

INQUIRY INTO CHILD PROTECTION

Organisation: Intellectual Disability Rights Service
Date received: 29 July 2016

July 29 2016

Ms. Tina Higgins
Principal Council Officer
Upper House Committees
Parliament of NSW

By email-

Dear Ms. Higgins

**Re: Intellectual Disability Rights Service (IDRS) Submission to the
Legislative Council Inquiry into Child Protection**

The Intellectual Disability Rights Service (IDRS) is a specialist community legal centre offering legal assistance, education and support to people with intellectual disability in NSW. IDRS operates the Parents with Intellectual Disability Project which provides legal advice, representation, non-legal advocacy and court support for parents with intellectual disability in care matters.

IDRS is pleased to make a submission to the Legislative Council's current inquiry into child protection in NSW. Our submission attached.

IDRS would welcome the opportunity to appear before the Inquiry during its hearing days. Please contact myself or IDRS Executive Officer, Ms. Janene Cootes to advise how we can contribute further to the Inquiry hearings?

We look forward to hearing from you.

Sincerely,

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NSW Legislative Council

General Purpose Standing Committee No. 2

Inquiry into Child Protection

The Intellectual Disability Rights Service (IDRS) is a community legal centre and disability advocacy service providing legal advice and casework, non-legal advocacy and community legal education for people with intellectual disability in NSW. IDRS operates the Parents with Intellectual Disability project which provides legal advice, legal representation, non-legal advocacy and court support for parents with intellectual disability in care and protection matters, as well as information for solicitors and other workers supporting parents in the care jurisdiction.

IDRS welcomes the opportunity to provide input into the inquiry into the role of the Department of Family and Community Services in child protection. IDRS acknowledges that the welfare and best interests of children are paramount in decisions about child protection, but feels that the children of parents with intellectual disability suffer when investigations of serious harm and neglect fail to take into account best practice ways of engaging with people with intellectual or learning disability.

The Terms of the Inquiry and our remarks addressing the terms are set out below

Parents with intellectual disability over-represented in care matters

Despite representing a less than 0.25% of the overall parenting population, it is estimated that 11% of parents appearing in NSW Children's Courts have intellectual disability - this is a conservative estimate and does not take in to account the many parents who have low educational attainment and literacy problems. The outcomes for these parents once under judicial review are poor. (McConnell, Llewellyn & Ferronato 2000).

Since a significant proportion of families in care matters are those where one parent has an intellectual or learning disability, it is essential that FACS be adequately resourced and have expertise to respond effectively to these families.

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

Adjustments to Modes of Engagement with Parents with Intellectual Disability

People with disability have the right to be parents and people with intellectual disability can and do make good parents. IDRS believes that it is important for FACS workers to be aware that intellectual or learning disability of itself does not disqualify a person from parenting. IDRS believes that where deficits in parenting are identified, careful thought should be given to what targeted supports can be put in place to support the parent to parent successfully.

People with disability have the right for reasonable adjustments to be made to systems and processes so that they may realise their full and equal participation as citizens. IDRS believes there is scope for FACS to modify casework processes when working with parents with intellectual disability to facilitate engagement between parents and FACS workers investigating reports of harm to children. In particular, thought should be given to communication adjustments, and adopting ways of engaging that take into account the varying degrees of complexity that may surround a parent with intellectual disability.

Communication adjustments can include the use of easy English print materials, giving oral information in ways that assist the parent to understand the information, and the use of support people to assist with communication and understanding. In our experience, these adjustments are not routinely made by FACS workers and failure to use them continues to undermine interventions to promote child safety and preserve families.

Adjustment to styles of engagement may require FACS to respond by offering training in engagement to staff, and to consider the provision of more intensive intervention with vulnerable families to prevent or minimise removals. Intensive early intervention is discussed more at h) below.

IDRS notes that it is our experience that appropriate, targeted early intervention is not routinely offered to families; rather, FACS appears to react to crises and only begins to contact support services when removal is already likely. This means that families are given

little time to build their parenting capacity, leading to high rates of child removal that could potentially be lowered by a more pro-active approach to early intervention.

