

Child Voice and Participation

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

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Introduction

As South Australia's Commissioner for Children and Young People, my role is to advocate at a systemic level for the rights, interests and wellbeing of children and young people in South Australia. My work is directly informed and guided by children and young people, with particular regard to those who struggle to have their voices heard.

I welcome the recognition in the Department's Discussion Paper that 'children and young people must always be at the centre of child protection decision-making'. This review of the *Children and Young People (Safety) Act 2017* (the Act) is a critical opportunity to strengthen the ways in which the State listens and responds to the experiences and needs of children and young people.

The stresses and worries of childhood are real and we have many families needing more support to hold it together, none more so than the families who are involved with our child protection systems. Over the last five years in South Australia, the number of children in care has increased significantly and against national trends with the rate of children in care per 1,000 children also rising.

Behind these numbers are children who share the same hopes, dreams, expectations and worries as their peers. Over the past five years South Australian children have told me that to be happy, healthy, and hopeful they need to:

- Be confident in themselves and in their identities;
- Believe in their capacity to make a difference to themselves, their schools, and communities;
- Learn new things and experience mastery and achievement;
- Feel valued by adults and have time to "be" and "do" with others outside their family;
- Be listened to, and believed about things that affect them;
- Have a say over their lives; and
- Experience connection and confidence in their community.

They also tell me about their parents and the types of supports they want for their families to make their lives better. They tell me they want adults to stop fighting and to believe kids when they say things are not okay. They would like extra money and support to go to families who are struggling to pay for food and transport and rent. They want extra help to be able to play sport to attend community activities and more things to do and places to hang out in their local community.

When a family lacks financial resources, when housing is unstable, they describe the increasing anxiety and depression their parents and they experience. This is damaging both mentally and physically, and children describe how poverty and inequality undermine their parents' capacity to look after them as well as the child's

own ability to function. Meeting all the needs of a child can be challenging and families without supportive resources are not always able to be the parents they want to be and that their children deserve.

Having children's best interests first and foremost in our minds and actions compels us to create systems where no child is lost and where every child is heard, respected, and able to live in families who are supported to provide the care and resources children need to thrive and develop. We must protect children, uphold their rights, and nurture their relationships with the people who are important to them. In a nutshell, we must love and care for other people's children as we would our own. The social, health and economic costs for children and communities would be a too high a price to pay if we fail.

Any new legislation must place greater weight on supporting vulnerable families as well as understanding and valuing the voices and participation of children and young people in decision-making both at the individual and system level. Legislation should support, promote and reinforce good policy, practice and resources that embed a culture of respect for children's views.

The right of all children to be heard and taken seriously in all matters that affect them is enshrined in Article 12 of the United Nations Convention on the Rights of the Child (CRC). Article 12 not only establishes a right in itself, but it also constitutes one of the four general principles, meaning it 'should also be considered in the interpretation and implementation of all other rights'.ⁱ

The systemic safety and wellbeing of children depends on them having opportunities to be included in the processes that affect their lives. When children talk about being safe, they talk about feeling valued, known, heard and understood, and about stable relationships with people who are kind and who they can trust. As such, attending to children's participation rights alongside rights of protection must be a key part of system reform.

While the right to be heard is incredibly important to children and young people, it is also a right they feel least likely to have access to. As the principles of conventions and frameworks are filtered into programs and practice, experience shows that children's rights, particularly those related to 'voice' and 'choice', are often diluted in favour of other priorities and agendas.

It can be particularly difficult to enable children's participation in the context of child protection decision-making, where the current Act places 'safety' as the paramount consideration and the first priority tends to be the child's immediate safety.

Children and young people of all backgrounds often say they feel underestimated and overlooked when decisions are made that affect their lives. Children and young people with experience in the child protection system face additional barriers in the realisation of this right.

Adult determinations of a child or young person's best interests do not consistently prioritise children and young people's right to participate in decisions that affect their lives. In some cases, 'best interests' is used to justify overriding a child's right to express their views.

Legislation should clarify that the best interests of the child can only be met if they are included and supported to participate in decisions. As the United Nations Committee on the Rights of the Child has emphasised, the dichotomy between protection and participation is a false one and:

'There can be no correct application of Article 3 [the best interests of the child] if the components of Article 12 [hearing the child] are not respected. Likewise, Article 3 reinforces the functionality of Article 12, facilitating the essential role of children in all decisions affecting their lives'.ⁱⁱ

This submission focuses on the systemic changes that are needed to ensure children and young people are protected *in* rather than protected *from* participation. It draws on my direct engagement with children and young people in care, recognising their role as citizens and critical stakeholders in designing a more effective and child-centred system.

Children's meaningful participation not only improves the design and delivery of services and policies, but it also increases their self-esteem, sense of agency, empowerment and hope insofar as it sends a clear message to children that the adults and system around them care about and value their interests, wellbeing and safety. This is essential to building trust and supporting children and young people to feel positive about themselves and the adults and systems around them, both now and in the future.

In the Child Protection Systems Royal Commission Report *The Life they Deserve*, the Hon Margaret Nyland highlighted that there are 'dangers of a system that fails to listen to what children say, either directly or through their behaviour'.ⁱⁱⁱ When services or systems presume to understand children and young people's priorities, perspectives and wishes, without seeking their insights and respecting their views and experiences, this can exacerbate children and young people's feelings of disempowerment, confusion and frustration. This not only erodes their confidence and trust but can also perpetuate children and young people's marginalisation and vulnerability in ways that are counter to effective safeguarding.

