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## Child and Young People Act 2008 Reform Stage 2

The ACT Council of Social Service (ACTCOSS) welcomes the opportunity to provide written feedback to the *Children and Young People Act 2008 (CYP Act)* Stage 2 reform process.

As the peak body representing the community sector, ACTCOSS seeks to ensure that legislation enables service providers to provide high quality services to service users and that service users, including children and young people themselves, have their rights upheld. We therefore welcome the ACT Government's commitment to delivering legislative reform to align the *CYP Act* with *Next Steps for Our Kids 2022-2030*<sup>1</sup> and to embed the Aboriginal and Torres Strait Islander Child Placement Principle into legislation, which is a key recommendation of the *Our Booris, Our Way* review.<sup>2</sup> ACTCOSS has appreciated the in-person workshops and updates on the progression of these significant, complex and important legislative changes.

According to the information paper accompanying the consultation for this reform process<sup>3</sup>, the package of proposed legislative changes is underpinned by five core objectives:

- promoting shared responsibility for child protection through collaborative information sharing and reform of mandatory reporting laws
- empowering children by strengthening their rights and voices in decision making
- enabling diversion from the statutory child protection system into earlier support services
- delivering more equitable, transparent and accountable decision-making processes
- addressing the over-representation of Aboriginal and Torres Strait Islander children, young people and families in the child protection system.

ACTCOSS are supportive of these overarching objectives, and we recognise the need to reform the *CYP Act* to improve the care and support provided to children and young people involved with the child protection and out-of-home care system in the ACT. While we support most of the proposed amendments, we believe some aspects warrant further consideration to avoid unintended consequences that may work against the realisation of these core objectives. Importantly, adequate resourcing and support to services will be imperative to ensure the reforms

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<sup>1</sup> ACT Government, [Next Steps for Our Kids 2022–2030: ACT strategy for strengthening families and keeping children and young people safe](#), (2022).

<sup>2</sup> Our Booris, Our Way Steering Committee, [Our Booris, Our Way Final Report](#), (2019).

<sup>3</sup> ACT Government, [Children and Young People Amendment Bill 2 2024 Information paper, October 2023](#), 2023.

succeed in both diverting vulnerable families from contact with the child protection system and in improving outcomes of those already engaged with the system.

These reforms will have significant implications for vulnerable communities and the processes shaping legislative change will have profound impacts on the lives of many families and children in the ACT community. Reforms of such scale and complexity will also have significant implications for services working with vulnerable children and families. Given the complexity of the legislative reforms, this submission does not engage with all of the proposed amendments to the Act. While we have sought to engage with our members to provide overarching feedback, we have not been able to undertake a comprehensive consultation with the full range of ACTCOSS members potentially affected by the proposed reforms due to time and operational constraints and the sheer scale of the proposed changes.

Noting the complexity and significance of the reforms and their highly technical nature, we hope to see further engagement and consultation with overrepresented community members, community sector service delivery organisations and families with lived experience of the child protection system, including after the reforms take effect.

### ***Guiding principles***

ACTCOSS is broadly supportive of the ACT Government adopting a principle-based legislative framework in place of a heavy reliance on rule-based and prescriptive provisions. We are also supportive of the five foundational principles articulated in the Children and Young Peoples Amendment Bill 2 (Bill 2), however stress that to successfully operationalise these principles they will need to be complemented by additional resourcing, strong professional development, practice reforms (including practice frameworks and guidelines), supportive administrative processes, and clear policy expectations.

We support the creation of a 'child and youth participation' principle, recognising the importance of listening to children and young people and ensuring they have a say in case planning and decisions affecting them. Despite this, there is an overall lack of clarity regarding the ability for children and young people to have their voice heard and responded to. For example, under certain provisions in Bill 2, it appears parents' rights can override young people who are under the age of consent (16 years old) and who want to consent to seeking voluntary community support. To rectify this, some ACTCOSS members have suggested a 'mature minor' policy be implemented to enable young people under 16 to make decisions without the need for an order to be made.

