

**Submission
No 56**

CHILD PROTECTION AND SOCIAL SERVICES SYSTEM

Organisation: Youth Law Australia

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Inquiry into the child protection and social services system

Parliament of New South Wales Committee on Children and Young people

Lodged online.

Trusted relationships and respect: the only path to positive outcomes

Dear Committee members,

Thank you for the opportunity to provide a submission on the NSW child protection system.

1. Youth Law Australia

YLA (formerly the National Children's and Youth Law Centre) is a Community Legal Centre dedicated to helping children and young people to find a legal solution to their problems. YLA is Australia's only national, technology-based community legal service and works to empower young Australians with free legal information and knowledge. YLA aims to respond to any Australian young person, anywhere, with any legal problem. In the last two years, YLA has received 92 enquiries from children and young people in NSW who report experiencing child abuse and family violence, and 167 enquiries from children and young people in NSW who are at risk of homelessness due to their home environment.

2. Trusted relationships with caseworkers

The child protection system has come under intense scrutiny in the last 30 years. As summarised in the Family is Culture Report¹, since 2009 there have been 'at least 25 Ombudsman inquiries, Auditor General inquiries, commissions of inquiry, judicial reviews, parliamentary inquiries and Royal Commissions into various aspects of child protection practice and policy across the eight jurisdictions.'²

Despite this scrutiny, Government responses continue to report poor outcomes. In 2015, the Tune Review found that the system was 'failing to improve long term outcomes for children and to arrest the devastating cycles of intergenerational abuse and neglect.'³ In response, the NSW Government

¹ Family is Culture: Independent Review of Aboriginal Children in OOHC (2019), 8.

² ACIL Allen Consulting, Measuring Progress Under the National Framework: Evaluation of Progress under the National Framework for Protecting Australia's Children (Report, June 2015) 35.

³ David Tune, Independent Review of Out of Home Care in NSW (2015) 3.

launched ‘Their Futures Matter’ in 2016, which aimed to deliver improved outcomes for vulnerable children, young people and their families in NSW.⁴ In 2020, the Auditor-General found that the Their Futures Matter reform concluded in June 2020 without a strategy or plan in place to achieve its intent.⁵

As a result of scrutiny and subsequent government responses, the NSW child protection system appears to prioritise accountability and risk aversion, rather than building relationships with children, young people, their families, and other organisations. By focusing on the process, rather than the outcomes, the system has reached a point where the administrative burden placed on caseworkers takes precedence. Ticking a checkbox to record a home visit has more scrutiny within the Department than the quality of the home visit itself, and assisting a family financially so that they can drive a child to school requires three levels of delegation. Similarly, court deadlines prevent adequate and comprehensive consultation with families to improve outcomes when a matter is before the Children’s Court. This administrative burden infiltrates every area of a young person’s life, including health and education. The result of this is a political and community focus on quantitative information to determine the success of the system, which is insufficient to measure the outcomes for children, young people and their families. This can be exemplified by the 2019 Budget Estimates, where the questioning focused on how many children and young people are sleeping in hotels and motels (Alternative Care Arrangements) rather than where the young people were sleeping before DCJ found them a hotel, or where the young person is now after leaving the hotel.⁶

The continuous focus on systematic responses hinders relationship building with children and their families, which in turn prevents children and young people from forming a relationship with the caseworker or Department and having their voice heard. The system must shift to solutions that allow children, young people, and their families to participate in the system in order to improve outcomes for vulnerable families. There are good examples of this happening within the Department. One example is the Practice First Framework, developed by the Office of the Senior Practitioner. The Practice First Framework currently operates in 36 of the 82 Community Service Centres (CSCs) in NSW.⁷ The framework is focused on changing practice culture. To do so it

⁴ NSW Auditor-General’s Report to Parliament, Their Futures Matter, Executive summary (24 July 2020) 1.

⁵ NSW Auditor-General’s Report to Parliament, Their Futures Matter, Executive summary (24 July 2020) 1.

⁶ Transcript of Committee Proceedings 4 September 2019 p 41 and 42.

