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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**Government Response to the Standing Committee on Health, Ageing and
Community Services' Report 9: Interim Report on Child and Youth Protection
Services (Part 1)**

**Presented by
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INTERIM REPORT ON CHILD AND YOUTH PROTECTION SERVICES (PART 1)

STANDING COMMITTEE ON HEALTH, AGEING AND COMMUNITY SERVICES

INTRODUCTION AND CONDUCT OF INQUIRY

On Thursday, 16 May 2019 the ACT Legislative Assembly (the Assembly) asked the Standing Committee on Health, Ageing and Community Services (the Committee) to inquire into Child and Youth Protection Services.

INQUIRY REFERRAL AND TERMS OF REFERENCE

The Assembly asked the Committee to inquire into and report on two matters. As the matters have different reporting dates and coverage, the inquiry and respective reports have been divided into two separate reports – Part 1 and Part 2. This report is concerned with the inquiry into the first matter (Part 1)—specifically:

- to provide an analysis of the decision of the ACT Court of Appeal in the case of *CP v Director-General of Community Services Directorate [2018] ACTCA 32* and to identify potential systemic issues that may need to be addressed.
- The Assembly asked the Committee to report on the first matter by no later than March 2020.

Recommendations

Recommendation no. and summary	Government Response
RECOMMENDATION 1 – 4.27 The Committee recommends that the concept of cumulative harm should be expressly defined in the <i>Child and Young People Act 2008</i> and related care and protection policies and practices.	Noted <i>The Children and Young People Act 2008 (CYP Act)</i> refers to cumulative harm in section 341(2), where significant harm is defined as including: ‘multiple instances of harm that together make up significant harm’. As the <i>CYP Act</i> has now been in operation for 12 years and has been subject to a series of amendments during this time, consideration will be given to ensuring the Act is contemporaneous in its response to cumulative harm and other forms of abuse and neglect. The Government will consider potential amendments to the <i>CYP Act</i> when a relevant <i>CYP Amendment Bill</i> is next developed.

RECOMMENDATION 2 – 4.28 The Committee recommends that the Community Services Directorate—Child and Youth Protection Services should identify and address current gaps in the care and protection legislative response to cumulative harm identification and intervention.	Agreed-in-principle See response to Recommendation 1. In addition, the Community Services Directorate – Child and Youth Protection Services (CYPS) will reinforce existing policy and procedure with respect to cumulative harm through ongoing training. To support CYPS staff determine the presence of cumulative harm and assess risk CYPS has a Practice Guide: <i>Working with Families affected by Cumulative Harm and Neglect</i>. This guide expressly defines cumulative harm and outlines the approach to understanding and managing cumulative harm and neglect. Following <i>The Board of Inquiry into System Level Responses to Family Violence in the ACT</i> (the Glanfield Inquiry), CYPS established the Case Analysis Team. This team provides independent analysis of individual cases. A key focus of a case analysis is to consider whether a child has experienced or is at risk of experiencing cumulative harm.
RECOMMENDATION 3 – 4.35 The Committee recommends that the Community Services Directorate—Children, Youth and Protection Services should examine the feasibility of: (i) developing a system of categorisation to assist with determining the severity of various types of neglect or alleged abuse in care and protection matters; and (ii) adopt the system in the <i>Children and Young People Act 2008</i>.	Agreed-in-principle See response to Recommendation 1. The CYP Act and the CYPS Risk Assessment Framework provide the foundation upon which an allegation of abuse or neglect and its potential impact on a child or young person is investigated by CYPS. The Community Services Directorate will review the Risk Assessment Framework to determine whether it can be strengthened in this respect.

RECOMMENDATION 4 – 4.55 The Committee recommends that the ACT Government ensure that action arising from its <i>Review of Children Protection Decisions in the ACT</i> addresses human rights principles, and directly addresses the human rights requirements (including public authority obligations) pursuant to the ACT <i>Human Rights Act 2008</i> that a review of this nature must consider.	Agreed The ACT Government is committed to delivering on the <i>Review of Child Protection Decisions in the ACT</i> and ensuring consistent and transparent access to internal and external merits review mechanisms for children, young people, birth parents, carers and significant others engaged with the child protection system. The development of an external review model is currently being considered, informed by responses to the <i>Review of Child Protection Decisions in the ACT</i> discussion paper. Any proposed model will be guided by the principles of restorative practice and the ACT Government’s human rights obligations, including the obligations of public authorities.
RECOMMENDATION 5 – 4.77 The Committee recommends that the ACT Government in conjunction with the ACT Childrens Court and key stakeholders in the care and protection space— explore the feasibility of the merits, or otherwise, of the publication of Childrens Court decisions and report back to ACT Legislative Assembly.	Agreed The Community Services Directorate and Justice and Community Safety Directorate will work with the ACT Magistrates Court to assess the likely impacts on the parties and the court of publishing decisions in child and youth protection matters. Section 712A of the <i>Criminal Code</i> includes an offence for publishing information that identifies or enables a young person in children’s proceeding or their parents to be worked out. However, the CYP Act includes a requirement for written statements of reasons which, although not published, are made available to a party on request.

