

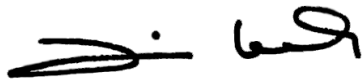
Submission to the TFM Access System Redesign Consultation

To whom it may concern,

Community Legal Centres NSW welcomes the opportunity to make this submission in response to the Their Futures Matter (TFM) Access System Redesign discussion paper. The redesign process presents a significant opportunity to reorient the child protection system in NSW towards providing early, holistic, preventive services and support to children and families and away from crisis-driven tertiary responses.

This submission focuses on the critical but overlooked role that community-based legal assistance services play in supporting families to keep children safe at home and prevent entries into statutory care. The submission does not answer every question posed in the discussion paper and instead focuses on the issues of greatest concern to our members

For further information, please contact our Senior Policy Officer, Emily Hamilton, via emily.hamilton@clcnsw.org.au or (02) 9212 7333.



Tim Leach
Executive Director
Community Legal Centres NSW

CONTENTS:

1. About Community Legal Centres NSW
2. General comments
3. Summary of recommendations
4. Guiding principles
5. Key themes
6. The system elements
7. System-wide enablers

1. ABOUT COMMUNITY LEGAL CENTRES NSW

Community Legal Centres NSW is the peak representative body for almost 40 community legal centres in NSW. Community legal centres are independent, non-government organisations that provide free legal services to people and communities facing economic hardship, at times when that help is needed most.

Community Legal Centres NSW represents the views of community legal centres to government and the broader community, advocates on key law reform and policy issues, and supports community legal centres to improve the efficiency and quality of services they deliver to the community, with the aim of increasing access to justice for people in NSW.

Community Legal Centres NSW is advised on child protection issues by our Care and Protection Network. Most community legal centres provide legal support to families on a wide range of child protection matters including early intervention advice and casework to help families understand the Department of Family and Community Services' (FACS) role and responsibilities, Risk of Significant Harm (ROSH) reports, guardianship orders, alternative dispute resolution, case planning processes and Family Group Conferencing (FGC), parent responsibility contracts, parent capacity orders, kinship care and contact orders and disputes.

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, access early support services, solve problems quickly and prevent issues escalating down the track.

Currently, only 12 community legal centres in NSW are funded as 'Care Partners' by FACS to deliver child protection legal services. This level of funding is completely insufficient to meet legal need. Indeed, in 2016, the overall quantum of funding allocated to the Care Partners program was reduced. At the same time, the scope of work Care Partners are expected to deliver was expanded. The program is subject to ongoing funding uncertainty, with current funding allocations only guaranteed until 30 June 2019.

2. GENERAL COMMENTS

Community Legal Centres NSW endorses the submissions made by our member centres: Intellectual Disability Rights Centre and Women's Legal Service NSW. We also acknowledge the significant over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in NSW. We strongly support the submissions made by the Aboriginal Child, Family and Community Care State Secretariat (AbSec) and the Aboriginal Legal Service NSW/ACT about the reforms needed to reverse this over-representation and to embed self-determination for Aboriginal and Torres Strait Islander children, families and communities in a redesigned child protection system in NSW.

3. SUMMARY OF RECOMMENDATIONS:

1. The guiding principles for the child protection system should align with well established principles set out in key international and domestic instruments, including the UN Convention on the Rights of the Child, the UN Declaration on the Rights of Indigenous People, the National Framework for Protecting Australia's Children (2009 – 2020), and FACS' Aboriginal Case Management Policy.
2. Guaranteed access to justice through timely, affordable and independent legal advice for families engaged with the child protection system should be a guiding principle for reform.
3. The principle of self-determination for Aboriginal and Torres Strait Islander people must be reflected in the guiding principles for the Access System Redesign project.
4. The government must acknowledge and address the systemic drivers of the over-representation of some groups within the child protection system, including persistent discriminatory beliefs and practices and entrenched, intergenerational financial hardship.
5. The government must acknowledge and address structural barriers to early support for children and families engaged with the child protection system, including through a significant investment of funding to address the chronic shortage of available and accessible services across the human services spectrum, particularly in regional, rural and remote areas.
6. The government should invest \$10.4 million to establish specialist child protection teams in legal assistance services across the state to deliver early legal advice and support, specialist non-legal casework and advocacy, and community education and outreach (including to FACS and NGOs) about the benefits of early legal advice for families engaged with the child protection system and to establish strong referral pathways and networks.
7. FACS, family support NGOs and other first-responder organisations should establish clear and consistent referral policies, which prioritise referrals for legal advice and support for families at the point of first contact with the child protection system, and which encourage 'warm referrals' to all support services.
8. All organisations, agencies and individuals (including families themselves) must be able to refer children and families into key early intervention and support services. Access to services must not be limited to referral from FACS.
9. The government should shift the balance of government funding for child protection from statutory intervention to early support, including directing all new funding for the child protection system to early support, prevention and preservation.
10. The government should invest in successful existing justice reinvestment projects, expand the model across the state, and support communities to develop justice reinvestment approaches to supporting the safety and wellbeing of children and families engaged with the child protection system in NSW.
11. The government should amend the *Children and Young Person's (Care and Protection) Act 1998* to introduce a requirement that all families engaged with the child protection system in NSW have access to affordable, independent legal advice and support throughout their engagement with the child protection system, from point of first contact to final orders.
12. The government should amend the *Children and Young Person's (Care and Protection) Act 1998* to require FACS to make 'active efforts' to provide support services to children and families engaged with the child protection system.
13. FACS should undertake audits of all Community Service Centres to support appropriate policy, practice and reform implementation and provide improved training for staff, including ongoing cultural competence and cultural safety programs.

4. GUIDING PRINCIPLES

Community Legal Centres NSW notes that significant work has been done at the international, national and state level to articulate principles to guide child protection practices and support children's safety and wellbeing. This includes, for example, the UN Conventions on the Rights of the Child (CROC), the National Framework for Protecting Australia's Children (2009-2020) and the NSW Department of Families and Community Services (FACS) Aboriginal Case Management Policy.

