

**Submission
No 40**

CHILD PROTECTION AND SOCIAL SERVICES SYSTEM

Organisation: Women's Legal Service NSW

Date Received: 14 December 2020

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The Hon Matthew Mason-Cox MLC
Chair
Inquiry into the child protection and social services system
Parliament House
Macquarie Street
Sydney NSW 2000

By email: childrenyoungpeople@parliament.nsw.gov.au

Dear Chair,

Inquiry into the child protection and social services system

1. Women's Legal Service NSW (**WLS NSW**) thanks the Committee on Children and Young People for the opportunity to comment on the inquiry into the child protection and social services system.
2. We wish at the outset to express our surprise, frustration and deep disappointment at yet another inquiry. What we need is action. In particular, we call for the full implementation of the *Family is Culture* report recommendations¹ and adequate funding to support effective implementation.²

About Women's Legal Service NSW

3. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
4. WLS NSW has a First Nations Women's Legal Program (**FNWLP**). This program delivers a culturally sensitive legal service to First Nations women in NSW. We provide a First Nations legal advice line, participate in law reform and policy work, and provide community legal education programs and conferences that are topical and relevant for First Nations women.
5. An Aboriginal Women's Consultation Network guides the FNWLP. It meets quarterly to ensure we deliver a culturally safe service. The members include regional community representatives and the FNWLP

¹ Professor Megan Davis, *Family is Culture: Independent Review into Aboriginal and Torres Strait Islander Children and Young People in Out-of-Home Care in New South Wales (Family is Culture Report)*, 2019.

² AbSec, 'Opportunity for reform to protect Aboriginal children in upcoming budget', Media Release, 11 November 2020 accessed at: <https://absec.org.au/MR-Opportunity-for-reform-to-protect-aboriginal-children.html>



staff. There is a representative from the Aboriginal Women's Consultation Network on the WLS NSW Board.

6. Members of our Aboriginal Women's Consultation Network have extensive experience engaging with the community on the issues of care and protection as well as working within the child protection sector.
7. This submission will focus on terms of references 2 to 4, noting these issues are cross cutting.

Terminology

8. The term "domestic violence" is intended to include domestic and family violence.
9. We note that some people prefer to identify as victims of violence and others as survivors of violence. When we use the term "victim-survivor", this is intended to mean both victims and survivors.
10. The term "early support" is used instead of "early intervention". "Early support" is intended to mean being offered strengths based, client-centred, trauma informed, culturally safe support at the earliest opportunity when an issue of child safety is identified. Concerns have been raised by community members about the connotations associated with the term "intervention" for Aboriginal and Torres Strait Island people. The term "support" is preferred as it suggests a more collaborative strengths-based approach.

Term of reference 2: The respective roles, responsibilities, including points of intersection, of health, education, police, justice and social services in the current system and the optimum evidence-based prevention and early intervention responses that the current system should provide to improve life outcomes.

Term of reference 3: The adequacy of current interventions and responses for vulnerable children and families and their effectiveness in support families and avoiding children entering out of home care.

Term of reference 4: The availability of early intervention services across NSW including the effectiveness of pilot programs commissioned under Their Futures Matter program.

Justice

11. We refer to our submission to the Committee on Children and Young People *Inquiry into Support for Children of Imprisoned Parents in New South Wales* (2020) which outlines the experiences of mothers and carers in the justice system and our recommendations to improve life outcomes for these mothers which will also benefit their children.³
12. We also refer to our submissions in response to the:
 - 12.1 *Their Futures Matter – Access System Redesign Discussion Paper* (2019)
 - 12.2 *Family is Culture* review (2017)

³ Women's Legal Service NSW, Submission No 19 to Parliament of New South Wales, *Inquiry to Support for Children of Imprisoned Parents in New South Wales*, 28 February 2020, accessed at: <https://www.parliament.nsw.gov.au/ladocs/submissions/67311/Submission%2019%20-%20Women%27s%20Legal%20Service%20NSW%20-%20Support%20for%20Children%20of%20Imprisoned%20Parents%20in%20NSW.pdf>

- 12.3 Department of Family and Community Services *Shaping a Better Child Protection System Discussion Paper* (2017)
 - 12.4 NSW Legislative Assembly Committee on Community Services *Inquiry into support for new parents and babies in NSW* (2017)
 - 12.5 *General Purpose Standing Committee No 2 Inquiry into child protection* (2016)
 - 12.6 Department of Family and Community Services *Child Protection Legislative Reform Discussion Paper* (2013)
13. In each of these six submissions we outline the need to properly implement existing laws and the importance of accountability of the Department of Family and Community Services, now known as the Department of Communities and Justice (**DCJ**) and NGOs providing child protection services (**funded service providers**).⁴ The need for much greater accountability of DCJ and funded service providers is a strong theme in the *Family is Culture* report.