To ensure the 'child and youth participation' principle is applied, consideration should also be given ensuring information and services are delivered in a way that is developmentally appropriate, accessible to people with disability, and culturally safe. Children and young people's individual circumstances or needs may affect their understanding and engagement, and there can also be specific barriers to engaging children and young people in care, particularly Aboriginal and/or Torres Strait islander children and young people. They are more likely to have had experiences of trauma, adversity and discrimination; this can in turn foster distrust of services and young people can struggle to have their voices heard. The child protection and out-of-home care systems are often confusing, stressful and difficult to navigate, and this may reduce a child or young person's capacity or willingness to engage. It is essential to proactively consider how these factors may affect each individual child or young person's capacity to participate and what is required to most effectively share information with them, seek their

views, and engage them in the decision-making process. Feedback loops for children and young people should also be deployed to explain how their views have been considered. The *CYP Act* should also protect a child or young person's right to and right not to exercise their power of participation.

The inclusion of 'family preservation' as a foundational principle is also welcome. Implementing this principle will require greater focus on the factors contributing to involvement with the child protection system, including intervening earlier with intensive supports to keep families together when it is safe and to avoid entries to care. Child protection services should be embedded as part of a continuum of service delivery that includes the range of universal, secondary and tertiary services for children and families. There is evidence, however, that the current workforce within child protection systems is not well prepared and trained to deliver effective early intervention and family preservation interventions, and workforce planning will be essential to ensure workers are equipped to deliver early intervention. In particular, we note the *The Our Booris, Our Way* Implementation Oversight Committee has been alerting the Government for almost five years about Aboriginal workforce shortages, but with limited response from Government. Responding to these workforce challenges is more critical than ever.

Further, while ACTCOSS supports the 'best interests' and 'family preservation' principles, we believe additional considerations are warranted to ensure these principles deliver equitable outcomes and help to reduce the over-representation of Aboriginal and Torres Strait Islander children and families. These considerations are outlined below.

### ***Aboriginal and Torres Strait Islander over-representation***

The ongoing over-representation of Aboriginal and Torres Strait Islander children and families in the child protection system and out-of-home care is a severe and persistent issue. SNAICC's *Family Matters 2023 report* shows the over-representation of Aboriginal and Torres Strait Islander children and families in the ACT remained static and had not significantly improved in the reporting timeframe.<sup>4</sup> This over-representation is compounded through each successive step in the system, and much more needs to be done to support families to exit the system into appropriate, culturally safe services, and with the aim of restoring functional family life without statutory intervention.

Each contact by child protection systems must start with an understanding of the historical and ongoing systemic racism, bias and a lack of cultural competence that Aboriginal and Torres Strait Islander families face when engaging with statutory systems. This is reflected in the data showing that Aboriginal and Torres Strait Islander families are 5.7 times more likely to be reported to child protection authorities.<sup>5</sup> Children placed in out-of-home care also cannot be presumed to be safe, with Aboriginal and Torres Strait Islander children in care being more likely than non-Indigenous children to be subject to abuse.<sup>6</sup> A suite of preventative measures, alongside implementation of all of the recommendations from the *Our Booris Our Way* report (including comprehensive and accessible early

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<sup>4</sup> M. Taylor, G. Young, R. Kumar, L. Turner, L. Hutchins, B. French, L. Ann Jones, R. Holt, R. Marlais, E. Armstrong, L. Harris, D. Hill, N. Cronin, D. LaSalle, T. Corrales, N. Schlesinger, [The Family Matters report 2023](#), SNAICC - National Voice for our Children.

<sup>5</sup> Taylor *et al.*, [The Family Matters report 2023](#), p. 23.

<sup>6</sup> Taylor *et al.*, [The Family Matters report 2023](#), p. 30.

childhood education and fully-funded Aboriginal Community Controlled Organisations [ACCOs] to deliver services), must complement legislative reform to redress rates of over-representation.<sup>7</sup>

Against this backdrop, the proposed reforms to the *CYP Act* include some positive steps toward reducing the over-representation of the Aboriginal and Torres Strait Islander children and families in the ACT's child protection system and out-of-home care. Despite this, ACTCOSS believes several aspects of Bill 2 warrant further consideration to ensure the proposed reforms contribute to better outcomes and the goal of reducing the over-representation of Aboriginal and Torres Strait Islander children and families.

We strongly support enshrining the Aboriginal and Torres Strait Islander Child Placement Principle (ATSCIPP) in the *CYP Act*, and its inclusion as part of the 'best interest' principle in Bill 2. However, to support this long overdue legislative change and ensure the 'best interests' of Aboriginal and Torres Strait Islander children and young people are upheld, the Act Government must expedite the full implementation of the *Our Booris, Our Way Review* recommendations.

