Community Legal Centres NSW

22 March 2013

The Hon. Pru Goward MP
Minister for Family and Community Services
Minister for Women

Via email: cpreforms@facs.nsw.gov.au

Dear Minister,

Response to Discussion Paper: Child Protection: Legislative Reform, Legislative Proposals

We thank you for the opportunity to comment on the **'Discussion Paper: Child Protection: Legislative Reform, Legislative Proposals'**, ('the Discussion Paper'). This submission is made by Community Legal Centres NSW (CLCNSW) and its Aboriginal Advisory Group (the AAG). CLCNSW's response to the 'Discussion Paper' is informed through communication with staff working in CLCs and Aboriginal legal access programs, and in consultation with the AAG. We are aware that a number of our member CLCs will also be making separate submissions, focusing on the particular client groups of their centre.

CLCNSW and the AAG have not answered all questions in the Discussion Paper. The absence of specific information or details should not be construed as either support or opposition to the proposals in the Discussion Paper. The submission is limited due to the consultative approach used to develop the views expressed in the submission.

Community Legal Centres NSW
Community Legal Centres NSW Inc. (CLCNSW) is the peak body representing the network of Community Legal Centres (CLCs) throughout NSW. It has 40 members, including generalist and specialist CLCs.

Aboriginal Advisory Group (AAG)
The Aboriginal Advisory Group is a committee constituted under the CLCNSW Rules and Objects and is comprised of Aboriginal workers in community legal centres. It meets at least four times a year and provides advice to CLCNSW on matters affecting Aboriginal people and their access to justice.

Community Legal Centres provide a variety of free legal services to disadvantaged clients and communities across the State including legal advice, casework, community legal education, law reform activities and referrals. Some of our member CLCs have a focus on providing legal services to Aboriginal peoples in NSW, including specialist centres, such as Wirringa Baiya Aboriginal Women's Legal Centre and Thiyama-li Family Violence Service, and through the Aboriginal Legal Access Program.

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Aboriginal Legal Access Program (ALAP)
ALAP is a state-wide program in NSW aiming to ensure better access by Aboriginal people to CLC services, increase the numbers of Aboriginal people receiving CLC services, improve and enhance the capacity of CLCs to provide effective and culturally appropriate services to Aboriginal people, and increase awareness among Aboriginal people of their legal rights and the legal services available to them. Specialist staff are employed to provide the ALAP, including a Community Development Worker at the CLCNSW State Office, and ALAP staff in 5 CLCs.

Submission
CLCNSW and the AAG welcome reform of the *Children And Young Persons (Care and Protection) Act 1998 (the Care Act)*', in so far as that reform promotes better outcomes for Aboriginal children. CLCNSW respectfully submits that the 'Discussion Paper' lacks clarity on a number of important issues that relate specifically to Aboriginal children.

Areas of particular concern include:
- Timeframes
- Adoption
- Accountability for 'deaths in care'
- The implementation of Section 13 (culturally appropriate care provisions)
- Power in-balances in the ADR processes
- A lack of services and support for parents
- CLCNSW requests that any plan to pass a draft bill through parliament be delayed to ensure sufficient time for community and stakeholder comment.

Background
Aboriginal and Torres Strait Islander children are dramatically over-represented in child-protection and out of home services in NSW.

In 2013, Aboriginal people represent only 5% of the overall NSW population, yet over 83% of young people in Out Of Home Care are Aboriginal. Put simply, five out of every six children in care are Aboriginal. All being equal, this statistic is sixteen times worse than it should be. No other population group in NSW has a higher proportion of young people in care. In fact, more Aboriginal children are living in OOHC today than during the Stolen Generation period.[1] As of March 2008, there was four times the number of Aboriginal children in OOHC than there was Aboriginal children living in foster homes, institutions, or missions in 1969, during the stolen generations.[2]

The UN Convention on the Rights of the Child (CROC)
As a signatory to the UN Convention on the Rights of the Child (CROC), the government and society have a responsibility to always promote the best interests of the child. Child protection policy must uphold a child's right to preserve their identity,[3] to live with their parents,[4] to family reunification[5] and to protection from abuse and neglect.[6] These rights

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[1] http://www.creativespirits.info/aboriginalculture/politics/a-guide-to-australias-stolen-generations
[2] According to the Special Commission of Inquiry into the Department of Community Services
[3] Article 8 UN CROC
[4] Article 9 UN CROC
[5] Article 10 UN CROC

apply to all children, Aboriginal and non-Aboriginal.