RECOMMENDATION 6 – 4.90 The Committee recommends that the ACT Government explore the feasibility of codifying in the <i>Children and Young People Act 2008</i> that all families have a legal entitlement to family group conferencing before Child and Youth Protection Services can intervene and before a matter is referred to the Childrens Court in care and protection matters.	Noted While it would be preferable for a Family Group Conference to take place prior to statutory intervention being required, CYPS has a legislated responsibility to ensure the safety and wellbeing of children and young people in the ACT. This will at times require an immediate response if a child or young person is at risk of experiencing abuse and neglect. The <i>Children and Young People Act 2008</i> already provides for a Family Group Conference to occur (s75). In recognition of the overrepresentation of Aboriginal and Torres Strait Islander children and families reported to and involved in the child protection system, currently a Family Group Conference is available to Aboriginal and Torres Strait Islander families who agree to participate in this process. Any decision to extend this to all families requires the consideration of funding to expand the program. The Government is committed to ensuring that therapeutic options are available even after care proceedings have been commenced. The Government has provided initial funding to implement a Therapeutic Care Court (TCC) in the Childrens Court. The TCC will assist in reducing the number of children and young people in out of home care by helping them remain or re-unify with their families as soon as appropriate by addressing challenges associated with parental substance misuse, parenting capacity issues, family violence and mental health issues.
RECOMMENDATION 7 – 4.98 The Committee recommends, to the extent that work is not already taking place, that the Community Services	Agreed It is CYPS policy to prioritise kinship care placements over foster care placements for all children. The principles of the CYP Act express a strong preference for

Directorate—Children, Youth and Protection Services should ensure that decision-making regarding the number of placements a child or young person may have and the length of time at each placement actively considers all placement quality indicators including: placements in compliance with the Aboriginal Child Placement Principle; local placements; and placements with siblings.	supporting families to look after their own children and family-based care over care by foster carers. The CYP Act requires that all decisions made are underpinned by the best interests of the child (s349), which is legally defined and again prioritises connections with family, culture and placement stability as key considerations. CYPS staff record best interests’ decisions (including placement) using a structured template which ensures compliance with the legislation and policy. The Directorate reports on placement stability as well as rates of kinship care for all children, including for Aboriginal and Torres Strait Islander children. A specific procedure titled ‘<i>Placing a child in accordance with the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)</i>’ was developed to support the Territory’s commitment to the ATSICPP. This procedure steps out the process of making decisions in respect of priorities for placement and kinship care, using an appropriate cultural lens. Placements with siblings and supporting sibling groups are explicitly prioritised.
RECOMMENDATION 8 – 4.108 The Committee recommends, to the extent that work is not already taking place, that the ACT Government should articulate in applicable governing policies, processes and practices the linkages between various initiatives currently taking place in the care and protection space—including the <i>Our Booris Our Way Review</i> and the <i>Review of Child Protection Decisions in the ACT</i>—in the context of the ACT as a human rights jurisdiction and Canberra becoming a restorative city.	Agreed-in-principle The ACT Government is continuously working to improve the Territory’s child protection system to help families care for their children and make the ACT a safe place for every child. Part of this is providing all staff with clear guidance through policy and practice guides. While CYPS is committed to ensuring that these critical documents are consistent with current initiatives, human rights and restorative principles, drawing explicit linkages within each document is likely to make them significantly longer and less user-friendly in supporting better practice.

RECOMMENDATION 9 – 4.109 The Committee recommends that the ACT Government table in the ACT Legislative Assembly its response to the ACT Law Reform Advisory Council final report—<i>Canberra—Becoming a restorative city</i> (provided to government in October 2018) by the end of June 2020.	Agreed-in-principle The Justice and Community Safety Directorate and the Community Services Directorate continues to explore options for Canberra to become a Restorative City and how to better articulate the links between various initiatives that are seeking to strengthen existing practice. The Justice and Community Safety Directorate provided a supporting document to the ACT Law Reform Advisory Council final report and it can be accessed on the Restorative City page on the Justice and Community Safety Directorate’s website.
RECOMMENDATION 10 – 4.124 The Committee recommends that the ACT Government should: (i) review its responses to recommendations made in Auditor-General’s report No. 1 of 2013: <i>Care and Protection System</i> and those of the Standing Committee on Public Accounts inquiring further into the Audit Report in light of the matter subject to this inquiry; and (ii) inform the ACT Legislative Assembly whether it considers any further action is required in its response to recommendations made by the Auditor-General and the Public Accounts Committee, respectively.	Agreed The ACT Government will proceed to review its response to the recommendations arising from the Auditor-General’s report No. 1 of 2013: <i>Care and Protection System</i> and those of the Standing Committee on Public Accounts inquiring further into the Audit Report. The focus of this review will be on the specific issues the committee has raised under ‘Other Matters’ in the interim report. The Community Services Directorate will review the response to the Auditor-General’s Report and advise the Minister of the recommendations that are completed, outstanding or superseded. The Minister will report back to the Legislative Assembly.