

General Purpose Standing Committee No. 2
Inquiry into child protection
Supplementary questions for Children's Court of NSW
27 September 2016 hearing

1. Can you please elaborate on your statement regarding funding issues preventing the best interests of a child being supported? **(page 2 of submission)**
 - a. Can you provide examples?
 - b. Is this prevalent?
 - c. How substantial is the difference between those options taken and the options you would consider 'the best interests of the child'?

Please note that the Children's Court can only respond to this question in general terms based on anecdotal feedback provided by judicial officers and Children's Registrars.

The issue can arise in the context of whether restoration is a realistic possibility. For example, if a parent has an intellectual disability or mental illness the question may be raised as to whether the parent could care for the child if ongoing in-home support is provided to the parent. However, caseworkers are likely to argue that the provision of the necessary support is not feasible where the need for the support is likely to continue until the child reaches the age of 18 years. The inference in these circumstances is that the need for ongoing funding to support restoration to the parent is likely to be the significant factor affecting the feasibility of that option.

Perhaps the most prevalent circumstance where funding issues are raised is in the context of contact with family. Where it has been assessed that supervised contact is appropriate the frequency of that contact is in part determined by the availability of funding to provide supervision.

2. Where an NGO takes a 'narrow' view of the best interests of the child, is it driven by resource constraints? **(page 3 of submission)**

- a. Is it a 'cost cutting' measure?

The Children's Court is not in a position to answer this question.

3. Where an NGO alters a care plan agreed to by the Court, is this similarly a case of resource constraints? **(page 3 of submission)**

- a. What rules or guidelines are in place to prevent this happening?

The Children's Court is not in a position to answer whether resource constraints play a part in adherence to the care plan by an NGO and the Children's Court is not aware of any internal rules or guidelines applying between the Department and the NGO.

However, the Court will often order a report under s82 of the *Children and Young Persons (Care and Protection) Act 1998* requiring the Minister to provide a written report to the Court within 12 months concerning the suitability of the arrangements for the care and protection of the child or young person, including an assessment of progress in implementing the care plan. Where an NGO has responsibility for the child the report is prepared by the NGO but it is endorsed by the Department of Family and Community Services before being provided to the Court. Under s82 the Court can invite the parties to make an application for variation of the court order but a variation of the order is not necessarily the appropriate remedy in the circumstances of the particular case. The Court is otherwise without power to address any failure to adhere to the care plan, apart from referring the issue to the Ombudsman.

4. In your view, is the level of resourcing for early intervention programs sufficient? **(pages 4 - 5 of submission)**

The Children's Court is not in a position to comment on whether the level of resourcing for early intervention programs is sufficient. However, Court statistics indicate that in the 2015/16 financial year only 14 Parental Responsibility Contracts were registered with the Children's Court across

the state and 35 applications for Parent Capacity Orders were made. However, 2867 applications were made for a parental responsibility order for a child in the same period.

Please note that some caution should be adopted as these statistics are collected manually and are not audited for accuracy.

5. What evidence has the Court seen of the effectiveness of TEIP? (pages 4 - 5 of submission)

- a. Are early intervention programs intervening early enough? Or do resource constraints force them to target children far higher in the risk spectrum?

The Children's Court is unable to comment because it only sees cases where the Department is seeking a statutory intervention and is not aware of cases where a statutory intervention has been avoided by effective early intervention. However, anecdotally the Court hears from parents who claim that early interventions have been unsuccessful because the services have not been available in their area or there have been long waiting lists. Sometimes a disconnect between service providers is raised as a blockage to obtaining intervention. For example, some parents have advised the Court that they have been unable to enter residential rehabilitation because they will lose their public housing placement which will in turn impact on their ability to care for their child.

6. How many instances were there where the Children's Court, in dealing with a case before it, did not endorse the recommended decisions of FaCS's caseworkers in:
 - a. 2011?
 - b. 2012?
 - c. 2013?
 - d. 2014?
 - e. 2015?

The Children's Court is unable to provide the particular data requested. Court data is collected manually and only records the type of application made and the

type of order made whereas the outcomes in care and protection proceedings are far more nuanced by the making of supplementary orders and the approval of the permanency plan as set out in the care plan.

However, the Court can provide some information on the category of the primary order sought and the category of the primary order made, such as applications and orders made under s79. An application for an order for parental responsibility under s79 is the most common application that is made to the Children's Court and almost all applications filed by the Secretary under this section will seek an order for parental responsibility of the child to the Minister to 18 years.

The table below illustrates the difference in very broad terms between the orders sought under s 79 and the orders made under s79. However, some caution should be exercised in interpreting this information.

Firstly, it should be noted that because cases can take 9 to 12 months to complete, matters counted in one year may be finalised in the following year.

Furthermore, although this is some indication of the difference between the applications brought by the Secretary and the orders made by the Court it does not fully reflect the number of matters where restoration is found to be appropriate or where a placement with a family member is approved under a care plan. This is because an order for parental responsibility can be made with respect to the Minister, one or both parents or another suitable person or persons. An order of parental responsibility to the Minister can also be structured in a way to provide for restoration to a parent over a period of time but for statistical purposes it would be counted as having been finalised by way of an order under s79.

	2011/12	2012/13	2013/14	2014/15	2015/16	Totals
S79 New	2303	2204	2548	2682	2867	12 604
s79 Finalised	2219	2258	2344	2044	2351	11 216

The next table illustrates the difference between applications made and orders made for guardianship which is a new category of order introduced in 2014 as part of the reforms to the *Children and Young Persons (Care and Protection) Act 1998*.

	2011/12	2012/13	2013/14	2014/15	2015/16	Totals
S79A New	n/a	n/a	n/a	61	83	144
S79A Finalised	n/a	n/a	n/a	51	198	249

7. What was the level of resources provided to the Children's Court Clinic, in dollars of funding for:
- the 2011/2012 financial year?
 - the 2012/2013 financial year?
 - the 2013/2014 financial year?
 - the 2014/2015 financial year?
 - the 2015/2016 financial year?

The Children's Court Clinic is part of the Department of Health and the Children's Court has no information in relation to funding of the Clinic.

8. What will be the level of resources provided to the Children's Court Clinic, in dollars of funding for the 2016/2017 financial year?

The Children's Court Clinic is part of the Department of Health and the Children's Court has no information in relation to funding of the Clinic.