



creating a better life
for children and young
people in care

Submission to the Health, Communities,
Disability Services and Domestic and Family
Violence Prevention Committee
examination of *Child Protection Reform
Amendment Bill 2017*

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About CREATE Foundation

CREATE is the national consumer body representing the views of children and young people in care. To be an effective advocate, CREATE balances the engagement and connection with children and young people with the independent role we play to gain their views about what is important to them, and change the system for the better. CREATE believes that all children and young people with a care experience should have the opportunity to reach their full potential.

CREATE Foundation's mission is to create a better life for children and young people in care.

CREATE does this through:

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

CREATE Foundation Limited was established in 1999 with the belief that a truly effective child protection system is one that listens to the views of the children and young people it seeks to protect and support. The importance of encouraging and facilitating the participation of children and young people in key decisions that affect their lives is a core principle of the organisation.



Introduction

The *Child Protection Reform Amendment Bill 2017* (The Bill) comes before Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (The Committee) as a result of the Queensland Government's acceptance of relevant recommendations of the final report of the Queensland Child Protection Commission of Inquiry (2013), *Taking Responsibility: A Roadmap for Queensland Child Protection*.

As the national peak consumer body for children and young people in out-of-home care (OOHC), CREATE has a keen interest in ensuring that legislation underpinning the redesign of services meets the needs of this cohort.

Since the commencement of the Commission of Inquiry on 1 July 2012, CREATE has sought to ensure that children and young people's experiences and views are heard throughout this process of reform. Initially CREATE worked to raise awareness amongst young people about the Commission of Inquiry via its membership network and sector partners throughout Queensland.

CREATE encouraged and supported interested young people to make their own submissions. CREATE also spoke with many young people for the purpose of informing the initial CREATE submission to the Commission of Inquiry. The Commissioner asked CREATE to assist in facilitating opportunities for the Commission of Inquiry to obtain information directly from children and young people with a care experience. As a result, CREATE organised a series of focus groups held in locations throughout Queensland. The results were published in the *CREATE Consultation Report for the Queensland Child Protection Commission of Inquiry*¹.

In February 2016, CREATE (2016a) made a submission to the "Supporting families and protecting children: a new legislative framework paper" (the Framework Paper) based on the views and opinions expressed by children and young people in out-of-home care regarding specific questions raised in the initial consultation process. CREATE then drew upon this feedback and other material for its response to *The Next Chapter in child protection legislation for Queensland: Options Paper* (CREATE, 2016b). Where those views are relevant to this submission, they are used in this response, alongside the wealth of insightful feedback provided to CREATE by children and young people with an out-of-home care experience on a wide range of topics over the past 10 years. This includes comments from discussions at CREATE Queensland's monthly Youth Advisory Groups (YAG).

CREATE supports our partners that are key agencies within Queensland's child protection sector and recognises they will address questions in the paper which relate directly to their expertise, culture, working knowledge, and background to inform the legislative reform process. Due to this, CREATE's submission will not focus on legislative-reform issues nor questions pertaining to policy changes that are best addressed by the peaks and experts in the respective areas.

¹ CREATE Submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee examination of *Child Protection Reform Amendment Bill 2017*, 30/8/2017



Response to Next Chapter in Child Protection Legislation for Queensland Options Paper

CREATE recently provided feedback to the Department of Communities, Child Safety and Disability Services (DCCSDS) regarding potential amendments to the Child Protection Act (the Act). CREATE's submission (CREATE, 2016b) focused on;

- A broadened purpose for the Act
- Further defining what is meant by “a child’s best interest”
- Addressing the disproportionate representation of Aboriginal and Torres Strait Islander children and young people
- A shared responsibility across government for child protection and well-being
- A contemporary quality and safeguards framework
- Meaningful participation by children and young people in decision making
- Information sharing
- Permanency outcomes for children
- Young people transitioning to independence

CREATE acknowledges that there were some amendments made to earlier drafts of the Bill as a result of this and other feedback provided by CREATE. CREATE, through this submission, is providing feedback on areas of the Bill before the Parliament that is still in need of refinement to ensure it provides the best legislative framework for meeting the needs of children and young people in contact with Queensland’s child protection system.

Determining a child’s best interest

Whilst CREATE supports the amendment to Section 5A of the Act (Paramount Principle) to add a more long term view of the child best interests, there remains a need to strengthen the legislation by placing greater emphasis on the importance of listening to a child in the process of determining their best interest.