For example, the National Framework for Protecting Australia's Children 2009-2020 includes a set of guiding principles for keeping children safe. These principles enshrine the key rights expressed in CROC and prioritise children's rights to well-being, safety and participation in decisions affecting their lives. They acknowledge the fundamental rights and responsibilities of families to provide for the safety and wellbeing of children, with support from their communities and governments.

The National Framework also recognises the importance of promoting the wellbeing of Aboriginal and Torres Strait Islander children, young people and families. As discussed below, Community Legal Centres NSW believes that genuine self-determination is critical to promoting the wellbeing of Aboriginal and Torres Strait Islander children and their families.

Community Legal Centres NSW suggests that the guiding principles for the access system redesign be reformulated to align with the well-established principles already articulated in these and other key policies and international human rights instruments, including the NSW Human Services Outcomes Framework and the UN Declarations on the Rights of Indigenous Peoples and FACS Aboriginal Case Management Policy.

In addition, we believe that the child protection system in NSW must be underpinned by a commitment to access to justice for all families, and to the rights of Aboriginal and Torres Strait Islander people and communities to exercise self-determination in providing for the safety and wellbeing of their children and young people.

4.1 ACCESS TO JUSTICE

Access to justice through independent, affordable and timely legal assistance and support is crucial for all children and families who are engaged with FACS, regardless of which stage of the process they are at. The need for legal assistance for families already engaged with the statutory system is clear. However, families need support from their first engagement with FACS, whether statutory responses are ultimately triggered or not. At the point of first engagement with FACS, many people do not fully understand full extent of the child protection system, the legal process they may have to participate in, or the extreme consequences that might result if they choose to disengage.

Overwhelmingly, families who come into contact with the child protection system experience severe socio-economic disadvantage, systemic discrimination and social isolation and exclusion. Many parents whose children are removed were themselves removed from their own families as children and have personal experience of out of home care. Despite this, they may have a limited understanding of the legal process involved, few resources to secure private legal representation and no knowledge of where or how to access free legal advice and support.

In light of this significant power imbalance, it is critical that families engaging with the system have access to information and advice about how the system works, their rights and alternative

actions they can take to avoid FACS intervention, the importance of engaging constructively with FACS and other support services, the potential legal consequences of any actions they choose to take and, where needed, specialist advocacy support from a trusted and independent source.

Community Legal Centres NSW believes that the most effective way to ensure access to justice is to guarantee that every family engaged with the child protection system in NSW be granted a right to free, independent legal advice from point of first contact with FACS.

4.2 ABORIGINAL SELF-DETERMINATION

The principle related to culturally safe and accessible services does not adequately encompass Aboriginal and Torres Strait Islander peoples' right to self-determination. At the international level, the right to self-determination is clearly articulated and defined in the UN Declaration on the Rights of Indigenous People. At the national level, the *Bringing Them Home Report* clearly defined self-determination for Aboriginal and Torres Strait Islander people in Australia.

Since then, many Aboriginal community-controlled organisations like SNAICC and Absec have applied these definitions to the context of caring for and protecting children. In its submission on the Access System Redesign discussion paper, AbSec articulates self-determination as 'the collective right of Aboriginal peoples to determine, through their own governance program, the systems and structures for (among other things) the care and protection of their children.' It goes on to note that the *Bringing Them Home Report* 'positioned self-determination as a cornerstone of a contemporary child protection system that delivers for Aboriginal children and families, and guards against a repeat of damaging past policies and practices.'¹

Community Legal Centres NSW endorses AbSec's submission that the principle of self-determination for Aboriginal people must be reflected in the design principles for the Access System Redesign project. We also endorse AbSec's submissions about how to realise the principle of Aboriginal self-determination for the care, safety and wellbeing of their children in practice.

RECOMMENDATIONS

1. The guiding principles for the child protection system should align with well established principles set out in key international and domestic instruments, including the UN Convention on the Rights of the Child, the UN Declaration on the Rights of Indigenous People, the National Framework for Protecting Australia's Children (2009 – 2020), and FACS' Aboriginal Case Management Policy.
2. Guaranteed access to justice through timely, affordable and independent legal advice for families engaged with the child protection system should be a guiding principle for reform.
3. The principle of self-determination for Aboriginal and Torres Strait Islander people must be reflected in the guiding principles for the Access System Redesign project.

¹ Absec. Their Futures Matter: Access System Redesign submission. March 2019, pp. 6-7.

5. KEY THEMES

5.1 UNDERSTANDING THE DRIVERS OF VULNERABILITY

5.1.1 SYSTEMIC DISCRIMINATION AS DRIVER OF POOR OUTCOMES FOR FAMILIES

Systemic discrimination plays a significant role in the over-representation of particular groups with the statutory care and protection system, including Aboriginal and Torres Strait Islander people, people with an intellectual disability, people with a family history of involvement with the child protection system and people experiencing entrenched, intergenerational socio-economic disadvantage. It operates to limit access to early and appropriate supports and to target tertiary responses to those most vulnerable within the system.

For example, recognised factors that contribute to over-representation of Aboriginal and Torres Strait Islander children in out of home care in all Australian jurisdictions include:

- the ongoing impacts of historical child removal practices and other discriminatory policies (which include intergenerational trauma and entrenched socio-economic disadvantage)
- the potential for cultural bias in the application of risk assessment tools, racial profiling and caseworkers' lack of understanding and respect for Aboriginal cultural and family practices.²

Factors such as these have created a deep mistrust of government and mainstream service providers among many Aboriginal and Torres Strait Islander people and communities.

Similarly, widely held views about the incapacity of people with intellectual disability to safely parent their children contribute to the persistence of a 'remove first, ask questions later' approach to engaging with parents with intellectual disability in some FACS districts. As a result, parents with intellectual disabilities often fear being judged as incapable and expect a pessimistic response from services about their capabilities.³

This systemic discrimination can result in a pattern of negative perceptions of and interactions with FACS for parents and families engaged with the child protection system. These negative experiences limit people's willingness to engage with FACS and prevent them from hearing and acting on information and assessments about what they need to do keep their children safe at home.

It can also result in an unwillingness to engage with mainstream services and supports. The ultimate outcome of this cycle of discrimination and disengagement is the ongoing targeting of tertiary, crisis-driven responses to those most marginalised and disadvantaged within the community.

