Submission to the Review of the *Children and Young People (Safety) Act 2017*

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Commissioner for Children & Young People

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Commissioner's Foreword

As the Commissioner for Children and Young People, my mandate under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* is to advocate at a systemic level for the rights, interests and wellbeing of all children and young people in South Australia.

I welcome the opportunity to provide feedback on the legislative review of the *Children and Young People (Safety) Act 2017* (Safety Act). This review provides an important opportunity to review the consequences of the implementation of many of the recommendations made in both the Child Protection Systems Royal Commission led by Margaret Nyland and the Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA). It is also an opportunity for the government to ensure that South Australia's legislation provides a framework for promoting and protecting the rights, interests, wellbeing and development of all children and young people in the state, from before birth and into adulthood.

A sound legislative framework should strike the right balance between principles and prescriptiveness; where funding is required and where funding is discretionary; and what data needs to be reported publicly. Sound legislation, underpinned by clear guiding principles and supported by strong leadership and policy, can facilitate cultural change and ensure everyday decision making and practices promote the best possible outcomes for all children and young people.

The child protection system is under pressure from a number of directions for either (1) alienating many families and communities through a response that focuses on forensic investigations and child removal, and (2) a public discourse criticising the system for not "rescuing children" enough and demanding more authoritarian intervention in families rather than the provision of genuine family support. However, as those of us involved in the system know, removing a child from their family creates trauma for the child, the family and ultimately the community.

Whilst the current system has made some positive improvements for individual children, as a system designed to ensure that children and young people are protected from harm it has not served South Australian children well. We now require strong leadership across politics and government to introduce new legislation that can facilitate the capacity of the State to put differential effort and resources into supporting all parents to be the type of parent they want and need to be, including providing extra support when children's experiences or circumstances result in increased vulnerability.

When these extra supports do not achieve the desired outcomes, then on behalf of the community the legislation must address increasingly more prescriptive approaches for the State to become the significant adults and parents in children's lives. This legislated responsibility being to deliver on what children need in terms of their education, wellbeing health and safety and ensure their outcomes are equal to their peers.

New legislation should provide for all children, with differentiated responses to vulnerable children and children at risk of serious or significant harm. It should also consider formally including reference to a more differentiated understanding and response to different types of harm.

The preeminent focus on risk of harm from parents can result in just identifying rather than addressing and preventing the range of structural factors that increase stress for families and can result in children being more susceptible to harm. Such factors are all challenges that we have a duty to support families to overcome, include poverty, poor housing and poor physical health and mental health.

If we focus on investment in services, resources, and practical assistance to support families to provide more stable homes for their children, then it is possible to make a positive impact on children's rights, interests and wellbeing. To make a difference, this new legislation should support and resource social infrastructure in relation to poverty and inequality as legitimate areas of intervention to increase the capacity of parents to look after their children.

Assessment of harm from the actions taken by the State must also be given active consideration, as well as the harm of not actively considering the rights of children to voice their opinions and be heard in decision making and problem-solving processes.

Decades of research, practice, wisdom and experience informs us that intervention carries its own risks. This includes children being harmed when taken into care and the longer-term risks of not growing up with family, losing connections with community, and of not developing a strong identity or experiencing feeling loved. The negative long-term impacts for children associated with missing out on family relationships must also be considered, alongside the intergenerational harm associated with shame and punishment felt by their parents and communities.

New child protection legislation should provide for and prioritise networks of support available in the community without restrictive eligibility criteria. This will require priority access for families to get the services they need before a crisis occurs, building trust with families and a shift from a preoccupation with mandatory reporting to a legislated requirement for mandatory action, from 'doing things right' to 'doing the right thing'.

'Doing the right thing' includes decreasing the population of re-reported children, increasing access to Family Group Conferencing (FGC) and supports before and after removal, and a long-term financial investment and system incentivisation towards increasing the capacity of parents to learn new ways of parenting, and build strong family relationships and community connections.

In addition, an investment in educational and therapeutic innovative practice, that looks for the strengths and potential in families and does all it can to return children in out of home care to their parents, must become a hallmark of the South Australian child protection system.

While this requires enabling policies and practices and adequate funding, it starts with legislation that reflects a collective ambition for an approach to the care of children and young people that sets up a system that will operate in a fundamentally different way to our current system. Our legislation must inspire action, scaffold aspiration, and move beyond intentions that will achieve positive outcomes for some children towards a commitment for all children to live in stable and safe environments, have nurturing relationships, and maintain strong connections to community and culture.

Introduction

The Nyland Royal Commission resulted in what was described by the government at the time as a 'landmark piece of legislation'.[i] However, five years on, it has not delivered what was envisioned. Since the introduction of the Safety Act, more children are being removed from their families than ever and high levels of reporting are contributing to an overwhelmed system that is unable to appropriately assess which children and families require a statutory response.

At the same time, as the number of children entering care continues to rise, many stakeholders are concerned about what they see as minimal improvements in outcomes for children under the guardianship of the Chief Executive.

Many consider that the current system primarily engages families at a point where removing the child is the 'only intervention option'.[ii] As such, we appear to be missing many opportunities to support families to stay together safely through early intervention or reunification. Once a child is removed, families are often left unsupported before being assessed for reunification, during which time the relationships and attachment between a child and family deteriorate.

Without information and support to know 'how' a family is expected to change, a child's removal can often exacerbate the issues that triggered the initial intervention. To "break this cycle", legislation needs to look beyond statutory child protection measures and better reflect commitments to prevention and early intervention, family preservation and reunification, and transparency and accountability.

'Protecting children and young people from harm' is not an adequate ambition for our child protection system or community. While safety is important, the objectives of any amendment of the current Act or a new Act must set higher aspirations and ensure that processes, assessments and decisions are based on a holistic view of a child's best interests, incorporating their wellbeing, voice, relationships, safety and circumstances.

The review of the Act also provides an opportunity for the South Australian government to progress recommendations made in the Royal Commission into Institutionalised Responses to Child Sexual Abuse (the Royal Commission) in relation to Problem Sexual Behaviour (PSB).

Although the Royal Commission's initial focus was on child abuse perpetrated by adults, it discovered that child-on-child sexual abuse and sexual behaviour was much more prevalent in Australia than previously considered. Research shows that unwanted and inappropriate sexual behaviour from one child to another can produce similar levels of harm and psychological damage as child sexual exploitation perpetrated by an adult.[iii]

At a systemic level, however, there is no consistent nationwide data on the nature and prevalence of PSB or child-on-child sexual abuse. There is also a lack of appropriate primary, secondary and tertiary interventions to prevent the development of PSB and to appropriately respond to children who are displaying or impacted by PSB.

The lack of appropriate services is especially concerning as therapeutic interventions can significantly reduce or eliminate problem sexual behaviour and any related trauma, especially for pre-pubescent children.

In this context, this submission suggests the review may be an opportunity for the government to legislate for appropriate and therapeutic responses to PSB in South Australia.

This submission recommends that consideration be given to the RCIRCSA recommendations that state and territory governments should consider resourcing an independent oversight body to be responsible for functions related to both Child Safe Standards and a Reportable Conduct Scheme.

In respect to the above introductory comments, I make the following specific recommendations:

1. **That there be a new Act that embeds a public health approach to promoting and protecting the rights, interests and wellbeing of all children in South Australia.**

2. **That the guiding principles for the purposes of the Act:**
    a) Explicitly recognise the United Nations Convention on the Rights of the Child, embedding relevant Articles into principles, with 'best interests' as the overarching principle and paramount consideration.
    b) Embed the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of 'active efforts' and recognise Aboriginal children's and families' right to self-determination and the exercise of legislative authority.
    c) Embed a requirement of 'active efforts' for all children and young people.

