

**Submission  
No 15**

## **CHILD PROTECTION AND SOCIAL SERVICES SYSTEM**

**Organisation:** Northern Rivers Community Legal Centre

**Date Received:** 11 December 2020

11<sup>th</sup> December 2020



**Re: NSW Parliamentary Inquiry into the effectiveness of the NSW child protection and social services system in responding to vulnerable children and families**

### ***INTRODUCTION***

The Northern Rivers Community Legal Centre (NRCLC) is a free legal advice, information, advocacy, community legal education and law reform service. The NRCLC provides three main services, a Legal Service, Tenant's Advice and Advocacy Service (TAAS) and Women's Domestic Violence Court Advocacy Service (WDVCAS). The NRCLC employs Aboriginal people across its services and specifically an Aboriginal community development worker on the Aboriginal Legal Access Program (ALAP) to provide culturally competent services to the nine Aboriginal communities encompassed within the NRCLC catchment region.

The Northern Rivers Community Legal Centre welcomes the opportunity to make a submission to the NSW Parliamentary Inquiry into the effectiveness of the NSW child protection and social services system in responding to vulnerable children and families.

The NRCLC is a member of the Northern Rivers CLSD Program that includes staff from the Northern Rivers Community Legal Centre, the Aboriginal Legal Service, Legal Aid NSW (Lismore office and specialist services), the Justice Advocacy Service (JAS), the Women's Domestic Violence Court Advocacy Service (WDVCAS), as well as staff from youth services, financial counselling services, mental health services, drug and alcohol services, local courts, disability services, tenancy services and neighbourhood and community centres. This submission is informed by the role of the NRCLC in coordinating the CLSD program in the region and by the community development, education and case work undertaken by the NRCLC within the Northern Rivers catchment region. Children and young people who have contact with the statutory care and the criminal justice systems, and their families are a continued focus of CLSD Program partners in the Northern Rivers.

CLSD Program partners in the Northern Rivers are particularly concerned about:

- The lack of child protection early intervention legal services
- the level of knowledge that children and young people who live in OOHC, and who have contact with the statutory care system have about their rights
- the level of access that children and young people who are in contact with the statutory care system have to legal services, and
- the trajectory that exists from OOHC to the criminal justice system, where Aboriginal and Torres Strait Islander young people are over-represented.

**114 Molesworth St, Lismore, 2480**

**Administration & Legal Service**

**Tenants Advice & Advocacy Service**

**Women's Domestic Violence Court Advocacy Service**

PO Box 212 Lismore 2480

02 6621 1000 Fax 02 6621 1011

02 6621 1022 1800 649 135 Fax 02 6621 1033

1300 720 606 Fax 02 6621 1055

ABN 98 071 395 652

The Northern Rivers CLSD region includes the area in and around Tweed Heads, Murwillumbah, Byron Bay, Ballina, Lismore, Casino and Kyogle, which corresponds roughly to the Department of Communities and Justice (DCJ) Northern NSW District. It must be noted however that the NRCLC catchment region extends to the Clarence Valley region and includes Grafton, McLean, Yamba and surrounds. Excluding the Clarence Valley region, on 30 June 2019, there were 903 children and young people living in OOH in the District. This figure has increased annually from 779 children and young people in June 2014. Of those 903 children and young people, 392 are Aboriginal, which is an increase from 337 one year before.<sup>1</sup>

According to data from Their Futures Matter, vulnerable young children aged 0-5 in the Northern NSW region (4,483 children) are 4<sup>th</sup> highest out of 16 in estimated future cost to the NSW Government; children aged under 15 who are affected by mental illness in the region (4,012 children) are 5<sup>th</sup> highest out of 16 in estimated future cost to the NSW Government and young people aged 15-18 affected by mental illness (1,911 young people) are 6<sup>th</sup> highest out of 16 in estimated future cost to the NSW Government. A significant proportion of these children and young people are Aboriginal or Torres Strait Islander<sup>2</sup>.

### ***Importance of early legal assistance in responding to vulnerable families***

Early independent legal advice in child protection matters is crucial to providing advocacy to assist parents to explore their options to prevent permanent child removal.

A review of Children's Court documents for clients who presented at NRCLC for advice post-removal of their children, often reveals points within the process where early intervention legal advice could have provided the client with the opportunity to prevent their children being removed.

