women's law centre

16 February 2016

The Director General
OOHC Reform Team
PO Box 63334
EAST PERTH WA

Attention: Ms Emma White

By email to: OOHCReform@cpfs.wa.gov.au

Dear Ms White,

OUT OF HOME CARE REFORM

Thank you for the opportunity to provide feedback on the proposed legislative amendments.

ABOUT THE WOMEN'S LAW CENTRE (WLCWA)

The WLCWA is a not-for-profit community legal centre funded by the Commonwealth Attorney General's Department to provide quality legal services to disadvantaged women in Western Australia. We provide free legal advice and casework in the areas of family law, family and domestic violence issues, care and protection proceedings and criminal injuries compensation for victims of family and domestic violence and/or sexual assault.

The WLCWA is a state-wide service. We undertake several outreach programs to specific target groups. At present our target areas focus on assisting Aboriginal and Torres Strait Islander women who live in remote communities in the Ngaanyatjarra Lands through a partnership with the NPY Women's Council. We also provide law reform advocacy, community legal education and professional development training in our casework areas.

The WLCWA is one of the few community legal centres in WA that assists women in care and protection proceedings concerning their children or grandchildren. The WLCWA is increasingly utilised by mothers and grandmothers in distress, seeking legal advice and assistance to negotiate the child protection system and have their children returned to their care. We also note the majority of women we assist are at risk of, or have had children removed from their care as a result of family and domestic violence.

We are grateful for the opportunity to highlight some of our concerns.

We confirm that all case examples have been de-identified for confidentiality purposes.

Introduction

The WLCWA is concerned about the disproportionate impact the proposed legislative amendments will have on our clients, namely - victims of family and domestic violence, families living in rural, regional and remote areas, Aboriginal and Torres Strait Islander families, culturally and linguistically diverse clients and women in prison.

We are also concerned the proposals come at a time where the funding for support services for parents and grandparents are being reduced. We note that strains on the Legal Aid WA and Western Australian Budget in the last 12 months has increased the number of women seeking legal assistance from our service. From 1 July 2015, the WLCWA was one of 11 community legal centres in this state whose funding was reduced by 9.3%. Further funding cuts are expected. We are aware of similar reductions in funding and staffing from legal and support services throughout Western Australia.

The WLCWA echoes the introductory comments of the Family Inclusion Network of WA 'submission to the DCPFS out of home care reform' dated September 2015 at pages 1 and 2. We agree that out of home care is not delivering positive outcomes for our clients or their children. We strongly support an opportunity for consultation on the delivery of early intervention and prevention strategies to support families and avert children and young people's entry into the child protection system. With the upcoming review of the *Children and Community Services Act* 2004 commencing in 2017, this is an opportune time to look at *'what could be done differently?'* over the next 12 months.

In our view, if appropriate services and supports were available to parents and grandparents it would negate the need to remove children and young people from their parents care, especially where family and domestic violence is the protection concern. It is well recognised that early intervention and prevention support has long term social and economic benefits for families and the community. Furthermore, we are aware as outlined in the Ombudsman's investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities,[1] that timely assessment of risk, support and referrals for legal advice are not provided to victims of family and domestic violence to the extent support is provided in cases where family violence is not a concern

We are also extremely concerned about the short time frame for community consultation of the proposed legislative amendments. The matters under review are highly complex and have serious consequences for our clients. The proposed amendments should not be considered in isolation. We repeat our earlier request that DCPFS consider the out of home care legislative amendments throughout 2016 in the lead up to the review of the Act in 2017.[2]

<u>Responses</u>

1. **Should the underpinning principles of the Act give more emphasis to the importance of permanency of care for a child in out of home care?**

   The WLCWA does not support the proposed amendment. All children and young people have the right to know and be cared for by their parents. The reunification of children and young

[1] Ombudsman, Western Australia *'Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities'* 19 November 2015.
[2] Letter from WLCWA to Director General, Emma White dated 21 December 2015

people with their parents should always be an option in all but exceptional circumstances. To make greater emphasis on the 'importance of permanency' could have the effect of disengaging parents and grandparents in an already difficult system and leave them feeling they have 'no hope'.

Long term placements are not always available or successful

Greater emphasis on permanency accepts as fact that all out of home care placements are available, suitable and appropriate on a long term basis. We are aware that this is not always the case. For example, it can be very difficult to keep children and young people with multiple siblings and age ranges in the same family placement. Separation from siblings can result in disrupted placements.

Foster care placements can break down for a number of reasons, particularly for teenagers that are not attending school, become involved in the criminal justice system or choose to 'think with their feet'.

Case example

Vanessa and Gareth's 2 sons and daughter were taken into care when they were 9, 7 and 5 years old under a time limited 2 year protection and care order. The children were placed with Gareth's Aunty. Vanessa was illiterate and innumerate. She did not have any legal assistance when the time limited order was made. Vanessa agreed to the order as Gareth was happy for his Aunt to care for the children. Vanessa and the Aunty also got on well and she was able to see the children by family agreement.

