

Submission

To Government of South Australia; Department for Child Protection

Topic Children and Young People (Safety and Support) Bill 2024 Consultation

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Submission to the Government of South Australia's Department for Child Protection's "Children and Young People (Safety and Support) Bill 2024" Consultation

Uniting Communities welcomes the opportunity to provide input into the Department for Child Protection's "Children and Young People (Safety and Support) Bill 2024" Consultation.

Preamble

Uniting Communities is a member of the South Australian Leadership Coalition for Child Protection Reform and has chosen to invest our efforts in providing a formal response to the Bill through a joint Coalition response. The points identified in this brief response are wholly consistent with the position established by the Coalition but serve to provide further emphasis for the need for further changes required to make South Australian Children & Young Peoples Safety and Support Bill the progressive legislation needed for our State. Whilst we acknowledge some important positive measures contained in the current Bill it unfortunately fails to meet this test. However, if the amendments proposed in this submission are adopted, we believe the Bill will deliver the transformative legislative change required to underpin the reform needed for South Australia.

Specific Feedback

The Positive

The Bill incorporates a number of measures which reflect positive reform and change that are to be commended. These include:

- The inclusion of 'significant harm' to replace 'harm' as a key determinant in informing decision made in respect of reporting and removal of children and young people. This threshold change is consistent with other jurisdictions response but more importantly better defines when and how statutory intervention should be delivered. Our unsustainable rates of notifications and child removals in this state have in part been fuelled by an unreasonably low threshold of harm which has been detrimental for families and for children and young people. It is essential that this element of the Bill is retained. Whilst Uniting Communities continues to advocate for a scrapping of mandatory reporting all-together, we understand that despite moves in other jurisdictions around the world to do this, that there is unlikely to be significant community support for it to be enacted. We are confident that this will change in time and these mandatory notification provisions will, if not now, be eventually scrapped from our legislation. Having noted the positive change in introducing the concept of significant harm there are two caveats to this support – namely the current definition which remains too broad and encompassing and secondly its inconsistent application in other parts of the Bill (refer to alter references).
- The creation of a State Strategy for Safety and Support is, in principle, a positive development. Whilst such mechanisms are only as good as their ultimate content and implementation, having a legislative requirement to produce and report on such a strategy is a good measure. It would be enhanced by explicitly naming families in its title which could be more consistent with one of the stated purposes of the Bill to "support and strengthen families and communities". It also needs a

more inclusive approach to its development than currently articulated in the Bill to ensure the voices of families, particularly those with a lived experience of the child protection and family support system, are included.

- The power of the Minister to direct the Chief Executives of certain State Authorities to meet to discuss interagency approaches is potentially a positive measure. Ensuring other State Government agencies with responsibility for supporting families and children to fulfill these responsibilities is an important accountability tool. The Bill wording however is very “timid”, referencing the provision to direct meetings and discussions but not actions likely to be required to improve support for families and children by other agencies. It is recommended that this wording is strengthened to provide a more active and accountable set of responsibilities and actions – including where needed investment to deliver required supports.

What’s missing

Notwithstanding the above points (and other positive changes providing greater recognition of the Aboriginal Child Placement Principles and Acknowledgement of impacts of past laws and practices on Aboriginal Communities, families and children) the Bill is lacking some major elements required to make it progressive and a fit for purpose Act for our current conditions in South Australia. The most significant of these include:

- A failure to change the provision in the current legislation for the definition of what is referred to as the “Paramount Principle (for the) Safety of Children and Young People.” Whilst the Bill has expanded on the definition of best interests, both more generally for South Australian children and young people (and more significantly for Aboriginal Children and Young People) the Paramount Principles continues to be limited to ensuring children and young people are safe and protected from harm. This narrow definition (not even consistent with other changes to shift thresholds for reporting and removing children to “significant” harm) cannot be displaced in guiding statutory interventions, including by the Courts and Child Protection officers. Whereas most other jurisdictions have changed their Paramount Principle to be encompassing of other interests and considerations the Bill has failed to adapt this progressive approach to defining the Paramount Principle (see attached table comparing this reference to 3 other Australian jurisdictions wording all of which should have informed a change to the current S.A. Bill). Retaining this narrow scope for the Paramount Principle will continue to drive overly conservative and punitive decision making in our Child Protection system. As such, we will struggle to turn around South Australia’s poor performance in terms of the continuing over-representation of children and young people in our out of home care system. If there were one critical reform to be made to the Bill as it currently stands, it would be to change the Paramount Principle definition to something more contemporary and inclusive of a broader suite of best interests akin to wording provided in the examples attached. This does not displace the importance of safety but places it alongside other elements of best interests.
- If this narrow definition of the Paramount Principle is not changed to incorporate a broader suite of best interests, then the remaining principles, including the Aboriginal Placement Principles, remain subservient and potentially irrelevant in key decision making. It is simply that important that the Paramount Principle is amended.
- Application of Significant Harm: Whilst the referencing of significant harm as opposed to harm as a revised basis for reporting and responding to concerns is a positive development, the application of these terms is not used consistently through the Bill. Although harm may be an appropriate threshold for some actions such as convening a case conference, the application of court orders (Part 10- Section 98) continues to use harm rather than significant harm as the basis for making

