OPEN LETTER TO THE MINISTER FOR FAMILY AND COMMUNITY SERVICES

7th November 2013

The Hon Pru Goward MP
Minister for Family and Community Services, and Minister for Women
Level 34 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister Goward,

Child Protection Legislative Reform

We refer to the *Child Protection Legislative Reform Discussion Paper (Discussion Paper).* We, the undersigned legal, health, human rights and/or community organisations are concerned that the proposed reforms will disproportionately impact on vulnerable and disadvantaged people, especially Aboriginal and Torres Strait Islander families; victims of domestic and family violence; parents with disabilities; parents living in regional, rural and remote areas; and parents in prison, without giving careful consideration to the best interests of the child.

We believe these changes, in large part, take child protection public policy in a direction that is contrary to international best practice which demonstrates the benefits of serious commitment to early intervention, particularly where mothers have experienced domestic violence; or where disability, trauma, social exclusion and poverty are the causes of child protection concerns.

To increase the focus on adoption as a child protection strategy suggests we have not learnt from the past and are set to repeat mistakes that will necessitate another apology in the future.

We call on you to address the following concerns:

1. Greater investment in early intervention tailored for high needs groups

It is widely accepted that the key to reducing risk to children is resourcing early intervention services to provide parents and carers with the skills to keep their children safe. Greater investment in early intervention tailored for high needs groups is required. This should include holistic community based support such as social worker/support services, early intervention legal services and parent advocates/mentors.

Currently, there is no enforceable requirement that parents are offered and able to access support services before their children are removed from their care. In our experience, parents face a range of barriers to engaging with support services including, feelings of shame; judgmental attitudes; and fear that children will be removed.

The lack of access to services is exacerbated for parents in regional, rural and remote areas. We are aware that where parents and carers do seek support for a combination of complex problems, they are often turned away where services find it challenging to identify appropriate supports and treatment options.

We believe early intervention services should be offered in a timely manner and as a general rule, *before* removal is considered as an option. Services must be adequately resourced to ensure this happens. Accountability measures to ensure support services are available before removal should be included in the law.

2. Decisions should be made on a case-by-case basis

We are concerned by the proposed arbitrary timeframes for reaching a decision about feasibility of restoration before a permanency plan other than restoration is implemented: 6 months if the child is under 2 years and 12 months if the child is over 2 years.

Such rigid time frames will disproportionately impact on vulnerable parents, particularly mothers who have experienced trauma, including intergenerational trauma, post-natal depression or are in custody, often as a result of the trauma they have experienced. There is no acknowledgment that it takes time and support to recover from trauma, particularly intergenerational trauma.

The proposed rigid timeframes also do not take into consideration that every family is unique. Decision making must be flexible, respond to the individual circumstances, be culturally appropriate and in the best interests of the child.

Prioritising family preservation as the first and primary permanency response is important, as generally it is best for children to remain with their family. This is also consistent with human rights obligations.[1]

While we agree that on rare occasions adoption may be an appropriate permanency planning option for a child in need of care, this should not be listed in the hierarchy of permanency but continue to occur with the oversight of the Supreme Court.

3. Supporting victims of domestic and family violence to be protective parents

There needs to be more support offered to victims of domestic and family violence to be protective parents. A holistic approach to child protection, domestic violence and family law reforms is required.

In the context of domestic and family violence, it is often the case that rather than holding the perpetrator (often the father) to account, the mother is punished for not acting in a protective manner. If a mother is unable to leave a violent relationship within a suggested and often arbitrary timeframe, she will often be viewed as failing to act protectively. It is therefore the mother who is unfairly seen as responsible for the consequences of violence in a child protection context.[2]

This view fails to recognise that when a woman leaves a relationship, it is one of the most dangerous times of the relationship and requires planning and support.

It is essential to support rather than blame mothers escaping domestic and family violence as well as to recognise the onus on the perpetrator to take responsibility for their actions. Case workers also need to be supported through adequate training, including about trauma informed practice.

