

INQUIRY INTO CHILD PROTECTION

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SUBMISSION

NSW LEGISLATIVE COUNCIL STANDING COMMITTEE No 2 INQUIRY INTO CHILD PROTECTION

Prepared by

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Introduction

I welcome the opportunity to make a submission to this inquiry into the role of FACS in relation to child protection.

My submission will focus the impact of current procedures, practices and systems in the area of child protection in New South Wales on families where one or both parents have intellectual disability.

The submission I make is based on my academic knowledge and research, professional experience and personal commitment to parents with intellectual disability and their children.

My Qualifications and background

I am currently a lecturer in the Social Work Program in the Faculty of Education and Social Work at University of Sydney. My doctoral research led to the development a assessment method to assist child and family workers to work collaboratively with parents with intellectual disability to assess their parenting support needs. I continue to collaborate nationally and internationally on research in the area of parenting with intellectual disability and I am an executive member of the Special Interest Research Group (SIRG) on Parenting within the International Association of the Scientific Study of Intellectual Disabilities (IASSID).

I am regularly called upon by Community Services and the NSW Children Court to undertake parenting capacity assessments in relation to families where one or both parents have intellectual disability; and for 25 years supported parents with intellectual disability and their children as a 'frontline' worker.

Since 1990 I have been a foster/respite carer to a sibling group of girls with intellectual disability removed from their mother with intellectual disability. My foster daughters are now adults and mothers with intellectual disability. I provide ongoing support and respite to their children (three of whom are currently in the out-of-home care system).

Over-representation of families where a parent or parents has intellectual disability in contact with the child protection system

The number of children being reared by parents with intellectual disability is unknown. It is recognised, however, that there is a growing number of children born to parents with intellectual disability and that this number will continue to grow due to inclusive policies and practices (Bernard, 2007; Booth & McConnell 2006; Pixa-Kettner, 2008).

Mildon, Matthews & Gavida-Payne (2003) estimated 1-2% of families with children under the age of 18 years had at least one parent with intellectual disability. Mann, Llewellyn & Wade (2014a), using the Survey of Disability, Ageing and Carers (2009) and the General Social Survey (2010), estimated the prevalence of parents with intellectual disability who have custody of their children was 0.41% of the general parenting population.

While these percentages may on face value appear small it is noteworthy and significant that families headed by at least one parent with intellectual disability are overrepresented in the child protection system. It is estimated that at least one in ten families before the NSW Children's Court there is at one parent who has intellectual disability and that one in six children growing up in out-of-home care have a parent with a disability (Llewellyn, McConnell & Ferronato 2003).

Acknowledging that the figures cited are estimates and dated, anecdotal reporting and practice experience suggest the number of parents who have intellectual disability and are in contact with the child protection system remains significantly disproportionate, more than a decade on.

Having rigorous and reliable data on the number of parents with intellectual disability in contact with the children protection system is critical in order to inform policy and practice. Current FACS and Children's Court data collection procedures do not allow for this information to be obtained.

Recommendation 1: *FACS and NSW Justice review and upgrade their data collection to allow for data to be gathered and retrieved about the number of*

parents with disability in contact with the child protection system and the number of children removed from parents with disability, disaggregated by gender, ethnicity, Aboriginal and Torres Strait islander status and other relevant variables. (As recommended in The Australian Child Rights Taskforce CRC 25 Report May 2016 p. 19)

Support for parents with intellectual disability and their children

The research is conclusive; parental intellectual disability per se does not that prevent these parents from adequately caring for their children (Tymchuk & Feldman 1991; Wade, Llewellyn & Matthews, 2008). Rather it is the impact of life long social disadvantage, lack of access to resources to overcome such disadvantage and prejudicial treatment by the child protection system that eventually results in children of parents with intellectual disability being removed and placed in out of home care (McConnell & Llewellyn 2005).

What is also known is that mothers with intellectual disability tend to have poor physical and mental health; have trauma histories of their own childhood experience of abuse, neglect or bullying; have limited social capital and are susceptible to being in exploitative or abusive relationships. A file analysis of mothers with intellectual disability involved in care proceedings in the NSW Children's Court revealed a significant number of these mothers had been in care themselves and that in a staggering 79% of cases, domestic violence was a confounding factor leading to children being placed in care (Spencer, 2012)

Improving the pathway to parenthood

Support for parenting, particularly for mothers with intellectual disability, needs to commence well before they are pregnant. Their capacity to parent is highly dependent on their pathway to parenthood. It remains the case that for the vast majority of girls and young women with intellectual disability their dream of being in a relationship and one day becoming a mother is

discouraged by those around them. Moreover the attitude prevails “that the least they know the better.”

