

2020

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

STATEMENT

**Children and Young People – Out of Home Care:
Response to Motion of 18 September 2019**

**Presented by
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In September 2019, the Legislative Assembly agreed to a motion moved by Mrs Kikkert that required me to report to the Assembly in March 2020 with an update on the Review of Child Protection Decisions in the ACT (the Review). The update was specifically required to inform the Assembly on how the voices of children and young people have been included in the consultation process, the progress and outcomes of the Review and consultation process, what steps will follow and when these are expected to conclude.

The Review is a direct response to Recommendation 12 of the *Report of the Inquiry: Review into the system level responses to family violence in the ACT* (the Glanfield Report), which was that:

‘A review should be undertaken of what decisions made by CYPS should be subject to internal or external merits review. The review should have regard to the position of other jurisdictions and be chaired by the Justice and Community Safety Directorate.’

In line with the recommendation, the Justice and Community Safety Directorate (JACS) has chaired a working group to undertake the Review, which also includes officials from the Community Services Directorate (CSD).

As I have previously acknowledged, this work has not progressed as fast as many would have liked. This is in part due to the workload carried by the relevant officials in responding to the Royal Commission into Institutional Responses to Child Sexual Abuse, which was clearly a priority for all Australian governments.

The *Review of child protection decisions in the ACT* discussion paper was released for public consultation in May 2019 and submissions in response to the paper closed on 28 June 2019.

An independent consultant, Mr Peter Muir, was commissioned to review all submissions received as part of the consultation process and to prepare a findings paper for the consideration by the Review's working group and the Government.

As part of the consultation process, I wrote to 18 stakeholders, inviting their feedback on the issues raised in the discussion paper and offering them a face to face meeting with Mr Muir to support their participation.

These stakeholders included the CREATE Foundation, the peak organisation representing the voices of children and young people with an out of home care experience, the *Our Booris, Our Way* steering committee, the Human Rights Commission, local Aboriginal and Torres Strait Islander community controlled organisations, disability advocacy organisations and Carers ACT.

Eighteen formal submissions were received during the consultation period. Five of the organisations that made written submissions and one carer family also accepted the opportunity to meet with Mr Muir.

Submissions have been made public where respondents have provided their express permission, and where these submissions do not include the disclosure of personal information about another person.

I would like to thank the organisations and individuals engaged in the consultation process by sharing their experiences of the ACT child protection system and their opinions on how decision review within this space could operate.

Mr Muir's paper titled *Stakeholder Feedback on the Discussion Paper: Review of Child Protection Decision in the ACT* was provided to the Review working group on 31 October 2019 and is now available on the JACS and CSD websites.

The findings paper does not make recommendations, but rather synthesises the feedback and issues raised by respondents against the five questions asked in the discussion paper.

What the findings paper reaffirms is that decision-making in child protection is inherently complex. While the best interests of the child are paramount in all decisions made about a child's safety, welfare and wellbeing, there are times when the adults involved in a child's life have vastly different views about what is in a child's best interests and it falls to a decision maker in Child and Youth Protection Services or to the Childrens Court to make a decision.

While there were many points of difference in the submissions received, Mr Muir identified three recurring themes across the submissions. These themes will be front of mind as the ACT Government works to implement changes to internal and external review processes. These themes are:

- reforms to internal and external merit review systems need to be supported by consistent and strengthened CYPS practice;
- Aboriginal and Torres Strait Islander people, children and young people, and parents with disability warrant particular attention in the design and implementation of any system of decision review; and
- advice and advocacy is needed at every part of the system to ensure the effectiveness of any decision review process.

In addition, there was agreement that external merits review mechanisms were a necessary part of the review system. However, there was no consensus about the model that would best suit the ACT and there is more work to do on this.

With the completion of Mr Muir's report, there are three over-arching pieces of work being undertaken. These will need to intersect to provide a robust child protection decision review framework.

Firstly, Child and Youth Protection Services is undertaking work to improve internal decision-making processes. Stakeholders have told us that they want more consistent and transparent decision-making mechanisms. They want more information about how and why decisions are made, and they want to know how they can be part of the decision-making process.

Secondly, the Community Services Directorate is working to provide a more transparent and consistent internal merits review process. Stakeholders said that they did not know what internal merits review processes were available to them or how to access these review processes. They also felt that the processes were not independent enough of the original decision maker.

Work on these two areas – CYPS decision making and internal decision review is already underway through:

- the development of a decision-making guide for staff, with standardised templates and staff training to improve how decisions are made and communicated;
- the development of more information for stakeholders on CYPS decision making, in particular for children and young people, birth parents and carers;
- new information for advocacy services, so they can better support their clients to understand and participate in decision making;

- the redesign of internal decision review processes to strengthen consistency and transparency and again, more information about these processes will be developed for stakeholders;
- a redesign of complaints processes to provide a restorative, strength-based approach to complaints management that will focus on conciliation and participative involvement in complaints handling; and
- we will also continue to invest in advocacy support services through *A Step Up for Our Kids* and to fund programs that are based on family-led decision making and restorative models of practice such as Family Group Conferencing and Functional Family Therapy – Child Welfare.