Children and young people's views and experiences are an essential part of accurate assessment and planning. Yet children and young people in care do not consistently feel like their insights or experiences have been considered or valued. At times, they feel as though the system dismisses their experiences, underestimates their capacity, prioritises other issues, or that staff do not have the capacity to check in regarding their wellbeing or follow up on their concerns.

Children and young people in care do not always have relationships with supportive and trustworthy adults, which can also be a barrier to feeling comfortable and feeling heard. Children and young people are not consistently provided with necessary information about the parameters of their participation or matters being considered, including the consequences of potential decisions. Too often, children and young people experience the process of being asked for their opinions as a tokenistic ‘tick a box’ activity rather than a genuine attempt to take their views into consideration.

Where children and young people are given opportunity to share their views, they do not consistently hear back about how and whether their views have been considered. This can exacerbate distress and distrust in system when it feels like everything is happening to you and is ‘out of your control’.

While there are limits on the extent to which children can determine the outcomes of proceedings or decisions, the fact that children and young people’s preferences will not always be accommodated is not a reason to negate their right to be heard. When children and young people are supported to understand why certain decisions have been made, they are more likely to accept the outcome, including when a decision does not reflect their wishes. As such, regardless of outcomes or decisions, children and young people should be heard, their views should be documented, and they should be provided with an explanation of the reasoning behind different decisions.

Individuals and agencies understand the importance of children and young people’s participation and have demonstrated a commitment to capturing and representing their views, including in this submission. However, the systemic implementation of Article 12 is more difficult to achieve.

Child protection practices and processes, both formal and informal, tend to prioritise the voices and reinforce the power of professionals and adults. Children continue to be viewed as incapable or too vulnerable to be involved in decisions, and facilitating their participation is considered ‘too difficult’, logistically or emotionally, or not in their ‘best interests’. Overcoming these barriers cannot occur through goodwill alone but requires dedicated, long-term investment at all levels of our system.

We must ensure that legislative change and future system improvements include opportunities for children to express their views in the community and at every stage of their ‘care journey’, from before they enter care through to their transition from care and beyond, including in court proceedings, decisions regarding placements, contact arrangements, case planning, annual reviews, education and other services, as well as leaving care and transition to adulthood. Children and young people’s engagement in ‘everyday’ decision-making warrants as much attention as systemic and longer-term decision making.

Rather than expecting children to be able to cope with and adapt to intimidating and alienating formal decision-making processes, there is an opportunity to rethink adult-centred processes and move to child-centric process, including through the provision of child- and youth-friendly information, environments, advocacy and support. This will drive better outcomes at an individual level, given that children and young people know their lives better than anyone else, and at a system level, where their context and experiences can provide valuable contributions to the development, delivery and review of policies, practices and services.

I am 10 years old. I identify as female (gender)

I currently live in foster care (please circle) kinship care residential care commercial care don't know other

I wish... I could have more ability to see more of my family and have with them for a couple of days and have a pet

I feel safe when... people welcome me to my wife.

I am worried that... I would never be able to live with my family again

What I would like to change to make life better is... having friends come over and having a pet cat and dog.

Thank you for your answers! They will help me to communicate your concerns, views and ideas.

I am 10 years old. I identify as female (gender)

I currently live in foster care (please circle) kinship care residential care commercial care don't know other

I wish... I can have my own say in things like my decisions and I can share my views. I wish we had LG so they aren't making decisions for me 24/7.

I feel safe when... I'm with my foster family. And when I get my own say.

I am worried that... we won't get LG. Or I won't get my way with things I decide.

What I would like to change to make life better is... DCP not controlling my life or making decisions for me.

Thank you for your answers! They will help me to communicate your concerns, views and ideas.

I am 7 years old. I identify as a boy (gender)

I currently live in foster care (please circle) kinship care residential care commercial care don't know other

I wish... I was Sonic

I wish I could live here forever and ever.

I feel safe when... I'm with you guys (carers)

I am worried that... I'm not going to live here

What I would like to change to make life better is... to be a good boy, not a bad boy to have my own PS4.

Thank you for your answers! They will help me to communicate your concerns, views and ideas.

I am 14 years old. I identify as female (gender)

I currently live in foster care (please circle) kinship care residential care commercial care don't know other

I wish... to see family - sisters.

I feel safe when... in placement with staff

I am worried that... I won't see my sister who moved to Sydney

What I would like to change to make life better is... nothing, I am happy.

Thank you for your answers! They will help me to communicate your concerns, views and ideas.

What we did

To inform this submission to the review of the Safety Act, I prioritised hearing directly from children and young people with experiences of the care system.

I was supported to have eight group conversations with 88 children and young people with a range of experiences in a range of settings across South Australia. The children and young people who participated were aged between 3 and 25 years old and had diverse experiences in terms of the age at which they entered care and how long they had been in care. The agencies that supported my connection to children and young people included those working in foster care, kinship care and residential care.

