

INQUIRY INTO CHILD PROTECTION

Name: Professor Gwynnyth Llewellyn

Date received: 26 July 2016

Gwynnyth Llewellyn

PhD Sydney BA MEd DipContEd UNE GAICD DipOT NSW CollOT

Professor Family and Disability Studies

Director, Centre for Disability Research and Policy

Head, WHO Collaborating Centre in Health Workforce Development in Rehabilitation and Long Term Care

25th July 2016

Tina Higgins

Principal Council Officer | Upper House Committees

Parliament of New South Wales

Parliament House, Macquarie Street Sydney NSW, 2000 Australia

Dear Tina,

Thank you for the opportunity to make a submission to the Legislative Council General Purposes Standing Committee No. 2 *Inquiry into Child Protection* and extending the due date for this submission.

The submission focuses on two groups of children and their families. The first is children with disabilities and the child protection system and the second is parents with disabilities and specifically parents with intellectual disability. I address Terms of Reference a), f) and h) for each group however in practice there is some overlap due to the lack of capacity in the Department of Family and Community Services to adequately address disability and needs and requirements of children and their families where a child or a parent has a disability.

I provide a number of references which may assist the Committee in its deliberations. Additional references can be supplied on request. I would be willing if required to speak with the Committee about the issues facing families with children with disability and families where a parent or parent has a disability and the shortcomings in system responses to these families.

My submission which is provided in my role as Director, Centre for Disability Research and Policy at the University of Sydney is based on my academic and professional expertise in these two areas over the past nearly thirty years. I initially trained as an Occupational Therapist, and I have qualifications in special education, adult education, and social sciences, including health social sciences. My Masters by Research thesis addressed the challenges in the special education system in NSW of adequately addressing the educational, health and social needs of children with disabilities and high support needs; my PhD thesis addressing the shared identity of being a person with intellectual disability and a parent – and from the parent perspective. I have published many scholarly articles on families with children with disability and families with parents with disability including leading the first international edited book on parents with intellectual disability in 2012.

Please do not hesitate to contact me if further information is required.

Sincerely,



THE UNIVERSITY OF
SYDNEY

NSW Legislative Council General Purpose Standing Committee No. 2

Inquiry into Child Protection



**Centre for Disability
Research and Policy**

NSW Legislative Council General Purpose Standing Committee No. 2

Inquiry into Child Protection

Submission from Professor Gwynnyth Llewellyn,

Director Centre for Disability Research and Policy

University of Sydney

© July 2016

Contact Details

Professor Gwynnyth Llewellyn
Centre for Disability Research and Policy
Faculty of Health Sciences, University of Sydney
PO Box 170, Lidcombe NSW 1825, Australia

Introduction

1. Persons with disability, children and parents, are over-represented in the child protection system. Our research in NSW provides evidence for thisⁱ. Research in the United Statesⁱⁱ, Canadaⁱⁱⁱ, the United Kingdom^{iv} and Scandinavia^v confirms the findings of over-representation of both children and adults with disability in care and protection systems internationally.
2. The research studies in Australia and elsewhere have examined the reasons for this over-representation^{vi, vii, viii}. The overall reason is lack of capacity – knowledge, skills and attitudes about disability – at all levels of the child protection system. This is not a new phenomenon. In Australia I and my colleagues have been drawing attention to this in our research and scholarly writing, in submissions to Senate Inquiries, Parliamentary Inquiries in NSW and other states, and in work with the Australian Human Rights Commission for over twenty years.
3. The lack of capacity in the child protection system is demonstrated in all phases of procedures and practices in relation to legislative responsibility for the safety and wellbeing of children and young people. Specifically, there lack of capacity to adequately assess risk and harm to children with disability thus leaving them exposed to up to 3 times higher risk of abuse and neglect^{ix}; decisions are made and solutions formulated based on stereotypes about child and parental disability which are inaccurate, out-dated and discriminatory^x; and there is a lack of investment in data collection and analysis to understand the extent of the problem, the ongoing impact on children and parents with disability and their families, and to develop innovative solutions to ameliorate the problem^{xi}.
4. This amounts to a continuing dereliction of duty by the Department of Family and Community Services under the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities. The former specifically addresses the rights of children with disability in Article 23; the latter which addresses both the rights of children with disability (Article 7) and the rights of adults with disability to form families (Article 23).