an application for an order. This undermines the very intent of inserting a provision for significant harm which would be a more appropriate threshold for such interventions. The Bill needs to be reviewed more thoroughly to test other examples of where this lower threshold for actions has been retained to ensure it doesn't maintain an unreasonably low bar for interventions. Other areas in which this test should be applied, includes the approval of contact arrangements where the Chief Executive has a veto to prevent such arrangements where there is a risk of harm (but not significant harm) for the child or young person.

- The Bill has missed the mark entirely in relation to ensuring best and active efforts are made to enable a family and the parents of a child or young person to safely care for their children in their family, community and culture. Whereas legislation in other jurisdictions places a responsibility on the State to deliver (and show evidence of such delivery) support services and resources for a family prior to making a care application these responsibilities are not evident in the Bill (beyond the mandatory requirement for Family Group Conferencing for Aboriginal and Torres Strait Islander children and young people and optional use for other children and young people). Given the paucity of family support services in South Australia, the Bill misses an opportunity to enshrine in legislation a basic right for a family and parents to be offered the assistance and resources reasonably needed to enable them to ensure their child or young person is not in significant harm and can thrive. This Bill does not offer this right to a service which is a major omission. Merely making reference to the possibility of establishing networks and services for children and young people (Division 6 – 34); directing Chief Executives of other State Authorities to meet to discuss interagency approach (Section 18); having the power to provide services for children, young people and their families (Sections 17, 19 & 20) or establishing a State Strategy for the Safety and Support of Children and Young People (but not for their families – Part 5 Division 1) is NO substitute for ensuring all parents and families have access to appropriate support services to meet their obligations. The removal of a child or young person from their family without offering support to enable the family to provide for the care and safety of their child will continue to consign more children being unnecessarily removed from their family and parents and their community and culture. The legislation should place an expectation on the State to offering and facilitating the take up of such support services prior to action being taken to remove a child from the care of their parents other than in exceptional circumstances.
- Similarly to the lack of focus and commitment to supporting families needing assistance, the Bill has not prioritised the need for family restoration and reunification. The opportunity to safely and effectively reunify children and young people with their families continues to be missed and this Bill offers no solution to rectify this situation. The few references to reunification are perfunctory and provide no sense that the restoration of children with their families is a priority. This comes at enormous cost for children, families and the State budget and is a contributing factor in the high rates of children and young people in care in South Australia.
- The Bill has effectively watered down the reporting obligations of the Minister contained in the current Act. In particular, the Bill has deleted all reference to the additional annual reporting obligations contained in clause 15 of the current Act. These obligations were included in recognition of the need to ensure a level of accountability in the provision of family support and intensive family support services to children and young people who are at risk and their families. Specific requirements, including to report on South Australia's performance relative to other States and Territories have been omitted from the Bill and substituted with a broad reference to collecting and publishing statistical data. One of the reasons the current Act included specific reference to family support programs was a concern that these services were not being offered and delivered to the level required by families in South Australia. Continuing evidence from the Report on Government services together with unmet need data from South Australia's intensive family support programs demonstrates that this remains a problem for South Australia - yet the obligation to report on this has been removed.

- The Bill contains 2 important Charter of Rights – for Children and Young People and for Carers and enshrines their place within the Child protection system in legislation. However there is one very critical stakeholder group missing from these statement of rights – and that is Parents and Families. It is recommended that the Bill adopt provisions increasingly being made in other jurisdictions to incorporate a Charter of Rights for Parents and Families. Attached is an example produced in Western Australia for the Department of Communities which – with appropriate consultations with parent groups in South Australia, could be adopted for our jurisdiction.

Conclusion

In summary, the Bill offers some positive improvements to the current Act and these measures should be supported. However, it remains a Bill with enormous gaps required to meet the demands and needs of children, young people and their families in our State. It will not, without the amendments/changes outlined in this response, deliver the transformation needed for Child Safety and Family Support. Uniting Communities remains available and willing to work with Government to help craft legislation that will deliver the transformation our Child Protection and Family Support system needs.

We appreciate the opportunity to provide input into the Department for Child Protection’s “Children and Young People (Safety and Support) Bill 2024” Consultation.

