



creating a better life
for children and young
people in care

CREATE submission to the Inquiry into the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015

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About CREATE Foundation

CREATE Foundation is the national peak consumer body for children and young people with an out-of-home care experience. We represent the voices of over 43,000 children and young people currently in care, and those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential.

Our mission is to create a better life for children and young people in care.

To do this we:

- **CONNECT** children and young people to each other, CREATE and their community to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by facilitating a variety of programs and services for children and young people in care and developing policy and research to advocate for a better care system.

Introduction

CREATE Foundation thanks the Committee for the opportunity to provide input to the Inquiry into the Children, Youth and Families Amendment (Restrictions the Making of Protection Orders) Bill 2015.

CREATE welcomes the proposed amendment to section 276(1) (b) to restore proper court oversight and ability to holistically consider whether a protection order should be issued.

In addition CREATE would like to bring to the Committee's attention a few related issues for consideration. As already noted by the Hon. Edward O'Donohue, Chair of the Committee during the Committee's first public hearing - the bill before the house "...cannot be looked at in isolation of the legislative change that took place last year or indeed of the 2005 Act..." With this in mind, our submission includes the following Key Challenges in Out-Of-Home-Care for the Committee's review:

- Voices of Children and Young People
- Sibling placement and contact in out-of-home care
- Sibling carers
- Care Planning

CREATE acknowledges that this Inquiry is specifically focussed on the most recent amendment proposed by the Victorian Government. However we also note the changes under the 2014 Amendment Act will not commence until March 2016 and encourage the Committee to consider the following with a view to possibly encouraging broader amendments to further strengthen the Act in other areas to better address the interests of children and young people in out-of-home care.

Key Challenges in Out-of-Home Care

Voices of Children and Young People

CREATE believes children and young people in out-of-home-care have the best insight into how the system works and their experiences of life within the care system provide the best source of information for improving the system.

The United Nations Convention on the Rights of the Child (1989) includes a requirement that children and young people have the right to have a say in decisions that impact their lives. Australia's support for the Convention is asserted in National Standard 2 of the National Standards for Out-of-Home Care (FaHCSIA, 2012) which includes and measures whether "Children and young people participate in decisions that have impact on their lives."

The CREATE Report Card 2013 (McDowall, 2013) asked children and young people to rate how often they were able to have a say about decisions that affected their lives while in care and the extent they felt people listened to what they had to say. Differences in responses were found for Age Group, Jurisdiction and Placement Type, and as might be expected the older age group (15-17 years old) reported feeling more able to have a say than the 10-14 and the 8-9 age groups. Aboriginal and Torres Strait Islander children and young people reported more negative responses about being heard than Anglo-Australians; similarly, those in residential and other placements felt less heard than those in permanent care, kinship care, or foster care. Responses in Victoria showed 55% of children and young people felt they were listened to "quite often or all the time" in comparison to the Australian average 46% (McDowall, 2013).

Children and young people enter out-of-home care for reasons beyond their control and through no fault of their own. CREATE believes children and young people should not be considered passive participants in this process; where possible and age-appropriate, they should be engaged in decision-making from the beginning to help achieve the best possible outcomes. This includes children and young people having a say in where they are placed, with whom they want to have contact and having these and other questions asked regularly to see whether their wishes or circumstances have changed. Where appropriate children and young people should be able to seek independent advice and support to inform their decisions, particularly those about permanent placement and or adoption.

Researchers have noted a lack of children and young people's voices in legal decisions, including those before they even enter care. Evidence to the Queensland Child Protection Commission of Inquiry (2012) noted that although the principle of children being able to have a say in decisions that affect their lives is becoming more recognised in Australian policy and practice, in reality children's voices are not often heard in court and decisions are generally made for them, without their input.

For young people to have opportunity to have input to decisions that impact their lives is critical. It enables the young person to participate in the process and to hopefully influence their outcomes for the better. CREATE appreciates the 2014 Amendment Bill provides direction to include the voices and wishes of children and young people in the decision making process. We recommend that those responsible for applying the legislation are strongly encouraged to make all efforts to ensure this good practice occurs and provide evidence that this has taken place when decisions come to court.

Sibling placement and contact in out-of-home care

Children and young people require a stable environment in order to form positive attachments and trusting relationships with the significant people in their lives. This includes developing a sense of belonging within the family environment. It is the development of this secure base that enables a child to develop cognitively and emotionally.

