



ACT Children & Young People
Death Review Committee

Response prepared for the
Justice and Community Safety Directorate

REVIEW OF CHILD PROTECTION DECISIONS IN THE ACT

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About the Children and Young People Death Review Committee

The ACT Children and Young People Death Review Committee is established under the *Children and Young People Act 2008* to work towards reducing the number of deaths of ACT children and young people. The committee reports to the Minister for Children and Young People.

The legislation sets out the requirement for the committee members to have experience and expertise in a number of different areas, including paediatrics, education, social work, child safety products and working with Aboriginal and Torres Strait Islander children and young people.

The committee aims to find out what can be learnt from a child's or young person's death to help prevent similar deaths from happening in the future.

To assist with this aim, we keep a register of all the deaths of ACT children and young people who die before they turn 18 and use the information on the register to learn more about why children and young people die in the ACT.

We can make recommendations about changes to legislation, policies, practices and services to both government and non-government organisations.

The committee does not investigate or determine the cause of death of a particular child or young person. We do not place blame or seek to identify underperformance but seeks to help raise awareness or to spread prevention messages among professionals and in the broader community.

The committee is keen to receive advice and feedback from interested ACT community members

Introduction

The ACT Children and Young People Death Review Committee (the Committee) is pleased to have the opportunity to make a submission to the Justice and Community Safety Directorate (JACS) on the review of Child Protection Decisions in the ACT. The Committee was established in 2012 and over this time has developed considerable expertise in working within the ACT and in the national forums to prevent and reduce the likelihood of death for children and young people. The Committee continues to undertake work to improve systems intended to support children, young people and their families and to work collaboratively towards national and international reporting.

The ACT is a small jurisdiction and is fortunate that a relatively small number of deaths of children and young people occur each year. As you are aware, similarly, the ACT experiences fewer deaths per year of children and young people engaged in the child protection system compared with other jurisdictions. Nevertheless, every death of a child, young person or adult is a tragedy and made all the worse when the death was preventable. Anything that can be done to stop such deaths is, in the Committee's view, extremely worthwhile.

The submission addresses the pertinent issues raised in the consultation paper, and our responses are drawn from the expansive expertise that make up the committee membership. The Chair of the Committee Ms Margaret Carmody, Deputy Chair, Mr Eric Chalmers, and Committee members, Professor Morag McArthur, Dr Judith Bragg and Dr Sue Packer provided information at a face-to-face consultation on 18 June 2019. This submission reflects the issues raised at this time.

Our response is also provided in light of a review that the Committee undertook in 2018. The Committee reviewed the deaths of 11 children aged 0-3 years and a key issue identified across the files of children engaged in CYPS was the lack of justification regarding decisions made by CYPS. Recommendation 18 of the report states that 'the Community Services Directorate review quality assurance systems to ensure client documents are complete, information is recorded fully and accurately and that assessments are documented in a manner that records the justification of decisions made by professionals in regard to the safety of the child'.

In response to the Discussion Points

The following section sets out the Committee responses to the five discussion points noted in the discussion paper.

1. WHAT PRINCIPLES SHOULD UNDERPIN ANY FUTURE DECISION REVIEW PROCESS?

The Committee is in agreement that any decision review process must regard the best interests of the child or young person as the paramount consideration. This principle reflects Article 3 of the Convention on the Rights of the Child.

The Committee further contend that the timeliness of any review process is critical to ensure that decisions are made as early as possible. Decision review processes need to ensure that critical time frames in childhood and adolescence are taken into account (including the developmental needs of children and young people). Children and young people should be informed as soon as possible, in clear and appropriate language, preferably same day of legal and administrative decisions which affect them.

The participation of children and young people is also critical and the Committee emphasise the need for children and young people to be provided with appropriate opportunities to participate in decisions that affect them, including being provided with information about decision review processes and how to make complaints in clear and appropriate language. There are a number of models currently in existence such as that used by the Family Court and that of assisted communication in the New Zealand Child Protection System.

The Committee further highlight that transparency is an important principle that should underpin all decisions. The justification for decisions about children and young people needs to be well documented and those involved or who are affected by such processes need to be kept informed at all stages.

The Committee further contends that the principle of accessibility is critical for any review process to be successful. Decision makers need to actively advertise and promote the process of review in all communication and correspondence.