Benefits of early legal advice:

- Solicitors can explain client's rights and responsibilities of DCJ if DCJ make contact,
- Solicitors can liaise with DCJ to assist clients to understand the safety concerns, what DCJ are asking the client to do to address the safety concerns and ensure that what DCJ is asking the client to do will address the safety concerns.
- Solicitors can encourage engagement with support services and warmly refer clients to support services.
- Solicitors can advise of the importance of child focused insight, action and positive engagement and what may happen if the safety of children is not addressed.
- Solicitors can liaise with DCJ to encourage the use of early intervention tools such as family group conferencing (FGC's) and Family Actions Plans as an alternative to an application being made in the Children's Court
- Solicitors can advise clients about options for avoiding a care application being made in the Children's Court, including making an application in the Federal Circuit Court for Family Law Orders.

Clients often have a history of negative interactions/perceptions of DCJ, which can limit engagement or prevent clients from taking in the information provided by DCJ Caseworkers. In addition due to solicitor's confidentiality requirements clients can talk freely to solicitors so that the legal advice can address the pertinent issues to address child safety concerns.

### ***Barriers to early legal assistance***

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<sup>1</sup> [https://public.tableau.com/profile/facs.statistics#!/vizhome/TableA1B3C2D4N48-N51/Performance\\_measure](https://public.tableau.com/profile/facs.statistics#!/vizhome/TableA1B3C2D4N48-N51/Performance_measure)

<sup>2</sup> NSW Government, Their Futures Matter. Family Investment Model, Northern NSW. Retrieved from, [https://www.theirfuturesmatter.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/723977/Northern-NSW\\_.pdf](https://www.theirfuturesmatter.nsw.gov.au/__data/assets/pdf_file/0008/723977/Northern-NSW_.pdf)

Underpinning the 2015/16, Safe Home for Life changes to child protection, that elevated adoption and guardianship in the hierarchy of child placements, was the use of early intervention mechanisms including access to early intervention legal services. DCJ allocated a small amount of funding to Community Legal Centre's for this purpose however despite allocation of this funding, legal services continued to receive a lack of referrals from DCJ in relation to early intervention matters.

Research undertaken by the Law and Justice Foundation of NSW shows that vulnerable clients often, do not seek out legal assistance, however, they are presenting to community and health service workers to assist them to deal with a range of issues.<sup>3</sup> Legal services in the Northern Rivers region working in child protection have reported that they often see clients for the first time when they require representation in the Children's Court. Community service and health workers in this regard are the crucial link to accessing justice for clients presenting with child protection and domestic violence issues.

### ***Early Intervention Referral Project***

To address and overcome the lack of referrals made by DCJ for early legal assistance, NRCLC partnered with a range of community services working with families experiencing DCJ intervention to create the child protection Early Intervention Referral Project (EIRP). The aim of the EIRP was to provide sector development for frontline service workers across the Northern Rivers region to guide effective responses to child protection and domestic and family violence presentations, with an emphasis on early referral to legal services and specialist domestic violence services.

Since the EIRP sector development has been rolled out, the Centre saw an increase in referrals from service providers in early intervention care and protection matters. The increase in referrals led to families being assisted to understand their rights and responsibilities and to more effectively navigate the child protection system.

### ***Case Study - Veronica's story***

Veronica contacted NRCLC for advice after the NSW police attended her home to complete a welfare check on her two children. The police told Veronica that they had received reports that she had been smacking and yelling at her children. Veronica was provided with advice about the process of reports being made to DCJ if children are considered to be at "Risk of Significant Harm", including what to do if DCJ make 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 DCJ caseworker. Three weeks later Veronica attended the Centre for further advice. DCJ 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 DCJ. We advised Veronica about the importance of attending the meeting and engaging with DCJ, 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. We arranged for a support worker to attend the meeting with Veronica to assist her with note taking. Veronica attended the meeting and followed our advice with regard to positive engagement, insight and protective behaviours. Subsequently the outcome of the safety assessment was safe and DCJ referred Veronica to a family support service for

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<sup>3</sup> Law and Justice Foundation of NSW (2014) 'Reshaping legal assistance services: building on the evidence base. Retrieved from: [http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/\\$file/Reshaping\\_legal\\_assistance\\_services\\_web.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/$file/Reshaping_legal_assistance_services_web.pdf)

ongoing support. Had Veronica not sought legal advice before the meeting with DCJ she reported that she would not have engaged.

