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INQUIRY INTO CHILD PROTECTION

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creating a better life for children and young people in care

Submission to the New South Wales Legislative Council Inquiry into Child Protection

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About CREATE Foundation

CREATE Foundation is a peak consumer body representing the voices of all children and young people in out-of-home care.

CREATE Foundation is national and has offices in all of Australia's states and territories. As the national consumer body advocating for children and young people with a care experience, CREATE seeks to provide opportunities for children and young people to have a voice and be heard. CREATE is unique in that it is one of only a handful of organisations in the world, and the only organisation of its kind in Australia expressly established to advocate on behalf of children and young people in care.

CREATE's mission is to create a better life for children and young people in care, including those who are or have been the subject of care and protection orders. CREATE achieves its mission by connecting children and young people with a care experience to each other and their community, empowering them to develop in order that they may realise their potential, and changing the care system, in consultation with children and young people through advocacy to improve policies, practices and services.

CREATE engages with children and young people at fun events, holding regular Youth Advisory Group meetings to discuss ideas and issues generated by children and young people, conducting formal consultations with children and young people to have input to resources, programs and policies, training young people to be advocates for themselves and others within child protection systems, and financial help and skills development to help young people transition to independence.

Young Consultants participate in child protection conferences and meetings to provide their direct experiences of child protection systems to child protection workers, senior staff and politicians. It is CREATE's view that improvements to the system must be informed by the knowledge and experiences of the children and young people who live or have lived in out-of-home care. With major inquiries and reviews into child protection being conducted, and at various stages of consultation and implementation, in all states and territories in recent years, as well as the national Royal Commission into Institutional Responses to Child Sexual Abuse, CREATE continues to consult with children and young people to obtain their views. These views are used as the basis for submissions to inquiries and reviews, such as this Legislative Council Inquiry into child protection.

CREATE has a national research program, informed by the views of children and young people in out-of-home care, that drives its advocacy work. CREATE's Report Cards are national research projects conducted every one to two years focussing on issues facing children and young people in care. Some of the single issues CREATE has looked at include, education, health and transitioning to independence, with the most recent Report Card covering all of the life domains in the Looking After Children framework. CREATE's research provides an opportunity for children and young people to give their views on how they are faring and how the state and territory child protection systems are working. These views also inform other research projects, most recently a report into sibling and family contact in the child protection system. CREATE also conducts consultations at a state level. Most recently, CREATE consulted young people in New South Wales on their knowledge of their care plan, their leaving care experience as well as their experience obtaining and securing independent housing. Importantly, CREATE's research allows for the views of children and young people to be expressed independently, without influence of political or bureaucratic priorities.

Executive Summary

CREATE believes the voices of children and young people in care should be integral to inquiries and systemic reform processes of the child protection system. As such, this submission has been informed by the views and opinions of children and young people. CREATE's recommendations have been written to promote the voice of children and young people in care throughout the New South Wales

(NSW) systemic reform of the child protection system, and in improving various system issues to develop better outcomes for children and young people in care throughout the state.

The Terms of Reference of the Inquiry are comprehensive and include all aspects of the child protection system in NSW. In responding to these criteria, CREATE has specifically written to the issues which concern children and young people in out of home care. CREATE would like to highlight the key issues raised in this submission.

Stability in Care

CREATE believes that for children and young people in care to have positive experiences in the out-of-home care system, including placement stability, the care system itself must have measures in place which ensure children and young people themselves are involved in the decisions which affect their lives, are listened to and are consulted when placement decisions are made. To do this, it is critical for caseworkers to have the skills to develop meaningful relationships with children and young people.

CREATE recommends that the NSW Department of Family and Community Services (FACS) takes measures to reduce the high caseworker turnover which negatively affects children and young people's experience in the care system, and their sense of stability. CREATE also recommends that stability and permanence are not only assessed in terms of legally permanent placements, but also with regard to the development of supportive relationships with caseworkers and carers.

Independent Oversight and Monitoring of Carers

CREATE believes that independent oversight of the care system provides young people with the safety and anonymity to provide feedback and complaints regarding their time in care.

This submission is advocating for the independent monitoring and auditing of carers to be continued and strengthened, particularly given the high numbers of children and young people reporting abuse in care.

Support for Kinship Care

CREATE believes that kinship carers are presented with unique challenges and have different needs to those of foster carers, and that they require more specialised support. However, research shows that despite the fact NSW has the highest proportion (55%) of children and young people living in kinship care placements in Australia (AIHW, 2015), they do not enjoy any additional supports and are often more disadvantaged than foster carers (Australian Institute of Family Studies, Chapin Hall Center for Children University of Chicago, & New South Wales Department of Family & Community Services, 2015). CREATE recommends that kinship care placements are provided with additional and specialised support within the NSW systemic reform and are included within permanency plans (See CREATE Position Paper on Kinship Care, 2015a, http://create.org.au/wp-content/uploads/2015/02/CREATE-Position-Paper_Kinship-Care.pdf).

Overrepresentation of Aboriginal Children and Young People in Out of Home Care.

CREATE believes the over-representation of Aboriginal and Torres Strait Islander children and young people in out of home care is unacceptable and indicates current approaches to support Aboriginal families, children and communities are not working. As of 30 June 2015 in New South Wales, there was a significant proportion of Indigenous children in out of home care, 6,210 from a total number of 16, 843 children in OOHC across the state. (AIHW, 2016, p. 64). This level of over-representation is consistent with the reported number of Aboriginal and Torres Strait Islander children and young people in care across all jurisdictions.

CREATE supports actions advocated by SNAICC, in NSW, AbSec and others, in the recommendations in this submission (See CREATE Position Paper on the Overrepresentation of Aboriginal and Torres

Strait Islander children in Out of Home Care, 2015b, http://create.org.au/wp-content/uploads/2015/02/CREATE-Position-Paper_Overrepresentation.pdf).

Sibling Placement and Contact

CREATE believes that siblings in out-of-home care, wherever possible, must be supported to stay together; and where co-placement is not possible, they must be empowered to maintain regular contact with each other while in care. In 2013, CREATE consulted with young people regarding their views on sibling placement children and young people in care reported that they desired more contact with their siblings than with any other family member with whom they were not living (McDowall, 2013). Furthermore, research has consistently demonstrated that placing children and young people with their siblings leads to outcomes which are in line with the aims of the *Safe Home for Life* reforms including increased stability, fewer placement disruptions and more successful reunifications, compared with those who are separated from their siblings (Drapeau, Simard, Beaudry & Charbonneau, 2000; Leathers, 2005; Webster, Sholonsky, Shaw, & Brookhart, 2005).

The recommendations in this submission support measures to facilitate higher rates of sibling placement and contact (See CREATE Position Paper on Sibling Placement and Contact, 2015c, http://create.org.au/wp-content/uploads/2015/02/CREATE-Position-Paper_Sibling-Contact.pdf).

Children's and young people's participation in their entry into care and in access to information

CREATE believes that children and young people have the right to be involved in relevant case planning matters from the very beginning of their entry into care and to have access to information about their past. This is in line with recommendation 5 from the 2014 Senate Community Affairs References Committee Inquiry into Out-of-Home Care (Senate Community Affairs Committee Secretariat, 2015). Children and young people in care report to CREATE that they want to know why they are in care and information about their family history.

CREATE believes it is critical for young people to be involved in their care planning process, and for care plans to be developed in a youth-friendly way. This would enable children and young people to understand what is happening when they enter care and when decisions need to be made during the time they are in care.

Leaving Care

Young people leaving care are one of the most vulnerable groups in society. Research shows that young people leaving care experience significantly reduced life outcomes compared to their peers who do not have a care history (CREATE 2009; 2016a). CREATE believes investment in good leaving care planning is critical to provide young people with a better chance to enjoy better outcomes after they leave care. However, CREATE's research on leaving care found that 64% of young people leaving care did not have a leaving care plan; and after leaving care, 35% were homeless in the first year; only 35% completed Year 12; 29% were unemployed (compared to the national average at the time, 9.7%); and 70% were dependent on Centrelink for some form of income support (McDowall, 2009).

CREATE urges jurisdictions to provide young people who are leaving care with more prioritised and specialised services to assist them in leaving care, as well as providing further funding to much-needed after-care services. Moreover, CREATE supports increasing the age for leaving care to 21 years nationally and advocates for increasing supports for young people who leave care to age 25 years. These supports are critical to enhance life outcomes for one of our most vulnerable groups of young people.

Children and Young People with Disability in Out of Home Care

Children and young people with disability who live in out-of-home care are widely recognised as a particularly vulnerable group within the care system. Despite this, there are various barriers in identifying those children and young people in care with a disability and in efficiently delivering services to those young people.

