts between non-government organisations and government bodies to better support children and families, we firmly believe that the proposed amendments to the Children and Young People Act, as outlined in the information paper, represent a positive step towards ensuring the safety and connectivity of children and young people.'
- > **Conflict Resolution Services** told us 'enhanced information sharing across the sector will undoubtedly lead to a more holistic support system for children and their families, representing an excellent opportunity for the funded non-government sector to ensure best practices.'
- > **SNAICC** and the **Aboriginal Legal Service NSW/ACT** both recommended a 'consent' provision attached to the ACT Information Sharing Scheme to ensure '*practitioners...take into account the views of the child and their family members about sharing confidential information where it is safe, appropriate and reasonable to do so.*'
- > The **ACT Human Rights Commission** noted that other jurisdictions, regionally and internationally, [may] have adequately justified a principles-based approach over a mandated legislative consent-based scheme. The Commission remained open to provided more detailed advice when provided with a detailed legislative proposal and justification beyond that provided in the information paper.

## Consent from children and young people

- > Stakeholders offered limited commentary on obtaining consent from children and young people for information sharing, yet the insights provided were important.
- > The **ACT Human Rights Commission** particularly highlighted scenarios where the rights, best interests, and privacy of children or young people conflict with widespread information sharing. They pointed out the

potential harms experienced when confidential information is disclosed without the awareness or consent of children and young people, emphasising the need for thoughtful consideration.

- > In a related context, **Youth Coalition** observed the challenging situations where parental consent rights were considered more important than a young person's consent, shedding light on the broader issue of consent.
- > **Young people** themselves voiced strong frustration over decision-makers not having all the information and thought we need to share information better. They also said it's important for different agencies to communicate more, so mistakes aren't made, and the people who might be causing harm can't just move around unnoticed. They really wanted the adults and organisations in their lives to 'just talk to each other'.

### Information sharing for unborn children

- > A common theme was the acknowledgment of the need to balance considerations for prenatal information sharing, respecting the right to privacy while ensuring the safety and wellbeing of the unborn child and their parent. Many recommended better supports for pregnant people by streamlining the identification and referral process to appropriate services at an early stage.
- > We also heard the importance of recognising and preventing the trauma associated with assessments immediately following childbirth. Many stakeholders stressed the need for early support and some provided powerful case studies.
- > **Karinya House** stressed the significance of early intervention. They said offering support to women during their pregnancies allows them the opportunity to develop positive relationships with services before crisis point and empowers women to take agency over their own lives. The importance of streamlining identification and referral processes was emphasised, ensuring women can access support as early as possible. Karinya House highlighted the importance of an information sharing scheme, while maintaining a woman's right to privacy/confidentiality and being able to control how their information is shared.
- > **Uniting NSW/ACT** told us 'We support the proposed reforms to prenatal information sharing and assessments to provide support for high-risk families prior to birth. As recognised by the Information Paper, this aligns the ACT with other jurisdictions including NSW.'
- > The **ACT Human Rights Commission** said 'the right to privacy does not necessarily require that all prenatal information be treated as inherently sensitive and incapable of disclosure, as is currently mandated under section 365 of the CYP Act. Information about an unborn child and their family must not, however, be treated in the same way as other information relevant to the safety, welfare and wellbeing of a child or young person.'
- > **Women's Legal Centre ACT** and **Legal Aid ACT** told us 'Generally, we support any change that promotes the capacity to provide support to parents to address child protection concerns before any action is taken by CYPS. Particularly for pregnant people, information sharing at the antenatal stage will help to establish supports and alleviate any risk issues, hopefully avoiding the need for reporting and investigation by CYPS. Information sharing will assist to identify people at risk and help organisations to work collaboratively to provide wrap-around supports.'

### Information Sharing Teams

- > We received feedback expressing concerns about the suggested transition to the term 'Information Sharing Teams' instead of maintaining the term 'Care Teams'. Several stakeholders emphasised the importance of genuine and respectful information sharing, with an emphasis on family input to prevent the sharing of inaccurate information.
- > **Uniting NSW/ACT** voiced apprehensions, suggesting that retaining the concept of 'Information Sharing Teams' might introduce further complexity for providers engaged in the care and support of children and families.

## Information Sharing by the Director-General

- > Overall, we received positive feedback on proposals aimed at strengthening the Director-General's ability to share information, with a clear call for these proposals to be extended further.
- > Feedback highlighted concerns about the current secrecy surrounding child protection assessment processes, stressing the need for increased information sharing and transparency. The **Canberra Restorative Community** expressed reservations, stating the proposal fell short in addressing the ongoing secretive nature of CYPS assessment processes, which they believe is opaque for families.
- > The **ACT Human Rights Commission** '*welcomes the proposal to reduce the kinds of 'sensitive information' that may only be disclosed if the Director-General has decided that doing so is in the best interests of the child, which we understand has been sparingly determined to date.*'
- > Objections were raised with the proposal to empower the Director-General to inform non-offending parents and carers about the registration status of known sex offenders and the proposal found support from **Uniting NSW/ACT**. Some stakeholders emphasised the importance of involving or notifying other key government partners, such as the Education Directorate and ACT Policing when information was shared.

## Mandatory reporting

- > We heard strong support for the expansion of mandatory reporting from several agencies, with a shared belief in the importance of improved reporting requirements.
- > **Conflict Resolution Service** stated 'The expansion of mandatory reporting abuse types has long been overdue within the ACT. We believe that this expansion will broaden the safety net for children who may have previously "fallen through the cracks" due to the previously stringent reporting guidelines.'
- > Agencies such as Barnardos, the Women's Legal Centre ACT, Legal Aid ACT and Youth Coalition also showed strong support.
- > **Youth Coalition** stated 'We welcome the expansion of the mandatory reporting abuse types with the aim of including types of abuse previously not made explicit', and this was echoed by **Barnardos**, which acknowledged 'the expansion of mandatory reporting abuse types and particularly welcomes the inclusion of the risk of significant harm from exposure to domestic violence and neglect.'
- > **Women's Legal Centre** and **Legal Aid ACT** told us 'We support the proposed changes to mandatory reporting. An expansion of the mandatory abuse types will encourage relevant reporters to consider and articulate what risk they have assessed might exist.' They particularly supported 'the inclusion of a provision that allows and supports conferral and information sharing between colleagues prior to making a report. This will make a massive difference, particularly for at-risk pregnant people. It will promote discussion and support at the early stages and enable parents to implement supports with a view to addressing any risks and preventing the need for CYPS involvement.'
- > **ACT Council of Social Services** said it 'strongly supports the underlying intent of the proposed changes to mandatory reporting thresholds, noting that they are based on an understanding of the harms experienced by children outside of commonly understood definitions of abuse and are supported by the findings of the landmark Australian Child Maltreatment Study. However, the major legislative change from the simple threshold of physical and sexual abuse to a far more complex and broad definition of Risk of Significant Harm (ROSH), including broader definitions of the types of harms and risks to children's safety, risks substantial unintended consequences.'
- > We also heard opposition to the expansion of mandatory reporting from several agencies. The **ACT Human Rights Commission** stated it '*opposes broadening the scope of mandatory reporting in this way ... we do not*

