



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

On behalf of Connecting Foster and Kinship Carers SA Inc

As the peak body representing foster and kinship carers in South Australia, Connecting Foster & Kinship Carers SA (CF&KC-SA) is deeply committed to advocating for the needs and rights of carers and the children they support. Our feedback submission draws upon our initial submission supplied to government in November 2022, and continues to reflect the lived experiences of carers across the state, the challenges they face, and the essential reforms needed to ensure that the child protection and family support system works effectively for all.

We have summarised our feedback on the *Children and Young Person (Safety and Support) Bill 2024 (the draft Bill)* into three sections:

1. The CF&KC-SA proposed amendments and an analysis against the Bill
2. Previously proposed amendments we submit need to be adopted into the legislation; and
3. Additional matters for inclusion and/or consideration

We appreciate the government's efforts in seeking input from key stakeholders into the final form of the Bill and look forward to contributing to a system that better serves South Australia's family based carers, and the children and young people in their care.

Analysis of CF&KC-SA's proposed amendments

This section summarises the proposed amendments submitted by CF&KC-SA to government in the review of the current legislation and how they have been adopted and included within the draft Bill.

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.

- CF&KC-SA proposed the CYPS Act be amended to establish the composition, purpose, nature and extent of the powers and responsibilities of the CCIU.

CF&KC-SA notes the draft Bill was not amended to include the composition, purpose, nature and extent of the powers and responsibilities of the CCIU. It appears that the practical reality of the draft Bill, with the CCIU not being legislated and the entire concept of Care Concerns being disbanded, and the new Quality of Care Report Guidelines being adopted, makes the proposed recommendation somewhat obsolete. We would anticipate that there will be a reconsideration of that unit when the Quality of Care Report Guidelines are detailed. CF&KC-SA requests that the spirit of this proposed amendment be addressed in detail within the proposed Quality of Care Report Guidelines and the policy framework which underpins it.

- CF&KC-SA proposed the CYPS Act be amended to establish a clear and reasonable threshold for what is a care concern.

Again, given the adoption of the Quality of Care Report framework, and the proposal of the underpinning guidelines, the non-inclusion of this within the Bill itself is understandable. CF&KC-SA submits that this proposal will (and must) become a part of the Quality of Care Report Guidelines. CF&KC-SA requests the threshold is prescribed in the Quality of Care Report Guidelines, and it should reflect the Chief Executive's obligation to ensure procedural fairness under s 26(3).

- CF&KC-SA proposed the CYPS Act be amended to embed principles of natural justice and procedural fairness into the care concern investigation process.

CF&KC-SA is relieved to finally see within the Bill the inclusion of procedural fairness pursuant to s 26. Carers highly anticipate the proposed Quality of Care Report Guidelines, which should set out clearly and in detail how procedural fairness will be considered within any review process afforded to carers.

- CF&KC-SA proposed the CYPS Act be amended to prescribe the process by which care concerns are investigated, and the duties owed to carers during investigations.

CF&KC-SA is pleased to see the draft Bill inclusion under s 26 requiring that the Quality of Care Report Guidelines must set out the assessment, response and review pathways. CF&KC-SA anticipate

consultation in the development of the Guidelines and the inclusion of duties owed to carers during this process.

- CF&KC-SA proposed the CYPS Act be amended to ensure that unsubstantiated care concerns are removed from Carer files.

CF&KC-SA notes the draft Bill was not amended to include the removal of unsubstantiated care concerns for carer files. However, CF&KC-SA submits that in order to ensure procedural fairness is afforded to carers, this must be included within the Quality of Care Report Guidelines set out in the regulations.

- CF&KC-SA proposed the CYPS Act be amended to widen the definition of reviewable decisions (set out in sections 157 and 158 and related regulations) to include care concern decisions.

CF&KC-SA notes that although s 26 provides that the Quality of Care Report Guidelines must stipulate the process by which decisions relating to Quality of Care reports can be reviewed, the draft Bill has not widened the scope to allow for internal reviews of Quality of Care Reports. This is something that CF&KC-SA will advocate for inclusion in the Quality of Care Report Guidelines.

SUMMARY: CF&KC-SA welcomes the inclusion of s 26 – Quality of Care Report Guidelines, in the hope it will set out fairly how a Quality of Care Report is assessed, the actions that must be taken in response to a report, the ways in which procedural fairness is to be afforded in relation to a report, the process by which decisions relating to reports can be reviewed (including the persons who may seek such a review), and other information required by the regulations. We welcome s 26(3) stating the Chief Executive must ensure that procedural fairness is provided in the course of any action taken in response to a Quality of Care Report. This evidentially means that the bulk of the work regarding this area is still to come, and CF&KC-SA urge this topic to be given priority once the draft Bill ultimately becomes legislation.

