



Connecting Foster Carers – SA Inc

advocate support connect inform

serving aboriginal, relative, kin and foster carers in South Australia

Nyland Royal Commission Response Unit
Attorney-General's Department
via email: NRCResponseUnit@sa.gov.au

16 September 2016

Dear NRC Response Unit,

Response to *Child Protection Systems Royal Commission Report Recommendations*

Connecting Foster Carers – SA Inc (CFC) presents this response to the *Child Protection Systems Royal Commission Report: The life they deserve* (the Nyland Report), and the recommendations contained therein.

As the peak body for foster and kinship carers in South Australia and with a growing membership of over 700, CFC 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 supports many of the recommendations, some in whole and others in part. CFC also finds there are opportunities for further clarification on certain recommendations and others where we are in disagreement with the recommendations as currently stated.

As previously mentioned, CFC is also disappointed with the areas not considered by the Nyland Report, namely the fundamental lack of legal rights and recognition of carers; and the provision of binding, autonomous oversight of decisions of Families SA that affect carers and the children in their care. Foster and kinship carers are therefore in a position where they are not legally protected as carers or as individuals – and this is not known to many before they accept caring responsibilities. We seek to redress this gap and note opportunities within our response where this can occur. CFC strongly believes these changes will lead to an immediate and significant impact on the recruitment and retention of foster and kinship carers in future.

CFC welcomes many of the recommendations, including recommendations 70, 116 and 153.

Thank you for your consideration. Please do not hesitate to contact us should you like any further information or have any questions.

Yours faithfully,

Amanda Porter
Chief Executive Officer



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Chapter 10

77	<p>Although CFC supports this recommendation in principle, CFC accepts there are challenges with this recommendation, as follows:</p> <p>The Commission noted as follows:</p> <ul style="list-style-type: none"> - The turnover of caseworkers undermines children’s ability to ‘form trusting and stable relationships’; - 35% of children had been allocated 5 or more caseworkers during their time in OOHC; - Some children in care were unallocated; - ‘Some children do not welcome the intrusion of the Agency into their lives, as they do not wish to be identified as a child in care’; and - Most concerning, ‘[i]t is clear to the Commission that the caseworker staff charged with supporting the most vulnerable children in this state are not in a position to offer the best service.’ <p>Given these findings CFC considers it somewhat naïve to make a blanket recommendation about children in care having ‘an allocated caseworker who has face-to-face contact with them once a month at a minimum’.</p> <p>CFC accepts that in cases where children are in residential care facilities, have had multiple placements and/or are in unstable placements and the child has a long-term trusted case worker then it would be appropriate to maintain this level of contact. However there are cases where this type of blanket approach is unnecessary and could lead to a “box ticking exercise” that does little to support the child and their placement.</p> <p>For example, where children are in a long term, stable placements the intrusion of case workers into the child’s home and life may be inappropriate and could cause confusion and emotional, social, behavioural and educational issues that may destabilise a placement.</p> <p>CFC believes that there needs to be a more flexible approach with respect to caseworkers having ‘face-to-face’ contact with a child every month, particularly where a child attends school, is in a stable, long-term placement and where there is a high level of turnover of caseworkers.</p>
80	<p>CFC agrees with this recommendation to the extent that the annual review and sharing of information is genuinely in the best interests of the child, and does not become another “box ticking” exercise. For example it may not be appropriate to have an annual review for children in long term, stable placements at all, whereas for children in unstable placements more frequent reviews may be appropriate.</p> <p>Further, CFC expects that any sharing of information must respect the integrity of the child and take into consideration the purpose, usefulness and need for the sharing of information. Any sharing of information about a child must be done with the best interests of all children as the primary consideration, including those in the foster care family, and</p>



