**SUBMISSION REGARDING REVIEW OF CHILDREN AND YOUNG PEOPLE (SAFETY) ACT 2017**

***On behalf of Connecting Foster and Kinship Carers SA Inc***

**INTRODUCTION**

It is important to view the contribution and proposed recommendations of the Children and Young People (Safety) Act 2017 (**CYPS Act**) made by Foster and Kinship Carers through the lens of Foster and Kinship Carers.

Foster and Kinship Carers (**Carers**) have an unenviable and at times fraught role to play within the child protection system. They often find themselves caught between the desires of families, the expectations of the Department for Child Protection (**DCP**) and their own real life circumstances. They bring children into their home, often with their own biological children, and then they seek to provide love and stability, whilst the whole time knowing that many factors relating to the children in their care are out of their control, and subject to change, sometimes overnight. Whilst that is an accepted part of the role, for the system to operate effectively for the sake of children in care, there needs to be clear boundaries and processes in place to ensure that Carers are treated fairly and equitably.

The need for Carers rights to be recognised is not, and should not, be viewed as some attempt by Carers to gain power or an upper hand within the system. To form that view would be to fundamentally misunderstand the reality that Carers are the bedrock of the child protection system. Without Carers, children would face poor outcomes and the Government would encounter insurmountable costs. Children rely upon Carers being able to provide stable, effective care. The Government relies on Carers to raise these children, who are not their own, as if they were their own. At times, the experience of Carers has been that the way in which the DCP makes decisions or executes actions fundamentally undermines their ability to provide that care.

Carers are often (if not always) providing care to children who are already have trauma histories, sometimes with complex needs. This means that in providing care, they are already faced with challenges which parents with biological children in their care may never experience. Further, they are, to some extent, under constant supervision from the DCP who (rightly) will need to report if care is dangerous or

concerning. This fishbowl environment, however, only adds to the challenges faced by Carers and their families. It is vital that updates to the CYPS Act ensure that children are protected, but also guarantees (to the extent possible) the success of placements by ensuring the powers granted to decision makers are balanced and the processes adopted thoughtful and reflective of the complex environment in which they are executed.

To that end, the independent peak representative body for Carers, Connecting Foster & Kinship Carers SA (**CF&KC-SA**) have developed a set of proposed amendments which seek to minimise the issues currently being encountered by Carers and better embed within the legislation protection for Carers rights, which in turn will result in better outcomes for children in care.

Each proposed amendment was identified as a direct result of consulting with, advocating for, and supporting Carers taking into consideration their collective lived experience, dedication and commitment to improve the lives of the children and young people in their care.

**PROPOSED AMENDMENT 1**

**The CYPS Act is amended to outline the powers and responsibilities of the Care Concerns Investigation Unit (CCIU), prescribe the care concern investigation process and make care concern decisions reviewable.**

The current care concerns process, and the management of care concerns generally, is an issue that is repeatedly raised by Carers as an area of deep concern. Carers raise the following issues.

- The care concern process is, at times, used to raise petty issues.
- The care concerns process does not provide Carers with natural justice.
- Concerns are often not raised directly, or clearly, with Carers.
- Concerns are not raised in writing.
- Carers are often not given a proper opportunity to consider the allegations and respond to them.
- Care concerns are often raised well after the event.
- Carers are not advised of their rights at the time a care concern is raised.
- Carers are not provided with, nor do they have access to, an explanation of the role and powers of the CCIU or care concern investigation process.
- Carers are not advised of an investigation timeframe.
- Carers are '*left in the dark'*, while the investigation takes place – often for months.

- Investigations are often inadequate. For example, Carers report that independent third parties (for example teachers, doctors, friends of the Carers) are not approached or questioned.
- Investigations sometimes include children (including biological children) being interviewed without an adult present and without parental consent.
- Carers report being treated as though they are '*guilty until proven innocent*' – even when they have given years of exemplary service as Carers.
- Care concerns allegations remain on the Carer's file (even if they are unsubstantiated) as a permanent record – some would say a '*permanent stain*'.
- Carers are not provided with support during or after a care concern investigation.
- After completion of a care concern investigation, Carers report they are sometimes required to continue to interact with DCP and agency support workers who during the period of the investigation treated them with contempt
- The care concerns process is not transparent.
- There are inconsistent interpretations and processes regarding what specifically is a Care Concern across offices and regions within SA
- Care concerns decisions are not open to independent review.

A care concern investigation can have disastrous and life changing consequences.

