



Human Services Policy
ACT Community Services Directorate
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Dear CYP Act Reform team

ACT Human Rights Commission submission to consultation on the proposed Children and Young People Amendment Bill 2024

The ACT Human Rights Commission welcomes the opportunity to make a submission to formal consultation on reforming the *Children and Young People Act 2008*.

There is an urgent need for transformative reform of current approaches to child protection. Movement away from a risk-based, adversarial approach to child protection to proactive, family-centred and culturally safe support for those within, and at the edge of, the child protection system is vital to ensuring the wellbeing of our community into the future, breaking cycles of disadvantage and fostering trust in the child and youth protection framework.

Implemented effectively, many of the recommended amendments among the proposed reforms will provide a clear, normative foundation to build public confidence and trust, and promote better outcomes for vulnerable children and young people and their families. However, certain of the proposed reforms risk moving the opposite direction. In addition, and by their nature, the proposed changes raise complex, significant and interrelated human rights implications that must be carefully considered and justified in accordance with s 28(2) of the *Human Rights Act 2004*.

The Commission looks forward to engaging further in the development of these vitally important reforms. Please be aware that we intend to make our submission publicly available on our website shortly after it is provided.

Yours sincerely

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President and Human
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Executive Summary

There is urgent need to transform the child protection system in the ACT. Our submission strongly supports the intent of the proposed reforms to move from a risk-based adversarial approach to child protection to a proactive, trusted, family centred and culturally safe system that is firmly centred within a human rights framework. We particularly welcome long overdue action to address the unacceptable levels of removal of Aboriginal and Torres Strait Islander children from their families and cultural connections. We congratulate the commitment to fully implement all the recommendations of the *Our Booris, Our Way – Final Report*. Moving forward will require genuine partnerships with Aboriginal and Torres Strait Islander peoples and is critical to upholding principles of self-determination and realising cultural rights protected by section 27(2) of the *Human Rights Act 2004* (HR Act).

Our submission celebrates many aspects of the proposed reforms, including the introduction of an external merits review scheme, the concept of “active efforts”, the central role envisioned for Aboriginal Controlled Community Organisations (ACCOs), the focus on family led decision making, the proposal to ensure a less opaque system for families involved, the commitment to child and youth participation, the retention of information to enable “life stories” of children and young people, and mandating continuing support for young people in care to the age of 21 years old.

Our submission also emphasises that certain proposed reforms or aspects of proposed reforms are problematic and prompt concern, including:

- A particular apprehension in relation to the expansion of mandatory reporting, which we oppose. We do not accept that expanding the legislative scope of mandatory reporting will meaningfully contribute to the prompt identification, triage and assessment of children and young people and their families who require support. We see the opposite to be true for operational reasons and because we are concerned the expansion will weaken the already low levels of trust in support systems, including the ability to access trusted trauma informed services.
- The nature of merits review has been misconstrued by proposing to require an “error” to be identified in order to make an application, rather than facilitating a full review of the decision in question. We are strongly supportive of introducing an external merits review scheme as widely understood in Australian law and jurisprudence, and see such introduction as a priority in the reform process.
- That there is a necessity to fully incorporate an international human rights law (IHRL) conception of the best interests of the child test. Certain elements which are components of a “best interests” test should not be articulated as being distinct from or in competition with the “best interests” principle but should instead be expressed as elements of the same overarching test and that test should be the one understood in IHRL. We similarly encourage an IHRL conception of child and youth participation rather than limiting their voices to particular types of decisions.
- The currently proposed “principles-based” approach to information sharing will not necessarily provide the sufficient protection against arbitrary interference with relevant human rights. In any case, clear guidance and protocols for information sharing entities (including about consent) will be required.

We also emphasise that the changes we otherwise support will be of little effect without a robust strengthening of the service response in parallel to legislative endeavours.

Many of the proposed changes, if implemented effectively and with sufficient funding for the service supports needed to realise the aims, will provide a clear, normative foundation to build public confidence and trust, and promote better outcomes for vulnerable children and young people and their families. By their nature, such proposed changes, however, raise complex, significant and interrelated human rights implications that must be carefully considered and justified in accordance with s 28(2) of the HR Act.

About the ACT Human Rights Commission

The ACT Human Rights Commission ('the Commission') is an independent statutory agency established by the *Human Rights Commission Act 2005* (HRC Act). Its main object is to promote the human rights and welfare of people living in the ACT. The Commission was first established on 1 November 2006 when the HRC Act took effect. Since 1 April 2016, a restructured Commission has included:

- The President and Human Rights Commissioner;
- The Discrimination, Health Services, Disability and Community Services Commissioner;
- The Public Advocate and Children and Young People Commissioner (PACYPC); and
- The Victims of Crime Commissioner.

As independent officer holders with key oversight roles in relation to children and young people, we support urgent and transformative reform of current approaches to child protection. Movement away from a risk-based, adversarial approach to child protection to proactive, family-centred and culturally safe support for those within, and at the edge of, the child protection system is vital to ensuring the wellbeing of our community into the future, breaking cycles of disadvantage and fostering trust in the child and youth protection framework.

In exercising their diverse functions, Commissioners and their staff regularly identify systemic concerns and patterns that relate to, or are affected by, settings under the *Children and Young People Act 2008* (CYP Act). This includes the Commission's discrimination and child and young people services complaints jurisdictions, the Public Advocate's monitoring of child protection services and related notifications under the HRC Act and CYP Act and the VOCC's functions with respect to monitoring family and domestic violence involving children, young people, and their families. The Commission has actively called for several of the proposed reforms to the CYP Act over the previous decade, as outlined and referenced in Appendix A.

The Commission strongly supports the ambitious agenda and vision set out in the *Next Steps for Our Kids 2022-2030* strategy for strengthening families and keeping children and young people safe. Every child has a distinct right, recognised in the *Human Rights Act 2004* (HR Act), to the special protection needed because they are a child. Legislative changes that realise a child, youth and family centred, evidence-based, accountable, transparent, and culturally safe system of child protection are overdue.

In the ACT, Aboriginal and Torres Strait Islander children and young people are 14.1 times likelier to be in out of home than non-Aboriginal and Torres Strait Islander children.¹ This unacceptable overrepresentation of First Nations children is an undoubtedly grave limitation of s 27(2) of the HR Act, which affirms that Aboriginal and Torres Strait Islander peoples must not be denied the right to maintain, control, protect and develop cultural teachings, languages and knowledge and kinship ties. As the *Our Booris, Our Way – Final Report* made clear, separation of First Nations children and young people from family and culture, which is the very source of a child or young person's safety and identity, fosters disconnection and dislocation. The Commission commends the ACT Government's undertaking to implement all 28 recommendations of this report.

The Commission is committed to, and strongly advocates for, practices that uphold the principle of self-determination across the ACT. This collective right of First Peoples to control their own destiny is of fundamental importance, especially in the context of child protection, and is intertwined with the enjoyment of cultural and human rights. As a small jurisdiction, the ACT is well-placed to listen to, empower and walk with Aboriginal and Torres Strait Islander peoples in taking action to address over-representation and realise self-determination in everyday practice across the ACT. This means taking time to listen respectfully, providing consistent communication and follow-up, and involving the Aboriginal and Torres Strait Islander community as active partners in decision-making. For many Aboriginal and Torres Strait Islander peoples, traumatic and intergenerational legacies of separation have created a profound and

¹ Productivity Commission, 'Socioeconomic Outcome Area 12: Aboriginal and Torres Strait Children Are Not Overrepresented In the Child Protection System', *Closing the Gap Information Repository* (Web Page) Table CtG12.1 <[Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system - Dashboard | Closing the Gap Information Repository - Productivity Commission \(pc.gov.au\)](#)>.

justified distrust of child protection agencies and laws. The effect of genuine, active, and meaningful partnership with Aboriginal and Torres Strait Islander peoples in amending the CYP Act cannot be understated.

Human rights and child protection systems

In the ACT, the HR Act protects a range of fundamental human rights drawn from international human rights law (IHRL) to which all individuals present in the ACT, or subject to its jurisdiction, are entitled. Child protection systems both support and limit many of the rights protected in the HR Act in various ways, including:

- *Protection of children and families:* Section 11(1) of the HR Act provides that families are the fundamental group unit of society and are entitled to be protected by society. Section 11(1) recognises that one of the principal ways in which the family is to be protected is through the promotion of family unity. Section 11(2) provides that every child has the right, without discrimination, to such protection as is needed due to being a child. Section 11(2) effectively incorporates a right to special or positive measures. The rights of children and families are also protected in s 12 of the HR Act, which prohibits arbitrary and unlawful interferences with home and family life.
- *Right to equality and non-discrimination:* Section 8 of the HR Act provides that everyone is entitled to equal protection of the law without discrimination. Treatment that disproportionately affects members of a group with particular characteristics (such as race, sex, or disability), will amount to differential treatment on the basis of that protected attribute for the purposes of human rights law. Legislation or a policy may be based on race for the purposes of human rights law, even where it does not refer to race, if it disproportionately impacts the members of a particular racial group.
- *Right to a fair hearing:* The right to a fair hearing in s 21 of the HR Act is also relevant to proceedings relating to the care and protection of children. The right to a fair hearing is an essential aspect of the judicial process and is indispensable to ensure the protection of other human rights. Many of the elements of a fair hearing relate not just to the conduct of the hearing itself, but also relate to notions of procedural fairness and an individual's ability to access the justice system to vindicate their rights.
- *Rights of Aboriginal and Torres Strait Islander peoples:* Section 27(2) of the HR Act protects the distinctive cultural rights of Aboriginal and Torres Strait Islander peoples, including rights to maintain, control, protect and develop cultural heritage, languages and kinship ties. These considerations must therefore also be incorporated into decision-making processes regarding the care and protection of Aboriginal and Torres Strait Islander children and young people.

