

## **Brief: Children & Young People (Care and Protection) Amendment Bill 2018**

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### **OVERVIEW**

Community Legal Centres NSW has major concerns about proposed reforms to the *Children and Young Persons (Care and Protection) Act 1998 (Care Act)*. The changes will have a disproportionate impact on the most vulnerable families in NSW and are being rushed unnecessarily.

We urge the parliament to act responsibly and refer this legislation to inquiry so that the practical consequences of proposed reforms on children and families with complex needs can be fully investigated and understood.

### **COMMUNITY LEGAL CENTRES NSW**

Community Legal Centres NSW is the peak body for 37 community legal centres in NSW. Over the past 40 years, community legal centres have been a cornerstone of access to justice for people experiencing social and economic disadvantage in NSW.

Most community legal centres provide legal support to families on a wide range of child protection matters including ROSH reports, care and protection orders and out-of-home care. Our child protection services are client-centred, focused on early support and embedded within key 'at risk' communities. We work collaboratively with government and non-government agencies to help parents, children, grandparents, carers and guardians navigate the system, to access early support services, solve problems quickly and prevent issues escalating down the track.

Currently across NSW only 12 community legal centres are funded as care partners by the Department of Family and Community Services (FACS). This is completely insufficient to meet legal need.

### **KEY RECOMMENDATIONS**

1. The *Children & Young Persons (Care and Protection) Amendment Bill 2018* (the Bill) should be referred to the Legislative Council Standing Committee on Social Issues, or other appropriate body, for a thorough inquiry into the practical consequences of proposed amendments, particularly for children and families with complex and specialist needs.
2. The proposals to place a time limit on restoration, amend the Adoption Act and change s90 of the *Care Act* should be abandoned.
3. The proposal requiring FACS to engage families in Alternative Dispute Resolution (ADR) before seeking care and protection orders should include legislatively guaranteed access to free, independent, accessible legal advice for people and families.

4. The Bill should be amended to include a positive obligation on FACS to support families prior to removal and following any court order for restoration.
5. The Government should complement legislative reforms with increased funding for legal assistance and other community service providers engaged in child protection work so that people and families engaged with the child protection system have access to early, independent legal advice at all stages of the process. This should include an additional \$10.34 million per year to embed care and protection teams consisting of solicitors and community support workers in community legal centres across NSW.

## KEY CONCERNS WITH THE PROPOSED LEGISLATION

### 1. Two-year maximum time-limit for restoration

Community Legal Centres NSW opposes the introduction of an arbitrary time limit for families to work towards restoration. The proposal restricts the court to considering whether children can be restored to their families within a maximum period of two years. This effectively limits the court's discretion to grant flexible care and protection orders on a case-by-case basis. We are particularly concerned that the proposal fails to impose corresponding obligations on FACS to provide intensive, wholistic support to families to achieve restoration within the proposed time frame.

Many families face systemic barriers to achieving restoration within two years, including a chronic and well-documented lack of public housing and accessible support and rehabilitation services. Families in regional, rural and remote areas face particular challenges accessing appropriate and timely services in this context. Rather than setting families up to fail by imposing arbitrary time limits, the Government should introduce a scheme of comprehensive legislative supports that prevent removals in the first place or provide support towards restoration that is tailored to families' needs.

In our view, the proposal allowing FACS to request prioritised services for children identified at risk of significant harm is insufficient to address the need for support as it does not give rise to any positive obligation on the department to support families.

### 2. Guardianship orders by consent and changes to the *Adoption Act*

Community Legal Centres NSW opposes the introduction of guardianship orders by consent. The proposal would allow the court to make a guardianship order under section 38 with a parent's consent even where FACS has made no finding that a child is at risk of significant harm or should be subject to a care and protection order. The requirement that parents considering consenting to guardianship orders have access to free legal advice doesn't go far enough to ensure appropriate accountability once such orders are made.

We also oppose proposed changes to the *Adoption Act* that broaden the Supreme Court's power to dispense with a parental consent where an adoption order is sought by a child's current guardian. Together, these two proposals create a fast-tracked pathway to adoption without an adequate regulatory framework to provide oversight and protect the best interests of vulnerable children.

### **3. Additional barriers to seeking variation of care and protection orders**

Community Legal Centres NSW opposes any changes to section 90 of the *Care Act*, which would make it harder for parents to apply to vary or dismiss care and protection orders. According to FACS' report on the outcomes of its consultations on proposed reforms, there is little community support for changes to s90. The explanatory materials to the Bill give no clear rationale for the proposal requiring the court to consider the stability of a child's current placement when granting leave to a parent to make an application to change current orders.

In its current form, s90 already sets a high bar for parents seeking to change care and protection orders. Further, the section also enables the Court to dismiss unmeritorious applications where the applicant cannot demonstrate an arguable case. Rather than further limiting parents' access to the courts, the Government should ensure they have access to free, independent legal advice when seeking the court's leave to make an application under s90.

### **4. Inadequate provision for independent legal advice and representation**

Community Legal Centres NSW recommends guaranteed legal assistance for families engaged in ADR. We support the commitment to early intervention that underpins the proposal requiring FACS to engage families in ADR before seeking care and protection orders from the court. However, guaranteed free, independent, accessible legal advice is needed to address power imbalances between parents and FACS, to support parents to fully participate in a culturally safe process, and to ensure that placing a child in out of home care is considered as an intervention of last resort.

Families with complex needs (including people with cognitive disabilities and Aboriginal and Torres Strait Islander people) should also be guaranteed access to specialist non-legal advice support to help them engage with FACS. Community legal centres are perfectly placed to support families participating in ADR with FACS and, along with the Aboriginal Legal Service NSW/ACT, Family Violence Prevention Legal Services and Legal Aid NSW, should be adequately funded to provide these services.

### **5. Lack of meaningful consultation**

Community Legal Centres NSW is deeply concerned about the lack of consultation on these significant changes. While stakeholders, including Aboriginal organisations, were advised of the broad areas for amendment in the Discussion Paper released last year, they have not been given an opportunity to comment on the wording of the Bill. A number of the proposed changes in the Bill were opposed in the consultation following the Discussion Paper and some go beyond what was outlined in the Discussion Paper.

On 24 September 2018, over twenty community legal centres and the Aboriginal Legal Service NSW/ACT wrote to the Minister expressing our concerns about the lack of genuine, ongoing and transparent consultation on these reforms since the submission process closed in December 2017, particularly the lack of engagement with Aboriginal organisations.

On 11 October, the Minister wrote back saying that the outcomes of the process and the government's response would be released later in the year. There was no mention at all of the pending legislation, which was tabled on 23 October 2018.

Further, the proposed reforms largely ignore the 28 recommendations of the NSW Legislative Council General Purpose Standing Committee No 2 report: *Child Protection*, released in March 2017.

Aboriginal and Torres Strait Islander children represent about 38% of children in out of home care in NSW. Given the significance of the reforms and their likely disproportionate impact on Aboriginal and Torres Strait Islander children and families, it is critical there is genuine consultation with Aboriginal organisations and other stakeholders.

## MORE INFORMATION

For further advice from community legal centres regarding these reforms, via our Care & Protection Network, please contact:

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*NB: The analysis and recommendations in this briefing paper may be updated following further consultation and advice.*