



Review of the *Children and Young People (Safety) Act 2017*

Discussion Paper

Building the South Australian
child protection system for the future



Government of South Australia
Department for Child Protection



Acknowledgment of Country

Aboriginal people have made and continue to make a unique and irreplaceable contribution to the state of South Australia.

The South Australian Government acknowledges and respects Aboriginal people as the state's First People and Nations, and recognises Aboriginal people as Traditional Owners and occupants of South Australian Land and Waters.

The South Australian Government acknowledges that the spiritual, social, cultural and economic practices of Aboriginal people come from their Traditional Lands and Waters, and that Aboriginal people maintain cultural and heritage beliefs, languages and laws which are of ongoing importance today.





A message from the Minister

Every South Australian child deserves to be safe, cared for and loved.

In progressing this vision, families, communities, whole of sector and whole of government must work together.

Our government is committed to exploring how we can collectively do more to keep children in our community safe and ensure the child protection system meets community need and expectations, now and into the future.

As Minister for Child Protection, I am viscerally determined to make change that genuinely improves the lives of children and young people. No one person can do this alone but together, we can.

Our community is facing many challenges that impact children's safety. Our state's child protection system fulfills an incredibly important role, from providing support to families and communities through to protecting and caring for children. This is challenging and complex work that inherently carries risk, and all jurisdictions across Australia are experiencing increasing pressures and demand.

Child protection work is undertaken in an environment where many families face deeply interconnected issues – domestic and family violence, poverty, intergenerational and complex trauma, mental ill-health, substance misuse.

Need is increasing, with approximately one in three children in South Australia the subject of a child protection notification at some point during their childhood. There are a range of interconnected and complex issues faced by families that result in contact with the child protection system, particularly the impact of domestic and family violence, drug and alcohol misuse, poverty and unemployment.

With community need and expectation high, our child protection system has been the subject of numerous reviews and inquiries. Over and over, these have affirmed that the system is grappling with very serious issues and that change is needed.

The recent State Budget included a range of important investments to address immediate need including:

- \$128.9m additional funding over 5 years to fund the cost of caring for children and young people who have entered care
- Additional supports for young people transitioning from care (\$3.2m)
- Advocacy services for children and young people and carers (\$0.8m)
- Reinstated funding for the Child and Young Person's Visitor with \$1.9m.

We know there is more to do.

Looking to the future, we know that a radical rethink is needed on how governments and communities can collectively keep children safe now and for generations to come. We need transformational change. This calls for us to be bold and immensely innovative in our actions.

The scheduled review of the *Children and Young People (Safety) Act 2017* provides a critical opportunity to rigorously examine and improve the central legislative framework through which South Australia's child protection system operates. It is the opportunity to re-define what our child protection responses look like going forward, to deliver on our commitments to Aboriginal children and young people, and to make sure we have the legal settings in place that reflect community values and expectations.

In undertaking this review, I am deeply committed to listening to the voices of children, young people, families, carers, those who work in the sector, and our communities, and to finding new solutions together.

I welcome your participation in this important conversation and to progressing change with you.

Thank you for your input.



Hon Katrine Hildyard MP
Minister for Child Protection



CONTENTS

REVIEW OF THE <i>CHILDREN AND YOUNG PEOPLE (SAFETY) ACT 2017</i>	6
The consultation process	7
The review approach	7
Next steps	8
SOUTH AUSTRALIA'S CHILD PROTECTION LEGISLATION: A TIMELINE	9
DISCUSSION	10
Embedding the Aboriginal and Torres Strait Islander Child Placement Principle	10
What are active efforts?	11
Enabling self-determination and the exercise of legislative authority	12
Legislating Aboriginal Family-Led Decision-Making	12
Getting the settings right	13
Priorities and principles to guide decision-making	13
Responsibility for children and young people	14
Thresholds for reporting and response	15
Children at the centre	16
Participation	16
Timely decision-making	16
Ensuring access to supports	17
Supporting our partners	18
Kinship and Foster Carers	18
NGO Service providers	19
Reunification approaches	19
ANYTHING ELSE?	20



REVIEW OF THE *CHILDREN AND YOUNG PEOPLE (SAFETY) ACT 2017*

The *Children and Young People (Safety) Act (SA) 2017* (CYPs Act) commenced in two parts in 2018 to provide a new legislative framework for the child protection system in South Australia. This new Act was part of the State Government's response to recommendations made by the Child Protection Systems Royal Commission (referred to as the Nyland Royal Commission) and incorporated key coronial recommendations.

