



creating a better life
for children and young
people in care

Submission to the Community Support and Services Committee:

Child Protection Reform and Other Legislation Amendment Bill

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Introduction

CREATE welcomes the opportunity to comment on the Child Protection Reform and Other Legislation Amendment Bill (the Bill). CREATE is committed to ensuring that the voices of children and young people who have an out-of-home care experience are heard and considered in all areas that affect them. The reality of what young people in care experience (e.g., high turnover of case managers, carers, residential care workers, support workers, and health practitioners) means that young peoples' voices need to be heard as experts in their own lives (Tregeagle & Hamil, 2011). Young people have the right to be heard and participate in decisions being made about them at both the individual (e.g., day-to-day decision-making) and systemic level, including decision-making around legislation, policy, and practice changes.

CREATE previously provided comment to the discussion paper, "Rethinking rights and regulation: Towards a stronger framework for protecting children and supporting families" (CREATE, 2019a), and continues to support reform that gives further voice to children and young people involved in the child protection system. This Bill proposes positive changes to legislation in relation to the participation of young people in decision-making and their having a say in their own best interests. Should legislation be amended to include these changes, CREATE advocates for consideration and consultation with young people in relation to the development and implementation of policies and practice frameworks stemming from legislative changes to ensure that ideals are translated into practice and reflected across all young people's experiences.

Participation

CREATE supports this positive step to explicitly and clearly describe principles of meaningful and ongoing participation within legislation. Children and young people in care have the right to be meaningfully and genuinely engaged in decision-making processes, including having access to the right information at the right time, having support and encouragement from a trusted person, being given ongoing opportunities to speak out, being heard by people who have power to enact change, and being able to affect and/or shape outcomes (Vosz et al., 2020). This right is enshrined in the United Nations Convention on the Rights of the Child (1989), Article 12.1. While participation in decision-making has been included in the Charter of Rights for a child in care (section 74 and Schedule 1 of the Child Protection Act, 1999) and National Standards for Out-of-home Care (FaHCSIA, 2011), these obligations have not been actioned in a consistent way to date. For example, CREATE's 2018 National Survey (McDowall, 2018) found that only 53% of young people in Queensland knew about their case plan (with less than 60% of these young people reporting they had been involved in its development) and less than 30% could definitively report that they knew about their transition or "leaving care" plan.

I don't know if I have a case plan, so it would be useful if I got to see it and choose my goals. (Female, 13 years)

Actually, being able to participate in the case plan might be a start. (Male, 16 years)

They just never really used my words. My case plan was pretty much just what they thought was best for me. (Female, 17 years)

If I could plan it after school. They sometimes talk about it during school hours; therefore, I am unable to attend the meetings. (Female, 16 years)

I had my say in it. I went to meetings about the case plan. I had to read the case plan before the meetings and then discuss things I liked and didn't like about it. (Female, 14 years)

Further, both the AIWH National Survey (2019) and CREATE's National Survey (McDowall, 2018) found that, nationally, only 62.9 to 67.5% of young people agreed that they had opportunities to have a say and feel listened to at least "reasonably often". Age, placement type, and sex influenced children and young people's perceptions about being heard, with children and young people in residential care and independent living, girls, and older children reporting feeling less heard (McDowall). Young people with disabilities also are especially vulnerable to being excluded from participation, particularly those with impairments that affect communication (e.g., attempts to communicate negative views can be interpreted as "challenging behaviour"). Evidence suggests that professionals find it harder to listen, hear, and understand disabled children and young people and often exclude them through inattention to communication styles and needs and reliance on carer or support worker feedback (Taylor et al., 2015).

I had to run away before anyone would listen to me. Then I just got a letter saying I was grounded for two weeks. But no-one really listened or did anything. Everyone in care is running away — there is nothing else you can do. (Quote from young person; Bessel, 2011)

Sometimes people smash windows - for safety...more support for people with disabilities. (Male, 13; McDowall, 2018)

This legislation will mean that tokenistic forms of participation will be less likely to be acceptable (e.g., asking a young person about what they would like and when, and then repeating this in their case plan every year will not be an acceptable framework for participation). CREATE commends the positive additions included in the Bill that express that it is okay for young people to want to participate in different ways, or not at all, and that creative engagement (e.g., communicating verbally or non-verbally; in person or through trusted person/s) is essential for active participation. Also, it acknowledges that young people sometimes change their mind (this is part of being an engaged, healthy human) and that this is part of ongoing participation. This is consistent with comments by young people who participated in the 2019 CREATE Conference. These young people advocated that

to aid participation, the process must meet children and young people “*on their turf*” and “*in their time*” (Young Participants, ViA Conference; CREATE, 2019b).

