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Human Services Policy team  
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27 July 2023

## **Families ACT submission to Children and Young People Amendment Bill 1 Discussion paper**

Dear Louise,

Thank you for the opportunity to provide comments on the Children and Young People Amendment Bill 1 Discussion paper.

Families ACT is a territory peak, not-for-profit, organisation which advocates and works for vulnerable and marginalised children, young people and families in the ACT and surrounding region to improve their physical, social and emotional wellbeing. We take a broad and inclusive view of what constitutes a family and strive to improve the wellbeing of all families in the region.

We advocate to government on local and regional issues impacting vulnerable and disadvantaged children and families. Our current advocacy focus areas are child protection reform, housing and homelessness and the middle years.

We have responded to the questions in the discussion paper relating to our policy and community sector expertise and acknowledge that we have no legal expertise. If a question lies outside our expertise, we have referred to the stakeholder or organisations we believe might be appropriate to respond.

### **Reorganising towards the concept of 'significant harm' (page 6)**

#### Cumulative harm

Reorganising abuse and neglect within 'significant harm' is intended to shift the focus of the child protection system toward the safety, welfare and wellbeing of children and young people.

2. Tell us about the advantages, challenges or other consequences you see with this approach.

Families ACT is supportive of reorganising 'abuse' and 'neglect' to an overarching concept of 'significant harm' but we would like to know what constitutes 'significant harm' and how will it be defined? Is it one and/or more incidents/reports of abuse and maltreatment? More importantly, how will 'significant harm' be assessed by child protection staff? Will standardised assessment tools be introduced across the child protection and family support sector?

The latest Australian Child Maltreatment Study (ACMS) reports that "*child maltreatment is*

*endemic in Australia*<sup>1</sup> providing sobering data on the prevalence of five types of child maltreatment. We recommend that the study’s definitions of child maltreatment be adopted in this Bill. The ACMS defines physical abuse, sexual abuse, emotional abuse, exposure to domestic violence, neglect and multi-type maltreatment which occurs when a child experiences two or more different types of child maltreatment.<sup>2</sup>

Cumulative harm is recognised as a series or combination of acts, omissions, or circumstances.  
3. Tell us about the advantages, challenges or other consequences you see with this approach.

Families ACT welcomes the insertion of the concept of ‘cumulative harm’ to highlight and clarify the importance of considering repetitive (cumulative) patterns of harm on a child or young person. We also support the clear provisions that ‘*significant harm*’ to a child or young person might be caused by the ‘*existence of a single, series or combinations of circumstances*’. However, we note with concern that the discussion paper only lists four categories of abuse and neglect on page 7, omitting the fifth ACMS definition of child maltreatment which is ‘*exposure to domestic violence*’.

We recommend that the proposed amendments must include a provision for ongoing persistent family conflict harming a child or young person including, but not limited to, abuse done by siblings to siblings. We recommend following ACMS guidance, as it defines “*exposure to domestic violence occurs when a child sees or hears acts of violence towards other family members in the child’s home. The acts are typically done by (and in relation to) a parent or caregiver, but may also be done by other members of the child’s family*”<sup>3</sup> which covers sibling abuse of siblings as well as other members of a child’s family. As evidenced in the ACMS, young people (16-24 years) were more likely to experience exposure to domestic violence (43.8%) compared to 39.6% of the full sample (16 – 65 years and older).<sup>4</sup>

### **Limiting the ‘balance of probabilities’ to court proceedings**

Our aim in removing the ‘balance of probabilities’ test from the assessment phase is to enable proactive support for families.

4. Tell us about the advantages, challenges or other consequences you see with this approach.

Families ACT is supportive of the amendment to limit the ‘balance of probabilities’ to court proceedings and removing it as the standard proof when undertaking assessments and providing support to children and families. We agree that the existing definition of ‘risk of abuse and neglect’ is problematic as it introduces this legal concept during the risk assessment phase preventing supports to at-risk children and their families being provided. Removing the ‘balance of

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<sup>1</sup> Haslam D, et al (2023). The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report, page 3

<sup>2</sup> Ibid., page 6 – 7

<sup>3</sup> Ibid, page 7

<sup>4</sup> Ibid, page 16.

probabilities' test as the standard proof required when undertaking assessments will allow for more proactive and potentially earlier support for children and their families. This support should also not only be mandated support, but families and children should be encouraged to access non-statutory support services providing early intervention and thus preventing a potential escalation of identified issues. The community sector in the ACT, including Children, Young People, Family Support Program (CYFSP) funded services, is well placed and expert in providing this kind of support.

Families ACT welcomes that this change will also require the implementation of an evidence-based risk assessment tool which will ensure that key decisions are informed by information and research known to be relevant to that decision. However, we strongly recommend that the introduction and implementation of any assessment tool is underpinned by extensive training of the whole sector including community sector services staff and the child protection workforce. We encourage **shared government-community sector training** enabling all staff to use the tool and ensuring that all speak a common language. The new Chief Practitioner role announced in the latest ACT Budget should be responsible to oversee the implementation of a new assessment tool and the shared government-community sector training. We strongly believe that such an important cultural change needs to be led and 'lived' by example from the top.

#### **Amendments to the definition of sexual abuse, domestic violence and neglect (questions 5 – 7)**

A broader definition is intended to enhance the response to child sexual abuse. A broader definition is intended to enhance the response to domestic and family violence. Changes to the definition of neglect.

#### 5.-7. Tell us about the advantages, challenges or other consequences you see with these approaches.

Families ACT supports the proposed amendments to widen the statutory definition of sexual abuse to include grooming and sexual exploitation unified alongside other forms of abuse. We share the expectation that this will reflect and allow for a more progressive and responsive policy approach to child sexual abuse.