CREATE has identified that there is a significant gap in data and research regarding this particular cohort of young people in the care system (CREATE 2012, p. 8; Miller, 2003; Nathonson & Tzioumi, 2007; Tarren-Sweeney & Hazell, 2006; United Cerebral Palsy & Children's Rights, 2006). This research and statistical analysis gap needs to be addressed in order to more effectively provide services to these children and young people in care.

CREATE supports NSW to provide a supported decision-making approach to disability inclusion and service provision. CREATE supports the development of a definition of disability, using a human-rights based approach, in order to enhance the implementation and delivery of the National Disability Insurance Scheme (NDIS) and also to empower people with disabilities to make informed decisions about their lives and participate equitably in society.

Recommendations

CREATE makes the following recommendations in this submission to the New South Wales Legislative Council into Child Protection as per the terms of reference:

c) The amount and allocation of funding and resources to the Department of Family and Community Services for the employment of casework specialists, caseworkers and other frontline personnel and all other associated costs for the provision of services for children at risk of harm, and children in out of home care

- **Implement measures to reduce caseworker turnover:** It is critical for government to take measures to reduce caseworker turnover in order to increase the number of experienced caseworkers working with children and young people in care.
- **Enhance participation of children and young people in placement decisions:** It is critical for caseworkers to consult more effectively with those children and young people to understand what they want and why, and how they may be able to achieve that**.** By including young people in placement decision making decisions it improves the likelihood of placement stability.
- **Provide support to caseworkers and carers to develop effective and meaningful relationships with children and young people:** It is critical for caseworkers to receive appropriate training to improve the efficacy of their work with children and young people and equip them with the necessary tools to develop meaningful relationships with children and young people in care.
- **Embed permanency planning as an approach in the care system, highlighting alternative options to legal permanence**: Placement permanency is a key indicator of placement satisfaction. However, recent reforms in NSW to support permanency planning, including legal guardianship and adoption, should be implemented with care. Permanence and stability in care can equally be achieved through strong and stable foster care and kinship arrangements as well as through the development of supportive relationships with carers and caseworkers.

e) The support, training, safety, monitoring and auditing of carers including foster carers and relative/kin carers

- **Continue strengthening assessment and monitoring mechanisms for carers:** CREATE supports the NSW Office of the Children's Guardian's establishment of the Carer's Register. CREATE also supports the ongoing work of the NSW Ombudsman's Reportable

Conduct scheme. Continual evaluation of these mechanisms are required to assess their effectiveness and to identify gaps. Out-of-home care providers must also monitor and ensure carers adhere to the Ministerial Code of Conduct for Authorised Foster, Relative and Kinship Carers (FACS, n.d.b)

- **Empower young people through increased staff capacity and training of staff on the significance of support networks, responding to disclosures and educating young people:** Increase the number of caseworker assistant and caseworker positions to enhance staff capacity to maintain frequent contact and home visits with children and young people. Standard 21 of the NSW Child Safety Standards (Office of the Children's Guardian, 2015) requires staff to be provided with training. Modules should include education on the significance of identifying and developing children and young people's support networks beyond their household such as with trusted teachers, youth services and extended family. Training should also include skills on responding formally to children's disclosures seriously and educating children and young people about their rights and their access to complaint mechanisms.
- **Establish accessible independent complaints mechanism:** CREATE endorses the Senate Community Affairs References Committee's recommendations for the Coalition of Australian Governments to develop and implement nationally consistent powers for independent child commissioners and guardians to address complaints and concerns by children and young people (Senate Community Affairs Committee Secretariat, 2015). An ideal complaint mechanism is independent of the providers of out-of-home care, easily accessible either online or face-to-face, provides for a support person and individual advocacy services and gives timely responses and progress updates.
- **Provide community visitor schemes to visit all out-of-home care placements:** CREATE endorses the Senate Community Affairs References Committee recommendation for the extension of community visitor schemes to all out-of-home care placements (Senate Community Affairs Committee Secretariat, 2015). Feedback from young people of visitor schemes in other states demonstrate that they were more able to talk to the visitor as they were independent (Commission for Children and Young People and Child Guardian, 2012). CREATE recommends a combination of regular and irregular visits to ensure thorough monitoring.
- **Increase financial support for kinship carers:** Increase the supported care allowance or incorporate means-testing to account for the financial disadvantage faced by kinship carers. Financial support is especially required for respite care services and after care support to relieve the impact of financial hardship on placement stability for children and young people.
- **Develop specialised assessment for kinship carers:** An assessment tool is needed to take into account the unique circumstances under which kin and relatives become carers. The assessment tool needs to be sensitive and respectful of the skills and knowledge of the kinship carer while providing a clear indication of support required.
- **More specialised training and support:** Existing training programs for carers must incorporate specialised training for kinship carers around contact issues, managing family conflict and understanding the needs of children and young people in out-of-home care such as trauma education and behavioural management strategies. Respite care should be offered to provide a break for carers who are under strain or caring for particularly challenging children. Provide access to support groups specific to kinship carers can reduce social isolation and facilitate the sharing of skills and knowledge.
- **Specialised support workers for kinship carers:** Provide training to staff on the needs of kinship carers and how to engage carers to provide adequate information about roles, responsibilities and entitlement. Agencies could also benefit from workers specialising in kinship placements who can work sensitively and skilfully to address the complex challenges faced by kinship carers.

g) Specific initiatives and outcomes for at risk Aboriginal and Torres Strait Islander children and young people

- **Increase the proportion of government expenditure extended to Aboriginal communities and Aboriginal community-controlled organisations in delivering family support services and other early intervention services:** For Aboriginal communities and Aboriginal community-controlled organisations to be able to appropriately protect and support their children and young people they must have the appropriate funds. Additional financial support for Aboriginal community-based services would support cultural efficacy and empower communities to seek help when required.
- **Increase the number and capacity of Aboriginal community-controlled organisations and Aboriginal communities to deliver family support services, prevention and early intervention services, out of home care services and after care services:** It is critical that support for Aboriginal community-controlled solutions should also include capacity-building programs to ensure Aboriginal communities are empowered to support their communities most effectively.
- **Place Aboriginal and Torres Strait Islander families, communities and young people themselves at the centre of child placement decisions and consultations:** The lack of progress in reducing the percentage of Aboriginal and Torres Strait Islander children and young people in out of home care is a symptom of the system being ill-informed of the decisions which best meet the needs of Aboriginal children. It is imperative that decisions regarding the placement of Aboriginal and Torres Strait Islander young people must be made with meaningful consultation and participation of their families, communities and also children.
- **Promote cultural competence, understanding and respect for Aboriginal and Torres Strait Islander culture to more effectively deliver services to the community:** It is critical that case workers, policy makers and non-indigenous service providers understand the historical experiences, complexities and intergenerational trauma which severely impacts on Aboriginal and Torres Strait Islander communities today. Without an understanding of the historical context nor an appreciation of the differences of Aboriginal culture, can workers effectively work with Aboriginal communities.
- **Promote the placement of Aboriginal children with Aboriginal agencies and carers to maintain cultural and community connection:** For Aboriginal children and young people to maintain the best connection to their culture and community every possible measure should be taken to place children within their cultural community. As discussed, despite the Aboriginal Child and Young Person Placement Principles, Aboriginal children are still being placed with non-indigenous carers and therefore without providing ways for Aboriginal children to maintain their cultural identity.

i) Any other related matter - Sibling Placement and Contact

- **Improve capacity of carers to care for siblings groups:**
  Carers should be given specialised support to care for large sibling groups. Support may include: increased financial support, priority respite care, specialised training and access to child development specialists and family mediation services. There are also a growing number of older siblings who are becoming carers, which needs to be recognised.
- **Recognition of sibling co-placements in Permanent Placement Principles:** The *Permanent Placement Principles* of the *Safe Home for Life* reform (Family & Community Services, 2014) do not explicitly recognise the needs of children and young people to be placed with siblings. Where family reunification and guardianship is prioritised, emphasis is placed on birth parents and kin, rather than sibling co-placement. The principles which guide casework and decisions by the Children's Court must take into account the significant impact of sibling co-placements on feelings of safety and

emotional well-being for children and young people in care. Care plans should note "sibling contact" as a separate section to give due consideration to young people's needs.

