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Ms Bec Cody MLA (Chair), Mrs Vicki Dunne MLA (Deputy Chair)
Ms Caroline Le Couteur MLA

Submission Cover Sheet

Inquiry into Child and Youth Protection Services (Part 2)

Information Sharing under the Care and Protection System

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ACT Government Submission

Standing Committee on Health,
Ageing and Community Services

Inquiry into Child and Youth Protection Services

(Part Two)

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Introduction

The ACT Government welcomes the opportunity to provide a submission to the Health, Ageing and Community Services Committee Inquiry into Child and Youth Protection Services – Part Two (Inquiry).

This submission addresses the Terms of Reference for this Inquiry, specifically:

the ability to share information in the care and protection system in accordance with the Children and Young People Act 2008, with a view to provide maximum transparency and accountability to maintain community confidence in the ACT's care and protection system.

The submission provides an overview of the care and protection system in the ACT, including recent reforms in child protection, case management and court processes. Detailed information on these processes is provided in several attachments to this submission. A high-level overview of the role and responsibilities of Child and Youth Protection Services (CYPS), as the statutory child protection agency in the ACT, is provided.

The submission considers child protection information sharing in the ACT. It outlines information sharing provisions under the *Children and Young People Act 2008* (CYP Act) and identifies challenges in sharing child protection information. Further, the submission includes analysis of the ability to share information in accordance with provisions in the CYP Act. National reform efforts to improve information sharing in child protection are also briefly discussed.

Arrangements guiding information sharing on the safety and welfare of children are informed by multiple, intersecting legislative frameworks. In the ACT, decisions to share information must balance privacy and human rights obligations. Under the CYP Act, the best interests of the child or young person are to be upheld as paramount in seeking to achieve this balance.

The submission outlines various oversight mechanisms that support accountability and transparency of decision-making in CYPS, and enhance information sharing and reporting. These mechanisms demonstrate the significant oversight in place over the child protection system.

In this submission, the terms 'child', 'children', 'young person' and 'young people' are used interchangeably and refer to any person under 18 years old. Concerns of abuse or neglect can be reported regarding any child under 18 years old who lives in the ACT.

The submission does not consider matters subject to Part One of the Inquiry and does not contain protected or sensitive information (for an explanation of protected and sensitive information, see 'Categories of information' on page 26). Reviewable decision-making for children and young people in the care of the Director-General in out of home care is only briefly discussed, as work is currently underway to consider options for reform, informed by a comprehensive public discussion paper.

Child Protection in the ACT

Most children and young people are best protected and cared for within their own family. However, when children and young people are at risk of abuse and neglect within their families, or their families do not have the capacity to protect them, child protection services have a role in ensuring their safety and wellbeing. Child protection agencies have a responsibility to deliver a range of protective and supportive child and family services.

In the ACT, Child and Youth Protection Services (CYPS) is part of the Community Services Directorate (CSD), which is responsible for statutory child protection in the ACT. CYPS is responsible for investigating the wellbeing of children in Canberra who may be at risk of abuse or neglect by a **family member** or **guardian**.

CYPS has legislative responsibility under the *Children and Young People Act 2008* (CYP Act) to facilitate and coordinate services across government and non-government agencies, to support the care and protection of children and young people believed to be at risk of harm. This involves assessing risk and working with families and other professionals to resolve issues relating to the safety and wellbeing of children and young people.

CYPS receives and records allegations of child abuse or neglect occurring within a family and responds where appropriate. While CYPS is responsible for investigating child abuse or neglect that occurs within a family context, police are responsible for investigating allegations of criminal behaviour and child abuse or neglect outside the family environment. CYPS works closely with ACT Policing to pass on reports as appropriate and also to receive reports and information from police.

CYPS is primarily responsible for:

- receiving reports regarding children who may be at risk of neglect, harm and abuse;
- investigating concerns raised about the safety and wellbeing of children and young people;
- providing case management support for families who require active linking to support services for a period to ensure safety and engagement;
- undertaking assessment of family safety and, where the parents are not willing and able to care for their child and it is in the child's best interests, placing the child with an alternative carer;
- applying to the ACT Childrens Court for a care and protection order if the child's safety cannot be ensured within the family;
- delivering case management for children and young people where restoration is the focus and children are on short-term care orders;
- supervising children on care and protection and youth justice orders; and
- providing and funding out of home services, specialist support services, and adoption and permanent care for children and young people in need.

CYPS works closely with the community sector, other ACT Government directorates, police and courts to protect children and young people. This is to ensure that children and their families and carers get the right kind of help at the right time and service responses are individualised to reflect each family's unique needs, strengths and challenges.

Service framework

Child protection policy and practice is continuously evolving and maturing to respond to the most vulnerable and at-risk families in the ACT. CYPS provides a continuum of service delivery to children and young people considered at risk of serious abuse and harm. CYPS functions as part of a broader human services system that responds to the safety and wellbeing of children and shares the responsibility of child protection across government and non-government services, including the court system.

CYPS works to deliver positive outcomes for families by providing a response that focuses on:

- Diversion;
- Protection;
- Restoration;
- Transition and permanency; and
- Trauma-informed practice.

Child protection is everyone's business. This means that CYPS relies on partnerships and effective information sharing to keep children safe. Most families interact with a number of local services systems including schools, health services, child care providers and other community-based services on a regular basis. The child protection system relies on the quality and currency of information provided by these services to assist decision-making about the most appropriate response that is required for a child and their family.

Recent reforms in child protection

State and territory governments are continually responding to increasing demands placed on their child protection systems by reform projects, funding pressures, external reviews, third party reporting requirements and public awareness, and challenges in staff recruitment and retention. In this context, the ACT's child protection system has been in a state of continuous review, improvement and associated change since the development and introduction of the CYP Act in 2008. The CYP Act itself built on and implemented aspects of the ACT Government's response to Cheryl Vardon's 2004 review of the ACT child protection system, *The Territory as Parent: review of the safety of children in care in the ACT and of ACT child protection management*.

In the ACT, over the past decade there have been several major reviews into the child protection system:

- ACT Public Advocate: Review of the Emergency Response Strategy for Children in Crisis in the ACT (interim report in 2011 and final report in 2012) (Public Advocate (2012));
- ACT Auditor-General's Office: Performance Audit Report – Care and Protection System (2013) (Auditor-General's (2013));
- Report of the Inquiry: Review into the system level responses to family violence in the ACT by Mr Laurie Glanfield AM (Glanfield Inquiry) (April 2016); and
- *Our Booris Our Way* (due for completion in late 2019, with three sets of interim recommendations made to date).

Over this period, CYPS has continued to undertake a major program of reform through *A Step Up for Our Kids – One Step Can Make a Lifetime of Difference (Out of Home Care Strategy 2015-2020) (A Step Up for Our Kids)* and the integration of child protection and youth justice. This work has continued in partnership with key stakeholders to strengthen service delivery and improve outcomes for children, young people and their families. Ongoing reforms have focused on policy and practice improvement, strategic planning, training and staff development and stakeholder engagement.

As outlined in ACT Government responses to the reviews, significant reforms and initiatives are being progressed, or have been implemented, to address system-wide issues. Some key reforms include:

- improved support for Aboriginal and Torres Strait Islander families;
- implementation of *A Step Up for Our Kids*;
- establishment of Child and Youth Protection Services (CYPS), which brings together child protection and youth justice services;
- development of a new client management system for CYPS; and
- establishment of the Family Safety Hub.

Support for Aboriginal and Torres Strait Islander families

Delivering better outcomes for Aboriginal and Torres Strait Islander children is one of the ACT Government's highest priorities, and the Aboriginal and Torres Strait Islander community plays a critical role in achieving this. As part of this approach, an independent review (*Our Booris, Our Way*) is underway and is considering the circumstances of each Aboriginal and Torres Strait Islander child and young person involved in the child protection system, including those in out of home care. The review focuses on systemic improvements needed to address the overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system within the ACT.

For further detail on support for Aboriginal and Torres Strait Islander families, see [Attachment A](#).

A Step Up for Our Kids

On 1 January 2015, the ACT Government delivered the strategic framework for the delivery of out of home care services *A Step Up for Our Kids*. *A Step Up for Our Kids* was developed in response to the ACT's own experiences and reviews, as well as a growing body of national and international evidence on better practice in child protection and early support for families.

A Step Up for Our Kids seeks to support the following key outcomes:

- parents are supported to keep their children safe at home, and fewer children and young people experience the out of home care system;
- children and young people who do come into care are safely reunified with their parents as early as possible;
- early, well informed decisions are made to not return children and young people to their birth parents in circumstances where risk cannot be reduced and managed; and
- safe, nurturing and permanent alternatives are found for children and young people who cannot return to their family home.

The ACT Together consortium has been commissioned to deliver out of home care services to support children and young people who cannot live with their birth families. This arrangement seeks to reduce duplication in the roles of government and community services, giving service providers greater autonomy and responsibility in providing stable, long-term care for children.

For further detail on *A Step Up for Our Kids*, see [Attachment B](#).

Establishment of Child and Youth Protection Services (CYPS)

In June 2015, CYPS was formed by the integration and alignment of care and protection services and youth justice services. The key focus of CYPS is to support improved outcomes for children, young people and families requiring a care, protection or youth justice response.

Key features of the integrated service response under CYPS include:

- establishing a single case management approach to ensure that one person maintains a strong connection with the family, supporting a more coordinated system response;
- shifting the emphasis from a young person's needs related to their offending, to reframe this as a more holistic focus on their wellbeing;
- supporting a whole-of-family response that extends beyond a young person's offending needs to acknowledge and address other vulnerabilities experienced within the family; and
- building the capacity of staff through broad training opportunities to embed trauma-informed practice across CYPS.

Development of a new client management system

The development of a new client management system, Child and Youth Record Information System (CYRIS), is part of CYPS' ongoing program of reforms in response to the Public Advocate (2012) and Auditor-General's (2013) examinations of the child protection system. These reviews highlighted the need for CYPS to have a high-quality client management system that improves support for vulnerable children and young people, through enhanced information management and record keeping.

