THE GUARDIAN'S

Submission

Children and Young People
(Safety and Support) Bill 2024

September 2024

Guardian
for Children and
Young People

Paying Respect & Acknowledgement

The Office of the Guardian for Children and Young People humbly and respectfully acknowledge the lands, waters, skies, histories, legacies, talents, creations, sciences, care, love, kindness, giving and generosity of the First Peoples of the lands that we live, work, walk and play upon.

Our office is based on the lands of the Kaurna people, we thank and express our gratitude to Kaurna for looking after this place so future generations can enjoy. We work right across the state called South Australia and we pay similar homage to those nations in which we visit.

Our promise is to work and walk with care in all we do - with our dedication to also supporting future generations.

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Guardian for Children and Young People Level 3, 111 Gawler Place, Adelaide 5000

www.gcyp.sa.gov.au Ph. 08 8226 8570
gcyp@gcyp.sa.gov.au
GPO Box 2281
Adelaide SA 5001
DX 115

Preliminary Notes

I make this submission in my capacities as Guardian for Children and Young People (the Guardian), Training Centre Visitor (TCV), Child and Young Person's Visitor (CYPV) and Youth Treatment Orders Visitor (YTOV). In these positions, my role is to advocate for the rights and best interests of children and young people in care and youth detention.1

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

Care Experience Consultation

In August 2024, I sought the views of people with experience of living in out-of-home care, to hear what they thought about key changes to the Children and Young People (Safety and Support) Bill – and to inform this submission. It is important that we listen to people with care experience and hear their views on what's needed to improve the child protection system, and how legislation can help achieve this goal.

Direct quotes from this consultation appear throughout this document. As I was trusted with these words, I present them as unaltered as possible. There is swearing and hard truths, and I acknowledge some people may take offence. But I consider it is important to use those words as they were spoken. This is necessary to convey the intensity of feeling behind the statements.

I express my sincere gratitude to those involved for their willingness to talk about their experiences in care and the broader child protection system. This submission is all the better for it and I am honoured and humbled to present your views throughout. I pay my respect and acknowledge your commitment and desire to make things better for all children and young people, now and into the future.

[1] Information about each of my roles and statutory functions is available on the Office of the Guardian for Children and Young People's website at https://gcyp.sa.gov.au/what-we-do/.

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Executive Summary

It has been a long journey to get to this point, of providing my feedback on amendments to the *Children and Young People Safety Act 2017* (CYPS Act).

From the announcement of the five-year legislative review in September 2022; through to providing a comprehensive submission in November 2022 with 26 recommendations for legislative reform; to receiving the Department for Child Protection's Review Report in March 2023; and now, two years later, a draft Bill.

And, I have to say: I am underwhelmed by this consultation process. I am sure that I will not be alone in observing that Government receptiveness to feedback over the past few weeks has been lukewarm, at best. And, at times, downright chilly.

After nearly two years of delays, closed door deliberation, cryptic timeframes and convenient omissions from public-facing documents, the community and sector has been given four weeks to review and respond to 218 provisions and two Schedules. What's at stake in this review is not only identifying those missed opportunities for reform; but also identifying those amendments that have been omitted from briefings, information sessions and a one-pager on key changes. Some of these amendments are anything but minor, and I hold serious concerns about both the implications of the changes and the lack of transparency involved.

The message received from Government through this consultation process, loud and clear, is: trust us, this is happening, we know best. With or without your support, this Bill is going through. Let us get this through, and then we'll circle back.

Well, to that, I say back to Government: your time pressures are self-made, and you should know better than to play politics with children and young people's lives.

You should know better: to provide real, honest and detailed information to those who know best what the child protection system is like, children and young people in care and those adults who have navigated and lived through the system. And then listen and act on what they say.

You should know better: to put your money where your mouth is, and meaningfully engage and partner with Aboriginal people, communities and leaders in South Australia about legislative amendments that will Close the Gap for Aboriginal children and young people.

You should know better: to listen to the expert advice you have legislated, appointed, funded and are surrounded by. I shouldn't be left scratching my head about why you have not accepted recommendations made by myself as the independent oversight and advocacy body for children and young people in care. Or my colleagues appointed under legislation to advise Parliament about the rights and best interests of children and young people, the Commissioner for Aboriginal Children and Young People and Commissioner for Children and Young People.

The responsibility of making these statements sit heavy on me. Because I know that, if Government listens, that means delaying the process of legislative reform to enable a fulsome consultation and response process. I don't want delay, because I am entirely enthusiastic about some of the changes I see in this draft Bill.

But, in the same breath, I am really worried about other aspects and disappointed about missed opportunities. After considerable reflection, I am writing this feedback because I genuinely believe we can't afford any more rushed processes, buried interagency negotiation and compromise for convenience.

So, to Government, I say: it's up to you whether you listen to the community you serve about what's needed for meaningful change. The wisdom and experience sits with children and young people, those who have been through the care system, the families and communities who care and raise children, the oldest living culture on Earth. And, while I do not want to contribute to delay, I also know that I can't name a time where something that was rushed through Parliament did so to genuinely benefit communities.

With those observations and reflections in mind, I have decided that I am not engaging in the political game of compromise. My feedback on the draft Bill is fearless and frank, and I hope that compromise can be reached instead within Cabinet – to excise proposed amendments which I do not believe are in the best interests of children, at the very least, without an open, transparent and fulsome consultation process. And to take another look at

what's been put forward by the community and sector, around what would help.

I understand, and am realistic about the fact, that some of the amendments I have and will continue to advocate for are costly and are unlikely to be incorporated within the new Bill. For those changes, I live in hope – but, if faced with failure, I will continue to advocate for them and work towards influencing the social settings that lie behind community acceptance and views. I will work towards influencing civic society attitudes, to ensure we do not see or treat children and young people as dollars traded across portfolios ~~or~~, but as individuals who we owe a debt to. And that, when we acknowledge the bare minimum, we owe to children and young people, we simply find ways to fund it – like all the costly services, conveniences and benefits that adults receive.

Now, to the details.

Summary of response

In November 2022, I made a comprehensive submission to the five-year review of the *Children and Young People (Safety) Act 2017 – A rights-based approach to safety*.[2] This submission was based on my experience in advocating for children and young people in care and detention, monitoring the provision of services, and talking with children, young people and staff about their experiences.

A rights-based approach to safety made 26 recommendations to help shape new laws to improve the system and the lives of children and young people.

I acknowledge that the draft *Children and Young People (Safety and Support) Bill 2024* (CYPSS Bill) has incorporated some, although not all, of my recommendations. As Appendix 1, I have included a summary of my previous recommendations – and the extent to which they were incorporated into the CYPSS Bill (or not). The breakdown is as follows:

- Seven were substantially incorporated.
- Seven were partially incorporated.
- Twelve were not incorporated to any extent, nor were they acknowledged in any public-facing documents arising from the legislative review.

Where my recommendations have not been incorporated, or have only partially been incorporated, I preface my submission by indicating that those recommendations stand.

But, as they have already been considered and not introduced into the draft Bill, I will not substantially reproduce the same information and arguments; although I must express my disappointment that Government has not provided reasons or a response to indicate why those recommendations have not been implemented.

Instead, my submission focuses on the following:

- Highlighting those recommendations not (or only partially) incorporated which I believe have the most significant impact on children and young people's lives
- My observations regarding key changes proposed to the *CYPS Act*
- Putting forward the views of those with care experience, arising from my recent consultation.

In writing this submission, I believe that Government should not proceed with the following changes which are at risk of causing (or contributing towards) harm to children and young people:

- Removing the obligation to report on quality of cultural support planning for Aboriginal and Torres Strait Islander children and young people.
- Removing the obligation to report on progress against recommendations made by the *Child Protection Systems Royal Commission.*
- Embedding the Statement of Commitment to Foster and Kinship Carers into legislation.
- Introducing the Quality of Care Report Guidelines.
- Removing the express obligation for Annual Review panels to provide children and young people with a reasonable opportunity to make submissions, including in the absence of their carer (if they wish).
- Providing an express right for carers to personally present their views at Annual Reviews.
- Increasing the penalty for harbouring or concealing a child who is absent from a State care placement without lawful authority.
- Expanding powers for child protection officers, to use force to enter premises without a warrant where a child is absent from a State care placement without lawful authority.

[2] A rights-based approach to safety: OGCYP submission to the five-year review of the *Children and Young People (Safety) Act 2017*. Office of the Guardian for Children and Young People, Adelaide 2022.

- Expanding powers for the Court to order a warrant to apprehend a child or young person who is absent from a State care placement without lawful authority.
- Changing the eligibility age range for assistance to care leavers from 17 – 25 years, to 16 – 24 years.
- Removing the Minister's discretion to provide assistance to a care leaver who has been in care for less than six months.
- Removing the obligation to prepare a leaving care plan for children and young people on short-term guardianship or custody orders.

In raising these matters, I am mindful that none of these changes have been included in public-facing documents regarding the outcomes of the legislative review and proposed legislative changes. While I have reviewed the CYPSS Bill in as much detail as possible within the strict feedback timeframes, I do not have confidence that I have been able to catch all relevant changes hidden within 218 provisions and 2 Schedules.

For matters of such significance, I encourage Government to provide more transparent information about changes so that individuals, communities and the sector can consider and provide fulsome feedback.

In addition to highlighting changes that I am worried will make things worse, I also remain in hope that I can influence some changes for the better. The amendments I have identified are easy to implement from a drafting perspective, but would have hugely positive impacts for the lives of children and young people. This includes:

- Making the best interests of the child or young person the paramount consideration in decision-making.
- Guaranteed assistance for children and young people leaving care, including supported placement to the age of 21 years.
- Making contact determinations a decision reviewable by SACAT.
- Removing the caveats that the Charter of Rights for Children and Young People, and leaving care plans, do not create legally enforceable rights or entitlements.
- Providing children and young people with enforceable rights to personally present their views in forums that affect them, including annual reviews and Contact Arrangement Review Panel (CARP) reviews.
- Providing children and young people with enforceable rights to be represented by an advocate, for internal reviews and CARP reviews.
- Ensuring that children and young people in all forms of alternative care – including under third-party orders, voluntary out-of-home care and under safety plans – have access to independent advocacy and oversight.