3. **That the Minister is responsible for the application and enforcement of the entirety of the Act, and legal Guardianship is reverted to the Minister.**

4. **That the Act legislate additional responsibilities for the State to protect and promote the rights and wellbeing of vulnerable groups of children.**

5. **That the Act legislate additional responsibilities for the State to protect and promote the rights of children who are removed from their family, in line with 'corporate parent' principles and with particular regard to:**
    a) Ensuring everyday decision making is timely and accounts for child voice and participation.
    b) Supporting the rights of children to maintain safe and appropriate contact with family members.
    c) Supporting connection with siblings.
    d) Protecting a child's right to privacy.
    e) Strengthening support for care leavers.

6. **That the Act strengthen the legislative base for early intervention, family preservation and reunification by including an 'active effort' obligation to:**
    a) Ensure access to Family Group Conferencing at the earliest opportunity;
    b) Provide support for parents and families both prior to and post-removal.

7. **That the Act promote accountability and transparency by:**
    a) Requiring all Ministers to publicly report on outcomes for all children, vulnerable children, children in care and children leaving care.
    b) Requiring policies and practice frameworks to be public.
    c) Ensuring the Contact and Review Panel's board has two independent parties on the panel, provides reasons for decisions and an appeal mechanism in certain circumstances.

8. **That the Act legislates for a cross-agency approach to child death reviews with a focus on developing shared understanding and responsibility in regard to what could have made a difference.**

9. **That mandatory reporting requirements are amended to reintroduce active responsibilities for mandated notifiers to intervene before a notification is made, ensuring that notifications are timely and add value to the picture of a child's life.**

10. **That legislation is reviewed to ensure there are no barriers to appropriately responding to problem or harmful sexual behaviour.**

11. **That the Review considers interstate responses to appropriately respond to problem sexual behaviour with a view to implementing a response that is appropriate for South Australia, adequately resourced and consistent with a public health approach.**

12. **That the Act establishes an independent oversight body that is responsible for monitoring and enforcing the Child Safe Standards.**

13. **That the Act establishes and implements a Reportable Conduct Scheme in South Australia that is overseen by an independent body.**

I hope that these insights will inform the future of South Australia's child protection system and legislation. This submission is designed to be read alongside my other submission to this review, which focuses on Child Voice and Participation.

If you would like to discuss anything further, please do not hesitate to contact my office.

Yours sincerely,

Helen Connolly
Commissioner for Children and Young People, South Australia

Recommendation 1: That there be a new Act that embeds a public health approach to promoting and protecting the rights, interests and wellbeing of all children in South Australia.

The child protection system in South Australia continues to resemble what Nyland described as an 'inverted pyramid' with too much emphasis on the 'pointy end' and tertiary interventions rather than primary and secondary interventions.[iv]

In the current Act, there is very little focus on early intervention and prevention to address the structural factors that undermine child and family wellbeing and safety and to ensure parents, families and communities are supported to keep children living safe at home.

During the debate of the Safety Bill in 2016, it was argued that without providing for prevention and early intervention, the Act was 'likely to make children and young people less safe and provide them less protection'.

To address this, there is an opportunity for legislation to adopt a public health approach that covers all children and young people in South Australia, recognising the importance of investment in early intervention and prevention in order to reduce the need for statutory intervention.

Legislation that introduces a framework that ensures responses are provided across the service continuum is required. This includes providing for primary and universal initiatives that support all families; secondary intervention services that are targeted and proportionate to need and therefore are able to capture the most vulnerable families; and tertiary intervention services for where abuse or neglect has already occurred.

Primary intervention would be the largest part of a more balanced system, with secondary and tertiary services making up progressively smaller parts of the system. A public health approach provides a framework for all government agencies to be responsible for, and supported to take a more active role in, supporting children and families. This approach is also consistent with Nyland's recommendations and the National Framework for Protecting Australia's Children and Young People.

The Prevention and Early Intervention for the Development and Wellbeing of Children and Young People Bill was tabled in 2017 and was a missed opportunity to create a culture of collective responsibility for children's safety and wellbeing in South Australia.

The Bill should be reconsidered insofar as it offered a legislative framework for South Australia to embed the rights of children and families to receive the support they need to keep children safe and out of care. The Bill provided for a Whole of

State Prevention and Early Intervention Strategy that would set out priorities, strategies, and outcomes for the purposes of the Bill.

Legislation can support a public health approach to child protection by:

- Emphasising that statutory intervention is a last resort;
- Requiring investment in early intervention and protective intervention to support families and communities to keep children living safe at home;
- Ensuring government and non-government providers work with children, families and communities to provide services that are timely and referral pathways are needs based, local and integrated;
- Establishing collaborative partnerships between government and non-government organisations and communities;
- Recognising the rights, interests and aspirations of Aboriginal and Torres Strait Islander families and communities and the importance of Aboriginal-led decision-making and responses.

Appropriate resourcing and investment is imperative to ensure that a public health approach is properly implemented with services throughout the State.

I acknowledge that the government has been steadily increasing investment into early intervention and family support services. However, South Australia's expenditure on early intervention and intensive family support services is the lowest of all Australian states and territories, while almost 80 per cent of total child protection services expenditure is directed to out of home care.[v]

This imbalance is set against clear evidence that investing in quality early intervention and family preservation work has the greatest likelihood of protecting children and families from the harmful consequences of abuse and neglect and stemming the flow of children into out-of-home care.

Redirecting investment towards the primary and preventative end is also less costly than intervention at the tertiary end. Evidence shows significant savings and benefits related to improved education, health and employment outcomes and reduced criminal justice expenditure.[vi]

Recommendation 2: That the guiding principles for the purpose of the Act:

a) **Explicitly recognise the United Nations Convention on the Rights of the Child, embedding relevant Articles into principles, with 'best interests' as the overarching principle and paramount consideration.**
b) **Embed the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of active efforts and recognise Aboriginal children's and families' right to self-determination and the exercise of legislative authority.**
c) **Embed a requirement of active efforts for all children and young people.**

a) Explicitly recognise the UN Convention on the Rights of the Child, embedding relevant Articles into principles, with 'best interests' as the overarching principle and paramount consideration.

The Principles of the Act should embed the United Nations Convention on the Rights of the Child (UNCRC), with the 'best interests' of the child as the overarching principle and paramount consideration in implementing policies, practices, any decision-making and processes.

Although the Act is the responsibility of one Minister, these objectives and principles should apply to all of government so that there is a shared responsibility for all Ministers to be answerable to the outcomes of children and ensure all policies and procedures that relate to children and young people seek to give effect to the CRC.

The current paramount consideration of "safety" is too narrow and fails to recognise that children have a number of rights which must be considered in reaching life changing decisions about their future.[vii] The paramountcy principle of "safety" can ultimately lead to decision-making heavily influenced through a risk lens rather than a child-centred, evidence-based lens with children's best interests at heart. This not only contributes to high rates of child removal, but also hinder chances of reunification.

Including best interests as the paramount consideration will ensure decisions consider a more holistic, longer-term view of a child's life, development, relationships, health and wellbeing.

Best interests is a well-established concept in Australian law and policy, which encompasses safety but also recognises the range of factors that influence children's overall wellbeing across the life-course. Part 2 of the current Act recognises children's 'other needs', including the need to be heard and have their views considered, for love and attachment, for self-esteem, and to achieve their

full potential. A best interest's approach will recognise that these needs are of equal importance to and inseparable from safety.

To this end, legislation should clarify that the best interests of the child can only be met if they are included and supported to participate in decisions. My Child Voice submission to this Review provides further comment on how legislation can be strengthened to ensure the State listens and responds to the experiences and needs of children and young people.