*accept that expanding the legislative scope of information to be reported will meaningfully contribute to the prompt identification, triage and assessment of children and young people and their families who require support’.*

- > Some were concerned about the impact that an expansion could have on system resources, with **Families Act** writing ‘... an expansive mandate could lead to an overwhelming influx of reports potentially diverting attention from the most severe cases.’ and ‘The ambitions of Next Steps could well collapse under the burden of a flood of reporting.’
- > Finally, we heard concern that an expansion could limit the support seeking behaviour of those most in need. The **Canberra Restorative Community** said, ‘*both voluntary and mandatory reporting ... can be a significant inhibition to parents’ help-seeking*’ and the **Human Rights Commission** said ‘*The Commission’s unique vantage point in the investigation and conciliation of complaints and case monitoring of family, sexual and personal violence, as well as insights from Aboriginal and Torres Strait Islander advisors and clients underscore the genuine risk of disengagement with support services for fear of mandatory reporting.*’
- > Many stakeholders told us providing training and community education was important, alongside the proposed reform of mandatory reporting laws. **Aboriginal Legal Service NSW/ACT** acknowledged the significant training and education needed to implement the proposed changes to mandatory reporting. They offered to be actively involved in developing and delivering training and education to the sector.
- > The important balance around the expansion of mandatory reporting was summed up by **ACT Disability, Aged and Carer Advocacy Service** and **Advocacy for Inclusion** who maintained ‘*Mandatory reporting plays a crucial role in bringing the instances of abuse and neglect to authorities, thus abolishing it would not be a constructive reform initiative.*’ However, they pointed to the necessity of an adequately resourced, responsive and trustworthy system and concluded by saying ‘... *a comprehensive approach is necessary, encompassing clarified legislation, extensive training, public education, and more efficient methods for intake, screening, and assessment of reported cases.*’

## Delegations

- > Stakeholders were cautiously supportive of the proposed changes to delegation powers. They acknowledged the benefits of improving communication and making decision-makers more accessible. There were concerns regarding the practical implementation and oversight of these delegations.
- > The **Women’s Legal Service and Legal Aid ACT** ‘welcome any reform that clarifies who holds the decision-making power, and who is the first point of contact for families. Clarifying this for clients will provide greater accountability and access to review mechanisms if there are any concerns about decisions that are made. However, the effectiveness of this amendment will depend on what delegations happen and how they are managed.’
- > We heard that delegated decisions must be included in the external merits review process.
- > Stakeholders, including **SNAICC**, expressed strong support for the proposed legislated changes that provided for delegations to Aboriginal Community- Controlled Organisations (ACCOs), stating, ‘*SNAICC supports the proposed legislated provision for transferring the Director-General’s powers to the executive of an Aboriginal and Torres Strait Islander community-controlled service.*’
- > **SNAICC** further recommended, ‘using the broader term ‘transfer of authority’ alongside formal ‘delegation’ to reinforce the central goal of Aboriginal and/or Torres Strait Islander self-determination and self-management of child protection matters.’

- > **Aboriginal Legal Service NSW/ACT** told us the transfer or delegation of powers to ACCOs for children and young people in out-of-home care is long overdue. They told us substantial effort was needed to make this operational. The ACT Government was further invited to progress delegation of the intake and assessment process to ACCOs.
- > **Barnardos** also supported the proposed shift and told us about better case management through the delegation of parental responsibility, stating, *'For example, delegating parental responsibility to non-government service providers in NSW provides effective and timely decision-making. This has been evidenced since 2007 (when the delegation first came into effect in NSW) and diminishes duplication of roles and service delivery and enhances case management.'*
- > **Families ACT** told us 'There are various powers and functions granted to CYP staff under the Act, and careful thought should be given to permitting full delegation of powers to entities that may lack the essential requirements for reporting and oversight that CYPs currently possesses.'
- > **Women's Legal Service** and **Legal Aid ACT** were also concerned, noting 'we are cautious about our support as it is unclear how this delegation will take effect and how this will be practically implemented.'

## Family decision-making

- > The proposed move toward a broader family decision-making model has drawn some attention from stakeholders. While the majority expressed strong support, many told us to 'go further', and were interested in further discussing the details for effective implementation.
- > **Conflict Resolution Service** suggested family decision-making is an *'excellent opportunity to enhance collaboration between funded non-government sector services and statutory bodies.'* They believe this collaborative approach will strengthen support networks and contribute significantly to the reform's intended purpose.
- > The **Women's Legal Service** and **Legal Aid ACT** supported the proposal that the court should be satisfied that family decision-making is offered before making a final order. However, they advocated for an extension of this requirement to include interim orders, suggesting that the court should consider any family agreement reached before making any order (except those orders following emergency action).
- > The **ACT Human Rights Commission** emphasised the inclusion of family decision-making in the Childrens Court's decisions, advocating for additional provisions that would allow the court to critically assess family-led decision-making opportunities, considering duration and outcomes.
- > Both **SNAICC** and **Aboriginal Legal Service NSW/ACT** endorsed the proposed approach to family decision-making but advocated for more, including legislated access for Aboriginal and Torres Strait Islander families to Aboriginal family-led decision-making at any stage of the child protection system, facilitated by an independent Aboriginal person unaffiliated with the government.
- > **Uniting NSW/ACT** supported the role of family decision-making and acknowledged the current legislative challenges in implementation. They recommended increased funding for service providers to facilitate participation in family decision-making meetings.
- > **Canberra Restorative Community** told us the 'fresh approach' to assessment in the Information Paper, particularly family decision-making, as positive opportunity for practice improvement on the current approach which they told us is 'non-restorative'. They suggest replacing the existing approach with a more restorative model and provided the Ngartyuitya Family Group Conference model operated by Relationships Australia in South Australia as a good practice example.

- > **ACT Disability, Aged and Carer Advocacy Service** and **Advocacy for Inclusion** recommended the introduction of Family Group Conferencing model as a standard practice, providing families a platform for collaborative decision-making and exploring alternative support. They stress the importance of monitoring its implementation and integrating family engagement into support mechanisms that address safety risks.

## Orders: Better and more accountable case management

- > We heard strong support for the proposed new court orders with an increased focus on early intervention measures and promotion of family reunification and connectedness for children and young people.
- > The call for legislative amendments to reinforce alternative support options before removal and the introduction of statutory provisions specifying reasonable timeframes were positively acknowledged as measures to promote fairness and transparency.
- > The **Conflict Resolution Service** said ‘increased emphasis on early intervention measures in the envisioned future state, particularly through assessments and family reunification efforts, presents a remarkable opportunity for the funded non-government sector to work in tandem with statutory bodies. This partnership will provide better capacity building opportunity to parents in order to provide adequate care and safety for their children.’
- > **Barnardos** ‘strongly supports the Government’s intent for the new orders and thresholds to deliver a strengthened approach to family preservation, reunification and stable and culturally appropriate care arrangements. We further welcome the accompanying provisions to enhance the quality of child protection case management.’
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** said ‘we welcome the attempt in this Bill to clarify in plain English the purpose of different types of orders which might be made under the Act. We believe this is an important access to justice issue and ensures there is a greater shared understanding between families, CYPs and ACT Courts.’
- > While there was widespread approval for specific amendments, we heard concerns about creating more paperwork, and the need for careful implementation.