While these changes are relatively 'easy' from a drafting perspective, I acknowledge they are not so easy to incorporate from a practice perspective, or from a dollar's perspective. But they are best practice, and fundamental to upholding children and young people's rights, best interests and wellbeing. So, I put them forward in any event.

Where such recommendations are not incorporated, it is clearly not about time to draft changes – the process has taken nearly two years to get to this point. It is about money to guarantee rights. It is about willingness to act to uphold best practice in children's rights. It is about reluctance to introduce accountabilities that demonstrate when best practice is not upheld.

Where such recommendations are not incorporated, I intend to report on these matters and will continue to advocate for legislative amendment into the future.

The Best Interests of the Child

No.	Guardian Recommendation	Key changes in draft CYPSS Bill
1.	Make best interests of the child the paramount consideration in decision-making	• 'Best interests principle' introduced – but protection from harm remains paramount • Best interests are to be upheld and effected in all decision making • Broad range of relevant factors listed relating to physical, social, emotional, psychological and cultural wellbeing

Since commencing my role in August 2022, I have raised my concerns publicly on multiple occasions regarding the impact of the controversial decision to make 'protection from harm' the paramount consideration in decision-making under the CYPS Act. This paramount principle displaced the best interests of children and young people as the paramount consideration; and, in doing so, **brought South Australia considerably out-of-step** with international law, contemporary best practice approaches and child protection legislation in all other Australian jurisdictions.

I note that the *CYPS Act* is currently inconsistent with Article 3 of the *United Nations Convention on the Rights of the Child*, which stipulates that children and young people have the right to have their best interests taken as a primary consideration in all actions that affect them. Further, **South Australia is the only Australian jurisdiction** to focus exclusively on 'protection from harm' as the paramount consideration.[3]

While I am pleased to see the introduction of the best interests' principle in the CYPSS Bill, I maintain my initial recommendation that best interests should be the paramount consideration – and not subject to protecting children and young people from a narrow conception of physical and psychological harm. The best interests' principle is **inclusive of protection from harm, not in opposition to it**.

The reason that international and national best practice guidance requires best interests as a paramount consideration is because of the sophisticated, nuanced and individualised process it establishes for rights-based decision-making. As expressed by the United Nations Committee on the Rights of the Child:

There is no hierarchy of rights in the Convention; all the rights provided for … are in the 'child's best interests'[4]

There is no conflict between the right of the child to have their best interests taken into account, and the safety and wellbeing of the child. All rights for a child are in their best interests. Rather, Article 3 provides the methodology for achieving these rights: that the decision maker should give consideration to all of the child's rights under the CRC and identify the action that achieves these rights to the fullest extent possible.

While the Report into the Review of the *CYPS Act (CYPS Act Review Report*) noted that many stakeholders told the review it was important to maintain safety as the paramount consideration in the Act, it is worth highlighting those stakeholders who instead recommended that best interests should be made the paramount consideration:

- Myself, as Guardian for Children and Young People, Training Centre Visitor, Child and Young Person's Visitor, Youth Treatment Orders Visitor

[3] Children and Young People Act 2008 (ACT), s 8; Care and Protection of Children Act 2007 (NT), s 10; Children, Young Persons and Their Families Act 1997 (Tas), s 10E; Children, Youth and Families Act 2005 (Vic); s 10; Children and Community Services Act 2004 (WA), s 7; Children and Young Persons (Care and Protection) Act 1998 (NSW); s 9, Child Protection Act 1999 (Qld), s 5A.

[4] UNCRC, General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para 1), 29 May 2013, CRC/C/GC/14, [4].

and a member of Australia's OPCAT National Preventive Mechanism.

- The Commissioner for Aboriginal Children and Young People.
- The Commissioner for Children and Young People.
- The CREATE Foundation.
- The South Australian Council of Social Service.
- Child and Family Focus SA.
- the Law Society of South Australia.[5]

The *CYPS Review Report* did not adequately address why submissions from myself, and other highly regarded individuals and entities, have been disregarded on this matter.

Recommendation 1

I urge amendment to the draft bill to make best interests' principle the paramount consideration in decision-making.

[5] Commissioner for Children and Young People, Submission to the Review of the Children and Young People (Safety) Act 2017 (2022), p 4; CREATE Foundation, Submission to the South Australian Government: Review of the Children and Young People (Safety) Act 2017 (2022), pp 4-5; The Law Society of South Australia, Review of the Children and Young People (Safety) Act 2017 (2022), p 3; South Australian Council of Social Service, Submission to the Department of Child Protection's Review of the Children and Young People (Safety) Act 2017 (2022), pp 5-6; Child and Family Focus SA, Child and Family Focus SA Submission to the 2022 Review of the Children and Young People (Safety) Act 2017 (2022), p 35.

Aboriginal & Torres Strait Islander Child Placement Principle

I am pleased to note changes in the CYPSS Bill aligned with recommendations I made in 2022 – and as supported by other key stakeholders – regarding principles for Aboriginal and Torres Strait Islander children and young people.

In particular, I welcome the proposal to embed all five elements of the Aboriginal and Torres Strait Islander Child Placement Principle – and the sixth pre-cursor element – to the standard of active efforts.

Alongside introducing the Principle in its entirety, I welcome the inclusion of practical provisions to support interpretation and application, including:

- legislating a requirement for cultural support planning in case plans
- specifically requiring active efforts to support reunification, and undertake family scoping
- articulating principles of family-led decision-making
- specifically articulating key cultural rights as relevant to the best interests of Aboriginal children and young people
- including a guiding principle recognising that nurturing connections to family, community, culture and Country is foundational in ensuring that Aboriginal and Torres Strait Islander children and young people are protected from harm
- introducing an obligation on the Chief Executive to offer to convene a family group conference for an Aboriginal or Torres Strait islander child or young person in particular circumstances
- provisions to enable the progressive delegation of legislative authority to Recognised Aboriginal Entities
- a new scheme for the involvement of Respected Persons in Court proceedings to support Aboriginal children and young people.

These provisions are much needed.

> "I don't know fucking shit about who I am, what I am, or where I belong."
>
> "Mandatory that connection is maintained in some form."

Acknowledging that these positive changes have been put forth, I have to say that I am disappointed by the level of caveats applying to these changes – a theme that emerges on multiple occasions throughout my submission. This includes caveats that obligations do not have to be fulfilled if the Chief Executive determines it is not in the best interests of the child or young person; caveats that the Aboriginal and Torres Strait Islander Child Placement Principle is subject to the paramount principle of protecting children and young people from harm; and that failure to meet the standard of active efforts does not, of itself, affect the validity of decisions made under the Act.

In addition to those caveats, I note that the draft CYPSS Bill proposes to remove the only reporting obligation regarding Aboriginal and Torres Strait Islander children and young people. Currently, section 156(1) of the *CYPS Act* requires the Chief Executive to report annually on the following information regarding Aboriginal and Torres Strait Islander children and young people:

- the extent to which case planning in relation to such children and young people includes the development of cultural maintenance plans with input from local Aboriginal and Torres Strait Islander communities and organisations;
- the extent to which agreements made in case planning relating to supporting the cultural needs of such children and young people are being met (being support such as transport to cultural events, respect for religious laws, attendance at funerals, providing appropriate food and access to religious celebrations);
- the extent to which such children and young people have access to a case worker, community, relative or other person from the

same Aboriginal or Torres Strait Islander community as the child or young person.

Since the *CYPS Act* commenced, there have been **ongoing issues with reporting capability** to meet these requirements, due to a failure to invest in the systems enhancements to enable data capture and reporting.

Conveniently, I note that reporting against these requirements has been omitted from the CYPSS Bill – **which would no doubt remove the legacy 'legislative breach'.** I would issue a word of caution to interested readers that removing legislative compliance for the sake of system convenience is a slippery slope to poor practice and often precipitates predictable harm.

Instead, there is a generalised obligation for the Minister for Child Protection to report annually on the operation of provisions specific to Aboriginal and Torres Strait Islander children and young people, in accordance with requirements and information set out by the regulations.

I acknowledge that the regulations may set out highly relevant and substantial information requirements in the Minister's annual report; but I do not have those regulations available to me to comment on. Instead, I see:

- removal of a reporting responsibility that the DCP has been unable to meet for six years
- replaced by a generalised description of relevant reporting, allocated instead to the Minister
- against requirements that can be set from time-to-time through regulation making processes.

I note that, far from letting the DCP off-the-hook for these reporting issues, the Commissioner for Aboriginal Children and Young People's final report into the inquiry regarding the Aboriginal and Torres Strait Islander Child Placement Principle recommended legislating a sixth element to the Principle of 'Performance' to meet the need for cultural oversight and accountability in the provision of child protection services. As articulated by Commissioner Lawrie:

The implementation of Performance to the standard of Active Efforts is demonstrated by accurate reporting and compliance of all elements, including comprehensive measures embedded within practice and case management systems.[6]

While I hope that the legislated amendments are intended to enable the Performance element through regulations, there is no public-facing information that indicates as such. The only public-facing information is removing current accountability requirements. This is highly concerning.

In providing my feedback on the CYPSS Bill at this time, I would like to further touch upon the impact and my interaction with Commissioner Lawrie's inquiry.