In 2008, CREATE conducted focus groups with 22 children and young people with a care experience, aged 9 – 19 years, and smaller consultations with four children and young people, about proposed changes to the Act, covering a framework for “child’s best interest”, case plan reviews, changes to long term guardianship and transition time for young people returning to birth parents (CREATE, 2008). The views expressed by children and young people in this consultation were reinforced by a more recent consultation CREATE conducted to inform its initial submission in early 2016 to DCCSDS regarding the current review of the Act (CREATE, 2016a). The key message from the 30 children and young people featured in CREATE’s *Response to Review of Child Protection Act 1999* was that the current legislative framework needs to be strengthened to ensure improved and consistent practice. Many participants felt that they were left in the dark regarding major decisions, and identified relationship building as a key first step in facilitating young people’s participation.

Children and young people acknowledge that they may not always have all of the information about what is in their “best interest”, but they strongly believe their views should be sought in consideration of their best interests. When asked to nominate the three most important things the

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court should consider when making a decision about them, children and young people spoke about “Having a Say”, “Family” and “Impact on Young Person”. A common message from many of those consulted was that their opinions and wishes should hold a similar weight to other factors in the best interest framework.

Currently in detailing principles for ensuring the safety, wellbeing and best interests of a child (Section 5B), the Act makes no reference to the significance of a child’s views in this context. To this end, CREATE suggests the addition of a clause that recognises the value of considering the child or young person’s perspective (appropriate to maturity and age) to 5B. Such a clause could highlight that in making decisions about the safety, best interests and well-being of a child, “every effort should be made to seek the views of the child or young person about their needs and what actions would be in their best interest and ensure their safety and well-being”.

Permanency for children and young people

A key intended outcome of the Bill is creating a more conducive legislative permanency for more children and young people in care.

Permanency can be achieved through different measures and the legislation must be able to ensure that the child or young person’s best interests are the basis for decisions (CREATE, 2014a). Decisions about permanent arrangements for children and young people must be made on a case-by-case basis and involve children and young people in the process. It is concerning that in the current Bill, Section 59, Clause 7A, which sets out matters with which the court must be satisfied before making a permanent care order, does not include any reference to seeking the views of a child or young person (who is able and willing to express their views) about the permanent care order.

CREATE’s position paper on stability in care, recognises stability as critical for children and young people’s ongoing development and well-being (CREATE, 2016c). Placement planning must be individualised and respond to children and young people’s individual needs, including developmental and educational needs (CREATE, 2016c). CREATE acknowledges the importance of placement stability for children and young people in care to develop a sense of “felt security”, which leads to improved outcomes while in care, and when they leave out-of-home care (Cashmore & Paxman, 2007). However, CREATE is also aware that children and young people have said that they would like to be able to have contact with members of their birth family, particularly their siblings, where it is safe to do so and this needs to be specifically addressed through permanency planning processes to ensure it occurs (McDowall, 2015).

Children and young people have told CREATE that as they get older and/or are in care longer, they would like more of a say in making permanent arrangements for their care:

When a child has been living in a foster family for over 4 years the department should ask the carers would they like guardianship over the child because they are stable and happy.

I think once you come into care and you are mature enough, you should be able to say that your birth parents don’t get a say about your life anymore.

Once a child is like, 12 then they and their carers should be able to decide whether they are identified in public.

Permanent care reminds me of the difference between renting and owning a house. If you rent, you never know what could happen. You can’t change much in a rental, because you have no say.



(CREATE, 2016a)

CREATE acknowledges the attempts that have been made to safeguard the rights and best interests of children on permanent care orders;

- The Bill includes obligations on permanent guardians under a new s79A including ensuring the Charter of Rights is complied with as if the guardian were the Chief Executive, ensuring the child is provided with help to transition to independence, preserving the child's identity and connection to culture and maintaining the child's relationships with their family and other significant people in their life.
- A complaints framework has been inserted into the Bill that allows a child or a member of a child's family to make a complaint to the Chief Executive if they believe a permanent guardian for the child is not complying with the guardian's obligations under section 79A.
- DCCSDS will have oversight for a minimum of 12 months prior to a PCO being made.
- A new s51VB has been added to the Bill to provide that a child may ask the Chief Executive to review their case plan at any time after a PCO is granted.
- The Bill inserts a new section 74A to oblige the Chief Executive to ensure that, prior to a final PCO being made, the Chief Executive must ensure a child is told about the obligations of their guardians under s79A and informed about their right to contact DCCSDS or the public guardian at any time if they consider that these obligations are not being complied with.