I heard stories of resilience, love, and kindness, as well as distress and trauma. I heard about carers and staff who went out of their way to do the right thing for children, and of being let down time and time again by adults who they felt were never on their side. Some young people said they had wished they had stayed with their family and that the loss of family has irreparably harmed them. This was very common for children who had been removed and whose families went on to have other children who were not removed.

Other young people told me they should have been removed earlier and that continuing contact with their family has not been a positive experience. Some children spoke about wanting more contact with birth parents, while others who didn't want or didn't expect to have an ongoing relationship. The commonality of experience was that most didn't believe that their views were given adequate weight in any decisions made about their lives.

Whilst each child's experience is individual and as unique as their families, the universality of children not feeling heard must be addressed and all parts of the system must better listen to children and respond to what children want and need.

In addition to these conversations, I designed a postcard for children in care to share what they wish, when they feel safe, what they are worried about and what they would like to change to make life better. The postcards were distributed to children via a range of service providers. I received 40 postcards from children and young people aged between 4 to 17 years old who are living in foster care, kinship care and residential care.

As well as being informed by the children and young people who completed a postcard or participated in these recent conversations, this submission also honours conversations I have had with many children and young people in care in residential and foster care and in school settings across South Australia over the last five years.

It has also been informed by engagement with a range of stakeholders and advocates across the community, government, and non-government sectors,

including Child Representatives and other legal experts, service providers and social workers, parents and carers policymakers, school leaders and educators.

My office also observed several matters in the Care and Protection jurisdiction of Adelaide Youth Court. Meetings with the Legal Service Commission in South Australia as well as Legal Aid, government departments and the offices of Children's Commissioners and Guardians across other Australian states and territories provided further insight into practices in relation to child voice and representation in care and protection proceedings.

I am 11 years old. I identify as Female (gender)

I currently live in foster care (please circle) kinship care residential care commercial care don't know other

I wish... that I can dye my Hair

I feel safe when... I am around mum and friends

I am worried that... I'll make no friends in High School apart from Family

What I would like to change to make life better is... Nothing

Thank you for your answers! They will help me to communicate your concerns, views and ideas.

I am 15 years old. I identify as Female (gender)

I currently live in foster care kinship care residential care (please circle) commercial care don't know other

I wish... To live with people my own age & to be able to have freedom

I feel safe when... I'm with the staff

I am worried that... My future will be bad.

What I would like to change to make life better is... Having freedom & making my own choices

Thank you for your answers! They will help me to communicate your concerns, views and ideas.

I am 10 years old. I identify as Female (gender)

I currently live in foster care kinship care residential care (please circle) commercial care don't know other

I wish... that we had better internet also that the internet was not restricted

I feel safe when... We Play games and watch movies

I am worried that... nothing :)

What I would like to change to make life better is...
• Hey google
• Better wifi
• cordell not screaming all the time.

Thank you for your answers! They will help me to communicate your concerns, views and ideas.

I am 9 years old. I identify as Male (gender)

I currently live in foster care (please circle) kinship care residential care commercial care don't know other

I wish... I could have my sisters and my own say and have my brother I wish I had HG

I feel safe when... I'm with you (foster mum) With my family

I am worried that... I won't get my way with DCP

What I would like to change to make life better is... DCP not butting into our lives

Thank you for your answers! They will help me to communicate your concerns, views and ideas.

Key messages from children and young people in care

- Children described enormous grief and loss associated with significant disruption to their lives, including the loss of relationships with brothers, sisters, and extended family, including grandparents; the loss of leaving pets or not being able to have pets in their new homes; moving multiple times, changing schools and having to make new school friends.
- Children spoke of feeling powerless and entering a world that they didn't understand, where they had no idea of what was happening to them and to the other kids in their family.
- Children said they couldn't understand what was being said to them and that the experience of being put into a stranger's house without explanation is something they never forget.
- Children who had been taken into care from school said this changed their views of school as a safe place, both the embarrassment of removal from school and knowing that others at the school would know and they were now different with greater risk of being "othered".
- Children were catapulted into navigating complex interpersonal relationships with multiple adults including family, carers, placement workers, support workers, social workers therapists, lawyers, and other "random" adults they didn't know who or what they did.
- Children talked about not understanding how the system works and what everyone does, which left them powerless and disconnected from their own life. Consequently, many had stories of confusion about the timelines of their lives and events of the past and what had occurred prior to removal during removal and after.
- Some children and young people are worried about never seeing, having contact or living with their family again, while others are worried about not being able to stay in a placement where they feel safe and supported. Other children and young people wished they had long-term guardianship 'so that DCP aren't making decisions for me 24/7'.
- Some children had stories of perpetuation of their trauma when in care and a few shared new and worse abuse in the system, describing their experiences post-removal as being the most traumatising.
- Children were aware that their birth parents are often not treated with respect and looked down on by foster families, social workers, and others.
- Children and young people voiced frustration about not feeling heard when decisions are made that affect their lives.

