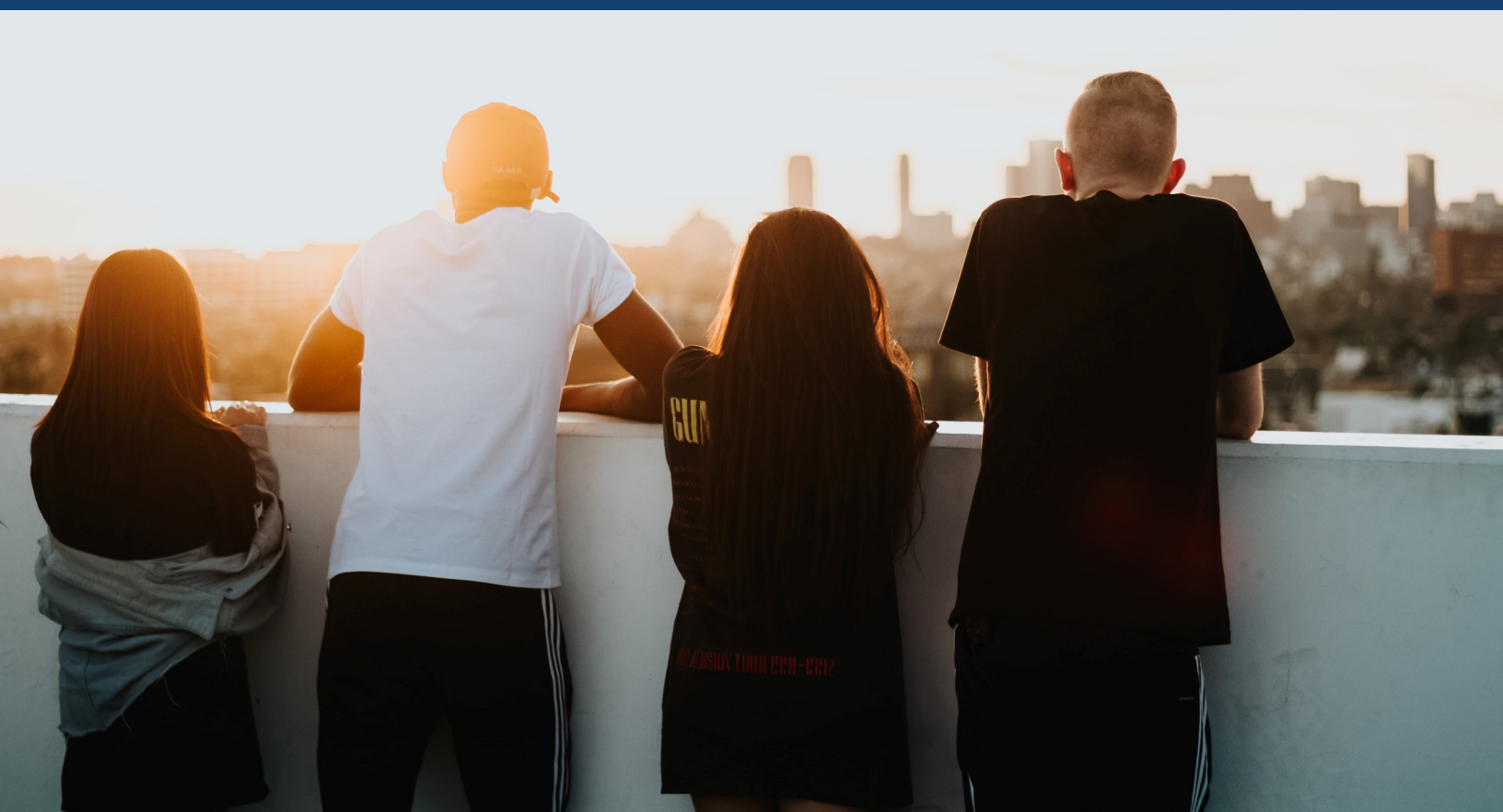




Study Paper on Youth Aging into the Community



Study Paper on Youth Aging into the Community

**A Study Paper Prepared for the British
Columbia Law Institute by the Members of the
Child Protection Project Committee**

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The British Columbia Law Institute was created in 1997 by incorporation under the provincial *Society Act*. Its purposes are to:

- promote the clarification and simplification of the law and its adaptation to modern social needs,
 - promote improvement of the administration of justice and respect for the rule of law, and
 - promote and carry out scholarly legal research.
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Introductory Note

Study Paper on Youth Aging into the Community

In British Columbia, research demonstrates that youth who have spent time in government care are more likely to experience significantly worse social, educational, employment and health outcomes than their peers in the general population. This situation is not unique to British Columbia. As a result, attention has been directed in recent years towards the plight of young adults leaving care by policy makers and civil society, both in Canada and internationally. As the second dimension of the Modernizing the *Child, Family and Community Service Act* Project, this study paper aims to capture the recent movement and reform that has occurred in this field with a view to enabling a comparison of British Columbia's law and policy from this inter-provincial and international perspective.

The study paper outlines the legislative and policy landscape with respect to youth aging into community in British Columbia, alongside a review of the legislative models that support policy and practice related to youth leaving care in other select jurisdictions, both within Canada and internationally. The study paper offers some broad comparisons between these jurisdictions, identifies some trends, and highlights some innovative practices for improving care leaver outcomes on topics which include transition planning, post-care supports, relationship-based support, extended care, Indigenous youth leaving care and program evaluation. We provide this study paper with a view to assisting law and policy makers, civil society and interested groups in their consideration of potential law reform measures going forward.

The Modernizing the *Child, Family and Community Service Act* Project has been carried out with the assistance of a project committee made up of experts in the child protection field. On behalf of the board of directors of the British Columbia Law Institute, I want to thank the members of the Child Protection Project Committee for their dedication to this project and close attention to the research presented in this study paper. BCLI fully supports the contents of this study paper and looks forward to it making a contribution to the developing body of knowledge on youth aging into community.



Emily L. Clough
Chair,
British Columbia Law Institute
April 2021

Child Protection Project Committee

The Child Protection Project Committee was formed in 2019. This volunteer project committee is made up of leaders in the field of child protection in British Columbia. The committee's mandate is (1) to assist BCLI in developing recommendations to reform British Columbia's child protection statute, the *Child, Family and Community Service Act*; (2) to review comparative legal research into legislation on youth aging into the community.

The members of the committee are:

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For more information, visit us on the World Wide Web at:

<https://www.bcli.org/project/16649>

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The Modernizing the *Child, Family and Community Service* Project has been made possible by support from the Law Foundation of British Columbia, which BCLI thanks for its generous contribution to the project. BCLI also grateful to the law firm Watson Goepel LLP and the Public Guardian and Trustee of British Columbia for hosting committee meetings.

The staff of BCLI have played a key role in designing, managing, and executing the work on this project. Kathleen Cunningham (executive director to September 2020) and Karen Campbell (executive director from September 2020) have provided executive planning and management for the project. Kevin Zakreski (senior staff lawyer) was the project manager. He and Valerie Le Blanc (staff lawyer) have contributed to supporting project-committee meetings. Rachel Kelly (legal researcher), Greg Blue, QC (senior staff lawyer), and Kevin Zakreski were responsible for drafting this study paper. And the following staff members have also contributed to the research, publication, and administration for this project: Shauna Nicholson (legal assistant), Bénédicte Schoepflin (communications director), Maria Sokolova (research assistant), and Chelsea Szafranski (articled student).

EXECUTIVE SUMMARY

An overview of the study paper

Research in Canada and internationally clearly demonstrates that youth who have been in government care are more likely to experience significantly worse social, educational, employment and health outcomes as adults than their peers in the general population. There is a global trend that sees young people not in care more likely to stay at home longer, reaping the benefits of the financial and emotional support that comes with doing so. These benefits are not available to youth aging out of the child protection system.

Acknowledging this situation, attention has been directed in recent years towards the plight of young adults leaving care by policy makers and civil society, both in Canada and internationally. This study paper aims to capture the recent movement and reform that has occurred in this field with a view to enabling a comparison of British Columbia's law and policy from this interprovincial and international perspective.

The study paper outlines the legislative and policy landscape with respect to youth aging into the community in British Columbia, setting out programs and supports currently available to assist youth transitioning from care. The study paper also reviews legislative models that support policy and practice related to youth aging into the community in other jurisdictions, including Ontario, England, select Australian states, New Zealand and the United States, with a focus on Washington. Despite challenges in making direct comparisons, the study paper offers some broad comparisons, identifies some trends, and highlights some innovative practices on topics which include transition planning, post-care supports, relationship-based support, extended care, Indigenous youth leaving care and program evaluation.

About the Modernizing the Child, Family and Community Service Act Project

The Modernizing the *Child, Family and Community Service Act* Project is a major law-reform project. BCLI began the Modernizing the *Child, Family and Community Service Act* Project in 2019. The project has two dimensions:

- (1) a focused review of the *Child, Family and Community Service Act*¹ to identify outdated provisions and operational incompatibilities and gaps within the statute itself and with legislation and regulations that intersect with this Act; and
- (2) comparative legal research into legislative models that support policy and practice related to youth aging into the community.

This study paper is concerned with the second dimension of the project.²

Our supporters and the project committee

The Modernizing the *Child, Family and Community Service Act* Project has been made possible by project funding from the Law Foundation of British Columbia.

In carrying out the project, BCLI had the assistance of the Child Protection Project Committee. This committee is made up of experts in the child protection field in British Columbia. It includes members of the legal and social work professions, as well as officials from the Ministry of Children and Family Development for British Columbia, the Office of the Representative for Children and Youth of British Columbia, and the Office of the Public Guardian and Trustee of British Columbia.

Content of the study paper

British Columbia's approach to youth leaving care

Research clearly demonstrates that youth who have aged out of government care in British Columbia are more likely to experience significantly worse social, educational, employment and health outcomes than their peers in the general population. A number of British Columbia-focused reports in recent years have indicated that services and supports for youth aging into the community are insufficient to address this gap in outcomes.

There are numerous reasons why a child may be placed in care, including neglect, harm and parental illness. A child may enter care through a number of different pathways, which sit along a continuum of ministry intervention.

1. RSBC 1996, c 46 [CFCSA].

2. See British Columbia Law Institute, *Report on Modernizing the Child, Family and Community Service Act* (Rep. no. 92) (April 2021) (for the report prepared to address the project's first dimension).

The study paper leads with a detailed review of the legislative and policy landscape with respect to youth aging into the community in British Columbia, setting out legislated supports and services as well as policy-based government and non-government programs.

In summary, some programs and supports exist in British Columbia to assist care leavers in their transition to adulthood, with a focus on education and training. Most programs are policy-based and discretionary. Specific transition planning is not statutorily mandated for all youth in care in British Columbia, although internal ministry policy sets out some expectations in this regard. British Columbia's main support program and its only legislated program (Agreements with Young Adults), is widely criticized for failing to bring young adults above the poverty line, having narrow eligibility criteria, disadvantaging the most vulnerable cohorts of care leavers and perpetuating inequities in access, in particular for Indigenous care leavers. Other policies and programs have been created in British Columbia to meet some of the more pressing needs of youth aging into the community. Most of these programs have developed in an ad hoc manner, and in response to observed needs. However, there is no unifying policy or framework within which these various programs currently operate.

It is well documented that Indigenous children and youth in care experience poorer outcomes than their non-Indigenous peers. Given this, and the historical and current overrepresentation of Indigenous youth in care in British Columbia, the study paper specifically addresses Indigenous care leavers. Many advocates and experts have called for policy and practice to focus on the needs of Indigenous care leavers. While by no means aiming to be comprehensive in its discussion, the study paper identifies some key reform recommendations and initiatives aimed at improving outcomes for Indigenous youth transitioning from care to the community. Any government consideration of services and programs for Indigenous youth must be developed in partnership with Indigenous communities.

The study paper canvasses some recent general government initiatives relating to care leavers in British Columbia, including those flowing from the ongoing COVID-19 pandemic. It also outlines recent reform recommendations made by the Representative for Children and Youth, researchers and other experts.

Canadian comparison—Ontario

The study paper depicts a relatively comprehensive picture of the care leaving system in Ontario, to enable an effective comparison with British Columbia. The study paper outlines both the legislated transition planning and post-care support programs and services available to youth aging into the community in Ontario. The

Continued Care and Support Program is Ontario's main program of support for youth aging into the community. Legislation mandates that monthly financial support and guidance be provided to eligible young adults, including those on voluntary agreements, until they turn 21 years of age. This program has statutory authority, is universally accessible and is not tied to a youth's success in meeting their stated goals. Other non-legislated support programs also exist, which include financial support for extended health and dental services, transition life skills programs and a number of educational supports. These supports are not centrally coordinated.

The overrepresentation of Indigenous children in care in Ontario is widely acknowledged and criticized. This chapter provides an outline of some recent reform recommendations and government initiatives aimed at improving services to meet the needs of Indigenous children and youth in care, and more specifically as they transition from care into the community. Given time, scope of the project and expertise, these are in no way to be considered a comprehensive reporting of Indigenous care leaving legal and policy issues.

International comparisons

The challenges faced by care-experienced youth in British Columbia are not unique to British Columbia. Despite a relative dearth of comprehensive longitudinal studies, there is a consensus in the literature that internationally and across the board, youth aging out of care experience poorer life outcomes globally, as compared with their non-care peers.

Our international comparative research in this study paper aims to provide a relatively detailed picture of the statutorily mandated supports and services available to care leavers in select jurisdictions, to enable a broader perspective on British Columbia's approach. To this end, we have reviewed the international jurisdictions of England, select Australian jurisdictions, New Zealand and the United States, with a focus on Washington.

England

England has significantly overhauled its care leaver supports and services in the past two decades, with the introduction of comprehensive care leaver legislation and ongoing government commitments to evaluating and updating programs and strategies. Statutory duties, generally placed on local authorities, are specific and numerous.

England was the pioneer of the one-on-one, relationship-based support worker model (Personal Adviser), which has been reproduced in some form in several other jurisdictions, as well as the innovative legislative requirement to "keep in touch"

with youth who have left care. Extended care for foster children was incorporated into legislation in 2014 through the Staying Put program, and more recently for youth aging out of residential care through its Staying Close program.

Australia

Australia has seen the development of a national framework over the past decade, providing some consistency between states with respect to their care leaving mandates and promoting the incorporation of duties into law. However, while states' legislation sets out a broad framework of government duties with respect to transition planning and post-care services, implementation is highly discretionary and enforceability is lacking. All Australian jurisdictions provide some form of universally available post-care services, which support care leavers in areas such as health, housing, education, employment and well-being. There has been a strong campaign in Australia advocating for states to provide extended care. This has resulted in three Australian states recently offering some form of extended care to eligible care leavers up to the age of 21. Notably, Victoria has the broadest extended care program.

New Zealand

New Zealand has recently overhauled its child protection system, with a number of major legislative amendments relevant to young people leaving care coming into force in 2019. Key features of the new legislative system include statutorily mandated transition planning, extended care to the age of 21, the provision of transition support services accessible to the age of 25, legislative requirements to maintain contact with care leavers, one-on-one relationship-based transition support workers and broad powers to provide discretionary financial assistance to young people in or leaving care and to those who support them. As part of this overhaul of the child protection system, New Zealand has incorporated some legislative and other reform measures aimed at reducing disparities between Māori and non-Māori youth in care, building partnerships with Indigenous communities and organizations and providing culturally appropriate transition services to combat cultural disconnection and disengagement with Indigenous communities.

United States

The study paper focuses on two pivotal pieces of federal legislation impacting the programs and services available to youth aging out of the foster care system in the United States. These are the *Foster Care Independence Act of 1999*, which significantly improved funding for state-based independent living programs for foster youth, and the *Fostering Connections to Success and Adoptions Act of 2008*, which permits states to optionally extend foster care up to the age of 21. Federal legislation

also provides for extended Medicaid coverage and an education funding program to assist youth from foster care with expenses for higher education.

States have flexibility to design their own independent living programs with the assistance of federal funding, covering areas such as finance, housing, counselling, employment, education, relationship, community connections and other needs of youth leaving care. Washington state provides its independent living program to youth up to the age of 21 (or 23 if in extended care) through its Independent Living Program, Transition to Independent Living Program and Independent Youth Housing Program.

The United States is notable for its early adoption of extended care for foster youth. Most states, including Washington, offer extended care up the age of 21 years for youth in care who meet the education, training, employment or medical waiver eligibility requirements. The United States' approach to mandating data collection and evaluation of independent living programs through federal legislation is an innovative practice worthy of highlighting.

Key themes, trends & innovative practices

Political, historical, constitutional and cultural differences between the jurisdictions surveyed, although chosen for comparison due to broad similarities with Canada, make direct comparisons somewhat difficult. Acknowledging these limitations, the study paper makes some broad comparisons, identifies some trends, and highlights some innovative practices.

Internationally, the last two decades have seen a significant shift in law and policy towards legislating and thereby formalizing government services available to youth aging into community.

Outside British Columbia, all reviewed jurisdictions, bar one, have legislation that mandates the provision of some form of support to *all* youth who have aged out of care. (Tasmania still provides support to all youth leaving care but does so pursuant to government policy.) British Columbia is unique in that its primary legislated support program only supports a narrow cohort of care leavers. While the reach and accessibility of post-care programs is variable across jurisdictions, it can safely be said that, outside of British Columbia, there is a trend toward broadening coverage of post-care programs to ensure support is universally accessible, particularly for the more vulnerable cohorts of youth.

The concept of a relationship-based transition worker who provides one-on-one practical, planning and personal support for the whole period of the youth's

transition has now been incorporated into the post-care programs in several jurisdictions. While most jurisdictions' post-care services, including those of British Columbia, provide some form of case management service, these models stand out for their relationship-based approach to support. The role of these workers is not just practical but also emotional, reflecting the importance, as supported by the literature, of youth having someone they can identify as being committed to their well-being in the longer term. Evidence suggests this model has significant benefits for youth navigating the transition into the community.

In addition to this innovative practice of relationship-based support workers, the statutory duties in England and New Zealand to maintain contact with youth who have aged out of care for a period of time are worth highlighting. These statutory requirements require local authorities or transition workers to be proactive in their efforts to engage with and keep in touch with care leavers.

The research indicates a clear trend toward extending care to youth beyond the statutory age of majority, with some form of extended care now in place in the vast majority of United States jurisdictions, at least three Australian states, New Zealand and England. Extending the care of the state as a means of scaffolding youth as they develop the skills, abilities and maturity necessary to move toward being functioning, independent adults has the support of significant numbers of researchers, academics, advocacy groups and other commentators.

We have outlined some recent legislative measures taken in these comparative jurisdictions aimed at improving outcomes and experiences for Indigenous care leavers, which may help to inform British Columbian policy going forward; however, more comprehensive research is likely needed in this area. Legislative measures identified in other jurisdictions tend to focus on obligations to consult with and involve Indigenous organizations and communities in transition care planning for Indigenous youth, and on improving the cultural competency of care leaver policies and programs.

Outside the United States, there is a dearth of data on care leaver outcomes and a lack of comprehensive evaluative studies of the impact of care leaving programs on these outcomes to help guide future design of policy and practice. The study paper highlights the innovative solution to this problem in the United States, whereby the federal government has incorporated program evaluation and data collection into statutory obligations tied to foster care funding.

Conclusion

Some programs and supports exist in British Columbia to assist limited numbers of care leavers in their transition to adulthood, with a focus on education and training. Most programs are policy-based and discretionary. The Agreements with Young Adults program, British Columbia's primary care leaver support program, is the only statutorily mandated program supporting youth aging into the community. The program is widely criticized for its limited accessibility and for providing inadequate and insufficient supports.

Our comparative research has revealed significant variability between jurisdictions in the level of support, the types of support, the period of support, and the legal authority for the support provided to youth transitioning from care to the community. While there is great variability between jurisdictions, the interprovincial and international research does clearly highlight that British Columbia has fallen behind. As the only jurisdiction surveyed that does *not* provide some form of post-care guidance and support to *all* care leavers, in line with modern understandings of trauma, harm reduction and the impact of cultural disconnection, British Columbia stands out. Further, with a clear international trend toward extending care based on evidence of both the lifelong benefits to youth, as well as state economic benefits, British Columbia is also lagging. That said, it must be acknowledged that COVID-19 related emergency measures have been extended to all youth set to age out of care during this time.

Even after taking account of context and comparative difficulties, it is clear that British Columbia could learn a significant amount from the generally more cohesive, developed, innovative, and statute-based, albeit diverse, approaches to supporting care leavers in these jurisdictions.

Chapter 1. Introduction

About the Modernizing the Child, Family and Community Service Act Project

What are the project's goals?

BCLI began the Modernizing the *Child, Family and Community Service Act* Project in 2019. The project has two dimensions: (1) a focused review of the *Child, Family and Community Service Act*³ to identify outdated provisions and operational incompatibilities and gaps within the statute itself and with legislation and regulations that intersect with this Act; (2) comparative legal research into legislative models that support policy and practice related to youth aging into the community.

This study paper is concerned with the second dimension of the project.⁴

The Child Protection Project Committee

In carrying out this project, BCLI has had the benefit of assistance from the Child Protection Project Committee. This project committee is made up of leaders in the child protection field. Its ranks are drawn from lawyers, social workers, public officials and overseers, as well as others.⁵

The project's supporter

The Modernizing the *Child, Family and Community Service Act* Project has been made possible by project funding from the Law Foundation of British Columbia.

An Overview of this Study Paper

Research in Canada and internationally clearly demonstrates that youth who transition from government care are more likely to experience significantly worse social, educational, employment and health outcomes than their peers in the general population. There is a global trend that sees young people more likely to stay at home longer, reaping the benefits of the financial and emotional support that comes with

3. CFCSA, *supra* note 1.

4. *Report on Modernizing the Child, Family and Community Service Act*, *supra* note 2.

5. See, below, appendix A at 195–200 (for list of committee members with short biographies).

doing so.⁶ These benefits are not available to youth aging out of the child protection system.

Acknowledging this situation, attention has been directed in recent years towards the plight of young adults leaving care by policy makers and civil society, both in Canada and internationally. This study paper aims to capture the recent movement and reform that has occurred in this area with a view to enabling a comparison of British Columbia's law and policy from this interprovincial and international perspective.

British Columbia

After introducing the project's goals, committee members and supporters in chapter 1, chapter 2 of the study paper leads with a detailed review of the legislative and policy landscape with respect to youth aging into the community in British Columbia. This chapter first provides context for the topic, in terms of the pathways in which a child may come into care, as well as the poor socio-economic, health and well-being outcomes often experienced by youth who have been in care. The chapter continues to set out the legislated supports and services available to care leavers in British Columbia, as well as other policy-based government and non-government programs.

Given the historical and ongoing overrepresentation of Indigenous youth in care in British Columbia, the chapter specifically addresses Indigenous youth aging into the community, with reference to recent reform recommendations made by experts in this field. This chapter canvasses some recent general government initiatives, including those flowing from the COVID-19 pandemic, as well as reform recommendations made by the Representative for Children and Youth, researchers and other experts to improve outcomes for British Columbia's youth leaving care.

Ontario—a Canadian comparison

In chapter 3 we have provided a reasonably comprehensive picture of the care leaving system in Ontario, to enable an effective comparison with British Columbia. The chapter outlines the legislated transition planning and post-care support programs and services available to youth aging into the community in Ontario. This is followed by an outline of the major non-legislated support programs available. Like British Columbia, the overrepresentation of Indigenous children in care in Ontario is widely reported and criticized. This chapter provides an outline of some recent reform recommendations and government initiatives aimed at improving services to meet the

6. Jane Kovarikova, "Exploring Youth Outcomes After Aging-Out of Care" (April 2017) at 6, online (pdf): Office of the Provincial Advocate for Children and Youth <youthrex.com/wp-content/uploads/2019/02/ExploringYouthOutcomesReport-042417.pdf>.

needs of Indigenous children in care, and as they transition from care into the community. Given time, the scope of this project and expertise, this discussion is in no way to be considered a comprehensive reporting of Indigenous care-leaving legal and policy issues.

International comparisons

The challenges faced by leavers in British Columbia are not unique to British Columbia. Despite a dearth of data, there is a consensus in the literature that internationally and across the board, youth aging out of care experience poorer global life outcomes as compared with their non-care peers.

The comparative research in this study paper aims to provide a relatively detailed picture of the statutorily mandated supports and services available to care leavers in select international jurisdictions, to enable a broader perspective on British Columbia's approach. To this end, we have reviewed the international jurisdictions of England (chapter 4), select Australian jurisdictions (chapter 5), New Zealand (chapter 6) and the United States, with a focus on Washington (chapter 7).

Discussion & conclusion

Political, historical, constitutional and cultural differences between the jurisdictions surveyed, although chosen for comparison due to broad similarities with Canada, make direct comparisons somewhat difficult. Acknowledging these limitations, we have made some broad comparisons, identified some trends, and highlighted some innovative practices in chapter 8. Analysis in this chapter has been divided for discussion purposes into the following topics: post-care transition services (legislative mandate; planning, reach and accessibility; relationship-based transition workers; and maintaining contact), extended care, Indigenous care leavers and program evaluation.

In chapter 9 we use this comparative discussion and inter-jurisdictional perspective to make some broad-based conclusions with respect to British Columbia's approach to supporting its youth aging into the community.

Chapter 2. The Law in Canada: British Columbia

Overview

In Canada, child protection systems are the responsibility of individual provinces. In British Columbia, the care and protection of children falls to the Ministry of Child and Family Development whose primary focus is “to support all children and youth in British Columbia to live in safe, healthy and nurturing families and be strongly connected to their communities and culture.”⁷ The British Columbia *Child, Family and Community Service Act* (CFCSA) is the primary statute governing child protection, youth, and young adult support services and agreements in the province.⁸

As of October 31, 2020, there were 5,437 children and youth in care in the province.⁹ In the 2019/20 fiscal year, 440 youth exited care in British Columbia as a result of aging out.¹⁰ Just over half of these youth were Indigenous.¹¹

While a wide array of social programs, including income assistance and universal publicly funded health care are available to eligible adults in British Columbia, social policy research in Canada and internationally suggests that young adults who have been in government care as children need additional, tailored support to reduce disadvantages as they transition into independent living and adulthood.¹² Youth who age out of government care in British Columbia are more likely than their peers to experience poorer outcomes across the board, including with respect to education

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7. British Columbia, “Ministry of Children and Family Development” (last visited 8 April 2021), online: <www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-or-organizations/ministries/children-and-family-development>.
 8. CFCSA, *supra* note 1. The CFCSA replaced the former *Family and Child Service Act*, SBC 1980, c 11.
 9. British Columbia Representative for Children and Youth, *A Parent’s Duty: Government’s Obligation to Youth Transitioning into Adulthood* (Victoria: Office of the Representative for Children and Youth, 2020) at 11, online (pdf): <rcybc.ca/wp-content/uploads/2020/12/RCY-A-Parents-Duty_FINAL.pdf> [RCY 2020 Report].
 10. British Columbia, Ministry of Children and Family Development, “Post Transition Supports: Case Data and Trends,” (last visited 8 April 2021), online: Government of British Columbia <mcfcd.gov.bc.ca/reporting/services/child-protection/post-transition-supports/case-data-and-trends> [MCFD Case Data].
 11. *Ibid.*
 12. See sections below on British Columbia, Ontario and international jurisdictions for jurisdiction-specific discussion of these issues, with references to supporting material.
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levels, employment, health and community connection. A number of reports in recent years have indicated that services and supports in British Columbia for youth aging into the community are insufficient to address this gap in outcomes.¹³

This scaffolding of young people into independence, both emotionally and financially, is increasingly common in today's society. While youth age out of the care protection system at age 19 with an abrupt transition to full independence, the proportion of non-care young adults aged 20 to 34 living with at least one parent has risen substantially over the past four decades across Canada.¹⁴ As observed by British Columbia's Representative for Children and Youth in her recent report on youth leaving care, *A Parent's Duty: Government's Obligation to Youth Transitioning into Adulthood*:

Despite defining a legislated limit to care at 19, research demonstrates that successful transitions are dependent on many factors other than age. The theory of emerging adulthood signaled a shift in youth independence literature and gave instructive focus to the need for programs and services for vulnerable individuals throughout their twenties. Emerging adulthood is a nonlinear process "often characterized by shifts back and forth between independence and dependence." Young people in care typically face an abrupt and intense transition to independence after care ends, whereas young people without the trauma and challenges associated with the child welfare system benefit from a more gradual transition.¹⁵

This need for continued support as a young adult is recognized by British Columbia's family law system, which allows for child support payments to be made to support children over the age of majority where the child is unable to fully care for

13. See e.g. the Representative for Children and Youth's 2020 report titled *A Parent's Duty: Government's Obligation to Youth Transitioning into Adulthood*, *supra* note 9, which details outcomes, with references to research and statistics, for youth leaving care with respect to homelessness, educational achievement, earning potential, health and mental health, substance use and criminal justice involvement. See also the 2018 British Columbia Coroner's Service Report titled *Review of MCFD-Involved Youth Transitioning to Independence January 1, 2011—December 31, 2016: Report to the Chief Coroner of British Columbia*, *infra* note 23, which found high rates of suicide, mental health issues and drug overdose deaths, as well as a disproportionate number of deaths of young Indigenous people; see also sections below on international jurisdictions for reports of similar outcomes in those jurisdictions.

14. 2016 Canadian census data indicates that 34% of young adults between the ages of 20 and 35 continue to live with at least one parent: Statistics Canada, *Young adults living with their parents in Canada in 2016*, Census in Brief, Catalogue no. 98-200-X2016008 (Ottawa: Statistics Canada, 2017) at 1, online (pdf): <www12.statcan.gc.ca/census-recensement/2016/as-sa/98-200-x/2016008/98-200-x2016008-eng.pdf>.

15. RCY 2020 Report, *supra* note 9 at 48 [footnotes omitted].

themselves as a result of “illness, disability, or some other reason, including if they’re going to school.”¹⁶ Attendance at a post-secondary institution such as university, college or a technical college is a reason for the possible continuation of child support payments.¹⁷

Large gaps in school completion rates and achievement have been consistently reported in British Columbia over recent years, with data indicating that the school completion rate in British Columbia in 2019 for students in care was 47.5% compared with 85.9% for their non-care peers.¹⁸ Statistics also indicate that youth aging out of care continue on to post-secondary education at roughly half the rate of the general population, with university graduation rates just one-sixth or less than the general population.¹⁹

A 2018 Metro Vancouver youth homelessness survey reported that half of the homeless youth surveyed were currently or had been previously in foster care, a group home or under an independent living arrangement, with a larger proportion of these youths being Indigenous (65% Indigenous compared with 38% non-Indigenous peers).²⁰ In a similar survey in Greater Victoria, results indicated a disproportionate number of homeless people have a history of involvement in government care.²¹ As reported by one advocacy organization, “[a]lthough only 1% of children and youth in

16. *Federal Child Support Guidelines*, SOR/97-175, online: <canlii.ca/t/531vd>, Schedule II, s 1 (definition of child); Legal Aid BC, “When Does Child Support End” (last visited 8 April 2021), online: <family.legalaid.bc.ca/finances-support/child-spousal-support/when-does-child-support-end>.

17. See Legal Aid BC, “When Does Child Support End,” *supra* note 16.

18. RCY Report 2020, *supra* note 9 at 20.

19. British Columbia, Ministry of Advanced Education and Skills Training, “Vulnerable youth get extra support for post-secondary studies” (5 June 2020), online: Government of British Columbia <news.gov.bc.ca/releases/2020AEST0027-001017>.

20. BC Non-Profit Housing Association, *2018 Youth Homeless Count in Metro Vancouver* (Burnaby: Metro Vancouver Homelessness Partnering Strategy Community Entity, 2018), at 37, online (pdf): <www.metrovancouver.org/services/regional-planning/homelessness/HomelessnessPublications/2018MetroVancouverYouthHomelessCount.pdf>.

21. Greater Victoria Coalition to End Homelessness, “Everyone Counts: 2018 Greater Victoria Point-in-Time Count” (2018) at 22, online (pdf): <victoriahomelessness.ca/wp-content/uploads/2018/07/2018-PiT-Count-Community-Report-FINAL.pdf>. See also Shalu Mehta, “Aging out of care: youth face growing risk of homelessness”, *Vancouver Island Free Daily* (3 September 2020), online: <www.vancouverislandfreedaily.com/news/aging-out-of-care-youth-face-growing-risk-of-homelessness/>.

British Columbia are in government care, over half of youth experiencing homelessness have been in care.”²²

In 2018 the British Columbia Coroners Service engaged in a comprehensive review of the circumstances surrounding the deaths of young people who had died while transitioning to the community from government care.²³ The report found much higher instances of mental health issues among children in care and a significant increased likelihood of death.²⁴ With respect to young adults transitioning from care, the report noted:

[t]hey leave their social worker, their youth worker, their foster family or other support persons. For many youth, there is no longer a case manager overseeing their services. They may be transferred to new adult service providers or may no longer have access to mental health supports or services. They lose access to financial, education, and social supports provided through the child welfare system. They are now responsible for independently managing all aspects of their life and care needs.²⁵

Higher rates of involvement with the criminal justice system and increased substance use disorders have also been reported with respect to young adults in and leaving care in British Columbia.²⁶

Before continuing on to review the supports and services available in British Columbia to assist youth transition to independence, we first briefly review the pathways through which a child might enter care in British Columbia and the ways in which care is provided.

22. Zero Ceiling, “How Aging Out of Care Leads to Homelessness” (4 June 2019), online: <zeroceiling.org/aging-out-leads-to-homelessness/>. For more statistics on youth homelessness, see Lizi McLoughlin, “Youth Homelessness, What You Need to Know” (20 February 2019), online: Zero Ceiling <zeroceiling.org/youth-homelessness-need-to-know/>.

23. BC Coroners Service Death Review Panel, *Review of MCFD-Involved Youth Transitioning to Independence January 1, 2011—December 31, 2016: Report to the Chief Coroner of British Columbia* (Victoria: 28 May 2018), online (pdf): <www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/child-death-review-unit/reports-publications/youth_in_transition_-_death_review_panel_report_-_28-05-2018.pdf?bcgovtm=buffer> [BC Coroners Service Death Review Panel Report].

24. *Ibid* at 27.

25. *Ibid* at 10.

26. RCY Report 2020, *supra* note 9 at 23 and 25.

Pathways to Care

In British Columbia, the Ministry of Children and Family Development (“MCFD”) has responsibility for child protection under the *Child, Family and Community Service Act*.²⁷ It is pursuant to this Act that a child may be removed from their home, after investigation, and placed in the care of the director.²⁸

The latest available statistics published by the MCFD report that, in 2019, 6,263 children and youth were under the guardianship of the provincial director of child welfare. Of this total number, 4,111 were Indigenous.²⁹ By far the majority of children in the care of the director are in care for protection reasons as a result of a court order (90%), with the remaining children (10%) under a voluntary or special needs agreement.³⁰

There are numerous reasons why a child may be placed in the care of a director, including where a parent may be temporarily unable to care for a child due to illness, a child is experiencing neglect or harm, or a parent is unable or unwilling to care for the child.³¹ A child may enter care through a number of different pathways, which sit along a continuum of ministry intervention. These interventions range from short-term voluntary agreements in which the parent retains guardianship but delegates authority to the ministry to care for the child’s daily needs, to court-ordered continuing custody orders in which the ministry acts as guardian and has all the rights and responsibilities as the parent.³² These pathways into care, along with types of care placements, are summarized below.

27. CFCSA, *supra* note 1.

28. Deborah Rutman, Carol Hubberstey & April Feduniw, *When Youth Age Out of Care—Where to From There? Final Report* (Victoria: University of Victoria, 2007) at 1, online (pdf): <homelessshub.ca/sites/default/files/WhenYouthAge2007.pdf> [Rutman Report].

29. British Columbia, Ministry of Children and Family Development, “Children and Youth in Care,” (last visited 8 April 2021), online: Government of British Columbia <mcfcd.gov.bc.ca/reporting/services/child-protection/permanency-for-children-and-youth/performance-indicators/children-in-care> [Children & Youth in Care Data].

30. *Ibid.*

31. Auditor General of British Columbia, *Oversight of Contracted Residential Services for Children and Youth in Care: An Independent Audit*, (Victoria: Office of the Auditor General of BC, 2019) at 17, online (pdf): <www.bcauditor.com/sites/default/files/publications/reports/OAGBC_OCRS_RPT.pdf> [Auditor General of BC Report].

32. Rutman Report, *supra* note 28 at 1; Auditor General of BC Report, *supra* note 31 at 17.

Voluntary agreements

Voluntary care agreement

Under section 6 of the CFCSA a director may make a written voluntary care agreement with a parent who has custody of a child and is temporarily unable to look after the child in their home.³³ The agreement may delegate to the director as much of the parent's authority as is necessary to give effect to the terms of agreement.³⁴ As indicated by its name, the agreement is voluntary and can be used where a short-term crisis prevents the parent or guardian taking care of the child. The parent retains guardianship of the child throughout the term of the agreement and may be required to contribute financially if income is above a certain threshold.³⁵ The maximum length of a voluntary care agreement is dependent upon the child's age, being 12 months for children under 5 years, 18 months for 5 to 11 year olds and 24 months for children 12 years and over, inclusive of all consecutive agreement renewals.³⁶

Special needs agreement

A similar type of voluntary agreement (special needs agreement) is available under section 7 of the CFCSA. This agreement may be used specifically for the care of children diagnosed with a permanent or long-term severe or developmental disability who require temporary care outside the home.³⁷ The parent continues to retain guardianship of the child throughout the agreement and may be required to contribute financially if income is above a certain threshold.³⁸ The initial term of the agreement must not exceed six months, but the agreement may be renewed for terms of up to 12 months each.³⁹

Extended family program agreement

In cases where a child temporarily cannot be cared for by their parents in their own home and it is considered best for the child to live with a relative or close family

33. CFCSA, *supra* note 1.

34. *Ibid*, ss 6 (1) and (2).

35. Legal Aid BC, "Making Agreements for Your Child's Care" (last visited 8 April 2021), online: Legal Services Society <familylaw.lss.bc.ca/children/child-protection/making-agreements-your-childs-care>.

36. CFCSA, *supra* note 1, s 6 (7).

37. *Ibid*, s 7.

38. Legal Aid BC, "Making Agreements for Your Child's Care," *supra* note 35.

39. CFCSA, *supra* note 1, s 7 (4).

friend, the director may make an agreement with the relative or family friend under an extended family program agreement.⁴⁰ Under this agreement, the director may contribute to the child's support.⁴¹ The parent retains guardianship of the child throughout the term of the agreement.⁴²

Youth agreement

Although a youth agreement is not a pathway into care, we have included information on this voluntary method by which a youth may receive MCFD assistance to provide context for the discussion of youth agreements below. According to the MCFD, most youth between the ages of 16 to 18 years who are in need of residential services from MCFD are appropriately served by way of a youth agreement, rather than being in care under the guardianship of the director.⁴³ A higher proportion of non-Indigenous youth are on youth agreements as compared to Indigenous youth, who are more likely to be in care under guardianship of the director.⁴⁴

Under section 12.2 of the CFCSA⁴⁵ a director may make a written agreement with a youth aged 16 to 18 years who is not formally in the care of the director or under a care order about to expire, and who is in need of assistance. Broadly, to qualify for a youth agreement, the youth must be in need of assistance or protection, no longer able to live with their parents, "affected by a significant adverse condition, such as severe substance abuse, a significant behavioural or mental disorder, or sexual exploitation" and "an agreement with the youth under section 12.2 of the Act would be a safe and effective alternative to dealing with the youth under Part 3 of the Act."⁴⁶ Under a youth agreement, assistance is generally provided to help with basic living costs, transportation and for those youth leaving care, start-up costs such as utility connection fees and furnishings.⁴⁷

40. *Ibid*, s 8. See also British Columbia, "Foster Child Placement with a Person Other Than the Parent in BC" (last visited 8 April 2021), online: <www2.gov.bc.ca/gov/content/family-social-supports/fostering/temporary-permanent-care-options/placement-with-a-person-other-than-the-parent> [Extended Family Program].

41. *Supra* note 1, s 8 (2).

42. Extended Family Program, *supra* note 40.

43. Children & Youth in Care Data, *supra* note 29.

44. *Ibid*.

45. *Supra* note 1.

46. *Child, Family and Community Service Regulation*, BC Reg 527/95, s 8.1 [CFCS Regulation].

47. Federation of BC Youth in Care Networks, *Your Life, Your Rights: A Guide to the Rights of Young People in British Columbia* (2008) at 53–54, online (pdf): <fbcyicn.ca/sites/default/files/know-rights-online.pdf> [Your Life, Your Rights].

Custody orders

Where a court has determined that a child cannot be returned to their parents, the court may make a temporary or continuing custody order.

Temporary custody order

Under the CFCSA the court may order that “the child be placed in the custody of a person other than a parent with the consent of the other person and under the director’s supervision, for a specified period” or that “the child remain or be placed in the custody of the director for a specified period.”⁴⁸ The maximum total period of time that a temporary custody order can remain in effect depends on the age of the child as follows: 12 months for a child under 5 years of age, 18 months for a child who is 5 to 11 years of age and 24 months for a child over the age of 12 years.⁴⁹

A temporary custody order gives the director or other person who has custody certain rights and responsibilities for the child:

47 (1) A director who has custody of a child under an interim order or temporary custody order has the following rights and responsibilities unless they are limited by the court under subsection (3) of this section:

- (a) to consent to health care for the child;
- (b) to make necessary decisions about the child’s education and religious upbringing;
- (c) to exercise any other rights and to carry out any other responsibilities of a personal guardian of the child, except the right to consent to the child’s adoption.

(2) Any other person who has custody of a child under an interim order or a temporary custody order has the same rights and responsibilities that a director has under subsection (1) unless they are limited by the court under subsection (3).⁵⁰

48. CFCSA, *supra* note 1, s 41 (1) (b) and (c). Similar orders can also be made under section 42.2 of the CFCSA with respect to children who are under a supervision order.

49. *Ibid*, s 45 (1).

50. *Ibid*, s 47.

A parent may retain health care decision making rights for a child under a temporary custody order if a court deems it is in the child's best interests.⁵¹

Continuing custody order

A continuing custody order sits at the highest level of intervention in child protection matters. A director may apply for a continuing custody order under section 49 of the CFCSA. Such orders may be made in the following circumstances:

49 (4) The court must order that the child be placed in the continuing custody of the director if

- (a) the identity or location of a parent of the child has not been found after a diligent search and is not likely to be found, or
- (b) a parent is unable or unwilling to resume custody of the child.

(5) The court may order that the child be placed in the continuing custody of the director if there is no significant likelihood that

- (a) the circumstances that led to the child's removal will improve within a reasonable time, or
- (b) the parent will be able to meet the child's needs.

(6) Before making a continuing custody order under subsection (5), the court must consider

- (a) the past conduct of the parent towards any child who is or was in the parent's care,
- (b) the plan of care, and
- (c) the child's best interests.⁵²

Once a continuing custody order is made, the director becomes the sole personal guardian of the child and may consent to the child's adoption and the Public Guardian and Trustee becomes the sole property guardian of the child.⁵³ A continuing custody order will terminate when:

- (a) the child reaches 19 years of age;
- (b) the child is adopted;
- (c) the child marries;

51. See *ibid*, s 47 (3) to (6).

52. *Ibid*, s 49 (4) to (6).

53. *Ibid*, s 50.

- (d) the court cancels the continuing custody order; or
- (e) custody of the child is transferred under a permanent custody order (under section 54.1).⁵⁴

The director may also become the personal guardian of a child pursuant to section 51 of the *Infants Act* “if a child has no guardian or if the guardian appointed is dead, refuses or is incompetent at law to act.”⁵⁵ The Public Guardian and Trustee is the property guardian of the child as circumstances require. Despite the wording of section 51 of the *Infants Act*, in practice, the director will assess any appropriate alternatives for care of the child proposed by family or friends thereof before determining whether it is necessary to assert personal guardianship over a child in such circumstances. Only if there appears to be no appropriate proposal for care of the child, will the director take steps to bring the child into the care of the MCFD. In such circumstances, the director will generally remove the child pursuant to section 13 (1) (j) of the CFCSA if “the child’s parent is dead and adequate provision has not been made for the child’s care.”⁵⁶ In cases of unaccompanied minor refugees or situations where a child appears to be otherwise without a guardian, the child would be removed under subsections 13 (1) (i) or (k) of the CFCSA, depending on the child’s circumstances.⁵⁷ Proceeding under the CFCSA in such cases provides greater clarity around the guardianship status of the child and provides due process for any interested parties that disagree with the child remaining in the care of the MCFD.

Placement options

As “family preservation” is an identified priority of the MCFD, the majority of children who come into contact with the MCFD remain living at home with supports.⁵⁸ However, some children will still need to come into care and require residential services. “Residential service” is defined in the CFCSA as “accommodation and associated supervision provided for a child in a foster home or other place away from the home of the child’s parent.”⁵⁹ These children and youth who require a residential

54. *Ibid*, s 53 (1).

55. RSBC 1996, c 223, s 51.

56. CFCSA, *supra* note 1, s 13 (1) (j).

57. *Ibid*, s 13 (1) (i) and (k).

58. British Columbia, Ministry of Children and Family Development, “Residential Services to Children in Need of Protection: Case Data and Trends” (last visited 9 April 2021), online: Government of British Columbia <mcf.gov.bc.ca/reporting/services/child-protection/services-to-children-in-need-of-protection/case-data-and-trends>.

59. CFCSA, *supra* note 1, s 1(1).

service may be placed in one of the following living arrangements, depending upon the level of ministry intervention required, the needs of the child, the plan of care or the terms of any agreement.

Foster home

Approved foster caregivers provide a home for the child or youth and will receive ongoing support from a care team as well as a monthly payment to help support the child financially.⁶⁰ The following types of foster care are described on a British Columbia government website:

Children's needs range from reasonably straightforward to very complex, which requires different types of family foster care homes.

- **Restricted care:** Foster care provided by relatives or family friends
- **Regular care:** Foster care provided by a family who has not previously known the children provides care
- **Specialized foster care:** Foster care provided to children with mental or physical disabilities, or emotional or behaviour problems
- **Respite or relief foster care:** Foster families who take children for short periods, so that parents / foster caregivers can have a few days without the children.⁶¹

The majority of children and youth requiring out-of-home care are placed in the foster care system.

