

Submission to the Royal Commission into Early Childhood Education and Care

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I make this submission in my capacities as Guardian for Children and Young People, Training Centre Visitor and Child and Young Person's Visitor. In these positions, my role is to advocate for the rights and best interests of children and young people in care and youth detention.

I fulfil these functions through providing advocacy on individual and systemic issues, as well as monitoring the safety and wellbeing of these children and young people.

Response to Terms of Reference

This submission responds to the second term of reference for the Royal Commission into Early Childhood Education and Care (RCECEC):

The extent to which South Australian families are supported in the first 1000 days of a child's life, focussed on opportunities to further leverage early childhood education and care to enable equitable and improved outcomes for South Australian children.

My submission focuses on the needs and circumstances of infants and young children in care, as well as barriers to accessing supports for young parents with care experiences.

Infants and young children in care in South Australia

In 2020-21, South Australia had the highest per capita rate of infants in out-of-home care (OOHC), with nine in every 1,000 children under one year old living in OOHC. For Aboriginal children, this figure was seven times higher, at 63 per 1,000 children.¹

The number of very young children in OOHC in South Australia is indicative of a systemic overreliance on child protection services to respond to wellbeing concerns for children in their early years. Factors influencing this state of affairs include:

- A legislative framework for child protection services that is heavily focused on protection from 'harm'. South Australia differs from all other Australian jurisdictions in this respect, where the legislative focus is on the broader best interests and wellbeing of children.²

¹ Australian Institute for Health and Welfare (AIHW), *Child protection 2020-21* (2022), Table S5.5. Data has not yet been published by the AIHW for the 2021-22 financial year.

² For a more comprehensive discussion of this legislative framework, see Office of the Guardian for Children and Young People (OGCYP), *A rights-based approach to safety: OGCYP submission to the five-year legislative review of the Children and Young People (Safety) Act 2017* (2022), pp 2-7 ('A rights-based approach to safety').

- Low spending on early intervention and family supports,³ with little funding directed towards strengthening Aboriginal Community Controlled Organisations to deliver key services that divert Aboriginal children and families from a removal response.⁴
- Low reunification rates, with high reliance on long-term finalised custody or guardianship orders that place children under the care of the state government until they turn 18 years as a permanent care arrangement.⁵

While child protection interventions prevent harm for many children and young people, we must remember that these interventions are a serious – and often traumatic – disturbance in their lives. A high demand for child protection services is a sign of failure to provide appropriate support before children and families reach crisis point.

The OOHC sector in South Australia is under considerable stress from rising numbers in care. It is a major concern for my office that children and young children are increasingly being placed in residential care, resulting from systemic issues to source, approve and support family-based placements.⁶ While it is rare for infants and very young children to be placed in residential care, this does still occur – most recent data provided to my office by the DCP indicates that, at 30 June 2022, 118 children under the age of 10 were living in residential care, with 13 of these children under the age of five years.⁷

Culturally safe and trauma-informed early childhood education and care (ECEC) services have a vital role to play in offering an alternative path for working through the needs of vulnerable children and families. But it is important to remain mindful that expanding the availability of (and engagement) with ECEC services carries the risk of unintended consequences for children – unless proper attention is also given to the structure and response capacity of the child protection system.

Increased availability of and engagement with ECEC services is likely to result in greater identification of developmental vulnerabilities and wellbeing concerns for children. This is an important intervention opportunity, to explore family needs, put supports in place and report child protection concerns where required. But achieving this potential requires a parallel strategy, to strengthen family preservation strategies in South Australia.

³ In 2021-22, child protection expenditure on combined family support services and intensive family support services in South Australia was 19.6% lower than the national average. Data source: Productivity Commission, *Report on Government Services 2023*, Part F, Chapter 16, Table 16A.8 ('ROGS 2023')

⁴ The 2022 Family Matters Report described South Australia's investment in ACCOs to provide family support and intensive family support services as 'disappointingly low': SNAICC – National Voice for our Children and Family Matters – Strong communities. Strong culture. Stronger children, *The Family Matters Report 2022: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander Children in Out-of-Home Care in Australia* (2022), pp 42-3.