Recognising that few human rights are absolute, the HR Act provides for human rights to be subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. In general, this means that any measure that limits a human right must be: i) set by law; ii) pursue a legitimate objective; iii) be rationally connected to its stated objective; and iv) be a proportionate means of achieving that objective. Whether a measure is proportionate will require consideration of any less restrictive ways to achieve the stated aim; adequate and effective safeguards against abuse (including oversight and scope for review); the extent of the interference of the human right; and there being sufficient flexibility to take account of individual circumstances.²

This submission outlines the Commission's preliminary feedback on *selected* proposals for reforms of the CYP Act, as set out in the Information Paper, *Children and Young People Amendment Bill 2 2024* (October 2023). Given the scope and complexity of proposals canvassed in the Information Paper, any omission or failure to provide feedback should not be taken as an endorsement that the proposal is likely to be consistent with rights. The Commission will necessarily reserve its views about human rights consistency of proposed reforms until having reviewed the draft Bill prior to its consideration by the ACT Government.

² For more information, human rights guidance is available at ACT Justice and Community Safety Directorate, 'Human Rights Factsheets', <<https://www.justice.act.gov.au/safer-communities/protection-of-rights/human-rights-and-support/human-rights-fact-sheets>>

1. Legislative framework: Guiding principles

Objects clauses

To fully reflect the underlying intent of these reforms, any legislative provisions governing the child protection system should be expressly interpreted by reference, and cohesively situated within, the ACT's human rights framework. Though not broached in the Information Paper, we note that the key principles underpinning these reforms strive to realise a human rights-based approach to child protection. Principles prioritising support for the preservation of the family, early intervention and support, and the least restrictive interference necessary in the best interests of the child or young person each demonstrate a commitment to further aligning child protection decision-making with the requirements of the HR Act.

We believe that these fundamental ideals should instil and inform how these reforms are interpreted; by decision-makers, the Childrens Court and the ACAT. To these ends, we consider it important that the objects of the CYP Act be updated to expressly reference the human rights of children, young people and their families and carers. It is a matter of concern that such a significant piece of legislation directed toward the protection of human rights, including the rights of children, does not explicitly encourage human rights-consistent interpretation. We also reiterate our recent recommendation that new Chapter 16, which underpins reforms to raise the age of criminal responsibility, include an objects clause to promote its interpretation consistent with its diversionary and therapeutic aims.³

Best interests principle

The 'best interests principle' in Article 3 of the *Convention on the Rights of the Child* (CRoC) is a key element of the special protection to which all children are entitled, including under Australian human rights legislation, due to their special vulnerability relative to adults.⁴ Section 8 of the CYP Act reflects this principle by requiring that the best interests of children and young people be the paramount consideration in all decisions made under the Act.

Amendments to relocate, and reduce the complexity of, the best interests principle for care and protection decisions made under the CYP Act do not inherently raise concern. Given its paramount status, however, we seek to ensure that it is accurately defined and that certain elements, which will be operationalised and expanded on through proposed statutory principles (e.g. Principles of Active Efforts, Child and Youth Participation, Family Preservation, Identity and Permanency and Stability), are not understood as somehow distinct from, and in competition with, the content of the best interests principle.

The CRoC does not seek to define what constitutes the 'best interests' of a child. Its scope and content are instead detailed in expert commentary of the United Nations Committee on the Rights of the Child (UN CRC).⁵ In Part V of *General Comment 14 (Implementation: assessing and determining the child's best interests)*, the UN CRC outlines seven elements that should be considered when a decision about the child's best interests is to be made:

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| (a) the child's views; | (d) care, protection, and safety of the child; | (f) the child's right to health, and |
| (b) the child's identity; | (e) situation of vulnerability; | (g) the child's right to education. |
| (c) preservation of the family environment and maintaining relations; | | |

These seven elements provide an indication of the minimum factors that must be taken into account when determining what is in a child or young person's best interests. The UN CRC further explains that the best

³ ACT Human Rights Commission, *Submission to Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023* (9 June 2023) [22]-[24], available at: <https://www.parliament.act.gov.au/_data/assets/pdf_file/0008/2243906/Submission-018-ACT-Human-Rights-Commission.pdf>

⁴ *Certain Children v Minister for Families and Children* (2016) 51 VR 473.

⁵ Committee on the Rights of the Child, *General Comment No 14: Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013), [60].

interests principle is specifically intended as flexible, holistic and context-dependent. These seven elements are not to be considered an exhaustive statement of its content, nor is any one element, like a child's safety, to be generally afforded greater weight in all matters. Discretion is reserved to a decision-maker to take account of other facts or circumstances they consider relevant when deciding what is in a child or young person's best interests. In doing so, the best interests of a child must not be considered in isolation from their broader personal, context, situation and needs; that is, it must take account of impacts on their survival and development.⁶

Not all of the seven elements identified by the UN CRC currently feature among the eleven 'best interests' criteria prescribed in s 349 of the CYP Act (as recently amended). Of particular concern is that the CYP Act does not expressly recognise the principle of prioritising support to preserve the family environment and relations.⁷ Other elements that are not directly contemplated include the child's identity (including their sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality); the different kinds and degrees of the child's vulnerability (including due to disability, homelessness, minority, asylum or refugee status, and experience of abuse); and the child's rights to health and education; each of which ought to be clearly represented.

Listed elements in s 349 are also unnecessarily prescriptive and do not neatly correspond with their broader framing by the UN CRC. Proposed revisions would therefore align with the best interests principle under s 5(2) of the *Adoption Act 1993* (ACT) (Adoption Act), which we agree would provide a clearer foundation on which to develop the relevant amendments in conjunction with some elements contained in s 10 of the *Children, Youth and Families Act 2005* (Vic). Because best interests considerations reflect a range of factors to be balanced against each other and appropriately weighted in individual circumstances, we would advise against integrating exceptions that correspond with other elements (e.g. care, safety and protection) into new best interests considerations (e.g. '[t]he need to strengthen, preserve and promote positive relationships between the child and the child's parent, family members and persons significant to the child, *where it is safe to do so*').

Foregrounding the best interests principle in the opening provisions of the CYP Act, akin to the Adoption Act, does not raise particular concerns. It will nevertheless be important that its extended application to other provisions under the CYP Act, including with respect to places of youth detention, are taken into account in refining the new provision.

Interaction with other proposed statutory principles

The Commission has previously raised concerns that, in practice, existing care and protection principles under s 350 of the CYP Act have been overlooked, or given substantially less weight, in light of the principle that the best interests of the child must be the paramount consideration in any decision about a particular child or young person (per CYP Act, s 8).

Given this, it is critical that several of the new principles are not presented – either expressly or implicitly – as somehow distinct from the best interests of the child and to be read in competition with that overriding key concept. For example, the Information Paper suggests, on p. 13, that the Principle of Active Efforts will include a caveat that the best interests of the children and young people will remain of paramount consideration. We would respectfully suggest that such a caveat is unnecessary and potentially misleading.

We again stress that the proposed statutory principles must be read as further detailing elements of the best interests of a child. One option to achieve this, subject to advice of the ACT Parliamentary Counsel's Office, may be to emulate the way the Aboriginal and Torres Strait Islander children and young people placement principles, set out in a separate provision, have been integrated by signpost reference into the list of best interests considerations that a decision-maker must take into account.

⁶ Ibid, [32].

⁷ See, as a useful model, *Children, Youth and Families Act 2005* (Vic), s 10(3)(a): 'the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child'.

Active efforts principle

The Commission is strongly supportive in principle of the introduction of a principle of active efforts. We understand this principle would oblige those exercising functions under the CYP Act to make deliberate, evidenced and persistent attempts to prevent a child or young person from entering out of home care or else to restore them to their parents or family. If implemented diligently and effectively, this principle would greatly enhance public confidence by promoting ongoing connection to family, community, and culture, especially for Aboriginal and Torres Strait Islander children and young people. Given its content and focus, we would expect this proposed principle will significantly overlap with the proposed Family Preservation Principle.

Under IHRL (and Australian human rights law),⁸ the preservation of the family environment and maintaining family relations has been identified as a key component of the best interests principle, guaranteed under Article 3 of the CRoC:

61. Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family's capacity to take care of the child, unless separation is necessary to protect the child. Economic reasons cannot be a justification for separating a child from his or her parents.

