

28 June 2019

Civil Law Group

Legislation, Policy and Programs Branch

ACT Justice and Community Safety Directorate

BY EMAIL: JACSLPPCivil@act.gov.au

Dear Colleagues,

RE: SUBMISSION IN RESPONSE TO 'REVIEW OF CHILD PROTECTION DECISIONS IN THE ACT'

Please see **enclosed** the Women's Legal Centre ACT submission. Thank you for the opportunity to respond, and please contact me if you wish to discuss further.

Yours Sincerely,

A handwritten signature in blue ink, appearing to be 'C. Maclean'.

Claudia Maclean

Principal Solicitor

Introduction

1. The Women’s Legal Centre ACT (‘WLC’) is committed to providing high quality legal services to vulnerable women and their children. We also assist government to improve policy, legislation and implementation. We do this through making constructive, solutions-oriented submissions based on evidence and draw on our front-line experience in our legal and social work practices in the ACT.
2. WLC has analysed *the Review of Child Protection in the ACT Discussion Paper* (‘Discussion Paper’) and provides the following submissions in relation to each of the discussion points. Additional commentary is included where we consider it necessary to clarify our submissions.
3. WLC would like to emphasise it agrees with most of the Discussion Paper’s foundational propositions, including:
 - a) All recommendations about whether CYPS decisions should be subject to **internal** or **external** merits review should be made through the **best interests** of the children lens¹;
 - b) Review mechanisms must support **improved decision making** and must not compromise a central objective of the *Children and Young People Act 2008* (ACT) (“CYP Act”) to provide for and promote the wellbeing, care and protection of children and young people in care²; and
 - c) access to review of government decisions is a key component of access to justice³ with **timely, expert review** of significant government decisions being a crucial mechanism to both **improve incorrect individual decisions** as well as **the quality and consistency** of agency decision making practices.
4. We agree with the Glanfield Review conclusion that, going forward:

“Child review decisions can have life changing consequences. It is important that CYPS sees itself as being openly accountable to the Government and the community for the way it carries out its role and the decisions it makes.”⁴

¹ Discussion Paper, p. 7

² Discussion Paper, p. 8

³ *ibid*

⁴ Glanfield Review, Chapter 7, p 73

5. WLC's submission draws the following conclusions:
- a) Current internal and external review processes in relation to CYPs decision making are **limited and inadequate**⁵, leading to outcomes which are not in the best interests of children;
 - b) **Improved, legislated external review mechanisms must be implemented** in the ACT as a priority, drawing on other jurisdictions' approaches and lessons, to meet the objective of the CYP Act of providing for and promoting the wellbeing, care and protection of children and young people in care; and
 - c) **Access to justice is not currently being achieved** in the ACT. Care and protection decision making disproportionality affects the most vulnerable, including those who are financially, culturally and socially marginalised. Access to justice is hardest for the most financially and socially vulnerable to achieve⁶. CYPs' decision making practices are complex, and cohorts have great difficulty navigating the 800 page *CYP Act*, plus some of CYPs' 1000-plus internal policy and guidance documents.
 - d) **Transparency of decision making is limited**, partly because of legitimate privacy concerns, possibly because there is no obligation to provide information about certain internal processes⁷, or processes followed are not internally clear.⁸
 - e) **Our clients find the care and protection system overwhelming and do not have access to adequate legal resources and representation**. Too many people struggle to access adequate **ongoing** legal assistance, even in instances when judicial review is legitimate and adequate legal representation could change the decision and be in the children's best interests⁹.

Effect on Aboriginal and Torres Strait Islander People

⁵ WLC agrees with analysis and conclusions to this effect contained in Glanfield Review, Chapter 7, towards which WLC contributed in 2016. Note that WLC has continued to make public submissions to this effect since, including in its submission to the *Our Booris Our Way* review process in 2018.

⁶ See useful analysis regarding overwhelming levels of unmet legal need in Australian Aboriginal communities and women engaged in civil legal matters, at [http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public_consultations_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf) at 2.8

⁷ WLC agrees with Legal Aid's publicly available submission of 30 March 2016 to the Glanfield Review describing decision review processes as opaque and lacking accountability.