- Children and young people describe feeling safe when they feel listened to; are with family members, friends and pets; and have opportunities to play.
- Children and young people in care wished for more ‘freedom’ and ‘certainty’, including more opportunities to see their friends and family, both online and offline; have a say in decisions about their life and ‘feel more in control’; and be physically active.
- Children and young people said that their lives would be better if they were listened to, if they could ‘go out more’, do more exercise and other activities, and if they had more support for the future and independent living.
- Children and young people have diverse and unique needs, resources, capacities and experiences that we can only seek to understand and include by listening to what they have to say.
- When children and young people understand the parameters of their participation, their expectations are more likely to be met and they are more likely to accept decisions and trust the adults and systems around them.
- When children and young people are provided with explanations for decisions, they are more likely to feel valued and positive about themselves, others and systems. Many children and young people highlighted the importance of transparency in decision-making and the positive difference it makes to their lives.

“I’m worried I won’t get to call my sisters on their birthdays”

– 13 year old, female

“I wish i could have my cat to help me sleep”

– 14 year old, female

“I am worried that I might be going down the wrong path in my life”

– 16 year old, male

Key systems insights

- When ‘safety’ is the paramount consideration, it can be particularly difficult to facilitate the inclusion of children and young people’s voices in child protection decision-making.
- A child or young person’s right to be heard is too often viewed as in conflict with, rather than complementary or essential to, their best interests.
- Although individuals and agencies working across the system appear to understand and demonstrate a commitment to the importance of children’s voices and participation, there are significant barriers to facilitating the participation of children and young people in practices and processes at a systemic level.
- The dichotomy of children as either ‘vulnerable’ or ‘capable’ overlooks the complex reality that children can be both vulnerable and capable, and that their involvement in decision-making processes can be stressful and difficult but it can also provide relief and promote trust, with the right support, information and feedback.
- Children and young people are not consistently provided with the information and support necessary to be able to express their views or to make an informed decision to not express their views.
- Children and young people recognise the importance of relationships with trustworthy, supportive and responsive adults to enable their participation, but they do not consistently have access to such relationships.
- Opportunities for a child or young person to be heard at a systemic level are generally not consistent enough to capture key elements of a child’s life and needs over time, including their relationships, experiences, wellbeing, perceptions, hopes and dreams.
- There is no reportable activity or measurable outcome that quantifies the extent to which children and young people in care in South Australia have access to this right.

Child voice and participation in court

Under the current Safety Act, children and young people ‘must be given a reasonable opportunity to personally present to the Court their views related to their ongoing care and protection’ unless the Court is satisfied that the child or young person is ‘not capable of doing so’ or that ‘to do so would not be in the [child or young person’s] best interests’ (s62).

Further, under the Act, Child Representatives must act in accordance with any instructions given by the child or young person, or (to the extent that the child or young person has not given, or is not capable of giving, instructions) with their ‘own view of the best interests of the child or young person’ (s63).

Child Representatives are committed to their role and the importance of seeking, capturing and representing the views and best interests of children and young people. However, the balance of power and a lack of transparency in decision-making processes made within the Department can be disempowering for Child Representatives.

Children and young people are often excluded from proceedings on the basis that it is not in their best interests to be involved. Other systemic barriers include significant time pressures, and insufficient resourcing and guidance for Child Representatives, though updated guidance is currently being drafted by the Law Society.

It is important that legislation and guidance be based on a presumption that children’s voices are to be heard, with it being only in exceptional circumstances they are not heard. Children and young people should not only have access to opportunities to express views, but also access to:

- adequate and appropriate information, support, communication and explanations in language they understand;
- feedback on the weight given to their views; and to
- information about their rights and procedures for complaints, remedies or redress.

Court proceedings should also account for the views of siblings. In New South Wales, for example, the Court ‘may consider the views of siblings’ and ‘must take account of the interests of any siblings in determining what orders (if any) to make in the proceedings’.^{iv}

Provisions relating to children’s right to information should also be strengthened. While section 63 of the Act requires the Child Representative to explain the nature of their role to a child or young person, there is no obligation or expectation placed

on the Child Representative or the Court to provide other information or support to children and young people.

The New South Wales *Children and Young Persons (Care and Protection) Act 1998* provides that the Children's Court must take measures (accounting for age and developmental capacity) to ensure that a child or young person in proceedings before it understands the proceedings, including the 'nature' and 'legal implications' of any assertions made in the proceedings, as well as (where requested) 'any aspect of the Court's procedure' and 'any decision or ruling made by the Court'.^v

Currently, South Australia's legislation does not provide a definition of 'best interests' or guidance in determining the best interests of a child. Tasmania's *Children, Young Persons and Their Families Act 1997* may be useful to consider as it outlines the elements that should be taken into account in determining the best interests of a child, including 'the views of the child' and the child's relationships with family members, including siblings.^{vi}

Legislation should clarify that it is in the best interests of the child to be included in decision-making and provided with the necessary support, tools and information to exercise this right as is appropriate to their age, maturity and capacity. This will address instances where consideration of the 'best interests of the child' is used to override a child's right to express their views.

This will also align with research showing the importance and benefits of children being involved – and at the very least informed – about processes and decisions that impact their lives.^{vii} To achieve this will require:

- Adequate resourcing for Child Representatives;
- Minimum professional requirements for lawyers representing children and young people in care and protection proceedings;
- Clear and up-to-date guidance and practice standards that: are based on the presumption that children's voices will be heard; clarify what 'best interests' means, including when it may not be in the best interests for the child to have a voice; embed the voices of children and young people; and guide best practice in representing children's voice, needs, experiences and perspectives, including how to navigate potential conflicts or tensions.
- Regular and ongoing Continuing Professional Development (CPD) training for both lawyers and judges on contemporary issues related to children, child development, communication with children of all ages, understanding of non-verbal communication, trauma-informed practice, disability-related needs.