## Urgent Medical Examination Notices

- > Stakeholders supported the proposed introduction of medical examination notices and recommended expansion of the circumstances where they are used. Attention was drawn to the need for careful consideration of a child or young person’s capacity to consent to health examinations, with emphasis on consulting and obtaining consent. There were also questions about the details of transferring of parental responsibility and whether this extended to consent for treatments or just the medical examination and advice.
- > Throughout the consultation workshops, stakeholders supported the introduction of ‘medical examination notices’ and saw this as a valuable tool to prevent children being removed. Many told us that the proposed notices should be extended to any circumstance of significant harm and not limited to cases of sexual and physical abuse.
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** said ‘we do not think it is appropriate to limit this provision to circumstances involving only sexual or physical abuse. Presumably situations involving neglect and emotional abuse could also give rise to a need for urgent medical treatment (including urgent intervention by a mental health practitioner).’ However, they cautioned that if this provision was expanded to include neglect, ‘care should be taken to ensure that the systemic disadvantage of Aboriginal families, does not inadvertently lead to the removal of Aboriginal and Torres Strait Islander children from their families.’

- > **CREATE** told us ‘Due consideration [should] be given to the child or young person’s capacity to consent to health examinations. 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.’

### Assessment and Appraisal Orders

- > There were concerns that provisions excluding parents from being told about applications to assess their children may be overused. Stakeholders told us these provisions would need to have safeguards to avoid misuse and ensure procedural fairness.
- > **Families ACT** said, ‘Although it is recognised that notification in some circumstances may be a risk, safeguards should be put in place to avoid the use or potential overuse of any provision that allows for individual parents or families to be excluded from notification for an assessment or appraisal order.’
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** told us, ‘CYPS should be required to notify parents if an assessment order is sought, unless doing so would create an unacceptable risk to a child or young person’. And that ‘We accept that formally serving parents may be slightly more onerous on CYPS and may create delay. However, we believe that parents should be notified before, or as soon as possible after, an assessment order is made to ensure procedural fairness.’

### Emergency Action Threshold and Support Before Removal

- > There was strong support for a shift toward a threshold of ‘unacceptable risk of significant harm’. **Uniting NSW/ACT** told us they ‘commend the ACT government on adopting a broader consideration of the immediate unacceptable risk of harm. We agree that a new approach is needed to consider the factors which influence the safety of a child or young person.’ They suggested further amendments to the threshold should be made to ‘include the role of family and community in supporting children and families.’
- > **ACT Disability, Aged and Carer Advocacy Service** and **Advocacy for Inclusion** told us amendments were needed ‘to explicitly reinforce the requirement for exhaustive attempts at exploring alternative support options before considering removal as a last resort.’
- > **Carers ACT** told us an education program would be needed with the introduction of a new threshold to allow the community, and particularly the Aboriginal and Torres Strait Islander community, to understand ‘unacceptable risk of significant harm’.

### New Final Orders

- > Stakeholders were supportive of the new final orders, particularly the focus on early intervention, family preservation and reunification.
- > **Families ACT** said ‘members have been telling us for many years that they believe long-term orders (e.g., till 18) are overused and this works against the best interests of the child and their family. A frequent comment has been that long-term orders have been the default position and demonstrative of lazy work. Greater sophistication in the use of orders underpinned by the principles of family preservation and reunification is an essential system reform. This reform reinforces the focus on the principle of “active efforts” enshrined in Bill 2.’
- > We heard concerns that adding new final orders might create too much paperwork and doubt it would really help families without making things too complicated.
- > **Uniting NSW/ACT** were concerned ‘that the introduction of the proposed new final orders (family preservation orders, family reunification orders and long-term orders) will increase the bureaucratic burden on families and will not result in significantly improved outcomes....’

- > **Aboriginal Legal Service NSW/ACT** was ‘not opposed to the introduction and delineation of different types of orders, although note that more information is required about the potential length and limitations of orders that might support a “family preservation order”.’
- > Stakeholders supported plain language naming of the different final orders and felt the names signalled the purpose of the order to parents and family members.
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** ‘believe this is an important access to justice issue and ensures there is a greater shared understanding between families, CYPS and ACT Courts.’ They suggested further name changes to interim orders being called an ‘Emergency Out of Home Care Order’ and Long-Term Care Orders be called Long Term Out of Home Care Orders.

### Family Preservation Order

- > The proposed Family Preservation Order was supported by stakeholders.
- > The **Women’s Legal Centre ACT** and **Legal Aid ACT** told us ‘We support the introduction of Family Preservation Orders, and believe the changes proposed to the concept of Parental Responsibility (PR) in the Act should increase the use of these orders, specifically by allowing PR to be split between parents and the DG in a way that alleviates risk.’
- > We heard hopes these orders would decrease the need for the separation of children from their families.
- > However, we also heard concerns that it was unnecessary for the court to be involved for families whose children are not yet facing an unacceptable risk of significant harm.
- > **Uniting NSW/ACT** told us ‘the proposed family preservation order is intended to be used with families who can, with the right supports, care for their children safely at home. We are not convinced there is a purpose in involving the court system to support these families.’
- > **SNAICC** was concerned that the use of Family Preservation Order may increase the number of Aboriginal and Torres Strait Islander children in the child protection system. They told us that ‘*The proposed Family Preservation Orders will function as an interim measure targeting children who are deemed to be ‘at risk’ of harm at home but do not reach the ‘unacceptable risk of significant harm’ threshold for removal. There is a risk that families who would otherwise not qualify for an order would be made subject to a Family Preservation Order, compounding the over-representation of Aboriginal and/or Torres Strait Islander children and families within the system.*’
- > **Aboriginal Legal Service NSW/ACT** recommended that the government ‘undertake further consultation with the Our Booris, Our Way Implementation Oversight Committee, SNAICC and the ALS to draft an order that effectively achieves family preservation without compounding the over-representation of Aboriginal and Torres Strait Islander families within CYPS.’

### Family Reunification Order

- > We heard support for the proposed Family Reunification Order.
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** ‘welcome the introduction of Family Reunification Orders. This type of order should clearly signal to all stakeholders including CYPS and parents what the purpose of this order is.’
- > **SNAICC** ‘supports the introduction of a Family Reunification Order to avoid children being fast-tracked to EPR or adoption, once the ‘unacceptable risk of significant harm’ threshold has been crossed.’
- > We heard some concerns that the requirements for these orders could place unreasonable responsibility on parents to prove their capacity and willingness to care for their children.

