



Connecting Foster Carers – SA Inc

The peak body for foster and kinship carers in South Australia

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27 January 2017

Ms Joanne Howski
Legislative Services
Attorney General's Department
via email: LLPSubmissions@agd.sa.gov.au

Dear Ms Howski,

RE: Children and Young People (Safety) Bill consultation draft

Connecting Foster Carers – SA Inc (CFC-SA) presents this response to the draft *Children and Young People (Safety) Bill 2016* (SA). This submission is informed by the personal and professional experiences of our paid staff and volunteer board members and via contact with carers and CFC-SA members.

As the peak body for foster and kinship carers (carers) in South Australia, CFC-SA aims to advocate, support, connect and inform carers to achieve the best possible outcomes for all children and young people in their care and in their homes.

CFC-SA supports the introduction of new legislation and celebrates the inclusion and acknowledgement of carers as an essential part of the child protection system. The importance of new legislation cannot be understated – getting it right from the outset will see carers enjoy legal protection, ensure greater stability, reduce the expense to the system through improved recruitment and retention and less reliance on residential care services (to name a few), and work towards achieving the ultimate goal: the best possible outcomes for children and young people.

CFC-SA has provided comments and proposed changes to areas of the Bill in efforts to address, protect and improve carers' rights. The following areas are of particular importance, where CFC-SA:

- seeks the right of carers to be heard to be absolute, subject to the best interests of the child or young person, and not discretionary;
- is opposed to any risk of carers being imprisoned for any term whatsoever;
- is opposed to any risk of carers being fined for any sum whatsoever; and
- proposes amendments to allow for urgent hearings at the South Australian Civil and Administrative Tribunal (SACAT) in relation to matters that arise from the new legislation.

Thank you for your consideration. CFC-SA would be pleased to discuss any of the following areas in more detail.

Yours sincerely

Amanda Porter
Chief Executive Officer



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Section of the <i>Children and Young People (Safety) Bill 2016 (SA)</i> ('Bill')	Comments
Chapter 2, Part 3, section 8(1)(c)	<p>CFC-SA supports the inclusion of the principles of intervention, in particular that account should be taken of those persons 'in whose care children and young people [have been] placed'.</p> <p>CFC-SA accepts that this would include foster and kinship carers (carers).</p>
Chapter 2, Part 3, section 9	<p>CFC-SA supports the inclusion of the placement principles, in particular the inclusion 'stable and secure environment' and that an 'existing relationship' is considered of importance.</p> <p>CFC-SA however would like to see s 9(1)(b) amended to read 'approved carers are entitled to be, and must, insofar as it is practicable, be involved in decision-making relating to children and young people in their care.'</p> <p>CFC-SA has advocated, and continues to advocate that in many cases the strongest relationship a child or young person ('CYP') in care has is with their carer.</p> <p>CFC believes that if the government wants to recruit and retain volunteer carers, to care for highly vulnerable and damaged children in secure, stable, inexpensive home based care, then the government must protect and empower carers for the benefit for the children for whom they care.</p>
Chapter 3, section 12(1)	<p>CFC-SA welcomes the inclusion of the definition of 'approved carers' in the Bill.</p> <p>The definition of 'family' is cause for some confusion however, and arguably could extend to include carers. If it is not the intention of the Bill to include approved carers in the definition of 'family' it should expressly exclude them to avoid any such confusion.</p>
Chapter 3, section 13	<p>CFC-SA welcomes the extension of the meaning of harm to include '<u>mental</u> and emotional abuse'.</p> <p>This section highlights the need to genuinely support carers in the provision of long term, stable, permanent family based care to achieve the best possible outcomes for CYP. Carers are supporting the most vulnerable CYP in this state to address emotional, social, behavioural and educational needs, and will benefit greatly from various support initiatives aimed towards sustaining their caring responsibilities and connecting with other carers.</p>
Chapter 4, Part 2, section 19(1)(d)	<p>CFC-SA welcomes the inclusion of 'persons who have a close association with the child or young person' to an entitlement to attend family group conferences, however CFC-SA would like the section to extend beyond those that should attend 'in the opinion of the coordinator', to expressly include carers that have had CYP in their care for some time.</p> <p>CFC-SA believes that approved carers that have had the care of a child for some time should have the absolute right to attend family group conferences. Carers are often best able to speak on matters that may have an impact on CYP in their care because carers:</p>



