

**Submission
No 6**

CHILD PROTECTION AND SOCIAL SERVICES SYSTEM

Organisation: Lou's Place

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SUBMISSION TO THE PARLIAMENT OF NEW SOUTH WALES COMMITTEE ON CHILDREN AND YOUNG PEOPLE INQUIRY INTO CHILD PROTECTION AND THE SOCIAL SERVICES SECTOR

About Lou's Place

General Manager Nicole Yade

Contact details Lou's Place
182 Victoria Street
POTTS POINT 2011

Telephone (02) 9358 4553

Email [REDACTED]

Website www.lousplace.com.au

Our Service Model

Lou's Place is a women's day refuge and crisis service, located in Kings Cross. Our service assists women experiencing or at risk of experiencing homelessness, domestic and family violence, child protection issues, complex trauma, substance use issues, disability and mental health conditions. Lou's Place is a safe place for women and offers a range of free supports, services and group activities. It is the only refuge of its kind in Sydney and has received no government funding since it began operation in 1999.

Lou's Place provides a supportive context for women to tackle life's challenges by offering services that help them rebuild self – respect, stability and security in their lives. Our safe environment allows women the opportunity to consider their options, imagine a different life and take steps to build it. This is achieved through the therapeutic case management services provided by our staff team, and a community of women supporting each other. Apart from case management, we offer drop in and referral assistance where no appointment is necessary. We also offer range of therapeutic activities and group work programs to build confidence, develop life skills and promote healing and recovery. Our only eligibility criteria is that the person is over 18 years of age and identifies as a woman. We work with women for as long as they'd like to work with us.

Lou's Place runs a unique program called Always Mum. Always Mum supports women who currently have children in Out of Home Care and are seeking to re-establish or improve their relationships with their children. This is achieved through seven weeks of Catholic Care's My Kids and Me parenting education, three weeks of domestic violence education, legal education and confidential advice in partnership with Women's Legal Service NSW, therapeutic case management and advocacy support. Through the child protection process, our case management can span years. This extended duration of our case management services has allowed us to identify issues with the Child Protection system. This submissions details some of the most pertinent recurring issues and is in no way a complete submission of all the issues we have identified with the system.

Practice Recommendations

Our submission recommends that the NSW Government focus on:

1. Strengthening relationships between mothers and children
2. Supporting the whole family
3. Addressing Aboriginal overrepresentation
4. Reviewing issues with the legal process
5. Reviewing the use of parenting capacity assessments
6. Gaining a better understanding domestic violence
7. Gaining a better understanding substance use
8. Employing parent advocates or peer workers to support mothers
9. Taking issues with foster care placements seriously
10. Addressing issues with caseworkers

1. Strengthening Relationships Between Mothers and their Children

Our program, *Always Mum*, is unique in that it offers a program to mothers who do not currently have the care of their children. Always Mum works with mothers regardless of the stage of the legal process and regardless of whether restoration has been deemed a realistic possibility by the Department of Communities and Justice ('the Department' or 'DCJ') or the Children's Court. We have observed that most services will only work within an Early Intervention framework or once restoration has been agreed to by the court. Whilst we support the implementation of more intensive early intervention support work and restoration work, this is a huge gap in service delivery.

Supporting mothers to address child protection concerns, particularly at the time of removal

At the time of removal, mothers are often at their most vulnerable. Our clients are usually dealing with the ramifications of childhood sexual abuse and domestic violence relationships, which often leads to mental health issues and periods of substance misuse. Many mothers we work with were in out-of-home care as children. The time where child removal occurs is a key turnaround point for women if adequate wraparound support is provided. However, once the removal occurs, mothers are not supported by the Department to work on their issues and are instead alienated from support and the decision-making process. The child becomes a client of the Department's casework, whilst the mother does not. We reject the premise that children can be protected without also supporting their biological parents.