TOR a) The capacity and effectiveness of systems, procedures and practices to notify, investigate and assess reports of children and young people at risk of harm.

5. The Royal Commission into Institutional Responses to Child Sexual Abuse recently completed the public hearing on Case Study 41 with regard to disability. The publically available transcripts are at <http://www.childabuseroyalcommission.gov.au/case-study/27150f40-1e84-4b27-9f8b-c25fc162a561/case-study-41,-july-2016,-sydney>
6. The three institutional vignettes presented in the first week Tuesday 11th July to Friday 14th July contain detailed instances of lack of capacity in disability service providers to have appropriate processes in place, to understand and follow regulatory procedures when allegations were made, to communicate effectively and in a timely manner with police, the Department of Family and Community Services, staff and families, and a general unwillingness to acknowledge these shortcomings and their lack of knowledge, skill, and attention to responsibility and accountability for children with disability in their care.
7. The policy panels in the second week Tuesday 19th July to Wednesday 20th July addressed the safety and wellbeing of children with disability in the National Disability Insurance Scheme as well as the transition arrangements which form part of

the bi-lateral agreement which governs the implementation and roll out of the NDIS in NSW.

8. The themes running through both weeks of the hearing covered the lack of capacity in the disability services sector to function effectively as child safe providers, the 'distance' between disability providers and the Department of Family and Community Services despite the regulatory frameworks for funded disability services including Working with Children Check, and the lack of convictions for alleged perpetrators due to a belief that children with disability cannot be reliable witnesses.
9. The three points first mentioned in paragraph 3 above were regrettably illuminated over and over again; lack of capacity in the system, stereotypical and out-dated views in conflict with the UN Conventions (paragraph 4); and lack of investment in data collection and analysis to enable evidence-informed policy and practices to address and overcome the system shortcomings which are further disadvantaging children with disability in NSW.
10. With regard to parents with disability and specifically intellectual disability there is abundant evidence that decisions about risk of harm for their children are made on inaccurate and out-dated beliefs about intellectual disability. This practice has a long history in NSW. To address the Care and Protection Act (Children and Young People) 1998, No 157 Section 71 part 2 states (2) The Children's Court cannot conclude that the basic needs of a child or young person are likely not to be met only because of:
 - (a) a parent's disability, or
 - (b) poverty
11. Despite this ground breaking legislative inclusion now nearly 20 years old, the anecdotal evidence continues to accumulate that this section is honoured in the breach in Children's Court determinations. The Department of Family and Community Services is unable to provide unit and disaggregated data to the national collection of child protection data. If forthcoming, this data would enable investigation of the prevalence of parents with disability in the care and protection system (at all levels including the Children's Court) and the reasons for and the processes involved in their children being removed from parental care in disproportionate numbers.

TOR f) The structure of oversight and interaction in place between the Office of the Children's Guardian, Department of Family and Community Services, and non-government organisations regarding the provision of services for children and young people at risk of harm or in out of home care

12. Evidence was given to the Royal Commission (op.cit) by Samantha Taylor, Executive Director of NDIS Implementation in the Ageing, Disability and Home Care Division of the New South Wales Department of Family and Community Services.
13. In her evidence Ms Taylor referred to concerns about compliance of non-government organisations providing disability supports with the Working with Children Checks process. Accordingly a Child Safe Organisations Project between FACS and the Office of the Children's Guardian has been established recently to develop educational materials to inform the sector of their responsibilities to ensure child safe organisations. This is a positive step forward however it appears to have taken a long time for the Department and the Office of the Children's Guardian to recognise the need for such a project.
14. Children with disability are disproportionately over-represented in relation to their population numbers in reportable conduct matters before the NSW Ombudsman.