62. The Guidelines for the Alternative Care of Children⁹ aims to ensure that children are not placed in alternative care unnecessarily; and that where alternative care is provided, it is delivered under appropriate conditions responding to the rights and best interests of the child. In particular, "financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care [...] but should be seen as a signal for the need to provide appropriate support to the family" (para. 15).¹⁰

The Bill will insert additional provisions that apply 'active efforts' in the context of applications for orders separating the child from their family and home under the CYP Act; specifically, the Director-General will be required to provide evidence of meeting the proposed 'active efforts' principle in any application for orders transferring parental responsibility or seeking residence provisions. The Childrens Court would in turn need to be satisfied that active efforts have been made. The proposal to require evidence of deliberate, evidenced and persistent efforts to keep families together promises to embed greater awareness of the need to preserve family unity as part of the best interests principle. We see this proposal as naturally aligning with, and reinforcing, the human rights imperative that any separation of a child from their family only occur as *necessary in the best interests of the child*.¹¹

As equivalent provisions under s 9A of the *Children and Young Persons (Care and Protection) Act 1998* (NSW) only recently commenced on 15 November 2023, there is currently limited jurisprudence about how 'active efforts' would be applied in law and practice.¹² In its earlier submission to the Inquiry of the Standing Committee on Health, Ageing and Community Services on Child Protection (Part 2) ('HACS Inquiry

⁸ *A v Chief Executive, Department of Disability, Housing & Community Services* [2006] ACTSC 43, [48]; See also *Secretary to the Department of Human Services v Sanding* [2011] VSC 42 – the Court held that, when determining what protection was in the best interests of a child, the Children's Court must also consider protection of the family as the fundamental group unit in society.

⁹ *Guidelines for the Alternative Care of Children*, GA Res 64/142, UN Doc A/RES/64/142 (24 February 2010, adopted 18 December 2009).

¹⁰ United Nations Committee on the Rights of the Child ('UN CRC'), *General Comment No 14: Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013), [60].

¹¹ *Convention on the Rights of the Child*, GA Res 44/25, UNTS 1577(20 November 1989, entered into force 2 September 1990) ('CRoC'), art 9; UN Human Rights Committee ('UN HRC'), *General comment No. 17: Article 24 (Rights of the child)*, 35th sess, UN Doc CCPR/C/21/Rev.1/Add.6 (7 April 1989), [6]; UN CRC, *General Comment No 14: Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration*, 62nd sess, UN Doc CRC/C/GC/14 (29 May 2013), [60].

¹² *Cf. Mia Harris (a pseudonym) and Adam Jackson (a pseudonym) v Secretary to the Department of Families, Fairness and Housing* [2023] VSC 228 (3 May 2023), [157]-[187].

(Part 2)') in June 2019, the Commission advocated for amendments to the CYP Act to require the Childrens Court to be satisfied that the Director-General has taken all reasonable steps to provide services necessary in the best interests of the child before making a protection order. This suggestion, based on ss 10(3)(g), 10(3)(i) and 276(1)(b) of the *Children, Youth and Families Act 2005* (Vic), was endorsed and recommended by the HACS Inquiry (Part 2) in Recommendation 3.¹³

Absent further guidance or relevant case law, much will depend on how 'active efforts' is interpreted and applied in practice and by whose standard active efforts are judged – whether by the Childrens Court, Child and Youth Protection Services (CYPS) or contracted service providers. Related to this, the reality of service provision within Canberra is that, at times, a service deemed to be essential will be unavailable, unaffordable or uneconomical. It is highly important that 'active efforts' not be easily dispensed where a required service does not operate locally, or is otherwise unavailable in the ACT (i.e. where there is a market failure). Secondary support services necessary to support family unit and protection of the child from harm may, for example, include support to access housing, drug and alcohol rehabilitation, access to mental health services, assistance with applying for social security or the National Disability Insurance Scheme, access to respite services, or simply logistical assistance (e.g. transport). It is unclear if these would be contemplated as part of taking 'active efforts'. Moreover, 'active efforts' must not be interpreted in such a way as would pressure Aboriginal and Torres Strait Islander children, young people and their parents and families to access services that are not culturally safe or appropriate. In this regard, we consider that realising 'active efforts' in practice will likely require far greater funding of Aboriginal Controlled Community Organisations (ACCOs), as a proportion of child protection and family services funding, than its current level of 1.3%.¹⁴

We welcome that 'legal services' will be listed among the services that may constitute evidence of active efforts. In practice, however, we query whether grants of legal aid will be made available to parents, families and other people who require legal services to engage with the child protection system prior to proceedings seeking protection or other orders under the CYP Act. There are also live questions about whether 'legal services' and other active efforts might extend to assistance regarding other risks of harm to a child or young person, such as a lack of stable housing or employment.

Family decision-making

As a related observation, the Commission observes that the proposed changes to ensure a less prescriptive framework for the provision and recognition of family group conferencing, inclusive of expanding eligibility to all families, should greatly support implementation of the Principle of Active Efforts. In particular, we welcome that the proposed definition will encompass and support independent Aboriginal Led Family Decision Making, which we view as essential for genuine opportunities for self-determination. Demonstrated diversion rates of 78% and 63% in recent trials in Victoria and New South Wales respectively speak to ACCOs being best placed to engage and empower Aboriginal families and foster their relationships with the services and support needed for the safety of their children and young people.¹⁵

The Information Paper makes clear that opportunities to engage with family decision-making will form part of the Childrens Court's consideration of the Principle of Active Efforts (above). Specifically, we understand that opportunities for family-led decision-making will form part of the evidence of active efforts provided to the Childrens Court in applications for certain orders. In our view, the drafting of these provisions must ensure scope for the court to critically interrogate and consider *how* such opportunities have been provided, their duration, and outcomes, rather than simply an assertion that they have been offered.

¹³ Standing Committee on Health, Ageing and Community Services (ACT Legislative Assembly), *Report on Child and Youth Protection Services (Part 2)* ('HACS Inquiry (Part 2)') (Report 11, July 2020), [5.28].

¹⁴ Family Matters, SNAICC, Monash University et al., *The Family Matters Report 2022 – Measuring Trends to Turn the Tide on the Over-Representation of Aboriginal And Torres Strait Islander Children in Out-Of-Home Care in Australia* (Report, 3 November 2022), 18 & 56, available at: <<https://www.familymatters.org.au/wpcontent/uploads/2022/11/20221123-Family-Matters-Report-2022-1.pdf>>

¹⁵ Sarah Wise & Graham Brewster, *Seeking Safety: Aboriginal Child Protection Diversion Trials Evaluation Final Report*. (2022) University of Melbourne, available at: <<https://rest.neptune-prod.its.unimelb.edu.au/server/api/core/bitstreams/36203016-7255-4cae-aa33-327cfd8cd003/content>>

Moreover, the Aboriginal and Torres Strait Islander Children and Young People Commissioner and ACCOs must be empowered to dispute evidence of active efforts, and put forward their alternative proposals for reunification to the court. We emphasise that the Childrens Court must be empowered *not only* to consider such evidence, but also to critically engage with how those opportunities have been offered, any progress, agreements or alternative proposals proposed by families, and reasons for family decision-making as evidence of active efforts.

Expanded definition of family

We are pleased that the Bill would update the relatively restrictive definition of ‘family member’ under the current CYP Act. Presently, s 13 of the CYP Act captures only a child or young person’s immediate and intermediate relatives by blood or marriage and, for Aboriginal and Torres Strait Islander people, those with responsibility for the child or young person under cultural customs and traditions.

As outlined above, human rights law encompasses a broader view of ‘family’ based on the existence of family life, which is essentially a question of fact. Although the essential ingredient is the right to live together to develop family relationships, other factors may be sufficient to indicate that the relationship has sufficient constancy to constitute *de facto* family ties, including its length and nature. Biological ties, or the absence of biological ties, are not alone determinative of a familial relationship with a child or young person. The definition of ‘family’ for the purposes of human rights law hence encompasses relationships between children and their carers or foster parents, which must be balanced with other family ties.¹⁶ What this means is that, where a child or young person has been restored to their families, any family ties that they have developed with their carers or foster parents must still be recognised, and as far as reasonable, promoted and supported.

Certain measures should, in our submission, be embedded into operational practice from early contact with a child or young person to ensure their right to family is respected. For Aboriginal and Torres Strait Islander children and young people, for example, information should be gathered to effectively map relevant kinship connections as soon as practicable. CYPS must also be cautious to ensure all family members are engaged as appropriate about action in relation to a child or young person; selective consultation with certain family members should be avoided as far as reasonably possible.

2. Shared responsibility

Information sharing

The Information Paper envisages changes to the existing settings for sharing of information relevant to the safety, welfare or wellbeing of a child or young person. Principles governing information sharing under the new scheme would encourage – but not mandate subject to exceptions – an agency obtaining consent to use or disclose information for the safety, welfare and wellbeing of the child and young person wherever safe and practical to do so. We do not have concerns about the second principle, which would simply restate the intent that agencies share information and work collaborative to promote the safety, welfare and wellbeing of the child. The third proposed principle, however, would direct that the safety, welfare and wellbeing of a child or young person *takes precedence* over the protection of confidentiality or an individual’s right to privacy.

We understand that these changes are aimed at encouraging more proactive sharing of information among relevant agencies and service providers in seeking to realise greater collaboration and earlier delivery of wraparound and tailored support for children, young people and their families/carers. Even so, it is a matter of some concern that the Information Paper anticipates only a ‘principles-based’ approach.

Inevitably, information sharing schemes will engage, and in-principle limit, human rights; including primarily the right to privacy of those whose personal information is collected, used and disclosed. The right to privacy relevantly protects against arbitrary or unlawful interferences with a person’s right to control the

¹⁶ See, for example, *G v E and Ors* [2019] EWHC 621 (Fam) (26 March 2010).

dissemination of information about them.¹⁷ Like most rights in the HR Act, however, the right to privacy may be subject to reasonable limits set by laws that are suitably accessible, predictable, and foreseeable in their scope of operation. As such, any discretion to share personal information must be suitably delineated so that an individual will generally be able to understand how, when, and why information about them might be accessed.

