

Submission to the South Australian Government: Review of the Children and Young People (Safety) Act 2017


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CREATE appreciates the opportunity to comment on the review of the Children and Young People (Safety) Act 2017. The *Children and Young People (Safety) Act 2017* is integral to the care and support that children and young people in care receive. Children and young people are experts in their lives and can add value to the design of systems that affects them. CREATE is committed to ensuring that the voices of children and young people who have an alternate (or out-of-home) care experience are heard and considered in all areas that affect them.


CREATE also acknowledges the historical and ongoing injustice and trauma that underpins this conversation. First Nations children, young people, families, and communities have experienced systemic colonial abuse stemming from government-issued child removal practices of the Stolen Generations Era and past and current institutional racism, which continues to impact through intergeneration trauma and over-representation in the care and criminal justice systems (Campbell et al., 2020; CREATE, 2022a; SNAICC, 2019). CREATE believes that the over-representation of First Nations young people in the out-of-home care sector is completely unacceptable (CREATE, 2022a) and supports calls that “Indigenous practitioner-led policy, practice, training and programme design is critical to addressing the escalating rates of Indigenous child removal” (Oates, 2020; p. 1)

Aboriginal and Torres Strait Islander Child Placement Principle being embedded in the legislation to the standard of active efforts

CREATE unequivocally supports compliance with the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP), in which all First Nations children are to be safe, supported, and empowered according to the five core elements: prevention, partnership, placement, participation, and connection (SNAICC, 2017, 2019). CREATE welcomes legislative change embedding the ATSICPP to the standard of *active efforts* (defined as purposeful, thorough and timely efforts) and advocates for strong networks of resources and funding for Aboriginal Community Controlled Organisations to ensure they are well supported to become the primary welfare decision-makers and providers for First Nations children and young people.

The Aboriginal and Torres Strait Islander Child Placement Principles have not been actioned in a consistent way to date. Young people frequently report to CREATE that they are not being placed in accordance with the ATSICPP. This includes not always being placed with First Nations carers, not having a cultural support plan, not being linked with Aboriginal Community Controlled Organisations, and/or not being linked with Kin and community.

When DCP ask me if I wanna see my mum, I say no but they keep asking - but when I wasn't living with my dad they never asked if I wanted to see him (participant's bio mother non-Aboriginal, father Aboriginal). I don't see my other siblings, I didn't know about them until my step-mother told me, I always wanted an older sibling and



would've been good to know but now I don't really care. (Young Person; CREATE, 2022b)

It took years to be able to have access at my mum's house, even though I grew up there – if you got removed from there it like it becomes a danger and yes, they have to put safety plans in place, but it should not have taken years for that to happen. (Young Person; CREATE, 2022b)

McDowall (2018) found that only 18% of young people aged 10 to 18 years knew about their cultural support plan. Consistent with McDowall, Mendes et al. (2020), who spoke with participants who worked with indigenous care leavers across Australia, found that, while cultural support plans were important for First Nations care leavers, these plans were often observed to be incomplete or poor in quality.

I can't even remember what the plan covered. Something that was there for me—I wasn't involved in developing it. (Male, 19; CREATE 2022c)

I did have indigenous services helping me, but I wasn't really engaged at that time. I am engaged now. When I was young, I really leaned towards not getting helped. It should have been given before I was misbehaving a lot and not wanting the help. (Female, 23; CREATE 2022c)

It's so different to see kids who have opportunity to go back and connect with country; it's a different lens, it's organic and beautiful, and you can see it change kids. We don't see it happen in care. There shouldn't be any difference; if we can celebrate it at home with our families, why can't we do it in care? (Young person; CREATE, 2022b)

As it currently stands, the *Children and Young People (Safety) Act 2017* predominantly focuses on one element of the ATSI CPP: placement. CREATE advocates for working with First Nations children, young people, communities to promote self-determination and embed *active efforts* towards all aspects of the ATSI CPP into legislation.


