

Inquiry into Child Protection

Legal Aid NSW

*Response to Supplementary Questions
from the Committee*

to the

*General Purpose Standing Committee
No. 2*

September 2016

Introduction

In July 2016, Legal Aid NSW provided a submission to the General Purpose Standing Committee No.2 in response to the terms of reference of the Inquiry into Child Protection. A number of Legal Aid NSW practitioners contributed to the submission.

On 16 August 2016 the primary authors of the submission, Katrina Wong of the Children's Civil Law Service and Nicola Callander of the Family Law Division, Legal Aid NSW appeared before the Committee and gave evidence. They were joined by Maria Le Breton, Director Women's Domestic Violence Court Advocacy Service NSW and Liz Snell, Law Reform and Policy Coordinator, Women's Legal Service NSW.

There were four outstanding supplementary questions for Legal Aid NSW following the hearing. Katrina Wong and Nicola Callander have provided responses to these questions below.

If there are any questions regarding this submission please contact Aideen McGarrigle, Manager, Legal Policy, Legal Aid NSW, by email at Aideen.mcgarrigle@legalaid.nsw.gov.au or by telephone on 02 9219 5701.

Further Information from Evidence Provided

Raising the Leaving Care Age from 18-21 (transcript p.16)

Legal Aid NSW confirms our recommendation that the leaving care age be raised from eighteen (18) years of age to twenty-one (21). This recommendation is focused on extending the support from the Department of Family and Community Services (FaCS) or other case management agencies for young people aged 18 years or older as they transition to independence. This recommendation is consistent with recommendations made recently by the Senate Community Affairs References Committee on Out of Home Care in August 2015 (recommendation 22).

The Committee may also be interested in a recent report by Anglicare Victoria which commissioned Deloitte to consider the potential benefits that would flow, both to the individual and to the public, from extending support to all young people in Out of Home Care from the age of 18 to 21.¹ The report found that there were key benefits in the extension of support to care leavers including:

- Higher levels of engagement with education
- Decreased rates of homelessness
- Reduced interaction with the justice system, and
- Duration and severity of mental illness may be improved.

The report put forward a sound socio-economic case for consideration of public investment in the extension of support to young people leaving care beyond the age of 18.

Supplementary Question Responses from Legal Aid NSW

Supplementary question 1

1. You raised the importance of early intervention (including early legal intervention), noted that Parental Responsibility Contracts (PRCs) are not being used in large numbers to date, and also discussed some models of intervention (e.g. Cornerstone from New York) to support restoration. Can you elaborate on what good early intervention would look like and what you consider is needed across NSW to deliver it and support family preservation and restoration?

In terms of case work early intervention services, Legal Aid NSW believes that the professionals who provide early intervention services are probably best placed to respond to the question.

¹ Anglicare Victoria, *Raising our Children: Guiding Young Victorians in Care into Adulthood*, Socioeconomic Cost Benefit Analysis by Deloitte Access Economics, August 2016. Available at: <http://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-guiding-young-victorians-in-care-into-adulthood-anglicare-220816.pdf> as at 19 September 2016.

However, Legal Aid NSW can speak to this from the perspective of working with families once they become aware of the legal implications of their circumstances, and what our legal team regularly observes might have been done earlier to prevent the matter progressing to removal of children and legal proceedings.

Culture Change

In the experience of Legal Aid NSW, there appears to be some resistance to co-operation between FaCS and legal representatives in relation to care and protection matters. Legal Aid NSW suggests that for early intervention services to be effective, this culture of reticence and misunderstanding needs to improve. A recent example is where FaCS case workers were very reluctant to provide lawyers with the information they needed to properly advise clients about parent responsibility contracts (PRCs). While this example highlights the need for a cultural shift FaCS, Legal Aid NSW suggests there is also a need for a cultural shift in legal representatives.

Conferencing and Legal Advice

Legal Aid suggests that 'good early intervention' would ideally involve conferencing with families following their very first contact with child protection services and that, integral to this, families should be directed to obtain legal advice. Legal advice and assistance at this early stage would provide primary carers with information about the legal framework within which care and protection takes place and the potentially serious legal implications for their family.

Legal Aid NSW notes that the *Children and Young Person (Care and Protection) Act* (the Act) provides for alternative dispute resolution as an early intervention (see section 37), but it has been rarely initiated by FaCS.

Available Services

As a corollary to conferencing, primary care givers should be referred to services that target their specific needs and given the support necessary to ensure their attendance at those services. Legal Aid NSW suggests that early conferencing can provide an ideal opportunity to identify needs, make appropriate referrals, and agree on outcomes and how they will be monitored and measured.

Family Group Conferencing

Legal Aid NSW understands that in March 2015, FaCS commenced the roll out of a program of Family Group Conferencing (FGC). This model involves primary care givers and any extended family members and supports meeting with caseworkers in what could be described as a 'facilitated negotiation', with FaCS determining what is negotiable.

Legal Aid NSW was not consulted about the roll out but became aware of it indirectly.

Legal Aid NSW suggests that the roll out of FGC should be undertaken in consultation with major stakeholders. Consultation with major stakeholders is essential to the success of any significant early intervention and that the lack of consultation potentially wastes the opportunity to provide a more holistic service.

Increased Co-operation and Transparency

Legal Aid NSW supports FGC as an early intervention initiative and suggests there is no reason why early intervention conferences, should not be used as a forum to workshop early intervention initiatives such as PRCs, parent capacity orders (PCOs) and section 38 Care Plans. However, legal advice and assistance should be integral to such processes.

