Submission by

YOUTH ADVOCACY CENTRE INC

to the

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

in relation to the

Child Protection (Amendment) Bill 2017

SEPTEMBER 2017

Introduction

The Youth Advocacy Centre Inc (YAC) is a community legal and social welfare agency for young people generally aged 10-18 years in the greater Brisbane region who are involved in, or at risk of involvement in, the youth justice and/or child protection systems and/or are homeless or at risk of homelessness. YAC has been operating for over 35 years.

YAC provides advice and direct representation to children in the child protection system who are "Gillick competent", that is, where they have the age and maturity to make choices and decisions when given information and appropriately advised in relation to the presenting situation. A significant number of the children YAC represents in the Youth Justice system are also known to Child Safety Services.

As well as individual advocacy, YAC is active in participating in forums of all kinds as a means of supporting, or advocating for, systemic reform in relation to children and young people's human rights, particularly for their views to be heard and their ability to be involved in decision making which affects them. This work is informed by the experiences of our individual clients and the international instruments which Australia has committed to, particularly the UN Convention on the Rights of the Child. YAC was one of the many stakeholders consulted in the course of the development of this Bill and is appreciative of that opportunity.

YAC notes that the Bill aims to address two critical needs of children and young people involved with the care system: the need for stability in a child's life throughout their childhood, and the ongoing of support for young people when they turn 18.

- **Transition to Independence**

YAC is very pleased to see a commitment in the legislation to children in care up to the age of 25. New section 75 (Transition to Independence) provides that the chief executive will ensure there is assistance in transitioning to independence for a person who has been a child in the custody or under the guardianship of the chief executive until they turn 25. This recognises the reality for most children whose parents continue to be there for them beyond the age of 18 as well as the neuroscience in relation to the development of the adult brain which is not finalised until around the mid-twenties.

However, it is noted that other references to transition to independence are not so explicit. For example, new section 79A (Obligations of long-term guardians and permanent guardians to children under orders) does not note that these guardians would be encouraged to maintain support, at least in terms of being available for advice and non-financial assistance, for as long as possible beyond the young person's 18th birthday. While the young person would have the ability to go back to the Department under section 75, continuing an existing positive relationship would be the better option and it would be appropriate to advise guardians accordingly of this expectation.

- **The role of the child in decisions**

Variation of permanent care orders

Section 65 (Variation and revocation of child protection orders) provides that the litigation director, a child's parent or the child may apply to the Childrens Court for an order to vary or revoke a child protection order for the child. However, new section 65AA (Variation and revocation of permanent care orders) only allows for the litigation director to make such an application in relation to a permanent care order. It is YAC's submission that a child should also be able to make such an application.

YAC has been advised that the limitation to the litigation director is so that if there is a serious breach which warrants varying or revoking the order then attempts can be made to manage the situation through case planning, etc and making an application would only be in exceptional circumstances. Further "This approach also acknowledges the barriers that children or their parents may face in directly making an application for variation or revocation in the Childrens Court".

YAC is not convinced that an application in relation to variation or revocation of a permanent care order should be managed differently to a long term guardianship order – noting that new section 80A provides that the same obligations apply where a child is no longer cared for by long-term guardian or permanent guardian. If there are procedural barriers (which must also be relevant to other variation/revocation applications), then those barriers should be addressed rather than preventing people from being heard by an impartial judicial officer on a matter which is critical to their wellbeing. Effectively, this means by ensuring that they can access legal advice and support.

New section 65AA(2) should reflect the new section 15(1)(c) *Director of Child Protection Litigation Act 2016* at clause 86 and add a subsection (2)(c):

> the order is no longer appropriate and desirable for promoting the child's safety, wellbeing and best interests.

Since the 'safety, wellbeing and best interests of the child' is the paramount principle, it is also noted in relation to new section 15(1)(c)(ii) that the CE should be satisfied of A **or** B not A **and** B. Therefore the proposed addition to 65AA(2) would be an alternative ground, not additional to the other grounds.

Obligation to provide children under particular child protection orders with information

The child must be provided with information on an ongoing basis, with the material changing to meet the child's increasing capacity to understand and make choices. As time goes by, a child may forget the rights they have to support and information – particularly if at the time they were told they were quite young or it did not seem very relevant to their situation. The current wording of new section 74A would allow the CE to tell a 5 year old about the matters listed and have technically fulfilled their obligation. To ensure that children and young people are aware of what help they can seek and from whom, the section should place a greater onus on the CE. This should include a record being kept on the child's file as to when and how they were so advised –which could be through the long term or permanent guardian.

New section 79A must therefore place obligations on the long term or permanent guardian to ensure the child has this information.

Where child is no longer being cared for under certain orders

New section 80A (Obligations if child is no longer cared for by long-term guardian or permanent guardian) extends the obligations which were previously in place for a child no longer cared for by a long term guardian to the situation where a child is no longer cared for by a permanent guardian.