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	<ul style="list-style-type: none"> - Spend significantly more time with CYP than any other person in the child protection system; - Witness the actual, real life, consequences of decisions made by the Court, the Department and agencies on CYP; - Are responsible for the care and conduct of CYP; and - Are trained and required to comply with all relevant policies and directives prescribed under legislation, regulations, directives, policies, procedures and mandates of the Department and any such delegates. <p style="text-align: center;"><i>“While this provision seems to concern the removal of children from their birth homes, based on experience with the Department, in many cases there may well be quite a long time between removal and the family group conference. During this time the carer will have developed a good knowledge of the child’s needs and the child may have formed a strong attachment to the carer, especially in cases of kinship care. In these cases, the carer’s input would be invaluable and should not be left to the discretion of the Chief Executive but the carer should have a right under law to be involved.”</i></p> <p style="text-align: right;">(Carer)</p>
Chapter 4, Part 2, section 20	The definition of ‘family’ may cause some confusion in this section of the Bill.
Chapter 4, Part 2, Section 22	<p style="text-align: center;"><i>“Based on experience, it is not uncommon for an agreement to be reached about an action to be taken by the Department but there is no follow through and nothing happens. It would seem to be equitable for there to be a remedy against the Department as well as against other parties to the family group conference.”</i></p> <p style="text-align: right;">(Carer)</p>
Chapter 5, Part 1, Section 26(3)	<p style="text-align: center;"><i>“Carers are considered to be mandatory reporters and must undertake relevant courses. Rather than relying on the Regulations, it would seem logical to cover them in the law.”</i></p> <p style="text-align: right;">(Carer)</p>
Chapter 5, Part 3	<p>CFC-SA is aware of instances where CYP in stable, long-term placements with approved carers have been removed abruptly and without prior communication with the carer or the CYP. This practice severs any attachment between CYP and carer, creates distrust between all parties (especially between the carer and the Department), and leaves carers questioning their abilities while negatively impacting several areas of their lives (health in particular). Many carers exit the system or require a long period of time before continuing with their caring role.</p> <p>While this section considers the removal, action and custody of CYP, CFC-SA asks whether consideration may be given to addressing those instances where the Chief Executive approves removal of CYP from approved carers.</p>



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<p>Chapter 6, Part 1, Section 40</p>	<p><i>“If a carer is seeking guardianship of a child, the present draft does not allow the carer to seek a Court order in the circumstances where the Department does not approve and refer the application or takes an unreasonable time in making its determination. This is such an important decision for all concerned that there should be some judicial oversight not only of the administrative process used but of the actual decision itself.”</i> (Carer)</p>
<p>Chapter 6, Part 1, Section 41(4)</p>	<p>It is well established that timely decision-making, permanency and stability are key factors in promoting the wellbeing of and best outcomes for CYP in out-of-home care. CFC-SA therefore welcomes the requirement that the ‘Chief Executive must assess the likelihood of a reunification occurring, and if reunification is likely the period within which reunification is likely to occur’. However CFC-SA is strongly of the view that such a decision must be made within a prescribed period and mandated in the proposed Act.</p> <p>CFC-SA would recommend that the Bill be amended to reflect the timelines prescribed in the Nyland Commission recommendations: ‘The timeframe in the vast majority of cases should not exceed six months for a child under two years, or 12 months for older children.’ The failure to mandate timeframes directly impacts on the stability and permanency of placements and therefore directly contributes to the vulnerability of CYP in care.</p> <p><i>“There are cases where children have been removed from the carer after many years. This can cause considerable trauma both to the child and to the carer and the carer’s family, especially when the child has been with the carer from or near birth and has no relationship or attachment to the birth family. The fear of the possibility that the child will be removed from a carer for family reunification causes ongoing stress and concern for the child, the carer and the carer’s family and should be minimised whenever possible. Family contact can be ordered by the Court to ensure the child has a relationship with the birth family without causing this stress and trauma.</i></p> <p><i>Where a child has been in the continuous care of a carer for a period of three years or more and where the child has formed an attachment to the carer, reunification should only be considered in extraordinary circumstances.”</i> (Carer)</p>
<p>Chapter 6, Part 1, section 42(3)</p>	<p>CFC-SA would like to this section amended to read ‘Without limiting subsection (2), the Court must, unless the Court is on the opinion that it would not be in the interests of the child to do so, ... (b) if the child is in the care of an approved carer – the approved carer, a reasonable opportunity to make representations to the Court in any relevant proceedings.’</p> <p>CFC-SA has been made aware of experiences by carers who have sought to make submissions to the Court on behalf of a CYP in their care, and that request has been ignored or rejected. Further, CFC-SA has received many complaints that non-government agencies and the now defunct Families SA would not make submissions on behalf of carers. Again, it is carers that spend the most time with CYP and are therefore arguably</p>