CYRIS replaces the existing legacy systems to provide immediate access to information about children and young people at risk, assist case management functions and provide real time reports and data to support the work of CYPS. The ability for field caseworkers to have secure mobile access to the system is an important part of its development. Mechanisms to improve the exchange of information about children and young people between out of home care agencies and CSD will also be enabled. CYRIS is expected to 'go live' before the end of 2019.

Family Safety Hub

The ACT Government is implementing several reforms to address family violence, including the intersections between child protection and family violence responses.

To lead these reforms, the ACT Government established the Office of the Coordinator-General for Family Safety in 2016, which is committed to achieving an interconnected, whole of government and community approach to address domestic and family violence.

The Family Safety Hub was launched in 2017-18 following an extensive consultation and co-design process. In 2018, the Family Safety Hub co-designed early interventions for women and families during pregnancy and early parenting who experience increased risk of domestic and family violence.

ACT initiatives to strengthen early support

The ACT Government is developing initiatives that aim to strengthen services to improve outcomes for vulnerable families in the ACT, particularly through the Early Support Initiative.

Early Support is an initiative of the Human Services Cluster, comprising Canberra Health Services and the Health, Education, Justice and Community Safety, and Community Services Directorates. This arrangement acknowledges that no single organisation alone can change the trajectory for Canberra's most vulnerable people.

The long-term objective of the Human Services Cluster is to improve life outcomes and enable intergenerational wellbeing in three priority areas: vulnerable children and their families, with a focus on early childhood; Aboriginal and Torres Strait Islander families and children; and families who have experienced domestic and family violence.

Four initiatives are being developed as part of Early Support that will adopt a 'try, test, and learn' approach:

- The Child Protection Diversion initiative will focus on keeping Aboriginal and Torres Strait Islander children safe at home with their families, with a primary focus on achieving progress against early recommendations from *Our Booris, Our Way*.
- The Sustained Nurse Home Visiting Program initiative will focus on a multi-disciplinary approach to support the needs of complex families from birth to three years.
- The Youth Diversion initiative will focus on diversionary approaches with children in the 'middle years' (8-13 years old) who have parents who are in the adult corrections system.
- An Education Directorate-led initiative is being developed to leverage Commonwealth funding for a placed-based initiative.

For further detail on initiatives to strengthen early support, see [Attachment C](#).

ACT Child Protection System

A child's behaviour can be the symptom of any number of things happening in their life – abuse or neglect may or may not be one of them. This means that child abuse and neglect is difficult to detect.

Any person who has a significant concern for the wellbeing of a child may make a report to CYPS or the police.

A child is deemed to be in need of protection if the child has been abandoned, the child's parents are dead or incapacitated (for example, admitted to hospital) or the child has suffered, or is likely to suffer, harm and the child's parents have not protected the child or are unlikely or unable to protect the child. The test for whether a child is 'in need of protection' is set out in section 345 of the CYP Act, outlined below:

- (1) For the care and protection chapters, a child or young person is ***in need of care and protection*** if—
 - (a) the child or young person—
 - (i) has been abused or neglected; or
 - (ii) is being abused or neglected; or
 - (iii) is at risk of abuse or neglect; and
 - (b) no-one with parental responsibility for the child or young person is willing and able to protect the child or young person from the abuse or neglect or the risk of abuse or neglect.

Every report made to CYPS raising concerns about a child's welfare is assessed by a child protection worker in the Intake Service. CYPS gathers information and decides if the report should be investigated, based on its assessment of whether the child appears to need protection using the test in section 345 of the CYP Act.

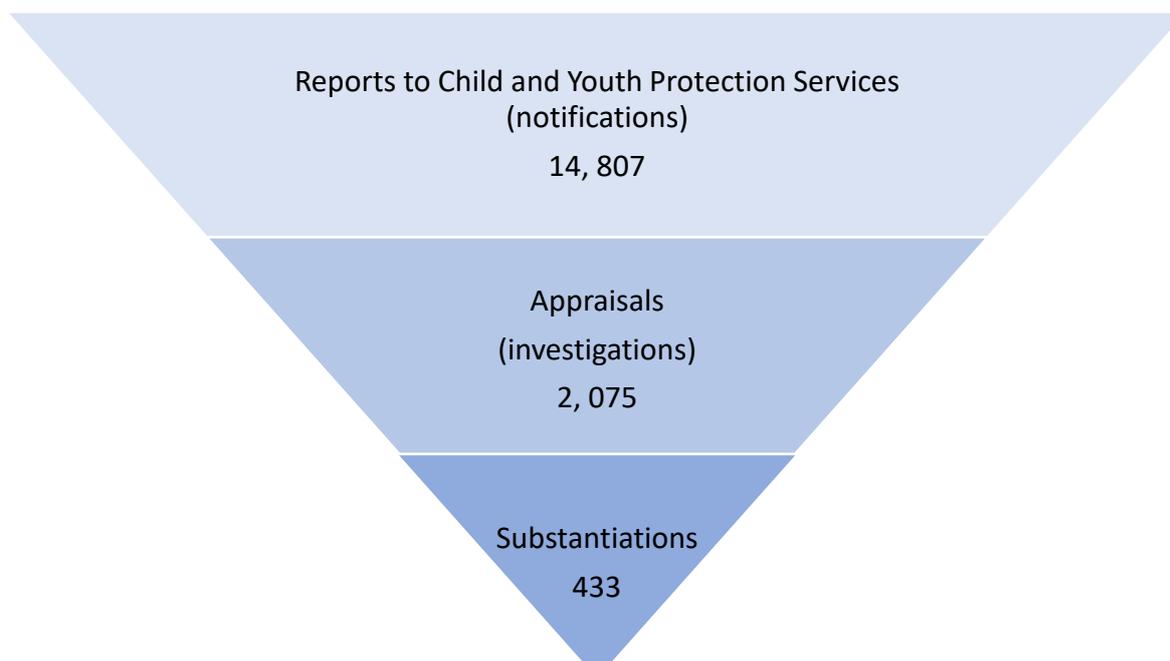
After investigating, if CYPS is satisfied on reasonable grounds that the child needs protection, a decision may be made to substantiate the report. If necessary, CYPS will also issue a protection application in the Childrens Court.

Alternatively, CYPS may determine that no further action is required. This may occur where the information provided is not considered to be child abuse or neglect, or it may be evident from the information that a parent is acting protectively and ensuring the child's safety. CYPS will support the family to manage any issues they may be experiencing.

While a large number of reports are made to CYPS each year, only a relatively small proportion of these will be assessed as requiring further investigation. Following investigation, an even smaller number will be substantiated.

Figure 1 (over page) illustrates the number of reports made to CYPS in 2017-18 and the proportion of these that were progressed to investigation and substantiation.

Figure 1: Reports to the ACT child protection system 2017-18



Source: Productivity Commission, *Report on Government Services (2019)*, Table 16A.4

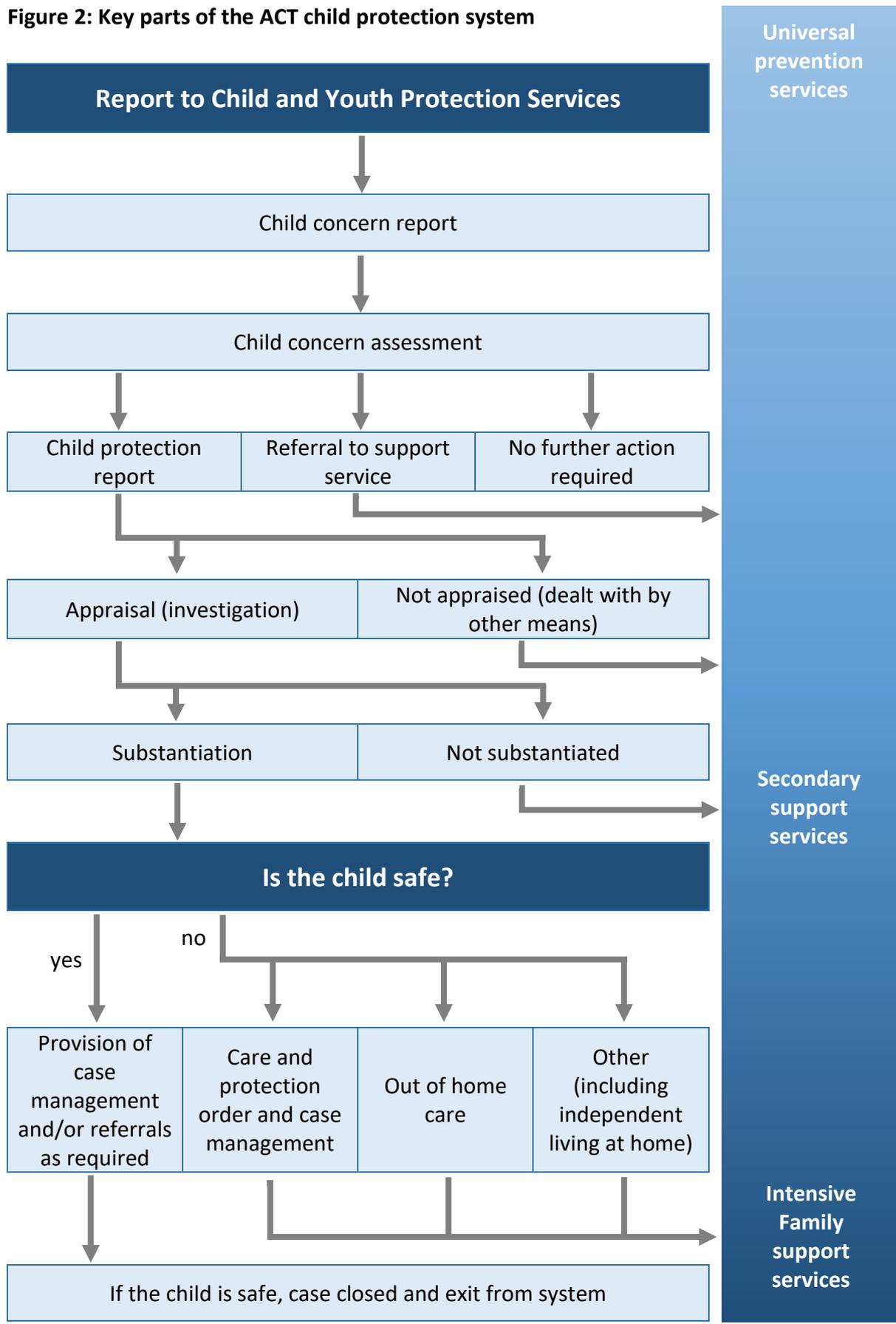
The ACT child protection system is broadly structured around five parts:

1. Reports raising concerns about possible abuse, neglect, harm or risk to a child (child concern reports)
2. Appraisals (investigated reports)
3. Substantiated reports
4. Care and protection orders (that are made by the ACT Childrens Court)
5. Out of home care, which is a temporary, medium or long-term living arrangement for children who cannot live with their families (for example, kinship care, foster care and residential care).