- **Policy requirements for management of sibling groups by the same agency:**
  Policy requirements must mandate that geographical boundaries are considered when transferring a child or young person to an out-of-home-care agency and during any placement changes. Best practice should require sibling groups to be case managed by the same agency.
- **Out-of-home care standards requiring accurate record keeping and information exchange:**
  The National Standards for Out-of-Home Care (FaHCSIA, 2011) should incorporate the use of a genogram and accurate record keeping of family members for all children and young people in care. To enhance information exchange, records must include the location of siblings and the agency they are managed by. This standard should also be incorporated into the Out-of-home care accreditation process administered by the NSW Office of the Children's Guardian. The *ChildStory* and *Patchwork* system should also be used to connect carers and caseworkers who care for sibling groups. This new technology should be made accessible to carers and all out-of-home care caseworkers to facilitate sibling contact and information exchange.
- **Train and monitor carers to facilitate sibling contact for children and young people:**
  It is noteworthy that carers are just as important in facilitating family contact as caseworkers (O'Neill, 2004; Sen & Broadhurst, 2010). Carer recruitment and training must stress the importance of contact with siblings for children and young people in care. The accreditation and monitoring of carers as well as recruitment agencies should include the recognition and facilitation of sibling contact as a measure.
- **Continued monitoring of out-of-home care providers on facilitation of sibling contact:**
  Agencies need to facilitate sibling contact and review this process throughout a young person's life in care. This is sorely needed for children and young people whose siblings are not in care. Contact needs to respect children and young people's wishes and be monitored. Sibling contact must be reviewed regularly as the needs, wishes and circumstances of children and their siblings may change. This process must be audited as part of the accreditation process administered by the NSW Office of the Children's Guardian.
- **Designate funding to empower children and young people to maintain sibling contact:**
  Designate funding to agencies to empower children and young people with means to maintain sibling contact. Potential means include: cost effective mobile phone plans or prepaid SIM cards which allow for phone contact as well as internet access for the use of Skype and Facebook, particularly when siblings are placed in different states, towns or cities. A function may be incorporated into the *ChildStory* system which clearly shows children and young people the location and contact details of their siblings.
- **Increase funding to resource agencies to facilitate sibling contact:**
  Increase funding which can be used as brokerage to assist in paying for travel, buying vehicles large enough to transport families, sending siblings to holiday camps and organising outings. Increasing caseworker assistant positions to facilitate sibling contact can also enhance staff capacity and address time constraints and staff shortage.
- **Establish a child-friendly version of the care plan and allocate legal aid to maximise participation for children and young people during entry into care:**
  A child-friendly version of the care plan document should be developed to assist young people to understand their care plan so that it is meaningful and accessible. Children's legal aid services and youth solicitors can be allocated to work with caseworkers at the Children's Court to ensure children and young people receive clear explanations of court processes, legal proceedings and how they can be involved in decisions regarding their entry into care.

Children's and young people's participation in their entry into care and in access to information

- **Use the *ChildStory* system or new technology to enhance transparency and access to information for children and young people:**
  The *ChildStory* system is designed as an information sharing platform between caseworkers, carers and children and young people. Age appropriate information about family history, reasons for being placed in care and a copy of the care plan should be uploaded to allow children and young people access to vital information. This system should be made available to all children and young people in care to cultivate a culture of transparency and knowledge of their rights.
- **Increase funding and resources for staffing to expedite access to files**
  Increased funding to increase staff positions to expedite the processing of files to be released to children and young people, with appropriate trauma-informed support for the young person who is accessing their file.

Leaving Care

- **Extend statutory responsibility to young people who exit out-of-home care to 25 years of age:** Commensurate with Signatory Action 2.1.4 of the National Framework for Protecting Australia's Children 2009-2010 (Commonwealth of Australia, 2009), extend statutory responsibility to young people in care. Consider amending Section 3 of the *Children and Young Persons (Care and Protection) Act 1988* which currently defines "young person" as a person who is aged 16 to 18 years, to 25 years.
- **Increase Transition to Independent Living Allowance (TILA) amount and financial assistance:** Increase the TILA amount and after care funding to take into account the costs of living. Revise procedures for accessing entitlements in leaving care plans to diminish administrative barriers.
- **Improve leaving care planning:** Ensure rigorous monitoring of out-of-home care agencies for the development and endorsement of high quality leaving care plans as part of the accreditation administered by the Office of the Children's Guardian. As mandated by Standard 13 of the National Framework for Out-of-Home Care (FaHCSIA, 2011), leaving care plans should commence at age 15, be done in partnership with the young person. Leaving Care Plans should also be comprehensive and sufficient and need to be flexible and accessible to reflect the changing needs of the young person as they mature.
- **Improve staff capacity for intensive support and effective casework to young people 15 years and over:** Address high staff turnover and increase caseworker assistant positions to improve current staffing, resources and time constraints.
- **Expand programs and policies which support gradual transition to independence:** Increase funding to out-of-home care agencies to provide more supported independent living programs. Expand the trials currently being developed by the Federal Government which provide place-based intensive case management and personal advisors for up to 3 years to assist care leavers to gain skills for independent living (NCCSW, 2016). Consider extending carer payments until the age of 21 years to allow sufficient time to adjust to adulthood.
- **Priority access and support to attend and sustain higher education:** Extend fee-free programs, equity access, campus accommodation, subsidies, and scholarship places for care leavers for all higher education pathways. Such initiatives are already successfully operating at the University of Newcastle, Western Sydney University and TAFE. Family and Community Services should also partner with educational institutions and the private sector to prioritise access to apprenticeships, training programs and employment schemes for care leavers.
- **Access and support for securing housing:** Include exit from out-of-home care as a criteria on the eligibility for priority social housing list. Increase funding to establish crisis accommodation catering specifically for care leavers or establish co-op housing dedicated to young people exiting out-of-home care. The current *2015-2017 National Partnership Agreement on*

Homelessless (Department of Social Services , 2015) which gives priority funding to frontline services focusing on homeless youth should be extended to prioritise young people leaving out-of-home care. Make careleavers a priority group in the *Youth Private Rental Scheme* and *Rent Choice* scheme, which provides financial assistance to maintain tenancy in the private rental market.

- **Sustained funding for after care services:** Increase and sustain funding for after care services. In the absence of parental support and stable relationships, intensive ongoing casework is critical to support the complex needs of young people who have been in care.
- **Priority access to government services through a corporate parenting model:** Consider implementing a corporate parenting model similar to the UK, to introduce shared responsibilities between education, health, housing, juvenile justice and the private sector to provide care leavers with the same support as typically experienced by their peers not in care. This model considers a whole-of-government approach to recognising and prioritising the needs of care leavers.
- **Ongoing support:** Implement a mentoring scheme for young people who have transitioned to independent housing to gain advice and expand support networks.

Children and Young People with Disability in Out of Home Care

- **Provide more funding to independent advocacy and research bodies to undertake research to fill the significant research gap recording and analysing the percentage of children and young people with disability in the care system:** In NSW there is little research to understand how the sector can better service children and young people with disability in care and what types of support are most beneficial to this cohort of the in-care population. Accurate and consistent research and statistical analysis is essential to deliver evidence-based support and services to families experiencing disability and to children and young people with disability in care.
- **Increase family and early-intervention support services to families experiencing disability prior to children and young people entering the care system:** Additional support to some of the most disadvantaged children and young people and their families is much needed to stem the over-representation of children and young people with disability in the care system.
- **Develop a more accurate and inclusive framework to help people with disability, their carers and workers understand and define disability within the National Disability Insurance Scheme (NDIS) context:** Using a human-rights based approach, it is critical for NSW to develop a framework for children and young people with a disability, their carers and workers to use to understand and define their disability in order to access disability support services. Under NDIS, people with disability and their carers need to understand how their disability affects them to be able to be eligible for disability support.
- **Train caseworkers and disability sector staff on how to most effectively work with children and young people with disability in the care system:** The supported decision making approach must be embedded within the sector as well as in the NDIS framework of disability service provision. It is critical that staff know how to most effectively work with this vulnerable cohort within the care system.

Introduction

CREATE Foundation thanks the General Purpose Standing Committee No. 2 for the opportunity to respond to the Inquiry into Child Protection.

CREATE believes the voices of children and young people, relaying their own experiences and views, is crucial to any discussion about child protection systems, particularly out-of-home care, as they are best placed to provide feedback on the lived impact of current polices, legislation and practices. Data from CREATE's National Research (McDowall, 2009; 2013), state-based consultations (CREATE

Foundation, 2015e; 2016a; 2016b) and Think Tanks (CREATE Foundation, 2015e; 2016c) are used extensively throughout this submission as the key resource for the views of children and young people. CREATE notes the significance of this Inquiry given the raft of policy and legislative changes which have come into effect since October 2014 in the New South Wales child protection sector. Changes to funding structures for the provision of out-of-home care services and after care services in the non-government sector are currently in negotiation. The changing landscape of child protection in New South Wales renders this Inquiry particularly timely. CREATE supports this Inquiry as a critical avenue for children and young people in care to contribute to policy and legislative developments to ensure that any reforms reflect their needs and experiences.