It seems that all of these safeguards rely on the child or young person having the confidence to raise issues and the knowledge of who to raise their issue with. It is CREATE's experience that children and young people often need more support to raise concerns about their care. To reduce the risk of children and young people becoming stranded in permanent care placements which no longer meet their needs (and consequently at higher risk of homelessness because of an abrupt disconnection from crucial supports in their life), CREATE is proposing that the Bill include a clause which stipulates that in the first five years of their permanent care order the child or young person receives a six-monthly visit from a Community Visitor from the Office of Public Guardian.

In addition, moving forward CREATE also feels it important to clarify whether concerns about the care being provided to children and young people on permanent care orders will be considered as standard of care issues or whether carers will be subject to notifications in line with members of the general community.

A shared responsibility across government for child protection and well-being

It is concerning that the Bill contains no references to establishing responsibility across government for child protection and well-being.

CREATE supports the proposed changes to provide a stronger legislative framework (which is similar to the South Australian Rapid Response framework) to facilitate priority access to Queensland government services by children and young people with a care experience. A whole government commitment is needed to improve outcomes for children and young people with a care experience to bring them in line with their peers who are not in care.

In the areas of health, education and criminal justice, children and young people in care are not being well served. The Australian Institute for Health and Welfare (2015) has found that children and young people in out-of-home care are academically disadvantaged as evidenced in NAPLAN results. These results, while not based on Queensland data, correspond to earlier findings by the then Queensland Commission for Children and Young People and Child Guardian (2013).

Though more children and young people in care achieved at or above the National Minimum Standards than below them across the tests for years 3, 5, 7 and 9, they achieved lower standards than all Australian students across all years and tests (Australian Institute of Health and Welfare, 2015b).

The CREATE Report Card (2013) found that only 25% of children and young people knew about their individual education plan, and few of them were involved in its development (McDowall, 2013). With only two thirds (64.6%, n=691) of children and young people describing their school experience as “quite good” or “very good”, there is a lot of room to improve the educational outcomes and experience for children and young people in care.

One of three key factors that encourages young people to continue on to higher and further education is compatibility between welfare and education systems, as educational engagement can be supported (Jurczynszyn & Tilbury, 2012). Improved linkages between systems must take into account the views of children and young people, have regard for their privacy and include training for staff to improve understanding of the care experience. Young people have told CREATE the particular challenges they face in an educational context:

ESPs [Education Support Plans] are done at school, you miss a class and everyone knows you are different – because it suits the system. There needs to be something in the law that says they can't make you feel different because you are in care. (CREATE, 2016a)

Always feel alone, every other child has siblings there, or material possessions to bridge that gap for them. As a foster child you always feel like teachers are tiptoeing around you. Also, the pre-conceived idea of foster children being dangerous and a bad influence because they haven't had much guidance needs to diminish. Exposing children to different situations helps us adapt easier and get smarter. (CREATE, 2016a)

Changing placements means new schools. School didn't understand I was at the level. They assume we're not up to most of the school standards. (CREATE, 2013)

The school and teachers treat you like you're dumber than you are when you're in care. I get straight A's in math...but now I get low marks in English cause I get the normal exams, but the teacher gives me easier work [through the term] (CREATE, 2013)

The CREATE Report Card (2013) found that 80% of children and young people in out-of-home care reported their health as being “quite good” or “very good”, with those in home-based care reporting that their health needs were better met than for children and young people in residential care (McDowall, 2013a).

One area where better coordination and tailored health responses have been requested by young people with a care experience is in the area of mental health services, particularly at the time of transition from care:

Transition from adolescent to adult mental health services is scary. When I was in care I had someone to call the ambulance for me when I needed help. Now I have to do it myself. If I tell my mental health worker that something's wrong she just says “you know what to do”. Now my mental health is my responsibility.

It's hard when you age out of adolescent services. I went from CYMHS to adult mental health. CYMHS does counselling. In adult mental health they just make sure that you're alive.

The adult mental health system is so different. Adult mental health is crisis driven but when you really need help they're not there for you they just want to make sure that you're alive.

It's hard going from one to the other. My advice is to avoid adult mental health services and find somewhere else to do counselling.