Vanessa and Gareth separated. Gareth was sentenced to a period of imprisonment for a series of family and domestic violence offences against Vanessa. Every time Vanessa asked to see the kids, Gareth's Aunty was busy. This went on for several months. Vanessa felt the Aunty blamed her for Gareth going to prison. Vanessa was then sentenced to a period of imprisonment. During this time she had very little contact with her children or DCPFS. Gareth's Aunt took the children to see their Father in Hakea but refused to visit Vanessa in Bandyup. When the 2 year order was about to expire, DCPFS applied for and were successful in obtaining an order until 18 years. The children were now 12, 10 and 8 years old.

Shortly before her release, Vanessa engaged with the WLCWA and a non-legal support service. With support and advocacy, Vanessa started having telephone contact with the children and monthly visits in the lead up to her release. During these visits her eldest son would say, 'I don't care what anyone says, when you get out of prison I am coming to live with you'. On her release, Vanessa obtained housing and continued spending time with her children. Her eldest son repeatedly told Vanessa of his desire to live with her. Vanessa made DCPFS aware of this. This caused further tension between Vanessa and Gareth's Aunty.

From the age of 13, Vanessa's son would regularly run away from his Aunt's house and go and stay with his Mother. He was also acting up at 'home' and coming to the attention of Police. His foster Aunty was tiring of his behaviour and notified DCPFS that it was disruptive to the other children in her care. She asked DCPFS to look for an alternate carer. DCPFS workers tried to engage with the teenager but he refused to listen when told he could not live with his mother. Vanessa's son was placed with a maternal Aunt and uncle but continued running away. By the time he turned 14, Vanessa's son was living with her on an informal basis. On our last contact

with the client, her other son was starting to engage in similar behaviour. Vanessa is worried the foster placement will also break down.

Greater emphasis on permanency also assumes that all protection orders place children and young people with adults other than their parents. Any emphasis on permanency should be on children and young people remaining with their families. Other examples of foster care placements breaking down include foster parents separating or wanting to relocate interstate or overseas.

Lack of resources, current system unable to cope

As at 30 June 2015, there were 4,503 children and young people in care in Western Australia, with children and young people entering care younger and remaining in care for longer. [3] In addition, there were 18,602 child protection notifications in the 2014-2015 year.[4] In the majority of cases we see, children and young people are already in provisional protection and care prior to an application being made in the Children's Court.

In our view, it is well recognised that DCPFS staff are over worked and under resourced and this impacts on the support provided to parents and grandparents. It is our experience that DCPFS staff do not have the time or necessary skills to balance the competing responsibilities of supporting parents, children and young people and carers towards reunification and the permanency planning principles. We note that many caseworkers focus more on the permanency planning policy to the detriment of parents and grandparents where support and assistance is not being provided. Many of the Departmental policies and guidelines are written with value and importance but in our experience work differently in practice, such as the previous example. We also note that our experience is consistent with a major finding of the Ombudsman investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities, which was that although DCPFS has developed an extensive policy framework, it is not fully implemented in its responses to family and domestic violence.

It is also our view the child protection system is not currently equipped to proceed with the proposed legislative amendments. For example, in November 2015, Wanslea, Western Australia's largest foster care agency reached its contractual capacity for short and long term foster care placements in the metropolitan area. In practical terms Wanslea was forced to temporarily stop accepting referrals during office hours.[5] Considering over 44% of children in care are placed with relative carers, it appears there are not enough foster carers for the number of children requiring out of home care.[6]

We are also aware of the long waiting lists for parents and grandparents to access services such as housing, relative carer assessments and parenting capacity assessments. In our experience parents and grandparents can wait for several months for a service to become

[3] DCPFS Annual Report 2014-2015 page 44.
[4] As above at 3.
[5] Lacshon, Eliza 'WA foster agency hits capacity, halts referrals during office hours' ABC online dated 12 November 2015.
[6] DCPFS Annual report 2014-2015

available to undertake a parenting capacity or relative carer assessment. This results in multiple Court adjournments.

Case example

Janice's granddaughter was taken into provisional protection and care in June 2015. At the same time she formally requested DCPFS assess her as a relative carer for her granddaughter. In July 2015, Janice applied to be a party to the Court proceedings. In September 2015, Janice sought assistance from the WLCWA as she felt DCPFS were not acting in a timely matter regarding her application to be a relative carer. For over 8 months, the matter was in the Children's Court on a regular basis awaiting the outcome of Janice's relative carer assessment. DCPFS regularly cited a lack of resources as the reason for the delay in the assessment process. Eventually the Children's Court Magistrate made an interim placement order for Janice's granddaughter to live and be cared for by her while awaiting the relative carer assessment to be completed.