The CYPs Act introduced a child-focused legislative framework with a greater emphasis on safety. The new framework enabled multiple agencies to respond to screened-in notifications through specific pathways. It sought to increase the participation of families and carers while making sure children and young people were at the centre of decision-making.

The CYPs Act states that the Government must review the legislation and produce a report about what it finds before the fifth anniversary of the commencement of the Act. Based on these dates, the review report is due before 26 February 2023, which is five years after phase one of the Act commenced.

The consultation process

As part of this review, the Government has committed to widely consult. We want to hear from as many people as possible and we will be doing our best to ensure the consultation process is inclusive and accessible.

We will be supporting consultations in both metropolitan and regional locations across South Australia. In addition, we will support targeted forums for key groups of stakeholders including children and young people, carers, and across government partners. We will also support targeted consultations to hear directly from Aboriginal community members, leaders and representatives from Aboriginal organisations.

Through the consultation, we want to hear about your experience with the CYPs Act, your ideas about what is working well and how this legislation could be improved.

To help prompt your feedback, we have put together this Discussion Paper. This Discussion Paper is based on previous submissions made by stakeholders in relation to the CYPs Act and highlights areas for potential reform. It is intended as a starting point as you think about the key areas for review. You are welcome to provide your suggestions in relation to any aspect of the CYPs Act.

There are a number of ways you can have your say, including:



taking our survey via yoursay.sa.gov.au/cypsactreview



sending a written submission by email to:
DCPCYPsActReview@sa.gov.au



posting a written submission to:
**CYPs Act Review, Department for Child Protection,
GPO Box 1072, Adelaide SA 5001**



registering to attend a regional or metropolitan consultation
(see yoursay.sa.gov.au/cypsactreview to register)

If you need assistance engaging with this consultation, please get in touch using the above contact details.

The review approach

This review will be informed by:

- the evidence about best practice and what works
- exemplars from other jurisdictions
- previous submissions made in relation to the CYPs Act since its commencement
- opportunities to review and streamline related legislative frameworks including relevant provisions of the *Families and Communities Services Act 1972*
- opportunities to remedy minor technical, grammatical and/or definitional issues.

Note regarding language

In accordance with the South Australian Government protocol, this discussion paper uses the term 'Aboriginal' to refer to people who identify as Aboriginal, Torres Strait Islander, or both Aboriginal and Torres Strait Islander.

This review will also be informed by the outcomes of the following:

- the inquiry into foster and kinship care under section 169A of the CYPs Act, which is being led by Dr Fiona Arney and anticipated to be received by the Government in September 2022
- the external review of all coronial and other recommendations relating to child protection in South Australia, which is being led by Kate Alexander and anticipated to be received by the Government in November 2022
- the Inquiry into the application of the Aboriginal and Torres Strait Islander Child Placement Principle led by the Commissioner for Aboriginal Children and Young People, Ms April Lawrie, with interim findings anticipated to be received by the Government to inform this review
- the independent review led by former South Australian Police Commissioner Mr Malcolm Hyde AO.

Next steps

- A report on this review of the CYPs Act will be prepared for the Minister for Child Protection by 26 February 2023.
- The final report is expected to be tabled in Parliament in March 2023. The report will recommend changes to the current legislation for the consideration of the State Government.
- Depending on the report recommendations, the State Government will decide whether to pursue changes to the law and what changes it will propose.
- If the State Government decide to reform the law, consultation will be undertaken on a draft amendment bill.