Contracted residential services (group homes)

The MCFD contracts with approximately 100 residential services, both private and not-for-profit, to provide housing, food and other supports to some of the most vulnerable children and youth in care.⁶² Often referred to as group homes,⁶³ these services typically provide 24/7 care by staff in a home setting to individual or groups of

60. British Columbia, "Foster Care Payments" (last visited 9 April 2021), online: Government of British Columbia <www2.gov.bc.ca/gov/content/family-social-supports/fostering/for-current-foster-parents/foster-care-payment>.

61. *Ibid.*

62. Auditor General of BC Report, *supra* note 31 at 4.

63. Contracted Residential Services can also include "smaller family-based homes (similar to foster homes) that are sub-contracted by a larger organization and either employ full-time staff members or periodically hire support staff." *Ibid* at 20.

children and youth who require more complex care and who cannot be cared for in the foster care system.⁶⁴ A child's complex care needs may be a result of medical conditions, mental health challenges or significant behavioural, addiction, aggression or attachment issues.⁶⁵ A minority of children and youth in care live in a contracted residential service.

Out-of-care or kinship placement

Under an out-of-care or kinship placement,⁶⁶ care is usually provided by a relative or close family friend in the relative's or friend's home, by agreement under the extended family program referred to above. The caregiver may receive supports to assist in taking care of the child.⁶⁷

Independent living program

The independent living program is an MCFD funded program designed to help youth aged 15 or older who are in care but are not living in a supervised placement (e.g., foster or group home) to learn to live independently, with supports, in preparation for when they exit the care system at age 19. Support may be in the way of financial and other life-skills supports.⁶⁸

Conclusion

Having established the pathways by which children and youth may enter government care, the following section of the study paper will provide a review of existing legislative and regulatory regime with respect to young adults leaving care in British Columbia. This is immediately followed by a broader review of non-legislated government and community led programs available to support young adults aging into the community.

64. *Ibid* at 21.

65. *Ibid*.

66. British Columbia, "Temporary & Permanent Care Options for Kids and Teens in B.C." (last visited 9 April 2021), online: Government of British Columbia <www2.gov.bc.ca/gov/content/family-social-supports/fostering/temporary-permanent-care-options>.

67. Extended Family Program, *supra* note 40.

68. Your Life, Your Rights, *supra* note 47 at 41–44.

Legislated Supports & Services for Youth Aging into Care

Child, Family and Community Service Act

The *Child, Family and Community Service Act* is the primary statute governing child protection, youth, and young adult support services and agreements in the province.⁶⁹ In 1999, the CFCSA was amended to add Part 2.1 to the act to include specific provisions for youth and young adult support services and agreements.⁷⁰ This part was introduced to “create a new youth services part of the statute to change the way the ministry supports young people who are already known to the ministry. It provides additional tools and flexibility to serve youth more effectively.”⁷¹ Prior to this amendment, there was no legislative framework for assisting youth in care to transition to independence.

A note on terminology:

- A “child” for the purposes of the CFCSA is a person under the age of 19 years and includes a “youth;”⁷²
- The CFCSA defines “youth” to mean “a person who is 16 years of age or over but is under 19 years of age;”⁷³
- In British Columbia, the age of majority is 19 years⁷⁴ and for the purposes of child protection law, a person will age out of the child protection system upon turning 19;
- The term “adult” is not defined in the CFCSA but is used to refer to a person aged 19 years or older;
- We have used the term “youth aging into the community” to refer to youth in the child protection system in British Columbia around the ages of 16 to

69. CFCSA, *supra* note 1.

70. *Ibid*, Part 2.1 as amended by *Child, Family and Community Service Amendment Act*, SBC 1999, c 26, s 4.

71. Bill 84, *Child, Family and Community Service Amendment Act*, 1st reading, *Official Report of Debates (Hansard)*, 36-3, vol 16, No 9, (22 June 1999) at 1410 (Hon L Boone).

72. CFCSA, *supra* note 1, s 1.

73. *Ibid*, s 1.

74. *Age of Majority Act*, RSBC 1996, c 7, s 1 (a).

19 years who are facing an upcoming transition into adulthood and independent living in the community.

- The term “young adult” is used in its ordinary sense, except:
 - in the context of the Agreement with Young Adults program under section 12.3 of the CFCSA where “young adult” is defined in the regulations to mean a person who has entered into, or eligible to enter into an agreement under section 12.3 of the act;⁷⁵ or
 - when used in reference to the province’s *Representative for Children and Youth Act*,⁷⁶ where that act defines “young adult” to mean a person “who is 19 years of age or older but is under 24, and received a reviewable service within 15 months before the person’s 19th birthday.”⁷⁷
- Other jurisdictions use a variety of terminology to describe the various ages and stages of young people transitioning from care to independence, including care leavers, care-experienced youth, youth aging out and young people transitioning from care or transitioning into community. We have attempted to primarily use the terminology prevalent in the jurisdiction that is under discussion but have also used these terms interchangeably throughout.

Transition planning and post care services

For the purposes of the study paper, we are concerned with the supports and services available to British Columbian youth aging into the community who no longer fall within the care and protection mandate of the CFCSA as a result of reaching 19 years of age. While a child legally becomes an adult overnight, the real transition to adulthood and independence takes time and planning. The type and quality of planning have significant ramifications for the success of the youth’s transition to independence. Consequently, this study paper is also interested in any legislated transition planning requirements for youth in care who are approaching the age of majority.

Transition planning

There are no generally applicable statutory transition planning requirements for all youth in care approaching the age of majority in British Columbia. While children in care are required to have a “plan of care” that must addresses certain criteria identified by regulation (such as the child’s living situation, parent contact and cultural

75. CFCS Regulation, *supra* note 46, s 15.

76. SBC 2006, c 29.

77. *Ibid*, s 6 (2).

identity),⁷⁸ there is no legal requirement that the plan of care address priorities, supports or goals for youth as they approach independence and adulthood.

Policies

MCFD policy does, however, include a requirement that a care plan should be reviewed at least every 6 months and specifically “in preparation for the child/youth leaving care.”⁷⁹ Involvement of Indigenous communities in developing care plans for Indigenous youth is also a requirement of the policy.⁸⁰

MCFD policies provide guidance to social workers or case managers to assist youth in care to prepare for living independently. Policy 5.9 titled “Planning for a Child/Youth Leaving Care” appears to provide broad guidance to case workers, with requirements such as:

- Involve the child/youth, relevant family members, caregivers and other significant persons when planning for the transition.
- Provide all relevant information, documents and assistance necessary to facilitate the transition to the new living arrangement.
- Arrange for the services and supports needed to assist the child/youth and their family after they leave care.
- Coordinate and monitor the child/youth’s transition in order to avoid, if possible, their return to care, interruption of services, or further disruption in their living arrangement.⁸¹

MCFD policy 5.10 titled “Preparing Youth to Live Successfully in the Community” is a more detailed policy setting out a specific list of action items to be considered by the worker in planning for the youth’s independence.⁸² These items for consideration include providing information about timelines and expectations, assisting youth to obtain basic living essentials, financial and social assistance, information on health care coverage, therapeutic supports, advocacy services and funding programs for education and training (e.g., Provincial Tuition Waiver Program), and assistance in

78. CFCSA, *supra* note 1, s 21 (1). See also CFCS Regulation, *supra* note 46, s 8.

79. British Columbia, Ministry of Children and Family Development, *Child Welfare Policy, Children and Youth in Care Policies* (last revised 24 October 2019) Policy 5.6 at 37, online (pdf): <www2.gov.bc.ca/assets/gov/family-and-social-supports/policies/cf_5_children_youth_in_care.pdf>.

80. *Ibid*, Policy 5.6 at 35.

81. *Ibid*, Policy 5.9 at 73.

82. *Ibid*, Policy 5.10 at 75–79.

obtaining identification and other personal records.⁸³ According to the policy, a worker should assess whether a youth may be eligible for the Youth Agreement program at this stage.⁸⁴ Policy 5.11 sets out detailed guidance specifically on planning for independence for youth with special needs, with a focus on early planning (from the age of 14 years) and with a view to connecting youth to Community Living BC, where appropriate.⁸⁵

The British Columbia Public Guardian and Trustee (“PGT”) protects the legal and financial interests of children and youth in care and acts as co-guardian with the MCFD and delegated Aboriginal agencies.⁸⁶ According to its recent Guardianship Services Report, “[a] key feature of the PGT’s transition services is financial literacy training . . . by offering individual client mentoring and facilitated workshops on basic money management and budgeting skills to youth in communities across the province.”⁸⁷ According to PGT policies, the PGT Guardianship and Trust Officers (“GTOs”) and in-house counsel start preparing youth for legal and financial independence prior to their age of majority.⁸⁸ When a youth in the care of MCFD or a delegated Aboriginal agency has an ongoing legal issue or assets, including a Registered Disability Savings Plan, or may come into assets post-majority, current practice requires GTOs to start connecting with the social worker and the youth several years before they turn 19 to develop a transition plan for independence, and thereafter at least annually up to the age of majority.⁸⁹ GTOs discuss a list of action items with the youth, including financial planning, money management skills, and the PGT Educational Assistance Fund and post-majority trustee services (both discussed later in this chapter). Transition planning for ongoing legal matters includes advising youth of their legal rights at the age of majority.⁹⁰

83. *Ibid*, Policy 5.10 at 77.

84. *Ibid*, Policy 5.10 at 75.

85. *Ibid*, Policy 5.11 at 81–88.

86. *Ibid*, Policy 5.5 at 31.

87. Public Guardian and Trustee of British Columbia, *Child and Youth Guardianship Services—2018–2019 Report* (last visited 13 October 2020) at 2, online (pdf): PGT BC <www.trustee.bc.ca/reports-and-publications/Documents/GuardianshipServicesReport_%2020182019.pdf>.

88. British Columbia, Public Guardian and Trustee, *Policy 7806: Transitional Services for Property Guardian Clients* [unpublished; archived with British Columbia Law Institute].

89. *Ibid*.

90. *Ibid*.

Statutory planning requirements—Youth Agreements

For the limited group of youths who have met the eligibility requirements and are on a Youth Agreement under Part 2.1 of the CFCSA, planning for independence is a specific requirement of the legislation.⁹¹ This planning process is supported by more detailed internal policies to assist the allocated social worker in the planning process.⁹²

By way of background, the Youth Agreement program is for youth not technically in the care of the ministry, or who have care orders set to soon expire, who meet the criteria set out in section 12.2 of the CFCSA and section 8.1 of the regulation.⁹³ Broadly, these youths must be in need assistance or protection, no longer able to live with their parents, “affected by a significant adverse condition, such as severe substance abuse, a significant behavioural or mental disorder, or sexual exploitation” and “an agreement with the youth under section 12.2 of the Act would be a safe and effective alternative to dealing with the youth under Part 3 of the Act.”⁹⁴ Youth who are under 16 years of age can also receive support under a youth agreement if they are married or are a parent or expectant parent.⁹⁵

The purpose of the legally binding agreement is to assist the youth to overcome challenges, return to school or work experience, develop life skills, and to make healthy community and family connections in their transition to independence.⁹⁶ Under a youth agreement assistance is generally provided to help with basic living costs, transportation and for those youth leaving care, start-up costs such as utility connection fees and furnishings.⁹⁷

Among other requirements for entering a youth agreement, the director must be satisfied that “the youth demonstrates ability and readiness to . . . implement a plan for independence prepared under section 12.2 (3) of the Act.”⁹⁸

91. CFCSA, *supra* note 1, s 12.2 (3).

92. British Columbia, Ministry of Children and Family Development, *Agreements with Young Adults Policy & Procedures* (last revised October 2020) [unpublished; archived with British Columbia Law Institute] [MCFD AYA Policies & Procedures].

93. CFCSA, *supra* note 1, s 12.2; CFCS Regulation, *supra* note 46, s 8.1.

94. CFCS Regulation, *supra* note 46, s 8.1.

95. CFCSA, *supra* note 1, s 12.2 (9) (b).

96. Your Life, Your Rights, *supra* note 47 at 53–55.

97. *Ibid.*

98. CFCS Regulation, *supra* note 46, s 8.2 (e) (iii).

CFCSA, section 12.2(3) provides:

- (3) The agreement must include a plan for independence that contains
 - (a) a description of the support services or financial assistance, or both, that are to be provided by the director,
 - (b) the goals to be met by the youth, and
 - (c) any other contents specified by regulation.⁹⁹

The CFCSA permits regulations to be made with respect to the content and preparation of plans for independence.¹⁰⁰ The relevant regulation sets out a detailed list of what must be addressed in the plan for independence, as follows:

8.2 For the purposes of section 12.2 (3) of the Act, a plan for independence must contain the following:

- (a) a description of the behavioural commitments of the youth, the responsibilities and promised acts of the youth and the director under the agreement, and any relevant timelines;
- (b) information necessary to support and preserve the youth's cultural, racial, linguistic and religious heritage;
- (c) in the case of an Indigenous youth, information necessary to support the youth to learn about and practise the youth's Indigenous traditions, customs and language and to belong to the youth's Indigenous community;
- (d) a description of the youth's plan to make the transition to independence, addressing education, employment, residential arrangements and interpersonal relationships;
- (e) a plan outlining how the youth's performance under the agreement, including accomplishments and successes, will be monitored throughout the term of the agreement.¹⁰¹

Evidenced by this provision, a plan for independence must address the pathway by which an Indigenous youth will maintain their Indigenous cultural connections and learning. This requirement is supported by the regulations which enable the ministry to make an agreement with Indigenous communities to involve them in the development of independence plans for Indigenous youth.¹⁰² The ministry has a set of

99. CFCSA, *supra* note 1, s 12.2 (3).

100. *Ibid*, s 103 (1) (e).

101. CFCS Regulation, *supra* note 46, s 8.2.

102. CFCSA, *supra* note 1, s 92.1 (2) (a) (i).

comprehensive standards aimed at promoting “consistent high-quality service to vulnerable youth in need of assistance”¹⁰³ which apply to all aspects of youth agreements, from assessing eligibility and developing the agreement to monitoring and reviewing procedures.¹⁰⁴

The initial term of a youth agreement can be up to 3 months with renewals permitted for terms up to 6 months.¹⁰⁵ Agreements cannot extend beyond the youth’s 19th birthday,¹⁰⁶ at which point the person may be eligible to transition over to an adult agreement (Agreements with Young Adults) under section 12.3 of the Act (see below). In the 2019/20 fiscal year, 454 youths aged out of their youth agreements, 186 of which were Indigenous.¹⁰⁷

Some literature aimed at youth in care suggests that at least for those youth who are not living in a supervised placement such as foster care or group home, their care plan should include a plan for their transition to independence:

This preparation should be included as part of your plan of care and should address the following:

- Promoting stability and continuity of healthy relationships between you and appropriate members of your family (e.g., parents, siblings, extended family), family friends, and members of the community that are significant in your life (e.g., cultural or religious supports)
- Your goals for the future
- Assisting you to get a Social Insurance Number
- Appropriate out-of-care or independent living options
- Services and supports required to prepare you for independence:
 - Self-care skills (e.g., personal hygiene, nutrition, housekeeping)
 - Money management skills (e.g., budgeting, banking)
 - Advocacy (e.g., applying for entitlements, seeking advice)

103. British Columbia, Ministry of Child and Family Development, *Standards for Youth Support Services and Youth Agreements* (last revised March 2019) at 1 [unpublished; archived with British Columbia Law Institute].

104. *Ibid* at 34–54.

105. CFCSA, *supra* note 1, s 12.2 (5).

106. *Ibid*, s 12.2 (6).

107. MCFD Case Data, *supra* note 10.

- Social skills (e.g., communication).¹⁰⁸

Further, in May 2018, the then Minister of Child and Family Development issued a statement in response to the BC Coroners Service Death Review Panel Report,¹⁰⁹ indicating that transition planning is incorporated into plans of care for youth:

Right now, 84% of 18-year-olds in care have an up-to-date Plan of Care, which includes considerations for cultural connection, as well as preparations for adulthood and independence—and we will continue to take steps to improve.¹¹⁰

Commentary on transition planning

In 2018, the MCFD ran a province-wide engagement process to hear from youth, young adults and former youth in care “[t]o better understand the current state and the opportunities for change” in the area of youth transition, amongst other areas.¹¹¹

With respect to in-care transition planning for youth leaving care, the report made it clear that transition planning was lacking:

Early transition planning for youth leaving care does not always happen. There are many other priorities in a young person’s life that end up taking precedence over transition planning. Aging out of care can be an anxious and stressful time for youth, which many youth would rather avoid than discuss with their caregiver or social worker. The young person may not feel comfortable or have a supportive and caring adult to discuss their future goals with. Alternatively, a young person may not be in a place to begin transition planning, particularly if they are dealing with mental health or addictions.

Many caregivers indicated that they are not clear with respect to their role in transition planning or supporting the youth to obtain key life skills. Many participants felt that there is a lack of communication and dedicated resources to support transition planning (i.e. dedicated youth transition workers). As a result,

108. Your Life, Your Rights, *supra* note 47 at 41–43.

109. BC Coroners Service Death Review Panel Report, *supra* note 23.

110. British Columbia, Ministry of Children and Family Development, “Minister’s Statement on BC Coroners Service Death Review Panel (28 May 2018), online: Government of British Columbia <news.gov.bc.ca/releases/2018CFD0034-000990>.

111. British Columbia, Ministry of Children and Family Development, *What We Heard: About Youth Transitions and the Family Based Caregiver Payment Model in British Columbia: Phase One Engagement Report* (Victoria: MCFD, 2019) at iii, online (pdf): <www2.gov.bc.ca/assets/gov/family-and-social-supports/services-supports-for-parents-with-young-children/reporting-monitoring/00-public-ministry-reports/what_we_heard_feb_2019.pdf> [MCFD Youth Transitions Report].

many youth are leaving care without the necessary relational supports, life-skills or developmental milestones to live independently.¹¹²

Further, with respect to transition planning for Indigenous youth, the report identified a lack of support to connect with Indigenous communities and cultural roots:

Many young adults feel disconnected from their culture and community when they come into care, leaving them isolated and without a natural network of supports after they turn 19. Participants stated that the current care system does not build interdependence or promote enough opportunities for the youth to re-establish connections with their community or cultural roots in a meaningful way. Furthermore, some young adults said that they feel judged or unsupported to connect with their cultures.

Participants shared that some Indigenous communities do not have the capacity or resources to support young adults or their transition needs; as such, some expressed concern about young adults returning to their community, as they may have limited guidance and support.¹¹³

In her 2020 report, the Representative for Children and Youth acknowledged the importance of transition planning for youth who are in care, and for those reaching young adulthood, recommending that:

The Ministry of Children and Family Development should fully implement and proactively support and monitor effective practice in planning for transition into adulthood, beginning at least by age 14 for youth in continuing care and extending beyond age 19. Principles of this transition planning process should include:

- a. Developmentally appropriate processes, aligned with the non-linear and complex process of transitioning to adulthood, and supporting the shift from dependence to interdependence, with relationships at the centre.
- b. Contextualization of the experience of Indigenous youth transitioning to adulthood within the experience of colonization and supporting the reclamation of culture and identity as critically important elements of the lives of emerging First Nations, Métis, Inuit and Urban Indigenous young adults.
- c. Reciprocal processes, where youth agency is prioritized and youth are responsible and empowered to design a case plan representative of their goals, interests and support networks.¹¹⁴

112. *Ibid* at 5-6.

113. *Ibid* at 6.

114. RCY 2020 Report at 62–63 (Recommendation 1).

In this report, the Representative for Children and Youth also highlighted the importance of continuity of relationships in transition planning both in and post-care with the recommendation that the “MCFD should develop and implement a plan to establish dedicated youth transition workers to assist and support youth transitioning from care into adulthood” and that these transition workers “engage with young people before they turn 19 and provide systems navigation support, case management and adult guidance up to the age of 27 years.”¹¹⁵

In making these recommendations, the Representative for Children and Youth noted that implementation will have staffing and resource implications, and that changes to the legislation may be necessary to enable MCFD involvement in transition planning beyond the age of 19 years, and to establish a clear statutory mandate.¹¹⁶

Summary

- There is no general legislative requirement in British Columbia to develop transition plans to support all youth as they approach adulthood and independence. Ministry policies provide guidance to workers on transition planning for youth.
- However, there is a legislative requirement to develop comprehensive transition plans (“plans of independence”) for a narrow cohort of youth who are not technically in the care of the MCFD but are in need of assistance and have entered into Youth Agreements pursuant to section 12.2 of the *CFCSA*.
- This legislation mandates that plans of independence for Indigenous youth on Youth Agreements address maintenance of cultural connections and learnings and that Indigenous communities are involved in the development of plans of independence for these Indigenous youth.
- While the financial supports and services provided to a youth on a Youth Agreement do not continue once the youth turns 19, the legislation appears to encourage planning for independence beyond 19 and into young adulthood by addressing key areas such as connection with Indigenous community, education, employment, residential arrangements, and interpersonal relationships.
- An MCFD report in 2018 which focused on youth experiences of the transition process reported that early transition planning for youth leaving care does not always happen, that youth do not feel adequately supported to

115. *Ibid* at 63 (Recommendation 2).

116. *Ibid* at 62–63.

transition into independence, including supported to connect with culture and communities in a meaningful way.

- In 2020 the British Columbia Representative for Children and Youth recommended that:
 - The MCFD fully implement and proactively support and monitor effective practice in planning for transition into adulthood, beginning at least by age 14 for youth in continuing care and extending beyond age 19; and
 - The MCFD should develop and implement a plan to establish dedicated youth transition workers to assist and support youth transitioning from care into adulthood, from prior to age 19 through to age 27.

Post-Care Transition Support Services

This section of the study paper will consider any *legislated* post-care transition support services available to care-experienced young adults *after* they turn 19 years old through their transition to adulthood and independence.

Other government and non-government post-care transition services, policies and programs will be discussed further below.

Agreements with Adults (AYA)

In addition to Youth Agreements, amendments in 1999 to the CFCSA saw the development of the Agreements with Young Adults (AYA) program to support young adults aging into the community.¹¹⁷ The AYA program is the main government program supporting youth aging into the community in British Columbia.

Legislation

Section 12.3 of Part 2.1 of the CFCSA sets out the program's parameters as follows:

Agreements with Adults

12.3 (1) Subject to the regulations, a director may make a written agreement with a person 19 years or older who, before the person's 19th birthday, was

(a) a child in care,

117. *CFCSA*, *supra* note 1, as amended by *Child, Family and Community Service Amendment Act*, SBC 1999, c 26, s 4.

(b) the subject of an order for custody under this Act, other than as described in paragraph (a), or

(c) the subject of, or a party to, an agreement under this Act.

(2) The agreement may provide for support services or financial assistance, or both, to assist the person while

(a) enrolled in an educational or vocational training program, or

(b) taking part in a life skills or rehabilitative program.

(3) Subject to the regulations, the agreement may be renewed or, after an interval, another agreement under this section may be made.¹¹⁸

Eligibility criteria for the program are set out in section 8.3 of the *Child, Family and Community Service Regulation*¹¹⁹ as follows:

8.3 A director may enter into an agreement under section 12.3 of the Act with a person who, until the person's 19th birthday,

(a) received support services or financial assistance, or both, under section 12.2 of the Act,

(b) was in the continuing custody of a director, or

(c) was in the guardianship of a director of adoption or of a director under section 51 of the *Infants Act*.¹²⁰

About the program

Agreements with Young Adults are the main government program of supports for care leavers in British Columbia. The Ministry of Children and Family Development administers the program, which is aimed at young adults aged 19 to 26, who have been in the care of the ministry (excluding those under temporary care order or with voluntary or special needs agreements) or under a Youth Agreement and are aging into the community.¹²¹ The program is limited to those young adults who are undertaking education or job training or engaging in rehabilitation or life skills programs. The purpose of the program is to “help cover the cost of things like housing,

118. *Ibid*, s 12.3.

119. CFCS Regulation, *supra* note 46.

120. *Ibid*, s 8.3.

121. British Columbia, Ministry of Children and Family Development, “Agreements with Young Adults” (last visited 12 April 2021), online: Government of British Columbia <www2.gov.bc.ca/gov/content/family-social-supports/youth-and-family-services/teens-in-foster-care/agreements-with-young-adults> [Agreements with Young Adults].

child care, tuition and health care while [the young adults] go to school or do job training, or attend rehabilitation, mental health, or life skills programs.”¹²²

Under section 8.4 of the regulations, the term of the agreements, including any renewals, cannot exceed 48 months or extend beyond the person’s 27th birthday.¹²³ However, it should be noted that the 48-month time limit may be suspended during the COVID-19 state of emergency if access to the youth’s education or training program has been impacted.¹²⁴

According to MCFD data, a total of 1,237 young adults received AYA supports between April 2019 to March 2020 (an increase from 1,107 young adults the previous year) at a total expenditure of almost \$12.5 million.¹²⁵ As recently reported by the British Columbia Representative for Children and Youth, 89% of young people who have aged out of care in the past 8 years have aged out without a legal status that makes them eligible for AYA benefits.¹²⁶

There has been a trend toward increasing numbers of youth aging into the community receiving AYA supports over recent years;¹²⁷ however, despite this trend, data indicates that only about one-third of young adults eligible for AYA receive an AYA benefit.¹²⁸ In fact, the Representative for Children and Youth reports that this figure overrepresents the true number of eligible young adults benefiting from AYA at any one time since it doesn’t reflect non-renewals or terminations of agreements.¹²⁹

Of note, the Representative for Children and Youth has reported that the uptake of AYAs is inequitable among certain sub-groups. In particular, a significantly greater proportion of non-Indigenous young adults access an AYA benefit when they turn 19 (46%) than do Indigenous young adults (33%).¹³⁰ Uptake is much higher in the urban area of Vancouver/Richmond at 65% as compared with some other regional

122. *Ibid.*

123. CFCS Regulation, *supra* note 46.

124. *Ibid.* s 8.5. With respect to the province’s state of emergency as a result of the COVID-19 pandemic, see section below titled “COVID-19 Pandemic Measures.”

125. MCFD Case Data, *supra* note 10.

126. RCY 2020 Report, *supra* note 9 at 31.

127. *Ibid* at 34 (Table 2).

128. *Ibid* at 33.

129. *Ibid.*

130. *Ibid* at 37.

areas where uptake was as low as 15%.¹³¹ Further, those with a higher level of education when they turn 19, such as high school completion, are much more likely to access the AYA program than those with lower levels of education.¹³² In summary, the Representative for Children and Youth has noted:

Generally speaking, those young people who are more likely to access AYA support are those who likely experience fewer barriers in their transition to adulthood and are more likely to have the skills and supports necessary to access and make use of the program.¹³³

An AYA is not a mandatory program. Rather, a young adult must apply to the MCFD to participate. To apply for an AYA, a young adult must meet the eligibility criteria set out in section 8.3 of the regulations (above).¹³⁴

Services under the AYA program include financial support, up to a maximum of \$1,250 per month (maximum of \$15,000 per year), for living expenses while the young adult attends a school, vocational, rehabilitation, or an approved life skills program.¹³⁵ Not everyone on an AYA receives the maximum amount of funding, and funding is reduced where the young adult's income from employment reaches a minimum threshold.¹³⁶ Rehabilitation programs include mental health, addictions or substance use programs, or cultural healing and wellness programs, including post-treatment support programs.¹³⁷ Life skills programs include financial management, decision making and problem solving skills, as well as cultural learning and connection programs.¹³⁸

Living expenses intended to be covered by the program include food, shelter and daily basic living and medical expenses for the young adult and their children, if any. Funding can also be used for educational expenses such as tuition and program

131. *Ibid* at 36.

132. *Ibid* at 38.

133. *Ibid*.

134. CFCS Regulation, *supra* note 46.

135. Agreements with Young Adults, *supra* note 121.

136. RCY Report 2020, *supra* note 9 at 32.

137. Agreements with Young Adults, *supra* note 121.

138. *Ibid*; MCFD AYA Policies & Procedures, *supra* note 92 at 15.

supplies (textbooks, uniforms, etc.) that are otherwise not covered by the province's Youth Education Assistance Fund (see below).¹³⁹

To be eligible for the AYA program, young adults must meet a mandatory minimum number of hours of participation in their education, rehabilitation or life skills programs. For young adults completing high school or treatment programs, at least 15 hours a week is required.¹⁴⁰ Young adults in education or vocational programs must carry a minimum 60 percent of a full-time course load, or 40 per cent if they have a permanent disability.¹⁴¹

Youth in the AYA program receive support from a social worker throughout the term of the agreement.¹⁴² Ministry procedural policies with respect to the AYA program note that the ministry "identifies the support services to be provided by a Social Worker and/or Support Worker" before entering the agreement;¹⁴³ however, details as to the type or intensity of support available is not set out in the policy and commentary outlined below suggests this support is minimal.

Commentary on the AYA program

The views of young adults transitioning into the community, caregivers and delegated aboriginal agencies on the AYA program were summarized in a 2018 MFCD report after a community engagement process (as noted above). Some key themes that emerged from the report included:

- The AYA is a good program for young adults, with the potential to be even better with improvements.
- Eligible young adults on AYA appreciate that the program is available to them.

139. Agreements with Young Adults, *supra* note 121; British Columbia, Office of the Representative for Children and Youth, *On Their Own: Examining the Needs of B.C. Youth as They Leave Government Care* (Victoria: Office of the Representative for Children and Youth, April 2014) at 32, online (pdf): <rcybc.ca/sites/default/files/documents/pdf/reports_publications/rcy_on_their_own.pdf> [RCY 2014 Report].

140. These hours have been reduced while COVID-19 emergency measures are in place: British Columbia, Ministry of Children and Family Development, "COVID-19 support for youth and young adult," online: Government of BC <www2.gov.bc.ca/gov/content/family-social-supports/covid-19-information/youth-young-adults-response-to-covid-19> [MCFD COVID-19 Support].

141. RCY 2014 Report, *supra* note 139 at 32.

142. *Ibid.*

143. MCFD AYA Policies & Procedures, *supra* note 92 at 6.

- Youth and young adults on AYA want more support and to continue relationships in a meaningful network.
 - The length of the program should be extended to respond flexibly to circumstances. A young adult must complete their educational degree or program within 48 months, including any life-skills or rehabilitation programs. Non-care peers often take longer.
 - Funding does not cover wrap-around supports for those in the program, such as trauma support, counselling, mentoring, or cultural activities;
 - Funding does not take account of other lifestyle requirements, such as if a young adult has children;
 - More generally, transition supports do not take account of variation in capacity and needs of the young adult, such as physical and mental health needs.¹⁴⁴
- AYA eligibility/access is too restrictive and complex and is not available to all youth and young adults aging out of care.
 - The application process is complex and challenging without adequate assistance to help with the process.¹⁴⁵
 - As at the time of the report, AYA's were limited to those in care or on a Youth Agreement the day before their 19th birthday; however, the British Columbian government has noted in its most recent budget that eligibility for AYA will be expanded (see below).
- The funding amount young adults receive on AYA doesn't cover all living expenses, such as housing and does not take account of geographical location in cost of living.¹⁴⁶
- The life skill program options for AYA are narrow and not available across the province; however, a recent government announcement has indicated that "[c]ultural programs are also now included under the AYA life-skills program policy."¹⁴⁷ It is unclear whether this is only a time-limited inclusion resulting from COVID-19 emergency measures.

144. MCFD Youth Transitions Report, *supra* note 111 at 6.

145. *Ibid* at 7.

146. *Ibid* at 8.

147. MCFD, COVID-19 Support, *supra* note 140.

The Representative for Children and Youth undertakes a comprehensive analysis of the AYA program in her 2020 Report on government obligations for youth transitioning to adulthood, ultimately concluding the program to be insufficient:

While there certainly have been improvements, AYA to date has served as an ineffective placeholder for adequate and sufficient supports for youth transitioning to adulthood from care after 19. The program has been mired in access problems from its beginning, and it has never served more than 40 per cent of eligible youth in their first year of leaving care.¹⁴⁸

Key criticisms of the AYA program identified by the Representative for Children and Youth are briefly summarized as follows:

- The maximum amount of AYA funding (\$15,000 per year) is insufficient to bring the young adult above the poverty line, with those earning additional income to supplement the funding being penalized financially for doing so.
- Eligibility for AYA is too narrow, with only a small percentage of youth leaving care with a legal status that enables them to access the program.
- Program requirements disadvantage the most vulnerable cohorts of care leavers, such as those not ready to pursue training, education or move beyond basic life skills programs without additional support.
- There are significant inequities in access to the program, in particular for Indigenous care leavers, those in some regional locations, male care leavers and those with lower education.
- AYA is an opt-in program, with an application process that some care leavers find challenging, creating additional barriers to access.¹⁴⁹

Following this detailed analysis of the AYA program and other supports available to youth transitioning into community, the Representative for Children and Youth recommended an overhaul of the AYA program to address its shortcomings. The Representative for Children and Youth recommended that all youth aging into the community, including those on Youth Agreements, access universal support through automatic enrollment in the AYA program until the age of 27 years:

148. RCY 2020 Report, *supra* note 9 at 40.

149. See RCY Report 2020, *supra* note 9 at 31–41 for further details of the Representative for Children and Youth’s critique of the AYA program.

Recommendation #3

In order to support the same gradual and extended transition to adulthood that most young people enjoy, MCFD should implement universal and comprehensive financial support for young people aging out of all types of care and out of Youth Agreements by automatically enrolling them on their 19th birthday in Agreements with Young Adults, unless the young person chooses to opt out. Universal support should continue until the young person's 27th birthday without restriction, subject to reasonable constraints such as consideration of other income.¹⁵⁰

In support of her recommendation, the Representative for Children and Youth referred to the government's parental obligations to youth who have been in government care:

A typical parent in the community would not simply cut off their child altogether for being unable to enroll in or complete a program, but rather would encourage and support them to move forward as best they can in the circumstances. Removing AYA eligibility requirements does not mean removing expectations about educational and skill enhancement, labour attachment or engagement in rehabilitation measures. The Representative envisages that helping young people identify and meet such requirements would be one of the roles of the dedicated transition support workers outlined in Recommendation 2. These transition workers would work alongside the young person's natural support systems to engage, prompt and support the young person to move forward. The key difference in the approach recommended here is that if a young person is initially unable to take those positive steps or to follow through to completion, they would be supported to figure out those challenges rather than abandoned to fall into poverty and homelessness, as is too often the case now.¹⁵¹

Representative for Children and Youth—Advocacy Services

The province's Office of the Representative for Children and Youth is mandated under the *Representative for Children and Youth Act* to provide support, assistance, and information to young adults and families relating to available services and programs.¹⁵² While not a dedicated post-care support service, supports and assistance include "advocating on behalf of a young adult receiving or eligible to receive a prescribed service or program."¹⁵³ The Representative for Children and Youth's

150. *Ibid* at 64 (Recommendation #3).

151. *Ibid* at 64.

152. *Supra* note 76, s 6 (1) (a.1).

153. *Ibid*, s 6 (1) (a.1) (ii).

authority is defined by the act's description of reviewable services, generally provided by or funded by MCFD or a delegated Aboriginal Agency, outlined as follows:

- (a) Support services and programs under the *CFCSA*;
- (b) Support services and programs under the *Youth Justice Act*;¹⁵⁴
- (c) Mental health and addiction services for children; and
- (d) Additional designated services prescribed by regulation under s 29 (2) (b) of the *Representative for Children and Youth Act*.¹⁵⁵

The Office of the Representative for Children and Youth website notes that “designated services” include “services for youth and young adults during their transition to adulthood.”¹⁵⁶

Public Guardian and Trustee Trust Fund Management

In addition to the financial transition planning assistance provided by the PGT to youth approaching care leaving age (detailed above), the *Public Guardian and Trustee Act*, in conjunction with the *Infants Act*, now allows the PGT, by agreement, to act as trustee for young adults aging into the community.¹⁵⁷ The relevant acts provide:

Public Guardian and Trustee Act

Powers as executor, administrator, trustee or attorney

6 The Public Guardian and Trustee may

- (a) act as an executor under a will or as an administrator of an estate,
- (b) act, either alone or jointly with another person, as a trustee if the Public Guardian and Trustee is appointed a trustee

154. SBC 2003, c 85.

155. *Supra* note 76, s 1 “reviewable services.”

156. British Columbia, Office of the Representative for Children and Youth, “Mandate and Legislation” (last visited 21 April 2021), online: RCY BC <rcybc.ca/about-us/mandate-and-legislation/>. See also British Columbia, Office of the Representative for Children and Youth, “Advocacy Fact Sheet” (last visited 12 April 2021), online (pdf): RCY BC <rcybc.ca/wp-content/uploads/2019/06/advocacy_fact_sheet_-_final.pdf>.

157. *Public Guardian and Trustee Act*, RSBC 1996, c 383, ss 6 and 7.1, as amended by *Miscellaneous Statutes Amendment Act (No 2)*, 2018, SBC 2018, c 23, s 11 [PGT Act]; *Infants Act*, RSBC 1996, c 223, s 16, as amended by *Miscellaneous Statutes Amendment Act (No 2)*, 2018, SBC 2018, c 23, s 2 [Infants Act].

- (i) in a will, settlement or other instrument creating the trust,
 - (ii) by a majority of a trust's beneficiaries who have reached 19 years of age and are otherwise capable of making the appointment,
 - (iii) by a court,
 - (iv) by a statute, or
 - (v) by agreement of the Public Guardian and Trustee, and
- (c) act as attorney of a person in accordance with the terms of a power of attorney or an enduring power of attorney.¹⁵⁸

Use of trust money for young adult's benefit

7.1 If acting as trustee under section 6 (b)(v) for an adult

- (a) who has not yet reached 27 years of age, and
- (b) who, until reaching 19 years of age,
 - (i) was in the continuing custody of the director under the *Child, Family and Community Service Act* and had the Public Guardian and Trustee acting as property guardian, or
 - (ii) was under the property guardianship of the Public Guardian and Trustee under section 51 of the *Infants Act*,

the Public Guardian and Trustee may, during the term of the trusteeship, authorize payment of all or part of the trust money for the maintenance, education or benefit of the adult.¹⁵⁹

Infants Act

Termination of guardianship

16 (1) Subject to subsection (3), on termination of his or her guardianship of an infant because of the ward reaching 19 years of age, the Public Guardian and Trustee, after deducting any commission and settling the claims and liabilities of the property arising or accruing due before the ward's majority, must

158. PGT Act, *supra* note 157, s 6.

159. *Ibid*, s 7.1.

(a) pay or transfer the property of the ward to him or her on receiving his or her release, or

(b) if the ward requests, pass his or her accounts as a guardian under the Supreme Court Civil Rules.

(2) On termination of his or her guardianship of an infant for any other reason, the Public Guardian and Trustee, after deducting any commission, must pass his or her accounts under the Supreme Court Civil Rules.

(3) If a ward

(a) who was, until reaching 19 years of age, in the continuing custody of the director under the *Child, Family and Community Service Act* and had the Public Guardian and Trustee acting as property guardian, or

(b) who was, until reaching 19 years of age, under the property guardianship of the Public Guardian and Trustee under section 51 of the *Infants Act*,

reaches 19 years of age and enters into an agreement with the Public Guardian and Trustee under section 6 (b) (v) of the *Public Guardian and Trustee Act*, subsection (1) does not apply until the earlier of the following:

(c) the date the former ward terminates that agreement;

(d) the date the former ward reaches 27 years of age.¹⁶⁰

In respect of these reforms, the community-based organization AgedOut has noted:

For years, the PGT has advocated for law reform that would allow youth aging out of care the choice to continue receiving support from the PGT to manage the money held in their trust accounts. . . . This change will address many of the concerns held by the PGT's Guardianship and Trust Officers, who have heard former youth in care say they regret not having a plan in place when they received their money at 19. Sometimes family and friends can put pressure on youth aging out of care to spend their money in ways they may not want. Other times, youth aging out of care have found their money quickly spent with little to show for it.¹⁶¹

160. *Infants Act*, *supra* note 157, s 16.

161. "Legislative Amendments Affect Youth Aging out of Care" (3 December 2018) online: AgedOut <agedout.com/news/legislative-amendment-affects-youth-care-aging-out>.

Summary

Agreements with Young Adults

- The AYA program is the province's primary government program supporting youth aging into community in British Columbia. It is the province's only legislated post-care transition support program.
- Administered by the MCFD, the AYA program is aimed at supporting young adults aged 19 to 26 (for a maximum period of 48 months) who have been in the care of the ministry or on a Youth Agreement (excluding those under a temporary care order or with voluntary or special needs agreements) in their transition to the community.
- The AYA program is not compulsory and requires the young adult to apply for it. The program is limited to those young adults who are undertaking education or job training or engaging in a rehabilitation, mental health or life skills program.
- The purpose of the AYA program is to help cover the cost of housing, basic living needs, childcare, tuition and health care while the young adult participates in education, job training, or attends rehabilitation, mental health, or life skills programs. It is unclear exactly what type or level of wrap-around supports are provided by case managers under the program, but commentary has suggested that the provision of wrap-around supports is minimal.
- Approximately one-third of eligible youth aging into community continue into the AYA program, with Indigenous care leavers significantly under-represented in the program.
- Following a finding that the AYA program provides inadequate and insufficient supports to youth aging into community, the Representative for Children and Youth has made recommendations for the overhaul of the AYA program, including a recommendation to grant universal access to AYA by way of automatic enrolment for all youth leaving care, including those on youth agreements, until the youth turns 27 years of age.

Representative for Children and Youth

- The Office of the Representative for Children and Youth is mandated under the *Representative for Children and Youth Act* to provide support, assistance, and information to young adults in the child protection system and young adults transitioning into independence through the provision of advocacy services.

Public Guardian and Trustee

- The *Public Guardian and Trustee Act*, in conjunction with the *Infants Act*, allows the PGT, by agreement, to act as trustee for young adults aging into community up to the age of 27 to assist young adults who have received access to their funds at 19 years of age to appropriately manage their money.

Non-Legislated Post Care Support Programs

Government Programs and Services

Youth Education Assistance Fund

The MCFD Youth Education Assistance Fund (YEOF) was established in 2002 to support young adults to pursue post-secondary education or training. The YEOF program offers grants of up to \$5,500 per program year to former youth in care students between ages 19 to 24 (up to a maximum of four years).¹⁶² The funds are meant to cover tuition, books, fees or living expenses while young adults study at designated post-secondary or vocational institutions.¹⁶³

Like the AYA program, the YEOF program is not a mandatory program. Young adults must apply for consideration under YEOF, and demonstrate that they meet the following eligibility criteria:¹⁶⁴

Legal	Other
• A former British Columbia youth in continuing custody;	Must ALSO be: • A full-time student or a student with a permanent disability

162. British Columbia, StudentAid BC, "Youth educational assistance fund for former youth in care" (last visited 12 April 2021), online: StudentAidBC <studentaidbc.ca/explore/grants-scholarships/youth-educational-assistance-fund-former-youth-care> [StudentAid BC YEOF].

163. Victoria Foundation, "Helping Youth Formerly in Care Pursue Educational Dreams" (25 September 2012), online: Victoria Foundation <victoriafoundation.bc.ca/helping-youth-formerly-in-care-pursue-educational-dreams/> [Victoria Foundation].

164. Eligibility criteria obtained from StudentAid BC YEOF, *supra* note 162.

Legal	Other
I. Of a director designated under section 91 of the <i>CFCSA</i> pursuant to that act; or II. Under the guardianship of a director pursuant to section 51(1)(a) of the <i>Infants Act</i>; or III. Under the guardianship of a director of adoption pursuant to the <i>Adoption Act</i>: until 19 years of age or for at least five years immediately prior to adoption or permanent transfer of custody to a person other than a parent under section 54.1 of the <i>CFCSA</i>.	studying at a 40 percent course load; - Registered to take post-secondary-level courses from a designated post-secondary institution in an eligible program leading to a certificate, diploma or degree that is at least 12 weeks long; and - Between 19 and 24 years old.

The funding for YEAF comes from the MCFD. The fund is managed by the Victoria Foundation and administered by the Ministry of Advanced Education, Skills and Training.¹⁶⁵ According to MCFD data, a total of 218 young adults received a YEAF bursary in the period April 2019 to March 2020.¹⁶⁶ We were unable to find published data on the numbers of Indigenous young adults receiving funding under this program.

Students receiving financial assistance under the AYA program may still be eligible for YEAF funding. Of note, YEAF funding is not available after a person turns 25, whereas funding under the AYA program can support students up until they turn 27, as does the tuition waiver program described below.

Provincial Tuition Waiver Program

The Provincial Tuition Waiver Program (PTWP), funded by the Ministry of Advanced Skills, Training and Education, waives tuition fees for British Columbian students who are:

165. Victoria Foundation, *supra* note 163.

166. MCFD, Case Data and Trends, *supra* note 10.

- a) former youth in care between ages 19 and 26 (inclusive);¹⁶⁷ or
- b) 17 or 18 years of age, have graduated from high school and are no longer in MCFD care.¹⁶⁸

To qualify for the PTWP, students must be:

- Residents of British Columbia; or
- Placed in another province under a MCFD or Delegated Aboriginal Agency Interprovincial Placement Agreement;
- Studying full-time or part-time at one of 25 British Columbian public post-secondary institutions, the Native Education College, or one of 10 approved trades training providers; and
- Formerly in any MCFD program, including on a Youth Agreement or Delegated Aboriginal Agency Legal Status or Ministry of Social Development and Poverty Reduction Child in Home of Relative program for at least 24 months or 730 days (consecutive or accumulated in any combination).¹⁶⁹

The PTWP runs in conjunction with other financial support for educational programs including YEAF and AYA (see above). In her recent report, the Representative for Children and Youth noted that the tuition waiver program has been a significant success for young adults aging into the community, with data showing that 1,185 students have accessed the program.¹⁷⁰ The 2018/19 to 2020/21 Budget and Fiscal Plan indicated that \$6 million over 3 years would be allocated to this program.¹⁷¹ However, the Representative for Children and Youth also noted that access to the program reflected similar issues to those accessing AYA, with students receiving tuition waivers being significantly more likely to be non-Indigenous than Indigenous,

167. According to youth advocacy organization AgedOut, students who apply for a program before their 27th birthday will continue to be eligible for tuition waiver for the length of their program, even after turning 27: “Tuition Waivers” (last visited 12 April 2021), online: AgedOut <agedout.com/education/tuition-waivers>.

168. British Columbia, StudentAid BC, “Provincial Tuition Waiver Program” (last visited 12 April 2021), online: StudentAid BC <studentaidbc.ca/explore/grants-scholarships/provincial-tuition-waiver-program> [StudentAid BC PTWP].

