

# The importance of early legal support for families in the child protection system

August 2019

**Keeping children safe in their communities requires investment in community-level early support services. This includes guaranteed access to affordable and independent legal support.**

**Looming funding cuts to the Community Legal Centre Care Partners by Legal Aid NSW will leave families with complex needs without the help and support required to keep their kids safe at home.**

## Every child deserves a safe home

Sometimes parents need help and guidance to create safe environments for their children. This support comes best from the broader family and community, not from strangers.

Australia has a shameful history of forcibly removing children from families and communities that continues today. This is because policy makers provide insufficient community-level support to families. They stand back and wait for a crisis.

Taking children away from their community and placing them into out-of-home-care has significant long-term impacts, including on mental health. It also increases the likelihood someone will enter the criminal justice system and struggle to provide safe environments for their own children.

We need to support families in their time of need, not break them apart when they are most vulnerable. Early support services, including legal assistance, can make all the difference to keeping lives on track and kids safe in their communities.

## Barriers to early legal assistance

Since 2014, child protection reforms have been underpinned by an ‘in principle’ commitment to early support and prevention, including early legal assistance. This commitment has not been matched by adequate funding increases for legal assistance services. Reforms have also elevated adoption and guardianship up the hierarchy of child placements.

Despite dedicated NSW Government funding for a small number of community legal centres to provide child protection legal services under the Care Partners Program, Family & Community Services (FACS) caseworkers and FACS-funded NGO service providers rarely refer families for early legal support.

**“Early legal assistance can keep families together while ensuring the safety of the child.”**

People with legal problems often don’t seek advice directly. Instead, research shows that people with complex needs are more likely to talk to community or health service workers about a range of issues. This makes community and health service workers a crucial link to accessing justice for people with child protection issues.

However, these workers often don’t have the tools to identify legal issues, access appropriate referral pathways, or address barriers to accessing legal help. If they have mandatory reporting obligations, they may be reluctant to refer people for legal advice.

Aboriginal and Torres Strait Islander children are over-represented in the child protection system, making up about 40% of the out-of-home-care population in NSW. The lack of culturally safe family support and legal services is a key barrier to reversing this trend and improving outcomes for Aboriginal children and their families.

Community legal centres strongly support work by SNAICC, AbSec and the Aboriginal Legal Service to design, advocate and implement culturally safe, community-controlled family support services for Aboriginal and Torres Strait Islander people.



## Case study: Veronica's story

Veronica contacted Northern Rivers Community Legal Centre for advice after NSW police visited her home to complete a welfare check on her two children. The police told Veronica they had received reports from the children's school that she had been smacking and yelling at her children and that they weren't going to school. The child protection lawyer advised Veronica about FACS' safety and risk assessment process, including what to do if FACS made contact with her about the reports. They encouraged Veronica to come back for further advice if FACS contacted her.

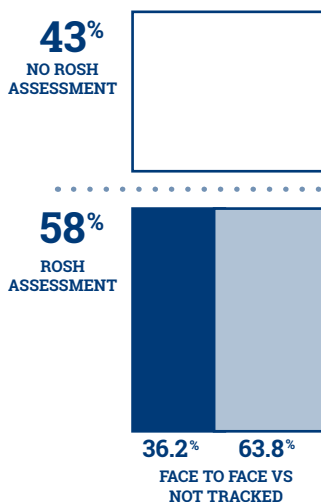
Three weeks later Veronica approached the Centre for further advice. FACS had made contact and asked her to attend a meeting to talk about the children. Veronica reported that she didn't want to attend the meeting or engage with FACS. The Centre advised Veronica about the purpose of the

meeting and the importance of engaging positively with FACS, understanding and showing insight into the caseworkers' safety concerns, demonstrating her protective abilities and strengths and actively engaging with support services.

The lawyer arranged for a support worker to go to the meeting with Veronica. Veronica followed the lawyer's advice about positive engagement, demonstrating 'insight' and 'protective behaviours' and 'engaging with supports'. As a result, FACS assessed that Veronica's children were safe in her care and referred them to a family support service for ongoing support.

Veronica said that if she hadn't sought legal advice before the meeting with FACS she wouldn't have engaged with them. This would have increased the risk of FACS removing her children from her care.

## System failing to support families



**In 2017-18, 293 678 children were reported to the FACS Child Protection Helpline.**

126,242 (43%) were assessed to be not at Risk of Significant Harm (ROSH) and received no response or follow up from FACS.

167,436 (58%) received a ROSH assessment. Of these, 60,612 (36.2%) of children received a face-to-face assessment from FACS. Responses to the remaining 106,824 children at ROSH (63.8%) were not tracked.

NSW laws provide no guarantee for any of these families to be referred to the independent early legal and non-legal supports that can help parents make the changes needed to keep their children safe.