⁸ "*Decisions and reasons for decisions are not always clearly recorded in accordance with the Directorate's procedures*", quote Muir, P. (2016) Independent Review Child and Youth Protection Services Response to the Dillon Children, Report to the Office for Children, Youth and Family Support ACT Government at p 30.

⁹ Re lack of ability to access legal assistance see Glanfield Review, Chapter 7, p 73 - "*As a consequence of decreasing funding for legal representation, families are often unrepresented at hearings for care and protection orders in the Children's Court...these families may have poor reading and writing skills and little capacity to represent themselves.*"

6. This conundrum is regularly faced by ACT's Aboriginal and Torres Strait Islander people who are disproportionately negatively affected by CYPs decision making. CYPs has a limited number of sufficiently culturally skilled staff who can make decisions in Aboriginal children's best interests¹⁰, and Aboriginal and Torres Strait Islander people, their children and communities suffer.
7. The decisions effecting Aboriginal and Torres Strait Islander people include decisions about:
 - a) **Contact** - which family members or other important people to children may have contact with children, and when;
 - b) **Culture** - decisions about where children will live and whether they will be supported to have educational, cultural or other opportunities; and
 - c) **Community and Kin** - decisions about whether the implementation of the Aboriginal and Torres Strait Islander Child Placement Principle has been adhered to (which, in our experience working with Aboriginal women, it sometimes is not with direct and negative impacts on CYPs' treatment of Aboriginal children and family).
8. Crucially, Care Plans and Cultural Plans, **are not reviewable in the ACT**, unlike other jurisdictions¹¹ who have merits review of care plans. These Care and Cultural Plans are of variable quality and depth, which has a major impact on children's lives.

Women and Children Experiencing Family Violence

9. WLC submits women and children who are more often financially and socially vulnerable are disproportionately affected by decisions made under the *CYP Act*, with those experiencing family violence particularly affected. The Glanfield Review raises the issue of whether CYPs' handling of such cases is suitable and highlights the issue of:

*"the mother, who is subject to domestic violence, becoming the target of assessment of parental suitability almost as a perpetrator herself and potentially losing her child or children."*¹²
10. We are equally concerned this cohort is disproportionality negatively affected with limited recourse for review. Many clients experiencing violence have become the 'target of

¹⁰ Glanfield Review, Chapter 7, p 72

¹¹ For example, Victoria and Queensland.

¹² *ibid*

assessment', where undue pressure has been placed on the person experiencing violence to obtain a Family Violence Order (FVO) against a violent partner, even when this may place them at a higher risk of violent retribution. In our experience, the responses from CYPS officers have been to the effect that failure to obtain the order will make the woman appear unprotective of her children, and CYPS decision making proceeds on this basis,¹³ placing women and their children at risk. At times, when women are applying for a family violence order, they are at a high risk of violence and death. In this context, the inability to obtain adequate internal or external review of life changing decisions can lead to serious system failures in generating greater risk of violence to women and children.

Discussion Point 1 - What principles should underpin any future decision review process?

11. The future review processes must adhere to accepted administrative law principles; Access to Justice principles, fundamental human rights, and the children's best interests' objective. All these considerations must be underpinned by:
 - a) Transparency
 - b) Effectiveness
 - c) Efficiency
 - d) Non-discrimination and Cultural safety; and
 - e) Accessibility.

12. Current internal and external review mechanisms are limited, do not positively compare to other jurisdictions, and do not meet the above principles to the detriment of vulnerable groups in the ACT.

¹³ WLC notes Legal Aid has previously advised in publicly available submissions that is has "encountered a number of cases where CYPS has demanded a parent obtain an DVO in order to ensure contact with or care of a child. In many of these cases, there has been little consideration of whether the DVO will promote the safety of the parent and child in each circumstance...it appears that CYPS uses DVOs as a 'box to tick'..." see 4.1, Legal Aid's publicly available submission of 30 March 2016 to the Glanfield Review.

