

**Submission  
No 45**

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

**Organisation:** Legal Aid NSW

**Date Received:** 18 December 2020

Parliamentary inquiry into the  
child protection and social  
services system

Legal Aid NSW submission to  
the Parliamentary Joint  
Committee on Children and  
Young People

*18 December 2020*

323 CASTLEREAGH ST  
SYDNEY NSW 2000

**Legal Aid**   
NEW SOUTH WALES

---

## Table of Contents

About Legal Aid NSW .....	3
Introduction .....	4
Legal Aid NSW services.....	4
Terms of reference.....	5
1. <i>How vulnerable children and families are identified and how the current system interacts with them including any potential improvements, particularly at important transition points in their lives</i>	5
Permanency Support Program and legislative reforms	5
Inadequacy of risk assessment tools	6
2. <i>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</i>	8
Safety Action Meeting model	9
Child protection conferences	9
Health justice partnerships	10
Education	12
Police and justice	14
Centrelink	19
Young people leaving care	21
3. <i>The adequacy of current interventions and responses for vulnerable children and families and their effectiveness in supporting families and avoiding children entering OOHC</i>	24
Early intervention tools	24
Family group conferences	25
Intervention and support for families after the Children's Court	26
Support for Aboriginal and Torres Strait Islander families	26
4. <i>The child protection intake, assessment, referral and case management system</i>	33
5. <i>The availability of early intervention services across NSW including the effectiveness of pilot programs commissioned under Their Futures Matter program</i>	35
6. <i>The adequacy of funding for prevention and early intervention services</i>	35
Consultation with Aboriginal and Torres Strait Islander communities	35
7. <i>Any recent reviews and inquiries</i>	36
8. <i>Any other related matters</i>	36
Lack of systemic approach to maintaining sibling contact for children in OOHC	36
Management of sexual assault matters for children and young people in care	36
Data on the civil law needs of children in OOHC	37

---

## About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW). We provide legal services across New South Wales through a state-wide network of 25 offices and 243 regular outreach locations, with a particular focus on the needs of people who are socially and economically disadvantaged. We offer telephone advice through our free legal helpline LawAccess NSW.

We assist with legal problems through a comprehensive suite of services across criminal, family and civil law. Our services range from legal information, education, advice, minor assistance, dispute resolution and duty services, through to an extensive litigation practice. We work in partnership with private lawyers who receive funding from Legal Aid NSW to represent legally aided clients.

We also work in close partnership with community legal centres, the Aboriginal Legal Service (NSW/ACT) Limited and pro bono legal services. Our community partnerships include 27 Women's Domestic Violence Court Advocacy Services, and health services with a range of Health Justice Partnerships.

The Legal Aid NSW Family Law Division provides services in Commonwealth family law and state child protection law. Specialist services focus on the provision of Family Dispute Resolution Services, family violence services and the early triaging of clients with legal problems

through the Family Law Early Intervention Unit. Legal Aid NSW provides duty services at a range of courts, including the Parramatta, Sydney, Newcastle and Wollongong Family Law Courts, all six specialist Children's Courts and in some Local Courts alongside the Apprehended Domestic Violence Order lists. Legal Aid NSW also provides specialist representation for children in both the family law and care and protection jurisdictions.

The Civil Law Division provides advice, minor assistance, duty and casework services from the Central Sydney office and 20 regional offices. It focuses on legal problems that impact on the everyday lives of disadvantaged clients and communities in areas such as housing, human rights, social security, financial hardship, consumer protection, employment, immigration and fines. The Civil Law practice includes dedicated services for Aboriginal communities, children, refugees, prisoners and older people experiencing elder abuse.

Legal Aid NSW welcomes the opportunity to make a submission to the Parliamentary inquiry into the child protection and social services system. Should you require any further information, please contact:

Meagan Lee  
Senior Law Reform Officer  
Strategic Law Reform Unit



## Introduction

Legal Aid NSW welcomes the opportunity to make a submission to the NSW Parliamentary Joint Committee on Children and Young People's inquiry into the child protection and social services system.

We have made a number of recent submissions on the child protection system in NSW, including to the:

- independent review of Aboriginal and Torres Strait Islander children and young people in out-of-home care (**OOHC**) (2017)<sup>1</sup>
- Family and Community Services (**FACS**) discussion paper entitled 'Shaping a better child protection system' (2017),<sup>2</sup> and
- General Purpose Standing Committee No 2 inquiry into child protection (2016).<sup>3</sup>

Many of the comments and recommendations in those submissions remain relevant to this inquiry. However, rather than repeat the content from those submissions, this submission focuses on the themes of early intervention and collaboration between agencies, and provides further comments and recommendations following these previous submissions.

## Legal Aid NSW services

Legal Aid NSW provides assistance to vulnerable children and families by way of advice, minor assistance and extended legal assistance<sup>4</sup> when they are involved with the Department of Communities and Justice (**DCJ**). We provide duty lawyer services and casework representation to both children and families when proceedings are commenced

---

<sup>1</sup> Legal Aid NSW, Submission to Professor Megan Davis, *Independent Review of Aboriginal Children and Young People in Out-of-home Care* (December 2017)

<[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0014/28310/Legal-Aid-NSW-sub-to-review-of-Aboriginal-children-and-YP-in-OOHC.PDF](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0014/28310/Legal-Aid-NSW-sub-to-review-of-Aboriginal-children-and-YP-in-OOHC.PDF)>.

<sup>2</sup> Legal Aid NSW, Submission to the Department of Family and Community Services, *Shaping a Better Child Protection System: Discussion Paper* (November 2017)

<[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/27827/Final-Legal-Aid-NSW-submission-to-FACS-Shaping-a-better-child-protecti....pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0008/27827/Final-Legal-Aid-NSW-submission-to-FACS-Shaping-a-better-child-protecti....pdf)>.

<sup>3</sup> Legal Aid NSW, Submission to the General Purpose Standing Committee No 2, *Inquiry into Child Protection* (July 2016) <[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0016/25342/Child-Protection-Inquiry-submission.pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0016/25342/Child-Protection-Inquiry-submission.pdf)>; Legal Aid NSW, Response to Questions on Notice to the General Purpose Standing Committee No 2, *Inquiry into Child Protection* (September 2016)

<[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0016/25513/Inquiry-into-child-protection-Questions-on-Notice.pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0016/25513/Inquiry-into-child-protection-Questions-on-Notice.pdf)>; Legal Aid NSW, Response to Supplementary Questions from the Committee to the General Purpose Standing Committee No 2, *Inquiry into Child Protection* (September 2016) <[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0017/25514/Inquiry-into-child-protection-Supplementary-Questions.pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0017/25514/Inquiry-into-child-protection-Supplementary-Questions.pdf)>.

<sup>4</sup> Extended legal assistance (ELA) is a legal service which includes taking carriage of a matter (or multiple matters) in an ongoing, representative capacity, but due to the nature of the matter it does not proceed to a court or tribunal, or the lawyer is not required to appear before a court or tribunal.

---

in the Children's Court of NSW. We also interact with vulnerable families in other legal contexts, including in domestic and family violence matters, family law proceedings and mediation where final orders have been made but issues arise in relation to contact.

In the past five years, the total number of family law grants of aid where care and protection is the primary matter group has decreased, from 5,397 in 2015-16 to 3,786 in 2019-20. There has also been a decreasing number of family law grants of aid in care and protection matters provided to Aboriginal and Torres Strait Islander clients over this period. However, Aboriginal and Torres Strait Islander clients still represent a disproportionately high percentage of those who receive family law grants of aid in care and protection matters. This proportion has increased every year in the past five years, from 23.3% in 2015-16 to 27.6% in 2019-20.

Legal Aid NSW also has a Children's Civil Law Service (**CCLS**), which provides holistic civil law and youth casework assistance to highly disadvantaged young people involved with the criminal justice system. Many clients of the CCLS are in, or have been in, statutory OOHC. CCLS lawyers often assist these clients with accessing their leaving care entitlements, such as a leaving care plan, a legal file audit, and their care records. CCLS also advocates for young people in residential OOHC in situations where police are being called to manage their trauma-related behaviours. CCLS has undertaken systemic work in this area, contributing to the development and oversight of the *Joint Protocol to reduce the contact of young people in residential OOHC with the criminal justice system* (**Joint Protocol**).

## Terms of reference

1. How vulnerable children and families are identified and how the current system interacts with them including any potential improvements, particularly at important transition points in their lives

### *Permanency Support Program and legislative reforms*

Legal Aid NSW submits that there have been some unintended consequences as a result of the introduction of the Permanency Support Program (**PSP**) and the reforms to the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (**Care Act**) that commenced in February 2019 (**2019 reforms**), particularly regarding the ways in which permanency is interpreted and implemented for children.

The development and implementation of the PSP by FACS (as it was formerly known) in October 2017 focused on:

- ensuring fewer entries into care by keeping families together
- ensuring that children spend less time in care by facilitating their return home or finding them other permanent homes, and

- 
- providing a better care experience by supporting children's individual needs and their recovery from trauma.

The introduction of the program focused on caseworkers working with families to identify and attain the best permanency goal for a child within two years.<sup>5</sup>

The impact of the PSP has been felt by Legal Aid NSW, with our data supporting a significant reduction in filings in the Children's Court across NSW since the program's introduction.

The 2019 reforms focused heavily on:

- facilitating earlier family preservation and restoration
- attempting to minimise litigation, with a focus on family agreement and alternative dispute resolution, and
- empowering families to make decisions about the care arrangements for their children.

In our experience, the focus of the PSP on restoration and keeping families together has had mixed results. Anecdotally, the matters that we work on where children have been removed involve families with significant histories (sometimes years) of contact with child protection workers, and little engagement or success in minimising risk in that time. In a significant number of cases, children appear to have been left in high risk situations for longer periods of time.

When proceedings are commenced and children are removed, at the outset the permanency goal is often identified as being restoration, despite a lack of evidence to suggest that the family is willing and able to take steps to reduce risk to an acceptable level.