While the current Act allows for a child or young person's attendance at Family Group Conferences (FGC), children and young people can be excluded if the FGC co-ordinator is 'satisfied that to do so would be in the best interests of the child or young person'. There should be mechanisms to ensure children's wishes are considered and given due weight during FGCs, regardless of whether or not they attend. For this to be effective, legislation should be strengthened with appropriate resourcing to ensure all families to have the opportunity to engage in Family Group Conferences at the earliest opportunity.

Court environments are generally not conducive to effectively hearing children insofar as they are intimidating, hostile, confusing and adult-focused. I welcome the work being undertaken in the Adelaide Youth Court to ensure information and processes are more accessible and child-friendly, particularly in the criminal jurisdiction.

There is an opportunity for Court procedures and environments to more consistently align with the presumption that all children's voices are heard, including through the provision of child-friendly information and explanations of decisions and judgements; access to advocacy support, a trusted friend or teacher, or opportunities to communicate with the Magistrate directly, including in a more natural environment outside of Court; appropriate training for staff; and child-friendly changes that the physical design and facilities of court rooms. While access to many of the above technically exists in South Australia, it is not as common as it could be.

There should also be greater oversight and public reporting about the outcomes the system delivers for children and young people, including the extent to which children and young people's views are being sought, heard, documented, considered and valued. This could include a mechanism to monitor their feelings and perceptions of children and young people themselves in relation to the realisation of their right to be heard.

In South Australia, Child Representatives provide legal representation to children and young people during court proceedings and the Guardian for Children and Young People can provide individual advocacy once a child or young person is in care. However, there is a gap in advocacy for children to be heard outside of these two mechanisms, particularly regarding administrative decisions made outside of Court.

This is significant, given that some of the decisions of biggest concern to children and young people are made outside of court, including decisions regarding placements and contact arrangements with parents, siblings and family.

There may be scope to consider the need for a Child Advocate, similar to the role of 'Child Advocates' in Queensland as a means of filling this advocacy gap. This

Child Advocate could provide support, information and advocacy and answer children and young people's questions not only throughout the Court process, but also in relation to decisions outside of court. This includes decisions regarding placements, case workers and education, including suspensions or exclusions from school. Access to this Advocate should be automatic rather than the onus being on children or families to request such support.

Where the Youth Court previously made decisions regarding contact arrangements, these decisions are now made by the Contact Arrangements Review Panel and are not reviewable or transparent.

My primary submission recommends that such decisions should be appealable to SACAT in certain circumstances. 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. SACAT should be resourced so they can appropriately address this issue in order to drive better outcomes for children and families.

Legislation should require decisions regarding contact arrangements to account for children's views, including the interests of any siblings, and be reviewable and transparent. This is important not only because children, young people and families are more likely to accept decisions when they are understood, but also because facilitating meaningful connection and contact, where it is safe to do so, also increases hopes for the future and likelihood of reunification.

<p>I am 16 years old. I identify as <u>male</u> (gender)</p> <p>I currently live in foster care kinship care <u>residential care</u> commercial care don't know other (please circle)</p> <p>I wish... <u>To see family</u></p> <p>I feel safe when... <u>—</u></p> <p>I am worried that... <u>Never see family again.</u></p> <p>What I would like to change to make life better is... <u>Be in SILS program</u> <u>Get Centrelink.</u></p> <p>Thank you for your answers! They will help me to communicate your concerns, views and ideas.</p>	<p>I am 11 years old. I identify as <u>boy</u> (gender)</p> <p>I currently live in foster care kinship care <u>residential care</u> commercial care don't know other (please circle)</p> <p>I wish... <u>that I can get new games for my switch. I want another kid who is 11 like me.</u></p> <p>I feel safe when... <u>living here & going out with my friends with Camden.</u></p> <p>I am worried that... <u>more drama as not sure how much I see when I'm hungry not getting food</u></p> <p>What I would like to change to make life better is... <u>another kid who is 11 or 12.</u></p> <p>Thank you for your answers! They will help me to communicate your concerns, views and ideas.</p>
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Child voice and participation in care

While children and young people of all backgrounds often voice frustrations about not feeling heard in decisions that affect their lives, children and young people's engagement with the care system often exacerbates these concerns.

There is an opportunity for legislation to be strengthened to drive policy change, ensuring that the views of children and young people in care are actively sought, listened to, documented and considered in everyday decision-making as well as more formal, longer-term decision-making processes.

In addition to decisions regarding placements, children should also be included in relation to their connection with family, case planning, education and planning for the transition from care. It is also critical that children and young people have choices and opportunities to influence smaller yet still significant 'everyday' decisions, such as what they eat and what they do before and after school.

Children and young people must be provided with age-appropriate information so that they can understand why certain decisions have been made about their lives, including why they may not be able to see siblings or other family members.