The United Nations Declaration on the Rights of Indigenous Peoples
Australia has ratified the *United Nations Declaration on the Rights of Indigenous Peoples.* It is critical that the Declaration is implemented into domestic law and policy on child protection.[7]

Responses to the proposals set out in the Discussion Paper

PROPOSAL 1:
Introduce stand-alone parenting capacity orders to require parents to attend a parenting capacity-building or education course

Question 1 (a):
Do you think parenting capacity orders would be an effective mechanism to address escalating risk in both an early intervention and child protection context? Are there other mechanisms that might be equally or more effective?

In the AAG's experience, it is common practice for a family's first contact with the Department of Family and Community Services (FACS, or 'the Department') to be when FACS files an application against them in the Children's Court. It is understood that the filing of an application is to be a measure of last resort.

It would be a positive development for parents to receive communication of the potential of FACS to intervene before any court action, including capacity orders.

Question 1 (b):
What factors do you think the Court should consider before making a parenting capacity order?

The Court should consider the child's situation in a holistic way.

The following factors should be considered:
- The History of the child/ren, including previous relevant risks and involvement in the Care and Protection system
- The views of the child/ren
- Minimal disruptions to the child/ren's connections to positive supports
- The views of the parents
- The reason why a parenting order may be needed
- The intended outcome of the parenting order- ideally focusing on parents addressing the behaviours that pose risks to the child
- The underlying reasons for real or perceived poor parenting capacity that can be addressed through support services and treatment

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[6] Article 19 UN CROC

[7] Australian Human Rights Commission, 'The Community Guide to the UN Declaration on the Rights of Indigenous Peoples', p.56

- The available services, taking into account the family's access to transport, financial situation and other potential obstacles (e.g. if some of the expected changes are too costly for parents, they won't work).
- Safety concerns of either parent and the support needed
- Where there are 2 parents involved, the possibility of 2 separate parenting capacity orders is recommended. This is particularly relevant if there is domestic violence present, or if one parent is motivated and the other is not.

Question 1 (c):
What should be the consequences for failing to comply with a parenting capacity order?

There should be no blanket rule regarding non-compliance. The consequences should depend on the severity of the non-compliance and ultimately, the degree of risk or negative effect, if any, that the non-compliance poses to the child/ren. Where possible, non-compliance should be addressed with the parent as early as possible, with a view to achieving compliance: for example, discussing the reasons for non-compliance and providing the opportunity to make reasonable modifications to a parenting capacity order. In some cases non-compliance may be due to factors totally outside of the parents' control – for example, a specified course or service being unavailable.

PROPOSAL 2:

Strengthen the PRC Scheme by:
(a) introducing a new modified PRC for use in early intervention programs to support disengaged parents
(b) extending the duration of a PRC from six to twelve months to enable a parents to attend intensive parenting courses or therapeutic treatments and demonstrate abstinence from substance misuse so children can stay at home with them safely
(c) introducing PRCs for parents with an unborn child at risk to help improve their parenting capacity in preparation for the birth of their child
(d) requiring FACS (CS) to attempt to use PRCs with parents prior to commencing care proceedings in appropriate matters

Question 2 (a):
Do you think there is a place for PRCs in early intervention programs?

No Comment

Question 2 (b):
If so, what should the consequences of a breach of a PRC in an early intervention context be?

No Comment

Question 2 (c):
Do you agree that PRCs will be improved by extending timeframes, broadening their scope to include unborn children and mandating their use prior to commencing care proceedings in appropriate matters?

We agree with this. As the Court is currently not obliged to consider requests from parents for the Department to engage with a pre-natal family, the introduction of a PRC

at this stage will oblige all parties to engage early. CLCNSW and the AAG's view is that this is likely to reduce the use of 'birth alerts' and the removal of new-born babies.

Question 2 (d):
Are there any other ways that PRCs may be improved to help parents keep their children out of OOHC?

No Comment

PROPOSAL 3:
Consider the suitability of FGC for care matters to better engage families to resolve child protection concerns.