169. *Ibid.*

170. RCY 2020 Report, *supra* note 9 at 42.

171. British Columbia, Ministry of Finance, *Budget and Fiscal Plan 2018/19 to 2020/21* (Victoria: Government of BC, 2018) at 31, online (pdf): <bcbudget.gov.bc.ca/2018/bfp/2018_Budget_and_Fiscal_Plan.pdf>.

and with much higher rates of access by females.¹⁷² The Representative for Children and Youth concluded:

The Provincial Tuition Waiver program has been praised for creating new opportunities for young people and signaling a more promising future for them after care. While there is a great deal to celebrate, the program does not work for everyone, as the government has acknowledged. The PTWP is invaluable for those who are ready to attend post-secondary, but lacks the wraparound services and supports needed to ensure the success of youth who need more time to be ready for that step. The provincial government has talked about a more comprehensive program with wraparound supports, being developed in partnership with the Ministry of Children and Family Development as part of the 2018/19 budget process. This program has yet to be developed and implemented.¹⁷³

It should be noted that there is no legislative basis for the PTWP program. While the program is generally available to students province-wide, it is practically limited to young adults geographically located in proximity to the listed public educational institutions or included training providers, or those willing and able to travel to such locations.

Youth Futures Education Fund

Since its commencement in 2015, the Youth Futures Education Fund (YFEF) complements the Provincial Tuition Waiver Program by providing financial assistance to youth formerly in care who are in a Provincial Tuition Waiver Program or other post-secondary tuition waiver program.¹⁷⁴ As an application-based program, the funds are provided to help cover living expenses (e.g., rent, groceries, vital mental health care treatment, utilities, transportation, textbooks, etc.) while the young adults are studying.¹⁷⁵

The YFEF program is a collaboration between Coast Capital Savings, British Columbia, and the Office of the Representative for Children and Youth.¹⁷⁶ Since 2015 almost \$2 million has been raised for the fund, with almost 50% coming directly from

172. RCY 2020 Report, *supra* note 9 at 42.

173. *Ibid.*

174. British Columbia, Youth Futures Education Fund, *Annual Report 2018—2019* (Burnaby: YFEF, 2020) at 1, online (pdf): <youthfutures.ca/wp-content/uploads/2020/04/YFEF-%E2%80%93-Annual_Report_2018-19_.pdf> [YFEF Annual Report].

175. *Ibid.*

176. *Ibid.*

the Ministry of Advanced Education, Skills & Training.¹⁷⁷ This includes a recent injection of \$250,000 in June 2020 into the fund by the provincial government.¹⁷⁸ Nearly \$1.4 million has been distributed to more than 600 students attending a higher education institution on a tuition waiver program.¹⁷⁹ On average, students on YFEF receive \$1,300.¹⁸⁰ Living costs for students in British Columbia are estimated by the Ministry of Advanced Education, Skills and Training at \$19,700 annually.¹⁸¹ Twenty-six percent of students receiving YFEF are Indigenous.¹⁸²

Non-Government programs/services

Institutional Tuition Waiver Program

A number of institutions offer their own tuition waiver programs for youth aging into the community who do not qualify for the PTWP. Each institution has its own eligibility requirements with lower barriers to entry than the provincial program. For example, compared to the PTWP two-year requirement, the Vancouver Island University only requires that youth are currently or have previously lived as a youth in care in British Columbia for one year or more (consecutive or accumulated).¹⁸³ Similarly, the University of British Columbia offers its tuition waiver program to youth who can show that they were in the continuing custody of MCFD or a Delegated Aboriginal Agency for at least one year.¹⁸⁴

The 2014 report of the Representative for Children and Youth on youth leaving care challenged British Columbia's post-secondary schools to waive tuition for former

177. British Columbia, Ministry of Advanced Education, Skills and Training, "Vulnerable youth get extra support for post-secondary studies" (5 June 2020), online: Government of BC <news.gov.bc.ca/releases/2020AEST0027-001017>.

178. *Ibid.*

179. *Ibid.*

180. *Ibid.*

181. YFEF Annual Report, *supra* note 174 at 1.

182. Youth Futures Education Fund, "Success Takes Support" (last visited 12 April 2021), online: YFEF <youthfutures.ca/success-takes-support/>.

183. Vancouver Island University, "Youth Aged out of Care Funding: Vancouver Island University Tuition Waiver Program (VIUTWP)" (last visited 12 April 2021), online: VIU <services.viu.ca/student-affairs/financial-aid-awards/youth-care-tuition-waiver-program>.

184. University of British Columbia, "Funding for former youth in care" (last visited 12 April 2021), online: UBC <students.ubc.ca/enrolment/finances/awards-scholarships-bursaries/funding-former-youth-care#ubc-tuition-waiver-program>.

children and youth in care.¹⁸⁵ These institutional tuition waiver programs appear to be a response to this challenge.¹⁸⁶

While not purporting to be a definitive list of institutions offering this type of program, at least one reference indicates that, starting with Vancouver Island University in 2013, 11 colleges and universities in British Columbia have begun offering tuition-waiver supports or special bursaries to youth leaving care.¹⁸⁷

Public Guardian and Trustee Educational Assistance Fund

The Public Guardian and Trustee Educational Assistance Fund was established in June 1989 with funds donated by private benefactors.¹⁸⁸ Annual bursaries range in value up to a maximum of approximately \$4,415.¹⁸⁹

To be eligible for this funding, a youth must:

- be a former permanent ward of the Ministry of Social Services of British Columbia, its predecessor or successor, or have been in continuing custody of the British Columbia Ministry for Children and Family Development under the *Child, Family and Community Service Act* or predecessor laws;
- be at least 19 years of age as of the date studies commence;
- be a high school graduate or equivalent currently enrolled or planning to enroll in a post-secondary academic, technical or vocational program;
- demonstrate the requisite financial need.¹⁹⁰

185. RCY 2014 Report, *supra* note 139 at 3.

186. See e.g. Vancouver Island University “Post-Care Tuition Waiver Program (PCTWP) (Questions and Answers)” (last updated 17 April 2019) at 1, online (pdf): VIU <services.viu.ca/sites/default/files/2018_02_01_proofed_viu_tuition_waiver_qa_.pdf>.

187. Richard Watts, “For youth raised in care, break on tuition offers step up,” *Times Colonist* (30 June 2016), online: <www.timescolonist.com/news/local/for-youth-raised-in-care-break-on-tuition-offers-step-up-1.2313582>.

188. Public Guardian and Trustee BC, “PGT Educational Assistance Fund” (last visited 12 April 2021), online: PGT BC <www.trustee.bc.ca/services/estate-and-personal-trust-services/pages/pgt-educational-assistance-fund.aspx>.

189. *Ibid.*

190. *Ibid.* To meet the financial need requirement, a young adult must show that: 1) they have a financial shortfall that could prevent them from continuing their studies; 2) they have some financial support outside the bursary; 3) they are unable to access additional financial support to cover the shortfall; and 4) they have an estimated budget for the upcoming academic year based on reasonable expenses and financial support: *ibid.*

Academic performance and the career goals of the youth are also taken into consideration.¹⁹¹

Federation of BC Youth in Care Networks Bursaries

This non-profit organization “supports young people in and from care to pursue their careers and achieve their goals through education and skill building” through two small bursary programs: Education Achievement Bursary and Reach for Success Bursary.¹⁹² These bursaries are offered in three rounds per year to a total of \$5,000 per round for the Education Achievement Bursary and \$1,500 per round for the Reach for Success Bursary. Below is a brief description of each fund:

- **Education Achievement Bursary:** financial support, up to a maximum of \$1,500 toward tuition for youth aged 15 to 24 in and from care attending post-secondary school;¹⁹³ and
- **Reach for Success Bursary:** helps young people in and from care with up to a \$500 one-off payment for personal or professional development (e.g., extracurricular activities, workshops, tutoring, conferences, or other skill-building activities).¹⁹⁴

Federation of Community Social Services of BC Bursaries (FCSSBC)

The FCSSBC Youth Education Bursary assists young people who are, or have been, in care and who want to pursue a career in the field of Human and Social Services.¹⁹⁵ Bursaries are offered to assist with the cost of tuition and other educational-related expenses, to a maximum of \$2,000 per year.¹⁹⁶

To qualify for the FCSSBC bursary, young adults must meet the following criteria:

- Currently in care or a former youth in care in the province of British Columbia. This includes being under a continuing custody order; temporary

191. *Ibid.*

192. Federation of BC Youth in Care Networks, “Dream Fund” (last visited 13 April 2021), online: <fbcyicn.ca/what-we-offer/programs/dream-fund>.

193. *Ibid.*

194. *Ibid.*

195. The Federation of Community Social Services of BC, “FCSSBC Youth Education Bursary” (last visited 13 April 2021), online: <fcssbc.ca/programs/youth-education-bursary/>.

196. *Ibid.*

custody order, Voluntary Agreement or Special Needs Agreement; or on a Youth Agreement under the *CFCSA*;

- A Canadian Citizen or a Landed Immigrant;
- 30 years old or younger in the year of their application;
- Currently attending or planning to enroll in a post-secondary academic program in a recognized Canadian public post-secondary institution (per the list of Public Institutions on the British Columbia Ministry of Advanced Education website); and
- Education plans relate to a career in the field of Human and Social Services. Examples include Social Work, Counselling, Child & Youth Care, Psychology, Community, Family & Child Studies, Gerontology & Social Work, Mental Health & Addictions, Pre-Social Work.¹⁹⁷

The FCSSBC website notes that, “[s]ince 2009, the bursary program has awarded \$211,925 in bursaries to 158 recipients to help students with the financial costs of tuition, books, and supplies for post-secondary study (as of July 2018).”¹⁹⁸

Organizations Providing Information, Referrals and Connections

The Fostering Change *Opportunities in Transition: An Economic Analysis of Investing in Youth Aging out of Foster Care* report notes that non-government, provincial organizations play a role in providing information, referrals and connections to youth aging into the community.¹⁹⁹ This report specifically refers to two organizations that receive funding from MCFD: 1) Federation of BC Youth in Care Networks; and 2) AgedOut.com.

Summary of Non-Legislated Post-Care Supports and Services

- There are a number of government funded and administered educational support programs available to care leavers in British Columbia (AYA, Provincial Tuition Waiver Program, YEAF and YFEF);

197. *Ibid.*

198. *Ibid.*

199. Martin Shaffer & Lynell Anderson, *Fostering Change, Opportunities in Transition: An Economic Analysis of Investing in Youth Aging out of Foster Care in their 20s—Report 1 of 3: Educational, Economic, Social, and Wellness Outcomes* (Vancouver: Fostering Change, September 2016) at 17, online (pdf): <youthrex.com/wp-content/uploads/2019/02/Fostering-Change-Opportunities-in-Transition-Report-1.pdf> [Fostering Change Report].

- There are also several privately funded education related grants and bursaries for youth aging into the community in British Columbia (including but not limited to the Institutional Tuition Waiver Program, Federation of BC Youth In Care Networks Bursaries, PGT Educational Assistance Fund and FCSSBC Youth Education Bursary).
- These programs aim to assist with tuition costs, other educational expenses, such as books and institutional fees, as well as basic living expenses while undertaking education or training.
- The Representative for Children and Youth made the following recent observations with respect to the myriad of educational supports available to young adults leaving care:

each of the funds are independently managed and set out different outcomes for applicants. For example, the Youth Futures Education Fund (YFEF) and Youth Education Assistance Fund (YEAFF) are both bursary programs, but YFEF provides funding to tuition waiver recipients, while YEAFF seeks scholarship applications from youth ages 19 to 24 with certain care statuses on their 19th birthday. They are financed with different pools of money, have separate governance models and are administered independently by various charities. While efforts to support post-secondary education for former youth in care have certainly been made, there is a lack of coherence and comprehensiveness to the current supports. The landscape of post-secondary funding options and available bursaries can be challenging for some youth to understand and navigate.

- Several non-governmental, provincial organizations play a role in providing information, referrals and connections to youth aging into the community.

Indigenous Youth

Overview

The responsibility for the protection of Indigenous children in the care of the Director in British Columbia is shared by the MCFD and 24 Delegated Aboriginal Agencies (DAAs).²⁰⁰ Through delegation agreements, the Provincial Director of Child Welfare gives authority to these DAAs to administer some or all parts of the *Child, Family and*

200. See also *An Act respecting First Nations, Inuit and Métis children, youth and families*, SC 2019, c 24 [Federal Act] (setting out principles and minimum standards applicable to provision of child and family services in relation to Indigenous children).

Community Service Act, depending on the level of delegation negotiated.²⁰¹ According to the provincial government:

Currently, there are 24 Delegated Aboriginal Agencies with various levels of delegation: three can provide voluntary services and recruit and approve foster homes; 7 have the additional delegation necessary to provide guardianship services for children in continuing care; and 14 have the delegation required to provide, in addition to the above, full child protection, including the authority to investigate reports and remove children.²⁰²

The majority of Indigenous children and youth in care remain the responsibility of the director, with approximately 42% of Indigenous children and youth in care being serviced by DAAs.²⁰³ Some agencies service particular nations and communities, while others service children and youth from multiple nations and communities.²⁰⁴

In British Columbia, Indigenous children and youth have historically and continue to be overrepresented in the child welfare system. Indigenous children in care made up 65% of total children in care as of March 2019,²⁰⁵ where less than 10% of children and youth in British Columbia identify as Indigenous.²⁰⁶ Approximately half of the youth aging into the community in the fiscal year 2019/2020 were Indigenous.²⁰⁷ Colonization and racism, interlinked with poverty and westernized approaches to child welfare are often cited as causes of this overrepresentation.²⁰⁸

201. British Columbia, “Delegated Aboriginal Agencies in BC” (last visited 23 April 2021), online: <www2.gov.bc.ca/gov/content/family-social-supports/data-monitoring-quality-assurance/reporting-monitoring/accountability/delegated-aboriginal-agencies>.

202. *Ibid.*

203. Auditor General of BC Report, *supra* note 31 at 26.

204. *Ibid.*

205. British Columbia, Ministry of Children and Family Development, “Children and Youth in Care (CYIC)” (last visited 23 April 2021), online: <mcf.gov.bc.ca/reporting/services/child-protection/permanency-for-children-and-youth/performance-indicators/children-in-care>.

206. RCY 2020 Report, *supra* note 9 at 15.

207. British Columbia, Ministry of Children and Family Development, “Post Transition Supports: Case Data and Trends” (last visited 23 April 2021), online: <mcf.gov.bc.ca/reporting/services/child-protection/post-transition-supports/case-data-and-trends>.

208. Robert Mahikwa, “The Next Chapter: A Practical Guide for Individuals, Families, Communities, Social Workers, and Organizations Supporting Indigenous Youth Aging-Out of Care” (MSW Thesis, University of Victoria, 2018) at 4, online: <dspace.library.uvic.ca/handle/1828/10396>; RCY 2020 Report, *supra* note 9 at 15.

Indigenous Youth Aging into the Community

Given this overrepresentation of Indigenous children in British Columbia's child welfare system, many advocates and experts have called for policy and practice to focus on the needs of Indigenous youth aging out of care.²⁰⁹ As Indigenous children are removed from their families and often their Indigenous communities, a lack of cultural connection has been identified as a key factor contributing to poorer mental health outcomes.²¹⁰

It is well documented that Indigenous children and youth in care experience poorer education outcomes than students in the general population.²¹¹ Indigenous youth leaving care also experience higher rates of homelessness than their non-Indigenous peers. In terms of supports and services for Indigenous young adults aging into the community, the Representative for Children and Youth issued a report in 2015 with a recommendation for:

[e]nhanced transition planning . . . with the recognition that these [Aboriginal] youth may require particularly robust services including foster care and other supports that extend beyond the age of 19. Aboriginal girls in care who are at risk of drug overdose, involvement in survival sex trade, and poor school attendance to be offered extension of foster care to 24 years of age.²¹²

The Representative for Children and Youth has recently noted that advocates working with Indigenous groups have expressed concern that the AYA program does not work well for many Indigenous young people.²¹³ Even as compared with their in-care peers, only 33% of Indigenous youths accessed AYA, the province's primary support mechanism for youth aging into the community, upon turning 19, compared

209. See e.g. RCY 2020 Report, *ibid* at 15. See also BC Coroners Service, *BC Coroners Service Death Review Panel: Review of MCFD-Involved Youth Transitioning to Independence* (Victoria: Office of the Chief Coroner of British Columbia, 2018).

210. Mahikwa, *supra* note 208 at 5.

211. British Columbia, Ministry of Education et al, News Release, 2020EDUC0031-001014, "Improving outcomes for First Nations children in care" (4 June 2020), online: <archive.news.gov.bc.ca/releases/news_releases_2017-2021/2020EDUC0031-001014.htm>.

212. British Columbia Representative for Children and Youth, *Paige's Story: Abuse, Indifference and a Young Life Discarded* (May 2015) at 63, online (pdf): RCY <rcybc.ca/wp-content/uploads/2019/05/rcy-pg-report-final.pdf> [2015 Paige Report].

213. RCY 2020 Report, *supra* note 9 at 35.

with a 46% non-Indigenous access rate in the 2019/2020 fiscal year.²¹⁴ These figures are representative of similar uptake patterns in previous years.²¹⁵

In 2016 the comprehensive *Indigenous Resilience, Connectedness and Reunification—From Root Causes to Root Solutions* report made 85 recommendations to reform British Columbia's child welfare law, policy, and practice for Indigenous children and youth.²¹⁶ Key themes emerging from the report and recommendations include:

- increasing support services that help keep families together, including reconnecting youth who have aged out of care with their families and communities;
- social work support;
- an aging-out plan as a required component of each care plan for youth, developed with the support and direct involvement of an Indigenous youth's community;
- a mandatory requirement for MCFD to proactively develop an AYA to ensure continued support for youth who are transitioning out of care and into adulthood; and
- development of a youth transition team should be established in each of the 13 MCFD regions to offer support and assistance for youth who are transitioning out of care.²¹⁷

The Auditor General of British Columbia conducted a review in 2019 of contracted residential services for youth in care²¹⁸ and found that despite commitments in the CFCSA to connect Indigenous youth in care to their Indigenous communities and families, “many of the contracted residential services available to both the Delegated

214. *Ibid.*

215. *Ibid.*

216. Grand Chief Ed John, Special Advisor, MCFD, *Indigenous Resilience, Connectedness and Reunification—From Root Causes to Root Solutions* (Victoria: November 2016), online (pdf): <fns.bc.ca/wp-content/uploads/2017/01/Final-Report-of-Grand-Chief-Ed-John-re-Indig-Child-Welfare-in-BC-November-2016.pdf> [Indigenous Resilience].

217. *Ibid.* at 138–140.

218. Office of the Auditor General of British Columbia, *Oversight of Contracted Residential Services for Children and Youth in Care: An Independent Audit Report* (June 2019), online: <bcauditor.com/sites/default/files/publications/reports/OAGBC_OCRS_RPT.pdf>.

Aboriginal Agencies and the ministry did not provide culturally appropriate support and care to Indigenous children and youth.”²¹⁹

While findings made in this review were not specific to youth aging out of care, it should be noted that children in residential services tend to be older than their peers in the foster system, with the average age being approximately 15 years old, and almost 80% being older than 13.²²⁰ In addition, as mentioned earlier in the study paper, children and youth in residential services are generally a more vulnerable cohort at higher risk of poorer outcomes post-care. As a result, culturally appropriate residential services that support connectedness to culture and community is particularly important for this group.

Recent Reforms and Initiatives for Indigenous Youth in Care

In 2019, British Columbia became the first province in Canada to enact legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples into provincial law and policy going forward.²²¹ This Act sets out a process to align laws in British Columbia with the United Nations declaration.

Improving educational outcomes for Indigenous children in care has been a key focus of reforms aimed at improving the general welfare of Indigenous children in care. Recent reforms include a 5 year British Columbia Tripartite Education Agreement signed in 2018 between the Province of British Columbia, the Government of Canada and the First Nations Education Steering Committee, which “commits the parties to work together to make systemic shifts (i.e., legislative, policy and practice reforms) to support successful educational outcomes of all First Nations students, no matter where they live in the province.”²²² As noted above, the province has committed to continued funding in its AYA program to help cover monthly living expenses while children and youth in care and those transitioning into the community finish high school, undertake post-secondary, life skills or rehabilitation programs.

On May 26, 2020, the Province and First Nations signed the First Nations Children and Youth in Care Protocol as a commitment to:

work together to engage in dialogue and joint action on specific issues and initiatives, seeking to improve the educational outcomes and well-being of

219. *Ibid* at 32.

220. *Ibid*, at 22 (exhibit 3).

221. See *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44.

222. “Improving outcomes for First Nations children in care,” *supra* note 211.

Indigenous children and youth in care, and former youth in care through legislative, policy and practice reform.²²³

A key priority of the protocol is to support youth transitioning between grades, and from the school system into post-secondary education or the workforce. As noted by the government news release:

[t]his builds on broader government efforts to prioritize children and youth in care throughout their lives, including the post-secondary Tuition Waiver Program, a new K-12 education supplement, supporting Indigenous communities to exercise jurisdiction over Indigenous child welfare, and an increase this year of \$5 million in funding to help children and youth in care connect to their culture and heritage as part of Budget 2020.²²⁴

In response to Grand Chief Ed John's report *Indigenous Resilience, Connectedness and Reunification—From Root Causes to Root Solutions: A Report on Indigenous Child Welfare in British Columbia* (see above), a number of amendments were made to the CFCSA. The changes aim to increase the involvement of Indigenous communities at each stage of the child protection process. Key changes relating to Indigenous youth aging out of care include affirming in the Act's guiding principles that "Indigenous families and Indigenous communities share responsibility for the upbringing and well-being of Indigenous children"²²⁵ and that "Indigenous children are entitled to (i) learn about and practise their Indigenous traditions, customs and languages, and (ii) belong to their Indigenous communities."²²⁶

Further, the Act was amended to include provisions authorizing the director to make agreements with First Nations entities for the purpose of, among others, involving the Indigenous community in the creation of youth agreements for Indigenous youth, specifically plans of independence made under a youth agreement, as well as involvement in the development of plans of care for all Indigenous children and youth.²²⁷

At the federal level, the Government of Canada is working with Indigenous partners on the implementation of the *Act respecting First Nations, Inuit and Métis children*,

223. *Ibid.*

224. *Supra* note 211.

225. *Indigenous Resilience*, *supra* note 216 at Guiding Principle 2 (b.1) (Section 2 (a) amending act).

226. *Ibid* at Guiding Principle 2 (f) CFCSA (section 2 (b) amending Act).

227. See CFCSA, *supra* note 1, s 12.2 (2.1) (section 10 amending act) and s 92.1 (Section 45 amending act).

*youth and families*²²⁸ which came into force on 1 January 2020 for the reform of Indigenous child protection services. The Federal Act was a response to calls to action from the Truth and Reconciliation Commission of Canada.²²⁹ It affirms the jurisdiction of Indigenous communities over decision making for their children and families and aims to reduce the number of Indigenous children in care.²³⁰ The Government of Canada has committed half a billion dollars to the Federal Act's implementation. The Federal Act establishes a set of national principles to guide the provision of Indigenous child and family services, including the best interests of the Indigenous child, cultural continuity and substantive equality.²³¹ The Federal Act also enables Indigenous communities to transition toward exercising full or partial jurisdiction over child and family services.²³²

In her 2020 report, the Representative for Children and Youth acknowledged the overrepresentation of Indigenous youth in the child welfare system, stating that "more focused attention must be paid to the unique issues young Indigenous people face when transitioning into adulthood" and that "[a]ny attempts to improve policy and practice for youth leaving care must centre on the experiences and needs of Indigenous youth."²³³ As part of her recommendation that dedicated youth transition workers be established to provide adult guidance and support, the Representative for Children and Youth recommended that "[p]articular attention should be paid to engaging transitional support workers who are First Nations, Métis, Inuit and Urban Indigenous, as well as non-Indigenous workers who have received cultural safety and trauma awareness training to work respectfully with these young people."²³⁴

228. Federal Act, *supra* note 200.

229. Rachael Knowles, "Canadian Government invests half a billion into First Nations decision-making," *National Indigenous Times* (4 December 2020), online: <nit.com.au/canadian-government-invests-half-a-billion-into-first-nations-decision-making/#:~:text=Introduced%20on%20January%201%20this,of%20Indigenous%20children%20in%20care.&text=To%20do%20that%2C%20Indigenous%20communities,be%20in%20the%20driver's%20seat.%E2%80%9D>.

230. Federal Act, *supra* note 200.

231. Federal Act, *ibid*, s 9.

232. Indigenous Services Canada, News Release, "The Assembly of First Nations and Canada Sign a Historic Protocol Agreement to Advance the Transfer of Child and Family Services to First Nations" (7 July 2020), online: <www.canada.ca/en/indigenous-services-canada/news/2020/07/the-assembly-of-first-nations-and-canada-sign-a-historic-protocol-agreement-to-advance-the-transfer-of-child-and-family-services-to-first-nations.html?utm_source=miragenews&utm_medium=miragenews&utm_campaign=news>.

233. RCY 2020 Report, *supra* note 9 at 15–16.

234. *Ibid* at 63 (Recommendation #2).

Recent Initiatives

Expansion of AYA Eligibility

Relevant to a number of youth concerns regarding the AYA program discussed above, the government of British Columbia announced in its Budget and Fiscal Plan for 2020/2021–2022/2023 that eligibility criteria for AYA will be expanded:

[y]outh who turn 19 in certain out-of-care placements will now be eligible to enrol in the program, as well as youth with significant involvement with the child welfare system between the ages of 12 and 19. Over 250 additional youth with involvement in the child welfare system per year are expected to benefit from this expansion. This change allows for closer alignment with the provincial Tuition Waiver program for former youth-in-care that was introduced in Budget 2018.²³⁵

Our research has not been able to uncover any further details of this planned expansion.

COVID-19 pandemic measures

At the onset of the COVID-19 pandemic, the province issued an order to amend the regulations to suspend aging-out provisions under the CFCSA and regulations to ensure youth in care will not age out of services during COVID-19.²³⁶ The MCFD has extended this emergency support several times since its initial order per the amendments set out in its earlier order, now to run until March 31, 2022.²³⁷

The extension of supports includes:

- Youth in foster care, out-of-care placements and contracted residential agencies will be able to stay where they are past their 19th birthday, available until March 31, 2022

235. BC Budget and Fiscal Plan 20/21 to 22/23 at 15, online: <www.bcbudget.gov.bc.ca/2020/pdf/2020_budget_and_fiscal_plan.pdf>.

236. OIC 220/2020, (2020) BC Gaz II, vol 63, no 8 (made under CFCSA, *supra* note 1, s 103 (2)). See also British Columbia, Ministry of Children and Family Development, News Release, 21915, “Extended supports help youth in care during pandemic” (30 March 2020), online: <news.gov.bc.ca/21915>.

237. British Columbia, Ministry of Children and Family Development, News Release, 23177, “Supports extended for youth aging out of care” (20 September 2020), online: <news.gov.bc.ca/23177>; British Columbia, Ministry of Children and Family Development, News Release, 23753, “Supports for youth in care extended another year” (9 February 2021), online: <news.gov.bc.ca/23753>.

- Youth on Independent Living Agreements and Youth Agreements will receive monthly living expenses past their 19th birthday, until March 31, 2022.
- A temporary Life Skills option is available for youth to access Agreements with Youth Adults (AYA) program until March 31, 2022.
- This includes expansion of program eligibility to a wider range of existing programs online and in communities as well as decreasing the number of required hours of participation per week. Cultural programs are also now included under the AYA life-skills program policy.
- As of October 1, 2020, more flexibility to access mental health supports including cultural healing and wellness are available for young adults under the AYA rehabilitative program area.²³⁸

Of note, youth receiving continuing housing assistance under these emergency measures may also be able to access some AYA funding to support their educational, training or life skills programs, at the same time.²³⁹ The 48-month time limit for accessing AYA may be suspended if a youth has not been able to access their training or educational programs as a result of the pandemic.²⁴⁰

MCFD Youth and Young Adult Transitions Service Framework

In its 2020/21—2022/23 Service Plan, MCFD reports that one of its key strategies is to “implement a Youth and Young Adult Transitions Service Framework” that will provide ongoing services and supports for youth aging into community.²⁴¹ Supports include building and sustaining connections between youth and their culture and community. One of the goals of this framework is to improve uptake of young adults enrolled in the AYA program.²⁴² Our research has not uncovered any further information about this framework.

Learning Fund for Young Adults

The Learning Fund for Young Adults is a government program whereby the MCFD contributes funding for children born after 2007 and who have been in care for at least one year to match the British Columbia Training and Education Savings

238. “Extended supports help youth in care during pandemic,” *supra* note 236; “Supports for youth in care extended another year,” *supra* note 237.

239. “Supports for youth in care extended another year,” *supra* note 237.

240. CFCF Regulation, *supra* note 46, s 8.5.

241. British Columbia, Ministry of Children and Family Development, *2020/21—2022/23 Service Plan*, (Victoria: February 2020) at 10, online (pdf): MCFD <www.bcbudget.gov.bc.ca/2020/sp/pdf/ministry/cfd.pdf>.

242. *Ibid.*

Grant.²⁴³ This grant provides \$1,200 for every British Columbian child born after 2006.²⁴⁴ First disbursements from this program are not due to be paid out until 2024. The funding is to assist with costs of higher education.²⁴⁵ Little information is publicly available about the program.

Recent Reform Recommendations for British Columbia's Care Leaving System

Representative for Children and Youth

In 2014, the Representative for Children and Youth undertook a comprehensive review of the care leaving system in British Columbia and published a report.²⁴⁶ The report made four recommendations, one of which was to implement a legislative system based on the comprehensive United Kingdom model. A summary of the recommendations is set out below:

Recommendation 1

That the Ministry of Children and Family Development immediately take steps to establish a Youth Secretariat to provide a defined youth focus across all of the ministry's service areas and to coordinate cross-ministerial efforts to ensure successful transitions to adulthood for youth leaving care and out-of-home placements. The Secretariat should work to ensure that youth are provided the same or better access to supports and services as their non-care peers. It should include strong Aboriginal participation and leadership and work to ensure effective coordination and leadership on transition issues affecting young people in care and those in out-of-care placements.²⁴⁷

Recommendation 2

That the Ministry of Education begin a targeted initiative in all B.C. school districts to ensure that every youth in care or in an out-of-care placement has a

243. RCY Report 2020, *supra* note 9 at 43.

244. British Columbia, "British Columbia Training and Education Savings Grant Information" (last visited 23 April 2021), online: <[www2.gov.bc.ca/gov/content/education-training/k-12/support/scholarships/bc-training-and-education-savings-grant#:~:text=Families%20in%20British%20Columbia%20are,Education%20Savings%20Grant%20\(BCTESG\)>](http://www2.gov.bc.ca/gov/content/education-training/k-12/support/scholarships/bc-training-and-education-savings-grant#:~:text=Families%20in%20British%20Columbia%20are,Education%20Savings%20Grant%20(BCTESG)>)>.

245. RCY Report 2020, *supra* note 9 at 43.

246. British Columbia, Representative for Children and Youth, *On Their Own: Examining the Needs of BC Youth as They Leave Government Care* (Victoria: Representative for Children and Youth, 2014) online: RCY BC <rcybc.ca/reports-and-publications/reports/monitoring-reports/on-their-own-examining-the-needs-of-b-c-youth-as-they-leave-government-care/>>.

247. *Ibid* at 37.

clear education plan and skills training pathway to guide them as they progress in school and transition out of government care and high school.²⁴⁸

Recommendation 3

That MCFD build a durable policy foundation for youth programs and services in British Columbia to ensure that vulnerable youth, such as those in care and out-of-home placements, are provided guaranteed access to training, skills and other programs as well as adequate social supports, and are not transitioning to dependence with poor opportunities.

Details:

- In the short-term, MCFD to consider amending the Child, Family and Community Service Act to permit, on a case-by-case basis, the extension of foster care up to age 25 for young people who are attending post-secondary institutions or apprenticeship programs.
- MCFD to prepare a discussion paper on legislative options for a more durable, stable policy framework to close the gap for transitioning vulnerable youth.
- MCFD to promote discussion and consideration of a Youth Leaving Care Act, similar to that in force in the U.K., to provide a stable, long-term commitment to helping youth in care and out-of-home placements make the transition to adulthood and to anchor programs, services and a systemic approach to accountability.²⁴⁹

Recommendation 4

That the Select Standing Committee on Children and Youth consider holding public hearings on youth leaving care and out-of-home placements to better inform legislators and the public of the need for a solid, durable program of services and supports for these youth.²⁵⁰

More recently, the Representative for Children and Youth made a number of recommendations for reform after undertaking a comprehensive analysis of government supports available to youth aging into community. Findings were published in a report titled *A Parent's Duty: Government's Obligation to Youth Transitioning into Adulthood*.²⁵¹

248. *Ibid* at 39.

249. *Ibid* at 40.

250. *Ibid*.

251. RCY Report 2020, *supra* note 9.

While a number of these recommendations have been discussed in the context of the relevant sections above, we think it useful to set out the recommendations in full, as summarized by the Representative for Children and Youth:

- Extend and improve transition planning, which should start at least by age 14 and extend beyond age 19.
- Develop a province-wide system of dedicated transition workers through community agencies to provide systems navigation and case management support, as well as adult guidance, for these young people up to the age of 27.
- Extend support past age 19, including the automatic enrollment of all young people across all types of care and youth agreements in Agreements with Young Adults, continuing to age 27.
- Consider an extension of voluntary residential care. MCFD should evaluate current emergency measures in place due to COVID-19 that allow young people to continue to stay in their placements past their 19th birthday, with a goal of making that flexibility a permanent change.
- Provide additional dedicated housing for youth and young adults leaving care. There is perhaps no greater challenge facing young people transitioning out of care than finding appropriate, affordable, and safe housing.
- Develop and implement a plan for mental health and substance use services for youth in care transitioning to adulthood.
- Collect longitudinal data on youth transitioning out of care and evaluate services, with results made public. Data collection and evaluation are essential to ensure high-quality and equitable services. That we know so little in these two critically important areas hinders efforts in B.C. to improve outcomes for children and youth in care.²⁵²

Supports and services reform recommendations for Indigenous youth

As set out above in the section on Indigenous youth leaving care, there have been recent legislative amendments to the CFCSA in response to recommendations made by Grand Chief Ed John in his 2016 report on British Columbia's child protection system for Indigenous children and youth. With respect to youth transitioning out of care, amendments largely reflect increased involvement of Indigenous communities in the development of plans for independence for Indigenous youth on youth agreements, and in the development of care plans generally for Indigenous youth in care.

252. *Ibid*, "Executive Summary" at 4–5.

Relationships Matter Report (2018)

In December 2018, Melanie Doucet, a PhD candidate and former youth in care, published a report on a collaborative photovoice research project that highlighted “the voices of youth who have ‘aged out’ of care on issues related to forming healthy, supportive and sustainable relationships with people who matter to them.”²⁵³ The report sets out 12 relationship-related themes, and makes 34 recommendations for reform of child welfare policy and practice. Some key recommendations include:

- Inclusion of animal companions as “family” for children and youth in and from care;
- Amendments to residential tenancy laws, and related BC Housing provisions, to support youth leaving care to have pets in affordable housing;
- Supports and services to facilitate cultural connections to land and community for Indigenous youth leaving care;
- Involvement of children and youth in and from care in decision-making; and
- Policy and practice that focuses on youth “aging out” of care as living inter-dependently with supports and services.²⁵⁴

Vancouver Foundation ‘Fostering Change’ reports

Fostering Change Opportunities in Transition: An Economic Analysis of Investing in Youth Aging out of Foster Care provides an economic perspective on the challenges and opportunities associated with youth aging into the community.²⁵⁵ Three reports were published from the project, which considered the following key issues impacting youth leaving care:

- 1) educational, economic, social and wellness outcomes;
- 2) the costs of those outcomes; and

253. Melanie Doucet, PhD (c), McGill University School of Social Work, *Relationships Matter for Youth ‘Aging Out’ of Care: Research Report*, (Montreal: Fall 2018) online (pdf): <rcybc.ca/wp-content/uploads/2019/04/relationships_matter_research_report_fall_2018_final_0.pdf>.

254. *Ibid* at 68–83.

255. Martin Shaffer & Lynell Anderson, *Fostering Change, Opportunities in Transition: An Economic Analysis of Investing in Youth Aging out of Foster Care—Summary Report* (September 2016) at 1–2.

- 3) the costs of increased supports in relation to the potential savings and benefits they offer.²⁵⁶

The reports note that social, educational, economic and wellness outcomes for youth aging into the community are poor; that the immediate and long-term costs of these adverse outcomes are very high—hundreds of millions of dollars every year; and that the cost of increased supports is small relative to the potential savings and benefits to youth from care, and to society as a whole.

Key findings include:

- Educational, economic, social, and wellness outcomes for many youth aging out of care are poor compared to most young people.
- The costs of adverse outcomes for youth aging out of care are very high—between \$222 and \$268 million for the cohort of 1,000 youth aging out each year—plus significant intangible costs.
- There is broad agreement and recognition that increased support for youth aging out of care from age 19 through 24 is required to help meet living costs, pursue further education, and connect with their communities for personal, cultural and social support.
- Significant proportions of youth aging out of care experience special needs, substance abuse issues, and the challenges of early parenting—review and enhancement of specific service and facilities is needed.
- 60% of youth in care are aboriginal—meaningful engagement with aboriginal leadership, communities, families and young people is needed for the design and delivery of culturally appropriate and effective support.
- All youth aging out of care require a basic package of increased supports for living costs, education, community connections, and social support.
- A basic package of increased supports can build on existing services and programs including:
 - increased resources for organizations that already provide mentoring, social support, and community connections;
 - expansion of efforts to waive adult high school program or university tuition fees and address other education costs;

²⁵⁶. *Ibid.*

- adapting Agreements with Young Adults (AYAs) to deliver cost of living supports to more youth aging out of care continuously from age 19 through 24.
- The cost of such a basic package of increased supports available from age 19 through 24 is estimated at \$99,000 per youth aging out of care (which averages \$1375 per month).
- The total incremental government funding requirements for a basic package of increased supports from age 19 through 24 is estimated at \$57 million.
- Studies in other jurisdictions suggest that the benefits of improved educational outcomes from increased support will, in themselves, pay for the incremental funding requirements.
- Even if there was no recovery of the incremental funding requirements, the \$57 million translates to \$33 per household each year (\$2.75 per month) in order to give young people this level of support.²⁵⁷

The Representative for Children and Youth has drawn on this economic analysis to argue that “[i]mproving and expanding supports for youth and young adults in their transition out of government care is not just a moral imperative, but an economic one.”²⁵⁸ In the most recent report, the Representative for Children and Youth concluded that:

The Fostering Change cost-benefit analysis was conducted a few years ago and while stated costs and benefits may have changed to some degree since that time, the fundamental conclusion holds: the ongoing scarcity of accessible, flexible supports for youth in transition is by far the most expensive option for government. Findings in this report echo those from a number of similar studies.²⁵⁹

British Columbia Expert Panel on Basic Income

In January 2021, the British Columbia Expert Panel on Basic Income issued a report that made many recommendations for improving British Columbia’s existing income and social support system.²⁶⁰ Included among them were recommendations

257. Shaffer & Anderson, *supra* note 255 at 1–2.

258. RCY Report 2020, *supra* note 9 at 5.

259. *Ibid* at 59.

260. David A. Green, Jonathan Rhys Kesselman & Lindsay M. Tedds, *Covering all the Basics: Reforms for a More Just Society* (Vancouver: British Columbia Expert Panel on Basic Income, 2021), online: <bcbasicincomepanel.ca/wp-content/uploads/2021/01/Final_Report_BC_Basic_Income_Panel.pdf>. The Expert Panel on Basic Income was appointed by the

concerning young adults, with some specifically relating to young adults who were formerly in care.

The Expert Panel concluded that success in raising the prospects for youth emerging out of care has been constrained by the fact that no particular provincial ministry or agency has a specific mandate to serve this group. While the Expert Panel regarded AYA as a beneficial and worthwhile program, they also concluded that many youth formerly in care need “wraparound” social supports in order to reach the point at which they can feasibly take advantage of post-secondary education, and that life-skills programs now available in conjunction with AYA only partially address this need. More time may be needed by youth emerging from care to reach educational goals than is needed by others. The Expert Panel observed that in emphasizing independence, existing programs tend to impose unrealistic expectations on youth aging out of care to enter the community as adults without the important interpersonal and social connections that assist other youth on the pathway to autonomy.

The Expert Panel endorsed the concept of “connected autonomy” discussed in the Vancouver Foundation *Fostering Change* report mentioned above, as well as its conclusion that all youth aging out of care require a package of basic supports for living and education costs, the opportunity to form long-term relationships with dependable adult supporters, and connection to their communities through cultural and other activities.²⁶¹

Towards these ends, the Expert Panel made the following short- and medium-term recommendations:

- Increasing MCFD funding relating to child protection and family services, and increasing social worker resources with the objective of establishing longer-term continuity of contact between families, vulnerable children and children in care and ministry social workers (short term);²⁶²

provincial government in 2018 to “consider the viability of a basic income in BC and support the simulation of various basic income models . . . to identify impacts and financial implications,” and to “look at BC’s existing income and social support system and how elements and principles of a basic income could be used to transform and enhance it.” The Expert Panel ultimately did not recommend a universal basic income scheme as a general poverty reduction strategy, but recommended extensive changes to various components of the provincial income and social support system.

261. *Ibid* at 457, citing Shaffer & Anderson, *supra* note 221.

262. *Supra* note 260 at 458.

- Providing core capacity funding for the most effective community organizations that help youth formerly in care in order to create capacity for transition planning and support (short term);²⁶³
- Extending the duration of AYA agreements beyond 48 months (short term);²⁶⁴
- Expanding and enhancing the life-skills support component of AYA in consultation with young adults affected and organizations that support them (short term);²⁶⁵
- Making former youth in care eligible for a program recommended by the Expert Panel called “Assisted to Work,” which is intended to provide intensive work supports to overcome significant barriers to accessing good jobs, with eligibility details designed in consultation with young adults affected and supporting organizations (medium term);²⁶⁶
- Implementing a new targeted basic income benefit for *all* youth formerly in care for at least two years, whether or not they were in care up to age 19 or are parties to an AYA agreement, with the following features:
 - The full benefit would be at least equivalent to the Market Basket Measure poverty line;
 - The benefit would be payable for ages 19–21 and then reduced by 25 percent per year until age 25;
 - The phased reduction could be suspended for up to two years to facilitate education and training;
 - The benefit would be provided in combination with community supports;
 - AYA benefits would be adjusted to provide equivalent financial support to current program participants, with AYA remaining accessible to at least age 27 (short term);²⁶⁷
- Designing the financial support programs for youth formerly in care so that the payments and offered support services would be initiated by a youth contacting a service delivery organization of the youth’s choice and

263. *Ibid* at 459.

264. *Ibid*.

265. *Ibid*.

266. *Ibid* at 460.

267. *Ibid* at 460–461.

receiving an initiation session to provide information on available supports (short term);²⁶⁸

- Establishing a specific legislative mandate and funding allocation for a designated ministry or other government agency to support youth formerly in care.²⁶⁹

Subsequent to the issuance of the Expert Panel's report, the Representative for Children and Youth endorsed their recommendations, and drew analogies between them and the recommendations she herself had made earlier.²⁷⁰

268. *Ibid* at 461.

269. *Ibid* at 462.

270. Statement by Dr. Jennifer Charlesworth, Representative for Children and Youth (8 February 2021), online: <rcybc.ca/wp-content/uploads/2021/02/RCY-Statement_Basic-Income-report_FINAL.pdf>.

Chapter 3. The Law in Canada: Ontario

Overview

Approximately 17,000 of Ontario's 3.1 million children are in the care of a children's aid society, with between 800 to 1,000 children aging into the community each year.²⁷¹ As found in other jurisdictions in Canada and internationally, Ontario youth who have been in care face significantly worse outcomes across the board as compared with their peers. Educational achievement is lower,²⁷² health and mental health outcomes are poorer,²⁷³ housing is more unstable²⁷⁴ and involvement in the criminal justice system is more likely.²⁷⁵

In its 2016 inquiry into the overrepresentation of Indigenous and Black children in Ontario's child welfare system from a racial discrimination perspective, the Ontario Human Rights Commission ("OHRC") found the overrepresentation of Indigenous children in care was "staggering."²⁷⁶ The OHRC reported that in 2016:

over half of children . . . under age 15 in foster care in Canada were Indigenous, despite Indigenous children only accounting for 7.7% of the child population. There are more Indigenous children in care today than there were in residential schools at the height of their use.²⁷⁷

Child protection services in Ontario saw recent changes with the enactment of the *Child, Youth and Family Services Act* (CYFSA), which came into force on April 30,

271. Ontario, Office of the Provincial Advocate for Children and Youth, *Exploring Youth Outcomes After Aging-Out of Care* (Toronto: Office of the Provincial Advocate for Children and Youth, 2017) at 5, online: <youthrex.com/wp-content/uploads/2019/02/ExploringYouthOutcomesReport-042417.pdf> [*Exploring Youth Outcomes*].

272. *Ibid.*

273. *Ibid* at 9.

274. *Ibid* at 18.

275. *Ibid* at 29.

276. Ontario Human Rights Commission, *Interrupted childhoods: Over-representation of Indigenous and Black children in Ontario child welfare* (February 2018), online: <www3.ohrc.on.ca/sites/default/files/Interrupted%20childhoods_Over-representation%20of%20Indigenous%20and%20Black%20children%20in%20Ontario%20child%20welfare_accessible.pdf> [*Interrupted childhoods*].

277. *Ibid* at 7.

2018.²⁷⁸ The Act displays a more child-centred focus on decision-making and stronger oversight for children's aid societies and licensed residential services. Key changes included:

- Raising the age of protection from 16 to 18 years (effective January 1, 2018);
- Stronger focus on early intervention, helping prevent children and families from reaching crisis situations at home;
- More culturally appropriate services for children and youth in the child welfare system, including Indigenous and Black children and youth, to help ensure they receive the best possible support; and
- Improving oversight of service providers, including children's aid societies, so that children and youth receive consistent, high-quality services across Ontario.²⁷⁹

In Ontario, the Ministry of Children, Community and Social Services ("MCCSS") funds children's aid societies to provide child protection services in the province under the CYFSA. The ministry also monitors children's aid societies, develops provincial policies relevant to the implementation of child welfare programs across the province and licenses residences for children in care, such as group homes and foster care.²⁸⁰

Children's aid societies are independent, non-profit organizations with the legal mandate to provide child protection services. In brief, children's aid societies are mandated by legislation to:

- Investigate allegations or evidence that children who are under the age of 18 years are in need of protection
- Protect children who are under the age of 18 years

278. Bill 89, *An Act to enact the Child, Youth and Family Services Act, 2017, to amend and repeal the Child and Family Services Act and to make related amendments to other Acts*, 2nd Sess, 41st Leg, Ontario, 2017, sch 1 (assented to 1 June 2017).