SOUTH AUSTRALIA'S CHILD PROTECTION LEGISLATION: TIMELINE

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- A vertical timeline on the right side of the page, with a dotted line running down the center. To the left of the line are dates, and to the right are descriptions of events. Each date is preceded by a small circle. The 'NOW' entry at the bottom has a filled blue circle, while all others are empty.
- Aug 2016** ○ The Child Protection Systems Royal Commission delivered its report, *The Life They Deserve*, to the Government of South Australia. The report included 260 recommendations, 256 of which were accepted by the government at the time. A number of recommendations were made regarding the *Children's Protection Act 1993*.
 - Nov 2016** ○ The Department for Child Protection (DCP) is established as a standalone department.
 - Feb 2017** ○ The *Children and Young People (Safety) Act 2017* is introduced into Parliament.
 - May 2017** ○ DCP signs the **Family Matters Statement of Commitment**.
 - July 2017** ○ The *Children and Young People (Safety) Act 2017* is passed by the SA Parliament and assented to by the Governor of South Australia.
 - Feb 2018** ○ Phase 1 of the *Children and Young People (Safety) Act 2017* commences.
 - Oct 2018** ○ Phase 2 of the *Children and Young People (Safety) Act 2017* commences.
 - Jul 2019** ○ The *Children's Protection Act 1993* is repealed.
 - Dec 2019** ○ The 3-year whole of government child protection strategy, *Safe and Well*, is released, consolidating reporting on Royal Commission recommendations.
 - Dec 2019** ○ The inaugural DCP Practice Approach and Manual of Practice are published.
 - Jan 2020** ○ Release of *Every effort for every child: South Australia's strategy for children and young people in care 2020-23*.
 - Jun 2020** ○ The **Statement of Commitment to SA foster and kinship carers** is released.
 - Jul 2021** ○ The **DCP Child and Youth Engagement Strategy** is launched.
 - Dec 2021** ○ Commonwealth, state and territory governments jointly release *Safe and Supported: the National Framework for Protecting Australia's Children 2021-31*.
 - Sep 2022** ○ Commonwealth, state and territory governments finalise work with SNAICC and the Aboriginal Leadership Group to develop two 5-year Aboriginal Action Plans as part of the *Safe and Supported* framework.
 - NOW** ● Consultation underway to inform the review of the *Children and Young People (Safety) Act 2017*.



DISCUSSION

This discussion paper includes information about a number of key issues that are being considered as part of the review of the CYPs Act. Discussion points are included after each key issue to assist you in providing feedback.

Your submission can include *any* areas of the Act that you consider to be working well, and any suggestions you have about potential changes to the legislation. You are not limited to the topics outlined here.

If you prefer, a feedback survey based on this discussion paper is also available on yoursay.sa.gov.au/cypsactreview.

Embedding the Aboriginal and Torres Strait Islander Child Placement Principle

The Child Placement Principle was developed nearly forty years ago to address the growing rate of over-representation of Aboriginal children in care. It aims to change the way child protection systems value culture and embed the right of Aboriginal people to be part of decision-making about Aboriginal children and young people's care and protection.



The Principle includes five elements - **prevention, partnership, placement, participation and connection** – with an additional first step of **identification**, or making sure government recognises Aboriginal children as Aboriginal at first contact with the child protection sector (and continuously from that point on).

All Australian jurisdictions have agreed that more needs to be done to fully embed the Principle in legislation as part of efforts to reduce the over-representation of Aboriginal children and young people in care. The commitment to meet this challenge is contained in Target 12 of the recently refreshed National Agreement on Closing the Gap. The achievement of Target 12 is the key focus of the Aboriginal and Torres Strait Islander Action Plan under the *Safe and Supported: the National Framework for Protecting Australia's Children 2021-23*. Safe and Supported and its Action Plans embed the State Government's commitment to legislative reform that will:

- implement the Child Placement Principle to the standard of **active efforts**
- **enable self-determination** and the **exercise of legislative authority** by Aboriginal people, communities and organisations.

What are active efforts?

Active efforts are described as '**purposeful, thorough and timely efforts that are supported by legislation and policy**'. [SNAICC – National Voice for Our Children](#) has developed a comprehensive resource that describes what active efforts might look like in legislation. Examples include:

- setting minimum requirements for the identification of Aboriginal children and young people, to occur at least by the completion of any investigation
- setting minimum requirements for the provision of family preservation and reunification supports
- providing every Aboriginal family with the opportunity to participate in Aboriginal Family-Led Decision-Making, including Family Group Conferencing
- requiring an independent representative of Aboriginal Community Controlled Organisations (ACCOs), or other recognised Aboriginal entities, to participate in all significant decisions about Aboriginal children
- requiring decision-makers to fully investigate all placement options at each level of the placement hierarchy (and to periodically review lower-priority placements for opportunities to reconnect with a higher-priority placement)
- requiring Aboriginal service providers to be resourced in proportion to the level of over-representation of Aboriginal children and young people in care
- requiring cultural care plans developed with the input of the child and family.