In our view, one of the unintended consequences of the focus of the PSP and 2019 reforms on restoration is that it is now expected that the specified permanency goal be pursued for up to two years in circumstances where it is not realistic. This potentially results in children being left in situations of uncertainty for extended periods of time in the hope that restoration can occur, when it may be that this is, and always has been, an unachievable goal. This achieves the opposite of permanency for these families.

We recommend that the goal of permanency be considered in the context of the individual family, not simply interpreted to mean that restoration must be sought and achieved in all cases.

#### *Inadequacy of risk assessment tools*

In more recent years, Legal Aid NSW has observed a heavy reliance by child protection workers on risk assessment tools. These tools require certain data to be input into the system, with a focus on a certain point total leading to certain outcomes (for example, children remaining with parents or being restored to parents).

---

<sup>5</sup> 'About the Permanency Support Program', *NSW Government Communities & Justice* (Web Page) <<https://www.facs.nsw.gov.au/families/permanency-support-program/about>>.

---

In our experience, the use of these tools is leading to inconsistent outcomes for families engaged with the child protection system and unsafe outcomes. In some situations, the tools are heavily relied on as the determining factor in decisions about safety. In others, they are used and then discarded if the outcome is not consistent with what the child protection workers consider to be the best permanency outcome for a family.

For example, the Structured Decision Making Restoration Assessment Tool uses a flowchart to assist caseworkers in reaching a restoration outcome or leading them to reconsider the permanency goal for a family. In one case we were involved in, answers to the questions in the tool indicated that restoration was not appropriate. However, the child protection workers were able to 'override' this determination and restore the child anyway.

In our experience, often a determination is made by caseworkers using various tools, and there is a reluctance to move or change the goal of restoration (and other permanency goals)<sup>6</sup> despite a lack of progress by a family towards reducing risk. Again, the use of these tools has the unintended consequence of creating uncertainty and in some cases delaying permanency for children. These issues are illustrated by the following two case studies.

#### ***Gina's story***<sup>\*7</sup>

Legal Aid NSW recently represented Gina, a mother in Children's Court proceedings where the tools used by child protection workers supported restoration to the child's father. Gina had herself been a child in care, and the tools used did not support restoration of the child to her because of the trauma history that she had as a result of having been in care.

A clinic assessment through the Children's Court was ordered and both Gina and the child's father were assessed in relation to their prospects of restoration. The clinic report raised significant concerns about the capacity of the father to meet the needs of the child and instead supported restoration to Gina.

#### ***Beth's story***<sup>\*</sup>

Legal Aid NSW acted as the Independent Legal Representative (ILR). Beth, the mother, had an intellectual delay. She had two children from previous relationships.

In March 2019, DCJ became aware that Beth was pregnant again and her partner was a convicted child sex offender who had just moved in. A safety plan was developed, under which the oldest daughter would sleep in a room away from Beth's partner, and he would not be left unsupervised with the children. Beth could not understand the risk posed by

---

<sup>6</sup> See also *Department of Communities and Justice (DCJ) and Jack and Jill* [2020] NSWChC 3, in which the Children's Court was not satisfied that permanency planning for a child had been appropriately and adequately addressed merely by the fact that DCJ's permanency plan involved a desire for guardianship sometime in the future (which was contrary to the carer's wishes).

<sup>7</sup> All case studies marked with an asterisk in this submission have been de-identified.



---

her partner due to her level of cognitive functioning. The next day, the caseworkers told Beth's partner he had to leave the home.

Beth's intellectually delayed sister, disabled brother and the foster grandfather of her children also lived in the home. The foster grandfather had not sought adequate supports for any of the now adult children, didn't appear to acknowledge the risk posed by Beth's partner, and had been charged by police with offences against the disabled brother. After a few months, it was clear that Beth was still allowing her partner in the home and allowing unsupervised time, including dropping the children to his new residence.

Two months later, DCJ put support workers in the home from 6am–9am and from 3pm–7pm each day. The family was also later referred to the 'Make a Safe Home' program for additional supports, and DCJ assisted Beth with a National Disability Insurance Scheme (NDIS) application.

One month later when the baby was born, it was observed that Beth wasn't able to feed the baby safely, and still did not consider her partner (the baby's father) to pose a risk. Beth and her sister had also raised concerns that the children had been abused by the foster grandfather, and the sister said she was sexually abused by one of Beth's previous partners. The family was then referred to another support service, which made a number of reports to DCJ.

Four months after their initial involvement, the children were removed.

We recommend that further training be provided to caseworkers on the use of these tools, and that there be a focus on highly skilled caseworkers developing individualised plans for families as opposed to outcomes driven by tools.

Multidisciplinary teams should be considered within DCJ to specialise in decisions around removal, which are separate from the casework teams that work with families once these decisions are made. This could allow expertise in complex decision-making to be developed. It could also mean that the ongoing working relationship between the family and the caseworker may be less challenging as the decision-making is made by others.

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

In Legal Aid NSW's experience, vulnerable families intersect with health, education, police and justice in a variety of different ways and with a variety of different outcomes. The experiences of individual families tend to vary depending on their location, the local initiatives available, the individual caseworkers involved and their level of expertise and

---

training. There are better outcomes for families when services like DCJ, Health, Education, Police and Legal Aid NSW are involved with families early and work collaboratively.

We highlight below some positive examples of collaboration between agencies in early intervention, as well as some opportunities for improved collaboration and coordination between agencies.

#### *Safety Action Meeting model*

In our 2017 submission on 'Shaping a better child protection system', we supported the use of the Safety Action Meeting model in a child protection context.<sup>8</sup> These meetings, which are used for victims of domestic violence who are deemed to be at serious threat under the Safer Pathways Program, involve government agencies like NSW Police, Health, Education and DCJ working together to reduce risk and promote safety. The meetings focus on how these agencies can protect victims, and on developing a safety action plan containing a list of actions aimed at reducing the threat to a victim's safety.

We consider that there would be significant benefit in adapting this model to suit a child protection context where a family is considered to be at risk of significant harm. The early identification of these families, action plans with expectations and coordination around the availability of services, and accountability of various agencies in the provision of these services, are an efficient and effective way to engage with vulnerable families at an early stage to keep them together and safe.

#### *Child protection conferences*

We have also previously suggested that child protection conferences in the United Kingdom provide another example of a model that facilitates whole of government service delivery in child protection.<sup>9</sup> Under the model operating in the United Kingdom, child protection conferences are called when the local authority has investigated concerns about child abuse and believes the child is suffering, or likely to suffer, significant harm. Child protection conferences often include a range of services, including in relation to health (including adult and child mental health), housing, alcohol and substance misuse, and domestic violence. The purpose of the conference is to:

- bring together and analyse information about the child and the parent's capacity in an interagency setting
- make judgements about whether the child is suffering, or likely to suffer, significant harm, and

---

<sup>8</sup> Legal Aid NSW, Submission to the Department of Family and Community Services, *Shaping a Better Child Protection System: Discussion Paper* (November 2017)

<[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/27827/Final-Legal-Aid-NSW-submission-to-FACS-Shaping-a-better-child-protecti....pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0008/27827/Final-Legal-Aid-NSW-submission-to-FACS-Shaping-a-better-child-protecti....pdf)>.

<sup>9</sup> Ibid.

- 
- decide what future action is required to safeguard and promote the welfare of the child.<sup>10</sup>

We consider that these conferences have real potential as an early intervention tool that could form part of the suite of actions to be used under section 34 of the Care Act, and could be held in conjunction with other processes, such as a family group conference.

### *Health justice partnerships*

The Legal Aid NSW Early Intervention Unit (**EIU**) has established a number of health justice partnerships (**HJPs**) with health and welfare agencies. HJPs provide on-site legal assistance to vulnerable people in health-related settings, including hospitals, community health centres and health outreach services in public housing estates.

Often lawyers in HJPs assist parents who are about to, or have recently had, a baby who is considered to be at risk of significant harm by DCJ. Lawyers work closely with health staff (e.g. social workers, nurses and other specialists engaged with the patient) and DCJ caseworkers to identify the risk factors relevant to the family, develop case plans to identify how the risk can be managed by families, and negotiate with DCJ to keep children at home.

We consider that the ability of parents to obtain early legal advice is a key component of the success of this model. In our experience, parents who are able to obtain independent advice on the reasons for DCJ's involvement, the potential consequences of further involvement from DCJ, and the steps to be taken to reduce risk, are better equipped to navigate the child protection system. Working closely with health and other workers, lawyers are able to quickly and efficiently access information about a patient's experience in hospital (including strengths, successes and areas for further development) and understand the referrals that should and are able to be made for the family. The benefits of this collaborative process is illustrated by the following case studies.

#### ***Suzette's story\****

Suzette was 26 weeks pregnant with her fourth child. She had a long history of domestic and family violence and substance abuse issues. Her three older children were in the care of the Minister in two different family placements, and her arrangements for seeing her children were causing her concerns.

Legal Aid NSW assisted Suzette to improve contact with her older children. We also worked with her hospital social workers to put in place appropriate referrals to services to help her with counselling, parenting courses, housing and drug treatment.

We advised FACS (as it was formerly known) on the way that Suzette was addressing its concerns, and reinforced how her earlier life experience had affected her parenting

---

<sup>10</sup> HM Service, *Working Together to Safeguard Children: A Guide to Inter-agency Working to Safeguard and Promote the Welfare of Children* (July 2018)  
<[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779401/Working\\_Together\\_to\\_Safeguard-Children.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779401/Working_Together_to_Safeguard-Children.pdf)>.

---

capacity. Although FACS took Suzette's baby into care soon after birth, she still has regular contact with her baby for breastfeeding and bonding, and there is a plan for the baby to be restored to her care.

Legal Aid NSW represented Suzette at court and obtained letters from the hospital social workers to support her court case.