SNAICC's *Family Matters Report* reveals persistently low expenditure on family support and intensive family support, with the ACT having the third lowest rate (12.0%) as a proportion of overall child protection expenditure.<sup>8</sup> Of the funding committed to family support and intensive family support in the ACT, only 17.5% is directed toward ACCOs. If the ATSCIPP and family preservation principle are to be effectively applied in practice, expenditure will need to be re-balanced from statutory child protection intervention towards early intervention and family support services, and from non-community controlled service providers/models to those determined by, and accountable to, Aboriginal and Torres Strait Islander communities.

This will also support the implementation of the 'Active Efforts' principle proposed in Bill 2, which requires child protection officials to adhere to the principle of taking active efforts to ensure a child's safety, wellbeing and family preservation, including for Aboriginal and Torres Strait Islander young people.

ACTCOSS also has significant reservations about the introduction of the Structured Decision Making® (SDM) tool. We note that this tool was recently decommissioned by the Queensland Government, partly on the basis that it had been found to produce high rates of false positives for First Nations children and was serving to exacerbate the problem of over-representation in child protection and out-of-home care in Queensland. This was despite efforts by the Queensland Government to refine the tool and make adjustments to take into account social, cultural and historical factors for First Nations peoples. We note that similar criticisms have been levelled at this tool in relation to the entrenching of disparities for Black communities and people of colour in the United States. We also understand that SNAICC and ACCOs in other jurisdictions have raised concerns about the use of SDM and other algorithmic-based tools. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) critically examined the use of such tools, with several expert witnesses

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<sup>7</sup> Our Booris, Our Way Steering Committee, [Our Booris, Our Way Final Report](#), (2019).

<sup>8</sup> Taylor *et al.*, [The Family Matters report 2023](#), p. 41

indicating that they were inequitable and had the potential to reproduce biased outcomes for First Nations peoples, people with disability, and people with mental health issues.<sup>9</sup>

The SDM tool uses an actuarially-based prognosis that assesses a family's future risk of abuse or neglect based on their history and characteristics, such as prior involvement with the child protection system, previous parental alcohol and drug use, mental health or disability status, family involvement with the criminal justice system, etc. While the rationale may be to standardise assessments and reduce individual bias by caseworkers, the use of 'risk proxies' can serve to reproduce and reinforce existing biases and discrimination embedded in the historical data, particularly for Aboriginal and Torres Strait Islander families who are, for example, much more likely to have had prior involvement with the criminal justice or child protection systems. In other words, actuarial- or algorithmic-based tools such as SDM inadvertently bake in bias to the assessment of individuals, relying on risk proxies that disproportionately affect First Nations peoples, while potentially missing other non-Indigenous peoples altogether simply because they do not exhibit these risk proxies. Ultimately, the most important protective factor for a child is their family's love, and this is not effectively captured by the SDM tool.

We urge the Government to consult with and act on the advice of local ACCOs regarding the appropriateness of the SDM tool, including with Gugan Gulwan, Sisters in Spirit, Yerrabi Yurwang and the Aboriginal Legal Service. We also recommend resourcing Aboriginal-led approaches to assessment and the development of culturally safe and responsive assessment tools for Aboriginal and Strait Islander children, young people and families.

### **Consultation processes**

It is important government and statutory agencies are engaged in effective and ongoing consultation with the community, in particular Aboriginal and Torres Strait Islander communities as well as other overrepresented groups. In our discussions with stakeholders, we have found that while consultation processes often invoke optimism and generate expectations of meaningful change, follow-up conversations and ongoing engagement is often lacking and this can undermine the stated objectives of the consultation. We recommend that consultation broaden over time and involve more community members who may not proactively access consultation and may not have the connections with official channels and service providers, including outreach that more effectively engages with the voices of people who are most impacted by the proposed legislative changes.