Following removal, mothers are usually given a Summary of Proposed Plan (SOPP), which includes a list of concerns that the Department holds about their parenting and how they can address these concerns. In most cases, DCJ does not assist the mother to address these concerns; the mothers are left to complete required tasks with

minimal support, guidance and feedback from DCJ. Lou's Place has identified this systemic disadvantage and supports mothers in addressing the identified concerns that warranted the removal of the child or children, but more support services need to be funded for this work. This is in line with section 10A of the *Child and Young Persons (Care and Protection) Act 1998* (NSW) ('the Act'), which provides that restoration to the birth parents is the first preference when considering long-term placement options.¹

Further, the matter is usually set down at the Children's Court for Final Orders within a few months. Final Orders is where the Department proposes to the court the Orders that should be granted. During this process, the Department proposes to the court whether they believe restoration is a realistic possibility or whether parental responsibility ('PR') should be placed with the Minister until 18 years of age. This decision partly rests on the progress the mother has made towards addressing the concerns listed in the SOPP. However, time is an issue with this process. Often the SOPP includes tasks that take over 12 months for the mother to realistically complete such as attending a residential rehabilitation program for 9 months followed by 12 months abstinence in a community setting. Since the SOPP tasks usually cannot be completed within the time between removal and Final Orders, PR is assigned to the Minister until 18 years of age. This means mothers' only option to reclaim PR is to return to court in 12 months or more and apply for a Section 90.²

Greater use of parenting contracts and short-term orders

To address the issue of competing time frames, we support greater use of parenting contracts and short-term orders. Parenting contracts require parents to undertake certain tasks for a period of up to 18 months, without allocating parental responsibility or placing the child in out-of-home care.³ Parenting contracts do not require a care application to be brought before the court.⁴ Short term orders are set for a period of up to two years and allows the Department to share parental responsibility with the mother, with the aim of restoration occurring at the successful completion of the 2-year order.⁵ Both options require DCJ to be more proactive in working with the mother and to utilise specialist services that would be highly beneficial in addressing identified issues of concern. These options provide the mother with a clear framework and time period for addressing their parenting concerns, without necessarily placing parental responsibility with the Minister until the child turns 18 years of age.⁶ As a result, greater use of these options would streamline the legal process instead of requiring mothers to return to court with a separate application in the future.

¹ *Child and Young Persons (Care and Protection) Act 1998* (NSW) section 10A.

² *Child and Young Persons (Care and Protection) Act 1998* (NSW) section 90.

³ *Child and Young Persons (Care and Protection) Act 1998* (NSW) section 38A.

⁴ *Child and Young Persons (Care and Protection) Act 1998* (NSW) section 38D.

⁵ *Child and Young Persons (Care and Protection) Act 1998* (NSW) section 79.

⁶ *Child and Young Persons (Care and Protection) Act 1998* (NSW) section 38A, section 79.

Increasing contact

In our experience, many children over 8 years of age begin to express a desire to return home to their mothers. As a result, we believe that greater support should be provided to mothers to strengthen their relationships with their children even if they are not in their care so at the time children “vote with their feet”, the mother is connected to their child and able to adequately care for them. Once Final Orders grant PR to the Minister until the age of 18 years, most mothers are given between four and 12 two-hour visits per year, which are often supervised by a contact worker. Our view is that this frequency and duration of contact is not sufficient to maintain connection and bonding between mothers and their children. Mechanisms for ongoing review of contact should be embedded in the legislation, particularly so that contact can be increased in line with children’s wishes.

Supported contact & parent coaching

Supervised contact often occurs in contact centres, supervised by a worker who is a stranger to the family. Sometimes, supervised contact will occur in more natural settings like a shopping centre or park. The supervisor in attendance monitors the contact and takes notes on the mother’s parenting and interaction with the child or children. The individual supervisor often changes from visit to visit. This type of family contact arrangement is often very distressing to mothers and their children as it is not a therapeutic, trauma-informed setting. Whilst we understand that supervision of family contact is important in higher-risk cases, we propose that supervision of family contact would be an optimal opportunity to encompass parenting coaching. Contact supervision as parenting coaching provides a rich opportunity for mothers to improve their parenting skills and build greater connection with their children. This approach would build parenting capacity for mothers whilst providing a safer and secure environment for children.

2. Supporting the Whole Family

Many of our mothers have reported that family members who are ready and willing to provide care to their child were not contacted nor explored by the Department. This has led to children being placed in foster care with a stranger, even when there are family members available to care for the children, contrary to Placement Principles provided in the Act.⁷ This is particularly concerning when Aboriginal children are placed with non-Aboriginal families, which also runs contrary to the framework provided in the Act.⁸

⁷ *Child and Young Persons (Care and Protection) Act 1998* (NSW) section 10A.

⁸ *Child and Young Persons (Care and Protection) Act 1998* (NSW) section 10A.