Life opportunities in term of completion of high school, employment and engagement in community networks impact on who women partner with and when they decide to parent.

For this reason, to stem the tide as to what is happening for mothers with intellectual disability at the pointy end of the child protection system, attention and resources needs to be directed ‘upstream’ to ensure girls and young woman with intellectual disability have access to programs that foster personal growth and sexual wellbeing.

While the following three recommendations may be outside the scope of this inquiry they are included for consideration.

Recommendation 2: *There be a review into the teaching of sexuality and sex education within the NSW Education system’s K-12 curriculum, particularly the year 11-12 Crossroads program to ensure the curriculum is accessible to students with special learning needs.*

Recommendation 3: *The NSW Office of Women set as a strategic priority the funding of programs to specifically address the inequities experience by women with intellectual disabilities particularly in the key areas of: health and wellbeing, education and employment opportunity; safety and justice.*

Recommendation 4: *That this inquiry endorses the recommendations in the NSW Family Planning report: Love & Kisses: Taking Action on Reproductive and Sexual Health and the rights of People with Disabilities 2012-2014.*

Support for parenting

Article 23 (Respect for home and family) of the United Nation Convention on the Rights of People with Disabilities states:

“People with disabilities have the right to marry
and to found a family.....states must provide

effective and appropriate support to people with disabilities in bringing up children...”

As a signatory to the UNCRPD it is incumbent on the state and Commonwealth government to fund programs that are effective and appropriate for parents with disabilities.

Empirically, we know what works for parents with intellectual disability. There are now an extensive suite of evidence-based parent education programs, tools and best practice guidelines to assist workers support parents with intellectual disabilities (for an overview see www.healthystart.net.au). The challenge, however, is in transferring this knowledge into practice. In 2015, the Commonwealth ceased funding Healthy Start, a national capacity building strategy aimed at improving the health and wellbeing outcomes for children whose parents have learning difficulties through facilitating knowledge transfer and capacity building in the child and family sector.

Recommendation 5: *The NSW Government lobby the Commonwealth to reinstate the funding of Healthy Start.*

The support required by families where at least one parent has intellectual disability varies. There will be periods, for example, when a child is transitioning from one developmental stage to another when intensive support may be required and other times when all the parent needs is know they have someone he/she can call on. Years ago Family Support Services provided such support. In recent years, early intervention programs (EIPs) due to funding guidelines have pared back the length of time that EIPs can support families. This has significantly disadvantaged parents with intellectual disability and their children pushing them towards the tertiary end of child protection.

Recommendation 6: *FACS Early Intervention Program funding guidelines exempt time frames on service delivery to parents with intellectual disability and their children.*

Whether many parents with disability meet the eligibility criteria for National Disability Insurance Scheme (NDIS) funding and how they fair in this Scheme, is yet to be known. The Council of Australian Governments Disability Reform Council has established a set of principles and applied principles about the sharing of responsibilities between the NDIS and other support systems such as child protection and family support systems.

Under the applied principles for Child Protection and Family Support, the following applied principles are relevant to issues raised in this submission:

“The child protection, community services, family support, education and/or health sectors will continue to be responsible for universal parenting programs, counselling and other supports for families that are provided both to the broad community and families at risk of child protection involvement, or families experiencing or at risk of experiencing family violence, including making these services accessible and appropriate for families with disability.” (3.2)

“The NDIS and the systems providing child protection and family support will work closely together at the local level to plan and coordinate streamlined services for individuals requiring both child protection and/or family support and disability services recognising that both inputs may be required at the same time or that there is a need to ensure a smooth transition from one to the other.” (3.6)

Recommendation 7: *That FACS provides funding to early intervention programs to ensure services are accessible and appropriate (based on evidence based research) for families with disability.*

Recommendation 8: *That FACS develops disability access standards for all early intervention programs and that these standards be audited as part of the funding process.*

Recommendation 9: *The Inquiry recommend the NSW Government fund an independent evaluation of how the NDIS and the systems providing child protection and family support work together at the local level to ensure that families requiring the input of both are receiving coordinated streamlined services.*

Parents with intellectual disability contact with the child protection system.

Parents with intellectual disability report feeling they forever have to prove themselves (Llewellyn & McConnell 2010). Even those who manage well and have no reason to be afraid, live in constant fear of child protection knocking on their door. Their fears are not unwarranted. Research reveals that parents with intellectual disability receive differential treatment in the child protection system (McConnell & Llewellyn 2005; Booth & McConnell 2006; Proctor & Azar 2013).