Questions

1. Do you support the Aboriginal and Torres Strait Islander Child Placement Principle being embedded in the legislation to the standard of active efforts?
2. Looking at the different examples, what changes can we make throughout the legislation to demonstrate the commitment to active efforts?
3. Should the legislation require that all government agencies make active efforts to support Aboriginal children and young people?
4. Should the legislation include the model of active efforts for all children and young people engaged with child protection?

Enabling self-determination and the exercise of legislative authority

The CYPS Act currently establishes an authority for the Chief Executive of the Department for Child Protection to undertake intervention, care and protection activities for children and young people.

The South Australian Government has committed to work with Aboriginal people and stakeholders to delegate legislative authority to recognised Aboriginal entities (e.g. ACCOs), and to enable the exercise of self-determination by Aboriginal people in child protection.

Some jurisdictions have already taken steps to embed self-determination as a principle and to enable the exercise of child protection legislative authority by Aboriginal people. This includes the delegation of guardianship, investigation and case management functions.



Questions

5. Should the CYPS Act explicitly recognise Aboriginal children's and families' right to self-determination and cultural authority?
6. Do you support legislative reform that will explicitly provide for the progressive delegation of legislative functions to recognised Aboriginal entities?
7. More broadly, what roles and functions could recognised Aboriginal entities hold under the legislation?

Legislating Aboriginal Family-Led Decision-Making

We believe that Aboriginal Family-Led Decision-Making (AFLDM) is a critical element of improved child protection decision-making and supporting safety within a child or young person's own family, community and culture. The Department for Child Protection has an AFLDM policy in place, which is supported by practice guidance. As part of this review, we are investigating whether to explicitly embed AFLDM in the legislation and how we can better ensure that the voices of Aboriginal children, young people, their families and communities are heard and acted upon.

Questions

8. Should the CYPS Act embed the commitment to Aboriginal Family-Led Decision-Making?
9. Should the CYPS Act require that all Aboriginal families engaged with child protection can access Family Group Conferencing at the earliest opportunity?
10. How do we better ensure that the voices of Aboriginal children, young people and families are heard and acted upon?



Getting the settings right

Priorities and principles to guide decision-making

Child protection laws need to be built on a strong human rights framework.

The priorities and principles that underpin South Australia's child protection framework are contained in Chapter 2 of the Act. These were developed using a rights-based framework, based on consultation, and building on Australia's commitments to treaties and agreements including the United Nations Convention on the Rights of the Child.

South Australia's child protection legislation makes clear that the paramount consideration in the administration of the Act must always be to ensure that children and young people are protected from harm. The decision to prioritise safety followed the findings of the coronial inquest into the death of Chloe Valentine and the report of the Nyland Royal Commission. It is clear that the South Australian community continues to expect that safety will be first and foremost in decision-making.

As part of this review, we will be considering what other matters or principles should be taken into account in child protection decision-making.



Questions

11. Do we have the right principles in place to guide decision making in South Australia's child protection legislation?
12. In addition to safety as the paramount consideration, should the legislation be explicit that the best interests of the child is a matter to be considered in decision-making?
13. Do you support changes to the legislation to make it clear that the Aboriginal and Torres Strait Islander Child Placement Principle is the paramount consideration - aside from safety – in all decision-making involving Aboriginal children and young people?

Responsibility for children and young people

Commissioner Nyland made it very clear that child protection is ‘everybody’s business’.

This review provides an opportunity to consider whether the existing legislative framework enables us all to uphold our respective responsibility for protecting children and young people in our community, and what changes could be made to enable that to happen.

Generally speaking, most people agree that responsibility for children and young people sits with a child’s parent or broader family network, and that families have a right to privacy and to exercise self-determination in the way they raise their children. While parents and families have a primary responsibility for their children, most people also believe that there is a role we should all play in promoting children’s safety and wellbeing.



Community members can play this role by making sure families are supported and feel included and we can work together to ensure everyone has the capacity and confidence to play this supportive role.



Service providers, including government and non-government agencies, can play an important role to make sure supports are in place for families who need them to stay safely together.



When all other options for intervention and support have been explored and the child still remains at risk, application for a care and protection order should be made to keep the child safe.