It is uncontroversial that streamlining information sharing and collaboration in the best interests of a child or young person pursues a legitimate aim for the purposes of limiting human rights, like the right to privacy, under s 28(2) of the HR Act. To the extent that a clearer and less complex framework for sharing safety, welfare and wellbeing information among relevant agencies may help to identify and assess risks of significant harm or stimulate early intervention and wraparound support, it is rationally capable of upholding the best interests of the child. Even so, consistency with the HR Act will depend on the scheme being supported by adequate safeguards that ensure any disclosure of information under the proposed scheme curtails human rights only in a way that is strictly proportionate to its stated aim.

Fundamentally, this means that any collection, use or sharing of personal information among agencies *must* only take place to the extent necessary to promote the safety, welfare and wellbeing of a child or young person.¹⁸ Whether the sharing of information is proportionate will also vary in the circumstances depending on the nature of the particular information (e.g. health information), who it concerns (e.g. prenatal information, young adults transitioning from care) and the reason motivating its disclosure. Without diminishing the importance of timely, collaborative, coordinated and informed responses to the needs of children and young people, our preliminary view is that a ‘principles-based’ approach would not provide sufficient protection against arbitrary or unreasonable collection, use or disclosures of personal information. This is especially so given the wide range of agencies and organisations that will be authorised to share information under the scheme, and the varied scope and nature of information that may be shared and the reasons for doing so (e.g. personal health information).

It is accordingly our view that amendments to revise information sharing under the CYP Act must be supported by clear guidance and protocols for information sharing entities that govern the scope of their discretion to request, use and share personal information and how that discretion should be exercised. Such guidance should, among other things, indicate when the relevant child, young person or other relevant person’s consent must be sought, when it will be appropriate to proceed without their consent, and whether, when and how they would be notified that their information has been used or disclosed. Steps to confirm the accuracy, relevance, and adequacy of information for its purpose should also be contemplated, as should a requirement to record why information has or has not been shared. To ensure Parliamentary scrutiny, we recommend that such guidance take the form of a disallowable instrument.

We appreciate that consent and notification requirements in the CYP Act may not easily lend themselves to a simple and clear licence to collect, use and share information with reference to optional guiding principles. We also recognise that the guiding principles proposed by the Information Paper draw on Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*, which was endorsed by the Royal Commission into Institutional Responses to Child Sexual Abuse as a useful model for implementing its recommendation to establish a nationally consistent information sharing scheme. Unlike the ACT, however, New South Wales has not enacted human rights legislation and the scope of the Royal Commission’s recommendations focused only on sexual and physical abuse only. Any transfer of policy settings must therefore be critically considered. Indeed, the ACT Government’s response to the *Royal Commission into Institutional Responses to Child Sexual Abuse’s Final Report (Part 1)* affirmed that information sharing for the safety of children and young people is a complex area of law, and the importance of upholding the right

¹⁷ For the purposes of human rights law, ‘arbitrary’ includes elements of capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate [in the circumstances] to a legitimate aim sought (*Thompson v Minogue* [2021] VSCA 358, from [50]). ‘Unlawful’ means other than as provided by law.

¹⁸ UN HRC, *General comment No. 17: Article 24 (Rights of the child)*, 35th sess, UN Doc CCPR/C/21/Rev.1/Add.6 (7 April 1989), [4].

to privacy under the HR Act and limits on disclosure must be clearly communicated in implementing any nationally consistent or revised information sharing schemes.¹⁹

The rights of the child guarantee paramount consideration of the best interests of a particular child or young person in *particular* child protection actions or decisions that affect them, which must equally motivate and inform the sharing of information under the CYP Act. Giving paramount consideration to the best interests of a child or young person does not, however, mean that the safety, welfare and wellbeing of a child or young person should *automatically and generally* override any consideration of an individual's personal privacy, or confidentiality to the extent it promotes other rights (e.g. life, security of person, fair trial). On the contrary, there will be times when the rights, best interests and privacy of the child or young person weigh heavily *against* widespread sharing of their information.

In such circumstances, it is difficult to conceive how an approach that does not condition an agency's discretion to use, share and disclose information (including based on consent) would also uphold the child and youth participation principle, the right of a child to be heard, and ultimately their best interests. Over the course of 2019-20, the Children and Young People Commissioner partnered with the ACT Government's Family Safety Hub to undertake a joint consultation with children and young people about their experiences of domestic and family violence. Participating children and young people spoke specifically about experiences of violence and other reprisals where information they had shared in secret was forwarded on by government agencies without their awareness or consent and eventually brought to their parents' attention.²⁰

Without having considered the detailed legislative proposal and accompanying justification, our advice necessarily reflects a preliminary view. In this regard, we recognise that Part 6A of the *Child Safety and Wellbeing Act 2005* in Victoria also implements a broad authorisation to share information with reference to guiding principles and broad underlying protocols. It may also be that other jurisdictions, regionally and internationally, have adequately justified a principles-based approach over a mandated legislative consent-based scheme. In this regard, the Commission remains open to providing more detailed advice around the design of an information sharing approach in accordance with human rights principles in the development of the relevant provisions.

Prenatal information sharing

As noted above, other considerations must be balanced when sharing protected information for the benefit of certain categories of 'child or young person'. Because a person's human rights only vest in a person on birth, the best interests of the child will not as readily justify interferences with a pregnant person's privacy. Folding the collection, use and sharing of prenatal information into the broader information sharing scheme does not, in itself, raise concerns provided that decisions about accessing and sharing prenatal information, including personal health information, continue to properly consider the different rights engaged.

The long-term effects of trauma in-utero, including due to the birth parent's experience of family or domestic violence, substance misuse during pregnancy or lack of antenatal care, may provide a sufficiently important public purpose to justify limits on a parent's privacy in particular circumstances. A mandated legislative consent-based model that offers clear legislative protocols about how information may be shared in certain circumstances (e.g. with consent, notifications) would support the handling of various categories of personal information (including prenatal information), with due respect for the privacy and autonomy of pregnant persons.

¹⁹ ACT Government, *The ACT Government Response (Part 1) to the Royal Commission into Institutional Responses to Child Sexual Abuse* (June 2018), 10, available at: <https://www.act.gov.au/_data/assets/pdf_file/0018/1210761/Response_Part-1.pdf>.

²⁰ Public Advocate and Children and Young People Commissioner & ACT Government, Family Safety Hub, *Now you have heard us, what will you do? Insights from young people on domestic and family violence*, (Project Report, 2021), 13, available at: <https://www.hrc.act.gov.au/_data/assets/pdf_file/0004/2264476/Now-you-have-heard-us-What-will-you-do-Report-FA-Web-FA.pdf>.

Mandatory reporting

The Information Paper, at p. 17, outlines a proposal to broaden the categories of treatment that must be reported under s 356 of the CYP Act. The expanded scope of mandated abuse proposed by the Bill would capture reasonable belief of physical abuse, sexual abuse, emotional/psychological abuse; exposure to domestic violence or neglect arising in the course of a prescribed reporter's work. Currently, s 356 of the CYP Act only criminalises a failure to report sexual abuse or 'non-accidental physical injury'.

The Commission opposes broadening the scope of mandatory reporting in this way and shares the serious concerns articulated in the Information Paper (at p. 18) without being comforted by the rationale expressed.

We understand this expanded scope is aimed at aligning notifications with the key statutory focus for intervention in the best interests of a child or young person; this being the existence of "any detrimental effect of a significant nature on the safety, welfare or wellbeing of the child or young person" ('significant harm'), as introduced in the *Children and Young People Amendment Act 2023*. Mandatory reporting about emotional and psychological abuse, neglect and exposure to domestic violence is also intended to complement the growth of a proactive and collaborative information sharing culture.

Mandating disclosures of suspected abuse engages and limits the right to privacy and reputation (HR Act, s 12), meaning any increased scope of reporting must be demonstrably justified as reasonable, necessary, and *proportionate* to safeguarding the safety, welfare and wellbeing of a child or young person. Further, capturing 'neglect' within these categories must be carefully considered to guard against reporting solely based on circumstances of poverty or disability, which would limit the right to equality and non-discrimination (HR Act, s 8).

The Commission shares the serious concerns about expanding the scope of mandatory reporting abuse types that are briefly summarised in the Information Paper (at p. 18). Operationally, we are concerned that this expansion will see a significant increase in reporting that further impedes Child and Youth Protection Service's (CYPS) ability to effectively identify and triage matters where early support is urgently required. Data from the Productivity Commission's *Report on Government Services 2023* indicates that, in 2021-22, there were 19,412 mandatory and voluntary reports under the current CYP Act of which 11% were investigated and 2.2% were substantiated.²¹ In this regard, we do not accept that expanding the legislative scope of information to be reported will meaningfully contribute to the prompt identification, triage and assessment of children and young people and their families who require support. Whether the scope of information that *must* be reported is adequately circumscribed to CYPS' capacity to process it will directly inform the consistency of this proposed expansion with the HR Act, as will the availability of other ways (e.g. information sharing) to identify children, young people and families in need of early intervention and support.