New section 287(1) includes that a family reunification order -

- May include any condition that Court considers to be in the best interests of the child, to be reasonably capable of being carried out by each person who will be subject to the condition and will promote the reunification of the child with the child's parent (under section 287(3), this may include a condition concerning contact between the child and child's parent, or child and another person significant to the child)

CREATE believes this fails to recognise the important relationship between siblings. The National Standards for Out-of-Home Care (FaHCSIA, 2012) includes and measures whether "Children and young people are supported to safely and appropriately maintain connection with family, be they birth parents, siblings or other family members".

Children and young people in out-of-home care across Australia have told CREATE (McDowall, 2013) that living with their brothers and sisters in care is very important and that they are the people they most want to contact when they are not living together. Our latest national research, the *Sibling Placement and Contact in Out-of-Home Care* Report (McDowall, 2015) shows that less than one in three children live with all of their siblings in out-of-home care, and contact with the siblings who are not placed with them is not always regular or easily accessed. In Victoria 68% of respondents said they were separated from their siblings in some way (i.e. 43% split & 25% splintered compared with the Australian average of 36% split and 35% splintered).

Other researchers have found that keeping siblings together improves their experience in care as well as their longer term outcomes.

- Children and young people that are co-placed in care generally experience more placement stability and successful reunifications (Webster, Schlonsky, Shaw, & Brookhart, 2005)
- Children placed in intact sibling groups experienced more stability and fewer disruptions in care than those who were separated (Drapeau, Simard, Beaudry, & Charbonneau, 2000); (Leathers, 2005).
- Nurturing sibling bonds while in care can reduce the impact of some of the negative occurrences while in care, and provide valuable support well into adulthood (Herrick & Piccus, 2005)
- Family and culture, particularly for Aboriginal and Torres Strait Islander children and young people, play a pivotal role in the child's development (Moss, 2009).

CREATE believes that when siblings cannot be placed together, maintaining ongoing contact between brothers and sisters is vital and should be prioritised. Ensuring siblings are able to have regular and ongoing contact with each other should be as much a priority as ongoing contact with the parent and should be incorporated into legislation, policy and other strategies implemented in the best interests of the child.

Overall caseworkers surveyed for our *Sibling Placement and Contact in Out-of-Home Care* Report thought maintaining contact between siblings was important. However, CREATE is concerned that 20% of caseworkers found high levels of difficulty in organising sibling contact. Of the reasons given

for this difficulty, the most frequently mentioned (17% of 207 comments) concerned the location of siblings. The distance of geographic separation, particularly when interstate; also when siblings were placed with different agencies in different regions.

Young people in Victoria have expressed to CREATE how they feel about their siblings and their experience in care.

"I am happy my baby sister is with me, it makes me sad when she is not. She lives with her dad but he's not a nice man. I want my sister to live with me always so I know she is safe."
(Female, 17years)

"The workers told me I couldn't see my brother because it might upset his placement."
(Male, 19 years)

"If I didn't go into foster care with my little sisters, I think I would have gone off the rails."
(Female, 18 years)

"I was removed from a carer after her boyfriend assaulted me. My younger brother stayed there and I haven't been able to see him ever since. I don't know why the workers think it was okay or safe for my little brother to stay living in a place that was not safe for me."
(Male, 19 years)

Sibling Carers

CREATE believes that sibling relationships should also be a priority consideration in establishing a placement for a child or young person. Many young people have older siblings that may be in a position to care for them. This opportunity is often overlooked or not explored to its full potential. Siblings residing together is the most natural form of home life for children and young people that cannot reside with their parents.

Young people in care often express concern for their sibling's welfare and are protective of them, as seen in the CREATE Sibling Placement and Contact in Out of Home Care DVD – *Siblings are forever* 2015. Young people felt responsible for their younger brothers and sisters; and their younger siblings looked up to their older siblings for support. Young people desire an opportunity to develop relationships further, and keep a strong bond between their brothers and sisters. A current study underway at Melbourne University and the Centre for Excellence in Child and Family Welfare, highlights that in the UK about 38% of kinship care is with older siblings. In Victoria grandparents are the most common kinship carer, the number of current sibling carers is difficult to establish due to the way census collect's information and does not acknowledge siblings under the age of 15 (Kiraly, 2011).