3. Addressing Aboriginal Overrepresentation

Aboriginal children and young people are about 10 times more likely than their non-Aboriginal peers to be removed from their families and tend to remain in care longer.⁹ To address Aboriginal overrepresentation in the Child Protection system, we call for all recommendations in the Family is Culture report are implemented immediately.¹⁰

4. Reviewing the Legal Process

The legal process should be reviewed with a view to achieve greater understanding of the legal process for mothers. The child removal process is initiated in the Children's Court via an Initiating Care Application. Feedback from mothers we work with is that they are unclear about their rights during this legal process. They are also often very unclear about how the process works, engagement and input allowed from them during the process and likely outcomes resulting from the process. This lack of understanding is often interpreted by the Department as the mother "not caring" about the outcomes for her children. However, the mother's we work with express a strong desire to be more involved at every stage of the process.

Legal Aid often represents the mother in Care Matters. Legal Aid representation is mixture of both Legal Aid lawyers and private practice lawyers who receive a grant from Legal Aid to provide their legal services. It is our experience that most private practice lawyers working on a grant of Legal Aid leave Legal Aid matters allocated to them to the last minute often due to their already heavy workloads. This means that in most cases, there is minimal contact by the lawyers representing the mother to enable fully informed conversations to occur. Consequently, the process of the matter and individual issues of complexity are often not fully explained to the mother. Understandably, this causes mothers significant stress and uncertainty.

Further, decisions are often made by lawyers who represent the mothers without fully informed consent of the mother. We have had multiple solicitors working under a Legal Aid grant tell mothers that they cannot ask any more questions of the solicitor as they have "taken up too much of their time already." Whilst we understand care matters are complex, the various orders need to be fully explained to the mother so that she is provided with the opportunity to be involved in all decisions regarding her child. Refusing to ensure Aboriginal mothers are fully informed about the care and protection process, runs contrary to the principles of self-determination and participation in decision making, outlined in the Act.¹¹

⁹ AbSec, *Aboriginal Family Preservation and Restoration Model Guidelines*, June 2020.

¹⁰ *Family is Culture: Independent Review into Aboriginal and Torres Strait Islander Children and Young People in Out-of-Home Care in New South Wales (2019)*.

¹¹ *Child and Young Persons (Care and Protection) Act 1998* (NSW) section 11, section 12.

Greater education for mothers on their legal rights, the legal process, possible options and likely outcomes is required. This could be explained by the DCJ caseworker or be a requirement of a private solicitor working on a Legal Aid grant. Better legal education for mothers would be better achieved through providing funding to community legal centres where solicitors are trauma-informed and able to understand the complexities of both the legal issues and the mothers' situation. Mothers in our program have provided positive feedback for legal education and advice provided by specialist organisations like Women's Legal Service. Support throughout the legal process could also be combined with linking mothers with relevant support services by way of a funded service who sits in a consultation room in the Children's Court, like WDVCAS for domestic violence matters. Having a support service in the court means that mothers could be explained the legal process as well as linked up with necessary support services as early as possible.

5. Reviewing the Use of Parenting Capacity Assessments

Parenting Capacity Assessments are often used to assess whether restoration to the mother is viable. These assessments are usually carried out by clinical psychologists who meet the family for a few hours on one occasion. We have seen numerous parenting capacity assessments with various inaccuracies and incorrect conclusions about the families. These assessments seem to use a similar template for all assessments and do not allow much room for nuanced information about the family's situation. Despite these identified issues, these assessments are heavily relied upon by both DCJ and the court. Conversely, support services with intensive, long-standing relationships with the family are often dismissed as 'non-expert' reports, although they have had considerably more involvement with the family than a one-off clinical assessment.

Additionally, there is a dearth of culturally appropriate assessors for Aboriginal and Torres Strait Islander families. Recently, an Aboriginal mother in our program had a choice of waiting over 12 months for an Aboriginal assessor (and thereby delaying potential restoration for her children) or to agree to a non-Aboriginal assessor. The mother asked the non-Aboriginal assessor about her cultural awareness and the assessor assured the mother she was "culturally safe." However, from the assessment it is clear that the assessor did not have an understanding of how care is provided within Aboriginal families (i.e. with involvement from all family members) and the importance of family in practising their culture. In addition, the issue of intergenerational social adversity are not so much taken into consideration or acknowledged in care matters as required by the court in criminal matters.¹² To address this issue, more Aboriginal clinical assessors should be appointed by the Department to carry out parenting capacity assessments. Independent Aboriginal consultants could be appointed alongside any clinical assessor to support

¹² *Bugmy v The Queen* [2013] HCA 38 where it was noted that the court be required to consider the unique systemic and background factors affecting Indigenous people in the sentencing process.

assessors to carry out assessments in a culturally safe and aware manner. We have had positive outcomes for Aboriginal families in cases where the Department has appointed an independent Aboriginal consultant to assess the case and ensure the legislation as it pertains to Aboriginal families is being followed.