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	<p>placed to make the most meaningful submissions on behalf of CYP.</p> <p>It is therefore vitally important that carers:</p> <ul style="list-style-type: none"> - Are acknowledged and treated with respect; - Receive information about how and where a submission may be made and this information is accessible and transparent; - As a vulnerable population, are assisted to make submissions; - Are not adversely affected because they have made a submission; - Have their submissions promptly acknowledged, assessed and prioritized in accordance with the urgency of the issues raised; - Are advised if their matter is out of scope of the Court and are redirected to appropriate authorities where possible; - Are advised of the submission and Court processes, expected timeframes, how they are able to contribute to the submission and Court process, the possible outcomes and avenues of review and appeal; - Be provided with written records receive responses in writing about decisions being made; - Receive procedural fairness; - Have their personal information treated confidentially; and - Are adequately supported by an independent and objective advocacy and support service such as CFC-SA. <p>CFC-SA would like the right of carers to be heard to be absolute, subject to the best interests of the CYP, and not discretionary.</p>
<p>Chapter 6, Part 2, section 48</p>	<p>The timelines of Court orders have been a cause of great concern to CFC-SA and carers. Our members consistently report that the lack of prescribed timeframes, in relation to certain procedures, leads directly to:</p> <ul style="list-style-type: none"> - Feelings of powerlessness, vulnerability, isolation, distress and uncertainty; - Breakdowns in family relationships, not only with foster children, but within wider family networks; and - Mental health issues, including anxiety, for which members have had to seek medical treatment. <p>It is clear the Bill acknowledges the requirement for timely decision making, as per the inclusion of the principles of intervention, the placement principles and the inclusion of the words 'must be dealt with expeditiously...' in section 48(1). However, the Bill fails to ensure that matters are in fact dealt with 'expeditiously' by failing to mandate prescribed timelines.</p> <p>CFC-SA would like to see the inclusion of express mandated timelines, pursuant to which the Court must make orders and periods of adjournment.</p>