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	only to parties that are bound by a confidentiality undertaking and/or agreement.
82	<p>Agree.</p> <p>CFC is however of the view that the Commission did not go far enough with respect to placing an emphasis on concurrent planning. CFC is of the view that the Commission should have used this opportunity to consider concurrent planning not only for children who may be unified with their biological family but for other scenarios also.</p> <p>For example, if, after the relevant times prescribed by recommendation 70, the court is to make an order regarding guardianship, CFC sees no reason that the order could not be made that the carer of the child be made the guardian at that time, if it is appropriate under the circumstances.</p> <p>CFC also considers that if the government supports adoption from OOHC, then concurrent planning should be considered for adoption from foster care also.</p>
83	<p>Agree, however CFC does not consider the Commission has been prescriptive enough in this recommendation.</p> <p>CFC is of the view that there should be adequate prescription with respect to what the “review” should assess. The statement “system deficits” lacks prescription and therefore means it is likely to be difficult to implement.</p> <p>CFC also thinks that the any review of placement breakdown should be used as a means to collect data, produce evidence and therefore inform future practice.</p>
84	<p>CFC considers that this recommendation lacks adequate prescription. ‘Therapeutic support’ is a broad term, as is ‘being at risk’ and ‘under stress’. The failure to identify what is meant by therapeutic support is at risk of being mere rhetoric and therefore a recommendation that is incapable of implementation.</p> <p>Given that the Commission accepts that stable, permanent family based care is the best option for children entering OOHC, CFC is disappointed with the lack of consideration that ‘therapeutic support to placements’ was given.</p>
90	<p>Agree. However, the Commission should have been far more prescriptive with respect to what supports need to established to ensure children are adequately and intensively supported in schools if suspension/expulsion becomes a risk.</p> <p>Further, the Commission should have considered and prescribed what options should be made available for children who do end up being suspend and/or expelled. As the Commission noted, it is often left to carers to care for children who are suspended or expelled from school which places further stress on already stressed and undervalued carers, which can lead to destabilisation and potential placement breakdown. It also places considerable pressure on volunteer carers.</p>



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Comments

Given that the Commission accepts and acknowledges the following:

- The Minister must rely on foster carers to discharge the responsibilities of guardianship;
- That the best outcomes for children in OOHC are achieved through stable, secure family based care;
- That placement stability is best achieved through:
 - o 'entry into care at an early age'
 - o 'a shorter exposure to an abusive environment before coming into care'
 - o 'clear and decisive actions regarding the child's long-term future at any early age'
- That children in trusting, safe and stable relationships are generally safer;

CFC is disappointed that the Commission did not give greater consideration as to how to best achieve to genuinely support carers and achieve stable, safe, permanent family based care.

Chapter 11

112	<p>This recommendations lacks prescription and genuine understanding with respect to the day to day care of children that have suffered trauma.</p> <p>CFC accepts that training is important, however this is widely accepted. The Commission may have considered more progressive initiatives to:</p> <ul style="list-style-type: none"> - Genuinely reduce exposure to trauma; - Lessen trauma; - Support children suffering from trauma; and - Support carers caring for children with trauma.
113	<p>Agree, but only to the extent that children in care and foster and kinship carers are reimbursed in the same manner as agency staff.</p>
115	<p>CFC are disappointed that the Commission absolutely failed to address issues that exist with respect to care concerns.</p> <p>Care concerns have grave impacts on carers, placement stability and the recruitment and retention of carers.</p>
116	<p>Agree.</p> <p>CFC is in communication with Minister Close's office and has presented an initial proposal outlining the funded advocacy service, including staffing levels, and the range of recommendations which could be supported (in whole or in part) through appropriate resourcing.</p> <p>CFC is in a position to progress this work, whilst focusing on ensuring foster and kinship carers actually have legal rights (see response to recommendation 117 below).</p>



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117	<p>This recommendation is misguided. Foster and kinship carers have no legal rights, per se, so funding someone to provide advice on legal matters demonstrates the Commission's failure to understand and acknowledge the lack of legal status, rights and recognition of carers.</p>
118	<p>CFC does not accept this recommendation.</p> <p>CFC is strongly of the view that any body empowered to make a decision to remove a child from a placement must be absolutely independent of the Agency. Children and carers must have the right to independent, binding, autonomous oversight of the Agency's decision making.</p> <p>The Commission noted that:</p> <p style="padding-left: 40px;">In 2007 a Select Committee was appointed ... to examine and report on Families SA ... The Committee heard overwhelming evidence from foster parents, family members, advocacy agencies, staff and experts in child protection that a 'culture of arrogance, mistrust, bullying and dishonesty is endemic within the department'. The Committees heard of a 'pervasive and rotten culture.' (52)</p> <p>And that 'despite these observations ... being made in such strong terms, evidence to the Commission suggested that nothing has changed.'</p> <p>Further, the Commission noted that, in failing to comply with summonses in breach of the <i>Royal Commissions Act 1917 (SA)</i>, Families SA:</p> <ul style="list-style-type: none"> - Had an absence of training with legal obligations of staff; - Had poor communication from higher management levels to staff; - Lacked organisational candour; - Had a culture that encouraged uncritical compliance with direction; - Unquestioning acceptance of the chain of command; - 'Significant deficits' in record keeping; and - 'Significant misunderstanding about basic concepts'. <p>It is astonishing therefore that despite these findings, in relation to a breach of the law, the Commission is happy for the Agency to determine, without independence or oversight, whether a child should be removed from a placement.</p> <p>CFC is of the view that the decision to remove a child should be made, in non-urgent circumstances, by an independent, binding authority whose decisions are capable of appeal, for example to the Youth Court or the South Australian Civil and Administrative Appeals Tribunal. In cases where removal is urgent, such decisions should be appealable to the Youth Court or the South Australian Civil and Administrative Appeals Tribunal. This would bring South Australia in line with other jurisdictions, for example Queensland.</p>
121	<p>CFC does not support any recommendation that would incentivise the further damaging of children within the child protection system.</p> <p>The Commission states that:</p>