Early legal support

14. Amongst the many recommendations for legislative change, the *Family is Culture* report recommends a legislative right to early support for First Nations families to prevent the removal of First Nations children from their family.⁵ Such support must be culturally safe, domestic violence and trauma informed and strengths based. This is something which many have been advocating for some time. The need for legislative reform is urgent – it cannot be delayed until 2024 as the Government proposes.
15. We refer to our submission to the NSW Legislative Council General Purpose Standing Committee No 2 *Inquiry into child protection* (2016) which outlines the need for early engagement with families. This submission outlines the experience of our clients who have had a lack of early engagement, and the need for further investment for early support for families.⁶ This early support must include early legal support.

⁴ Women's Legal Service NSW, *Response to Their Futures Matter – Access System Redesign Discussion Paper* (5 April 2019) accessed at <https://www.wlsnsw.org.au/wp-content/uploads/TFM-Access-System-Redesign-WLSNSW-Sub-fa.pdf> ; Women's Legal Service NSW, *Response to the Family is Culture Review* (14 December 2017) accessed at: <http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Submission-Family-is-Culture-fa.pdf> ; Women's Legal Service NSW, *Response to the Shaping a Better Child Protection System Discussion Paper* (30 November 2017) accessed at: <http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Submission-Shaping-a-Better-CP-system-fa.pdf> ; Women's Legal Service NSW, *Response to the NSW Legislative Assembly Committee on Community Services Inquiry into support for new parents and babies in NSW* (24 November 2017) accessed at: <https://www.parliament.nsw.gov.au/ladocs/submissions/59267/submission%2049.pdf> ; Women's Legal Service NSW, *Response to the General Purpose Standing Committee No 2 Inquiry into child protection*, (2 August 2016) accessed at: <https://www.parliament.nsw.gov.au/ladocs/submissions/55905/0073%20Women%27s%20Legal%20Service%20NSW.pdf> ; Women's Legal Service NSW, *Response to the Department of Family and Community Services Child Protection Legislative Reform Discussion Paper* (18 March 2013) accessed at: http://www.wlsnsw.org.au/downloads/law-reform/2013WLSNSW_FACS_CP_Review180313.pdf

⁵ *Family is Culture Report*, Ibid 1, Recommendation 25.

⁶ Women's Legal Service NSW, *Response to the NSW Legislative Council General Purpose Standing Committee No 2 Inquiry into Child Protection* (2 August 2016) accessed at: <https://www.parliament.nsw.gov.au/ladocs/submissions/55905/0073%20Women%27s%20Legal%20Service%20NSW.pdf>

16. The success of early legal support was outlined in our submission to *Their Futures Matter – Access System Redesign* (2019).⁷ In this submission, we highlighted the success arising out of early legal support in our casework.
17. We also referred to the external review of the legal aid scheme in British Columbia. The recommendation given the highest priority in this review was the creation of child protection clinics to provide legal and other support to help parents *before* child protection concerns escalate to removal of children from their care.⁸ This recommendation was made in recognition of the power imbalances parents experience when children are removed from their care by the state.⁹ Noting the over-representation of Indigenous children in out of home care in British Columbia, the report particularly acknowledges the power imbalances experienced by Indigenous families.¹⁰
18. We recommend similar early legal support for parents/primary caregivers in NSW to ensure parents/primary caregivers have information and understand the Department of Communities and Justice and NGO child protection services processes; they understand the issues of concern that have been identified and how these can be addressed, including having input to how the issues can be addressed; they are assisted to access services; and to address power imbalances.
19. Following the 2014 Child Protection Legislative Reforms, the NSW Government funded Legal Aid NSW, who also funded community legal centres and the Aboriginal Legal Service to provide early legal advice and support to families in care and protection matters. This work was known as Care Partners. The funding to community legal centres for this work ceased in 2019 with little notice and without sufficient rationale.¹¹ Funding for Legal Aid NSW was retained.
20. It is well established that parents/primary caregivers should have access to legal advice and assistance in care matters. It is imperative that parents/primary caregivers have choice in accessing early legal support. Limiting funding to Government services only will mean that some communities are less likely to access legal advice and assistance because of a mistrust in Government.
21. Access to early legal support for parents/primary caregivers from Aboriginal and Torres Strait Islander community-controlled organisations and community legal centres is recommended in the *Family is Culture Report*.¹²
22. In addition to funding government legal services such as Legal Aid, it is vital to also fund community legal services. This includes Aboriginal and Torres Strait Islander community-controlled organisations, such as Aboriginal Legal Service and Family Violence Prevention Legal Services; and community legal centres, including specialist legal services such as women's legal services.