The trigger for the chief executive reviewing a child's protection and care requirements is a written notice from the guardian, which is supposed to happen immediately. YAC submits that the child should also be able to advise the chief executive that they are no longer being cared for and need assistance and the chief executive should be able to act on this advice too. There could well be situations where the guardian fails, for some reason, to fulfil their responsibilities and the department should have a responsibility to act on the child's notification. YAC has been referred to the Charter of Rights in Schedule 1 of the Act and sections 14 and 74 being sufficient for intervention by the department but it is by no means certain that actions would be taken by the relevant adults for these to come into play, or at least not necessarily as quickly. A notification by the child under new s80A would trigger an immediate review of their situation rather than considerations of breach of a Charter responsibility or a new notification of harm.

Another way to address this would be to enable the child or the permanent guardian to apply for a revocation of the order where they believe their relationship has broken down.

Dealing with complaint about permanent guardian

New section 80E should provide that if a child is not satisfied with the refusal to deal with their complaint or the outcome of a complaint which is dealt with, they should be able to ask the Public Guardian to review of the matter. If the complaint fulfils any of the criteria for variation or revocation of a permanent guardian order, the Public Guardian should be able to assist the child in the making of an application.

- **Sharing of information**

In consultation on the draft Bill, YAC had the following concern which remains a matter of significant concern.

Under new section 159M the definition of "prescribed entity" includes "specialist service provider". "Specialist service provider" is defined very broadly: a "non-government entity funded by the State or Commonwealth to provide a service to a child in need of protection, a child who may become in need of protection without preventative support", or to their family. This would capture all the legal and social welfare programs across YAC.

Under section 159N, the CE is able to require information from a "prescribed entity". Section 159N(2) states that the entity must comply with the request. It is acknowledged that no offence is created by failing to comply (section 159N(4)) and that current section 159Q (3) prevents the provision of information in conformity with the legislation from constituting a breach of any code of professional etiquette or ethics or a departure from accepted standards of professional conduct. However, the effect of the new sections is that a request can be made which would result in a breach of **legal professional privilege for any lawyer working in a community legal centre** if complied with. This will not affect private lawyers or those working for Legal Aid Queensland as they will not fit the requirement of a "non-government entity funded by the State or Commonwealth……" This will be relevant to any CLC which works with children or their families, including CLCs providing assistance to women, including in a family violence context.

While it will be open to the CLC lawyers not to provide information, it is not reasonable that only one part of the legal profession is put in this position. CLC lawyers should be able to assure their clients of client-solicitor privilege in the same way as all lawyers. We are also concerned about any unintended consequences of such a provision, such as in relation to funding agreements with State government agencies because of a failure to comply with a legislative provision.

The Bill before Parliament includes a new section 159R(3) which has been inserted since our feedback on the draft Bill but YAC's view is that it does not address this situation:

> Clause 66 amends section 159R to clarify that disclosure under chapter 5A does not affect waive or otherwise affect a claim of privilege by the person the information is about. This includes legal professional privilege.

This clause talks about a claim of privilege by the client rather than the lawyer of whom the request would be made. The Explanatory Notes only discuss the aspect of information sharing rather than when information is required to be provided to the Department. There is no comment made in the section on Consistency with Fundamental Legislative Principles as to the apparent impact of the definitions. We would ask that this matter be given serious consideration and, if necessary, that the Bill be amended to address the situation.

New section 189B (Access to information for prescribed research) contains a previous provision but one which YAC still considers should be amended. Sub-section (3) allows the chief executive to contact, or **authorise the researcher to contact**, a client to ask if they would like to participate in their research (our emphasis).

Researchers should not be provided with anyone's contact details and allowed to contact them without prior consent having been gained (preferably in writing) by Child Safety staff, particularly a child or a young person who is or has been in care. The potential ramifications of a child or young person being contacted by a person they do not know to talk about their personal life experiences and circumstances are significant. Development of trust and rapport with these children is important and their caseworker or someone they know should talk to them about who the researcher is, what they are wanting to do and generally prepare them for any interaction in addition to getting the child's agreement to it happening at all.

YAC has been advised that departmental practice is to contact young people and their contact details "are not usually provided to researchers" and the Bill will not alter this practice. However, YAC submits that policy and practice can change overnight and the child's right to privacy and confidentiality should be protected at law, particularly where the consequences could be significant for the child. There is therefore an opportunity to amend the legislation to do this.

- **Other matters**

The drafting of new section 62(2). The Explanatory Notes provide a good description of the intent but the wording of the section is difficult to follow and will therefore create issues in implementation.

At present, the legislation does not specifically require a case plan to be in writing. While it would be assumed that this what would happen, it would be appropriate for this to be stated as it is for many other types of documentation or information in this and other legislation.

While the addition to section 51CZ provides that a case plan must include expectations of parents and the CE, section 51C does not require case plans in all circumstances relevant to 51CZ which may limit the effectiveness of the clause.

New section 51VB does not include any timeframes for a decision or response from the CE. It is noted that current section 51VA does not do so either in relation to a long term guardianship order.