Clause 18 of the 2014 Amendment Bill inserts a new section 276A into the Principal Act, which requires the Court, when deciding to make a protection order to have regard to certain matters, for the consideration of the "the arrangements in place for any siblings of the child who are under 18 years of age; and..." to CREATE recommends the inclusion ***of whether the child has any siblings over the age of 18 years.***

Clause 18 further adds "When deciding to make a protection order that has the effect of conferring parental responsibility for the child on the Secretary, section 276A(3) requires the Court to have regard to advice provided by the Secretary about – " CREATE recommends that in addition to considering the likelihood of the child's parent permanently resuming care of the child..."; ***where its***

identified that the parent is unable to resume care of the child, that consideration of siblings aged over 18 years assume care of the child in lieu of an able parent.

Care Planning

CREATE notes and welcomes the inclusion of care planning in the 2014 Amendment Bill. CREATE Report Card 2013 (McDowall, 2013) showed that less than one third of respondents knew anything about their “care plans” and only one third of those who knew about a plan knew something of its contents and had been involved in its preparation. In Victoria, 35% of young people knew about their plan and 29 % were “Quite” or “Very” involved in development of their plan but only 16% were “Quite” or “Very” satisfied with the final product.

CREATE believes involving children and young people in their case planning, including the development of care plans, is necessary to improve the participation of children and young people in the important decisions that affect their lives.

Conclusion

CREATE notes that this Inquiry is specifically focussed on the most recent amendment proposed by the Victorian Government, however we also note the changes under the 2014 Amendment Bill will not commence until March 2016.

CREATE urges the Committee to consider the issues raised in this submission, specifically the:

- Inclusion and documentation of children and young people’s voices in the decision making processes; and the
- Recognition of the importance of the importance of sibling relationships with the inclusion and consideration of siblings in care orders under section 276A and 276A (3).

CREATE encourages the Government to further amend the Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014 before commencement of the changes next year, to consolidate the important work already done.

For any questions about this submission or to clarify points raised please contact CREATE State Coordinator Cathy Carnovale on 03 9918 0002 or email cathy.carnovale@create.org.au

References

- AIHW. (2015). *Child protection Australia: 2013–14. Child Welfare series no. 61. Cat. no. CWS 52.* Canberra: Australian Institute of Health and Welfare.
- CREATE. (2012). *Be Heard Northern Territory: Feedback from children and young people about their experiences in out-of-home care in the Darwin and Alice Springs regions.* Darwin: CREATE Foundation.
- Drapeau, S., Simard, M., Beaudry, M., & Charbonneau, C. (2000). Siblings in family transitions. *Family Relations*, pp. 77-85.
- FaHCSIA. (2012). *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009 - 2020.* Canberra: Commonwealth Government .
- Forde Inquiry. (1999). *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions.* Brisbane: Queensland Government.
- Herrick, M. A., & Piccus, W. (2005). Sibling connections: the importance of nurturing sibling bonds in the foster care system. *Children and Youth Services Review*, pp. 845 - 861.
- Kiraly, M. (2011). <http://www.cfecfw.asn.au/news/2014/08/research-evidence-symposium-oct-2014>. Retrieved from <http://www.cfecfw.asn.au>: <http://www.cfecfw.asn.au/sites/default/files/Kith%20&%20Kin%20Care%20-%20CFECFW%20Ozchild%20UoM.pdf>
- Leathers, S. J. (2005). Separation from siblings: Associations with placement adaptation and outcomes among adolescents in long term foster care. . *Children and Youth Services Review*, pp. 793-819.
- McDowall, J. (2013). *Experiencing out-of-home-care in Australia: The views of children and young people* . Sydney : CREATE Foundation .
- McDowall, J. (2015). *Sibling Placement and Contact in Out-of-Home Care* . Sydney : CREATE Foundation .
- Moss, M. (2009). Broke Circles to a different identity: An exploration of identity for children in out-of-home care in Queensland, Australia. *Child & Family Social Work* , pp. 311-321.
- Webster, D., Schlonsky, A., Shaw, T., & Brookhart, M. A. (2005). The ties that bind II : Reunification for siblings in out-of-home care using a statistical technique for examining non-independent observations. *Children and Youth Services Review*, pp. 765 - 782.