



Rachel Stephen-Smith MLA  
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24 March 2020

Dear Minister Stephen-Smith,

### **External review for child protection decision-making in the ACT**

We, the undersigned, are writing to you to convey our shared view about the urgent need to provide for external merits review of child protection decisions. We do so with the intention of fully informing your upcoming report to the ACT Legislative Assembly about the progress and outcomes of the government's review of child protection decisions and next steps for reform.

We acknowledge that decision-making in child protection matters is inherently complex. We therefore welcome your view that 'more review mechanisms should be available'. However, we respectfully disagree with your observation that there is no clear consensus among stakeholders about which child protection decisions should be reviewable or the most appropriate process for their review. We wish to highlight that there is, in fact, overwhelming community and stakeholder consensus about these matters. To this end, we enclose a joint communiqué detailing the minimum reforms that we, the undersigned, agree are required urgently to improve the transparency and accountability of the ACT's child protection system.

The absence of external merits review of child protection decision-making has been questioned in successive reviews and inquiries over many years and gives rise to serious issues of incompatibility with the government's obligations under the *Human Rights Act 2004*. We consider that it is unacceptable to point to a lack of a 'single model' across other jurisdictions that could be 'picked up and applied in the ACT' as a reason for further delay. Other Australian jurisdictions overwhelmingly provide for external review of child protection decisions. The government has had over three years since the Glanfield Report was published to work through any jurisdictional variations and to settle on an ACT-appropriate model. There can be no excuse for the ACT to continue to remain out of step with the rest of Australia by continuing to deny vulnerable children and their families their basic human rights.

It is of significant concern to us that the limited accountability for child protection decisions, whether made within the directorate or by outsourced service providers, disproportionately impacts Aboriginal and Torres Strait Islander children and families. Urgent reforms to rectify these concerns are essential and must not be further delayed or postponed to future reviews or work plans. Public trust and confidence in the system will continue to be eroded without immediate and decisive legislative action.

We would welcome the opportunity to meet with you in the coming weeks to discuss the attached joint communiqué and the potential for corresponding reforms to the *Children and Young People Act 2008*.

Yours sincerely,

**Dr Helen Watchirs OAM**  
President and Human Rights  
Commissioner, ACT HRC

[signed]

**John Boersig**  
CEO, Legal Aid ACT

[signed]

**Jodie Griffiths-Cook**  
Public Advocate and Children  
and Young People  
Commissioner, ACT HRC

[signed]

**Barbara Causon**  
Former Chair, *Our Booris, Our  
Way* Steering Committee

[signed]

**Karen Toohey**  
Discrimination, Health  
Services, and Disability and  
Community Services  
Commissioner, ACT HRC

[signed]

**Claudia McLean**  
Principal Solicitor,  
Women's Legal Centre

[signed]

**Heidi Yates**  
Victims of Crime  
Commissioner, ACT HRC

[signed]

**Robyn Martin**  
CEO, Beryl Incorporated

[signed]

**Chris Donohue**  
President, ACT Law Society

[signed]

**Dr Emma Campbell**  
CEO, ACT Council of Social  
Service Inc

[signed]

**Michael Bleasdale**  
CEO, ACT Disability Aged Carer  
Advocacy Service (ADACAS)

[signed]

**Advocacy for Inclusion**  
(Bonnie Millen and Jamelle  
Boettcher)

[signed]

**Dr Janet Hunt**  
ANTaR ACT

[signed]

**Barnie van Wyk**  
CEO, St Vincent de Paul  
Society Canberra/Goulburn

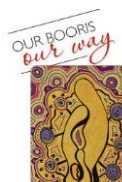
[signed]

**Julie Tongs**  
CEO, Winnunga

[signed]

**Jon Stanhope**  
Winnunga

[signed]



## JOINT COMMUNIQUÉ

### REFORMING CHILD PROTECTION DECISION-MAKING IN THE ACT

There is overwhelming and broad consensus among stakeholders that change is urgently needed to improve the transparency and accountability of the ACT's child protection system. This change must not be delayed any longer.