In a truly child-centred system, children and young people's case notes and 'life stories' would be documented with sensitivity and the assumption that the child or young person will read them one day. This may look like files that address the child directly, are written in the first person, and respect children and young people's voices and participation, wellbeing, experiences and outcomes. The use of language should reflect this, including through legal and clinical such as 'contact' being replaced with 'time with family' or 'catch up'.

Refocusing from adult-centred to child-centred processes and practices is vital to effectively safeguarding the wellbeing of children. It will not only promote transparency, accountability and trust in the system, but also reduce stigma and empower children and young people to develop their sense of identity and make plans for the future beyond 'being in care'.

"i wish I could have more opatunity to see more of my family and live with them for a cupple of day's and have a pet"

– 10 year old, female

Relationships and connection with siblings

For too many children and young people in South Australia, contact with the child protection system means separation from their siblings. Children and young people often describe the pain of being separated from their brothers and sisters, and wish

they could spend more time with them, talk to them more often or live with them. Many are worried that they will not be able to call their siblings on their birthdays or ever see their sibling who lives interstate.

Research shows that supporting siblings in care to stay together, with access to support, enhances feelings of wellbeing and can provide a sense of emotional and physical safety, continuity and familiarity.^{viii} Being connected to people children consider important to their family structure is both a right and a protective factor against the impact of trauma, uncertainty and disruption on children's lives.

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.

Any new legislation should place greater emphasis on upholding safe and loving relationships that are important to children and young people, including sibling and sibling-like relationships. This could include provisions that impel active efforts, including that:

- When decisions are being made about children in care, the views of brothers and sisters must be actively sought, listened to, recorded in writing, and considered.
- Where a child is being placed in kinship care, foster care or residential care, consideration must be given to placing siblings together or in placements near to one another, where it is appropriate to do so and after considering children's views and wishes.
- Where siblings cannot be placed together, efforts should be made to keep siblings in the same community, including the same school.
- If siblings must be separated, children and young people should have the right to information behind that decision and be involved in creating a plan to maintain meaningful contact on a regular basis, and this should be reviewed.
- Provisions relating to the part of a child's case plan that 'sets out contact arrangements in respect of the child or young person' (section 28(2)(c) of the current Act) should be more specific and include siblings, friends and other people connected with the child or young person.

Siblings should be defined in a way that recognises the importance of 'sibling-like' relationships between children who may identify as siblings through shared experiences, emotional connections and culture. Given that 'siblings' will mean different things to different children, the best way to understand what siblings

means to each child is to ask them who they consider to be their siblings.

Given that children's lives, needs, circumstances and family networks can be complex, decision-making is not always straightforward. There can be situations where the rights and needs of one child may appear to contradict those of one or more of their siblings. Legislation and guidance should be designed to support practitioners to navigate assessments and decision-making in the context of such tensions and complexity. Scotland's National Guidance, *Staying together and connected: getting it right for sisters and brothers*, provides a good practice example for consideration.^{ix}

"I consider a lot of people family – a lot of cultures merged into one, they're still my family and I would do anything for them."

"I wish I could have my sisters and my own say, and have my brother. I wish I had LTG."
– 9 year old, male

"I wish I could see my real family for a little bit"
– 17 year old, male

"The ones that mean the most to you – be closer to them. A system should not tear families apart – if we're about keeping families together, why is it so hard to connect"

<p>I am <u>14</u> years old. I identify as <u>Female</u> (gender)</p> <p>I currently live in foster care kinship care <u>residential care</u> commercial care don't know other (please circle)</p> <p>I wish... <u>I could have my cat to help me sleep</u></p> <p>I feel safe when... <u>I'm sleeping</u></p> <p>I am worried that... <u>not at the moment</u></p> <p>What I would like to change to make life better is... <u>having my cat</u></p> <p>Thank you for your answers! They will help me to communicate your concerns, views and ideas.</p>	<p>I currently live in foster care <u>kinship care</u> <u>residential care</u> commercial care don't know other (please circle)</p> <p>I wish... <u>I want to not move have house because</u></p> <p><u>because other young people are annoying and mean</u></p> <p>I feel safe when... <u>I can live on my own with carers</u></p> <p>I am worried that... <u>living with other people</u></p> <p>What I would like to change to make life better is... <u>my voice and opinion listened to and taken into consideration</u></p> <p>Thank you for your answers! They will help me to communicate your concerns, views and ideas.</p>
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I am 13.5 years old. I identify as female (gender)

I currently live in foster care kinship care residential care commercial care don't know other (please circle)

I wish... I had an iPhone 13 pro max & an iPad. I could play with my friends on my birthday without any adults or eavers. Walk to school.

I feel safe when... I am calm, relaxed. When watching Riverdale or listening to music.

I am worried that... I want get to call my sisters on their birthdays.

What I would like to change to make life better is... go back home with Mum & Dad or to old carers. More Adelaide trips. More games!

Thank you for your answers! They will help me to communicate your concerns, views and

Thank you for your answers! They will help me to communicate your concerns, views and ideas.

I am 10 years old. I identify as female (gender)

I currently live in foster care kinship care residential care commercial care don't know other (please circle)

I wish... We had a big swimming pool (again)

I feel safe when... mum is with me all the time

I am worried that... - im not worried about anything

What I would like to change to make life better is... nothing, i have good life and family.

Thank you for your answers! They will help me to communicate your concerns, views and ideas.