13. The current review regime does not meet the fundamental principle that **significant government decisions made under enactment which are incorrect should be reviewable**. Administrative law is in itself *'an accountability mechanism that applies to government decision making about individual matters, rather than broad policy decisions'*¹⁴. This is fundamental to a liberal democracy and crucial to access to justice, which should be strongly adhered to in the ACT. This includes adherence to basic and well-founded administrative law principles enshrined in *Administrative Decisions (Judicial Review) Act 1989* (ACT) such as:

- a) Natural justice;
- b) Procedural fairness;
- c) That the decision maker acted within power;
- d) That the making of the decision was not an improper exercise of power;
- e) That the decision was not erroneous at law; and
- f) That there was sufficient evidence to justify the making of a decision, including not taking into account irrelevant considerations.

14. As noted by the Commonwealth Attorney General's Department¹⁵:

*'The operation of administrative law as an accountability mechanism also requires that government agencies whose decisions are the subject of merits or judicial review carefully consider and analyse review outcomes. **This is necessary not only to ensure the specific outcome of an individual review matter is delivered, but also to build into agency practices any systemic changes needed to improve the overall quality of decision making**'.*

15. The objective of merits review under administrative law is to ensure important administrative decisions affecting people's lives are **quality decisions** which are correct and

¹⁴ Attorney General's Department (Cth), *Australian Administrative Law Policy Guide*, 2011
<https://www.ag.gov.au/LegalSystem/AdministrativeLaw/Documents/Australian-administrative-law-policy-guide.pdf>

¹⁵ *ibid*

preferable.¹⁶ This includes review at all levels of decision making, from primary decision making to judicial review.

Access to Justice

16. A decision review process should be underpinned by principles that promote access to justice. Currently, judicial review is inaccessible to many. The matters the court may review are limited, the court system is stretched, and the process is expensive and lengthy. The average cost of a family lawyer in the ACT is \$500- \$550 per hour. Whilst people receive grants of aid from the Legal Aid Commission, these grants of aid are limited and do not cover the actual expense incurred of running these matters. Eligibility for legal aid is also very limited and is subject to strict means test. Grants of aid can also be cut at the last moment, where lawyers are under increasing caseload pressures and time demands.
17. We submit access to justice and children's best interests are not served through court processes being a primary external review mechanism. Rather, considerations of access to justice need to be at the forefront of designing and implementing a decision review process. This includes making the process simple, affordable, efficient, fair and transparent. This also includes resourcing the legal assistance sector to assist vulnerable people through this process.

Human Rights

18. The ACT is a proud human rights jurisdiction. Human Rights principles as contained in the *Human Rights Act (2004) (ACT)* ('the Human Rights Act') and *Convention on the Rights of Children*, should underpin all government decisions. We submit relevant human rights are not currently being upheld, where the limited care and protection review processes perpetuates this. Specifically:

- a) The right to protection of family in accordance with s 11 of the Human Rights Act;
and

¹⁶ See Administrative Review Council
<<https://www.arc.ag.gov.au/Publications/Reports/Pages/Downloads/Whatdecisionsshouldbesubjecttoemeritreview1999.aspx#object>>
Yet few decisions are explicitly reviewable under the CYP Act (via s 839 ACAT review processes or otherwise).

- b) The right to protection of children and young people in accordance with s 11 (2) of the Human Rights Act; and
 - c) Article 9 of the *Convention on the Rights of Children*. In relation to relevant decisions (which by implication includes care and protection decisions made affecting children's ability to live with their families) all interested parties must be given an opportunity to participate in proceedings and make their views known. These obligations are not consistently adhered to in the ACT in multiple cases we are aware of.
19. Women (mothers, aunts and grandmothers) who are vulnerable are unable to obtain ongoing legal assistance and are not able to obtain adequate review of CYPS and court decisions affecting their children's lives. In WLC's experience, decisions have been made without adequate foundation that are not in the best interests of children. One striking recent example is of a grandmother with an exemplary personal history, no allegations of negative behaviour regarding her grandchild or any other child, and no adequate reasons provided by CYPS, being consistently denied any contact with her grandchild. Without contact, the child is being denied their family.
20. Principles of transparency, effectiveness, efficiency, non-discrimination and accessibility, as well as adherence to administrative, human rights and child protection laws in the ACT should underpin a decision review process.