## Insufficient funding for early support

Crisis funding/rehoming

\$1.2 billion

Early intervention

\$149.5 million

**In 2018-19, FACS will spend \$2.2 billion on child protection.**

54% (\$1.2 billion) will be spent on out-of-home care, permanency support, guardianship and adoption.

Just 6.8% (or \$149.5 million) will be spent on early intervention.

In 2016, Legal Aid NSW cut 50% of funding to 12 CLC 'Care Partners'. The rest of this funding (a mere \$423,000) is due to expire on 30 September 2019.

## The impact of early legal advice

Independent legal advice and advocacy is crucial throughout a family's involvement with the child protection system, helping parents understand their options and access any supports they need.

Families sometimes have a history of negative contact with FACS, which can lead to disengagement and make it difficult for them to take in information FACS caseworkers are providing. Having a trusted, independent advocate to talk to makes all the difference.

Lawyers help families understand:

1. the safety concerns that have brought the family to the attention of FACS and the safety and risk assessment process;

2. FACS' powers, obligations and functions within the child protection system;
3. what parents need to do to address the concerns raised by FACS;
4. the importance of taking action, positive engagement with FACS and other services, and the consequences of not addressing safety concerns;
5. family law options and other alternatives to FACS intervention, including family group conferencing and Family Action Plans; and
6. the legal process if FACS ultimately makes an application in the Children's Court.

In short, early legal assistance can help families stay together and access the support they need to keep children safe. The earlier referrals for legal support are made, the better.

## Northern Rivers Early Intervention Referral Project

Since 2014, Northern Rivers Community Legal Centre has delivered the Early Intervention Referral Project to address the low numbers of referrals for child protection legal advice made by FACS and other health and community services. This collaborative project aims to develop strong working relationships between local FACS caseworkers, health workers and community organisations around the importance of referring families for legal advice if a mandatory child protection 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 the past three years the project has:

- delivered capacity building seminars and workshops to service providers to explain why it is important to refer clients for independent legal advice.
- developed a 'Referral Card' for FACS and local services to give to families, with contact details for free child protection legal services and family violence services in the Northern Rivers.
- developed a legal advice 'Referral Map' for service providers, setting out the different stages FACS may become involved with a family and why legal advice is important at each stage.

Through the project, the number of clients referred to the Northern Rivers Community Legal Centre care and protection practice has increased. This means more families better understanding their rights and responsibilities, more effectively navigating the child protection system, and ultimately staying together when it is safe to do so.

## Specialist, community-based casework and advocacy

Most community legal centres provide child protection legal services to families, including: early intervention advice and casework, Risk of Significant Harm reports, family group conferencing, parent responsibility contracts, guardianship orders, kinship care, contact orders, and disputes.

Importantly, community legal centres combine legal assistance with specialist non-legal advocacy for families with complex needs. This includes people with intellectual disability, women experiencing family violence, and Aboriginal people. As a result, community lawyers are experts at identifying families' underlying support needs.

Within specialist child protection teams, lawyers and non-legal advocates work together to identify

needs, provide culturally safe services and make connections to appropriate services (including FACS supports). This interdisciplinary early support can help families avoid the unnecessary escalation of issues into court actions and child removals.

Embedded within communities, community lawyers frequently collaborate with a range of service providers to engage 'hard to reach' clients through innovative service models. For example, Redfern Legal Centre, Hume Riverina Community Legal Service and Women's Legal Services NSW

deliver child protection legal services within hospital and healthcare settings. These Health Justice Partnerships enable collaboration between lawyers, midwives and social workers to identify women at risk, provide holistic case-management and legal casework, and link them to any additional supports they need.

The Women's Legal Service NSW Health Justice Partnership has been operating successfully out of women's health centres in Blacktown, Penrith and Liverpool for over 30 years.

## **IDRS Parents Program**

The Intellectual Disability Rights Service (IDRS) Parents Program supports parents with intellectual disability who have had, or are at risk of having, their children removed by FACS. The program employs a part-time solicitor and parent advocate/case worker and combines legal and non-legal advocacy strategies to ensure parents with intellectual disability are fairly treated and given the best chance to raise their children. Program staff:

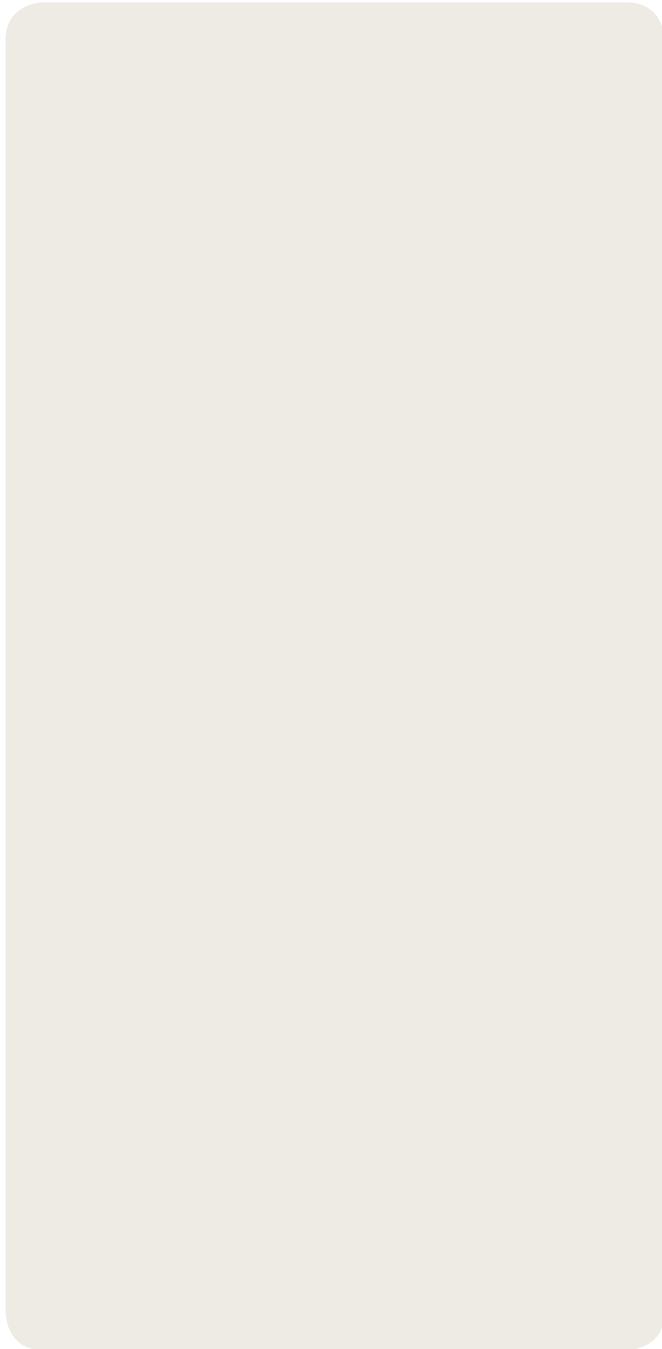
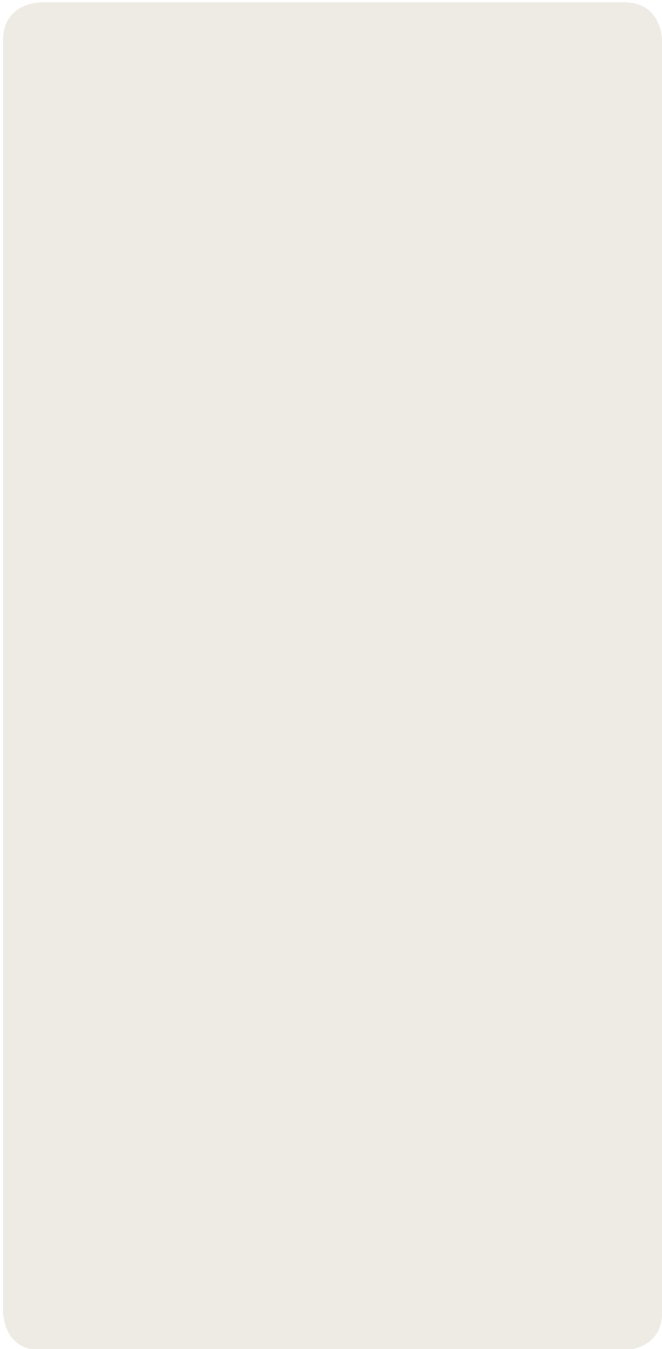
- ensure clients receive early legal advice and support so they understand the legal process, their rights and the likely outcomes of the choices they make
- connect people with relevant support services, including through the National Disability Insurance Scheme
- build good working relationships with FACS Community Service Centres and caseworkers
- educate disability support workers, FACS caseworkers and lawyers about working with people with intellectual disability
- provide phone advice and referrals for clients in regional and remote areas when they are not able to provide support face to face
- undertake systemic advocacy for changes in policy and laws that will improve fairness and outcomes for parents with intellectual disability.