279. For more detailed information on the changes, see Ontario, Ministry of Children and Youth Services, "Ontario strengthens legislation for child and youth services" (Toronto, 2017), online: <www.children.gov.on.ca/htdocs/English/professionals/childwelfare/modern-legislation.aspx>.

280. Ontario, Ministry of Children, Community and Social Services, "About Ontario's children aid societies" (last visited 23 April 2021), online: <www.children.gov.on.ca/htdocs/English/professionals/childwelfare/societies/index.aspx>.

- Provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children
- Provide care for children assigned to its care
- Supervise children assigned to its supervision
- Place children for adoption.²⁸¹

There are 50 children's aid societies across Ontario, including 12 Indigenous children's aid societies.²⁸²

Of note, a working group established in 2012 by the Minister of Children and Youth Services, in conjunction with the Office of the Provincial Advocate for Children and Youth, designed an action plan for system-wide change to address issues with Ontario's care leaver supports and services. The working group published a report titled *Blueprint for Fundamental Change* in January 2013 which contained numerous recommendations for reform.²⁸³ A number of these reforms are reflected in the supports and services set out below.

More recently, the government of Ontario has released a strategy to redesign and modernize its child welfare system.²⁸⁴ The strategy is built on five pillars that focus on:

- community-based prevention services to enhance family well-being;
- improving the quality of residential care;
- increasing youth supports;
- developing stable lifelong connections for children and youth; and

281. Ontario Association of Children's Aid Societies, "Children's Aid and Child Protection" (last visited 27 April 2021), online: <www.oacas.org/childrens-aid-child-protection/>.

282. Ontario, Ministry of Children, Community and Social Services, "About Ontario's children aid societies," *supra* note 280.

283. Ontario, Youth Leaving Care Working Group, *Blueprint for Fundamental Change to Ontario's Child Welfare System: Final Report of the Youth Leaving Care Working Group* (January 2013), online (pdf): <www.children.gov.on.ca/htdocs/English/documents/childrensaid/youthleaving-care.pdf> [Blueprint for Fundamental Change].

284. Ontario, Ministry of Children, Community and Social Services, Background, "Ontario Releases Strategy to Redesign the Child Welfare System" (29 July 2020), online: <news.ontario.ca/en/backgrounder/57803/ontario-releases-strategy-to-redesign-the-child-welfare-system>.

- improving accountability and sustainability.²⁸⁵

Of particular relevance to care leavers, the strategy identifies “a priority focus on supporting children and youth to succeed at school and graduate with their peers, setting them up for future success at work and in adulthood.”²⁸⁶

Legislated Care Leaver Supports and Programs

Transition planning

The *Child, Youth and Family Services Act*²⁸⁷ provides broadly that a child in care has the right to “a plan of care designed to meet their particular needs.”²⁸⁸ Indigenous communities must be consulted in the preparation of plans of care for Indigenous children, as well as for voluntary agreements made with Indigenous youth.²⁸⁹ Topics that must be addressed by the plan of care are set out in the Act and regulations; however, transition planning for youth approaching adulthood is not expressly identified in the legislation as topic which that be addressed.²⁹⁰

With amendments to the CYFSA in January 2018, the age of protection in Ontario was extended to all children under the age of 18 years, thereby extending the full care of the child protection system to include 16 and 17 year olds.²⁹¹ As such, youth in need of protection who are 16 or 17 years old may now enter into voluntary agreements with a children’s aid society for the provision of supports and services for up to 24 months, or until the youth turns 18.²⁹² While not enshrined in the legislation, government policy acknowledges the need for transition planning for this

285. *Ibid.*

286. *Ibid.*

287. *Child, Youth and Family Services Act, 2017*, SO 2017, c 14, Sch 1 [CYFSA].

288. *Ibid.*, s 13.

289. *Ibid.*, s 72.

290. *Ibid.*, s 100. See also O Reg 156/18, s 128 (Review of Foster Plan of Care) and s 94 (Resident Plan of Care).

291. A recent CBC news article reported that Ontario has plans underway to remove the age cut-off for youth in care, to ensure that all youth transitioning from care to adulthood feel confident in their transition and are adequately prepared; however our research has not uncovered any further details with respect to this reported plan: Angelina King, “Ontario changing child-welfare system to stop teens from aging out of care unprepared,” *CBC News* (2 March 2021), online: <www.cbc.ca/news/canada/toronto/ontario-changing-child-welfare-system-aging-out-1.5932470>.

292. CYFSA, *supra* note 287, s 77.

cohort, requiring that a plan be developed in conjunction with the youth which includes “[s]pecific planning with respect to transitioning to adulthood and independence including plans to build financial literacy and household management skills.”²⁹³

Recommendations made by the Youth Leaving Care Working Group referred to above reflected the importance of transition planning for youth. The group recommended that “youth in care have transition plans that relate to their goals and that identify and prepare them to access relevant supports long before they leave care” and that “youth from care have the option to be connected to youth in transition workers,” who can provide support with funding employment, housing, educational opportunities and community resources.²⁹⁴ While not required by legislation, the Youth In Transition Workers program, which has since been set up in response to these recommendations, is a program offered to 16 to 24-year-olds to assist young adults navigate their transitions to independence, as detailed in the section below.²⁹⁵

Post-Care support programs and services

Continued care and support

The *Child, Youth and Family Services Act* legislates the provisions of post-care supports to youth aging into the community through the province’s Continued Care and Support Program. This program has similarities to the British Columbian Agreements with Young Adults program.

Youth who are 18 and transitioning from care may be eligible to receive financial supports of \$850 per month, and guidance up to the age of 21, by entering into an agreement for care and support.²⁹⁶ These supports are intended to help eligible youth meet their goals in transitioning to adulthood.²⁹⁷ The CYFSA provides the

293. Ontario, Ministry of Children, Community and Social Services, *Policy Directive: CW 003-18—Protection Services for 16–17 Year Olds*, (last visited 27 April 2021), online: Government of Ontario, <www.children.gov.on.ca/htdocs/English/professionals/childwelfare/CYFSA/policy_directive_CW003-18.aspx>.

294. Blueprint for Fundamental Change, *supra* note 283 at 15.

295. Ontario, Ministry of Children, Community and Social Services, News Release, “New Supports for Youth Leaving Care” (27 February 2014), online: <<https://news.ontario.ca/en/release/28512/new-supports-for-youth-leaving-care>>.

296. O Reg 156/18, *supra* note 290, ss 53–55.

297. Ontario, Ministry of Children and Youth Services, “Youth leaving care” (last visited 27 April 2021), online: <www.children.gov.on.ca/htdocs/English/childrensaid/leaving-care.aspx> [Youth Leaving Care].

minister with general authority to provide funding or other support, on a discretionary basis, to youth who have aged out of care, and their families:

26 The Minister may provide services and provide funding pursuant to agreements for the provision of services to persons who are not children, and to their families, as if those persons were children.²⁹⁸

With respect to continued care and supports, the CYFSA provides:

124 A society or prescribed entity shall enter into an agreement to provide care and support to a person in accordance with the regulations in each of the following circumstances:

1. A custody order under clause 116 (1) (b) or an order for extended society care under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) was made in relation to that person as a child and the order expires under section 123.
2. The person entered into an agreement with the society under section 77 and the agreement expires on the person's 18th birthday.
3. The person is 18 or older and was eligible for the prescribed support services.
4. In the case of a First Nations, Inuk or Métis person who is 18 or older, paragraph 1, 2 or 3 applies or the person was being cared for under customary care immediately before their 18th birthday and the person who was caring for them was receiving a subsidy from the society or an entity under section 71.²⁹⁹

In summary, a person is eligible for continued care and supports pursuant to section 124 of the CYFSA if they were:

- a child in the care of the province pursuant to a custody order, an order for extended society care, or a voluntary agreement that expires on the person's 18th birthday;
- a person who is already 18 years of age or older and was eligible for the prescribed support services; or
- an Indigenous child being cared for under customary care where their caregiver was receiving a society subsidy.

298. CYFSA, *supra* note 287, s 26.

299. *Ibid*, s 124.

Further details of the program are set out in the regulations³⁰⁰ and the 2016 Ontario Permanency Funding Policy Guidelines³⁰¹ issued by the minister pursuant to the act.³⁰² Key aspects of the program include:

- Agreements for continued care and support may include one or both of financial and non-financial support.³⁰³
- Agreements for continued care and support cannot be made for a term exceeding 12 months, but a society must make reasonable efforts to renew the agreement before its expiry, for a maximum period of 36 months.³⁰⁴
- Agreements for care and support can only be made with eligible youth who are 18 to 20 years of age, inclusive.³⁰⁵
- Where financial support is provided under an agreement, the amount must not be less than is set out in Appendix B “Continued Care and Support for Youth Policy Directive” dated March 20, 2018. This amount is currently set at \$850 per month, payable to the youth or the youth’s caregiver, by agreement.³⁰⁶
- Financial support must be provided to the eligible youth unless the youth is already receiving certain financial assistance, such as basic financial assistance under the *Ontario Works Act, 1997*, income support under the *Ontario Disability Support Program Act, 1997* or the youth’s caregiver is receiving assistance under, for example, the Stay at Home for School program.³⁰⁷

300. O Reg 156/18, *supra* note 290, ss 53–55.

301. Ontario, Ministry of Children, Community and Social Services, “2016 Ontario Permanency Funding Policy Guidelines and Addendum” (15 June 2016), online: Government of Ontario, <www.children.gov.on.ca/htdocs/English/professionals/childwelfare/cyfsa/permanency_funding_policy_guideline.aspx> [Ontario Funding Policy Guidelines].

302. CYFSA, *supra* note 287, s 42.

303. O Reg 156/18, *supra* note 290, s 53.

304. *Ibid*, s 54 (2), (3) and (10).

305. *Ibid*, s 54 (5).

306. Ontario, Ministry for Children, Community and Social Services, *Policy Directive CW 001-18: Continued Care and Support for Youth* (Ontario: 2017) at Appendix B, online: Government of Ontario, <www.children.gov.on.ca/htdocs/English/professionals/childwelfare/cyfsa/policy_directive_cw001-18.aspx> [Continued Care and Support Policy].

307. O Reg 156/18, *supra* note 290, s 54 (6).

The government's policy directive for its continued care and support program contains further details, including specifying the nature of non-financial supports to be provided. The policy states:

Societies will provide supports and guidance that will assist youth to achieve physical and emotional wellbeing, acquire basic life management skills and develop social networks that include connections to caring adults and the community.³⁰⁸

The policy directive requires that in conjunction with the agreement with the youth:

The society worker and youth shall meet to develop a Youth Plan that is based on the youth's individual strengths, needs and goals. The society worker shall consider, at minimum, the following areas in the planning:

- Permanent Relationships;
- Community Connections;
- Health and Well-Being;
- Housing;
- Education/Employment;
- Life Management Skills/Personal Development; and
- Identity.³⁰⁹

In addition to updating the plan at least every 12 months, a social worker must meet with the youth at least once every three months to discuss the youth's progress under their plan and to address any challenges identified.³¹⁰

With respect to the COVID-19 pandemic, emergency measures have been put in place extending care and supports for youth who turn 18 during the pandemic and continuing care and support agreements for those youth whose agreements are set

308. Continued Care and Support Policy, *supra* note 306 (Effective Date).

309. *Ibid* at para 5.

310. *Ibid* at para 8.

to expire during the pandemic.³¹¹ These supports have most recently been extended until September 30, 2022.³¹²

Ontario's continued care and support program appears to be wider in its reach than its comparable British Columbia program (Agreements with Young Adults). Pursuant to the policy directive and as a result of the non-discretionary language used in the legislation ("shall enter into an agreement"), children's aid societies are required to offer the continued care and support program to all eligible youth.³¹³ In British Columbia, the legislative language used with respect to its comparable AYA program creates only a discretionary provision to support youth aging into the community.³¹⁴ In British Columbia, the AYA program is only available to those youth in an educational, rehabilitative or life skills program, whereas Ontario's continued care and supports program is available to a broader cohort of care leavers, including a more marginalized and vulnerable cohort. In addition, a youth's continued access to Ontario's program is not contingent on whether the youth meets their stated plan goals.³¹⁵

All eligible youth in Ontario receive the minimum of \$850 per month under the program. In British Columbia, funding is allocated on a discretionary basis in accordance with a needs assessment to a maximum of \$1,250 per month (with youth on average receiving \$836 in AYA benefits per month in 2019/2020).³¹⁶ Ontario's program is available to youth for 36 months from the ages of 18 to 21. British Columbia's program is available for a longer period totalling 48 months and can be accessed anytime between the ages of 18 and the youth's 27th birthday.³¹⁷ It appears that the wrap-around and emotional supports element of the Ontario program is

311. O Reg 156/18, *supra* note 290, s 54 (11). See also Ontario, Ministry for Children, Community and Social Services, *Policy Directive: CW004-20 Supporting Consistency of Care for Youth whose Care Arrangements are Scheduled to Expire During the COVID-19 Pandemic* (2020), online: Government of Ontario <www.children.gov.on.ca/htdocs/English/professionals/childwelfare/cyfsa/policy_directive_CW004-20.aspx>.

312. O Reg 140/21, s 3 amending O Reg 156/18, *supra* note 290, s 54 (1).

313. CYFSA, *supra* note 290, s 124; Continued Care and Support Policy, *supra* note 306.

314. CFCSA, *supra* note 1, s 12.3 ("a director *may* make a written agreement" [emphasis added]).

315. Continued Care and Support Policy, *supra* note 306.

316. Figure calculated as follows: total AYA expenditure divided by number of AYA participants in April 2018 to March 2019 as reported at MCFD Case Data, *supra* note 10.

317. As noted in the section on British Columbia supports above, AYA is available beyond the age of 27 to those youths who have commenced an eligible educational, rehabilitation or life skills program before they turn 27 but which extends beyond their 27th birthday.

more formalized and potentially more of a focus compared with the British Columbian AYA program, which is reported to be largely transactional in nature.

Non-Legislated Care Leaver Supports and Programs

Transition and post-care supports

Aftercare Benefits Initiative

Funded by the Ontario Ministry of Children, Community and Social Services and administered by the Ontario Association of Children's Aid Societies, the Aftercare Benefits Initiative offers comprehensive extended health and dental benefits to former youth in care, since its commencement in 2014.³¹⁸ Young adults aged 21 to 24 who have left care and are eligible for the Continued Care and Support Program (and their dependents) may be eligible to receive prescription drug, dental, vision and extended health benefits under the Aftercare Benefits Initiative. Some youth may be excluded from the initiative, such as those receiving disability benefits.³¹⁹ In addition, these youth may also be eligible to receive counselling and life skills supports up to the age of 29 under this program.³²⁰ Some youth who were adopted after June 1, 2016 may also be eligible for the program.

Transition and life skills programs

The Ontario Ministry of Children, Community and Social Services briefly references a transition and life skills program available to youth leaving care, which uses "youth-in-transition workers to connect youth who are 16 to 24 years old to community services and provide support with stable housing, education resources, employment services, and life skills training."³²¹

Registered Education Savings Plan

Pursuant to a ministerial directive under section 42 (1) of the CYFSA, children's aid societies, including Indigenous societies, are required to establish Registered Education Savings Plans (RESP) for eligible children and youth in care. Youth in or leaving care can then access the funds in their RESPs to pay for eligible post-secondary

318. Ontario Association of Children's Aid Societies, "Aftercare Benefits Initiative" (last visited 27 April 2021), online: OACAS, <www.oacas.org/what-we-do/child-welfare-operations-excellence/aftercare-benefits-initiative/>.

319. *Ibid.*

320. Youth Leaving Care, *supra* note 297 (After Care Benefits).

321. *Ibid* (Transition and life skills programs).

educational or vocational training expenses.³²² Amounts equivalent to the June 2016 federal Universal Child Care Benefit must be used to establish the funds (called Children's Special Allowance), currently set out in the relevant policy directive as:

- \$160 per month for eligible children in care who are under the age of six; and
- \$60 per month for eligible children and youth in care aged six through 17.³²³

To be eligible for a RESP under this program, the child or youth must be receiving or have received the Children's Special Allowance and be:

- In extended society care;
- In interim society care for at least twelve consecutive months;
- Children in customary care for at least twelve consecutive months; or
- Youth in a Voluntary Youth Services Agreement (with an alternative option to have the society establish a personal savings account on behalf of the youth instead of a RESP).³²⁴

Stay Home for School Program

Ontario has extended funding to caregivers to provide a stable home for youth aged 18 to 20 years who would otherwise be required to leave care at age 18, as they complete their high school education.³²⁵ Financial assistance is available under this program where the caregiver was receiving funding from a society to care for a youth just prior to their 18th birthday (e.g., foster care, group care, kinship care, customary care, Renewed Youth Supports); the youth is eligible for the Continued Care and Support for Youth program; the youth is enrolled in high school or an equivalent program with a minimum course load; and the caregiver and student both wish to continue the care arrangement.³²⁶

322. *Ibid* (Registered Education Savings Plan).

323. See Ontario, Ministry of Children, Community and Social Services, *Policy Directive CW005-16: Registered Education Savings Plans* (30 April 2018), online: Government of Ontario, <www.children.gov.on.ca/htdocs/English/professionals/childwelfare/cyfsa/policy_directive_CW004-18.aspx> (Introduction).

324. *Ibid* at para 1.

325. Youth Leaving Care, *supra* note 297 (Stay Home for School Program).

326. Ontario Funding Policy Guidelines, *supra* note 301 (Stay Home for School).

Post-Secondary education support

Former youth in care who are entering college or university may be eligible for programs which provide financial support to help their transition into adulthood. These programs include the following:³²⁷

- Since 2013, former youth in care who are eligible for the Continued Care and Support for Youth program, and are enrolled in a participating college or university, can receive full tuition coverage.³²⁸ The “100% Tuition Aid” program is a joint initiative between the ministry and participating publicly assisted colleges and universities in Ontario. The grant is for up to \$6,000 per academic year to cover tuition.³²⁹
- While not specific to youth leaving care, the Ontario Student Assistance Program may provide a mix of different financial aid supports. Supports may include grants, bursaries, income exemptions and loan assistance to cover educational costs, such as tuition, books, living expenses, child care expenses and university application fee refunds.³³⁰
- The Living and Learning Grant for full-time post-secondary or training program students who are aged 21 to 24 and are receiving OSAP, may be available to youth who have left care, in addition to any basic OSAP funding.³³¹ Youth can receive up to \$2,000 per semester during the school year to help with their living costs.³³²
- Mentorship and orientation programs are offered by Crown Ward Education Championship Teams. These programs can offer former youth in care help with completing high school and their transition into college or university by offering mentorship, peer support, motivation, and guidance. These

327. Youth Leaving Care, *supra* note 297 (support for post-secondary education and training).

328. *Ibid.*

329. See Quinte Children’s Homes, “Tuition Aid Program Assists Youth Leaving care” (last visited 27 April 2021), online: <quintechildrenshomes.com/tuition-aid-program-assists-youth-leaving-care/>.

330. Youth Leaving Care, *supra* note 297 (support for post-secondary education and training); Ontario, “Learn About OSAP” (last visited 27 April 2021), online: <www.ontario.ca/page/learn-about-osap>. See also Ontario, “Ontario Post Secondary Application Fee Reimbursement Program” (last visited 27 April 2021), online: <www.ontario.ca/page/ontario-postsecondary-application-fee-reimbursement-program#section-0>.

331. Ontario, “Students in Special Circumstances” (last visited 27 April 2021), online: <www.ontario.ca/page/students-special-circumstances#section-1>.

332. Youth Leaving Care, *supra* note 297 (support for post-secondary education and training).

Teams often include volunteers from local school boards, children's aid societies, post-secondary institutions, community agencies, Employment Ontario and provincial ministries.

- The Ontario government's recent strategy to redesign the child welfare system has identified as a priority focus "supporting children and youth to succeed at school and graduate with their peers, setting them up for future success at work and in adulthood." In this respect, the strategy is reported to include "[e]xpanding access to education supports and employment projects for children and youth in and from care (e.g. postsecondary, employment and apprenticeship programs)."³³³

Indigenous Youth Leaving Care

As noted in the overview above, the OHRC has reported disproportionately high incidences of Indigenous and Black children in care across the province. Acknowledging that the reasons for this overrepresentation are complex and multifaceted, the OHRC considered the existence of racial discrimination as a contributing factor:

The issues that give rise to the over-representation of Indigenous and Black children in the child welfare system are complex and multi-faceted. For example, low income, which is one of the inter-generational effects of colonialism, slavery and racism in society, is a major driver of child welfare involvement for Indigenous and Black children. Many Indigenous, Black and other racialized families, communities, advocates and others are also concerned that systemic racial discrimination in the child welfare system plays a significant role.³³⁴

After its 2016 inquiry into the overrepresentation of Indigenous and Black children in care, the OHRC ultimately concluded that "although the racial disproportionality data presented in this report is not conclusive of discrimination by [children's aid societies], it is a starting point for [children's aid societies] and the government to look critically at racial inequality in the sector."³³⁵ Although not targeting improvements for care leavers specifically, the OHRC made numerous recommendations aimed at government, children's aid societies and civil society organizations. The recommendations are aimed at improving data collection, but more substantively at combating socio-economic inequalities that contribute to the disproportion, as well as training and education for child welfare workers at all levels on anti-racism and

333. Ontario, "Ontario Releases Strategy to Redesign the Child Welfare System," *supra* note 284.

334. Interrupted Childhoods, *supra* note 276 (Introduction).

335. *Ibid* (Summary and Key Findings).

the provision of culturally competent services to Indigenous, Black and other racialized families, in consultation with affected communities.³³⁶

More recently, the Ontario government, together with First Nations, Métis, Inuit and urban Indigenous partners, has commenced working to implement the Ontario Indigenous Children and Youth Strategy.³³⁷ The strategy aims to improve services to meet the needs of Indigenous children and youth with a focus on:

- transforming Ontario's relationship with Indigenous children and youth, and their families
- enhancing First Nations jurisdiction and Indigenous control for children and youth services
- prioritizing preventative services for Indigenous children and youth that are culturally appropriate
- building a high quality integrated services network that supports Indigenous children and youth
- enabling government and Indigenous service providers to track and evaluate their work in implementing the strategy.³³⁸

In conjunction with this Indigenous-specific strategy, the government's strategy to redesign the child protection system, outlined above, includes a number of Indigenous-focused goals and priorities.³³⁹ The strategy's five-pillared approach reports, among other goals, that:

- Sectors will actively address the disproportionate referrals of Indigenous and Black families to child welfare and ensure they receive culturally appropriate supports;³⁴⁰
- Indigenous children, youth and families, through the Ontario Indigenous Children and Youth Strategy (OICYS), will access prevention and early intervention supports that are culturally-appropriate and reflect their

336. See e.g. *ibid* at chapter 8 (Recommendations 1, 6, 16 and 22).

337. Ontario, "Ontario Indigenous Children and Youth Strategy" (last modified 7 July 2017), online: Government of Ontario <www.children.gov.on.ca/htdocs/English/professionals/indigenous/index.aspx>.

338. *Ibid*.

339. Ontario, "Ontario Releases Strategy to Redesign the Child Welfare System," *supra* note 284.

340. *Ibid* (Pillar 1).

customs, heritages and traditions. This includes the implementation of Indigenous-led child and family services;³⁴¹

- Protection services are a last resort. When they are needed, they will be directly delivered by or with First Nations, Inuit, and Métis peoples wherever possible;³⁴²
- Dedicated, targeted supports to meet the distinct needs of children and youth and to respond to their cultural identity;³⁴³
- Shifting financial investments to new initiatives to better serve Indigenous, Black, racialized and LGBTQ2S children and youth;³⁴⁴

Summary for Ontario

- While youth in care are required by legislation to have a “plan of care” in place, specific transition planning for all youth approaching adulthood is not an express requirement of the legislation.
- Government policy mandates that 16 to 17-year-old youths on voluntary agreements should have a specific transition plan in place.
- The Continued Care and Support Program is Ontario’s main program of support for young adults who have aged into the community. Supported by legislation, the program provides financial support (\$850 per month) and guidance to all young adults who are 18 and transitioning from care, including those on voluntary agreements, until they turn 21 years of age.
- A transition and life skills program is available to youth leaving care, which uses “youth-in-transition workers” to connect youth who are 16 to 24 years old to community services and provides support with finding stable housing, education resources, employment services, and life skills training.
- A number of other supports and services are available to assist youth transitioning into community, including: an extended health benefits scheme; financial assistance by way of contributions to a RESP; payments for caregivers to enable youth to stay at home to complete high school; free tuition for post-secondary education; along with a miscellany of grants and bursaries to assist cover some living and other expenses while undertaking study of training.

341. *Ibid.*

342. *Ibid.*

343. *Ibid* (Pillar 3).

344. *Ibid.*

- As in British Columbia, Ontario has disproportionately high incidences of Indigenous and Black children in care across the province, with commentators and observers calling for improvements in the provision of culturally competent services to Indigenous, Black and other racialized families, in consultation with affected communities.
- The Government of Ontario, together with Indigenous partners, has commenced working to implement the Ontario Indigenous Children and Youth Strategy to improve services to meet the needs of Indigenous children and youth.
- The Government of Ontario has also recently developed a strategy to redesign the child protection system. The strategy includes a number of Indigenous-focused goals and priorities, as well as goals for improving youth access to education and employment supports and improving supports for a successful transition to adulthood.

Chapter 4. International Jurisdictions: England

Overview

Every year in England approximately 10,000 young people leave government care. The mandated leaving care age is 18 years, with the option of leaving care as young as 16 years.³⁴⁵ However, local authorities must continue to support young people who have left care until they turn 21 years (or 25 years if they remain in education or training), with the details of this support discussed below.

As in British Columbia and other countries around the world, care leavers in England experience worse outcomes than their peers in many areas. Most children in care in England are in care as a result of abuse and neglect, impacting significantly on their mental and emotional health and behaviour.³⁴⁶ A high proportion of young people in England leave care before their 18th birthday directly into independent living, as compared with their non-care peers who are significantly more likely to be living at home well into their 20s.³⁴⁷ Reports indicate that care leavers are more likely to become homeless, have contact with the criminal justice system, become teenage parents, achieve lower levels of education and have higher levels of unemployment.³⁴⁸

The United Kingdom has seen a significant overhaul of its care leaver supports and services in the past two decades, with ongoing government commitments to evaluating and updating programs and strategies. For the purposes of this study paper, we have focused our review of care leaver supports and services in England. Reforms have centred on a number of key pieces of legislation and cross-government strategies including: the *Children (Leaving Care) Act 2000*;³⁴⁹ the *Children and Young*

345. United Kingdom, National Audit Office, *Care Leavers Transition to Adulthood*, HC 269 Session 2015–16, 17 July 2015 (UK: National Audit Office, 2015) at 5, online (pdf): <www.nao.org.uk/wp-content/uploads/2015/07/Care-leavers-transition-to-adulthood.pdf>.

346. *Ibid* at 6.

347. *Ibid*.

348. *Ibid* at 6–7.

349. *Children (Leaving Care) Act 2000* (UK), c 35 [*Leaving Care Act 2000*].

Persons Act 2008,³⁵⁰ the 2013³⁵¹ and 2016 care leaver strategies;³⁵² and the *Children and Families Act 2014*,³⁵³ which have all gradually expanded the responsibilities of local authorities in supporting and improving the lives of young people leaving care.³⁵⁴ Details of the legislation and government strategies are referred to below in the context of the major supports and services available to care leavers in England. A comprehensive review of all available supports and services and the legislative and policy changes over the past two decades is beyond the scope of this paper.

Legislated Supports and Services

Leaving Care Act (2000) and beyond

In 2001, the government introduced the *Children (Leaving Care Act) 2000* (“*Leaving Care Act 2000*”), which radically changed the legislative landscape with respect to care leaver supports and services.³⁵⁵ Prior to the *Leaving Care Act 2000* there was no statutory framework in place for care leavers in England, leaving the provision of supports entirely up to the discretion of local authorities.³⁵⁶ The *Leaving Care Act 2000* replaced section 24 the *Children Act 1989* (“*Children Act 1989*”).³⁵⁷

As is customary in England, to aid in interpretation and implementation of the new legislation, the government published the *Children (Leaving Care) Act, 2000 Guidance and Regulations* (“*Leaving Care Act 2000 Guidance*”),³⁵⁸ in conjunction with the

350. *Children and Young Persons Act 2008* (UK), c 23.

351. United Kingdom, *Care Leaver Strategy: A Cross-Departmental Strategy for Young People Leaving Care* (London: HM Government, 2013), online (pdf): <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/266484/Care_Leaver_Strategy.pdf> [2013 Care Leaver Strategy].

352. United Kingdom, *Keep on Caring: Supporting Young People from Care to Independence* (London: HM Government, 2016), online (pdf): <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/535899/Care-Leaver-Strategy.pdf> [2016 Care Leaver Strategy].

353. *Children and Families Act 2014* (UK), c 6.

354. TACT Fostering, *Policy Briefing on Keep on Caring: Supporting Young People from Care to Independence* (July 2016) at 1, online (pdf): <www.tactcare.org.uk/content/uploads/2016/09/Keep-on-Caring-Brief.pdf>.

355. The *Leaving Care Act 2000*, *supra* note 349 applies to England and Wales.

356. 2016 Care Leaver Strategy, *supra* note 352 at para 1.1.

357. *Children Act 1989* (UK), c 41.

358. United Kingdom, Department of Health, “*Children (Leaving Care) Act 2000: Regulations and Guidance*”, online (pdf):

Children Act 1989 Guidance and Regulations, Volume 3: Planning transition to adulthood for care leavers (“Children Act 1989 Guidance”).³⁵⁹ Local authorities must comply with the guidance and regulations as set out in these and other relevant guidance documents.³⁶⁰ We make reference to these guidance documents in the discussion below to help elucidate government obligations to care leavers.

Key features

In summary, the *Leaving Care Act 2000* mandated that local authorities:

- assess the needs of the young person transitioning out of care;
- appoint a personal advisor to befriend and assist the young person in navigating their way to independence; and
- develop a Pathway Plan to help the young person achieve their goals.³⁶¹

Initially the *Leaving Care Act 2000* provided this support to the young person up to the age of 18 years, or 21 years if they were in education. However, in accordance with recommendations made in the government’s 2016 strategy report on care leavers discussed below, this age has been raised to 25 for all children regardless of whether in education or training.³⁶²

A note on language

The *Children Act 1989* distinguishes between different types of children and young people in and leaving care for the purposes of determining what supports and services they are eligible to receive. These are summarized as follows:

<webarchive.nationalarchives.gov.uk/20121206162732/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4058600.pdf> [“Leaving Care Act 2000 Guidance Document”].

359. United Kingdom, Department of Education, “Children Act 1989 Guidance and Regulations, Vol 3: Planning Transition to Adulthood for Care Leavers” (October 2010, last revised January 2015), online (pdf): <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/397649/CA1989_Transitions_guidance.pdf> [Children Act 1989 Guidance Document].

360. Section 7 of the *Local Authority Social Services Act 1970* (UK), c 42 requires local authorities to comply with the guidance and regulations set out in these documents unless local circumstances indicate exceptional reasons that justify a variation.

361. *Leaving Care Act 2000*, *supra* note 349.

362. 2016 Care Leaver Strategy, *supra* note 352 at 30.

- Children (16 and 17 years) who are still in care are referred to as “eligible children”;
- Children (16 and 17) who have been in care for a certain period but are no longer in care are referred to as “relevant children”;
- Young persons (18 to 21) who have been eligible or relevant children are referred to as “former relevant children”; and
- Young persons aged 16 or over who cease to be cared for after the age of 16, up to age 21 (or 24 if in education) are referred to as “qualifying children.”³⁶³

General duties

Corporate parenting principles

In 2016 the government developed a care leaver strategy which was published in its report titled *Keep on Caring: Supporting Young People from Care to Independence* (“2016 Care Leaver Strategy Report”). As part of the strategy’s implementation, corporate parenting principles were introduced by legislation.³⁶⁴ These principles encourage all departments within a local authority to view the supports they provide to both children in care and care leavers through the lens of what a reasonable parent would do to support their own children.³⁶⁵ The *Children and Social Work Act 2017* provides:

(1) A local authority in England must, in carrying out functions in relation to the children and young people mentioned in subsection (2), have regard to the need—

- (a) to act in the best interests, and promote the physical and mental health and well-being, of those children and young people;
- (b) to encourage those children and young people to express their views, wishes and feelings;
- (c) to take into account the views, wishes and feelings of those children and young people;
- (d) to help those children and young people gain access to, and make the best use of, services provided by the local authority and its relevant partners;

363. See Children Act 1989 Guidance Document, *supra* note 359 at 10–14 for a summary of supports and services available to each of these categories of young people in and leaving care.

364. *Children and Social Work Act 2017* (UK), c 16, s 1.

365. *Ibid* at para 3.1; 2016 Care Leaver Strategy, *supra* note 352 at para 1.12.

(e) to promote high aspirations, and seek to secure the best outcomes, for those children and young people;

(f) for those children and young people to be safe, and for stability in their home lives, relationships and education or work;

(g) to prepare those children and young people for adulthood and independent living.

(2) The children and young people mentioned in this subsection are—

(a) children who are looked after by a local authority, within the meaning given by section 22(1) of the Children Act 1989;

(b) relevant children within the meaning given by section 23A(2) of that Act;

(c) persons aged under 25 who are former relevant children within the meaning given by section 23C(1) of that Act.³⁶⁶

The published guidance on implementation of these corporate parenting principles is comprehensive.³⁶⁷ The guidance makes it clear that although the duties contained in the principles apply to local authorities, “other agencies play an important role in supporting them to carry out their responsibilities to be a good corporate parent.”³⁶⁸

Duty to cooperate

The *Children Act 2004* imposes a duty on local authorities to cooperate with relevant partners, such as police, national health service, educational institutions and housing services, with respect to “improving the well-being of children in the authority’s area.”³⁶⁹ Although not specific to care leavers, this duty certainly applies to care leavers.³⁷⁰ Further, this legislation requires such relevant partners to co-operate

366. *Children and Social Work Act 2017*, *supra* note 364, s 1.

367. United Kingdom, Department for Education, *Applying corporate parenting principles to looked-after children and care leavers Statutory guidance for local authorities* (London: HM Government, February 2018), online (pdf): <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683698/Applying_corporate_parenting_principles_to_looked-after_children_and_care_leavers.pdf> [Applying Corporate Parenting Principles].

368. *Ibid* at para 3.7.

369. *Children Act 2004* (UK), c 31, s 10(1). Note s 10 (4) lists all relevant partners with whom a local authority has a duty to cooperate.

370. Applying Corporate Parenting Principles, *supra* note 367 at para 3.8.

with local authorities in making arrangements for the well-being of children to ensure a collaborative and cohesive approach.³⁷¹

General obligation to support a care leaver who is still a child

In addition to the more specific duties described below, the *Children Act 1989* places a general obligation to support and care for a *child* who is no longer in care and is transitioning to independence. With respect to relevant children (aged 16-17 years) the legislation states:

23B(8) The responsible local authority shall safeguard and promote the child's welfare and, unless they are satisfied that his welfare does not require it, support him by—

- (a) maintaining him;
- (b) providing him with or maintaining him in suitable accommodation; and
- (c) providing support of such other descriptions as may be prescribed.

Statutory obligations with respect to care leavers who are no longer children (aged 18 and above) are discussed below.

Transition planning—needs assessment and Pathway Plan

Broadly, the *Children Act 1989* requires transition planning for all children in care (eligible children) through development of a Pathway Plan based on a thorough needs assessment. The Act requires that this transition planning continue for all children and young people as they leave care (relevant children and former relevant children).³⁷² It is expected that such planning will commence prior to the child's 16th birthday and certainly prior to them leaving care.³⁷³ The child's in-care social worker will be the primary person responsible for the child's transition planning, with this role being transferred to the young person's personal adviser once they

371. *Children Act 2004*, *supra* note 369, s 10(5); Applying Corporate Parenting Principles, *supra* note 367 at para 3.9.

372. Children Act 1989 Guidance Document, *supra* note 359 at paras 3.4–3.6. For eligible children in care, see duties relevant to pathway planning in s 23E. For relevant children, see duty to undertake needs assessment and develop a pathway plan in s 23B (3). For former relevant children, see duty to maintain personal advisor and pathway plan in s 23C (4). Section 23CA (3) requires a needs assessment and pathway plan be developed for a relevant or former relevant child up to the age of 25 if they intend to pursue an education or training program.

373. *Ibid* at para 3.11.

leave care.³⁷⁴ The Children Act 1989 Guidance provides that a child's Pathway Plan must address the following matters:

- The young person's health and development building on the information included in the young person's health plan established within their care plan when they were looked after. The plan should support the young person's access to positive activities.
- Education, training and employment. The Personal Education Plan (PEP) should continue to be maintained while the young person continues to receive full or part-time education. Information within the PEP will feed directly into the Pathway Plan. Pathway plans must have an explicit focus on career planning, taking into account the young person's aspirations, skills, and educational potential.
- Contact with the young person's parents, wider family including siblings and friends and the capacity of this network to encourage the young person and enable them to make a positive transition to adulthood.
- The young person's financial capabilities and money management capacity, along with strategies to develop the young person's skills in this area.³⁷⁵

Post-Care support

Personal advisers

As per amendments introduced by the *Leaving Care Act 2000*, section 23B (2) of the *Children Act 1989* requires the responsible authority to arrange for each eligible and relevant child to have a personal adviser and to continue the appointment of a personal adviser for former relevant children.³⁷⁶ The guidance explains:

The appointment of a personal adviser is therefore a statutory requirement. This emphasizes the importance of the role and reflects the belief that young people living in and leaving care should be able to identify someone as committed to their well being and development on a long term basis.³⁷⁷

A similar duty is placed on local authorities with respect to former relevant children under section 23C (3) of the Act.³⁷⁸ Initially, personal advisers were appointed to

374. *Ibid* at para 3.17.

375. *Ibid* at para 3.7.

376. *Children Act 1989*, *supra* note 357.

377. Children Leaving Care Act 2000 Guidance Document, *supra* note 358 at 47.

378. *Children Act 1989*, *supra* note 357.

young people up to the age of 21, and then to age 25 if the child wished to pursue further education.³⁷⁹ However, this was extended by legislation in 2018 to mandate the provision of a personal adviser if the young person wished, to the age of 25 for *all* care leavers regardless of whether they are in education.³⁸⁰

Section 8 of the *Care Leavers (England) 2010 Regulation* sets out the functions of the personal adviser:

8. (1) A personal adviser has the following functions in relation to the relevant child or former relevant child for whom they are appointed—
- (a) to provide advice (including practical advice) and support,
 - (b) where applicable, to participate in the assessment and the preparation of the pathway plan,
 - (c) to participate in reviews of the pathway plan,
 - (d) to liaise with the responsible authority in the implementation of the pathway plan,
 - (e) to co-ordinate the provision of services, and to take reasonable steps to ensure that the child makes use of such services and that they are appropriate to the child's needs,
 - (f) to remain informed about the relevant child's or former relevant child's progress and wellbeing, and
 - (g) to keep a written record of contacts with, and of services provided to, the relevant or former relevant child.
- (2) In addition, where accommodation is provided to a relevant child or former relevant child by the responsible authority under section 23B or section 24B, the personal adviser must visit the relevant child or former relevant child at that accommodation—
- (a) within 7 days of the accommodation first being provided,
 - (b) subsequently, before the pathway plan is reviewed under regulation 7(3), and

379. The *Children and Young Persons Act 2008*, *supra* note 350, s 23.

380. *Children and Social Work Act 2017*, *supra* note 364, s 3. See also United Kingdom, Department for Education, *Extending Personal Adviser Support to all Care Leavers to Age 25: Statutory Guidance for Local Authorities* (London: HM Government, February 2018) at 4, online (pdf): <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683701/Extending_Personal_Adviser_support_to_all_care_leavers_to_age_25.pdf> [Extending Personal Adviser Support Guidance Document].

(c) at subsequent intervals of not more than two months.³⁸¹

On a practical level, the role of a personal adviser is described in recent guidance as follows:

The PA acts as a focal point for the young person, ensuring that they are provided with the practical and emotional support they need to make a successful transition to adulthood, either directly or through helping the young person to build a positive social network around them. All care leavers should know who their PA is and how to contact them. Throughout their transition to adulthood and independent life, care leavers should be able to rely on consistent support from their PA, who is the designated professional responsible for providing and/or co-ordinating the support that the young person needs. This includes taking responsibility for monitoring, reviewing and implementing the young person's pathway plan.³⁸²

While young people may now have a personal adviser until the age of 25, it is not expected that a personal adviser will provide the same level of support after a person turns 21.³⁸³ The legislation “does however enable local authorities to respond positively to requests for support from care leavers aged 21-25 who may be continuing to struggle with the transition to independence and adult life.”³⁸⁴

Some early studies of the personal adviser model indicated that “the role of the [personal adviser] was ‘pivotal’ in ensuring that leaving care services maintained contact with the young people in order to generate plans and review progress.”³⁸⁵ Further, that young people valued this ongoing support, that they had positive relationships with their personal advisers and that their personal advisers were easily accessible.³⁸⁶ Criticisms have included poor transitioning between in-care social workers and personal advisers, and the capacity of personal advisers to provide sufficient

381. *Care Leavers (England) 2010*, SI 2010/2571, s 8. See also Children Act 1989 Guidance Document, *supra* note 359, 109–118.

382. Extending Personal Adviser Support Guidance, *supra* note 380 at para 13.

383. *Ibid* at para 10.

384. *Ibid*.

385. Philip Mendes and Jade Purtell, “An Evaluation of Housing Outcomes from a Support Program for Young People Transitioning from Out-of-Home Care in Victoria, Australia” (2017) 16:2 Scottish Journal of Residential Child Care 1 at 4–5, online (pdf): CELCIS <www.celcis.org/files/1815/0540/4809/2017_Vol_16_2_Mendes_P_et_al_An_evaluation_of_housing_outcomes....pdf>.

386. *Ibid*.

support given heavy caseloads, particularly as the age for having a personal adviser has recently been extended to 25 years.³⁸⁷

Keeping in Touch

Local authorities have a legislated duty “to take reasonable steps to keep in touch with a relevant child for whom they are the responsible authority, whether he is within their area or not.”³⁸⁸ Provision of accommodation, pathway planning and appointment of a personal adviser are the primary means by which this duty is met.³⁸⁹

For former relevant children aged 18–20, local authorities have a proactive duty to keep in touch.³⁹⁰ For young people aged 21 or older, keeping in touch by way of pathway planning and needs assessment occurs if the young person requests it.³⁹¹

Extended care—Staying Put program

The Staying Put program in England allows eligible foster children to continue living with their former foster carers until the age of 21, where both parties agree to the arrangement.³⁹² The program was introduced under the *Children and Families Act 2014*, which came into force in May 2014 by amendment to the *Children Act 1989*.³⁹³ The amended section 23CZA of the *Children Act 1989* provides:

(1) Each local authority in England have the duties provided for in subsection (3) in relation to a staying put arrangement.

(2) A “staying put arrangement” is an arrangement under which—

387. Centrepont, *From care to where? Care Leavers' Access to Accommodation* (London: Centrepont, 2017) at 22, online (pdf): <centrepont.org.uk/media/2035/from-care-to-where-centrepont-report.pdf> [Centrepont].

388. *Children Act 1989*, *supra* note 357, s 23B (1).

389. Extending Personal Adviser Support, *supra* note 380 at 8.

390. *Children Act 1989*, *supra* note 357, s 23C (2). See also Extending Personal Adviser Support, *supra* note 380 at 7.

391. *Ibid.*

392. United Kingdom, House of Commons Library, *Research Briefing: Support for Care Leavers*, by Philip Loft et al, CBP08429 (London: House of Commons Library, 2020) at 23, online: <commonslibrary.parliament.uk/research-briefings/cbp-8429/> [Support for Care Leavers Briefing]. Note an eligible child is defined in paragraph 19B of Schedule 2 to the *Children Act 1989*, *supra* note 357 as aged 16 or 17, still looked after, and looked after by a local authority for a period of 13 weeks, or periods amounting in total to 13 weeks, which began after s/he reached 14 and ended after s/he reached 16: *Children Act Guidance Document*, *supra* note 359 at para 7.21.

393. *Children and Families Act 2014*, *supra* note 353, s 98.

(a) a person who is a former relevant child by virtue of section 23C(1)(b), and

(b) a person (a “former foster parent”) who was the former relevant child’s local authority foster parent immediately before the former relevant child ceased to be looked after by the local authority, continue to live together after the former relevant child has ceased to be looked after.

(3) It is the duty of the local authority (in discharging the duties in section 23C(3) and by other means)—

(a) to monitor the staying put arrangement, and

(b) to provide advice, assistance and support to the former relevant child and the former foster parent with a view to maintaining the staying put arrangement.

(4) Support provided to the former foster parent under subsection (3)(b) must include financial support.

(5) Subsection (3)(b) does not apply if the local authority consider that the staying put arrangement is not consistent with the welfare of the former relevant child.

(6) The duties set out in subsection (3) subsist until the former relevant child reaches the age of 21.

The relevant guidance on the Staying Put statutory framework suggests that the program “is aimed at former relevant children who require an extended period with their former foster carer/s due to delayed maturity, vulnerability and/or in order to complete their education or training.”³⁹⁴

Local authorities must provide financial support to the former foster parent under the legislation. While the amount of support is assessed on a case-by-case basis, the amount provided must be sufficient to “cover all reasonable costs of supporting the care leaver to remain living with them.”³⁹⁵

Recent figures show that:

394. United Kingdom, *Staying Put: Arrangements for Care Leavers Aged 18 and Above to Stay on with their Former Foster Carers Guidance* (London: HM Government, 2013) at 11, online (pdf): <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/201015/Staying_Put_Guidance.pdf> [Staying Put Guidance Document].