It had been anticipated that this work would be completed by July 2020, but clearly this may be delayed as a result of the current COVID-19 emergency.

The third area of reform will be consideration of an external merits review process for child protection in the ACT. Work on external merits review is more complex and will take longer.

As previously noted, while the findings paper shows that there is agreement that more review mechanisms should be available, but not agreement on what they should be.

I recognise that a significant group of stakeholders, facilitated by the ACT Human Rights Commission (HRC), recently wrote me an open letter about external review of child protection decisions and rejected this analysis. However, it is the only conclusion I could reach after reading the submissions to the discussion paper, as well as Mr Muir's summary report.

While I welcome signs of an emerging consensus on a limited number of matters that would need to be settled in order to design an external review mechanism, there remains more to do. The Joint Communique from these stakeholders did not, for example, consider whether an external review process should be adversarial or restorative. This is a key question on which there were significant differences of view among respondents to the discussion paper, but which will influence the design, structure and operation of any external review mechanism.

It is my strong view that any external review mechanism needs to adhere to the fundamental principle of the *Children and Young People Act 2008* that the best interests of a child or young person is the paramount consideration. Hence, review mechanisms must first and foremost consider what is in the best interest of the child or young person; and in making a decision about a child or young person, a decision-maker must avoid delays in decision-making processes because delay is likely to prejudice the child's or young person's wellbeing.

A true external merits review mechanism (as opposed to a panel making recommendations to the Director-General) would require legislative change and probably additional government investment. I am committed to working with government and non-government stakeholders in investigating these options.

The Review working group has been establishing a plan to investigate and determine the preferable external merits review option going forward.

An important component of this work is how the voices of children and young people are included in the ongoing consultation process.

In the consultation phase of the review, written submissions were made by children and young people advocates, including the CREATE Foundation and the ACT Public Advocate and Children and Young People Commissioner. Mr Muir also spoke with a representative of the CREATE young consultants' program.

Feedback to inform the Review of child protection decisions in the ACT was also received from a small sample of young people on child protection orders engaged with child protection services and through data received from 2018 and 2019 Viewpoint surveys.

For the two young people who chose to provide feedback, their main interest was in the initial decision-making rather than a process of reviews. This is understandable given the immediate impact of decisions in their lives.

In the same vein, one young person said 'not taking too long' is a feature of a good decision. Another young person suggested that when there is not agreement about a decision that meeting half-way, or a compromise should be achieved.

This aligns with the feedback from the 2018 Youth Roundtable on case planning and decision making. The young people who attended were all clear that they wanted opportunities to be involved in decisions and understand what was happening in their lives and why.

The Viewpoint Survey is a digital questionnaire designed to engage children and young people and allow them to share and record their views, wishes and feelings. The survey is offered to children and young people on an annual basis by their case manager and asks questions that can inform their individual needs and provide broader information to inform child protection practice.

Relevant to this report, Viewpoint includes questions that specifically ask young people about decision making and their involvement in decision making.

In 2019, 53 young people between 8 and 17 years of age provided feedback, via the Viewpoint survey, on decision making. In this survey, a third of these respondents said people explain the decisions made about them all the time and 46 per cent said most of the time.

More than half responded 'yes' when answering the question about whether they know where they can get help to ask for changes to a decision or make a complaint. Another 38 per cent responded 'yes' about whether they felt able to ask for changes to a decision.

Again, in the 2019 Viewpoint survey, 68 per cent said people listened to what they said most of the time. Another 21 per cent said people listen to what they said all the time.

We know that children and young people want opportunities to be involved in decisions made about them, to provide their input and have the decisions made explained to them.

The information provided by young people is being used to inform the work now being undertaken by the Community Services Directorate regarding decision making and internal review of decisions.

Changes are being made to decision-making processes and internal review of decisions processes to ensure it is clear to children and young people how they can be involved in decisions made about them and their lives, how they can ask for help if they don't understand why a decision has been made and how they can ask for support in having a decision reviewed.

The ACT Government will continue to work with children and young people on their individual matters, seeking their views on processes that affect them and giving them a voice through the CREATE young consultants, youth roundtables and Viewpoint to ensure we are continuously developing a service that listens to children and young people and builds on their knowledge and experience.

In conclusion, the ACT Government supports the development of an external review mechanism for child protection decisions in the ACT and is committed to working with stakeholders and capturing the voice of children and youth as this important piece of work progresses.

I have responded to the letter from the HRC and other stakeholders acknowledging the community's frustration with the time it has taken to progress the Review. I have advised that I would be happy to meet with the HRC and any other stakeholders to discuss the Joint Communique.

My letter also noted that establishing an external review mechanism as proposed in the Communique would require amendments to the *Children and Young People Act 2008*, which is a complex piece of work. In the interim, as noted previously, work is progressing on models that reflect the intent of stakeholder feedback but don't require legislative changes. I have also offered to discuss that work with the HRC and to jointly host a forum or workshop on these matters when the current restrictions on face-to-face gatherings are sufficiently eased.

I look forward to continuing this work in a collaborative way with all stakeholders, including children and young people whose lives are most affected by the difficult decisions made in the child protection system.