- > **SNAICC** told us that ‘these orders place the burden of responsibility on parents and families to demonstrate their capacity to care for their children via a care plan, without recognising the related responsibility of the ACT Government to fund ACCO-delivered, culturally appropriate family support services.’
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** told us they ‘do not support the inclusion of ‘willing and able parent’ in this section. In our experience, this provision often places unrealistic expectations on victim-survivors of violence, creating an onus on them to protect children from risks (like an ongoing risk of exposure to DFV) completely outside their control. We would instead propose the relevant test be that the Court can be satisfied there is a realistic possibility the child will no longer be at unacceptable risk of harm during the period of the order.’
- > **Aboriginal Legal Service NSW/ACT** recommended there not be a cap on the number of times an application can be made to extend a Family Reunification Order.

### Long Term Care Orders

- > We heard minimal concerns about the proposed changes to long-term care orders.
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** told us to consider naming these orders ‘Long Term Out of Home Care Orders’. Like Family Reunification Orders, they did not support using the ‘willing and able parent’ test to make this type of order. They instead proposed specific criteria to make a Long-Term Care Order including:
  1. That the child was at unacceptable risk of harm when the circumstances which gave rise to the application occurred; and
  2. There is no realistic possibility that the unacceptable risk of harm can be alleviated, and that the Court can be satisfied there is a realistic possibility the child will no longer be at unacceptable risk of harm during the period of the order.

### Enduring Parental Responsibility Orders

- > **SNAICC** supported the proposed changes to enduring parental responsibility (EPR) orders in relation to Aboriginal and Torres Strait Islander children and young people, where an order can only be sought if an ACCO has completed a report that recommends the EPR order for the specific child or young person. **SNAICC** also welcomed the introduction of Family Reunification Orders ‘to avoid children being fast-tracked to EPR or adoption, once the ‘unacceptable risk of significant harm’ threshold has been crossed’.
- > The **Youth Advisory Council** also made several comments regarding EPR orders. They agreed with repealing the current provision at section 477 of a presumption that it is in the best interests of children and young people who have been on orders for specified time periods and living with the same carer to be subject to a long-term order (which would include an EPR order). The **Youth Advisory Council** also supported the requirement of active efforts to seek the views, wishes and objections of parents as part of the criteria for seeking EPR orders.
- > The **Youth Advisory Council** made a number of recommendations about strengthening the role of children’s and young people’s views and wishes in relation to EPR considerations: ‘Council recommends... all proposed amendments to EPR be amended to protect a child or young person’s existing right of objection under s 513 (1)(b)...as well as align with the intent of the proposed Child and Youth Participation Principle.’
- > The **Youth Advisory Council** supported Recommendation 26(b) of *Our Booris, Our Way*, that for Aboriginal and Torres Strait Islander children and young people, EPR should only be available for Aboriginal and Torres Strait Islander carers. They also recommended a legal requirement for all aspects of EPR to demonstrate active efforts have been exhausted to restore an Aboriginal and/or Torres Strait Islander child and to find, assess and place with all potential Indigenous family members, using culturally appropriate processes.

## Care plans

- > Stakeholders endorsed standards promoting active family involvement and collaboration in care plans. They recognise the positive impact of increased focus on early intervention and family reunification.
- > **Karinya House** emphasised the ‘*need for clearly defined goals*’ to allow parents to understand expectations.
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** suggested Care Plans being required at all stages of litigation, not just final orders; that Care Plans should form part of orders and that mediation should be required prior to changing a Care Plan and amending the order and that Care Plans should be listed as a relevant example of change of circumstances for amendment and revocation applications and for external merits review.
- > Many stakeholders supported the inclusion of cultural plans in Care Plans. **Women’s Legal Service** and **Legal Aid ACT** supported the change to increase court oversight of cultural plans (as part of Care Plans). They noted that this ‘*should not limit the inclusion of more comprehensive (cultural) plans developed on a case by case basis as attachments to an individual’s Care Plan.*’
- > **SNAICC** supported the introduction of ‘minimum standards to ensure care plans are quality documents that strengthen an Aboriginal and/or Torres Strait Islander child’s connection to, and practice of, their cultural identity.’
- > **SNAICC**, along with other stakeholders, recommended that Care Plans were ‘developed in consultation with the Aboriginal and/or Torres Strait Islander child or young person, parents, kin and family, and relevant Aboriginal community-controlled organisations.’ That they should also include descriptions of ‘active efforts’ and that they include any proposed allocation of parental responsibility for culture.
- > We heard support for expanding the scope to allow families to voluntarily register Care Plans. The **Conflict Resolution Service** told us ‘*Registration of Care Plans empowers the court to issue necessary orders to enforce the care plan. However, our experience indicates that court-enforced requirements for engaging with support services have at times led to disingenuous engagement, ultimately diminishing the capacity-building of the involved child or family. To mitigate this risk, it is crucial to proactively involve the child and family’s chosen support services collaboratively in the care plan before considering court intervention.*’

## Suitability of Care Arrangements

- > We heard strong support for formal ways for the court and other parties to check that care arrangements are suitable after final order are made, and a call to include children and young people in these checks.
- > **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.’
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** told us ‘If CYPS assesses that a child is at unacceptable risk of harm, emergency action must be taken. We propose that whenever this occurs, CYPS should be required to provide a report on suitability of care arrangements, including importantly in relation to Aboriginal and Torres Strait Islander Children, addressing the options for culturally appropriate kinship care, and as soon as practicable, commission an independent expert to report on the risk or other issues at play for the child/family before proceeding to seek a Family Reunification or Long Term Out of Home Care Order.’
- > **Aboriginal Legal Service NSW/ACT** told us that as well as introducing the reports on suitability of care arrangements, that the Childrens Court should be able to then ‘*relist for review of the care arrangements. This is consistent with reporting mechanisms and powers to list for “progress review” found in NSW, pursuant to sections 82 of the Children and Young Persons (Care & Protection) Act 1998.*’

## Revocation of Orders

- > We heard support for the proposed changes to revocation applications. However, there were different ideas and opinions on several topics, such as what should count as a relevant change of circumstances, who should or shouldn't be allowed to apply for revocation, and whether there should be more funding for legal help for parents in these cases.
- > **Women's Legal Centre ACT** and **Legal Aid ACT** told us 'We wholeheartedly agree that the proposed amendments to revocation of orders should be made.'
- > Some stakeholders strongly supported the expansion of who can apply for revocation. **Aboriginal Legal Service NSW/ACT** told us 'The ALS supports the proposed changes to the provisions regarding the amendment and revocation of final orders, removing limitations on the time frame the application can be brought and expanding the parties that can bring an application, including the Chief Executive Officer of an ACCO.'
- > However, other stakeholders were concerned about the expansion. The **Youth Advisory Council** 'strongly recommends the removal of the clause (and any clause of related affect) that proposes 'to expand eligibility to apply for revocation orders to any other person who can demonstrate sufficient interest in the child or young person's welfare'.'
- > **Aboriginal Legal Service NSW/ACT** recommended 'The ACT Government include a parent being able to parent subsequent children as a factor to consider as part of an application to revoke.'
- > **Women's Legal Centre ACT** and **Legal Aid ACT** said that 'changing a care plan should be specifically named in the Act as an example of a relevant change of circumstances.'
- > **Women's Legal Centre ACT** and **Legal Aid ACT** also told us 'We submit that additional funding should be allocated to enable parents to obtain legal representation to assist them through the revocation process. The allocation of funding would assist parents to navigate the complex revocation process. By ensuring that parents have the necessary support, the overall equity and effectiveness of the revocation process, safeguarding the rights and interests of those involved will be significantly improved'.