395. Children Act 1989 Guidance Document, *supra* note 359 at para 7.30.

- 57% of young people who had turned 18 in a foster placement were still living with their former foster carers under a Staying Put arrangement three months on; and
- The proportion of 19 and 20-year-olds who were still living with their former foster carers under the Staying Put scheme remains at 26%.³⁹⁶

Staying Put pilot programs instituted between 2008 and 2011 provided strong support for the expansion of the programs, with reports indicating that “young people who stayed put were more than twice as likely to be in full-time education at 19 than those who did not.”³⁹⁷ However, there has been some criticism over the years regarding sufficiency of the program funding levels.³⁹⁸ A recent report indicates that issues with funding of the program may be impacting access to the program, with reports that many young people must leave their foster care homes on turning 18 as a result of lack of funding for their continued stay.³⁹⁹ It appears that a commitment by government to funding this program in the longer term, beyond 2020/2021 has yet to be made.⁴⁰⁰

Staying Close program

In response to recommendations made in an independent report on children’s residential care in England, the government announced its intention to implement the Staying Close program.⁴⁰¹ The program is for young people leaving residential care, as an alternative to the Staying Put program for those leaving foster care, which would “enable young people to live independently, in a location close to their children’s home with ongoing support from that home.”⁴⁰² In October 2019, after a

396. Action for Children, *Giving Care Leavers the Chance to Stay* (Watford: Action for Children, 2020) at 8, online (pdf): <media.actionforchildren.org.uk/documents/Staying_Put_six_years_on.pdf> [Chance to Stay].

397. *Ibid.*

398. Support for Care Leavers Briefing, *supra* note 392 at 23.

399. Chance to Stay, *supra* note 396 at 8.

400. Support for Care Leavers Briefing, *supra* note 392 at 24.

401. United Kingdom, *Residential Care in England: Report of Sir Martin Narey’s Independent Review of Children’s Residential Care* (London: HM Government, 2016) at 65 (Recommendation 33), online (pdf): <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/534560/Residential-Care-in-England-Sir-Martin-Narey-July-2016.pdf>; United Kingdom, UK Parliament, Children’s Social Care: Statement made by Minister of State for Children and Families Edward Timpson, Statement UIN HCWS57 (4 July 2016), online: <questions-statements.parliament.uk/written-statements/detail/2016-07-04/HCWS57>.

402. United Kingdom, Department for Education, *Putting children first: Delivering our Vision for Excellent Children’s Social Care* (London: HM Government, 2016) at para 59, online (pdf):

number of successful pilot programs,⁴⁰³ the government announced £6 million for 2021/2022 to roll out the Staying Close program across the country “helping young people leaving residential care to continue to get on-going support from their previous carers they know and trust, which will help them to successfully live independently.”⁴⁰⁴ Of note, unlike the Staying Put program, this program is not a statutory program. Longer term funding for this program has not been allocated.⁴⁰⁵

Housing

A broad picture of the housing situation for care leavers is evident from the following 2019/2020 data:

- 35% of care leavers were in independent living
- 15% of care leavers were housed in semi-independent/transitional accommodation
- 11% of care leavers were living with parents or relatives
- 8% of care leavers were living with former foster carers.⁴⁰⁶

With respect to housing and accommodation, it is clear that local authorities have a legislative duty to provide suitable accommodation to relevant children (16–17 years).⁴⁰⁷ However, for those young people who have turned 18 and are transitioning to independence (former relevant children) accommodating those care leavers who are homeless or at risk of homelessness becomes a joint effort. The Care Leavers Act 2000 Guidance states:

<assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/554573/Putting_children_first_delivering_vision_excellent_childrens_social_care.pdf>.

403. Support for Care Leavers Briefing, *supra* note 392 at 24–25. See also the promising results of a Staying Close pilot program published in 2020: United Kingdom, Department for Education, *The Fairways Staying Close Project: An Evaluation Report* (London: HM Government, 2020), online (pdf) <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/931996/Staying_Close_Fair_Ways.pdf>.

404. United Kingdom, Department for Education, Press Release, “Vital New Support for Young People Leaving Care” (23 October 2019), online: <www.gov.uk/government/news/vital-new-support-for-young-people-leaving-care>.

405. Support for Care Leavers Briefing, *supra* note 392 at 23.

406. *Ibid* at 29.

407. *Children Act 1989*, *supra* note 357, s 23B (8).

Whilst the primary responsibility for securing accommodation for young homeless people rests with the local housing authority, it is essential that a corporate and multi-agency approach is adopted by the local authority to care leavers. Local authorities should develop a strategy in partnership with housing providers to provide a range of accommodation to meet the assessed needs of relevant children and other care leavers. The housing needs of care leavers should be addressed before they leave care and arrangements made for joint assessment between social services and housing authorities, as part of the multi-agency assessment on which an individual after-care plan or pathway plan should be based. It is important that local housing departments and social services departments have joint protocols in place for dealing with care leavers, to ensure that housing and social services each play a full role in providing support to these young people.⁴⁰⁸

This multi-agency approach to ensuring appropriate housing for care leavers is evident in the requirement that local authorities work together with children's services to develop joint housing protocols which recognize their concurrent responsibilities and are in line with corporate parenting principles.⁴⁰⁹ The Homelessness Code of Guidance deals specifically with care leavers and states:

By working together, housing authorities and children's services authorities can better ensure that as a corporate parent, the appropriate accommodation and support is available to care leavers.

Housing authorities, children's services authorities and other relevant departments within local authorities, are advised to develop joint protocols or procedures to ensure that each department plays a full role in providing corporate parenting support to young people leaving care.⁴¹⁰

Acknowledging that a joined-up approach is needed, local authorities still retain some specific statutory duties with respect to housing for care leavers. Some noteworthy duties include:

- The local authority has some obligations with respect to vacation accommodation for care leavers in higher education, as mentioned above.

408. Care Leavers 2000 Guidance Document, *supra* note 358 at para 25.

409. Support for Care Leavers Briefing, *supra* note 392 at 32.

410. United Kingdom, Ministry of Housing, Communities and Local Government, *Homelessness Code of Guidance for Local Authorities* (London: HM Government, 2018) at paras 22.5–22.6, online (pdf): <assets.publishing.service.gov.uk/media/5ef9d8613a6f4023cf12fc67/Current_Homelessness_Code_of_Guidance.pdf> [Homelessness Guidance Document].

- Local authorities have a statutory duty under section 20 of the *Children Act 1989* to provide accommodation to *any* young person aged 16 to 20 in their area, regardless of whether they have been in care, if necessary to safeguard or promote their welfare:

S20(3) Every local authority shall provide accommodation for any child in need within their area who has reached the age of sixteen and whose welfare the authority consider is likely to be seriously prejudiced if they do not provide him with accommodation.

(4) A local authority may provide accommodation for any child within their area (even though a person who has parental responsibility for him is able to provide him with accommodation) if they consider that to do so would safeguard or promote the child's welfare.

(5) A local authority may provide accommodation for any person who has reached the age of sixteen but is under twenty-one in any community home which takes children who have reached the age of sixteen if they consider that to do so would safeguard or promote his welfare.⁴¹¹
- Local authorities have a duty under the *Housing Act 1996*⁴¹² and the *Homelessness (Priority Need for Accommodation) (England) Order 2002*⁴¹³ to secure accommodation for certain unintentionally homeless care leavers, including:
 - A person (other than a relevant student) who is under 21 and at any time after reaching the age of 16, but while still under 18, was, but is no longer, looked after, accommodated or fostered.⁴¹⁴
 - A person (other than a relevant student) who has reached the age of 21 and who is vulnerable as a result of having been looked after, accommodated or fostered.⁴¹⁵

411. *Children Act 1989*, *supra* note 359, s 20(3)–(5) [emphasis added].

412. *Housing Act 1996* (UK), c 52, s 188 (1) (“If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must secure that accommodation is available for the applicant’s occupation”). Categories of persons with “priority need” are set out in s 189 of the act, along with those categories referred to in articles 3-6 of the *Homelessness (Priority Need for Accommodation) (England) Order 2002*, *infra* note 413, SI 2002/2051.

413. *The Homelessness (Priority Need for Accommodation) (England) Order 2002*, SI 2002/2051.

414. *Ibid*, Art 4(1). See also Homelessness Guidance Document, *supra* note 410 at para 8.3.

415. *The Homelessness (Priority Need for Accommodation) (England) Order*, *supra* note 413, art 5(1). See also Homelessness Guidance Document, *supra* note 410 at para 8.3.

The terms “looked after, accommodated or fostered” are quite broadly defined in section 24 (2) of the *Children Act 1989* and include people looked after by local authorities, accommodated by a voluntary organization or in a private children’s home, accommodated in certain health institutions and privately fostered.⁴¹⁶

- Local authorities have a duty under the *Housing Act 1996*, as amended by the *Homelessness Reduction Act 2017*, to provide free advice and information services to meet the needs of specific groups in their districts, including care leavers.⁴¹⁷
- Pursuant to this same *Homelessness Reduction Act 2017*, certain public bodies have a duty to refer people to a local housing authority if they become aware that they are homeless or threatened with homelessness, with the person’s consent.⁴¹⁸

An evaluation of legislation and policy with respect to housing supports for care leavers has reported some overall improvements in outcomes for care leavers over recent years but suggests that the system could be more effective. Civil society organization Centrepont found:

While there have been many positive policy changes aimed at improving outcomes for care leavers in recent years, accommodation remains an area fraught with problems. Local authority practitioners are struggling to balance increasing workloads. Some of the mechanisms designed to ease the transition to independence – pathway plans, joint protocols and reciprocal arrangements - are not working as effectively as they could. External factors are also increasing the pressure on local authorities, such as increasing demand for services and a challenging housing market.⁴¹⁹

The priority need status of care leavers aged 18 to 21 under the *Housing Act 1996*, which requires local authorities to provide accommodation to care leavers threatened with homelessness, is reported by Centrepont to act as a safety net to care leavers.⁴²⁰ However, this policy is also criticized as only coming into effect in an

416. *Children Act 1989*, *supra* note 357, s 24(2).

417. *Housing Act 1996*, *supra* note 412, s 179 as amended by the *Homelessness Reduction Act 2017* (UK), c 13, s 2. See also Support for Care Leavers Briefing, *supra* note 392 at 31–32.

418. *Ibid*, s 213B as amended by the *Homelessness Reduction Act 2017*, *supra* note 417, s 10. See also Support for Care Leavers Briefing, *supra* note 392 at 32.

419. Centrepont, *supra* note 387 at 4.

420. *Ibid* at 15.

emergency, once crisis point has already been reached.⁴²¹ In addition, the local authority duties toward “unintentionally” homeless care leavers is also criticized as allowing authorities to avoid their responsibilities with a classification of a care leaver as being “intentionally” homeless due to rent arrears, for example.⁴²²

An All-Party Parliamentary Group for Ending Homelessness assessment of care leavers and housing policy noted that “[t]oo often, care leavers who present at their local authority as homeless cannot access the support they need.”⁴²³ Citing Ofsted, the authors reported that in 2015 “64% of local authorities were rated inadequate or requiring improvement in their services for care leavers.”⁴²⁴

Education & training

For care leavers pursuing higher education, some funding and programs are statutorily mandated. Under the *Children Act 1989*, the local authority has a duty to contribute to the costs and expenses of undertaking higher education to former relevant children who commence the education prior to turning 25.⁴²⁵ Assistance with education is available until the young person finishes their program or training.⁴²⁶ This flexibility acknowledges that young people from care are more likely to have suffered disruption to their education or to have embarked on education pathways later than their non-care peers.⁴²⁷

The kinds of assistance provided under the Act are “(a) contributing to expenses incurred by him in living near the place where he is, or will be, receiving education or

421. *Ibid.*

422. *Ibid.*

423. All-Party Parliamentary Group for Ending Homelessness, *Homelessness Prevention for Care Leavers, Prison Leavers and Survivors of Domestic Violence* (July 2017) at 6, online (pdf): APPGEH <www.crisis.org.uk/media/237534/appg_for_ending_homelessness_report_2017_pdf.pdf>.

424. *Ibid.*, citing United Kingdom, Office for Standards in Education, Children’s Services and Skills, *Re-Inspection of Inadequate Local Authorities*, Reference no: 160010 (London: HM Government, 2016), online (pdf): <assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/498648/Consultation_on_re-inspection_of_inadequate_local_authorities.pdf>.

425. *Children Act 1989*, *supra* note 357, s 23CA (4)–(6). See also s 24B for similar duties regarding assistance with education for former relevant children under the age of 21.

426. *Ibid.*, s 23CA (6) (“If a person to whom this section applies pursues a programme of education or training in accordance with the pathway plan prepared for him, the duties of the local authority under this section (and under any provision applicable to the pathway plan prepared under this section for that person) subsist for as long as he continues to pursue that programme.”).

427. Leaving Care Act 2000 Guidance Document, *supra* note 358 at 61.

training” or “(b) making a grant to enable him to meet expenses connected with his education and training.”⁴²⁸ The Care Leaving Act 2000 Guidance explains this assistance further:

The responsible authority would not be expected to provide accommodation and maintenance for those in Higher Education: under such circumstances, the prime funding must come from whatever mainstream sources would be available to support anyone else. However should the young person’s welfare or educational or training needs require it the responsible authority would be under a duty to provide assistance such as travel or equipment costs as well as contributing to the expenses incurred by the young person in living near the place where he or she is, or will be, receiving education or training.⁴²⁹

In addition, the *Children Act 1989* requires the local authority to pay a former relevant child under the age of 25 who is pursuing higher education a one-off Higher Education Bursary.⁴³⁰ The minimum amount a local authority must provide to a care leaver is currently set by regulation at £2000.⁴³¹

Local authorities are also under a statutory requirement to provide vacation accommodation between school terms or funds for such accommodation, to care leavers pursuing higher education.⁴³²

Some other non-statutory programs related to education and training for care leavers are noted below.

Other statutory duties

In addition to the legislative obligations above, other statutory duties to young people who have left care include a duty to provide general assistance (section 23C (4) (c)); and a duty to provide assistance with the expenses associated with employment (section 23C (4) (a)).⁴³³

428. *Children Act 1989*, *supra* note 357, s 23C (4), in conjunction with s 24B (2).

429. Leaving Care Act 2000 Guidance Document, *supra* note 358 at 62.

430. *Children Act 1989*, *supra* note 357, s 23C (5A).

431. *Children Act 1989 (Higher Education Bursary) (England) Regulations 2009*, SI 2009/2274, s 2. See also the Explanatory Memorandum to these regulations.

432. *Children Act 1989*, *supra* note 357, s 24B (5); *Children Act 1989 Guidance Document*, *supra* note 359 at para 7.84–7.85.

433. *Ibid* at para 4.5.

These additional supports generally apply until the young person turns 21 years of age.

Non-Legislated Supports and Programs

Without canvassing the range of non-legislated government or charitable supports and services available to care leavers in England, we consider the following worthy of mention.

Care Leaver Covenant

As a result of commitments made by the government in its 2016 Care Leaver Strategy,⁴³⁴ the government introduced the Care Leaver Covenant in 2018.⁴³⁵ The Care Leaver Covenant is “a promise made by the private, public and voluntary sectors to provide support for care leavers aged 16-25 to help them to live independently.”⁴³⁶ It is intended to encourage participation by wider society in supporting care leavers. Those who sign up to the covenant make an “offer” of the supports or services that they can provide to care leavers, for example, work experience placements, internships, mentoring, financial guidance, concessionary access to sport and leisure activities or providing or supporting them in educational and training opportunities.⁴³⁷

As of November 2020, 155 organizations had signed the covenant, including public bodies, charities and businesses and 60 higher education institutions.⁴³⁸

In addition to the statutory financial and other assistance outlined above, some additional programs related to education and training for care leavers exist. These include vulnerable student bursaries of up to £1,200 for 16–19 year olds⁴³⁹ and financial support, for example fee waivers or cash awards from the youth’s university or

434. 2016 Care Leaver Strategy, *supra* note 352 at para 3.9.

435. Support for Care Leavers Briefing, *supra* note 392 at 8.

436. Care Leaver Covenant, “Care Leaver Covenant: Ready When You Are” (last visited 28 April 2021) at 1, online (pdf): <mycovenant.org.uk/identity-cms/wp-content/uploads/2020/01/CLC-Intro-Leaflet-Branded-Low.pdf>. See also Care Leaver Covenant, “What is the Care Leaver Covenant?” (last visited 28 April 2021), online: <mycovenant.org.uk/about/>.

437. *Ibid* at 3.

438. Support for Care Leavers Briefing, *supra* note 392 at 9.

439. Education and Skills Funding Agency, “Guidance: 16 to 19 Bursary Fund Guide 2020 to 2021 Academic Year” (last visited 28 April 2021), online: <www.gov.uk/guidance/16-to-19-bursary-fund-guide-2020-to-2021-academic-year#eligibility-criteria-bursaries-for-young-people-in-defined-vulnerable-groups>.

college.⁴⁴⁰ Care leavers may also be eligible for repayable government loans for tuition and maintenance which are available to the wider population.⁴⁴¹ The Children's Commissioner has recently called for the age limit for vulnerable student bursaries to extend beyond 19 years and for free tuition for care leavers.⁴⁴²

Some Recent Evaluation

The 2016 Care Leaver Strategy undertook an overall assessment of care leaver law and policies, based on Ofsted inspections and care leaver interviews.⁴⁴³ Several key findings were made:

- The quality of pathway planning for care leavers is not good enough in around two-thirds of local authorities inspected, with a lack of clear, specific actions to drive care leavers' progress;
- Not enough is done to raise awareness among care leavers of their entitlements;
- In around half of local authorities inspected, not enough support was being provided to help care leavers to find and sustain education, training or employment;
- In around a third of local authorities, care leavers did not have access to a suitable range of accommodation options; and
- In too many local authorities, senior corporate parents did not consistently prioritize the needs of care leavers or have sufficiently high aspirations for them.⁴⁴⁴

More positively, the report noted that care leavers generally viewed the support provided by personal advisers positively and local authority performance on keeping in touch with care leavers was in the process of improvement.⁴⁴⁵

440. Student Finance for England, "Help Support Students Who've Been in Care" (last visited 28 April 2021), online: <www.practitioners.slc.co.uk/exchange-blog/2019/july/help-support-students-who've-been-in-care/#:~:text=Care%20Leavers%20may%20also%20be,fee%20waivers%20or%20cash%20awards>.

441. United Kingdom, "Student Finance" (last visited 28 April 2021), online: <www.gov.uk/student-finance>.

442. United Kingdom, Children's Commissioner for England, "10 Asks for Care Leavers" (23 October 2020) online: <www.childrenscommissioner.gov.uk/2020/10/29/10-asks-for-care-leavers/>.

443. 2016 Care Leaver Strategy, *supra* note 352 at para 1.22–1.32.

444. *Ibid* at para 1.29.

445. *Ibid* at para 1.30.

Chapter 5. International Jurisdictions: Australia

National Framework

Leaving care law and policy has been a topic of state and federal government engagement in Australia in recent years. In 2009 the Commonwealth, State and Territory governments made a long-term commitment to improve supports to young people leaving care under the National Framework for Protecting Australia's Children 2009–2020.⁴⁴⁶ The National Framework's overarching purpose was to transition from a system in which child protection equated with responding to abuse and neglect to a system that promotes the safety and well-being of children.⁴⁴⁷

The Third Action Plan under the National Framework (2015–2018) included a specific strategy to “develop and strengthen support for young people in care transitioning to adulthood and improve priority access to support services.”⁴⁴⁸ With statutory child protection remaining the domain of individual states and territories, and income support payments the domain of the federal jurisdiction, the National Framework enabled a nationally consistent approach to be developed in helping young people transition from care to the community.

A number of independent reviews of the state-based child protection systems have also given traction to reform in this area.⁴⁴⁹ These reviews indicate general

446. Australia, Council of Australian Governments, *Protecting Children is Everyone's Business: National Framework for Protecting Australia's Children 2009–2020* (Canberra: Commonwealth Government, 2009) at 5, online (pdf): <www.dss.gov.au/sites/default/files/documents/child_protection_framework.pdf> [National Framework].

447. *Ibid* at 7.

448. Australia, Department of Social Services, *National Framework for Protecting Australia's Children—Third Three-Year Action Plan 2015–2018: Driving Change, Intervening Early* (Canberra: Commonwealth Government, 2015) at 5, online (pdf): <www.dss.gov.au/sites/default/files/documents/12_2015/pdf_third_action_plan_for_protecting_australias_children.pdf> [Third Action Plan].

449. See e.g. Philip Cummins, Dorothy Scott & Bill Scales, *Report of the Protecting Victoria's Vulnerable Children Inquiry*, 3 vols (January 2012), online: <childprotectioninquiry.vic.gov.au/report-pvvc-inquiry.html>; Commissioner for Children Tasmania, *An Uncertain Road Ahead: Young People Leaving Care in Tasmania* (Hobart: Commissioner for Children Tasmania, 2012); Australia, Senate, Community Affairs Reference Committee, *Out of Home Care* (Canberra: Senate Printing Unit, 2015), online: <www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/out_of_home_care/~media/Committees/clac_ctte/Out_of_home_care/report.pdf>; South

consensus that care leavers experience significantly poorer outcomes than their non-care peers and that extended care and improved post-care support is needed to improve youth outcomes.⁴⁵⁰

Overview

In Australia, young people transitioning from care typically come from one of four main types of care: home-based care (foster or kinship care); family group homes; residential care; or independent living.⁴⁵¹ By far the majority come from home-based care.⁴⁵² The age of majority in all jurisdictions is 18 years. Indigenous children and youth are significantly overrepresented in Australia's child welfare system.⁴⁵³

As a result of the development of a nationally consistent approach under the National Framework, all jurisdictions in Australia (except Tasmania) have legislation mandating that all young people in care must have a transition support plan to

Australia, Child Protection Systems Royal Commission, *"The Life They Deserve": Child Protection Systems Royal Commission Report*, 2 vols (Adelaide: Government of South Australia, 2016), online: <www.agd.sa.gov.au/sites/default/files/complete_report_child_protection_systems_royal_commission_report.pdf?acsf_files_redirect>; Western Australia, Office of the Auditor General, *Young People Leaving Care: Report 2* (Perth: Office of the Auditor General, Western Australia, 2018), online: <audit.wa.gov.au/wp-content/uploads/2018/08/report2018_02-YoungPeopleCare.pdf> [Young People Leaving Care]; New South Wales, Legislative Council, General Purpose Standing Committee No. 2, *Child Protection: Final Report* (Sydney: The Committee, 2017), online: <www.parliament.nsw.gov.au/lcdocs/inquiries/2396/Final%20report%20-%20Child%20protection.pdf>; Northern Territory, Royal Commission into the Detention and Protection of Children in the Northern Territory, *Final Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, 4 vols (November 2017), online: <www.royalcommission.gov.au/royal-commission-detention-and-protection-children-northern-territory>.

450. Philip Mendes, "Young people transitioning from out-of-home care: What do public inquiries tell us about the state of current policy and practice in Australia?" (6 May 2019) online: Australian Institute of Family Studies <aifs.gov.au/cfca/2019/05/06/young-people-transitioning-out-home-care-what-do-public-inquiries-tell-us-about-state> [Policy and Practice in Australia].

451. Australian Capital Territory, Community Services Directorate, *Transition from Out of Home Care to Adulthood: Mapping Legislation and Policy Across Australian Jurisdictions* (Canberra: ACT Government, 2018) at 7, online (pdf): <www.communityservices.act.gov.au/__data/assets/pdf_file/0010/1306594/Discussion-Paper-transition-from-out-of-home-care-to-adulthood-FINAL.pdf> [Transition from Out of Home Care].

452. *Ibid.*

453. Philip Mendes, Bernadette Saunders & Susan Baidawi, *Indigenous Care Leavers in Victoria: Final Report* (Victoria: Monash University, 2016) at 10–11, online (pdf): <www.lmcf.org.au/get-media/b73fb60e-188b-42c3-8fd4-99067390b34b/Indigenous-Care-Leavers-Final-Report.pdf.aspx> [Indigenous Care Leavers Victoria].

identify priorities and pathways for their successful transition to adulthood.⁴⁵⁴

These plans typically address areas such as housing, education, health, training, employment, relationships and financial management. Transition plans are generally required to be in place from 15 years of age. In practice there are variations between jurisdictions in their approaches to transition planning. Details of the legislation will be discussed below with specific reference to select jurisdictions.

In addition to a legislative requirement that transition plans be developed, all jurisdictions (except Tasmania) legislate for the provision of post-care supports.⁴⁵⁵ Legislation typically references the areas in which post-care supports are to be provided, such as housing, education and finance, leaving implementation to the policy domain of each jurisdiction. However, as will be discussed further below, these supports are largely discretionary, with no avenues for legal enforcement.

Legislation typically denotes age limits up to which post-care supports will be provided. Transition support planning generally commences at age 15 in line with the National Framework recommendations, with some variation in the age at which supports will stop. Most jurisdictions' legislation allows for the provision of post-care support until the person turns 25, with the exception of South Australia (until the person turns 26), and Victoria (until the person turns 21). Uniquely, New South Wales has an additional provision which gives the minister discretion to continue to provide support beyond the age of 25 with no upper age limit specified.⁴⁵⁶

The programs and methods by which these post-care supports are provided vary greatly between jurisdictions. Examples of the way in which these programs are delivered, with specific reference to select jurisdictions, is provided below.

454. Transition from Out of Home Care, *supra* note 451 at 7. Note, while Victoria mandates transition planning through policy, such policy states it is fulfilling its legislative obligations with respect to transition planning for care leavers: see Victoria, Department of Human Services, *Care and Transition Planning for Leaving Care in Victoria: A framework and Guide* (Melbourne: Government of Victoria, 2012) at 3, online (pdf): <www.dhhs.vic.gov.au/sites/default/files/documents/201706/care-and-transition-planning-for-leaving-care-framework-1212_PDF.pdf> [Victorian Transition Policy].

455. For details, see individual jurisdictions discussed below.

456. *Children and Young Persons (Care and Protection) Act 1988* (NSW), s 165 (3).

Legislated Transition Planning and Post Care Support Services in Select Jurisdictions

South Australia

South Australia revamped its child protection legislation in 2017 in response to a Royal Commission.⁴⁵⁷ The *Child and Young People (Safety) Act 2017* includes the following provision mandating transition planning for young people in care:

111—Chief Executive to assist persons leaving care

- (1) The Chief Executive *must*, in relation to each child or young person who is lawfully leaving the care of a person in whose guardianship or custody they have been placed under this Act, and in consultation with the child or young person, prepare a plan setting out steps to assist the child or young person in making their transition from care.
- (2) The Department, and any other State authority specified by the Chief Executive in a plan under this section, is to take reasonable steps to implement the plan.
- (3) However, a plan under this section does *not create legally enforceable rights* or entitlements.⁴⁵⁸

With respect to post care assistance for young people aged between 17 and 25 inclusive, the legislation provides the following:

112—Minister to arrange assistance for eligible care leavers

- (1) The Minister *must cause* such assistance as the *Minister thinks appropriate* to be offered to each eligible care leaver for the purposes of making their transition from care as easy as is reasonably practicable.
- (2) Without limiting the kinds of assistance that may be offered to an eligible care leaver, such assistance *may include* 1 or more of the following:
 - (a) the provision of information about Government and other resources and services available to the eligible care leaver;
 - (b) the provision of education and training services;

457. South Australia, Child Protection Systems Royal Commission Report, *The Life They Deserve* (Adelaide: Government of South Australia, 2016), online (pdf): <www.agd.sa.gov.au/sites/default/files/complete_report_child_protection_systems_royal_commission_report.pdf?acsf_files_redirect>.

458. *Child and Young People (Safety) Act 2017* (SA), s 111 [emphasis added].

- (c) assistance in finding accommodation;
 - (d) assistance in finding employment;
 - (e) assistance in accessing legal advice and health services;
 - (f) counselling and support services.
- (3) If an eligible care leaver accepts an offer of assistance, the Minister *must take reasonable steps* to provide such assistance, or cause such assistance to be provided, to the eligible care leaver.
- (4) To avoid doubt, assistance may, at the discretion of the Minister, be provided for a specified period or until a person ceases to be an eligible care leaver.
- (5) However, an offer of assistance under this section does *not create legally enforceable rights* or entitlements.
- (6) In this section—
- “eligible care leaver”—a person is an eligible care leaver if the person—
 - (a) is more than 16, but less than 26, years of age; and
 - (b) was, at any stage, under the guardianship or custody of the Chief Executive or another person pursuant to this Act or the *Children’s Protection Act 1993* for a period of 6 months or more (or such lesser period as may be allowed by the Minister).⁴⁵⁹

Under these provisions assistance must be provided by the minister, however the amount of assistance and type of assistance that must be provided is at the minister’s discretion.

Victoria

Transition planning requirements are set out in a comprehensive policy, rather than legislation. The policy states that it “provides guidance to help care providers and case managers comply with the legislative requirements through thorough high-quality transition planning, review and recording processes for young people from 15 years of age.”⁴⁶⁰ Transition planning happens in 3 stages—preparation (from 15 years), transition (final 12 months) and post-transition planning.⁴⁶¹

459. *Ibid*, s 112 [emphasis added].

460. Victorian Transition Policy, *supra* note 454 at 3.

461. *Ibid* at 6. See also Susan Baidawi, *Continuing Care in Australia: An Analysis of State and Territory Legislation and Policy* (Melbourne: Anglicare Victoria, 2016), at 8, online (pdf): thehomestretch.org.au/site/wp-content/uploads/2016/11/State-and-Territory-Legislation-and-Policy_Susan-Baidawi.pdf [Continuing care in Australia].

With respect to post-care supports, the *Children, Youth and Families Act 2005* provides:

Responsibilities of the Secretary

16(1) Without limiting any other responsibility of the Secretary under this Act, *the Secretary has the following responsibilities—*

...

(g) to provide or arrange the provision of services to assist in supporting a person *under the age of 21* years to gain the capacity to make the transition to independent living where—

(i) the Secretary has had parental responsibility for the person;
and

(ii) on the Secretary's parental responsibility ending, the person is of an age, or intends, to live independently;

..

(2) The statement of responsibilities of the Secretary under this section *does not create, or confer on any person, any right or entitlement enforceable at law.*

...

(4) The kinds of services that *may be provided* to support a person to make the transition to independent living include—

(a) the provision of information about available resources and services;

(b) depending on the Secretary's assessment of need—

(i) financial assistance;

(ii) assistance in obtaining accommodation or setting up a residence;

(iii) assistance with education and training;

(iv) assistance with finding employment;

(v) assistance in obtaining legal advice;

(vi) assistance in gaining access to health and community services;

(c) counselling and support.⁴⁶²

462. *Children, Youth and Families Act 2005* (Vic), s 16 [emphasis added] [*CYF Act*].

While transition planning requirements in Victoria are not enshrined in legislation, the relevant policy is very comprehensive and is stated to be a tool to enable compliance with the legislation.⁴⁶³ However, the statute expressly states that no enforceable legal entitlements are conferred by the legislation.⁴⁶⁴ Further, the types of assistance which might be provided by the Secretary are entirely discretionary. Interestingly, while Victoria appears to be fairly progressive in its provision of non-legislated programs for care leavers, they have the lowest age cut-off for services at 21 years,⁴⁶⁵ compared with 25 years for most other jurisdictions.

A longitudinal study on leaving care was commissioned by the Victorian Department of Health and Human Services to increase understanding of the factors associated with successful transitions from out-of-home care.⁴⁶⁶ A report on the study in 2018 found some issues around implementation of the legislative and policy requirements with respect to care leavers. In summary, these included:

- Only 46% of care leavers and 22% of young people still in out-of-home care reported that they had a transition plan.
- While case workers mostly reported that their own transition planning practices were in line with policy guidelines, they identified a lack of leaving care support and access to services as a barrier to effective transition planning.
- Post-care service provision and referrals to care leavers was uneven, with some gaining access but others showing little awareness of what services were available.
- Caseworkers identified important gaps in the provision of services, in particular workers identified leaving care and mental health services as having restrictive eligibility requirements and limited capacity to assist clients with high needs.⁴⁶⁷

463. Victorian Transition Policy, *supra* note 454 at 3.

464. *CYF Act*, *supra* note 462, s 16 (2).

465. *Ibid*, s 16 (1) (g).

466. Stuart Muir & Kelly Hand, *Beyond 18: The Longitudinal Study on Leaving Care, Wave 1 Research Report: Transition Planning and Preparation* (Melbourne: Victorian Department of Health and Human Services, 2016), online: <aifs.gov.au/publications/beyond-18-longitudinal-study-leaving-care> [Beyond 18].

467. *Ibid* at V–VI (Executive Summary).

Queensland

Queensland's *Child Protection Act 1999* was amended in 2017⁴⁶⁸ to reflect its commitment to the National Framework and Third Action Plan with respect to care leavers. Section 75 was amended in line with the approach taken in other jurisdictions regarding transition planning requirements and post-care assistance. With respect to transition planning and post-care support, the legislation provides:

75 (1) This section applies to a person who is or has been a child in the custody or under the guardianship of the chief executive.

(2) *As far as practicable*, the chief executive *must*—

(a) ensure help is available to assist the person in the transition from being a child in care to independence; and

(b) ensure the help is available to the person for the period *starting when the person turns 15 and ending when the person turns 25*.

(3) Without limiting subsection (2)(a), the help *may include* the following—

(a) help to access entitlements, including, for example, social security allowances or payments;

(b) help to access appropriate accommodation;

(c) help to access education and training;

(d) help to obtain employment;

(e) help to obtain legal advice;

(f) help to access health and community services, including, for example, specialist disability support services;

(g) support in establishing or maintaining relationships with the person's family or carer;

(h) help in accessing information, including information in the chief executive's possession or control, about the person and his or her time in care;

Note—

See section 188C about the information the chief executive may give the person.

(i) counselling or other support to help the person in relation to information mentioned in paragraph (h);

468. *Child Protection Reform Amendment Act 2017* (Qld).

(j) other assistance, based on an assessment of the person's needs, provided by the chief executive.

Examples of assistance, based on a person's needs, that may be provided by the chief executive—

- financial assistance under *section 159*
- help given to ensure a young person with impaired capacity is given the opportunity to develop decision-making skills and exercise the rights mentioned in the *Guardianship and Administration Act 2000*, sections 5 and 6.⁴⁶⁹

The wording of Queensland's legislation is some of the strongest nationally in terms of obligations placed on the government, with some discretion evident in use of the phrase "as far as practicable."⁴⁷⁰ There is no inclusion of a "non-enforceability" clause. In line with the National Framework and the majority of other jurisdictions, transition planning is to commence at age 15 and support services remain available until the person turns 25.

Provision of financial assistance in subsection (j) is entirely a needs-based discretionary consideration; however, notably this financial assistance may still be available to the person or their caregiver to help with their transition to independence, even once the person has reached the age of majority:

159 (1) The chief executive may pay the allowance decided by the chief executive to a child's carer, long-term guardian or permanent guardian for the child's care and maintenance.

(2) Also, the chief executive may pay the amount decided by the chief executive towards expenses incurred in the care and maintenance of a person who has been a child in the custody or under the guardianship of the chief executive to the person or the person's carer *to help the person with the transition from being a child in care to independence.*

(3) A payment may be made to the person or the person's carer under subsection (2) *whether the person is a child or an adult.*⁴⁷¹

469. *Child Protection Act 1999* (Qld), s 75 [emphasis added].

470. *Ibid*, s 75 (2).

471. *Ibid*, s 159 (3) [emphasis added].

It is reported that this financial support can be continued on a case-by-case basis while a person continues to live in home-based care while completing their schooling, for example.⁴⁷²

Tasmania

Tasmania's transition and post-care services appear to be entirely a matter of policy and have not been legislated, despite a 2012 recommendation by the Commissioner for Children and Young people that this occur.⁴⁷³ Policy requires transition planning and care leaving supports to commence at age 15 and continue until age 25.⁴⁷⁴

Despite this absence of legislation, in June 2019 Tasmania joined a growing number of states in extending funding to home-based carers to enable youth who have reached the age of majority to opt to remain in care until the age of 21.⁴⁷⁵ General support services and some financial support up to \$2,500 is also available to 18 to 24 year olds through the state's After Care Support Program.⁴⁷⁶

Western Australia

Western Australia has some of the strongest, least discretionary legislative requirements to provide young people with transition planning and post-care services. These include the provision of social services and assistance with accommodation, education and employment.

In terms of transition planning, the *Children and Community Services Act 2004* provides that mandatory care plans must be updated to identify the needs of a child preparing to leave care.⁴⁷⁷ No age is specified in the legislation for the commencement of this process, but reviews must occur at least every 12 months.⁴⁷⁸ In addition, provisions with respect to post-care services include:

472. Transition from Out of Home Care, *supra* note 451 at 10.

473. Policy and Practice in Australia, *supra* note 450.

474. Continuing Care in Australia, *supra* note 461 at 16, citing Tasmania, Department of Health and Human Services, *Planning for Leaving Care and Aftercare Support* (Hobart: Government of Tasmania, 2009).

475. Tasmania, Department of Communities, "After Care Support Program" (last visited 30 April 2021), online: Government of Tasmania <www.communities.tas.gov.au/children/adoption/support_for_care_leavers/after_care_support_program> [Tasmania After Care Support]

476. *Ibid.*

477. *Children and Community Services Act 2004* (WA), s 89 (5).

478. *Ibid.*, s 90.

98 (1) The CEO *must ensure* that a child who leaves the CEO's care is provided with any social services *that the CEO considers appropriate* having regard to the needs of the child as identified in the care plan for the child under section 89.

...

99. Without limiting section 98, the CEO *must ensure* that a person who qualifies for assistance is provided with services to assist the person to do any one or more of the following—

- (a) obtain accommodation;
- (b) undertake education and training;
- (c) obtain employment;
- (d) obtain legal advice;
- (e) access health services;
- (f) access counselling services.⁴⁷⁹

Much greater discretion is afforded to the Western Australian government in relation to the provision of financial assistance:

100(1) The CEO *may* provide a person who qualifies for assistance with financial assistance in the form of—

- (a) a contribution to expenses incurred in obtaining, furnishing and equipping accommodation; or
- (b) a contribution to expenses incurred by the person in living near the place where the person is, or will be—
 - (i) employed or seeking employment; or
 - (ii) undertaking education or training; or
- (c) a grant to enable the person to meet expenses connected with his or her education or training.

(2) Financial assistance may be provided under this section on any terms and conditions that the CEO considers appropriate.

(3) Without limiting subsection (2), the terms and conditions may include provisions as to repayment and the recovery of outstanding amounts.⁴⁸⁰

479. *Ibid*, ss 98–99 [emphasis added].

480. *Ibid*, s 100 [emphasis added].

In 2018 the Western Australian Auditor General completed a review of law, policy and practice for young people leaving care.⁴⁸¹ Despite these strong legislative provisions the Auditor General's report identified concerns about access to leaving care supports, impacting on life outcomes for this vulnerable group of youths:

Long waitlists and unavailability of services in some areas impact on when and how much support care leavers get. The Department is required by law to provide support to care leavers who qualify for assistance up to the age of 25, but most are not accessing what they need. Only 34% of eligible young people accessed leaving care support between 2014 and 2017.

... In 82% of cases we looked at, this process did not commence at 15 as required by the Department's policy. This increases the risk of needing crisis management because less time is available to arrange all the support services required.

... Agencies and providers do not effectively collaborate to improve access to critical services.

... The Department does not adequately monitor the performance of service providers, so it lacks key information to improve support.⁴⁸²

The Auditor General's report made a number of recommendations with the result being, as observed by one commentator, that:

Western Australia is undertaking a suite of reform actions aimed at evaluating and ultimately sharing responsibility to deliver post-care services with the community sector, as the state strengthens the post-care supports available to young people leaving care.⁴⁸³

It appears these reforms are occurring at a policy level, with improved funding to community-based service providers.⁴⁸⁴ No upcoming legislative changes have been identified.

Record keeping

Several states include statutory provisions specifically aimed at ensuring care leavers have access their personal records.

481. Young People Leaving Care, *supra* note 449.

482. *Ibid* at 7–9.

483. Transition from Out of Home Care, *supra* note 451 at 12.

484. *Ibid*.

For example, New South Wales has legislation on accessing records free of charge, along with requirements that assistance be provided to youth to assist them to gain access to their records:

168(1) On leaving, or after having left, out-of-home care, a person is entitled to have access, free of charge, to personal information relating directly to the person in any records kept by—

(a) the designated agency that had supervisory responsibility for the person, or

(b) his or her authorised carer, or

(c) the Secretary, if the person was under the parental responsibility of the Minister and the Department was not the designated agency that had supervisory responsibility for the person.

(1A) In this section, a reference to records kept by a designated agency includes a reference to records formerly kept by the agency and delivered to the Secretary as referred to in section 170(2A).

(2) The designated agency is to provide an appropriate person to support and assist the person seeking access to information at the time when access to the information occurs.

(3) Information under this section is to be provided orally or in writing, as the person concerned elects.

(4) This section extends to any person who was under the parental responsibility of the Minister or the Secretary, however expressed, under the repealed *Children (Care and Protection) Act 1987*, the repealed *Child Welfare Act 1939* or any other repealed Act.⁴⁸⁵

Western Australia and Northern Territory have similar provisions, which ensure the young person leaving care has access to their “personal material” or “personal items” such as birth certificate, passport, photographs and any other relevant records, free of charge.⁴⁸⁶

Federal Transition to Independent Living Allowance

The federal government administers and funds the Transition to Independent Living Allowance. Young people who have left formal care and are between the ages of 15 to 25 years may receive a one-off payment of up to \$1,500 under this program to

485. *Children and Young Persons (Care and Protection) Act 1988* (NSW), *supra* note 456, s 168.

486. *Children and Community Services Act 2004* (WA), s 97; *Care and Protection of Children Act 2007* (NT), s 86 (1).

assist with costs of transitioning to independence.⁴⁸⁷ The funds can be used for a range of household items or to pay for counselling, education, training courses, medical expenses or other eligible services.⁴⁸⁸ The young person and case worker must develop a “transition to independent living plan,” which includes a plan for how this money is to be used.⁴⁸⁹

Summary

- All states (except Tasmania) have legislated mandatory transition planning requirements for young people leaving care. Transition planning is typically required to commence at the age of 15. In practice, there is variability between states as to whether all young people are provided with transition planning support and what that support entails.⁴⁹⁰
- All states (except Tasmania) have legislated requirements that post-care supports and services be provided to care leavers in areas such as housing, education, employment and counselling, with implementation being left to the policy domain. Post-care support generally continues until the age of 25, with some exceptions.
- Although enshrined in legislation in nearly all states, the provision of transition planning and post-care supports are typically discretionary and not legally enforceable (with Western Australia having the least discretionary statutory wording). Statutory language such as “may provide” and “as the minister considers appropriate” are common. Some jurisdictions have gone so far as to expressly state in the legislation that such supports are not legally enforceable.
- Some states include statutory provisions which ensure the young person leaving care is given access to their personal records free of charge.
- For a discussion of legislated financial supports, see below.

487. Australia, Department of Social Services, “Transition to Independent Living” (last updated 7 July 2020), online: Commonwealth Government <www.dss.gov.au/our-responsibilities/families-and-children/benefits-payments/transition-to-independent-living-allowance-tila>.

488. *Ibid.*

489. *Ibid.*

490. Transition from Out of Home Care, *supra* note 451 at 8.

Implementation of Legislated Post-Care Support Services

Overview

All Australian jurisdictions offer post-care support services, as indicated by the statutory provisions outlined above.⁴⁹¹ However, there is significant discretion in the ways in which these statutory obligations are implemented by state and territory governments.

The extent and type of support varies across jurisdictions, and commentators have noted issues with access to these services in the recent past. Issues identified include operational issues connected to the fact that individuals must self-initiate access to services that are voluntary,⁴⁹² service accessibility for young people living in remote areas,⁴⁹³ lack of knowledge of the existence of services, adequate funding levels for services, access to services for the most vulnerable⁴⁹⁴ and a lack of culturally sensitive programs.⁴⁹⁵ Support in most states includes:

- Information about services available;
- Referrals to the relevant services;
- Case management to assist with finding appropriate services; and
- Financial support to access services, such as housing.⁴⁹⁶

Case work and support services are generally provided by the relevant government agency, or a community organization funded wholly or partly by government.⁴⁹⁷ Most jurisdictions have a dedicated program with a mandate to deliver these

491. Note, Tasmania's post-care support program is not enshrined in legislation but remains policy based.

492. Transition from Out of Home Care, *supra* note 451 at 9; Young People Leaving Care, *supra* note 449 at 8.

493. Transition from Out of Home Care, *supra* note 451 at 15; Young People Leaving Care, *supra* note 449.

494. Transition from Out of Home Care, *supra* note 451 at 15.

495. Philip Mendes et al, *Indigenous Care Leavers in Australia: A National Scoping Study* (Melbourne: Monash University, 2020) at 98, online (pdf): <apo.org.au/sites/default/files/resource-files/2020-08/apo-nid307306_0.pdf> [National Scoping Study].

496. Transition from Out of Home Care, *supra* note 451 at 9.

497. *Ibid.*

support services, usually in areas of health, housing, education and community connection. Examples of these post-care programs include the Australian Capital Territory's ACT Together Community Adolescent Program,⁴⁹⁸ Queensland's Next Step Plus program,⁴⁹⁹ Victoria's Better Futures program⁵⁰⁰ and South Australia's Post Care Support Services.⁵⁰¹

We set out below further details of the post-care support programs available in the state of Victoria, with some references to other select jurisdictions. A comprehensive survey of all post-care services in all Australian jurisdictions is outside the scope of this study paper.

Spotlight on Victoria

Better Futures post-care program

Victoria's Better Futures post-care support program provides case work, information, advice and financial assistance to young people who are or were in kinship care, foster care or residential care on or after their 16th birthday and under a designated protection order at that time. In response to criticism that care leavers supports were fragmented and difficult to navigate with complex eligibility criteria, Victoria consolidated its programs and rolled out this new Better Futures post-care support program in 2019.⁵⁰² This program helps youth navigate the programs and services available to support them in implementing their transition plans. The following is a summary of the main supports and services that a young person may be connected with under this program, beyond general welfare and referral programs.

498. Act Together, "Community Adolescent Program" (last visited 30 April 2021), online: <www.acttogether.org.au/our-services/community-adolescent-programs/>.

499. Next Step Plus, "Next Step Plus: For Young People Transitioning from Care" (last visited 30 April 2021), online: <nextstepplus.com.au/>.

500. Victoria, Department of Health and Human Services, "Better Futures" (last updated 27 January 2021), online: Government of Victoria, <providers.dhhs.vic.gov.au/better-futures>.

501. Relationships Australia, "Post-Care Support Services" (last visited 30 April 2021), online: <www.rasa.org.au/services/adult-health-wellbeing/post-care-support-services>.