Consideration: Participation Needs to be Culturally Safe

Principles of participation described in 5E need to include a statement about creating culturally safe environments and practices to encourage connection and participation. Practice frameworks and policies need to ensure these spaces and mechanisms honour the Aboriginal and Torres Strait Islander Child Placement Principles (ATSICPP).

The Bill amends section 6AA(2)(a) to replace the concept of “having regard to” the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) with the concept of applying active efforts in relation to ATSICPP. “Active efforts” is defined as meaning purposeful, thorough, and timely efforts. The intention is to place more emphasis on the application of the Principle. While, if the ATSICPP is more widely implemented than at present (see AIHW, 2021), more culturally safe contexts will be created for Aboriginal and Torres Strait Islander young people to participate in life decision-making, it must be realised that this cohort have the same rights to participate as all young people and should not be heard only within their own communities.

Consideration: Participation and Case Plans

Young people report a low level of participation in formal meetings, with those in Queensland indicating that they participated in departmental meetings approximately 40% of the time (McDowall, 2018). Further, as seen above, only 53% of young people in Queensland knew about their case plan, and of these, less than 60% reported they had been involved in its development. Given this, consideration should be given to explicitly describing in the legislation the ongoing and meaningful participation needed for the development and review of case plans. This could include amendments ensuring that young people are informed that they have a case plan, ensuring that young people have a copy of their case plan where appropriate, and ensuring that the principles of participation described in Section 5E are referred to in sections relevant to both the development and review of case plans (e.g., Part 3A, Division 3 – Case planning at a family group meeting, Division 4 – Other steps in the case planning process, and Division 5 – Periodically reviewing the case plan). Alternatively, including a statement in 5E such as “the child is regularly informed and involved in case planning” could strengthen ongoing and meaningful participation in this area.

Consideration: Participation and Court

Section 5E(5) states: *This section does not apply to a court or the tribunal.* CREATE advocates that the views of children and young people must be heard and considered in all matters that affect them.

Including this statement in the amendment is not consistent with recommendations made by Queensland Child Protection Commission of Inquiry (2013), which stated:

“There needs to be appropriate avenues for the voice of children and young people to be heard in child protection proceedings. Their views are not consistently being heard. The Commission is recommending that amendments be made to the Child Protection Act to require the views of children and young people be provided to the court either directly or indirectly” (p. xxv).

Consideration should be given to including legislative amendments that ensure that the principles of participation are applied in all processes where decision are being made that affect children and young people, including in Courts and Tribunals. In addition, consideration should be given to ensuring that decisions cannot be finalised unless “authorised” decision-makers are satisfied that attempts have been made to obtain young people’s views in a way deemed consistent with the principles of participation.

The Department make[s] decisions about contact without talking to us kids and it affects us and the people caring for us; so, they should ask us before they make a decision. All kids should have a say. My little brother goes to school but he’s too young to have a lawyer and say what he wants to say at court. He knows what he wants the same as I do. (Female, 12; McDowall, 2018)

Consideration: Participation and Placement

Research consistently shows that young people want to have a say in decisions being made about their placement (Bessell, 2011; McDowall, 2018). McDowall (2018) asked young people how often they were able to have a say in decisions being made about their education, family contact, and placement changes. Young people reported more say about education and family contact, and less about placement changes, with those in residential care reporting the least opportunity for participation about placement changes. Approximately one third of 427 comments by young people that mentioned that they were not able to have a say were in relation to placement issues (McDowall).

I don’t want to go to residential care, but they say there’s nothing else. Because it’s all they have got, I have to go. No one tells me what to expect. No one cares that I don’t want to go. I like the carers I’m with now, but they are old and I have to leave at the end of March. (Male, 14 years)

I was younger, and my carer and myself were having arguments at home. And later on, I was at school and I was called up to the office to find all my bags and boxes packed with all my stuff in it. They removed me from their home and that is how I found out. (Female, 16 years)

Why can’t the department listen to me? I feel unsafe in my current situation and just want to live with my pop. (Male, 17 years)