Workers need to be truthful and honest about what adult mental health does and can and can't do. We shouldn't go into adult mental health thinking that we're going to have the same amount of support as a service like CYMHS because we're not going to. The transition from an adolescent to adult mental health service should start at 17 and a half years but it's important to check with the young people that this is what they want and need and to

(CREATE, 2014b)

Feedback CREATE has received from young people indicates that better sharing of responsibility across government departments may help to improve communication between different areas of government:

It's frustrating when the Department does not listen to the services that are supporting us. When recommendations are made to the Department [of Child Safety] by mental health services, they need to listen and take on board what is said. My counsellor told the Department that I should not be returned home to my birth Mother but they did it anyway - to my detriment.

(CREATE, 2014b)

Young people transitioning to independence

Since 2008, CREATE has been highlighting the concerns and issues raised by young people preparing to leave out-of-home care and those who have left the system between the ages of 16 - 18 years after long-term care. Concerns consistently point to the need for young people to be involved in their transition planning earlier and for support to be improved and extended beyond 18 years (McDowall, 2008; 2009; 2016). The National Standards for out-of-home care specify that planning for transition from care begin at 15 years, and that young people be involved in that planning to increase its effectiveness. Surveys with young people aged 15-25 years who have an out-of-home care experience consistently show that over half of young people aged 15 years and over are not aware of having a "leaving care plan".

CREATE's recent national evaluation of the Go Your Own Way transition from care resource contains findings and recommendations relevant to this review of legislation (McDowall, 2016). In Queensland, 41% of young people surveyed (out of national average of 42 percent) reported they were aware of having a transition from care plan, and young people with a plan reported higher confidence ratings across the life domains of housing, study, employment, finances, self-care, family, friends, support services and obtaining identity documents (McDowall, 2016, pp. 32, 41).

While the QCPCI found that "the existing legislation, policy and procedures relating to young people leaving care in Queensland indicate a desire to provide adequate support", it also found "disconcerting gaps both in transition planning and in the targeted provision of post-care support" (Queensland Child Protection Commission of Inquiry [QCPCI], 2013, pp. 296, 312). The QCPCI (2013) also found that:

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Queensland is the only state where legislation, policy and practice are unclear as to how long the state must continue to deliver support once young people leave the care system at 18 years of age (QCPCI, 2013).

This review of the Act provides an opportunity for the Queensland government to clearly state that young people with a care experience will be actively supported at an important time in their life course, in keeping with contemporary community standards and norms. A recent Victorian report; *Raising our children: Guiding young Victorians in care into adulthood (Socioeconomic cost benefit analysis)* demonstrates how investing in extending care to 21 years for young people in out-of-home care provides savings to state governments as it improves education, health and justice outcomes for young people across their lives (Deloitte Access Economics, 2016).

The model, used by Deloitte Access Economics (2016), when applied to the Queensland setting shows “every dollar invested in the program is associated with an expected return of \$2.69 in either savings or increased income” (p. 59). The benefits to young people of extending care include remaining housed, continuing education and training, support to enter the workforce, improved health and fewer criminal convictions. These benefits are expected for the majority of young Queenslanders who enjoy a gradual and supported transition to independent living that includes being able to stay and/or return to living in the family home well into their twenties. The Australian Bureau of Statistics (2015) found that 58% of young men and 47% of young women, aged 18 to 24 years, had never left their parental home to live elsewhere. This is not as straight forward for young people leaving care, with CREATE’s recent research finding just over 20% continuing to live with their carer at 18 years and 27% moving to live with family members (mostly relatives who were not parents or siblings) (McDowall, 2016).

The Deloitte Access Economics report (2016) found that if care were extended to 21 years in Queensland the social outcomes would be:

- Homelessness Halved 39% to 19.5%
- Hospitalisation Decreased 29.2% to 19.2%
- Education Engagement Increased 3.6% to 9%
- Arrests Decreased 16.3% to 10.4%
- Drug and Alcohol Dependence Decreased 15.8% to 2.5%

The establishment of Next Step After Care services in Queensland in 2015 is a welcome and timely implementation of Recommendation 9.1 of the QCPCI. However, CREATE believes the response will be strengthened if transition from care is reframed as Extended Care and mandated through legislation.