502. Victoria, Department of Health and Human Services, "Better Futures Factsheet for Providers" (2020) at 1, online: Government of Victoria <providers.dhhs.vic.gov.au/better-futures-post-care-service-factsheet>.

Key Worker

Youth are allocated a Key Worker to provide case work, assist in obtaining funding and provide information and advice.⁵⁰³ Key Workers will commence working with the youth while they are still in care (from 16 years of age) and remain working with them until they turn 21.⁵⁰⁴

Information and advice services

Information and advice services include:

- Go your Own Way Information Kit.
- A mobile phone application with step-by-step advice on transition issues, such as renting a house, getting a licence and other relevant topics, called Sortli.
- Youthlaw Legal Pod Program offering a broad range of legal assistance and support for up to three years to young people who have recently left care between the ages of 18 and 25.⁵⁰⁵

Housing

Assistance with finding accommodation for care leavers is often a major priority for case workers, with research revealing that a disproportionate number of care leavers end up homeless.⁵⁰⁶ Assistance may include funding to purchase household items or to pay a security deposit, as per the financial assistance program detailed below. The Leaving Care Housing and Support Initiative for care leavers includes some access to limited transitional housing.⁵⁰⁷

Education

Several educational programs, such as the Skills First Youth Access Initiative, are in place. This initiative provides a waiver on student tuition fees for vocational study programs at select institutions and for select courses. It is available to young people

503. *Ibid* at 2.

504. *Ibid*.

505. Victoria, Department of Health and Human Services, "Support Services for Young People Leaving Care" (last visited 30 April 2021), online: Government of Victoria, <services.dhhs.vic.gov.au/support-services-young-people-leaving-care> [Victorian Support Services].

506. Transition from Out of Home Care, *supra* note 451 at 5.

507. Victorian Support Services, *supra* note 505.

under 24 years of age who have been under a care protection order and meet other eligibility criteria. The program is aimed at “learners at risk of poor learning outcomes” supporting them to “stay in education and reach their potential for better life opportunities.”⁵⁰⁸

Raising Expectations is an innovative program that recognizes the significant social and economic barriers to care leavers entering higher education by providing financial and other assistance to enable them to do so. It is a cross-sectoral collaboration between the Centre for Excellence in Child and Family Welfare and founding university partners, Federation University Australia and La Trobe University, with Swinburne University joining more recently.⁵⁰⁹ The program commenced in July 2015 and has recently seen the Victorian Department of Education and Training commit to a multi-year investment until December 31, 2022, enabling delivery and expansion of the program in Victoria.⁵¹⁰ Touted as the first of its kind in Australia, the program is not just about providing funds for higher education, but about supporting care leaver students from all angles to enter and complete their university or TAFE studies. The program does this through:

- Direct support to care leaver students, including scholarship applications, enrolments, referrals to personal, academic supports, peer support and mentoring
- Expanding and strengthening connections with Student Support Services across campuses
- Strengthening outreach supports and services to schools including through school partnership/tertiary aspiration programs to students in secondary/flexible learning schools
- Increasing availability of, and access and support to, financial supports (bursaries, scholarships, including accommodation)
- Establishing participation data collection for vocational and higher education students
- Increasing engagement/support with prospective and current students and their carers and advocates

508. Victoria, Department of Education and Training, “Skills First Youth Access Initiative” (last visited 30 April 2021) online: Government of Victoria <www.education.vic.gov.au/about/programs/Pages/Skills-First-Youth-Access-Initiative.aspx>.

509. Raising Expectations, “How it works” (last visited 30 April 2021) online: <www.cfecfw.asn.au/raisingexpectations/>.

510. *Ibid.*

- Monitoring Year 12 VTAC/SEAS applications and offering students bursaries/scholarships and linkage to other services
- Making referrals to the Skills First Youth Access Initiative and establishing referral processes and pathways through other programs such as DET's Re-connect and community sector leaving care services.⁵¹¹

It is reported that Raising Expectations has increased the number of care leaver student undergraduate enrolments alone by over 600% since 2015.⁵¹² Further, a Deloitte return on investment analysis concluded that for every dollar invested, the program generates an estimated minimum of \$1.80 in economic and social benefits.⁵¹³

Extended Care

As a result of an effective, ongoing campaign by civil society groups in Australia (known as Homestretch),⁵¹⁴ there has been a move towards extending care to young people beyond the age of 18 years through to age 21, on an opt-in basis for those meeting relevant eligibility criteria.⁵¹⁵ A report by Deloitte Access Economics, which was commissioned by Anglicare Victoria for the Homestretch campaign, concluded that the social and economic benefits of extending care in Victoria to age 21 far outweigh the anticipated government expenditure.⁵¹⁶ Increased government expenditure on housing support, justice, drug and alcohol support, welfare and hospital visits for youth in the scenario where extended care is not offered were taken into

511. *Ibid.*

512. *Ibid.*

513. Centre for Excellence in Child and Family Welfare, *Deloitte—Social Return on Investment Analysis* (Melbourne: CFECFW, 2020) at 2, online (pdf): static1.squarespace.com/static/5e3fa640098d724e00eac106/t/5ee9685fb19ce852049d9c33/1592354912497/Deloitte+Summary_16June2020.pdf [Deloitte Analysis – Raising Expectations].

514. See Homestretch, “Young people in state care should have a place they call home and support until the age of 21” (last visited 30 April 2021) online: thehomestretch.org.au/.

515. Note, there have been no legislative changes increasing the age of to which young people can be subject to child protection orders—these policy changes simply allow young people to receive additional supports to maintain home-based care arrangements on a voluntary basis for an extra 3 years until they turn 21.

516. Deloitte Access Economics, *Raising Our Children—Guiding Young Victorians in Care into Adulthood: Socioeconomic Cost Benefit Analysis*, commissioned by Anglicare Victoria (Brindabella: Anglicare Victoria, 2016) at 12–25, online: thehomestretch.org.au/site/wp-content/uploads/2016/08/Raising-Our-Children_Guiding-Young-Victorians-in-Care-into-Adulthood.pdf.

account in this analysis.⁵¹⁷ Further, the report concluded that extended care would result in improved outcomes for young people leaving care in mental and physical health, employment, education, civic connectedness and intergenerational disadvantage.⁵¹⁸ The report made similar conclusions for other Australian states.⁵¹⁹

Reform with respect to extended care has occurred on a state-by-state basis at the policy level. As has been noted, legislation dealing with post-care services and funding does not prevent the possibility of funding extended care arrangements, however no specific legislative provisions mandating extended care yet exist.⁵²⁰

As of June 2019, Tasmania began providing extended care payments to family-based foster carers, formal kinship carers and third-party guardians.⁵²¹ These payments enable young people aged 18, 19 and 20 to remain in care after their Care and Protection Orders lapse at 18 years of age.⁵²² Payments are maintained at full rate for 18 year olds and are progressively reduced to 50% for 20 year olds, reflecting the young person's increasing responsibility for themselves as they transition to independence. Young people must be living at home full-time (at least 4 nights per week) to be eligible.⁵²³

South Australia instituted a similar program commencing January 2019 through what is called the Stability in Family Based Care Program. The program continues carer payments for those young people in foster care up to age 21.⁵²⁴

517. *Ibid.*

518. *Ibid* at 33–36.

519. *Ibid* at 57–64.

520. Continuing Care in Australia, *supra* note 461 at 5. It should be noted that legislation in some states permits discretionary financial assistance to carers who remain caring for young people after the age of 18. For example, see *Child Protection Act 1999* (Qld), s 159 (3).

521. Tasmania, Department of Communities, “Transition to Independence Program—Extended Carer Payments” (March 2020), online: <www.communities.tas.gov.au/__data/assets/word_doc/0031/61987/Communique-Transition-to-Independence-Family-based-Carers-V3-FINAL-Accessible-version.docx>.

521. *Ibid.*

522. *Ibid.*

523. *Ibid.*

524. South Australia, Department for Child Protection, “Better Supporting our Young People in Care” (last visited 30 April 2021), online: Government of SA <www.childprotection.sa.gov.au/news/dcp-news/better-supporting-our-young-people-in-care-to-age-21#>>.

Most recently, after a successful pilot program, Victoria announced it will extend “the full care of the state” from January 1, 2021 to young people in care up to the age of 21 by way of an accommodation allowance.⁵²⁵ This program differs from that in South Australia and Tasmania in that it is not restricted to those opting to remain living in home-based foster or kinship care but is also available to those leaving residential care, or those in home-based care who choose to transition to independent living.⁵²⁶

Other financial assistance post-care

Brokerage funds

In addition to the statutorily mandated Commonwealth TILA payment (see above) and extended care payments in a minority of jurisdictions, some level of financial support is available to young people leaving care in most jurisdictions.⁵²⁷ Financial support may be, for example, by way of brokerage for specific costs.⁵²⁸ There is no consistent approach as to how or whether the different jurisdictions incorporate financial obligations into legislation.

In Victoria, this financial assistance for care leavers is known as Flexible Funding and is administered as part of the state’s Better Futures program. In accordance with its name, this funding can be used for a range of purposes and is provided in accordance with the Secretary’s responsibilities under section 16 of the *Children, Youth and Families Act 2005* to “provide or arrange the provision of services to assist in supporting a person under the age of 21 years to gain the capacity to make the transition to independent living.”⁵²⁹ In brief:

Better Futures workers assist young people to access flexible funding to support the achievement of their transition goals across the areas of housing and living skills, health and wellbeing, employment, education, and community connections. Flexible funding should be used in accordance with the goals and needs of

525. Homestretch, “‘The single most significant reform to child welfare in a generation’—Victorian Government leads nation in announcing universal care for young people to the age of 21” (last visited 30 April 2021) online: <thehomestretch.org.au/news/the-most-significant-reform-to-child-welfare-in-a-generation-victorian-government-leads-nation-in-announcing-universal-care-for-young-people-to-the-age-of-21/>.

526. *Ibid.*

527. Transition from Out of Home Care, *supra* note 451 at 9.

528. *Ibid.*

529. *CYF Act*, *supra* note 462, s 16 (1) (g).

each young person identified in close partnership with them and should assist to build the independence of young people.⁵³⁰

Only broad reference is made in the *Children, Youth and Families Act 2005* to government financial responsibilities to care leavers:

16(4) The kinds of services that *may be provided* to support a person to make the transition to independent living include—

...

(b) depending on the Secretary's assessment of need—

(i) financial assistance.⁵³¹

Flexible funding cannot be used to purchase items that are the responsibility of other programs, but can be used for:

- creating community connections through recreation and hobbies
- services or materials which benefit personal or vocational development (for example education resources, life skills education, etc.)
- costs associated with travel to interviews for education and training
- job readiness expenses including interview and work clothing
- costs associated with housing establishment—including furniture and whitegoods
- learner's permit and driving lessons
- cultural activities that support Aboriginal young people to connect with culture and community, including return to country
- counselling.⁵³²

530. Victoria, Department of Health and Human Services, "Better Futures Flexible Funding Practice Advice" (December 2019) at 2, online: Government of Victoria <providers.dhhs.vic.gov.au/better-futures-flexible-funding-practice-advice>.

531. *CYF Act*, *supra* note 462, s 16 (4) [emphasis added]. For a similarly broad approach to legislating powers to provide financial assistance to care leavers, see *Child Protection Act 1999* (Qld), s 159 (2) ("Also, the chief executive may pay the amount decided by the chief executive towards expenses incurred in the care and maintenance of a person who has been a child in the custody or under the guardianship of the chief executive to the person or the person's carer to help the person with the transition from being a child in care to independence.").

532. Victoria, Department of Health and Human Services, "Better Futures Flexible Funding Practice Advice," *supra* note 530 at 2.

It is unclear what maximum amount is available under this funding scheme, however the practice guide notes that requests under \$5,000 can be approved by Senior representatives within each Better Futures organization and requests over \$5,000 must be approved by a Better Futures panel.⁵³³

Some jurisdictions are more specific in their legislation about the purposes for which financial assistance may be provided. For example, the Australian Capital Territory Act states:

529J(1) The director-general may provide financial assistance to a young person, or young adult, who was previously in out-of-home care.

(2) The director-general may provide financial assistance only if satisfied on reasonable grounds that the assistance is—

(a) for an appropriate purpose; and

(b) reasonably necessary considering the young person's, or young adult's, circumstances.

Examples—appropriate purposes

1 for furnishing accommodation

2 for education or training

3 for seeking employment

(3) The director-general may provide financial assistance on the conditions that the director-general considers appropriate.

(4) However, if the director-general provides financial assistance in the form of a loan to a young person or young adult, no interest is to be payable on the loan.

(5) The Minister may make guidelines about appropriate purposes for financial assistance.

(6) A guideline is a notifiable instrument.⁵³⁴

While the New South Wales *Children and Young Persons (Care and Protection) Act 1998* contains a broad power to provide financial assistance to care leavers who continue to reside in their home-based care until the age of 25, it also enables discretionary financial assistance to be provided to care leavers who have turned 18 for

533. *Ibid* at 4.

534. *Children and Young People Act 2008* (ACT), s 529J. For a similar approach, see also *Children and Community Services Act 2004* (WA), s 100.

the very specific purpose of pursuing educational or vocational training.⁵³⁵ The details with respect to eligibility for this financial assistance are not set out in the Act, but are left to a combination of regulation and policy. The Act provides:

161(1) The Secretary may, in respect of any child or young person in out-of-home care, grant financial assistance to any person having the care of the child or young person for any period during which the child or young person is in that person's care.

(1A) Without limiting subsection (1), financial assistance may take the form of a grant, an allowance or a refund of expenditure, or any other form of financial assistance that the Secretary may approve generally, or in a particular case or class of cases.

...

(3) If financial assistance under this section was being provided in respect of a person immediately before the person attained the age of 18 years, the Secretary may—

(a) for the purpose of securing education or vocational training on a full-time basis for the person, and

(b) subject to such conditions as may be prescribed by the regulations and to such additional conditions as the Secretary may determine,

from time to time, and until the person reaches the age of 25 years, continue to provide financial assistance in respect of the person for any period during which the person is residing in the home of the person to whom the financial assistance is provided.⁵³⁶

Some states have not incorporated any specific reference to financial assistance for care leavers into legislation but nevertheless provide it under state policy. For example, Tasmania provides up to \$2,500 in financial assistance as part of its After Care Support Program which can be used to:

- Complete education or training
- Improve employment opportunities
- Develop and maintain relationships with family members
- Improve links to the wider community
- Participate in sporting and creative activities.⁵³⁷

535. *Children and Young Persons (Care and Protection) Act 1998* (NSW), *supra* note 456, s 161.

536. *Ibid*, s 161.

537. Tasmania After Care Support, *supra* note 475.

Of note, Tasmania has recently instituted a Learning Incentive Payment, which is a \$2,500 payment to both the young person in care and their carer upon completion of Year 12 or equivalent, aimed at encouraging and supporting the young person to continue with their education.⁵³⁸

On the other hand, South Australia does not make specific reference to financial assistance in its legislation, more generally referring to “assistance as the Minister thinks appropriate.”⁵³⁹ It appears South Australia only provides select grants (outside of its extended care funding) through a private trust grant program governed by a volunteer board of directors and managed by the Public Trustee. Grant requests generally exceed grants given.⁵⁴⁰

Summary of legislated post-care support services

- All Australian jurisdictions offer post-care support services, as is required by legislation in most jurisdictions;
- The extent and type of post-care support varies across jurisdictions. The details as to how states should implement their support programs is not included in the legislation;
- Most support includes information about services available, referrals to the relevant services, case management to assist with finding appropriate services; and some financial support to access services, such as housing;
- Case work and support services are provided by the relevant government agency or more commonly by a community organization funded wholly or partly by the state or territory government;
- Most jurisdictions have a dedicated program with a mandate to deliver these support services, usually in areas of health, housing, education and connections with community;
- Care leavers in all states have access to the Commonwealth funded TILA financial assistance program which provides a one-off payment of \$1,500 for

538. Tasmania, Department of Communities, “Learning Incentive Allowance” (last visited 30 April 2021) online: Government of Tasmania <www.communities.tas.gov.au/children/adoption/support_for_care_leavers/learning-incentive-allowance>.

539. *Child and Young People (Safety) Act 2017* (SA), *supra* note 458, s 112.

540. South Australia, Department for Child Protection, “Dame Roma Mitchell Grants” (last visited 30 April 2021) online: Government of South Australia <www.childprotection.sa.gov.au/children-care/support-children-care/supporting-dame-roma-mitchell-grants>.

young people between the ages of 15 and 25 years who have left formal care, to assist with purchasing eligible items or services needed to assist their transition to independence;

- In addition to TILA, some form of financial support for young people leaving care is available in most jurisdictions, usually administered through the state or territory's dedicated post-care program. For example, brokerage for specific items.
- There is no consistent approach to how or whether the different jurisdictions incorporate financial assistance into legislation. Some jurisdictions' statutes only make broad general reference to financial assistance responsibilities, some set out discretionary powers to provide financial assistance for specific purposes, such as education, and others make no reference to financial obligations at all.
- There has been a move nationally towards extending care to young people beyond the age of 18 years through to age 21. This occurs on an opt-in basis for those who meet eligibility criteria through the provision of extended care payments in Tasmania, South Australia and Victoria.
- Victoria has recently announced it will extend "the full care of the state" from January 1, 2021, to young people in care up to the age of 21 with an accommodation allowance. Victoria offers the most comprehensive extended care program given that the allowance provided will not be restricted to those opting to remain living in home-base foster or kinship care but will also be available to those leaving residential care, or those in home-based care who choose to transition to independent living.

Indigenous Care Leavers

Overview

Indigenous children in Australia are overrepresented in all areas of the child welfare system. According to the latest Australian Institute of Health and Welfare figures, in June 2018, 39% of children in out-of-home care across Australia were Indigenous, making Indigenous children 10 times as likely as non-Indigenous children to be in out-of-home care.⁵⁴¹ In 2017, the rate of Indigenous children who were the subject

541. Australian Institute of Health and Welfare & National Indigenous Australians Agency, "Aboriginal and Torres Strait Islander Health Performance Framework: Tier 2—Social Determinants—Child Protection" (last updated 20 November 2020), online: Commonwealth Government <www.indigenoushpf.gov.au/measures/2-12-child-protection> [Aboriginal Health Performance Framework].

of a substantiated child protection notification was 42 per 1,000, compared with 6.8 per 1,000 for non-Indigenous children.⁵⁴²

Australia has a history of traumatic Indigenous child protection policies with forcible removal of Aboriginal children from their families and communities, known as the Stolen Generation.⁵⁴³ The intergenerational trauma of these and other policies, combined with socio-economic disadvantage and ongoing lack of understanding of Indigenous cultures, particularly roles played by extended family and community, are said to be factors relevant to the perpetuation of this overrepresentation.⁵⁴⁴ Resulting issues of substance abuse and family violence have also been identified as key factors,⁵⁴⁵ as has a lack of collaboration between government and Aboriginal and Torres Strait Islander agencies and a general lack of cultural competence within child protection services.⁵⁴⁶ It has been observed that similar issues have been raised in the Canadian child protection context.⁵⁴⁷

Outcomes for Indigenous care leavers

Despite the inequalities experienced by Indigenous youth in the Australian child protection system there has been limited research and data collection regarding the needs and outcomes for Indigenous care leavers.⁵⁴⁸ However, a 2016 Monash University report into Indigenous care leavers in Victoria usefully summarized existing evidence to report the following picture of Indigenous care leavers Australia-wide:

- Indigenous identity combined with care leaver status have resulted in poorer educational experiences and outcomes for Indigenous care leavers than the general population;
- There exists disproportionate involvement by Indigenous care leavers in the youth justice system, with the authors noting parallels to the Canadian context in this regard;

542. *Ibid.*

543. *Ibid.*

544. Indigenous Care Leavers Victoria, *supra* note 453 at 10–11.

545. Aboriginal Health Performance Framework, *supra* note 541.

546. Indigenous Care Leavers Victoria, *supra* note 453 at 9–10.

547. *Ibid* at 11.

548. *Ibid* at 13.

- Despite policies aimed at helping Indigenous care leavers maintain connections to culture and family, significant numbers of Indigenous young people leaving care have poor connection to their cultural heritage; and
- Indigenous care leavers are more likely to return to their biological families.⁵⁴⁹

Select policies and reform measures

The importance of cultural support and community connectedness for Indigenous youth in the child protection system is commonly understood and increasingly reflected in Australian government law and policy, if not practice.⁵⁵⁰ Many understand this need and the value of maintaining cultural identity to be the primary and fundamental need of Indigenous care leavers, through which other social and emotional needs may be fulfilled.⁵⁵¹ One report noted that “cultural connectedness was also seen to support resilience, identity development, social connectedness and material sufficiency among Indigenous care leavers.”⁵⁵²

Australian jurisdictions have adopted a number of policies and measures which reflect this understanding of the importance of maintaining and enhancing connections with Aboriginal culture and communities for children in and leaving care. Implementation of these policies and measures is variable.

Aboriginal child placement principle

All states have adopted the Aboriginal and Torres Strait Islander Child Placement Principle into law and policy.⁵⁵³ The principle has a number of broad aims:

- (1) recognition and protection of the rights of Aboriginal and Torres Strait Islander children, family members and communities in child welfare matters;
- (2) self-determination for Aboriginal and Torres Strait Islander people in child welfare matters; and

549. *Ibid* at 13–15.

550. *Ibid* at 8.

551. *Ibid*.

552. *Ibid*.

553. Fiona Arney et al, “Enhancing the Implementation of the Aboriginal and Torres Strait Islander Child Placement Principle Policy and Practice Considerations” (2015) Child Family Community Australia Paper No 34 at 1, online (pdf): Australian Institute of Family Studies <aifs.gov.au/cfca/sites/default/files/cfca34.pdf> [Aboriginal Child Placement Principle].

(3) reduction in the disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system.⁵⁵⁴

More specifically, the principle requires children be placed according to the following order of preference: the child's extended family, the child's Indigenous community; other Indigenous Australians.⁵⁵⁵

For example, Victoria's *Children, Youth and Families Act 2005* states:

14(1) For the purposes of this Act the Aboriginal Child Placement Principle is that if it is in the best interests of an Aboriginal child to be placed in out of home care, in making that placement, regard must be had—

- (a) to the advice of the relevant Aboriginal agency; and
- (b) to the criteria in subsection (2); and
- (c) to the principles in section 14

(2) The criteria are—

- (a) as a priority, wherever possible, the child must be placed within the Aboriginal extended family or relatives and where this is not possible other extended family or relatives;
- (b) if, after consultation with the relevant Aboriginal agency, placement with extended family or relatives is not feasible or possible, the child may be placed with—
 - (i) an Aboriginal family from the local community and within close geographical proximity to the child's natural family;
 - (ii) an Aboriginal family from another Aboriginal community;
 - (iii) as a last resort, a non-Aboriginal family living in close proximity to the child's natural family;
- (c) any non-Aboriginal placement must ensure the maintenance of the child's culture and identity through contact with the child's community.⁵⁵⁶

Most recent statistics indicate that as at June 2018, 65% of Indigenous children in out-of-home care were placed with a relative or kin, other Indigenous carer or in Indigenous residential care in accordance with the placement principle.⁵⁵⁷ However,

554. *Ibid* at 2.

555. Aboriginal Health Performance Framework, *supra* note 541.

556. *CYF Act*, *supra* note 462, s 14.

557. Aboriginal Health Performance Framework, *supra* note 541.

some commentary suggests that full application of the broader principles of the policy are implemented in as few as 13% of cases.⁵⁵⁸ Barriers to the implementation of this placement principle are noted to include:

the over-representation of Aboriginal and Torres Strait Islander children in the child protection system, a shortage of Indigenous carers, poor identification and assessment of carers, inconsistent involvement of Indigenous people and organisations in decision-making, deficiencies in the provision of cultural care, and inconsistent quantification and monitoring of the Principle.⁵⁵⁹

Cultural care

As part of the Aboriginal Child Placement Principle, all Australian jurisdictions are under a legislative obligation to help children in care connect with their Indigenous culture and identity when they are unable to be placed with Indigenous carers.⁵⁶⁰ Further, all jurisdictions have policies in place aimed at ensuring Indigenous children in care have cultural plans to support their connection with family and community.⁵⁶¹

While not specifically targeting youth leaving care, cultural plans are considered by youth and care workers as “crucial in achieving a successful transition from care, and supporting reunification with family and community.”⁵⁶²

Victoria has gone a step further by introducing a statutory requirement that cultural support plans be developed for Indigenous youth in care, as part of their care plans:

176(1) The case plan for an Aboriginal child placed in out of home care must address the cultural support needs of the child.

(2) The Secretary must provide a cultural plan to each Aboriginal child in out of home care that is aligned with the case plan for the child.

558. Aboriginal Child Placement Principle, *supra* note 553 at 2.

559. *Ibid.* See also Aboriginal Health Performance Framework, *supra* note 541.

560. Terri Libesman, *Cultural Care for Aboriginal and Torres Strait Islander Children In and Out of Home Care* (Fitzroy: Secretariat of National Aboriginal and Islander Child Care, 2015) at 56, online (pdf): <www.snaicc.org.au/wp-content/uploads/2016/01/02852.pdf>. For example, see the *Children, Youth and Families Act, 2005* (Vic), s 14 (2) (c) (“any non-Aboriginal placement must ensure the maintenance of the child’s culture and identity through contact with the child’s community”) [Cultural Care].

561. National Scoping Study, *supra* note 495 at 77.

562. *Ibid.*

(3) The case plan must reflect and be consistent with the child's cultural support needs, having regard to the child's circumstances, so as to—

- (a) maintain and develop the child's Aboriginal identity; and
- (b) encourage the child's connection to the child's Aboriginal community and culture.

(4) For the purposes of subsection (3), the child's cultural support needs may vary depending on—

- (a) the length of time that the child has spent in out of home care; and
- (b) the age of the child; and
- (c) the length of time that the child is expected to remain in out of home care; and
- (d) the extent of the child's contact with the child's Aboriginal family members; and
- (e) whether the child is placed within the child's own Aboriginal community, another Aboriginal community or with non-Aboriginal carers.

(5) For the purposes of subsection (4), a child's Aboriginal community is—

- (a) the Aboriginal community to which the child has a sense of belonging, if this can be ascertained by the Secretary; or
- (b) if paragraph (a) does not apply, the Aboriginal community in which the child has primarily lived; or
- (c) if paragraphs (a) and (b) do not apply, the Aboriginal community of the child's parent or grandparent.⁵⁶³

While the importance of cultural plans and adherence to cultural care requirements embedded in legislation for youth leaving care is clearly identified, commentators have observed some serious shortfalls in implementation of the policies. Shortfalls identified include:

- A lack of formal processes to assist in maintaining connections between child and family or culture,⁵⁶⁴ including an absence of a national practice framework across jurisdictions;⁵⁶⁵

563. *CYF Act*, *supra* note 462, s 176.

564. Cultural Care, *supra* note 560 at 56.

565. Aboriginal Child Placement Principle, *supra* note 553 at 12.

- A lack of processes to monitor compliance with legislative and policy requirements, including a dearth of data to inform policy and practice going forward;⁵⁶⁶
- Although numbers are improving, a low percentage of Indigenous children with cultural plans, and poor quality existing cultural plans;⁵⁶⁷
- Quality and sufficiency of culture planning inhibited by a lack of resources, both in terms of numbers of Indigenous staff and community elders available to assist in culture planning, and a lack of funding of Aboriginal agencies tasked with the development of such plans;⁵⁶⁸
- A lack of cultural competency among non-Indigenous case workers and an absence of training to develop cultural plans.⁵⁶⁹

Transition plans & post-care support services

Transition planning for Indigenous and non-Indigenous youth leaving care is a statutory requirement in most jurisdictions in Australia, as outlined above. However, as discussed, there is some evidence that transition planning does not always happen, or the quality of transition plans are lacking. In addition, it has been reported that Indigenous youth leaving care are even less likely to have an adequate transition plan in place.⁵⁷⁰ There is consensus that effective transition planning is crucial to a successful transition from care to independence, with one commentator observing:

Poor transition planning may result in Indigenous care leavers feeling ill-equipped to live independently without intensive support and leave them facing significant barriers to accessing housing, education and employment, and building and maintaining successful and healthy relationships with family, friends and the community outside of care. They are at risk of homelessness and early juvenile justice involvement. Female care leavers are at a risk of family violence, early pregnancy and child removal.⁵⁷¹

Outside of the federally funded Transition to Independence Allowance, funding of transition support programs occurs at the state level, with significant variability

566. Cultural Care, *supra* note 560 at 56–57.

567. National Scoping Study, *supra* note 495 at 78.

568. *Ibid* at 81–82.

569. *Ibid* at 81–82; Aboriginal Child Placement Principle, *supra* note 553 at 12.

570. National Scoping Study, *supra* note 495 at 89.

571. *Ibid*.

between jurisdictions.⁵⁷² Few Indigenous-specific care leaving programs exist in only a small minority of states, and those that exist have been criticized for being out of proportion to the numbers of Indigenous care leavers and for being under-resourced and underfunded.⁵⁷³

With respect to the system as a whole, a 2020 Monash University study of Indigenous care leavers in Australia found that as a result of inadequate resources and supports, out-of-home care and the care leaving system were only able to prioritize the most urgent tasks,⁵⁷⁴ finding that:

Overwhelmingly participants spoke of the system being at worst “broken,” or at best “complex,” with an emphasis on limitations of the current service system to appropriately respond to or support any care leavers, particularly Indigenous care leavers. The service system was described as confusing, underfunded, under-resourced and with insufficient support mechanisms to respond adequately to need. The system is slow, impersonal, inconsistent and culturally insensitive to Indigenous care leavers. Many participants felt like this was common knowledge within the aftercare service system. Individual workers are trying their best to appropriately support Indigenous care leavers but are overworked and experiencing burnout; unable to make any broad shifts in service delivery or policy.⁵⁷⁵

National Agreement on Closing the Gap

In 2020, all Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations endorsed a new National Agreement on Closing the Gap. Developed by government and Indigenous organizations in partnership, the objective of the agreement is to “enable Aboriginal and Torres Strait Islander people and governments to work together to overcome the inequality experienced by Aboriginal and Torres Strait Islander people, and achieve life outcomes equal to all Australians.”⁵⁷⁶ The federal government has initially committed to co-contribute \$46.5 million to assist in building the capacity of the Aboriginal and Torres Strait Islander

572. *Ibid* at 98.

573. *Ibid*.

574. *Ibid* at 98–99.

575. *Ibid* at 98.

576. Closing the Gap in Partnership, “National Agreement on Closing the Gap: At a Glance” (last visited 30 April 2021), online: Commonwealth Government <www.closingthegap.gov.au/national-agreement-closing-gap-glance>.

community-controlled sector to deliver services to Indigenous Australians. States will also provide financial contributions.⁵⁷⁷

There are five overarching outcomes identified in the agreement: shared decision-making; building the community-controlled sector; improving mainstream institutes; access to and use of Aboriginal- and Torres Strait Islander-led data; and certain socio-economic outcomes. With respect to Indigenous youth, the socio-economic outcomes identified include targets for improvement in educational attainment and employment levels of Indigenous youth.⁵⁷⁸ Further, targets specifically aim to reduce the rate of overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care by 45% by 2031.⁵⁷⁹ Implementation of the Aboriginal Child Placement Principle and use of cultural support plans are considered indicators of progress toward achieving this outcome.⁵⁸⁰

577. Australian Institute of Health and Welfare & National Indigenous Australians Agency, “Aboriginal and Torres Strait Islander Health Performance Framework: Report Overview—National and Regional” (last visited 30 April 2021), online: Commonwealth Government <www.indigenoushp.gov.au/report-overview/policies-strategies/national-regional#ctg>.

578. Closing the Gap in Partnership, *National Agreement on Closing the Gap* (August 2020) at 21–23 (Outcomes 5, 6 & 7), online: <www.closingthegap.gov.au/sites/default/files/files/national-agreement-ctg.pdf> [National Agreement on Closing the Gap].

579. *Ibid* at 30–31 (Outcome 12).

580. *Ibid*.

Chapter 6. International Jurisdictions: New Zealand

Overview

New Zealand has recently overhauled its child protection system, which has included a number of major legislative amendments relevant to young people leaving care. These amendments came into force on July 1, 2019 in accordance with the newly named *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989*.⁵⁸¹

By way of background, in April 2015 the Minister for Social Development established an expert panel with a mandate to determine how to tackle the pressing issue of transforming the lives of New Zealand's vulnerable children, which included young people leaving care.⁵⁸² The expert panel looked comprehensively at New Zealand's child protection system, producing a final report in December 2015 titled *Investing in New Zealand's Children and their Families*.⁵⁸³ It is the recommendations in this report that have led to the recent improvements in the system, including the creation of the new Oranga Tamiriki/Ministry for Children, which commenced operation on April 1, 2017.⁵⁸⁴ In formulating its recommendations, the expert panel identified that a fundamental shift in the system was warranted:

The Panel has confirmed the fundamental shift required to achieve better outcomes for vulnerable children is for the system to prioritise the earliest

581. *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989* (NZ), 1989/24. The legislation was previously called the *Children, Young Persons, and Their Families Act 1989*. The title was updated pursuant to s 5 of the *Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017* (NZ), 2017/31. Some relevant amendments were also made to the *Vulnerable Children Act 2014* (NZ), 2014/40 pursuant to the *Vulnerable Children Amendment Act 2017* (NZ), 2017/32 [*Children's and Young People's Well-being (Oranga Tamariki) Act*].

582. New Zealand, Modernising Child, Youth and Family Panel, *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Wellington: Ministry of Social Development, 2015), online: <www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/corporate/expert-panel-cyf/investing-in-children-report.pdf> [Expert Panel Report].

583. *Ibid.*

584. New Zealand, "New Ministry for Vulnerable Children, Oranga Tamiriki Launched" (1 April 2017) online: Government of New Zealand <www.beehive.govt.nz/release/new-ministry-vulnerable-children-oranga-tamariki-launched>.

opportunity for a stable and loving family, and to enable all children to feel a sense of identity, belonging and connection.⁵⁸⁵

With respect to youth transitions to adulthood, the expert panel specifically envisioned the following key elements would be integrated into the new system:

Investing in supported transitions to young adulthood: All young people require support and care as they enter young adulthood, to set them up for success in employment, health and future parenthood. Raising the minimum age of transition to independence from 17-years-old to 18 years, providing a right to remain or return to age 21, and extending the support for these young people to age 25 (inclusive) will ensure young people experience a supported transition to adulthood. It also invests by preparing them for future parenthood themselves. Young people will be enabled to attempt to live independently, study, travel or work and do it with the security that their supportive relationships are still present. For young people who have experienced care, transition services will work with caregiving families so they can be the primary source of support and care for their young people as they grow up. The department would partner with communities and iwi to broker services needed for young people. This includes practical assistance and services to equip young people to achieve their aspirations for the future, and supports for caregiving families to enable them to continue to provide love and care.⁵⁸⁶

New Legislative Framework

Under the first phase of legislative reform, which took effect on April 1, 2017, the mandatory age of care and protection was raised to include 17 year olds.⁵⁸⁷ Other key changes in this phase included enhanced support to enable young people to express their views and participate in decision making,⁵⁸⁸ and the enablement of a broader range of professionals to undertake a wider set of functions to assist in the care of vulnerable children.⁵⁸⁹

585. Expert Panel Report, *supra* note 582 at 8.

586. *Ibid* at 10.

587. The definition of Young Person in section 2 of the *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989* was amended to include 17 year olds: *Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017* (NZ), 1997/31, s 7(4).

588. *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989*, *supra* note 581, s 11, as amended by *Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017*, *supra* note 587, s 15.

589. See *Children, Young Persons, and Their Families (Advocacy, Workforce, and Age Settings) Amendment Act 2016*, 2016/98; New Zealand, Ministry of Social Development, "Investing in New Zealand's Children and Their Families" (last visited 3 May 2021) online: <www.msd.govt.nz/about>

The majority of legislative reforms occurred in phase two, with the introduction of the *Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017*, which amended New Zealand's primary child protection statute *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989*.⁵⁹⁰ While a small number of amendments came into force on April 1, 2017, the remainder came into force on July 1, 2019.⁵⁹¹ With respect to young people transitioning into independence, significant amendments to the primary statute were made with the inclusion of a section entitled "moving to independence."⁵⁹² Key aspects of this section are summarized below.

Purposes and principles

Right at the outset, New Zealand's new legal framework with respect to children in care has recognized that its role as "parent" extends to assisting these vulnerable young children in their journey towards independence and adulthood, beyond the age of majority. The *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989* states that one of the purposes of the Act is to "promote the well-being of children, young persons, and their families, whānau, hapū, iwi, and family groups by . . . assisting young persons who are or have been in care or custody under the Act to successfully transition to adulthood in the ways provided in the Act."⁵⁹³ As a result of the expert panel's recommendations, new "moving to independence" provisions were inserted into the statutory regime. The purposes of these new provisions are set out in the legislation:

386AAB The purposes of sections 386AAC to 386C are—

(a) to prepare young persons to be ready to thrive as independent young adults and for the preparation for moving to independence to begin early:

[msd-and-our-work/work-programmes/investing-in-children/new-childrens-agency-established.html#NewchildrensquotagencyestablishedndashtheMinistryforVulnerableChildrenOrangaTamariki2](https://www.msd-and-our-work/work-programmes/investing-in-children/new-childrens-agency-established.html#NewchildrensquotagencyestablishedndashtheMinistryforVulnerableChildrenOrangaTamariki2)>.

590. *Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017*, *supra* note 587, amending *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989*, *supra* note 581.

591. *Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017*, *supra* note 587, s 2.

592. *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989*, *supra* note 581, ss 386AAA to 386C, as amended by *Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017*, *supra* note 587, ss 128 to 130.

593. *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989*, *supra* note 581, s 4(1)(j).

(b) to ensure that young persons have opportunities to have relationships with caregivers and other trusted adults that endure into adulthood:

(c) to enable young persons to access the government and community support that they need to manage challenges and to grow and develop as adults.⁵⁹⁴

The Act also contains a comprehensive set of principles that should guide those exercising powers under these new statutory provisions. Along with supporting the young person to learn to lead their own decision-making, there is a strong focus in the stated principles on strengthening relationships and creating connections with family, other trusted adults and with Indigenous communities:

386AAC A person who is performing functions or exercising powers under sections 386AAD to 386C to assist a young person to move to independence must be guided by . . . the following principles:

(c) the relationships between the young person and their family, whānau, hapū, iwi, and family group are, if appropriate, to be maintained and strengthened:

(d) family, whānau, hapū, iwi, family groups, and communities are to be supported to help the young person move to independence.⁵⁹⁵

Of note, these principles make it clear that proactive and prompt assistance should continue to be provided to the young person regardless of the decisions that the young person makes:

(g) assistance to the young person is to be provided proactively, promptly, and to be sustained regardless of the decisions that the young person makes.⁵⁹⁶

Transition planning

New Zealand's Oranga Tamariki/Ministry for Children has a comprehensive policy outlining the ministry's obligations with respect to transition planning for young people in its care as they approach adulthood. Broadly, ministry policy outlines that transitioning planning requires the following:

Before rangatahi leave care or custody we must:

- ensure they [young people] know about and understand the entitlements they have once they leave care or custody

594. *Ibid*, s 386AAB.

595. *Ibid*, s 386AAC (c) & (d).

596. *Ibid*, s 386AAC (g).

- assess their needs and establish what support, advice and assistance they need to become and remain independent after they leave care or custody. This will include an assessment of life skills.
- explore all avenues of support available to them, including universal services, and connect them to these supports and services
- develop a plan for transition that reflects the required support, advice and assistance we will give rangatahi
- assist them to obtain accommodation.

We must ensure that any assessment is youth-centred, comprehensive, holistic, strength-based, culturally responsive and trauma-informed.⁵⁹⁷

Transition planning should commence from the age of 15 with the assistance of the young person's social worker and involving a family group conference or where appropriate a Hui ā-whānau (gathering facilitated using Māori methods of engagement and protocols).⁵⁹⁸ While the Act does not refer specifically to any transition planning requirements, it does place statutory obligations on the ministry to have a written care plan for each child or young person "in relation to the care or protection or well-being of the child or young person."⁵⁹⁹ In addition, with respect to the ministry's "advice and support" obligations outlined below, the Act requires an assessment of what advice and support a young person requires to assist them in their transition to independence and to give them that support, prior to their leaving care:

386A (2) A person (including the chief executive), a body, or an organisation that has the care or custody of the young person must, before the young person leaves that care or custody,—

(a) assess what support by way of advice and assistance the young person will need to become and remain independent after they are no longer in that care or custody; and

(b) provide or arrange for the provision of that support to that young person to the extent that the support reasonably relates to the period before the young person leaves the care or custody; and

597. New Zealand, Oranga Tamariki/Ministry for Children, *Policy—Transition to Adulthood: Preparation, Assessment and Planning (Our Responsibilities Before Rangatahi Leave Care or Custody)* (last updated 19 April 2021), online: Government of New Zealand <practice.orangatamariki.govt.nz/policy/transition-to-adulthood-preparation-assessment-and-planning/#our-responsibilities-before-rangatahi-leave-care-or-custody> [Transition to Adulthood Policy].

598. *Ibid* (Developing and Reviewing the Plan).

599. *Oranga Tamariki Act 1989/Children's and Young People's Well-being Act 1989*, *supra* note 581, s 29(1). See also s 29A for details of the contents of such plans.

(c) advise the young person of their entitlements under subsection (4) and section 386B.⁶⁰⁰

Ministry policy with respect to transition planning states that transition plans should be updated annually and at least 6 months prior to the young person turning 18.⁶⁰¹

Social workers should assist the young person to identify in-care and post-care goals, support them to lead decision making and involve family/*whānau*, caregivers and other members of their support network in the process.⁶⁰²

From the age of 16 and while still in care, a young person will be referred to a local transition support service and will commence working with a transition worker from that service. The transition worker, young person and the young person's social worker will work collaboratively to plan for the young person's upcoming transition to independence.⁶⁰³ Once the young person leaves care or at the age of 18, this transition worker will have primary responsibility for maintaining contact and providing proactive support to the young person, until the age of 21.⁶⁰⁴

Maintaining contact to age 21

Maintaining contact with young people leaving care is a key part of the recent reform measures in New Zealand, which is aimed at addressing the anxiety and disconnectedness that many young people in care experience as they face adulthood and independence.⁶⁰⁵ The rationale for the new statutory obligations has been explained by the ministry:

600. *Ibid*, s 386A (2).

601. Transition to Adulthood Policy, *supra* note 597 (Developing and Reviewing the Policy).

602. New Zealand, Oranga Tamariki/Ministry for Children, *Guidance—Before Rangatahi Turn 18: Preparing Them to Leave Our Care (How We Help Prepare Rangatahi)* (last updated 15 April 2020), online: Government of New Zealand <practice.orangatamariki.govt.nz/our-work/transitioning-to-adulthood/transition-to-independence/transition-to-adulthood/before-rangatahi-turn-18-preparing-them-to-leave-our-care/> [Before Turning 18 Guidance].

603. *Ibid*.

604. *Ibid*.

605. *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989*, *supra* note 581, s 386C; See also New Zealand, Oranga Tamariki/Ministry for Children, *Guidance—Maintaining Contact* (last updated 1 May 2019), online: Government of New Zealand <practice.orangatamariki.govt.nz/our-work/transitioning-to-adulthood/transition-to-independence/transition-to-adulthood/maintaining-contact/> [Maintaining Contact Guidance].

Rangatahi [Māori expression for ‘young people’] who have left our care or custody have told us that they felt anxious and unprepared for adult life, and often experienced chaos, frequent movement and, in many cases, periods of homelessness.

... For rangatahi Māori, many had become disconnected from their immediate and extended family/whānau over the course of their childhoods and did not have the natural supports that others had in young adulthood.

... Maintaining contact is about sustaining a connection with rangatahi so they feel like they are not alone and have support and back up until they turn 21.⁶⁰⁶

Maintaining contact with the young person between the ages of 18 and 21 years is a statutory requirement of the *Oranga Tamariki Act 1989/ Children’s and Young People’s Well-being Act 1989*.⁶⁰⁷ Under this provision the ministry must “take reasonable steps” to maintain contact with a young person who has been in care⁶⁰⁸ and the intensity of the contact maintained is dependent upon the young person’s needs and circumstances:

386C (2) Irrespective of whether the young person is living with a caregiver under section 386AAD or is being provided with any advice or assistance under section 386A, the chief executive must take reasonable steps to maintain contact with the young person.

(3) The following factors must be taken into account when a decision is made about the extent to which contact is maintained with the young person:

- (a) whether the young person wishes contact to be made with them:
- (b) the young person’s particular needs:
- (c) the young person’s age, maturity, and the desirability of them being independent when they are able to do so.⁶⁰⁹

606. *Ibid* (Why Maintaining Contact is Important).

607. *Oranga Tamariki Act 1989/ Children’s and Young People’s Well-being Act 1989*, *supra* note 581, s 386C.

608. We have used the general term “in care” for simplicity; however, it should be noted that the statutory contact requirements in s 386C specifically apply to young people aged 14 and 9 months to 21 years who have been in care for any combination of the following care or custody arrangements during their period of continuous care (under a temporary or extended care agreement, a custody order or a sole guardianship order): the care or custody of the Oranga Tamariki chief executive, an iwi social service, a cultural social service, the director of a child and family support service.

609. *Oranga Tamariki Act 1989/ Children’s and Young People’s Well-being Act 1989*, *supra* note 581, s 386(2) and (3).

Once a youth has left care, the primary responsibility for maintaining contact falls to the young person's transition worker, who is matched with the young person through a local transition support service before they leave care.⁶¹⁰ However, in the event that the local service is unable to provide a transition worker, the ministry will retain responsibility to directly fulfil this role, usually through a social worker.⁶¹¹

Extended care to age 21

Extended care is available to young people who have been in care for at least 3 continuous months after the age of 14 years and 9 months.⁶¹² This means that children who meet these eligibility requirements are now entitled to be supported to live with a caregiver at any time and for any period from the age of 18 up to the age of 21 years.⁶¹³ This includes the option to return to living with a previous caregiver or a new caregiver during this period.⁶¹⁴

Extended care is a purely voluntary arrangement between the young person and the caregiver, with the ministry having statutory obligations to assist the young person to negotiate and agree to the terms on which the young person and caregiver will live together.⁶¹⁵ The ministry is not required to provide support for the extended care arrangement if the chief executive is of the view that the arrangement will be detrimental to the young person.⁶¹⁶

610. Pursuant to ministry policy, the Oranga Tamariki/Ministry for Children must refer a young person to a Transition to Adulthood Service where they will be matched with a Transition Worker: Transition to Adulthood Policy, *supra* note 597 (Referral of Rangatahi to a Transition to Adulthood Service).