At the time of preparing my submission, Commissioner Lawrie's Inquiry into the Aboriginal and Torres Strait Islander Child Placement Principle had commenced. Rather than making comprehensive recommendations to the *CYPS Act* Review regarding legislative changes, I instead undertook research and prepared evidence for Commissioner Lawrie to inform relevant legislative recommendations within the fulsome scope of that inquiry. Matters I raised in my oral evidence and written submission included:

- lack of accountability and departmental oversight for the quality of cultural support planning
- an exponentially growing rate of Aboriginal children and young people being placed into residential care, and Aboriginal young people living in residential care placements detained at the Adelaide Youth Training Centre
- little movement over past years in the proportion of Aboriginal children and young people being placed in kinship placements
- poor statistical performance in reunification outcomes for Aboriginal children and young people
- challenges in achieving family contact arrangements, and insufficient independent oversight of relevant decisions
- low participation in annual reviews by Aboriginal children and young people
- low funding directed towards Aboriginal community-controlled organisations
- the value that Aboriginal children and young people in care place on access to Aboriginal workers
- evidence of strong social and emotional wellbeing outcomes for Aboriginal children and

[6] Commissioner for Aboriginal Children and Young People, *Holding on to Our Future*, recommendation 2.

young people in kinship placements with Aboriginal family members.[7]

In June 2024, Commissioner Lawrie's report was handed down, with 32 recommendations – 21 of which require some level of legislative reform. Of those recommendations, I note Commissioner Lawrie's recently released statement which identified only three are reflected in the legislation, with a further six partially incorporated to some extent.[8]

It is disappointing to note that the CYPSS Bill has been released for consultation in the absence of any public response from government regarding Commissioner Lawrie's legislative recommendations. Without that response, it is challenging for the sector to understand on what basis key recommendations have not been adopted. This includes the following, which I note have considerable overlap with my own observations and recommendations published in my related submissions:

- restoring the best interests of the child as the paramount consideration in decision-making
- abolishing the Contact Arrangements Review Panel, and bringing these decisions within the remit of judicial review
- judicial oversight of department compliance with the Aboriginal and Torres Strait Islander Child Placement Principle, with power to make relevant orders to promote compliance
- imposing strong reporting requirements upon the DCP regarding the Aboriginal and Torres Strait Islander Child Placement Principle.

Instead, my observation is that the recommendations from Commissioner Lawrie's inquiry which have been implemented are ones that impose largely 'aspirational' obligations on the DCP, with a lack of enforceability and accountability attached – and which largely align with existing departmental policy documents. The unfortunate reality is that many of the policies already look good; it's adherence and consequence that is lacking.

With the manner in which these – much needed and long fought for – changes are incorporated into the legislation; I have to question – what's new?

This question was echoed in consultation with people with care experience:

I do remain hopeful that Government intends to use these new levers to address the overrepresentation and disproportionately poor outcomes for Aboriginal children and young people in care. But it is only hope that I can bring to reflecting upon these changes, noting that there is nothing 'new' which compels the department to take relevant actions; and legislative recommendations from myself, Commissioner Lawrie and other relevant stakeholders that would take power and discretion away from the Department have not been implemented.

There is an appearance of appeasement in these changes. The Department has significant work ahead to demonstrate a genuine intent to change standard practice and not just find new ways of ticking boxes.

Recommendation 2

I recommend that Government releases a public response to the Commissioner for Aboriginal Children and Young People's Inquiry into the Application of the Aboriginal and Torres Strait Islander Child Placement Principle, prior to progressing relevant legislative amendments.

[7] As available on the Commissioner for Aboriginal Children and Young People's website.

[8] Commissioner for Aboriginal Children and Young People, *Media Release: Draft Bills fails SA Aboriginal children*, 17 September 2024.

Promoting the Right to be Heard

No.	Guardian Recommendation	Key changes in draft CYPSS Bill
6.	Legislate to ensure children and young people have a reasonable opportunity to personally present their views at (1) Annual reviews; (2) Internal reviews; and (3) CARP reviews	• Recommendation incorporated for Internal Reviews • While relevant CARP provisions have been amended to require the panel to consider submissions made by children and young people, this does not specify a right to present those views personally • A key protection for children and young people regarding annual reviews has been removed – namely, a requirement to notify the child of their annual review, and give them a reasonable opportunity to make submissions (including in the absence of a person who has care of them) • There is a more generalised 'voice' provision which requires those involved in the operation and administration of the legislation to take reasonable steps to ensure the voice of a child or young person is heard in the course of making a 'prescribed decision' that affects the child or young person. • Voice 'may' be heard in person, in writing or by audio or audiovisual recording; in the absence of any particular person or with the accompaniment of a support person nominated by the child or young person

> "Kids opinions and voices didn't just start now. They started at the beginning of time."

In my 2022 submission, I noted that the *CYPS Act* contained broad statements of respect for children and young people's voices, through Parliamentary declarations, a requirement to take the children and young people's need to have their views considered in decision-making, and a general 'principle of intervention' that children and young people should be given the opportunity to express their views with due weight given to those views in accordance with their developmental capacity and the circumstances.

These principles are highly important, but as a matter of reality they conflict with the day-to-day experience of children and young people in care – who often report to my office concerns and frustrations about not being included, informed or shown appropriate respect in decision-making.

> "For anything to happen, it takes you to fight and scream for you to have your own fuckin' voice."

> "Kids speak out all the time. I've spoken to multiple children still in the system, they say they've all been assaulted… and they speak up and they get pushed down."

I note that those general principles have now been strengthened, and I am supportive of that step. Although I must continue to highlight the importance of concrete legislative requirements, policy guidance and operational oversight to ensure that this is translated into practice.

Children and young people are acutely aware that their views are not always adequately considered by the adults in the room. To supplement general principles, I recommended a legislative obligation to ensure children and young people are provided an opportunity to personally present their views at key decision-making forums and processes; namely, Annual Reviews, Internal Reviews and CARP reviews.

> "Do the big people know what that means to the little person".
>
> "The little person always has to be fighting for everything. 'I need to fight to see mum, I need to fight to see brother'. When does the big person learn? Like, 'I am gonna fight for them to see who they want to see'"
>
> "Once you're in care, everyone else has power"

I am pleased to see that a provision has been included regarding internal reviews; however, no equivalent guarantee has been inserted regarding an opportunity to provide in-person submissions at annual reviews or CARP reviews. At the same time, I am concerned that with respect to annual reviews:

- the removal of an existing provision, which requires the annual review panel to notify the child of their annual review, and give them a reasonable opportunity to make submissions (including in the absence of a person who has care of them)
- at the same time, a new provision has been introduced to guarantee the opportunity for in-person attendance and submissions at annual reviews from carers with whom a child or young person is placed.

I understand the new clause 13 may be intended to 'catch' this process, through imposing an obligation to take reasonable steps to ensure children and young people's voices are heard in the course of decision-making affecting them. However, the discretion allowed by that provision falls far short of a guaranteed opportunity for in-person attendance and submissions. It is insufficient to meet the intent of my recommendation: which is to improve opportunities for in-person attendance at annual reviews.

At the same time, the introduction of 'voice' protections for carers creates significant imbalance in rights related to annual reviews.

While carers are currently entitled to make submissions to an annual review, there is no guarantee of an opportunity to do so in-person. From a practical perspective, the new provision under clause 141(5) is likely to result in a default position of carers being invited to annual reviews.

There is a provision that can exclude a carer if the panel determines that it would not be in the best interests of the child or young person for the carer to attend. However, I am concerned about the effectiveness of this protection – noting that these situations often arise where there is some level of concern regarding carers influencing the child or young person's expression of their views (whether through intimidation, the child's individual manifestations of trauma, or otherwise), speaking for children and young people or otherwise attempting to prevent them from providing their independent views.

In these situations, the nature of the carer's behaviour and relationship can make it difficult to establish enough evidence (within the bounds of procedural fairness) to make an assessment that their personal attendance would not be in the best interests of the child or young person. Adults often have the upper hand in advocating for themselves, including relying on legislative provisions to place pressure on decision-making processes.

> "Why aren't the children allowed in the annual reviews but the carers are? Hold up a second."
>
> "It should be the choice of the young person, that's the thing it should be up to the young person who's in the room and who's present at the table."
>
> "Your annual review's about your family, it's about your mental health, it's you know… if you're 16 do you want your carer there?"

In raising these points, I do not doubt that there is also a significant power imbalance between carers and the Department, which underlies a desire to include this legislative guarantee. However, I do not believe this legislative guarantee is the best mechanism to respond to carers interests in this matter; due to the risk that it will in fact prejudice the interests of children and young people.

At no stage should a child's best interests be subjugated by the interest of another party – but these changes do enable this to happen. As responsible practitioners and law makers we must remain vigilant in this respect.

Recommendation 3

a. Legislate to ensure children and young people have a reasonable opportunity to personally present their views at (1) Annual reviews; and (2) CARP reviews
b. Remove subclause 141(5) from the Bill.

Improving Access to Advocacy

No.	Guardian Recommendation	Key changes in draft CYPSS Bill
7.	Introduce requirement for children and young people to be represented by an advocate (unless they have made an informed and independent decision not to be) in (1) SACAT proceedings; (2) internal reviews; and (3) CARP reviews.	• Introduced for SACAT, but not for internal reviews or CARP.
8.	Children and young people in all forms of alternative care (including third-party orders and voluntary out-of-home care) should have access to independent advocacy and oversight from the Guardian (with appropriate funding to OGCYP)	• Not incorporated – no relevant changes
9.	Introduce a funding commitment clause for the Child and Young Person's Visitor	• Not incorporated – no relevant changes

Right to an advocate

A topic that is deeply tied to children and young people's ability to express their views, and have those views acted upon, is their access to independent advocacy.

While the CYPSS Bill has included its general 'voice' provision (as discussed above), I am disappointed to note that there has been very little responsiveness to my recommendations regarding improving advocacy avenues for children and young people in care. This, ironically, undermines the impact of requiring adults to take reasonable steps to listen to children.

I sought to ensure children and young people should be guaranteed access to an advocate in

1. SACAT proceedings,
2. internal reviews
3. CARP reviews.

While all three of these processes are administrative in nature and should be conducted with less formality than court proceedings, children and young people still rely significantly on advocacy in these circumstances to navigate processes, explain information in child-friendly ways and ensure they have the opportunity to express their views and feel safe to express their views. This is essential to redress power imbalances for children and young people, and ensure they are both aware of their rights, have support to access them and assistance where required in expressing their views.