Discussion Point 2 - How can the accessibility of internal merits review information be improved?

21. We submit the accessibility of internal merits review can be improved by:
- a) Provision of relevant information to clients about review processes, drafted in simple language; and
 - b) Increased responsiveness from the complaints handling team.
22. The existing internal merits review processes outlined in the Discussion Paper are not widely known by or accessible to people most likely to be affected by these decisions. The overwhelming experience of WLC clients is that they are unaware of any options to request review of decisions of the Director General or ACT Together, or if informed of the option

they have little faith impartial, efficient review of decisions will be the response of any internal review process.

23. WLC clients advise they are not aware of any internal review processes. In meetings we attend, they are not told of avenues of review even when they make clear their wish for the decision to be reconsidered. This suggests that review information included in CYPS' *Guide 4 – Feedback and Raising Concerns* is not routinely provided to parents, or others like Aboriginal Aunts, Grandparents or kin who wish to have care of or contact with children. Particularly after care orders have been made, decisions of the Director-General and ACT Together occur without any formal or informal review or oversight, even when this is requested by some of our clients.

24. WLC is aware there is a Complaint Handling and Management Platform available within the ACT Community Services, where an aggrieved person can lodge a formal complaint about Child and Youth Protection Services, online or by post. WLC clients advise that often they do not receive any response to complaints lodged via this platform and find this complaint handling process highly inadequate and frustrating. WLC's own experience utilising CYPS' internal complaints handling process is that the original decision maker's decision is echoed in the written response, and no discussion or consultation occurs (even when a matter is very complex).

25. We submit if complaints mechanisms are **not highly efficient**, they can delay decision making to the detriment of those seeking review **and to children**. For example, women we work with may be attempting to seek contact with a child family member or seek to become a kinship carer for them. Where there are delays, which often happens when women we work with attempt to seek decisions from CYPS, this can lead to weeks, months and in one case over one year's, delay in critical decision making. This is an extended period in a young child's life, who in the meantime is forming attachments to other (non-family) carers to the exclusion of family. In some current WLC cases, Aboriginal women have been denied adequate contact with young children while there are delays in CYPS decision making. We have been present when women have been informed that the lack of attachment formed with these women is partly why increased contact with the child cannot occur. **In the context of delays having been entirely beyond these women's control, it is imperative that**

reviews not exacerbate delay further, but instead be able to increase efficient and effective decision making in children’s best interests.¹⁷

26. The explanation included in *Guide 4 – Feedback and Raising Concerns* is not written in particularly accessible or plain English language, and the pathway to request review is not clear. The expectations placed on the parent or carer to request that a decision be reviewed are onerous and include:

1. Request a Decision Making Statement from the caseworker
2. Request a meeting with the caseworker
3. Seek a Review of the decision from the CYPS Complaints Unit
4. Ensure, if eligible, your request for review is passed on to the appropriate area within CYPS or ACT Together.

27. Further, whilst *Guide 4 – Feedback and Raising Concerns* seems to suggest caseworker decisions are currently subject to internal review, the experiences of WLC clients shows internal review is not something which is routinely explained by CYPS workers, and that even where people do seek internal review, it is very unusual, if not unheard of, for a decision to be changed via this process. There are limited types of decisions which are reviewable under the current Act with key decisions regarding child’s living, contact and education arrangements not reviewable despite these decisions have serious impact on child’s current and future life and wellbeing.