These five parts are briefly outlined in Figure 2, below. This is intended to provide general context for the child protection system, to support a broader understanding of information sharing processes.

For comprehensive detail on child protection processes in the ACT, see [Attachment D](#).

Figure 2: Key parts of the ACT child protection system



Source: Adapted from Glanfield, L. (2016) Report of the Inquiry: Review into the system level responses to family violence in the ACT, pg. 17. Adapted from Productivity Commission Report on Government Services (2016) Figure 15.1.

Child concern reports

While CSD is the ACT Government agency responsible for child protection, it relies on members of the community for early identification of those likely to be at risk.

Any person can make a voluntary report to CYPS, raising concerns about possible abuse, neglect, harm or risk to a child. The CYP Act provides a framework within which CYPS can receive and respond to these reports (referred to as 'child concern reports'). Certain professionals who come in contact with children and families through their work are mandated to report suspected child abuse or neglect, under section 356 of the CYP Act.

Child concern reports relate to a possible risk of abuse, harm or neglect. CYPS will record a child concern report when it receives information that questions a child's safety and wellbeing. This includes where the person believes a child is being, has been, or is at significant risk of being, abused or neglected, or is otherwise in need of care and protection (section 354 of the CYP Act). Concerns include parental substance abuse, neglect, exposure to family violence, physical abuse and sexual abuse. Common concerns raised in child concern reports in the ACT include parental substance abuse, neglect and exposure to family violence.

Under section 362 of the CYP Act, a person can provide information to CYPS about the safety and wellbeing of an unborn baby. This is known as a prenatal report. When a prenatal report is received, CYPS may: offer support on a voluntary basis for the duration of the pregnancy; provide referrals to health and community services that can support the woman during and after pregnancy; and/or appraise the baby's safety and wellbeing after birth.

Information that would identify a reporter or would allow the identity of a reporter to be worked out is sensitive information that is not to be shared unless ordered by the Court (section 866 of the CYP Act).

In making such an order, the Court must hear the views of the information holder in relation to disclosure of sensitive information, must consider the desirability of protecting the identity of a reporter and must ensure that the sensitive information is provided appropriately.

This is the case in all child protection agencies in Australian jurisdictions.

Child concern assessment

When CYPS receives a child concern report, it is required to seek further information about the child's situation. To do this, a 'child concern assessment' is conducted to determine the most appropriate response to the report. This involves an analysis of a child's exposure to risk, their potential needs, and any existing protective factors or mitigating circumstances.

The assessment considers all information about the child and family, and includes siblings and other children (including unborn children) living in the same home. CYPS may also seek the views of relevant professionals who know the child, such as teachers, childcare staff or support workers. CYPS does not need parental permission to speak with these people.

The child concern assessment involves an examination of:

- information from the child concern report (or 'prenatal report');

- historic CYPS file information, including previous child concern reports, child protection reports, assessments, appraisal records and other relevant records;
- current advice from agencies and professionals (including school staff and carers) who are, or have been, involved with the family; and
- any other source information about the child or family.

The assessment guides CYPS in determining whether the information in the child concern report indicates the child may be ‘in need of care and protection’ (section 345 of the CYP Act). If this threshold is met, the child concern report is upgraded to a ‘child protection report’.

Responding to a child concern assessment

After conducting a child concern assessment, CYPS may undertake a number of actions, including any or all of the following interventions:

- Support response –
 - This includes support offered to the family **on a voluntary basis**, such as assistance with a housing problem or referral to a parenting program.
- Referrals to support services –
 - CYPS may **actively** connect the family with a recommended support service; this can include phoning the service to ensure it has capacity to provide support and following up with the family to encourage uptake of the service.
- Appraisal –
 - This is a thorough investigation of the child’s home and family environment to enable CYPS to form a professional view of the child’s needs, the parenting capacity of each parent, and the likelihood that the child has experienced or is at significant risk of abuse or neglect.

CYPS may decide after completing an assessment that no further action is required. This can occur if the information provided is not found to indicate abuse or neglect, or if the assessment demonstrates that a parent is acting protectively and ensuring the child’s safety.

In some cases, CYPS will determine that while the child is not at risk of abuse or neglect, the family would benefit from some form of help. This may include assistance from CYPS with a specific issue, or referrals to a program run by another agency. These types of support responses are voluntary, and families do not have to accept the support.

Child protection reports

When CYPS staff suspect on reasonable grounds that information received during a child concern assessment indicates that a child may be in need of care and protection, a child concern report is upgraded to a ‘child protection report’.

When a child concern report is progressed to a child protection report, CYPS will undertake a more thorough assessment of the child’s situation. This assessment may lead to an ‘appraisal’ (see below).

Appraisals (investigated reports)

A 'care and protection appraisal' is a planned process of enquiry into a family situation in response to a risk assessment, which is used to determine:

- whether the child has experienced, is experiencing, or is at risk of experiencing abuse or neglect, or is otherwise in need of care and protection;
- the family's issues, needs, strengths and difficulties, and the impact these may have on the child; and
- the child's needs and the parenting capacity of each parent, including whether they are willing and able to provide care and protection.

An appraisal involves looking at the child's home and family environment and speaking with both parents (where possible) the child and any siblings living in the same home. In doing this, CYPS aims to establish what is happening in the family to accurately understand the situation and determine what response, if any, is required. An appraisal can comprise several different activities, such as interviews, medical examinations, developmental assessments and requests for information from other relevant services.

An appraisal may also take place in circumstances where a child may be in need of care and protection because:

- there is serious and persistent conflict between the child and the people with parental responsibility; or
- the people with parental responsibility for the child are dead, have abandoned the child or cannot be found after reasonable inquiry; or
- the people with parental responsibility for the child are sexually or financially exploiting the child, or are unwilling to protect them from such exploitation.

An appraisal response does not preclude the appraising case manager from also recommending strategies for addressing need, such as making a referral to a community support service or arranging a case conference.

Substantiated reports

Substantiation is not directly addressed in the CYP Act, and guidance is provided in CYPS policy and practice documents. An appraisal process will lead to a substantiated report if there is reason to believe or suspect that a child or young person has been, or is being:

- physically abused; and/or
- sexually abused; and/or
- neglected to the extent that failure to provide the child with a life necessity has caused, or is causing, significant harm to their wellbeing or development; and/or
- emotionally abused (including psychological abuse) in a way that has caused, or is causing, significant harm to their wellbeing or development.

Careful consideration is required to determine if acts of abuse or neglect can be substantiated, based upon the available evidence. A decision to substantiate matters raised

in a report should reflect the legal and policy definitions of abuse and neglect. The CYP Act provides guidance on identifying abuse and neglect (sections 342 and 343).

A matter will also be substantiated where it can be demonstrated that the child is at significant risk of abuse or neglect (as defined in section 344 of the CYP Act). This requires consideration of the child's entire risk environment – not just a specific event or episode – to determine if the environment is characterised by multiple risk factors with a high probability of having a negative impact on the child.

An appraisal process extends beyond the events reported in both child concern and child protection reports, encompassing a holistic assessment of the child's circumstances and risk issues. If an appraisal identifies abuse, neglect or a significant risk of abuse/neglect that is additional to or different to the content of the original report(s), these concerns must be assessed (and substantiated, where appropriate).

What can happen after an appraisal?

For most families who experience an appraisal, children remain in the family home. However, where further information is required, or it is determined that the child is likely to be 'in need of care and protection', CYPS may conduct a family assessment, or a child protection case conference, enter into a voluntary care agreement, take emergency action or seek a care and protection order. Each of these processes is summarised below and described in detail in [Attachment D](#).

Family Assessment

When CYPS becomes involved with a family because of concerns that have been raised, staff may conduct a family assessment to determine if a child or young person's safety and wellbeing are at risk. The CYPS case manager will collect information about aspects of the family's life, including information about the parent/s (or other person/s with parental responsibility), the child or young person and other family members, to better understand:

- whether the child or young person is safe;
- the child's physical, emotional and psychological safety;
- how the needs of the child are being met (such as food and clothing, supervision, and school attendance);
- any needs that are not being met, and the reasons for this; and
- supports and assistance that may be needed to support the child and their family.

In conducting a family assessment, CYPS will speak separately with the child or young person, their parent/s or guardian/s, carers and other family members. CYPS may also speak with other people who are involved in the life of the child or young person, such as teachers or medical professionals. The family assessment also considers existing information from child protection records or previous assessments.

CYPS may also work with other agencies to provide additional information for the family assessment, through activities such as observing family interactions or conducting an interview.

Child Protection Case Conference

A child protection case conference is a meeting of key people who are involved in the case management of a child and their family, chaired by a person who is independent to the case management structure in CYPS (known as an independent chair). A decision about when an independent chair would be most useful will depend on a child or young person's level of involvement with CYPS, their age and their individual circumstances. Case conferences (including child protection case conferences) are a communication tool that enables information sharing between individuals and services, while encouraging collaboration and inter-agency decision making.