### *Maxine's story\**

Maxine is a 21-year-old ex-state ward. She identifies as Aboriginal and has a significant history of trauma. She was 20 weeks pregnant when referred to the EIU for advice by her after care service. Maxine refused to undertake a risk assessment, and DCJ had indicated, based on her history of trauma, wardship, drug use, impulse control and contact with the criminal justice system, that her baby was at risk, and more intrusive intervention may be required.

After obtaining instructions from Maxine, it became clear that her issue with the risk assessment was the fact that the caseworker allocated prenatally to her was the same caseworker when she was removed. Maxine was not opposed to a risk assessment, but was opposed to anyone from that DCJ office undertaking it. She believed that contact with anyone from that office would trigger a trauma response and compromise the assessment.

With the assistance of the after care service, a case conference was held with Maxine and her network of support, including the Aboriginal Medical Service, and the Community and Corrections Office (Probation and Parole). Following the case conference, a community-based occupational therapist was sourced and funded to undertake the risk assessment.

Legal Aid NSW wrote to DCJ proposing the community-based occupational therapist as an alternative assessor, noting Maxine's concerns about being assessed by that DCJ office. We invited them to approve the alternative assessor or explain how it was in the best interests of the unborn child for the risk assessment to take place where our client had expressed concerns that it was likely to re-trigger her trauma.

DCJ did not approve the assessment but agreed that our client's concern was legitimate, and we were able to negotiate a different office to undertake the assessment and the manner in which the assessment occurred. We worked with the client to understand the benefit of positive engagement with DCJ and the risk assessment.

Through this collaborative approach, our client consented to the risk assessment and ultimately our client was assessed as being safe. DCJ closed the case.

### *Alana's story\**

Alana had six previous children removed due to allegations of sexual abuse by her partner. The eldest child was four years old when the allegations were made. The parents had not had contact with the children in four years.

---

There was an investigation by the Joint Child Protection Response Program (**JCPRP**) and charges were laid against the father. The police investigation was found to have significant flaws – there were many generations of the family living in the home, and issues with JCPRP accurately identifying the perpetrator. The child was found to have chlamydia, and only the parents were tested at the critical time.

Children’s Court proceedings found there was significant risk of harm and the children were removed. Alana was referred to the Legal Aid NSW HJP by a senior social worker at the hospital. She was around 37 weeks pregnant and it was too late for the Pregnancy Family Meeting program.

Legal Aid NSW gave Alana advice and support about her position as the non-offending parent, and that what she needed to do to identify a safe place to live with the child. We advised her regarding therapeutic programs and living in separate accommodation to the father. Alana was committed to retaining care of the baby and willing to compromise her relationship to that end.

After the baby was born, the matter was resolved by a parental responsibility contract filed with the Children’s Court, which allowed Alana to retain care of the baby.

### *Education*

#### **Support for children in the OOHC and criminal justice systems to engage and re-engage with school**

The NSW Ombudsman has reported on the overrepresentation of vulnerable cohorts of students in school suspensions – namely, students with an OOHC history as well as Aboriginal students and students with cognitive or learning disabilities.<sup>11</sup> Furthermore, there is considerable overlap between each of these groups – Aboriginal children are over-represented in OOHC and are more likely to have a disability, and Aboriginal children, children in OOHC and children with a disability as a cohort are all more likely to be suspended from school.<sup>12</sup>

Children and young people in OOHC have significantly poorer educational outcomes than students in the general population.<sup>13</sup> The 2017 Association of Children’s Welfare Agencies’ (**ACWA**) ‘Report into the educational engagement of children and young people in care in NSW’ found that one in five NSW students in care were absent from school because of ill health, suspension, chronic disengagement or expulsion.

Legal Aid NSW supports measures to reduce the disproportionate number of children and young people in OOHC who are excluded from school. These include improving schools’

---

<sup>11</sup> This includes the NSW Ombudsman’s *Inquiry into Behaviour Management in Schools* (August 2017) and its most recent *OCHRE Review Report* (October 2019).

<sup>12</sup> NSW Ombudsman, *OCHRE Review Report* (October 2019) 247. It recommended that the Department of Education establish a central standing committee to inform its approach to addressing the issues affecting vulnerable cohorts of children.

<sup>13</sup> See, for example, Dr Michelle Townsend, Family and Community Services, *Are We Making the Grade? The Education of Children and Young People in Out-of-home Care* (Research Report, 2012).

---

engagement with students to find alternatives to suspension and expulsion wherever possible, that focus on inclusion and promoting their engagement with education and training. We acknowledge that the Department of Education is currently reviewing the *Student Discipline in Schools Policy* and the *Suspension and Expulsion of School Students Procedures*.<sup>14</sup>

We support court-based initiatives to help children and young people in OOHC appearing before the Children's Court to re-engage with education. The NSW Government's response to the 2018 inquiry into the adequacy of youth diversionary programs in NSW referred to the Department of Education facilitating a 12-month trial with Children's Court registrars to hold conferences to deal with unsatisfactory school attendances and to provide court liaison officers.

We understand that, based on the success of the Education Liaison Officer in the *A Place to Go* initiative, the Department of Education has funded Education Liaison Officer positions across Children's Courts in NSW and that these are now operating in Broadmeadow and Surry Hills courts.

We are aware of various other successful collaborations between agencies that have been developed in specific locations. For example, a program on the Central Coast called 'Supporting Students Supporting Families' brings together DCJ, the Department of Education and NSW Police to discuss children who are at risk. This is another model that could potentially be considered and built upon.

### **Compulsory schooling orders**

The Education list of the Children's Court hears applications for compulsory schooling orders where a child or young person has not been attending school. We consider that applications for compulsory schooling orders brought by the Department of Education are often applications brought in relation to families who also have child protection issues. Sometimes these proceedings are a precursor to care proceedings and sound a warning for more serious issues within a family.

We provide representation in these matters, and consider that more could be done early on from a child protection perspective to prevent the escalation of risk to a level where children are at risk of removal. If further information were able to be provided to the court and to Legal Aid NSW from both DCJ and the Department of Education on their involvement with the family, more work could be done collaboratively and with the assistance of lawyers to work with these families earlier to keep children safe at home.

### **Data on school exclusion and children in OOHC**

We suggest that monitoring and analysis of suspension and exemption data be improved to better understand and respond to the disproportionate impacts on children in OOHC. Consistent with the NSW Ombudsman's data improvement recommendations, we

---

<sup>14</sup> This includes developing a new Student Behaviour Strategy: 'Student Behaviour Strategy', *NSW Government* (Web Page) <<https://education.nsw.gov.au/student-wellbeing/attendance-behaviour-and-engagement/student-behaviour/behaviour-strategy>>.



---

suggest that the Department of Education advise how it will collect, analyse and report on suspension and expulsion of students in OOHC.

### *Police and justice*

Children and young people with an OOHC history are overrepresented in the criminal justice system. A 2015 study of 17,638 young people involved with the criminal justice system in NSW found that approximately 10% of the sample had had previous OOHC placements.<sup>15</sup>

In Australia, research has shown that, while the overwhelming majority of those in OOHC do not commit crime, placement in OOHC is associated with increased contact with the criminal justice system.<sup>16</sup> According to a recent study by the Australian Institute of Criminology, the criminalisation of children with care experience results from a complex interaction between trauma, mental health conditions, the care environment, and difficulties in locating suitable accommodation. The study suggests that policy and therapeutic interventions must be developed with an understanding of this context.<sup>17</sup>

For many years Legal Aid NSW has raised concerns about the ‘drift from care to crime’,<sup>18</sup> and the legal needs of this cohort. A 2013 report by Legal Aid NSW identified children and young people with multiple and complex needs as the most frequent users of Legal Aid NSW services.<sup>19</sup> The study found that 80% of high users were children and young people who were 19 years and under, almost all had spent time in juvenile detention (94%), and nearly half (46%) had spent time in OOHC. The Children’s Civil Law Service was established largely in response to the findings of this report, and has many clients involved in the criminal justice and the child protection systems. Legal Aid NSW considers there to be a strong policy rationale for delivering targeted and holistic services to address the needs of these children and young people.

### **A Place to Go**

In 2019–20, Legal Aid NSW participated in *A Place to Go (APTG)*, a multi-agency initiative of *Their Futures Matter* that targets 10–17 year olds in the youth justice system who come before Parramatta Children’s Court or have a connection to the Nepean Police Area Command. APTG aims to enhance the wellbeing of children in the initiative and decrease the likelihood of reoffending. It does this by ensuring children are supported in accessing holistic, strengths-based wraparound services, which meet their immediate and long-term needs. This includes access to a ‘key worker’ – a single point of contact for the child who

---

<sup>15</sup> Clare Ringland, Don Weatherburn and Suzanne Poynton, NSW Bureau of Crime Statistics and Research, *Can Child Protection Data Improve the Prediction of Re-offending in Young Persons?* (Crime and Justice Bulletin No 188, November 2015).

<sup>16</sup> Andrew McGrath, Alison Gerard and Emma Colvin, Australian Institute of Criminology, *Care-experienced Children and the Criminal Justice System* (Trends and Issues in Crime and Criminal Justice No 600, September 2020) 2.

<sup>17</sup> *Ibid* 10.

<sup>18</sup> See Erin Gough, Legal Aid NSW, *The Drift from Care to Crime: A Legal Aid NSW Issues Paper* (Issues Paper, October 2011).

<sup>19</sup> Pia van de Zandt and Tristan Webb, Legal Aid NSW, *High Service Users at Legal Aid NSW: Profiling the 50 Highest Users of Legal Aid Services* (Report, June 2013).

---

can help them navigate the service system – as well as therapeutic, trauma-informed short-term and transitional accommodation for children who are unable to return home (including those in OOHC).

The Legal Aid NSW CCLS was funded to provide a civil lawyer to participate in APTG. The position was established in recognition that children in the initiative were likely to have civil law problems that would impact on their overall outcomes, if left unresolved. The solicitor completed a detailed legal health check for each client referred, which usually identified that the child had multiple legal issues. Common legal needs included debt (largely fines), OOHC advocacy, victims compensation, human rights, housing, identification and NDIS issues. Regrettably, due to funding constraints, the Legal Aid NSW APTG civil solicitor was not funded beyond 30 June 2020.