DCP need to be developing and working with us, not against. It's gotta go back to community, there is no trust with white people, with the white law, it harms us. (Young person; CREATE, 2022b)

Why doesn't the minister actually create change? All the money we get given when we go into the system, why can't it go to our families to help keep us together and to make things better for our families, they'd rather remove a kid, they know it's causing more trauma, but they still do it. (Young person; CREATE, 2022b)

I think that workers need to have PD's [professional development] that require them to engage better with Aboriginal young people and make an effort to connect them with their culture ... It should be mandatory for workers to do cultural fitness training and it should always be done by an Aboriginal person. (Young person; CREATE, 2022b)

Application of Model of Active Effort Generally

The focus on active effort is of great importance for First nations young people in care given their over-representation and inherent disadvantage and the need for remedial action. However, a strong argument can be made for the model to apply to all children and young people in alternative care because of the universally poorer outcomes experienced by this group. McDowall (2020) showed that



while significantly fewer First Nations young people completed Year 12, more had been absent from placement during their time in care, more were involved with youth justice post-care, and more became early parents. But, apart from these four areas, all young people with a care experience fared equally poorly. They all need governments and agencies to do everything possible to provide the support required to redress the trauma and disadvantage that resulted in the young people being brought into care initially. “Active effort” is required, and accountability to ensure this model is implemented effectively.

Legislating Authority and Aboriginal Family-Led Decision-Making

CREATE is not an Indigenous agency and would not presume to speak for such organisations. The questions regarding legislation controlling expression of self-determination are best responded to by First Nations organisations. CREATE does support in principle self-determination for Indigenous peoples in child protection by ensuring greater involvement of Aboriginal Community Controlled Organisations (ACCOs) in the alternative care context so that First Nations young people can be sure of receiving culturally appropriate and safe treatment before, during, and after their involvement with the care system. However, it is imperative that for ACCOs to assume this responsibility, they must be adequately prepared, trained, and resourced so that they can provide the essential support required effectively.

Children at the Centre

CREATE acknowledges that it is not best placed to comment on legal aspects of the Legislation, particularly regarding thresholds for reporting and attempting to ensure “everybody” is involved in child protection.. However, our work does focus on the children and is particularly concerned with their having a voice in decision-making affecting their lives. Several questions in this *Discussion Paper* address **Participation** which is of fundamental importance (e.g., Questions 12, 22, 23, and 24).


Participation

Response to Q12. In addition to safety as the paramount consideration, should the legislation be explicit that the best interests of the child is a matter to be considered in decision-making?

As is articulated in Article 3 of the United Nations *Convention on the Rights of the Child*:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (UNCRC, 1989)

To honour Australia’s commitment to this *Convention*, it is imperative that all states and territories include the Best Interests of the Child as a primary consideration in legislation and policy. The more explicit the legislation can be in this regard, the more likely compliance will be achieved. Indeed Article 3 further explains that applying the “Best Interest” framework requires authorities to take all



appropriate legislative and administrative measures to ensure not only the safety of children and young people, but also their health and well-being.

I'm 25 and I don't see an end to the trauma from my care experience. You could give me a compensation payment and it wouldn't be enough, I want my childhood. I would've been safer being in my family, I wouldn't have been abused and moved to over 180 homes. My spirit was dampened and it will always be trapped; I will always have the mentality of a 16 year old but that's the trauma in it all, we will always carry it with us. You never have the answers, your family can't give you that, DCP won't, health workers can't., Who can? Where's the beacon of hope? Position of power needs to be focussed back onto the best interests of the kids. (Young person; CREATE, 2022b)

Response to Q22. Should the legislation be clear that children and young people are at the centre of everything we do?

If the best interest model is followed, children and young people will be at the centre of all child protection considerations. However, for this situation to be realised, opportunities must be provided and mechanisms created by which young people can be involved and supported to participate in decision-making. Recent legislation introduced by the Queensland government (*Child Protection Reform and Other Legislation Amendment Act 2022*) establishes the expectation that such situations will occur to ensure children and young people are directly involved. Specifically, the Act aims to:

- reinforce children's rights in the legislative framework;
- strengthen children's voices in decisions that affect them; and
- streamline, clarify and improve the regulation of care.