Any reform process must acknowledge and address persistent discriminatory beliefs and practices that influence the range of outcomes available to particular groups of people based on their race, culture, socio-economic status, disability or past history of engagement with the child

² Queensland Government Child Protection Commission of Inquiry Report, Chapter 7, pp. 169-70: http://www.childprotectioninquiry.qld.gov.au/_data/assets/pdf_file/0005/175397/Chapter-7.pdf.

³ Intellectual Disability Rights Service Submission to Their Futures Matter Access System Redesign Discussion Paper. March 2019.

protection system. It must also address the systemic drivers socio-economic drivers of disadvantage.

5.1.2 STRUCTURAL BARRIERS TO ACCESSING EARLY SUPPORT SERVICES

In addition to systemic discrimination, there are a number of structural barriers to service access for families engaged with the care and protection system, including early legal advice and support. These structural barriers prevent families from accessing the services they need, when they need them. They include:

- lack of available and accessible services, particularly in rural, regional and remote areas
- poor and inconsistent referral practices, including referral pathways which limit access to services to people referred by FACS

lack of awareness of and referrals for early legal support by FACS and non-government organisations (NGOs).

There is a critical lack of available and accessible services for families needing support to keep their children safe at home. This includes early family and parenting support services as well as the wider array of services families need to address safety issues, including drug and alcohol rehabilitation services, domestic and family violence services and refuges, specialist disability support services, and culturally safe, community-controlled services for Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities.

This lack of services is felt most acutely in rural, regional and remote areas. In some areas, services simply don't exist. In others, lack of services is expressed through waiting lists that are up to six months long for some service types. In rural, regional and remote areas, access to services is further limited by a lack of appropriate and affordable transport options, including public transport services, which effectively limits people's access to services in neighbouring areas

Community Legal Centres NSW is particularly concerned that this widespread lack of services will further disadvantage families already engaged with the statutory child protection system, who now have just 24 months to address safety concerns and have their children restored under recent amendments to the *Children and Young Persons (Care and Protection) Act 1998* (Care Act).

Other factors limiting access to services include that:

- many of the key early intervention services are only accessible via a referral from FACS.
- FACS is referring families already engaged in the statutory child protection system to early intervention services. This reduces the places available for families identified as in need of support but not yet formally engaged in the statutory system.
- constant changes to service offerings due to funding decisions make it difficult for practitioners to keep abreast of what services are available in a given area – a particular challenge for small organisations that deliver statewide services.

people are often given service information but left to self-refer, rather than supported to access the service via a 'warm' referral from their caseworker. This can result in a 'referral roundabout' where clients are referred from service to service and required to re-tell their story multiple times, without necessarily receiving the supports they need.

As a result, access to services for clients through FACS very much depends on the willingness of the individual case worker to facilitate referrals. Some community lawyers report that FACS rarely responds to correspondence on behalf of clients, including requests for support or referral to services under section 21 of the Care Act.

To address this issue, it is critical that access to services is not limited by referral from FACS or lack thereof. Ideally, a much broader range of people and organisations, including mandatory reporters, legal assistance services and families themselves must be able to make referrals into appropriate services.

If the reform vision to reorient the system towards early support, prevention and preservation is to be realised, the government must also increase investment in services across the human services spectrum to ensure that families are able to access services when and where they need them. This includes providing services that are accessible to people with specialist needs, including culturally safe/Aboriginal community-controlled services and specialist disability, CALD, LGBTIQ and other services. It also includes ensuring families are able to access services and supports immediately on referral, rather than being placed on a waiting list.

At the same time, it is important for FACS caseworkers to be mindful of the support services that are available locally and the length of waiting lists for specific programs they refer families to for support when preparing case plans and determining whether there is a realistic possibility of restoration. FACS also needs to make a better commitment to help families to cover transport costs they incur to meet their Family Plan goals.

RECOMMENDATIONS

4. The government must acknowledge and address the systemic drivers of the over-representation of some groups within the child protection system, including persistent discriminatory beliefs and practices and entrenched, intergenerational financial hardship.
5. The government must acknowledge and address structural barriers to early support for children and families engaged with the child protection system, including a significant investment of funding to address the chronic shortage of available and accessible services across the human services spectrum, particularly in regional, rural and remote areas.

6. SYSTEM ELEMENTS

6.1 EARLY TARGETED SUPPORT, ADVICE AND CASE MANAGEMENT

Community Legal Centres NSW believes that community-based legal assistance services form a critical but overlooked element of the early support system for families engaged with the child protection in NSW.

This section:

- provides an overview of the child protection legal services delivered by community legal centres
- sets out why access to early legal advice and support is important for families engaged with the child protection system and advocates for an expansion of specialist child protection teams that offer legal support and non-legal advocacy for families engaging with FACS.
- offers examples of collaborative service delivery models involving community-based legal assistance services, which are supporting the delivery of positive outcomes for children and families.

6.1.1 COMMUNITY LEGAL CENTRES: SUPPORTING FAMILIES TO KEEP THEIR CHILDREN SAFE AT HOME

Community legal centres engage in legal and non-legal, trauma-informed, culturally competent casework that is flexible, client-centred, responsive and holistic. Lawyers and non-legal workers receive advanced training in trauma impacts and participate in professional development in a variety of specialised fields such as gender-based violence, disability discrimination and child protection. Community legal centres help clients that fall through the gaps and have worked closely with complex client groups for many years, developing relationships of trust with hard to reach communities.

Critically, community legal centres have the ability to support clients to work constructively with government agencies like FACS, other legal assistance services and non-government service providers to address their needs. This brokerage is particularly important for Aboriginal communities and clients with complex needs, including parents with intellectual disabilities, victims/survivors of family violence and culturally and linguistically diverse clients, who may have low levels of trust in institutions.

Currently, 12 community legal centres across NSW are funded to deliver child protection legal services to families engaged with FACS. With limited funding, these centres have developed rapport and relationships of trust with at risk families and helped them to understand why their child has come to FACS' attention and identify the actions they can take to address FACS' concerns and, ultimately, keep their children safe at home.