Legal Aid NSW understands that the APTG is currently being evaluated. We are interested to see the findings and recommendations of this evaluation, but consider APTG to be an example of a promising initiative involving wraparound services and multi-agency coordination for vulnerable children and young people, including those in OOHC. We would also be interested in considering any further opportunities for comprehensive and targeted civil law assistance being re-integrated into APTG, or other wraparound services for children and young people in the criminal justice and/or child protection systems.

### **Collaboration between DCJ Community Services and Youth Justice**

The Collaborative Response Family and Adolescent Team (**CRAFT**) is an initiative that involves greater collaboration between DCJ Community Services and Youth Justice to better service young people in the child protection and criminal justice systems, divert them from statutory interventions, and support them to realise their full potential. Under the initiative, a Community Justice Team has been established in the Sydney, South Eastern Sydney and Northern Sydney districts, and is based at Burwood Youth Justice, Sydney Youth Justice and Surry Hills Children's Court. The team is multidisciplinary in nature, with practitioners from both DCJ Community Services and Youth Justice providing earlier intervention and integrated case management and support to 10–18 year olds who are in the child protection and/or youth justice systems, or at risk of involvement in those systems.

Legal Aid NSW is supportive of measures such as these to provide more intensive and coordinated service responses to vulnerable children and young people.

We understand that the CRAFT initiative is limited to the above districts at this stage. We recommend that it be extended or similar principles be applied to other Youth Justice and DCJ Community Services districts across the state.

### **Children in residential OOHC and contact with the criminal justice system**

Legal Aid NSW has longstanding concerns about the use of police as a behaviour management tool for young people in residential OOHC. From early 2014, Legal Aid NSW worked closely with the NSW Ombudsman's Office and other agencies to develop the Joint Protocol in response to this identified systemic issue.



---

The Joint Protocol was formally signed on 23 August 2016 and revised in 2019. Under the Joint Protocol, the onus is on OOHC providers to minimise the use of police where there is a behaviour management issue with a child or young person. Instead they are encouraged to look at the child or young person's behaviour management and support plan to see if the issue can be resolved in another way. If police are called, they are required to take a staged approach, including consideration of taking no formal action, or diverting the child or young person under the *Young Offenders Act 1997* (NSW).

The signatories to the Joint Protocol are NSW Police, DCJ, ACWA and AbSec. DCJ is responsible for the implementation of the Joint Protocol.

Legal Aid NSW continues to be involved in the development of training delivered to residential OOHC services and the NSW Police Force as part of the implementation of the Joint Protocol. Legal Aid NSW is also a representative on the statewide Steering Committee that oversees the implementation of the Joint Protocol, and the Operational Issues Group that considers individual cases of non-compliance with the Joint Protocol.

Although we acknowledge efforts that have been made to raise awareness of the Joint Protocol, we remain concerned that it is not understood or applied consistently by the NSW Police Force and residential OOHC providers.

For example, criminal law solicitors from a regional Legal Aid NSW office have raised concerns that children and young people in residential OOHC in their area continue to have unnecessary contact with the criminal justice system. Some of the concerns raised include a residential OOHC provider seeking to use the criminal justice system to manage children and young people's behaviour, such as:

- police being regularly called in response to minor incidents. In some instances, this appears to be driven by a requirement to make a police report for the purposes of an insurance claim, which conflicts with the objective to minimise the contact of these children and young people with the criminal justice system
- the taking out of Apprehended Violence Orders (**AVOs**) against children and young people in residential OOHC to protect staff
- children and young people coming before the court for very minor offending, and
- curfews and non-association conditions being imposed as part of bail.

Concerns have also been raised about some police charging the young person unnecessarily, or laying additional unnecessary charges, when alternative measures could have been taken, consistent with the Joint Protocol.

Legal Aid NSW criminal law solicitors have indicated that there seem to have been improvements in this area over the past 12 months, but issues persist.

On several occasions, our regional solicitors have observed that children and young people who were repeatedly charged with offences when in residential OOHC have left care and not come back before the court as frequently or at all.

---

### ***Eve's story\****

Eve had approximately 27 sets of AVOs and charge matters over four years while she was in the care of a residential OOHC provider. Almost all of the matters related to intimidation and assaults on the workers or damage to property of the OOHC provider. She suffered from complex trauma and her response to stressful situations was to lash out.

Eve spent a lot of time in youth detention. On the last matter, she told a Legal Aid NSW solicitor that she wouldn't go back to live in one of the OOHC provider's houses when she was released from the youth justice centre, and intended to live with her boyfriend instead. This is because she believed she would not get into any more trouble if she were not living in one of those houses.

About a year later, Eve was still being supported by the OOHC provider, but was no longer living in one of its houses. She had a baby, but had separated from her boyfriend. As far as Legal Aid NSW is aware, she has not been back before the courts since the last case we represented her on when she was 17 years old.

### ***Bobby's story\****

Bobby was a child who had experienced multiple and complex trauma, and was taken into OOHC. He had been in youth detention since he was 12 or 13 years old. When he was 16 and 17, Bobby spent at least half of each year in custody. When he was 17, he was diagnosed with fetal alcohol spectrum disorder (**FASD**). Almost all of his charges related to offences regarding his residential OOHC provider's workers or property.

Bobby said he would not return to the OOHC provider after he was released from custody on the last occasion.

As far as Legal Aid NSW is aware, Bobby has not been back before the court.

We reiterate recommendation 67 of the 'Family is culture' report that all residential OOHC staff and all NSW police officers should receive training on the Joint Protocol in order to reduce the contact of young Aboriginal people in OOHC with the criminal justice system.<sup>20</sup>

### *Housing*

#### ***Comments from Cara\****

We all know how hard it is to get stable housing and accommodation.

Parents in crisis need more help with temporary accommodation and housing. The lack of housing should not be held against them.

---

<sup>20</sup> Professor Megan Davis, *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-home care* (Review Report, 2019) Recommendation 67.

---

Legal Aid NSW is concerned about how a family's social housing situation, as a result of decisions and actions by DCJ Housing, may be taken into account in risk assessments by DCJ Community Services and potentially influence decisions regarding the removal of children. This has the potential to exacerbate already difficult circumstances for vulnerable families.

In our experience, actions or inaction by DCJ Housing may contribute to an assessment that a child's safety is at risk, which may place the child at risk of removal from, or of being denied regular contact with, family. Primarily, this can occur:

1. in connection with the condition of social housing premises (where repairs are not undertaken when needed or at all), such that DCJ Community Services may determine that premises are substandard
2. when tenants are not appropriately assisted with housing transfer applications, such that the tenant's housing is considered insufficient to adequately accommodate the child(ren) (e.g. not enough bedrooms), and
3. when tenants are persuaded by DCJ Housing to relinquish a tenancy, only to find that on relocating to a refuge or other temporary accommodation, DCJ Community Services decides that the tenant no longer has appropriate housing to ensure the safety of the child(ren).

#### *Clair's story\**

Clair was living with her child and expecting a second child. Before her second child was born, her first child was removed by DCJ Community Services due to concerns about Clair's drug use and the condition of the DCJ Housing property.

Clair then went to live with her sister. Clair requested a transfer on the basis of the state of the repairs and the area was not beneficial to her rehabilitation.

Clair received an offer of a new property, but when she inspected the premises with a support worker, the building was boarded up. Clair rejected the offer as she could not inspect the inside condition of the property. DCJ Housing considered that this was a reasonable offer and it took advocacy from Legal Aid NSW to reverse this decision. Our instructions are that Clair did not receive another offer.

DCJ Community Services then wrote a letter of support to DCJ Housing explaining that the condition of the social housing property was of a concern for the potential restoration of Clair's children, due to the structural hazards and immediate health and safety concerns.

Eventually DCJ Housing did address some of the repair issues, but Clair did not move back as she was concerned about the area and her health. At this point, Legal Aid NSW began consultation with DCJ Housing senior management. While much of the "fault" was put back on Clair's drug use and non-engagement with DCJ Housing (i.e. not allowing access to the property to complete the repairs), it did open a space to escalate complex matters involving the welfare of children in social housing to a senior level.

---

DCJ Housing advised that Community Services and Housing in that particular district have been finding opportunities to discuss how to support families jointly, and that Clair's case has opened up further dialogue between the two agencies about how to further improve their collaboration and understanding of shared clients.

Legal Aid NSW is having liaison meetings with senior management of DCJ Housing, as a result of which we have been able to escalate matters like this (as evidenced in Clair's\* case above).

We encourage further improved coordination between DCJ Housing and DCJ Community Services to work with families to ensure that they have access to safe and suitable housing. This would be consistent with the PSP goal of supporting families to stay together.

It would also be consistent with the 'Family is culture' review report, which expressed concern that a lack of appropriate housing may act as an impediment to restoration.<sup>21</sup> The report recommended that DCJ develop a memorandum of understanding between Housing and Community Services that allows for the sharing of information held by Community Services when it is required by Housing before parents can access Housing services.<sup>22</sup> We note that the NSW Government has introduced new priority housing categories where housing is needed to support the restoration of a child or prevent children from entering OOHC.<sup>23</sup>

We also consider that there should be greater transparency around the decision-making process in relation to social housing, and how DCJ Housing decisions may contribute to determinations by DCJ Community Services.

#### *Centrelink*

Legal Aid NSW is concerned about the lack of coordination between DCJ and Centrelink, and that the lack of support provided by these agencies to families when children are removed can exacerbate already traumatic circumstances.

#### *Cara's story\**

Cara is an Aboriginal woman. She has been through a lot in life, experiencing much loss and grief from childhood into adulthood. She fell pregnant at a young age, while trying to cope with everything she had been through and while living in a violent relationship. She had her first child removed from her at hospital.

At this time, Cara was in the Children's Court. Her family lawyer at the time (not Legal Aid NSW) advised her that, as her child was going to be returned to her care, she didn't need to report to Centrelink any change in circumstances. This advice was wrong. As it turned out, the child was never returned to her care and, despite Cara seeking advice from the

---

<sup>21</sup> Ibid 359.