This might be a useful model of legislation on which SA could build.

Response to Q23. How can the legislation better support children of all ages to express their views and wishes, and uphold their right to participate in important decision-making processes that affect them?

Children and young people in care have the right to be meaningfully and genuinely engaged in decision-making processes (see United Nations *Convention on the Rights of the Child*, 1989, Article 12.1). Creating opportunities for meaningful participation has benefits for individual children and young people and the organisations that work to support them (Vosz et al., 2020). Participation includes having access to information relevant to taking part in decision-making, space and time to reflect on relevant information and potential decisions, having support and encouragement from a trusted person, being given ongoing opportunities to speak out, being heard by people who have power to enact change, and being able to affect and/or shape outcomes (CREATE, 2020a; Vosz et al., 2020).

CREATE supports the consideration of amendments to legislation that would better support children of all ages to express their views and wishes and uphold their rights to participate in decisions that affect them.

Being informed is the first step to participation. While participation in decision-making has been included in the Charter of Rights for a child in care (Office of the Guardian for Children and Young People, South Australia, n.d.), the *Children and Young People (Safety) Act 2017* does not specify that the Charter of Rights needs to be communicated to the child or young person (i.e., that the young person should be told about the Charter of Rights, be given information about their rights in a way that



is appropriate based on their age and ability to understand, and told who can help if they believe their rights are not being upheld). CREATE's 2018 National Survey (McDowall, 2018) found that only 20% of South Australian young people knew their State had a Charter of Rights for Children and Young People in Out-of-Home Care. This was the poorest response rate across all States and Territories.

All young people in care should be able to know why they're in care and should always know their rights. (Female, 23; CREATE, 2020b)

Best practice principles of participation should be included within legislation. In the *Children and Young People (Safety) Act, 2017*, Part 5, Section 10 principles of intervention are outlined, including:

If a child or young person is able to form their own views on a matter concerning their care, the child or young person should be given an opportunity to express those views freely and those views are to be given due weight in the operation of this Act in accordance with the developmental capacity of the child or young person and the circumstances.

However, these obligations have not been actioned in a consistent way to date. Both the AIHW National Survey (2019) and CREATE's National Survey (McDowall, 2018) found that, nationally, only 63% to 68% of young people agreed that they had opportunities to have a say and feel listened to at least "reasonably often". McDowall found that those who were older, females, and those in residential care or living independently felt less opportunity to have a say.

I wouldn't really complain because I was really quiet and because no one really listened to me (Female, 24; CREATE, 2021)


You have to be an issue to get something done in resi care – if you want to speak to your social worker, you smash a window and they're there in 5 minutes – you learn that negative behaviour is the only way that gets you heard. (Young person; CREATE, 2022c)

I was fed up not being listened to. (Male, 20 years; McDowall, 2018)

I was being bullied so bad and my case workers wouldn't listen to me when I kept asking to be moved/re-placed. (Female, 24 years; McDowall, 2018)

Young people with disabilities also are especially vulnerable to being excluded from participation, particularly those with impairments that affect communication (e.g., attempts to communicate negative views can be interpreted as "challenging behaviour"). Taylor et al. (2015) suggests that professionals find it harder to listen, hear, and understand disabled children and young people. They can be excluded through inattention to communication styles and needs, and reliance on carer or support worker feedback (Taylor et al., 2015).

For children and young people in out-of-home care, participation is complex, with meaningful participation often the combined result of having access to the right information at the right time, feeling safe, supported, and encouraged to participate by trusted support person, being given time and space to have a say, having opportunities to have a say in an ongoing capacity, and receiving feedback that having their say has an impact on what happens (Bessell, 2011; McDowall, 2016). CREATE advocates for the inclusion of best practice principles related to active participation to be



enshrined in legislation (e.g., CREATE, 2020a; Vosz et al., 2020). This would help to facilitate participation that is child-centred and authentic; not tokenistic (CREATE, 2020a; SNAICC, 2013). Best practice principles would be co-designed with young people; but at a minimum should include:

- children and young people are given meaningful and ongoing opportunities to participate in a way that is appropriate for that child or young person;
- children and young people are given information relevant to being able to participate in a way that they can understand;
- children and young people are given information about who can support them to understand the information, think about their views, understand the process, and participate;
- children and young people are given time to consider the information and their views prior to participation;
- children and young people are able to freely express their views (including the view that they wish to not participate). This might include non-verbally or indirectly (e.g., via a letter, audio-recording, through a trusted person);
- children and young people are able to change their minds and express different views across situations and time;
- decision-makers make genuine attempts to understand and consider children and young people's views;
- children and young people's views are recorded using their own words; and
- children and young people receive a copy of relevant plans or documents that record decisions (e.g., case plans; leaving care plans). Plans should be written in a way that is understandable to children and young people and explained to them in a way that they understand (with opportunities to ask questions).

Seek the views of young people. (Young person, CREATE, 2020a)

Department really needs to involve young people in the decisions and choices about their life. (Female, 17; McDowall, 2020)

I think young people should have a say and to be listened to. (Female, 14; McDowall, 2020)


Dedicate time to talk to young people and take on board what they are saying. (Young person; CREATE 2020)

Speak their language [and] let them have a say. (Young person; CREATE 2020a)

They just never really used my words. My case plan was pretty much just what they thought was best for me. (Female, 17 years; McDowall, 2020)

I wish I knew who was in the room when I was younger, why they were listening to me, what their role was. (Young Person; CREATE, 2022b)

The annual reviews are always social workers and supervisors; DCP never thought to ask me to come to the meeting or to be involved in choices about my schooling. DCP always set these meetings in school times; they had meetings about me without



telling me. You get placed into a new home but you never get told why. They never told me why they took me from my parents; it took me 12 months after I left care to get my case records, but it's all redacted, three quarters of the case file is redacted. (Young Person; CREATE, 2022b)

A lot of things can be done outside of DCP to remove that perception of power and control – they need to share the power, there needs to be self-determination, focusing on what matters to the kids. (Young Person, CREATE, 2022b)

Principles of participation should be referred to in relation to all matters that affect them.

Young people report a low level of participation in formal meetings, with young people in South Australia indicating that they participated in meetings approximately 40% of the time (McDowall, 2018). Further evidence of low levels of participation has been highlighted within CREATE's 2018 National Survey (McDowall, 2018), finding that:

- Only 30% of South Australian participants knew about their case plan (with less than 50% of these young people reporting they had been involved in its development; $N = 110$);
- Very few South Australian First Nations young people knew about their cultural maintenance plan (approximately two out of 16 participants);
- Very few South Australian 15–18-year-olds knew about their leaving care plan (approximately three out of 33 participants);
- Young people were more likely to be involved in decisions about education and family contact; and less likely to be involved in decisions regarding their placement.


Given this, consideration should be given to explicitly describing in legislation the ongoing and meaningful participation (i.e., principles of participation) needed in all areas where decisions are being made that affect young people. This includes sections mentioning:

- the development and review of all parts of case plans (i.e., reunification plans, cultural maintenance plans, family contact);
- the development of a leaving care plan;
- decisions in relation to placement; and
- decisions being made within Court and Tribunals.

Consideration should be given to ensuring that decisions cannot be finalised unless decision-makers are satisfied that attempts have been made to obtain young people's views in a way deemed consistent with the principles of participation.

I don't know if I have a case plan, so it would be useful if I got to see it and choose my goals. (Female, 13; McDowall, 2020)

Actually, being able to participate in the case plan might be a start. (Male, 16 years; McDowall, 2020)



Felt that I knew a lot of the stuff that was on my plan and I was comfortable with the level of information I had. I knew what and when something was going to happen. (Male, 21; McDowall, 2020)

Even though they kept me involved with the completion of it, they gave me information that they thought I would follow when I listened to what they told me, but they didn't explain it so I could understand, i.e., insufficient understanding. (Male, 23; McDowall, 2020)