The draft CYPSS Bill has included a relevant obligation for SACAT proceedings; but not for internal reviews or CARP reviews. The basis for this differentiation is unclear – particularly when it comes to CARP, noting that these decisions are not subject to any further review. This means that a young person who disagrees with a decision about contact with their family or other important people in their lives is not guaranteed an opportunity to seek advice and support from an advocate – legal or otherwise – before a final and binding decision is made. In my view, this is highly inappropriate and detrimental to the best interests of children and young people in care.

Given Internal Reviews and CARP Reviews are administered by DCP, I observe (once again) that perhaps the omission of 'right to an advocate' for children and young people is a systems convenience at the expense of children and young peoples natural justice.

Recommendation 4

I urge reconsideration of my recommendation that the right to an advocate be extended to internal reviews and CARP proceedings.

Advocacy and oversight for all alternative care arrangements

I further note that the CYPS Act Review Report made no reference to the concerns I raised about children and young people under alternative care arrangements who do not have access to independent oversight and advocacy, and no relevant changes appear in the CYPSS Bill. This includes those under (long-term guardianship specified persons) third-party orders; voluntary out-of-home care placements for children and young people with disability; or those unable to live with parents or guardians under the conditions of a DCP Safety Plan.

Access to child-friendly advocacy systems is an essential safety mechanism to prevent and address breaches of children's rights in any type of alternative care arrangement. In recognition of this matter, the 2021 UN Day of General Discussion on Children's Rights and Alternative Care recommended the development of independent monitoring systems for all children in alternative care.[9] This recommendation was not limited to children who are under guardianship of the state under child protection laws.

While children and young people **may** have access to mainstream quality assurance or monitoring bodies, child-friendly advocacy and justice systems require speciality training and services:

'adults need preparation, skills and support to facilitate children's participation effectively, to provide them, for example, with skills in listening, working jointly with children and engaging children effectively in accordance with their evolving capacities'.[10]

This includes to:

- be child-safe, with child-specific measures in place to reduce the risk of child exploitation and sexual abuse
- encourage and be respectful of children's views
- create processes and resources that are adapted to children's needs
- accountable to evaluation and feedback from children and young people.[11]

Recommendation 5

I urge reconsideration of my recommendation that children and young people in all forms of alternative care should have access to independent advocacy and oversight by the Guardian for Children and Young People. This advocacy function must be funded.

Funding commitment clause: Child and Young Person's Visitor

Previously, I highlighted an anomaly in the legislation whereby there is no requirement to fund the role of the CYPV. I note that other roles undertaken by the Guardian do have this provision.

With over 700 children and young people living in residential care, it is not feasible for a single person appointed to the role of CYPV to perform the functions and powers of the role as described in the legislation. It is unrealistic for this role to be performed without appropriate resourcing from Government. Achieving the intent of the Nyland recommendation to establish a visiting scheme for children in residential care requires a legislative amendment to introduce a funding commitment clause for the CYP Visitor role.

I note comments by Minister Scriven – as spokesperson for Minister Hildyard – in the Legislative Council on 7 September 2022 with respect to the *Children and Young People (Safety) (Child and Young Person's Visitor) Amendment Bill*:

at this stage there is no need to legislate for this funding. Indeed, we will have the opportunity to address this … in the full review of the Children and Young People (Safety) Act'[12]

There was no mention of this recommendation or matter in the Review Report, and no relevant changes appear in the CYPSS Bill. Presumably, Government has considered whether to require a

[9] UNCRC, 2021 Day of General Discussion: Children's Rights and Alternative Care (Outcome Report), 13 June 2022, pg. 32.
[10] UNCRC, General Comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12, [134].
[11] Ibid.
[12] South Australia Parliament, *Legislative Council (Hansard)*, 7 September 2024 (the Hon. C.M. Scriven), p. 928.

funding commitment clause for the CYPV, and declined to do so – but this is without discussion with myself, or providing reasons.

While I note that the CYPV function is currently funded, there is no guarantee of this continuing in the future without a funding commitment clause. This is a highly important role, and it is a very simple legislative amendment to include a funding commitment clause, in line with that which appears for my other roles as Guardian, TCV and YTOV.

Recommendation 6

I maintain my recommendation to introduce a funding commitment clause for the Child and Young Person's Visitor.

Equality for Children in Care

No.	Guardian Recommendation	Key changes in draft CYPSS Bill
10.	Associated amendment to the *Equal Opportunity Act*, to make care status a protected attribute	• Not incorporated
11.	Restrict publishing identifying information for CYP in care – with appropriate exceptions to allow CYP to make decisions (in accordance with age and maturity) about telling their story	• Incorporated through section 211.

Equal opportunity

The matters I raised previously regarding discrimination against children and young people in care were not mentioned in the *CYPS Act Review Report* and have not been addressed through introducing relevant protections in the CYPSS Bill, or an associated amendment to the *Equal Opportunity Act*.

This is a missed opportunity to improve legal protections for children and young people in care, including through addressing challenges that DCP case management encounter in navigating both government and non-government services – such as health, education, youth justice and broader human services.

> "If you've already been in care you've got that red flag on your name."

Recommendation 7

I maintain my recommendation to including care status as a protected attribute under equal opportunity law in South Australia.

Restricting publication of identifying information

In my submission, I expressed concern about inflammatory media practices in 2022 in child protection cases, and noted my advocacy for articles to be removed from circulation or edited to remove information that may identify children and young people in care.

I raised that, when information is reported about child protection cases, that information is on the public record for the child or young person's whole life; and that long after public interest has subsided, children and young people may experience ongoing effects of shame, stigmatisation and re-traumatisation. This may arise from accessing the information personally, the knowledge that the information is publicly available, or adverse treatment from friends, family or community members who become aware of the information.

All of the above points have been notified to my office as very real impacts of children and young people.

To address this issue, I proposed an amendment to strengthen protections and ensure that children and young people are protected from the harm associated with breaches of their privacy in the media.

I am pleased to see that a provision has been introduced aligned with this recommendation; particularly to the extent that it restricts exploitative media reporting which breaches privacy rights for children and young people and contributes to community stigma.

I would like to highlight, though, an important theme that arose in my recent consultation, engaging people with care experience. Multiple participants spoke to distressing experiences with strict and blanket-application rules around

publishing information related to them – including school photos. For clarity, a ban on school photos is not the intended outcome from the privacy securities; and a commonsense approach to how such legislation is enacted must be undertaken, or else explicit legislative or regulatory guidance must be provided.

> "Say if you're under 16, and the Guardian [DCP] said 'no you can't have your photo in this school album because your parents might find you or a perpetrator, you had no choice, you had to stand out in class."

> "I wasn't allowed to be in school photos because DCP decided… I was in contact with my mum there was no reason for DCP to not want me in there."

> "We've been told as children we've not been allowed to have our photos taken."

> "In some cases that's understandable, that's totally fair, but like, I was forced into contact and access with my mum, so it's not like DCP were trying to protect me from any one… but I had to miss out on a few group photos in my life, because my carers forgot to get approval first"

While being supportive of the provisions in the draft Bill to the extent that it applies to media outlets, participants in the consultation provided valuable insight into policy and practice relating to their individual identities. Those we spoke to expressed strong views that any legislation designed to protect the privacy of children and young people's care status should not be used to further separate them from their peers or stigmatise them. When this happens publicly, this can be distressing, isolating and humiliating for those in care.

It is understood that this provision is intended to protect against publicised breaches of children and young people's privacy through identifying their care status – and this is a matter I also hold considerable concerns about. But the insights of those who spoke to me indicate that pockets of practice can develop which take strict and unwavering approaches to privacy for children and young people in care, which do not account for individual circumstances or safety risks.

Recommendation 8

I recommend robust practice guidance to ensure the boundaries of the restriction on identifying public information are well understood by departmental staff, carers and those who work with children and young people in care through government and non-government services.

Accessing the Right Supports

No.	Guardian Recommendation	Key changes in draft CYPSS Bill
13.	Introduce obligations on state authorities to prioritise assistance to children and young people in care, on request from CE DCP	The draft CYPSS Bill attempts to introduce a 'public health' approach, through: • the introduction of a State strategy for the Safety and Support of Children and Young People • a power for the Minister to direct prescribed State authorities to meet for the purpose of discussing an interagency response to prevent harm to a specific child or young person, or group of children and young people.

I am supportive of the new proposed provisions, which are broadly aligned with the intent behind my recommendation to introduce obligations on state authorities to prioritise assistance to children and young people in care.

However, based on accompanying information, I understand that the intended prescribed State authorities are the Departments for Health, Education and Human Services.

Finalising this list will be a matter for regulations, but I would like to note at this stage that important key stakeholders missing from this list; including Housing, SAPOL and relevant justice partners through the Attorney-General's Department (e.g., prosecution, witness and victims services).

Between these missing state authorities lie some of the most persistently challenging issues to resolve in supporting children and young people in care, through:

- involvement in criminal justice processes – whether as a victim or an alleged offender
- housing insecurity at times of critical social developmental phases – with many young people exiting care facing homelessness.

Based on available information, I cannot see any reasonable basis to exclude these stakeholders and recommend expanding the scope of the prescribed bodies through the regulations.

Recommendation 9

Prescribed authorities under clause 18 should include Housing, SAPOL and relevant justice partners through the Attorney-General's Department.

Protection: Neglect, Abuse & Violence in Care

No.	Guardian Recommendation	Key changes in draft CYPSS Bill
15.	Maintain the mandatory reporting threshold	• Not incorporated – reporting threshold has been changed from 'harm' to 'significant harm'
16.	Enshrine the R20 arrangement in legislation	• Not incorporated
17.	Clarify classes of people who can apply for an internal review, to ensure significant people to the child have this right – eg, siblings, parents, relevant professionals etc.	• Incorporated through Schedule 1
18.	Include an obligation to identify eligibility for compensation payments as part of case planning	• Not incorporated

Mandatory reporting

In my submission, I did not support a changed threshold to mandatory reporting; and I continue to hold reservations about raising reporting and response thresholds.