In particular, Aboriginal stakeholders whom ACTCOSS consulted with for the purposes of this submission indicated that the sheer complexity, significance and scale of reforms included in the omnibus Bill, along with the limited timeframe for consultation, ultimately limited the scope for meaningful engagement with local community members and organisations. We recognise the limitations of incremental adjustments and the pressing need for transformational change to the ACT's child protection system. Such change, however, needs to be implemented in a manner that enables meaningful engagement with the communities and key stakeholders who are most affected. While we recognise the Government's efforts to consult and engage with relevant stakeholders, the bundling together of multiple and highly complex changes in this second tranche of reforms has made it difficult for

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<sup>9</sup> Counsel Assisting the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Submissions of Counsel Assisting following Public hearing 8: The experiences of First Nations people with disability and their families in contact with child protection systems*. [Submissions of Counsel Assisting following Public hearing 8 \(royalcommission.gov.au\)](https://royalcommission.gov.au)

communities and providers to engage in a meaningful way. Given the scale and significance of the reforms, and the tight timeframe for implementation, we strongly recommend that there is ample information sharing, consultation and that feedback loops are established to support the implementation of the reforms. Such consultation and information sharing needs to be conducted in a manner that is respectful and responsive to the needs and circumstances of ACCOs and provides them with adequate time to engage with their own stakeholders and Aboriginal community members.

### ***Over-representation and experiences of children, parents and families with disability***

In the process of consulting on reforms to the *CYP Act*, stakeholders shared concerns with ACTCOSS regarding the lack of recognition of families with parents and children with disability. These families are overrepresented in the child protection system and out-of-home care.

We have heard that for families with parents with intellectual disability, information is frequently inaccessible, timeframes to respond to actions are inappropriate, and families are presumed to be ineffective or incapable parents to their children. In addition, both Child and Youth Protection Services (CYPS) staff and service delivery organisations frequently lack the required skills to meet the needs of people with disability. This is supported by the findings of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission). In a Research Report examining parents with disability and their experiences of child protection systems, the Disability Royal Commission detailed many highly concerning experiences of families with disability, including:

*the continued and explicitly discriminatory conflation of parents with disability with ‘risk’ across Australian and international child protection systems. In several jurisdictions across the world, disability persists as a statutory ground to be considered in determinations of a person’s ‘fitness’ to parent. This is despite Article 23(4) of the Convention on the Rights of Persons with Disabilities (the ‘CRPD’) which unequivocally states that children should not be separated from their parents on the basis of their or their parents’ living with disability.<sup>10</sup>*

Based on this and other data in the report, we hold concerns that a focus on early intervention and diversion from statutory intervention, together with the introduction of the SDM tool, may lead to heightened scrutiny and surveillance of parents with disability and their parental skills, with the resulting stress and pressures on family dynamics perversely increasing the risk of such families being subject to statutory interventions.

As indicated above, the use of the SDM tool has the potential to replicate, rather than remedy, the social inequities and known problems with child protection decisions for families with disability. This was highlighted in the Research Report undertaken by the Disability Royal Commission, which found:

*As substantial empirical literature attests, such risk assessments based as they are on past numbers of parents’ involvement with child protection systems are more telling of the social, systemic and individual prejudice and discrimination and absence of support faced by parents*

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<sup>10</sup> T. Libesman, P. Gray, E. Chandler, L. Briskman, A. Didi & S. Avery, *Research Report: Parents with Disability and their Experiences of Child Protection Systems*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2023, p. 39.

*with disability, than any generalised risk inherent to parents with disability. Furthermore, [...] the present-day pre-occupation with risk assessment ‘can distort and deflect attention from the relations of race, class and gender that are structured into child protection processes’ – all through the ‘supposedly neutral application of the best interests of the child’. Many of these factors are likewise structured into supposedly neutral risk assessment tools, further entrenching their impact while downplaying or even rendering invisible their presence in the decision-making process.<sup>11</sup>*

We have heard from stakeholder consultations that families with disability can often feel that their lives are ruled by service interactions and bureaucracy, which increases the fear of being judged on parenting. This has meant that families are hesitant to seek support when they are facing struggles, the opposite outcome of what the legislative reform is hoping to achieve.

We recommend that the *CYP Act* reform re-examine opportunities to include people with disabilities and their families, including those with lived experience of child protection. This would help ensure that the legislative reforms are accompanied by measures to improve the experiences of families with disability and support a more disability safe and inclusive service system. In particular, the implementation of the family preservation principle proposed in Bill 2 will require greater consideration of appropriate assessment tools, better training of caseworkers, and accessible support services that are responsive to the needs of families with disability. All CYPS workers should undertake quality training on disability that interrogates ableist assumptions and ensures they fulfil their responsibility to make appropriate reasonable adjustments.

For many parents with disability subject to child protection system involvement, the possibility of family preservation is foreclosed by the lack of safe, accessible and appropriate services. Case workers and systems should be inclusive of the needs of parents with disability and not perpetuate assumptions that parents with disability are less deserving or less able to care for their children, but rather must be supported for families to remain intact.