Legal Aid NSW understands that the current FGC model does not include lawyers or a requirement to obtain legal advice, regardless of the stage at which the conference is being used with primary care givers. Legal Aid NSW is concerned that this approach may not achieve the best or most sustainable outcomes for families, and that it maintains a culture in which the significant stakeholders working with families are operating in silos instead of collaboratively.

Tensions may be created by different stakeholder perspectives. However, in promoting a culture of collaboration, Legal Aid NSW is hopeful that those tensions can be used constructively to build a better understanding and respect for respective roles and to achieve improved outcomes.

In relation to FGC and the management of parenting resources such as PRC and PCOs, please contact Ms Penny Hood, Director Innovation Co Design and Implementation, FaCS at penny.hood@facs.nsw.gov.au or on (02) 8753 8486.

Supplementary question 2

2. *With children and young people placed in residential care it was noted (transcript p. 13) that typically there will have been numerous breakdowns of out-of-home care placements by the time they get there. If we're looking at reducing the numbers in residential care it seems that foster care placement breakdowns are a key factor. What would you suggest can be done to try to address this area and improve placement stability in the out-of-home care system?*

Legal Aid NSW believes that professionals who work directly with young people in foster care environments would be better placed to answer this question.

However, Legal Aid NSW can point to literature and reports that provide recommendations on what can be provided to improve placement stability in the out of home care system. These include:

- Recommendations provided in the Senate Community Affairs References Committee report on Out of Home Care (August 2015), seeking a national strategy to support and accredit foster carers to improve recruitment and retention, including addressing consistent rates of financial support, case worker support and training of foster carers (recommendations 37 and 38)
- Recommendations provided in the recently published South Australian Child Protection Systems Royal Commission report, *The Life they Deserve* which included calling for the investment of resources to support foster carers such as additional training and increased payment rates for carers looking after children with complex needs.

In addition to the increasing numbers of young people in statutory out of home care, Legal Aid NSW has observed an increase in the complexity of the needs of young people, with a corresponding increase in the challenging behaviours exhibited by these young people. This will require foster carers to be equipped with therapeutic skills to care for young people, particular those with complex needs.

In their joint report *Reforming the Foster Care System in Australia: A new model of support, education and payment for Foster parents*,² UNSW and Berry St argue that a new professionalised and integrated model of foster care must be developed to take into account the differing needs and circumstances of children in out of home care. Their report makes recommendations for a model that integrates:

- Clinical assessment and therapeutic support
- Carer recruitment, training, support and supervision
- A fostering allowance (reimbursements), and
- A foster parent fee (income for foster parents)

Supplementary question 3

3. *With Parental Responsibility Contracts and Parenting Capacity Orders there is engagement by legal stakeholders to improve the documents and better fit them into caseworkers' toolkits. In the debate on these legislative reforms concerns were raised that contracts and orders in the absence of available and appropriate services could effectively set parents up to fail. Do you have any information or views about ensuring/addressing the availability and appropriateness (including cultural appropriateness) of the services and programs that are likely to be involved with parents and families under PRCs or PCOs?*

Legal Aid NSW Family Law Early Intervention Unit and litigation service solicitors provide advice and minor assistance services to clients at many stages of their contact with the child protection system. As part of that service, clients are referred to available local services such as refuges, housing services, rehabilitation centres, drug and alcohol services and counselling, and domestic violence support.

In the experience of Legal Aid NSW there are insufficient services to meet the non legal needs of clients in most areas, but particularly in remote and regional centres. The lack of services in remote and regional centres directly impacts Aboriginal and Torres Strait Islander families.

In addition, the types of available services do not meet the needs of families with long standing and complex needs, including the needs of parents who have suffered trauma and childhood abuse themselves. In the experience of Legal Aid NSW, long standing, often intergenerational problems with anger, domestic violence and drug and alcohol addiction, which lead to serious deficits in parenting and create risks for children, will not be cured by a six (6) week program with an attendance requirement of once per week for two hours.

² <http://www.childhoodinstitute.org.au/Assets/563/1/ReformingtheFosterCareSysteminAustralia.pdf>

In the experience of Legal Aid NSW, when parents are motivated to address long standing issues, the lack of appropriate services can cause great frustration and a sense of hopelessness in them, which feeds their predicament and confirms their sense of failure.

Legal Aid NSW suggests that services need to be long term and therapeutic. Men dealing with serious anger issues need months of therapeutic intervention. Young mothers who want to learn to live drug, alcohol and abuse free, need at least 12 months in properly staffed and supported residential rehabilitation programs, with capacity to accommodate their children. Currently there are very few rehabilitation centres and available places are rare.

Legal Aid NSW agrees that an essential part of effective early intervention with families is the provision of complementary services targeted to meet their specific needs, and that without those services, many early interventions are unlikely to be effective and indeed, may well set parents up to fail.

Legal Aid NSW recognises that the provision of complementary services targeted to meet specific needs represents a very significant financial commitment. However, the primary problems faced by many families that come into contact with child protection services are very similar and can be identified. There is no shortage of expertise and understanding about the complex needs of families. Rather, there is a lack of adequate services.

Supplementary question 4

4. During another session of the hearing (transcript p. 59) concerns were raised about a tendency in cases where children have been removed relating to domestic violence for a failure or delay in reviewing changes in the family circumstances to address the domestic violence issues and that this means restoration may not be adequately considered as an option. Do you have any comments and recommendations to add from your perspective in response to these concerns?

Legal Aid NSW did not specifically address domestic violence in the submission to the General Purpose Standing Committee No.2. Maria Le Breton, Director Women's Domestic Violence Court Advocacy Service NSW, appeared before the committee and is better placed to respond to this supplementary question.