Additional rights principles should be applied, based on Articles of the UNCRC, and recognise:

- That children should grow up in a family environment, in an atmosphere of happiness, love and understanding (Preamble).
- That parents have the primary responsibility of bringing up their children with the state providing appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities (Article 18).
- A child's right to express their views freely and for their views to be given due weight in all matters affecting them (Article 12). My Child Voice submission provides further insights and recommendations regarding children's realisation of this right.
- A child's right to privacy and to protection of the law against any attacks on their privacy, home, family, correspondence, honour or reputation (Article 16).
- A child's right to enjoy and practice their culture (Article 30) and preserve their identity (Article 8).
- A child's right to education that develops their personality, talents and mental and physical abilities to their fullest potential (Articles 28 and 29).
- A child's right to enjoy the highest attainable standard of health (Article 24) and standard of living adequate for their physical, social, and emotional development (Article 27).
- A child's right to rest and leisure and to engage in play and recreational activities (Article 31).

b) Embed the Aboriginal and Torres Strait Islander Child Placement Principle to the standard of active efforts, and recognise Aboriginal children's and families' right to self-determination and the exercise of legislative authority.

I fully support embedding the full iteration of the Aboriginal and Torres Strait Islander Placement Principle into legislation to the standard of 'active efforts'. The SNAICC – National Voice for our Children resource describes how active efforts might be embedded in legislation, including:

- Setting minimum requirements for the provision of family preservation and reunification supports;
- Providing every Aboriginal family with the opportunity to participate in Aboriginal Family-Led Decision-Making, including Family Group Conferencing; and
- Requiring an independent representative of Aboriginal Community Controlled Organisations (ACCOs), or other recognised Aboriginal entities, to participate in all significant decisions about Aboriginal children.

I support proposed changes to recognise Aboriginal children and families' rights to self-determination and cultural authority, and legislative reform that will provide for the progressive delegation of legislative functions to recognised Aboriginal entities.

Empowering Aboriginal families, communities and organisations is essential to addressing the over-representation of Aboriginal children in our child protection and out-of-home care systems.

The detail in relation to these legislative reforms should be determined by Aboriginal Community Controlled Organisations and the Aboriginal community, who have the cultural authority to determine how they should be enshrined and applied.

c) Embed a requirement of active efforts for all children and young people.

Practise principles should embed a requirement for all-of-government taking active efforts to keep children at home and in community, recognising that outcomes can often be worse for children who are taken from their family.

Most of the services that should be in a position to address the structural determinants of abuse and neglect, including housing and homelessness services, healthcare services, mental health services and drug and alcohol services – are not administered by the Department. The principle of 'active efforts' should therefore be embedded in all legislation governing agencies that provide services to children and families.

Active efforts include, but are not limited to:

- Supporting families to address safety concerns to prevent children from entering care and before a child is removed;
- Ensuring that there is always an opportunity for reunification for every child who has been removed, including those on long-term orders;
- Guaranteeing that children who are removed from their families are placed with family, kin or community.

Recommendation 5 provides further comment on the implementation of this principle in relation to early intervention and family preservation and reunification efforts.

Additional principles that underpin the Act should also:

- Recognise the need to focus supports around critical transition periods and stages of development.
- Acknowledge the importance of the first 1,000 days and the need for appropriate support for all families during this time, especially first-time parents and young parents.

Recommendation 3: That the Minister is responsible for the application and enforcement of the entirety of the Act, and legal Guardianship is reverted to the Minister.

This office recommends that the responsibility for legal guardianship for children removed from their family should be assumed by 'the state' and its representative through the Minister for Child Protection rather than the Chief Executive.

Doing so will ensure responsibility and accountability and is consistent with the view that children's best interests should be elevated to the very highest level of government.

Recommendation 4: That the Act legislate additional responsibilities for the State to protect and promote the rights and wellbeing of vulnerable groups of children.

If we are to improve outcomes for all children and young people in South Australia and deliver on their fundamental rights, legislation should acknowledge and provide for the unique experiences of children who may face particular barriers to being seen or heard.

This not only means children in care but also includes other groups of children and young people, including children and young people:

a) with disability;
b) with complex disability needs who are unable, or at risk of being unable, to live in their family home;
c) living in poverty;
d) with severe mental illness;
e) with an incarcerated parent;
f) living with chronic illness/es;
g) with caring responsibilities;
h) whose parents live with disability;
i) who are young parents; and
j) in contact with the youth justice system.

Additional principles for promoting and protecting the rights and wellbeing of vulnerable children and young people should include:

- Prioritising access to services and supporting children and young people to make the best use of services.
- Encouraging children and young people to express their views, wishes and feelings and taking these views, wishes and feelings into account.
- Promoting high aspirations, and seeking to secure the best outcomes, for children and young people.
- Respecting children and young people's right to privacy and dignity, only using and sharing information to the extent that is necessary to ensure timely and appropriate support.
- Ensuring children and young people are safe, that their life is stable in all areas of their lives, at home, in relationships, education, sport and work;
- Respecting every child's cultural background and ensuring cultural considerations, cultural competency and cultural authority in all decision-making and processes.

- Supporting and preparing children and young people for adulthood and independent living, and ensuring this support continues throughout adulthood.

a) Children and young people with disability.

Although the government has made positive progress in terms of improving access to NDIS plans and support for children and young people in care, there has been little recognition of safeguarding gaps for children with disability. This is despite recognising gaps in relation to the oversight of adults with disability through the expansion of the Adult Safeguarding Unit.

There is an assumption that is built in to system and service models, including the NDIS, that parents have the capacity and resources to keep their children safe and to advocate for and protect them. However, some parents are unable, ill-equipped or unwilling to properly advocate for their children. There needs to be systemic recognition of this and a mechanism to ensure that there is greater oversight of places where children with disability live, earn, learn and play, including educational institutions.

Extra oversight and support should ensure that children with disability are accessing a range of services and opportunities (including but not limited to disability-specific opportunities and services), including education, sport and community services.

This oversight should not only have regard to the use of restrictive practices, behaviour management, and health and medical needs, but also to wellbeing, the quality of relationships with peers and trusted adults, and access to developmentally and age-appropriate mechanisms to be heard and participate in line with principles of the *Disability Inclusion Act 2018 (SA)*.

b) Children with complex disability needs who are unable, or at risk of being unable, to live in the family home.

My recent submission to the Parliament of South Australia's Social Development Committee identifies systemic gaps in responses to children with complex disability needs who are unable, or are at risk of being unable, to live in the family home.[i]

Despite some progress by Australian governments over recent years in terms of recognising and supporting this group of children, significant concerns remain regarding their isolation, invisibility and a lack of safeguarding and oversight.

'Voluntary out of home care' arrangements are often crisis-driven and a 'last resort', and generally occur where there is a lack of appropriate services available or amid a breakdown of family support, relationships and resources.

While some children in this situation have stable accommodation, a small but significant number experience social admissions to hospital or extended stays in

Kurlana Tapa Youth Justice Centre, while others are temporarily placed in Airbnb's or caravan parks, remain in respite due to a lack of appropriate accommodation or move between placements due to care concerns.

Many children are living with complex mental health needs as well as complex behavioural and sensory needs, all of which can be compounded by the trauma and confusion of being isolated from family members and a familiar home environment. Further, some parents have reported being cut off from support payments once their child is living outside of the family home. This is despite the reality that their significant caring role often continues.

A multi-agency, child-focused and family-centred response between state and the Commonwealth is required to ensure this group of children and their families have stable, safe and appropriate housing, are healthy and connected to others, services and the community.

c) Children and young people living in poverty.

In South Australia, 1 in 4 children and young people under 18 years of age are estimated to be living in the state's most disadvantaged socioeconomic circumstances, compared to 18.5% nationally. In some areas of the state, more than 50% of children live in poverty.[iii]

Poverty and financial insecurity have a significant impact on a child's learning, development, and connection to school and their community, as well as their friendships and sense of self-worth and belonging.

Legislation should give effect to children's rights to receive assistance from government in these circumstances (as per Article 26 of the UNCRC). It should enable the provision of funding and resources for community-based services and collaboration and coordination of local services; identify strategies, targets and measures to actively reduce the impact of poverty on children and families; and allow for every child's full and enriching participation in all aspects of school and community life, including sport and recreational activities.

d) Children and young people with severe mental illness.

As the prevalence of mental health and behavioural challenges among young people continues to grow, parents and advocates report that there are significant gaps in care, support and treatment available to children and young people experiencing mental health crises.