CREATE also notes the numerous past state and federal inquiries into child protection and the many recommendations that have not been implemented due to resourcing and other issues. Since 1997, there have been over 30 inquiries, investigations and reports into the various child protection systems at state and federal levels across Australia, alongside a continual increase in the numbers of children entering care, and in particular, an increase in the number of Aboriginal and Torres Strait children and young people entering out-of-home care (AIHW, 2015).

In addition to the current Inquiry, there are several other inquiries and investigations underway including the Royal Commission into Institutional Responses to Child Sexual Abuse. CREATE believes the large sums of money allocated to inquiries could have been invested into improving service delivery rather than repeatedly looking for different answers. Bromfield (2012) notes that in Victoria the reforms stopped the increase of reports of child abuse to authorities but did not sufficiently improve the quality of child protection practice. CREATE strongly encourages this Inquiry to focus on delivering better outcomes for children and young people in out-of-home care throughout Australia.

Response to the Terms of Reference

c) The amount and allocation of funding and resources to the Department of Family and Community Services for the employment of casework specialists, caseworkers and other frontline personnel and all other associated costs for the provision of services for children at risk of harm, and children in out of home care.

Stability for children and young people in out of home care is recognised as a key goal in improving the care system and is specifically addressed in the National Standards for Out of Home Care (FaCHSIA, 2011). As found in CREATE's 2013 Report Card, those young people with fewer placement changes and good relationships with their carers and caseworkers, reported more overall satisfaction within the care system (McDowall, 2013). However, the task to improve stability in out-of-home care is not straight forward and relies on many aspects, not least of which is the issue of caseworker turnover, the nature of a child's relationship with their caseworker and also the permanency of a placement.

As noted by CREATE (2013), the problems experienced by children and young people throughout Australia – particularly in residential placements – reflect a larger "systemic problem of high workforce turnover rates" (McDowall, 2013, p. 86). While CREATE appreciates that improving caseworker retention is dependent on a variety of factors, it is also critical to improve the experience of the care system for children and young people (McDowall, 2013; CREATE 2014a).

Moreover, improving caseworker relationships with children and young people in care is equally important. CREATE believes that meaningful participation for children and young people in care is enabled through the development of strong relationships with caseworkers and carers (CREATE, 2014a). However, in 2013, only 65.2% of young people (nationally) reported to CREATE that they were able to contact their key caseworker when required. Although there were significant differences in results across jurisdictions, NSW was rated among the lowest with regard to satisfaction with their relationship with their caseworkers (McDowall, 2013). Overall,

children and young people indicated that they wished caseworkers to consider and respect their opinions and decisions, follow through on agreements and actions, and act promptly to such agreed actions (McDowall, 2013.

> *I have been waiting for a year for her to approve my dental work for over a year. She never gets back to me.* (Female, 15 years)
>
> *She takes too long, and pretty much all the time I can never talk to her.* (Female, 16 years)
> (McDowall, 2013, p. 39)

As outlined in CREATE research, it is not surprising that children and young people who experienced few placement changes reported being more satisfied with their experience of the care system than those who experienced a high rate of placement instability (McDowall, 2013). On this note, CREATE welcomes the findings and recommendations of the Senate Inquiry into out-of-home care, calling for the addition of a permanency planning measure to the National Standards for out of home care and for a nationally consistent approach to permanency planning (Australian Senate Community Affairs References Committee, 2015).

Whilst these recommendations are much needed, it is important to note that stability or permanency can be achieved in various ways, not always leading to legally permanent placements (Australian Senate Community Affairs References Committee 2015; AbSec, 2015; CREATE, 2014a). Feedback from children and young people has demonstrated that, the development of strong and meaningful relationships with carers and caseworkers is equally important to a permanent placement, and can contribute to building much needed stability in a young person's life (McDowall, 2013; CREATE, 2014a; AbSec, 2015; CREATE, 2013).

Recommendations

CREATE believes that for children and young people in care to have positive experiences in the out of home care system, including placement stability, the care system itself must have measures in place which ensure children and young people are directly involved in the decisions which affect their lives, are listened to and consulted with when placement decisions are made. The recommendations in this submission support this view.

- **Implement measures to reduce caseworker turnover:** As noted elsewhere, it is critical for government to take measures to reduce caseworker turnover in order to increase the number of experienced caseworkers working with children and young people in care.
- **Enhance participation of children and young people in placement decisions:** It is critical for caseworkers to consult more effectively with those children and young people to understand what they want and why, and how they may be able to achieve that**.** By including young people in placement decision making decisions it improves the likelihood of placement stability.
- **Provide support to caseworkers and carers to develop effective and meaningful relationships with children and young people:** It is critical for caseworkers to receive appropriate training to improve the efficacy of their work with children and young people and equip them with the necessary tools to develop meaningful relationships with children and young people in care.
- **Embed permanency planning as an approach in the care system, highlighting alternative options to legal permanence**: As discussed, placement permanency is a key indicator of placement satisfaction. However, recent reforms in NSW to support permanency planning, including legal guardianship and adoption, should be implemented with care. Permanence and stability in care can equally be achieved through strong and stable foster care and kinship

arrangements as well as through the development of supportive relationships with carers and caseworkers.

e) The support, training, safety, monitoring and auditing of carers including foster carers and relative/kin carers

Safety, Monitoring and Auditing of Carers

An alarming rate of children and young people have experienced some form of abuse whilst in care. In CREATE's 2013 Report Card (McDowall, 2013), young people expressed concerns about abuse, violence and mistreatment in their placements. The occurrence of sexual abuse, assault, neglect and psychological harm inflicted by trusted adults is distressingly high in the out-of-home care sector.

Recent statistics from the NSW Ombudsman (2015) reveal that this sector represents 47% of all reportable conduct notifications received by the NSW Ombudsman. During 2012 to 2014, the Royal Commission into Institutional Reponses to Abuse in Care (2015) documented that at least 20% of the allegations of sexual abuse perpetrated by carers and other household members pertained to children in residential care, kinship care and foster care settings.

The factors contributing to children and young people in care being vulnerable to abuse are:

- *Social Isolation* – Children and young people rely most heavily on their carers for support (McDowall 2013). Caseworkers were rated as an unlikely key support person (McDowall, 2013) and young people with whom CREATE has consulted, noted that there is often a lack of contact from caseworkers during their placement. Social isolation renders children and young people more vulnerable to the likelihood of abuse and limits avenues for disclosure.
- *Lack of independent complaint mechanisms:* Children and young people see complaint systems located in departments as biased or compromised (CREATE, 2014b). CREATE found that young people in residential care were the largest group wanting to complain but 54% chose not to raise the issue because of concerns with negative outcomes (McDowall, 2013).
- *Lack of awareness of complaint mechanisms:* CREATE's survey of 1069 children and young people, the 309 NSW based respondents revealed that only 38% knew how to complain if necessary (McDowall, 2013).
- *Lack of institutional response:* Even when cases of sexual abuse of children in institutions were brought to the attention of departments, police, and institutional providers they are often ignored, not followed up, or disbelieved (Royal Commission into Institutional Responses to Child Sexual Abuse, 2015).
- *Current assessment of carers:* The Royal Commission into Institutional Responses to Child Sexual Abuse highlighted the need for more rigorous assessment processes to mitigate risk as, *'many perpetrators can impress when being assessed and are often able to use their role to promote themselves as socially acceptable*' (2015).

What is most concerning is that young people have told CREATE about their attempts to disclose instances of abuse to departmental staff and trusted adults during their time in care. It appears common for young people to have not been believed or be dismissed, to have remained in the placement following disclosure and to have suffered further abuse. In these instances, young people were forced to resort to absconding or deliberately displaying behavioural issues to effect a placement breakdown.