Ultimately, community legal centres want to ensure that people understand the child protection system, their responsibilities and options, and to work productively with other legal assistance services, like Legal Aid NSW and the Aboriginal Legal Service, and the broader family support sector to keep families together and children safe at home where possible.

CASE STUDY: SHOALCOAST COMMUNITY LEGAL CENTRE

Wendy is a single mother with three children and a history of family violence. At the time she sought advice from Shoalcoast Community Legal Centre (CLC), Wendy had an Apprehended Violence Order (AVO) against her former partner and FACS was preparing to refer her matter to the Children's Court seeking supervision and undertakings for the three children.

The Shoalcoast CLC solicitor worked with Wendy to ensure she understood FACS' concerns in relation to her children's health, safety and welfare, what FACS' required her to do to address those concerns (including attending regular speech therapy and other health services) and the importance of doing so.

With her solicitor's support, Wendy kept a diary of all of the children's medical appointments and her appointments with FACS. She notified her FACS case worker if she was unable to attend any appointments and rescheduled missed appointments for her children.

The solicitor also explained to Wendy the terms of the AVO in relation to the family violence she had experienced, the possible impacts of the violence on her children, and the importance of complying with the AVO's conditions. The solicitor encouraged Wendy to record her partner's text messages and calls and to refer these to the police rather than engage with them directly and risk contravening the conditions of the AVO.

With Shoalcoast CLC's support, Wendy met or addressed all FACS' concerns and the department took no further action to remove Wendy's children. The early legal advice and on-going support provided to Wendy enabled her to focus on addressing FACS' concerns and to engage positively with her caseworker.

6.1.2 SPECIALIST CHILD PROTECTION LEGAL TEAMS

Importantly, many community legal centres combine legal advice and support with specialist non-legal advocacy for people and families with complex needs. The Parent Advocacy Program at the Intellectual Disability Rights Service (IDRS) provides an excellent example of a successful specialist care and protection team that secures positive outcomes for children and families through combined legal and early intervention advocacy support.

The Intellectual Disability Rights Service (IDRS) supports parents with an intellectual disability who are involved with FACS. The Parent Advocacy Program (the program) helps parents who have had their children removed from their care or are at risk of having their children removed by FACS, particularly pregnant women.

The program employs a part time solicitor and parent advocate/case worker and combines legal and advocacy strategies to enable parents with intellectual disability to be fairly treated and have the best chance to raise their children.

It offers:

- Legal advice and casework for parents with intellectual disability in care and protection matters
- Non-legal advocacy and support for parents who are at risk of having a child removed including during pregnancy

- Support persons for parents at the Children’s Courts in Child Care and Protection matters
- Capacity building with disability support workers, child protection workers and lawyers so that they work better with parents with intellectual disability
- Systemic advocacy for changes in policy and laws that will improve fairness and outcomes for parents with intellectual disability.

IDRS operates as a state-wide service. However due to funding limitations, the program’s reach is effectively limited to the Western Sydney, Hunter and Wollongong areas. Despite this, program staff have worked tirelessly to:

- build good working relationships with FACS Community Service Centres and caseworkers
- educate FACS caseworkers about working with people with intellectual disability
- ensure clients are referred for early legal advice and support so they understand the legal process, their and the likely outcomes from the choices they make
- connect people with relevant support services, including through the National Disability Insurance Scheme (NDIS)
- provide phone advice and referrals for clients in regional and remote areas they are not able to support face to face.

The program is most successful when parents are referred as early as possible during pregnancy. In 2017-18, the program worked with nine expectant mothers. FACS was already involved with many of these families. The parent advocate helped the women talk with FACS and understand what they needed to do to be able to take their children home. The advocate also worked with the women to prepare for parenthood and to refer them to services to help them address FACS’ concerns. For many mothers this included the advocate helping them to apply for an NDIS service funding package.

Of the nine mothers IDRS supported during pregnancy, seven were able to take their babies home from hospital and have continued to care for them. This is a particularly good outcome because five of the seven mothers had previously had babies removed from their care and this was the first time they had been able to keep the care of their child.

The program was recently evaluated by researchers at the university of Sydney. The research identified three main themes raised by parents:

1. **Powerlessness** – including not being heard, being in a bewildering process, being assumed to be incompetent and the impact of double victimisation when domestic violence was involved
2. **Dealing with trauma** – including the grief, despair and mental health problems they experienced on losing care of their child
3. **Making a difference** – having an advocate build a bridge between them and the care and protection system, parents felt valued, that they had a voice and had someone they could trust in the absence of family or other support.⁴

⁴ Intellectual Disability Rights Service Annual Report 2017-18: <https://idrs.org.au/site18/wp-content/uploads/2018/12/IDRS-Annual-Report-2017-18-Final-LowRes.pdf>.

The research concluded that parents with intellectual disability need specialist support when they come into contact with the care and protection system.

CASE STUDY: SPECIALIST ADVOCACY FOR PARENTS WITH INTELLECTUAL DISABILITY

Wanda is an Aboriginal woman with an intellectual disability. Her first three children were removed from her care and now live in out of home care. Wanda also has a past history of drug abuse and domestic violence.

Wanda first became involved with the IDRS Parent Advocacy Program late in her third pregnancy - too late for the program to help her access the support she needed to keep that baby safe at home.

Following IDRS' advice, Wanda contacted the program early in her fourth pregnancy. By this time, she had addressed her drug and domestic violence issues. Despite being aware of the pregnancy, FACS refused to engage with Wanda or allocate her a caseworker. Wanda and IDRS were concerned that FACS would simply assume her baby into care at birth based on her disability, her Aboriginality, her past engagement with the child protection system and the fact that her other children had not been restored to her care.

The IDRS advocate made weekly calls to FACS to insist Wanda be allocated a caseworker before the baby was born. Eventually, FACS advised that in order for a caseworker to be allocated, IDRS would need to report Wanda to the FACS Child Protection Helpline.

Together, Wanda and the IDRS advocate called the Helpline and reported Wanda as 'asking for assistance'. IDRS then followed up with the relevant FACS community service centre weekly until Wanda was allocated a pre-natal caseworker.