Different people have different ideas about what these roles and responsibilities look like in practice, and if child protection legislation has a role in enabling everyone to take responsibility to keep children and young people safe from harm.

Questions

14. Should a public health approach be taken to child protection, and if so, how can the legislation support this?
15. How can the legislation enable everyone to take responsibility for the safety and wellbeing of children?
16. Should the legislation set out the roles and responsibilities of relevant government and non-government agencies for children’s safety?
17. Should the legislation explicitly require the government to fund therapeutic interventions targeted to support families whose children have been identified as at risk of harm or abuse?

Thresholds for reporting and response

Child protection systems across Australia and overseas are challenged every day to make the best possible decisions to keep children safe.

In terms of the scale of this challenge in South Australia:

- It is estimated that 1 in 3 children over the course of their childhood will be the subject of a child protection report as families deal with complex issues including domestic and family violence, substance misuse and mental ill-health.
- We have seen an upward trend in these child protection notifications since 2017-18, so that around 80,000 notifications are now received by the Department for Child Protection each year.
- Approximately half of these notifications meet the threshold to be screened-in for a response from either DCP or other government and non-government agencies.
- Between 2017-18 and 2021-22, the number of screened-in notifications dealt with by investigation or referral increased by 141% – from 10,643 to 25,658.
- On average, around 200 notifications are received each day with 100 being screened-in for a response.

In 2016, the Nyland Royal Commission recommended that DCP respond to all screened-in notifications. At that time, there were approximately 20,000 screened-in notifications per year and the department was responding to around 9,000 via investigation or referral. In its efforts to respond to this recommendation, DCP built its response capacity to the point where, in 2021-22, the department responded to over 25,000 notifications – more than the total number of screened-in notifications in 2017-18. What had not been predicted at the time of the Nyland report was that the number of screened-in notifications would increase by 63% over the following three years.

We know that getting the thresholds for reporting and responding right is a critical part of keeping children safe. As part of this review, we want to know what changes we can make so that all children and young people experiencing significant abuse and neglect receive the support they need.

Questions

18. Does South Australia have the legal threshold right for child protection? If not, what is the right threshold?
19. Would you support changes to the threshold that enables the Department for Child Protection to focus on children and young people at *imminent risk of significant harm*?
20. Should there be any changes or exemptions to the existing mandatory reporting requirements? How else could mandatory reporters discharge their obligations (e.g. where support is already in place)?
21. Building on existing referral pathways for screened in notifications, how can we more effectively access the capabilities of other government agencies and government funded NGOs to provide services to families where a child has been the subject of a screened-in notification?





Children at the centre

Participation

We know that **children and young people must always be at the centre of child protection decision-making.**

One of the ways we can do this is by making sure we amplify the voices of children and young people in decision-making both at the individual and system level. As part of this review, we will be consulting directly with children and young people and with CREATE about the legislation as a whole, and about what meaningful participation in decision-making means in practice for children and young people.

We are seeking your feedback on how we can make sure the legislation reflects our commitment to amplifying and privileging the voices of children and young people.

Questions

22. Should the legislation be clear that children and young people are at the centre of everything we do?
23. How can the legislation better support children of all ages to express their views and wishes, and uphold their right to participate in important decision-making processes that affect them?
24. Should the Aboriginal and Torres Strait Islander Child Placement Principle guide what *participation* looks like for Aboriginal children and young people?

Timely decision-making

Child protection decision-making is complex, and requires the careful navigation of the interests and rights of all parties to a decision. We know it can be stressful for everyone involved – children and young people, parents, carers, service providers and child protection practitioners. That said, most people would agree that child protection decision-making should always be focussed on what is in the interests of the children and young people who will be impacted by the decision.



Since the CYPS Act commenced, many stakeholders have made submission that one way to improve outcomes for children and young people is to embed our commitment to timely decision-making throughout the legislation. These include suggestions to re-insert Investigation and Assessment Orders, to re-introduce the 10-week rule and to re-consider avenues for review. As part of this review, we have agreed to consider these proposals and receive your submissions on what else you think might need to change.

Questions

25. Are there parts of the legislation that could be changed to improve the timeliness of child protection decision-making and support better outcomes for children and young people?

Ensuring access to supports

In discussions with children and young people, families, carers and partners, it is clear that we all want young people to have access to the best possible supports and services while in care and when transitioning to adulthood and independence.