The Commission's unique vantage point in the investigation and conciliation of complaints and case monitoring of family, sexual and personal violence, as well as insights from Aboriginal and Torres Strait Islander advisors and clients underscore the genuine risk of disengagement with support services for fear of mandatory reporting. For example, the experience of Victim Support ACT is that some clients accessing the services of Victim Support ACT are aware of the legislated mandatory reporting requirements which, in turn, deters them reporting certain conduct to avoid triggering a report. Accordingly, a broadening of the categories of treatment that must be reported may paradoxically put some victim survivors at increased risk by deterring them from seeking and receiving assistance from mandated professionals at all. For practitioners and care organisations, overreliance on mandatory reporting may also lead to voluntary or mandatory reports being treated as a 'tick-box' exercise that refers and discharges their obligation to provide necessary support. In this regard, we are acutely conscious that the proposed expansion to capture 'emotional/psychological' harm risks a greater number of adolescents experiencing mental ill health being reported in circumstances where they have already been seeking mental health supports.

²¹ Productivity Commission, *Report on Government Services 2023* (Report, 6 June 2023), Child protection services data tables, Table 16A.5 (January 2023), available via: <<https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/child-protection>>

Valuable changes in administrative practice, like the introduction of Structured Decision Making tools, training and improved screening processes, may go some way to mitigating these concerns by promoting more targeted and consistent reporting of *significant* harm. Yet, without embedding specific statutory safeguards and/or guidance to these ends (e.g. prescribed considerations, a ministerial protocol), these practices and reliance on organisational cultures may diminish over time and cannot in themselves be relied on as sufficient assurance of the Bill's consistency with the HR Act. Accordingly, we recommend that the Bill seek to more closely define the kinds of harm that are intended to be reported, including by linking this explicitly to the concept of significant harm and elevating risk assessment guidelines into legislative instruments.

Moreover, the Commission has significant concerns about an expanded scope of mandatory reporting facilitating greater systems abuse in the context of interpersonal and family disputes or family and domestic violence. Our complaints and have periodically identified matters in which a person, or multiple people, have selectively presented information to mandated professionals with a view to prompting a mandatory report. We are also aware of regulatory action against practitioners (including conditions on registrations) for having made mandatory reports of information relayed by patients or other clients.

Conferral with colleagues

Although permitting a person to confer and share information with colleagues before making a mandated or voluntary report may enable some preliminary assessment of the veracity of information on which a report would be based, this will not necessarily stem a conservative culture of overreporting; especially in conjunction with a broader scope of circumstances that must be reported. Recognising that an authorisation to share and discuss a proposed report with colleagues may also limit the right to privacy where shared excessively or unnecessarily, these changes must also be supported by tailored guidance and resources, including about reporting on behalf of a group. In such circumstances, it is our view that whether to make a report should be informed by consensus and not at the discretion of individual practitioners.

Anonymity of mandatory and voluntary reports

Whether the expanded scope of mandated reports is reasonable in accordance with s 28 of the HR Act will, in part, be informed by the strict prohibition on identifying a person who has made a mandatory report. Categorical anonymity of voluntary and mandatory reports, as currently applies under s 857 of the CYP Act, may not, in fact, realise the least rights-restrictive reasonably available means of promoting the safety, welfare and wellbeing of children and young people.

The Commission recognises that strict anonymity of reporters is directed toward the protection of mandated reporters from reprisals, the safety of the child or young person and other family members, as well as the integrity of any subsequent assessment about risks of significant harm to a child or young person. Moreover, strict anonymity serves to reassure those who might not otherwise make a report for fear of reprisals. For these reasons, the Commission would not advocate to entirely remove the ability to make mandatory reports anonymously or disclosure of reporters' identities without their consent. Prohibiting any identification of a person who has made a voluntary or mandatory report, particularly where they consent, risks undermining the trust of parents, families, or carers about whom a report is made. Being unable to clearly raise and discuss the concerns underlying a mandatory report risks entrenching a defensive and adversarial relationship that impedes early intervention and support in the best interests of the child.

Given the cooperative and supportive intent underpinning *Next Step for Our Kids 2022-2030* and the *Charter of Rights for Parents and Families*, CSD should consider scope for suitable exceptions that would allow a mandatory report to be made – where appropriate and agreed by the reporter – with the knowledge and involvement of the relevant parent, carer, or family. Similarly, we consider there may be merit in requiring mandatory reporters to disclose, or otherwise make obvious, that they are required by law to report information disclosing certain forms of abuse from the outset of an interaction.

Prenatal information sharing and assessments

The Information Paper contemplates collapsing categories of prenatal information into the new apparatus for sharing of information relevant to the safety, welfare and wellbeing of a child or young person (see p.

20). As outlined above, the right to privacy does not necessarily require that all prenatal information be treated as inherently sensitive and incapable of disclosure, as is currently mandated under s 365 of the CYP Act. Information about an unborn child and their family must not, however, be treated in the same way as other information relevant to the safety, welfare and wellbeing of a child or young person. Accordingly, we recommend that the relevant ministerial protocol or other statutory guidance also address the circumstances in which a person's consent should (and must) be sought; when, how and for what purposes prenatal information might be used and disclosed; and how and when a pregnant person would be made aware of such disclosure.

6. Keeping children and young people in out of home care safe and connected

Retaining personal records to create a 'life story'

The Commission strongly supports the proposed statutory obligation that Child and Youth Protection Services retain personal records for every child and young person in out of home care. Proactive maintenance of records about a child's experiences and life is fundamental to respecting their human rights, including their right to privacy (HR Act, s 12; to the extent it protects one's identity and specific past) and the rights of the child (HR Act, s 11(2)).

Neuropsychological studies of children indicate that experiences of maltreatment, adversity and other trauma stressors are linked to an increased likelihood of autobiographical memory disturbances related to childhood.²² Trauma experience has been shown to correlate with difficulty retrieving specific memories, known as overgeneral autobiographical memory, and recall of details of general childhood experience, such as time, place and people involved.²³ In these ways, obliging the Director-General to keep comprehensive records and complete individualised annual assessments of all children in out of home care is an important special measure directed to the children and young people in out of home care being able to equally develop their identity and access information they may not remember about their lives.

While the keeping of these records is important in and of itself, of equal importance is the need to ensure these records are directly informed by the child or young person themselves and that they are written in language that makes them accessible for children and young people both now but also as an historical record of their care experience. To that end, it may be useful to draw upon the work undertaken by Monash University in developing the *Charter of Lifelong Rights in Childhood Recordkeeping in Out of Home Care*,²⁴ in particular the best practice guide to recordkeeping.²⁵

Sharing information about children and young people's care with their parents

The final report of the 'HACS Inquiry (Part 2)' made clear the need for reforms to improve transparency and accountability of the ACT child protection system. The final report, dated July 2020, noted the opacity and power imbalance in the current system for access to information about children and young people in care. Application of strict secrecy requirements to categories of 'sensitive information', reserving ultimate discretion to the Director-General to share information in the best interests of the child, was found to have fostered a culture of secrecy without rights of review or appeal.²⁶

²² See, for example, David Brown, Robert F Anda, Valerie J Edwards, Vincent Felitti, Shanta Dube & Wayne Giles, 'Adverse childhood experiences and childhood memory disturbance' (2007) 31(9) *Child Abuse & Neglect*, 961.

²³ María Verónica Jimeno, Jose Miguel Latorre, and María José Cantero, 'Autobiographical Memory Impairment in Adolescents in Out-of-Home Care' (2021) 36(23-24) *Journal of Interpersonal Violence*, available at: <<https://journals.sagepub.com/doi/10.1177/0886260520907351>>.

²⁴ Monash University et al, *Charter of Lifelong Rights in Childhood Recordkeeping* (Charter, February 2022), available at: <<https://www.monash.edu/it/clrc>>.

²⁵ Monash University, *Recordkeeping Best Practice Guide to Support Implementation of the Charter of Lifelong Rights in Childhood Recordkeeping in Out-of-Home Care* (Report Version 1, November 2021), available at: <https://www.monash.edu/_data/assets/pdf_file/0007/2894740/Best-Practice-Service-Providers-Guide-to-Recordkeeping-in-OOHC-Final.pdf>.

²⁶ HACS Inquiry (Part 2), [3.6].

The Commission therefore welcomes the proposal to reduce the kinds of ‘sensitive information’ that may only be disclosed if the Director-General has decided that doing so is in the best interests of the child, which we understand has been sparingly determined to date. Any exceptions to a new secrecy offence under the CYP Act must be carefully crafted to ensure they accommodate appropriate sharing of information about a child or young person with their families, carers, kin, and legal representatives in a way that adequately addresses the concerns raised during the HACS Inquiry (Part 2) and upholds rights to family, fair hearing, and the best interests of the child, as discussed below.

In this regard, we are pleased that the Bill intends to implement a further recommendation of the HACS Inquiry (Part 2) by mandating the provision of certain information to families, carers and legal representatives about a child or young person’s life, treatment, health, education and wellbeing.²⁷ We understand the Bill would identify the circumstances in which information about placement and progress in care must be given to families, carers and other significant people, as part of ensuring an ongoing relationship and ties with children or young people in care.