<sup>22</sup> Ibid Recommendation 111.

<sup>23</sup> NSW Government Communities & Justice, *Family is Culture Response - Progress Report - Nov 2020* (Report, November 2020) 27.

---

lawyer to do the right thing, Centrelink gave her a \$9,098 debt. She notified Centrelink at the time that she had failed to report due to incorrect legal advice. However, the debt was still applied to her. This added a financial burden to her load as her Centrelink income was reduced to pay off the debt.

Legal Aid NSW recently assisted Cara through lodging a debt waiver request along with letters of support on her behalf. Centrelink waived this debt, and the refund went towards repaying other outstanding Centrelink debts also accrued during periods of crisis.

Due to the crises building in her life, Cara's second and third children were also removed from her care four years after her first. Around this time, she was also coping with the deaths of several close family members. Cara was completely overwhelmed by the ongoing trauma, loss and grief, and failed to report to Centrelink the change in circumstances of her children having been removed, this time due to a mental health crisis. Centrelink applied a debt of \$6,857. This extended the period of debt-repayment burden well into the future, while Cara was still trying to set herself up to get her children back.

We applied for a waiver of this debt on compassionate grounds, however Centrelink flagged that Cara's failure to report previously (despite acting in good faith) would go against her, as would the amount of time in which the debt had accumulated (four months). We submitted that Cara did not intend to benefit – in fact, she would have been eligible for a similar rate of Centrelink payments if she had reported the change – but on this particular occasion, she did not have the capacity to meet her Centrelink obligation due to her personal circumstances, in particular, the removal of her two younger children.

Since then, Cara had a near death experience with alcohol after the removal of her two younger children. This was a wake-up call for her. She went on to study Aboriginal family wellbeing, violence prevention and trauma counselling, and went through a steep healing process. Cara paid off the second debt. One of her children has now been returned to her care, and she is an active community advocate.

In our view, DCJ and Centrelink should improve their coordination and support for families in crisis when children are removed. This would allow parents to focus on their parenting obligations and reuniting the family, rather than penalise or place them under further stress.

Our client Cara\* was able to identify several improvements to the system, and we have sought to reflect her views throughout this submission, where possible. Legal Aid NSW supports the following recommendations, which Cara\* identified as potentially making a significant difference to her situation:

- DCJ should notify Centrelink on a person's behalf when that person's circumstances change as a result of intervention by DCJ. Only the minimum amount of information necessary should be shared to put Centrelink on notice.
- Centrelink should offer assistance to families in crisis, including through emergency payments, and recognition of a 'crisis period' during which payments are maintained while reporting obligations or requirements to look for work or to study (e.g. required number of hours for ABSTUDY) are suspended.

There is considerable evidence that young people leaving care are likely to experience significant and multiple forms of disadvantage and exclusion.<sup>24</sup> Young care leavers are at increased risk of homelessness, substance use and contact with the criminal justice system.<sup>25</sup> Young people leaving care are also more likely to have poorer health, education and employment outcomes than the non-care population.<sup>26</sup>

We are aware that the NSW Government is exploring ways of addressing these problems in order to help care leavers have better life outcomes. For instance, the Futures Planning and Support project on the Mid North Coast (part of *Their Futures Matter*) is offering a range of supports to young people aged 17–25 years who have been in OOHC, including mentoring and advocacy, intensive casework, and brokerage.

Legal Aid NSW strongly supports targeted and wraparound supports for young people leaving care. We also consider there to be sound arguments for incorporating legal assistance as part of the services delivered to this cohort.

Young people leaving care are far more likely to have legal problems, which if left unaddressed can lead to further problems and entrench disadvantage and vulnerability. For instance, the Law and Justice Foundation LAW survey found that 74.1% of the 18–24 year olds surveyed that had been in OOHC reported a substantial legal problem, compared to 27.2% per cent of this age group overall.<sup>27</sup>

We highlight specific areas of concern and recent developments below.

### **Housing services for young people leaving care**

As noted above, young people leaving care are at a high risk of becoming homeless. A 2009 Create Foundation survey found that 35% of young people leaving care were homeless in the first year of leaving care.<sup>28</sup>

Although we understand that care leavers are eligible to be on the priority list for social housing, in our experience, child protection caseworkers seeking to arrange housing for young people leaving care do not seem to have a designated point of contact in DCJ Housing to streamline or prioritise applications, or receive any other kind of specialised assistance.

---

<sup>24</sup> Toni Beauchamp, UnitingCare Children, Young People and Families, *Young People Transitioning from Out-of-home Care to Adulthood: Review of Policy and Program Approaches in Australia and Overseas* (Policy Paper, July 2014).

<sup>25</sup> Dr Joseph J McDowall, CREATE Foundation, *CREATE Report Card 2009, Transitioning from Care: Tracking Progress* (Report, November 2009).

<sup>26</sup> *Ibid.*

<sup>27</sup> Deborah Macourt, Law and Justice Foundation, *Youth and the Law: It's Not All About Juvenile Justice and Child Welfare* (Updating Justice No 35, December 2013).

<sup>28</sup> Dr Joseph J McDowall, CREATE Foundation, *CREATE Report Card 2009, Transitioning from Care: Tracking Progress* (Report, November 2009).



---

### *Sean's story\**

Sean was placed in the care of the Minister to 18 years of age. Despite having involvement with FACS (as it was formerly known), Juvenile Justice (as it was formerly known) and an OOHC NGO, Sean approached the age of leaving care with no Housing Pathways application lodged.

Legal Aid NSW assisted Sean to complete an online application just before he turned 18. Not long after, Housing NSW threatened to close the application as they had not received adequate supporting documents. Legal Aid NSW advocated for an extension and coordinated the collection of supporting material from other agencies, including a living skills assessment from the OOHC NGO. Without Legal Aid NSW coordinating and driving this process, it is likely that Sean would have left care with no housing application.

Sean remained homeless and moved into a family member's residence where he was exposed to violence and substance use. When Sean's homelessness and vulnerability hit crisis point, his (then) FACS caseworker agreed to advocate for his housing application to be prioritised, escalating it to the director before any progress was made. Throughout this process there was no coordination with Housing and FACS to provide a smooth transition from care into independent accommodation.

We consider that improved coordination and collaboration between the Housing and Community Services arms of DCJ has the potential to help address this issue, and better ensure that care leavers have access to appropriate housing once they turn 18.

### **Young people in OOHC leaving custody**

In Legal Aid NSW's experience, there can be poor collaboration and coordination between Community Services and Youth Justice to address the needs of children and young people in OOHC leaving custody.

### *Jessie's story\**

Jessie is an 18-year-old Aboriginal young person who was in the care of the Minister to 18 years of age. She was in the criminal justice system and was sentenced to a control order in a youth justice centre. Jessie's earliest release date was approximately five months after her 18<sup>th</sup> birthday.

As Jessie's release date approached, her Youth Justice case worker in custody attempted to plan for her release. Although there was a leaving care plan in place which placed responsibility for making referrals for accommodation with FACS (as it was formerly known), the Regional FACS district office would not participate in the pre-release case conferences. Jessie was homeless and Youth Justice had difficulty planning for her release without the assistance of FACS. Jessie expressed a wish to move to a different regional town where she had a supportive adult or to move to Sydney. Youth Justice attempted to make referrals to services in different areas and referred Jessie to Legal Aid NSW for assistance.

---

In the end, Jessie was assisted on her release by a youth service local to the Youth Justice Centre (and not in the area where Jessie lived before custody or wished to live upon release), who tried to secure accommodation in a refuge upon her release. FACS confirmed that the Aftercare Financial Plan had not been signed off almost five months after Jessie turned 18. There were items requested in that plan that would have assisted Jessie significantly on her release, such as a mobile phone and credit to stay in contact with services and money for groceries.

A 2013 report by the Ombudsman on 'The continuing need to better support young people leaving care' found that leaving care planning and support was inadequate for care leavers who were in Youth Justice detention in the 12 months prior to exiting care.<sup>29</sup> This is particularly acute for care leavers who have an intellectual disability or otherwise are eligible for NDIS support. Leaving care planning and referrals are very 'place-based', meaning that services usually have a catchment area. If it is not clear where a young person will live once they leave custody, it is very difficult to make referrals and set up support. An NDIS plan also needs to be created with supports and services in mind, so this is hindered by being in custody.

In our view, young people in OOHC leaving custody would benefit from improved coordination and collaboration between Youth Justice, DCJ Community Services (and potentially Housing), as well as the National Disability Insurance Agency (**NDIA**).

### **Leaving care plans**

The ACWA Transition into Independence Forum (**TIF**), of which Legal Aid NSW is a member, has raised concerns regarding the absence of clear and consistent policies governing the implementation of leaving care plans. A significant issue is the absence of streamlined processes for young people wanting to access the funds and resources allocated in their leaving care plans. Members of TIF, including Legal Aid NSW, have identified various gaps and barriers, as well as a lack of consistency, transparency and accountability, in the system available to care leavers for accessing the entitlements in their leaving care plans. This ultimately undermines the benefits of creating a leaving care plan which meets a young person's needs and goals as they transition to independence.

The Office of the Children's Guardian (**OCG**) is currently conducting a review into leaving care plans for young people exiting care in 2020 (during the COVID pandemic). Legal Aid NSW understands the review will consider both individual and systemic issues relating to the development and implementation of leaving care plans. Legal Aid NSW would encourage the Committee to take into account the findings of the OCG review, if it is released before the Committee's report.

---

<sup>29</sup> NSW Ombudsman, *The Continuing Need to Better Support Young People Leaving Care* (Report, August 2013).