⁵ In 2020-21, 185 children were reunified with their families. Over three in four (77%) of children and young people on care and protection orders in South Australia were on long-term finalised guardianship orders. This was the highest rate in the country. Data source: AIHW, *Child protection 2020-21* (2022), Tables S4.10 and S6.1

⁶ In 2021-22, the residential care population grew at eight times the rate of the OOHC population. Data source: Productivity Commission, *ROGS 2023*, Tables 16A.2 and 16A.20. Issues with supporting the family-based care sector have been explored in depth in recent inquiries and inquests: see, Fiona Arney, *Independent Inquiry into Foster and Kinship Care* (2022) and *Findings of the Coronial Inquest into the Death of Zhane Andrew Keith Chilcott*, 6 April 2023.

⁷ Data source: Government of South Australia, Department for Child Protection (unpublished).

In this context, it is important to highlight that key recommendations from the 2016 *Child Protection Systems Royal Commission* (the Nyland report) remain outstanding, regarding the need to establish alternative notification and referral pathways for accessing early intervention and preventative response strategies.⁸

The Nyland report highlighted the importance of allowing ‘soft’ self-referral options for families to access early intervention supports, and for mandatory notifiers to discharge their obligations through referral to NGO service providers in certain circumstances, rather than making a child protection report. The model recommended by the Nyland report is depicted in Figure 1 below.

Figure 1: Proposed reform model of the child protection system, from the *Child Protection Systems Royal Commission*⁹

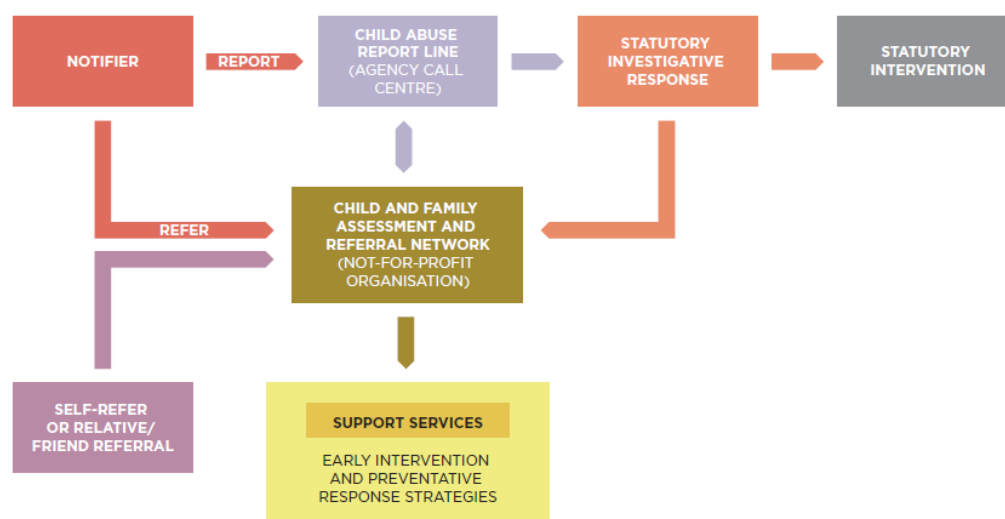


Figure 8.6: Proposed reform model of the child protection system

This recommendation was accepted in principle by the South Australian government. However, it was not implemented into legislation, and the *Children and Young People (Safety) Act 2017* continues to direct mandatory notifiers into the statutory system.¹⁰ While the government has reported this recommendation as complete, the 2022 review of South Australia’s child protection system conducted by Kate Alexander concluded that: ‘the intent of Nyland’s recommendations about alternate referral pathways and mandatory reporting have not been supported adequately in the legislation, nor in the operations of practice’.¹¹

This outstanding recommendation is heavily linked to access and engagement with ECEC services, for those who need it most. Strengthening alternative pathways to support services outside of the statutory child protection system has the potential to alleviate one of the most significant barriers to vulnerable families engaging with ECEC services: namely, the real and reasonable fear of heavy-handed child protection responses and interventions if they admit that they need help.