Friendships and opportunities to play

Having opportunities to play sport, participate in other activities, and hang out with friends both online and offline, is a critical part of healthy social, emotional and physical development for all children.

Hobbies and participation in recreational activities can support children and young people in care to build life skills and social connections, be part of 'something bigger' and 'more normal', and not feel defined or disadvantaged by their care status.

Yet children and young people in care face particular barriers to participation that are also barriers to maintaining positive relationships and being heard. This includes barriers related to cost and availability of transport or staff, restrictions and rules, particularly those living in residential care. It can take months for decisions to be made about consent to access opportunities or participate in activities that children living with their birth families would generally have easy access to.

Missing out on such opportunities can make children feel different from their peers and perpetuate stigma, embarrassment and isolation. Efforts should be made to address these barriers and ensure decision-making is based on a more balanced assessment of risk and best interests that incorporates children's views so that the lives of children in care are not so different to other children.

"i want my social worker to take me out more"

– 10 year old, female, foster care

"to get internet so that we can play online games on my xbox"

– 14 year old, male, residential care

“I wish I could play with my friends on my birthday without any adults or carers. Walk to school.”

– 13 year old, female

“Doing different stuff like watching tv more and colouring in”

– 6 year old, female

Case planning and annual reviews

Under the Safety Act, the Chief Executive ‘must take reasonable steps to ascertain the views, and encourage the participation, of any person who, in the opinion of the Chief Executive, has information relevant to the preparation of the case plan of a particular child or young person’. The examples of ‘such people’ outlined in the Act includes the child or young person themselves.

Barriers to being heard highlight young people’s experiences of instability, high rates of staff turnover and a lack of positive relationships or contact with social workers and other adults. This leaves young people feeling that their words are misinterpreted, or as if they are not listened to or taken seriously.

However, case planning processes are currently adult-focused and bureaucratic, with insufficient attention to relationships or wellbeing. Some young people are involved in developing their case plans, this opportunity is not consistently offered to all young people. There is an opportunity for legislative change to support every child to have an active, up to date case plan and to not only be aware of the existence a case plan or annual review, but also of their right to be involved in the development of such plans and reviews.

There should be a presumption that children and young people will participate in case planning and annual reviews. Legislation should provide a legislative base to facilitate meaningful participation and capture children and young people’s voices and experiences over time and in real time. This includes engaging and accessible tools – including digital tools – for children and young people to express in non-verbal ways what’s important to them, how they feel, and what they would like to change.

Such tools will provide valuable insights into children and young people’s lives and wellbeing and should be used to regularly inform and review case plans at individual level as well as informing the design and delivery of policies, practices, projects at a more systemic level.

Access to information, opportunities and tools should be automatic for every child and young person so that being heard does not depend on the capacity or goodwill of individual case workers. This will address inconsistency in the quality and

relevance of planning and decision-making and help to ensure processes recognises, reflects and responds to child's needs and nurture stable and trusting relationships. Ensuring every child and young person has a say will also avoid models whereby only a select few (often the least marginalised of the marginalised) will be engaged and have a voice.

Particular attention should be given to engaging with younger children, in recognition of the fact that children and young people's experiences, opinions and needs vary significantly as they get older and that the experiences of an 8 year old today cannot be transposed from an 18-year old reflecting on their experiences when they were an 8 year old. My annual student voice postcards project, which I adapted to gather insights from children and young people in care to inform this submission, may provide a useful model of engagement for younger age groups.

The Act provides that case plans must include 'parts' relating to decisions made at FGCs, cultural maintenance, reunification, contact arrangements, and the resolution of disputes, while the Regulations currently outline that case plans must also contain 'parts' related to child's physical health, mental health, emotional wellbeing, education and development.

The parts that are currently in the Regulations should be strengthened in the primary legislation with a particular obligation and expectation that children and young people's views will be considered. Plans containing these parts that have been developed without insights from children and young people themselves will be inadequate.

Meaningful participation requires an appropriate level of information about the scope and parameters of decision-making available to them, when decisions are being made, the reasons for decisions and any appeal mechanisms available to them. There should also be greater respect for those closest to children to also feel supported and included in decision making.

The influence of these mechanisms should be monitored and reported to increase understanding and improvements of how children are involved in decisions that impact them and the extent to which the system is responding to and acting on what children and young people.

“having friends come over and having a pet cat and dog”

– 10 year old, female

“DCP not controlling my life or making decisions for me”

– 10 year old, female

“i feel included when my friends and family ask me to do something with them even if I don’t do it. It just makes me feel loved and included”

– 14 year old, female

“I wish I could go on more holidays, get out more, and do more exercise”

– 16 year old, male

School and education

School is a significant part of children and young people’s lives. Some children and young people describe school as a safe place that nurtures relationships, opportunities and skills that are critical to their health, safety, wellbeing, confidence, and aspirations.

Children and young people in out-of-home care can face particular challenges and negative experiences at school. This includes being treated differently from peers by teachers; moving schools due to placement changes or instability; a lack of respect for privacy; and a lack of expertise supporting children to deal with the impacts of complex trauma and placement instability. South Australian data shows that students in care are suspended at a rate four times higher than students who are not in care.