Question 3 (a):
Should there be an obligation upon Community Services to refer care matters to a FGC prior to commencing care proceedings and, if so, what should be the nature of this obligation?

Generally, Family Group Conferencing (FGC) should be preferred to Court intervention. FGC involves family members and promotes individual accountability.[8] The right to self-determination is fundamental in Australian society. FGC, if used appropriately, is a way of ensuring that Aboriginal people are able to make decisions about their own lives.[9]

Based on the experiences of the Aboriginal Advisory Group, the major problem with FGC is that too many families do not receive legal advice prior to entering into agreements with FACS. Families are entering into agreements with FACS without an understanding of the legal implications. Subsequently, families may end up agreeing to requests made by FACS, which they cannot comply with. Non-compliance is often a trigger for a removal and formal commencement of Care and Protection Proceedings.

This is a matter of fairness. Pursuant to Articles 10, 11, 19, 28 and 32 of the UN Declaration on the Rights of Indigenous Peoples, individuals and families have a basic right of free, prior and informed consent. Aboriginal people must be legally informed prior to and during the FGC process.[10] Individuals must not be pressured into taking part in FGC.[11]

CLCNSW and the AAG respectfully submits that Community Legal Centres, Legal Aid and the Aboriginal Legal Service must be sufficiently funded to provide independent advice and/or assistance to parents about FGCs.

Question 3 (b):
Should the Court be able to refer parties to FGC in addition to or in place of a dispute resolution conference?

Yes, especially where there is agreement between all parties on the majority of matters.

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[8] Leone Huntsman, 'Literature Review- Family group conferencing in a child welfare context', www.community.nsw.au

[9] UN Declaration on the Rights of Indigenous Peoples, article 3

[10] UN Declaration on the Rights of Indigenous Peoples (articles 10,11,19,28 and 32)

[11] Ibid.

However, it is essential for upholding the right to free, prior and informed consent,[12] that families involved in FGC receive, as a minimum, legal advice or legal assistance (even if it is only legal advice regarding proposed agreements between the two parties).

PROPOSAL 4:
Incorporate sanctions for breaches of prohibition orders that include:
- **fines**
- **community services orders**
- **compulsory attendance at parenting capacity programs, counselling or drug and alcohol rehabilitation**

Question 4:
What measures should be introduced to enforce prohibition orders under the Care Act?

Some forms of sanctions are supported providing they are measurable to the breach. Breach proceedings must comply with the rules of evidence, as is required by all criminal proceedings. Defendants must be given the opportunity to prepare a response, as having their side of the story properly understood and considered is an essential component of procedural fairness in these circumstances.

Many services such as parenting capacity programs, counselling or drug and alcohol rehabilitation programs are unavailable in certain areas, particularly in regional and remote locations. Waiting lists are often too long, unfairly placing parents and children at further disadvantage by prolonging the process of family reunification. We respectfully submit that there needs to be more services and funding for families in regional and remote locations

We do not support the imposition of monetary penalties on families that are already in financial hardship, particularly where children will or may suffer as a result.

PROPOSAL 5:
Introduce alternative sentencing options (other than fines) to child abuse and neglect offences such as community service orders and educative and therapeutic services or rehabilitation

Question 5:
Do you agree that there should be alternatives to fines for the child abuse and neglect offences under the Care Act and, if so, what type of orders would be appropriate?

Yes, we agree there should be alternatives to fines under the Care Act. Fines disproportionately impact on families that are socially and economically disadvantaged.[13] This leads to further financial pressures and often an accrual of unpaid fines.[14] Already vulnerable families are put under further pressure. This has the potential to adversely affect the children in these families. Such practices are often not in the 'best

[12] Ibid 9.

[13] Law and Justice Foundation, 2009, 'Fine but not fair: Fines and disadvantage'

[14] Ibid.

interests of the child' and may cause Government agencies to breach articles in CROC[15] (article 3, 4).