State/Territory	Proposed SA Bill 2024	Current SA Act	QLD	NSW	VIC
Act/Bill Title and date and length	Children and Young People (Safety and Support) Bill 2024 (147 pages)	Children and Young People (Safety) Act 2017 (110 pages)	Child Protection Act 1999 (last amended Feb 2024) (392 pages)	Children and Young Persons (Care and Protection) Act 1998 No 157 (last amended April 2024) (229 pages)	Children, Youth and Families Act 2005 (Last amended July 2024) (799 pages)
Paramount Principle	Division 3—Guiding principles 10—Paramount principle—safety of children and young people (1) The paramount principle in the administration, operation and enforcement of this Act is to ensure that children and young people are safe and protected from harm. 40 (2) No other principle or requirement set out in this Act displaces, or can be used to justify the displacement of, the paramount principle.	7—Safety of children and young people paramount The paramount consideration in the administration, operation and enforcement of this Act must always be to ensure that children and young people are protected from harm.	Paramount principle: The main principle for administering this Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child’s life, are paramount.	Principles for administration of Act (1) This Act is to be administered under the principle that, in any action or decision concerning a particular child or young person, the safety, welfare and well-being of the child or young person are paramount.	10 Best interests principles (1) For the purposes of this Act the best interests of the child must always be paramount. (2) When determining whether a decision or action is in the best interests of the child, the need to protect the child from harm, to protect his or her rights and to promote his or her development (taking into account his or her age and stage of development) must always be considered.
Link to Act	https://yoursay.sa.gov.au/95604/widgets/443743/documents/292728	https://www.legislation.sa.gov.au/_legislation/lz/c/a/children%20and%20young%20people%20(safety)%20act%202017/current/2017.25.auth.pdf	https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1999-010	https://legislation.nsw.gov.au/view/html/inforce/current/act-1998-157#sec.9A	https://content.legislation.vic.gov.au/sites/default/files/2024-07/05-96aa138-authorized.pdf



