

Allison Willis
SA HCASA
Level 3, 12 Pirie Street
Adelaide SA 5000

email: awillis@hcasasn.au and healthsafetyqualityfeedback@sa.gov.au

5 May 2020

Dear Ms Willis,

I am writing to provide some feedback on the Community Feedback and Complaints Strategic Framework 2020 – 2023 (Draft Framework). As the Commissioner for Children and Young People I advocate for all children and young people in South Australia. I also monitor statutory authorities to ensure they are seeking to give effect to the United Nations Convention on the Rights of the Child (CRC) in accordance with section 5 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.

In everything I do I use a child's rights-based approach, which is guided by the goal of promoting and securing the full range of children's rights, placing children at the centre of policy development, design and delivery, and reviewing systems and services through a child's rights lens.

In respect to this Draft Framework I commend the six principles of Consumer Feedback and Complaints Management. The six principles provide a sound foundation to establish complaints management systems in health services and responding to all individuals, no matter what the background.

However, the Draft Standard, in its current form, does not recognise children and young people as a vulnerable group, nor does it recognise that health services have a legal requirement to provide to government policies that ensure that environments in health services are child safe under Chapter 8 of the *Children and Young People (Safety) Act 2017*.

This is particularly concerning on the back of recent inquiries in Australia highlighting the vulnerability of children, including the Child Protection Systems Royal Commission (SA) in 2016 South Australia, Royal Commission into Institutional Responses to Child Sexual Abuse in 2017 and Royal Commission into the Detention and Protection of Children in the Northern Territory also in 2017. All of these have highlighted the lack of voice children have in complaints and feedback systems and that better responses by adults and systems are required to keep children safe.

The above omissions also reflect what children and young people have said to me. They often do not feel heard or appreciated, even when they have had lived experience:

"They [institutions] need to change to give a little bit more respect to kids and pay a little more attention."

11 year old female – Hopes and Dreams Consultation

In light of the above I recommended that children are explicitly included as a vulnerable group and that their rights and legal protections are outlined in this document. This includes recognising children's rights under the Convention on the Rights of the Child (CRC) and Child Safe Environments obligations required under *The Children and Young People (Safety) Act 2018* and the supporting [National Child Safe Principles](#) which put children's best interests at the forefront. The National Child Safe Principles were endorsed by all Australian governments in February 2019 and can be seen as the "gold standard" guide to creating child safe environments.

Children and young people want to be recognised as a stakeholder group who has important things to say. In respect to complaints, they want to be able to trust that institutions will listen to them when they make a complaint, without feeling like their complaint have been ignored or dismissed just because they are children.

To ensure this type of meaningful participation by children and young people organisations need fully realise Article 12 of the CRC, which is embedded in the National Principles as well as South Australian [Child Safe Environments Principles of Good Practice](#)¹. The right of *Children and young people to have a say on all issues that affect them and for their views to be taken seriously*.

Implementing Article 12 requires a change in the status of children in our community, and the nature of relationships between adults and children. For adults it requires us to move beyond thinking of children and young people as simply the focus of our care and protection. We need to start believing in children and young people as capable citizens who are able to meaningfully contribute to the decisions that impact on their lives.

Implementation also requires institutions need to actively put children and young people front and centre in our thinking, and to include them in shaping and contributing to the services that impact on them. It seems logical that systems and services that directly impact children and young people should involve them in their planning, monitoring and evaluation of those services. From this we can change the way systems are governed, managed and implemented and change laws, systems and services and then we can build a system of suicide prevention that has participation and rights at the core.

I understand that the Goals within the Draft Framework provide health services with the **key actions** to implement a local consumer feedback and complaint mechanism and processes. In respect to the current actions there appears to be certain elements missing, and they are in the areas where capacity building is required, in particular:

- a. The actions do not recognise that the responses for children should be different to adult responses. It is well known that children and young people are at

¹ National Child Safe Principles 2 and 6: Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously and Processes to respond to complaints and concerns are child focused. CSE Principles of Good Practice SA Principle 6" Empower and promote the participation of children in decision-making and service development.