Parents/ caregivers should be dealt with through education, therapy and/or rehabilitation services that identify and respond to neglectful and/or abusive behavior. This approach assists families rather than imposing further disadvantage. Community service orders can be useful in terms of a statement that certain behavior is not acceptable. However, time impositions need to be realistic and not interfere with parenting responsibilities. We have an obligation to protect children by working with Aboriginal families and communities.[16]

PROPOSAL 6:
Achieve greater permanency for children and young people in OOHC by:

(a) incorporating permanency into the objects of the Care Act including the preferred hierarchy of permanency being:
1. Family preservation/restoration
2. Long-term guardianship to relative or kin
3. Adoption
4. Parental responsibility to the Minister

Question 6:
Are there other measures for achieving greater permanency in the Care Act that should be considered?

CLCNSW and the AAG support the following as the legislative hierarchy for the permanent placement of Aboriginal children.

1. Family Preservation/ Restoration- to Parents/ Care Giver
2. Family/ Relative or Kinship placement
3. An order to the Minister should be the very last resort, where no other order will ensure the safety, welfare and wellbeing of a child.

CLCNSW and the AAG are respectfully not convinced that such emphasis on early decisions about restoration and permanent placements is warranted.

Adoption is not supported as an option for the Children's Court jurisdiction to formalise as an order. Adoptions are a specialised area of the law, beyond the capacity of the Children's Court at the placement stage of proceedings.

The placement principles set out in section 13 of the *Care Act* directly deal with Aboriginal children. CLCNSW's consultation with care workers and the AAG highlighted that the Court too often uses section 9 principles to override the principles in section 13.[17] As such, Section 13 is ignored and becomes irrelevant. This is a reason why the placement of Aboriginal children often doesn't work.

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[15] The United Nations Convention on the Rights of the Child
[16] *The UN Declaration on the Rights of Indigenous Peoples* (articles 21 and 22)
[17] Children and Young Persons (Care and Protection) Act 1998

(b) requiring that the Court can only make an order for parental responsibility to the Minister if adoption or long-term guardianship is not possible

CLCNSW strongly opposes adoption as an outcome for Aboriginal children. It is well known that adoption is generally not culturally appropriate for Aboriginal children.[18] Between 2000 and 2010, across Australia, 18 Aboriginal children were adopted, 10 of those were adopted by close family members, all of the children remained within Aboriginal communities.[19]

Orders providing parental responsibility to the Minister should never be a permanent option that cannot be reviewed – i.e. if parents or kin placements become a viable option, parents or kin should be able to request a review of the order. Parental Responsibility orders to the minister can always be reviewed by section 90 applications.

(c) requiring permanency plans not involving restoration to include the pursuit of guardianship/adoption or reasons why they should not be pursued

The purpose/ need for guardianship orders is unclear. It is requested that the Department provide additional information as to the differences between guardianship orders and an actual order for Parental Responsibility to a relative and/or Kin.

PROPOSAL 7:
Legislate restoration timeframes – within six months for children less than two years and within twelve months for children older than two years

Question 7:
Do you agree with the restoration timeframes proposed?

The proposal to include timeframes within legislation is not supported. Legislating timeframes suggests that either:
a) A Parent can be rehabilitated in a set time period, or
b) It infers that parents are forever beyond rehabilitation.

This ignores the individual circumstances of each case/ family. Legislating timeframes is likely to increase the number of Aboriginal children in foster care, and function as a driver for another 'Stolen Generation'. We therefore strongly oppose legislating timeframes.

Further, we respectfully submit that specialised Magistrates within the Children's Court should retain the discretionary power to decide either for or against restoration, based on all the evidence before the court, and regardless of the timeframe.

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[18] http://www.dcsi.sa.gov.au/pub/tabId/199/itemId/540/moduleId/755/General-information-about-adoption.aspx

[19] Responding to Child Sexual Assault in Aboriginal Communities, Ombudsman NSW, December 2012

PROPOSAL 8:
Enhance supported care placements by introducing:
- **self-regulation of supported care placements by some supported carers to limit the intrusion of FACS (CS) in stable relative and kinship placements**
- **a two-year cap on the duration of supported care placements to achieve greater permanency and stability through permanent legal orders for these children and young people**

Question 8 (a):
Is 'self-regulation' of supported OOHC a positive step forward? Can you see any problems with this approach?

CLCNSW and the AAG respectfully question why low-intervention supported care placements cannot continue long term. If there are no safety concerns held for the child in the placement, we query why permanent legal orders are considered the best, or only viable alternative.

Question 8 (b):
What would be the key elements of the self-regulation model for supported OOHC?