I am concerned that when faced with the ongoing and increasing strain upon the Department's statutory response services, we are bouncing around legislative amendments that have little to do with the real issues at play.

> "Again, it's the band aid sorta shit."

The *CYPS Act* was intended to introduce a greater focus on safety and protection from harm, in line with guidance from coronial inquiries and the *Child Protection Systems Royal Commission*. Introduction of this legislative framework has correlated with a significant increase in reports to the Child Abuse Report Line. In many ways, this can be seen as an intended effect of the legislative change, in line with our evolving community understanding and standards regarding early intervention and prevention responses; the prevalence of child abuse, neglect and maltreatment; and the impacts of cumulative harm.

The issue, as I understand it, is that many of these reports do not require statutory intervention; so, in coming through to the DCP, it is clogging up the lines and making it harder to sift through and identify those reports which do require statutory intervention. Indeed, it is not difficult to see how that pressure would be a challenge for the DCP; noting there has been a 63% increase in notifications between the commencement of the *CYPS Act* and the 2022-23 financial year, while 'Protective Intervention Services' to respond to child protection reports has only increased by 15.1% over the same period.[13] The services cannot keep up with the demand.

While I do believe South Australia needs to increase its expenditure on Protective Intervention Services (PIS) – noting we have the lowest expenditure, nationally – this is only one piece of the puzzle. The primary issue is not stopping calls coming through, or resourcing to sift out those calls that do not require statutory intervention; the biggest issue is the absence of alternatives for children, young people and families who do need help, but do not require a statutory response.

[13] For further discussion, see Guardian for Children and Young People, Child Protection in South Australia from the Productivity Commission's Report on Government Services 2023, p. 43.

Without significant attention to alternative referral pathways for families showing signs that an early intervention and prevention response may be required or beneficial, I fear that the approach put forward will keep South Australia stuck in a loop of crisis-driven responses; and children and young people being placed at risk when they and their family need help.

> "It seems like maybe people might miss out on supports they might need."
>
> "My understand of the system is that that's what triggers everything. So how do you get support and early intervention happening without this."
>
> "More people gonna miss the criteria to get help when they actually need it."

As I noted in my 2023 report on child protection expenditure:

The consequences of funding decisions for [Protective Intervention Services] are far-reaching, impacting upon the safety and wellbeing of children and young people in complex and nuanced ways. If the system is not properly resourced to respond to child protection reports, then pressure builds to triage out lower-level concerns and focus only on the most serious and imminent harm. This means that children who fall below that threshold, but still reasonably require an immediate statutory response, may be left in unsafe situations.

Further, missed opportunities to refer families to appropriate services may severely limit the choices available to social workers by the time those families reach the level of risk required to meet triage criteria. This has the potential to drive higher rates of children and young people entering care, when that outcome may have been avoidable if resources had been directed towards identifying and responding to concerns when they were first reported.[14]

For interested parties, I would like to highlight that key Nyland recommendations which may relieve pressure on the mandatory notification system – including the Child and Family Assessment and Referral Network – have been marked complete by DCP in annual *Safe and Well* reporting,[15] but not in fact implemented. Further, I note the findings of the Alexander Review regarding efficiencies in referrals between DCP and DHS which may contribute to delays in responding to notifications.[16]

Government indicated further consideration was required regarding recommendations made by that Review; nearly two years later, presumably that recommendation is still under consideration. However, given this legislative reform agenda, I hesitate to guess that this recommendation may not in fact be supported by the government. If this is the case, I believe a rationale should be provided as to why.

Recommendation 10

I recommend that DCP gives further consideration to efficiency, resourcing, relying on NGO services for 'soft' self-referrals and discharging obligations through funded NGO services.

Responses to going 'missing' from care

A matter that I have identified through detailed review of the legislation, but could not see reflected in any publications relating to the review, is changed responses to children and young people who are missing from care – or away from their placement 'without lawful authority'. This includes the following changes:

- Increase in penalties for the existing offence of harbouring, concealing or assisting another person to harbour or conceal a child or young person who is absent from a State care placement without lawful authority – with the maximum penalty for a first offence increasing from 12 months to 3 years imprisonment
- Providing child protection officers with the power to use force to enter premises, places, vehicles or vessel without a warrant, if the child protection officer believes on reasonable

[14] Ibid, p. 40.

[15] Department for Child Protection, *Safe and Well Annual Report 2023*.

[16] Kate Alexander, Trust in Culture: A review of child protection in South Australia, November 2022.

grounds that a child or young person who is absent from a State care placement is located within the premises, place, vehicle or vessel

- Expanded power for the Court to issue a warrant to apprehend a child or young person who is absent from a State care placement without lawful authority is present.

With respect to the second point, it is important to note that these powers already exist where there are safety concerns or risk of harm; what's new is that the child's absence from a State care placement without lawful authority has become relevant grounds, in and of itself, and **without establishing those safety concerns or risk of harm**.

These provisions have a *complicated* impact on the lives of children and young people in care. In some circumstances, children and young people who are missing may be at significant risk of harm. They may be with family, or with other people in the community, who are predatory or exposing them to health and safety risks. They may be held against their will, and subject to physical, sexual and/or emotional abuse.

But, I need to stress, that it is not as simple as this.

As noted in my Child and Young Person Visitor Annual Report 2022-23[17] there are complex factors that cause children and young people to run away from their placements. These include 'pull' factors that draw them away, such as being able to see their loved ones, siblings and friends; and 'push' factors that drive them away, such as fraught dynamics with the young people they live with and them feeling that their house environments not being safe for them.

> "We know most of the time the push and pull factors sending kids away from placement – it's for really good reasons."

> "I understand that [some people are unsafe] but the government's not safe, at the end of the day neither's resi care, like, that place is not the best place for young people to be raised in."

> "They are running away because of the physical abuse that's happening in the house and everyone that that person is telling they're not listening. And social workers keep shrugging, the people that are in power that can make the decisions aren't making the decisions, so it leads to that child running away."

These push and pull factors are frequently the subject of my individual and systemic advocacy for children and young people in residential care; and it is a high number of children and young people who are affected. In 2022-23, more than 1 in 4 young people that my advocates and I visited in residential care were reported as missing persons in the months prior to the visit.

Those I spoke to in my recent care experience consultation highlighted the need to draw a clear distinction between those circumstances where children and young people are running to sources of safety; versus being lured to harm.

> "If we're in care generally we want to be with family or friends and we might leave if our placement's not good, leave and go to those places but I think this is around unsavoury people in the community – there are random, bad f'd up people that prey on vulnerable people – fuck them up"

Where children and young people are self-placing – particularly with parents, or other family – in response to these 'push' and 'pull' factors relating to their safety and security in their approved placement, there are serious risks associated with criminalising those adults in their life. This can be a disincentive to self-help behaviours through leaving unsafe placements or connecting with support networks while missing from care; and may isolate them from support networks who are afraid of police being called. It is also important to consider the impacts on people who are already subject to increased risk of criminalisation and heavy-handed – or 'risk-adverse' – child protection responses, including parents with their own care backgrounds, Aboriginal families, and migrant and refugee families.

[17] Child and Young Person's Visitor, *Annual Report 2022-23*, pp. 52-53.

> "They're going to their family's houses because it's the only place they feel safe. If they don't feel safe at that placement, they get dragged back there with a missing person report and then they get the cops involved and then if they're fighting back they're being combative, 'let's put them in a cell for a couple of hours call DCP and figure it out from there'."

> "Why does it have to be so punitive all the time... like MPRs and us, like once you get put on MPR... like where is the child's voice echoed in this you know, where is that being met and listened to as well as it not being punitive and attach those stigmas around these young people you know."

Noting the risks involved, I believe greater delineation is required within the legislation to ensure the intent of such provisions is met, and that protective persons are not caught up and criminalised. I would also reiterate, where there are risks of harm or children and young people in fact suffer harm, there are already existing child protection and criminal justice levers which apply to these situations.

I would also like to add, that if there are reasons for increasing penalties and the powers of child protection officers and the Court in these areas, this should be subject to a fulsome and transparent consultation process; not as 'hidden' amendments in the context of broader child protection legislative change, which is what I observe here.

Recommendation 11

I recommend further consideration regarding the increased penalty for harbouring or concealing – including further consultation to capture delineation between persons who are concealing for the purpose of harm, and those who seek to enact protective behaviours.

Quality of care reports

I note, with some trepidation, the new Quality of Care Report Guidelines proposed in the draft CYPSS Bill. While limited information is available about the intended impact of these guidelines, I hold concerns that it is inappropriate to create this mechanism for separate processes and actions when reports relate to a child or young person in care.

I am mindful that there has been significant carer advocacy in recent months (and years) regarding the 'care concern' process, focused on improving procedural fairness and reducing experiences of invasive interventions in the *lives of carers* by the Department.

While I understand those concerns, I believe we must remain mindful of who we are protecting through this legislation, and the vulnerability that children and young people experience in both family-based and non-family based care arrangements. In particular, that children and young people in care are often particularly vulnerable to abuse, neglect and maltreatment, for reasons such as trauma histories; the high proportion of children and young people in care with disability and neurodiversity; the targeted exploitation of children and young people in care; and increased risk of exposure to unstable and institutional care arrangements.

> "People advocating for this is cool and all, we all need to do the right thing, but carers are also not doing the right thing."

> "Nothing needs to be done apart from caring for the young people that don't have anyone caring for them, that should be the whole focus [of this legislation]."

> "[for me] Foster meant more abuse."

> [speaking about abuse in foster care] "You can get away with it more, it's hidden more."

> "I never had kin care, it was everything else, and none of it's positive, not for me anyways."

> "If we're getting removed from our parents for like 18 years, why are we allowed 6 months on and off with an abusive carer"

If processes for investigating child protection reports for children and young people in care are taken out of legislation, this creates an avenue for

community pressure upon the DCP to amend those processes from time-to-time, without the accountability of requiring a Parliamentary legislative amendment process. The power imbalance between 'grown-ups' (in this case, carers) and children and young people is a theme throughout my submission, and it arises again in this proposed process.