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<p>Chapter 6, Part 5, section 58</p>	<p>As per section 42(6) of the Bill, CFC-SA considers that the right that carers be heard be absolute and not discretionary.</p> <p>CFC-SA would therefore like section 58 of the Bill to read 'In any proceedings under this Act relating to a child or young person, the Court must, on the application of – ... (b) a person who has at any time had the care of the child or young person ... hear submissions the applicant wishes to make in respect of the child or young person <u>and/or matters to the placement of that child or young person ...</u>'</p> <p>For example, CFC-SA has been contacted by distressed carers seeking advocacy services. CFC-SA has been made aware of recent situations whereby CYP are removed from long term placements without notice, in the absence of Care Concerns and without prior planning for future placements. CFC-SA holds great concerns for the distress the CYP is experiencing, particularly when the CYP has not known any other home environment and has additional familial relationships, including siblings and other CYP in care. On more than one occasion, the carer has been willing to take significant additional steps (including moving homes) to sustain placements had they known there was any chance their caring relationship was at risk.</p> <p>It would be appropriate for the Court to hear the relevant facts in relation to these matters, and for this to occur in a timely manner.</p>
<p>Chapter 7, Part 1, section 64(4)</p>	<p>CFC-SA is of the view that there must be some reciprocal obligations on the Chief Executive with respect to carers to lessen the burden, grief and difficulties that carers face.</p> <p>For example, pursuant to s 64(4) 'the person will, where appropriate, assist the child or young person to return to their own family'. It is CFC-SA's contention that the Chief Executive must therefore be under an express statutory obligation to advise carers of the status and plan for CYP, and if the CYP is at any stage likely to be returned their family of origin the Chief Executive must advise the carer of such at the outset of the caring relationship.</p> <p>CFC-SA are aware of occasions where carers were under the mistaken belief that the CYP in their care was to be placed with them until that CYP attained 18 years, and then the CYP was subsequently removed and placed back with their family of origin. There is no question that carers suffer grief and trauma when a child is removed, and this directly impacts on the recruitment and retention of carers.</p> <p>CFC-SA therefore seeks reciprocal acknowledgement of carers role in the child protection system; and reciprocal legal rights and acknowledgement of that fundamental role.</p>
<p>Chapter 7, Part 1, section 64(7)</p>	<p>CFC-SA is absolutely opposed to any risk of carers being imprisoned for any term whatsoever for undertaking a voluntary role, beyond those imposed on the public generally.</p> <p>CFC-SA seeks the removal of section 64(7) of the Bill.</p>
<p>Chapter 7, Part 1, section 65</p>	<p>CFC-SA welcomes the requirement that pursuant to section 65(c) the Chief Executive 'must ... ensure that ... ongoing support and guidance are provided to the approved carer' and section 65(d) where 'proper assessments are made of any requirement of the approved carer for financial or other assistance.' However, CFC-SA is concerned that the ambiguity of the language used will mean the section is effectively unenforceable and</p>



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	<p>therefore carers will continue to lack genuine support, guidance and assistance.</p> <p>CFC-SA is of the view that there has been sufficient research to demonstrate the support, guidance and assistance that carers genuinely seek, and this section could be redrafted to reflect that research and avoid its current ambiguity.</p>
Chapter 7, Part 1, section 67	<p>CFC-SA is absolutely opposed to any risk of carers being fined for any sum whatsoever for undertaking a voluntary role, beyond those imposed on the public generally.</p>
Chapter 7, Part 1, section 70(1)	<p>CFC-SA would like to know what information is made available to a 'placement agency' before commenting further on section 70(1) of the Bill.</p>
Chapter 7, Part 1, section 70(2)	<p>CFC-SA seeks to ensure carers receive adequate information regarding CYP in order to make an informed assessment and to consider and address risks prior to and during placement. Where the CYP makes a request to prevent disclosure, we suggest a caveat stating the request will not be granted where it impacts the carer's ability to provide for the CYP safety and wellbeing, or the safety or wellbeing of others.</p>
Chapter 7, Part 1, section 72(2)	<p>CFC-SA is absolutely opposed to any risk of carers being fined for any sum whatsoever for undertaking a voluntary role, beyond those imposed on the public generally.</p>
Chapter 7, Part 3, section 80(2)	<p>CFC-SA welcomes the inclusion of Chapter 7, Part 3 of the Bill. However, CFC-SA would like to see the factors required for a grant of other person guardianship mandated.</p> <p>At present the Bill allows the Chief Executive full, unfettered power to determine whether an application may be made, and what factors may or may not be relevant to an application of other person guardianship. In effect therefore Chapter 7, Part 3 of the Bill does not change the present legal rights of carers with respect to seeking an application of other person guardianship.</p> <p>CFC-SA would like to see the timeline, requirements and factors necessary for an application to be mandated within the proposed Act, and an allowance for carers to bring an application for other person guardianship without the approval of the Chief Executive. CFC-SA is of the view that the grant of other person guardianship is a matter that not only affects the legal rights of the CYP, but the carer also and is therefore a matter that should be determined by the Court.</p>
Chapter 7, Part 3, Section 80(3)	<p><i>“When the child has been in care for over 3 years, it is reasonable to presume that a relationship has developed between the child and the carer and the carer's family. Ensuring the continuation of this relationship without the uncertainty of the child's removal is prima facie in the child's best interests. Any decision not to approve the application should therefore be made on supportable grounds and should be subject to independent review by the Court. The applicant should be supplied with a written statement of the reasons and should have the right to appeal the decision to the Court.”</i></p> <p>(Carer)</p>