28. The experience of WLC clients in dealing with CYPS is of significant delays in communication, frequent staffing changes (many of our clients have worked with more than four (4) case workers), and as a result continuity in case management is affected (as the Glanfield Review notes, human judgements affect case managers’ differing care and protection practices¹⁸,

¹⁷ We note that while delays in critical decision making are not always intentional, they are in our experience able to be highly damaging to children and families and can result in children being denied their family and kin. WLC recognises delays in child protection systems are often due to a lack of child protection resources: “*Child protection systems in Australia are under substantial pressure...evidence suggests the situation is worsening, with increased numbers of children becoming involved with the child protection system. Aboriginal and Torres Strait Islander children continue to be overrepresented.*” Australian Human Rights Commission, Information relating to Australia’s joint 5th and 6th Reports under the CROC Optional Protocol – Submission to the Committee on the Rights of the Child 1 November 2018.

¹⁸ Glanfield Review, Chapter 7, p 74

which is our clients' experience). Many women engaging have experienced trauma relating to family circumstances, CYPS interventions in their lives and other factors. In that context, the current pathway to internal merits review is particularly arduous.

29. Further, there is also nothing in *Guide 4 – Feedback and Raising Concerns* to suggest that current internal review processes ensure any distance or separation between the reviewer and the original decision maker. Given the charged nature of any interaction with CYPS (particularly where children have been removed and contact with certain family members is denied, or severely constrained, for example) the importance of the reviewer(s) of decisions being independent and unconnected to the primary decision maker(s) is important, to not only ensure high quality decision making but also to growing community confidence that highly invasive actions affecting children is indeed legitimate. This is especially important where non-Aboriginal workers are involved in interventions in Aboriginal families, not least because of intergenerational trauma relating to unjustified child removals of the past, which as it is well known, directly affect present experiences.

Discussion Point 3 - Should existing internal merits review mechanism be codified by amending the *Children and Young People Act 2008 (Act)*?

30. If adequate internal merits review is included in the *CYP Act*, it must adhere to the principles of transparency, effectiveness, efficiency, non-discrimination and accessibility. This must include uniformly providing a clearer outline of the process for individuals (including older children) affected by decisions.
31. Codification of adequate internal merits review into the *CYP Act* will help to address **some** of the current issues with internal review processes. The Discussion Paper itself acknowledges that codification reflects best practice principles and it could provide structures and timelines for improved internal review that are not currently in place, for example by providing for the reviewer to be 'organisationally distinct'¹⁹ from the primary decision maker.
32. Very importantly, internal merits review should be available in relation to a wide variety of decisions and must include various decisions made by the Director-General pursuant to a

¹⁹ Administrative Review Council, Report to the Attorney-General – Internal Review of Agency Decision Making November 2000, <https://www.arc.ag.gov.au/Documents/report44.pdf>, pg 19

care order. We note the current list of reviewable decision under s839 of the CYPS Act is inadequate and does not provide an adequate review mechanism for people whose children have been removed from their care.

33. Currently, these decisions are not made with reference to specific legislative criteria, but rather under the broad discretion of the Director-General. They are very often decisions which are central to the rights of children to maintain contact with their parents and wider family after care orders have been made. They should therefore be subject to close and thorough scrutiny. The importance of this, especially to ensure the best interests of children are achieved, cannot be overstated. Many children are denied regular contact for no clear or apparent reason made available with family members with whom they have an attachment, when there is no obvious risk. WLC is concerned that there are possibly unstated and undocumented reasons guiding decision making. For example, insufficient resourcing to review contact decisions, insufficient resourcing and funding available for initial phases of supervised contact, or suchlike. WLC has been informed by CYPS of insufficient resourcing in these regards. In the absence of clear reasons being available, and no ability to compel the provision of reasons, clients can only speculate.

34. Decisions such as with whom a child lives, change of contact or interstate orders should be open to improved internal and external review processes. A right to request a written statement of reasons should be included in the legislation. This will help parents and other interested parties to understand the reasons behind the decision which was made and possibly accept it. Currently, section 22B of the *ACT Civil and Administrative Act 2008* provides for the requirement to give reasons statements but only if a decision-maker makes a *reviewable decision*. Therefore, there is no obligation on the Director – General to provide a statement of reasons for the decisions concerning child’s living, contact and education arrangements.