Voluntary Care Agreement

For a range of reasons, a parent (or other person who holds parental responsibility for a child or young person) may ask CYPS to place their child in the temporary care of a suitable person for a limited period. This agreement between the parent/s or guardian/s of a child or young person and the Director-General, of the Community Services Directorate (CSD) is called a Voluntary Care Agreement (VCA). The agreement is made by law under section 394 of the CYP Act. If the child or young person is aged 15 years or over, they must agree to the VCA for it to be valid. A VCA is only appropriate in circumstances where:

- all other alternative supports have been considered and are found unsuitable; and
- everyone involved agrees that entering into a VCA is in the best interests of the child or young person at the time the agreement is made.

A VCA serves to share the daily care responsibility for a child or young person between their parent/s (or other person/s with parental responsibility) and the Director-General of CSD. This enables CYPS to make day-to-day decisions about the child or young person, such as granting permission for their attendance at school excursions, taking them to a doctor for non-serious complaints, or managing their behaviour. Usually, a VCA will initially be approved by CYPS for seven days; this may be extended, usually by a period of six weeks.

Emergency Action

Emergency Action is a direct intervention in a child's life under section 406 of the CYP Act to ensure their immediate safety. This serves to transfer daily parental responsibility from the parent/s of a child or young person (or other person/s with parental responsibility) to the Director-General of CSD. Emergency action may include arranging for the child's care and protection by keeping them somewhere that is safe, such as a kinship care placement or a foster care placement.

Once emergency action is taken, daily parental responsibility is conferred upon the Director-General for two working days. During this time, staff will undertake further assessments to determine if the child or young person needs care and protection. This may involve interviews with the parent/s or guardian/s, the child or young person, other family members and people who are significant in the child's life. This information forms part of a care and protection appraisal. The case manager who has taken the emergency action must notify each person who has parental responsibility; the ACT Public Advocate; and the ACT

Childrens Court. CYPs must also ensure that the child's matter is brought before the Childrens Court within two working days.

Care and Protection Orders

The CYP Act provides the primary legislative framework for proceedings regarding care and protection orders. This framework also includes the *Court Procedures Act 2004*, the *Court Procedures Rules 2006* (the Rules), and any practice directions issued by the ACT Childrens Court. The ACT Childrens Court has jurisdiction for care and protection matters under section 288 of the *Magistrates Court Act 1930*.

For detailed information about Childrens Court processes, see [Attachment E](#).

Care and protection orders provide the Director-General of CSD with responsibility for aspects of a child's welfare. Three types of care and protection orders made by the ACT Children's Court under the CYP Act:

- interim care and protection order (section 433);
- care and protection order (section 464); and
- long-term care and protection order (section 479).

An **interim care and protection order** is usually granted at the first application, as a means of putting in place short-term protective arrangements for a child or young person and evaluating these arrangements prior to finalising the order. This provides time to see how the child is responding to the new arrangements, and to consider any changes the parents may make during this period to improve the safety of the child.

A **care and protection order** is granted when the Children's Court is satisfied it has sufficient information upon which to make a determination that a child is in need of care and protection, and that the child's best interests will be served by making the order. This order is usually made for either 12 months, 2 years, or until the child reaches 18 years of age.

A **long-term care and protection order** (also known as an order until 18 years of age) is a care and protection order that includes a long-term parental responsibility provision. This order applies until the child or young person is 18 years old and assigns daily and long-term care responsibility for the child or young person to the Director-General CSD (or another stated person).

Out of home care

Out of home care is a temporary, medium or long-term living arrangement for children and young people who are unable to live with their parents. Out of home care can be voluntarily and informally arranged, or it can be statutory where a child protection order is in place.

Types of arrangements under out of home care include:

- kinship care;
- foster care;
- Enduring Parental Responsibility; and
- residential care and other arrangements.

Kinship care is out of home care provided by a child's relatives or friends. Kinship care is the preferred placement type for children who are unable to live with their parents. Some kinship care arrangements are informal, for example, a grandparent looking after a child because the child cannot live with their parents. CYPS staff are responsible for locating and authorising formal kinship care placements, but do not play a role where a family has entered into informal arrangements (other than assuring themselves of the safety of the child in this placement, if the child has come to the attention of CYPS).

Foster care is out of home care of children in a family setting with trained, assessed and accredited foster carers who carry out parental responsibilities and are reimbursed for the care of the child. CSD funds foster care agencies under the ACT Together consortium to recruit and support foster carers. The ACT Together consortium is responsible for locating and supporting foster care placements in the ACT.

Parental responsibility is the responsibility of each parent or legal guardian to make decisions about the care, welfare and development of their child(ren). These responsibilities may be varied by agreement or by a court order. CYPS may apply for an order that allows the Director-General, CSD to hold either full parental responsibility for the child or to share this responsibility with another person.

Where an order gives full parental responsibility to the Director-General, this may be delegated to a carer. This means that the carer has legal responsibility for the long-term care, protection and development of a child, and all powers, responsibilities and authority a guardian of a child has by law. Where an order gives shared parental responsibility between the Director-General and the parent or carer, both the parent/carer and CYPS (on behalf of the Director-General) can carry out this responsibility and make decisions about a child's care.

Enduring Parental Responsibility (EPR) may be also be considered as potential a pathway for a child or young person to permanency from out of home care. EPR transfers responsibility for the day-to-day and long-term decision making for a child or young person to a carer, without severing the legal ties between the child or young person and their birth family.

Residential care involves placement in a residential home intended for the care of children and young people. The ACT Together consortium is responsible for locating and supporting residential care placements in the ACT. Residential care is provided by a non-government provider.

Other out of home care arrangements may also be used in the ACT. These include shared care or independent living arrangements for young people aged 16 and over, such as where a young person is the sole tenant in a property and is supported to live independently.

External oversight and transparency mechanisms

Several oversight mechanisms exist to support the accountability and transparency of decision-making in CYPS and enhance information sharing and reporting. These mechanisms demonstrate the significant oversight in place over the child protection system.

A strong independent and external oversight system provides scrutiny of the child protection system in the ACT. This includes the ACT Human Rights Commission – specifically, the Public Advocate and Children and Young People Commissioner – as well as Official Visitors for Children and Young People. These roles have strong statutory powers to oversee child protection services, including the ability to: intervene in response to complaints received from young people; actively participate in care team meetings; and seek information (including protected and sensitive information) in response to concerns.

Public Advocate and Children and Young People Commissioner

The Public Advocate and Children and Young People Commissioner focuses on individual advocacy, such as for an individual child or young person in contact with the child protection and youth justice systems. The Commissioner contributes to improvements in the accessibility, responsiveness and quality of supports and services available for vulnerable young people.

Under the CYP Act, CSD is required to provide information to the ACT Public Advocate in certain circumstances. These include all applications for care and protection orders (whether an amendment, revocation, or original application), Annual Review Reports, and requests to transfer orders interstate. For example, CYPS must advise the Public Advocate about action taken following a care and protection appraisal where the child or young person is already in out of home care. In addition, the Public Advocate may request access to information held by CSD. The Public Advocate may also participate in care team meetings, case conferences and court processes.

Official Visitors

Official Visitors for Children and Young People aim to ensure appropriate standards and advocate for the rights and dignity of children and young people in out of home care and youth justice settings. They do this by visiting places of care, talking to children and young people, inspecting records, reporting on the standard of facilities and reporting to the Minister and other public authorities.

ACT Ombudsman

The Ombudsman can investigate complaints about actions and decisions made by CSD. As part of an investigation, the Ombudsman has the power to obtain and share information with relevant authorities. In addition, the Ombudsman holds a key oversight role in the operation of the Reportable Conduct scheme.

ACT Children and Young People Death Review Committee

The ACT Children and Young People Death Review Committee (the Committee) is an independent multi-sectoral Ministerial Committee established under Chapter 19A of the CYP Act. This independent Committee works towards reducing the number of deaths of ACT children and young people. Members contribute experience and expertise in different areas, including paediatrics, education, social work, child safety products and working with Aboriginal and Torres Strait Islander children and young people.

The Committee aims to find out what can be learned from the death of a child or young person, to help prevent similar deaths from occurring in the future. One of its key functions is to maintain a register of all the deaths of children and young people who die before they turn 18 years. The Committee provides regular reports to the Minister and Legislative Assembly and can also make recommendations about changes to legislation, policies, practice and services, to both government and non-government organisations.

Children and Youth Services Council

The Children and Youth Services Council is established under the CYP Act and provides advice to the Minister for Children, Youth and Families on a range of matters. The Council provides independent strategic advice to the Minister on the progress of the implementation and outcomes of *A Step Up for Our Kids*.

Human Services Registrar

The Human Services Registrar has regulatory oversight of most community service providers in the ACT, including those providing services under the *Disability Services Act 1991*, *A Step Up for Our Kids* and community housing. Through this role, it aims to build the capacity of service providers to deliver safe, high quality and viable services.

In addition, the Human Services Registrar investigates incidents and complex complaints made about government and non-government service providers. It has the power to request and share information in order to undertake its functions, which include representing the Directorate on matters relating to quality safeguards for vulnerable and disadvantaged members of the community.

While the Human Services Registrar operates independently, information is shared regularly between the Human Services Registrar and CYPs to ensure effective monitoring of approved care and protection organisations in the ACT.

ACT Senior Practitioner

The ACT Senior Practitioner for the elimination and reduction of restrictive practices has independent oversight of the use of restrictive practice in care and protection services for children in the ACT. The Senior Practitioner can develop guidelines and standards to ensure the use of least restrictive practice and support an appropriate therapeutic environment for vulnerable people. The Senior Practitioner has the power to receive and investigate complaints about any action taken by a provider involving the use of a restrictive practice. The Senior Practitioner may also conduct investigations on their own initiative, where restrictive practices are a concern.

Office of the Australian Information Commissioner

The Office of the Australian Information Commissioner (OAIC) can investigate privacy complaints from individuals about the handling of personal information by ACT public sector agencies under the Information Privacy Act 2014 (ACT).