- It can result in a child being removed.
- It can result in a Carer's registration being revoked.
- It is distressing and stressful for Carers, the children in their care and (sometimes) also for biological families.
- It can result in reputations being ruined.
- It can result in a Carer being stood down from, or losing, his or her paid or voluntary employment (in particular where the Carer's employment role involves working with children). As just a few examples:
    - a husband and wife Carer couple (one a teacher, one a school principal) were both stood down from their employment for years while an investigation took place and appeals were pursued – with devastating personal and professional consequences

- one Carer was stood aside from Emergency Services Officer duties while an investigation took place
- one Carer was forced to resign from a pre-school board because of an investigation.

There is no doubt that the care concern process as it currently stands impacts negatively on the wellbeing of Carers. It also impacts on Carer retention and recruitment. Even Carers who have not been the subject of a care concern express real fear about these consequences. They worry that they might lose the children in their care. They see what happens to their Carer friends. They know how a care concern might affect their own employment. Many Carers will openly state that if they knew about the risks associated with care concerns investigations before becoming a Carer they would '*never have taken it on'*. They counsel other potential Carers not to do it because of these risks. CF&KC-SA are also aware of a number of professionals who have opted not to take on the role as a Carer for the same reasons.

Fear and anger about the care concern process is regularly raised with CF&KC-SA. It emerges in every annual survey and is the top issue for support each quarter since offering the Carer Advocacy Service officially in July 2018.

CF&KC-SA propose that the CYPS Act be amended to:

- establish the composition, purpose, nature and extent of the powers and responsibilities of the CCIU;
- establish a clear and reasonable threshold for what is a care concern;
- embed principles of natural justice and procedural fairness into the care concern investigation process;
- prescribe the process by which care concerns are investigated, and the duties owed to Carers during investigations;
- ensure that unsubstantiated care concerns are removed from Carer files; and
- widen the definition of reviewable decisions (set out in sections 157 and 158 and related regulations) to include care concern decisions.

These changes will not only make the process fairer for Carers, they will also provide certainty and clarity for DCP staff and those employed in the care concerns investigation unit.

**PROPOSED AMENDMENT 2**

**The CYPS Act is amended to improve the process regarding Carers participating in decision making.**

The CYPS Act states at s82(1) that approved Carers are entitled '*to participate in the decision-making process relating to the health, safety, welfare or wellbeing of a child or young person'* in their care. However, s82 (2) provides that this does not apply '*if the decision-maker is satisfied the participation of the approved Carer would not be in the best interests of the child or young person'.*

The important mandatory obligation in s82(1) – which expressly applies '*despite any other provision of this Act or any other Act* '- can thus be circumvented by a decision of an unnamed (perhaps junior) 'decision maker' – with no reasons given.

Our Carer Advocacy Service has identified one of the most common concerns of Carers is not being involved or invited to participate in the decision-making process regarding the child or young person in their care. This spans all areas of care and case planning from schooling, disability service access, contact & access arrangements, and reunification. In practice Carers are told a decision has "been made", but not told by whom or why.

Whilst below we address some more specific proposed amendments regarding notification to Carers of Court applications, this does not address the more general decision making processes about which Carers are often left in the dark. To address that general process, some guidance can be taken from the *Child Protection Act 1999* (QLD), which provides in section 5D that all parties must be involved, respected and informed of their rights to participate in decisions made under the Act. The principles expressed in this section seek to ensure that decisions are made collaboratively with all parties that may be affected by the decision.

CF&KC-SA propose that Section 82(2) of the Act be amended to the effect that:

- any decision that participation of an approved carer not be in the best interests of a child or young person be a determination of the Chief Executive; and
- such decision, and the reasons for it, be provided to the approved carer in writing as soon as reasonably practical.

It is accepted that the Chief Executive will have the power to delegate the making of this determination to appropriately experienced departmental officers.

**PROPOSED AMENDMENT 3**

**The CYPS Act is amended to provide Carers with notification of Youth Court hearings.**

At present, the Carer voice is not consistently heard in Youth Court matters relating to child or young person in their care. It is not entirely clear why there is apparently hesitancy to invite Carers to be a part of that process. Anecdotally, it appears the hesitancy may arise due to the fact Carers are considered to have a vested personal interest in the outcome of Youth Court matters, which may cloud their evidence in some way. To avoid Carer involvement on that basis is naïve and underestimates entirely the Court's ability to balance and weight evidence with such factors in mind.

