

20<sup>th</sup> March 2019

Secretariat for the Steering Committee for the Review of Government Service Provision

**Re: What is known about systems that enable the ‘public health approach’ to protecting children.**

Dear Secretariat

As South Australia’s Commissioner for Children and Young People my mandate under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* is to advocate for the rights, interests and wellbeing of all children in South Australia. It is also my role to ensure that South Australia, at all levels of government satisfies its international obligations under the Convention on the Rights of the Child (CRC). Further, I must seek to engage those groups of children and young people whose ability to make their views known is limited for any reason, this includes children under the protection of the State.

I commend that all governments in Australia are recognising that the public health approach to prevent child abuse and neglect from occurring in the first place is where resources should be concentrated and that children should be at the centre of this. I have spoken to thousands of children and young people since I became the inaugural Commissioner for South Australia and they have told me that they want to be heard and listened to in decisions that affect their lives. However, institutions and areas that should be child-centred, are in reality, not, especially when adult parties are fighting for their own interests or a department’s interest.

For example, the Family Law system often listens to the adults above children, and although children should be at the centre, they are not heard by decision makers, due to the fact that adults think it is best that children are not in court. This fact alone means the process is not child-centred as the child is on the periphery and the decision makers are listening to the adults in the system above the unfiltered child’s voice. Like one young person said about this system:

*“Children are still seen as possessions, even if not legally there is still a social stigma. They have opinions but they are seen as if they are a child they can’t have an opinion. They should not be seen that way because they have opinions and emotions which are very real.” (young person, Family Law consultation)<sup>1</sup>*

Another system that is purportedly child centred is the Education system, an institution created for children. It is a service for them, but the current South Australian Act makes no mention of how children can provide feedback or be involved in decisions in their schools. Further the new – once in a generation – Education Bill currently before the South Australian

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<sup>1</sup> SA Commission for Children and Young People, What Children and Young People think should happen when families separate”, August 2018, accessed at <https://www.ccyp.com.au/wp-content/uploads/2018/08/Family-Law-Report-Final-27-08-18.pdf>.

Parliament had no mention of children's participation until our office asked why they were not included as a stakeholder that should be consulted.<sup>2</sup> This demonstrates that law makers and politicians are still not recognising children's fundamental right to be heard, and are not putting them front and centre of laws and policies that affect them.

To put children in the centre, this steering committee should be carefully considering what child centred means when it comes to a health approach in child protection. In my view any child centred model should be based on the Convention on the Rights of the Child (CRC). Australia ratified this convention on 17 December 1990 giving children fundamental rights and therefore has a duty to fully implement it.

Article 19 provides the Convention's central and most comprehensive understanding of child protection and what the states duties are in relation to child protection. "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

To satisfy Article 19, the government must consider the Convention's guiding principles and therefore children's fundamental rights, including:

- The state's duty to ensure to the maximum extent possible the survival and development of the child (as a minimum) (Article 6).
- Children's interests (Article 3) by "systemically considering how children's rights and interests are or will be affected by their [institutions] decisions and actions."<sup>3</sup>
- For the state to be able to understand what is in their best interests children must be heard and their views listened to and respected in the decisions that affect their lives (Article 12).
- That children cannot be discriminated against on the grounds of race, colour, religion, national, ethnic or social origin, sex, language or any other status and not to be punished on the basis of their status (Article 2).

To implement these fundamental rights the committee could use child rights impact assessments to help design child-centred laws, policies and practices which are widely available.<sup>4</sup> Child rights impact assessments are "a tool for decision-making in the best interests of children"<sup>5</sup> and is a systematic process that maps how policies, decisions and laws impact on children and their best interests.

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<sup>2</sup> Government of South Australia, South Australian Legislation, Education and Children's Services Bill, accessed at <https://www.legislation.sa.gov.au/LZ/B/CURRENT/EDUCATION%20AND%20CHILDRENS%20SERVICES%20BILL%202018.aspx>.

<sup>3</sup> Convention on the Rights of the Child, General Comment No. 5 (2003): General measures of the implementation of the Convention on the Rights of the child (arts. 4, 42 and 44, para. 6), Committee on the Rights of the Child, thirty-fourth session, 19 September – 3 October 2003.

<sup>4</sup> Including Emerging Minds Children's Rights Impact Assessments at <https://emergingminds.com.au/resources/childrens-rights-in-impact-assessments/>, Children and Young People's Commission Scotland at <https://www.cypcs.org.uk/policy/crig>, The International Journal of Human Rights at <https://www.tandfonline.com/doi/abs/10.1080/13642987.2018.1558989?journalCode=fjhr20> and UNICEF at [https://www.unicef.org/csr/css/Children\\_s\\_Rights\\_in\\_Impact\\_Assessments\\_Web\\_161213.pdf](https://www.unicef.org/csr/css/Children_s_Rights_in_Impact_Assessments_Web_161213.pdf).

<sup>5</sup> UNICEF, What is a Child Rights Impact Assessment? Accessed at <https://www.unicef.ca/fr/discover-fr/article/what-is-a-child-rights-impact-assessment>

Other practical points to be child centred in the child-protection space include:

- Being aware how children and young people are impacted by any intervention from child protection services
- Giving children multiple opportunities to express, clarify and communicate their feelings and wishes
- Ensuring that all intervention should – as far as possible – seek to create and strengthen the positive everyday networks which surround children and young people
- Providing opportunities to link families with very young children to supports and services to strengthen physical, cognitive and social functioning, and
- Ensuring that children and young people are informed, as soon as possible, about any legal and administrative decisions made about them, the reasons for any decisions and any appeal mechanisms.

If you have any questions or queries please do not hesitate to contact this office.

Yours sincerely

Helen Connolly  
Commissioner for Children and Young People