They did my transition when I was 17 and a half. Not when I was 15/16. Would not have hurt to plan it out earlier so we could cover more and also plan/change the plan a lot better. (Male, 20; McDowall, 2020)

I don't want to go to residential care but they say there's nothing else. Because it's all they have got, I have to go. No one tells me what to expect. No one cares that I don't want to go. I like the carers I'm with now, but they are old and I have to leave at the end of March. (Male, 14; McDowall, 2018)

*Never asked me where I wanted to go when they moved me. Moved me from **** to ****. Pretty much move me, kicked me out, moved me. (Male, 13; McDowall, 2018)*

I know that I was not involved or included in many of the decisions that were made about my placements. I don't remember much; when I got to a certain age I just stopped caring and stopped giving a shit about anything. (Young Person; CREATE, 2022b)

My social worker was really old; her talking to me in the car was the only participation in decision-making that I had. (Young Person; CREATE, 2022b)


The Department make[s] decisions about contact without talking to us kids and it affects us and the people caring for us; so, they should ask us before they make a decision. All kids should have a say. My little brother goes to school but he's too young to have a lawyer and say what he wants to say at court. He knows what he wants the same as I do. (Female, 12; McDowall, 2018)

Kids in care don't get the rundown of why a lawyer is appointed and what they are supposed to do for you, what their actual job is, and explaining it on our level so we understand. (Young Person; CREATE, 2022b)

Participation and the Aboriginal and Torres Strait Islander Child Placement Principle

Response to Q24. Should the Aboriginal and Torres Strait Islander Child Placement Principle guide what participation looks like for Aboriginal children and young people?

CREATE supports and advocates for the development of practice frameworks, policies, and legislation that honour the Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPP). If the ATSICPP is more widely implemented, including the inclusion of *active efforts* (purposeful, thorough and timely efforts), more culturally safe contexts will be created for Aboriginal and Torres Strait Islander children and young people to participate in decision-making. It also is vital that this cohort have the same rights to participate as all young people and should not be heard only within their own communities.



When you yarn to other blackfullas at school, it's so different, it's very open-door policy and everyone yarns about everything. In DCP, it's too shame to be black, it's in the too hard basket, too complicated, DCP's mentality is "let's link you in with services and hope they do it for us". (Young person; CREATE, 2022b)

Timeliness of Decision-Making

Response to Q25. Are there parts of the legislation that could be changed to improve the timeliness of child protection decision-making and support better outcomes for children and young people?

Reliability and timeliness of responding are areas young people often mention as problems with their interactions with caseworkers: "If they would just get back to me when I called" is a common complaint from young people. Time frames are required in response to handling child protection notifications etc., but the same rigor doesn't seem to apply once the children and young people are in the system. Tightening the legislation to more clearly specify the expectations placed on caseworkers and other authorities when responding to the needs of young people would be likely to lead to more satisfaction with their treatment, a more positive response to the department, and more satisfactory outcomes for children and young people.

Transitioning to Adulthood

Response to Q26. Could the CYPS Act be strengthened to enable all young people in care, and leaving care, to access the services they need to heal from trauma, to grow up healthy and strong, and to be supported as they transition into independence?

Just remember, our wings aren't fully developed—so don't push us out and expect us to fly by ourselves. (Female, 19; CREATE, 2022c)


Successful transitions for those in alternate care rely on effective planning and support. This includes the active participation of young people in developing their leaving care plans and cultural support plans (McDowall, 2020; Mendes et al., 2020). For example, McDowall (2018) found that relatively few 15- to 17-year-olds reported being aware of having a leaving care plan (24%). Consistent with this, McDowall (2020) found that, on average, 18- to 25-year-olds who had recently been through the leaving care process rated preparation for leaving care poorly (e.g., 26% had spoken to no one prior to leaving care; only 36% knew that they had a leaving care plan).