A greater emphasis on permanency will also be difficult for foster carers and could result in unrealistic expectations. In our view, foster carers should always be aware that reunification of children and young people with their families is the best long term outcome.

Unintended consequences

An increased emphasis on permanency (in addition to the reduction of the current time frames) is likely to result in an increase of contested applications at the interim stage of Children's Court proceedings. This would have the effect of escalating the resources of an already stretched Court system and consequently costs to the Government and community. It is our understanding that at the end of 2015, the time for a matter to reach trial in the Perth Children's Court (care and protection) was not less than 9 months. By investing in early intervention strategies, the Government could not only save money but also reduce the need for out of home care in situations where it can be alleviated by proper support and resources.

RECOMMENDATIONS

The permanent removal of a child or young person from their biological family should only be an option of last resort and as such the principle of permanency should not be given more emphasis in the underpinning principles of the *Children and Community Services WA* 2004 Act.

In the event legislative amendments are made to support permanency planning, the first objective should be 'that children and young people are restored into the care of their parents wherever possible and in the child's best interests'.

There will also need to be a significant increase to the training, resources and funding of DCPFS staff, foster care agencies, other legal and non-legal support agencies and the Children's Court.

Resources and funding be invested in early intervention and prevention strategies, reunification services and support provided to families.

2. Should the maximum period for a Supervision Order be reduced from 24 months to 12 months, with the possibility of up to a further 12 month extension?

The WLCWA does not suport this proposal. The WLCWA does not support reducing any of the current time frames or introducing any time limits. For example, consultation questions 3, 4, 6 and 7. In our view, reducing the current timeframes and/or limiting the number of times an order can be extended is inconsistent with s 7 of the Act 'best interests of child are the paramount consideration'.

Every case is different and circumstances can change

Every family is different. Every child is different. The needs of each family and child can change over time. For example, culturally and linguistically diverses clients, Aborignal and Torres Strait Islander families, women in prison and families living in rural, regional and remote areas are all unique.

Decision making requires flexibility if parents are to receive the support they require to achieve reunification with their children. For culturally and linguistically diverse clients and Aboriginal and Torres Strait Islander clients, the services and supports also need to be culturally appropriate. It is important to take into account the unique circumstances of each child and each family. Similarly, there must be flexibility to allow for changes in circumstances.

The availability of specialised services for culturally and linguistically diverse clients, Aboriginal and Torres Strais Islander clients and clients living in rural, regional and remote areas are often limited or have long waiting lists. For Aboriginal and Torres Strait Islander clients and clients living in rural, regional and remote areas, there can also be issues of conflict of interest due to family connections.

Case example

Geraldine was living in a remote Aboriginal community with her 2 sons, thousands of kilometers from Perth. She was seriously assaulted by her partner and fled with her sons to Perth to escape the violence and receive treatment for her injuries at the Hospital. On her release from Hospital, Geraldine had nowhere to stay whilst waiting for her bus home and no money for accommodation. Whilst in Perth, Geraldine came to the attention of Police for sleeping rough in

a local park. Her 2 sons were taken into provisional care due to lack of suitable housing and concerns of family and domestic violence. Geraldine remained in Perth to attend the first appearance in the Children's Court and engaged the WLCWA. With the assistance of WLCWA, Geraldine was able to negotiate with the Department to have her sons placed in care with relatives in a community closer to where she lived which would allow more frequent contact and a placement that was culturally appropriate. Geraldine then returned to her home community.

DCPFS applied for a time limited 2 year care and protection order. The DCPFS requirements for reunification with Geraldine's children were onerous and lengthy. In addition, the services required were not available in her home community including a requirement for urinalysis even though this was not possible. DCPFS recognised this in the s143 proposal filed with the Court.

The WLCWA researched the availability of services in the clients community and surrounding areas, making contact and arranging for 'warm' referrals as required. The WLCWA then assisted Geraldine to negotiate with DCPFS to have the requirements that were not possible removed from the s143 proposal and to adapt other requirements so they were realistic and achieveable.

The above case example reflects the litigious nature of DCPFS. In our experience support and flexibility helps clients achieve their requirements for reunification or contact and ultimately better outcomes for children.

Unintended consequences

We are concerned the introduction of shorter time frames and time limits could lead to an increased number of children and young people in care, in particular Aboriginal and Torres Strait Islander children and those living in remote communities. Reduced time frames and time limits will have disparate outcomes for such clients. We are aware that as at 30 June 2015, over 50% of children and young people in state care are Aboriginal and Torres Strait Islander and the figure is 100% for Aboriginal and Torres Strait Islander children and young people in care in the Kimberley region. In addition, the rate of growth is significantly faster than for non-ATSI children, with the number of Aboriginal and Torres Strait Islander children in care increasing by 9% in the 2014-2015 year.[7] The statistic is similar in other jurisdictions across Australia especially in the Northern Territory[8] and South Australia[9]. Many of these Aboriginal and Torres Strait Islander families fighting for reunificiton with their children will not achieve this.