---

### 3. The adequacy of current interventions and responses for vulnerable children and families and their effectiveness in supporting families and avoiding children entering OOHC

#### *Early intervention tools*

The 2019 reforms introduced a number of additional early intervention tools for use by DCJ. The Care Act currently provides for the use of tools such as:

- prioritised access to services (section 17)
- temporary care arrangements (section 151)
- parent capacity orders (section 91-91I)
- parent responsibility contracts (sections 38A-38G)
- care plans by consent (section 38), and
- alternative dispute resolution (section 37).

These early intervention tools are available as an alternative to more intrusive actions like removal. However, our solicitors have seen very few clients seek assistance in relation to these tools, and it appears that they may be under-utilised by caseworkers in practice. For example, we understand that, as at September 2020, over the past 12 months there have been only six applications for guardianship orders by consent filed in NSW. Five out of these six were all filed in the one Children's Court registry. We would be interested to receive some data from DCJ about case workers use of these tools with vulnerable and at-risk families.

Despite the ability of child protection workers to assist families to access prioritised services, it remains unclear to Legal Aid NSW what this means in practice. As outlined in our 2017 submission on 'Shaping a better child protection system',<sup>30</sup> it is often not clear whether the family has been referred to services, what services are or could be provided, how the parents are to engage with the services, and what assistance is being provided to them to engage with these services. We strongly believe that early collaboration with a variety of services and stakeholders is usually a strong indicator of likely success and family preservation.

Legal Aid NSW is well placed to assist families who are asked by DCJ to engage with them in relation to any of the above tools. We provide advice, minor assistance and extended legal assistance (**ELA**) to clients who do not have court proceedings but require advice in relation to early intervention work with DCJ.

We suggest that these tools be used in conjunction with a family group conference or a safety action-style meeting as described above. These meetings could either be used to

---

<sup>30</sup> Legal Aid NSW, Submission to the Department of Family and Community Services, *Shaping a Better Child Protection System: Discussion Paper* (November 2017) <[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/27827/Final-Legal-Aid-NSW-submission-to-FACS-Shaping-a-better-child-protecti....pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0008/27827/Final-Legal-Aid-NSW-submission-to-FACS-Shaping-a-better-child-protecti....pdf)>.

---

discuss and formulate the most appropriate tool for the individual family, or be used as an opportunity to discuss the proposed tool, seek feedback and reach a consent position as to what it will contain. These conferences could then also be used to monitor compliance, adjust expectations and ensure there is ongoing provision and engagement with services.

### *Family group conferences*

In our 2017 submission on ‘Shaping a better child protection system’,<sup>31</sup> we supported the increased use of family group conferences as an important way to address risk in families before removals occurred. While the 2019 reforms saw alternative dispute resolution become mandatory except when there are exceptional circumstances, we have little anecdotal or other evidence of their success or information on how they are being utilised by DCJ.

We are aware that there has been a large number of family group conferences convened with reportedly a high degree of success. Attendance of legal representatives is discouraged and there is very little publicly available information as to things like:

- who attends a conference
- who facilitates a conference
- the goals of the conference (i.e. what families will be discussing)
- whether families are aware of their ability to obtain legal advice before and after these conferences
- the options for support for families during and after these conferences, and
- how agreements are reached during these conferences.

We consider that the family group conference model has great potential to assist families to address risk before it gets to an unacceptable level, if further information and resources are available in relation to the process and its desired outcomes.

We suggest that further work be done to:

- develop a process or policy around how families are invited, and what information they are given about why they are being asked to attend the conference and what is hoped to be achieved
- develop clear and concise documents to be provided to families, which set out the concerns and how they are to be addressed, timeframes and consequences of failure to comply. These documents could then be reviewed and legal advice given to families at an early stage, and
- encourage families to access legal advice before and after attending a conference. Legal advice should be mandatory before families execute any agreements or plan, to ensure that families understand the documents and the consequences of signing them

We support legislative reform or guidance in relation to the scope, purpose and role of a family group conference.

---

<sup>31</sup> Ibid.

---

### *Intervention and support for families after the Children's Court*

There are also some difficulties with interventions and supports for at risk families after their involvement in the Children's Court, which can lead to children returning to care. This suggests that the interventions with the families may have been inadequate.

The 2019 reforms led to a change to the test regarding the restoration of children to the care of their parents, allowing children to be restored to parents "within a reasonable period". It was anticipated that a greater percentage of children would be able to be restored to parents over a longer period of time.

There are limitations in relation to the available checks and balances after final orders are made in the Children's Court. Although there is legislative power to make orders requiring reports to be prepared at various stages, there are widespread difficulties with compliance with these orders, and limitations in relation to the court's ability to ensure that interventions and responses are effective once the legislative timeframes have expired.<sup>32</sup>

We recommend expanding the powers of the Children's Court to ensure ongoing supervision of care plans with restoration occurring over extended periods. This could involve the ability to return the matter to the Court for progress reviews over longer periods of time, and greater power to extend timeframes to provide orders on their own motion.

### *Support for Aboriginal and Torres Strait Islander families*

We submit the following comments and suggestions to better support Aboriginal and Torres Strait Islander families to avoid their children entering OOHC.

#### **Trauma-informed and culturally appropriate practice**

DCJ should be trauma-informed and culturally appropriate. In our submission to the review of Aboriginal and Torres Strait Islander children and young people in out-of-home care, we recommended that FACS (as it then was) and other agencies integrate the theory and practice of trauma-informed care into casework as a means of reducing the numbers of Aboriginal and Torres Strait Islander children in and entering OOHC. We also suggested that FACS (as it then was) develop meaningful relationships with Elders and community members to assist with managing and placing children at risk, and employ appropriately qualified staff to create positive working relationships with Aboriginal communities.<sup>33</sup>

---

<sup>32</sup> DFACS & *The Jacobs Children* [2019], *DOFACS and Amber* (2019).

<sup>33</sup> Legal Aid NSW, Submission to Professor Megan Davis, *Independent Review of Aboriginal Children and Young People in Out-of-home Care* (December 2017) <[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0014/28310/Legal-Aid-NSW-sub-to-review-of-Aboriginal-children-and-YP-in-OOHC.PDF](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0014/28310/Legal-Aid-NSW-sub-to-review-of-Aboriginal-children-and-YP-in-OOHC.PDF)>.

---

We note that the 2019 'Family is culture' report (following the review of Aboriginal and Torres Strait Islander children and young people in OOHC) recommended that:

[DCJ] should provide culturally-competent, trauma-informed training and materials for child protection staff... around working with Aboriginal community and families. This training should focus on how to appropriate engage Aboriginal families in early intervention and prevention work.<sup>34</sup>

The importance of trauma-informed and culturally appropriate practice is highlighted by one of our clients, who wanted her voice to be reflected in this submission.

**Comments from Cara\***

"DCJ need to realise the impacts on mums and dads of their trauma that they experienced as children. Many don't understand coming from a white upbringing. Aboriginal people, we are different. We are brought up by our aunts, uncles, nans and pops – they all play a role. Having children removed brings trauma back into us, brings the heartache. It goes right back to the Stolen Generation and the impacts on our grandparents who were removed.

DCJ think they know what's best for our children all the time. Children return home on their own when they get to a certain age. And they come back with issues. That's from being in and out of homes.

DCJ say our children have to have stability. My daughter was in 15 different homes. They remove our children, put them in different homes, different towns, different households, they muck our children up themselves.

DCJ need to have a significant culture shift to play the role they are supposed to. They need to understand us as Aboriginal people, our ways of life, our upbringing. We all live on land and come from a Mission, we all look after and look out for one another's family and children.

They need cultural awareness training. They need Aboriginal managers and senior managers. They need Aboriginal workers."

According to the NSW Government response to the 'Family is culture' report, DCJ and its sector partners "will strengthen casework policies, practice guidelines, and training, including culturally capable, trauma-informed training and materials for all child protection staff".<sup>35</sup> The response notes that DCJ and its sector partners will continue to roll out its Connecting with Aboriginal Communities training, which aims to equip staff with the skills and capability to work more effectively with Aboriginal clients and make better informed and culturally appropriate decisions.<sup>36</sup>

---

<sup>34</sup> Professor Megan Davis, *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-home care* (Review Report, 2019) Recommendation 40.

<sup>35</sup> NSW Government Communities & Justice, *Family is Culture Response - Progress Report - Nov 2020* (Report, November 2020) 19.

<sup>36</sup> *Ibid.*

---

## Strengths-based approach with individualised support

DCJ and other support services should provide individualised support and take a strengths-based approach to build up parental capacity. According to the 'Family is culture' report:

Children should be safe and it is important, in order to promote this safety, that Aboriginal families are provided with clear, achievable and strengths-based goals, accompanied by culturally sensitive and holistic casework, to make restoration the primary goal of permanency planning after children enter care. While restoration will not be achieved in all cases, strengths-based and supportive approaches to restoration are more likely to achieve this outcome for children who enter care and will give families the best chance of staying together.<sup>37</sup>

The report recommended that DCJ should, in partnership with Aboriginal stakeholders and community, review its existing policies, guidance and practice relating to restoration, focusing on providing sustained and suitable support services for Aboriginal families experiencing complex issues that cannot be solved simply through individual behavioural change.<sup>38</sup>

### Comments from Cara\*

"DCJ always set you up to fail. When I first had my first baby removed, they put all these things in the care plan that totally overwhelmed me. Parenting courses, drug and alcohol counselling is good for some, but some is not relevant. Some parents have done these courses previously, yet they send you to do it again just to tick the box.

People don't live in the past, they make changes. DCJ bring the past up to bring you down. I have never experienced them build me up. They say, "How are you going to do this and that? You have no licence, no passport." They don't give support.

DCJ take the risk of harm role *only*. Other services need to step in to provide the support to parents that builds parents *up*, not tears them down. That respects that the parents know better than anyone else – what they and their families need, where they have failed as parents, what roadblocks exist in their lives. And then provides all the supports for those parents to deal with those roadblocks and build themselves up to get their families back together."