### **Increased resourcing for services**

Successfully implementing the reforms proposed to the *CYP Act* will necessitate increased funding for service delivery and increases to administrative costs. ACTCOSS’s *Counting the Costs* report highlighted pressures on the existing community services sector in the ACT. The report painted a picture of chronic underfunding that has not kept pace with the true cost of delivering services, nor with increased demand and increased complexity among those seeking support. While the report points to the need to prioritise early intervention and prevention to reduce escalating demand and increased costs into the future, governments continue to prioritise crisis response.

These funding issues are pronounced in the family support and intensive family support systems, and is the context in which the proposed reforms will be unfolding. Against this backdrop, significant investment and resourcing of the sector will be imperative to improve outcomes and successfully implement the complex and significant changes that are proposed.

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<sup>11</sup> Libesman *et al.*, *Research Report: Parents with Disability and their Experiences of Child Protection Systems*, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2023, p. 42

In particular, substantial investment in ACCOs is required. The *Family Matters Report 2023* found that the proportionate expenditure on family support and intensive family support services in the ACT is lower than it was in 2017-18 and, at 12.0%, is lower than the proportionate expenditure on such services at a national level.<sup>12</sup> Redressing the issue of Aboriginal and Torres Strait Islander over-representation in the children protection system and out-of-home care will require community-led responses and the sufficient and stable resourcing of ACCOs to respond to the needs of their communities. This is underscored in SNAICC's *Stronger ACCOs, Stronger Families Report* which found that the lack of responsive and flexible needs-based funding is a major barrier to the effective delivery of services through ACCOs.<sup>13</sup>

We recommend that projected funding costs be thoroughly assessed alongside legislative changes in order to enable best practice service delivery. In addition to increasing the quantum of funding, it is important funding processes, including associated reporting and administrative arrangements, are designed and developed in ways that genuinely support self-determination for ACCOs and overcome the systemic barriers that such processes typically present to ACCOs.

### ***Expanding the grounds for mandatory reporting***

ACTCOSS strongly supports the underlying intent of the proposed changes to mandatory reporting thresholds, noting that they are based on an understanding of the harms experienced by children outside of commonly-understood definitions of abuse and are supported by the findings of the landmark Australian Child Maltreatment Study. However, the major legislative change from the simple threshold of physical and sexual abuse to a far more complex and broad definition of Risk of Significant Harm (ROSH), including broader definitions of the types of harms and risks to children's safety, risks substantial unintended consequences. It requires associated training and education for all employees of statutory services, community services and mandatory reporters. In particular, out-of-home care and youth justice workers who may be becoming mandatory reporters for the first time will require comprehensive education and training to ensure that reports are made with knowledge and understanding of their purpose, and so that other avenues of intervention and information for families are understood.

While ACTCOSS acknowledges that the increase in reporting grounds is intended to improve child safety, we remain concerned about the potential to flood an already overstretched system with low-risk cases; divert resources away from high-risk cases and/or early intervention and prevention; and increase the over-representation of Aboriginal and Torres Strait Islander children, young people and families. Research has suggested broadening the grounds for mandatory reporting may not always improve the detection of children exposed to maltreatment; may not always benefit children who are experiencing harm (for example, when system burden may hinder the ability of child protection services to identify those children most in need of an urgent response); can increase the likelihood of false positives, particularly for Aboriginal and marginalise families and in a context where child protection workers faced with overwhelming caseloads; may increase harms to families subjected to unnecessary investigations and interventions; and can divert much-needed resources to situations

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<sup>12</sup> Taylor *et al.*, [The Family Matters report 2023](#), p. 41.

<sup>13</sup> SNAICC, [Stronger ACCOs, Stronger Families Report: Final Report](#), 2023.



that can be more effectively dealt with outside the child protection system.<sup>14</sup> Individuals and families may also be more reluctant to seek help if they are worried that they will be reported.<sup>15</sup>

To avoid or minimise these unintended adverse effects, a number of measures will need to be implemented alongside the expanded grounds for mandatory reporting. To manage the potential increase in mandated reports and the resulting unintended consequences, the Information Paper accompanying the package of proposed reforms indicates that the ACT Government is committed to “investment in training, infrastructure, data analysis and ensuring reporting systems are equipped to manage potential increases in reports”. Fulfilling this commitment will be critical, and we urge the ACT Government to work closely with services to better understand the training, infrastructure and other specific resourcing implications of the proposed changes.