Despite the success of the EIRP in assisting vulnerable families to navigate the system and keep children safe and at home the community legal sector including the small amount of funding allocated to the NRCLC, lost Care Partner Funding and hence the ability to effectively provide child protection early intervention legal advice. The EIRP sector development initiative produced an increase in families seeking early intervention child protection legal advice from the NRCLC. In 2018 on average, NRCLC Care Partner Reports to DC&J showed a 33% increase in early intervention legal advice and five times as many legal tasks undertaken then the 2017 reporting periods. The (Oct-Dec 2018) Care Partner report maintained that trend. Of particular note was that a large proportion of families receiving early intervention legal advice successfully engaged with services resulting in DCJ closing their case file.

The history of trauma between the Aboriginal and Torres Strait Islander population and DCJ and the power imbalance in that relationship if clients do not have an independent third party to provide them with advice/ advocacy, often leads to a care application that could have been avoided. Early intervention referral and advice benefits, families, DCJ and the Courts. Referring families for advice and addressing issues early results in a cost benefit for DCJ and justice agencies.

### **Case Study**

A client was referred to NRCLC's legal service by the Women's Domestic Violence Court Advocacy Service (WDVCAS) for advice and assistance with both an apprehended domestic violence order and a Victims Support application. The client was experiencing family violence and had a three year old child in her care. Throughout the course of the client interview, the client disclosed that a DCJ caseworker had attended her home and had asked her to do a number of things, including engage in the early intervention program Brighter Futures and ensure her ex-partner does not come to the home. The client was reluctant to work with DCJ or Brighter Futures. The Solicitor gave the client advice about her rights and the responsibilities of DCJ and explained to the client some steps she could take to avoid a care and protection application being made. The Solicitor encouraged the client to engage with support services, including Brighter Futures and counselling, and assisted the client to draft a parenting plan which provided for the child to spend supervised time with the Father. The client successfully completed the Brighter Futures program and the child's case file was eventually closed.

The loss of Care Partner funding has left a gap in the ability of legal services across the region to provide child protection early intervention legal services. The Aboriginal Legal Service and Legal Aid are under-resourced and much of the resources are taken up in attending to children's court matters. A crucial referral pathway to NRCLC's early intervention legal service has also been lost because ALS and LA also act for children leaving a gap in early intervention legal service provision for families. Although private practitioners are a referral option they are often not trauma informed and are unable to undertake the advocacy required on behalf of the client to facilitate better outcomes for vulnerable children and families.

Legal services working with vulnerable families report that there is a lack of responsibility and accountability on the part of DCJ to undertake early intervention. There is no legislative requirement of DCJ to undertake early intervention and to actually provide evidence to the Court when the application first comes before the Court. We contend that legislating mechanisms within the act for the Court to order that the Department undertake early intervention if the requirement has not been complied with provides further opportunity for families to engage with services to address DCJ safety concerns.

***The trajectory that exists from OOHC to the criminal justice system, where Aboriginal and Torres Strait Islander young people are over-represented.***

As part of local efforts to address the concerns of children and young people in OOHC, the Northern Rivers CLSD partnership held a forum to discuss the supports that are currently available for children and young people locally in June 2020. It was noted that efforts to introduce services to the region to facilitate improved outcomes for children and young people are often not taken up and implemented formally by criminal justice agencies.

'Since March CASPA has been funded by the Department of Juvenile Justices to provide a diversion program to young offenders. Since the commencement we have seen overwhelmingly positive outcomes for all the young people who have resided within this program. CASPA is able to provide up to twenty eight days of supervision, casework, accommodation and transport support to Children and young people between the ages of 12 and 17 who are at risk of entering the juvenile detention system due to lack of appropriate accommodation and support. Aboriginal young people under the age of 14 are specifically targeted through this program we offer as part of a committed approach to diversion away from the criminal justice system.

CASPA has built an excellent relationship with Police to date through a mutual commitment to reducing the criminalisation of young people, unfortunately we are yet to receive a referral from the local area command for this service. Information and education on the program was limited and CASPA continue to engage with police on a monthly basis and promote the service. It is important that police are acutely aware of the service given they are the referral point into the program for youth who would otherwise be detained due to lack of housing for bail.'<sup>4</sup>

Criminal justice agencies are not utilising services that have been introduced into the region to support children and young people in their contact with the criminal justice system. The lack of utilisation of these initiatives risks the region losing vital services that contribute to producing better outcomes and/or keeping young people in OOHC from entering the criminal justice system.

'Justice Advocacy Service (JAS) supports young people (& adults) with cognitive impairment in contact with the NSW criminal justice system, including as victims, witnesses, and suspects/defendants to exercise their rights and fully participate in the process.