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

- > We heard overall support for the various proposed measures to improve the ongoing safety and wellbeing of children and young people in out of home care, as well as recommendations to strengthen the approach in specific areas.

### Sibling relationships

- > A **diverse range of carers** and **children and young people** strongly emphasised the need to recognise and preserve sibling relationships for children and young people in out of home care. The views of these stakeholders were enriched by direct firsthand experience and caregiving insights. The valuable insights added depth to the discussions, highlighting the importance of acknowledging and maintaining familial bonds within the unique context of out of home care.

### Definition of Family Member

- > We heard support for a broader definition of family member.
- > **ACT Council of Social Services** told us 'by broadening the definition of "family member", the reforms to the CYP Act would ensure that appropriate people are not automatically excluded from being identified as a potential carer due to governmental definitions of a family member... expanding the definition of family, the legislation

may also be expanded to allow for children and young people's voices to be heard in identifying adults that they have significant and important relationships with.'

### Conditional carer approval

- > We heard support for conditional carer approval.
- > **Carers ACT** told us, 'We welcome the changes allowing for conditional carer approval, where full approval is not able to be granted.'
- > **Uniting NSW/ACT** told us, 'We support the proposed reforms to allow conditional approval for carers and especially prospective kinship carers, in order to allow them to care for a child or young person whose assessment is in progress.'

### Annual Reviews

- > We heard support for changes to the Annual Review process, as well as recommendations to further strengthen the process.
- > **SNAICC** told us, 'SNAICC welcomes the proposed amendments to improve the function of annual reviews as opportunities to support family reunification, review and update care plans and collect up-to-date data on the experience of Aboriginal and/or Torres Strait Islander children in [out of home care].'
- > **SNAICC** recommended we 'Legislate the expectation that Annual Reports capture whether an Aboriginal and/or Torres Strait Islander young person has received their annual 715 health check as covered by Medicare.'
- > The **Aboriginal Legal Service NSW/ACT** told us, 'The ALS support the transformation of the Annual Review process and submits that the transformation should also include provision for the review of permanency for the child (including whether reunification is a possibility), contact arrangements and cultural support planning for the child or young person as part of the formal annual review process. The ALS submits that the review process should include parents and extended family members, and not just the kinship carer providing care to the child or young person.'

### Minimum number of home visits

- > We heard concern around the minimum number of home visits proposed for children and young people in care. Stakeholders recommended the minimum number of home visits be increased.
- > **Uniting NSW/ACT** told us 'We are concerned that requiring children and young people to be visited by and spoken to directly by their child protection case manager on at least two occasions per year is inadequate.'
- > A staff member at **Melaleuca Place** echoed the concerns of Uniting and told us, 'My concern with such a low number as the required minimum is that it may provide permission for less than adequate engagement with the child or young person.'
- > **CREATE** told us they are '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' sets a dangerous minimum standard.' CREATE recommended the minimum number of home visits '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.'
- > The **Youth Advisory Council** recommended 'the ACT Government amend the minimum number of 2 visits per annum, to at least 4 minimum during a review period. It is imperative that this amendment is considered with all factors that are individually specific to the child/young person's stability, needs and circumstances.'
- > The **Aboriginal Legal Service NSW/ACT** told us, 'We support the introduction of minimum expectations for home visits, providing opportunities for children and young people to meet with and speak directly to their

case manager. However, the minimum requirements that this occur on at least 2 occasions in a year is not sufficient or adequate ... The ALS supports a minimum of 'quarterly' home visits being expressed as the minimum in the legislation.'

- > The **Australian Multicultural Action Network** stress the importance of safety and wellbeing standards for out of home care placements.

### Outlaw of corporal punishment

- > We heard strong support for the prohibition of corporal punishment, with a call for its extension beyond care settings.
- > **Uniting NSW/ACT** told us, 'We strongly agree with the outlawing of corporal punishment for all children and young people living in out of home care.'
- > The **ACT Human Rights Commission** echoed Uniting and told us, 'The Commission is pleased that the proposed reforms will explicitly prohibit corporal punishment or punishment that humiliates, frightens, or threatens in a way that is likely to cause emotional harm to children and young people in all out of home care settings.' The ACT Human Rights Commission recommended, 'To promote consistency with the rights of the child ... the Commission strongly encourages the ACT Government to extend the prohibition on corporal punishment beyond out of home care to all settings, including in the home.'

### Retaining personal records: Life Story work

- > Respondents welcomed proposals to enhance Life Story work, while underlining the need for more engaged child and youth participation.
- > **CREATE** told us they welcome proposals to enhance child protection's Life Story work, but urge the ACT Government to 'include principles for such work to be grounded in relational practice that supports children and young people to make meaning of their life and world' or 'restorative and trauma informed practice principles'.
- > **Uniting NSW/ACT** recommended 'the ACT Government amend the life story provision to require that children and young people participate in the life story process with the involvement of their family or carer if appropriate.'

### Transitions from care

- > We heard strong support for the proposal to mandate support for care leavers until the age of 21 years, as well as the proposal to increase access to personal records for care leavers.
- > The **ACT Human Rights Commission** told us 'The Commission strongly supports the proposal to mandate the continued provision of support and services to any care leaver under the age of 21 years, as occurs in Victoria, and broaden the kinds of services that may be provided.'
- > **Uniting NSW/ACT** echoed the ACT Human Rights Commission and told us, 'We strongly support the proposed reform to ensure that young people leaving care are able to access their care records at any age.'
- > **Carers ACT** also told us they are 'pleased to see that child protection will continue to provide support ... to any care leaver under the age of 21.'
- > Stakeholders collectively called for comprehensive and accessible records, universal transition support, extended age for support, and increased service types for care leavers.

