January 2017

RE: Children and Young People (Safety) Bill 2016

The Child and Family Welfare Association of South Australia (CAFWA-SA) welcomes the opportunity to provide feedback on the draft *Children and Young People (Safety) Bill 2016* that has been released for public consultation.

CAFWA-SA is the peak body representing the non-government child protection and out-of-home care sector in South Australia.

CAFWA-SA takes this opportunity to call for reform measures that go beyond the review of the current Children's Protection Act (1993). The measures that have been announced in 'A fresh start' as well as the announcements of additional funding will not be sufficient to resolve the fundamental problems facing the child protection system in this state. We call for a greater degree of collaboration and partnership with the non-government sector in order to foster whole-of-community responsibility keep children safe, as well as to reduce the number of children and young people who need to be removed from their families and placed in state care as a result of neglect or harm. The fundamental objective for the reform of the state's child protection system must be to assist families to provide safe and nurturing environments for their children, and to have the necessary services and supports activated (secondary and tertiary prevention) before a family reaches crisis point.

To this end, CAFWA-SA calls for the following commitments:

1. Refocussing of the government's additional commitment of $432M (over 4 years) to deliver enhanced early intervention and dedicated family support services through the reallocation of a further $50M (over 4 years) into a new early intervention services fund; this could be achieved in part by diverting funding away from the early intervention research directorate which is a function that could be performed by the Australian Centre for Child Protection in partnership with government and other research institutions;
2. Expanding the proposed pilot Child and Family Assessment and Referral Network to 4 locations incorporating 1 dedicated regional network AND ensuring that 3 of the 4 Networks are run by respected non-government agencies in the nominated regions;
3. Including non-government agencies involved in child and family welfare interventions as an integral member of the expanded Child and Family Pathway which effectively operates as the 'front-end' of the child protection system;

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4. Committing to incorporate early intervention and prevention provisions and statutory obligations in the Children and Young People (Safety) Bill OR to ensuring these provisions are included in a revised Family and Community Services Act;
5. The introduction of a new and contemporary dialogue with the broader South Australian community about what it takes to provide an all of community response to keeping children safe from harm. This should be precipitated by a series of community forums/discussions around the role and benefit of 'mandatory notification' and alternative measures which would more effectively engage community members in keeping children safe; and
6. Legislate for and appropriately resource a Gazetted Aboriginal organization to provide expert Aboriginal input and consultation on all decisions made to remove an Aboriginal child from their family, and to act as a buffer against culturally unsafe decisions about care arrangements that leave Aboriginal children, young people, families and communities highly vulnerable; recognition and sincere and serious commitment to reducing the over-representation of Aboriginal children in the child protection system is of paramount importance

CAFWA-SA submits its specific feedback on the Bill as follows:

Children and Young People's Visitor Scheme

CAFWA-SA supports the establishment of an independent office of a Children and Young People's Visitor. It is imperative that the Visitor Scheme functions independently of any other government oversight such that it can provide the extra layer of visibility and accountability for which the scheme seeks to achieve. The distinction between the oversight role currently carried out by the Office of the Guardian for Children and Young People and that of the Visitor will need to be clearly articulated.

Aboriginal Placement Principle

CAFWA-SA supports the inclusion of an Aboriginal Child Placement Principle in the Bill, however calls for the current inclusion to be strengthened significantly. The provisions must be more robust and provide a greater level of accountability to the Department for Child Protection to ensure that Aboriginal children maintain close connections with family and culture wherever possible, and that all efforts are made to retain contact with kin. The provisions made in the Bill don't necessarily need to provide for a prioritized system of placement types or outcomes, as it should be the role of the delegated, Gazetted Aboriginal organization to ensure that case-by-case decisions are made in the best interests of the child in question. A provision for a delegated, gazetted Aboriginal organization to be involved in all placement decisions of Aboriginal children must be made.

Chapter Two of the Bill (Guiding Principles) refers only to Aboriginal culture in the context of removal and placement of children, and must be strengthened to include principles for working with Aboriginal children, young people, families and communities in a preventative manner. These principles must reflect how the Department for Child Protection, and the Chief Executive as legal guardian will engage and work alongside Aboriginal people and communities to strengthen family and community functioning such that removal of children is reduced. The engagement of Gazetted Aboriginal organizations will be critical for ensuring the success of this work.

Support for young people leaving care

The provisions in the draft Bill allow for some levels of support to be provided for care leavers once they age out of care at the age of 18. CAFWA-SA calls for the formal leaving care age to be lifted

from 18 to 21 years old, and that foster and kinship carers be resourced to provide formal care for young people until the age of 21. Young people would be able to opt out of a care arrangement at the age of 18 however the decision to remain in the care of a family until the age of 21 must be legislated for. The transition to adulthood can best be viewed as a series of false starts for some young people, and as in the context of a normative family environment, many young people will return home to parents / family on a number of occasions after 'trialling' independent living. Such arrangements must be available to foster families for the young people they have cared for, such that they have the resources to support them through to the age of 21.