The Convention on the Rights of Persons with Disabilities requires that people with disability be provided with appropriate support to enable them to exercise their legal capacity on an equal basis with others.

JAS will support a young person with cognitive impairment who is:

- In custody (under arrest) at a Police station
- Reporting a crime to Police as a victim or witness
- Making application for a domestic personal violence order or personal violence order
- Being interviewed by Police as a suspect in a criminal matter
- In custody at a Youth Justice Centre
- Appearing at Court to give evidence
- Appearing at Court following arrest

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<sup>4</sup> CASPA Services Ltd.(2020). Family Supports Program Manager, CASPA Services Ltd.

- Appearing at Court via AVL from a youth justice centre
- Meeting with their criminal lawyer

JAS will also connect clients to disability and/or mainstream services.

This submission relates specifically to the experience of the JAS service that operates in Northern NSW and to the period July 2019 to December 2020.

In July 2019, JAS expanded to become a state-wide service. This expansion has included the recruitment of a team of casuals to cover police station supports 'out of hours', ensuring the provision of a 24/7 service. An extensive promotion campaign has been rolled out, with new casuals being oriented and introduced to local police stations, so they can be called out when a support person is required.

Despite these efforts, (while recognising the impact of COVID 19) they have not resulted in more referrals, particularly for young people who come into contact with police and are then taken into custody.

A total of 155 referrals for support were received for the Northern NSW region. Of these, only 9 of were for people under the age of 18. Of these 9 referrals, only 2 were made by police, the other 7 were referred by lawyers, service providers or family.

This is of great concern to people who work within the youth sector and who aim to steer young people away from the criminal justice system.<sup>5</sup>

### ***Case Study 1***

Casey is 17 years old. Recently, he was taken into custody after breaching his bail conditions by absconding from a placement. Casey is Aboriginal, has a long history of trauma and has been under the care of the Minister since 2017. Early in his life, his mother abandoned him and his brother and he was placed with a community member. When that person passed away, he was left in the care of that person's non-Indigenous partner. Casey came forward and said that he was being abused by that person, as a consequence, was put under the care of the Minister, until he turns 18.

Casey has been diagnosed with Foetal Alcohol Syndrome and a developmental delay, along with various psychiatric disorders. This makes it difficult for him to understand his bail conditions and means that he often ends up breaching them. He is not on a Disability Support Pension and nobody has ever helped him to apply for support through the NDIS.

Casey has a long list of convictions, including assaulting police, resist arrest and carry a concealed weapon. He also has an ADVO that was taken out by his ex-partner.

Currently, he is in a Youth Justice Centre and has been put on a Behaviour Management Plan for assaulting staff. He has an upcoming court case but centre staff are reluctant to allow JAS to support him, given the constricted confines of the AVL room. He has a Case Manager and JAS advocates are working with her to try and set up long-term supports to ensure Casey has choices beyond repeat incarceration.

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<sup>5</sup> Justice Advocacy Service. (2020). Intellectual Disability Rights Service Inc.

## Case Study 2

Oska is a 12 yo boy who attends an independent primary school in Northern NSW.

Oska has autism and physical characteristics that make him 'stand out' and he has been subjected to bullying from a number of his peers for some time. In a recent incident, he punched another boy at school who had been bullying him. The matter was referred to the police for charging and they called him in for an interview.

Oska's carer was advised to call JAS for support and they arrived at the police station. Police Officers had not heard of the service and questioned their presence – 'we just want to ask him a few questions' they said. The JAS advocate argued that this young person was a vulnerable person, entitled to support and to legal advice. This was arranged, despite police reluctance, and a lawyer from the Youth Legal Service spoke to all the parties, taking great care to explain his choices and the legal implications of these choices.

Eventually, Oska was released with a warning, but it took some time to try and explain all the complexities related to answering 'a few questions'. As the lawyer pointed out, despite his young age, he could be deemed capable of recognising the 'nature of a crime' and could be charged, taken to court and end up with a criminal record.

Version 2 of the 'NSW Joint protocol to reduce the contact of young people in residential out of home care with the criminal justice system' aims to 'reduce the frequency of police involvement in responding to behaviour by young people living in residential and intensive therapeutic care (ITC) services'.<sup>6</sup> Although the protocol was originally adopted in 2016 and the revised version is an initiative of the Western Sydney Interagency network and corresponding area commands the training and implementation for regional NSW has been ad hoc, lacking in substantive training and implementation. The training for the service sector and police was due to occur pre-COVID however as COVID prevented the training from occurring at that time it has now moved on-line. The on-line method is undertaken by service providers and criminal justice agency workers individually and in isolation from each other. To be effective criminal justice agencies and OOHC providers need to be trained together so that local and relevant, formal processes can be developed to enable the aims of the protocol to be realised. LA's criminal division continue to report to the CLSD network that children and young people on OOHC in the Northern CLSD region are entering the criminal justice system on minor property damage offences occurring in OOHC premises.