Victims of Family and Domestic Violence

The number of children and young people at risk of entering care or being taken into care as a result of family and domestic violence is increasing. For example, our clients are often blamed for 'not acting in a protective manner'. In our experience, women recovering from trauma

[7] DCPFS Annual Report 2014-2015 at page 28.

[8] Northern Australian Aboriginal Justice Agency & Northern Territory Legal Aid Commission joint submission on the Care and Protection of Children Amendment Bill 2014 at page 6.

[9] Aboriginal Legal Rights Movement Inc.

such as sexual assault and/or family and domestic violence are not receiving adequate support from DCPFS to prevent the removal of children and young people from their care.

The difficulties a woman faces when trying to leave a violent relationship are well recognised. Separation and safety are not synonymous. Leaving increases the risks to a victims health and safety and the safety of their children as perpetrators explore more drastic ways to re-establish the control they are losing. Women need support and resources to take the very difficult step of leaving a violent relationship. Leaving isn't always an option or desire for women. The focus should predominantly be on holding the perpetrator of violence accountable for his violence and supporting him to stop, rather than holding the victim accountable for his deliberate parenting choice to use violence against the mother of his children. It is also well recognised the recovery from the impacts of family and domestic violence can take many years. For Aboriginal and Torres Strait Islander families, this is compounded by intergenerational trauma, the impacts of colonisation and the stolen generation. There is a variety of research available which supports this. A reduction in time frames would disproportionately impact such clients, essentially blaming the victim and not holding the perpetrator of the violence accountable.

In our view, DCPFS staff need adequate and ongoing training on the dynamics of family and domestic violence and using language and actions to hold perpetrators accountable. The child protection system has the opportunity to help combat family and domestic violence at a grass roots level by changing the language used in Departmental documentation. The legal profession and social workers typically neutralise domestic violence language. For example, in our experience a s143 proposal will often state *'Ms Smith was involved in domestic violence with Mr Smith'*. This does not adequately identify the perpetrator and victim of the family and domestic violence. This kind of communication not only conceals who is responsible for the violence, but actually mutualises the violence, shifting part of the blame onto the victim. Solicitors at the WLCWA regularly request such wording to be changed to read *'Ms Smith was assaulted by Mr Smith'*. This statement clearly identifies the perpetrator and victim of the family and domestic violence. In the majority of matters, such proposals have been rejected.

Case example

Sonya 's 2 daughters were taken into care due to concerrns of alcohol and family and domestic violence. Sonya was the victim of several assaults from her now ex partner. The Section 143 proposal filed with the Children's Court listed the following as requirements to be met for DCPFS to 'consider the Mother's reunification with her children': -

Not have any contact with Police in relation to violence perpetrated by either Sonya or Albert toward each other or any other persons.

Not to have contact with Police in relation to any alcohol related issues.

The WLCWA wrote to DCPFS expressing concern over the wording of the above. Our client felt she could not call the Police if she was hurt by her partner as this would threaten her chances of reunification. Similarly, Sonya felt she could not call the Police if family members attended her home uninvited and cause trouble while under the influence of alcohol. The WLCWA were concerned the language mutualised the violence. For example, the victim and perpetrator of the family and domestic violence were not clearly identified as such.

After several months of negotiation, resulting in multiple adjournments in the Children's Court, the wording of the s 143 proposal was changed.

The case example above is a clear breach of the DCPFS casework practice manual, which sets out:

"Department goals should be developed that support the safety of the child and the protective adult victim and address the risk associated with the perpetrator's behaviour.

Child protection workers should carefully consider how the department goals are worded to:

- place the focus on managing the risks associated with the perpetrators behaviour (the source of harm)
- avoid locating responsibility for stopping the violence with the adult victim or child
- avoid goals that may escalate risk for an adult victim and/or child, and
- avoid focusing only on the symptoms and impacts of family and domestic violence, for example, on mental health issues, parenting, behavioural issues etc., without also addressing the risks associated with the perpetrator's behaviour (the source of harm)"

Women in prison

The WLCWA has worked with women in prison for a number of years. A high proportion of our casework is assisting Mothers in the care and protection jurisdiction. For example, to ensure safe arrangements are in place whilst they are unable to care for their children, negotiating visits with children whilst inside and having their children returned to their care on release.

Research confirms that incarcerated women are some of the most vulnerable and disadvantaged women in our community. Many incarcerated women have been the victims of

crime themselves. The report of an announced inspection of Bandyup Women's Prison states at Page 32 that 90% of women in prison had experienced abuse.