PROPOSED AMENDMENT 2: The CYPS Act is amended to improve the process regarding carers participation in decision making.

- CF&KC-SA proposed that s 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.

CF&KC-SA notes the relevant provision, s 135(2), of the draft Bill was not amended to include our proposal, remains the same as the current Act.

- CF&KC-SA proposed that s82(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, that said decision, and the reasons for it, be provided to the approved carer in writing as soon as reasonably practical.

CF&KC-SA notes the draft Bill was not amended to include our proposal, and remains the same as the current Act.

SUMMARY: Unfortunately proposed amendment 2 was not considered. CF&KC-SA welcomes the inclusion of s 11 – Best Interest Principle in the draft Bill and the role of those considerations in applying the best interests standard. As such, CF&KC-SA requests, at s 135(2), that written rationale is supplied to the approved carer in line with the considerations of s 11.

PROPOSED AMENDMENT 3: The CYPS Act is amended to provide Carers with notification of Youth Court hearings.

- CF&KC-SA proposed that s 52 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 s 53, 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 s 51(3).

CF&KC-SA notes this has not been amended to the proposed detail.

SUMMARY: In relation to carers being informed of court hearings, we note s 101 states the Court should allow an approved carer a reasonable opportunity to make representations in any proceeding relating to a CYP in their care. We ask this is amended to place a positive obligation on the Court and/or the

Department to ensure that carers are provided a reasonable opportunity to make such representations, namely replacing the word “should” with must, and “allow” with ensure.

In any event, we request s 101 is amended to require the provision of information relating to any such proceedings, including copy of the application, variation, extension or revocation of an order and the date of any hearing to the carer.

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.

- CF&KC-SA proposed 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 (s 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.

CF&KC-SA notes this has not been amended to the proposed detail.

SUMMARY: The current legislation and draft Bill does afford flexibility on orders, if the CE deems reunification is likely. However, noting that s 111 does not limit the ability of the CE to apply for a subsequent order to the same end, CF&KC-SA intend to advocate that policies are adopted which ensure this is an option, as appropriate, in consultation with carers.

PROPOSED AMENDMENT 5: The CYPS Act include amendments to clarify and strengthen review processes.

- CF&KC-SA proposed the CYPS Act be amended to include a simple chart – setting out what is, and what is not, a reviewable decision and by whom, with guidance 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.

CF&KC-SA welcomes the inclusion of Schedule 1 of the draft Bill – Internal review of decisions under Act, however we ask that in relation to reviewable decisions made under s 130(1), the definition of prescribed person does not exclude:

- an approved carer who has cared for a period of less than 6 continuous months, who is otherwise considered “a person aggrieved by a decision made by the CE or child protection officer”, echoing s157 of current legislation.
- a person with whom a child is placed who is not an approved carer (i.e. temporary carers awaiting approval).
- Any other person who, in the opinion of the CE, is a person aggrieved by the decision (i.e. kinship carers keen to be considered for additional family entering care, where they have not been scoped as a carer).

We are concerned that the draft Bill limits the scope of who can request a reviewable decision, due to the detailed definition present in Schedule 1, which is not specified in current legislation.

- CF&KC-SA proposed 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.

CF&KC-SA notes the draft Bill has not been amended to include our proposed detail. We ask the final Bill include that carers are 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 calendar days) after a reviewable decision is made. We also ask that such written notice and rationale be provided to anyone entitled to review the decision under s 197 and **pursuant to Schedule 1**. This is a necessity for the purposes of taking steps following a decision, including having it reviewed, to not include this proposal potentially undermines the other positive aspects of the draft Bill which provide greater ability and clarity for carers to seek review.

- CF&KC-SA proposed the CYPS Act be amended to include (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.

CF&KC-SA notes this has not been amended to the proposed detail. We ask the legislation to provide for the DCP and/or the Tribunal to grant a stay of removal (and/or placement) decision pending the outcome of a review by the relevant body (the DCP Internal Review Unit or SACAT as the case may be).

In addition we ask any such amendments include that an applicant to a review has the opportunity to request a stay of the decision in review, until the relevant review is completed.

- CF&KC-SA proposed the CYPS Act be amended to ensure 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.

CF&KC-SA notes this has not been amended to the proposed detail. CF&KC-SA emphasises the delay caused by refusal or failure to make a decision results in carers unable to access their right to have a decision reviewed, impacting procedural fairness. Further, we suggest guidance can be drawn from the Work Health and Safety Act 2012 (SA) which, at s 229(1), allows for reviews of decisions and “decisions taken to be made”, which would include where a person decides to make no decision.