Currently, the Department for Child Protection is working with other government and non-government services providers through *Investing in their future* to make sure children and young people in care have priority access to the services they need such as health, mental health, disability and education support, as well as to other services that will support them to pursue their personal interests and aspirations.

The CYPS Act contains some provisions to reflect the Government's responsibility for children and young people's wellbeing and supports as they transition to independence. Some stakeholders have suggested that these need to be strengthened in line with community expectations.

Question

26. Could the CYPS Act be strengthened to enable all young people in care, and leaving care, to access the services they need to heal from trauma, to grow up healthy and strong, and to be supported as they transition into independence?





Supporting our partners

Prioritising children and young people means valuing those who support children in care. These include our incredibly important kinship and foster carers and service providers.

Kinship and Foster Carers

Kinship and foster carers are central to helping children and young people feel loved, to heal and to thrive.

- Kinship carers, or carers who are part of a child's family, are the biggest group of carers providing family-based care to children and young people. Currently, there are approximately 1,800 kinship carers in the system. Kinship carers are mainly engaged and supported by the Department for Child Protection. As part of efforts to implement the Aboriginal and Torres Strait Islander Child Placement Principle, three ACCOs are engaged to support some carers caring for Aboriginal children and young people.
- Foster carers are members of the community who generously open their homes to care for children and young people. Currently, there are about 1,400 foster carers. Foster carers are recruited and supported by NGOs including an ACCO. The NGOs are funded by the Department for Child Protection.

The future of a sustainable out of home care system is critically reliant on carers, and currently, more carers are needed to support the number of children and young people in need. In every way possible, we need to be encouraging more people to open their homes to care for children and young people. This review also provides an opportunity to think about whether we need to make changes to the CYPs Act to better support carers to care for children and young people, and embed DCP's 'Statement of Commitment' in legislation.

In deciding if changes are needed, we will be considering the submissions of carers and carer advocacy bodies made over time about how the system might better support them to undertake this incredibly valuable role. This includes looking at the processes for carer engagement, information-sharing and complaints. The Government will also be considering the findings and recommendations of the Foster and Kinship Care Inquiry, which is anticipated to be released in September 2022.



Question

27. Can changes be made to the legislation which help us to further bring to life the 'Statement of Commitment'?

NGO Service providers

Our non-government partners are a critical part of South Australia's child protection system.

Together with the Department for Child Protection, NGO service providers share in the responsibility for service delivery to best meet the needs of the children, young people and families in contact with the child protection system. Acknowledging it can be challenging work, quality service provision in this context has the genuine capacity to transform and improve the lives of children and young people and families, and to strengthen the community as a whole.

As part of this review, we are keen to hear from our valued sector partners to explore ways the legislation could be improved to enable the sector to better care for, protect and support children and young people.

Question

28. What changes could be made to the CYPS Act that would improve the ability of NGO providers to deliver essential care and protection services to children and young people?

Reunification approaches

Whenever it is safe to do so, we know that the best outcome for children and young people is to live with their families.

Reunifying a child with their parents is a process involving the reintegration of the child into a family environment that may have changed significantly from the environment the child left. The evidence suggests that it is important to view reunification as a process rather than a placement event. Reunification requires careful planning and a breadth of services and supports from a when child first enters care and beyond the child's return home, to meet the child's and their family's needs.

In South Australia, the reunification framework used by the Department for Child Protection is included in policies and practice guidance, and for Aboriginal children and young people this is the Aboriginal and Torres Strait Islander Child Placement Principle.

As part of this review, we will consider whether a reunification framework should be provided for in South Australia's child protection legislation and what this might look like. In particular, we are considering options like:

- embedding reunification as an explicit principle of intervention and/or placement under the CYPS Act
- providing a legislative framework for the reunification process, including specific legislative provision for the reunification of Aboriginal children and young people.

Question

29. Should a reunification approach be provided for in the CYPS Act legislative framework?



ANYTHING ELSE?

This discussion paper is provided as a guide only. We welcome your submission on any aspect of the CYPs Act.



Take our survey via yoursay.sa.gov.au/cypsactreview



Send a written submission by email to:
DCPCYPsActReview@sa.gov.au



Post a written submission to:
**CYPs Act Review, Department for Child Protection,
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Register to attend a regional or metropolitan consultation
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