A US study by Proctor and Azar (2013) got 212 child protection workers to read and make responses to vignettes describing parents who were labeled as either having or not having intellectual disability. In relation to parents with intellectual disability, workers had significantly higher levels of 'pity' for these parent and willingness to help. Proctor and Azar's findings reflect my longstanding professional observation of FACS workers. By and large, the majority of FACS caseworkers feel for parents with intellectual disability, particularly those parents who themselves grew up in state care. They want to help them; however lack the training and skills to know how to do so

effectively. This observation is supported by research by Clayton, Chester, Mildon and Matthews (2008)

Recommendation 10: FACS review the training provided to FACS workers in relation to working with parents with disabilities.

Recommendation 11: FACS to trial collaborative support plan tools when working with parents with intellectual disability to assess and plan support.

Recommendation 12: In order to enhance disability knowledge within the Department and support frontline caseworkers specialist family and disability practitioners positions be created in each FACS district.

Recommendation 13: FACS fund places in the University of Sydney's Graduate Certificate of Health Science (Developmental Disabilities) for child protection caseworkers.

Families where at least one parent has intellectual disability need to be case managed by experienced child protection workers and not novice practitioners. Moreover these families require consistency in caseworkers that are experienced, clinically competent and able to make professional decisions. High workloads get in way of workers being able to work effectively with these families, as does excessive bureaucratic reporting and lack of line management support (See Healy, Meagher & Cullin 2009).

There is an extensive research literature on retention of workers in child protection system, which I refer this Inquiry to. Within this literature there are some recurring themes. These are summed up succinctly in McFadden, Campbell and Taylor (2015 p.1558):

“[Factors that contribute to retention child protection workers] include good-quality primary and ongoing training, constructive organisational cultures, supportive social and supervisory support, together with manageable workloads. Whereas, defensive organisational culture with poor social

supports and unmanageable caseloads are related to intention to leave and job exit.”

Recommendation 14: FACS to triage and allocate the case management of families with special and/or complex needs to senior child protection specialists.

Recommendation 15: FACS streamlines its administrative practices and provides administrative support to caseworkers to enable them to dedicate more time to working directly with families.

Child protection investigation practices

Parents with intellectual disability are particularly vulnerable when under investigation by child protection. They often find it difficult to understand what is being asked of them and are unaware of the nature or implications of lines of questioning. It is well known that people with intellectual disability are also prone to acquiesce to those in authority and are susceptible to becoming overwhelmed and behaviour in ways that are later used against them.

The vulnerability of person with intellectual disability is recognized in other settings. For example under the Criminal Procedure Act 1986 (NSW), NSW Police Code of Practice for Custody, Rights, Investigation, Management and Evidence (CRIME), if the police suspect a person has a cognitive disability steps need to be taken to get a support person for them and other adjustments made for example to the interview and custody process. FACS should follow similar protocols and arrangements in child protection investigations involving parents with intellectual disability.

Recommendation 16: FACS formalise the practice of ensuring that a parent who is suspected of having a intellectual/cognitive disability has a support person and that reasonable adjustment be made to the interview process.

On removal of a child from a parent with intellectual disability

The removal of a child from his or her parent is distressing and a highly charged situation for everyone involved. Parents with intellectual disability

are particularly vulnerable and are more likely to have difficulty understanding, taking instruction or self-regulating their behaviours. Once again, having a support person on hand can make all the difference.

While the Child Protection caseworkers focus needs to be primarily on the care and protection of the child, FACS has a duty of care, at time and immediately after removal, to ensure a child's birth parent is also safe.

Recommendation 17: *FACS reviews its child removal protocols and practices to ensure sensitivity and safety of all involved.*

On FACS practices in relation to supervised contact while care proceeding are in progress

While care proceedings are in progress, most birth parents will have supervised contact with their child or children. Contact normally occurs in a FACS office, a park or a play-centre supervised by a contact worker. For the most part contact workers do not hold any formal qualifications in child-care or social welfare. To do the job they need a current driver licence, a vehicle and a working with children clearance.

Contact workers make written notes about the interaction between the parent and the child and these contact records are routinely tended by FACS to the Court. In the case of parents with intellectual disability these records are commonly used to mount a case of parental incapacity.

This practice should be stopped. The purpose of contact is for children to have ongoing contact with their birth parent/s and at times other members of their extended family. These occasions should not be used for evidence gathering by untrained workers for the purpose of supporting FACS's case in court.

Recommendation 18: *FACS desists from including contact worker reports in evidence tended in care proceedings.*

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