The practical reality is that Carers are most often best placed to understand how the child or young person in their care are coping on a day to day basis. Carers are the people with the greatest insight into the emotional and physical wellbeing of the child or young person in their care. In fact, Carers are often the first person that child or young person will disclose their views and opinions to. And yet, so often, the task of deciphering how a child is faring or how they feel about their care arrangements is left to professionals who have limited contact with the child, with no reference to the Carer. That is not a criticism of social workers, nor a suggestion that professional involvement should be disregarded, but rather the full picture of the child or young person's experience is lost without hearing from the person who is acting *in loco parentis* in a practical sense. DCP rarely engages with Carers to ensure their views and voice are heard as part of an application, and this is to the detriment of the child or young person.

To some extent, the changes needed to ensure that Carers are able to support the child or young person in their care through Youth Court proceedings requires changes to the practice of DCP, however, legislative amendment would also assist.

The CYPS Act at s51(3) provides, to some extent, standing for Carers to make representations to the Youth Court, the ability to exercise this power is limited due to the fact Carers are regularly not notified of Youth Court hearings involving the child or young person in their care. If they were, then they could have the ability to speak to DCP and to consider if they want to obtain leave pursuant to s51(3).

CF&KC-SA propose that s52 of the CYPS Act be amended so that the Carer of a child or young person will receive a copy of the application, variation, extension or revocation of an order under s53, or at the very least will be advised by the Court of the date of any hearing of such an application so that they are properly afforded an opportunity to exercise their rights under s51(3).

**PROPOSED AMENDMENT 4**

**The CYPS Act is amended to provide more flexibility regarding options for the length of Guardianship orders of the Chief Executive (GOCE) in the Youth Court.**

Currently the legislation only allows for 12 month or 18 year Guardianship of the Chief Executive (GOCE) orders under section 53 of The Act.

While s53 allows, and s89 (1) clearly envisages, consecutive 12 month orders, Carers report that, in practice, subsequent 12 month orders are not being considered.

Carers are seeking more flexibility around GOCE orders, as often 12 months is too short of a timeframe to facilitate biological parents to alter their situation for reunification.

CF&KC-SA propose that the Act provide the Youth Court with more flexibility and powers to order various timeframes for GOCE orders. In Queensland for example short-term custody or guardianship orders of up to 24 months are available (section 62 of *Child Protection Act 1999)*. If reunification is viable, a longer period that involves Carers in supporting the process of reunification could lead to greater success.

**PROPOSED AMENDMENT 5**

**The CYPS Act include amendments to clarify and strengthen review processes.**

There are a number of issues which have arisen for carers which highlight a need for amendment to the legislation regarding the review of decisions, including a need to:

- clarify what is a reviewable decision;
- ensure that, when a reviewable decision is made, Carers are provided with a written statement of reasons from the actual decision maker;
- ensure that, when there is a decision to remove a child, the content of the 'statement of reasons' provided to Carer be prescribed and include amongst other things the rights of the Carer to have the decision to remove stayed; and
- ensure the definition of 'decision' includes a refusal or failure to make a decision.

Each of these is discussed in detail below.

<u>Clarify what is a reviewable decision</u>

The types of decisions that are reviewable are limited to decisions made under Chapter 7 of the CYPS Act (other than Part 4 of that Chapter) and pursuant to section 40 of the CYPS Regulations.

DCP has reported that over a 2-year period, 40% of the internal review applications received were not within the scope of the legislative power of review. Applications for review deemed out of scope are not reviewed.

The South Australian Civil and Administrative Tribunal (SACAT) have published several decisions which highlight the difficulty Carers have in understanding what is a reviewable decision.

- In the matter of *REM & PVR v Department for Child Protection [2020] SACAT 9 (28 February 2020)* the Tribunal Member found that some sections in Chapter 7 provide that certain conduct amounts to an offence and other sections set out obligations imposed on individuals.
- In the matter of *XVS v Department of Child Protection [2021] SACAT 38 (19 April 2021)* the Tribunal found that a refusal by the Department to make a placement decision was not a 'placement decision' and accordingly no internal review had been, or could have been, conducted; thus, the Department's decision in 2020 was not a 'reviewable decision'. SACAT found that the application was misconceived as the Tribunal had no jurisdiction to entertain or determine it.
- In the matter of, *BKM & SEU v Department for Child Protection [2020] SACAT 16 (10 March 2020)* found that a 'placement decisions' in Chapter 7 which are subject to review in SACAT clearly are not intended to encompass decisions made by the Chief Executive to reunite a child with the biological parent or parents from whom the child has previously been removed.