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	<p>‘where general foster parents have children whose needs escalate and the care of those children would be better provided through a specialist agency, carers should be helped to move their registration to the specialist agency.’</p> <p>This may in fact lead to the exaggeration of children’s behavioural, emotional, psychological and/or physical problems so as to increase subsidy rates.</p> <p>This recommendation flies in the face of the Commission’s observation that ‘[g]ood quality care which reduces psychological distress and associated behavioural symptoms can result in carers having payments reduced’ and that ‘inequities become well known and promote resentment among carers.’</p> <p>CFC is of the view that this recommendation, coupled with the observations and the Commission’s failure to properly address professional foster care is inconsistent, lacking and in need of review by government.</p>
122	This recommendation is too broad and lacks prescription.
123	Agree. The Agency must be transparent in all of its dealings.
124	<p>Agree. However, this recommendation is too broad and lacks prescription.</p> <p>The Commission unequivocally accepts that secure, stable family based care produces the best outcomes for children in OOHC, however the Commission failed to recommend genuinely progressive change.</p>
126	<p>CFC is of the view that the Commission failed to be more creative in considering what supports carers genuinely need with respect to placements.</p> <p>For example, some carers are unwilling to put their children into respite care because many children respond very poorly to the destabilising effects of respite care. However, carers should not be penalised for not accessing respite. Carers may benefit from having someone come and babysit and/or help with housework.</p> <p>CFC believes there are more creative and less damaging ways of supporting placements than removing already traumatised children and placing them in respite.</p>
127	<p>CFC does not accept this recommendation.</p> <p>CFC is strongly of the view that any body empowered to make a decision to remove a child from a placement must be absolutely independent of the Agency. Children and carers must have the right to independent, binding, autonomous oversight of the Agency’s decision making.</p> <p>The Commission noted that:</p>



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<p>In 2007 a Select Committee was appointed ... to examine and report on Families SA ... The Committee heard overwhelming evidence from foster parents, family members, advocacy agencies, staff and experts in child protection that a 'culture of arrogance, mistrust, bullying and dishonesty is endemic within the department'. The Committees heard of a 'pervasive and rotten culture.' (52)</p> <p>And that 'despite these observations ... being made in such strong terms, evidence to the Commission suggested that nothing has changed.'</p> <p>Further, the Commission noted that, in failing to comply with summonses in breach of the <i>Royal Commissions Act 1917 (SA)</i>, Families SA:</p> <ul style="list-style-type: none">- Had an absence of training with legal obligations of staff;- Had poor communication from higher management levels to staff;- Lacked organisational candour;- Had a culture that encouraged uncritical compliance with direction;- Unquestioning acceptance of the chain of command;- 'Significant deficits' in record keeping; and- 'Significant misunderstanding about basic concepts'. <p>It is astonishing therefore that despite these findings, in relation to a breach of the law, the Commission is happy for the Agency to determine, without independence or oversight, complaints about its own operations.</p>
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Comments

CFC is of the view that given:

- The 'rotten culture' of the Agency;
- The Commission's finding that 'there is no doubt that in most circumstances the best care for children who cannot live at home is in an alternative home-based environment';
- That GCYP 2013/2014 audit reported that 81% of children were living in stable, long-term placements;
- That 'a healthy and robust foster and kinship care system is critical to the functioning of the child protection system...'
- 'The best recruitment strategies for foster care might rely on word of mouth, but their success is very much dependent on the message being delivered by existing carers' yet most would not recommend foster care because of challenges with the Agency; and
- The Agency's failure to comply with the law;

The Agency should not have the oversight of decisions that affect the legal rights of carers, in particular:

- Decisions to remove children from placements;
- Disputes and/or complaints between carers and Agency staff; and
- Care concerns.



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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.