To the extent it alludes to NSW laws as a potential model, relevant provisions in the *Children and Young Persons (Care and Protection) Act 1998* mandate the sharing of information about a child or young person’s out-of-home care placement to any parent or other significant person as soon as practicable after it occurs. Which information and how much is provided will depend on the wishes of the child or young person and their authorised carer, as well as guidelines prepared by the NSW Children’s Guardian. Placement information may be withheld where an authorised carer does not consent (subject to some exceptions) or where the agency reasonably believes that providing the placement information would adversely affect the safety, welfare or wellbeing of the child, young person, their authorised carer or a member of the household.²⁸ Parents are also entitled to information about the progress and development of their children while in out of home care.²⁹

On balance, we consider these provisions a useful starting point in ensuring parents, families and other significant people proactively receive information about their children, as reasonable and appropriate. Rights to information concerning the progress and development of children must not, however, be restricted solely to parents. The HACS Inquiry (Part 2) highlighted that such provisions should extend as well to the legal representatives of children, young people, and their parents.³⁰ To satisfy the ‘quality of law test’ for limiting human rights, the ACT Government must also be obliged to publish guidelines about the categories of information that will be shared under the new provisions, and when and how that information will be provided.³¹ We recommend that the development of any guidelines involve targeted engagement with children and young people, perhaps through CREATE, as well as with parents and families, Aboriginal and Torres Strait Islander peoples and other interested stakeholders, including the Commission.

Insofar as decisions to withhold information are envisaged ‘[subject to consent and risk assessment]’, decisions to withhold protected information from parents, carers and families must also be unambiguously included among those decisions capable of external merits review under the new pathway.³²

²⁷ HACS Inquiry (Part 2), [6.19].

²⁸ *Children and Young Persons (Care and Protection) Act 1998* (NSW), Chapter 8, Division 1A.

²⁹ *Ibid*, s 163.

³⁰ HACS Inquiry (Part 2), [6.19] (Recommendation 10).

³¹ HACS Inquiry (Part 2), [6.10], [6.23]; ACT Human Rights Commission, *Submission to Inquiry into Child and Youth Protection Services: Part Two – Information Sharing under the Care and Protection System* (August 2019), 5, available at: <https://www.hrc.act.gov.au/_data/assets/pdf_file/0009/2295207/Submission-Inquiry-into-Child-and-Youth-Protection-Services-2019.pdf>.

³² ACT Human Rights Commission, *Inquiry into Child and Youth Protection Services (Part 2) – Information Sharing under the Care and Protection System: Answer to question on notice and supplementary submission* (February 2020), [2]-[7] available at: <https://www.parliament.act.gov.au/_data/assets/pdf_file/0018/1508013/Final-Responses-to-QToN-PH-4-Feb-20-ACT-HRC-Inq-into-CYPS-Part-2.pdf>; HACS Inquiry (Part 2), [6.21] (Recommendation 12).

Outlawing of corporal punishment

The Commission is pleased that the proposed reforms will explicitly prohibit corporal punishment or punishment that humiliates, frightens, or threatens in a way that is likely to cause emotional harm to children and young people in all out of home care settings. The prohibition of corporal punishment in out of home care is an important advancement for children and young peoples' rights in the ACT, bringing the Territory in line with Queensland and New South Wales,³³ and into closer conformity with the Territory's obligations to protect children and young people from all forms of physical or mental violence under both the HR Act and international human rights law.³⁴

However, the Commission is concerned that limiting the prohibition of corporal punishment to out of home care implies tacit approval for the use of corporal punishment in other settings (such as by parents). As it currently sits, corporal punishment remains lawful in the ACT, with the practice limited by legislation and policy only in certain settings, including childcare centres and day care,³⁵ government and independent schools,³⁶ and in detention.³⁷ Corporal punishment, however, remains lawful in all other settings, including in the home, under the common law defence of *reasonable chastisement*.

Human rights law is unambiguously clear; it does not condone *any* form of corporal punishment, however light, which includes hitting (smacking, slapping, spanking) a child or young person with the hand or an implement, pinching, boxing ears or forced ingestion, including washing a child or young person's mouth out with soap.³⁸

The UN CRC states that article 19 of the CRoC requires States to 'take all appropriate legislative, administrative, social and educational measures to protect the child from *all forms of physical or mental violence* ... while in the care of parent(s), legal guardian(s) or any other person who has care of the child'.³⁹ The UN CRC makes it clear that 'there is no ambiguity: "all forms of physical or mental violence" does not leave room for any level of legalised violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence'.⁴⁰

The UN CRC has recommended on four occasions that corporal punishment in Australia be prohibited in the home and all other settings.⁴¹ In 2008, the Committee Against Torture recommended that Australia 'adopt and implement legislation banning corporal punishment at home [and in all other settings] ... in all States and Territories'.⁴² Since the adoption of the CRoC in 1989, 65 States have prohibited corporal punishment in all settings, and a further 27 have committed to enacting a full prohibition (at May 2023).⁴³

To promote consistency with the rights of the child (HR Act, s 11(2)), security of person (HR Act, s 18), and equal protection of the law (HR Act, s 8), the Commission strongly encourages the ACT Government to

³³ *Queensland Child Protection Act 1999* (Qld) s 122(2); *Children and Young Persons (Care and Protection) Regulation 2022* (NSW) reg 46.

³⁴ See *Human Rights Act 2004* (ACT), ss 10(1), 11(2); CRoC, art 19(1); *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 7.

³⁵ *Children and Young People Act 2008* (ACT), s 741; *Education and Care Services National Law (ACT) Act 2011* (ACT), s 166.

³⁶ *Education Act 2004* (ACT) s 7(4).

³⁷ Corporal punishment is not among permitted disciplinary measures in the *Children and Young People Act 2008* (ACT), but is not explicitly prohibited.

³⁸ See, for example, UN CRC, *General Comment No 8: The Rights of the Child to Protection from Corporal Punishment and Other Cruel and Degrading Forms of Punishment*, 42nd sess, UN Doc CRC/C/GC/8 (2 March 2007).

³⁹ *Ibid*, [18].

⁴⁰ *Ibid*.

⁴¹ See UN CRC, *Concluding Observations of the Committee on the Rights of the Child: Australia*, CRC/C/15/Add.79 (21 October 1997) [15], [26]; UN CRC, *Concluding Observations on Second and Third Report*, CRC/C/15/Add.268 (20 October 2005) [5], [35]-[36]; UN CRC, *Concluding Observations on Fourth Report*, CRC/C/AUS/CO/4 (28 August 2012) [7]-[8], [43]-[47]; UN CRC, *Concluding Observations on Fifth/Sixth Report*, CRC/C/AUS/CO/5-6 (30 September 2019) [28].

⁴² United Nations Committee Against Torture, *Concluding observations of the Committee Against Torture - AUSTRALIA* 40th sess, UN Doc CAT/C/AUS/CO/3 (22 May 2008), [31].

⁴³ End Corporal Punishment, *Global Progress Towards Prohibiting All Corporal Punishment* (Report, May 2023) 1.

extend the prohibition on corporal punishment beyond out of home care to all settings, including in the home. In doing so, the Government should consider that legislative change to corporal punishment may have a greater impact on some communities and contribute to increased prosecution and marginalisation, including of culturally and linguistically diverse communities, religious communities, and Aboriginal and Torres Strait Islander peoples,⁴⁴ where appropriate and accessible information and support is not given to parents, legal guardians or any other person who has care of a child or young person. To that extent, legislative change must go hand in hand with public health education campaigns on the detrimental effects of corporal punishment on children and young people, and on where to access assistance, including alternative non-violent strategies for parents (such as the Triple P positive parenting program).

Support for young people transitioning from care

The Commission strongly supports the proposal to mandate the continued provision of support and services to *any* care leaver under the age of 21 years, as occurs in Victoria, and broaden the kinds of services that may be provided. We understand from the Information Paper, on p. 39, that the proposed approach will require care leavers to ‘opt out’ from continued services and support. In view of the demographic profile and experiences of children in out-of-home care, we are doubtful that an ‘opt-in’ model would see significant uptake, and to that extent also favour an ‘opt out’ model.

Although beneficial in nature, consistent with the participation principle, it will be critical that a child or young person approaching the age of 18 is actively engaged and supported to consider whether they wish to ‘opt out’ in a way that allows them adequate time and support to understand any implications. Doing so should not preclude them from opting back in should an unanticipated need arise post their initial decision.

7. External merits review

The Commission strongly supports the enactment of a mechanism for external review of child protection decisions, which we stress must be progressed as a priority element of these reforms. As we have consistently observed, the prevailing absence of a facility for external merits review gives rise to serious issues of incompatibility with the government’s obligations under the HR Act, and has been questioned in successive reviews since 2016.⁴⁵ The UN CRC has also characterised accessible mechanisms to appeal or revise decisions that do not seem to appropriately ascertain a child’s or children’s best interests as important to promoting the rights of the child.⁴⁶ For these reasons, it is the Commission’s clear position that an external merits review framework must centre on, and clearly reference, the HR Act.

Jurisdiction

The ACT Civil and Administrative Tribunal (ACAT) is, in our view, best placed to ensure timely, efficient, restorative, and affordable recourse to external merits review that is, above all, accessible for vulnerable children and young people and their families, carers and other significant people in their lives. It is highly telling in this regard that all other jurisdictions provide for such review by their Tribunals, and not a Court. We believe the ACAT, with its informal resolution processes and flexible rules of hearing, is also better adapted to ensure cultural safety for Aboriginal and Torres Strait Islander applicants. Its separation from the making of a care and protection order is, in our view, also desirable in promoting trust in the outcomes

⁴⁴ See, eg, Sophie S. Havighurst et al, ‘Corporal Punishment of Children in Australia: The Evidence-Based Case for Legislative Reform’ (2023) 47(3) *Australian and New Zealand Journal of Public Health*; Sophie S. Havighurst, ‘It’s Time to Ban Corporal Punishment of Kids in Australia’, *University of Melbourne* (3 May 2023) <<https://www.unimelb.edu.au/news/its-time-to-ban-corporal-punishment-of-kids-in-australia> | [Pursuit by The University of Melbourne \(unimelb.edu.au\)](https://www.unimelb.edu.au/news/its-time-to-ban-corporal-punishment-of-kids-in-australia)>.