Recommendations

IDRS recommends that FACS employs evidence-based methods to engage with people with intellectual disability and to maximise the positive potential of efforts at early intervention and preserving families.

IDRS also recommends that FACS allocates funds to train caseworkers in communicating with, and effective intervention and training assistance for, parents and expectant parents with intellectual disability.

Investigations - General Comments

Investigations of children at risk of serious harm are carried out by FACS caseworkers who are not required to have special knowledge or training in working effectively with people with intellectual disability. Investigations of allegations of serious harm reach conclusions which have serious consequences for children and families. Investigations are not easily subject to administrative review. Erroneous conclusions as to parental capacities and degrees of risk, flowing on from challenges with engagement and communication, may not be picked up and in a risk-averse culture may tend to lead to premature child removal rather than family preservation.

Recommendations

IDRS recommends that caseworkers investigating risks of serious harm to children receive training in communicating effectively with, and recognising the learning capacity of, people with intellectual or learning disability.

IDRS further recommends that FACS ensures that as far as possible parents with intellectual disability are offered the assistance of an independent support person for all meetings with caseworkers.

Investigations of Serious Criminal Assaults

In the case of allegations or disclosures of serious criminal assaults by parents against children there are two investigations, one by the police / FACS-staffed Child Abuse Squad and one by FACS caseworkers. The joint investigation may fail to uncover sufficient evidence to charge a parent with an offence, but the FACS investigation can still determine that serious harm has occurred. IDRS is aware of cases where following the conclusion of a joint investigation that did not lead to charges the parent was characterised in FACS affidavits filed in court as a "Person Causing Harm" by the FACS caseworker. IDRS notes that there is no provision under the *Children and Young Peoples (Care and Protection) Act 1998* for a parent to be accorded the status of Person Causing Harm. IDRS believes that where a joint police and FACS investigation has failed to conclude that a parent has committed a serious offence against a child, FACS should not assert that, in its view, the parent is a Person Causing Harm, on the ground that such a characterisation is likely to be unfairly prejudicial to the parent.

Recommendations

IDRS recommends that investigations of serious criminal assaults perpetrated by parents be undertaken only by the jointly staffed FACS and NSW Police Child Abuse Squad and that where joint investigations do not result in charges FACS refrains from asserting that the parent is a Person Causing Harm.

b) The adequacy and reliability of the safety, risk and risk assessment tools used at Community Service Centres

Tools used by caseworkers to assess risk of harm in child protection can be divided into actuarial and consensus-based tools. Actuarial tools use statistical methods to determine the level of risk to which a child is exposed, while consensual tools use conclusions drawn from child maltreatment literature and subjective assessments of expert practitioners. In general, actuarial tools are considered to have better validity and reliability but can be

inaccurate if a tool developed on one population is generalised and used upon minority populations that may have some significant differences from the development population¹. This is of concern to members of minority populations of people with disability and people from culturally and linguistically diverse backgrounds. Conclusions made about the level of risk determine decisions on when and how to intervene in families' lives.

In NSW an actuarial tool, the Structured Decision Making (SDM) system, has been used since 2009. This tool was developed by child protection services in Wisconsin USA and has been implemented in many American states as well as in NSW, Queensland and South Australia. IDRS raises two concerns about the use of risk assessment tools.

Firstly, we note that actuarial tools developed for one population must be used cautiously on a different population which may have different characteristics from the original population. It is not known how, or if, the SDM system has been adjusted to take into account parental intellectual disability.

Secondly, there is some evidence that SDM has been implemented in some states without robust training into how the system can be used in conjunction with the prior experience and knowledge of caseworkers. Newer workers can rely heavily upon the tool to determine the extent of risk of harm to children, without applying their own knowledge and experience or seeking the guidance of experienced workers².

Recommendations

IDRS recommends FACS institutes an independent evaluation of the use of the SDM risk assessment tool with a view to identifying gaps in training of child protection workers in using the tool and identifying if the SDM can be reliably applied to the assessment of risk of harm to children of parents with intellectual disability.

c) The amount and allocation of funding and resources to the Department of Family and Community Services for the employment of casework specialists, caseworkers and

¹ CFCA Resource sheet June 2016.