- different developmental stages, both physically and mentally and require responses that appropriate for children.
- b. The actions fail to recognise that those receiving complaints need to be trained on the various legal requirements and rights that different groups may have. This includes training on human rights and the relevant international conventions and laws that will apply to this strategy. It is not realistic to expect that employees will be well-versed on various international conventions, relevant instruments (such as OPCAT) and general comments that helps them protect children's rights and the rights of other vulnerable groups.
 - c. In respect to point b, if training on the children rights are given then it will ensure that the best interests of the child is the primary concern when working with children. Placing best interests at the forefront should ensure their right to develop in the best possible way (Article 6), have the best health care possible (Article 24) and the right to recovery and reintegration (Article 39).

Further to undertaking a reassessment to this Draft Strategy to specifically include children as a vulnerable group. There should be actions to ensure that child-friendly information is available and that there be a children's charter in respect to the rights of children in the Health System. There appears to be a plethora of information on rights for older Australians, but nothing for children, given their special status.

I have attached some background on the CRC and how it intersects with the *Children and Young People (Oversight and Advocacy Bodies) Act 2017* for further consideration. If you would like to discuss this further please contact Monique Bianchi, Principal Policy, Research and Advocacy Officer.

Kind regards,



Helen Connolly

BACKGROUND

How state authorities can seek to give effect to the Convention on the Rights of the Child pursuant to Section 5 of the *Children and Young People (Oversight and Advocacy Bodies) Act* – Background

The CRC was created as countries in the United Nations recognised that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”. This means that government should take into consideration children’s developmental, physical and neurological differences when implementing laws, policies and practice to protect their inherent vulnerability. This does not mean, however, that children’s rights should be ignored for their own “protection”.

Article 3 of the CRC states that all organisations must work towards what is best for each child. Article 4 ensures that governments make these rights available to children through “appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the” CRC.

General Comment No. 5 then talks about the 4 core guiding principles that need to be considered when developing laws, policies and practices to ensure the effective implementation of the CRC. These include:

- Article 2: The obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind. The application of the non-discrimination principle of equal access to rights **does not mean identical treatment** to adults.
- Article 3 (1): That every legislative, administrative and judicial body or institution is required to apply the best interests model by systematically considering how children’s rights and interests are or will be affected by their decisions and actions, including any proposed or administrative action, including Standards.
- Article 6: The child’s inherent right to life and the obligation to ensure, to the maximum extent possible the survival and development of the child. ‘Development’ includes a child’s physical, mental, spiritual, moral, psychological and social development.
- Article 12: The child’s right to express their views freely in all matters affecting the child and these views given due weight.ⁱ

Further *General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration* builds on *General Comment No. 5*, providing guidance on how to ensure that laws, policies, practices and procedures that affect children have their best interest involved. “

The concept of the child’s best interests is used to ensure both the full and effective enjoyment of all the rights recognised in the Convention and the holistic development of the child. The Committee has already pointed out that ‘an adult’s judgment of a child’s

best interests cannot override the obligation to respect all the child's rights under the Convention".ⁱⁱ

This Comment then goes on to introduce the child-rights impact assessment to "predict the impact of any proposed policy, legislation, regulation, budget or other administrative decision which affect children and the enjoyment of their rights."

The Committee recommends that Child Rights Impact Assessments should be built into government processes at all levels. Countries, including New Zealand, Austria, Belgium, Finland, Italy, Sweden and the United Kingdom. However other countries use social impact assessments where child rights are included. This includes Croatia, Denmark, Estonia, France, Germany, Latvia, Slovakia, Slovenia and Romania. Further, there is now guidance for businesses to assist them in implementing child rights impact assessments, including Australian businesses.ⁱⁱⁱ

ⁱ United Nations, *General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*, CRC/GC/2003/5, 27 November 2003.

ⁱⁱ United Nations, *General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para.1)*, CRC/C/GC/14, 29 May 2013.

ⁱⁱⁱ UNICEF Australia, 'Building Better Business for Children – An Interim National Baseline Assessment of Australian policy and law shaping business activities that impact on children', accessed at <https://www.unicef.org.au/our-work/unicef-in-australia/building-better-business-for-children> on 14 January 2020.