Review of child protection decisions in the ACT

While some administrative decisions made by CYPS are subject to external review, the ACT Government is currently reviewing which decisions made by CYPS should be subject to internal or external merits review.

In May 2019, the ACT Government released a discussion paper that summarised existing internal review mechanisms for CYPS decisions, analysed review mechanisms in other jurisdictions and proposed issues for comment to inform further consideration by Government.

Consultation, including several face-to-face consultation sessions, closed on 28 June 2019. During this time, the ACT Government received 18 submissions, including from *Our Booris Our Way*, the ACT Human Rights Commission, advocacy groups, care and protection organisations, legal organisations and interested community members.

An independent consultant is currently analysing the submissions and preparing a report for the ACT Government.

Information sharing in child protection

Across Australia, laws operate to ensure information can be shared about the safety and welfare of children with limited exceptions. These laws overcome privacy and confidentiality restrictions on sharing protected and sensitive information by authorising or requiring information to be shared despite those restrictions.¹

Arrangements guiding sharing information about the safety and welfare of children are informed by multiple, intersecting legislative frameworks. The sharing of protected and sensitive information is also guided by obligations under international instruments², human rights legislation³ and interjurisdictional protocols.

International instruments

Australia is required to uphold several international legal instruments to which it is a party. These instruments include the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention on the Rights of the Child (CRC).

The right to privacy established in the ICCPR has been partially incorporated into Australian law at Commonwealth, state and territory levels, including in privacy and health privacy legislation. This legislation regulates the collection, use and disclosure of personal information.

The CRC contains several articles with direct relevance to information sharing. Article 3 establishes the ‘best interests of the child’ principle, requiring that ‘[i]n all actions concerning children, whether undertaken by public or private social welfare institutions,

¹ Royal Commission into Institutional Responses to Child Sexual Abuse: Final Report (2017) Volume 8, pg. 141.

² International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention on the Rights of the Child (CRC).

³ Human Rights Act 2004 (ACT); Charter of Human Rights and Responsibilities Act 2006 (Vic); the Human Rights Act 2019 (Qld) is expected to come into force on 1 January 2020.

courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'.⁴

Connections between Australian legislation and instruments like the ICCPR and the CRC highlight tensions between the right to privacy and the rights of children. Resolving this tension requires an acknowledgement that the right to privacy is not absolute and may intersect with children's rights to physical and personal integrity, and protection from all forms of violence.

Human Rights legislation

Human rights legislation exists in two jurisdictions in Australia, with a third to come into force in 2020. The ACT and Victoria protect an individual's right to privacy under this legislation, with Queensland to enact its legislation next year.⁵

In the ACT, section 11(b) of the *Human Rights Act 2004* provides that every child has the right to protection because of being a child, without distinction or discrimination of any kind.

In addition, section 12(a) of the *Human Rights Act 2004* provides that everyone has the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

In certain circumstances, the right to privacy requires CYPs to share information with certain individuals. The right to privacy requires public authorities to allow individuals to have full control over information about them, including the right to know the identity of the information holder, the kinds of information held by the information holder and the way the information holder uses the information. It follows that all individuals have a clear right to access information about themselves that is held under the CYP Act, unless there are valid and lawful reasons to withhold information from such individuals.

The *Human Rights Act 2004* provides that human rights may be subject to reasonable limits set by laws, such as privacy laws, that can be demonstrably justified in a free and democratic society. Information sharing provisions in the CYP Act allow for limited and necessary infringement of this right to privacy.

Interjurisdictional protocols

Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance

The *Protocol for the Transfer of Care and Protection Orders and Proceedings and Interstate Assistance* (the Protocol) facilitates information sharing in relation to child protection matters between state and territory governments. All Australian states and territories and New Zealand are signatories to the Protocol, which was implemented in 2009 and revised in 2011.

⁴ United Nations Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) Art 3.

⁵ Human Rights Act 2004 (ACT); Charter of Human Rights and Responsibilities Act 2006 (Vic); the Human Rights Act 2019 (Qld) is expected to come into force on 1 January 2020. Parts of the Qld Act relating to the structure and educative functions of the Queensland Human Rights Commission commenced on 1 July 2019.

The purpose of the Protocol is to provide care and protection services to children and young people engaged with the child protection system where there is a proposal for the child to move interstate.

The Protocol provides the framework to facilitate and manage interstate requests for assistance and transfers of orders for children subject to child protection intervention, in accordance with the respective child protection legislation of each jurisdiction. While it acknowledges that no protocol can align with every jurisdiction's legal framework, the best interests of children cannot be met without an agreed protocol that assists all jurisdictions.

Through the ACT Interstate Liaison Officer role in CSD, information about the safety and wellbeing of a child may be requested by an interstate child protection authority, consistent with the Protocol. This might include information about:

- a child or family's history of involvement with an interstate child protection authority;
- a child who is temporarily interstate or has recently left the ACT; and
- prospective carers who live in other jurisdictions, to assist with kinship care assessments.⁶

In addition, the Protocol allows for an interstate alert process. An alert may be issued for a child who is the subject of a child concern report or a care and protection Order, if it is believed that they have left the ACT and their whereabouts are unknown. This alert process is used to notify other relevant jurisdictions of any information that relates to the child's possible exposure to risk. The sharing of child protection information under the Protocol excludes non-government organisations and is limited to the use of the interstate child protection agencies only.⁷

Information sharing protocol between the Commonwealth and Child Protection Agencies

The *Information Sharing Protocol between the Commonwealth and Child Protection Agencies* (the Commonwealth Protocol) also facilitates sharing Commonwealth-held information in relation to child protection matters across jurisdictions. Centrelink, Medicare and the Child Support Agency, as well as all state and territory child protection agencies, are parties to the Protocol.

The aim of the Commonwealth Protocol is to facilitate investigations and assessments of vulnerable and at-risk children in Australia to promote their 'care, safety, welfare, wellbeing and health'. The Commonwealth Protocol was implemented in 2009.

Information sharing in the ACT

All Australian jurisdictions have strict privacy and information sharing provisions built into their child protection legislation. In the ACT, decisions to share information must balance privacy and human rights obligations with the paramountcy of the best interests of a child or young person. This is vital to maintain public confidence in the care and protection system

⁶ Community Services Directorate, CYPS, Practice Guideline: Role of Interstate Liaison Officer (unpublished).

⁷ Royal Commission into Institutional Responses to Child Sexual Abuse: Final Report (2017) Volume 8, pg.151.

and to protect the privacy of individuals when they suspect a child or young person is at risk of abuse or neglect.

The range of legislation that affects information sharing and privacy provisions in the ACT relating to child protection is outlined at [Attachment F](#).

The CYP Act provides for the care, protection and wellbeing of children and young people, and is administered by CSD. It places obligations on individuals and agencies to handle and share protected and sensitive information in a fair and lawful manner. The CYP Act does not impose barriers to information sharing in circumstances where information needs to be exchanged if the safety of a child is at risk or compromised. In addition, legislative obligations protecting the right to privacy do not prevent information sharing where there are safety and welfare concerns.

Best interests of the child

The CYP Act sets out the objects, principles and considerations that apply to the administration of the CYP Act (Chapter 1). Importantly, the best interests of the child or young person must be regarded as the paramount consideration for any decision and action taken under the CYP Act. An additional principle applying to Aboriginal and Torres Strait Islander children and young people is included to recognise the connection of the child or young person to their community and the need to involve their community in decision-making.

The CYP Act also requires that decision-makers have the required qualifications, experience or skills to apply its objects and principles.

Information sharing under the Children and Young People Act 2008

Chapter 25 of the CYP Act, 'Information secrecy and sharing', authorises information sharing when it is in the best interests of the child or young person, and when performing a function under the CYP Act. It establishes the types of information that can be shared and under what circumstances this can occur. This includes sharing information with other jurisdictions (section 852). The CYP Act also provides a broad power for the Minister or Director-General to share protected information (see below) with anyone, if it is in the best interests of the child (section 851).

Relevant information is exchanged regularly between government and non-government agencies, service providers, law enforcement, regulatory and oversight bodies, as well as other jurisdictions. Overall, the legislative framework in the ACT does not impose barriers to information sharing, particularly where there are safety and welfare concerns about a child, and failure to share information would compromise the safety of a child.

Confidentiality or secrecy provisions

The CYP Act imposes obligations on individuals and agencies dealing with protected and sensitive information about children, using confidentiality and secrecy provisions to restrict the disclosure of information (section 846). People with responsibilities in child protection matters are subject to these confidentiality or secrecy provisions, and it is often a criminal offence to breach such provisions.

Confidentiality obligations restrict the sharing of information and provide protection for people who make reports (voluntary or mandatory) or provide certain information.

Secrecy provisions ensure information that is obtained or shared in the course of performing a duty or function under legislation, is used appropriately and lawfully. The CYP Act includes offence provisions prohibiting the disclosure of protected and sensitive information. Under the Act, it is an offence for an information holder to record or divulge protected and sensitive information, unless exercising a function under the CYP Act or another law (sections 846-847).

Privacy provisions

All jurisdictions, including the ACT, are obliged to protect the privacy and information of children and families who are involved with child protection agencies. Privacy legislation also imposes obligations and restrictions on state and territory public sector agencies.⁸ The CYP Act requires that any decision to share information must regard the 'best interests of the child or young person' as the paramount consideration (sections 8 and 851). In the ACT, obligations and restrictions regarding personal health information are also imposed under health privacy legislation (Health Records (Privacy and Access) Act 1997).

Categories of information

Various categories of information exist that shape how information is shared under the CYP Act. The CYP Act prescribes several categories; the most relevant of these are protected information, sensitive information, and safety and wellbeing information.

Protected information

Protected information is any information a staff member receives or obtains when exercising functions under the CYP Act (section 844). Almost all the information received about a child or young person will be protected information. Protected information includes sensitive information.