The program is most successful when parents are referred as early as possible during pregnancy. In 2017-18, the program's parent advocate worked with nine expectant mothers, many of whom were already known to FACS. Of these women, seven were able to take their babies home from hospital and continue to care for them. This is a particularly good outcome because five of the seven mothers had previously had babies removed from their care. Without support from the Parents Program, the most likely outcome for these women was that their babies would have been automatically removed from their care at birth.

## **How to improve access to justice**

For the benefit of children, parents and families in NSW:

- FACS should be required by law to refer families for early legal support at the point of their first contact with the child protection system.
- The NSW Government should work with SNAICC, AbSec, the Aboriginal Legal Service and the community legal sector to provide culturally safe casework and legal support services for Aboriginal families engaged with the child protection system in NSW.
- Legal Aid NSW should reverse its decision to defund the CLC Care Partner Program. The NSW Government should invest \$10.4 million per year into community law care and protection teams.



### Further reading

- Suzie Forell, *Is Early Intervention Timely?* (Law and Justice Foundation of NSW, Issues Paper 20, August 2015).
- Tamara Walsh and Heather Douglas, 'Lawyers, Advocacy and Child Protection', *Melbourne University Law Review* 35, 2 (2011), 621.
- Susan Collings, Margaret Spencer, Angela Dew and Leanne Dowse, "She was there if I needed to talk or to try and get my point across": specialist advocacy for parents with intellectual disability in the Australian child protection system', *Australian Journal of Human Rights* 24, 2 (2018).

# The importance of early legal support for families in the child protection system

August 2019

**Keeping children safe in their communities requires investment in community-level early support services. This includes guaranteed access to affordable and independent legal support.**

## Every child deserves a safe home

Sometimes parents need help and guidance to create safe environments for their children. This support comes best at the broader family and community level, not from strangers.

Australia has a shameful history of forcibly removing children from families and communities that continues today. This is because policy makers provide insufficient community-level support to families. They stand back and wait for a crisis.

Taking children away from their community and placed into out-of-home-care has significant long-term impacts, including on mental health and increasing the likelihood someone will enter the criminal justice system and have troubles providing safe environments for their children.

We need to support families in their time of need, not break them apart when they are most vulnerable. Early support services, including legal assistance, can make all the difference to keeping lives on track and kids safe in their communities.

## Barriers to early legal assistance

Since 2014, child protection reforms have been underpinned by an ‘in principle’ commitment to early support and prevention, including early legal assistance. This commitment has not been matched by adequate funding increases for legal assistance services. Reforms have also elevated adoption and guardianship up the hierarchy of child placements.

Despite dedicated NSW Government funding for a small number of community legal centres to provide child protection legal services under the Care Partners Program, FACS caseworkers and FACS-funded NGO service providers rarely refer families for early legal support.

**“Early legal assistance can keep families together while ensuring the safety of the child.”**

People with legal problems often don’t seek advice directly. Instead, research shows that people with complex needs are more likely to talk to community or health service workers about a range of issues. This makes community and health service workers a crucial link to accessing justice for people with child protection issues.

However, these workers often don’t have the tools to identify legal issues, access appropriate referral pathways, or address barriers to accessing legal help. If they have mandatory reporting obligations, they may be reluctant to refer people for legal advice.

Aboriginal and Torres Strait Islander children are over-represented in the child protection system, making up about 40% of the out-of-home-care population in NSW. The lack of culturally safe family support and legal services is a key barrier to reversing this trend and improving outcomes for Aboriginal children and their families.

Community legal centres strongly support work by SNAICC, AbSec and the Aboriginal Legal Service to design, advocate and implement culturally safe, community-controlled family support services for Aboriginal and Torres Strait Islander people.