In the absence of after-hours service options for children and young people in distress, hospital emergency departments tend to become the only option. In many cases, SAPOL are involved in responding to escalating behavioural issues, particularly where family support is limited or for those living in out-of-home care.

A more coordinated multi-system response to crisis prevention and intervention is required to divert children away from hospital emergency departments or the youth justice system and actively connect young people and families with resources, and services. Such a response would provide for a continuum of supports that involve schools, community partners and different levels of government, as well as primary health care, including professional and peer workforce teams who are specialists in child and adolescent health and non-hospital settings that are child, youth and family focussed.

There is an opportunity for legislation to provide for such a response and align with a public health approach and human rights principles, as set out in the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities. To this end, any recommendations for amendments to the *Mental Health Act 2009* (SA) as a result of the review currently being undertaken by the South Australian Law Reform Institute (SALRI) should also be considered.

e) Children and young people living with chronic illness.

Childhood chronic illness is a complex issue, with each illness having its own unique trajectory and impacts. Living with chronic illness can disrupt and impact all aspects of a child's development and outcomes, including educational outcomes, the ability to make friends and maintain connections, play sport and enjoy other activities. The impacts of missing out on these experiences can often cascade into their adult lives.

There are significant gaps in research regarding the prevalence of childhood chronic illness. In the absence of a standardised policy or model of care, many of these children are falling through significant system and service gaps, particularly during the transition from paediatric to adult services.

f) Children and young people with an incarcerated parent.

Although children with incarcerated parents are impacted by many statutory authorities across the criminal justice and other systems, they are largely invisible to adult decision makers and service systems.

While in some cases incarcerating a parent can provide a degree of protection to children, it can also result in negative impacts on families and future generations. Each child and young person's experiences are unique and diverse, varying according to age, the nature of their relationship with their parent prior to contact with the justice system, the quality of other family relationships, and what and when community support is made available to them. Broader socio-economic factors also come into play, along with the nature of their parent's offence and changes to their living and care arrangements.

As such, decisions regarding support and contact arrangements need to be tailor-made to each case, based on close examination of affected children's real-life situation, including the extent to which the child was affected by or a victim of the parent's offence.

There is an opportunity for legislation to identify children affected by parental incarceration as a vulnerable group and set the foundations for a systemic response that understands children's needs and provides them with information and priority access to timely, appropriate and specialised support services throughout all stages of their parent's contact with the justice system and in ways that respect children's right to privacy and do not perpetuate stigma or isolation.

My 2022 *Join the Dots* Report provides further systemic insights based on my direct engagement with this group of children and incarcerated parents.[ii]

g) Children and young people with caring responsibilities.

Children and young people with caring responsibilities provide significant amounts of care to people in their lives who may be living with either one or a combination of disability, chronic illness, mental illness, terminal illness or drug and alcohol dependence. The kind of care they provide may be a combination of physical, emotional, and personal care or childcare.

Although many young carers describe their caring role as a positive experience, research clearly indicates that caring can place significant strain on a young person's physical and mental health, wellbeing and education outcomes, particularly where young carers are inadequately supported.

While young carers gain life skills through their caring roles, their choices and opportunities can also be limited. They can be vulnerable to missing out on many activities, relationships, and opportunities that their peers take for granted.

Many young carers do not tell anyone about their role, meaning they are isolated and unable to receive the support they need. These young people explain that they often stay silent due to a fear of being taken away, of getting their family member into trouble, or of being bullied due to being 'different'.

There is an opportunity to recognise this group of children in legislation in South Australia and embed protections and support for families so that they can access services and stay together safely with their families and have the same opportunities as their peers. The *Children and Families Act 2014* and the *Care Act 2014* in the UK provide examples of legislation that strengthen the rights of young carers through assessing and preventing children from taking on excessive care and recognising the need to support young carers as they transition to adulthood.[iv]

h) Children and young people whose parents have disability.

Parents with intellectual, cognitive or psychosocial disability are currently over-represented in the child protection system. It appears to be more likely that their children are taken into care, and that this is partly attributable to a systemic assumption that a parent's disability is evidence of inability to care for child.

As such, legislation should seek to reduce this over-representation and challenge false and harmful assumptions and:

- explicitly prohibit discrimination against parents based on false assumptions regarding disability and parenting capacity; and
- ensure parents with disability have access to information and decision-making, parenting and advocacy support.

Recommendation 5: That the Act legislate additional responsibilities for the State to protect and promote the rights of children who are removed from their family, in line with 'corporate parent' principles and with particular regard to:

a) Ensuring everyday decision making is timely and accounts for child voice and participation.
b) Supporting the rights of children to maintain safe and appropriate contact with family members.
c) Supporting connection with siblings.
d) Protecting a child's right to privacy.
e) Strengthening support for care leavers.

When children are removed from their families, the State should have additional responsibilities to ensure that the rights, interests and wellbeing of these children are protected and promoted.

There are certain key needs that 'good parents' generally meet in order for children to thrive. There is an opportunity for legislation to reflect this by setting out 'corporate parenting' principles for the whole of government.

Such principles describe the behaviours and attitudes expected of government when they are acting as any good parent would by supporting, encouraging and guiding their children to lead healthy, rounded and fulfilled lives.[viii]

Legislating these principles can encourage all of government to be ambitious and aspirational in supporting children in care and care leavers and ensuring that they

are not placed at significant disadvantage compared to children who do not touch any system.

Corporate parenting principles should include, but are not limited to:

a) Ensuring everyday decision making is timely and accounts for child voice and participation.
b) Supporting the rights of children to maintain safe and appropriate contact with family members.
c) Supporting connection with siblings.
d) Protecting a child's right to privacy.
e) Strengthening support for care leavers, in accordance with the principle of focusing supports around critical transition periods and stages of development.

Corporate parenting means flipping the concept of risk: away from the 'risk' a child's behaviour or response could have on the organisation to what 'risk' an organisation's decisions or actions could have on a child's health and development.

a) Ensuring everyday decision making is timely and accounts for child voice and participation.

In the current system, we are aware it can take months for the Department to make decisions about opportunities or participation in activities and events that are key to children's wellbeing. This includes decisions around consent for children and young people to participate in everyday activities, such as hanging out with friends or having playdates, sleepovers, or going on camps or holidays.

Children have repeatedly told us that missing out on such opportunities can make them feel different from their peers and perpetuate stigma, embarrassment and isolation. Legislating for corporate parent principles could address this and ensure day to day decision-making is also based on best interests and an ambition so that the lives of children in care are not so different to other children.

b) Supporting the rights of children to maintain safe and appropriate contact with family members.

It is important for children in care to maintain contact with family, friends and other people who are important to their lives. Prioritising these connections is important to children's wellbeing and overall emotional health. The process of removal is life changing and children should be asked about support people in their lives and a responsible corporate parent should be actively maintaining these connections.

Our office has often heard from extended families losing contact with children that have ended up in care and the powerlessness they feel and the hoops they must

jump through to maintain these connections and the length of time for decisions to be made. Recommendation 7(c) below outlines specific concerns regarding decision-making related to contact arrangements, and my Child Voice submission provides further insights from children and young people regarding their relationships with family.

c) Supporting connection with siblings.

Children and young people in care have emphasised the importance of staying connected to their siblings for their wellbeing, sense of identity and ability to cope with significant changes in their lives.

Research has shown that nurturing sibling bonds not only reduces the impact of some of the negative occurrences while in care, but is also strong predictor of successful reunification, and can provide a valuable support well into adulthood.

South Australia has the highest rate of separating siblings in care in Australia. Although the Act makes reference to children and young people maintaining a connection with their 'biological family' (section 8(3)), there is no specific reference to siblings.