For young people exiting residential care at the age of 18, providing support to the age of 21 may be more complex, however they need to have some measure of formalized support available to them should they find themselves struggling to live independently. It is in these cases where the role of post-care services needs to be greatly enhanced such that wrap-around supports are available beyond the existing case management and counselling provisions for care-leavers.

We note that Chapter 7 Part 8 deals with assistance to care leavers. It is commendable that assistance extends to young people under the age of 26 years however Section 102 (5) provides that '…an offer of assistance under this section does not create legally enforceable rights or entitlements.' This effectively means that any support is discretionary and does not create the firm safety net required by many young people leaving care.

Local referral and assessment networks

Whilst CAFWA-SA is extremely supportive of the decision to establish local referral and assessment networks, we do not believe it is necessary to legislate for these as they form an operational component of the care and protection system. If the provision for these networks are to remain in the Act, we note that the current provisions are flimsy and do not prescribe how the networks will operate in the context of the current system of mandated notification (reporting abuse and neglect). CAFWA-SA is concerned that without a more prescriptive approach for how these networks will operate in the context of notifications, the burden of responsibility for ascertaining risk thresholds will be transferred from the statutory agency to the community with inadequate benchmarking described for when the statutory agency should become involved. CAFWA-SA further notes that these networks will only operate effectively if they, and the associated support services, are appropriately resourced to respond quickly to children deemed to require some sort of intervention.

The current trials that are underway in metropolitan South Australia must be augmented by a trial site in regional South Australia such that the success or otherwise of these networks can be compared and contrasted. CAFWA-SA also strongly supports the need for these networks to be led by a reputable non-government agency at each of the sites rather than led by a government department.

Reporting suspicions of abuse or neglect

With specific reference to Section 27, (2)(a), CAFWA-SA is concerned about the provision that 'a person need not report a suspicion under subsection (1)…if the person believes on reasonable grounds that another person has reported the matter in accordance with that subsection.' Whilst CAFWA-SA understands that there is impetus to reduce the overall number of unsubstantiated reports being made to the statutory agency, this particular provision may well result in people abrogating their responsibility to report where they believe (without substantive evidence) that

another person has made such a report. Further consideration needs to be given to provision and the potential implication that situations of abuse and neglect go unreported.

Approval of carers

With specific reference to Section 64, (2)(c), CAFWA-SA is concerned that prospective foster carers are going to be required to pay a fee for registration. CAFWA-SA posits that no fee should be payable by prospective foster carers (or agencies) as a part of the registration process.

Family group conferencing

With specific reference to Section 23, (1), CAFWA-SA is concerned about the provision that 'evidence of any statement made at a family group conference is not admissible in any proceedings.' Whilst we understand that written records of decisions made at family group conference will continue to be admissible in proceedings, we are concerned that certain important information or insights that may not be included in the written record of decision will not come before the court where in fact, such information may be crucial in ascertaining what will be in the best interests of the child in question.

Distinctions between powers delegated to the Chief Executive and those retained by the Minister

CAFWA-SA understands that delegation of legal guardianship is to be devolved from the Minister to the Chief Executive of the Department of Child Protection in the new Act, however there are instances throughout the Bill where reference continues to me made to delegations to the Minister that should sit with the Chief Executive. Refer for instance to Part 8, Section 102, 'Minister to arrange for eligible care leavers'. CAFWA-SA would suggest that some greater level of clarification be provided as to the distinctions between powers delegated to the Minister and those to the Chief Executive.

Reference to the United Nations Convention on the Rights of the Child (UNCRC)

As Australia is a state signatory to the UNCRC and has ratified it as an instrument of international human rights law, CAFWA-SA suggests that all Australian jurisdictions, wherever possible, articulate in statute law its commitment to the principles and articles of the Convention. CAFWA-SA calls for a preamble to the Bill that references the UNCRC and which commits the government to uphold the relevant provisions therein.

The Voice of the Child

In close consultation with the CREATE Foundation in South Australia, CAFWA-SA has noted that a child or young person is identified as anyone under the age of 18 years (Chapter 3, Interpretations), but that when defining the meaning of 'at risk' in Chapter 3, 14(1) the Bill reads 'For the purpose of this Act, a child or young person will be taken to be at risk if (e), the child of young person is under 15 years of age and is of no fixed address.' CAFWA-SA and CREATE agree that for the purposes of consistent definition and interpretation, a child or young person should be deemed at risk up until the age of 18.

CREATE and CAFWA-SA note that Chapter 4, Part 3 deals with case planning issues and the content of case plans. However, in Section 25 (2) the Bill provides that '…a case plan does not create legally enforceable rights or obligations on the part of the Chief Executive, the Crown, a child or young person or any other person.' We strongly support a greater level of accountability be provided for in the Act for the Department's obligation to ensure that case planning and case reviews occur in

conjunction with the child or young person (where appropriate) and that case reviews take place on at least an annual basis.

We commit our feedback to you in good faith.

Yours sincerely

Rob Martin

Executive Director

Child and Family Welfare Association of South Australia