## Assisted referrals to legal assistance services

DCJ should provide Aboriginal and Torres Strait Islander families assisted referrals to legal assistance services, including Legal Aid NSW, to help guide them through and understand the process and to advocate on their behalf, including at the early intervention stage. This is consistent with the 'Family is culture' report, which recommended that DCJ should ensure that all Aboriginal families receive 'warm' referrals to legal advisors before child

---

<sup>37</sup> Professor Megan Davis, *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-home care* (Review Report, 2019) 349.

<sup>38</sup> Ibid Recommendation 108.

---

protection involvement escalates to the point where entry into care is considered a possibility.<sup>39</sup>

**Comments from Cara\***

“DCJ will write down what they want you to do, but then they leave you and you think, ‘Where do I go?’

They could connect you up with financial help, financial counselling. They could link you up with advocacy. They don’t do any of that.

I’ve had plenty of caseworkers, I’ve never had anyone direct me to the path I need to take to tick all of their boxes. If their case workers are not going to take that role, they *must* link us up with someone who can.

You need someone to advocate for young mothers who are vulnerable. Even in first process of having youngest child removed. That feeling is unbearable. You can’t even think the next day what to do, you can’t even think ahead what you’re going to do in the future to get them back.

You need someone with you, to guide you, to tell you it’s okay, to speak on your behalf, be there when you are in meetings when they bring out the big words. If you have or haven’t got the education, dropped out of school, she can’t say yes or no if she doesn’t understand what you’re talking about. You need someone to break it down to another level where you can hear it.”

We acknowledge that, in its response to the ‘Family is culture’ report, the NSW Government has committed to continuing to monitor Aboriginal families’ access to legal services as early as possible, subject to the availability of appropriate legal services such as the ALS, local Community Legal Service or Legal Aid NSW.<sup>40</sup>

As mentioned above, Legal Aid NSW is well placed to assist families who are asked by DCJ to engage with them in relation to any of the early intervention tools. We are also well placed to assist clients with referrals to other services for support, such as financial counsellors.

We note that Legal Aid NSW and the ALS, under a Statement of Commitment, have agreed to work together to deliver high quality, culturally appropriate legal services to Aboriginal and Torres Strait Islander peoples.<sup>41</sup> As part of this, Legal Aid NSW funds the ALS to employ several solicitors to provide legal services to Aboriginal clients in the care and protection jurisdiction of the Children’s Court outside Metropolitan Sydney.

Legal Aid NSW also has a Protocol with the ALS for care and protection matters, which specifies that at any court or on any circuit where the ALS provides a service in care and

---

<sup>39</sup> Ibid Recommendation 53.

<sup>40</sup> NSW Government Communities & Justice, *Family is Culture Response - Progress Report - Nov 2020* (Report, November 2020) 20.

<sup>41</sup> Legal Aid NSW and Aboriginal Legal Service (NSW/ACT), *Statement of Commitment* (29 May 2013).



---

protection matters, all care applications involving Aboriginal children or young persons will be referred to the ALS in the first instance. Where there is no conflict, the ALS will make a determination as to whether it will represent the child / young person or parent/s.

### **Access to early intervention support**

Access to support services is essential to assist families in crisis. In our submission to the review of Aboriginal and Torres Strait Islander children and young people in out-of-home care, we recommended that Aboriginal parents and families be given early and intensive support to address any issues impacting upon parenting capacity.<sup>42</sup>

#### **Comments from Cara\***

“Every organisation can contribute something. Transport, financial needs, advocacy, debts, referrals to other support services in any area in which they’re struggling. They’ve all got a role, and they’ve all got something they can give.

But you need to access the services. Some don’t expose themselves out there for families to say ‘I can go to this organisation cause they’ve got that and I need that in that area to sort this out’.

Families who are in crisis need that support.”

Recognising that “parents often present to child protection services with multistratum and complex issues”,<sup>43</sup> the ‘Family is culture’ review report recommended that DCJ work with relevant agencies and service providers to develop a plan to coordinate integrated service provision in early intervention support efforts for Aboriginal families and children.<sup>44</sup>

The review report also recommended that the NSW Government amend the Care Act to mandate the provision of support services to Aboriginal families to prevent the entry of Aboriginal children into out-of-home care.<sup>45</sup> According to the NSW Government response, this will be considered as part of the review of the Care Act in 2024.<sup>46</sup>

### **Supporting Aboriginal and Torres Strait Islander people to become approved carers**

Government agencies should help support and facilitate Aboriginal and Torres Strait Islander people to become approved carers for Aboriginal and Torres Strait Islander children in OOHC. This is consistent with several recommendations of the ‘Family is culture’ report,<sup>47</sup> including recommendation 88 that DCJ should ensure that its processes

---

<sup>42</sup> Legal Aid NSW, Submission to Professor Megan Davis, *Independent Review of Aboriginal Children and Young People in Out-of-home Care* (December 2017)

<[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0014/28310/Legal-Aid-NSW-sub-to-review-of-Aboriginal-children-and-YP-in-OOHC.PDF](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0014/28310/Legal-Aid-NSW-sub-to-review-of-Aboriginal-children-and-YP-in-OOHC.PDF)>.

<sup>43</sup> Professor Megan Davis, *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-home care* (Review Report, 2019) 143.

<sup>44</sup> *Ibid* Recommendation 38.

<sup>45</sup> *Ibid* Recommendation 25.

<sup>46</sup> NSW Government Communities & Justice, *Family is Culture Response - Progress Report - Nov 2020* (Report, November 2020) 29.

<sup>47</sup> Professor Megan Davis, *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-home care* (Review Report, 2019) Recommendations 87–96.

---

do not unduly limit the ability of potential Aboriginal carers to safely care for Aboriginal children in OOHC.

***Comments from Cara\****

“Aboriginal children are supposed to be placed with Aboriginal kinship.

They need more Aboriginal carers out there. Because something happened 10 years ago is on their record, they can't be a carer. A lot of Aboriginal people don't come forward as carers because of that barrier.

They need to change the consideration of past records and the past for carers. It is critical that they take colonisation into consideration, and the impact of systemic racism that has resulted in records and violent relationships in the past.

They need to put money into 2–3 day courses to recruit lots of Aboriginal people to become carers. People are willing to help their children, but they are precluded due to hoops you have to jump through.

We look after one another's kids. In the wider world, you have to get legal documents to prove we can be a qualified carer to look after children.”

We note that the NSW Government has committed to reviewing and updating its policies and practices to support the identification and prioritisation of potential relative and kinship carers for Aboriginal children.<sup>48</sup>

**Support for grandparents and other family members**

More support is needed for grandparents and other family members who are carers or potential guardians. In our submission to the review of Aboriginal and Torres Strait Islander children and young people in out-of-home care, we recommended that FACS (as it then was) identify potential placements with family or kin, and provide support to ensure that these placements can be sustained.<sup>49</sup>

***Comments from the Central West Cooperative Legal Service Delivery Program***

DCJ removes Aboriginal children and places them with grandparents, but often does not provide information about the grandparents' rights in the current situation.

DCJ seeks for children to be in the care of the Minister until they are 18 years old, but there have been instances where it has not referred the grandparents or family member to legal advice so they know their rights to access guardianship.

---

<sup>48</sup> NSW Government Communities & Justice, *Family is Culture Response - Progress Report - Nov 2020* (Report, November 2020) 22.

<sup>49</sup> Legal Aid NSW, Submission to Professor Megan Davis, *Independent Review of Aboriginal Children and Young People in Out-of-home Care* (December 2017) <[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0014/28310/Legal-Aid-NSW-sub-to-review-of-Aboriginal-children-and-YP-in-OOHC.PDF](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0014/28310/Legal-Aid-NSW-sub-to-review-of-Aboriginal-children-and-YP-in-OOHC.PDF)>.



---

We note that the ‘Family is culture’ review report identified that data from the Pathways of Care Longitudinal Study highlight that Aboriginal caregivers require additional support to care for children in OOHC.<sup>50</sup> The report recommended that DCJ urgently engage with Aboriginal stakeholders and community in relation to the support needs of Aboriginal carers.<sup>51</sup> We acknowledge that the NSW Government has committed to conducting a workshop with Aboriginal stakeholders on how data from the study can be used to better support Aboriginal children in OOHC.<sup>52</sup>

### **Alternative, community-based approaches**

Consideration should be given to alternative, community-based approaches to care and protection matters which better facilitate the participation of Aboriginal and Torres Strait Islander families, communities and children and young people in decision-making.

For example, the Federal Circuit Court conducts an Indigenous list, which was designed to create a culturally safe and supportive space where Aboriginal and Torres Strait Islander families can participate and obtain assistance to help their families.<sup>53</sup> Where a person is aware that children in their family are at risk, they can obtain interim orders to care for the children. Proceedings are run in an informal and culturally appropriate manner – there is an Acknowledgment of Country, the judge sits with the parties around one table, and Aboriginal services attend and engage with families at the Court. This initiative was set up with significant input from local Aboriginal communities and services, and is due to be expanded to other locations.

We understand that the Aboriginal Care Circle pilot, which was set up at the Children’s Court in Nowra, aims to encourage more culturally appropriate decision-making in care proceedings involving Aboriginal children through ‘care circles’, in which all relevant people participate in decision-making, and the Magistrate gives directions and/or makes final orders. ‘Care circles’ are loosely based on the combination of family group conferences and circle sentencing in criminal matters.<sup>54</sup>

While the initiative appears to be promising, we understand that the pilot has not been operating for some years.

We would welcome more information from the NSW Government and the Children’s Court about the potential for the pilot to be recommenced and expanded to other court locations. This approach is also supported by members of the Central West Cooperative Legal Service Delivery Program, which has identified the need for a new approach to care and protection matters involving Aboriginal families, which could operate like circle sentencing

---

<sup>50</sup> Professor Megan Davis, *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-home care* (Review Report, 2019) 306.

<sup>51</sup> *Ibid* Recommendation 96.

<sup>52</sup> NSW Government Communities & Justice, *Family is Culture Response - Progress Report - Nov 2020* (Report, November 2020) 14.

<sup>53</sup> Trent Shepherd, ‘A Meeting Place for Aboriginal Families to Support Aboriginal Families’ (2018) 12 *UNSW Law Society Court of Conscience* 22.