Legislation should support pursue continued connection with siblings by:

- Seeking children's views and feelings about the placement of their siblings and involving them in decisions about placements and planning for how, when and where they will have contact;
- Explaining to children and young people why decisions are being made regarding placement and care of siblings;
- Ensuring active efforts to place siblings close together, where safe and appropriate to do so, and with regard to the wishes of children and young people;
- Ensuring active efforts to provide opportunities for frequent, informal contact, where siblings are separated, including transport for in-person visits or facilitating phone calls, video calls or letters where in-person visits are not appropriate or safe.

Given that each child and young person's situation, relationships, views and experiences will be unique and diverse, legislation needs to centre the needs and voices of children in decisions about sibling connection. Again, my Child Voice submission provides further insights from children and young people regarding the importance of sibling connection.

d) Protecting a child's rights to privacy.

Article 16 of the UNCRC protects children's right to privacy and the right to protection of the law against arbitrary or unlawful interference with their 'privacy, family, home or correspondence'.

The right to privacy is recognised as critical to children's social, emotional, physical development, autonomy and positive participation in society. The right to privacy is also key to realising other fundamental human rights, including the rights to education, health, freedom of expression and participation.

The principles of the Act must respect the privacy, dignity and personhood of children and young people, with particular regard to vulnerable children and children in care.

Children who are vulnerable and children who are in care and their families are often publicly named and identified by law enforcement and the media. This can lead to stigmatisation, discrimination and heighten the risks of bullying and harassment, with impacts on healthy development.

This can have particularly negative impacts when there is a lack of specific support services or in school environments where teachers and staff are not equipped to respond appropriately. A child's care status and identifying information should only be used or shared in ways that ensure the provision of necessary support in order to not perpetuate stigma. It also runs the risk of politicising children's very personal and complex issues rather than considering the impact on a child's long term health and wellbeing.

e) Strengthening support for all young people leaving care.

The transition from the Department of Child Protection to adult services is an unsettling and difficult time for young people. Young people transitioning from DCP can be particularly vulnerable during this transition period, particularly where they lack access to informal supports, positive role models and networks.

Part 8 of the current Safety Act sets out provisions regarding assistance for care leavers. However, these provisions are 'quite vague and equate to the provision of a service directory for young people'.[ix]

Legislation could be strengthened to better recognise young adulthood by making a commitment to commencing a formal transition period from 16 years of age for care leavers to ensure that safety and support provisions are in place.

This includes but is not limited to access to relevant Centrelink payments, bank accounts, adult guardianship, housing, employment and support such as the NDIS. This could also include peer mentoring and peer support, as well as person-centred brokerage systems where young people have agency in how they spend funds.

This will improve pre-planning around future needs and align with the principle of focusing supports around critical transition periods and stages of development. As Nyland highlighted, 'the way in which the state supports children and young people to transition out of care is a measure of the success of those charged with raising them'.[x]

This is particularly important for young adults transitioning from guardianship of the Chief Executive to guardianship of the Public Advocate. The Office of the Public Advocate (OPA) and the Department are working closely in relation to this group of children but notes that there are complex challenges as child protection supports drop away and NDIS-funded non-government services are relied on more heavily. A lack of planning and coordination of services and support can unnecessarily compound anxiety and see an increase in challenging behaviours for some young people.[xi]

Young people transitioning from DCP who are NDIS participants can have multiple stakeholders in their lives and complexities such as mental health, criminal justice, trauma, which require a high level of skill to provide appropriate support. Without adequate skills and training, OPA has seen placements break down and young people cycle through service providers and support. It takes time to develop a rapport and relationship with young people in this situation. If this formal process could begin earlier for the small cohort of young people who require adult guardianship, there is increased likelihood of successful transitions to adult services.

Further, it is also recommended that the provision for young people in family-based care to stay in care until 21 should also be extended to all young people. This is particularly important for those who live in residential care, who often experience the most complex needs and the poorest life outcomes, which are compounded by the pressures of leaving care at the age of 18, increasingly into homelessness.

Recommendation 6: The Act strengthen the legislative base for early intervention, family preservation and reunification by including an 'active effort' obligation to:

a) **Ensure access to Family Group Conferencing at the earliest opportunity;**
b) **Provide support for parents and families both prior to and post-removal.**

This Review is an opportunity to strengthen the legislative base for early intervention and family preservation. Where statutory intervention is being considered, there should be an obligation on the Department to provide evidence of family preservation efforts that were undertaken before statutory intervention.

To this end, the New South Wales Children and Young Persons (Care and Protection) Amendment (Family is Culture) Bill 2022 provides a useful example for consideration insofar as it requires the Secretary of the Department when making a care application to the Children's Court to provide evidence of:

- the active efforts made before the application was made and the reasons the active efforts were unsuccessful, and
- the alternatives to a care order that were considered by the Secretary before the application was made and the reasons the alternatives were not considered appropriate.

There should also be active efforts to ensure access to Family Group Conferences at the earliest opportunity for all families, except in exceptional circumstances. This should be automatic for at-risk pregnancies. As articulated in the Uniting Communities submission to this review, enshrining the right for all families to engage in Family Group Conferencing 'is perhaps one of the single most important reforms that could be introduced to reduce the number of child removals and maintain children living safely at home'.

Legislation should also be strengthened to ensure support services are extended to all parents and families both prior to and post-removal to improve their parenting capacity and readiness for reunification. Regardless of whether reunification happens, it is in the child's best interests that the parents address the protective concerns. Even where removal is necessary and reunification is not achievable at one point in time, it is important to work with and support parents to address underlying trauma and parenting concerns.

In respect to reunification, current provisions for 'onus on objector' run counter to supporting family preservation and reunification and can have the effect of absolving the State of responsibility to support families post-removal. The onus should be reversed so that it is the responsibility of the Crown to prove that a family does not have the capacity to care for their child. This will strike a better balance

between supporting a child's need for stability and positive attachment while enhancing the potential for reunification.

Current practices around prevention and reunification in both DCP and DHS are inconsistent, both across and within systems. Although there is some evidence of positive outcomes, good relationships and effective partnerships between workers, children and families, there are also many stories where workers adopt a deficit- and risk-based mindset. This was also noted in the Alexander Review with a common factor being children and families being isolated from broader systems of helpful family and community support.

The Alexander Review called for the need for workers to refocus back on parents and families' strengths to lower risks for children. Alexander noted that although this is the practice of some practitioners, the Department needs to take steps to ensure this approach is "valued and taken routinely". This will engender trust, not only by families, but by the greater community:

> *"Supporting families to lower risk to their children is much more likely to be achieved by working on shared goals that reflect the parents own insights and expertise. That is best done by harnessing strengths not focusing on weaknesses as a motivating force and must be based on what the family needs help within order to change."*

Increasing trust in the role and practices of reunification services is essential, and there is scope for legislative change to support this. Reunification support should be independent of the Department's response and assessment teams. This will avoid situations where families are expected to work with the same staff who removed their child and who may also have a biased view of a family's ability to change.

There should also be greater recognition that non-government services that have worked intensively with the family and have a relationship with them will be best-placed to make timely and appropriate assessments that account for long-term safety and interests, understanding of risk and capacity.

There is also still a lack of transparency surrounding decisions and actions made by the Department. I have heard from stakeholders that families are not always supported to understand processes and their experience of the system is defined by shifting goal posts, vague expectations and unrealistic timeframes to address protective concerns.

Even where parents appear to 'jump through hoops' to keep their children, it can feel to them as though the Department never intended for them to reunify with their children, particularly where they are not provided with explanations for decisions.

Where parents are disempowered, they feel upset and angry, reacting negatively to workers, only to find that decisions are then being made against them on the basis they were 'rude' or 'aggressive' towards Department staff.

There needs to be more information and legal advice so that parents and extended family and carers know where to access support so that they can navigate case plans and understand expectations regarding what needs to be addressed, as well as understanding the implications of removals, family group conferences, long-term orders.

Case study: A grandparent rang our office concerned for her 5 grandchildren. Her daughter, who had a history of drug abuse but is now apparently sober had her children taken from her after the birth of her 5th child. After being visited by DCP workers on a day when she had to take her children to school and the baby to a hospital check-up she was told her house was "too messy" and took all children away and gave them to the two fathers. The grandmother says both fathers take drugs.