⁷ FACSAR, Working together to support children and families: Key findings from the Practice First evaluation (2017)

encourages caseworkers to build genuine relationships with family and communities, in practice caseworkers are now encouraged to focus on the language they use and bring the ‘voice of the child’ to decision making about the child. While the Framework is now being rolled out broadly across DCJ CSCs, for it to be effective, NGO Out of Home Care (OOHC) providers would benefit from being provided with the same resources and training to be able to implement the Framework. YLA has been contacted by both young people and parents who have experienced issues with NGO OOHC caseworkers and have required independent legal advice to help resolve issues that they have experienced.

Another example of a relationship-based model working in the Child Protection System is the Professional Individualised Care (PIC) program. The PIC program is a pilot program that is now providing OOHC in NSW.⁸ The PIC model is a relationship-based model where Professional Therapeutic Carers are encouraged to provide professional care by building stable connections with a young person.⁹ They are not paid as carers but are instead paid as skilled professionals to provide support to a young person in a home-based setting. The PIC program states that “if the young person gains a real, trusting relationship with an advocate and a mentor, they are in an infinitely better position to transform their lives.”¹⁰ It is essential that the NSW Government has the infrastructure to determine when pilot programs such as PIC are achieving positive outcomes, and are able to reprioritise funding and safely scale up these programs. This was identified as a gap for the ‘crisis to early intervention evidence database’ established under the Their Futures Matters reforms.¹¹

3. Trusted relationships with advocates

Where children and young people experience abuse in care, or, where a caseworker is unable to build a relationship with the young person, it is paramount that children and young people have access to independent advocacy. A trusted relationship with advocates will allow young people to be informed of their legal rights and enable greater access to appropriate and timely remedies for alleged violations.¹² The role of independent advocacy to represent vulnerable individuals is already well established in other sectors including the disability sector, where the role of advocacy is

⁸ For more information see: <http://www.mypic.org.au/>

⁹ <http://www.mypic.org.au/>

¹⁰ <https://pic.care/>

¹¹ NSW Auditor-General’s Report to Parliament, Their Futures Matter, Executive summary (24 July 2020) 3.

¹² Liefwaard, T, Access to Justice for Children: Towards a Specific Research and Implementation Agenda (2019). 196.

acknowledged in the NDIS Act.¹³ Advocacy is particularly important for children in OOHC where an outcome for a young person should be obtained but is not, for example, a young person leaves care without a Leaving Care Plan or without the information to access their Leaving Care Plan.

Independent advocacy is also important where a young person has experienced a negative outcome, such as abuse in care.

The Royal Commission into Institutional Responses to Child Sexual Abuse found that the response that victims received from an institution has a substantial impact on the victim, 'institutional responses have the potential to either significantly compound or help alleviate the impacts of abuse.'¹⁴ Where the response was appropriate 'it can ensure children are safe and promote healing for victims, helping them to manage the effects of the abuse and move forward with their lives'.¹⁵ While DCJ currently has a process to identify potential remedies for children in OOHC, it does not allow children and young people to access timely and appropriate remedies for alleged rights violations. Firstly, the current DCJ 'legal audit' process often does not start until a young person turns 15.¹⁶ Secondly, the legal audit process involves a review of a child or young person's OOHC files, rather than a young person participating in their audit.¹⁷ This process creates several barriers for a young person to disclose alleged abuse. Not only does it raise potential conflicts where the legal guardian is the state, but it also prevents young people from participating in their legal audit. If children and young people are not participating in their legal matter, they are unlikely to access timely and appropriate remedies. Children and young people are more likely to disclose alleged abuse in settings that are child-sensitive¹⁸ where they can build a relationship that is independent and confidential. If children and young people establish a trusted relationship with an advocate, they will likely have greater access to remedies for alleged violations of their rights.

YLA encourages the NSW Government to consider a pilot project for children and young people in NSW OOHC to access independent and confidential advocacy to ensure that children and young

¹³ National Disability Insurance Scheme Act 2013 (cth), part 2, s4(13).

¹⁴ Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report (2017) Volume 3, p11. See https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_3_impacts.pdf

¹⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report (2017) Volume 3, p12.