⁸ Margaret Nyland, *The life they deserve: Child Protection Systems Royal Commission* (2016), recommendations 51 – 56.

⁹ Ibid, p 172.

¹⁰ Kate Alexander, *Trust in Culture: A review of child protection in South Australia* (2022), p. 108.

¹¹ Ibid, p 110.

Barriers to accessing early intervention supports for children with disability

There are challenges with sourcing authoritative data about the number of children and young people with disability living in care in South Australia. The Department for Child Protection (DCP) has advised my office that there are impediments to publishing data about disability, due to limited datasets available and difficulties in retrieving data about disability types from existing software. It is of ongoing concern to my office that this information cannot be provided. If a system does not fully understand the level of need, then how can it appropriately target resources to meet those needs, and ensure improved outcomes for children with disability in care?

While I do not hold information about the number of all children with disability in care, I have been informed by the DCP that approximately 25-26% of children and young people in care have an NDIS plan.¹² Noting that not all disabilities lead to eligibility for NDIS services, it is likely that the rate of children and young people with disability in OOHC is significantly higher.

My office is concerned to note ongoing issues with accessing therapeutic supports for young children with disability, even when they have been found eligible for NDIS early intervention supports. At times, we have observed children not receiving therapies for identified support needs despite having significant funds available in their NDIS plan, largely as a result of thin markets. This can result in long wait-times, or simply no available services to provide key therapies that support an early intervention approach, particularly in regional and remote areas.

On other occasions, long waitlists for state health services can lead to delays in accessing important medical treatments, as highlighted by the below case study.

Case study: 'Summer' – Access to timely health care¹³

GCYP received a request for advocacy on behalf of 2-year-old Summer, who was residing in a family-based placement. Summer has complex medical and disability needs and had been referred for semi-urgent surgery under the public system due to being constantly unwell and in significant pain. Summer was expected to have surgery within 90 days but was still waiting several months later. During that time, Summer continued to suffer with persistent illnesses, which impacted her ability to engage with her allied health and disability supports and compounded her developmental delays. OGCYP advocated with DCP case management, at the local level, for Summer to be seen under the private system. This was approved by DCP and Summer had a successful surgery just a few weeks later.*

When young children with disability or developmental delays are unable to receive early intervention supports, this leads to missed opportunities to divert or minimise developmental vulnerabilities. This can have lifelong consequences for social inclusion, health experiences and ongoing service needs and interventions.

For families caring for children with disability, this can lead to a path of compounding complexity and disadvantage that ultimately results in child removal. For children with disability who come to live in care, missed early intervention opportunities can interact with systemic pathways to

¹² OGCYP, *Guardian for Children and Young People 2021-22 Annual Report (2022)*, p 5

¹³ Case study published in *ibid*, p 16.

institutionalisation – including through placements in residential care facilities,¹⁴ and experiences of care criminalisation.¹⁵

Barriers to accessing support for parents with care experiences

Young parents with care experiences may have become parents while they were still in care, or after leaving care during a time when they were transitioning to independence and adulthood. In either event, young parents with care experiences may face particular barriers in accessing services, including:

- Trauma responses to interacting with services such as health, welfare and child protection, which may impact their engagement with support services.
- Heightened scrutiny from service providers, which can lead to individually or systemically biased practice approaches.
- Limited familial and community connections after leaving care, to provide practical, emotional and financial child rearing support.

These barriers can contribute to poorer social and emotional wellbeing outcomes for these young parents, as well as their children. Supporting young people in those circumstances has the potential to both reduce the developmental vulnerability of infants and young children, and divert intergenerational cycles of child removal.