From this point on, IDRS worked with Wanda and the FACS caseworker to identify the supports and services Wanda needed to keep her baby safe at home once it was born. This included: getting the required assessments and applying for an NDIS support package; facilitating access to parent education programs; and, securing 22 hours per day of in-home support for Wanda for the first three weeks after she took her baby home, and a regular three days per week of in-home support afterwards.

The IDRS advocate also attended all of FACS' home visits after Wanda was discharged from hospital and ensured that no visits were made unannounced. This helped Wanda to prepare for visits and to manage the trauma responses triggered by her past experience of the child protection system.

Wanda and her partner worked hard to engage with FACS and the support services provided, with guidance and support from IDRS. Wanda's baby is now living at home and thriving. Wanda and her partner have the support they need to care for and keep their baby safe. Without IDRS support, the likely outcome was that FACS would have waited for Wanda's baby to be born and then assumed it into state care without once having engaged with her or offered access to early supports during her pregnancy.

As noted above, currently, only 12 community legal centres are funded by FACS to deliver child protection legal advice and support. Like IDRS, with current funding allocations most of these

centres are only able to deliver a part-time service, even where their catchment is statewide (including for example Wurringa Baiya Aboriginal Women's Legal Centre and Women's Legal Service NSW).

Community Legal Centres NSW recommends that this funding be significantly expanded to adequately meet need and ensure access to justice families engaged with the child protection system in NSW. Specifically, we recommend the provision of \$10.4 million to the legal assistance sector to establish full and part-time specialist child protection teams across the state (depending on location and demand for services). Teams would include a solicitor, non-legal support worker and specialist advocate where necessary (for example, a specialist disability advocate, Aboriginal and Torres Strait Islander worker or family violence worker).

In particular, Aboriginal and Torres Strait Islander people and families should have guaranteed access to an Aboriginal-controlled legal assistance service.

In our view, it would also be beneficial for specialist child protection services to be funded to undertake community legal education and outreach to educate local FACS caseworkers, NGOs, mandatory reporters and the broader community about the role and benefits of referring people and families engaged with the care and protection system for early legal advice and to build strong referral networks and pathways.

6.1.3 EARLY LEGAL ADVICE AND SUPPORT HELPS KEEP FAMILIES SAFE AND TOGETHER

Community Legal Centres NSW believes that guaranteed access to early legal advice and support is a critical element of a redesigned access system that prioritises early support, prevention and preservation. Timely access to legal advice can help to divert children from statutory out-of-home care and ensure families have access to the supports they need to keep children safe at home.

Access to independent legal advice and support is important throughout a family's engagement with the system. Referrals should be made at the earliest possible opportunity. Ideally, when a family is first notified to FACS (whether or not the notification meets the risk of significant harm – or ROSH – the threshold). In the case of high-risk pregnancies, referrals should be made as early in the pregnancy as possible and always before the baby is born.

At this early stage, lawyers can support parents and carers to understand:

- FACS' powers, obligations and functions within the care system
- the safety concerns that have brought their family to FACS attention and the safety and risk assessment process
- their rights and responsibilities if FACS contacts them, what FACS wants them to do to address identified concerns and the potential consequences of any course of action they choose to take
- The importance of child-focussed insight, action and positive engagement with services to support family preservation and the potential consequences of not addressing children's safety issues
- family law options and other alternatives to FACS intervention, including family group conferencing and Family Action Plans
- the legal process if FACS ultimately makes an application in the Children's Court.

Community legal centres are also skilled at identifying clients' underlying support needs. Solicitors and non-legal advocates work together to facilitate warm referrals to appropriate services (including FACS supports). This early support can help to avoid the unnecessary escalation of issues, intervention by FACS (including removals) and court action and, ultimately, keep children safe at home or in the care of suitable family members.

CASE STUDY: WIRRINGA BAIYA ABORIGINAL WOMEN'S LEGAL CENTRE

Sonja is a young Aboriginal mum living in a rural area. After the birth of her baby, Sonja refused to engage with the FACS caseworker. She was at risk of losing her baby as a result.

Wirringa Baiya provided Sonja with legal advice, information and advocacy casework. This included:

- working with the FACS caseworker and Sonja to narrow the issues of concern for both parties.
- providing Sonja with honest advice about the SARA (Safety and Risk Assessment) process, FACS' obligation to investigate ROSH (risk of significant harm) notifications and the possible consequences of failing to address safety and risk issues.

After receiving this advice, Sonja agreed to work with FACS to address the caseworker's concerns.

Several months later, Sonja confirmed that she and the FACS caseworker were working together positively to ensure the baby's safety. Sonja had agreed to not return to her father's home and FACS had helped her find independent accommodation. Sonja reported being very happy with the caseworker. The FACS caseworker also reported being happy with the change in Sonja's attitude. The baby has not been removed and is still living with Sonja.

If a referral at the notification stage is not possible, it is important for families to have access to independent legal advice at any stage before proceedings commence in the Children's Court. At this stage, there is still time to support interested family members to participate in a child's care, including through the family law system.

Access to legal advice before court proceedings commence is even more important in light of amendments to the Care Act that came into force on February 4, 2019. Under these changes, FACS must now offer family group conferencing (FGC) to all families before commencing proceedings in the Children's Court. While FGC has been positively evaluated in NSW and elsewhere, our members and other legal assistance services like the Aboriginal Legal Service experience daily the power imbalances at play between families and FACS in FGC processes. Where parents are unrepresented, this power imbalance can result in FACS determining the agenda for FGCs, dictating the issues on the table to be discussed and the terms of agreements finally reached, in circumstances where families may not have fully understood the substance and implications of what they have agreed to through the process.

Once a matter is in the court system, every parent and interested relative (e.g. grandparents) should have access to legal advice.

CASE STUDY: MACARTHUR LEGAL CENTRE

Rosa is a 45-year old mother and grandmother from a culturally and linguistically diverse (CALD) background. She is married and works in the health sector. Her daughter, Maria, has a 9-month-old baby, Eva. There are substance abuse and domestic violence issues in Maria's relationship with Eva's father.

Rosa and her husband attended Macarthur Legal Centre after learning that FACS had assumed Eva into out-of-home-care after a medical examination uncovered a second break in her leg. The first break had been undetected. FACS suspected Eva's father caused the injuries.