² Gillingham 2011.

other frontline personnel and all other associated costs for the provision of services for children at risk of harm, and children in out of home care

Some parents with intellectual disability experience life on society's fringes, have backgrounds of trauma including childhoods in the out of home care (OOHC) system, and struggle to manage life changes and transition points without support. These backgrounds of multiple disadvantage will make these parents more susceptible to involvement in the child protection system when they become parents. IDRS recommends that there should be training to all frontline child protection services in working with people with intellectual disability, especially those who live on society's fringe. IDRS also recommends that FACS recruit casework specialists with expertise and experience in disability who can assess parent support needs in order to provide appropriate early intervention for children of parents with intellectual disability and to provide leadership and resourcing of other frontline staff who are investigating risks of harm to children of parents with intellectual disability.

Recommendations

IDRS recommends that FACS allocates funding to recruit and employ case work specialists with experience in supporting people with intellectual disability, particularly those with backgrounds of trauma.

d) The amount and allocation of funding and resources to non-government organisations for the employment of casework specialists, caseworkers and other frontline personnel and all other associated costs for the provision of services for children at risk of harm, and children in out of home care

As with point c) above, and for the same reasons, IDRS believes that FACS should liaise with NGOs providing services for vulnerable families to promote and enable the recruitment of specialist caseworkers and OOHC workers with experience in supporting people with intellectual disability, especially those who have backgrounds of trauma and complex support needs.

IDRS believes that the National Disability Insurance Agency, FACS and disability peak bodies should map out what parenting support can be provided to parents with disability who qualify for funded supports under the NDIS. FACS caseworkers should receive training about the NDIS so that they can ensure that parents with disability who come to their attention are made aware of the NDIS and assisted to access NDIS for appropriate disability supports.

Recommendations

IDRS recommends that FACS, disability service providers and the NDIA work together to ensure that practical parenting support services adjusted to effectively support and develop the parenting skills of parents with intellectual and learning disability are available to be purchased by parents with intellectual disability through NDIS package funds.

e) The support, training, safety, monitoring and auditing of carers including foster carers and relative/kin carers

In situations where restoration of a child to its parents is not possible, a long-term placement for the child will be sought. The long-term placement principles guiding placement are found in s10A *Children and Young Persons (Care and Protection) Act 1998*.

IDRS acknowledges that long-term carers can develop positive relationships with parents that allow for liberal, informal contact above the minimum contact required in Final Orders of the Children's Court. IDRS believes that children, who are in OOHC placements, benefit when there is a positive relationship between the parent and the foster carer. This can be more difficult to establish with a parent with intellectual disability. To this end, IDRS believes that FACS should adopt strategies or programs that support positive relationships and such strategies should include promoting effective communication between the carers and the parents and resolving conflicts that arise.

Recommendations

IDRS recommends that FACS develop strategies for supporting post-placement relationships between carers and parents of children in care.

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

No comment.

g) Specific initiatives and outcomes for at risk Aboriginal and Torres Strait Islander children and young people

IDRS recognises that Aboriginal people and organisations are best placed to comment on specific initiatives for at risk Aboriginal and Torres Strait Islander children. IDRS notes that a significant number of requests for support to the Parents with Intellectual Disability Project are from Aboriginal parents.

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

There is a need to develop evidence-based early interventions to support vulnerable families where a parent has intellectual disability. Current early intervention programs are not adjusted for parents with intellectual disability, which means these parents are denied the opportunity for meaningful participation in early intervention. A parent's failure to modify their parenting after participation in a parenting program that has not been modified to take into account their disability may be taken by FACS to mean that the parent can't learn new skills and used to justify child removal. Early intervention programs for parents with intellectual disability should be focused on building the practical skills of parents, using individualised, hands on, practical, step-by-step skill building. If group parenting training is used, the parent should be supported to participate in the group, and

supported to later practise the skills canvassed in the group so that skills are retained and reinforced. This type of support could possibly be included in a parent's NDIS package.