I’ve had a really good experience of being in care. I’ve been in care for 7 years and have had 2 placements. I had to move from my first placement after I’d been there

for 2 years, which I didn't want to do because they felt like a family to me. I had to move because my biological mum moved, and the Department wanted me to stay close to her. Even though I didn't want to move and felt like the Department didn't listen to me, I'm now happy that I did move because I love my family (I've now been with them for 5 years); but at the time I didn't feel like the Department listened to me. I went to court about a year ago and had my order revoked, so I no longer have any contact with the Department. (Female, 14 years)

You should be able to live where you want to, not where you are told you have to live. (Male, 15 years)

While this Bill proposes legislative amendments in relation to principles of participation, improvements are needed to ensure young people can have meaningful and ongoing participation in key decisions surrounding their placement (e.g., decisions about where a young person will be placed; placement matching; decisions about transitions to new placements). The pressure to find any placement for a child or young person can mean that there are reduced options or ability for a young person to choose meaningfully. The Department must reduce pressure in the system to ensure that young people can participate actively in decisions regarding who they live with. Ensuring legislative change is supported by policy and practice frameworks developed in consultation with young people with a lived experience is essential to ensure that principles of participation are applied in decisions related to placement.

Consideration: Participation and Placement Information

McDowall (2018) found that, in Queensland, less than 50% of young people reported only 1 to 2 placement changes while in care. Entering a new placement can be a frightening experience and often young people have very little say. Young people who have participated in consultations with CREATE have commented about information being an important step in these decisions. In one QLD Consultation about out-of-home care experiences (CREATE, 2017), young people described a desire for greater notice about placement changes, help in understanding why the change needed to occur, and information and photos of the proposed carer, their family, and home. These views have been expressed about placement changes across consultations in Queensland, and nationally (e.g., CREATE, 2009; McDowall, 2018)

Choosing the right carer is really important. Introduction to carers is really important, not just moved straight into a new home. (Female, 16; McDowall, 2018)

I've been in my current placement for 6 years. I didn't get much help when I moved. It wasn't a good experience – I didn't have a say about moving and they didn't give me any notice. (Young Person; Queensland Voices Consultation, 2017)

Having a carer explain why you are moving so you don't think it is you; being told the truth would be really helpful. (Young Person; QLD Voices Consultation, 2017)

It is very important for high-risk situations that if they can't make the decision, young people be given information. For example, in a residential placement, a

young person is moved because of abuse but don't know why they are moving, they take the negative with them, they think it's them, that there is something wrong with them. (Young Person; Participation Policy QLD Consultation, 2008)

Need to get the basics sorted – estimated time frame about how long you can stay at a specific placement for (Young Person; Participation Policy QLD Consultation, 2009)

Is it safe? (e.g., is the placement I am going to safe? How do I know what decision to make if I don't know this?) (Young Person; Participation Policy QLD Consultation, 2009)

Having my CSO just turn up to your school. It's hard when your friends see everything happening and you suddenly have a new placement to go to. No notice is so hard. (Young Person; QLD Voices Consultation, 2017)

While there is provision in the current Child Protection Act for the sharing of proposed carer information with a child or young person, young people suggest that this aspect of participation could be strengthened. Section 5E is a positive step for ensuring children and young people are communicated with in a way that is appropriate, given information that is reasonably necessary to allow them to participate, and given meaningful and ongoing opportunities to participate. Consideration to linking these principles of participation in Section 5E to Sections relevant to placement (e.g., Part 6, Division 4 Placing child in care) and ensuring young people are consulted in the development and implementation of policy and practice frameworks stemming from the legislation would strengthen ongoing and meaningful participation in this area.

Conclusion

Dedicate time to talk to young people and take on board what they are saying.
(Young Person, Best Practice Resource, CREATE, 2020)

Youth participation is a right, not an option, and children and young people report that it could be done better. Creating opportunities for meaningful participation has benefits for the individual child or young person and for the organisations that work help them (Vosz et al., 2020). Children and young people have reported that they feel safer when they, and their contribution, are valued, and when adults actively listen to, and consider, what they have to say (Moore et al., 2016). These amendments are opportunities to strengthen the rights and voices of children and young people in decision-making processes.

However, as with all legislation, Bills are only as effective as their implementation which depends on how the legislative intent is translated into policy, how adherence to the policy is monitored, and any deviation from the law addressed. Any vagueness in the policy terminology allowing lessening of the commitment of the legislation will lead to minimal change or few additional meaningful opportunities for the young people to participate. Lack of rigor and accountability in enforcing the amended

legislation will make a mockery of the government's aspiration to give young people in care a greater say in decisions affecting their lives.