6. Gaining a Better Understanding of Domestic Violence

As a member of Domestic Violence NSW, we endorse their submission to this inquiry.

Many mothers in our program are victims of domestic violence. In some cases, this violence impedes on a mother's ability to protect her children. However, in most cases, the mother is desperately seeking support for her and her child to leave the violence safely. Our experience is that children are removed from their mother whilst they are trying to escape the violence, especially when escaping violence results in short periods of homelessness. In some cases where the child is removed from the mother, the child is placed with the father or paternal family where the coercive control continues with the family and/or child as conduit. The system needs a better understanding of the patterns, dynamics and complexities of domestic violence, particularly how perpetrators use care of the children to threaten and control victims. Greater support for mothers and children to leave violence safely is also needed. Consideration must be given to the child's views regardless of their age and this should trump the violent parents' "rights" for contact. There is opportunity within the system to hold perpetrators accountable for their violence toward the whole family, but too often this is ignored in favour of their right to have contact with the child.

Case study – Sandra

Sandra was a victim of ongoing domestic violence from her partner and father of their 9-year-old son, Sam. Whilst Sandra wished to escape the violence with Sam, she could not find a refuge that would accommodate her and her son. Sandra felt that if she did not escape, she would be killed. Sandra went to a women's refuge. The child was then removed from both parents. Sandra then begun a 2-year long process to have her son restored to her care. The DCJ caseworkers admitted to Sandra that this "should never have happened", yet the system did not allow the process to be expedited in acknowledgement of this. Instead, Sandra had to navigate the same channels as if this was a legitimate removal. This case was complicated by a perpetrator and his family who were in complete denial of the abuse occurring. Sam had expressed that he did not want to see his father, though the father's parental rights trumped the wishes of Sam and Sam was required to continuing attending visits with his father.

7. Gaining a Better Understanding of Substance Use

As a member of the Network of Alcohol and other Drug Agencies (NADA), we support their submission to this enquiry.

Many mothers who have their children removed have had periods of alcohol or substance misuse. Through our work and advocacy with mothers and the Department, we have noticed a continued stigma caused by a lack of understanding about substance use. In particular, there should be greater education for DCJ caseworkers around the

difference between lapse and relapse. To reduce stigma, the focus should be on the impact of drug use on parenting rather than the drug use itself. Due regard should be given to protective measures taken by mothers to protect their children in the instance of a lapse. In our experience, mothers are often punished for a lapse by reducing contact and reconsidering offers of restoration even where the drug use did not impact their parenting. This occurs when they were open and honest with the Department about their use, which can reduce a mothers' desire to share important information with the Department. This occurs even when mothers continued working with support services to address the triggers and causes of the lapse. A more therapeutic response to drug use disclosures, by supporting mothers to get the help they need whilst still supporting contact where it is safe to do so, is in the best interests of children.

We have also observed a lack of understanding by DCJ caseworkers regarding the difficulty of reducing intake of legitimately prescribed, though addictive pharmaceuticals. There is a sense that certain medications, such as benzodiazapines, are "bad" drugs even though they are often legitimately prescribed for pain management. Better education for DCJ caseworkers on coming off legitimately prescribed, though addictive medication is required.

8. Employing Parent Advocates or Peer Workers

The Always Mum program is up to its seventh round. Due to the nature of the program and the fact that it occurs within the context of Lou's Place drop-in centre, many women who have completed the program in the past are connected with current participants. Mothers who are further along in their journey get to know other mothers who are just beginning the program. Within this context we have observed positive outcomes for mothers who are supported by other mothers who have a shared experience. Funding for parent advocates or peer workers independent of the Department would help support mothers to stay on track for the benefit of their children and is less intimidating than working with people from the Department. Parent advocates and peer workers may also assist in providing coaching and care around contact to ensure contact between children and mothers is successful.