CLCNSW and the AAG recommends that the key criteria of the self-regulated model for supported OOHC should be the ability to provide a safe and nurturing home environment, and the ability to integrate family relations within the context of kinship network.

PROPOSAL 9:
Provide permanent care to children and young people when adoption is not in their best interest by:
(a) introducing long-term guardianship orders
(b) repealing section 149 of the Care Act that provides for sole parental responsibility orders as this provision is underutilised

Question 9 (a):
Do you agree with the circumstances to which guardianship orders would apply?

CLCNSW and the AAG seek clarification on this proposal, as it is unclear what the benefits of a guardianship order are as opposed to other forms of parental responsibility.

CLCNSW and the AAG respectfully submit that guardianship orders should, when appropriate, be increased. Guardianship orders give the person who holds parental responsibility full control. We believe guardianship orders are currently underutilised because in most cases Community Services wants to retain control in relation to contact between the child and the birth parents. Often a close relative, such as a grandmother, will allow contact with the birth parents if she has full parental responsibility and no one can interfere with this.

Question 9 (b):
Are there other matters that should be included in the proposed features of a guardianship order for NSW?

CLCNSW and the AAG cannot comment, as it is unclear what the advantages of a guardianship order would be as opposed to parental responsibility.

We have concerns about the concept that an application for rescission of a guardianship order could only be made with the consent of the agency that last managed the placement.

It is respectfully submitted that the Department should extend the community consultation process to ensure that all proposed legislative changes are comprehensively informed by the expertise and experience of the community.

PROPOSAL 10:
Introduce concurrent planning to support timely permanent placements for children in OOHC by either:
a) streamlining the assessment of authorised carers and prospective adoptive parents
OR
b) creating a new category of "concurrent carer" who is authorised as both a long term carer and prospective adoptive parent

CLCNSW seeks clarification on this proposal.

CLCNSW and the AAG are strongly opposed to FACS developing foster care to become a pathway to adoption.

CLCNSW and the AAG respectfully submit that it is possible to support concurrent planning for long-term placements that are not adoptions. This is so that while restoration remains an option, children for whom restoration seems unlikely in the near future are ideally put in placements that could endure for the long-term if necessary. This would relieve them from being moved to different foster carers every few months. CLCNSW recognises that this already happens with the care plan and reviews of the care plan for out of home care, however we want to stress that this is often done poorly.

PROPOSAL 11:
That the Children's Court be conferred jurisdiction to make adoption orders where there are child protection concerns

Question 11:
Do you agree that there are benefits in conferring adoption jurisdiction to the Children's Court?

No Comment.

PROPOSAL 12:
Amend the Adoption Act to better recognise that authorised carers should not be required to undertake full assessment and authorisation as a prospective adoptive applicant

CLCNSW strongly disagrees with this proposal. Adoption laws should require full

assessment of the proposed carer, regardless of whether they are authorised as a foster carer. This reflects the seriousness and permanent nature of adoption.

PROPOSAL 13:
Enhance the permanency planning capacity of non-government services by merging the NSW Standards for Statutory OOHC and the NSW Adoption Standards

Question 13:
How can the NSW Standards for Statutory OOHC be enhanced to better promote permanency planning, from restoration to adoption, for children and young people in OOHC?

Unless it is the will of the child/ren, CLCNSW and the AAG do not support adoption as part of permanency planning for Aboriginal children in most cases.

Pursuant to Article 10 of the *UN Declaration on the Rights of Indigenous People*, all Aboriginal people have a right not to be forcibly removed from their country and people.[20]

PROPOSAL 14:
Amend the Adoption Act to improve the involvement of birth parents in planning for the adoption of their child including allowing non-consenting parents to be parties to an adoption plan and greater use of alternative dispute resolution in adoption proceedings so that parents are fully engaged in planning for matters such as contact arrangements

Question 14 (a):
What is the optimum mechanism for non-consenting parents to be parties to an adoption plan?