Sensitive information

Sensitive information includes a pre-natal report, care and protection report and appraisal information, interstate care and protection information, family group conference information and contravention report information (sections 844 and 845). It also includes any information that would identify a reporter or would allow the identity of a reporter to be revealed. Pre-natal information relevant to the safety, wellbeing and development of a child after the child is born is also considered sensitive information (sections 365 and 862(10)).

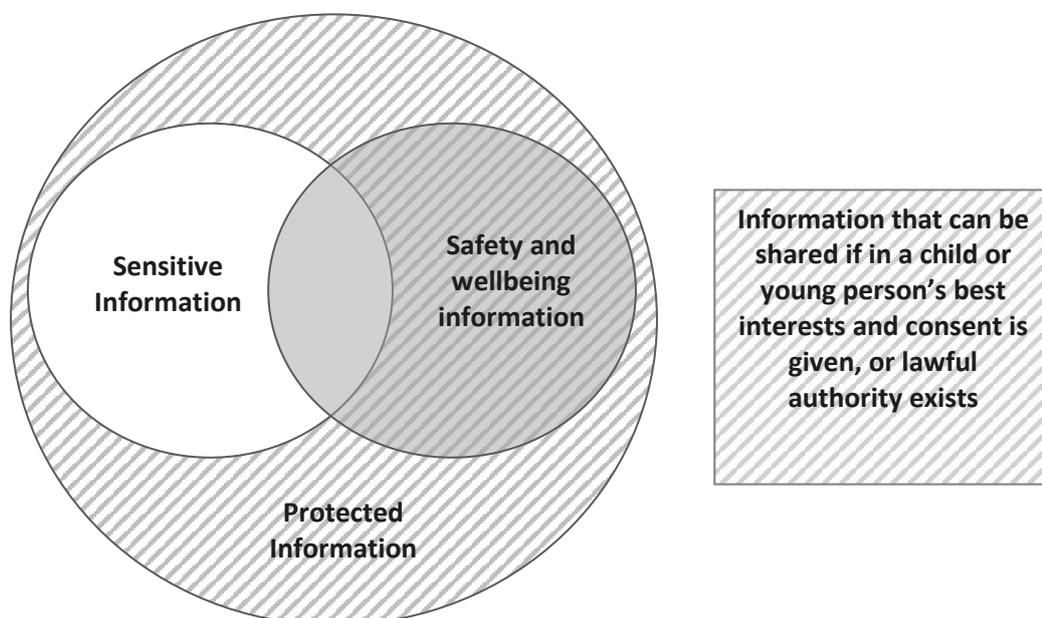
Safety and wellbeing information

Safety and wellbeing information is protected or sensitive information relating to the health, safety or wellbeing of a child or young person. The information does not have to relate solely to a child or young person and can also refer to their family or someone else (for

⁸ Information Privacy Act 2014 (ACT). The Privacy Act 1988 (Cth) imposes obligations and restrictions covering the collection, use and disclosure of personal information on Commonwealth public sector agencies and private sector organisations (with an annual turnover of \$3 million or more and health service providers).

example, information about a parent’s drug use history, a parent’s mental health diagnosis and treatment, a parent’s criminal history or a child’s educational testing results).

The diagram below illustrates the relationship between the three different types of information:



Information sharing entities

The CYP Act establishes a regime for sharing information between ‘information sharing entities’ (section 859). An information sharing entity is a person or agency that has information about a child’s safety or wellbeing. These include CSD and a range of government and community-based agencies that provide services to children and their families.

Information sharing entities include foster carers, kinship carers, people with parental responsibility, people providing care, out of home care agency staff, agencies providing support services, the ACT Public Advocate, Official Visitors, a Minister, the police, all statutory office holders and interstate statutory office holders.

The CYP Act identifies the following as information sharing entities:

- a parent or person with parental responsibility of a child (including an out of home carer) or foster care service;
- a Minister, ACT education provider, police officer or member of a police service or force of a State, or health facility;
- any of the following organisations that provide services to, or have contact with, a child or their family:
 - an administrative unit;
 - a community-based service;
 - a territory authority (other than a legal authority);
 - a territory instrumentality;

- an entity established under law of a State or the Commonwealth;
- the holder of a position established under a law of a State or the Commonwealth (e.g. official visitors); and
- a public employee (other than a judge or magistrate) (section 859).

The CYP Act also establishes ‘pre-natal information sharing entities’ (section 362). A pre-natal information sharing entity is a person or agency holding information that is relevant to the safety, wellbeing and development of a child after the child is born. These include individuals and agencies who would be involved in the care of a child, before, during and after the birth, where a child may need care and protection.

Information holders

All information sharing entities are ‘information holders’ (section 843). Information holders may exchange information with another information holder and must comply with the provisions of the CYP Act when sharing information. Information holders have a legal responsibility to protect the information they have received about children and young people under the Act. This responsibility extends to people who have had a past involvement with a child or young person under the CYP Act or prior legislation.

Decision-making and information sharing

In the ACT, decisions to share information must balance privacy and human rights obligations with the paramountcy of the best interests of a child or young person. The balance is also at times between the human rights of an adult and a child, as well as best interests of the child. Decisions to share sensitive information across agencies and between jurisdictions must also consider obligations to protect the confidentiality and privacy of protected and sensitive information. Decisions may also consider whether public interest would justify disclosure of the information, or whether sharing is required by a court order, other legal obligation or statutory exemption.

Information is exchanged about the safety and welfare of a child on a daily basis in the ACT, and confidentiality and privacy obligations are considered as part of this process.

Relevant information is exchanged regularly between entities with responsibilities for children’s safety and wellbeing, including:

- government and non-government agencies;
- schools;
- health services;
- service providers;
- law enforcement,
- regulatory and oversight bodies; and
- other jurisdictions.

On any given day, CYP staff share sensitive information regularly when exercising functions under the CYP Act. For example, information may be shared when making decisions about children and young people, convening a Carer Assessment Panel (chaired by ACT Together/Barnardos) and a

Linking Panel (chaired by CYPS), attending advisory groups with key internal and external partners, participating in a Restoration Panel, and participating in a declared care team.

Staff also attend quarterly forums with information sharing entities to improve practice and build trust with the community. Attendees include representatives from the Education Directorate; Chief Minister, Treasury and Economic Development Directorate; ACT Together; Independent Schools; Catholic Schools; Access Canberra; and ACT Policing's Sexual Assault and Child Abuse Team (SACAT).

In addition, the CYP Act provides a scale of information sharing according to the needs and best interests of children. As the risk to the child or young person increases, the greater the capacity to share information. For example, in response to a child concern report, staff are encouraged to gather information about the child and family from information sharing entities, as part of their assessment.

However, in response to a child protection report, staff may gather information from any person to assist with their assessment. In this way, the sharing of information is commensurate with the child's involvement in the child protection system. For example, if a child is in the care of the Director-General, free-flowing safety and wellbeing information exchange may occur through the declaration of a care team (see below).

In certain circumstances, sensitive information is required by a court to ensure the magistrate makes an informed decision about a child or young person's exposure to risk. For example, in a care and protection matter, the Children's Court is able to require sensitive information relating to reports and appraisals, as this is central to the question of whether the child is in need of care and protection (section 345).

Mechanisms for sharing information under the CYP Act

The CYP Act provides several mechanisms by which CYPS may or must share sensitive information for the safety and wellbeing of a child or young person in need of care and protection. These are:

- Care teams;
- Child protection case conferencing;
- Family group conferencing;
- Courts and investigative entities; and
- Criminal justice entities.

Declared care teams

The CYP Act provides for the establishment of 'care teams' for a particular child or young person. A care team facilitates information sharing among individuals and entities who are working with a child, young person or family to coordinate services and provide the best support. Members of a care team are both information holders and information sharing entities. They may share protected and sensitive information relevant to the safety and wellbeing of the child with other members of the care team.⁹

⁹ Safety and wellbeing information that is shared in care teams is protected (and may be sensitive) information.

A care team may be established, or 'declared', in several situations including:

- emergencies – to facilitate information sharing for up to two working days - for example, an emergency action situation at a hospital with health, police and other agencies;
- single events – to facilitate information sharing in relation to an event - for example, planning or undertaking an initial assessment of a child concern report or admitting a young person to the Bimberi Youth Justice Centre; and
- ongoing support – to work together and share information regularly - for example, working with a young person to provide ongoing care or to support compliance with a Court order.

A care team may only be declared by an authorised delegate of the Director-General (section 863(1)). Members of a declared care team should have a recent, current or future role with the child or young person (section 863(2)). This may include family members, foster carers, health professionals, community agency staff, counsellors, out of home care agency representatives, the Public Advocate, and Official Visitor or police. Children, young people, parents and people with parental responsibility should be advised that there is a declared care team concerning a child or young person that shares sensitive information about their safety and wellbeing.

Child protection case conferencing

In practice, the sharing of information between a declared care team will occur in a case conference meeting (usually held by CYPS), which can take place for a variety of purposes including case planning, a family meeting, a review of a child's arrangements or a safety planning meeting.¹⁰ Care team members can continue to share information outside of a case conference. Care team members are required to exercise caution and consider the information provided in a case conference, if people outside the care team also attend.

Family Group Conferencing

Family Group Conferencing (FGC) is a standard model that provides families with the opportunity to develop effective family plans to keep their children safe through shared decision-making. FGC has been operating as a pilot in the ACT since 2017 specifically for Aboriginal and Torres Strait Islander families.

Participants in a FGC may include the child, the child's parents and guardians, people who have a significant relationship with the family, such as grandparents, aunts, family friends and neighbours, as well as professionals who are involved with the child or family (for example, care and protection staff and health professionals). These participants may share protected and sensitive information during a FGC.

Between November 2017 and November 2018, CYPS partnered with Curijo, an Aboriginal operated organisation, to support 41 families to participate in FGC involving 48 children. Of these, 31 Aboriginal and Torres Strait Islander children have not subsequently entered care

¹⁰ Community Services Directorate, CYPS, Practice Guideline: Case Conferences. (unpublished).

following a Family Group Conference.¹¹ While these families were being appraised, reports in relation to the families reduced.