Rosa and her husband were deeply distressed: Eva had been seriously injured and was now in strangers' care. They knew nothing about the child protection system or their right to be assessed as Eva's primary caregivers.

Rosa was concerned FACS would reject her request to be Eva's carer due to her own history of child sexual abuse. The MLC solicitor advised Rosa about her strengths as a potential carer, including that she was Eva's biological grandparent, lived in her own home and in a supportive relationship and had stable employment.

After leaving MLC, Rosa and her husband contacted FACS and asked to be immediately assessed as Eva's primary carers. Within 48-hours, FACS placed Eva in their care. They then sought a parental responsibility order for Eva in the family court with Maria's consent. Eva remains in Rosa's care and has supervised contact with her parents while they address their individual issues.

Often, by the time clients are referred for legal advice or specialist advocacy, matters are already in the Children's Court or it is otherwise too late to facilitate access to support services or to challenge the decision (for example because the parent is the subject of an automatic birth alert, which means FACS will assume the baby into care before it is discharged from hospital, and the parent is not referred for legal or specialist advocacy support until close to or after the birth). This can result in children being removed from their parents unnecessarily because FACS remains unaware of changes in parents' circumstances or of their concerted efforts to engage with services and supports to help them keep their children safe at home.

CASE STUDY: INTELLECTUAL DISABILITY RIGHTS SERVICE

Melanie has an intellectual disability. She grew up in out of home care, has limited family supports, has lived in unstable accommodation in the past and has one other child who has been removed from her care. Melanie's second baby, Ivy, was born prematurely and spent the first month of her life in hospital. By the time of Ivy's birth, Melanie had moved into stable accommodation and was engaging more positively with support services.

During Ivy's hospital stay, Melanie visited daily and was actively engaged in Ivy's care. FACS did not engage with Melanie or offer supports throughout her pregnancy. However, despite positive reports from hospital staff and Melanie's changed circumstances, FACS assumed Ivy into care on her release from hospital. If Melanie had been referred to the Intellectual

Disability Rights Service Parent Advocacy Program earlier in her pregnancy, there is every possibility she could have been supported to keep Ivy safe at home.

6.1.4 IMPROVING ACCESS TO EARLY LEGAL SUPPORT

A number of factors limit access to early legal support for families facing financial hardship who are engaged with child protection system, including inconsistent referral practices and insufficient funding for community-based legal assistance services to meet need for early legal support.

Our members report an ingrained culture of unwillingness within FACS to refer people for early intervention legal support or to engage with lawyers throughout a family's engagement with the department. This is unwillingness is evidenced by:

- failures to respond to lawyers' attempts to request assistance on behalf of clients
- reluctance to refer clients for legal advice or to specialist advocacy services. Some community legal centres report receiving no referrals for early legal support from FACS, despite the fact that FACS specifically funds Care Partners to provide early advice
- attempts to prevent advocates from participating in care and protection processes, including advocates who support parents with an intellectual disability, to ensure they get fair treatment and a fair process, support them to engage directly with FACS or speak for them where they too terrified or traumatised to speak for themselves.

Similarly, family support NGOs are often unaware of the role that legal assistance services play in supporting families engaged with the child protection system, the services available locally and the benefits of making early referrals. As a result, FACS and NGO staff often fail to make early referrals or to facilitate 'warm' referrals for early legal support for families coming into contact with the child protection system.

When referrals do happen, it is often too late in the process to alter the care or 'permanency' pathway a child or family is on. This lack of strong referral pathways between the family support sector (including FACS) and the legal assistance sector also means families and communities have limited knowledge about the availability and benefits of early legal support.

To address these issues, Community Legal Centres NSW recommends:

- The development of appropriate and consistent referral policies within FACS and family support NGOs, which prioritise referrals for legal advice and support for families at the point of first contact with the child protection system
- Adequate funding for child protection legal assistance services, which are not strictly means tested and which include funding for community legal education to improve awareness and understanding of the importance of early legal support and advice within FACS, the family support sector and across the community more broadly.
- The introduction of a legislative requirement that all families engaged with the child protection system in NSW have access to affordable, independent legal advice and support throughout their engagement with the child protection system, from point of first contact to final orders.

6.1.5 MULTI-AGENCY SERVICE COORDINATION (OR COLLABORATIVE SERVICE DELIVERY)

Developing locally-responsive place-based initiatives based on good working relationships and strong referral networks between FACS, non-government human services organisations and community-based legal assistance services is key to improving access to early support services for families engaged with the child protection system in NSW.

Community legal centres have close relationships with many other agencies and work collaboratively for benefit of local families, particularly in regional areas. They offer co-located services to key at risk client groups by partnering with local services such as DSS-funded Family Mental Health Support Services, Women's Health Centres, Aboriginal Medical Services, mental health and counselling services, and local health networks.

Currently, community legal centres across the state are involved in collaborative service delivery models and projects designed to provide early support to people with complex needs, including children and families at risk of entering the child protection system. These include health justice partnerships and the Northern Rivers Community Legal Centre Early Intervention Referral Project.

6.1.5.1 HEALTH-JUSTICE PARTNERSHIPS

Research has found that many people disclose personal problems to a GP, midwife, counsellor or health professional long before they would think of going to see a lawyer.⁵ However, by intervening early, lawyers can work with health services such as Family Mental Health Support Services to identify clients at risk, and to assist with advice, referrals and co-located casework services. Research in this area has acknowledged the importance in identifying, accessing and engaging 'hard to reach' clients. Community legal centres work well with these clients already, and with sufficient funding, are well positioned to provide this work by establishing health justice partnerships.

Currently, Redfern Legal Centre, the Hume Riverina Community Legal Service and the Women's Legal Service deliver early intervention legal services in hospital and health service settings. The Hume Riverina Community Legal Service operates a health justice partnership with the Albury Wodonga Health Service. Under the partnership, a solicitor attends the health service one and a half days per week and provides advice to Aboriginal and Torres Strait Islander people on all civil law issues, including child protection. The health services also provides GP and psychology services to patients who are engaged with the child protection system.