CLCNSW and the AAG respectfully submit that the birth parent should always be a party to the proceedings in any application for adoption, allowing the parents the right to engage actively in the process. This is a matter of 'free, prior and informed consent'[21], as well as procedural fairness. To be 'informed' means that parents are given all appropriate information regarding their child's adoption and are informed when that information changes or when there is new information.[22]

[20] *UN Declaration on the rights of Indigenous Peoples*, article 10
[21] *UN Declaration on the rights of Indigenous Peoples* (Articles 10,11,19,28,29,32)
[22] UN Human Rights Commission, 'The Community Guide to the UN Declaration on the Rights of Indigenous Peoples', p.25

Question 14 (b):
How could alternative dispute resolution best work to engage parents in adoption proceedings?

ADR is most effective in an informal, less adversarial environment, where parents are actively engaged. All family members must be properly informed as to their legal rights and responsibilities throughout the ADR process.

PROPOSAL 15:
Amend the Adoption Act to provide for additional grounds for dispensing with parental consent, including grounds where:
(a) the parent is unable to care for and protect the child e.g. the parent is incarcerated for an offence against the child, or the parent repeatedly refused or neglected to comply with parental duties and reasonable efforts have failed to correct these conditions;

(b) a parent cannot be located, despite having given an undertaking to keep FACS (CS) informed of their whereabouts;

(c) there is no realistic possibility that the parent will be able to resume full-time care of the child or young person because reasonable efforts have failed to correct the conditions leading to the child or young person's placement and it is in the best interest of the child or young person to make the decision now.

Question 15:
What should be the additional grounds for dispensing with parental consent?

The AAG does not support any amendments to the Adoption Act. The Adoption Act already has satisfactory provisions for dispensing with parental consent.

Additionally, we are concerned that the term "reasonable effort" is undefined: it could provide a wide scope for the discretionary application of "reasonable effort".

PROPOSAL 16:
Limit the parent's right to be advised of an adoption in the following circumstances:
(a) where the child is over 12 years of age and has given their sole consent, or
(b) the Children's Court has taken away parental responsibility from that parent in care proceedings and found that there is no realistic possibility of restoration

Question 16:
Do you support limiting the role of parents in adoption proceedings in this way?

CLCNSW and the AAG strongly oppose limiting the role of parents in adoption proceedings in the manner described above. A finding of 'no realistic possibility of restoration' is a judgement based on both a 'snapshot' and a limited historical understanding of a parent's behaviour. By default it denounces the said persons potential to ever be a suitable parent. Minimising a birth parent's rights to be informed about adoption proceedings may deny them the opportunity to present relevant information to the court, including their capacity to re-commence parenting.

PROPOSAL 17:
Where there is no possibility of restoration, contact arrangements are to be made through case planning

Question 17:
Do you support contact arrangements being made through case work where there is no possibility of restoration?

No comment.

PROPOSAL 18:
Develop a common framework about contact arrangements between children and young people and their birth families to guide designated agencies when making contact decisions

Question 18:
What should be the key elements of a common framework for designated agencies in determining contact?

CLCNSW and the AAG respectfully disagree that agencies should determine contact. The role of agencies should be to ensure that compliance, evaluation and support structures are followed. If agencies are to make decisions about contact, then there should be a common framework to support those decisions. This would give all parties a consistent framework to follow, and is preferable to each agency following different policies and practices. It must be ensured that the actions of agencies do not undermine the court's power to make an order for contact.

PROPOSAL 19:
Improve the resolution of contact disputes by:
(a) requiring ADR be used to settle contact disputes
(b) where ADR is unsuccessful, contact disputes will be resolved in the Children's Court or the
ADT or the Family Court

Question 19 (a):
How should disputes about contact be resolved if they are not able to be resolved through ADR?

No comment

Question 19 (b):
If Model 1 is the preferred option and the Children's Court retains the power to make final orders about contact where there is no realistic possibility of restoration, should such orders be of a limited duration? For what time period?

No Comment

Question 19 (c):
If Model 2 is the preferred option and the Children's Court does not retain the power to make final orders about contact where there is no realistic possibility of restoration do

you agree that:

- where the minister or a designated agency has parental responsibility, the ADT be empowered to
review the contact decision and make contact orders and
- the Family Court is the best forum for making contact orders if a third party has parental responsibility?

No comment

PROPOSAL 20:
That the Children's Court has the power to enforce contact orders and arrangements

Question 20:
Should there be mechanisms for enforcement of contact agreements or orders and what should these be?