For example the government school sector reports 12% of children have a disability or additional support needs, however 21% of all reportable conduct notifications are for children with a disability^{xii}.

15. In relation to out of home care, FACS has indicated to the NSW Ombudsman that around 12% of children in out of home care have a disability. However and of immediate concern is that the Ombudsman reports 36% of all closed notifications from the out of home care sectors concern a child with disability or additional support needs^{xiii}.
16. The international evidence and data such as this shared between NSW government agencies points to the need for additional investment in oversight, interaction and funding arrangements to ensure that the rights of children with disability are upheld and that they are not exposed to ongoing disadvantage, dislocation, and risk of, or actual harm because of system inattention to their specific requirements or those of their families.

TOR h) The amount and allocation of funding and resources to universal support and to intensive, targeted prevention and early intervention programs to prevent and reduce risk of harm to children and young people

1. The evidence in the international literature and from research in Australia clearly points to prevention rather than 'cure' as the most effective, long term approach to preventing and reducing risk of harm to children and young people^{xiv, xv}.
2. This includes community awareness and responsibility for the safety and wellbeing of children and implementation of child safe organisations^{xvi}. The work being done by the Royal Commission (op-cit) on child safe organisations, their utilisation of evidence and their broad consultative processes are very welcome in this regard.
3. The evidence suggests that universal approaches such as regulatory frameworks which require accreditation and monitoring of child safe organisations are needed to complement the more usual approach of universal or targeted parenting programs^{xvii}.
4. The evidence also suggests that a balance is required between universal support and targeted prevention and early intervention programs such as Brighter Futures^{xviii}. Most strongly the evidence suggests that policy and practice must be evidence-informed to be effective^{xix}. Despite the self-evident nature of this statement it is more often breached than implemented.
5. The evidence about the heightened risk of harm for children with disability and the prevalence of abuse and neglect of children with disability provides an example. As noted there is hard evidence that these children are *over-represented* in the care and protection system, in reportable conduct notifications, and in out of home care. From an evidence-informed policy perspective this would suggest that dedicated funding and resources proportional to the evidence identified problem ought to be directed towards prevention and intervention programs specifically for children with disability and their families.
6. With regard to parents with disability, the evidence in the international literature and from research in Australia clearly points to *over-representation* of parents with disability and their children in care and protection systems. The evidence also points to systemic failures for these families during assessment of risk, court processes, opportunity for parent training and re-unification processes and practices. Evidence-

informed policy and practice requires that resources and funding would be directed to addressing these systemic failures in the long term interests of parents with disabilities, their children and the community more broadly.

7. The evidence clearly points to prevention rather than 'cure' as the most effective, long term approach to preventing risk of harm to children and young people. Australian evidence based parenting programs for parents with developmental disability (intellectual disability and other disabilities) exist^{xx} however these are funded and resourced in NSW. Evidence informed policy and practice would require that there is investment in supports and services for (prospective) and current parents with disabilities to reduce their over-representation in the care and protection system and the removal of children from their care.

The recently released *CRC25 Australian Child Rights Progress Report*^{xxi} speaks to progress or lack thereof on 25 years of the UN Convention on the Rights of the Child in Australia. Children with disability and parents with disability are dealt with in several sections of this report. The Report Recommendations include six recommendations in this regard (p. 6). The specific matters I refer to in my brief submission are addressed in these six recommendations. I highly commend these recommendations to the General Purpose Standing Committee No 2 for serious consideration in their deliberations on the Inquiry into Child Protection.