There is a significant lack of legal funding within the Child Protection space, and as such, people are often appearing in the SACAT unrepresented. Given this, there should be a focus on ensuring that the legislation is as user friendly as possible.

CF&KC-SA proposes that the CYPS Act be amended to include a simple chart – setting out what is, and what is not, a reviewable decision and by whom. Again, guidance can be drawn from the *Child Protection Act 1999* which, as Schedule 2, sets out what amounts to a reviewable decision and who is considered to be a person aggrieved by a decision.

<u>Ensure parties are provided with a written statement of reasons from decision makers</u>

CF&KC-SA notes that, in a number of instances, Carers are confronted with important, even life-changing, decisions being made about their role as Carer (for example the decision to remove a child) – without being provided with the decision, and the reasons for the decision, in writing.

To illustrate:

- When a decision is made to remove a child, a Carer is typically provided with a one-page letter which states *The Department for Child Protection [region office] sought approval from Director, Southern Region, ABC to formally terminate the placement. On [date], ABC approved the formal termination of CHILD placement with you, therefore, they will not return to your care.*
- The letter goes on to outline the procedure by which a Carer may seek a review of the decision, but provides no statement of reasons.

This issue was commented on by SACAT in the matter of *RHN and Anor v DCP* [2021] *SACAT 75 (9 November 2021)* where the Tribunal highlighted the lack of reasons given in relation to a placement decision. It stated:

> *"…significant weight cannot be placed on the original decision because the Department's statement of reasons (which is in the form of a recommendation) is inadequate and fails to weigh up all of the relevant considerations set out in the placement principles".*

The Tribunal went on to say:

> "*We strongly recommend that, in future, the respondent produce a considered statement of reasons from the actual decision-maker when making a placement decision".*

With respect, CF&KC-SA concur with the Tribunal. To not provide a written decision, including reasons for the decision, is to deny a person procedural fairness and natural justice. It significantly disadvantages a Carer who may seek review of the decision. It undermines the basis upon which a review application can be made and diminishes a child's right to have the decisions made by its guardian documented and justified. Failing to provide reasons in a reasonable timeframe means there is little or no express basis on which the decision can be scrutinised for the purposes of an internal or external review application. It is, in short, untenable.

CF&KC-SA proposes an amendment to the CYPS Act to ensure that Carers be provided with a written notice of a decision, including a statement of reasons from the decision maker as soon as practicable (with a maximum time limit of 7 days) after a reviewable decision is made.

<u>Prescribed reasons and power to stay when a decision is made to remove a child form a Carer</u>

Along with the need to provide written notice and a statement of reasons in relation to decisions made by DCP, particular information should be prescribed when a child is being removed from a Carer and a power to grant a stay should be enacted.

The need for this arises again from what the Tribunal found in *RHN and Anor v DCP* where it noted:

> *"Most glaringly, there is a failure by the decision-maker (as set out in the recommendation), or in the respondent's submissions on review to articulate the harm that might be experienced by the boys from severing the attachment relationship with the foster carers and moving them to an alternative placement, or any weighing up of that potential future harm against the harm of leaving them in the previous placement. This gives rise to a concern that the severed attachment harm was not given sufficient weight by the original decision-maker".*

On that basis, CF&KC-SA propose that, where a child is being removed from a Carer, the statement of reasons specifically indicates:

- the consideration had by DCP on the question of severing of attachment, including reference to any expert opinion obtained in relation to that topic.
- be based on, and include, a full written recent assessment from an independent psychologist (external to DCP), not the personal views of a case worker, and

CF&KC-SA propose that the CYPS Act be amended to include a provision similar to that provided in s90(3)(a) of the *Child Protection Act 1999* (QLD) which provides as follows:

> ***90 Notice of removal from care***
>
> *(1) This section applies if the chief executive—*
>
> *(a) has custody or guardianship of the child under a child protection order; or*
>
> *(b) has custody of the child under a care agreement.*
>
> *(2) As soon as practicable after making the decision to remove the child from the care of the child's carer, the chief executive must give written notice of the decision to the carer and the child unless—*
>
> *(a) the child is placed in the carer's care for less than 7 days; or*
>
> *(b) if the child is in the care of an approved carer—the child is removed under a provision of the agreement under section 84 relating to the duration of the child's care.*
>
> *(3) The notice to the carer must state the following—*
>
> *(a) the reasons for the decision;*