The majority of Aboriginal and Torres Strait Islander incarcerated women are Mothers and often significant carers for others in their extended family networks. Their incarceration has far-reaching consequences for their children, families and communities. [10] It is well-established that Aboriginal and Torres Strait Islander women are over-represented in the prison population. Generally, Aboriginal and Torres Strait Islander people make up 41.2% of the entire Western Australian prison population with Aboriginal and Torres Strait Islander women making up approximately 50% of the female prison population.[11]

The proposed reduction in timeframes would disproportionately impact on mother's and grandmother's in prison and consequently Aboriginal and Torres Strait Islander mother's and grandmother's. In our experience many of the parenting and other programs available to women in prison are not counted towards the Department's requirements for reunification. In addition, some DCPFS workers hold unfair attitudes towards parents in prison. This significantly impacts a mother's ability to comply with time frames whilst on remand or serving a sentence of imprisonment.

Case example

Hillary's 4 year old daughter was removed from her care on a time limited 2 year protection order due to concerns of family and domestic violence perpetrated by her then partner. There were also concerns of drug and alcohol use. Hillary seperated from her partner. She had a difficult time for a number of months due to the trauma of losing her daughter and the recovery from the family and domestic violence she experienced. Hillary felt she was not provided with any support from the Department to assist her with the family and domestic violence prior to removing her daughter. Hillary found it difficult to engage with Departmental workers due to the lack of support.

Hillary was fortunate to engage with a support agency that assisted her with FDV counselling and warm referrals to drug and alcohol counselling. With the agency's support, Hillary was able to re-engage with the Department and work with the Department's reunification goals. For a period of 10 months, Hillary was working well with the Department, engaging in all relevant services and having regular contact with her daughter. When all appeared to be going well, Hillary was arrested for some historical driving offences and minor drug possession offences that resulted in a period of 6 months imprisonment. Whilst incarcerated, Hillary did not have any contact with the her Departmental workers except via letter. She found it very difficult to speak with anyone from the Department via telephone.

Through the WLCWA Hillary made regular requests for visits with her daughter. The DCPFS caseworker made several comments to Hillary and her WLCWA Solicitor that 'jail is no place for children' and 'the child shouldn't be punished for her Mother's crimes'. It was clear the worker held a strong view against children having contact with their parents in prison. It took almost 3 months for the Department to organise the first visit which were to be held on a monthly basis

[10] Wilson, M and Jones J, "The Social and cultural Resilience and emotional wellbeing of Aboriginal mothers in prison", Centrelines, May 2012
note 1
[11] Wilson, M and Jones J, note 2

from then on. A 'lack of transport resources' was cited as one of the reasons for the infrequency of visits and for the cancelling of the third visit.

Whilst inside Hillary engaged in family and domestic violence courses, drug and alcohol counselling and a parenting course run by Ngala Parent Support. A week before her release, Hillary received her first and only visit from her DCPFS caseworker and was served with a 'revoke and replace' of the time limited 2 year order to an order for her daughter to be in care until she reached 18 years of age. Hillary was also told the courses and counselling she had undertaken in Bandyup would not count towards the Department's reunification requirements. Hillary was devastated.

Thankfully with Hillary's continual hard work, intensive support from several support agencies and the WLCWA working in collaboration, the application was withdrawn and replaced with a further time limited 2 year order.

This case example is not a one-off instance. The WLCWA has assisted a number of women in prison or newly released women with similar matters. The case example highlights the difficulties faced by victims of family and domestic violence dealing with care and protection matters and the myriad of social issues that further marginalise women in prison or newly released women.

The WLCWA is concerned about the number of women that do not have access to legal and support services dealing with the DCPFS. With legal and non-legal support women have a better opportunity to be informed and understand what is required of them and know their rights to negotiate and have a say on such important matters. It is extremely difficult for victims of family and domestic violence to advocate on their own behalf with the DCPFS and the recent Ombudsman report noted that victims of FDV are routinely **not** referred for legal assistance.

Lack of resources

In addition to the above concerns, the reduction in time frames and proposed introduction of time limits is both impractical and unrealistic for parents and the DCPFS. At present DCPFS staff are unable to realistically provide the support needed to parents and grandparents. The introduction of reduced time frames will only add to this pressure on parents and DCPFS staff. Overworked and under resourced DCPFS staff are currently unable to meet the competing responsibilities of supporting children, parents and carers. If time frames are reduced, it is our fear that the support to parents will be further reduced to their detriment.

Lastly, we are aware from experience the current timeframes in the *Children and Community Services Act WA* 2004 are rarely adhered to in practice. For example, the time frames required at ss 36 (2) (b), 35 and 37 of the Act. We note there has been a slight improvement in this regard in the metropolitan area, however the problem continues in many regional Courts throughout Western Australia.

For all of the reasons set out above, it is imperative that the relevant time frames for each matter be determined on a case by case basis and not mandatory and unrealistic time frames.

RECOMMENDATIONS

All decisions should be made on a case by case basis, based on the best interests of the child. We do not support the reduction of time frames or the introductions of time limits.

We recommend that parents and grandparents have input into what is required of them and the time frames for completion, especially for clients living in rural, regional and remote areas, Aboriginal and Torres Strait Islander clients and women in prison.