⁷ Women's Legal Service NSW, *Response to Their Futures Matter: Access System Redesign* (5 April 2019) accessed at: <https://www.wlsnsw.org.au/wp-content/uploads/TFM-Access-System-Redesign-WLSNSW-Sub-fa.pdf>

⁸ James Maclaren QC, *Roads to Revival: An External Review of Legal Aid Service Delivery in British Columbia*, January 2019, Recommendation 15, accessed at: https://news.gov.bc.ca/files/Roads_to_Revival-Maclaren_Legal_Aid_Review-25FEB19.pdf

⁹ *Ibid*, p 43.

¹⁰ *Ibid*.

¹¹ "Community legal centres in NSW outraged by funding cuts to early intervention programs", *ABC News*, 30 August 2019 accessed at: <https://www.abc.net.au/news/2019-08-30/outcry-from-community-legal-centres-in-nsw-over-funding-cuts/11461424>

¹² *Family is Culture Report*, *Ibid* 1.

23. It is well recognised that many First Nations communities have a mistrust of Government and Government services which stems from colonisation, dispossession and forced removal of children from their families and communities which has resulted in significant intergenerational trauma.
24. Similarly, people in refuge and migrant communities may also fear Government organisations.
25. Given the prevalence of family violence in child protection matters and the gendered nature of family violence, specialist women's services, including specialist women's legal services, also have an important role to play in supporting women and their children. It is vital to recognise the importance of appropriately funding such services.
26. We call for the immediate reinstatement of funding for community legal centres and Aboriginal and Torres Strait Islander community-controlled organisations for early support work.

Family Is Culture report

27. We express deep disappointment in the NSW Government's 4-page response to the *Family is Culture* report, nine months after the public release of the report.¹³
28. The response failed to engage with the central issue of self-determination.
29. While we acknowledge some positive aspects of the Government's response, including the appointment of an Aboriginal and Torres Strait Islander identified position, Deputy Children's Guardian, this statutory role only includes oversight of children and young people once they are in out-of-home care. The *Family is Culture* report recommended the establishment of an Independent Commission to have oversight of all aspects of the child protection system from early support all the way through to out-of-home care.
30. A significant number of the Report's recommendations relate to urgent legislative reform.
31. The NSW Government announced it will delay any legislative review until 2024, after the next state election. Such delay compounds and exacerbates trauma.

Family is Culture progress report

32. In late November 2020, the NSW Government released their *Family is Culture Progress Report*.¹⁴ It is our understanding that the *Progress Report* was released without engagement with First Nations communities despite self-determination being a fundamental theme in the *Family is Culture Report*.
33. The *Family is Culture Report* provides a clear roadmap of what needs to be done. It was informed by extensive consultation within the community. We stand with AbSec and ALS in calling for the following key actions:
 - 33.1 *Development of a partnership approach including government and Aboriginal community representatives to progress the broad-ranging recommendations arising from the review.*
 - 33.2 *Prioritise implementation of legislative amendments proposed by the Family is Culture review, developed in partnership with Aboriginal community representatives.*

¹³ NSW Government, *NSW Government response to the Family is Culture Review Report*, 2020, accessed at: <https://www.facs.nsw.gov.au/download?file=784517>

¹⁴ NSW Government, *Family is Culture Response – Progress Report*, November 2020, accessed at: <https://www.facs.nsw.gov.au/download?file=796639>

- 33.3 *Appointment of an independent Aboriginal statutory authority with the powers and resources to provide public accountability and oversight on behalf of Aboriginal children, families and communities, across the child protection system (including child protection and out-of-home care), in order to address the compliance issues identified by the review.*
- 33.4 *Commitment of adequate resources to the implementation of the Review's recommendations, with a particular focus on prevention, family support, and advocacy.*