- > The **ACT Human Rights Commission** strongly supported the proposal to retain personal records, but told us ‘While the keeping of these records is important in and of itself, of equal importance is the need to ensure these records are directly informed by the child or young person themselves and that they are written in language that makes them accessible for children and young people.’
- > **Conflict Resolution Service** sees transitions from care as an opportunity for young people to build connections with community support services and organisations.
- > **Uniting NSW/ACT** supports a provision recognising the universal right to access services and supports for young people leaving care.
- > **CREATE** recommended specifying the types of ‘services’ that may be provided and suggested including flexible funding to support transition plans and access to safe and secure housing. CREATE also recommended guaranteeing financial assistance to care leavers up to the age of 25.
- > **Aboriginal Legal Service NSW/ACT** supported the expansion of support to care leavers and recommended ‘the ACT Government ... undertake a comprehensive community education process aimed at young people in care, to ensure that they are fully aware of their rights regarding access to this support.’
- > **ACT Council of Social Services** ‘endorses measures that strengthen the support for young people transitioning from care. We are concerned, however, that proposed changes to “broaden and simplify” wording around the supports provided to care leavers does little to redress existing shortcomings in such support and may in fact compound the inequities experienced under current arrangements.’

## External merits review of decisions

- > We heard a wide range of perspectives on the proposed changes to the external merits review framework, with a blend of strong support and notable concerns. The notable concerns raised issues about the appropriate grounds for review, eligibility to initiate an application, and implementation complexities in the Childrens Court and the ACT Civil and Administrative Tribunal (ACAT).
- > **Uniting NSW/ACT** told us ‘We believe it is appropriate to have an external review of the child protection system ... We support the expanded understanding of ‘affected person’ to encompass broader family members, carers, or prospective carers. Further, we support the recognition that children and young people should be supported to request an external review of a decision.’
- > **Aboriginal Legal Service NSW/ACT** told us ‘The ALS supports any independent mechanism for review of child protection decisions. This includes making formal reference to the powers of the new Aboriginal and Torres Strait Islander Children and Young Person Commissioner to review those decisions.’
- > The **Australian Multicultural Action Network** told us they ‘support the introduction of an external merits review process to enhance transparency and accountability’ and suggested ‘clear guidelines and timelines for the [external merits review] process to ensure timely resolutions and fair outcomes.’
- > The **ACT Human Rights Commission** told us ‘The Commission strongly supports the enactment of a mechanism for external review of child protection decisions, which we stress must be progressed as a priority element of these reforms.’ The ACT Human Rights Commission also told us, ‘The [ACAT] is, in our view, best placed to ensure timely, efficient, restorative, and affordable recourse to external merits review that is, above all, accessible for vulnerable children and young people and their families, carers, and other significant people in their lives.’
- > The **ACT Human Rights Commission** qualified its support by telling us, ‘The Commission will not support a requirement that applicants articulate specified grounds before being able to access external merits review of administrative decisions made under the CYP Act ... In our view, to comply with the right to a fair hearing, the

mechanism for external merits must be empowered to examine both merits and any alleged procedural irregularities.’ The ACT Human Rights Commission also recommended ‘the Public Advocate ... should also be empowered to make an application for external merits review of such decisions with consent of the child or young person.’

- > **Women’s Legal Centre ACT** and **Legal Aid ACT** told us they are pleased to see the creation of an external merits review process but recommended ‘*In our view and to promote consistency within the Act, the persons who can have standing to bring an application for review should be the same as the standing to bring an application to the Court for revocation or review.*’
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** expressed concern about the requirement that parties must engage with the internal review process prior to being eligible to apply for external review and told us, ‘*It would be appropriate for the Bill to include provisions allowing direct access to external review in certain circumstances, including where internal review is significantly delayed.*’ The **ACT Human Rights Commission** echoed this view and told us ‘*targeted exceptions will be required where a prior internal review process would be unreasonable or impracticable in the circumstances.*’
- > **Families ACT** told us that, while it welcomed the proposal, ‘the restrictions imposed on this review process by the proposal to constrain applications when Children’s Court proceedings are currently in progress is a serious limitation to families’ rights ... Forcing ACAT matters to be suspended to allow the Children’s Court first review rights will cause significant harm to families and children.’
- > **Canberra Restorative Community** expressed uncertainty about the comprehensiveness of the envisioned external review arrangements and told us it is not clear whether the external review process will cover all decisions made by CYPs staff.
- > **ACT Council of Social Services** said ‘we urge the ACT Government to embed these important commitments to accountability and transparency into the legislation, with provision for independent oversight and ongoing monitoring of the culture and practices of CYPs. ACTCOSS believes this is imperative to tackle systemic challenges, shift cultural and institutional barriers to reform, maintain the momentum for change, and ultimately deliver better and lasting outcomes for child, young people and their families. While the introduction of the External Merits Review is a welcome step toward providing impartial and independent review of child protection decisions, much more is needed to provide the necessary oversight and accountability.’

## Reform implementation

- > We heard strongly from those with a lived experience of the system that the legislation would only be as good as its implementation.
- > **Carers** told us ‘Implementation is the key to successful legislation’ and one carer asked us ‘What is the comparison [of the legislation] with the current state? Now everything sounds great but things like communication are non-existent.’
- > The theme of trust and confidence was strongly echoed in most submissions. **Families ACT** told us ‘The proposed changes to the CYP Act outlined in this stage as well as stage 1 require a holistic culture change in child protection work. This whole of system culture change needs to be led and ‘lived’ by example from the top down and be underpinned by extensive training of both ACT Government and community sector workforces.’
- > **SNAICC** said reform would require ‘... fundamental practice changes to the Community Services Directorate. Without an indication of how the ACT intends to couple these legislative reforms with policy and funding change, it is difficult to assess what the intended or unintended consequences of the proposed amendments may be.’

- > **SNAICC** also told us ‘many of the proposed provisions will require a significant increase in resourcing for Aboriginal Community Controlled Organisations (ACCOs)’. Concerns around funding were also highlighted in **Uniting NSW/ACT**’s submission, which said there was a need to ‘increase funding to the child protection sector, including service providers, to achieve the ambitions of the Bill’.
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** noted the success of the reform in achieving its objectives is ‘entirely dependent on an implementation strategy. That strategy must be planned and resourced appropriately, and include training, communication, monitoring and evaluation for government and non-government stakeholders.’