4. Free legal representation for parents during Alternative Dispute Resolution (ADR)

We recognise that the potential benefits of ADR include: informing parents of concerns earlier than

[1] *Convention on the Rights of the Child*, ratified by Australia on 17 December 1990, Articles 3 (1), 3(2), 3(3), 8, 9(2), 9(3), 12, 18(2) 19, 20(3), 26 29(1)(c), 30, 31. The state also has a responsibility to protect victims, namely children and their mothers, and bring perpetrators to account – Due diligence obligations outlined in: Human Rights Committee, *General Comment No. 31*, CCPR/C/74/CRP.4/Rev.6, para. 8; Committee on the Rights of the Child, *General Comment No. 5,* CRC/GC/2003/5, 27 November 2003, para. 1; Committee on Economic, Social and Cultural Rights, General Comment No. 14, E/C.12/2000/4 (2000), para. 33. Also see: *General Assembly Resolution - Guidelines for the Alternative Care of Children*, A/RES/64/142, 24 February 2010, Article 3, 6, 9, 11, 15, 24, 32, 33, 34, 35, 36, 39-41, 51

[2] L Radford and M Hester, *Mothering through domestic violence*, Jessica Kingsley Publishers, London, 2006 at 143.

at the time of removal of children and providing parents with an opportunity to respond to concerns. In addition, we accept that the ADR process can offer flexibility and provide culturally responsive procedures and outcomes. However, we believe it is vital to involve legal advisors as well as other support persons in the ADR process to properly address power imbalances between parents and child protection authorities. This is particularly important where family violence is present. There should be a legislative requirement that parents are offered free legal advice before participating in ADR.

5. Informed consent required before adoption

We emphasise that prioritising family preservation as the first and primary permanency response is important, as generally it is best for children to remain with their family. This is also consistent with human rights obligations.

On the rare occasions when adoption is appropriate, we do not support further limiting parent's rights to be advised of an adoption and we do not support the proposed additional grounds for dispensing with parental consent to adoption.

6. Ensure Aboriginal children are identified

In line with the Government commitment not to place Aboriginal children for adoption, it is important to ensure that Aboriginal children are identified as such. This is particularly important when one or both parents are not identified by the Government as being Aboriginal and/or Torres Strait Islander.

7. Importance of transparent and adequate consultations

While welcoming the opportunity to provide comment on the *Discussion Paper* through a public consultation process, we are disappointed that submissions have not been published and that not all stakeholders have been able to engage in ongoing consultations.

Given the significance of the changes proposed, all stakeholders should be invited to review and comment on an Exposure Draft Bill, with a commitment from Government to consider submissions.

Yours sincerely,

Signed:
This letter has been prepared by the Community Legal Centres NSW's Aboriginal and Torres Strait Islander Peoples' Rights Working Group and the Care and Protection Network.

John Southalan, President, Australian Lawyers for Human Rights

Julie Oberin, Chairperson, Australian Women Against Violence Alliance

Suzie van Opdorp, Manager, Blue Mountains Women's Health and Resource Centre

Alastair McEwin, Director, Community Legal Centres NSW

Tracy Howe, CEO, Domestic Violence NSW Inc

Vivi Germanos-Koutsounadis, Executive Director, Ethnic Child Care Family and Community Services Coop

Mariette R. Curcuruto, Principal Solicitor, Far West Community Legal Centre

Samantha Frittman, Managing Principal Solicitor, Hawkesbury Nepean Community Legal Centre

Jane Brock, Executive Officer, Immigrant Women's Speakout Association

Daniel Stubbs, Director, Inner City Legal Centre

Janene Cootes, Executive Officer, Intellectual Disability Rights Service

Anna Cody, Director, Kingsford Legal Centre

Betty Green, Manager, Liverpool Women's Health Centre

Michael Walton, Principal Solicitor, Marrickville Legal Centre

Nassim Arrage, Principal Solicitor, Mid North Coast Community Legal Centre

Ken Beilby, Principal Solicitor, Northern Rivers Community Legal Centre

Tracy Howe, Co-convenor of NSW Women's Alliance, NSW Women's Alliance

Glenda Stares, Solicitor, Shoalcoast Community Legal Centre

Maria Cosmidis, Executive Officer, South West Sydney Legal Centre

Dr Jane Wangmann, Lecturer, Faculty of Law, University of Technology, Sydney

Patrick O'Callaghan, Principal Solicitor, Western NSW Community Legal Centre

Kat Armstrong, Director, Women in Prison Advocacy Network (WIPAN)

Heidi Guldbaek, National Law Reform Co-ordinator, Women's Legal Services Australia

Janet Loughman, Principal Solicitor, Women's Legal Services NSW

Emily Jones, Managing Director, Youth Action