Recommendations

Children and young people's right to be provided with security during their time in care and be free from harm is enshrined in the National Standards for Out-of-Home-Care (FaHCSIA, 2011) and the

United Nations Convention on the Rights of the Child (1989). CREATE recommends the following to ensure the safety of children and young people and strengthen monitoring mechanisms:

- **Continue strengthening assessment and monitoring mechanisms for carers:** CREATE supports the NSW Office of the Children's Guardian's establishment of the Carer's Register. CREATE also supports the ongoing work of the NSW Ombudsman's Reportable Conduct scheme. Continual evaluation of these mechanisms are required to assess their effectiveness and to identify gaps. Out-of-home care providers must also monitor and ensure carers adhere to the Ministerial Code of Conduct for Authorised Foster, Relative and Kinship Carers (FACS, n.d.b)
- **Empower young people through increased staff capacity and training of staff on the significance of support networks, responding to disclosures and educating young people:** Increase the number of caseworker assistant and caseworker positions to enhance staff capacity to maintain frequent contact and home visits with children and young people. Standard 21 of the NSW Child Safety Standards (Office of the Children's Guardian, 2015) requires staff to be provided with training. Modules should include education on the significance of identifying and developing children and young people's support networks beyond their household such as with trusted teachers, youth services and extended family. Training should also include skills on responding formally to children's disclosures seriously and educating children and young people about their rights and their access to complaint mechanisms.
- **Establish accessible independent complaints mechanism:** CREATE endorses the Senate Community Affairs References Committee's recommendations for the Coalition of Australian Governments to develop and implement nationally consistent powers for independent child commissioners and guardians to address complaints and concerns by children and young people (Senate Community Affairs Committee Secretariat, 2015). An ideal complaint mechanism is independent of the providers of out-of-home care, easily accessible either online or face-to-face, provides for a support person and individual advocacy services and gives timely responses and progress updates.
- **Provide community visitor schemes to visit all out-of-home care placements:** CREATE endorses the Senate Community Affairs References Committee recommendation for the extension of community visitor schemes to all out-of-home care placements (Senate Community Affairs Committee Secretariat, 2015). Feedback from young people of visitor schemes in other states demonstrate that they were more able to talk to the visitor as they were independent (Commission for Children and Young People and Child Guardian, 2012). CREATE recommends a combination of regular and irregular visits to ensure thorough monitoring.

Support and Training for Kinship Carers

Kinship care comprises of almost half (47.3%) of out-of-home care placements in Australia (AIHW, 2016). Forty-nine per cent of out of home care placements in New South Wales are kinship placements which is the highest proportion of children and young people living in kinship care compared to other jurisdictions (AIHW, 2016). Kinship care particularly affects Indigenous children and young people. In 2014-2015, 79.2% of Aboriginal and Torres Strait Islander children and young people were placed with relatives/kin or other Indigenous carers/services (AIHW, 2016). Children and young people consulted by CREATE expressed support for kinship care when deciding on a placement, with an important stipulation that jurisdictions continue to support and monitor those in kinship care placements to ensure children and young people are safe and thriving (CREATE Foundation, 2011).

Kinship carers face unique challenges compared to foster carers:

- *Financial disadvantage:* In a 2015 AIHW survey of 809 carers in New South Wales, significant income disparity was demonstrated whereby 58% of kinship care households had incomes less than $60,000 while this applied to only 39% of foster care households (Australian Institute of Family Studies, Chapin Hall Center for Children University of Chicago, & New South Wales Department of Family & Community Services, 2015).

- *Lower socio-economic background:* Kinship carers are likely to be older, in public rental accommodation, receiving income from a Centrelink pension and less likely to be employed or to have a university qualification (Yardley, Mason & Watson, 2009).
- *Less experience and training:* Kinship carers are less experienced for caring for a child in out-of-home care, attend less training and are less likely to have a carer development plan (Australian Institute of Family Studies, Chapin Hall Center for Children University of Chicago, & New South Wales Department of Family & Community Services, 2015). Kinship carers are often not prepared for the placement as they are motivated to care for a child due to family loyalty, obligation, and a desire for a child not to be placed in foster care (Child Safety Services, 2011, p.6).
- *Complex family relationships:* Kinship carers must manage family conflict and tensions while negotiating new boundaries within the family (Child Safety Services, 2011, p.4). Contact between kinship carers and birth parents have been found to be one of the most problematic areas unique to kinship placements (McHugh, 2009).

Current policies and practices do not take into account the unique needs of kinship carers. Despite the financial disadvantage faced by kinship carers, the allowance allocated to kinship carers is currently calculated at the same rate as foster carers (see Family & Community Services n.d.a). CREATE has heard from children and young people in kinship care that such financial circumstances result in pressure to contribute financially to the household in lieu of higher education or to find independent living when approaching leaving care age.

Under the *Safe Home for Life* reforms, kin and relative carers have been encouraged to transfer to guardianship orders as this is argued to lead to greater permanency. However, this has resulted in a cessation of funding for this group for respite arrangements, costs and services related to family contact, as well as the Transition to Independent Living Allowance (Family & Community Services, 2016).

There is evidence to suggest that while support from caseworkers is considered an important issue by carers, kinship carers experience irregular and inconsistent contact from caseworkers and receive less support, less services and fewer resources (Cuddeback 2004; Elarde & Tilbury 2007; Higgins, Bromfield & Richardson 2005). Adequate departmental support has a significant impact on the quality of care and safety for children and young people (Child Safety Services, 2011). Currently, for kinship placements under guardianship orders, support and contact with the department has been reduced to an annual check in by mail. In addition, the reality that it is 'family' who provides the care, appears to influence how both carers and workers perceive kinship care and the support that is 'offered' (or not) by workers and 'accepted' (or not) by families (Child Safety Services, 2011).

Recommendations

CREATE is of the view that the needs of kinship carers are distinct from foster carers. The following recommendation are informed by CREATE's Position Paper on Kinship Care of Children and Young People in formal Out-of-Home Care (2015a):

- **Increase financial support for kinship carers:** Increase the supported care allowance or incorporate means-testing to account for the financial disadvantage faced by kinship carers. Financial support is especially required for respite care services and after care support to relieve the impact of financial hardship on placement stability for children and young people.
- **Develop specialised assessment for kinship carers:** An assessment tool is needed to take into account the unique circumstances under which kin and relatives become carers. The assessment tool needs to be sensitive and respectful of the skills and knowledge of the kinship carer while providing a clear indication of support required.
- **More specialised training and support:** Existing training programs for carers must incorporate specialised training for kinship carers around contact issues, managing family conflict and

understanding the needs of children and young people in out-of-home care such as trauma education and behavioural management strategies. Respite care should be offered to provide a break for carers who are under strain or caring for particularly challenging children. Provide access to support groups specific to kinship carers can reduce social isolation and facilitate the sharing of skills and knowledge.

- **Specialised support workers for kinship carers:** Provide training to staff on the needs of kinship carers and how to engage carers to provide adequate information about roles, responsibilities and entitlement. Agencies could also benefit from workers specialising in kinship placements who can work sensitively and skilfully to address the complex challenges faced by kinship carers.

g) Specific initiatives and outcomes for at risk Aboriginal and Torres Strait Islander children and young people

The significant over-representation of Aboriginal and Torres Strait Islander children and young people in out of home care in New South Wales is unacceptable and of critical import for this child protection inquiry. As of 30 June 2015 (from the most recent Australian Institute of Health and Welfare (AIHW) National Child Protection Report), in New South Wales there was a significant proportion of Indigenous children (6,210) in out of home care from a total number of 16, 843 children in OOHC across the state. (AIHW, 2016). This figure is consistent with the reported number of Aboriginal and Torres Strait Islander children and young people in care across all jurisdictions and point towards one alarming, yet well-known conclusion – that Indigenous children and young people are 9.5 times more likely to be in out of home care than their non-indigenous counterparts (AIHW, 2016).

The seriousness of Aboriginal and Torres Strait Islander over-representation in the care system has been highlighted at the highest level through Indigenous-specific criteria and measures being included in the *National Framework for Protecting Australia's Children 2009-2020* and its subsequent *National Standards for Out-of-Home-Care* (CREATE Foundation 2014a; FaCHSIA, 2009; FaCHSIA, 2011). However, despite such inclusions and the national adoption of the Aboriginal Child and Young Person Placement Principles (ACYPP), 34% of Aboriginal and Torres Strait Islander children and young people remain to be placed in non-indigenous placements (AIHW 2016; Australian Child Rights Taskforce, 2016; AbSec, 2015,).

In 2016, Aboriginal and Torres Strait Islander (Aboriginal) children and young people remain to be at serious risk of being removed from the care of their communities. Consistent calls from Aboriginal communities and organisations to ensure that the care of their children and young people remains under the direction of their community, must be heeded (SNAICC, 2014; AbSec, 2015). It is widely noted, including by the Secretariat of National Aboriginal and Islander Child Care (SNAICC) and the Australian Child Rights Taskforce, that the historical experiences of colonisation, forced assimilation, the Stolen Generation and the inter-generational trauma resulting from such policies, are some of the key reasons for the high percentage of Indigenous children and young people in care (Australian Child Rights Taskforce, 2016; SNAICC, 2014). As the Australian Child Rights Taskforce has recently stated, "*the strengths of Aboriginal and Torres Strait Islander communities to care for their own children remain the dominant driving force in the realisation of children's rights*" (Australian Child Rights Taskforce, 2016, p. 41). It is imperative that Federal and State Governments act to more effectively support Aboriginal community-controlled organisations and empower Indigenous communities to maintain decision-making capacity in ensuring the safety and protection of their young people (Australian Child Rights Taskforce, 2016; SNAICC, 2014; AbSec, 2015).