*(b) if, under section 91, the carer is entitled to apply to have the decision reviewed—*

*(i) the carer may apply to the tribunal to have the decision reviewed; and*

*(ii) how, and the time within which, the carer may apply to have the decision reviewed; and*

*(iii) any right the carer has to have the operation of the decisions stayed.*

CF&KC-SA further seek an amendment of the CYPS Act (and potentially a consequential amendment of the *South Australian Civil and Administrative Tribunal Act 2013*) to ensure that the DCP and/or the Tribunal has the power to grant a stay of a removal decision pending review. Published SACAT decisions reveal that once children are settled within a new placement, the Tribunal is reluctant to remove children again, due to the harm that this further removal could cause.

> *The respondent notes that SZC has now successfully been placed with WPH (along with his sister NOC), for over a year and submits that, even if the Tribunal were to be satisfied that the original decision was not the correct and preferable decision at that time or now, the potential impact of removing SZC from this environment would need to be carefully assessed before the Tribunal were to make any orders that would lead to this result. We agree: if we were considering that such a course of action ought to be investigated, we would remit the matter to the decision-maker. JCW v The Department for Child Protection (2022) SACAT 19 (4 January 2022).*

This anomaly was the impotence for the Queensland government to include a stay of decisions to their Child Protection legislation. Giving Carers the right to apply for a stay on a decision, whilst it is being reviewed and appealed ensures that children are not placed with new Carers, and their attachment is not disrupted. Ensuring Carers have the right to stay decisions ensures that delays by the DCP and at SACAT do not unfairly disadvantage their right to appeal.

The purpose of this, evidentially being to ensure that attachment relationships between children and young people and carers are not severed or suffer as a result of a removal which is under review.

<u>Ensure the definition of 'decision' includes a refusal or failure to make a decision</u>

Sometimes Carers have had to wait a long period for decisions to made relating to the children and young people in their care – causing uncertainty and anxiety for all parties. These delays leave Carers in limbo. The lack of a decision leave Carers unable to access their rights to have a decision reviewed.

Some guidance can be drawn from the *Work Health and Safety Act 2012* (SA) which, at s229(1), allows for reviews of decisions and *"decisions taken to be made"*, which would include where a person decides to make no decision.

CF&KC-SA seeks an amendment to CYPS Act to ensure that the definition of 'decision' be extended to include a refusal or failure to make a decision within a reasonable timeframe having regard to the nature and circumstances of the decision.

**PROPOSED AMENDMENT 6**

**The CYPS Act includes amendments to Internal Review powers.**

There are a number of issues which have arisen when Carers have attempted to access DCP's internal review processes. This includes:

- failure to provide sufficient reasons;
- failure to consider and determine a review within a reasonable time period; and
- inconsistency about the reviewability of internal reviews.

<u>Failure to provide sufficient reasons</u>

The applications for internal review submitted by Carers are often extensive. In contrast, the internal review decision (called an 'Outcome of Review') received by Carers from DCP in response usually:

- is very brief (1-2 pages);
- does not include a comprehensive statement of reasons that addresses the facts and the law on which the internal reviewer relies;
- does not refer or respond to the issues raised by the Carer in their application, even to identify them as being irrelevant; and
- simply states that the reviewer considers the original decision is 'correct and preferable'.

As a result of this, Carers often feel that information they have provided is being overlooked, that their attempts to advocate for a child in their care fall on deaf ears and the effort is wasted. Further, they then often need to embark on an external review process without a complete understanding of DCP's position, or worse, without acting having a reviewable decision being produced by the internal review process at all.

Like when Carers seek review of decisions, the lack of adequate reasons makes external review difficult for Carers and SACAT alike. By way of example, in the matter of *WWZ & Anor v The Department for Child Protection [2020] SACAT 111 (3 November 2020),* SACAT found:

> *"The internal reviewer did not articulate the process to be undertaken when making a decision to move a child from one placement to another, or the question the decision-maker had to address.*
>
> *The Department submitted and we accept that this Tribunal's review is of the original decision made under sec 84 and not the internal review outcome.*
>
> *We consider it appropriate to observe that as WWZ had not contributed directly to the original decision, and as her contribution to the internal review had not been listed as having been considered, and given that neither decision was expressed in a manner that lent itself to being understood in its legislative context, we are not surprised that WWZ was not satisfied with the process or the outcome."*

Where an original "decision" which a Carer has sought to review is also inadequate (as described above) SACAT has in some instances found itself without a 'decision' to review at all. Rather than remit the matter back to the DCP (for a proper 'decision' to be made) SACAT has decided in some cases to simply determine the issue itself.