We ask that the definition of reviewable decision be broadened to include the wording “decisions taken to be made” in order to ensure procedural fairness is afforded, where there has been a refusal or failure to make a decision within a reasonable timeframe.

PROPOSED AMENDMENT 6: The CYPS Act includes amendments to Internal Review powers.

- CF&KC-SA proposed the CYPS Act 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 (e.g. documents reviewed, persons interviewed, etc)
 - provide a ‘decision’ and reasons that that can be reviewed by SACAT and responded to by a Carer

CF&KC-SA acknowledges that s 197(2)(5) refers to the requirement that the CE within 14 days of making a decision about the outcome of internal review, provide notice in writing of the decision and the reasons for the decision to the applicant.

- CF&KC-SA proposed the CYPS Act be amended to provide a legislated time frame for internal reviews to be completed by DCP (for example: within 30 days)

CF&KC-SA notes this has not been amended to the proposed detail. Where there is a requirement that an application for an internal review be made within a specified period, we ask a reciprocal obligation on DCP to complete the review is implemented in legislation. The “lag time” between a decision, and the process of internal review, often creates significant issues for carers, particularly where the decision may be for a removal or change of placement. Absent the capacity to stay a decision, should an internal review not be managed expediently, it risks the breakdown of relationships and/or placements – along with risks to the attachment of children. This is a serious issue which must be addressed. A proposal for how it can be done is noted below.

- CF&KC-SA proposed the CYPS Act be amended to include 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.

CF&KC-SA notes this has not been amended to the proposed detail. We ask for a provision which allows for carers to make an application to SACAT failing the completion of an internal review within a specified time period. That time period would preferably be 30 days, but could be longer. It is unlikely to result in an influx of decisions where carers are advised and clear that the internal review is being conducted and they are being engaged with. Absent that, they should have the right to take steps if there is genuine drift in decision making, or there are risks in relation to the placement or attachment. . We request inclusion that allows applications for external review to occur based on the principle of the “decision taken to be made”, to ensure procedural fairness in pursuing review at SACAT.

- CF&KC-SA proposed an amendment to the CYPS Act to address inconsistency, specifically uniformity of what is reviewable internally and externally.

CF&KC-SA welcomes the uniformity between internal and external review provisions pursuant to the inclusion of Schedule 1.

- CF&KC-SA proposed an amendment to the CYPS Act to ensure all decisions made under Chapter 7 be reviewable decisions, both internally and externally.

CF&KC-SA notes this has not been amended to the proposed detail, i.e. Contact Arrangements Review Panel (CARP) remains excluded in the draft Bill. CF&KC-SA request inclusion of decisions made by the CARP as reviewable, both internally and externally. The outcome should also be capable of being the subject of complaint to the Ombudsman.

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.

- CF&KC-SA proposed s 159 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).

CF&KC-SA welcomes the inclusion of s 199(1) whereby children and young people must be given reasonable opportunity to personally present to the SACAT their views related to their ongoing care and protection, regardless of whether they are represented by a legal practitioner in the proceedings. CF&KC-SA however still advocate that children and young people should be legally represented, in the manner they are in Youth Court proceedings, where a removal or placement decision is being reviewed. That simply provides children and young people with the same level of representation they are afforded if they are removed from a carer as if they were removed from a biological parent.

PROPOSED AMENDMENT 8: The CYPS Act be amended to include provision for compulsory mediation or conciliation upon review by SACAT.

- CF&KC-SA proposed s 158 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.

CF&KC-SA notes this has not been amended to the proposed detail, however under the internal review process, the Chief Executive may, at their discretion, use alternative dispute resolution methods as they deem appropriate when conducting an internal review. We are aware this is a new amendment within the draft Bill, and as such, welcome the inclusion.

PROPOSED AMENDMENT 9: The CYPS Act is amended to provide carers with a right to apply to the CARP and clarity regarding the time frame for CARP review determination.

- CF&KC-SA proposed an amendment to s 95(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 s 82(1).

CF&KC-SA notes this has not been amended to the proposed detail. We ask for approved carers to be included at s 140(8).

- CF&KC-SA proposed an amendment to s 95(5) of the Act, or the regulations envisaged by s 95(9), to include a timeframe for CARP determination. It is our position a time frame of 28 days will bring the process in line with other review processes within the Act.

CF&KC-SA welcomes the inclusion of s 140 – Review by CARP, and subsection 7 indicating a panel must, within 4 weeks of being convened under this section, and in accordance with any requirements set out in the regulations, complete a review in accordance with this section.