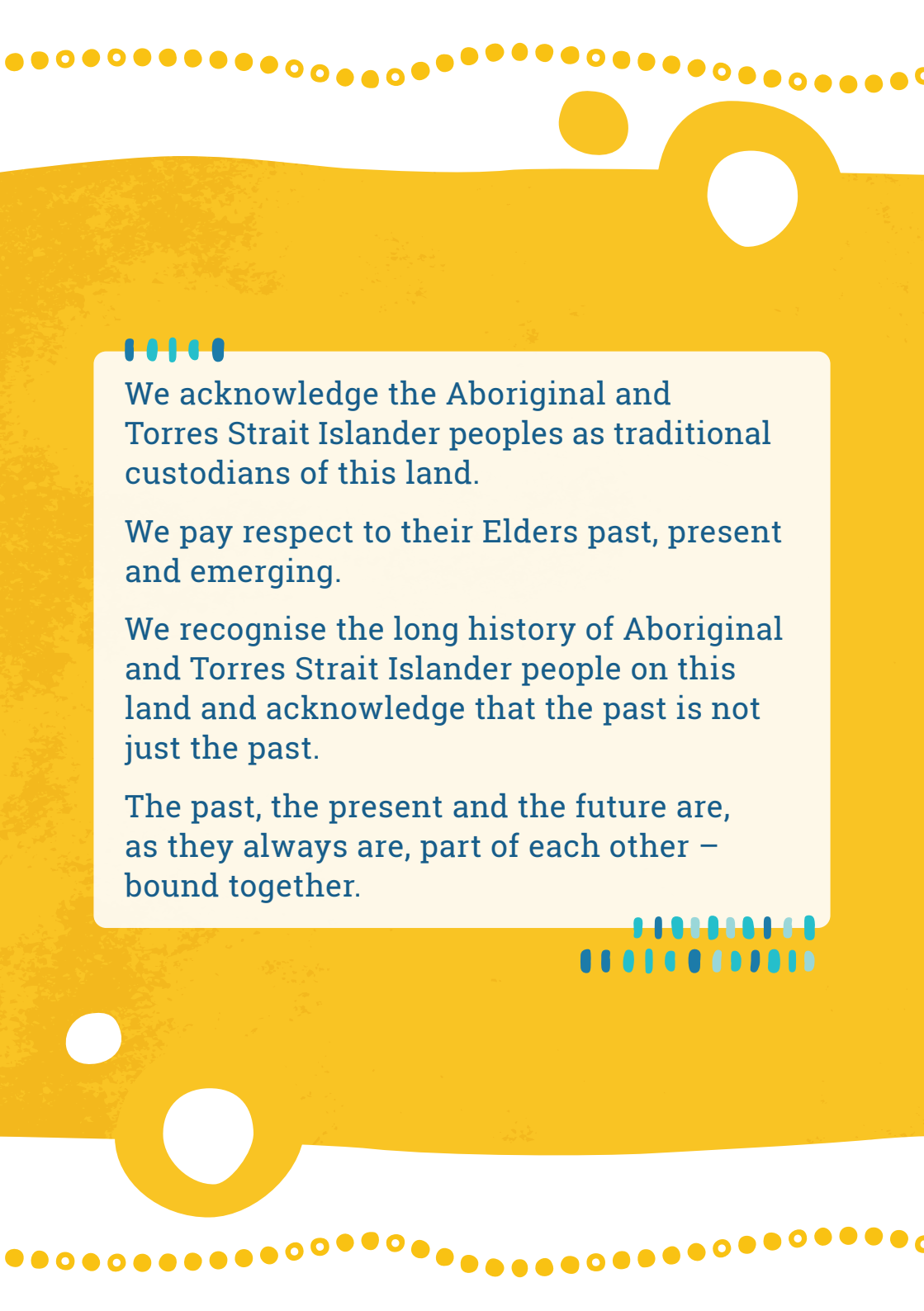

Government of **Western Australia**
Department of **Communities**



Charter of Rights for parents and families

(involved with statutory child
protection in Western Australia)






We acknowledge the Aboriginal and Torres Strait Islander peoples as traditional custodians of this land.

We pay respect to their Elders past, present and emerging.

We recognise the long history of Aboriginal and Torres Strait Islander people on this land and acknowledge that the past is not just the past.

The past, the present and the future are, as they always are, part of each other – bound together.

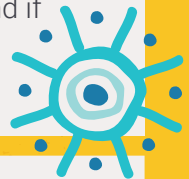


Respect. I have the right to:

- be treated with courtesy and dignity, without discrimination of any kind regardless of why my children entered care
- be recognised and respected in my role as a parent or family member
- have feelings of grief and loss acknowledged and understood in a sensitive and non-judgemental way
- have my culture respected and understood, and for this to be considered in the decisions made about my family.

Information. I have the right to:

- have the worries and possible outcomes explained to me clearly, in language that I understand, and have access to an interpreter if I need one
- be given information about what I need to do now and what happens next
- receive all information from formal meetings in writing, in a way that I understand within a reasonable timeframe
- be told who my child's case manager and team leader are, how to contact them, and told when this changes
- be informed about how my child is coping in care and if there are changes to the care arrangement
- honest and transparent communication.



Support. I have the right to:

- receive information about where I can get independent support and advice that is appropriate to my culture and needs
- have a support person with me in Court and in meetings with the Department of Communities.





Fair treatment. I have the right to:

- be treated fairly regardless of race, culture, gender or religion
- consistency and fairness in service delivery and information provided to me
- make a complaint or raise a concern without fear of reprisal
- be afforded procedural fairness
- have my concerns heard, recorded and responded to in a reasonable timeframe.

Participation and inclusion. I have the right to:

- self-determination and for my voice to be heard, acknowledged and considered seriously in the decision-making process
- have a clear understanding of what the goals are, and what I need to do to meet them
- be provided with timely updates concerning changes in my child's circumstances
- the opportunity for the best possible contact with my child that promotes our positive relationship.

Privacy and confidentiality. I have the right to:

- have my personal information treated respectfully and sensitively
 - know that my personal information will only be shared when necessary.
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This charter of rights aims to improve outcomes for children, parents and families who come into contact with the Department of Communities as a result of child protection concerns.

Parents, children and families have the right to life-long relationships with each other.

We need to work together in a way that places the child’s best interests, safety and wellbeing first.

At the same time, we need to maintain the parent-child relationship, connection to extended family (and kin), community, country and culture, to support a sense of belonging.

This Charter recognises that parents and families are the key to finding solutions which shape and influence the way we work together by:

- supporting a culture of respect for parents and families
- encouraging staff to work with parents and families as equal partners
- listening to, and including parents’ and families’ voices when working with children.

The rights in this Charter are consistent with the requirements of the *Children and Community Services Act 2004*.

Caseworker’s name:

Contact number:

Team leader’s name:

Contact number:



Useful numbers:

Family Inclusion Network WA (Fin WA)

Phone: (08) 9328 6434

Email: info@finwa.org.au

Legal Aid WA

Phone: 1300 650 579

Aboriginal Legal Service WA

Phone: (08) 9265 6666

Free Call: 1800 019 900

Complaints Management Unit

Phone: 1800 333 325 (1800 FEEDBK)



The Department of Communities and Fin WA worked together in developing the Charter of Rights for Parents and Families (involved with statutory child protection in Western Australia).