### Structured Decision Making

- > We heard support for the introduction of Structured Decision Making® (SDM) tools from some agencies. **Families ACT** told us they welcomed ‘*the introduction of Structured Decision-Making (SDM) tools in assessing whether a child is at risk. This interplay with the new requirement to provide evidence as to active efforts taken to preserve families is an opportunity for families to seek help and support from the statutory body without fear of reprisal.*’
- > **Women’s Legal Centre ACT** and **Legal Aid ACT** and **Gugan-Gulwan** indicated support for the introduction of SDM tools, particularly in relation to mandatory reporting.
- > We heard qualified support from other agencies, with concerns expressed around the cultural suitability of SDM tools. **Youth Coalition** stated it was a ‘*strong advocate for evidence-informed design (sic) making and assessment tools, include SDM tools.*’ However, it noted ‘*The only reservation we have is to echo concerns from the Aboriginal and Torres Strait Islander community regarding the validity and efficacy of these tools cross-culturally.*’
- > From other agencies we heard clear opposition to the use of SDM tools and a call to co-design decision making tools with the local Aboriginal and Torres Strait Islander community. **SNAICC** recommended ‘*CSD reverses their policy position on Structured Decision-Making tools and commits to co-developing a suite of culturally appropriate assessment tools with Aboriginal and Torres Strait Islander stakeholders in the ACT.*’
- > **Uniting NSW/ACT** has a similar view stating ‘*Co-design decision making tools with First Nations communities instead of adopting Structured Decision-Making tool.*’ **CREATE** suggested the ACT Government work with local ACCOs to better understand unintended consequences arising from the introduction of the SDM tool, for Aboriginal and Torres Strait Islander children and families.
- > The **Aboriginal Legal Service NSW/ACT** also expressed opposition to the introduction of the SDM tool and recommended consultation occur with SNAICC and itself to introduce culturally appropriate tools. It commented that ‘*The ‘transformative change’ that the ACT Government is hoping to realise through legislative reform will not be delivered in practice by the introduction of the SDM Tools. In fact, the ACT Government risks undermining the proposed transformative change by introducing tools considered by many to be racist and discriminatory, particularly in their application to Aboriginal families.*’
- > **Canberra Restorative Community** was concerned the SDM tool was not available for consideration as part of the consultation process.
- > The **ACT Council of Social Services** also ‘has significant reservations about the introduction of the Structured Decision Making® (SDM) tool. We note that this tool was recently decommissioned by the Queensland Government, partly on the basis that it had been found to produce high rates of false positives for First Nations children and was serving to exacerbate the problem of over-representation in child protection and out-of-home care in Queensland.’

## Championing Further Child Protection Reforms: Areas for Continued Progress

Several stakeholders highlighted the need to strengthen the approach in certain areas, highlighting opportunities for ongoing progress and enhancement.

### Working better with people living with disabilities

- > The final report of the [Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability](#) released on 29 September 2023 highlighted the deep-seated discrimination faced by parents with disabilities in the child protection context.
- > The ACT Government agrees people with a disability have the right to live without violence, abuse, neglect, or exploitation. Everyone, including people with disability, deserves a life that is safe and secure. People with a disability should be treated with dignity and respect, creating an environment that supports their wellbeing and includes them.
- > While the Disability Royal Commission didn't specifically focus on the child protection system, it was discussed extensively throughout the inquiry and across multiple volumes of the Final Report. Individuals with disabilities shared their experiences of harm stemming from interactions with the child protection system, both as children themselves and as family members of children with disabilities. These accounts shed light on the system's shortcomings concerning children with disabilities and parents of children with disabilities, highlighting issues such as discrimination, bias, and a lack of inclusivity within the system.
- > These findings demonstrate the need to improve capacity to appropriately respond to, and support, children and families with disability, and more importantly to work with families with a disability so that they can stay together safely with appropriate supports when in contact with the child protection system.
- > In particular, the experiences of Aboriginal and Torres Strait Islander people with disability in the child protection context were considered as part of Volume 9 (First Nations people with disability) and focused on through Public Hearings 8 (the experiences of First Nations people with disability and their families in contact with child protection systems) and 16 (First Nations children with disability in out-of-home care).
- > Through these parts of the Disability Royal Commission, we heard specifically there was an urgent need for reforms to address the over-representation of Aboriginal and Torres Strait Islander people with disabilities in the child protection system:
  - Aboriginal Community Controlled Organisations should play a crucial role at all stages of the child protection systems.
  - Culturally safe child protection assessments are important. Assessments based on Western parenting concepts are culturally inappropriate, failing to consider the strengths embedded in the cultural fabric of Aboriginal and Torres Strait Islander families and communities.
  - Aboriginal and Torres Strait Islander children in out-of-home care must have access to appropriate health and developmental screening.
  - Early intervention is essential to provide support for Aboriginal and Torres Strait Islander parents and children.
- > The [Research Report – Parents with disability and their experiences of child protection systems](#) released in July 2023 identified systemic shortcomings in child protection services, particularly in adequately supporting parents with disabilities.
- > A total of 27 recommendations were proposed to address these issues, spanning various aspects such as legislative and policy reforms, operational practices within child protection agencies, and funding mechanisms by governmental bodies. These recommendations included:

- Developing strategies to support parents with disabilities facing additional challenges such as financial constraints, inadequate housing, and instances of domestic and family violence.
  - Improving identification processes and data collection methodologies to better identify families where parents have disabilities and enable targeted interventions and support services.
  - Strengthening capacity-building initiatives to equip professionals in child protection with the requisite skills and knowledge to effectively assist parents with disabilities.
  - Enhancing parent advocacy and peer support services to augment the support network available to affected families.
  - Legislative reform to ensure that parents with disabilities receive appropriate support, are fully informed about their legal rights from the outset of their involvement with child protection services and have meaningful opportunities to participate in legal proceedings affecting their families.
- > Of particular note was emphasis given to reforming child protection laws for Aboriginal and Torres Strait Islander families, which included the enactment of ‘active efforts’ requirements, delegating or transferring child protection powers to Aboriginal Community-Controlled Organisations, legislating the five elements of the Aboriginal and Torres Strait Islander Placement Principle, prioritising relational and cultural permanency over legal permanency, and establishing and funding independent oversight bodies for child protection decision-making.
- > We received significant submissions from the **ACT Disability, Aged and Carer Advocacy Service** and **Advocacy for Inclusion**, and **ACT Council of Social Services**. These submissions, grounded in their own research and recommendations from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability underscored the urgent need to do more for people with disabilities.
- > These submissions advocated for fundamental changes in the legal framework to promote inclusivity, prevent discrimination, and actively support the rights and well-being of people with disabilities.
- > **The ACT Council of Social Services** told us, ‘the focus on early intervention and diversion from statutory intervention, together with the introduction of the SDM tool, may lead to heightened scrutiny and surveillance of parents with disability and their parental skills, with the resulting stress and pressures on family dynamics perversely increasing the risk of such families being subject to statutory interventions.’
- > These submissions propose the incorporation of a preamble or purpose section within the Act to recognise historical discrimination. Guiding principles, specifically focused on prevention, participation, and connection, are proposed to be embedded in the Act.
- > Language promoting disability-inclusive practices is recommended to be woven throughout the Act to ensure sensitivity in assessments, interventions, and support services provided by statutory services.
- > The establishment of reporting mechanisms was advised to monitor the implementation of these provisions, with an overarching goal of translating outlined principles into effective practice.
- > The recommendations also advocate for better access to counselling, legal assistance, and relevant services for parents with disabilities, fair assessments of parenting abilities considering disability-related factors, and mechanisms for monitoring and oversight.
- > We heard a call for data collection on the disability status of parents involved in the child protection system, with publicly available aggregated de-identified data, to underscore a commitment to transparency.
- > We heard it was important to empower parents with disabilities in decision-making processes, legislate specific timeframes for interventions, and work toward promoting thoughtful and informed approaches to child protection interventions. We also heard reasonable adjustments should be legislated.