PROPOSED AMENDMENT 10: The CYPS Act be amended to include provision for the inclusion of the carer voice during reunification process.

- CF&KC-SA proposed 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.

CF&KC-SA notes this has not been amended to the proposed detail, as reunification court was not identified in the draft Bill. CF&KC-SA notes s 128(4)(j) provides an opportunity for the carer voice to be heard in relation to case planning, it is important that this opportunity is set out in detail within policy documents so it is not overlooked. The opportunity should be proactively encouraged by the DCP.

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.

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

CF&KC-SA welcomes the inclusion of s 16 – Statement of Commitment to Foster & Kinship Carers.

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.

- CF&KC-SA proposed an amendment to the CYPS Act, which provides for an external complaint handling mechanism.

CF&KC-SA notes the inclusion of Part 5 – Amendment of the *Health and Community Services Complaints Act 2004*, in relation to external complaints handling. Whilst we are pleased to see the powers of the Health and Community Services Complaints Commissioner (HCSCC) and the Ombudsman expressly embedded in the draft Bill, CF&KC-SA is concerned the draft Bill now narrows the definition of what the Ombudsman and the HCSCC can review as it currently stands. CF&KC-SA requests clarification that the draft Bill does not restrict matters which carers can raise with each external complaint body, and that the scope is again widened to include complaints pertaining to CARP and Quality of Care Reports (previously care concerns)

Specific proposed amendments we continue to seek inclusion of

There is an evident philosophic change to this Bill, with the support of children and young people being brought into focus. CF&KC-SA acknowledges the inclusion of our proposed amendments, and the public health approach embedded at s 18. However, there are several key amendments we submit require immediate reconsideration for inclusion within the final Bill. They are as follows:

- the draft Bill be amended to provide a legislated, specified timeframe for internal reviews to be completed by DCP (i.e. within 30 days)

- the draft Bill be amended to include the right for an applicant to make an application for external review in the event the internal review is not completed within 30 days (or some other reasonable timeframe).
- the draft Bill be amended to widen the definition of reviewable decisions (set out in Schedule 1) to include Quality of Care Report decisions and decisions made by the CARP
- the draft Bill be amended for approved carer to be included at s 140(1) (b) and (c), and (8) – Review by Contact Arrangements Review Panel
- Schedule 1 be amended to expand the definition of an approved carer, to include a person who has cared for a period of less than 6 continuous months, and considered “a person aggrieved by a decision made by the CE or child protection officer” (as per s157 of current legislation) and include a person with whom a child is placed who is not an approved carer (i.e. temporary carers awaiting approval)

Additional items for inclusion and/or consideration

We draw attention to several areas in need of consideration by the DCP and the Minister in finalising the Bill. CF&KC-SA urges immediate attention to the lack of timeliness with regard to decision making for reviewable decisions, specifically the requirement for the department

CF&KC-SA requests additional consideration to the amendments below:

1. Include reference to the peak body for carers in s 16 – Statement of Commitment to Foster and Kinship Carers.
2. Include reference to the peak body for carers in s 17 – Functions of the Minister.
3. Noting the difference in the test to be applied to the Court in making an order for Specified Person Guardianship under s 123 and s 111(1)(h), we ask that the same test be applied to both. Where this amendment is not made, at the very least the peak asks for an explanation as to why the additional test of 'in the best interest of the child or young person' rather than 'appropriate to do so', is applied only to approved carers only under s 123, given the Court is already required to consider the best interests principle in regarding Part 2. Further, the peak asks for clarification on what impact this will have for the granting, variation or revocation of a Specified Person Guardianship order under s 123, as compared to under s 111(1)(h), as this exclusively relates to approved carers.

4. Clarification that s 125, Variation of specified person guardianship orders, does not lead to the revocation or variation of specified guardianship orders unnecessarily or in a vexatious manner, jeopardising placement stability for the young person.
5. Review by SACAT s 198 (6)(a), the panel of assessors to include a carer of the same parameters, when a reviewable decision pertains to family based care.
6. Ensure consultation and consideration is afforded to multicultural communities impacted by the draft Bill.
7. Request the inclusion of a regular review of the draft Bill – as was evident in the previous legislation. This is paramount to ensuring that this vital legislation is reviewed and reflects current trends. That it is vital is evidenced by the amount of external reviews/commissions/inquiries within the realm of child protection.
8. Require that notice of a reviewable decision is given to anyone who has the right to seek a review, within 7 days of the decision being made, adequately setting out the reasons for the decision and articulating the person's rights to seek a review or make a complaint
9. That the Court may have regard to the person with whom the child will be placed, and any contact arrangements, when making interim orders

13 September 2024