611. New Zealand, Oranga Tamariki/Ministry for Children, *Policy—Transition to Adulthood: Maintaining Contact* (last updated 1 July 2019), online: Government of New Zealand <practice.oranga-tamariki.govt.nz/policy/transition-to-adulthood-maintaining-contact/>.

612. *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989*, *supra* note 581, s 386AAD. We have used the general term "in care" which, for the purposes of the extended care provision, means "(a) the care or custody of the chief executive, an iwi social service, a cultural social service, or the director of a child and family support service under any agreement or order referred to in section 361(a), (c), or (d); or (b) the care of the chief executive as the agent of the court under section 33(1)(c)(ii) of the *Care of Children Act 2004*": s 386AAAD (1).

613. *Ibid*, s 386AA (2).

614. *Ibid*, s 386AAD (4) and (5).

615. *Ibid*, s 386AAE.

616. *Ibid*, s 386AAD (4) (c), (5) and (6).

Under these extended care provisions, caregivers have statutory obligations to act in accordance with the support arrangement negotiated and to “assist the young person who is living with them to become increasingly independent.”⁶¹⁷

Financial assistance *must* be provided by the chief executive for these extended care arrangements “to meet reasonable costs associated with living with the caregiver.”⁶¹⁸ Of note, the financial assistance is provided directly to the young person, unless deemed appropriate to pay it to the caregiver.⁶¹⁹ There is some discretion as to the amount the chief executive will pay to the young person, which is dependent upon what other financial assistance may be available to them as well as their personal circumstances.⁶²⁰

Advice & support to age 25

Advice & support

The Oranga Tamariki/Ministry of Children has a statutory obligation to provide advice and support to young people leaving care up to the age of 25. Previously the age limit for accessing such support was 20 years but this was extended to age 25 during the latest round of reform measures, which came into effect in July 2019.⁶²¹

The obligation to provide advice and support extends to young people who have been in care⁶²² for at least 3 continuous months between the age of 14 years, 9 months and 18 years.⁶²³ The provisions outline that the ministry *must* provide support by way of “advice and non-financial assistance that the chief executive considers the young person will need to achieve independence” and *may* provide support by way of “financial assistance that the chief executive considers the young person will need to achieve independence,” so long as there has been consideration of what other financial assistance may already be available to them.⁶²⁴

617. *Ibid*, s 286AAF.

618. *Ibid*, s 386AAG (1).

619. *Ibid*, s 386AAG (2).

620. *Ibid*, s 386AAG (1) (a) and (b).

621. *Ibid*, s 386A (4) as amended by *Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017*, *supra* note 587, s 129.

622. We have used the term “in care” for simplicity; however, for a complete understanding of who these statutory “advice and support” provisions apply to, see *ibid*, s 386 (1).

623. *Ibid*, s 386A.

624. *Ibid*, s 386B (1) (a) and (b).

The Act outlines what advice and assistance may be provided:

s 386B (2) Advice and assistance may include—

(a) giving information:

(b) assisting the young person to obtain accommodation, enroll in education or training, or obtain employment:

(c) legal advice:

(d) counselling:

(e) contributing to the expenses incurred by the young person in living near the place where they are or will be—

(i) employed or seeking employment; or

(ii) receiving education or training:

(f) making a grant to assist the young person to meet expenses connected with their education or training.⁶²⁵

Any financial assistance provided to a young person to help them with their education or training may be continued beyond the age of 25 if the young person has not yet completed their studies.⁶²⁶

The Act also permits financial support to be tailored to help those with higher or more complex needs.⁶²⁷

Ministry policy states that all young people leaving care to live independently (excluding those continuing to live with a caregiver) will receive at least \$1,500 to help with essential set up costs.⁶²⁸ Financial assistance beyond \$1,500 is discretionary.⁶²⁹ Assistance must be provided to a young person in an emergency, and such assistance can include emergency accommodation, food, transport and financial support.⁶³⁰

625. *Ibid*, s 386B (2).

626. *Ibid*, s 386B (5).

627. *Ibid*, s 386B (3).

628. Transition to Adulthood Policy, *supra* note 597, (All Rangatahi Leaving Care Are Entitled to Financial Assistance of at Least \$1,500).

629. *Ibid* (Discretion to Provide Financial Assistance Above \$1,500).

630. New Zealand, Orange Tamariki/Ministry for Children, *Policy—Transition to Adulthood: Advice and Assistance (Providing Assistance in an Emergency or Crisis)* (last updated 4 September 2020),

Transition support services

The ministry has implemented its statutory obligations under these “advice and support” provisions through the creation of transition support services programs.⁶³¹ These services are run by local organizations, with government funding. As indicated above, young people transitioning from care must be referred to a transition support service and are matched with a transition worker.⁶³² Consideration of the ability of the transition worker to be culturally responsive to the young person’s needs, language and identity must be given.⁶³³ The transition worker should assist the young person on an individualized basis to manage any crisis or emergency, and, as identified in ministry guidance on this topic, may provide any of the following types of assistance:

- giving them information, such as about other services in the community
- supporting them as parents or expectant parents, including linking them in with services that will support them
- supporting them to connect with their whānau, family, hapū and iwi if they wish
- assisting them to access legal advice, counselling or other services in their community
- assisting them to obtain accommodation
- assisting them to access financial assistance available from other agencies for emergency needs—for example, the Special Needs Grant that is available from Work and Income to meet emergency needs
- providing financial assistance, where it’s appropriate for Oranga Tamariki to do so, in regard to accommodation or meeting “emergency” needs right now, if these cannot be met in a timely manner by another agency, such as Work and Income

online: Government of New Zealand <practice.orangatamariki.govt.nz/policy/transition-to-adulthood-advice-and-assistance/#financial-assistance>.

631. New Zealand, Oranga Tamariki/Ministry for Children, *Guidance—Advice and Assistance When Rangatahi are Transitioning Out of or Have Left Our Care or Custody (Who is Eligible)* (last updated 3 September 2020), online: Government of New Zealand <practice.orangatamariki.govt.nz/our-work/transitioning-to-adulthood/transition-to-independence/transition-to-adulthood/advice-and-assistance-when-transitioning-out-of-care/> [Advice and Assistance Guidance].

632. Transition to Adulthood Policy, *supra* note 597 (Referral of Rangatahi to a Transition to Adulthood Service).

633. *Ibid.*

- assisting them to enroll in education or training, including access to the services and grants available through Work and Income's employment and training grants and services
- providing them with a financial contribution or grant necessary for expenses linked to events, such as seeking or keeping employment, or attending a course, where all other financial assistance has been first considered or isn't available.⁶³⁴

Broad statutory financial support powers

The *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989* gives the chief executive broad powers to provide financial assistance on a discretionary basis to young people who have been in care or are in contact on other bases with the ministry, including to organizations, parents and caregivers who are supporting them.⁶³⁵

Summary of legislated supports and services

- Legislation requires a care plan for all children in care. With respect to transition planning specifically, the Act requires that the ministry assess what advice and support a young person requires to assist them in their transition to independence and to provide the young person that support, prior to leaving care.
- Ministry policy with respect to transition planning is comprehensive. Transition planning should commence from the age of 15 with the assistance of the young person's social worker and involving a family group conference or where appropriate, a *Hui ā-whānau* (gathering facilitated using Māori methods of engagement and protocols). Transition workers engage one-on-one with young people leaving care to assist in the transition process.
- Maintaining contact with the young person between the ages of 18 and 21 years is a statutory requirement. In accordance with the statute, the ministry must "take reasonable steps" to maintain contact with a young person who has been in care.
- Pursuant to legislation, extended care is available to young people who meet the eligibility criteria, entitling them to be financially supported to live with or return to living with a caregiver at any time and for any period from the

634. Advice and Assistance Guidance, *supra* note 631 (Responding to the Needs of Rangatahi).

635. See *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989*, *supra* note 581, ss 387 to 389.

age of 18 years up to the age of 21 years. This occurs by voluntary agreement between both parties.

- The ministry has a statutory obligation to provide advice and support to young people leaving care up to the age of 25. Advice and support include practical support as well as financial support.
- Any financial assistance provided to a young person to help them with their education or training may be continued beyond the age of 25 if the young person has not yet completed their studies.
- Legislation contains broad powers to provide discretionary financial assistance to young people in or leaving care and those who support them.
- Funding local transition support services, which employ dedicated transition workers, is the primary method by which the ministry meets its statutory advice and support obligations to care-experienced young people.

Indigenous Care Leavers

In 2015 the expert panel highlighted the need to focus on reducing the overrepresentation of Indigenous children and youth in the child protection system.⁶³⁶ While there have been significant gains in this respect, evidenced by a steady decrease in the number of Māori children entering care between 2017 and 2020,⁶³⁷ overrepresentation of Indigenous youth in the child protection system remains.⁶³⁸ While only 25% of children in New Zealand identify as Māori, as of June 2019, 69% of children in care were Māori.⁶³⁹

For Indigenous children who do enter care, the importance of accessing culturally appropriate care is commonly recognized. In 2015 New Zealand's Office of the Children's Commissioner identified that insufficient priority was being given to the

636. Expert Panel Report, *supra* note 582 at 7.

637. New Zealand, Oranga Tamiriki/Ministry for Children, *Improving Outcomes for Tamariki Māori, Their Whānau, Hapū and Iwi: Section 7AA Report* (Wellington: Oranga Tamiriki/Ministry for Children, 2020) at 5, online (pdf): <orangatamariki.govt.nz/assets/Uploads/About-us/Report-and-releases/Section-7AA-Report/S7AA-Improving-outcomes-for-tamariki-Maori.pdf> [Section 7AA Report].

638. New Zealand, Office of the Children's Commissioner, *Statistical Snapshot* (Wellington: Office of the Children's Commissioner, 2020) at 1, online (pdf): <www.occ.org.nz/assets/Uploads/20200116-OCC-StatisticalSnapshot.pdf>.

639. *Ibid.*

provision of appropriate cultural practice and Māori cultural capability in the care protection system.⁶⁴⁰ The Children's Commissioner stated:

There is ample evidence, both nationally and internationally, that access to culture and culturally appropriate social work practice are strong protective factors for children who come into contact with the care and protection and youth justice system. Positioning Indigenous cultural identity as a strength can provide a foundation from which children can build resilience. This is particularly important in the New Zealand context, given that 58 percent of the care and protection population (and 68 percent of young people in CYF residences) are mokopuna Māori.⁶⁴¹

Again in 2017, the Office of the Children's Commissioner highlighted the need for more culturally appropriate engagement with Māori children, young people and their Indigenous communities throughout the Family Group Conferencing process.⁶⁴²

Since this time there have been a number of significant legislative and policy changes to the child protection system on this front. While a full discussion of Indigenous child protection issues in New Zealand is outside the scope of this paper, we have highlighted some key legislative and policy changes that have potential to impact outcomes for Indigenous care leavers.

In accordance with New Zealand's Treaty of Waitangi obligations, the new child protection legislative framework includes section 7AA titled "the duties of the chief executive in relation to the Treaty of Waitangi (Tiriti o Waitangi)."⁶⁴³ Section 7AA, which came into force on July 1, 2019, recognizes and provides a practical commitment to the principles of the Treaty of Waitangi.⁶⁴⁴ The provision requires the chief

640. New Zealand, Office of the Children's Commissioner, *State of Care: What We Learned from Monitoring Child, Youth and Family* (Wellington: Office of the Children's Commissioner, 2015) at 25, online (pdf): <www.occ.org.nz/assets/Publications/OCC-State-of-Care-2015-2.pdf> [State of Care Report].

641. *Ibid* at 15.

642. New Zealand, Oranga Tamiriki/Ministry for Children, *Specialist Maori Roles: Synthesis of Recent Evidence and Insights Presentation* (Wellington: Oranga Tamiriki/Ministry for Children, 2019) at 4, online (pdf): <www.orangatamariki.govt.nz/assets/Uploads/About-us/Research/Latest-research/Specialist-Maori-Roles-Evidence-Synthesis/Specialist-Maori-Roles-Evidence-Synthesis.pdf> [Specialist Māori Roles].

643. *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989*, *supra* note 581, s 7AA.

644. *Ibid*, s 7AA (1).

executive to improve outcomes for Indigenous children in New Zealand's care system in a number of ways. These include through the development of policies and practices that reduce disparities between Māori and non-Māori children and young people; developing strategic partnerships with Māori communities (*iwi*) and Māori organizations to improve outcomes for Māori children; and by developing policies and practices which have regard to the cultural and kinship responsibilities of Indigenous tribes, communities and families (the *whanaungatanga* responsibilities of their *whānau*, *hapū*, and *iwi*).⁶⁴⁵ The provision also requires the chief executive to report annually on measures taken to implement these obligations and the impact on Māori children in care.⁶⁴⁶ In the first annual report, the Chief Executive of Oranga Tamariki/Ministry for Children summarized these new legislative obligations:

At the heart of section 7AA is an expectation that Oranga Tamariki will uphold and protect the familial structures of *whānau*, *hapū* and *iwi*. As signalled in the many reviews and reports since 1986 and as required by Treaty of Waitangi principles, section 7AA requires a change in the way we develop and deliver policies, practices and services to preference improved outcomes for tamariki Māori, their *whānau*, *hapū* and *iwi* within the context of *tikanga* Māori.⁶⁴⁷

Further, as highlighted above, there is a strong focus in the Act's stated principles on strengthening relationships and creating connections between the child and his or her family, other trusted adults and their Indigenous communities.⁶⁴⁸

Practice standards and guidance were also developed by the ministry in 2017, ahead of the new legislation, to specifically articulate competencies required for working effectively with *tamariki* and *whānau* Māori.⁶⁴⁹ The ministry describes the relevant guidance as follows:

645. *Ibid*, s 7AA (2)–(4). The *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989* commonly uses Māori phrases and language to more appropriately articulate Māori concepts of culture, identity, kinship and family. We have made an attempt to convey the general meaning of the terms used; however for a proper and fuller understanding of the concepts conveyed by the Māori language used in the act, see the definitions set out in s 2. See also MyWhānau, "Blog: Meaning of Whānau" (last visited 3 May 2021), online: <www.mywhanau.com.au/blog/the-meaning-of-wh%C4%81nau>.

646. *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989*, *supra* note 581, s 7AA (5).

647. Section 7AA Report, *supra* note 637 at 19.

648. *Oranga Tamariki Act 1989/ Children's and Young People's Well-being Act 1989*, *supra* note 581, s 386AAC (c) & (d).

649. Section 7AA Report, *supra* note 637 at 26. For examples of such guidance provided by the ministry see New Zealand, Oranga Tamariki/Ministry for Children, "Working Effectively with Maori" (last updated 1 April 2019), online: <practice.orangatamariki.govt.nz/practice-

It focuses on practices that empower tamariki and whānau Māori using the principles of mana tamaiti, whakapapa and whanaungatanga. Ahead of legislation changes for 1 July 2019, we developed a suite of new and amended practice guidance for working effectively with Māori and to give effect to 7AA of the Oranga Tamariki Act 1989. This practice guidance supports practitioners to apply the five mana tamaiti objectives in practice, with a particular focus on the preferencing of whānau care, supporting tamariki connectedness to whānau, hapū and iwi and strengthening the participation of whānau, hapū and iwi in decision-making and planning for tamariki Māori. It includes key kaupapa Māori practice platforms such as the use of hui-a-whānau, Kairaranga-a-whānau, whānau searching and whakapapa research.⁶⁵⁰

With respect to Indigenous youth leaving care, the importance of providing culturally appropriate transition services has been recognized as crucial to combatting cultural disconnection and disengagement resulting from removal from family and community, with one commentator observing:

Such an arrangement also creates space for Iwi and other Māori and Pasifika providers to develop services specifically designed for their young people. Such services could facilitate re-connection with cultural networks for those who have lost these connections, and have the potential to enhance resilience by fostering positive cultural identity. In addition, Māori and Pasifika young people's higher rates of disengagement from the education system create barriers to engagement with mainstream providers of services for those not in education, training or employment.⁶⁵¹

Responding to the criticisms around lack of engagement with Indigenous communities and cultural practices for Māori children in care, the Oranga Tamariki/Ministry for Children instituted new processes and systems. For example, the Māori Design Group, established in 2017 and representing a diverse range of iwi and Māori communities and organizations, provides expert advice to the chief executive on Indigenous issues.⁶⁵² The group collaborated with the ministry to develop key system level responses and continues to provide the chief executive with “thought-leadership

standards/practice-framework-knowledge-and-evidence-base/working-effectively-with-maori/>; and New Zealand, Oranga Tamariki/Ministry for Children, “Culturally Informed Practice” (last updated 1 April 2019), online: <practice.orangatamariki.govt.nz/practice-standards/practice-framework-knowledge-and-evidence-base/culturally-informed-practice/>.

650. Section 7AA Report, *supra* note 637 at 26.

651. Nicola Atwool, “Journeys of Exclusion: Unpacking the Experience of Adolescent Care Leavers in New Zealand” in Philip Mendes & Pamela Snow, eds, *Young People Transitioning from Out of Home Care* (London: MacMillan Publishers, 2016) 309 at 322 [Journeys of Exclusion].

652. Section 7AA Report, *supra* note 637 at 17.

and an independent Māori lens across [ministry] policies, practices and services to improve outcomes for tamariki Māori.”⁶⁵³ The ministry also implemented Specialist Māori Roles, both within the ministry and organizations contracted by the ministry, to provide services that have been shown to improve outcomes for Māori children and youth.⁶⁵⁴ One such role was aimed at child and community participation in decision making “using Māori models of practice including the hui ā-whānau process, whānau searching and whakapapa research.”⁶⁵⁵ Further, there has been a significant recent increase in numbers of Māori social workers in the care system.⁶⁵⁶

More specifically with respect to Māori youth leaving care, the ministry has sought to increase the numbers of Indigenous organizations providing transition services, to reflect the fact that over 60% of youth leaving care are Indigenous. As of February 2020, 43% of community organizations set up to provide transition services, are *iwi* or Māori organizations.⁶⁵⁷ The research suggests that difficulties with accommodation, employment, isolation and relationships with birth family, which is common among care leavers, is of greater significance for Māori youth who have lost contact with their Indigenous communities and consequently struggle with their cultural identity.⁶⁵⁸

In its 2020 Oranga Tamariki/Ministry for Children 7AA Report, the ministry has indicated that it is working with the Ministry of Housing and Urban Development to prevent and reduce homelessness for youth leaving care, identifying Māori youth as a distinct group requiring additional support.⁶⁵⁹ As a result, increased funding for transitional accommodation for Māori youth leaving care has been allocated.⁶⁶⁰ In addition, the report advised that the Oranga Tamariki/Ministry for Children is working with the Ministry of Business Innovation and Employment to ensure that youth leaving care can easily access government training programs, as well as expanding public sector internships for youth leaving care.⁶⁶¹

653. *Ibid.*

654. Specialist Māori Roles, *supra* note 642 at 6; New Zealand, Oranga Tamariki/Ministry for Children, “Tamariki Maori” (26 August 2020), online: Government of New Zealand <www.oranga-tamariki.govt.nz/support-for-families/how-we-support-whanau/tamariki-maori/>.

655. Specialist Māori Roles, *supra* note 642 at 6.

656. New Zealand, Oranga Tamariki/Ministry for Children, “Tamariki Maori,” *supra* note 654.

657. *Ibid.*

658. Journeys of Exclusion, *supra* note 651 at 318.

659. Section 7AA Report, *supra* note 637 at 39.

660. *Ibid.*

661. *Ibid.*

Of note, one of five stated objectives of the ministry going forward is to “support, strengthen and assist tamariki Māori and their whānau to prepare for their return home or transition into the community.”⁶⁶² The ministry has indicated it will be expanding transition services over the next 12 months, ensuring relationship-based support to Māori youth as they transition to adulthood, and will be continuing to build partnerships with *iwi* and Māori organizations.⁶⁶³

Evaluative Commentary

The reform of New Zealand’s legislative framework governing child protection, in particular the transition of young people from care into the community, is very recent. As such, analysis of the effectiveness the reform measures appears to be limited.

Some early formulative evaluation of transition support services on which New Zealand’s model was ultimately based demonstrated that young people generally had positive experiences of the transition services offered.⁶⁶⁴ As well as providing adequate practical support, such as transition plan development, facilitating access to accommodation, linking young people with other community-based supports and providing crisis support, the provision of relationship-based support was identified as a fundamental component of the program.⁶⁶⁵ The unconditional, ongoing therapeutic and mentoring support provided by transition workers was identified as a highly valued aspect of the program.⁶⁶⁶

A recent critical analysis of New Zealand’s new legal and policy framework with respect to young people leaving care includes the following observations, briefly summarized:

662. *Ibid* at 52.

663. *Ibid*.

664. New Zealand, Oranga Tamariki Evidence Centre, *Operation and Experience: Formative Evaluation of the Transition from Care to Independence Service* (Wellington: Oranga Tamariki/Ministry for Children, 2018), online (pdf): <orangatamariki.govt.nz/assets/Uploads/About-us/Research/Latest-research/From-care-to-independence/Evaluation-of-the-Transition-from-Care-to-Independence-Service-executive-summary.pdf>.

665. *Ibid* at 6–7.

666. *Ibid*.

- The reforms are “a significant step forward,” with strengths of the new legislative provisions including the ability to remain with caregivers to age 21 and the entitlement to advice and support to age 25.⁶⁶⁷
- In addition, “emphasis on beginning the process early, assessment of need, a holistic approach, and community connection” were identified as being in line with the research on improving care leaver outcomes.⁶⁶⁸
- Despite implementation of the new law and policy to assist care leavers, such as increasing the care leaving age, access to extended care, and the provision of advice and support to the age of 25, research indicates that the absence of intangible support mechanisms, such as social and emotional support, continues to have a detrimental impact.⁶⁶⁹
- The role of family for non-care peers is a major provider of informal support during transition. Extended care is a way of replicating this informal family support. There is evidence of improved outcomes for those who are able to take advantage of extended care options.⁶⁷⁰
- Most children in care have some form of contact with their family of origin, or use the transition to independence to reconnect with their birth families. There is a strong focus in the legislation on strengthening relationships between the young person and their family, *whānau*, *hapū*, *iwi*, and other trusted adults. However, while family support is recognized as an important factor in a smooth transition from care, many family relationships can be problematic. Many families lack resources and circumstances which led to the care arrangement can often remain unchanged.⁶⁷¹
- The importance of having at least one constant, supportive adult relationship is widely recognized. Transition support workers play a mentoring role. Mentoring projects have demonstrated some success, however, the author notes that “effective mentoring may be difficult to achieve due to past experience creating barriers to investing in a relationship with a stranger” and suggests that identifying natural mentoring relationships from

667. Nicola Atwool, “Transition from Care: Are We Continuing to Set Care Leavers up to Fail in New Zealand?,” online: (2020) 113 Children and Youth Services Review 104995 at para 3.1.

668. *Ibid.*

669. *Ibid* at 2.1.

670. *Ibid* at 2.1.1.

671. *Ibid.*

supportive adults already within the young person's existing networks would be more beneficial.⁶⁷²

- There needs to be a reconceptualization of independence to recognize the “social scaffolding” that occurs in young people's lives, with a greater focus on interdependence instead.⁶⁷³

In conclusion, the author observed:

A Western ideological emphasis on individualism and independence as a desirable adult attribute underpins this policy. The dominant narrative is transition to independence and connection appears to be valued because it is instrumental in achieving this goal. Research evidence outlined [in the article] supporting interdependence as the foundation for policy and practice appears to have been ignored.

... New transition policy has been introduced at a time of major change in the delivery of care and protection services. It will only be successful in improving outcomes for young people leaving the care system if the shortcomings of Western ideology are recognised. The well-documented needs of young people leaving care for access to social capital, support in navigating identity, and enduring connections can only be met by a paradigm shift that bases policy and practice on the concept of interdependence. New Zealand's Indigenous culture offers an alternate paradigm and embracing culturally appropriate ways of working with Māori has the potential to enhance practice with all young people.⁶⁷⁴

672. *Ibid* at para 2.1.3.

673. *Ibid* at para 2.3.

674. *Ibid* at para 3.4 and 4.

Chapter 7. International Jurisdictions: United States

Overview

States are primarily responsible for providing child protection services in the United States, under supervision of the courts.⁶⁷⁵ Services are generally provided by a mix of public and private entities, utilizing both state and federal funding.⁶⁷⁶ As discussed below, federal funding and some federal statutory requirements play a large role in shaping state child protection policy,⁶⁷⁷ which is evident in our more in-depth review of Washington state care leaving policies. “Foster care” is the predominant term used to describe out-of-home care for children in the care and protection of the state welfare agency. As such, we use the term “foster care” in this section to broadly include care provided by families or relatives in private homes, group care in private homes, as well as group care in non-family settings, such as facilities that provide specialized treatment and shelters.⁶⁷⁸ Youth age out of care at the age of majority, which is usually 18, or youth may stay in care up to age 21 if the state has extended foster care.⁶⁷⁹

National figures from the United States Department of Health and Human Services indicate that older youth aged 13 to 20 years made up 27% of the total number of children and youth in care in 2017. Further, while most youth in care are reunified with family, adopted or placed with relatives, in 2017 approximately 20,000 youth “aged-out” of the foster care system upon reaching the age of majority, which is typically 18 years.⁶⁸⁰

In line with care leaver experiences in the comparative jurisdictions discussed above, youth from the foster care system in the United States have poorer outcomes compared with their non-care peers. These outcomes include lower educational attainment, higher unemployment, increased likelihood of drug and alcohol misuse,

675. United States, Congressional Research Service, *Youth Transitioning from Foster Care: Background and Federal Programs*, RL34499 (Washington: Congressional Research Service, 2019) at 6, online (pdf): <fas.org/sgp/crs/misc/RL34499.pdf> [Congressional Research Report].

676. *Ibid.*

677. *Ibid.*

678. *Ibid.* at 2.

679. *Ibid.*

680. *Ibid.*

greater prospects of involvement in the criminal justice system, and higher incidences of mental health disorders.⁶⁸¹ Housing insecurity and homelessness are also reported as common.⁶⁸²

Federal Jurisdiction

We focus our discussion below on two pivotal pieces of federal legislation impacting the programs and services available to youth aging out of the foster care system in the United States. The first of these is the *Foster Care Independence Act of 1999*,⁶⁸³ which amended Title IV-Part E of the *Social Security Act* (Federal Payments for Foster Care, Prevention, and Permanency)⁶⁸⁴ to significantly improve funding for state-based independent living programs for foster youth. The second piece of pivotal legislation is the *Fostering Connections to Success and Adoptions Act of 2008*,⁶⁸⁵ which also amended *Title IV-E* to permit states to optionally extend foster care up to the age of 21 years.⁶⁸⁶ First, we address federal statutory requirements to plan for a youth's transition to adulthood, while the youth is still in care.

Transition planning

Federal legislation places some obligations on states with respect to transition planning for youth who are approaching care leaving age, whether that be at 18 or if in extended care, older.⁶⁸⁷

Title IV-E, which requires states to meet certain obligations in order to receive federal funding for foster care, requires that a state's written case plan for children

681. Washington, Washington State Institute for Public Policy, *Extended Foster Care in Washington State: Final Report*, Document No. 20-05-3201 (Olympia: WSIPP, 2020) at 3, online (pdf): <www.wsipp.wa.gov/ReportFile/1721/Wsipp_Extended-Foster-Carein-Washington-State-Final-Report_Report.pdf> [WSIPP Report]. See also Congressional Research Report, *supra* note 675 at 3 for details of two particular state studies into outcomes for youth who have been in foster care.

682. Congressional Research Report, *supra* note 675 at 3.

683. *Foster Care Independence Act of 1999*, Pub L No 106-169, 113 Stat 1822, [*Foster Care Independence Act*].

684. 42 USC §§ 670–679c (2018) [*Title IV-E*].

685. *Fostering Connections to Success and Increasing Adoptions Act of 2008*, Pub L No 110-351, 122 Stat 3949 [*Fostering Connections to Success Act*].

686. *Title IV-E*, *supra* note 684, § 675 (8). See section below for details.

687. Congressional Research Report, *supra* note 675 at 5 (Figure 1).

aged 14 and older must include a written description of the programs and services the child will need to assist their transition to adulthood.⁶⁸⁸

Further, this legislation requires that within the 90 day period prior to a child turning 18 years (or the date the youth is anticipated to leave care, if in extended care), a case worker or other representative must “provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child.”⁶⁸⁹ In addition, the transition plan should include “specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services.”⁶⁹⁰

While the statute mandates that transition planning commence just 90 days prior to the youth leaving care, federal guidance clarifies this expectation:

Further, we note that while the transition plan is developed during a particular period of time prior to aging out of foster care the title IV-E agency should begin earlier to engage and prepare youth to develop the plan. Therefore, we expect the title IV-E agency to use the time well in advance of the 90-day period to prepare and fully engage a youth in his or her transition plan development. For example, an agency can best prepare the youth to direct their transition plan if the agency informs the youth ahead of time of the transition plan’s purpose and importance, how they are expected to participate in the transition plan, who they can invite to the planning sessions to represent their needs, how it is different or similar to other planning activities, what options are available in the topics that must be covered (e.g., housing and health insurance) and how to ask questions that can uncover further information or options that may not have been raised by the agency.⁶⁹¹

It is noted that the courts can play an important role in monitoring the development of a youth’s transition plan.⁶⁹²

688. Title IV-E, *supra* note 684, § 675 (1) (D). See also §§ 671 (a) (16) and 675 (5) (C) for further provisions respecting case plans for youth in care.

689. *Ibid*, § 675 (5) (H).

690. *Ibid*.

691. United States, Department of Health and Human Services, *Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008* (Washington: Department of Health and Human Services, 2010) at 13, online (pdf): <www.acf.hhs.gov/sites/default/files/documents/cb/pi1011.pdf> [Guidance on Fostering Connections].

692. Guidance on Fostering Connections, *supra* note 691 at 13.

The youth must be provided with copies of certain essential documents when leaving care, including a birth certificate, social insurance card, other health insurance documents, relevant identification and proof that the youth was in foster care.⁶⁹³

Post-Care and extended care legislative requirements

Foster Care Independence Act

As noted above, while states are primarily responsible for the provision of child protection services, funding for such services comes from both state and federal sources. The introduction of the federal *Foster Care Independence Act*,⁶⁹⁴ otherwise known as the *Chafee Act*, saw a major increase in the amount of federal funding made available to states to enable the development of state-based independent living programs for youth leaving foster care. Federal funding was doubled from \$70 million to \$140 million (increased to \$143 million in 2020), with a requirement that states match 20% of funding.⁶⁹⁵ States are allocated federal funds in accordance with the proportion of children in foster care in that state.⁶⁹⁶

The statute gives states flexibility to design their own independent living programs within the bounds of the statute's stated purposes, and generally covering areas such as finance, housing, counselling, employment, education, relationship and community connections, to assist youth both before and after they leave foster care.⁶⁹⁷ Funding for these state independent living programs is for youth from the foster care system aged 18 to 21 (or 23 years in states with extended care).⁶⁹⁸ The importance of engaging youth in their transition planning is acknowledged by the federal statutory requirement that the state program ensure that youth "participate directly in designing their own program activities that prepare them for independent living and that the youth accept personal responsibility for living up to their part of the program."⁶⁹⁹

693. *Title IV-E, supra* note 684, § 675 (5) (I).

694. *Foster Care Independence Act, supra* note 683.

695. Congressional Research Report, *supra* note 675 at 11, n 33.

696. *Title IV-E, supra* note 684, § 677 (c).

697. *Ibid*, § 677 (a) and § 677 (d).

698. *Ibid*, § 677 (a) (4).

699. *Ibid*, § 677 (b) (3) (H).

Eligibility for these federally funded state independent living programs, as dictated by the *Foster Care Independence Act*, has been summarized as permitting access to youth:

- in foster care between the ages of 14 and 21;
- who aged out of foster care and are between the ages of 18 and 21 (or up to age 23 in states that extend foster care to age 21);
- who left foster care at age 16 or older for kinship guardianship or adoption until they reach age 21 (or up to age 23 in states that extend care to age 21);
- who had been in foster care between the ages of 14 and 21 and left foster care for some other reason besides aging out of foster care, kinship guardianship, or adoption; and
- who are likely to remain in foster care until age 18 years.⁷⁰⁰

Extending Medicaid coverage

The *Foster Care Independence Act* also contains provisions amending *Title XIX* of the *Social Security Act*⁷⁰¹ to enable broader access to Medicaid for youth who have left foster care, giving states the option to extend Medicaid coverage to youth who were in foster care on their 18th birthday and who are under 21 years of age.⁷⁰² Income and asset tests for this cohort may apply.⁷⁰³

Since the introduction of this optional Medicaid coverage for foster youth, the *Patient Protection and Affordable Care Act*⁷⁰⁴ amended *Title XIX* of the *Social Security Act*⁷⁰⁵ in 2014 to include mandatory Medicaid coverage:

- for youth who are in foster care at age 18 (or 19–21 where extended foster care is provided);
- who have been in foster care for at least 6 months;

700. Congressional Research Report, *supra* note 675 at 13. See also *Title IV-E*, *supra* note 684, § 677.

701. 42 USC §§ 1396–1396w [*Title XIX*].

702. *Ibid*, § 1396a; United States, Congressional Research Service, *Child Welfare: Health Care Needs of Children in Foster Care and Related Federal Issues* (Washington: Congressional Research Service, 2014) at 31–32, online: <www.everycrsreport.com/files/20141216_R42378_c1a5d26fd74a608e077f1eedbe144807f886fe2.pdf> [CRS Child Welfare].

703. CRS Child Welfare, *supra* note 702 at 31.

704. *Patient Protection and Affordable Care Act*, Pub L No 111-148, 124 Stat 283.

705. *Title XIX*, *supra* note 701.

- who were enrolled in Medicaid while in foster care or subject to a waiver;
- are under the age of 26;
- are not eligible or enrolled under other existing Medicaid mandatory eligibility groups;
- regardless of the youth's income or assets.⁷⁰⁶

Education voucher program

In 2001 the *Foster Care Independence Act* was amended to include funding for education vouchers as an additional purpose of the legislation.⁷⁰⁷ Since this time, the Act has allowed for the provision of a federally funded voucher program to assist youth from foster care with expenses for higher education, known as the Educational and Training Voucher program.⁷⁰⁸ Students attending higher education may access vouchers of up to \$5,000 per year to help meet program expenses.⁷⁰⁹ This funding is available for a maximum of five consecutive or non-consecutive years from 14 years until a youth reaches the age of 26.⁷¹⁰

The Educational and Training Voucher program receives up to \$60 million in discretionary funding each year,⁷¹¹ which is allocated between the states based on their percentage of children and youth in foster care.⁷¹² Again, states must match this funding with 20% state funding for the program.⁷¹³

Indian tribes and tribal organizations

The federal statute applies equally to Indian tribes, tribal organizations or tribal consortiums which provide foster care pursuant to an agreement with a state and which

706. *Ibid*, § 1396a; CRS Child Welfare, *supra* note 702 at 30–31.

707. *Title IV-E*, *supra* note 684, § 677 (a) (5) (“To make available vouchers for education and training, including postsecondary training and education, to youths who have aged out of foster care.”); National Foster Care Coalition, “Chafee Education and Training Voucher Program: Six States’ Experiences” (2007) at 2, online (pdf): <www.fostercareandeducation.org/DesktopModules/Bring2mind/DMX/Download.aspx?EntryId=1241&Command=Core_Download&method=inline&PortalId=0&TabId=124> [Education and Training Voucher Program].

708. *Title IV-E*, *supra* note 684, § 677 (a) (5). See also *Title IV-E*, *ibid* § 677 (i).

709. *Ibid*, § 677 (i) (4).

710. *Ibid*, § 677(i) (1) and (3); Education and Training Voucher Program, *supra* note 707 at 2.

711. *Title IV-E*, *supra* note 684, § 677 (h) (2).

712. *Ibid*, § 677 (c).

713. Education and Training Voucher Program, *supra* note 707 at 2.

receive federal funding for this purpose.⁷¹⁴ Such Indian tribes and tribal organizations are also eligible to receive an allotment of federal “Chafee” funds (out of the state allotment) in accordance with the proportion of foster children and youth under the tribe’s care, as designated by the legislation.⁷¹⁵

Where a tribe is not directly allotted federal “Chafee” funds under § 677 (j), states are required to negotiate in good faith with Indian tribes and tribal organizations to receive a portion of state allotted “Chafee” funds, at the tribe’s request.⁷¹⁶ These funds must be used by the tribe to develop and oversee their own independent living programs specifically for Indian foster children within their care.⁷¹⁷

More broadly, the federal statute requires states to consult with Indian tribes and tribal organizations in the development of their state-based independent living plans for which they have received “Chafee” funds. The statute specifically requires states to certify:

that each Indian tribe in the State has been consulted about the programs to be carried out under the plan; that there have been efforts to coordinate the programs with such tribes; and that benefits and services under the programs will be made available to Indian children in the State on the same basis as to other children in the State.⁷¹⁸

Accountability and evaluation of state programs

Significantly, the federal statutory funding program has in-built state accountability mechanisms. The *Foster Care Independence Act* requires states to collect and report specific data to the Secretary of Health and Human Services on foster youth outcomes for the purpose of tracking care leaver outcomes and evaluating the success or otherwise of each state’s independent living programs.⁷¹⁹ The law requires the Secretary of Health and Human Services, in consultation with state and local public officials responsible for administering independent living programs, child welfare advocates, members of Congress, youth service providers and researchers to develop a plan to collect information on and develop outcome measures for youth aging out of foster care.⁷²⁰ Data collected must enable assessment of outcomes in the

714. *Title IV-E, supra* note 684, § 677 (d) (5) (C).

715. *Ibid.*, § 677 (j).

716. *Ibid.*, § 677 (b) (3) (G).

717. *Ibid.*

718. *Ibid.*

719. *Ibid.*, § 677 (f).

720. *Ibid.*

areas of educational attainment, high school diploma, employment, avoidance of dependency, homelessness, nonmarital childbirth, incarceration, and high-risk behaviours.⁷²¹ As a result, the National Youth in Transition Database was established by regulation in 2008, requiring states to commence compiling this data in October 2010.⁷²² An analysis of the data collected must be reported to Congress.⁷²³

In addition, the Secretary of Health and Human Services is charged with conducting evaluations of state-based independent living programs funded under the Act that the Secretary deems to be innovative or of potential national significance.⁷²⁴ Evaluation must include information on the impacts of the program on education, employment, and personal development.⁷²⁵ Funding is reserved specifically for implementing the performance measurement aspects of this funding program.⁷²⁶

Extended foster care and the Fostering Connections to Success and Adoptions Act

The *Fostering Connections to Success and Adoptions Act* permits states to use funds from its federal foster program to enable youth who have turned 18 to remain in extended foster care until the ages of 19, 20 or 21, at the option of the individual state.⁷²⁷ By inserting an optional (adopted at the state's discretion) definition of "child" to include 19, 20 and 21 year olds, extended foster care became a realistic option for many the nation's foster youths.⁷²⁸ However, there are some limiting criteria with respect to eligibility, as set out below.⁷²⁹ Extended foster care maintenance payments must be paid to the youth through the foster parent, child placement agency, childcare institution or the youth's supervised setting, with an exception if

721. *Ibid*, § 677 (f) (1) (A)–(C).

722. United States, Children's Bureau, "Fact Sheet: About National Youth In Transition Database" (last visited 5 May 2021), online: Department of Health and Human Services <www.acf.hhs.gov/cb/fact-sheet/about-nytd>.

723. *Title IV-E, supra* note 684, § 677 (f) (2).

724. *Ibid*, § 677 (g).

725. *Ibid*.

726. *Ibid*, § 677 (g) (2).

727. *Ibid*, § 675 (8); Congressional Research Report, *supra* note 675 at 4.

728. *Ibid*.

729. Congressional Research Report, *supra* note 675 at 4; Guidance on Fostering Connections, *supra* note 691 at 3.

the youth is in a supervised independent living setting in which no appropriate intermediary is involved.⁷³⁰

Statutory eligibility requirements for participation in the extended care program can be summarized broadly as follows:

- The youth must be:
 - In foster care under the responsibility of the relevant state agency; or
 - Part of an adoption assistance agreement that is in effect under section 473 of the *Social Security Act* and the youth had attained 16 years of age before the agreement became effective; or
 - Part of a kinship guardianship agreement that is in effect under section 473 (d) of the *Social Security Act* and the youth had attained 16 years of age before the agreement became effective; and
- The youth is aged 18 years or older, but younger than 22, as elected by the state; and
- The youth meets one of the following conditions with respect to education, training and employment:
 - completing secondary education or a program leading to an equivalent credential;
 - enrolled in an institution which provides postsecondary or vocational education;
 - participating in a program or activity designed to promote, or remove barriers to, employment;
 - employed for at least 80 hours per month; or
 - incapable of doing any of the activities described above due to a documented medical condition.⁷³¹

States can opt to narrow these eligibility criteria in limited ways, such as only providing extended care to youth aged 18 or 19, or only providing it to those who are completing secondary school or an equivalent program. However, the federal government encourages states to make the extended foster care program criteria as broad as possible, consistent with the law:

730. Guidance on Fostering Connections, *supra* note 691 at 9.

731. Title IV-E, *supra* note 684, § 675 (8); Guidance on Fostering Connections, *supra* note 691 at 3.

We are providing flexibility in applying the education and employment conditions because we want to encourage a title IV-E agency to take advantage of the option as soon as possible, even if the agency can do so on only a limited basis at this time. However, we encourage a title IV-E agency to consider how it can provide extended assistance to youth age 18 and older to the broadest population possible consistent with the law to ensure that there are ample supports for older youth.⁷³²

In addition to the above requirements, youth in extended foster care must be living in a licensed foster family home, childcare institution or independently in a “supervised setting.”⁷³³ The term “supervised setting” has not been strictly construed and guidance suggests that states have flexibility to develop a range of supervised independent living settings, which may include, “when paired with a supervising agency or supervising worker, host homes, college dormitories, shared housing, semi-supervised apartments, supervised apartments or another housing arrangement.”⁷³⁴ States are encouraged by the federal government “to be innovative in determining the best living arrangements that could meet an older child’s needs for supervision and support as he/she moves toward independence.”⁷³⁵

One source has reported that as of 2019, 29 states, the District of Columbia and 9 tribal nations offer extended foster care under the federally funded program, with some variation in eligibility criteria.⁷³⁶ (Of note, most other states still offer some form of extended foster care paid for with state funding.)⁷³⁷ All but one of these federally funded states (Indiana) provide extended foster care to age 21, and all of these bar 3 states and 2 Indian nations (Tennessee, West Virginia, Wisconsin, the Eastern Band of Cherokee, and the Penobscot Indian Nation) allow youth to remain in care under any of the training, education and medical exemption criteria.⁷³⁸ In summary, uptake of the extended foster care program by states has been significant and wide-reaching.

Other federal transition support programs

Other federal programs exist to support current and former foster youth with respect to housing, education, employment and training. We do not have capacity to

732. Guidance on Fostering Connections, *supra* note 691 at 3.

733. Title IV-E, *supra* note 684, § 672 (c) (2) (B); *Ibid* at 9.

734. Guidance on Fostering Connections, *supra* note 691 at 9.

735. *Ibid*.

736. WSIPP Report, *supra* note 681 at 3.

737. *Ibid* at 8.

738. *Ibid* at 3.

provide a detailed review of all federal programs, however we have summarized several of them as follows:

- Youth Activities and Job Corps are job training programs aimed at low-income, vulnerable populations, including foster youth.⁷³⁹ Together they provide a mix of educational and occupational training, as well as supportive services, such as childcare. Foster youth must be between the ages of 14 and 24 to be eligible for the programs and meet certain income criteria set out in the relevant legislation.⁷⁴⁰
- Pursuant to the *Higher Education Act*,⁷⁴¹ the federal government funds higher education institutions, public and private agencies and community organizations through a group of programs known collectively as the TRIO programs to assist foster youth and other vulnerable populations achieve their higher education goals.⁷⁴² The TRIO programs are administered by the Department of Education through provision of a myriad of services aimed at improving higher education retention rates, such as mentoring and tutoring, and assistance with temporary housing during school breaks.
- Federal assistance with respect to housing includes housing subsidies for former foster youth up to the age of 24 years through the federal Family Unification Voucher program, which is administered by the Department of Housing and Urban Development.⁷⁴³ Increased federal funding was recently announced for local public housing authorities under the Foster Youth to Independence Initiative, which targets housing assistance to young people aging out of foster care and who are at extreme risk of experiencing homelessness.⁷⁴⁴ In addition, the federal Runaway and Homeless Youth program, administered by the Department of Health and Human Services provides

739. 29 USC § 3161 et seq (Youth Activities); 29 USC § 3191 et seq (Job Corps).

740. Congressional Research Report, *supra* note 675 at 29.

741. *Higher Education Act of 1965*, 20 USC § 1001 et seq.

742. 20 USC § 1070a-11; United States, Department of Education, “Federal TRIO Programs” (last visited 5 May 2021), online: United States Government <www2.ed.gov/about/offices/list/ope/trio/index.html>; United States, Congressional Research Service, *Foster Youth: Higher Education Outcomes and Federal Support*, IF10449 (Washington: United States Government, 2016) at 1, online (pdf): <www.everycrsreport.com/files/2016-08-12_IF10449_13e22b49ff6118c60e8f58f36459e1637954d8b7.pdf>; Congressional Research Report, *supra* note 675 at 29–30.

743. Congressional Research Report, *supra* note 675 at 30.

744. United States, Department of Housing and Urban Development, “HUD Secretary Ben Carson Announces New Foster Youth Housing Vouchers in 24 States” (17 November 2020) online: <www.hud.gov/press/press_releases_media_advisories/HUD_No_20_195>.

housing services and related supports to eligible current and former foster youth.⁷⁴⁵

Washington

Overview

As set out above, states are primarily responsible for providing child protection services in the United States, which includes the provision of post-care supports and services.⁷⁴⁶ While state programs and services utilize a mix of state and federal funding, it is clear that federal funding plays a large role in shaping state child protection and post-care support policies and programs.⁷⁴⁷ These federal statutes,⁷⁴⁸ which place obligations on states with respect to transition and extended care programs for foster children in return for funding, are discussed in detail above and are not repeated here in our review of Washington state.