Families ACT also approves of the changes to rely on the definition of 'family violence' at section 8 of the Family Violence Act when amending the definition of domestic violence, as long as these amendments cover sibling on sibling abuse. Again, we recommend to also take guidance from the ACMS study which provides a clear definition of 'exposure to domestic violence' as cited above.

Families ACT agrees that the current definition of neglect is too narrow and outdated in contrast to the contemporary understanding of neglect which is defined for example in the ACMS as '*neglect has several dimensions: medical, educational, supervisory, physical, nutritional and environmental*<sup>5</sup>. We trust that the suggested changes to the definition of neglect are well-researched, evidenced and considered, therefore we share the hope that they will reduce the

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<sup>5</sup> Ibid, page 7

overall number of children and young people being investigated for reasons of neglect, where these issues could be better addressed through the provision of support.

### **Considering broader factors in ‘best interests’ (page 11)**

8. Are there any circumstances where a child’s safety should not be the primary consideration when determining their best interests.

9. Tell us about the advantages, challenges or other consequences you see with this approach.

Families ACT supports the suggested amendments with regards to ‘best interests of children and young people’ as they seem to be based on latest evidence as well as user experiences of the current system. With regards to Aboriginal and Torres Strait Islander children and young people, we cannot speak for them. We strongly recommend that Aboriginal and Torres Strait Islander controlled organisations such as our member Gugan-Gulwan, are consulted on the question about circumstances when a child’s safety should not be the primary consideration.

### **Streamlining the child protection intake processes**

The streamlining of the child protection intake process will reduce the administrative burden and enable practitioners to work more closely with children, young people and their families.

10. Tell us about the advantages, challenges or other consequences you see with this approach.

Early and ongoing attempts to accurately record the cultural identity of Aboriginal and Torres Strait Islander children and young people during child protection process will allow for their cultural and specific needs to be better addressed.

11. Do you foresee any unintended consequences or challenges with this approach in stage 1?

Families ACT again supports streamlining the child protection intake process as outlined and explained in the discussion paper on page 12 and has no further comments to make other than that the questions on unintended consequences of this approach should be answered by Aboriginal and Torres Strait Islander community representatives.

### **Increasing the timeframe for emergency applications to be filed (page 12)**

12. Is 3 working days sufficient time for children and families to obtain legal advice and representation following emergency action?

Families ACT attended a briefing session on the proposed changes to the Children and Young People Act. The session was also attended by a Domestic Violence Crisis Service (DVCS) representative who strongly advised against increasing the timeframe for emergency applications to be filed with the ACT Childrens Court from 2 to 3 working days.

We strongly share these concerns as in practice emergency action often occurs before a weekend, long weekend and/or public holiday which means that children are separated from their parents/caregivers for about 3-5 days under the current 2 working day provision. While this idea to allow families more time to obtain legal advice and representation sounds great in theory, it’s not welcome in practice as it potentially increases the time children are separated from their

parents to 4-6 days or even a week, depending on when weekends and public holidays fall. Examples shared at the briefing sessions indicated that the timing of most emergency action currently takes place late in the day and before a weekend making it difficult for parents to access legal advice and representation, as many services don't work out-of-hours. We support DVCS's suggestion to also consult with people with lived experience on this matter. Is an additional working day really what parents/caregivers need when an emergency action took place? Families ACT recommends to **not increase** the timeframe to 3 working days but provide **the option of taking a third working day** to parents/caregivers if they need to.

In addition, the accessibility of legal advice and representations needs to be improved, especially during out-of-hours and over weekends/public holidays. Not being able to get support from and access to legal advice only increases the agony and stress of parents and families experiencing an emergency removal of a child.

### **Improving the ACT Children and Young People Death Review Committee**

Research indicates a prolonged phase of brain development between adolescence and early adulthood, typically spanning until age 25. The draft Bill will expand the scope of inquiry for the Children and Young People Death Review Committee to include young people aged 18 to 24 years.

#### 13. Tell us about the advantages, challenges or other consequences you see with this approach.

The draft Bill will also expand the Committee's scope to include serious injuries of children and young people. This change will allow the Committee to review patterns of serious injuries, in addition to its primary focus on the deaths of children and young people and make recommendations for service improvements.

#### 14. Tell us about the advantages, challenges or other consequences you see with this approach.

Families ACT is supportive of expanding the scope of inquiry to include young people aged 18-24 years. Families ACT also supports the inclusion of serious injuries of children and young people allowing reviews of patterns of serious injuries which can then lead to recommendations for service improvement.

### **Closing comments**

Families ACT would like to make the following additional comments. We are concerned that the definitions of **what is mandatory reporting** versus **who are mandatory reporters** aren't currently very clearly understood in the community. As part of the review of the Act, we therefore strongly recommend that these definitions are reviewed and if necessary refined. If this issue can't be addressed in the amended legislation itself it should be covered in its explanatory and practice guides.

Finally, as mentioned in the briefing session, we believe that the issue of a young person giving consent to participate in a service or program without their parents'/caregiver's consent needs to be looked at. Given the progress around children and young people's rights including their right to be heard over the past decade, we believe it is time to consider if a young person should also be

afforded the responsibility to make their own decision about their care arrangements in certain circumstances. We acknowledge that this might be outside the remit of this first stage of the review of the Children and Young People Act but recommend looking at how the issue of giving consent by younger people to participate in a service or program can be addressed at the next stage.

Thank you again for the opportunity to comment on the Children and Young People Amendment Bill 1 Discussion paper.

If you need further clarification of our comments, please don't hesitate to contact me.

Kind regards,



Yvonne Gritschneider  
Acting Executive Officer  
Families ACT