While SACAT's position is pragmatic and understandable, it totally undermines the process for Carers. Carers have a fair expectation that the role of SACAT is to provide a merits review of a DCP decision, not to make a decision in DCP's stead.

It is not always the case that internal reviews are poorly conducted. CF&KC-SA has recently been privy to two occasions where an internal review has been carried out well. In those cases, the reviewer:

- re-assessed the facts
- contacted the applicant (Carer) to discuss the issues and their point of view
- provided a detailed summary of the investigation and highlighting inconsistencies in the original decision
- assessed the reasons for review provided by the applicant in their internal review application
- provided a written Outcome of Review decision that listed the steps taken, noted the inconsistencies of the original decision maker, and reviewed the legislation relied on in the original decision, and

- stayed the decision while the investigation took place.

CF&KC-SA endorses and commends this approach, but it is not appropriate for there to be such vast inconsistency. The inconsistency further supports the need for legislative guidance.

To that end, CF&KC-SA proposes that the CYPS Act to be amended to prescribe the process for internal reviews to ensure that a statement of reasons are provided which:

- comprehensively address the facts, the law, and the applicant's reasons for seeking a review
- give a summary of the material taken into account in the internal review process (eg documents reviewed, persons interviewed, etc)
- provide a 'decision' and reasons that that can be reviewed by SACAT and responded to by a Carer

<u>Delay in decision making</u>

As the Act currently stands:

- an internal review application must be submitted to the DCP within 30 days of a reviewable decision being made
- a DCP member of staff who was not involved in the reviewable decision will carry out the review, but
- there is no legislated timeframe within which to the internal review must be complete.

Some internal reviews take many months to be completed – effectively precluding a Carer from accessing his or her external review rights. As discussed above, Carers and children and young people are grossly disadvantaged by the delays of the Department to process and hand down internal review outcomes and further by the delays getting a hearing at SACAT. These delays themselves can have direct effects on the outcome of reviews. The Child Protection system is a living beast, where timely and clear decision making is vital.

CF&KC-SA proposes that the CYPS Act be amended to provide:

- a legislated time frame for internal reviews to be completed by DCP (for example: within 30 days)
- the right for an applicant to make an application for external review 30 days after an internal review application regardless of whether the internal review has been completed.

Reviewability of internal reviews

Under s157 of the CYPS Act, Carers have the right to internally review decisions of the Chief Executive, or a child protection officer. The types of decisions that are reviewable are those made under Chapter 7 of the CYPS Act, excluding Part 4 decisions (section 40 CYPS Regulations). If Carers are still dissatisfied with the internal review outcome, they can apply to SACAT under s158 of the CYPS Act for an external review of the decision.

However, not all internal reviews are reviewable at SACAT. Decisions made by individual child protection officers or other staff of the DCP not acting under delegated power of the Chief Executive are not reviewable at SACAT (section 158(1)(a) CYPS Act). The differentiation between delegated and non-delegated decisions creates a large amount of matters which are not reviewable externally. This was explored in the SACAT matter of REM & PVR v Department for Child Protection [2020] which noted:

> *..it is also important to observe that not every activity mentioned in a section of Chapter 7 of the CYPS Act gives rise to a 'decision of the Chief Executive' that is subject to review by SACAT.*

Some sections in Chapter 7 of the CYPS Act simply provide that certain conduct amounts to an offence.

Other sections in Chapter 7 simply set out a statement of the rights of children and carers, or obligations imposed on individuals. For example, s82 provides that approved carers have the right to participate in a decision making process relating to a child placed with them; there is no decision of the Chief Executive attached to that right. Similarly, s81(1) creates an obligation upon licensed foster care agencies (placement agencies) to provide certain information to approved carers; the Chief Executive makes no decisions related to that obligation.

A failure by a child protection officer to invite a person to a meeting, or a failure by a placement agency to provide information is not a 'decision of the Chief Executive under Chapter 7'.

There would likely be a right of internal review against such an action or omission, but such a decision would not then become a 'reviewable decision' under s 158 of the Act as it is not a decision of the Chief Executive under Chapter 7.

This lack of uniformity between the internal review and external review process amounts to another barrier for Carers to access a right to review. All decisions made by the Chief Executive (or delegate of) and child protections officers should be reviewable at SACAT.