The 11 year old son recently rang the Grandmother saying they received $50 by their dad to remain upstairs for the weekend, after which they found their dad "asleep" on the couch. He told his Grandmother that he and his two brothers want to go back to their mum.

The grandmother was desperate and rung the police to check up on them. She also rang the Guardian for Children and Young People but was told the children are not under any formal guardianship. All of this has resulted in DCP telling her not to "interfere" and that she is being obstructive. She has been told there is going to be a Family Group Conference, but that was months ago and she has heard nothing since. It feels to the Grandmother that if she and the mum do not do "exactly" what DCP say they will take the children away, even though she now has little hope that they are coming back. She says does not know who to turn to or how to navigate the system, especially as she comes from a non-English speaking cultural background.

Recommendation 7: That the Act promote accountability and transparency by:

a) **Requiring all Ministers to publicly report on outcomes for all children, vulnerable children, children in care and children leaving care.**
b) **Requiring policies and practice frameworks to be public.**
c) **Ensuring CARPs board has two independent parties on the panel, provides reasons for decisions and an appeal mechanism in certain circumstances.**

a) Requiring all Ministers to publicly report on outcomes for all children, vulnerable children, children in care and children leaving care.

To ensure accountability and reflect the State's commitment to promoting the wellbeing and safety of all children and young people, legislation should require Ministers to report publicly about the outcomes the system delivers for children and young people, including in the domains of health, education, housing, and justice.

This is particularly important since research has shown that children taken out of their home and placed into residential care are less likely to reach their full potential, are more likely to interact with the youth justice system, disengage from school and from community.

Currently, the Department collects and reports on data related to how many children are the subject of notifications, how many are in care, and where they are, among other measures. Although these are important numbers, they fail to consider the complexity of children's lives and how they are affected by decisions. Given that the Act is intended to ensure that children taken into care have the same opportunities and outcomes as children who live with their birth family, it is imperative that their outcomes are measured and compared to the general population. This will provide more reliable and holistic insights regarding children's outcomes, thereby providing a valuable basis for systemic improvements.

As recommended by the Special Commission of Inquiry into Child Protection Services in New South Wales (The Wood Report), government agencies that have responsibilities for the health, safety and wellbeing of children should have, as part of their performance agreements, a requirement to ensure inter-agency collaboration in child protection matters and a metric for measuring that performance.

The Child Development Council has an existing wellbeing framework with indicators that could be used as a basis to report on particularly vulnerable groups of children.

As highlighted in my Child Voice and Participation submission, consideration should also be given to how reporting requirements could include mechanisms to monitor the feelings and perceptions of children and young people themselves in relation to the realisation of their rights, wellbeing and safety. The wellbeing and engagement census run by the Department for Education may be a useful model to consider.[xii]

b) Requiring policies and practice frameworks to be public.

The DCP Practice Book and other policies, practice frameworks and procedures that affect children, families and carers should be made public to engender trust in the Department and system. Currently, the Act only requires polices to be made public if the Minister publishes the policies by notice in the Gazette (s19). This is an additional barrier to making policies public and should not be so prescriptive.

c) Ensuring CARPs board has two independent parties on the panel, provides reasons for decisions and an appeal mechanism for applicants in certain circumstances.

The operations of CARP has given rise to concerns from various stakeholders. Currently, the process is criticised for seemingly not reflecting principles of natural justice and procedural fairness. This is further eroding the trust in the "system".

To improve transparency and accountability, legislation should require that two members of CARP are independent of the Department and that the panel must publish the reasons for decisions. If the Chief Executive decides not to comply with a CARP decision, decisions should be appealable to the South Australian Civil and Administrative Tribunal (SACAT). As decisions around contact can change at any time, any appeals should be expedited to SACAT providing a short turn-around of no more than 4 weeks.

Despite current provisions providing for the views of child to be heard in SACAT proceedings (section 159 of the Safety Act), stakeholders have raised concerns regarding a lack of knowledge and expertise in terms of child development, protection and participation. As such, efforts must be made to ensure SACAT members have training and support to understand child-focused practice, including an understanding of child development, trauma and issues related to child protection and participation. To ensure cultural competency and cultural authority in decision-making related to Aboriginal families, SACAT should also be resourced to ensure that an Aboriginal member is present in any decision-making related to an Aboriginal child.

Recommendation 8: That the Act legislates for a cross-agency approach to child death reviews with a focus on developing shared understanding and responsibility in regard to what could have made a difference.

Any serious child injury or child death should have a timely, cross-agency review that is provided for in legislation and relies on full disclosure and shared responsibility.

Kate Alexander noted that there are already solid processes in place in South Australia to review child deaths and oversight arrangements, but there is a lack of trust in the community that these processes are adequate. There is an opportunity to refresh the Child Death and Serious Injury Review Committee with a Board similar to Queensland.

In Queensland, an Independent Child Death Review Board has been established and links together all agencies involved with a child, regardless of different models of service delivery or culture.

Alexander recommends 'a cross agency approach', convened by an independent mediator in the weeks following a child's death and attended by senior leaders across agencies, 'to look not at whether their agency complied with policy and procedure, but instead, look at what could have been done that might have made a difference'.[xiii]

Legislating for an improved and timely culture of systemic review will identify opportunities to improve systems, legislation, policies and practices to help protect children and prevent deaths that may be avoidable.

This also has the potential to promote shared understanding and responsibility and provide the Premier and Minister with 'a very strong and consistent message', thereby reducing the likelihood of the media and community to form simplistic explanations or pit one workforce against another.

Recommendation 9: That mandatory reporting requirements are amended to reintroduce active responsibilities for mandated notifiers to intervene before a notification is made, ensuring that notifications are timely and add value to the picture of a child's life.

The expansion of the Mandatory Reporting Scheme in South Australia has resulted in some unintended consequences, including an ever-increasing number of notifications and re-notifications that are not necessarily improving outcomes for children. There has also been an increase in the proportion of screened-in notifications.

There was criticism at the time the current Act was drafted that the mandatory notification system threshold would be too low and result in an overwhelming number of notifications that cannot be appropriately responded to, or even at times investigated. There is also the problem of mandated notifiers re-reporting children even when they are actively involved in working with families to address the same issue. These re-notifications in cases where protective concerns are already the focus of a support relationship "clog" up the system and appear to be done as an act of compliance rather than increased concern.

It is recommended that new legislation ensures that there is a clear threshold for reporting abuse and harm that strikes the right balance between the child's circumstances and context and the perceived harm that a reporter suspects. A threshold of 'imminent risk of significant harm', with appropriate definitions to provide guidance, is likely to be more reasonable and functional in ensuring those at greatest risk receive the required protective response while others are diverted to more appropriate services or responses.

Legislation must place a greater expectation - if not a duty - on those who detect risk or possible harm to act within the context of their relationship or powers to protect the interests of a child or young person. Tasmania's Act includes a provision which gives adults a "responsibility to prevent abuse or neglect or certain behaviour" (section 13).

Given that SAPOL is one of the most prevalent mandatory notifiers, there is also an opportunity for the Review to consider whether legislation should require other mandatory responses for SAPOL beyond reporting, including having powers to make referrals for children and families to access services, particularly in the context of domestic violence.

Given what we know about the challenges for women who are victims of domestic violence, we must consider differentiated responses that don't reduce complex family situations to the "partner or children" choice that domestic violence advocates say fail to improve the lives of women, children and families.

Recommendation 10: That legislation is reviewed to ensure there are no barriers to appropriately responding to problem or harmful sexual behaviour.