Young people consulted to inform CREATE’s *Response to Review of Child Protection Act 1999* suggest extending care to 21 years or 25 years, which would provide care more in keeping with the general community where young people are living longer in the parental home (often leaving and returning a number of times) before establishing an independent home (Australian Bureau of Statistics, 2015). The most frequent reason given by young people for continuing to live in the family home was financial (Australian Bureau of Statistics, 2015).

CREATE supports the intent of the amendment to Section 75 and would like to commend the Queensland Government for listening to the voices of many young people over a number of years who have called for clearer legislative support in this area. To further strengthen the amendments, CREATE is suggesting the following changes to Section 75;

- Remove the phrase “as far as practicable” in clause 2 – this term is vague and creates room for the state to walk away from its moral responsibility to young people it has taken into its care. As stated above, Current research shows the average young people in the general community remain supported by their parents is much higher than 18, or even 21 (Australian Bureau of Statistics, 2015).
- In clause 3b, CREATE suggests the state’s commitment to young people transitioning be strengthened to replace the current wording with ‘help to access appropriate accommodation and provide priority access to Queensland government housing services and products’. This is line with Recommendation 9.1 from the Queensland Child Protection Commission of Inquiry, that; *The Child Protection Reform Leaders Group develop a coordinated program of post-care support for young people until at least the age of 21, including priority access to government services in the areas of education, health, disability services, housing and employment services* (QCPCI, 2013).
- Replace clause 3h with ‘provide access to information, including information in the Chief Executive’s possession or control about the person or the person’s time in care at no charge’. CREATE feels this is a stronger commitment and reflects a fairer approach; young people from a care background should not have to pay for information about their own life kept by the state without their consent.

In addition to the above changes to the legislation, CREATE reasserts that improved outcomes would result from legislative changes to resource and allow young people to stay in their care placement until age 21. We have previously advised the government of the benefits of this legislation and it would bring Queensland’s legislation into line with other countries, like the UK.

This recognises community norms as mentioned above, whereby most young people in Australia choose to continue to live in the family home beyond their 18th birthday, and many remain living or come and go from the family home in their mid to late twenties (Australian Bureau of Statistics, 2015). CREATE also supports a provision that a young person can request assistance from the Department up until the age of 25 years, particularly to support young people to gain education, training and employment. All young people who leave care should be advised as part of their transition planning that they can request assistance from the Department at any time they need to up until they are 25 years old.

The following views are from young people during consultation about Transition to Independence in response to the Framework Paper:

I think the law at the moment is way too vague – it says that support can happen at Department’s “discretion” – but when was the last time you saw the Department providing much support to a 24 year old who used to be in care? It needs to say that support should be provided up until 25 and that people should be able to stay with their carers past 18 if this is the best place for them. The law should make sure you have a “shadow” if you need it, after you leave care – don’t have to use it but it is there.

Should be a law to transition the young people into safe housing.

Every young person should get a place to live for 2-3 years after care – the department should pay deposit.

You should be able stay in placement until suitable housing found

The law should try to create a situation that is similar to what it's like for other young people – if most other young people can return home for support after they turn 18 – then the law should make a system that does this – the law we have at the moment obviously doesn't.

I think that the government should help young people in care by supplying them with a house paid for up to a month of rent or grant them funds for a house so that the young person is able to pay rent, buy the stuff they would need for the house. I think that the government should allow young people who have transitioned to move back in with carers if where they are breakdowns for some reason.

Information Sharing

Information sharing is an important issue for CREATE and for children and young people in care. CREATE appreciates the work being done by the Queensland Government to improve the processes to share information to services through the Prescribed Lists outlined in Section 159 under clause 48 to provide clarity. A key question is who and how are the organisations selected to join these lists. CREATE recommends the CPA legislation clearly define this process, name the organisation that would be included, and allow prescribed decision makers the powers to include organisations, like CREATE, to be on this list.

Another issues that has been raised consistently by the Youth Advisory Groups and Young Consultants at CREATE is the issue of young people attempting to access their case files from the age of 18 onwards only to find large amounts of material redacted due to privacy concerns. Such a policy of limiting young people's access to information can create the problem of raising more questions for young people who are in fact seeking to answer questions through the process. CREATE is pleased to see the insertion of Section 188C into the Act as proposed in the Bill.

Young people speaking to the committee about the Bill

CREATE has a network of Young Consultants across Queensland. Young Consultants are systemic advocates who share their lived experience of the care system in order to improve the system for others. If the Committee is interested in hearing from some of these Young Consultants, please contact [REDACTED]

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