⁴⁵ Laurie Glanfield AM – Board of Inquiry into System Level Responses to Family Violence in the ACT, *Report of the Inquiry: Review into the system level responses to family violence in the ACT* (2016), 74 available at: <https://www.cmtedd.act.gov.au/data/assets/pdf_file/0010/864712/Glanfield-Inquiry-report.pdf>; ACT Law Reform Council, *Canberra – Becoming a Restorative City* (Final Report, October 2018), available at: <<https://nla.gov.au/nla.obj-2909420574/view>>; Above 25 (HACS Inquiry (Part 2)), [6.48].

⁴⁶ UN CRC, *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration* (art. 3, para. 1), 62nd sess (29 May 2013), [87], [98], available at: <https://www2.ohchr.org/english/bodies/crc/docs/gc/crc_c_gc_14_eng.pdf>.

of reviews. Moreover, ACAT review processes have demonstrated their ability to handle and sensitively balance the when to disclose or withhold confidential information where necessary or appropriate.⁴⁷

We acknowledge that provision for concurrent proceedings in the Childrens Court will be required, and support the approach canvassed by the Information Paper, at p. 45, wherein a review would be suspended pending the finalisation of related Childrens Court proceedings. We note similar provision is made in s 99M of the *Child Protection Act 1999* (Qld), which we consider a useful template for ensuring the administration of justice where Childrens Court and review proceedings are brought concurrently.

Procedural Aspects

Despite the Commission's strong support for EMR, we are not satisfied the proposed grounds for making an application would realise 'merits review' as it is understood in Australian law and jurisprudence. As the proposed model has been based on internal merits review processes, it is of significant concern the grounds for accessing both forms of 'merits review' are confined to discernible errors in law, fact, or policy; incomplete or incorrectly interpreted information; or situations where new information has come to light since the original decision. Obliging highly vulnerable applicants, including children and young people, to frame their concerns in accordance with these grounds undermines accessibility, and does not properly realise the accountability necessary to uphold the right to a fair hearing (HR Act, s 21).

Properly understood, merits review is a fresh *reconsideration* of the substance of an administrative decision, taking into account the information considered by the original decision-maker and any new information provided. It is a *de novo* review in which the reviewer 'stands in the shoes of the original decision-maker' tasked within coming to "the correct and preferable decision"; that is, the best decision objectively available on the information before them in accordance with the relevant and current law.⁴⁸

ACAT members have similarly characterised a tribunal's role in conducting merits review as follows:

The legislation and the case law establish that when undertaking administrative review, it is not the role of the tribunal to search for error in the decision under review, or to review the previous decision-maker's reasons; rather, the tribunal "stands in the shoes" of the decision-maker, and takes a fresh decision, doing a second time what the decision-maker was asked to do at first instance.⁴⁹

As such, the Commission will not support a requirement that applicants articulate specified grounds before being able to access external merits review of administrative decisions made under the CYP Act, or in care plans that the Director-General has made or varied under care and protection orders made by the Childrens Court. In our view, to comply with the right to a fair hearing, the mechanism for external review must be empowered to examine both the merits *and* any alleged procedural irregularities. Defining the issues, in our submission, is properly and appropriately a role for the ACAT and parties to an application, as already occurs in its existing merits review jurisdictions.⁵⁰

On its face, the proposal that an affected person (encompassing children and young people, their parents, siblings, family members and current or prospective carers) be entitled to apply for external merits review does not raise concern. We would suggest that the Public Advocate (and, subject to consultation, the Aboriginal and Torres Strait Islander Children and Young People Commissioner) should also be empowered to make an application for external merits review of such decisions with consent of the child or young person.

⁴⁷ E.g. *ACT Civil and Administrative Tribunal Act 2008*, s 22E (Certain material not required to be disclosed), s 39 (Hearings in private or partly in private); s 40 (Secrecy for private hearings).

⁴⁸ See, for example, *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at 591 per Bowen CJ and Deane J; *Shi v Migration Agents Registration Authority* [2008] HCA 31 (30 July 2008).

⁴⁹ *Applicant 201987 v Director-General, Education Directorate* [2020] ACAT 120, [13] (see also [12]-[14]), available at: <<https://www.acat.act.gov.au/decisions/applicant-201987-v-director-general,-education-directorate>>.

⁵⁰ See *ACT Civil and Administrative Tribunal Act 2008*, ss 68(2) and 69(2) and, for example, *Housing Assistance Act 2007*, Part 6A; *Heritage Act 2004*, Part 17; *Education Act 2004*, Part 6.1.

Prior internal review

In previous advocacy, the Commission (alongside legal and community organisations) called for an external merits review mechanism that would not require an applicant to have already accessed internal review processes.⁵¹ We did so in recognition of the distinct barrier that legacies of distrust in child protection systems may pose to prospective applicants, including Aboriginal and Torres Strait Islander parents and families in particular, in accessing internal review of decisions. While maintaining this concern, most other jurisdictions (other than Queensland) do premise access to external merits review on an applicant having first sought internal review; which provides an opportunity to more clearly articulate the reasons for a decision or recognise ways to improve decision-making and build trust by demonstrating accountability.

Irrespective of whether internal review is required as a prerequisite to accessing external merits review, targeted exceptions will be required where a prior internal review process would be unreasonable or impracticable in the circumstances. Excepted situations may appropriately include decisions that must be made urgently in response to serious and imminent risks (e.g. medical treatment), or decisions whose short-term consequences would unreasonably limit a person's human rights (e.g. where further period delay process renders familial relationships impossible to restore). As processes and timeframes for internal review will necessarily inform such assessments, we strongly recommend that a framework for internal review also be clearly contemplated in the CYP Act and/or subordinate legislation.

Reasons for decisions

While we appreciate that s 22B(1)(b) of the *ACT Civil and Administrative Tribunal Act 2008* entitles a person to ask for a statement of reasons for a reviewable decision, given the significant rights at stake and the likely vulnerability of prospective applicants, we also recommend consideration of obliging decision makers to proactively provide a statement of reasons underpinning a decision for which external merits review will be available.

Matters that will be subject to external merits review

The Information Paper lists, at p. 45, the matters for which external merits review may be accessed. We reiterate, per our earlier advice,⁵² that such decisions must be identified by reference to their ability to impact on human rights. Only those decisions that do not engage human rights or are unlikely to adversely affect the human rights of children, families and other affected people should be exempted from scope.

Consistency with the right to fair hearing will require that external merits review be available for:

- (a) Decisions that significantly alter the relationship between parents and their children, or between children and siblings or other people significant in children's lives. The kinds of conditions within this category include:
 - Care plan decisions and decisions relating to placement, contact and the provision of supports, including financial support for carers.
 - Decisions to grant to, or to remove from, an authorised carer the responsibility for the daily care of the child or young person.
- (b) Decisions that, including the imposition of conditions, limit a person's human rights. Decisions or conditions falling within this category include:
 - Conditions relating to child-parent or child-sibling contact (such as, requiring a parent obtain a Family Violence Order as a condition of contact or care of a child or young person);

⁵¹ ACT Human Rights Commission and others, *Joint open letter to Ministers about External Review of Child Protection Decisions* (24 March 2020), [2] available at: <https://www.hrc.act.gov.au/_data/assets/pdf_file/0009/2295252/Joint-Open-letter-to-Minister-External-Review-of-Child-Protection-Decisions-2020.pdf>.

⁵² ACT Human Rights Commission, *Inquiry into Child and Youth Protection Services (Part 2) – Information Sharing under the Care and Protection System: Answer to question on notice and supplementary submission* (February 2020), [2]-[7] available at: <https://www.parliament.act.gov.au/_data/assets/pdf_file/0018/1508013/Final-Responses-to-QToN-PH-4-Feb-20-ACT-HRC-Inq-into-CYPS-Part-2.pdf>; see also *Ibid*, [2].

- Conditions involving the parents or caregivers undergoing some form of treatment or drug and alcohol screening;
- Decisions to withhold information to parents and caregivers about the child or young person's progress and wellbeing;
- Decisions involving the child or young person's culture, religion, health or education (e.g. decisions about whether a child goes to a religious school or participates in cultural ceremonies/events or decisions about health treatment).

We consider allowing access to external merits review for such decisions would improve the quality and accountability of decisions that significantly impact the lives of children and young people, and their families and carers. The categories of decisions listed in the Information Paper appear to broadly address these categories, although will feature some as-yet unspecified exceptions. To this end, we recall our previous recommendation that the broad scope of decisions capable of Tribunal review under the *Children, Youth and Families Act 2005* (Vic) inform any model advanced in the ACT.⁵³ The Commission will accordingly welcome the opportunity to review an advance copy of the draft Bill, including the proposed categories of reviewable decisions and any relevant exceptions.