CF&KC-SA proposes a change to the legislation to address this inconsistency. In particular, we seek amendments to the Act to provide:

- uniformity of what is reviewable internally and externally; and
- all decisions made under Chapter 7 be reviewable decisions internally and externally.

**PROPOSED AMENDMENT 7**

**The CYPS Act be amended to ensure that children who are the subject of SACAT applications be separately represented so that their voice is heard.**

While CF&KC-SA's focus is as the peak representative body for family based Carers, we believe the voice of the child under guardianship is also critical in many SACAT hearings, as it is in Youth Court applications. The lack of a child's voice is particularly crucial where it may be perceived that the Carer is not able to speak on behalf of the child, and those at DCP may have limited relationships with the child.

CF&KC-SA proposes that s159 of the Act be amended to ensure that children who are the subject of a SACAT application are provided separate legal representation before SACAT (as they are in other jurisdictions such as the Family and Youth Courts).

**PROPOSED AMENDMENT 8**

**The CYPS Act be amended to include provision for compulsory mediation or conciliation upon review by SACAT.**

Often decisions involving Carers, children and young people are not necessarily amenable to the adversarial nature of a Tribunal decision. Unlike in many other dispute resolution settings, the parties have an important ongoing relationship before, during (and sometimes after) the hearing. It is our experience that many Carers who challenge Departmental decisions would benefit from, and prefer, a more restorative approach to their grievance. The option of a mediation or conciliation may lead to more satisfactory decision making on all sides, particularly where the views of the affected child or young person (if appropriate) can also be heard. As part of the review process in the Queensland Child Safety jurisdiction all matters must go through a compulsory conference before the matter is set down for a hearing at the Queensland Civil and Administrative Tribunal (section 99N *Child Protection Act* 1999). We understand that this approach in Queensland works well and often leads to a resolution eliminating the process of a Tribunal hearing.

Presently, although the *South Australian Civil and Administrative Tribunal Act 2013* provides the SACAT with the power to order a compulsory conciliation or mediation, the CYPS Act does not mandate one. Therefore, it remains a matter of discretion of the Tribunal and/or willingness of the parties. CF&KC-SA propose that s158 of the CYPS Act be amended so that a compulsory conference or mediation is mandated as the first step in the process when a matter is to be reviewed by the SACAT.

**PROPOSED AMENDMENT 9**

**The CYPS Act is amended to provide Carers with a right to apply to the Contact Arrangements Review Panel (CARP) and clarity regarding the time frame for CARP review determination.**

Contact arrangements have significant impact on Carers, their families and children and young people in their care, particularly when it does not go well. Carers are obliged to facilitate contact and as it currently stands, Carers have no rights or capacity to help shape contact arrangements and provide review.

As the legislation currently stands the CARP may under s95(5) affirm, vary or set aside a contact review determination. Section 95(5) does not mandate a timeframe by which the CARP must comply.

CF&KC-SA propose:

- an amendment to s95(1) of the Act to add 'approved carer' to the list of persons entitled to apply to CARP for a review of contact arrangements. The amendment would produce consistency with S82(1); and
- an amendment to s95(5) of the Act, or the regulations envisaged by s 95(9), to include a timeframe for CARP determination. A time frame of 28 days will bring the process in line with other review processes within the Act.

**PROPOSED AMENDMENT 10**

**The CYPS Act be amended to include provision for the inclusion of the Carer voice during reunification process.**

The reunification process for a child or young person in care can be a stressful process for those involved. Carers are supportive of reunification if executed in a measured, consultative and proactive process. Too often the reunification process is rushed, leading to poor transition planning and little consultation with Carers.

Since the CYPS Act was introduced, the Chief Judge of the Youth Court, Her Honour Judge Penny Eldridge, has created what is known as the "Reunification Court". There is not legislative foundation for this "court", and it appears rather to be a Court adopted processes which endeavours to create a less formal environment to monitor and consider reunification.

Like the need for the Carers voice to be heard in Child Protection proceedings, it is likewise vital that Carers be heard throughout any reunification process. They are at the coalface of the child's experience.

Carers believe their input would substantially enhance the reunification process, specifically the success of reunification for children in their care with their biological parents.

Where an application under s53 of the CYPS Act is "moved" to the Reunification Court and the less regimented Court setting, it is important that a processes to involve Carers in proceedings is not lost.

CF&KC-SA propose an amendment to the CYPS Act which:

- Creates a more formalised process for when matters are referred to the Reunification Court;
- Ensures Carers are advised by the Court that that matter is being heard in the Reunification Court and the dates when that is to occur; and
- Provides a mechanism through which Carers can make representations to the Court throughout the reunification process.