- 1. Central proposition:** Parents, carers, family members, children and other sufficiently interested persons (e.g. lawyers) must be able to ask the ACT Civil and Administrative Tribunal to review the merits of decisions made by the Director-General or their delegates (including outsourced service providers, like ACT Together) about a child or young person's care. A person must be able to access external review even where they have not already sought review internally.

#### Why?

- A person's inability to access a mechanism for independent and effective review of child protection decisions is incompatible with their rights to a fair hearing, recognised in the *Human Rights Act 2004*.
- Internal review alone is not sufficient to satisfy the government's human rights obligations. External merits review of child protection decisions is a standard feature in other Australian jurisdictions. This is a serious matter that must be rectified urgently.

- 2. What sort of decisions:** Decisions that significantly alter a child's relationship with their parents, their siblings or other significant people in their lives or decisions that limit a person's human rights must be subject to independent review mechanisms. At minimum, the following decisions must be externally reviewable:

- Care plan decisions and other decisions relating to placement, contact and the provision of supports, including financial support, to kinship carers and parents with disability.
- Decisions to grant to, or to remove from, an authorised carer the responsibility for the daily care and control of the child or young person.
- Conditions relating to child-parent or child-sibling contact (for example, requiring a parent to obtain a Family Violence Order in order to ensure contact with or care of a child).
- Conditions that involve parents or carers undergoing some form of treatment or drug and alcohol screening.
- Decisions that involve the child or young person's culture, religion, health or education (for example, decisions about whether a child goes to a religious school or participates in cultural ceremonies or decisions about health treatments).
- Decisions to withhold information from parents and family about a child or young person's care arrangements.

#### Why?

- None of the decisions listed above, which the Director-General (or their delegates) can make under a care and protection order or voluntary care agreement, are presently subject to external merits review or even judicial review.
- Greater accountability for decisions of this kind would promote better quality and evidence-based decision-making and bring the ACT in line with comparable processes in other Australian jurisdictions (including Victoria and Queensland, which are human rights jurisdictions like the ACT).

3. **Best interests** – The *Children and Young People Act 2008* must specifically require that any decision-maker consider, when assessing a child or young person’s best interests, whether and how support has been provided to preserve the family and their relationships with one another. Similar to Victoria, the CYP Act must also include an express requirement for the court to be satisfied that all reasonable steps have been taken to provide the services necessary to support family unity, prior to making a care and protection order.

Why?

- Under the *Children and Young People Act 2008*, a child or young person’s best interests is to be the paramount consideration in any decision. Presently, however, preserving family unity is viewed as a factor to be balanced *against* the best interests of the child.
- This is starkly inconsistent with well-established human rights standards, and diminishes the priority placed on supporting parents and families to provide for the child’s wellbeing, care and protection.

4. **Access to information** – The Director-General must be required to develop and publish guidelines on when and how their discretion to share sensitive information will be exercised. Decisions to refuse to provide sensitive information on the basis that it is not in the best interests of the child or young person to do so must also be subject to external review.

Why?

- The ACT care and protection system presently features more restrictive confidentiality requirements than those in other states and territories, which enable a culture of secrecy that hinders transparency and accountability of decisions.
- Greater transparency is critical to drive the cultural change required to improve the care and protection system and to enhance community confidence in the system.

5. **Aboriginal and Torres Strait Islander people** – Adequate implementation and adherence to the Aboriginal and Torres Strait Islander Child Placement Principle can only be achieved with the leadership and expertise of Aboriginal and Torres Strait Islander people. Both internal and external review processes must therefore include and be informed by Aboriginal and Torres Strait Islander people and organisations.

Why?

- Section 27(2) of the *Human Rights Act 2004*, importantly recognises the distinct rights of Aboriginal and Torres Strait Islander people to maintain, control, protect and develop their cultural heritage, practices, teachings, knowledge and kinship ties.
- Unless fixed as a matter of priority, deficiencies in the transparency and accountability of the child protection system will continue to fail some of the most vulnerable members of our community, including Aboriginal and Torres Strait Islander children and young people, who are disproportionately represented in the ACT’s out of home care system and inhibit their ability to fully maintain and develop their culture and kinship ties.