- > Importantly, we heard legislation should require compliance with the *United Nations Convention on the Rights of Persons with Disabilities*, along with the adoption of a specialised code of conduct for proceedings involving parents with disabilities in the child protection context.
- > Finally, the redirection of efforts to support services for parents with disabilities is advocated as an important step towards a more equitable and supportive child protection system.
- > Submissions also emphasised the complex challenges faced by Aboriginal and Torres Strait Islander children and parents with disabilities within the child protection system.

### Support for carers

- > Advocates highlighted the necessity for comprehensive reform to acknowledge and empower carers within legislation and the child protection system. They recommend incorporating inclusive language, specifically urging explicit references to foster and kinship carers throughout the legislation, particularly in areas related to supports, relationships, and connections.
- > Additionally, there was a strong call to formalise the ongoing role of carers when children and young people are restored, where this was in their best interest.
- > The **ACT Human Rights Commission** underscored the importance of acknowledging family ties between children and their carers or foster parents, even after a child is restored to their birth family, aligning with the broader definition of ‘family’ in human rights law.
- > Advocates highlighted the importance of acknowledging and safeguarding sibling relationships. They emphasised the genuine need to listen to the voices of children and young people in shaping legislation, policy, and decisions. Additionally, there was a strong emphasis on prioritising the perspectives of children over those of adults, ensuring their views take precedence.
- > Stakeholders at the carer workshop emphasised the necessity for trauma-informed legislation, explicitly recognising trauma, including intergenerational trauma, at all stages.
- > There was also a call to legislate support, as appropriate, for non-Aboriginal carers of Aboriginal children to ensure preservation of the child’s connection with their culture and identity. **The Women’s Legal Centre ACT** and **Legal Aid ACT** told us that *‘prioritising cultural training for carers, would assist to mitigate the potential loss of cultural identity for Aboriginal and Torres Strait Islander children placed in non-Aboriginal homes.’*
- > Concerns were strongly voiced about the current system generating uncertainty and limbo, profoundly affecting the well-being of children, young people, and their families throughout the complex process. There was a strong call for a more balanced perspective in the legislation, currently perceived as focusing predominantly on the rights of birth parents.
- > Some stakeholders advocated for well-defined permanency and stability timeframes for children and young people, aiming to provide a sense of certainty about their future and establish clearer boundaries for determining when active reunification efforts should conclusively end. The consensus among some stakeholders is that the proposed principle of stability and permanency falls short of addressing children’s stability and attachment needs.
- > Recommendations included establishing a monitoring body for the courts to oversee the speed and quality of judgments and exercising caution in overemphasising restoration efforts.
- > Informal carers, referring to those without a state or territory children’s court order, often encompassing relative carers were acknowledged. **Carers ACT** underscored the importance of specifically acknowledging informal kinship carers in the Act, advocating for an extension of support service availability to this group of carers.

- > Several discussions focused on information sharing and privacy safeguards, shedding light on challenges faced by carers in accessing vital health and well-being information about the children in their care. Stakeholders advocated for robust mechanisms to systematically safeguard carer privacy, emphasising the need for explicit language in the standalone principle of information sharing.
- > **Carers ACT** supported the Government's commitment to enhancing case management for carers through the delivery of Care Plans. They emphasised that these plans must go beyond acknowledgment, ensuring effective support, resources, and comprehensive training for caregivers.
- > Advocates strongly called for comprehensive reforms in legislation and the child protection system, emphasising the need for inclusive language that better recognises foster and kinship carers.

### Working better with children and young people

- > Stakeholders overwhelmingly supported efforts to enhance the participation of children and young people. However, a subset within this group expressed concerns that these efforts were not comprehensive enough. These stakeholders emphasised the need for clearer guidelines and safeguards to ensure the meaningful participation of children and young people.
- > **Youth Coalition** also advocated for a 'mature minor' principle and told us 'the parents' rights seem to over-ride the young person's consent to seek support in the community. For fear of legal risk, community organisations avoid working with young people who cannot get their parents' consent due to lack of clarity regarding whose consent is necessary. As a result, young people often run away from home and remain unsupported by services until they are 16 years of age and able to consent. Therefore, no matter how seriously we are taking the voice of the young person or how much we aim to support their best interests, the lack of clarity regarding consent prevents young people from receiving support. A 'mature minor' principle or policy has been used in other areas and jurisdictions.'

### Promoting sibling relationships

- > We heard strongly from carers, children and young people and other stakeholders that the reforms did not go far enough to protect relationships between siblings.
- > The **Youth Advisory Council** told us 'The ACT Government should prioritise the establishment of policy safeguards to ensure that sibling relationships and relational permanence are prioritised. The Council recommends that active efforts to place siblings in care together or partially together be exhausted and evidenced. Additionally, the Council recommends that CYPs invests in programs to facilitate and nurture safe sibling relationships, protect sibling relationships by establishing standards for regular contact between siblings where possible, with a minimum of once per month sibling contact.'
- > **CREATE** 'recommends the ACT Government ensure sibling connections are enshrined into legislation'.

### Voluntary Care Agreements

- > **Barnardos** and **Families ACT** both observed that the reform did not incorporate reform of Voluntary Care Agreement provisions and called for further reform of these provisions.
- > **Families ACT** told us, 'Anecdotal evidence from our members suggests that Voluntary Care Agreements are often used at a time of parental distress with parents feeling pressured into signing them without getting appropriate legal advice or even understanding the significance of what they are signing. It appears that sometimes Voluntary Care Agreements are subsequently used against the parents in legal proceedings, for example as an admission of not being 'willing or able' to look after their children at that time. Revoking or cancelling Voluntary Care Agreements seems also to be an unduly lengthy process (in some circumstances more than 2 years) obstructing family restoration.'

- > In response to consultation on the Children and Young People Amendment Bill 2023 (Bill 1), **Barnardos** told us ‘in our view there is significant scope for strengthening safeguards around voluntary care agreements (VCAs) that pertain to parental consent.’

## WHAT’S NEXT?

**Thank you to everyone who told us what they think about the proposed Stage 2 changes to the CYP Act.**

Your informed, candid and practical input is welcomed. It is now being considered and will inform the ongoing work to develop the draft amendments to the CYP Act.

To find out more about changing the CYP Act and other child, youth and family reform initiatives, visit [Changing the Children and Young People Act 2008 - Stage 2 | YourSay ACT](#) or email [CYPAct@act.gov.au](mailto:CYPAct@act.gov.au)

### Key Timings

**21 November – Consultation closed**

**December-February – Consideration of feedback and drafting of Bill**

**March 2024 – Listening Report released and stakeholder conversations continue**

**21 March 2024 – Introduction of Bill to the ACT Legislative Assembly.**

**March-August – Further drafting and targeted consultation continues to progress additional legislative reform.**

### THANK YOU FOR YOUR FEEDBACK

**2787**

People reached via YourSay

**809**

downloads of the information paper

**23**

presentations delivered to over 170 people

**5**

tailored workshops for those groups most impacted by changes

**110**

individualised emails to organisations and impacted entities

**27**

formal submissions received