The manner in which the proposed changes are worded casts the net far wider and will require significant support for mandatory reporters. For example, the proposed mandatory reporter guidelines include “harm caused by being exposed to family violence” which includes a “single act... or circumstance”. Although this might empower services who have a duty of care to children to act on their responsibilities to support child safety, implementation of the legislation will necessitate ongoing education of mandatory reporters to clarify and understand their responsibilities. In addition, the legislation must ensure that there are layers of protection against perverse outcomes for parents who have experienced or are experiencing intimate partner and family violence, such as child removal solely on the basis of a child witnessing family violence. All parents who are victim survivors of family and intimate partner violence must be supported to maintain the integrity of their physical custody of and relationship with their children, barring any other concerns. These recommendations align closely with the *Next Steps for Our Kids* aim to deliver “domestic and family violence informed and responsive service provision”.<sup>16</sup>

Importantly, increasing the number of people who are mandatory reporters could have the unintended consequence of disincentivising parents and carers from accessing a wide range of services that would benefit their children. Given the racist history of child removals in Australia, this could disproportionately affect Aboriginal and Torres Strait Islander families. There has not yet been effective consultation with these potential mandatory reporters. This portion of the legislation, but not all of Bill 2, should be delayed until this has occurred. This would enable a better understanding of the likely unintended consequences and planning how to mitigate them.

### **Changes to information sharing**

ACTCOSS recognises the importance of effective and timely information exchange to prevent harm and abuse and to better protect and promote the wellbeing and safety of children and young people. We also acknowledge

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<sup>14</sup> J.R. McTavish, M. Kimber, M., K. Devries, M. Colombini, J.C. MacGregor, N. Wathen, and H.L. MacMillan. Children’s and caregivers’ perspectives about mandatory reporting of child maltreatment: a meta-synthesis of qualitative studies. *BMJ open*, 2019, 9(4), p.e025741; C. Lippy, S.N. Jumarali, N.A. Nnawulezi, E. Peyton Williams, C. Burk, The Impact of Mandatory Reporting Laws on Survivors of Intimate Partner Violence: Intersectionality, Help-Seeking and the Need for Change, *Journal of Family Violence*, 2022, 35, 255–267; H. Douglas & T. Walsh, ‘[Mandatory Reporting of Child Abuse and Marginalised Families](#)’, in *Mandatory Reporting Laws and the Identification of Severe Child Abuse and Neglect*, B Matthews & D. Bross (eds), 2015, p491-509.

<sup>15</sup> Douglas & Walsh, ‘Mandatory Reporting of Child Abuse and Marginalised Families’, 2015.

<sup>16</sup> ACT Government, [Next Steps for Our Kids 2022–2030: ACT strategy for strengthening families and keeping children and young people safe](#), (2022), p. 18.

concerns across child protection agencies and related community services that existing legislative arrangements for information sharing is outdated, complex and confusing.

While recognising the need to improve the legislative provisions that govern the sharing of information, the changes proposed in Bill 2 carry significant implications for a wide range of service sectors and types. We note, for example, that Bill 2 contains few limitations on the obligation to provide information, and this may have significant implications for a wide range of service sectors that support marginalised populations, including alcohol and other drug services, mental health services, homelessness services, legal assistance services, and disability support services. ACTCOSS does not believe sufficient consultation and engagement has occurred to both promote awareness of the proposed changes across services sectors and to gauge feedback on the potential complexities, issues and risk of unintended consequences.

Changes to the information sharing arrangements will also need to be supported by policies and procedures for daily work once workers are trained, including responsible oversight and management, as well as communication procedures. Again, ACTCOSS strongly recommends engagement with frontline services to support the development of these policies and procedures and to understand the resourcing and other practice implications of implementing the changes.

Critically, consideration needs to be given as to how to ensure the information sharing regime encourages, rather than deters, help-seeking behaviour, and that it ultimately supports individual and community empowerment to make decisions that keep children safe. Based on feedback from disability support organisations, ACTCOSS is aware of past situations where CYPS actions around information-seeking have been counter-productive to their overall goals, for example subpoenaing every support person that a person works with (all their doctors, psychologists etc.) instead of just asking for a report from relevant professionals or providers at key moments. This can make parents feel unsafe to seek any support at a time when CYPS would be wanting a parent to seek that support, and when doing so is in the best interests of family preservation. Requests to share information should only be occurring when it is appropriate and necessary for this to occur, and to the extent necessary to promote wellbeing and safety of a child or group of children. This is critical to maintain service engagement and trust, particularly for Aboriginal and Torres Strait Islander families and other marginalised families who may hold greater levels of mistrust due to past government policies and current high rates of child removal.