Ongoing support, resource provision, practice development, and oversight will be required to ensure amendment contents are accepted and implemented at local and front-line levels and are reflected across all young people's experiences. CREATE advocates for the voices of children and young people to be heard and considered in any, and all, of these processes. Children and young people are experts in their lives and can add value to the design of systems that affects them.

References

- Australian Institute of Health and Welfare. (2019). *The views of children and young people in out-of-home care: overview of indicator results from second national survey, 2018*. AIHW. <https://www.aihw.gov.au/getmedia/ab21f8c3-3d5b-423e-9d36-2050ebe17ea6/aihw-cws-68.pdf.aspx?inline=true>
- Bessell, S. (2011). Participation in decision-making in out-of-home care in Australia: What do young people say? *Children and Youth Services Review*, 33, 496–501. <https://doi.org/10.1016/j.childyouth.2010.05.006>
- Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). (2011). *An outline of national standards for out-of-home care*. Commonwealth of Australia. https://www.dss.gov.au/sites/default/files/documents/pac_national_standard.pdf
- CREATE. (2009). *Consulting children and young people about the Department of Child Safety's participation policy focus group report*. Confidential Report.
- CREATE. (2017). *Queensland voices: Hearing from young people across Queensland about their out-of-home care experiences*. Confidential Report.
- CREATE. (2019a). *Submission to the Legal Affairs and Community Safety Committee: Rethinking rights and regulation: Towards a stronger framework for protecting children and supporting families*. https://create.org.au/wp-content/uploads/2019/10/CREATE-Submission_QLD_Rethinking-rights-and-regulation-Final.pdf
- CREATE. (2019b). *Voices in Action Conference*. CREATE Foundation. Melbourne, Australia.
- CREATE. (2020). *Children and young people as decision-makers: Encouraging participation in out-of-home care*. https://create.org.au/wp-content/uploads/2021/04/CRE4299_CREATE_BestPracticeResource_A4_2020web.pdf
- McDowall, J. J. (2018). *Out-of-home care in Australia: Children and young people's views after five years of National Standards*. CREATE Foundation. <https://create.org.au/wp-content/uploads/2019/03/CREATE-OOHC-In-Care-2018-Report.pdf>

- Moore, T., McArthur, M., Death, J., Tilbury, C., & Roche, S. (2017). Young people's views on safety and preventing abuse and harm in residential care: "It's got to be better than home". *Children and Youth Services Review*, 81, 212-219.
<https://doi.org/10.1016/j.childyouth.2017.08.010>
- Taylor, J., Cameron, A., Jones, C., Franklin, A., Stalker, K., & Fry, D. (2015). *Deaf and disabled children talking about child protection*. Edinburgh: NSPCC Child Protection Research Centre. <https://www.nspcc.org.uk/services-and-resources/research-and-resources/2015/deaf-disabled-children-talking-about-child-protection/>
- Tregeagle, S., & Hamil, R. (2011). Can stability in out-of-home care be improved? An analysis of unplanned and planned placement changes in foster care. *Children Australia*, 36(2), 74–80. <https://doi.org/10.1375/jcas.36.2.74>
- Queensland Child Protection Commission of Inquiry. (2013). *Taking responsibility: A roadmap for Queensland Child Protection*.
http://www.childprotectioninquiry.qld.gov.au/__data/assets/pdf_file/0017/202625/qcpci-final-report-web-version.pdf
- United Nations General Assembly. (1989). *The United Nations Convention on the Rights of the Child*. London: UNICEF. http://www.unicef.org.uk/Documents/Publication-pdfs/UNCRC_PRESS200910web.pdf
- Vosz, M., McPherson, L., Parmenter, N., & Gatwiri, K. (2020). *Enabling young people's participation in residential care decision-making*.
https://cetc.org.au/app/uploads/2020/04/YouthParticipation_Research-Brief-CETC-April2020.pdf

About CREATE

CREATE Foundation is the national peak consumer body for children and young people with an out-of-home care experience. We represent the voices of approximately 46,000 children and young people currently in care, and those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential.

Our mission is to create a better life for children and young people in care.

To do this we:

- **CONNECT** children and young people to each other, CREATE and their community to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by providing a variety of activities and programs for children and young people in care, and conducting research and developing policy to help us advocate for a better care system.