-
- ⁱ McConnell, D., Llewellyn, G., & Ferronato, L. (2000). *Parents with a disability and the NSW Children's Court*. The Law Foundation of NSW and the University of Sydney. ISBN 1 86487 323 X
- ⁱⁱ Taylor, C. G., Norman, D. K., Murphy, J. M., Jellinek, M., Quinn, D., Poitras, F. G., et al. (1991). Diagnosed intellectual and emotional impairment among parents who seriously mistreat their children: Prevalence, type, and outcome in a court sample. *Child Abuse & Neglect*, 15, 389–401.
- ⁱⁱⁱ McConnell D, Feldman M, Aunos M, Prasad N. (2011). Child maltreatment investigations involving parents with cognitive impairments in Canada. *Child Maltreatment*, 16, 21–32
- ^{iv} Booth T, Booth W. (2004). Findings from a court study of care proceedings involving parents with intellectual disabilities. *Journal of Policy and Practice in Intellectual Disabilities*, 1, 179–81.
- ^v Llewellyn, G., & Hindmarsh, H. (2015). Parents with intellectual disability in a population context. *Current Developmental Disorders Report*, 2(2), 119-126.
- ^{vi} Llewellyn, G., Dunn, P., Fante, M., Turnbull, L., & Grace, R. (1999). Family factors influencing out-of-home placement decisions. *Journal of Intellectual Disability Research*, 43(3), 219-241.
- ^{vii} Llewellyn, G., McConnell, D., & Ferronato, L. (2003). Prevalence and outcomes for parents with disabilities and their children in an Australian court sample. *Child Abuse and Neglect*, 27(3), 235-251.
- ^{viii} McConnell, D., & Llewellyn, G. (2005). Social inequality, 'the deviant parent' and child protection practice. *Australian Journal of Social Issues*, 40(4), 553-566.
- ^{ix} Jones, L, Bellis, MA, Wood, S, Hughes, K, McCoy, E, Eckley, L, Bates, G, Mikton, C, Shakespeare, T & Officer, A (2012). Prevalence and risk of violence against children with disabilities: A systematic review and meta-analysis of observational studies, *The Lancet*, 380 (9845), 899-907.
- ^x McConnell, D., & Llewellyn, G. (2000). Disability and discrimination in statutory child protection proceedings. *Disability and Society*, 15(6), 883-895
- ^{xi} Llewellyn, G. (2013). Parents with intellectual disability and their children: Advances in policy and practice. *Journal of Policy and Practice in Intellectual Disabilities*, 10(2), 82-85.
- ^{xii} Ombudsman NSW Disability Sector Reportable Conduct Forum April 2016, available at <https://www.ombo.nsw.gov.au/training-workshops-and-events/community-education,-events-and-forums/reportable-conduct-forum-/reportable-conduct-forum->
- ^{xiii} Op.cit Ombudsman NSW
- ^{xiv} Higgins, D. J. (2015). A public health approach to embracing safe and supportive family environments for children. *Family Matters*, 96, 39-52.
- ^{xv} Robinson, S. (2012). *Enabling and protecting: proactive approaches to addressing the abuse and neglect of children and young people with disability* Children With Disability Australia, Clayton, Victoria, available at: http://epubs.scu.edu.au/ccyp_pubs/90/.
- ^{xvi} Kaufman, K. L., Tews, H., Schuett, J.M. & Kaufman, B.R. (2012). Prevention is better than cure: The value of situational prevention in organisations (pp.140-169). In M. Erooga, *Creating safer organisations: Practical steps to prevent the abuse of children by those working with them*. Chichester, UK.: John Wiley & Sons, Ltd.
- ^{xvii} UNICEF (2012). *Measuring and monitoring child protection systems. Proposed regional core indicators for East Asia and the Pacific*. Strengthening Child Protection Systems Series: No.3. Bangkok, Thailand: UNICEF EAPRO. ISBN 978-974-685-137-4
- ^{xviii} Higgins, D. J. 2015 op.cit
- ^{xix} Jensen, P.H. (2013). *What is evidence-based policy?* Melbourne Institute Policy Brief Series No 4/13. ISSN 2201-5477.
- ^{xx} Healthy Start. A national strategy for parents with learning difficulties and their children, available at <http://www.healthystart.net.au/>
- ^{xxi} Australian Child Rights Taskforce (2016). *CRC25 Australian Child Rights Progress Report* available at <http://www.unicef.org.au/Upload/UNICEF/Media/Documents/CRC25-Australian-Progress-Report.pdf>