Courts and investigative entities

Information about a child or young person must also be shared with courts and investigative entities, where required under the CYP Act (Part 25.4) or another territory law (sections 865 and 866). Courts include a court of the Commonwealth (for example, the Family Court), a state or another territory. Investigative entities hold powers to require the production of documents or the answering of questions, and include the police, the Human Rights Commission, the Public Advocate and the Ombudsman. The Public Advocate may request both protected and sensitive information relevant to the physical and emotional welfare of a child or young person.

Criminal justice entities

Information about a child or young person can also be shared across and between criminal justice entities in the ACT. The *Crimes (Sentencing Act) 2005* provides authority for a Criminal Justice Entity (CJE) to share information with another CJE.¹² Information can be shared across CJE's about a person charged with an offence, the victim of an offence and a person who has been convicted or found guilty of an offence. The Director-General of CSD is listed as a CJE with whom information about an offence can be shared.¹³

Staff may also request information considered appropriate from another CJE in preparing a pre-sentence report. A staff member (an assessor) preparing a pre-sentence report can request information to be provided from various individuals and agencies, including a report for a young offender from a parent or person with parental responsibility, a domestic violence support organisation, a victim and statutory office-holders.¹⁴

Key service partners

CSD has improved information sharing with key service partners to better meet the needs of children and their families. For example, CYPS participates in a weekly forum to share information about family violence in the ACT. The forum aims to share information and inform interagency safety plans for children and comprises ACT Policing (Family Violence team), Director of Public Prosecutions, ACT Victims of Crime Commissioner, Domestic Violence Crisis Service and ACT Corrective Services.

Other information sharing obligations

In the ACT, the sharing of child protection information can also occur under the following schemes:

- Working with Vulnerable People (WWVP) scheme;
- Reportable Conduct scheme; and
- National Redress scheme.

¹¹ This information is accurate as at February 2019.

¹² Crimes Sentencing Act 2005 (ACT), s 136.

¹³ Crimes Sentencing Act 2005 (ACT), s 136(4)(d).

¹⁴ Crimes Sentencing Act 2005 (ACT), s 43.

Working with Vulnerable People Scheme

All Australian jurisdictions have a scheme for conducting background checks for people seeking to engage in child-related work. State and territory Working with Children Checks schemes include provisions for intra-jurisdictional, as well as inter-jurisdictional information sharing to support their operation.

In the ACT, the WWVP scheme is administered by Access Canberra and requires all organisations that engage employees or volunteers in regulated activities, as well as select registration bodies, to ensure relevant individuals are registered. Organisations can provide information to assist Access Canberra to determine an individual's suitability for registration with the individual's consent.

In practice, information sharing between government agencies with functions under the WWVP scheme occurs daily and often intersects with information sharing under other schemes such as the Reportable Conduct scheme.

Information sharing under the WWVP scheme is currently limited to sharing between agencies within the ACT. While other jurisdictions similarly lag, New South Wales has introduced leading practice for information exchange between jurisdictions, while Western Australia can also share information in limited circumstances.

Due to enabling provisions of other jurisdictions, Access Canberra can receive information for the purposes of WWVP checks. However, there is no legislative mechanism in the WWVP Act by which Access Canberra can proactively share information with other jurisdictions.

Additional amendments to the *Working with Vulnerable People (Background Checking) Act 2011* (ACT) are anticipated in late 2019 and 2020. These amendments will further strengthen information sharing arrangements under the WWVP scheme and enable information to be exchanged with other jurisdictions.

Reportable Conduct Scheme

The ACT Government implemented a Reportable Conduct scheme on 1 July 2017, with the ACT Ombudsman providing the oversight function for the scheme. Reportable conduct schemes require heads of agencies to notify oversight bodies about allegations, offences or convictions about child-related misconduct involving their employees. Conduct that is reportable involves abuse or neglect of a child, including sexual abuse, physical or psychological abuse.

As of August 2019, the ACT, New South Wales and Victoria are the only jurisdictions that have implemented a Reportable Conduct scheme.

The ACT Reportable Conduct scheme includes provisions relating to information sharing that are modelled on the New South Wales approach and Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW). The information sharing provisions support the principle that the safety, health and wellbeing of a child or young person must generally be treated as more important than protecting the confidentiality of information and personal privacy.

The ACT scheme allows government and non-government entities to share information that relates to the safety, welfare and wellbeing of a child or young person in relation to an allegation or investigation into reportable conduct.

Designated entities can proactively disclose to another entity (and other relevant bodies) information that relates to a reportable conduct allegation or investigation, or general information as it relates to the safety, health or wellbeing of a child or class of children.

The scope of information that can be shared between designated entities is limited to reportable conduct information rather than broad information related to children's welfare and wellbeing.

The scheme does, however, intersect with other information sharing mechanisms, as the ACT Ombudsman may proactively disclose any information received related to the safety, welfare and wellbeing of a child as part of its oversight function to a broad range of entities, including Access Canberra, ACT Policing, the Teacher Quality Institute and the ACT Human Rights Commission.

National Redress Scheme

The Australian Government established the National Redress scheme under *the National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Cth)* (National Redress Act). The ACT Government began participating in the scheme on 1 July 2018.

The National Redress Act authorises participating institutions to share information and overrides all state and territory legislation that would otherwise prevent information being shared, unless provisions are prescribed as exempt by the Rules. For example, sensitive information that appears in an applicant's case management file may be shared.

As a participating institution, the Territory is authorised to share information with the Commonwealth for the purposes of the Scheme and to prevent or lessen a serious threat to an individual's life, health or safety.

However, CSD has exempted several provisions to ensure certain information is not shared. For example, section 857 of the CYP Act ('protecting the identity of reporters') has been proposed to be exempt from the requirement to disclose information. This means that information about the identity of a reporter, as well as information that allows the identity of a reporter to be made out, cannot be shared.

In addition, the ACT may produce information in an aggregated form that does not disclose, either directly or indirectly, information about a particular person or institution. CSD may also share information within and between directorates to respond to a request for information, provide a direct personal response, and undertake internal investigation and disciplinary procedures.

Accessing child protection information

Several mechanisms enable a parent or person to seek access to their information at various stages in the child protection system. A parent, or person with parental responsibility, can

apply to access certain information during an appraisal process and will receive their information through an affidavit in care proceedings.

A person with a care history may request their information directly from CYPS. Some people participate in Life Story work to develop a therapeutic story of their life. Alternatively, a person may seek information under Freedom of Information (FOI) laws, where they have been involved with child protection or had a care experience.

The ACT is nationally consistent with respect to freedom of information and reflects better and leading practice with respect to Life Story work.

Appraisals and court processes

Several opportunities exist that enable a parent or person with parental responsibility, or a child, to seek access to their information at various stages in the child protection system. During an appraisal process, for example, any parent or person with parental responsibility who is contacted by CYPS about an appraisal has the right to be advised of the allegations contained in the Child Protection Report and to reply to these allegations. Section 369 of CYP Act requires CYPS to seek agreement from at least one parent or person with parental responsibility to an appraisal process. Further detail on the appraisal process is included in [Attachment D](#).

Following an appraisal process, CYPS may decide further information is required and perform a Family Assessment. Once this assessment is complete, CYPS provides a copy to all people with parental responsibility and arranges a meeting to discuss the assessment and any recommendations made by the assessor.

In some cases, a Family Assessment will recommend court action. All evidence to be presented in the court process must be shared to all parties involved by way of an affidavit. Further detail on court processes is included in [Attachment E](#).

Case management of care and protection proceedings at Court

Court action requires a case management conference to be held before the Court Registrar, or if escalation is required, a Magistrate hearing. The Director-General (as the applicant), presents an application to the court for a care and protection order. All other parties (e.g. the parent/s, person with parental responsibility and the child) must be provided with the background of the application, the terms of the proposed order, evidence to support the need for the order and results of any further assessments performed as part of the court process. All parties are also provided an opportunity to respond to the evidence presented in the Director-General's application.

Life Story

For children and young people growing up in out of home care, information about their unique life story may not be recorded in the same way as it would be in a traditional family setting. Personal stories of children in out of home care are more likely to be disjointed, reflecting experiences such as loss of family connections and placement instability.

Introduced in the ACT in 2010, Life Story seeks to preserve a child's records in a way that supports them to form a secure sense of identity. It acknowledges that statutory records often have a negative focus or are inaccessible, due to the volume of files and/or restrictions on sharing information.

Life Story may be offered when a person seeks detailed information about their own care experience, including through freedom of information (FOI). Where appropriate, the FOI team provides a warm referral for Life Story work, where this is likely to provide a more suitable response than statutory records.

While Life Story reflects better (and leading) practice, the resource-heavy nature of Life Story work means that it is provided as an 'intensive' form of aftercare support, rather than being offered universally to all children and young people who have had a care experience.

Freedom of information

The ACT's *Freedom of Information Act 2016* (ACT) (FOI Act) commenced on 1 January 2018, introducing an open access regime that ensures regular disclosure of certain categories of government information. The purpose of the FOI Act is to extend, as far as possible, access to the community to information held by the ACT Government and other statutory bodies.

CSD holds protected information and other documents that individuals and families may wish to access. The FOI Act provides a framework for individuals and families to access this information. As far as possible, CSD works to provide protected information where it is capable of doing so, while not releasing sensitive information.

Concerns about the ACT's information sharing environment

Overlapping and complex statutory and regulatory schemes create intricate information sharing arrangements in the ACT. When combined with obligations to oversight agencies, a complicated web of child protection information exchange emerges. This web of information exchange includes mandatory and voluntary reporting, failure to report obligations, reportable conduct and WWVP checks, regulation of the out of home care sector, and reporting obligations to statutory bodies such as the Public Advocate and the Children and Young People Commissioner.

CYPS staff working within this environment require an in-depth understanding of regulatory schemes and how they intersect, to be confident in their obligations to share information appropriately and safely. Given the restrictions of the CYP Act, staff must be cognisant that information shared under one scheme may then trigger obligations under other regulatory schemes. For example, staff must consider whether and how information shared with the Ombudsman under the Reportable Conduct scheme, may then be shared by the Ombudsman with Access Canberra under the WWVP scheme.