Chapter 12

128	CFC agrees, but given the increase in the numbers of children entering care and the number of carers leaving the system CFC considers this recommendation naïve and unrealistic.
137	Agree, but CFC considers that this would have to be heavily policed given that children in care are highly vulnerable to exploitation and predators.
141	<p>CFC accepts that there must be some guidance with respect to appropriate touching of children. However, it is wrong to draft guidelines with respect to human touch, particularly of small children who require care and comfort.</p> <p>The difficult truth is that a paedophile will not abide by ‘unambiguous guidelines’ regarding physical touch even if they exist. However, someone that is not a paedophile, but a caring worker, may avoid any touch with a child to avoid any perception of wrongdoing or ambiguity.</p> <p>CFC is of the view that this recommendation is too prescriptive.</p>
142	Agree, but CFC is of the view that any reports must be highly mindful of children’s privacy, and any effects on the child when later accessing these reports.
143	<p>Agree, but CFC believes that the recommendation should have been more prescriptive than receiving and tracking of information. The Commission should have prescribed:</p> <ul style="list-style-type: none"> - How this information is to be stored and used; - How long the information can be retained; and - Whether people will be immune from persecution/defamation for making reports.
145	<p>Agree, although CFC would have liked to have seen the Commission focus far more on:</p> <ul style="list-style-type: none"> - Early, decisive intervention; - Appropriate placement matching; and - Factors that support stable, secure, permanent care for children in OOHC; <p>so that children do not become unsuitable for home-based care.</p>
149	<p>Agree in principle. However, given the increase in the numbers of children entering care and the number of carers leaving the system CFC considers this recommendation naïve and unrealistic.</p> <p>CFC is disappointed the Commission did not give adequate focus to factors that:</p> <ul style="list-style-type: none"> - Recruit and retain good foster and kinship carers; and - support stable, secure family based care.



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	By failing to focus on these factors CFC believes it is naïve to think that “no child under 10 years [is] to be housed in a residential care facility.”
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Chapter 13

155	Agree. However, CFC believe that any decisions that have the ability to affect the legal rights of individuals should be appealable.
156	CFC considers that section 80 should be amended to enable foster carers to bring an application for other person guardianship without the delegation of the Minister, and the time period should be reviewed to be “a minimum of two years” in accord with recommendation 153.
157	Agree. CFC welcomes any means in which permanency for placements can be obtained. Given the overwhelming evidence that demonstrates that permanency is in the best interests of children and young people, CFC supports adoption as a valid and preferable option for children in care.

Chapter 14

161	<p>Agree, but CFC do not consider the payments should dependent on young people being engaged in ‘tertiary education, apprenticeships or any post-high school training’.</p> <p>CFC accepts that many young people entering adulthood from OOHC have not had the opportunities to acquire the skills, education, confidence and/or support to enter into training or education at a tertiary level. CFC considers that to continue support on this basis alone would be inequitable and lead to further stigmatisation and alienation of already marginalised young people.</p>
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Chapter 15

172	Agree. However, CFC is of the view that this recommendation is broad and lacks adequate prescription.
175	<p>CFC does not accept this recommendation.</p> <p>CFC is strongly of the view that any body empowered to make a decision to that affects the legal rights of an individual must be independent of the Agency. Children and carers must have the right to independent, binding, autonomous oversight of the Agency’s decision making.</p> <p>The Commission noted that:</p> <p style="text-align: center;">In 2007 a Select Committee was appointed ... to examine and report on Families SA ... The</p>



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	<p>Committee heard overwhelming evidence from foster parents, family members, advocacy agencies, staff and experts in child protection that a ‘culture of arrogance, mistrust, bullying and dishonesty is endemic within the department’. The Committees heard of a ‘pervasive and rotten culture.’ (52)</p> <p>And that ‘despite these observations ... being made in such strong terms, evidence to the Commission suggested that nothing has changed.’</p> <p>Further, the Commission noted that, in failing to comply with summonses in breach of the <i>Royal Commissions Act 1917 (SA)</i>, Families SA:</p> <ul style="list-style-type: none"> - Had an absence of training with legal obligations of staff; - Had poor communication from higher management levels to staff; - Lacked organisational candour; - Had a culture that encouraged uncritical compliance with direction; - Unquestioning acceptance of the chain of command; - ‘Significant deficits’ in record keeping; and - ‘Significant misunderstanding about basic concepts’. <p>It is astonishing therefore that despite these findings, in relation to a breach of the law, the Commission is happy for the Agency to determine, without independence or oversight, care concerns that can affect:</p> <ul style="list-style-type: none"> - The stability and security of placements; - The long term welfare of children; - The legal rights and socio-economic welfare of carers; and - The recruitment and retention of carers. <p>Care concerns must be handled by an independent body that is capable of making binding decisions in a prescribed time period that are appealable.</p>
176	See 175 above.
177	CFC is of the view that the term ‘should’ must be replaced with ‘must’. The time within which investigations should be completed must not be discretionary. The impacts on children, placements and carers are too grave to leave to the discretion of the Agency, particularly given the scathing review of the Agency by the Commission.
183	<p>CFC does not accept this recommendation.</p> <p>This will have dire consequences for carers whose matter has ‘undetermined’ outcome assigned to it. CFC urges the Government to look at CFC’s response to the Complaints Management and Resolution Policy and Procedures dated 26 June 2015 (submitted as Attachment A to this response).</p> <p>Further, if an option of ‘undetermined outcome’ is available it may cause some workers to record that outcome as a means of:</p> <ul style="list-style-type: none"> - Reducing workload; and - Reducing accountability.