If any time frames are reduced or introduced, we strongly support legislation providing the Children's Court with the discretion to extend the time frame in circumstances where the Court deems it does not have sufficient evidence to make such a determination and/or when it is not in the child's best interests.

3. **Should the maximum allowable period of a Time-Limited Order be changed from 2 years to 12 months?**

   No. The WLCWA does not support this proposal for the reasons set out above at Q2.

4. **Should there be a limit placed on the number of times the Department is able to apply for an extension of a Time-Limited Order?**

   No. The WLCA does not suport this proposal for the reasons set out above at Q2.

5. **Should criteria for an extension be linked to circumstances where the Court is satisfied that reunification is viable and progressing?**

   The WLCWA does not support this proposed amendment. In our view reunification should always be an option except in only exceptional circumstances. The proposal does not allow for a change in a parents circumstances. In our experience, decisions against reunification of a child or young person are often made prematurely, especially for women in prison. Our submissions in response to consultation question 16 below are relevant here also.

RECOMMENDATIONS

All decisions should be made on a case by case basis, based on the best interests of the child. An extension should be granted if special circumstances exist and if it is considered to be in the best interests of the child.

The Children's Court should have discretion to extend an order in circumstances where the Court deems it does not have sufficient evidence to make a determination and/or when it is not in the child's best interests.

6. **Should the total cumulative time that a child can be in out of home care without a permanent order be limited to 24 months?**

   No. The WLCWA does not support this proposal for the reasons set out above at Q2.

7. **If so, upon an application by the Department, should the Court also have discretion to make a Time-Limited Order that goes beyond the 24 months total cumulative time if considered to be in the best interests of the child?**

   Not applicable, please see answer above at Q6.

8. Do the names of the current Protection Orders adequately reflect the status and purpose of the order?

In general the names of the current Protection Orders are accurate and adequately reflect the status and purpose of the orders subject to the comments below at Q9.

9. Should any of the Protection Orders names change and, if so, what should they become and why?

Current Name	Proposed alternative name/s and changes	WLCWA comments
Provisional care and protection	Temporary protection and care Temporary care	The word 'temporary' could be considered a more accurate description of this form of care. In our view it is consistent with the principles to be observed in s 9 of the Act. Similarly, it is consistent with our view that reunification should always be a goal in all but exceptional circumstances. This wording could also give parents and grandparents hope that reunification with children is a viable option and increase their participation and engagement with the DCPFS.
	No substantive changes	Agreed.
Protection order (supervision)	Protection order (family support)	The current wording is accurate and reflects the status and purpose of the order. No change is required. In our experience the majority of families do not feel they receive adequate support from DCPFS. We do not consider this wording to be appropriate as it is not reflected in practice.
	Family Preservation order – Victoria	The wording 'family preservation' is preferable. Our comments above in support of the word 'temporary' are applicable here.
	Reduction of maximum period of order to 1 year	The WLCWA does not support this change for the reasons set out above in response to consultation questions 2, 3, 4, 6 and 7.
	Enable extension of up to 1 year only	The WLCWA does not support this change for the reasons set out above in response to consultation questions 2,3 4, 6 and 7.
Protection order (time limited)	Protection order (transitional care) Protection order (transisition) Transitional care order	The wording 'transitional' assumes a child will be transitioned to long term or permanent care. This is not supported.The current wording of the time limited order is more accurate and reflects the status and

		purpose of the order. Change is not required.
	Reduce maximum period to 1 year Enable extension of up to 1 year if reunification still possible Total cumulative time in OOHC not to exceed 24 months	We do not support these changes for the reasons set out above in response to consultation questions 2,3 4, 6 and 7.
	Enable this cap to be exceeded if special circumstances exist and in child's best interests.	If a 24 month time frame is legislated there must be discretion for it to be extended. For example, the Children's Court must be given the discretion to extend the time frame in circumstances where the Court deems it does not have sufficient evidence to make a such a determination, other special circumstances exist and/or when it is not in the child's best interests.
Protection order (until 18 years)	Protection order (long term) CEO care order Care Order	The current wording is a more accurate description and reflects the status and purpose of the order. As such a change is not required.
	No substantive change. No chance of reunification and parental resposibility for child will not be returned to parents.	We do not agree with this statement as it does not allow for a change in circumstances and assumes that parents are not capable of rehabilitaion. We are aware of protection orders until 18 years being revoked. The reunification of a child with their parents should always be an option.
Protection order (special gaurdianship)	Protection order (parental responsibility)	The wording 'parental responsibility' could be considered more accurate. It is our experience the term 'special guardianship' is confusing for parents.
	Home for life (special guardianship) Permanent care order – Victoria	The wording 'parental resposibility' above is preferable to these 2 options.
	No substantive change. Parental responsibility transferred to carer as 'special guardian'.	Agreed.

10. Should the Act be strengthened to ensure that, before the Court makes a permanent order, it must be satisfied that the Aboriginal placement principle has been applied in the child's best interests?