There has not yet been effective consultation with organisations that would be in scope for information sharing arrangements. This portion of the legislation, but not all of Bill 2, should be delayed until this has occurred. This would enable a better understanding of the likely unintended consequences and planning how to mitigate them.

### ***Cultural and institutional changes required to realise the intent of the legislative reforms***

According to the Information Paper accompanying the current consultation, the reforms to the *CYP Act* are designed to support transformational change to the ACT's child protection system, establishing a more equitable support system that "strengthens families, keeps children and young people safe", and "addresses the over-representation of Aboriginal and Torres Strait Islander children, young people and families". Achieving this, however, will require a significant shift in the internal culture and institutional practices of CYPS, and this will in turn need to be backed up by strengthened accountability and ongoing, independent oversight.

The appointment of the Aboriginal and Torres Strait Islander Children and Young People Commissioner aligns with a recommendations of the *Our Booris, Our Way* report and demonstrates the ACT Government's commitment to improving to the oversight of statutory child protection activities. However, consultation with key stakeholders continues to show that a culture of secrecy and fear of reprisals remains a significant barrier to reforming statutory child protection service delivery. We understand that families, particularly Aboriginal and Torres Strait Islander families, can face significant barriers when interacting with child protection systems due to internal cultural issues, compliance-focused bureaucratic practices, and a lack of transparency in the grounds for decisions. This dynamic erodes trust in the system and may affect long-term parental arrangements and outcomes for vulnerable children.

The *Next Steps for Our Kids* report indicates that the child protection system requires a significant increase in trust, accountability and transparency, and implies that the system is currently lacking these characteristics. The report states that: "Building on existing accountability through oversight agencies, Next Steps will increase transparency in decision making in partnership with those agencies and commissioned service".<sup>17</sup>

We urge the ACT Government to embed these important commitments to accountability and transparency into the legislation, with provision for independent oversight and ongoing monitoring of the culture and practices of CYPS. ACTCOSS believes this is imperative to tackle systemic challenges, shift cultural and institutional barriers to reform, maintain the momentum for change, and ultimately deliver better and lasting outcomes for child, young people and their families. While the introduction of the External Merits Review is a welcome step toward providing impartial and independent review of child protection decisions, much more is needed to provide the necessary oversight and accountability. We note that several jurisdictions have established new oversight committees or extended the role of external oversight bodies in relation to system monitoring, as well as introducing new or improved systems for managing adverse incidents and complaints.

### ***Embedding cultural competency and responsiveness across the workforce***

ACTCOSS believes that every case worker should be culturally competent, and that the responsibility to deliver more culturally safe and responsive assessments and services should not be confined to a designated special team. The *Our Booris, Our Way* report maintained that no Aboriginal and Torres Strait Islander family should be assigned to a culturally incompetent case worker, and to guarantee against this there must be mandated quality training and tools to measure the cultural competency of every case worker in an ongoing and comprehensive manner. As described in the most recent six-monthly update, a tool is being developed to review the cultural competency of employment applicants. This is a positive step, however it does not address the issue of the cultural competency of current employees.

The last six-monthly update of the implementation of *Our Booris, Our Way* recommendations was published in June 2023 and covers the period July-December 2022.<sup>18</sup> We are not aware of any additional measures to implement cultural competency across the workforce since this update was released, nor of related developments such as recruitment outcomes. We recommend that the *CYP Act* reforms address the need for universal cultural competency, and that accompanying the reforms a measurement tool is developed across the caseworker and

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<sup>17</sup> ACT Government, *Next Steps for Our Kids*, (2022), p. 17.

<sup>18</sup> ACT Government, [Our Booris, Our Way Review Six-monthly Update](#) (July – December 2022), 2022.

management workforce to ensure that cultural safety, competency and responsiveness is embedded in workforce training and practice.