No comment

PROPOSAL 21:
Establish a comprehensive legislative framework for the use of ADR in the child protection sector dealing with a range of matters including definitions, role, obligations and protections of convenors, confidentiality of ADR processes, and the limitations on the admissibility of information or documents disclosed during ADR in any subsequent court proceedings

Question 21:
What key provisions do you think should be included in the legislative framework for ADR?

We support this proposal. The current framework used in the Family Court jurisdiction should be adopted in the Children's Court Jurisdiction.

PROPOSAL 22:
Clarify and consolidate in the legislation the provisions relating to the regulation of special medical treatment for children and young people

We support this proposal.

Question 22 (b):
In relation to the administering of psychotropic medication to children in OOHC:
- who should give consent and in what circumstances?

Where a qualified specialist prescribes psychotropic medication to a child in OOHC, it should be for the carer to consent.

- should there be a requirement for a treatment plan or behaviour management plan when the medication is being prescribed? If so, should such plans be required for all

medical conditions or only for controlling behaviour?

It should be a requirement for all medical conditions. It is important to take a holistic approach to a child's medical requirements.

- What kinds of alternative safeguards might be implemented in lieu of a legislative requirement for plans?

No comment.

PROPOSAL 23:
Minimise the improper use of social media in a child protection context by strengthening provisions in the Care Act to prevent the unlawful publication of names and images of children and young people on social media sites and to prevent the publication of offensive or derogatory material about FACS (CS) workers which are intended to harass.

Question 23 (b):
Should it be an offence to publish offensive comments designed to harass child protection workers on social media sites?

CLCNSW and the AAG supports this proposal providing:

- Any limits designed to protect FACS workers are balanced with a person's right to freedom of speech.
- It does not create jurisdiction for the Children's Court.
- In the circumstances where less punitive measures fail to address and stop harassing behaviour towards caseworkers, then criminal matters should be reported to the police.

PROPOSAL 24:
Simplify the current scheme of parental responsibility orders by:
(a) streamlining parental responsibility orders that may be made by the Court to make it easier to identify who holds which aspect of parental responsibility for a child or young person
(b) introducing a 'self-executing' order whereby parental responsibility is with one person for a period of time and then passes to another at the end of the period

Question 24:
In what other ways do you think that parental responsibility orders can be improved?

No comment.

PROPOSAL 25:
Allow Supervision Orders to be extended for a further twelve months where the original order has expired and no report has been filed for the Court's consideration

Question 25:

Should the maximum timeframe for supervision orders be 24 months? Why or why not?

CLCNSW and the AAG respectfully submit that this should not happen, as this can punish the parents if FACS fails to deliver on their report

PROPOSAL 26:
That AbSec and CREATE should have access to personal information to permit fulfilment of their objectives

Question 26 (a):
Should AbSec and CREATE be prescribed to permit the release of otherwise personal information about carers and children to these bodies?

We agree with this in principle, however submit that more consultation on this is needed.

Question 26 (b):
Should peak carer advocacy groups have a similar ability to receive information as is being proposed to AbSec and CREATE?

We agree with this in principle, however submit that more consultation on this is needed.

PROPOSAL 27:
Private health professionals be able to share with other relevant agencies personal and health information about children, young people and families without client consent where this relates to the safety, welfare and wellbeing of a child or young person.

We agree with this in principle, however submit that more consultation on this is needed.

PROPOSAL 28:
That there be a legislative obligation to report on the deaths of children and young people in OOHC

Question 28:
Do you think FACS should be required by legislation to table an annual report to Parliament on their involvement with the families of children known to FACS (CS) who have died?

CLCNSW and the AAG strongly support this proposal. Every child's death known to the Department must be reported. Reporting of deaths must include:

- Deaths of children living with their natural parents who are known to the Department and;

- Deaths of children living in the care of the Minister, or someone else other than their natural parent.

This is a critical step in ensuring that the wellbeing of children known to FACS is represented via a system of accountability and responsibility. An annual report will allow for transparency and promote community awareness.

CLCNSW and the AAG further submits that there should be an obligation for the Government to report on any recommendations arising from Coronial inquests in relation to children who are/ or have been in OOHC, or have been the subject of a report to FaCS.

CLCNSW and the AAG strongly recommend that a thorough and independent review of the carer should be automatic following the death of a child in care.

Further information

For further information or to discuss this submission in more detail, please contact:

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