The increasingly complex regulatory environment and shift toward greater sharing of child protection information in the ACT means that the volume of requests, level of detail in requests, and the complexity of requests is growing rapidly.

Information sharing provisions in the CYP Act are complex. Several sections in the CYP Act are presented in a tiered structure, which prescribes the type of information that can be shared in certain circumstances by specific people, with different sharing rights and obligations.

The *Board of Inquiry into System Level Responses to Family Violence in the ACT 2016* (Glanfield Inquiry) describes the various sections and exemptions that guide information sharing provisions under the CYP Act as an ‘impenetrable labyrinth’.¹⁵ The risk with complex legislative provisions is that they can create uncertainty and may restrict or impede the ability of individuals and agencies to effectively share information according to legal and privacy obligations.

In response to the Glanfield Inquiry, changes were made to the CYP Act in 2016 to clarify the ability for government and non-government agencies to share information to promote the safety, welfare and wellbeing of a child or young person. Amendments also focused on improving information sharing under the WWVP scheme to ensure that information relevant to entities’ functions can be shared to prevent risk of harm to children and young people.

In addition, several amendments were made to the *Education Act 2004* (ACT) that enabled the sharing of information about children and young people in relation to their education in certain narrow circumstances. The amendments ensure the ACT can respond to a request for information from another jurisdiction about the enrolment status of a child. Providing this information enables the child or young person to be located in the education system and can assist the requesting jurisdiction to make decisions about that child’s safety and wellbeing. This may assist in reducing the risk of harm to a child or young person and providing support to their family where appropriate.

Several recent inquiries into the family violence sector in the ACT have also identified the problem of information sharing in the provision of domestic violence, child protection and family services.¹⁶ A 2015 gap analysis of domestic violence services in the ACT recognised that ‘proper and appropriate sharing of information is particularly critical for domestic and family violence....because it is a complex issue involving many agencies, which often alone do not have the information needed to make accurate assessments of risk.’¹⁷

More recently, the report from the ACT Domestic Violence Prevention Council Extraordinary Meeting 2018 made recommendations on ways to develop and improve the current family safety sector response to children and young people affected by domestic and family violence, including sexual violence, in the ACT.¹⁸ The report identified that many at-risk

¹⁵ Glanfield, L. (2016) Report of the Inquiry: Review into the system level responses to family violence in the ACT, pg. 81.

¹⁶ Glanfield, L. (2016) Report of the Inquiry: Review into the system level responses to family violence in the ACT. Board of Inquiry; ACT Domestic Violence Service System Final Gap Analysis Report by the Community Services Directorate (2016); Findings and Recommendations from the Review of Domestic and Family Violence Deaths in the Australian Capital Territory by the Domestic Violence Prevention Council (2016); ACT Government Response to Family Violence addressing the following reports: Glanfield Inquiry, Death Review, and Gap Analysis (2016).

¹⁷ ACT Government (2015) ACT Literature Review for the Gap Analysis of Domestic Violence services, pg. 28.

¹⁸ Domestic Violence Prevention Council report from Extraordinary Meeting 2018.

children and young people are ‘invisible’ in the ACT domestic and family violence system because of various factors, including ‘a deficit in response capabilities [including information sharing mechanisms] across the services system’.¹⁹

Royal Commission into Institutional Responses to Child Sexual Abuse

The issue of information sharing between institutions with responsibilities for the safety and wellbeing of children was examined by the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission).²⁰ Overall, the Royal Commission identified the need for reform to improve information sharing and better protect children from sexual abuse in institutional contexts.

The Royal Commission further explained its position on the issue, stating that its recommendations on information sharing ‘are underpinned by the principle that children’s rights to safety and wellbeing, and specifically to protection from sexual abuse, should be prioritised over other rights and concerns’.²¹

Comparison with other jurisdictions

Across Australia, laws operate to require or allow information sharing about the safety and welfare of children. These arrangements include information sharing regimes designed to facilitate information sharing between and across a range of agencies or organisations.

A high-level overview comparing the ACT with other jurisdictions finds that the ACT’s legislative framework is no more restrictive than other jurisdictions in terms of its privacy limitations and in imposing obligations on information holders to maintain confidentiality. For example, most jurisdictions impose obligations and restrictions to ensure information is shared only for performing functions under the relevant child protection legislation, and for the safety, health, welfare and wellbeing of a child or young person.

In contrast, the information sharing provisions under the CYP Act are more restrictive than those of other jurisdictions and inhibit the ability for a person to share their own information. For example, anything said or done during a family group conference (FGC) is deemed to be sensitive information. This means that, according to ACT legislation and guidance material, an Auntie who attends the FGC is prevented from discussing any information raised in the FGC with another family member who did not attend.

The ACT approach stands in contrast to the New Zealand model. In New Zealand, a FGC is a private and confidential meeting and all material that is discussed or relevant to a FGC is not admissible in court as evidence. However, there are no legislative barriers to sharing information outside the FGC and families are able to continue to discuss the FGC and the plan with significant people who may not have participated. Further work is required to ensure the ACT model reflects better practice – including ensuring families can share their own information without fear of prosecution.

¹⁹ Domestic Violence Prevention Council report from Extraordinary Meeting 2018, pg. 7.

²⁰ See Volume 8, Recordkeeping and information sharing.

²¹ Royal Commission into Institutional Responses to Child Sexual Abuse: Final Report (2017) Volume 8, pg. 30.

The ACT shares information within a more limited scope when compared to other jurisdictions such as New South Wales, the Northern Territory and South Australia. Generally, the ACT shares information about child protection matters, rather than about the safety, welfare and wellbeing of all children (with the notable exception of circumstances where the reportable conduct scheme applies).

Every jurisdiction restricts the publication of child-related proceedings. On balance, the ACT is more restrictive (but not as restrictive as Victoria) because it does not allow information to be published with the consent of the parties. This is distinguished from New South Wales, which prescribes in what circumstances the consent of a person or court may allow the publication of identifying information, including the identity of a reporter.

For a high-level visual analysis of the comparisons above, see [Attachment G](#).

National reform initiatives

Challenges with the sharing of information between and across agencies with responsibilities for children in Australia are complex and long-standing. In recent years, various inquiries into child protection services have recommended improvements to information sharing arrangements, to enable effective responses to child protection and family violence.²² The importance of information sharing and collaboration among government and non-government agencies in the areas of child protection and family violence has long been recognised.²³

National Framework for Protecting Australia's Children 2009-2020

Work under the *National Framework for Protecting Australia's Children 2009–2020* (National Framework) has sought to address the challenge of information sharing. Under the Fourth Action Plan (2018-2020) of the National Framework, states and territories are continuing work to improve the sharing of child protection information between jurisdictions, including information about the support needs of children and families involved in the care and protection system.

²² South Australia, Child Protection Systems Royal Commission, *The Life they Deserve – full report* (Nyland Report 2016); Victoria, Royal Commission into Family Violence, *Final Report* (Neave Report 2016); Queensland, Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection* (Carmody Report 2013); Royal Commission into Institutional Responses to Child Sexual Abuse: *Final Report* (2017) Volume 8, Recordkeeping and information sharing; Domestic Violence Prevention Council Report from the Extraordinary Meeting (2018); ACT Government Response to Family Violence (2016); Glanfield, L. (2016) *Report of the Inquiry: Review into the system level responses to family violence in the ACT*; Findings and Recommendations from the Review of Domestic and Family Violence Deaths in the ACT by the Domestic Violence Prevention Council (2016); ACT Government (2015) *ACT Literature Review for the Gap Analysis of Domestic Violence services*; Australian Law Reform Commission (ALRC) Report (2010) *Family Violence – A National Legal Response*. Final Report 114.

²³ Cung, D., Skattebol, J., Smyth, C., Katz, I., Keeley, M. and Bates, S. (2017) *Inter-Jurisdictional Child Protection Information Sharing: Final Report*. Sydney: Social Policy Research Centre, UNSW Sydney; Adams, C. and Lee-Jones, K. (2016) *A study into the legislative – and related key policy and operational – frameworks for sharing information relating to child sexual abuse in institutional contexts*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney.

As part of this work, CSD has partnered with NSW Families and Community Services (FACS) and the Department of Social Services (DSS) to participate in sharing information nationally to ensure child safety through a Business Research and Innovation Initiative (BRII) challenge.

Since 2016, CSD, FACS and DSS have progressed work to develop, test and evaluate technological solutions to create an innovative, specialised and fit for purpose national child protection information sharing system. This work aims to ensure seamless child protection sharing across jurisdictional borders.

A preferred solution has now been agreed by officials. Once agreed by all jurisdictions, this national system will enable state and territory care and protection agencies to effectively identify and make decisions in real time about children involved in the child protection system who have moved across borders.

Conclusion

The ACT Government is committed to continuous improvement in its child and youth protection and out of home care system. Our goal is to build a restorative child and youth protection system that works with families in a trauma-informed and respectful way. When children and young people are not able to live safely with their birth families, out of home care must meet their needs for safety, therapeutic support, ongoing connection to family and culture, and to know who they are, where they came from and why they are in care.

Appropriate access to and sharing of information is critical to assessing and addressing risks to children and young people, and to building relationships with families, children, young people and carers. At a practice level, CYPS has worked diligently provide staff with clear guidance through policies and practice guides to ensure information is shared appropriately. In addition, the capacity to appropriately access and share information between staff and agencies, and with children and young people, parents and carers, will be enhanced under the new client management system, which is expected to 'go live' on 1 October 2019.

Nevertheless, it is clear that the provisions of the *Children and Young People Act 2008* are too complex. This complexity is compounded by the range of reporting obligations introduced since 2008 to improve the safety of children and young people in the community. Part 2 of the Standing Committee on Health, Ageing and Community Services' current inquiry is therefore timely, and the Government looks forward to the opportunity to further participate in the inquiry as the Committee sees fit.