Lucy & Lauren case study

Lucy and Lauren met in a residential rehabilitation program. Lucy was just beginning the program as Lauren was completing her program. Both women had had children removed due to drug use. Along with completing rehab, Lauren also completed the Always Mum program in 2018. After meeting Lucy in rehab and completing the Always Mum program, Lauren suggested that Lucy also complete Always Mum. Lauren had been working for years to address parenting concerns identified by DCJ. Lauren applied for a section 90 for restoration and was successful. Lauren and Lucy, though both have completed their residential rehab program and Always Mum are consistently in contact. Lauren is encouraging Lucy to keep on track with her progress toward addressing her parenting concerns. Lauren is also providing information to Lucy about what to expect at each step of the process and assisting her with managing challenges that arise.

9. Taking Issues with Foster Care Placements Seriously

Many of the mothers in our program have shared experiences of their children being sexually abused or psychologically harmed whilst in foster care. Many mothers detail the steps they have taken to bring their child's disclosures to the attention of their caseworker, only to have their concerns not followed up or dismissed and their children to remain in the care of abusive carers. There is an issue of double-standards for birth mothers and foster carers in the child protection system. Issues that led to removal from a birth mother, do not receive investigation or follow-up with the same tenacity when it involves a foster carer. This is particularly true for non-government agencies who manage foster carers, as funding is partially dependent on placements remaining stable.

Helen case study

Helen has five children in foster care. Two of the children were placed together with a foster carer while the other three children were in separate placements. Three out of the five children disclosed sexual abuse in their foster care placements to Helen. Helen informed her DCJ caseworkers. However, a year on from these disclosures the children remained in the same foster care placements.

10. Addressing Issues with DCJ Caseworkers

There are systemic and administrative issues within the Department, including excessive caseloads and high turnover of caseworkers, which causes issues for families. There are also issues with DCJ caseworkers' approaches including refusing collaboration, judging families, and lacking understanding of how identified issues with parenting can be addressed. There are also issues with caseworkers lacking openness and transparency with mothers.

In terms of systemic and administrative issues, DCJ caseworkers often have caseloads well over their capacity. This leads to identified issues not being followed up in a timely manner. Further, high turnover of caseworkers reduces the ability for families to make meaningful progress as families must re-explain their situation to different caseworkers each time there is a change, leaving families with a feeling that they are 'starting all over again.'

Further, we have had DCJ caseworkers refuse collaboration with relevant services, reducing the possibility of meaningful, consistent and collaborative support across relevant government and non-government agencies. Given the complexity of care matters and that DCJ caseworkers are already overstretched, this approach is not effective in gaining positive outcomes for children and their families.

Mothers have reported feeling judged for their issues by DCJ caseworkers. We have also directly observed caseworkers telling mothers they will "never get their children back" and are responsible for "all the psychological damage" done to their children. Vulnerable people in our community deserve a non-judgmental and supportive



approach. This is particularly concerning given that these decisions rest with the Children's Court and not individual caseworkers.

DCJ caseworkers often lack sufficient understanding in the myriad of ways that parents can address identified child protection concerns. Caseworkers are generally responsible for generating the SOPP.¹³ In practice we find identified issues are inappropriately matched with SOPP tasks. For example, a mother with infrequent marijuana use is asked to attend a lengthy residential rehabilitation. If the mother does not complete the program, it reflects badly on her in Court, regardless on the mother's own view about what would be most beneficial to address her drug use.

The Department lacks openness and transparency with mothers yet requires openness from them. The mothers in our program have informed us that in the period leading up to removal, the Department asks for openness and transparency as to the issues they are currently facing with the promise of the Department providing support. Instead, they find their openness is used as grounds for removal with no pre-warning or transparency about the possibility of removal. This leads to a lack of trust towards the Department, which hinders the possibility of effective and meaningful work together in the future.

To address the issues with DCJ caseworkers, we suggest better funding for the Department to minimize caseloads. Where possible, caseworker transfer should be minimized. Greater training for caseworkers on their role and how to work therapeutically within it would assist in achieving more effective casework. Caseworkers also need to develop a better understand of the identified parenting issues and the myriad of ways in which a mother can address them. Finally, caseworkers should be required to disclose their intentions of removal when asking for information and not disguise this in 'offers to help' unless they plan to actually provide adequate support.

¹³ Discussed earlier on p. 2.