**PROPOSED AMENDMENT 11**

**The CYPS Act be amended to include the Statement of Commitment for South Australian Foster & Kinship Carers and given the same status and recognition as the Charter of the Rights of Children and Young People.**

The Statement of Commitment for South Australian Foster & Kinship Carers ("the Statement of Commitment") is a document developed in collaboration with the DCP, CF&KC-SA and Child Family Focus SA. It was prepared after extensive cross sector consultation. It is a co-designed tool to ensure the sector works in collaboration with Carers as an essential and respected part of the care team for children and young people.

We are proud of the work our organisation did to pursue the development of the Statement of Commitment. We are mindful though that it is just a statement. And we know that many people, including many DCP staff, agency support workers and many Carers do not even know it exists. Many Carers report that, even where it is known, it is not followed by the frontline workforce.

It needs to be made visible – a living, breathing document – and be embedded in daily practice.

One important first step to achieve that is to give the Statement of Commitment the same status and recognition as the Charter of the Rights of Children and Young People (Charter).

Section 13 of the CYPS Act establishes the Charter, states that it must be reviewed at least every 5 years, ensures that variations are consulted on, provides for the Charter is published on the DCP website and laid before both Houses of Parliament and states that *each person engaged in the administration,*

*operation or enforcement of a relevant law must, to the extent that it is consistent with section 7 to do so in a particular case, exercise their powers and perform their functions so as to give effect to the Charter.*

Including the Statement of Commitment in the CYPS Act in the same way as the Charter would be a simple way to lift its profile, to give it recognition and status and to ensure that it is kept up do date through regular reviews.

It is important to note that including the Statement of Commitment in this way would not give Carers additional legally enforceable rights or entitlements (just as the Charter does not give children and young people additional legal rights).

CF&KC-SA proposed that for Statement of Commitment to be included in the CYPS Act in the same way as the Charter is included in the Act.

**PROPOSED AMENDMENT 12**

**The CYPS Act be amended to include an additional complaints process– one that is wholly independent of DCP and the support agencies.**

While some non-controversial complaints can best be managed internally (not least because they offer opportunities for practice improvement), Carers also need urgent access to a complaints process that is wholly independent of both DCP and its support agencies.

Carers report that there is a very significant imbalance between them (as Carers) and the DCP and agency support workers with whom they interact. Workers have powers to make decisions that impact directly (and sometimes profoundly) on the lives of Carers including:

- to approve or not approve a Carer request for resources for a child;
- to call a meeting and insist the Carer attends;
- to visit a Carer's home;
- to assess and comment on a Carer's parenting ability; and
- ultimately, to remove a child.

In addition, some Carers report having experienced significant misconduct at the hands of workers including not limited to:

- being threatened, bullied, harassed and intimidated;
- having their biological children threatened;

- having documents changed;
- having signatures forged; and
- suffering retribution when they speak up.

Carers report feeling powerless in the face of these issues. They have little or no recourse when adverse decisions are made. When they have the courage to complain about misconduct, they feel they are dismissed and their complaints not addressed.

Carers therefore need a mechanism to redress the imbalance of power – one that that will support and protect them when:

- their complaint relates to the inappropriate conduct of a DCP or agency support worker – such as bullying, discrimination, harassment or intimidation;
- their complaint is serious;
- the complainant fears retribution;
- the complainant has no confidence in the internal complaint system; or
- the internal complaints system has failed to satisfy the complainant.

The Ombudsman already has powers to investigate some matters to identify 'administrative errors'. Recent changes in legislation (in late 2021) mean that the Ombudsman now also has powers to investigate the 'misconduct' of DCP staff and (in some circumstances) the staff of support agencies contracted by DCP – but only where that 'misconduct' can be shown to meet the high threshold of being both 'serious' and 'intentional'. These powers are welcome but have real limitations when it comes to addressing Carer concerns – including that the remedies they provide are often not what an aggrieved Carer is after.

CF&KC-SA therefore propose an amendment to the legislation which provide for an external complaint handling mechanism.

We thank the Minister for Child Protection for the opportunity to provide suggested amendments to the CYPS Act and look forward to reading the draft Bill in early 2023.

Sincerely,

Fiona Endacott (Chief Executive Officer, CF&KC-SA)

Megan Hender (Board Chair, CF&KC-SA)

Holly Veale (Board Member, CF&KC-SA)

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