Poverty

34. Social security payments are inadequate to meet the needs of many social security recipients and have forced many households into poverty.
35. Coronavirus (**COVID-19**) has increased the need for additional support for families, especially for families experiencing poverty. In March 2020, the Commonwealth Government introduced the Coronavirus Supplement which almost doubled the unemployment payment. With the introduction of this supplement, 425,000 were lifted out of poverty.¹⁵ However, this supplement has a legislated end date. The Commonwealth Government will gradually decrease this supplement up until 31 March 2021 and from 1 April 2021, the payments will return to the original payment rate.
36. The Australia Institute estimates that 120,000 children aged between 0 and 14 would be placed into poverty if the Coronavirus Supplement is removed altogether.¹⁶ While noting this is a NSW Government inquiry, preventing poverty through adequate social security support is required and relevant to a discussion about child protection and social support. It is essential that the increase in rate to Jobseeker, Youth Allowance and related payments are maintained.
37. Access to child support is also required, noting that withholding child support should be better recognised as financial abuse.

Housing

38. As we outlined in our submission to the *Family is Culture* review, women with children who are experiencing family violence are often in a difficult position. Women who stay in violent relationships often do so to protect their children from the perpetrator rather than leaving their children alone with the perpetrator. Yet children who are exposed to family violence are at risk of being removed by DCJ. If women leave violent homes with their children, children are also at risk of removal as a result of homelessness. Once children are removed, inappropriate housing can be a barrier to restoration due to a lack of safe and affordable housing options.
39. The current DCJ Housing Pathways policy is that a parent may be considered for priority access to social housing if she/he can provide evidence which demonstrates that *"the lack of appropriate accommodation is impacting their ability to have children restored"*.¹⁷ We are concerned however, to hear from community members that assessments of social housing applications appear to be based on the parent's current circumstances, such as whether a child is in their care at the time. It is imperative that the policy objective is maintained and applied correctly.

¹⁵ Matt Grundnoff, *Poverty in the age of coronavirus: The impact of the JobSeeker coronavirus supplement on poverty* (Discussion Paper, The Australia Institute, July 2020) p 1.

¹⁶ *Ibid.*

¹⁷ NSW Department of Family and Community Services (2016), *Priority access to social housing and evidence requirements*, <http://www.housingpathways.nsw.gov.au/additional-information/fact-sheets/child-protection-caseworker-factsheet>

40. We also seek clarification regarding the policies of the Aboriginal Housing Office (**AHO**) relating to prioritising victims-survivors of family violence and their children and providing appropriate accommodation when, for example, a parent is seeking to have their children returned to their care, subject to providing appropriate housing. These policies are not easily accessible on the AHO website.

Education

41. In July 2018, the Federal Government introduced the ParentsNext program to support parents and carers to gain skills and employment to re/enter the workforce. Again, we note that this is a NSW Government inquiry, but make reference to this Commonwealth initiative as one lacking in self-determination and input from those it is seeking to assist. This program appears to be punitive and discriminatory, targeting women and First Nations women in particular. This program is still in force and has been enhanced following the release of the 2020-21 Federal Budget. We refer to our submission to the Senate Community Affairs References Community on ParentsNext (2019) where we oppose the continuation of the program.¹⁸
42. On 16 November 2020, Premier Gladys Berejiklian announced a new \$10 million Return to Work program. Women NSW will have access to grants of up to \$5,000. This grant may include \$500 for textbooks, up to \$2,000 for technology and office equipment, \$3,500 for childcare including before and after school care, and \$500 for transport. The Return to Work program will provide women with financial assistance and support to help them return to the workforce. Women must be out of work for one month and plan to start paid work within six months in order to be eligible for this grant. It is our understanding that this grant of money would not be considered as a loan and would not need to be repaid.
43. While it is too early to know the effectiveness of this response, we welcome this initiative as acknowledgement of the need to provide support for women to return to the workforce, particularly noting the gendered impacts of COVID-19, including on retaining employment.

If you would like to discuss any aspect of this submission, please contact [REDACTED]

Yours faithfully,

Women's Legal Service NSW

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¹⁸ Women's Legal Service NSW, Submission 66 to the Senate Community Affairs References Committee, *Inquiry into ParentsNext*, 22 February 2019, accessed at: <https://www.aph.gov.au/DocumentStore.ashx?id=73dd5da3-70c8-459e-9295-b55ad5f71721&subId=666787>