<sup>54</sup> Sarah Ciftci and Deirdre Howard-Wagner, ‘Integrating Indigenous Justice into Alternative Dispute Resolution Practices: A Case Study of the Aboriginal Care Circle Pilot Program in Nowra’ (2012) 16(2) *Australian Indigenous Law Review* 81.

---

and make recommendations to the Children’s Court Magistrate.

#### 4. The child protection intake, assessment, referral and case management system

In Legal Aid NSW’s experience, the process of intake, assessment, referral and case management by DCJ remains unclear in terms of how, when and why certain decisions are made regarding children assessed as being at risk of significant harm.

Our solicitors work with families at many different points in time in a variety of legal contexts. These include:

- providing advice, minor assistance and ELA to parents who are engaged with DCJ
- providing advice and representation to parents who are part of Apprehended Domestic Violence Order (**ADVO**) proceedings where children are victims of family violence or have been exposed to family violence
- providing advice and representation to parents who have current Federal Circuit and Family Court proceedings where there are concerns about the children’s safety in one or both households
- representing children in care and protection proceedings in the Children’s Court where the child protection history is required to be canvassed at the beginning of the proceedings, and
- representing children as Independent Children’s Lawyers in Federal Circuit and Family Court proceedings where there are significant risks in one or both households and/or some involvement with DCJ, or where DCJ are requested to intervene.

Additionally, in our experience, obtaining information about children who may have been assessed as at risk of significant harm is difficult and inconsistent, both in terms of the amount of information provided and the reasons for the decision.

#### *Comments from Cara\**

“They come with a paper letter note saying we’re here to remove this child. Majority they don’t say why, with me they didn’t say why until after when they had their little care plan together.

They must say why.

Sometimes they assess the child wrong. They think they know what’s best for this child.

The local DCJ child psychologist says your child needs this. There is a lot of backlash about what she says about our kids. Just because you got a degree, you come from the medical point of view, I know my child better than you.

We know what is best for our children in a cultural way.”

Often, when a family is involved with the family law system, a decision is made that no further involvement is required from DCJ as the issues will be resolved by the Family

---

Court. This is the case even when the Family Court requests that DCJ intervene to assist the court in determining what is in the best interests of the child.

As representatives for both parents and children, our experience is that the processes for obtaining information from DCJ about its work with a family, concerns, risk assessments and case management largely depend on the individuals involved. Furthermore, decision-making is inconsistent. It is extremely difficult to provide advice to clients when these processes and outcomes are uncertain and judicial officers make decisions in a vacuum.

Below are examples of matters where the decision-making has been inconsistent, and information about the process involved in intake, assessment and case management has been difficult to obtain.

#### *Charlie and Harriet's story\**

Legal Aid NSW acted for two children, Charlie and Harriet, in Federal Circuit Court proceedings. Charlie and Harriet's father made allegations about risk in their mother's household. There was some initial involvement with DCJ, but this involvement was discontinued.

Approximately six months after DCJ's initial involvement, a risk of harm report was received and investigated, and Charlie and Harriet were assessed as no longer being safe in their mother's care. Their father was asked to sign a safety plan to not allow them to return to the care of their mother, in contravention of orders of the Federal Circuit Court.

The Independent Children's Lawyer (**ICL**) relisted the matter and the court listed the matter for an interim hearing. The ICL sought information from DCJ regarding its concerns for Charlie and Harriet in the care of their mother, including whether there were concerns about the mother spending time with them supervised or unsupervised. The ICL was provided with a copy of the safety plan, but no further information on the decision-making or intake process or assessment. DCJ declined the court's invitation to intervene in the proceedings, leaving the court with very little information about DCJ's assessment of Charlie and Harriet's situation.

#### *Tommy's story\**

Legal Aid NSW appeared as ICL in the Federal Circuit Court and then ILR in the Children's Court in matters involving four Aboriginal children, including baby Tommy (the fourth child). The children's mother is Aboriginal, and Tommy's father is also Aboriginal.

Orders were made in the Federal Circuit Court by consent, placing the three eldest children, all aged under five years, in the sole parental responsibility of their father. At the time, their mother was seven months pregnant with a fourth child (Tommy) by a different father, and had tested positive to methamphetamines. The mother had a documented history of many years of drug use, in addition to homelessness, relationships involving domestic violence, and her own trauma as an Aboriginal child from a fragmented family who had experienced sexual abuse.

---

The mother had been living at a refuge with the children. DCJ became involved and assumed the care of baby Tommy, who tested positive to methamphetamines at birth. DCJ placed Tommy in the care of a maternal aunt, but decided to work with his mother towards restoration. Tommy's father was a drug user and supplier, and was incarcerated for offences relating to same. At the time of Tommy's birth, his mother was in a relationship with another man, also a drug user. This was known to DCJ.

The mother agreed to enter residential rehabilitation on the Central Coast, while Tommy was in western Sydney. DCJ started to transport Tommy to spend overnight time with his mother within days of her commencing rehabilitation. The nights increased from two to three overnights with the mother. At the same time, DNA testing meant the paternal family also wanted contact, so Tommy spent two nights with his paternal grandparents and his father overnight (who was incarcerated), three nights with his mother on the Central Coast, and two nights with his carers.

Legal Aid NSW expressed real concern about this arrangement on behalf of Tommy, and obtained an order for a clinic assessment. The clinician was extremely critical of the care arrangement given Tommy's young age, and said he was likely to suffer serious psychological harm.

Tommy's mother had maintained the relationship with the man who she was seeing at the time of assumption and relapsed on leaving the program. Due to the mother's history and all available research about ICE addiction, the clinician suggested that this was a highly predictable outcome.

## 5. The availability of early intervention services across NSW including the effectiveness of pilot programs commissioned under Their Futures Matter program

No comment.

## 6. The adequacy of funding for prevention and early intervention services

### *Consultation with Aboriginal and Torres Strait Islander communities*

Legal Aid NSW supports the following suggestion from Cara\* regarding the need for Aboriginal communities to be involved in decisions about funding for services. This is consistent with the recommendations of the 'Family is culture' review report related to self-determination,<sup>55</sup> and its suggestion that funding be directed towards Aboriginal

---

<sup>55</sup> Professor Megan Davis, *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-home care* (Review Report, 2019) Chapter 7.

---

Community Controlled Organisations to ensure the most effective program design and delivery.<sup>56</sup>

#### **Comments from Cara\***

When they get funding they need to consult the Elders of the communities they are servicing to ensure the money goes where it is actually needed and not where non-Aboriginal workers say it should go.

They have to consult with the Aboriginal communities about funding, services, and what they are going to do. We're the experts in our home, with our children.

### 7. Any recent reviews and inquiries

See the 'Introduction' section of this submission.

### 8. Any other related matters

#### *Lack of systemic approach to maintaining sibling contact for children in OOHC*

There is currently no systemic approach to keeping groups of siblings who have entered OOHC connected. Our previous submissions identified that sibling groups are regularly separated when they enter OOHC, and discussed the impact of this on the child or young person.<sup>57</sup> There also appears to be no centralised or coordinated approach to ensure that caseworkers responsible for the case management of children and young people with siblings in OOHC facilitate ongoing contact between siblings. In our experience, this is most evident where case management for siblings is delegated to an NGO.

We recommend that DCJ give priority to ensuring siblings who enter OOHC remain together, and facilitating ongoing contact between siblings in OOHC.

#### *Management of sexual assault matters for children and young people in care*

A number of CCLS clients have disclosed incidents of sexual assault, either through direct disclosure to Legal Aid NSW or as part of the disclosure in their legal file audit advice. The incidents of sexual assault occurred when the child was in the care of the Minister, or under the supervision of DCJ prior to care orders being made. For many of these clients, there has been no follow up after an investigation by (the Joint Investigation Response Team (**JIRT**) (as it then was), no update provided regarding related criminal proceedings,

---

<sup>56</sup> Ibid 150.

<sup>57</sup> Legal Aid NSW, Submission to the Department of Family and Community Services, *Shaping a Better Child Protection System: Discussion Paper* (November 2017) <[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/27827/Final-Legal-Aid-NSW-submission-to-FACS-Shaping-a-better-child-protecti....pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0008/27827/Final-Legal-Aid-NSW-submission-to-FACS-Shaping-a-better-child-protecti....pdf)>; Legal Aid NSW, Submission to the General Purpose Standing Committee No 2, *Inquiry into Child Protection* (July 2016) <[https://www.legalaid.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0016/25342/Child-Protection-Inquiry-submission.pdf](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0016/25342/Child-Protection-Inquiry-submission.pdf)>.

---

minimal or no therapeutic intervention post disclosure, and no application lodged for victims compensation following the disclosure.

In Legal Aid NSW's view, there is scope for better management of legal or criminal proceedings following disclosure by a child or young person of sexual assault, especially where the Joint Child Protection Response Program (**JCPRP**) (formerly JIRT) is involved.

We suggest that file management relating to sexual assault disclosures be improved, including documentation following JCPRP investigations. Currently, each agency (i.e. Police, DCJ and Health) keeps its own records relating to JCPRP investigations. There is only one form that all agencies are required to complete to document their assessment outcomes following a JCPRP investigation. However, this form provides minimal details and is often not fully completed by all agencies. Furthermore, evidentiary material relating to the incident and disclosure of the sexual assault are often missing or incomplete in the child or young person's OOHC records.

We also suggest access to, and monitoring of, specialised therapeutic services and/or intervention after a sexual assault is disclosed, to ensure that the child or young person is able to heal and develop healthy coping mechanisms, and to prevent the development of associated behavioural issues.

#### *Data on the civil law needs of children in OOHC*

There is currently a gap in the evidence base regarding the civil law needs of children generally, in particular, children in OOHC and leaving care. We recommend that research be conducted into the civil law needs of children in OOHC and care leavers up to the age of 25 years. In particular, this research should prioritise Aboriginal and Torres Strait Islander children and young people.