Women's Legal Service NSW provides women with legal advice about the care and protection of children by telephone and at outreaches at Women's Health Centres in Blacktown, Penrith and Liverpool and at metropolitan Women's Correctional Centres. Our community access workers also provide Aboriginal women with additional support. Recognising the importance of providing legal advice in ways that are safe and accessible, particularly in the context of sexual, domestic and family violence, as well as the importance of a holistic response, Women's Legal Service NSW and Women's Health Centres have been working in a health justice partnership for over 30 years. For further information about Women's Legal Service NSW's work in care and protection and the importance of early legal advice, see their submission in response to this Discussion Paper.

⁵ Health Justice Partnerships Australia (reference)

CASE STUDY: REDFERN LEGAL CENTRE HEALTH JUSTICE PARTNERSHIP

Since 2015, Redfern Legal Centre and has been working in partnership with the prenatal and midwifery service at Royal Prince Alfred Hospital in a Health-Justice Partnership. This initiative has enabled collaboration between lawyers, midwives and social workers to identify women at risk and support them with holistic case-management and legal casework, and to link them to the support needed. CLCs can help in this space because of the flexibility of CLCs to work collaboratively with non-legal staff and services, across many problems, not just strict legal problems.

This initiative enables women to access legal advice in a safe and trusted space, about a range of issues from child protection, to family law, credit and debt, financial management, housing issues and so on. The benefit for mothers, babies and families has been substantial in that this collaboration has connected them at a stressful time to the holistic legal advice they need, and an added benefit has been the reduction in child protection issues so that FACS are in fewer cases required to remove babies.

6.5.1.2 EARLY INTERVENTION REFERRAL PROJECT

Since 2014, Northern Rivers Community Legal Centre has delivered the Early Intervention Referral Project in collaboration with the local Women's Domestic Violence Court Advocacy Scheme, the local Family Relationship Centre and the Aboriginal Legal Service.

The project aims to educate local FACS caseworkers, health workers and community organisations about the importance of referring families for legal advice if a mandatory report has been made or the family is otherwise known to FACS. The project also aims to develop strong working relationships and referral pathways between legal assistance and human services organisations in the Northern Rivers Region. Over past three years the project has:

- Delivered education seminars and workshops to service providers on the intersection between child protection and domestic and family violence and the importance of early legal advice. The workshops and seminars have been delivered to a wide range of universal and targeted service providers, including pre-school directors and hospital social workers. Another six workshops are currently being planned, including one that addresses the particular needs of Aboriginal and Torres Strait Islander people.
- Developed a 'Referral Card' for FACS and local service providers to give out to clients, which includes contact details for free child protection legal services and family violence services in the Northern Rivers region.
- Developed a legal advice 'Referral Map' for service providers, which sets out the different stages FACS may become involved with a family prior to removal and explains why legal advice is important at each of these stages.

As a result, the number of clients being referred into the Northern Rivers CLC care and protection practice has increased. Cases have included a mix of early intervention legal advice and matters at varying stages of the children's process, including advice on family case action plans and the ramifications of non-engagement with FACS, temporary care agreements and contact orders. As the case study below demonstrates, generally clients referred for legal advice early achieve better outcomes.

CASE STUDY: NORTHERN RIVERS COMMUNITY LEGAL CENTRE

Veronica contacted Northern Rivers Community Legal Centre for advice after the NSW police had attended her home to complete a welfare check on her two children. The police told Veronica that they had received reports from her children's school that she had been smacking and yelling at them. The Police were also told that she wasn't sending them to school. Veronica was provided with advice about the process of reports being made to FACS if children are considered to be at "Risk of Significant Harm", including what to do if FACS makes contact with her in relation to the children. Veronica was encouraged to come back to the Centre for further advice if she was contacted by a FACS caseworker.

Three weeks later Veronica attended upon the Centre for further advice. FACS had made contact with her and asked her to attend a meeting to talk about the children. Veronica reported that she didn't want to attend the meeting or engage with FACS. The Centre advised Veronica about the importance of attending the meeting and engaging with FACS, the purpose of the meeting, the safety and risk assessment process, the importance of understanding and showing insight into the safety concerns, the importance of highlighting protective abilities and strengths and engaging with support services.

The Centre arranged for a support worker to attend the meeting with Veronica to assist her with note taking. Veronica attended the meeting and followed the advice given to her with regard to positive engagement, insight and protective behaviours. Subsequently the outcome of the safety assessment was safe and FACS referred Veronica to a family support service for ongoing support. Had Veronica not contacted Northern Rivers Community Legal Centre and sought legal advice before the meeting with FACS she reported that she would not have engaged.

RECOMMENDATIONS

6. The government should invest \$10.4 million to establish full- and part-time specialist child protection teams in legal assistance services across the state to deliver early legal advice and support, specialist non-legal casework and advocacy, community education and outreach (including to FACS and NGOs) about the benefits of early legal advice for families engaged with the child protection system and to establish strong referral pathways and networks.
7. FACS, family support NGOs and other first-responder organisations should establish clear and consistent referral policies, which prioritise referrals for legal advice and support for families at the point of first contact with the child protection system, and which encourage 'warm referrals' to all support services.
8. All organisations, agencies and individuals (including families themselves) must be able to refer children and families into key early intervention and support services. Access to services must not be limited to referral from FACS.

7. SYSTEM-WIDE ENABLERS

7.1 THE EARLY SUPPORT SYSTEM MUST BE ADEQUATELY RESOURCED

Adequate and appropriately directed funding will be critical to ensure a well-organised system, which supports capable, qualified and well-trained workers to deliver early support services when and where they are needed. This funding needs to be certain, consistent and overwhelmingly targeted to early support services.

Currently, more than half of FACS funding on child protection is directed toward provision of out of home care services and other reactive statutory interventions for children found to be at risk of significant harm (ROSH). In 2016-17 the budgeted expenditure for child protection related services was approximately \$1.9 billion. Of this, 57% was spent on out of home care, 26% on statutory child protection and just 17% on early intervention.⁶

While the majority of FACS spending goes towards families at risk of significant harm, the majority of reports to the Child Protection Helpline relate do not meet the ROSH threshold.⁷ According to estimates provided by FACS for 2017-18, only about half of the 300,000 notifications made to the Child Protection Helpline each year meet the ROSH threshold that is needed to trigger intervention by FACS. Generally, families that are assessed as not meeting the threshold receive no follow up or referrals. Of the reports that meet the ROSH threshold, only one-third receive a face to face assessment by a FACS caseworker. Those that don't receive a face to face assessment may be referred to an NGO support service, or to a family referral service. However data about families that don't receive a face-to-face assessment is not captured or tracked (unless they are re-reported to FACS and receive an assessment).