Given the disproportionate number of Aboriginal and Torres Strait Islander children and young people in out of home care in this state and the lack of foster carers, it is relatively common

for Aboriginal and Torres Strait Islander children to be placed with non-ATSI families. It is our experience that many of the Aboriginal and Torres Strait Islander children placed with non-ATSI families are not maintaining appropriate family and cultural connections. With this in mind, we are also concerned about the frequency of Aboriginal and Torres Strait Islander relative forster carer assessments being returned as 'not suitable'.

In our view, the *Children and Community Services Act 2004 (WA)* should be strengthened to ensure the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) is correctly applied in all cases and to ensure that the DCPFS is accountable. As cited above, many of the Department's policies are written with value and importance but in our experience are not adhered to in practice. The WLCWA agrees with the submissions of the Secretariat of National Aboriginal and Islander Child Care (SNAICC) paper on the Aboriginal and Torres Strait Islander Child Placement Principle[12]. In particular, their concens of the limited understanding and only partial application of the ATSICPP in most Australian jursidictions[13]. The WLCWA shares the concerns of SNAICC about the application of the ATSICPP and the accountability and reporting of the DCPFS. The WLCWA endorse the SNAICC list of recommendations about the legislative and structural changes that are required to ensure compliance with the ATSICPP.[14]

RECOMMENDATIONS

Any legislative change to strengthen the ATSICPP will need to be supported by policy and practice improvements, increased resourcing, improved performance reporting and accountability to Aboriginal and Torres Strait Islander communities.[15]

11. Should the Department be required to demonstrate its application of the Aboriginal placement principle in the report it provides to the Court?

Yes.

12. Are there other options that should be explored?

We wholly endorse the comments of SNAICC that the ATSICPP is not simply about where or with whom a child is placed. Placement in out of home care is one of a range of interventions to protect Aboriginal and Torres Strait Islander children at risk of harm.[16] The WLCWA agrees with the aims of the ATSICPP to :-

1) Recognise and protect the rights of Aboriginal and Torres Strait Islander children, family members and communities.

2) Increase the level of self determination for Aboriginal and Torres Strait Islander people in child welfare matters.

[12] Tilbury, Clare, School of Human Services and Social Work, Griffith University - SNAICC on the ATSICPP: Aims and Core Elements, June 2013.
[13] Ibid at page 3.
[14] Ibid at page 9.
[15] Ibid at page 2.
[16] Ibid at page 3.

3) Reduce the disroportionate representation of Aboriginal and Torres Strait Islander children in the child protection system.[17]

The WLCWA also agrees with the SNAICC definitions and elements of the ATSICPP - prevention, partnership, placement, participation and connections.[18] The WLCWA endorses the SNAICC recommended mechanisms required to fully endorse each of the elements.[19]

RECOMMENDATIONS

DCPFS provide Aboriginal and Torres Strait Islander families with supports and programs that strengthen family and community capacity to care for their children, making a child or young persons removal from parental care the option of last resort.

DCPFS ensure that if an Aboriginal and Torres Strait Islander child or young person is in care, all efforts are directed towards ongoing family contact and timely and safe reunification.

13. Should the legislation set out an order of priority for orders which the Department and/or the Court must consider?

The WLCWA does not support this proposal. However, should an order of priority be introduced, WLCWA recommends the order set out below at Q14.

14. If so, what should the order of priority be?

The WLCWA does not support permanency over other types of care and protection orders. Children and young people remaining with their parents, for example under a supervision order should always be the first objective. Where this is not possible, and out of home care is required, children and young people should be placed with relative carers on a time limited order. Reunification with parents should be an option in all out of home care cases except in exceptional circumstances. All decisions should be based on the child's best interests.

Supervision Orders

It is our experience that supervision orders are an option rarely considered by DCPFS. We are aware of circumstances where it is appropriate to place a child or young person under a supervision order and where families are willing to consent to such an order but DCPFS has refused to consider this option. For example, because safety cannot be 'guaranteed'. A supervision order allows the child or young person to remain with the family. Under a supervision order DCPFS has unrestricted access to the child/young person. It is also an opportunity for DCPFS to effectively engage with families to reduce the need for ongoing care. A supervision order can be supported by a safety plan and departmental supervision. We believe the use of supervision orders is consistent with the objects of the Act.

RECOMMENDATIONS

Children and young people to remain with their parents and be supported by DCPFS to do so. Where out of home care is required children and young people be placed with a relative carer.

[17] Ibid at page 6.
[18] Ibid page 9.
[19] Ibid at page 8.

Where out of home care is required, DCPFS consider a supervision order with the goal of reunification as the first option for all families.

Any application for a protection and care order only be granted after all efforts to make a supervision order have failed. The Children's Court be provided with evidence of DCPFS efforts to engage with families in a way that supports the family and safety of the child or young person under a supervision order and the reasons why such an order is not appropriate in all the circumstances.