The Royal Commission made a suite of recommendations for all Australian governments to consider in order to better understand and respond to problem sexual behaviour (PSB). These recommendations include:

- Implement primary, secondary and tertiary interventions to address PSB at all levels (Recommendation 10.1).
- Ensure that timely expert assessment is available for individual children with problematic and harmful sexual behaviours, so they receive appropriate and therapeutic responses that match their circumstances (Recommendation 10.2).
- Adequately fund therapeutic interventions to meet the needs of all children with harmful sexual behaviours. These should be delivered through a network of specialist and generalist therapeutic services. Specialist services should also be adequately resourced to provide expert support to generalist services. (Recommendation 10.3)
- Ensure that there are clear referral pathways for children with harmful sexual behaviours to access expert assessment and therapeutic intervention, regardless of whether the child is engaging voluntarily, on the advice of an institution or through their involvement with the child protection or criminal justice systems (Recommendation 10.4).
- Develop therapeutic services that are aligned with the principles detailed in the full recommendation (Recommendation 10.5; see Appendix 1).
- Ensure that all services funded to provide therapeutic intervention for children with harmful sexual behaviours provide professional training and clinical supervision for their staff (Recommendation 10.6).
- Fund and support evaluation of services providing therapeutic interventions for problematic and harmful sexual behaviours by children (Recommendation 10.7).

Despite it being over five years since these Recommendations were made, full implementation has been slow. An audit of services conducted by my office in 2019 found:

- Deficiencies in universal and early intervention responses.
- There are not enough private providers or generalised services to support children and their families in South Australia.
- The majority of services are centralised in Adelaide with a dearth of services in regional and remote areas.

- A lack of knowledge by some service providers specialising in treating problematic sexual behaviour about what other services are available to children and their families.
- Since the Royal Commission there has been little additional funding to specifically address PSB responses and services, despite the recommendation to increase funding for therapeutic services.

Despite the delivery of the mandatory Keeping Safe: Child Protection Curriculum and the recently updated 'Sexual Behaviour in Children and Young People Procedure and Guideline' for educators and care providers, research has shown that many adults, particularly parents and teachers, do not have the necessary information or tools to be able to appropriately respond to incidences of PSB.

The majority of services are resourced to treat children whose sexual behaviour is at the more serious end of the continuum, often once damage has been done. Many children are in contact with child protection services and child justice system. The threshold to be admitted to services is high, which often results in many children and families being turned away when behaviours are less serious, only to return when the behaviour has escalated and more harmful.

In response to these findings, I established two multiagency groups - an advisory group and a working group – to bring key stakeholders and organisations across government, academia and the community together with the aim to develop better responses to problem sexual behaviour. In addition to connecting different organisations and strengthening understanding of the work undertaken by a range of stakeholders, the PSB Advisory and Working Groups have also provided feedback to the Department for Education on their new policy, procedure and guideline to respond to PSB across all school sectors.

It has been put to the PSB advisory and working groups that the current Act cannot adequately address child-on-child problematic and harmful sexual behaviour. This is on the basis that the Act's primary purpose is to protect children from harm and that this is not compatible with working with children who cause harm. I have previously taken this assertion at face value. However, there does appear to be scope within the current Act to respond to PSB, especially at the primary level.

The current provisions relating to the functions and powers of the Chief Executive and the Minister that seem particularly relevant in this regard include but are not limited to the following:

- Section 9 – Ensuring early intervention measures are in place and a priority 'where children and young people may be at risk'.
- Section 145 - Functions of the Chief Executive include providing information about the 'ways in which children and young people may be at risk of harm so that such cases are more readily recognised and more promptly dealt with.

The Minister also has the power (section 14 of the Act) to promote the wellbeing of children and young people and early intervention where they may be at risk of

harm. This could include leading a co-ordinated response to an issue, encourage partnerships as well as to "promote, support and adequately resource evidence-based programs delivering preventative and support services directed towards strengthening and supporting families".

Problem sexual behaviour is one issue that requires such efforts. It is therefore recommended that further thought be given to ensure there are no barriers in relation to preventing and responding to this issue and consider how legislation may provide for appropriate responses to PSB (See Recommendation 11).

There is an opportunity for legislation in South Australia to:

- Embeds a public health approach to protecting and supporting children displaying and impacted by PSB through providing for the Minister or CE to fund, research and oversee appropriate, primary, secondary and tertiary responses.
- Allows the Minister or CE to fund and develop an Early Intervention Framework and response as recommended by Margaret Nyland in the Child Protection Royal Commission that also covers the issue of PSB.

Recommendation 11: That the Review consider interstate responses to problem sexual behaviour with a view to implementing a response that is appropriate for South Australia, is adequately resourced and is consistent with a public health approach.

In order to determine the most suitable public health response to PSB in South Australia, the government should review responses in other Australian jurisdictions. This includes considering the viability of a model that is written into legislation as in Victoria, or a non-legislative state-wide framework to guide prevention of and responses to PSB such as those developed in New South Wales and Western Australia. Regardless of the model, it is critical that services are adequately resourced for the long term in order to ensure full implementation of the Royal Commission recommendations.

Victoria: A legislative response

In Victoria, the *Children, Youth and Families Act 2005 (Vic)* provides for therapeutic treatment for a child who has 'exhibited sexually abusive behaviours' (SABs). The introduction of Therapeutic Treatment Orders through a legislative scheme was first recommended by the Victorian Law Reform Commission (VLRC) in its review of the responsiveness of the criminal justice system to the 'needs of complainants in sexual offence cases'.[xiv]

This review highlighted the need for a more therapeutic response to children displaying PSB and their families, which are often not reported due to shame, fear or a lack of understanding. Prior to this time, such a response was difficult because:

- The *Children and Young Persons Act 1989* only allowed Child Protection workers to intervene if a child was being harmed and not harming others; and
- 'Sexually Abusive Behaviours' were deemed as criminal matters and the response was not therapeutic.[xv]

Further, the 2002 review of the *Children and Young Persons Act 1989* found that:

- A number of adult survivors of sexual abuse were disclosing they had engaged in PSB when they were young; and
- A number of child and adult survivors were disclosing they had been sexually harmed by an older child.

The VLRC emphasised the importance of rehabilitative policies and approaches that respond to children outside of the criminal justice system and assist their families. Such an approach was seen to 'benefit the whole community including other children and young people who may be prospective victims of abuse'.

Specifically, the VLRC recommended that:

- The Act be amended so that the Children's Court can make an order to ensure a child or young person have access, or attendance at, an appropriate therapeutic service (now s244 of the current Act);
- The Department of Human Services (DHS) commission appropriate research to enable it to develop guidelines for the identification of problematic sexual behaviours;
- The DHS and Children's Court establish a working group to develop a wider range of options to respond to children and young people who have displayed or been affected by SABs.

In October 2005 the Children, Youth and Families Bill was introduced with many amendments relating to earlier intervention. In relation to therapeutic treatment orders, the then Minister for Child Protection Sherryl Garbutt stated:

> *As well as strengthening and clarifying the existing functions of child protection, the bill provides a new basis for intervening earlier with young people who exhibit sexually abusive behaviour to help prevent ongoing and more serious sexual offences.*[xvi]

If Child Protection services assess that a child who has displayed problem or abusive sexual behaviours is in need of therapeutic treatment but unlikely to access it voluntarily, Child Protection services can apply to the Children's Court for a Therapeutic Treatment Order. The Order requires the child and their family to attend a treatment service.

Therapeutic Treatment Orders are intended to supplement rather than replace voluntary access to services. Treatment services are located at various sites across Victoria for children from birth to 17 years, and parents are encouraged to connect children to these services in a voluntary capacity and avoid any Court process. In the year ending 30 June 2020, 1,022 children across the state received a Sexually Abusive Behaviours Treatment Service response.

A key principle of these services is to acknowledge the historic, individual and systemic issues that led to these behaviours. Interventions include collaboration with a child's family, school and community. The Victorian government is also working with the Aboriginal community to design a culturally safe treatment service for Aboriginal children and young people.

The provisions relating to Therapeutic Treatment Orders (TTOs) commenced in 2007 to ensure there were services and practices available to implement these orders effectively. Initially, treatment was only for children aged 10 to 14 years and only 3 treatment services were funded.