“I didn’t get a say what school I went to”

“I’m worried that the kids at school annoy me”

– 13 year old, female

“I’m worried that I will get bad grades”

– 14 year old

“I’m worried that I’ll make no friends in high school apart from family”

– 11 year old, female

“not having to worrie about money and stressing about everything thats happening all the time. but i do want grandma to be my legall gardien so i dont need to see my soshall worker”

– 14 year old, female

Currently, Section 84(1)(f) of the Act provides that the Chief Executive may ‘make arrangements for the education of the child or young person’. The Regulations state that a case plan must contain a part setting out a ‘plan for the education and

development of the child or young person', and that information about school enrolment is prescribed information that should be provided to children and young people prior to their placement.

Experiences in the education system affect not just how children and young people engage with education but a range of services over the long term, as well as how they see themselves, adults and institutions.

Given the significance of school, there should be greater consideration and weight given to children's views about school and education in decision-making and planning, with particular support provided during key education transitions between school years and school sites. This will help to ensure children in care have the same opportunities as their peers and are valued for their relationships, achievements and all aspects of their identity and experiences, including but not limited to their care experience.

I am 14 years old. I identify as male (gender)

I currently live in residential care (please circle) foster care kinship care commercial care don't know other

I wish... to get my internet so that I can play online games on my xbox

I feel safe when... I feel safe almost all the time

I am worried that... nothing

What I would like to change to make life better is... I want to see mum and dad

I am 5 years old. I identify as Boy (gender)

I currently live in foster care (please circle) kinship care residential care commercial care don't know other

I wish... cake

I feel safe when... mum is with me

I am worried that... nothing

What I would like to change to make life better is... Ride my Bike

Thank you for your answers! They will help me to communicate your concerns, views and ideas.

Transition from care

When children and young people are excluded from decision-making processes while they are in care and separated from relationships that should scaffold children and young people throughout their lives, it is unlikely they will feel prepared or hopeful about the future.

Many children and young people are worried about what the future holds for them, including where they will live, whether they will be able to maintain important relationships or access education and employment opportunities.

“i don't know what the future holds for me”

– 17 year old, male

“be in SILS program. Get Centrelink”

– 16 year old, male

Including young people in planning for leaving care is essential both in terms of supporting children and young people to make decisions that will set them up for a healthy future as well as ensuring access to information and services is tailored to individual needs and interests and accounts for identity and culture, social relationships and support networks. Such information and services must include:

- Centrelink and financial support.
- Housing and independent living support.
- Health services and information related to physical, mental, sexual and dental health.
- Information about jobs pathways employment, education and training.
- Comprehensive and inclusive education relating to relationships and sexual health.

I am 11 years old. I identify as male (gender)

I currently live in residential care (please circle) foster care kinship care commercial care don't know other

I wish... to have the internet + internet
Restricted

I feel safe when... im in my Room

I am worried that... nothing

What I would like to change to make life better is... Get a xbox in my Room

Thank you for your answers! They will help me to communicate your concerns, views and ideas.

I am 6 years old. I identify as female (gender)

I currently live in residential care (please circle) foster care kinship care commercial care don't know other

I wish... for a unicorn, real life one, and a
tridaptor dinosaur.

I feel safe when... no one hurts me and im safe in
my room.

I am worried that... Someone will hurt me, like my sister.

What I would like to change to make life better is... Doing different stuff
like watching tv more and colouring in.

Thank you for your answers! They will help me to communicate your concerns, views and ideas.

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- ⁱ United Nations Committee on the Rights of the Child, General Comment No. 12 (2009) The right of the child to be heard, page 5. Available at <https://www.refworld.org/docid/4ae562c52.html>.
- ⁱⁱ United Nations Committee on the Rights of the Child, General Comment No. 12 (2009) The right of the child to be heard, p. 18. Available at <https://www.refworld.org/docid/4ae562c52.html>.
- ⁱⁱⁱ Child Protection Systems Royal Commission Report, Volume 1: Summary and Report, August 2016, p. 6. Available at <https://www.childprotection.sa.gov.au/documents/report/child-protection-systems-royal-commission-report.pdf>.
- ^{iv} Section 103 of the *Children and Young People (Care and Protection Act) 1998 (NSW)*.
- ^v Section 95 of the *Children and Young People (Care and Protection Act) 1998 (NSW)*.
- ^{vi} Section 10E of the *Children, Young Persons and Their Families Act 1997 (Tas)*.
- ^{vii} Tracey Race and Nick Frost, 2022. 'Hearing the Voice of the Child in Safeguarding Processes: Exploring Different Voices and Competing Narratives'. Available at <https://onlinelibrary.wiley.com/doi/epdf/10.1002/car.2779>.
- ^{viii} Baker et al, 2019. 'Siblings: A Review of the Evidence on the Circumstances and Experiences of Siblings in the "Care System", and the Factors which Promote or Inhibit Relationships', in Independent Care Review (ed.) Evidence Framework Feb 2017 – Feb 2020. Available at: https://www.carereview.scot/wp-content/uploads/2020/07/ICR_Evidence_Framework_v2-1.pdf.
- ^{ix} Scottish Government, 2021. Staying together and connected: getting it right for sisters and brothers: National Practice Guidance. Available at <https://www.gov.scot/publications/staying-together-connected-getting-right-sisters-brothers-national-practice-guidance/>.