35. We suggest that the internal review process include, at a minimum, the following steps:

- a) A written request to obtain a statement of reasons. The request itself should be in writing but does not have to be formal.

The statement of reasons must include:

- the findings on material facts,

- a reference to the information on which the findings were made insofar as the law permits disclosure; and
 - the reasons for the decision.²⁰
- b) A formal application for internal review by an aggrieved person. We suggest that providing any relevant additional information during the process of internal review and before the decision is made, should be allowed. This will allow for an opportunity for the decision maker to arrive at the most preferable decision. The internal reviewer must hold a more senior position than the original decision maker, not being involved in any capacity in the original decision making and not being a manager of the original decision maker. A response to the request for review must be timely, in accordance with well-founded principles of procedural fairness.
- c) If a person is still dissatisfied with an outcome of the internal review, they should be able to apply for external review. The decision-making process should be 14 days after the day the application is received, with the possibility to apply for an extension of time in some circumstances.

36. Alongside these legislative amendments, a comprehensive guide to internal merits review should be developed and published on the ACT Government website. These documents must be available in plain English language and community languages including accessibility to people with reading challenges. They should also be physically available in the offices of a range of stakeholders such as DVCS, Legal Aid, Child and Family Centres, Community Health Centres and counselling services.

Discussion Point 4 - Should there be external review mechanism for certain CYPS decisions, and if so, would decisions such as residency and contact benefit from external review?

37. WLC strongly supports the codification of external review processes for a range of child protection decisions, particularly those made in the exercise of the Director General's discretion pursuant to a care order, including residency and contact.

²⁰ *Administrative Appeals Tribunal Act 1975* (Cth)

38. While formal internal review processes would improve the current situation, a robust framework of external review is **essential** to support consistent, accurate and appropriate decision making within CYPS.
39. External review should be available for a wide range of decisions, including residency and contact decisions. The experiences of WLC clients are that decisions are often made about a child's residency, or the frequency of contact visits without any or adequate explanation of the reasons behind the decision being provided. The impact of these decisions on the relationships between children and their families cannot be understated, and they should be made in accordance with the 'best interests' principle, which is defined with reference to the matters set out in s349(1) of the CYP Act²¹. We note many of these principles relate to the importance of **maintaining children's relationships with family members**.
40. Concerningly, as noted in the Discussion Paper, there are currently no external review mechanisms available for decisions of the Director General, which is likely to impact upon the quality of these decisions, and on public perception of the decision maker's independence, propriety or accuracy.
41. **The positive impacts of external review mechanisms on an organisation are more likely to be realised where that organisation welcomes this external oversight and is open to change.** For this reason, WLC recommends that alongside any changes to either internal or external review mechanisms, there also be a strong push within the relevant agencies to effect cultural change. As noted by the Administrative Review Council "*it is important that there is a cultural acceptance of the benefits of merits review throughout an agency.*"²²
42. A child's residency and contact should be open to the external review process and in some cases a notice of decision should be given to parents, for example when transferring a child protection order to another state. Bodies that provide legal support to vulnerable people should be adequately funded by the government to assist people with preparing applications for internal and external review as well as education on merits review.

²¹ Sub sections b, c, d, e, f

²² <https://www.arc.ag.gov.au/Documents/ARC+REPORT+39.pdf>, p112

Discussion Point 5 - If an external merits review mechanism should be implemented, what is the most appropriate mechanism for the ACT?

43. WLC suggests that lessons from other higher performing jurisdictions implementing external review be studied to learn what aspects can best be incorporated in the ACT's external review process. Importantly, to improve the lack of trust and confidence in the current system due to its disproportionate negative effects on Aboriginal and Torres Strait Islander people, women and children, the design of the review process must consult closely with peak bodies and entities able to assist a review process able to serve children's best interests. We suggest a good option for exploration would be the ACT Civil and Administrative Tribunal, with a special division established to review specific categories of decisions, resourced with staff appropriately trained in family and child protection. We submit that leaving primary external review in the ACT Children's Court is undesirable due to the delay, stress, complexity and expense of proceedings in this court.
44. Other entities in the ACT with investigative powers should have more resourcing and enhanced powers to review and investigate complaints also.

