



Select Committee submission regarding the Children and Young People (Safety and Support) Bill 2024

On behalf of Connecting Foster and Kinship Carers SA Inc

As the independent representative peak body for Foster and Kinship Carers (carers) in South Australia, who are funded to provide support and advocacy services to our membership base of 1200 individuals and the wider approved-carer community, Connecting Foster & Kinship Carers SA (CF&KC-SA) welcomes the Select Committee's invitation to provide a submission in respect of the *Children and Young People (Safety and Support) Bill 2024*.

We attach, and take it as read, our submission as supplied for consideration during the initial consultation period and advise that this forms the basis of our current submission to the Committee. For particular consideration we highlight the following proposed amendments as significant:

1. That the Bill be amended to hold the best interests of the child as the paramount consideration under the Act.
2. That the Bill be amended to require decision-makers to provide a written notice of a reviewable decision, including a statement of reasons, to anyone who is entitled to seek a review, within seven days of the decision being made.
3. That the Bill be amended to place a reciprocal obligation on the Department for Child Protection (DCP) for the completion of an internal review within a legislated timeframe (for example: within 30 days).
4. That the definition of "decision" be expanded to include a refusal or failure to make a decision within a reasonable timeframe, and on that basis, that applicants may apply for an external review 30 days after an internal review application has been submitted, regardless of whether the internal review has been completed.
5. That the Bill be amended to widen the definition of reviewable decision (set out in Schedule 1) to include Quality of Care Report decisions and contact arrangement decisions, and for approved carers to be included as persons who may apply for such a review.

6. That s 136(2) of the Bill be amended to the effect that any decision that the participation of an approved carer not be in the best interests of a child or young person be a determination of the Chief Executive. As well as requiring that written notice of such a decision, and the reasons for it, be provided to the approved carer as soon as reasonably practicable.
7. That s 102 be amended to place a positive obligation on the Court to ensure carers are provided a reasonable opportunity to make representations in any proceeding relating to a child or young person to whom they provide care and requiring the provision of relevant information relating to such proceedings to the carer.
8. That Schedule 1 be amended to expand the definition of approved carer to include a person who has cared for a period of less than 6 continuous months and who is considered “a person aggrieved by the decision”, as well as a person with whom a child is placed who is not yet an approved carer (i.e. temporary carers awaiting approval).

In respect of the best interests principle, we provide further comment as to CF&KC-SA’s position on this amendment:

The express Parliamentary recognition of the UN Convention on the Rights of the Child and the UN Declaration on the Rights of Indigenous Peoples at s 9(8) of the Bill is a welcome addition, and we reaffirm our support for its inclusion. However, this is contradicted by the failure to hold the best interests of the child as the paramount consideration.

To hold the best interests of the child as paramount is to embed a child-centred, rights-based perspective which can only benefit those vulnerable children at the heart of this Bill. That is not to say that the child’s safety is not to be considered with great significance, or that to have best interests as the paramount consideration would be at the expense of protecting them from harm. Children, as distinct rights-holders, deserve to have all of their physical, emotional, educational and developmental needs considered, along with their need for love, stability, and safety.

It is the view of CF&KC-SA that a child rights-based approach must include the best interests principle as the paramount consideration, with safety and well-being necessarily at the forefront, whilst also ensuring decision-makers take the whole of the child’s circumstances into account to arrive at a decision that not only protects them from harm, but also recognises children as active agents in their own lives.

In addition, CF&KC-SA requests the Committee consider the following:

1. That the Bill be amended to include reference to the carer peak body in s 17 – Statement of Commitment to Foster and Kinship Carers.
2. That the Bill be amended to include reference to the carer peak body in s 18 – Functions of the Minister.

Finally, CF&KC-SA ask that the Committee seek clarification on the following issues:

1. We note the different tests to be applied to the Court in making an order for Specified Person Guardianship under s 124 and s 112(1)(h). We seek explanation as to why the additional test of 'in the best interest of the child or young person' is applied only to approved carers under s 124, given the Court is already required to consider the best interests principle in having regard to Part 2. Further, the peak seeks clarification on what impact this will have for the granting, variation or revocation of a Specified Person Guardianship order under s 124, as compared to under s 112(1)(h), as this solely affects approved carers.
2. We recognise that the concerns previously raised by CF&KC-SA in respect of the restrictions placed on the matters which may be referred to the Health and Community Services Complaints Commissioner were addressed through amendments to the Bill as it currently stands. Noting that, we strongly urge the Committee to consider, and make recommendations with regard to, the appropriateness, effectiveness and accessibility of this framework as a means of providing for an independent complaints mechanism for carers.

Should the Select Committee seek further information regarding this submission, CF&KC-SA directs that Fiona Endacott (CF&KC-SA Chief Executive Officer), Holly Veale (CF&KC-SA Board Chairperson) and Niamh Keller (CF&KC-SA Carer Advocate) may speak to the issues therein, by way of presenting evidence to the Committee in person.

30 December 2024