Existing Intensive Family Support Services work with families with children aged 0-15 the subject of risk of serious harm reports. These services are run by NGO providers but access is via a referral from FACS. These services should be expanded to provide greater access to early and appropriate targeted intensive interventions for parents with intellectual disability. Again, interventions need to take into account what adjustments to the program need to be made to overcome the difficulties in communication and in learning new skills that parents with intellectual disability may have. For instance, there may be a high reliance upon practical skills building in the family home, tailored to the learning style of the parent. If parents are required to attend support groups, it may be appropriate that they attend with a support person who can reinforce in practice the skills traversed in group work.

As well as the Intensive Family Support Service program, parents with intellectual disability should be able to access mainstream parenting groups run by local NGO family support services. Local family support services need to consider how to make their programs more accessible and useful to parents with intellectual disability by making appropriate adjustments of the kinds mentioned above.

Recommendations

IDRS recommends that existing Intensive Family Support Services be expanded and resourced to offer services to more parents with intellectual disability where a child is at risk of removal.

IDRS also recommends that the NSW Government liaise with the NDIA and disability peak bodies to promote development of a range of parenting supports that can be purchased by parents with an NDIS plan.

i) and any other related matter

Assumptions from Hospitals

Assumptions of new-born infants from hospital are common amongst parents with intellectual or learning disability and are especially traumatic events for parents. Often, although parents have been willing to receive parenting training and other assistance to prepare for parenting their child, no assistance has been offered or the assistance offered is not designed to cater for people who have difficulty with learning. Our experience is that there is a general attitude of pessimism within FACS about the capacity for people with intellectual disability to parent successfully and this affects willingness to proactively assist these parents to prepare effectively for parenting.

In the period following birth, IDRS believes that the physical and emotional health of mothers and children are especially vulnerable and intertwined and that assumptions need to take into account, for example, the desirability of breast feeding occurring wherever possible. While the mother is still in hospital she should be encouraged to breast feed and bond with her child. It should not need to be said that, absent medical reasons to not breast feed, breast feeding is best for children and for mothers, but there is no consistent practice of facilitating this. IDRS is aware of cases where breast feeding was not allowed because the hospital believed that the mother would need to be supervised to do this and further believed that supervision would need to be provided by FACS. As a consequence, efforts to support breast feeding were not made. Mothers with intellectual disability should be assisted by hospital maternity ward staff to breastfeed for as long as possible.

If a child is removed, our experience is that there is inadequate assistance available to the mothers with intellectual disability. For example the mother may need clinical assistance to prevent mastitis. IDRS believes that it is the responsibility of the hospital to ensure that the mother has the aftercare she requires to deal with complications arising from the removal of a new-born child.

Recommendations

IDRS recommends that FACS and NSW Health develop policy guidelines and staff training to ensure that mothers with intellectual disability are encouraged to breastfeed unless there is a medical reason for this not to happen.

Parents who are Victim/Survivors of Domestic Violence

Many parents with intellectual disability, usually women, experience domestic violence perpetrated by partners. Often their children are exposed to this violence, placing them at risk of serious harm and ultimately of removal and placement in long-term OOHC care. Currently, the child protection system fails to recognise that these mothers are often the primary victims of the violence. In cases where one parent is the victim of violence perpetrated by the other parent, the appropriate response from the child protection system ought to be to assist the victim/survivor and children to escape further violence, recover from the effects of the violence and identify and avoid potentially violent relationships in the future.

Recommendations

IDRS recommends that FACS identify better ways of responding to family violence where one partner is the primary victim so that the victim is provided with adequate support to avoid unnecessary further victimization through removal of the children of the relationship.

References

McConnell, D, Llewellyn, G. & Ferranto, L (2000) Parents with a disability and the NSW Children's Court Report to the Law Foundation of NSW. University of Sydney

Australian Government Institute of Family Studies, Child family Community Australia, *Risk Assessments in Child Protection* – CFCA Resource Sheet June 2016.

Gillingham P 2011 *Decision making tools and the development of expertise in child protection practitioners: are we 'just breeding workers who are good at ticking boxes'?* Child and Family Social Work