¹⁶ See for example: https://www.facs.nsw.gov.au/__data/assets/file/0003/340842/Victim-support-fact-sheet.pdf

¹⁷ See for example: https://www.facs.nsw.gov.au/__data/assets/file/0003/340842/Victim-support-fact-sheet.pdf

¹⁸ See for example: Liefwaard, T, Access to Justice for Children: Towards a Specific Research and Implementation Agenda (2019). 203.

people can access and build trusted relationships with advocates. YLA believes that this will allow children and young people to receive confidential information about their legal rights and access timely and appropriate remedies.

4. Trusted relationships for adolescents

YLA has also observed the need for greater intervention and support for adolescents who are at risk of harm in NSW. Children and young people (aged 12-25 years) are one of the largest cohorts of users of homelessness services.¹⁹ From 1 January 2019 – 31 December 2020, YLA received 167 enquiries from children and young people in NSW about leaving home, 110 of these enquiries were from children aged between 15-17. DCJ plays an important role for this age group, in YLA's experience, young people under the age of 18 who call Link2home will be transferred to the Child Protection Helpline.

DCJ's own data shows that only 31% of Risk of Significant Harm Reports were seen in 2019-2020.²⁰ While YLA does not have the data on the number of adolescents who receive intervention from the Department, it is clear to YLA that there are many adolescents at risk of significant harm who are not receiving intervention or support. As a result, this cohort is at a greater risk of homelessness as they feel that they have no choice but to leave their home to ensure their safety. A report analysing the most effective casework practice with adolescents found that 'the central feature or component of casework practice with adolescents (as it is with families) is the need to establish and maintain relationships.'²¹ Additional support, either within DCJ (DCJ currently only has three dedicated adolescent teams) or from other services is needed for this cohort.

A valuable support for children and young people who are not receiving intervention from DCJ is the Reconnect Program, which is funded by the Commonwealth Government. The Reconnect Program is an early intervention program which promotes social inclusion and attempts to maintain or re-establish a connection between young people and their families or other services, such as school.²²

¹⁹ AHRI, Redesign of a homelessness service system for young people (2020) 1. see [Redesign of a homelessness service system for young people \(ahuri.edu.au\)](https://www.ahuri.edu.au/research-and-publications/research-reports/research-report-10-redesign-of-a-homelessness-service-system-for-young-people)

²⁰ See: <https://public.tableau.com/profile/facs.statistics#!/vizhome/Objective2-Improvingthelivesofchildrenandyoungpeople/Objective2Highlights>

²¹ Schmied, V & Walsh, P, Effective casework practice with adolescents: perception and practices of DoCS staff (2007). 8.

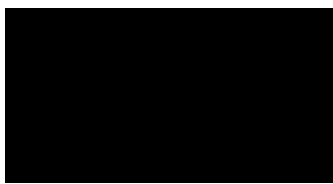
²² Reconnect Operational Guidelines 2018-2021. See: <https://www.dss.gov.au/families-and-children/programmes-services/reconnect/reconnect-operational-guidelines/reconnect-operational-guidelines>

Despite being funded by the Commonwealth, YLA often finds that Reconnect has large service gaps within NSW. YLA encourages the NSW Government to consider greater investment in this program to bolster the Department's capacity to provide support to adolescents who are at risk of harm.

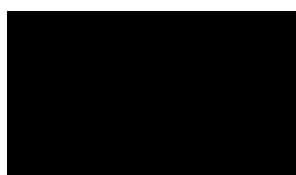
5. Conclusion

It is clear that the NSW child protection system has reached a point where it no longer prioritises building relationships with children, young people and families. The overemphasis placed on quantitative data and systematic responses, whilst important, will not alone produce positive outcomes. YLA recommends that the NSW Government prioritise casework practice and pilot programs that establish trusted relationships and respect between children and young people and their caseworkers, independent advocates and specialised adolescent services. The goal being to facilitate the effective participation of children and young people in the system and to ensure that their voices are heard. YLA welcomes the opportunity to provide further information to the inquiry and are available for hearings should they occur.

Kind regards,



Matthew Keeley
Director



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