Title 74 of the Revised Code of Washington (which deals with public assistance) gives authority to the Department of Children, Youth and Families to provide programs and supports to youth who are in foster care or are transitioning from foster care to independence:

74.13.031(16) The department shall have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-three years of age, who are or have been in the department's care and custody, or who are or were nonminor dependents.⁷⁴⁹

The legislation describes independent living services as including assistance with education, training, employment and life skills. A requirement to measure performance is embedded in the statutory provision, as is a requirement that the youth have a plan for achieving independent living skills.⁷⁵⁰ The relevant section provides:

Independent living services include assistance in achieving basic educational requirements such as a high school equivalency certificate as provided in RCW 28B.50.536, enrollment in vocational and technical training programs offered at the community and

745. Congressional Research Report, *supra* note 675 at 29.

746. *Ibid* at 6.

747. *Ibid*.

748. See the sections above discussing the *Foster Care Independence Act* and the *Fostering Connections to Success and Adoptions Act*.

749. Wash Rev Code § 74.13.031(16).

750. Wash Rev Code § 74.13.540.

vocational colleges, and obtaining and maintaining employment; and accomplishing basic life skills such as money management, nutrition, preparing meals, and cleaning house. A baseline skill level in ability to function productively and independently shall be determined at entry. Performance shall be measured and must demonstrate improvement from involvement in the program. Each recipient shall have a plan for achieving independent living skills by the time the recipient reaches age twenty-one. The plan shall be written within the first thirty days of placement and reviewed every ninety days. A recipient who fails to consistently adhere to the elements of the plan shall be subject to reassessment by the professional staff of the program and may be declared ineligible to receive services.⁷⁵¹

In accordance with these statutory provisions and federal requirements associated with the receipt of federal funding, Washington state has implemented its independent living programs for foster youth through several programs, discussed below.

In-Care and post-care transition supports and services

Independent Living Program

The Independent Living Program is a voluntary program for older foster youth in care to assist them to transition successfully to adulthood.⁷⁵² The program is delivered by community organizations and federally recognized tribes with government funding. The program helps youth develop daily living skills, provides educational, career and employment support and offers some funding to assist with achieving goals.⁷⁵³

To be eligible for the program, the youth must be:

- age 15 or older but not yet 18;
- in an established dependency through the Department of Child, Youth and Family Services or a tribal child welfare agency; and
- in an out of home placement for at least 30 days after their 15th birthday.⁷⁵⁴

Statutory requirements with respect to permanency planning for children aged 16 years or older require that successful completion of a responsible living skills

751. Wash Rev Code § 74.13.540.

752. Washington, Department of Children, Youth and Families, “Independent Living Program” (last visited 5 May 2021) online: Washington State Government <www.dcyf.wa.gov/services/independent-living-skills/independent-living-program> [Independent Living Program].

753. *Ibid.*

754. *Ibid.*

program or Independent Living Program, if appropriate, be identified as a key outcome in the child's plan.⁷⁵⁵ The responsible living skills program identified is an equivalent program for youth have not had success in other, traditional, state placements, and may be living on the streets or other insecure locations.⁷⁵⁶

While the Independent Living Program is not available for youth 18 years or older, youth in the program can transition to an equivalent government-funded program, known as the Transition to Independent Living Program, for assistance until the youth turns 23. This program is outlined below.

Of note, there is a statutory obligation on the Department of Child, Youth and Family Services to coordinate with and involve other relevant departments in the transition planning for youth who will be aging out of foster care.⁷⁵⁷ This may include the involvement of representatives from the department of social and health services division of behavioural health and recovery, the disability services administration, the economic services administration and the juvenile justice and rehabilitation administration.⁷⁵⁸

Transitional Living Program

The Department of Children, Youth, and Families contracts with local agencies to deliver its post-care independent living program, known in Washington as the Transitional Living Program.⁷⁵⁹ The state has a statutory obligation to contract with private vendors to provide the program for youth "emancipated as part of their permanency plan."⁷⁶⁰ The Transitional Living Program is effectively a continuation of the Independent Living Program discussed above, which is provided to youth in foster care who are not yet 18 but are nevertheless preparing for adulthood and independence.

755. Wash Rev Code § 13.34.136(2)(a).

756. Washington, Department of Children, Youth and Families, "Responsible Living Skills Program" (last visited 5 May 2021) online: Washington State Government <www.dcyf.wa.gov/services/independent-living-skills/responsible-living-skills>.

757. Wash Rev Code § 74.13.341.

758. Wash Rev Code § 74.13.341.

759. Washington, Department of Children, Youth and Families, "Transitional Living Program" (last visited 5 May 2021) online: Washington State Government <www.dcyf.wa.gov/services/independent-living-skills/transitional-living-program>.

760. Wash Rev Code § 74.13.037.

The Transitional Living Program is available to youth who are aged 18 but not yet 23 years, and who were in foster care (or are currently in extended foster care) through the Department of Children, Youth and Families, or a tribal child welfare agency, for at least 30 days after the child's 15th birthday.⁷⁶¹

Washington state Department of Children, Youth and Families summarizes services delivered under the program to include:

- Casey Life Skills Assessment (CLSA) and plan
- Educational Support
- Housing Assistance
- Employment Assistance
- Helps youth establish stable and healthy connections
- Case management
- Funding (may be used to assist with self-sufficiency and/or obtaining TL goals).⁷⁶²

Independent Youth Housing Program

Pursuant to statutory obligations, Washington state provides the Independent Youth Housing Program for youth who have aged out of the foster care system through local contracted agencies.⁷⁶³ The program aims to ensure adequate access to housing and to help youth to become independent and self-sufficient. The program provides rental assistance and case management services to eligible youth. Youth who are in extended care are not eligible for this program.⁷⁶⁴

Youth must be aged 18 but not yet 23 and have been in foster care least 4 months at any time before turning 18, with income under a certain statutory threshold.⁷⁶⁵ Youth must contribute a portion of income towards accommodation costs and comply with an independent living plan.⁷⁶⁶

761. Washington, Department of Children, Youth and Families, "Transitional Living Program," *supra* note 759.

762. *Ibid.*

763. Wash Rev Code §§ 43.63A.305–.315; Independence for Washington State Foster Youth, "Independent Youth Housing Program" (last visited 5 May 2021), online: <independence.wa.gov/programs/independent-youth-housing-program/>.

764. "Independent Youth Housing Program," *supra* note 763

765. Wash Rev Code § 43.63A.307.

766. Wash Rev Code § 43.63A.309.

In addition to providing funding for housing, the program is designed to assist the youth, through development of an independence plan and provision of services, to achieve self-sufficiency.⁷⁶⁷ Services provided should assist with family reconciliation, safe and stable housing, social and emotional well-being, education and employment and community connection.⁷⁶⁸

Continuing access to the program is conditional upon youth compliance with their independence plan and program requirements and policies.⁷⁶⁹ Having said this, program guidelines indicate some flexibility in this regard, requiring case managers to regularly meet with youth and update their plans as needed, stating that “[i]f the participant is not following through with their plan, then they may need to redefine the goals or the steps needed to reach them.”⁷⁷⁰ Best practices identified in program guidelines also provide evidence that a softer, individualized approach to compliance will be taken. Best practices outlined identify that services provided should be participant centred, demonstrate competency in Positive Youth Development theory and practice and trauma informed care, incorporate harm reduction principles and be culturally relevant.⁷⁷¹

Education

Without undertaking a full survey of all legislated state educational supports, we note that Washington state has some statutory obligations with respect to the provision of individualized educational support programs for youth between the ages of 13 and 21 years old who are in or aging out of the foster care system.⁷⁷² The program, currently limited in its geographical scope, is set up through a public private partnership, with the stated aims of “improv[ing] the educational outcomes of students who are dependant by providing individualized education services and supporting dependent youths’ completion of educational milestones, remediation needs, and special education needs.”⁷⁷³ The statutory program requires that the services

767. Washington, Department of Commerce, *Guidelines for Youth Housing Development Program 2018–2019 (Draft)* (Olympia: Washington State Government, 2017) at 17, online (pdf): <www.commerce.wa.gov/wp-content/uploads/2015/11/hau-ohy-iyhpdraftguidelines-6-8-2017.pdf>.

768. *Ibid.*

769. *Ibid* at 18.

770. *Ibid* at 17.

771. *Ibid* at 19–20.

772. Wash Rev Code § 28A.300.592.

773 Wash Rev Code § 28A.300.592(4).

provided by the non-governmental organization responsible for the program should include:

- (a) Advocacy for foster youth to eliminate barriers to educational access and success;
- (b) Consultation with schools and the department of children, youth, and families case workers to develop educational plans for and with participating youth;
- (c) Monitoring education progress and providing interventions to improve attendance, behavior, and course performance of participating youth;
- (d) Facilitating age-specific developmental and logistical tasks to be accomplished for high school and postsecondary success;
- (e) Facilitating the participation of youth with school and local resources that may assist in educational access and success; and
- (f) Coordinating youth, caregivers, schools, and social workers to advocate to support youth progress in the educational system.⁷⁷⁴

We have not comprehensively surveyed all state government legislated or funded services and supports for youth aging out of the foster care system in Washington state. We note that there are also a number of supports, grants and funding opportunities to support care leavers in Washington state provided by charities, community organizations and educational institutions, which include scholarships offered by several universities.⁷⁷⁵

Extended care

Historically, throughout the United States, including in the state of Washington, youth were permitted to remain in foster care only until their 18th birthday, at which point they were considered adults and required to live independently.⁷⁷⁶ Similar to youth in other jurisdictions, youth in Washington who age out of the foster care system experience significantly poorer outcomes than their non-care peers.⁷⁷⁷

774. Wash Rev Code § 28A.300.592(6).

775. Foster Parent Alliance of Washington State provides a list of government and non-government programs available to foster children in Washington: Foster Parent Alliance of Washington State, “Opportunities for Older Foster Youth” (last visited 5 May 2021), online: <www.fpaws.org/youth-rights-in-foster-care/opportunities-for-older-youth-in-care/>.

776. WSIPP Report, *supra* note 681 at 3.

777. *Ibid*; Congressional Research Report, *supra* note 675 at 3.

However, as a result of the settlement of a class action in 2004,⁷⁷⁸ the state instituted a small extended care pilot program between 2006 and 2011 known as the Foster Care to 21 Program.⁷⁷⁹ This pilot program permitted a small cohort of youth who would otherwise have aged out of the foster system at age 18, to remain in foster care until the age of 21 while enrolled in postsecondary education. This pilot program was entirely state funded.⁷⁸⁰

In 2008 Congress passed the *Fostering Connections to Success and Adoptions Act*.⁷⁸¹ As outlined above, this federal legislation permits states to use funds from its federal foster program to enable youth who have turned 18 and are engaged in certain education or employment related activities, or medically exempt, to remain in extended foster care until the age of 19, 20 or 21, at the option of the individual states.⁷⁸² As a result, in 2012 Washington closed its pilot program and commenced offering extended foster care to *all* youth in the foster care system who were engaged in postsecondary education.⁷⁸³ Washington's extended foster care program was expanded over the next three years to permit extended foster care to youth involved in a broader array of activities, in line with the intent of the federal legislation.⁷⁸⁴ Reflecting the federal statute, state legislation currently provides:

§ 74.13.031

(11)(a) The department shall provide continued extended foster care services to nonminor dependents who are:

- (i) Enrolled in a secondary education program or a secondary education equivalency program;
- (ii) Enrolled and participating in a postsecondary academic or postsecondary vocational education program;
- (iii) Participating in a program or activity designed to promote employment or remove barriers to employment;
- (iv) Engaged in employment for eighty hours or more per month; or

778. *Braam v Washington*, 81 P.3d 851 (Wash 2003). For a summary of the case, see National Centre for Youth Law, "Braam v. State of Washington" (last visited 5 May 2021) online: <youth-law.org/case/braam-v-state-washington/>.

779. WSIPP Report, *supra* note 681 at 3.

780. *Ibid.*

781. *Fostering Connections to Success Act*, *supra* note 685.

782. *Title IV-E*, *supra* note 684, § 675 (8); Congressional Research Report, *supra* note 675 at 4.

783. WSIPP Report, *supra* note 681 at 4.

784. *Ibid.*

(v) Not able to engage in any of the activities described in (a)(i) through (iv) of this subsection due to a documented medical condition.⁷⁸⁵

As of 2018, youth eligible for extended foster care are entitled to re-enroll an unlimited number of times before turning 21, allowing a significant degree of flexibility to take account of changing life circumstances.⁷⁸⁶

As of June 2019, 562 youth were enrolled in extended foster care, or 80% of eligible youth.⁷⁸⁷ These numbers indicate a high uptake rate for the program. Of those youth in extended care, 17% were residing in foster care settings and the remainder were living in supervised independent living settings.⁷⁸⁸ A recent study, discussed below, has shown significant improvement in outcomes for foster youth in Washington state as a result of the state's implementation of extended foster care.⁷⁸⁹

Evaluation of United States Transition Support and Extended Care Programs

There are a number of studies in the United States reporting outcomes for youth who have transitioned from foster care to independence with the assistance of the federally funded state-based independent living programs and extended foster care programs discussed above. We have set out some of these studies' findings below.

A 2016 United States' focused meta-analysis,⁷⁹⁰ which examined the impact of post-transition programmes on outcomes for youth leaving care, made the following observations and findings:

785. Wash Rev Code § 74.13.031(11)(a).

786. Wash Rev Code § 74.13.031(11)(e); See also Wash Rev Code § 74.13.336 for further details of eligibility requirements; WSIPP Report, *supra* note 681 at 4.

787. WSIPP Report, *supra* note 681 at 12.

788. *Ibid* at 4.

789. M Miller, D Bales & M Hirsch, *Extended Foster Care in Washington State: Final Report* (Olympia: Washington State Institute for Public Policy, 2020) online (pdf): <www.wsipp.wa.gov/Report-File/1721/Wsipp_Extended-Foster-Carein-Washington-State-Final-Report_Report.pdf> [Extended Foster Care].

790. Jessica A Heerde et al, "The Impact of Transitional Programmes on Post-Transition Outcomes for Youth Leaving Out-of-Home Care: A Meta-Analysis" (2018) 26:1 Health and Social Care in the Community e15, online: <onlinelibrary.wiley.com/doi/epdf/10.1111/hsc.12348> [Meta-Analysis]. Note, this meta-analysis was not limited to United States-based studies but included some international jurisdictions; however, the authors noted a dearth of relevant studies outside the

Hence, although the findings of this review are limited in their ability to infer programme participation is specifically associated with improved post-transition outcomes, the findings draw attention to the potential benefit of transitional programme participation particularly for housing, education and employment outcomes. Further research into the impact of transitional programmes on these outcomes, as well as substance use and mental health outcomes is needed, and would benefit from research designs that prospectively examine how transitional programme participation impacts these outcomes.

... Although the size of this effect was small, it is noteworthy given that, to the authors' knowledge, this is the first meta-analysis examining the impact of post-transition programmes. ... Results reported in longitudinal studies ... generally showed initial progress towards improved outcomes for those youth who participated in transitional programmes. However, these effects were not always sustained over time, suggesting the need for continued post-transition support.⁷⁹¹

A recent study has shown significant improvement in outcomes for foster youth in Washington state as a result of the state's implementation of extended foster care.⁷⁹² Comparing foster youth who received extended foster care ("EFC") and foster youth who age out of the foster care system without receiving EFT, the study found that youth who received EFC:

- were significantly less likely to be diagnosed with a substance use disorder;
- used emergency health service less frequently;
- were significantly more likely to be employed and to earn more money;
- were less likely to experience homelessness;
- had less involvement with the criminal justice system and the child welfare system; and
- attained higher levels of secondary and post-secondary education.⁷⁹³

An eight-year study in California tracked outcomes for foster youth, addressing whether extending foster care past the age of 18 influenced youths' outcomes during

United States and as such, findings were largely depicted the situation with respect to care leavers in the United States.

791. *Ibid* at 27.

792. Extended Foster Care, *supra* note 789.

793. *Ibid* at 14–20.

their transition to independence.⁷⁹⁴ In summary, the most recent reporting on the study in 2020 observed:

First, years after leaving foster care, most of these young adults look back on their experience of care. Over two-thirds report feeling lucky that they were placed in foster care. They were twice as likely as not to report being satisfied with their overall experience in care, and they were generally satisfied with the life skills training and services they received that were intended to support their transition to adulthood. These generally positive perceptions of foster care are remarkably consistent with the sentiments CalYOUTH participants expressed during all of the earlier rounds of interviews. The consistency with which these youth express their appreciation for the help they received during their time in foster care should provide encouragement for the investments that government, the philanthropic sector, and the caring individuals who work in and with the public child welfare system have made in supporting the transition to adulthood for youth in foster care. Second, it is important to acknowledge that despite the help they received from the foster care system, on average these young people are faring poorly compared to their age peers across many measures of wellbeing, including their educational attainment, employment, economic self-sufficiency, physical and mental health, and involvement with the criminal justice system. These relatively poor average outcomes should not be simply attributed to their time in foster care, since they generally came into care from marginalized communities where many young people struggle during the transition to adulthood and they had often suffered long histories of trauma prior to entering care. Nevertheless, our findings indicate that more work can and should be done to improve supports for them during the transition to adulthood.⁷⁹⁵

794. Mark E Courtney et al, *Findings from the California Youth Transitions to Adulthood Study (CalYOUTH): Conditions of Youth at Age 23* (Chicago: Chapin Hall at the University of Chicago, 2020) online (pdf): <www.chapinhall.org/wp-content/uploads/CY_YT_RE1020.pdf>.

795. *Ibid* at 156.

Chapter 8. Discussion

Introduction

The interprovincial and international comparative research outlined in the sections above, although not claiming to be comprehensive, aims to provide a relatively detailed picture of the statutorily mandated supports and services available to care leavers in each of the jurisdictions surveyed. Our review of British Columbia and Ontario also includes a summary of existing non-legislated care leaver support programs to provide readers with a fuller sense of what is available in these Canadian jurisdictions. The purpose of this review is to obtain a broader perspective on where British Columbia stands on the international stage regarding its provision of care leaver supports and programs, with a view to assisting law and policy makers, civil society and interested groups in their consideration of potential reform measures going forward.

There is a significant level of detail set out in earlier chapters of this study paper, and it is often the details of the law and policies and how they are implemented in practice that are key to gaining a proper understanding of the situation of care leavers in the unique context of each jurisdiction. Further, political, historical, constitutional and cultural differences between the jurisdictions surveyed, although chosen for comparison due to broad similarities with Canada, make direct comparisons somewhat difficult. However, acknowledging these limitations, we have attempted in this discussion to make some broad comparisons, identify some trends, and highlight some innovative practices.

It is apparent from this comparative research that there exists significant variability between jurisdictions in the level of support, the types of support, the period of support, and the legal authority for the support provided to youth transitioning from government care to independence. Given the focus of this study paper is on the programs and assistance provided to care leavers pursuant to the jurisdictions' legislative schemes, we note the significant variability in this regard. Jurisdictions can be said to broadly range from:

- highly developed and prescriptive legislative schemes, to which England, the United States, Washington, and perhaps New Zealand could arguably belong; to
- legislative schemes that set out a broad framework of government obligations to care leavers, but which are highly discretionary in terms of their implementation and enforceability, as reflected in many Australian jurisdictions; to

- jurisdictions in which few care leaver supports are enacted into law, but left largely to the policy domain, such as British Columbia, and arguably Ontario, to varying degrees.

While a review of funding levels for statutory and policy-based schemes was outside the scope of this study paper, it can be said that a consistent theme that emerged from commentary by experts, researchers, government agencies and care leaver advocacy organizations was that inadequate funding was one of the key barriers to the success of even the most applauded or innovative programs.

In-Care Transition Planning

There is general consensus that early transition planning, which commences well before a youth leaves care, is key to improving a youth's experience of their transition to independence. Reflecting this, with the exception of British Columbia, Ontario and Tasmania, all jurisdictions surveyed had some form of additional specific requirement embedded in legislation mandating comprehensive transition planning for all youth aging out of care.

Legislation in these jurisdictions typically requires transition planning to cover the major life areas of housing, education or training, basic living skills, general well-being and sometimes mental health or counselling. For Indigenous youth, maintenance of cultural connections was also commonly identified as a transition planning requirement. It should be noted that British Columbia's, Ontario's and Tasmania's legislative schemes do require a general care plan for all children in care but leave the more specific transition planning requirements to policy. For clarity, British Columbia does have a reasonably detailed legislated transition planning requirement, that includes elements of cultural planning and connection with community for Indigenous youth, but this is limited in its application to the narrower cohort of youth on Youth Agreements.

Most jurisdictions, whether by legislation or policy, oblige case workers to commence transition planning well before the age of majority or the date at which the youth will age into the community, often at around 15 or 16 years. Participation by the youth in planning for their transition to the community is often recognized in policy as key to the success of the transition.

Our review has found variable implementation of in-care transition planning obligations. Common observations, at least with respect to transition planning in Australia, Canada and England, are that systems are heavily weighted to crisis care or highly oriented toward achieving basic housing and income security, at the expense of well-rounded transition planning that takes account of the full spectrum of a youth's

needs and goals. Staffing and resources are typically identified here as the major barrier to successful implementation of transition planning requirements, even in a system such as Australia's, where a clear, consistent national framework has resulted in well-defined and comprehensive legislative requirements.

Post-Care Transition Services

Internationally, the last two decades has seen a significant shift in law and policy towards legislating and thereby formalizing government services available to youth aging into the community. From the United States' *Foster Care Independence Act of 1999* and England's *Children (Leaving Care) Act 2000*, which radically changed the legislative landscape in those jurisdictions, to the development of Australia's National Framework in 2009, and most recently New Zealand's overhaul of its child protection framework, there has been substantial movement across jurisdictions. British Columbia's adoption of its Agreements with Young Adults program in 1999 was a step in this direction.

Legislative mandate for post-care programs

All jurisdictions (except Tasmania, which remains policy driven) have legislation that mandates the provision of some form of support to all youth as they age out of care. British Columbia, however, is unique in that it only offers support to a narrow cohort of care leavers. The age at which youth age out of care is commonly 18 years, or older if the jurisdiction offers extended care.

All jurisdictions, except for British Columbia, have a universally available dedicated program designed to provide comprehensive advice and support services to all care leavers, usually in the domains of health, housing, education, employment and well-being. Examples include Victoria's Better Futures program, Ontario's Continued Care and Support Program and New Zealand's Transition Support Service. In British Columbia, limited support, which is largely transactional in nature, is made available only for the narrow cohort of care leavers who are eligible for the province's Agreement with Young Adults program.

These post-care services may be provided by the relevant government department or more commonly by a community organization funded wholly or partly by government. For example, British Columbia's Agreements with Young Adults program is administered by the Ministry of Children and Family Development, whereas in Australia, New Zealand and the United States, services are largely separated from child welfare departments and provided by community-based organizations with government funding. For care leavers who have had negative or mixed experiences with child welfare departments, there are advantages to this separation.

Post-Care Planning, Reach & Accessibility

Of the jurisdictions surveyed, it appears to be universal for legislation or policy to require development of a plan for the youth's independence as part of the jurisdiction's post-care program, with variation on what must be covered by these plans. The broader programs appear to have a more formalized focus on well-being, relationship and connection, with others, including British Columbia's Agreements with Young Adults program, remaining highly funding-focused and more transactional in nature.

The reach and accessibility of post-care programs is variable, with key limiting factors being age, care pathway and activities that must be engaged in to maintain access, such as education or training. Given participants will be young adults, all post-care programs are voluntary. It can be safely said that, outside of British Columbia, there is an international trend toward broadening coverage of post-care programs to ensure the more vulnerable cohorts of youth are receiving necessary supports. Recognition by policy makers of the impacts of trauma, including intergenerational trauma, and the complexity of care needs for many care leavers, has resulted in movement in Ontario and the international jurisdictions surveyed toward a universal support approach.

However, there remains great variability in this regard. For example, access to British Columbia's main post-care support program remains conditional upon the youth undertaking a minimum number of hours in an eligible education, training, rehabilitation or life skills program, thereby excluding British Columbia's most vulnerable youth. On the other end of the spectrum, Ontario's equivalent support program provides universal access, with policy specifically stating that a youth's continued access to the Continued Care and Support program is not contingent on whether the youth meets their stated plan goals. Other jurisdictions have a hybrid model. For example, Victorian youth can universally access post-care support programs, however funding is allocated through a needs-based, application process for specific items. Similarly, in Washington, access to the state's Transitional Living Program is widely accessible, however funding for housing is subject to the youth's compliance with their independence plan and other program policies. Of note, however, best practice guidelines for Washington's Independent Youth Housing Program clearly demonstrates an approach to compliance that is trauma informed, youth centred, culturally relevant and takes account of harm reduction principles.

The age to which post-care support is made available to youth transitioning from care is also quite variable. When comparing the age cut-off for transition supports, caution must be used. The type, amount and intensity of supports is highly relevant

to any age comparison, with the devil being in the detail outlined in the chapters above. On the lower end, Ontario and Victoria provide their post-care programs until the youth turns 21, noting however, that Ontario's program is universally accessible and is tied to receipt of a monthly stipend. Washington's major transition programs extend until the youth turns 23. The majority of jurisdictions provide their primary post-care programs until the youth turns 25, including New Zealand, most Australian jurisdictions and England. In terms of age, British Columbia's Agreements with Young Adults program has a relatively late age cut-off at 27 years, although the program is limited to any period of 48 months within this time. However, in light of the Agreement with Young Adults education and training focus and its resulting limited accessibility, it may be more helpful to compare age restrictions for this program with education and training related funding opportunities in other jurisdictions, many of which extend beyond their general post-care programs. For example, there is no age cut-off in England for education related funding where the youth commenced the educational program prior to age 25 in accordance with their pathway plan. Similarly, in New Zealand, financial assistance for education or training related purposes can be provided beyond the age of 25 if the youth has not yet completed their studies. There has certainly been an overall upward trend in the age cut-off for youth transition supports.

Relationship-Based transition workers

In terms of post-care support program content, the concept of a relationship-based transition worker who provides one-on-one practical, planning and personal support for the whole period of the youth's transition has now been incorporated into the post-care programs in several jurisdictions. Commencing with the statutory requirement in England to appoint care leavers with a Personal Adviser, New Zealand has adopted a similar approach with its Transition Workers, and potentially Victoria with its Key Workers. While most jurisdictions' post-care services provide some form of case management service utilizing social workers or other dedicated support workers, these models stand out for their relationship-based approach to support. The role of these workers is not just practical but also emotional, reflecting the importance, as supported by the literature, of youth having someone they can identify as being committed to their well-being in the longer term. As outlined in the section on England's Personal Advisers in chapter 4 above, while studies have shown the system to have benefits, it is also detrimentally impacted by resourcing issues.

Of note, Key Workers in Victoria start working with youth while they are in care and remain as their key support person until the age of 21, recognizing the importance of maintaining a level of continuity and security through the already difficult transition process.

Maintaining contact

In addition to this innovative practice of relationship-based support workers, the statutory duties in England and New Zealand to maintain contact with care leavers for a period of time post-care are worth highlighting. These statutory requirements require the local authority or transition workers to be proactive in their efforts to engage with and keep in touch with care leavers. In New Zealand, transition workers have a statutory obligation to keep in touch until the youth turns 21. In England, the statutory requirement is staggered, with an obligation to keep in touch until the youth turns 21, or at the youth's request, until the youth turns 25.

Extended Care

The research outlined above indicates a clear trend toward extending care to youth beyond the statutory age of majority, with some form of extended care now in place in the vast majority of United States jurisdictions, at least three Australian states, New Zealand and England. Extending the care of the state as a means of scaffolding youth as they develop the skills, abilities and maturity necessary to move toward being functioning, independent adults has the support of significant numbers of researchers, academics, advocacy groups and other commentators.

Campaigns such as Australia's Home Stretch campaign, which has utilized socio-economic cost-benefit analyses of extending care, appear to have had an impact on the uptake of extended care programs in Australia. One Australian analysis projected that extending care to youth in Victoria would result in improved outcomes for youth leaving care with respect to their mental and physical health, employment, education, civic connectedness and intergenerational disadvantage, with similar conclusions made for other Australian jurisdictions. Similar socio-economic analyses have been done in other jurisdictions, including British Columbia and Washington state, reporting comparable beneficial outcomes for youth, as well as benefits for government budgets longer term.

Extended care programs are not all alike, with variations in length of care, accessibility and statutory authority. All extended care programs are voluntary, given participants have reached the age of majority. The United States was an early adopter of extended care, with federal legislation passed in 2008 which permitted states to use federal funds to provide extended care. Consequently, Washington and the majority of other jurisdictions in the United States have legislated extended care programs. New Zealand's extended care program also has statutory authority, as does England's Staying Put program. Australian jurisdictions have preferred to incorporate extended care through policy, rather than legislation.

Extending care for three years appears to be the common approach (usually 18 years to the youth's 21st birthday). Some extended care programs impose stringent conditions, others aim to be accessible to a broader cohort. For example, South Australia's and Tasmania's programs are only available to youth living in home-based foster or kinship care. England's Staying Put program is aimed at youth who require an extended period with their former foster caregiver due to delayed maturity, vulnerability or to complete their education or training. The United States model requires youth in extended care to meet certain education, training or employment related requirements, or be exempt for medical reasons. Victoria's new extended care program is quite broad in that it is not restricted to those opting to remain living in home-based foster or kinship care but is also available to those in residential care, or those in home-based care who choose to transition to independent living, through an accommodation allowance. As this sample indicates, there is significant diversity in the design of extended care programs internationally.

Indigenous Care Leavers

This study paper has by no measure attempted a comprehensive review or study of issues relevant to Indigenous care leavers. Scope and expertise have not permitted this. Nor was this work informed by consultation with Indigenous communities. What has emerged from our limited review is that a number of other jurisdictions are grappling with similar issues with respect to the overrepresentation of Indigenous children in care, and with the disadvantage faced by Indigenous youth aging out of care even as compared to their non-Indigenous in-care peers. British Columbia statistics indicate Indigenous children in care made up 65% of total children in care as at March 2019,⁷⁹⁶ where less than 10% of children and youth in British Columbia identifies as Indigenous.⁷⁹⁷ Similarly in Australia, in June 2018, 39% of children in out-of-home care across Australia were Indigenous, where only 6% of the total child population in Australia are Indigenous.⁷⁹⁸ While only 25% of children in New Zealand identify as Māori, as of June 2019, 69% of children in care were Māori.⁷⁹⁹

These jurisdictions have been criticized as having a lack of adequately funded, Indigenous-specific care leaver policies and programs to support the transition of Indigenous youth from care to independence, within a framework that emphasizes the

796. British Columbia, Ministry of Children and Family Development, "Children and Youth in Care (CYIC)," *supra* note 205.

797. RCY Report 2020, *supra* note 9 at 15.

798. Aboriginal Health Performance Framework, *supra* note 541.

799. New Zealand, Office of the Children's Commissioner, *Statistical Snapshot*, *supra* note 638.

importance of cultural identity and cultural connection. British Columbian statistics are indicative, where only 33% of Indigenous youths accessed the province's primary support mechanism for youth aging into the community (Agreement with Young Adults) upon turning 19, compared with a 46% non-Indigenous access rate in the 2019/2020 fiscal year.⁸⁰⁰ These issues, along with recommendations for reform, have recently been addressed in British Columbia by advocates and experts alike, including in Grand Chief Ed John's report *Indigenous Resilience, Connectedness and Re-unification—From Root Causes to Root Solutions: A Report on Indigenous Child Welfare in British Columbia*⁸⁰¹ and by the Representative for Children and Youth, most recently in *A Parent's Duty: Government's Obligation to Youth Transitioning into Adulthood*.⁸⁰²

We have outlined some recent legislative measures taken in the jurisdictions studied in this paper aimed at improving outcomes and experiences for Indigenous care leavers, which may help to inform British Columbian policy going forward; however, more comprehensive research is needed in this area. Legislative measures identified tend to focus on requirements with respect to consultation with and involvement of Indigenous organizations and communities in care planning for youth transitioning from care and improving the cultural competency of care leaver policies and programs.

Evaluation and Data Collection

One final point to be made arising from our research is that it has been consistently observed that data in relation to care leavers and care leaver outcomes is seriously lacking in all jurisdictions, with the exception of the United States. Correlated to this lack of data on care leaver outcomes is a lack of comprehensive evaluative studies of the impact of care leaving programs and policies on these outcomes to guide future design of policy and practice.

Given this, we think it appropriate to highlight the innovative United States federal model, which has incorporated program evaluation and data collection into statutory obligations tied to foster care funding. The *Foster Care Independence Act* requires states to collect and report specific data to the Secretary of Health and Human Services on foster youth outcomes for the purpose of enabling evaluation of each state's independent living programs. An analysis of this data, pursuant to requirements set out in the Act, must be reported to Congress. Further, the Secretary is

800. RCY Report 2020, *supra* note 9 at 35.

801. Indigenous Resilience, *supra* note 216.

802. RCY Report 2020, *supra* note 9.

charged with conducting evaluations of particularly innovative state-based independent living programs that have potential to be nationally significant. Funding is reserved specifically for implementing the performance measurement aspects of this funding program.

Chapter 9. Conclusion

The research reveals that most of the services provided by British Columbia's child protection regime terminate at the age of majority. At the same time, many young adults are delaying full independence, or achieving independence more gradually than in years past. Many continue to receive financial and emotional support from their families well into their 20s. Youth aging into the community, in addition to their often difficult or traumatic childhoods, do not have this option and thus find themselves at a significant disadvantage at a key transitional time in their lives. Care experienced youth in British Columbia, and globally, are more likely to experience significantly worse social, educational, employment and health outcomes than their non-care peers.

Some programs and supports exist in British Columbia to assist limited numbers of care leavers in their transition to adulthood, with a focus on education and training. Most programs are policy-based and discretionary. The Agreements with Young Adults program, British Columbia's primary care leaver support program, is the only statutorily mandated program supporting youth aging into the community. The program is limited to those young adults who are undertaking education or job training or engaging in rehabilitation or life skills programs, with up to a maximum of \$15,000 per year to help cover the cost of housing, basic living needs, childcare, tuition and health care. A very narrow cohort of care leavers are eligible each year for the Agreements with Young Adults program and roughly only one-third of those eligible continue into the program, with Indigenous care leavers significantly under-represented in the program. Following a recent finding that the Agreements with Young Adults program provides inadequate and insufficient supports to youth aging into the community, the Representative for Children and Youth, and others, have made significant recommendations for the program's overhaul.

Over time, other policies and programs have been created in British Columbia to meet some of the more pressing needs of youth aging into the community. Most of these programs have developed in an ad hoc manner, and in response to observed needs. However, there is no unifying policy or framework within which these various programs currently operate. With several programs operating independently of each other with little to no coordination between them, care leavers are falling through the gaps.

Our comparative research in this study paper aims to provide a relatively detailed picture of the statutorily mandated supports and services available to care leavers in certain other jurisdictions, to enable a broader perspective on where British Columbia lies on the international stage with respect to its post-majority "parental"

responsibilities. Our research has revealed significant variability between jurisdictions in the level of support, the types of support, the period of support, and the legal authority for the support provided to youth transitioning from care to independence. While there is great variability between jurisdictions, the research above does clearly highlight that British Columbia has fallen behind. As the only jurisdiction surveyed that does *not* provide some form of post-care guidance and support to *all* care leavers, in line with modern understandings of trauma, harm reduction and the impacts of cultural disconnection, British Columbia stands out. Further, with the clear international trend toward extending care based on evidence of both the lifelong benefits to youth, as well as state economic benefits, British Columbia is also lagging.

Taking account of the unique contexts of the jurisdictions surveyed and resulting comparative challenges, it is clear that British Columbia could learn a significant amount from the generally more cohesive, developed, innovative, and statutory-based, albeit diverse, approaches to supporting care leavers in these jurisdictions.

APPENDIX A

Biographies of Project-Committee Members

Corinne P. Feenie (committee co-chair) graduated from the Faculty of Law at the University of British Columbia in 1988 and was called to the British Columbia Bar in 1989.

Corinne was Provincial Crown Counsel at 222 Main Street in Vancouver for a year before joining the law firm of Gove, McLachlan, Brown, acting for the Director of Child, Family and Community Services while maintaining a small criminal-defence practice.

In March of 1989, she became a partner in the law firm of Stewart Feenie (now Feenie MacDonald) where she continued to practice child protection as counsel for the Director in Vancouver for both the Ministry of Children and Family Development (MCFD) and Vancouver Aboriginal Child and Family Services Society (VACFSS) and for MCFD in North Vancouver, Squamish, and Pemberton, until her recent retirement from that practice.

Corinne is an active member of the Association of Family and Conciliation Courts (AFCC), an international interdisciplinary family-law association, and has been a regular speaker and Chair at Continuing Legal Education courses on child protection over the past 20 years. Corinne has also provided educational seminars for social workers, Provincial Court judges, and child protection lawyers in BC and Ontario.

Katrina Harry (committee co-chair) is a member of the Esketemc First Nation and the Manager, Indigenous Services, PLC, for Legal Services Society of British Columbia. Katrina opened the first Parents Legal Centre (PLC) for LSS, and now oversees the 10 locations across the province. The PLCs focus on collaborative practice and wrap-around support to clients engaged in the child-welfare system. In the last 10 years of practice Katrina focused mainly on child protection, which included representing clients at court at collaborative processes, writing or reviewing legal publications, presenting at or co-chairing conferences, and presenting as a guest lecturer at various law-related organizations. In her free time, she enjoys travel, food, music, and her wonderful family.

Holly Anderson is a Métis social worker whose roots lie in Manitoba. Holding a bachelor's of social work degree and a master's degree in Social Justice, she is the current Guardianship Manager with Vancouver Aboriginal Child and Family Services. Her focus is on practising from a restorative place with families, emphasizing an inclusive approach that is grounded in the belief that relationships with family, culture, and community are healing and in the best interest of the child. In her free time, Holly enjoys participating in her community and celebrating her family.

Fiona M. Beveridge is the Principal of Fiona Beveridge Family Law and has a specific focus on children, child protection, collaborative family law, and mediation. She is a certified Parenting Coordinator and is on the BC Hear the Child Society's roster of trained neutral child interviewers, providing reports that allow the views of the children to be considered in mediation or court cases.

Fiona has extensive experience in the area of child protection. Fiona was director's counsel for six years in the areas of Squamish and Pemberton. For the last eight years, Fiona has acted as counsel for parents and mostly for children in the care of the Ministry of Children and Family Development for British Columbia.

Fiona is the editor of the child protection chapters for Continuing Legal Education publications, including the *Family Law Sourcebook*, *Annotated Family Practice*, and the *British Columbia Family Practice Manual*, as well as the professional legal training course materials. Fiona has presented at CLE conferences about Acting as Counsel for Children in Child Protection Proceedings. Fiona was previously an Executive Member of the Canadian Bar Association's Children's Law Section and is now on the board of the BC Parenting Coordinators Roster Society.

Fiona is a practising member of the Law Society of British Columbia and holds a bachelor of laws degree from the University of Alberta and a master of laws degree from the University of Cambridge. She was called to the British Columbia bar in 2003 after working as a Judicial Law Clerk at the Supreme Court of British Columbia.

Jennifer A. Davenport was appointed as per diem Judicial Justice of the Provincial Court of British Columbia on April 1, 2020. Jennifer spent 20 years working for the Public Guardian and Trustee, retiring in 2019. She was appointed Deputy Public Guardian and Trustee on January 3, 2012 after serving as the Acting Director of Legal Services. Prior to that, Jennifer spent 12 years as legal counsel to the Public Guardian and Trustee both in the Child and Youth Services and Services to Adults divisions. As Deputy Public Guardian and Trustee, Jennifer was a member of the Executive Committee, the Director of Legal Services and Chief Legal Counsel to the Public Guardian and Trustee. Before joining the Public Guardian and Trustee, Jennifer

practiced law in Vancouver and Surrey, in the areas of small business and wills and estates law.

Jennifer completed her Bachelor of Commerce degree at the University of British Columbia and obtained a Juris Doctor degree from the University of Victoria. She has been on many volunteer boards and is the past Chair of the Canadian Bar Association Wills and Trusts subsection (Vancouver).

Meena Dhillon is a practising lawyer called to the bar of British Columbia in 2009 and a practising registered social worker. A sole practitioner, Meena has a practice focused on completing views of the child reports for family-law matters, handling wills-and-estates matters, plaintiff's personal injury, and conducting material damage arbitrations. Meena is a qualified roster member with the BC Hear the Child Society, qualified family-law mediation, and qualified arbitrator with the ADR Institute of British Columbia. Meena has worked in the area of child protection with the Ministry of Children and Family Development for 18 years. Meena's child protection work experience is focused on emergency child protection with the After Hours Program at MCFD. In addition, Meena is a sessional professor at the University of the Fraser Valley School of Social Work and Human Service, where she teaches course work on child-welfare intersections with the law and child-welfare policy. Meena is passionate about ensuring children's voices are heard in matters involving them and access to justice. Meena is a regular volunteer with Access Pro Bono, a board member with the BC Trial Lawyers Association, a founding member of the South Asian Legal Clinic of British Columbia, and an executive board member with the Indian Summer Festival Society.

Robert Evans (committee member July 2019–present) is a partner with RWE Family Law and a lawyer who has appeared before all levels of court in British Columbia.

Robert practises law because he is committed to the principles of fundamental justice and due process. He crafts solutions to legal problems by listening carefully to his clients, without jumping to conclusions. Focusing on family law, Robert aims to make a positive difference in the community by representing clients from all cultural and economic backgrounds. Robert believes that legal representation means striving to advance the legal position of his clients with sound legal advice and with strong advocacy on their behalf.

In 2011 Robert was called to the bar in British Columbia and in the State of New York, 3rd appellate division.

Meghan Felbel (committee member May 2019–October 2020) is the Director, Legislation and Legal Support with the Ministry of Children and Family Development for British Columbia, with responsibility for the development and implementation of statutes under MCFD's purview, including the *Child, Family and Community Service Act*, *Adoption Act*, *Social Workers Act*, and child care legislation, among others.

Meghan has a master's degree in public administration from the University of Victoria, and has led legislative and regulatory development projects for the BC government since 2012.

Carly Hyman is currently the Chief Investigator of the Reviews and Investigations team with the Representative for Children and Youth for British Columbia. She has a bachelor of arts degree from the University of Manitoba, a law degree from the University of Victoria, and was called to the bar in British Columbia in 2002. From 2004 to 2008, Carly worked as an investigator with the Office of the Ombudsperson where she investigated hundreds of complaints concerning a variety of government programs. From 2008 to 2013, Carly worked as the first manager of the Ombudsperson's systemic investigations team where she managed confidential, complex, and high-profile investigations. In 2014, Carly went to work at the Ministry of Health as the Manager of Seniors Policy. Carly then worked as the Director of Policy, Legislation and Issues Management with the Court Services Branch of the Ministry of Attorney General where she was responsible for major projects aimed at reforming the court system and improving citizens' experiences.

Serena Kullar (committee member May 2019–May 2020) is currently employed by Vancouver Coastal Health as a Program Coordinator for two pregnancy outreach programs, Youth Pregnancy and Parenting Program (YPPP) and Healthiest Babies Possible. Prior to this, she worked as the Perinatal Substance Use Social Worker at BC Women's Hospital, Fir Square. Serena Kullar also has over 10 years of child protection experience through her work at the Ministry of Children and Family Development as well as Vancouver Aboriginal Child and Family Services Society. The views and opinions expressed through the BCLI Child Protection Project Committee are my own and do not necessarily represent those of my employer.

Claudia Liddle (committee member August 2019–present) is the Family Service Child Protection Practice Manager with Vancouver Aboriginal Child and Family Services Society. Her responsibilities include general and complex case consultation, clinical and restorative supervision of both Team Leaders and Child Protection Social Workers in addition to liaising with the Ministry of Children and Family Development and other Delegated Aboriginal Agencies within the Province. Claudia has a bachelor's of arts in Psychology with a minor in Family Studies from the University of British Columbia where she was awarded a member of the Golden Key

International Honors Society. She has gained more than 17 years of experience working with children and families across various contexts with a strong emphasis on supporting Indigenous communities. She currently sits on two committees in partnership with the Ministry of Children and Family Development and Vancouver Coastal Health and has also been an invited presenter for both her Agency's 2019 conference and the Child Welfare League of America's annual conference on topics around Restorative Child Welfare and Restorative Supervision.

Penny Lloyd (committee member October 2020–present) is the Director, Legislation and Legal Support with the Ministry of Children and Family Development for British Columbia, with responsibility for legislative development for all statutes under MCFD's purview, including the *Child, Family and Community Service Act*, *Adoption Act*, *Child Care BC Act*, *Child Care Subsidy Act*, *Social Workers Act*, and *Community Services Interim Authorities Act*.

Penny has a master's degree in public administration from the University of Victoria and has over a decade of leading legislative, regulatory, and policy projects for the provincial government. Penny most recently served as Deputy Director for the Wildlife and Habitat Branch, leading legislative changes to support reconciliation with Indigenous peoples and making statutory decisions under the *Wildlife Act*. Experienced in working closely with Indigenous Nations and communities, Penny is passionate about legislative and policy change.

Crystal Reeves (committee member July 2019–present) has devoted her scholarship and legal practice to advancing the interests of Indigenous peoples in Canada and internationally. She joined Mandell Pinder LLP in 2010 and focuses her litigation and advocacy on Aboriginal title and rights and regulatory matters for Indigenous clients. She has appeared at all levels of court in British Columbia as well as the Federal Court and Federal Court of Appeal. Most recently, Crystal was co-counsel representing Upper Nicola Band on the Trans Mountain Pipeline Expansion Project at the Federal Court of Appeal. She also appears in provincial court on criminal, child protection, and family matters for Aboriginal clients, including on the Bella Bella and Bella Coola circuit courts. Crystal has also been involved in research projects involving the application of Indigenous laws in child protection matters, marine-use planning, and governance. She is also an Adjunct Professor in the Indigenous Community Planning stream at the School of Community and Regional Planning at the University of British Columbia.

Brandi Stocks is in-house legal counsel to the Public Guardian and Trustee of British Columbia (PGT), in Child and Youth Services. In that capacity, Brandi helps to protect the legal and property interests of youth in the province, advising the PGT when acting in her role as property guardian of minors in provincial care under the

authority of the *Child, Family and Community Service Act*. Brandi initially gained experience in child protection while practising in the Vancouver office of a large international law firm, where her litigation practice included family law. Brandi enjoys being active in the legal community, including speaking and writing for the Continuing Legal Education Society of British Columbia. Brandi has a law degree from the University of British Columbia.

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