Recommendations

CREATE believes the over-representation of Aboriginal and Torres Strait Islander children and young people in out of home care is unacceptable and indicates that current approaches to support

Aboriginal families, children and communities are not effective. CREATE supports actions advocated by SNAICC, in NSW, AbSec and others, in the following recommendations. These recommendations are also informed by CREATE's Position Paper on the Overrepresentation of Aboriginal and Torres Strait Islander Children in Out-of-home Care (2015b).

- **Increase the proportion of government expenditure extended to Aboriginal communities and Aboriginal community-controlled organisations in delivering family support services and other early intervention services:** For Aboriginal communities and Aboriginal community-controlled organisations to be able to appropriately protect and support their children and young people they must have the appropriate funds. Additional financial support for Aboriginal community-based services would support cultural efficacy and empower communities to seek help when required.
- **Increase the number and capacity of Aboriginal community-controlled organisations and Aboriginal communities to deliver family support services, prevention and early intervention services, out of home care services and after care services:** It is critical that support for Aboriginal community-controlled solutions should also include capacity-building programs to ensure Aboriginal communities are empowered to support their communities most effectively.
- **Place Aboriginal and Torres Strait Islander families, communities and young people themselves at the centre of child placement decisions and consultations:** The lack of progress in reducing the percentage of Aboriginal and Torres Strait Islander children and young people in out of home care is a symptom of the system being ill-informed of the decisions which best meet the needs of Aboriginal children. It is imperative that decisions regarding the placement of Aboriginal and Torres Strait Islander young people must be made with meaningful consultation and participation of their families, communities and also children.
- **Promote cultural competence, understanding and respect for Aboriginal and Torres Strait Islander culture to more effectively deliver services to the community:** It is critical that case workers, policy makers and non-indigenous service providers understand the historical experiences, complexities and intergenerational trauma which severely impacts on Aboriginal and Torres Strait Islander communities today. Without an understanding of the historical context nor an appreciation of the differences of Aboriginal culture, can workers effectively work with Aboriginal communities.
- **Promote the placement of Aboriginal children with Aboriginal agencies and carers to maintain cultural and community connection:** For Aboriginal children and young people to maintain the best connection to their culture and community every possible measure should be taken to place children within their cultural community. As discussed, despite the Aboriginal Child and Young Person Placement Principles, Aboriginal children are still being placed with non-indigenous carers and therefore without providing ways for Aboriginal children to maintain their cultural identity.

i) Any other related matter - Sibling Placement and Contact

CREATE's 2013 survey revealed that children and young people in care desired more contact with their siblings than with any other family members with whom they were not living (McDowall, 2013). Research has consistently shown that placing children and young people with their siblings leads to outcomes which are in line with the aims of the *Safe Home for Life* reforms such as more stability, fewer disruptions and more successful reunifications, compared with those who are separated from their siblings (Drapeau, Simard, Beaudry & Charbonneau, 2000; Leathers, 2005; Webster, Sholonsky, Shaw, & Brookhart, 2005). Furthermore, research has shown that nurturing sibling bonds mitigates the negative effects experienced while in care and provides valuable support well into adulthood (Herrick & Piccus, 2005).

The UN Convention on the Rights of the Child (CRoC, 1989), Australia's National Framework for Protecting Australia's Children (Commonwealth of Australia, 2015), and the National Standards for Out-of-Home-Care (FaHCSIA, 2011) (particularly Standards 9 and 10), all affirm children and

young people's right to maintain connection with their family. Yet, CREATE's 2015 survey of 236 children and young people in care in New South Wales found that only 34% lived with all of their siblings (McDowall, 2015). Children and young people with no other siblings in care emerged as a particularly vulnerable group as they experienced significantly greater disruptions and received less assistance to see their siblings than those who lived with some or all their siblings (McDowall, 2014).

Many children and young people have told CREATE of the devastating impact of losing contact with or being separated from their siblings, explicitly highlighting the effects on their sense of safety and emotional well-being:

> *"If I didn't go into foster care having my sisters with me, I probably would've gone off the rails"* (Female, *20*) (CREATE Foundation, 2015f)
>
> *"When you go into care…the only thing you have control over is your conversation with your siblings if they're there. If that gets taken away, you pretty much have nothing. Once you break that bond, it's hard to get that back"* (Female, *22*) (CREATE Foundation, 2015f)
> *"It's taken its toll on me not being able to see him (my brother) for the past 6 years. Is he fit and healthy? Is he going well at school?...All that stuff goes through your mind every time you go to bed and it's the first thing you think about"* (Male, 21) (CREATE Foundation, 2015f)
>
> *"I really felt alone. For the first time in my life I didn't have anyone by my side. My brother was my protector"* (Female, 16) (CREATE Foundation, 2015d)

Currently, a number of barriers impede on the co-placement of siblings and the facilitation of contact. In 2015, CREATE surveyed 128 caseworkers. Their responses indicate that the most salient factors impacting placements included (McDowall, 2015):

- geographical distance between sibling groups, affecting transport and coordination of meetings;
- bureaucratic or policy constraints resulting in the placement of siblings with different agencies in different regions;
- negative attitudes of carers and birth parents exhibited to sibling contact;
- carer capacity to care for large sibling groups both emotionally and physically
- lack of information and complex family relationships (such as siblings who have the same mother but different fathers) resulting in difficulty tracing family members; and
- lack of resources and heavy caseloads resulting in time restraints and logistical barriers

Recommendations

CREATE believes that siblings in out-of-home care, must be supported wherever possible, to stay together; and where co-placement is not possible, they must be empowered to maintain regular contact with each other while in care. CREATE recommends the following actions to address current barriers in the out-of-home care system (See CREATE's Position Paper: Sibling Placement and Contact in Out of Home Care (2015c):

- **Improve capacity of carers to care for siblings groups:**
  Carers should be given specialised support to care for large sibling groups. Support may include: increased financial support, priority respite care, specialised training and access to child development specialists and family mediation services. There are also a growing number of older siblings who are becoming carers, which needs to be recognised.
- **Recognition of sibling co-placements in Permanent Placement Principles:**

The *Permanent Placement Principles* of the *Safe Home for Life* reform (Family & Community Services, 2014) do not explicitly recognise the needs of children and young people to be placed with siblings. Where family reunification and guardianship is prioritised, emphasis is placed on birth parents and kin, rather than sibling co-placement. The principles which guide casework and decisions by the Children's Court must take into account the significant impact of sibling co-placements on feelings of safety and emotional well-being for children and young people in care. Care plans should note "sibling contact" as a separate section to give due consideration to young people's needs.

- **Policy requirements for management of sibling groups by the same agency:**
  Policy requirements must mandate that geographical boundaries are considered when transferring a child or young person to an out-of-home-care agency and during any placement changes. Best practice should require sibling groups to be case managed by the same agency.
- **Out-of-home care standards requiring accurate record keeping and information exchange:**
  The National Standards for Out-of-Home Care (FaHCSIA, 2011) should incorporate the use of a genogram and accurate record keeping of family members for all children and young people in care. To enhance information exchange, records must include the location of siblings and the agency they are managed by. This standard should also be incorporated into the Out-of-home care accreditation process administered by the NSW Office of the Children's Guardian. The *ChildStory* and *Patchwork* system should also be used to connect carers and caseworkers who care for sibling groups. This new technology should be made accessible to carers and all out-of-home care caseworkers to facilitate sibling contact and information exchange.
- **Train and monitor carers to facilitate sibling contact for children and young people:**
  It is noteworthy that carers are just as important in facilitating family contact as caseworkers (O'Neill, 2004; Sen & Broadhurst, 2010). Carer recruitment and training must stress the importance of contact with siblings for children and young people in care. The accreditation and monitoring of carers as well as recruitment agencies should include the recognition and facilitation of sibling contact as a measure.
- **Continued monitoring of out-of-home care providers on facilitation of sibling contact:**
  Agencies need to facilitate sibling contact and review this process throughout a young person's life in care. This is sorely needed for children and young people whose siblings are not in care. Contact needs to respect children and young people's wishes and be monitored. Sibling contact must be reviewed regularly as the needs, wishes and circumstances of children and their siblings may change. This process must be audited as part of the accreditation process administered by the NSW Office of the Children's Guardian.
- **Designate funding to empower children and young people to maintain sibling contact:**
  Designate funding to agencies to empower children and young people with means to maintain sibling contact. Potential means include: cost effective mobile phone plans or prepaid SIM cards which allow for phone contact as well as internet access for the use of Skype and Facebook, particularly when siblings are placed in different states, towns or cities. A function may be incorporated into the *ChildStory* system which clearly shows children and young people the location and contact details of their siblings.
- **Increase funding to resource agencies to facilitate sibling contact:**
  Increase funding which can be used as brokerage to assist in paying for travel, buying vehicles large enough to transport families, sending siblings to holiday camps and organising outings. Increasing caseworker assistant positions to facilitate sibling contact can also enhance staff capacity and address time constraints and staff shortage.