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Chapter 7, Part 4, section 84(3)(b)	CFC-SA welcomes the inclusion of section 83(3)(b) in the Bill, however CFC-SA is of the view that the section lacks prescription and will therefore be difficult to enforce.
Chapter 7, Part 4, section 86	CFC-SA is of the view that carers should have rights to be heard in relation to contact arrangements and such rights should be mandated under the proposed Bill.
Chapter 7, Part 9, section 103	CFC-SA welcomes the acknowledgement of carers, however CFC-SA is of the view that in effect this section does little more than entitle the parties to enter a form of alternative dispute resolution to be prescribed by the Chief Executive. This section fails to afford carers any genuine legal rights in relation to a deceased CYP and is therefore tokenistic in its scope.
Chapter 10, Part 1, section 133	<p><i>“The file notes upon which the Department rely in making their decisions are often incorrect or incomplete. There needs to be a system to ensure all records held by the Department are open to review by those who are affected by them. By placing this in the legislative requirements, the importance of this is indicated and the Chief Executive is compelled to ensure records are fairly and accurately kept.</i></p> <p><i>Ensure all file notes or other documents held by the Chief Executive or State authorities are made available for review by all affected persons, in particular approved carers, parents and the affected child or young person, at no cost. A system for resolution of conflict about the content of file notes and other documents is to be maintained.”</i></p> <p>(Carer)</p>
Chapter 10, Part 3, section 141	<p><i>“It is important for the carer to make an informed decision about taking on long-term care of a child. They should be aware of any disabilities or trauma the child may have experienced which could affect the child’s behaviour and emotional, physical and cognitive development. It is also important for carers to have the information to provide appropriate health care for the child if they become ill e.g. a family history of epilepsy, heart disease, diabetes or asthma.</i></p> <p><i>Approved carers to be provided with all information regarding the child which may affect their care of the child or their decision to enter into a long-term arrangement for the care of the child. This would include but not be limited to familial health issues, the reason the child was removed and any potential future health issues arising from pre-birth traumas or exposure to toxins.”</i></p> <p>(Carer)</p>



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Chapter 11	<p>CFC-SA welcomes the inclusion of chapter 11 in the Bill, and is of the view that this will have long-term positive impacts on the recruitment and retention of carers.</p> <p>However, given the experiences in other states regarding timelines for hearings and the nature of child protection matters, CFC-SA is of the view that the <i>South Australia Civil and Administrative Tribunal Act 2013 (SA)</i> should be amended to allow for urgent hearings in relation to matters that arise from the <i>Children and Young People (Safety) [Act] 2016 (SA)</i>.</p> <p>CFC-SA would consider this to be a critical inclusion that will directly affect the impact of SACAT in the new child protection legislation and ensuring it is efficient and effective in reviewing child protection matters.</p>
Other	<p>CFC-SA is curious as to what impact the new amendments will have on the <i>Family and Community Services Act 1972 (SA)</i>. Will there be any corresponding changes and/or amendments?</p>
Other	<p><i>“Can we please have something legislated that ensure kids in care have regular contact with their siblings???? This does not seem to have been raised as an issue anywhere.”</i> (Carer)</p>