Conclusion

45. The WLC welcomes the Discussion Paper but must notes its concern that the Discussion Paper appears worried that providing for enhanced review of CYPs decisions may negatively impact decision making occurring in the child's best interests.

Specifically, the Discussion Paper states:

"...provision of an avenue of review where first instance decisions may be disturbed could itself create a situation that is disruptive to a child, and contrary to their interests" (pg 8).

46. As we have outlined in our submission, **current practices are in fact often contrary to children's best interests**. It is demonstrated that in recent years decisions made by CYPs have not been in the best interests of children. This was the case in *CP v DG of CSD* (ACTA 32)), where minors were removed from their family home, separated from siblings and (in one confirmed case) subjected to harm. CYPs decision making did not stand up to superior court scrutiny.

47. Further, the WLC has been involved in a number of cases over past years where decisions arguably not in the children's best interests were made. Recent examples of this include cases where:
- a) Children placed with abusive foster carers against advice. This is a well known type of risk highlighted long ago in the 2004 Vardon report, and a risk which we (WLC) have recently raised when asking CYPS to revisit their decision regarding the placement of children.
 - b) An Aboriginal child wrongly was 'de-identified' as an Aboriginal child by CYPS. The terminology 'de-identified' is CYPS' own terminology used in its correspondence to an Aboriginal Grandmother. Such a decision by CYPS presents multiple risks not in the child's best interests, including a failure to apply the legislatively mandated ATSI Child Placement Principle and infliction of cultural denial.
 - c) Children are not being permitted adequate or regular contact with their siblings when there is no evidence presented by CYPS, and no assertion by CYPS, that it would be contrary to the children's best interests to engage with their siblings.
48. These are but some examples of recent client experiences where review options are inadequate. We are sufficiently engaged in their cases, and closely interfacing with CYPS, to know these cases intimately. Our staff have been present when statements evidencing poor decision making (for example poor child placements, and poor contact decisions) have been articulated by CYPS.
49. WLC submits that references to individuals' privacy and children's privacy are sometimes used to withhold information or to allude to there being reasons for decisions that are justifiable but not able to be shared, when in fact long term engagement in cases demonstrates there are not good reasons. Proper review mechanisms, like those that exist in other jurisdictions, could bring much needed impartiality to these instances.
50. WLC also notes the Discussion Paper expresses concern that providing avenues for *review could cause delays* impacting children. As outlined above, the WLC's experience is that relying upon CYPS decision making, which is rarely time-bound and often delayed, may be

contrary to children's best interests and opportunities for timely review could actually ***enhance decision making in the children's best interests.***

51. In the case of *CP v DG of CSD* (ACTA 32), court proceedings against child protection decisions took many years and extensive resources, as judicial review often does. At the completion of court proceedings, the children had spent many years apart from their biological families and siblings, contrary to the children's best interests. More efficient review mechanisms could prevent this.
52. WLC regularly requests CYPs make timely decisions regarding where children will live, who they are able to have contact with, and how much contact they may have with their families. Delays in CYPs decision making means suitable biological Aunts, Grandmothers and others able to care for children are eventually disregarded as carer options because the young children in question have 'attached' to their foster carers. As a result, women are informed that while they have been deemed suitable carers, the children will not be placed with them due to the children's attachment (bonding) with their non-family carers.
53. There is extensive evidence that under-resourced child protection agencies, including CYPs, make errors in their decisions. These should be reviewable through appropriately codified internal and external review mechanisms able to ensure that children's best interests may be achieved. The WLC notes recent reporting that children in care and protection in the ACT are the least satisfied nationally.²³ WLC submits that the current failure to provide adequate impartial internal or external review mechanisms to review questionable decision making increases the disadvantage and discrimination experienced by these cohorts, and must be dramatically improved.

²³ Canberra Times article that Children in ACT care are least satisfied – <https://www.canberratimes.com.au/story/6005073/i-am-pleading-acts-kids-in-care-the-nations-least-happy/>