Children and young people's participation in their entry into care and access to information

Children and young people's involvement in case planning is one of the measures identified within Standard 4 of the National Standards for Out-of-Home Care (FaHCSIA, 2010). CREATE's 2013 survey with young people revealed that only a third of the sample knew about the existence of a care plan.

14% knew very little about why they were in care and of all cultural groups, Indigenous children and young people were the least informed (McDowall, 2013).

The lack of involvement of children and young people during their entry into care was further confirmed by CREATE's 2015 consultation with 28 young people in New South Wales. Alarmingly, all participants indicated that they were not involved, had very little understanding of the court process and found the care plan to be inaccessible (CREATE Foundation, 2015e).

Reimer (2010) argues that knowledge of family history and an understanding of why change is happening in their lives are critical to young people's sense of identity as it provides a framework for making sense of their world. Bernheimer and Weisner (2007) assert that not having such insights can lead to significant deficits. This is evident in the consistent feedback CREATE has received from children and young people where they express great distress and confusion due to their lack of involvement in their care plans and barriers to vital information:

> *"I want to know why I'm in care… I have these small memories of being with people but didn't know whether it was a dream or real…" (Female, 15 years)* (CREATE Foundation, 2015e)

> *"There's no definite thing in the file that said why I'm out of my parent's care. All my carers have said different things about why I was taken" (Male, 13 years)* (CREATE Foundation, 2015e)

> *"Knowing my past gives me freedom…I don't want to be like my parents, I want to be the one that breaks the cycle" (Female, 16 years)*
> (CREATE Foundation, 2015d)

Of particular concern is that CREATE has heard from young people regarding the barriers they faced when they attempted to be more involved and better informed in their care history as they grew older. Young people have told CREATE that it is not uncommon to be told conflicting stories of their past, to be unaware of their right to access their care plan and to experience significant time delays –up to 18 months in some instances- in accessing their files.

Recommendations

CREATE believes that children and young people have the right to be involved from the very beginning of their entry into care and to have access to information about their past. This is commensurate with recommendation 5 from the 2014 Senate Community Affairs References Committee Inquiry into Out-of-Home Care (Senate Community Affairs Committee Secretariat, 2015) which calls for '*the Coalition of Australian Governments to include in the third action plan (2015-2018) of the National Framework a project to improve participation by children and young people in decision making processes, including entry into care*'.

CREATE recommends the following to ensure such participation:

- **Establish a child-friendly version of the care plan and allocate legal aid to maximise participation for children and young people during entry into care:**
  A child-friendly version of the care plan document should be developed to assist young people to understand their care plan so that it is meaningful and accessible. Children's legal aid services and youth solicitors can be allocated to work with caseworkers at the Children's Court to ensure children and young people receive clear explanations of court processes, legal proceedings and how they can be involved in decisions regarding their entry into care.
- **Use the *ChildStory* system or new technology to enhance transparency and access to information for children and young people:**

The *ChildStory* system is designed as an information sharing platform between caseworkers, carers and children and young people. Age appropriate information about family history, reasons for being placed in care and a copy of the care plan should be uploaded to allow children and young people access to vital information. This system should be made available to all children and young people in care to cultivate a culture of transparency and knowledge of their rights.

- **Increase funding and resources for staffing to expedite access to files**
  Increased funding to increase staff positions to expedite the processing of files to be released to children and young people, with appropriate trauma-informed support for the young person who is accessing their file.

Leaving Care

Young people leaving care are among the most vulnerable groups of people in our society. Research unequivocally shows that young people leaving care experience significantly reduced life outcomes compared to their peers who do not have a care history. Young people leaving care are:

- *More likely to be homeless:* 35% of care leavers become homeless in the first year of leaving care (McDowall, 2009). CREATE's recent consultation with 22 young people in rural New South Wales found that half of those (aged 18-23 n=14) who left care exited into homelessness or were forced to couch-surf, stay in youth refuges and other types of emergency accommodation (CREATE, 2016a).
- *More likely to be involved in the juvenile justice system:* Young people with a care background are more likely to be incarcerated and appear before the Children's Court (McFarlane, 2010). CREATE's 2009 survey of 471 care leavers found that 46% of boys were involved in the juvenile justice system (McDowall, 2009).
- *Less likely to be employed:* 29% of 471 care leavers CREATE surveyed were unemployed compared to the national average of 9.7% (McDowall, 2009).
- *More likely to be young parents:* 29% of the 471 care leavers CREATE surveyed were already parents themselves (McDowall, 2009).
- *Less likely to have completed year 12:* Only 35% of the 471 care leavers surveyed by CREATE had completed year 12 at the time of exiting care, compared to the general population (McDowall, 2009).

CREATE's extensive consultation with young people revealed that a number of gaps in the out-of-home care system place care leavers at a significant disadvantage. These include:

- *Poor planning:* CREATE's 2013 Report Card found that only 67% of the 325 respondents aged 15-17 were aware of having a formal leaving care plan and only 47% claimed to be involved in its preparation (McDowall, 2013). Young people have told CREATE that it is common for leaving care plans to be rushed, incomplete or only started a few months before they exited care (CREATE Foundation, 2016b; 2016c) .
- *Lack of consistent and intensive support:* Young people have consistently informed CREATE that they do not feel adequately equipped for independent living. Young people cited high staff turnover, staff unavailability and not having practical support for the development of life-skills and future planning as the most significant barriers (CREATE, 2016a; CREATE, 2016b; CREATE Foundation , 2016c)
- *Leaving care age not commensurate with capacity for independent living:* Without exception, all young people who consulted with CREATE expressed the need to raise the leaving care age. Young people told CREATE of the extreme anxiety associated with the "unrealistic pressure to grow up fast and to make decisions" about their future without the benefit of parental guidance, financial support and ongoing assistance afforded to their peers without a care history (CREATE, 2016b; CREATE 2016b; CREATE Foundation, 2016c).
- *Inadequate financial support:* Financial independence is one of the most commonly cited concerns from young people (CREATE 2016a; CREATE 2016b; McDowall, 2013). Young people

have told CREATE that the Transition to Independence Allowance (TILA) is insufficient to meet their needs and difficult to access.

- *Lack of alternate education and employment pathways:* Feedback from many young people to CREATE indicate that there is a lack of education and employment pathways which take into account the complex challenges they face such as: a history of disrupted schooling, past criminal records, ongoing mental health issues, financial hardship, lack of social support and unstable housing.
- *Lack of housing options:* CREATE's recent consultation (2016a) with 22 young people regarding their experiences of securing housing revealed that they faced discrimination and financial barriers in entering the private rental market and encountered a shortage of emergency or transitional housing.
- *Lack of ongoing support:* CREATE has spoken with young people who discussed the disadvantages care leavers often face regarding the complexities of reuniting with their birth families, lack of stable friendship and lack of stable relationships with trusted adults due to their care history. These factors were identified by young people as having significant impact on their mental health and sense of safety as they exited care.

Recommendations

Section 165 of *the Children and Young Persons (Care and Protection) Act 1998* allows the Minister to provide assistance for children and young persons of or above 15 years who leave statutory out-of-home care until they reach the age of 25 years, to ensure their safety, welfare and wellbeing. CREATE supports Recommendation 20 of the 2014 Senate Community Affairs References Committee Inquiry into Out-of-Home Care (Commonwealth of Australia, 2015) and the Signatory Actions of the National Framework for Protecting Australia's Children 2009-2010 (FaCHSIA, 2009) which call for improving such assistance to care leavers.