On that matter, I note that, prior to publishing these new guidelines, the Bill states that the DCP must consult with carers and carer representative bodies.

Concerningly, there are **no requirements to consult with children and young people** in care, or with advocacy bodies for children and young people in care. This omission seemingly flies in the face of the commitment to elevate the voices of children and young people, particularly in the wake of several recently publicised safety concerns for children and young people in care.

> "Are the kids gonna be informed about that?"
>
> Person 1: "Don't we want to learn from [young person's experience of abuse in care] when they didn't get a response, wouldn't we want to learn from that?"
>
> Person 2: "They don't."

Recommendation 12

I recommend removing the draft provision establishing the Quality of Care Report Guidelines.

If this recommendation is not accepted, the draft provision must be amended to require consultation with children and young people in care, and advocacy bodies for children and young people in care.

Nyland recommendations

As a final matter, I note that I was unable to see a reference to ongoing reporting against the recommendations of the Child Protection Systems Royal Commission, as is currently required by section 156(1)(e) of the *CYPS Act*.

As I reported in my 2022-23 Annual Report as Guardian for Children and Young People, I believe that many of these recommendations **remain outstanding**, despite being marked complete by DCP due to implementation being embedded within ongoing 'business as usual' improvement practices.[18] This includes the following key recommendations, aimed at ensuring safety for children and young people in care:

Table One: Guardian commentary on example Nyland recommendations marked complete[19]

No.	Nyland Recommendation	Guardian Comments
109	Create a project team to address the backlog in assessments of kinship carers and comprehensively review carers whose assessment is limited to an iREG assessment where the child has been living in the placement for more than three months	The systemic issue underlying this recommendation was the number of children and young people who remain in placements with carers who have not undergone a full carer assessment process for longer than three months. As highlighted in my 2022-23 Annual Report, 1,117 such placements in 2022-23 were extended beyond the legislatively permitted three-month period. And there were children in 2022-23 who spent nearly the entire year (358 days) in placements with carers who had not been through a full carer assessment process. The substance of this recommendation is not complete
128	Phase out the use of commercial carers in any rotational care arrangements except in genuine short-term emergencies.	I observe that the use of external agency carers remains widespread in DCP residential care. For example, 33.3% of houses my advocates and I visited through the CYPV program in 2022-23 used external agency carers to cover shifts more than once per week.

[18] Guardian for Children and Young People, *Annual Report 2022-23*, pp. 34-35.

[19] Ibid.

149	Apply the following standards across residential care: (a) no child under 10 years to be housed in a residential care facility except where necessary to keep a sibling group together; and (b) no child to be housed in a facility with more than four children, except where necessary to keep a sibling group together	I observe that it is not uncommon for children under 10 to reside in residential care, and there are still a number of houses that accommodate more than four young people.75 At 30 June 2023, 124 children under the age of 10 were living in residential care. I do not have information about how many resided with siblings. However, I observe that 66.7% of children under 10 years who were visited in 2022-23 did not live with a sibling. Further, 12.1% of children and young people visited by the CYP Visitor in 2022-23 were living in houses that accommodated more than four young people. None of these young people were living with a sibling.
150	Recruit a sufficient complement of staff to … abandon singlehanded shift	I continue to see the use of single-handed shifts in residential care. For example, 93.3% of houses visited by the CYPV program in 2022-23 only had one staff member on the overnight shift. This was despite the fact that, for 56.7% of houses, at least one young person had engaged in suicidal behaviour while at the placement (and, as such, could be considered to be in high risk circumstances)

Reporting on the implementation of these recommendations is fundamental for independent oversight bodies – including myself – to maintain oversight of whether key systemic challenges Nyland identified remain outstanding, and provide advice to the Minister for Child Protection accordingly.

It is also important for the South Australian government to report back to the community on what progress has been made to embed Nyland's recommendations, in light of the strong public interest in child safety and wellbeing, and the considerable public resources spent on the Royal Commission (and subsequent reviews and inquiries) to consider and formulate reform recommendations.

I acknowledge that the Nyland report was delivered eight years ago and there may be legitimate reasons for changing an implementation approach, or a previously accepted recommendation may no longer be accepted. This includes responding to emerging research, understandings of the needs of children and families and changed sectoral approaches to achieving best practice. Where such decisions have been made, this can be reflected in the government updating its position on whether previously accepted recommendations are no longer accepted, including detailing the reasons for doing so. **In fact, this is required by section 156 of the CYPS Act.**

Where recommendations remain 'accepted' but have not yet been implemented due to resourcing constraints or structural barriers, there should be transparency about these matters – so that the appropriate questions can be raised about funding allocation and government priorities.

I believe this reporting requirement should remain in any updated legislation.

Recommendation 13

I recommend substantially reproducing the reporting requirement in section 156(1)(e) of the *CYPS Act*, within the CYPSS Bill.

Contact with People who Matter

No.	Guardian Recommendation	Key changes in draft CYPSS Bill
19	The CYP Safety Act should expressly acknowledge that sibling relationships are a matter that should be taken into account in determining the best interests of children and young people.	• The 'best interests principle' includes a guiding principle that in case planning for a child or young person, consideration should be given to the desirability of placing, as far as possible, the child or young person with a person who is a member of the child or young person's family (including the child or young person's siblings). • There is a new consideration in contact arrangements, requiring the Chief Executive to give weight to the importance of the child or young person maintaining contact with their siblings.
20	The placement principle under the Child Protection Act 1999 (Qld) should be replicated: 'if a child is removed from the child's family, the child should be placed with the child's siblings, to the extent that is possible'.	
21	Make contact decisions reviewable by SACAT	• Not incorporated

I am supportive of these changes in the CYPSS Bill, which provide an important – and previously missing – legislative basis for valuing sibling relationships, including through placement and contact decisions.

> "I found out I had a brother at 20 years old, DCP didn't tell me at all, but they knew. They knew!"

With the introduction of these changes, I intend to monitor the extent to which this improves the rate of sibling placements and contact determinations issued. However, I am disappointed that the CYPSS Bill does not make contact determinations reviewable by SACAT.

It is a fundamental principle of administrative accountability and separation of powers that children and young people have access to judicial review of administrative decisions. While there are new provisions to improve procedural fairness in CARP reviews – including timeframes, independence of the presiding member and written reasons – these rights do not mirror those available through SACAT or the Youth Court. This includes further appeal rights, guaranteed access to a legal representative, and a right to personally present submissions.

I strongly believe that it is inappropriate for matters so important to children and young people's rights to be conducted without appropriate transparency, procedural fairness – especially where children and young people are not provided the opportunity to have their say, or the ability to hold decision-makers to account. With a substantially similar recommendation made by the Commissioner for Aboriginal Children and Young People, I also believe it is inappropriate for government to proceed without an explanation of the reasons.

> We don't get no decisions, it's all the department."

Recommendation 14

I urge reconsideration of my recommendation for contact determinations to be decisions reviewable by SACAT.

‘Leaving’ Care

No.	Guardian Recommendation	Key changes in draft CYPSS Bill
22.	Amend the Act so that assistance is guaranteed for all young people leaving care until the age of 25 years, and supported placement is 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.	Recommendations not incorporated.
24.	Remove the caveat that transition from care plans do not create legally enforceable rights or entitlements	

Transition from care and post-18 supports is one of the key topics consistently raised by young people when they contact my office. Common issues raised include:

- A lack of planning for their transition from care,
- A lack of post-care support, and
- The availability of post-care housing and the risk of homelessness.

These concerns were echoed in my recent consultation with people with care experience. In particular, strong views were expressed about the way that leaving care processes – and broader care experiences – set young people up to fail.

> “Set up to fail.”
>
> “When you think about it our life has been taken away from the moment you go in the system, so there’s no more living, it’s just setting us up.”
>
> “I didn’t get taught nothing.”
>
> “Care just doesn’t set you up at all.”

This is why I recommended legislative amendments to guarantee greater supports for young people leaving care, highlighting the importance of have a safe and stable place to live, and greater supports for young people transitioning from residential care.

I am highly disappointed that **no meaningful changes** have been made to guarantee assistance for care leavers if they require it, and ensure that they are protected from homelessness up to the age of 21 years. This flies in the face of social sciences research and economic modelling. The only possible rationale is a short-term, political-cycle response to cost.

I challenge government to review this decision, and **dig deeper to do right by the children and young people** who government has removed from their families, and taken on **responsibility as their legal guardian.** In doing so, the government must reflect on and draw from the experiences of all too many young people who have been **left in the lurch** when making the transition from care.

> Person 1: ”DCP hardly helped me from 17, I had to fight with my worker to get me a house, I moved in on the day I turned 18”…”
>
> Person 2: “[You] moved in with no washing machine, no mattress, no fridge – nothing” …
>
> Person 3: “How were those four walls at night?”
>
> Person 1: “Cold and scary”
>
> Person 4: “I bet”
>
> Person 1: “Big 3 bedroom house, massive backyard… but you know having that big of a property, my first property a three bedroom house, massive kitchen, massive lounge room, you know like not working or having anything to take my mind of stuff, you know the depressive state that I was in at that time you know, I didn’t have no help accessing services, no help accessing financial help, like I had to lean how to pay bills, all that stuff, I had to learn everything within like 2-3 weeks.”
>
> Person 2: “Everything you’re meant to know, just living.”
>
> Person 2: “I literally nearly cried when [you] couldn’t even cook something for themselves, and that’s just really basic, to keep alive.”

Not only has government failed to introduce meaningful change to support young people leaving care – but I am highly worried that many

young people exiting care may be worse off under the CYPSS Bill.