### ***The level of knowledge that children and young people who live in OOHC, and who have contact with the statutory care system have about their rights AND the level of access that children and young people who are in contact with the statutory care system have to legal services***

NRCLC attended the 'Their Futures Matters' co-design consultation in Coffs Harbour in 2017 and advocated that access to independent legal advice should form part of the universal supports offered to young people during and leaving OOHC.

In NSW the number of children and young people in OOHC has almost doubled and in 2016 Aboriginal children make up 37% of children and young people in OOHC. The number in residential care rose by

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<sup>6</sup> NSW Government (July 2019). Joint protocol to reduce the contact of young people in residential out of home care with the criminal justice system. Retrieved from [https://facswb.squid.cloud/\\_\\_data/assets/pdf\\_file/0006/585726/NSW-Joint-Protocol-2019.pdf](https://facswb.squid.cloud/__data/assets/pdf_file/0006/585726/NSW-Joint-Protocol-2019.pdf)



23% in one year and the average time of stay in care is 12.5 years (Their Futures Matter, Fact Sheet). Children and young people are increasingly exiting OOHC at age 18.

DCJ data shows that the rate of children and young people in OOHC during 2016-2017 in the Northern Rivers was 15.8 per 1,000 exceeding the state average of 11.4 per 1,000. In NSW in the quarter April-June 2017 the number of C&YP exiting OOHC was 732 an increase of 5.9% which can be partly attributed to the introduction of guardianship orders. Together the data above indicate that a substantial number of children and young people will be leaving OOHC in the NRCLC catchment region over the next three years. The needs and capabilities of children and young people in the Northern Rivers region will be informed by the wellbeing outcomes upon exiting OOHC.

Early indicators taken from the current Family and Community Services funded Pathways of Care Longitudinal Study (POCLS) show that 'Children [in OOHC] were not faring as well on socio-emotional adjustment with the proportions showing high levels of behaviour problems increasing with age from 17% among 12-35 month old children, to 47% among 12-17 year olds'.<sup>7</sup> These risk indicators are precipitated by children and young people's experience of trauma that resulted in their entry to OOHC. Young people in OOHC are particularly vulnerable having experienced some form of abuse or neglect upon entering OOHC.<sup>8</sup> A key component of offering legal services to children and young people leaving OOHC is to address the risk factors associated with exiting OOHC such as homelessness, contact with the criminal justice system, intergenerational abuse and neglect<sup>9</sup> to prevent future legal need arising. Introducing children and young people to legal services before leaving OOHC will support their immediate and future access to justice requirements and introduce them to the community service sector and the supports available to them that can be utilised when they are living independently.

***Recommendations to improve the effectiveness of the NSW child protection and social services system in responding to vulnerable children and families.***

- That early intervention legal services be properly funded to meet the needs of communities across NSW.
- That DCJ formalise and implement referral protocols so that vulnerable families have access to early intervention legal services.
- That DCJ compliance with requirements to provide early intervention services be legislated to include, in appropriate circumstances, after a care application has been made.
- That access to independent legal advice become a universal support for young people leaving OOHC.
- That NSW criminal justice agencies enter into formal referral arrangements with local services including CASPA (the bail house), Justice Advocacy Service and OOHC providers so that vulnerable children and young people are supported in their contact with the criminal justice system.

Should you have any queries regarding this matter, please contact the Centre via email, [legal@northernriversclc.org.au](mailto:legal@northernriversclc.org.au)

Yours sincerely  
*Northern Rivers Community Legal Centre*

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<sup>7</sup> Wave 1 Baseline Statistical Report: Summary Pathways of Care Longitudinal Study: Outcomes of Children and Young People in Out-of-Home Care in NSW, p8.

<sup>8</sup> Campo M & Commerford J. (2016) Child Family Community Australia. Supporting Young People Leaving Out of Home Care. CFCA Paper no 41, p2.

<sup>9</sup> NSW Government, Their Futures Matter. (2018). 'Reform Directions from the Independent Review of OOHC in NSW' Updated March 2018, p6.

Karin Ness

Community Development and Community Legal Education