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	<p>This is of particular concern given the findings of the Commission with respect to the Agency's failure to comply with the summons and the culture of the Agency.</p> <p>CFC believes that an outcome of substantiated or unsubstantiated must be reached.</p>
184	<p>CFC does not accept this recommendation.</p> <p>CFC is strongly of the view that any body empowered to make a decision to that affects the legal rights of an individual must be independent of the Agency. Children and carers must have the right to independent, binding, autonomous oversight of the Agency's decision making.</p> <p>The Commission noted that:</p> <p style="padding-left: 40px;">In 2007 a Select Committee was appointed ... to examine and report on Families SA ... The Committee heard overwhelming evidence from foster parents, family members, advocacy agencies, staff and experts in child protection that a 'culture of arrogance, mistrust, bullying and dishonesty is endemic within the department'. The Committees heard of a 'pervasive and rotten culture.' (52)</p> <p>And that 'despite these observations ... being made in such strong terms, evidence to the Commission suggested that nothing has changed.'</p> <p>Further, the Commission noted that, in failing to comply with summonses in breach of the <i>Royal Commissions Act 1917 (SA)</i>, Families SA:</p> <ul style="list-style-type: none"> - Had an absence of training with legal obligations of staff; - Had poor communication from higher management levels to staff; - Lacked organisational candour; - Had a culture that encouraged uncritical compliance with direction; - Unquestioning acceptance of the chain of command; - 'Significant deficits' in record keeping; and - 'Significant misunderstanding about basic concepts'. <p>It is astonishing therefore that despite these findings, in relation to a breach of the law, the Commission is happy for the Agency to determine, without independence or oversight, care concerns that can affect:</p> <ul style="list-style-type: none"> - The stability and security of placements; - The long term welfare of children; - The legal rights and socio-economic welfare of carers; and - The recruitment and retention of carers. <p>Care concerns must be handled by and independent body that is capable of making binding decisions in a prescribed time period that are appealable.</p>
252	<p>CFC do not accept this recommendation.</p> <p>CFC is of the view that carers should have the right to appeal decisions that affect them</p>



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and the children in their care to the South Australian Civil and Administrative Appeals Tribunal.

The Ombudsman does not have the power to make binding decisions. Further unlike SACAT, the decisions of the Ombudsman are not appealable to any court.

CFC believes that the Commission erred in determining that appeals to SACAT would "divert focus from critical questions of the best interests of the child". CFC is of the view that SACAT is better placed to review decisions of FSA, in that it is better resourced - "SACAT's Tribunal Members are from a range of professions and backgrounds. They include lawyers, psychiatrists, people with a social welfare or nursing background, people with a public sector background and accredited mediators".

CFC sees no reason that the concerns raised by the Commissioner regarding:

- Fees, which SACAT has the power to waive;
- Delays, which have been experienced by members seeking review by the Ombudsman;
- Deterioration of the relationship of the agency and the other parties (CFC would again recommend the government read CFC's response to the Complaints Management and Resolution Policy and Procedures dated 26 June 2015 and submitted as Attachment A to this response).

- Exclusion of children from the process;

could not be dealt with with Amendments to the *South Australian Civil and Administrative Tribunal Act 2013* (SA) and the *Child Protection Act*, which arguably creates the same amount of work as the amendments recommended by the Commissioner to the *Ombudsman Act* and the *Health and Community Services Complaints Commissioner Act*.'

Further, CFC reiterates its submission that carers must have standing to bring applications, and be heard in relation to matters that affect children in their care in the Youth Court. Please refer to CFC's submissions to the Royal Commission.

CFC is of the view that unless and until foster carers are properly protected by law it would be unreasonable and unethical for CFC to encourage members of the community to become foster carers. If the government is unwilling to protect people from the substantial financial and personal risks involved in becoming a carer, then the government should not be seeking to ask people to enter into this arrangement.