This means that tens of thousands of children and families who could benefit from early support services may not be getting access to them. It also means that families are often not even aware that they are known to FACS or that they have been reported to the Helpline. Anecdotally, Community Legal Centres NSW members and Aboriginal-controlled children's services report that often the first time a family learns a report or reports have been made against them is when FACS or the police arrive at their home to remove their child. This denies families the opportunity to address concerns raised before they escalate and perpetuates the cycle of negative interactions between families and FACS.

The inversion of FACS spending on reactive rather than proactive policies has resulted in many reviews recommending a revision of spending priorities to focus more on policies and practices structured around early support and prevention frameworks. The Maranguka Justice Reinvestment Project provides an excellent example of a community controlled and led early intervention initiative that has resulted in positive outcomes for the Maranguka community, including:

- a 23% reduction in police recorded incidents of domestic violence
- a 42% reduction in the amount of time spent in custody for adults
- a 38% reduction in charges across the top five juvenile offences categories.

⁶ New South Wales Legislative Council. General Purpose Standing Committee No. 2 Child Protection. Report 46. March 2017

⁷ Australian Institute of Health and Welfare (AIHW) “*Child protection Australia 2015–16*”, March 2017; Royal Commission into Institutional Responses to Child Sexual Abuse

At the same time, the project has led to significant cost savings for government. A recent KPMG assessment of the project found that it achieved savings of \$3.1 million in 2017 and that its financial impact is about five times higher than its operational costs.⁸ These outcomes have been achieved with no investment from government to date.

Community Legal Centres NSW supports the intention to reorient the system away from crisis responses and towards early intervention and prevention. However, we are deeply concerned that the stated commitment to prevention isn't supported by adequate funding or sufficient action. For example, while reforms such as the Permanency Support Program, which target children already in the care system, have been rolled out swiftly, other reforms designed to improve early access to supports for vulnerable families and divert them from statutory care, like the Targeted Early Intervention Reform Program, have experienced continuous delays over several years. The split of funding for early intervention programs and statutory care also continues to be heavily weighted towards crisis response.

RECOMMENDATIONS

9. The government should shift the balance of government funding for child protection from statutory intervention to early support, including directing all new funding for the child protection system to early support, prevention and preservation.
10. The government should invest in successful existing justice reinvestment projects, expand the model across the state, and support communities to develop justice reinvestment approaches to supporting the safety and wellbeing of children and families engaged with the child protection system in NSW.

7.2 LEGISLATIVE REFORM

7.2.1 LEGAL ASSISTANCE GUARANTEE

As noted in above, Community Legal Centres NSW strongly recommends the Care Act be amended to guarantee access to affordable, independent legal advice and support for all families engaged with the care and protection system throughout the process. This is particularly important in light of recent changes to the Act, which require FACS to offer alternative dispute resolution to all families before pursuing orders in the Children's Court.

Guaranteed legal advice is needed to address the significant power imbalances between families and FACS and to ensure families are able to participate in the process fully and in an informed way. Ideally, it should be delivered by properly funded specialist child protection teams that include lawyers, and specialist non-legal advocates and support workers.

⁸ The Conversation. *As indigenous incarceration rates keep rising, justice reinvestment offers a solution*. 11 December 2018. <https://theconversation.com/as-indigenous-incarceration-rates-keep-rising-justice-reinvestment-offers-a-solution-107610>.

7.2.2 LEGISLATIVE REQUIREMENT FOR FACS TO PROVIDE SUPPORT SERVICES

Community Legal Centres NSW also recommends that the Care Act be amended to require FACS to make 'active efforts' to support families to work towards restoration. The provision could be based on section 1912(d) of the US *Indian Child Welfare Act 1978*. Without such a provision, there is the potential for FACS to simply write off some parents as unable to address identified issues and prove their readiness to have their children restored within the new 24-month timeframe and immediately put children onto permanent removal pathways. This is a particular risk for highly vulnerable parents, including women in prison and parents with intellectual disabilities. An 'active efforts' style provision, would place greater legal obligations and accountability for FACS to work with families prior to taking court actions.

7.3 REFORM CULTURE AND PRACTICE CONSISTENCY

Community Legal Centres NSW members report that the quality of service delivery and program/reform implementation varies widely between FACS districts. This means that a family may or may not get access to information, services or programs based solely on where they live and who their caseworker is. This leads to inconsistent and discriminatory outcomes based on geography alone. High turnover of casework staff at FACS Community Service Centres also affects practice consistency and outcomes for families. In some areas our members report that turnover is so high that families are unaware of who their caseworker is.

As such, outcomes for families and ease of advocacy varies depending on the culture within individual FACS offices. In addition, implementation of mandated legislative change can be slow or non-existent. To address these issues, FACS should undertake audits of all Community Service Centres to support appropriate implementation of policies and procedures. Better staff training including ongoing cultural competency and cultural safety training is also needed.

These issues makes guaranteed access to early legal advice and advocacy support for families engaged with the care and protection system even more critical, so that families are aware of what FACS can and can't do and should and shouldn't be doing.

RECOMMENDATIONS

11. The government should amend the *Children and Young Person's (Care and Protection) Act 1998* to introduce a requirement that all families engaged with the child protection system in NSW have access to affordable, independent legal advice and support throughout their engagement with the child protection system, from point of first contact to final orders.
12. The government should amend the *Children and Young Person's (Care and Protection) Act 1998* to require FACS to make 'active efforts' to provide support services to children and families engaged with the child protection system.
13. FACS should undertake audits of all Community Service Centres to support appropriate policy, practice and reform implementation and provide improved training for staff, including ongoing cultural competence and cultural safety programs.