8. Further observations about practice

Meaningful changes in the outcomes for children, young people and their families will depend on meaningful administrative, budgetary, and cultural change. Although legislative reforms of statutory intake and referral pathways have the potential to provide key platforms for a therapeutic approach based in family support, there are clear limits to what can be achieved by amendments alone.

Increased investment in preventative approaches to address the underlying determinants of significant harm, including domestic violence, mental illness and substance abuse must be prioritised and funded, alongside intensive support services for vulnerable families that are evidence-based and demonstrate clear practice and program models.⁵⁴ Access to such supports should not be dependent on mandatory reports made by third parties to CYPS. Services should be accessible on a voluntary basis by families who require them, and warm referrals should be able to be made to supports funded and supported through the care and protection system in a way that instils trust through trauma informed approaches to supports. We consider a significant and contemporaneous increase in the support services will be required to realise the aims of the proposed reforms.

In addition to consultation in the development of the reform, the Commission would be pleased to engage further concerning the administrative, contractual and operational measures necessary to realise a more responsive, accountable and children and family-centred system of child protection in the ACT.

⁵³ See *Children, Youth and Families Act 2005* (Vic), s 333(1) (which enables review of any decision under a case plan or any other decision made by the Secretary concerning the child).

⁵⁴ Leah Bromfield, Fiona Arvey and Daryl Higgins, 'Contemporary issues in child protection intake, referral and family support' in Alan Hayes and Daryl Higgins (eds) *Family, Policy and the Law* (Research Report, 2014), 121, 127, available at: <<https://aifs.gov.au/publications/families-policy-and-law/13-contemporary-issues-child-protection-intake-referral-and>>.

APPENDIX 1 (ACT Human Rights Commission's advocacy for reforms to date):

The Commission has advocated consistently for a range of the proposed reforms to the CYP Act in recent years, which we set out and link to below for reference.

- Since 2014, past and present Commissioners have advocated consistently – both publicly and within Government – for a pathway to seek external merits review of administrative decisions made under care and protection orders. The ACT is significantly out of step with other Australian states and territories which allow for decisions affecting the rights of children, young people, their families, carers, and kin to be independently reviewed.
- In 2016, the Commission engaged with the *Review into the system level responses to family violence in the ACT* ('Glanfield Inquiry')⁵⁵ to draw attention to the absence of independent merits review of key decisions (e.g. contact, placement) compared to other jurisdictions and expressed concern about practices that do not directly seek a child or young person's views about matters affecting them.
- In September 2017, our submission to the former ACT Law Reform Advisory Council's Issues Paper: 'Canberra – Becoming a restorative city' advocated the value of embedding restorative processes, like family group conferencing and external merits review, into child protection processes in the ACT.⁵⁶
- In June 2019, the Commission provided a response to the ACT Government's review of child protection decisions in the ACT, which responded to Recommendation 12 of the Glanfield Inquiry. Our submission expressing our position that the absence of external merits review is incompatible with the right to a fair hearing (HR Act, s 21).⁵⁷
- In August 2019, the Commission participated in the Standing Committee on Health, Ageing and Community Services' *Inquiry into Child and Youth Protection Services (Part 2)* ('HACS Inquiry'). Alongside a number of community and legal stakeholders, our submission drew attention to the impact of constraints on sharing information about the placement and wellbeing of children and young people in care with their families, legal representatives and other significant people in their lives.⁵⁸
- After giving evidence before the HACS Inquiry, we made a further supplementary submission as part of a response to a Question on Notice. Our response offered further detail about the kinds of decisions that must, for consistency with the HR Act, be subject to external merits review, and a model for representation of children and young people in care and protection matters.⁵⁹
- In March 2020, the Commission coordinated a joint open letter to ACT Government ministers reiterating the urgent need for external merits review of child protection decisions. This letter appended a joint communiqué endorsed by key legal and social service bodies within the

⁵⁵ Laurie Glanfield AM – Board of Inquiry into System Level Responses to Family Violence in the ACT, *Report of the Inquiry: Review into the system level responses to family violence in the ACT* (2016), 74 available at: <https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0010/864712/Glanfield-Inquiry-report.pdf>.

⁵⁶ ACT Human Rights Commission, *Submission in response to the ACT Law Reform Advisory Council's June 2017 Issues Paper: 'Canberra – becoming a restorative city'* (29 September 2017), 5-7, available at: <<https://nla.gov.au/nla.obj-2909420574/view>>.

⁵⁷ ACT Human Rights Commission, *Response to the Discussion Paper – 'Review of child protection decisions in the ACT'* (28 June 2019), available at: <https://www.hrc.act.gov.au/_data/assets/pdf_file/0011/2295209/Submission-Review-of-child-protection-decisions-in-the-ACT-2019.pdf>.

⁵⁸ ACT Human Rights Commission, *Submission to Inquiry into Child and Youth Protection Services: Part Two – Information Sharing under the Care and Protection System* (August 2019), available at: <https://www.hrc.act.gov.au/_data/assets/pdf_file/0009/2295207/Submission-Inquiry-into-Child-and-Youth-Protection-Services-2019.pdf>

⁵⁹ ACT Human Rights Commission, *Inquiry into Child and Youth Protection Services (Part 2) – Information Sharing under the Care and Protection System: Answer to question on notice and supplementary submission* (February 2020), available at: <https://www.parliament.act.gov.au/_data/assets/pdf_file/0018/1508013/Final-Responses-to-QToN-PH-4-Feb-20-ACT-HRC-Inq-into-CYPS-Part-2.pdf>.

community.⁶⁰In July and September 2020, the Commission and ACT Government jointly hosted two roundtable discussions, bringing together a cross-jurisdictional experts to discuss models from other human rights jurisdictions, and community stakeholders to contribute to the development of an external review model. Communiqués following the roundtables recorded consensus about the need for a simple, accessible, family-centred and equitable mechanism for external merits review among other things.⁶¹

- In July 2022, the Commission and ACT Government hosted a further joint consultation with stakeholders and consultants about the guiding principles underpinning an external merits review model. Following this consultation, the Commission wrote to the consultant team reiterating that the model must be consistent with, and underpinned by, the HR Act.⁶²

Other formal written advice we have provided in recent years is also relevant to the proposed reforms:

- In March 2019, the Commission authored a submission in response to public consultation about reforms to the *Adoption Act 1993* aimed at enhancing permanency outcomes for children and young people. Specifically, this submission set out the human rights implications of proceeding with adoptions without parental consent, including how the best interests and participation of children and young people should be weighed when determining that a parent's consent is not required.⁶³
- In August 2021, the Commission provided a detailed joint submission to public consultation about increasing the minimum age of criminal responsibility in the ACT.⁶⁴ Following the introduction of the Justice (Age of Criminal Responsibility) Legislation Amendment Bill in May 2023, we made a submission and gave evidence to the Standing Committee on Justice and Community Safety's inquiry into that Bill.⁶⁵

⁶⁰ ACT Human Rights Commission and others, *Joint open letter to Ministers about External Review of Child Protection Decisions* (24 March 2020), available at: <https://www.hrc.act.gov.au/_data/assets/pdf_file/0009/2295252/Joint-Open-letter-to-Minister-External-Review-of-Child-Protection-Decisions-2020.pdf>.

⁶¹ ACT Human Rights Commission and ACT Community Services Directorate, 'Roundtable Discussion on an External Merits Review of Child Protection Decisions in the ACT' (Joint Communiqué, 22 July 2020), available at: <https://www.communityservices.act.gov.au/_data/assets/pdf_file/0007/1619278/Joint-Communique-from-the-External-Merits-Review-Roundtable-22-July-2020.pdf>; ACT Human Rights Commission and ACT Community Services Directorate, 'Roundtable Discussion on an External Merits Review of Child Protection Decisions in the ACT' (Joint Communiqué, 17 September 2020), available at: <https://www.communityservices.act.gov.au/_data/assets/pdf_file/0009/1638054/Joint-Communique-Roundtable-discussion-on-a-model-for-external-merits-review-of-child-protection-decision-making-in-the-ACT-17-September-2020.pdf>

⁶² ACT Human Rights Commission, *Letter to Dr Aron Shlonsky about consultation on External Merits Review mechanism for child protection decisions in the ACT*, 23 September 2022, available at: <https://www.hrc.act.gov.au/_data/assets/pdf_file/0017/2330261/20220923_Including-human-rights-as-a-principle-of-external-merits-review.pdf>

⁶³ ACT Human Rights Commission, *Response to the Discussion Paper – 'Dispensing with Consent'* (March 2019), available at: <https://www.hrc.act.gov.au/_data/assets/pdf_file/0005/2295212/Submission-About-Adoptions-Dispensing-with-Consent-of-Birth-Parents-2019.pdf>.

⁶⁴ ACT Human Rights Commission, *Submission to ACT Government consultation on raising the minimum age of criminal responsibility* (5 August 2021), available at: <https://www.hrc.act.gov.au/_data/assets/pdf_file/0008/2298059/Submission-to-ACT-Government-on-raising-the-minimum-age-of-criminal-responsibility.pdf>.

⁶⁵ ACT Human Rights Commission, *ACT Human Rights Commission submission to Inquiry into Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023* (9 June 2023), available at: <https://www.hrc.act.gov.au/_data/assets/pdf_file/0014/2300270/Inquiry-into-Age-of-Criminal-Responsibility-2023.pdf>.