### ***Definition of family member***

The Family Matters Report states that “The proportions of children placed with Aboriginal or Torres Strait Islander relatives or kin in each state and territory have remained unacceptably low.”<sup>19</sup> By broadening the definition of “family member”, the reforms to the *CYP Act* would ensure that appropriate people are not automatically excluded from being identified as a potential carer due to governmental definitions of a family member. ACTCOSS has heard from stakeholders that making this change, among others, would better align systems to meet the needs of families where some members may be Aboriginal and/or Torres Strait Islander and others are not, as well as in meeting the needs of newly identifying Aboriginal and Torres Strait Islander peoples or families. Through expanding the definition of family, the legislation may also be expanded to allow for children and young people’s voices to be heard in identifying adults that they have significant and important relationships with.

In addition to changing the definition of family member, we recommend that further consideration is given to policy or program changes to support Aboriginal kinship/carers who are caring for children or young people who have not formally entered the system. During our consultations, we were made aware of Aboriginal families in this situation who are providing care ‘voluntarily’, but are not entitled to any assistance or financial support, potentially putting their own families and children at risk of coming to the attention of CYPS. Under current policy settings, CYPS are unable to assist such families unless they formally enter the system, and the onus is thereby on the family to report the children they are caring for before CYPS will intervene and support them. We urge the ACT Government to co-design a program, back up by resourcing, to better support the needs of families in such situations, connecting them with the financial assistance and other support services to ensure the best outcomes for the children and young people they are caring for.

### ***Support for young people transitioning from care***

ACTCOSS endorses measures that strengthen the support for young people transitioning from care. We are concerned, however, that proposed changes to “broaden and simplify” wording around the supports provided to care leavers does little to redress existing shortcomings in such support and may in fact compound the inequities experienced under current arrangements.

The Act currently provides a comprehensive list of considerations for planning transitions to independence, however there is no obligation for the Director General to pay for services to assist in this transition. Instead, the provision of support is discretionary, which in practice means that assistance is frequently absent, inadequate and/or only provided in very limited circumstances. The consequences of this need to be understood against a backdrop of rising costs of living and a housing crisis that disproportionately affects young people. In this context, there is a pressing need for comprehensive, non-discretionary supports for young people transitioning from care, including housing support. In addition, we recommend consideration is given to extending support for care leavers up until the age of 25 years.

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<sup>19</sup> Taylor *et al.*, [The Family Matters report 2023](#), 2023.

## **RECOMMENDATIONS**

- To support the implementation of the Guiding Principles (including the ‘best interests’ and ‘active efforts’ principles) in relation to Aboriginal and Torres Strait Islander children and young people, fully implement the recommendations of the *Our Booris, Our Way* review.
- Implement measures to support the active participation of children and young people, including the development of guidelines and practice supports to encourage participation, and with consideration given to information provision and modes of participation that are developmentally appropriate, accessible to people with disability, trauma-informed and culturally safe.
- To support the implementation of the ‘family preservation’ principle, increase investment in early intervention and intensive family support services, accompanied by workforce planning and the development of robust practice and professional development frameworks. In line with recommendations from *Our Booris, Our Way Review*, this should include a significant increase in investment in Aboriginal Community-Controlled early supports and services for Aboriginal and Torres Strait Islander children and families.
- Consult with and act on the advice of local ACCOs regarding the appropriateness and risks of the SDM tool, with additional consideration given to implications for families with disability, parents/carers with mental ill health, and families from culturally and linguistically diverse backgrounds.
- Provide resources for Aboriginal-led approaches to assessment, including support for ACCOs to develop culturally safe assessment tools for Aboriginal and Torres Strait Islander children, young people and families.
- Remove the provisions with changes to mandatory reporting and information sharing from Bill 2 and delay their legislation until appropriate consultation with the breadth of affected service providers has occurred.
- Undertake widespread consultation across the community services sector and with community stakeholders to better understand the implications and potential issues arising from the proposed reforms, particularly in relation to the proposed mandatory reporting and information sharing regimes.
- Ensure consultation and information sharing is conducted in a manner and timeframe that is respectful and responsive to the needs and circumstances of ACCOs and provides them with adequate time to engage with their own stakeholders and Aboriginal community members.
- Undertake an independent review of the implementation of the legislated changes and associated measures one year after they come into effect, with a particular focus on mandatory reporting, information sharing, and the use of assessment tools.

- Improve transparency and strengthen accountability for the implementation of the reforms via oversight agencies and improved system monitoring.

Yours sincerely



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