Changes that have been introduced regarding care leavers include:

- explicitly enabling payments to carers to support eligible care leavers up to 25 years
- specifying the matters to be considered in a leaving care plan, including access to personal information
- changing the eligibility age range for assistance for care leavers from 17-25 years, to 16-24 years
- removing the Minister's discretion to provide assistance to a care leaver who has been in care for less than six months
- transferring responsibility to offer and take reasonable steps to provide assistance to care leavers from the Minister to the Chief Executive
- removing the obligation to prepare a leaving care plan for children and young people on short-term guardianship or custody orders.

The DCP's public facing summary of key changes only covers the first two points and unfortunately fails to mention those provisions which are adverse to care leavers rights.

I recognise that enabling carer payments can support young people to stay in valued living arrangements after the age of 18 years, and am supportive of making this option explicit in the legislation. I do note that this is already an option under the *CYPS Act*, and the proposed amendments do not create an enforceable right to such payments. I will be interested to monitor whether this amendment leads to substantial changes in support provided to children and young people in family-based care, after the age of 18 years.

While I am also supportive of listing those matters that should be considered in a leaving care plan, I am concerned that my recommendation to remove the caveat which prevents leaving care plans from creating legally enforceable rights and entitlements has not been incorporated. This leaves young people with a serious power imbalance when participating in the planning process and setting up their lives as a young adult. I maintain this recommendation; in the context of the CYPSS Bill, that would involve deleting subclauses 168(11), and 169(5).

I also noted with concern three changes to the legislation which appear to be adverse to the rights and interests of care leavers:

- Under the CYPSS Bill, the requirement to prepare a leaving care plan setting out steps to assist the child or young person in their transition from care will now only apply to young people on long-term guardianship orders (ie, orders until they attain 18 years of age). This is a departure from the CYPS Act, which requires a transition from care plan for all young people in care, to assist in making their transition from care.
- The CYPSS Bill changes the age range for an 'eligible care leaver' to receive government assistance (now from the Chief Executive, rather than the Minister) – from ages 17-25 under the CYPS Act to ages 16-24 under the CYPSS Bill. While this additional year at the lower end is highly important for children and young people leaving care at age 16, it is not clear why the age range has been reduced to exclude those who are aged 25.
- The CYPSS Bill removed the Minister's discretion to provide assistance where the care leaver was in care for less than six months.

I am not supportive of these changes, which limit existing rights that children and young people in care currently hold. There is little transparency regarding why these changes have been implemented.

While it may be beneficial for transition planning and supports to begin earlier (noting that this already occurs in practice), it is concerning that eligibility to receive offers of assistance will cut off a year earlier and that there is no messaging from the DCP as to why this change has been made.

This concern was echoed by people with care experiences who have provided their views on when transition planning should start, and how long young people leaving care should be able to access assistance and supports.

> "Once you turn 18 your case is closed."
>
> "I think it needs to be extended rather than cutting off at 24."
>
> "15 to 30."
>
> "Me personally, I don't think it should be 25, I think that the case should be assessed, if they seem like they need more time to properly adjust to independence and how to do stuff, yeah they can access that."
>
> "Maybe it shouldn't just be an age, so like, you know, when you have children when you grew up in care maybe your support network's not super strong, we wanna bump back into services, that might be 30 or 40, or maybe mental

> health gets a bit wobbly and we need to bump back into something, like why does it have to be a definition."

During consultation, people with care experience also expressed their views on transition planning being a 'tick-box' exercise, or a referral process, rather than providing meaningful and impactful supports and assistance. They also spoke about the importance of ensuring choice in service provider – and appropriate resourcing.

> "Transfer the authority from DCP."
>
> "But are they just gonna palm it off and say we're going to refer you to RASA and therefore we've ticked the box – so we're offering support but just ticking a box saying we're gonna refer you to RASA [Relationships Australia South Australia], but we're actually not doing anything."
>
> "But, literally, I'm not joking, RASA is just a referral service."
>
> "RASA doesn't have the resources to do anything."
>
> "Make sure they're resourced though."

Recommendation 15

a. I urge reconsideration of my recommendation to guarantee assistance to care leavers, including supported accommodation to 21 years.

b. With respect to the age at which care leavers are eligible to receive assistance, I recommend at the very least ensuring that the upper age limit remains the same, inclusive of 25 years of age. However, I also recommend consideration of suggestions made by those involved in my consultation, to remove the upper age limit altogether and enable supports as required throughout adulthood.

c. I recommend removing the following changes, which I believe are adverse to care leavers rights and interests:

- Removing the Minister's discretion to provide assistance to a care leaver who has been in care for less than six months
- Removing the obligation to prepare a leaving care plan for children and young people on short-term guardianship or custody orders.

Making Rights Real

No.	Guardian Recommendation	Key changes in draft CYPSS Bill
23. & 24.	Remove limitation that Charter does not create legally enforceable rights or entitlements	• Not incorporated
25	Insert a statutory obligation on the Chief Executive to provide a copy of the Charter of Rights to all children and young people in care, as well as information about the Charter and the role and contact details for OGCYP.	• Incorporated through clause 15

Charter of Rights for Children and Young People in Care

> "It [rights] needs to be at the forefront."

I was pleased to note that my recommendation to insert an obligation to provide a copy of the Charter of Rights to Children and Young People in care has been implemented in full. Providing a copy of this document alongside explanatory information that helps set out what they can practically do and available sources of help when their rights are not met is a highly important step.

However, as highlighted in my submission, for rights to have meaning, they have to be actionable. I reaffirm the statement I made previously:

Statutory charters of rights are a new and developing field, which are progressively being rolled out in various capacities across Australian jurisdictions. Most statutory charters impose some limitations on enforceability, and we are still learning lessons about what works and what does not. Blanket statements that a charter does not create any legally enforceable rights or entitlements risks defeating the purpose of embedding a human rights framework into legislation.[20]

There are alternative frameworks that can be used as a model for balancing the way that statutory charters impact rights and proceedings under administrative law; as just one example, I highlighted in my submission the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

Instead of adopting such a model, there is a common drafting approach throughout the *CYPS Act* – and as appears will be reflected in the CYPSS Bill – to including a caveat that express rights and protections do not create legally enforceable rights or entitlements. **This is not standard across South Australian legislation**, but a particular drafting approach that has been taken to child protection legislation. As an example, the Charter of Rights for Youths Detained in Training Centres, as established under the *Youth Justice Administration Act 2016* does not include this caveat. Adopting this approach in South Australia's child protection legislation is inconsistent with the spirit of the legislation, which is intended to create rights for and better support children and young people.

The caveats are of questionable effect; but do raise questions about enforceability, have the potential to contribute to attitudes that rights are optional; and create confusion from community members and children and young people about their rights in care.

> "I read through these rights, and basically every single one of them has been breached since when I was a kid in care… basically every single one of them has been breached and I did not know until I turned 16…I didn't know shit."

> "The little person always has to be fighting for everything. 'I need to fight to see mum, I need to fight to see brother'. When does the big person learn? Like, 'I am gonna fight for them to see who they want to see'.

> "I think of a care journey, like you get into care, and you get on a rollercoaster and you don't know where it's gonna turn next, or where you're going, or how fast or when it's gonna slow down, and

[20] Guardian for Children and Young People, A rights-based approach to safety: OGCYP submission to the five-year review of the Children and Young People (Safety) Act 2017, 2022, pp. 58-59.

> so learning your rights – it's really hard to be in this environment that you don't know when you're going to meet your social worker next, or when you're gonna have to go here next, or to do a psych or do this or do that, like, you're constantly bring pushed around, you know, and in amongst that 'oh here's a book, or you're entitled to this' but you're not entitled to that when you're being pushed and pulled left, right and centre so, you know even if you learn them how do you entrust or know that you can enact them, when you don't feel that you're in control of anything."

> "You can know your rights but still be too scared to speak out."

Recommendation 16

I recommend removing caveats which stipulate that express rights and protections for children and young people do not create legally enforceable rights or entitlements, throughout the CYPSS Bill.

Competing rights?

> "What, [do carers need] protection from what – kids or the system?"

At the same time as these caveats undermine the enforceability of children and young people's rights, I note that the CYPSS Bill purports to introduce the Statement of Commitment to Foster and Kinship Carers into legislation.

This Statement sets out how carers can expect to be treated by the department, and values-based commitments. This includes informing, consulting with and supporting carers, and working together in partnership. It also includes responsibilities upon carers in line with legislated requirements, regarding maintaining children and young people's health, wellbeing, connection to culture and families.

It will come as no surprise that I do not believe it is appropriate to include a Statement of Commitment to carers, within legislation in place to protect the best interests and wellbeing of children and young people.

> "It's [the legislation] supposed to be child-based, not carer-based."

> "Where's the statement for kids?"

> "Doesn't DCP need to do something, if they're doing something for the fuckin' carers? Shouldn't they have something for us mob."

Power is a significant theme that arises throughout my advocacy matters, with children and young people most often being those with the least power in the room. That power imbalance is felt across relationships with a wide array of adults; parents, family members, DCP and other government workers, and family-based carers.

I am sure that the intention is for carers to see their roles represented in the Act, and be able to point to concrete expectations regarding their own treatment. It is not surprising that this would be important to carers; but I have to ask the question, why this piece of legislation?

Statutory charters of rights – which the Statement of Commitment is analogous to – are primarily embedded where legislation either intends to confer benefits upon a particular group of people, or adversely impacts the rights of a group of people.

Second to children and young people subject to intervention under the CYPSS Bill, those with most at stake are parents and families. Yet, there is no statement of commitment to parents and families; and rightly so, because the bill is for the safety and support of children and young people.

Of all those affected by the CYPSS Bill, carers have the greatest power, with the option to discontinue their relationship when and how they choose. Let me explicitly clear, so there is no confusion, it is of course essential to ensure that carers are supported – to provide stability in care arrangements valued by children and young people, and so that the positive impacts of that support can flow through to the lives of children and young people. But, it is really important that we all understand that carers do not hold the same position of vulnerability as children and young people under the CYPSS Bill. It is unclear why they should have a statutory statement or charter to protect and assist in enforcing their interests in the lives of children and young people in care.