Further, any review mechanism must be modelled on principles of fairness, responsiveness, efficiency and cultural awareness.

2. HOW CAN THE ACCESSIBILITY OF INTERNAL MERITS REVIEW INFORMATION BE IMPROVED?

The Committee note that improvement of the internal merits review could be made in two key ways. The first is to ensure that all staff working with children and young people know about and use appropriately, the organisational supports and mechanisms available to manage expressions of dissatisfaction as early as possible. Staff commitment at all levels is essential to identify issues and ensure effective complaint handling. This requires staff to escalate expressions of dissatisfaction in a timely way, to the appropriate levels and through the appropriate mechanisms.

An effective internal merit review also requires a workplace culture that recognises the value of complaints and for all staff to be committed to effective complaint resolution. Staff need to be supported to develop the appropriate skills and knowledge required to manage and resolve complaints. Access to good supervision and training is essential.

The second way is to improve the way complaint information is provided. CYPS and Act Together should review its current communication strategy to its clients (including but not limited to children, young people, parents, foster carers and other stakeholders) about the complaint system and how to gain access to it. Chapter 10 Section 351 of the Act sets out how the decision maker must give the relevant people sufficient information about the decision-making process, in language and a way that they can understand, to allow the child or young person, and people with parental responsibility for the child or young person to take part fully in the decision-making process.

Current complaint information that the Committee has seen such as the booklet "Feedback and raising concerns" could be improved by providing a brief summary of each section. The Committee also advises that information should be provided in numerous ways—for example, on the website, in all correspondence and through pamphlets and posters that allow non-English speaking clients and those with literacy difficulties access to information. When dealing with dissatisfied clients, staff have a responsibility to direct them to the complaint process.

Furthermore, established mechanisms that provide advocacy support services funded under the 'step up for our kids' need to be promoted to individual carers and parents to express any concerns they have and to seek support about actions and decisions by either Act Together or CYPS. Access to these services in a timely manner is important.

3: SHOULD EXISTING INTERNAL MERITS REVIEW MECHANISMS BE CODIFIED BY AMENDING THE *CHILDREN AND YOUNG PEOPLE ACT 2008*?

The Committee supports that the principles and functions of an internal merits review mechanism be codified by amending the *Children and Young people Act 2008*. When amending the legislation we recommend that the types of decisions for review are broadly described and that there is flexibility to examine, evaluate and change internal review policy and internal review requests procedures to improve best practice as necessary.

4: SHOULD THERE BE EXTERNAL REVIEW MECHANISMS FOR CERTAIN CYPS DECISIONS AND, IF SO, WOULD DECISIONS SUCH AS RESIDENCY AND CONTACT BENEFIT FROM EXTERNAL REVIEW?

The Committee emphasise the importance of resolving complaints as soon as possible and supports the strengthening of the internal merits review mechanism in the first instance.

The Committee also supports the establishment of an external review mechanism for the review of decisions that are made about children and young people and which may be cause for concern to a child or young person, parent, foster carer or other key stakeholders. This panel would exist for any matter that has not been adjudicated on by a court and for any matter that may not have been resolved through the internal review. Decisions such as residency, contact, education, health and medical information (but not limited to) would benefit from external review.

5: IF AN EXTERNAL MERITS REVIEW MECHANISM SHOULD BE IMPLEMENTED, WHAT IS THE MOST APPROPRIATE MECHANISM FOR THE ACT?

As noted in the discussion paper key factors such as timeliness, expertise and resources must be considered when forming an external merits review mechanism.

The perception and function of independence and objectivity is critical for any external review mechanism. Any external mechanism established must be a decision-making body in its own right. It must also have the capacity to review historical information as well have the powers to seek new information from individuals or entities when the panel believes on reasonable grounds that they can provide information or produce a document or something else relevant to the review.

The Committee supports the establishment of an external review panel who hold expertise regarding child protection and child development matters. A Panel would need to ensure cultural safety and be mindful of the Aboriginal and Torres Strait Islander placement principles. The Committee advises that further consultation with the Aboriginal and Torres Strait Islander community in the ACT would need to occur to determine appropriate mechanisms. Aboriginal and Torres Strait Islander children in the ACT are represented in child protection at more than 12 times the rate that they are represented in the community generally. The Our Booris Our way review are currently informing systemic improvements to child protection systems, policies and practices, including the review of decisions.