The Australian Research Alliance for Children and Youth (ARACY) published a report in 2022 on the needs of young parents with a care experience. The report highlighted a range of policy levers that can be used to strengthen supports for this group of parents, including enhanced transition from care supports, extended support for OOH placements to the age of 21 years and ensuring an automatic entitlement to secure and appropriate housing for young parenting care leavers.¹⁶

Relevantly, a key recommendation from the report was to ensure that ECEC services are available onsite in schools, to promote ongoing engagement with education for young parents.¹⁷ It is equally important to consider how young parents can be supported to engage with higher education and employment. Strategies such as mentor programs, early transition planning to prepare young people for independence and guaranteed financial assistance can also improve young parent's access to ECEC services.

In my office's 2022 submission to the review of the *Children and Young People (Safety) Act 2017*, I made the following recommendation regarding support for care leavers, to aid their transition to adulthood:

Amend the [Children and Young People (Safety) Act 2017] so that assistance is guaranteed for all young people leaving care until the age of 25 years, and supported placement is

¹⁴ Jaylene Shannon, Nathan J Wilson and Stacy Blythe, 'Children with intellectual and developmental disability in out-of-home care: A scoping review' *Health and Social Care in the Community* (2023).

¹⁵ Susan Baidawi, et al, for the Royal Commission into Violence, Abuse, Neglect and Exploitation of people with Disability, *Research report – Care criminalisation of children with disability in child protection systems* (2023).

¹⁶ Australian Research Alliance for Children and Youth Limited, *Showing the light: Supporting Young Parents with Experience of the Care System* (2022), p 14.

¹⁷ Ibid, p 17.

guaranteed for all young people leaving care until the age of 21 years. This includes for children in both family-based and non-family-based care.¹⁸

I made this recommendation in the context of what many young people in care need to feel supported, live well and thrive; but it equally translates into the lives of their children.

It is promising to note that the report of the review has recommended a number of legislative changes to improve transition supports for care leavers, including embedding provisions for carers to continue to receive carer payments where a young person continues to live with them up to the age of 25 years.¹⁹ Unfortunately, though, no recommendations were made to guarantee supported placements or ongoing financial and case management assistance for young people in residential care – who are often at most risk of exiting care to homelessness.

The government's response to this report is yet to be seen, with draft legislation anticipated to be introduced to Parliament in the coming weeks. I intend to continue advocating that guaranteed financial and other support for all care leavers – including to prevent young people exiting to homelessness – be included in this package of legislative reform.

Conclusion

The high number of infants and young children in care in South Australia is indicative of serious systemic barriers to accessing the supports that children need in their first 1,000 days of life.

Access to ECEC services is inextricably linked to child protection responses. High quality services have considerable potential to divert child protection responses, through better supporting vulnerable parents – including young parents with care experiences – who are at risk of being separated from their children. Access to ECEC services for children can facilitate parents' opportunities to engage in education, employment and other activities with the potential to promote social inclusion, improve physical and mental health and alleviate financial disadvantage. This can support the resilience and capacity of parents to care for their children and assist in breaking intergenerational cycles of poverty and child removal.

This outcome is good for parents, and it is good for children; the evidence is clear that all children benefit from ECEC services, and especially children who are developmentally vulnerable. ECEC services are a key opportunity to identify when children have unmet developmental needs, and adopt an early intervention and prevention approach which may divert the need for child protection interventions later in life.

But the ability of ECEC services to achieve this result is heavily impacted by broader child protection frameworks and responses. Careful and considered planning will be required to ensure that ECEC service availability and engagement is supported by child protection reforms, with:

- An improved focus on early intervention and family preservation supports
- Strategies to address thin markets arising from workforce availability issues, and
- Comprehensive supports for young care leavers.

¹⁸ OGCYP, *A rights-based approach to safety* (n 2), recommendation 22.

¹⁹ Government of South Australia, DCP, *Review of the Children and Young People (Safety) Act 2017 Report* (2023), p 34.