If legislation is required to implement rights and support needs of other community members, then the most appropriate mechanism is legislation established for that purpose. This helps to prevent the statement being used in interpretative disputes, or disputes about decisions under the Act, in a way that may conflict with children and young people's rights.

Embedding statements of rights, values and commitments for carers within child-focused legislation runs the risk of putting those rights, values and commitments in opposition or competition to those held by children and young people.

This is a particular risk in light of the above discussion, regarding the enforceability of the Charter of Rights for Children and Young People in Care. People exercising responsibility and performing functions under the legislation must perform functions consistently with the Charter, to the extent that it is consistent with the paramount principle – protection from harm. While it does not create legally enforceable rights and entitlements, the existence of the Charter encourages rights-based approach; influences legislative interpretation; and may be relevant in review of decisions by SACAT.

When reviewing the way in which the Statement of Commitment is intended to be embedded, it is important to highlight that the obligations placed upon people engaged in the administration, operation or enforcement of the Act is expressed in the same terms: namely, that they must perform their functions so as to give effect to the Statement, to the extent that it is consistent with the paramount principle of protection from harm.

Significantly, this does not require that it must comply with the best interests principle; and I note that the inclusion of the paramount principle without also expressly naming the best interests principle is an expression choice which may be used in interpreting the legislation. Nor is the provision expressed to be subject to the Charter, which may create issues in resolving interpretative disputes where there is conflict between the Statement and a child or young person's Charter rights.

There are also a number of power imbalances which I believe the Statement may create or perpetuate:

- While carers must be consulted in the development of the Statement, there is nothing requiring consultation with children and young people in care – or those with a care experience.
- The Statement creates a hierarchy, whereby children and young people's family – including parents, grandparents, siblings, extended family, cultural family members, and community members – are on uneven legislative footing with foster and kinship carers.

For the reasons highlighted above, I hold serious concerns that the inclusion of the Statement of Commitment in the legislation is detrimental to the rights and best interests of children and young people in care.

Recommendation 17

I recommend removing the Statement of Commitment from the CYPSS Bill.

If there is a need for such a statement an alternative to the CYPSS Bill should be explored.

Conclusion

I acknowledge that my submission does not take a deep-dive into the positive and promising aspects of the CYPSS Bill. With a tight timeframe for response, I have been focused on areas of constructive feedback, and concerns I hold.

But I will take this opportunity, in conclusion, to highlight those features which I believe have great potential to improve the lives of children and young people in care.

I am highly supportive of the focus in the CYPSS Bill on improving interagency responsibility, buy-in and responses to children and young people in care.

The expansion of the Aboriginal and Torres Strait Islander Child Placement Principle – to embed the six elements of Identity, Prevention, Partnership, Placement, Participation and Connection – has the potential to create a solid legislative basis for reducing the overrepresentation of Aboriginal children and young people in care, and increasing connection with family, community and Country for those who do grow up in care.

The inclusion of the best interests' principle, and firmer obligation to include and respond to the voices of children and young people in decision-making, offers a pathway to improve rights-based decision-making and a departmental culture with greater alignment to the *Convention on the Rights of the Child*.

I recognise the efforts taken in drafting this Bill, and the significant efforts that will be required to implement the changes envisioned. The workforce will be key to supporting children and young people through these changes, and adopting and embracing new ways of working. I take this opportunity to acknowledge the impacts of reform and pay my respect to the continued energy applied towards not only direct service delivery, but improvement.

In providing my feedback, I do not wish to undermine these efforts, and the highly positive potential for change. But, it is an essential part of my role to provide advice when I identify areas of risk for children and young people's rights and wellbeing.

If nothing else, I urge Government to consider those risks that I have raised in my feedback, and not proceed with changes that are likely to have adverse impacts upon the lives of children and young people in care.

And, as expressed at the start of my submission, I continue to approach providing my advice with the hope of influencing Government to approach the task of reform with the courage that our children and young people deserve.

Appendix 1: Summary of Guardian Recommendations to the Review

	NO.	RECOMMENDATION
SUBSTANTIALLY IMPLEMENTED	2.	Embed Aboriginal and Torres Strait Islander Child Placement Principle to the standard of active efforts.
	3.	Make it explicitly clear that the Aboriginal and Torres Strait Islander Child Placement Principle must be taken into consideration in determining Aboriginal children and young people's best interests
	4.	Clarify case plan for Aboriginal and Torres Strait Islander children and young people must include a cultural plan
	11.	Restrict publishing identifying information for children and young people in care – with appropriate exceptions to allow children and young people to make decisions (in accordance with age and maturity) about telling their story
	14.	Include a requirement that case plans for children and young people with disability must include a disability care plan + include access to disability services as a form of assistance the Minister can provide for care leavers
	17.	Clarify classes of people who can apply for an internal review, to ensure significant people to the child have this right – eg, siblings, parents, relevant professionals etc.
	25.	Introduce statutory obligation to provide a copy of the Charter of Rights to all children and young people in care – as well as info about the Charter and contact details for OGCYP
PARTIALLY INCORPORATED	1.	Best interests of the child as the paramount consideration in decision-making
	5.	Consult with ACCOs and community regarding improving cultural safety for Aboriginal and Torres Strait Islander children and young people in Youth Court and SACAT proceedings
	6.	Legislate to ensure children and young people have an opportunity to personally present views (unless not capable, or not in their best interests) at (1) Annual reviews; (2) Internal reviews; and (3) CARP reviews
	7.	Introduce requirement for children and young people to be represented by an advocate (unless the child or young person has made an informed and independent decision not to be) in (1) SACAT proceedings; (2) internal reviews; and (3) CARP reviews.
	13.	Introduce obligations on state authorities to prioritise assistance to children and young people in care, on request from the CE DCP
	19. & 20.	Sibling relationships must be taken into account when determining best interests + introduce a placement principle for siblings (*ie, placed with siblings wherever possible)*
NOT INCORPORATED	8.	Children and young people in all forms of alternative care (including third-party orders, and voluntary out-of-home care) should have access to independent advocacy and oversight from the Guardian (with appropriate funding to OGCYP)
	9.	Introduce a funding commitment clause for the Child and Young Person's Visitor
	10.	Associated amendment to the *Equal Opportunity Act*, to make care status a protected attribute
	12.	Clarify that *Consent to Medical Treatment and Palliative Care Act 1995* still applies to children and young people regarding child protection assessments
	15.	Maintain the mandatory reporting threshold
	16.	Enshrine the R20 arrangement in legislation
	18.	Include an obligation to identify eligibility for compensation payments as part of case planning
	21.	Make CARP decisions reviewable by SACAT
	22.	*Guaranteed* assistance for all young people leaving care until the age of 25 – including supported placement as a *guarantee* for all CYP until 21
	23. & 24.	Remove limitation that Charter does not create legally enforceable rights or entitlements
	26.	Establish a Standing Committee of Parliament for ongoing oversight of the State's responsibilities to respect and promote the rights of the child

Appendix 2: Summary of Guardian Recommendations on the CYPSS Bill

NO.	RECOMMENDATION
1	I urge amendment to the draft bill to make best interests' principle the paramount consideration in decision-making.
2	I recommend that Government releases a public response to the Commissioner for Aboriginal Children and Young People's Inquiry into the Application of the Aboriginal and Torres Strait Islander Child Placement Principle, prior to progressing relevant legislative amendments.
3	a) Legislate to ensure children and young people have a reasonable opportunity to personally present their views at (1) Annual reviews; and (2) CARP reviews b) Remove subclause 141(5) from the Bill.
4	I urge reconsideration of my recommendation that the right to an advocate be extended to internal reviews and CARP proceedings.
5	I urge reconsideration of my recommendation that children and young people in all forms of alternative care should have access to independent advocacy and oversight by the Guardian for Children and Young People. This advocacy function must be funded.
6	I maintain my recommendation to introduce a funding commitment clause for the Child and Young Person's Visitor.
7	I maintain my recommendation to including care status as a protected attribute under equal opportunity law in South Australia.
8	I recommend robust practice guidance to ensure the boundaries of the restriction on identifying public information are well understood by departmental staff, carers and those who work with children and young people in care through government and non-government services.
9	Prescribed authorities under clause 18 should include Housing, SAPOL and relevant justice partners through the Attorney-General's Department.
10	I recommend that DCP gives further consideration to efficiency, resourcing, relying on NGO services for 'soft' self-referrals and discharging obligations through funded NGO services.
11	I recommend further consideration regarding the increased penalty for harbouring or concealing – including further consultation to capture delineation between persons who are concealing for the purpose of harm, and those who seek to enact protective behaviours.
12	I recommend removing the draft provision establishing the Quality of Care Report Guidelines. If this recommendation is not accepted, the draft provision must be amended to require consultation with children and young people in care, and advocacy bodies for children and young people in care.
13	I recommend substantially reproducing the reporting requirement in section 156(1)(e) of the *CYPS Act*, within the CYPSS Bill.
14	I urge reconsideration of my recommendation for contact determinations to be decisions reviewable by SACAT.
15	a) I urge reconsideration of my recommendation to guarantee assistance to care leavers, including supported accommodation to 21 years. b) With respect to the age at which care leavers are eligible to receive assistance, I recommend at the very least ensuring that the upper age limit remains the same, inclusive of 25 years of age. However, I also recommend consideration of suggestions made by those involved in my consultation, to remove the upper age limit altogether and enable supports as required throughout adulthood. c) I recommend removing the following changes, which I believe are adverse to care leavers rights and interests: • Removing the Minister's discretion to provide assistance to a care leaver who has been in care for less than six months • Removing the obligation to prepare a leaving care plan for children and young people on short-term guardianship or custody orders.
16	I recommend removing caveats which stipulate that express rights and protections for children and young people do not create legally enforceable rights or entitlements, throughout the CYPSS Bill.
17	I recommend removing the Statement of Commitment from the CYPSS Bill. If there is a need for such a statement an alternative to the CYPSS Bill should be explored.

Guardian
for Children and
Young People