Support. The transition from care is scary, there's this constant anxiety and fear of what's going to happen next. (Male, 19; CREATE, 2022c)

I found it great when having support after care to help me transition into independence. (Female, 19; CREATE, 2022c)

There is a lack of support when you turn 18. No one is ready to be on their own at 18. (Female, 19)

There should be more support for young people when transitioning from care. I've had support, I know many young people who have had no help. When I was first



taken from my parents the department were around all the time, too much, but when you're a teenager it's like they don't want anything to do with you. Teenagers want to be independent, but we need help. And even though foster parents love us, they don't want to look after us forever. Not much support from foster parents - they need more support than the kids. Including financial support. (Male, 18; McDowall, 2018)

There are so many questions and there are so many life lessons, that you don't— you are expected to figure it out by yourself. It's being able to have someone you can call... I actually don't know what I am doing right now, can I please have help, instead of being told "We can't help you". (Female, 23; CREATE, 2022c)

Young people in O'Donnell et al.'s (2020) study also reported that inadequate or poor formal planning processes (e.g., not developed with the young person; a lack of financial education and autonomy support) were barriers to successful transitions to independent living. Consistent with this, Mendes et al. (2020) described good transition plans for Indigenous young people as starting early, being culturally appropriate and comprehensive, including a focus on the development of independent living skills, and building relationships outside the care system.

Independent living skills are really important, and they are more likely to be able stay on if they are able to look after themselves. (Male, 21; CREATE 2022c)

Making a plan of the next steps of what I wanted to do after I turned 18 and the step I would have to take, like a goal plan, would have been really helpful. (Female, 20; CREATE 2022c)

CHOICES! Any support must be informed by what the young person needs. It must be flexible and creative. (Female, 25; CREATE 2022c)


Participation of young people is vital. Embedding principles of participation in legislation and referencing these in Part 8, Section 111 would clarify expectations associated with “in consultation with the child or young person” (p. 65) and help to facilitate participation that is child-centred and authentic; not tokenistic (CREATE, 2020a).

I did have a transition plan, but it was not discussed with me in a way that made sense to me or that I was able to process. I wish workers had checked in with me and asked questions like, “Does that make sense?” or “Do you need this information delivered differently?” I was too embarrassed to admit I didn't understand what was going on, so I just acted like everything was fine. (Gender non-conforming, 20; CREATE 2022c)

But no one has explained it enough for it to be understood. (Female, 18; CREATE 2022c)

I was notified about it and told about it. I can't remember what it was. Don't remember being involved in it. At an earlier stage in my life, it would have been good to be involved in developing the plan. I did have a voice, but it often went ignored. (Male, 19; CREATE 2022c)

Having transition plans not done unless they have had a say in it. Like, they could still have it, but it is not classified as complete unless they have had a say in it. So, then it puts back on the onus that they need to keep trying to engage the young person to have it completed. (Female, 23; CREATE 2022c)




It is acknowledged that SA has been a leader in providing extended care to 21 to young people ageing out of care. However, other states and territories now are providing more comprehensive support for all young people with a care experience (irrespective of original care placement, including residential care, and choice of future accommodation). This review of the child protection legislation would be an opportunity for the government to clarify the range of supports available to those transitioning to independence, and give more certainty to young people by setting their entitlements in legislation.


Implementation is Key

What is important is how legislation and amendments are translated into policy, how effectively new policies are communicated, accepted, and implemented, how adherence to policies is supported and monitored, and how deviation from the law is addressed. Ensuring that policy can be translated into real outcomes for young people requires serious resource development, support, and funding to promote best practice changes, as well as independent monitoring and evaluation that is transparent (i.e., de-identified and shared publicly). Accountability is a critical factor in the implementation of any legislation, and its effectiveness can be determined through analysis of the outcomes achieved by those directly affected: the children and young people living in alternative care.

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Appendix B: About CREATE

CREATE Foundation is the national peak consumer body for children and young people with an out-of-home care experience. We represent the voices of over 45,000 children and young people currently in care, and those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential.

Our mission is to create a better life for children and young people in care.

To do this we:

- **CONNECT** children and young people to each other, CREATE and their community to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by providing a variety of activities and programs for children and young people in care, and conducting research and developing policy to help us advocate for a better care system.