Additional funding was provided when TTOs were expanded to include 15-17 year old's in 2019 in line with recommendations made by the Royal Commission into Family Violence.

When introducing the Justice Legislation Amendment (Family Violence Protection and Other Matters) Bill 2018, the Minister stated that such *'timely early intervention for children displaying sexually abusive behaviours is of paramount importance for the prevention of future family and sexual violence, and to provide young people with pathways into stable and productive lives'*.

When a child in Victoria receives a Youth Justice supervised sentence for sexual offending, the court will include a condition to attend the Male Adolescent Program for Positive Sexuality (MAPPS). MAPPS is an intensive group treatment program for adolescents, based on cognitive-behavioural models. It requires participants to understand and accept responsibility for their offending behaviour, develop social skills and empathy for their victims, and aims to prevent reoffending.

New South Wales and Western Australia: Developing Frameworks for Responding to Problematic Sexual Behaviour

New South Wales and Western Australia have not used a legislative approach to respond to PSB. Rather, both have developed state-wide frameworks for responding to PSB and committed to appropriate funding of evidenced-based and therapeutic services for all children and young people throughout the state.

In developing the frameworks, both states undertook stakeholder consultation to develop a shared understanding of PSB and inform service delivery, how agencies collaborate and what further workforce training and development is needed.[xvii] This has been supported by auditing current services, developing and resourcing

intervention services for children and young people exhibiting sexual behaviours that can service the entire state.

For example, in 2021, the Western Australian government invested $2 million over two years to build an evidence base and deliver a program of work to inform the implementation of the Royal Commission recommendations in regard to preventing and responding to PSB. An additional investment of $2.7 million over three years is supporting a pilot specialist intervention program in partnership with the Western Australian arm of the Australian Centre for Child Protection (the ACCPWA). The ACCPWA was established with a focus on supports, training and research for children who are displaying PSB or who have been sexually abused.

It is encouraging that a draft multisystem framework on how to respond to PSB in South Australia will soon be released. In order to be effective, such a framework must be supported by appropriate resourcing to primary, secondary and tertiary therapeutic services throughout the state.

Recommendation 12: That the Act establishes an independent oversight body that is responsible for monitoring and enforcing the Child Safe Standards.

South Australia was one of the first states to implement a child safe environments scheme. The scheme recognised that the wellbeing and best interests of children are the responsibility of the entire community and that it was unrealistic to expect that a single agency (then Families SA) could 'effectively respond to all child protection concerns'.[xviii]

The Child Safe Standards aim to:

- Promote the safety of children;
- Prevent child abuse; and
- Ensure organisations and businesses have effective processes in place to respond to and report all allegations of child abuse.

Child Safe Standards work by:

- Driving changes in organisational culture – embedding child safety in everyday thinking and practice;
- Providing a minimum standard of child safety across all organisations; and
- Highlighting that we all have a role to keep children safe from abuse.

As a result of the Nyland Royal Commission, the South Australian scheme was expanded to include many more organisations, such as sole traders and small businesses that work with children, but the government may not have considered

how the resourcing would adequately monitor and serve the tens of thousands of new organisations and businesses that must comply with the CSE standards.

The RCIRCSA uncovered evidence that many institutions were still not safe, despite existing schemes. The Royal Commission recommended that all states embed Child Safe Standards in legislation and establish an independent oversight body to monitor and enforce the Standards. The report states:

> *An independent oversight body in each state and territory should be responsible for monitoring and enforcing the Child Safe Standards. Governments might enhance the role of existing children's commissioners or guardians for this purpose. The oversight body should be able to delegate functions to sector regulators, such as school registration authorities, to capitalise on existing regulatory regimes. The standards should be incorporated into existing regulatory or legislative frameworks where possible.*[xix]

At this time, five states and territories have implemented a Child Safe Standards scheme that is overseen by an independent body in line with the RCIRCSA recommendation: Victoria, ACT, NSW, WA and Tasmania (Tasmania's scheme will be fully implemented in 2024).[xx]

At this point in time, the South Australian government has not adopted this approach. Currently, the Child Safe Environments team is attached to the Department for Human Services (DHS). It supports organisations to lodge their child safe environments compliance statement; to develop policies and procedures in line with the National Principles for Child Safe Organisations; and facilitates Child Safe Environments training.

However, the Child Safe Environments team within DHS is small and has limited capacity to actively support organisations to meet statutory requirements to be child safe or to provide effective monitoring and oversight, including through collecting, analysing and reporting on data.

It is important that the South Australian government considers full implementation of Recommendations 6.10 and 6.11 made in the RCIRCSA. This will help to facilitate changes in culture to ensure that organisations and the wider community are more child-centred and child focused and that children are valued, their rights are respected, and concerns are better prevented, identified, reported and responded to.

Recommendation 13: That the Act establishes and implements a Reportable Conduct Scheme in South Australia that is overseen by an independent body.

Despite it now being more than five years since the RCIRCSA recommendations were handed down, the recommendations in relation to implementing a Reportable Conduct Scheme (RCS) have not yet been realised in South Australia.

In 2019, the Attorney General's Department engaged with stakeholders, including my office, to determine whether a RCS should be implemented in this state.

Despite many stakeholders supporting this scheme, the Attorney accepted a recommendation by the Department for Child Protection to defer consideration of the issue until South Australia's new child protection mechanisms have matured, and there is a better understanding of the benefits or otherwise of establishing a RCS. It was also noted that deferment would enable South Australia to observe schemes in other Australian jurisdictions and draw on best practice as these existing schemes mature and are reviewed.

This office is of the view that now is an opportune time for the government to reconsider the issue, and that evidence from other jurisdictions suggests that the benefits of implementing a scheme outweigh the costs.

This office submits that an RCS will:

- Complement and fill in the missing gaps in relation to early intervention, preventing child abuse and providing an additional layer of safeguarding that does not currently exist in SA.
- Support organisations to implement and practise the National Principles on Child Safe Standards.
- Engender trust and integrity in institutions that work with and service children.
- Apply a higher level of scrutiny to high-risk organisations.
- Capture a broader range and pattern of behaviours than the types of child abuse and neglect that must currently be reported in SA.
- Focus on the behaviour of employees rather than instances of child abuse and neglect.
- Provide a mechanism to track the behaviour of individuals, no matter where they are employed in the system.

The RCS provides for an independent oversight body that can be used as the single source of scrutiny and obliges heads of institutions that have responsibility for children to notify the independent oversight body of any reportable allegation, conduct or conviction.

Every organisation that must comply with the scheme is guided to ensure that the way they undertake investigations is consistent and child safe. The independent oversight body can also collect data on complaints in order to track any potential systemic concerns in organisations that can address and prevent future incidents.

This office gathered insights from the Victorian Commission for Children and Young People about the implementation of the RCS in Victoria. Some of the advantages they have noticed since its implementation include that the Scheme:

- Ensures that organisation's investigations are at a minimum, acceptable standard and that key principles are followed. This includes ensuring there is procedural fairness, that the investigation is child-centred, trauma-informed and that the child's voice is heard.
- Changes culture in organisations through supporting organisations to ensure their investigative processes meet minimum requirements.
- Supports organisations to be more open. Historically, often investigations were hidden and there was no accountability. This resulted in there being no cultural change throughout the entire organisation.
- Picks up on a number of other concerning behaviours that are not necessarily criminal in nature but still inappropriate, including:
    - Behaviours that cross professional boundaries;
    - Bullying behaviours and treating children in a way that would inflict emotional harm;
    - Any evidence of neglect.
- Build capability to capture an increased number of people that should not be working with children, instead of just capturing the people whose behaviour is at the "pointy end". Since the Scheme commenced, a total of 485 individuals found to have committed reportable conduct have been referred to the Department of Justice and Community Safety for reassessment of their Working with Children Check in relation to 1,036 substantiated allegations of reportable conduct which would not necessarily have been captured otherwise.[xxi]
- Enables information-sharing between relevant organisations, including the police, teacher organisations and similar organisations.

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