CREATE recommends:

- **Extend statutory responsibility to young people who exit out-of-home care to 25 years of age:** Commensurate with Signatory Action 2.1.4 of the National Framework for Protecting Australia's Children 2009-2010 (Commonwealth of Australia, 2009), extend statutory responsibility to young people in care. Consider amending Section 3 of the *Children and Young Persons (Care and Protection) Act 1988* which currently defines "young person" as a person who is aged 16 to 18 years, to 25 years.
- **Increase Transition to Independent Living Allowance (TILA) amount and financial assistance:** Increase the TILA amount and after care funding to take into account the costs of living. Revise procedures for accessing entitlements in leaving care plans to diminish administrative barriers.
- **Improve leaving care planning:** Ensure rigorous monitoring of out-of-home care agencies for the development and endorsement of high quality leaving care plans as part of the accreditation administered by the Office of the Children's Guardian. As mandated by Standard 13 of the National Framework for Out-of-Home Care (FaHCSIA, 2011), leaving care plans should commence at age 15, be done in partnership with the young person. Leaving Care Plans should also be comprehensive and sufficient and need to be flexible and accessible to reflect the changing needs of the young person as they mature.
- **Improve staff capacity for intensive support and effective casework to young people 15 years and over:** Address high staff turnover and increase caseworker assistant positions to improve current staffing, resources and time constraints.
- **Expand programs and policies which support gradual transition to independence:** Increase funding to out-of-home care agencies to provide more supported independent living programs. Expand the trials currently being developed by the Federal Government which provide place-based intensive case management and personal advisors for up to 3 years to assist care leavers to gain skills for independent living (NCCSW, 2016). Consider extending carer payments until the age of 21 years to allow sufficient time to adjust to adulthood.

- **Priority access and support to attend and sustain higher education:** Extend fee-free programs, equity access, campus accommodation, subsidies, and scholarship places for care leavers for all higher education pathways. Such initiatives are already successfully operating at the University of Newcastle, Western Sydney University and TAFE. Family and Community Services should also partner with educational institutions and the private sector to prioritise access to apprenticeships, training programs and employment schemes for care leavers.
- **Access and support for securing housing:** Include exit from out-of-home care as a criteria on the eligibility for priority social housing list. Increase funding to establish crisis accommodation catering specifically for care leavers or establish co-op housing dedicated to young people exiting out-of-home care. The current *2015-2017 National Partnership Agreement on Homelessless* (Department of Social Services , 2015) which gives priority funding to frontline services focusing on homeless youth should be extended to prioritise young people leaving out-of-home care. Make careleavers a priority group in the *Youth Private Rental Scheme* and *Rent Choice* scheme, which provides financial assistance to maintain tenancy in the private rental market.
- **Sustained funding for after care services:** Increase and sustain funding for after care services. In the absence of parental support and stable relationships, intensive ongoing casework is critical to support the complex needs of young people who have been in care.
- **Priority access to government services through a corporate parenting model:** Consider implementing a corporate parenting model similar to the UK, to introduce shared responsibilities between education, health, housing, juvenile justice and the private sector to provide care leavers with the same support as typically experienced by their peers not in care. This model considers a whole-of-government approach to recognising and prioritising the needs of care leavers.
- **Ongoing support:** Implement a mentoring scheme for young people who have transitioned to independent housing to gain advice and expand support networks.

Children and Young People with Disability in Out-of-Home Care

Children and young people with disability in out of home care are widely recognised as a particularly vulnerable group in the care system. However, despite this, there are various barriers in identifying those children and young people in care with a disability and in efficiently delivering services to those young people for a range of reasons.

Figures reporting the percentage of children and young people in care with disability vary significantly and are not consistently collected throughout all jurisdictions in Australia. However, the most recent, and conservative assessment of the number of children and young people with disability demonstrates that 14% of the out of care population nation-wide experience disability, which alarmingly is double the rate of children and young people with disability in the general population (7.3 %) (Australian Bureau of Statistics, 2011; Children with Disability Australia, 2015; Australian Child Rights Taskforce, 2016). Not surprisingly therefore, anecdotal evidence contributes to the general consensus in Australia, the United Kingdom and the United States of America, that children and young people with disability are vastly overrepresented in the respective care systems (CREATE, 2012; Cross, Kaye & Ratnofsky, 1992; Miller, 2003; Nathanson & Tzioumi, 2007; National Council on Disability, 2008; Rosenberg & Robinson, 2004; Scherr, 2007; United Cerebral Palsy & Children's Rights, 2006).

Moreover, the available data and anecdotal evidence also suggests that children of parents with disability are also disproportionately represented in the care system and that children with disability are sometimes regarded as a 'risk-factor in family breakdown' (CREATE, 2012; Standing Committee on Social Issues, 2002; Llewellyn et al, 2003; Frohmader, 2009; Australian Child Rights Taskforce, 2016). Such discrimination against children and families experiencing disability is of key concern and calls for additional support to be provided to those families experiencing such additional stressors.

The inconsistency of data regarding children and young people in care with disability, indicates another barrier in providing appropriate services to this vulnerable group of the population. It is widely agreed that there is a significant gap in the literature in identifying the figures of children and young people in care with disability (CREATE 2012; Miller, 2003; Nathonson & Tzioumi, 2007; Tarren-Sweeney & Hazell, 2006; United Cerebral Palsy & Children's Rights, 2006). CREATE, together with other commentators, have pointed to the inaccuracy of a definition of "disability" as one of the key reasons for such a gap in data collection and in research (CREATE, 2012; Osborn & Delfabbro, 2005; Wallis Group, 1996).

In NSW (as in all other jurisdictions in Australia), there is no consistent definition of "disability". NSW Legislation has, until recently, adopted a more traditional understanding of disability (Osborn & Delfabbro, 2005; Wallis Group, 1996). That is, as an intellectual, psychiatric, sensory or physical impairment that is or likely to be permanent (Disability Services Act 1993 (NSW, s 5; CREATE, 2012). The NSW Disability Inclusion Act 2014 and the implementation of the National Disability Insurance Scheme (NDIS) is a welcome amendment to this traditional approach, however, it also provides NSW with new challenges in providing timely, inclusive and effective services to children and young people in care with disability (CRPD, UN General Assembly, 2007; CREATE, 2012; Department of Family and Community Services (FACS) 2014).

Under the NSW Disability Inclusion Act 2014, the definition of disability is based closely on the understanding of disability within the Convention on the Rights of Persons with Disability. This definition recognises that disability results from barriers to equal and effective participation in society (FACS, 2014). The challenge with such a broad and inclusive definition for the out of home care sector is that it is significantly subjective and even more difficult to measure (CREATE, 2012). Even so, CREATE still urges NSW to collect more accurate data of disability based on this "social model" of disability (CREATE, 2012). This would enable the state, and other commentators, to understand the anecdotal evidence reporting a high percentage of children and young people in care with disability or in need of additional support. A clearer understanding of such data would enable services to more effectively support these young people to participate equally in the care system and in society (CREATE, 2012).

Recommendations

CREATE believes children and young people in care with disability have unique experiences in the care system and need additional support to assist them in ensuring they enjoy equal participation in society. The following recommendations adopt a rights-based approach to disability inclusion.

- **Provide more funding to independent advocacy and research bodies to undertake research to fill the significant research gap recording and analysing the percentage of children and young people with disability in the care system:** As discussed, in NSW there is little research to understand how the sector can better service children and young people with disability in care and what types of support are most beneficial to this cohort of the in-care population. Accurate and consistent research and statistical analysis is essential to deliver evidence-based support and services to families experiencing disability and to children and young people with disability in care.
- **Increase family and early-intervention support services to families experiencing disability prior to children and young people entering the care system:** Additional support to some of the most disadvantaged children and young people and their families is much needed to stem the over-representation of children and young people with disability in the care system.
- **Develop a more accurate and inclusive framework to help people with disability, their carers and workers understand and define disability within the National Disability Insurance Scheme (NDIS) context:** Using a human-rights based approach, it is critical for NSW to develop a framework for children and young people with a disability, their carers and workers to use to understand and define their disability in order to access disability support services. Under NDIS,

people with disability and their carers need to understand how their disability affects them to be able to be eligible for disability support.

- **Train caseworkers and disability sector staff on how to most effectively work with children and young people with disability in the care system:** The supported decision making approach must be embedded within the sector as well as in the NDIS framework of disability service provision. It is critical that staff know how to most effectively work with this vulnerable cohort within the care system.

Conclusion

CREATE appreciates the opportunity to provide a submission to inform the NSW Legislative Council's Inquiry into Child Protection. As with all CREATE research and reporting, this submission has been informed by the views of children and young people in care, in addition to building upon the literature throughout the sector and in academia on child protection and out of home care issues. CREATE's recommendations have been written to promote the voice of children and young people in care throughout NSW systemic reform process, and in improving various system issues to create better outcomes for children and young people in care throughout NSW.

CREATE has commented specifically on areas of the NSW child protection system which directly and indirectly affect children and young people in out-of-home care. Some key areas within the submission which the Legislative Council should address include: improving the direct participation of children and young people in placement decisions and other in-care decisions which affect their lives; actively addressing the overrepresentation of Aboriginal and Torres Strait Islander children and young people in care and providing more avenues for Aboriginal communities to control decisions which affect Aboriginal and Torres Strait Islander children; support more research into children and young people in care with disabilities and improving support to young people leaving care.

CREATE encourages the Legislative Council to contact us directly for further comment and looks forward to the result of the Inquiry.

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