The permanent removal of a child or young person from their biological family should only be an option of last resort and after all available options have been adequately explored and demonstrated to the Children's Court.

15. Should the Act be amended to strengthen provisions for expeditiously dealing with protection proceedings? If so, how?

The WLCWA does not support this proposal. It is our concern that meeting imposed deadlines will be to the detriment of parents and grandparents and will likely have a disproprotionate impact on our clients. We are concerned this would result in parents not fully understanding their rights to negotiate, be legally represented and to be heard in Court.

We are also of the view the current Children's Court system does not have the required resources to deal with matters expeditiously. Legislating a requirement for expedition could restrict the Children's Court flexibility and decision making ability. All matters should be carefully considered and decisions made in the best interests of the child, not legislated time lines. The child protection system needs to be flexible to the needs of indivdual families. Many of the submissions set out above in response to consultation Q's 1 and 2 are also applicable here.

Unintended consequences

We are concerned the expedition of matters in the child protection system could increase the number of protection and care orders being made on an ex parte basis, (without the presence of one or both parents). We are aware that each year there are numerous protection and care orders made on an ex parte basis. This often means that orders are made without the parents knowing what they are required to do to enable contact or reunification with their children. Once an order has been made on an ex parte basis, it can be very difficult for parents and grandparents to engage with the DCPFS and have a positive working relationship.

RECOMMENDATIONS

All cases should be dealt with on a case by case basis, considering all the information and evidence available and decisions made in the best interests of the child.

DCPFS ensure that all parents are personally served wth a protection and care application and fully understand the implicaitons of the application and orders sought.

DCPFS and the Children's Court ensure parents are aware of their rights to negotiate and to legal representation and have an opportunity to have their say.

A review of the Children's Court care and protection matters be undertaken throughout 2016 in consultation with Court Judiciary, Court staff and Court user services.

16. Should the legislation be amended to indicate that the level of contact a child is to have with his/her birth family should reflect the priority of meeting permancy objectives?

The WLCWA does not support this proposal. We are aware that decisions around permanency are often made prematurely. We are concerned this would result in a reduction of contact between parents and their children or in some cases result in no contact. Restrictions in contact will lessen the prospect of reunificaiton as an option for families.

As set out above in the case example of 'Hillary' in response to consultation question 2, we are aware a lack of DCPFS resources and transport often impacts the level of contact between children and young people and their families. It is essential that resources are available to ensure children are able to maintain contact with their families and culture based on their best interests.

The proposed amendment does not allow for a change in a families circumstances. Once a decision about the level of contact is made, it would be difficult for a parent or grandparent to increase the contact. In our view, prescriptive rules about contact are inconsistent with the principle of the child's best interests as the paramount consideration.

RECOMMENDATION

Any decisions about the contact a child or young person has with their biological family should be based on the child's needs and be in the child's best interests.

A lack of transport and resources should not be an acceptable excuse for the frequency of contact between a child and young person and their family.

Resources need to be made available to ensure children and young people are able to maintain contact with their families.

Conclusion

The WLCWA maintains serious concerns about the practical implications of the proposed legislative amendments and the serious consequences for our clients. We consider that further discussion and consultation is required prior to the introduction of the proposed legislation.

If you require any further information or wish to discuss, please do not hesitate to contact the writer on 9272 8855.

Yours sincerely,

Lesley Kirkwood
Managing Solicitor
WOMEN'S LAW CENTRE OF WA INC

ATT: List of recommendations and references

LIST OF RECOMMENDATIONS

1. **Should the underpinning principles of the Act give more emphasis to the importance of permanency of care for a child in out of home care?**

   The permanent removal of a child or young person from their biological family should only be an option of last resort and as such the principle of permanency should not be given more emphasis in the underpinning principles of the *Children and Community Services WA* 2004 Act.

   In the event legislative amendments are made to support permanency planning, the first objective should be 'that children and young people are restored into the care of their parents wherever possible and in the child's best interests'.

   There will also need to be a significant increase to the training, resources and funding of DCPFS staff, foster care agencies, other legal and non-legal support agencies and the Children's Court.

   Resources and funding be invested in early intervention and prevention strategies, reunification services and support provided to families.

2. **Should the maximum period for a Supervision Order be reduced from 24 months to 12 months, with the possibility of up to a further 12 month extension?**

   All decisions should be made on a case by case basis, based on the best interests of the child. We do not support the reduction of time frames or the introductions of time limits.

   We recommend that parents and grandparents have input into what is required of them and the time frames for completion, especially for clients living in rural, regional and remote areas, Aboriginal and Torres Strait Islander clients and women in prison.

   If any time frames are reduced or introduced, we strongly support legislation providing the Children's Court with the discretion to extend the time frame in circumstances where the Court deems it does not have sufficient evidence to make such a determination and/or when it is not in the child's best interests.

5. **Should criteria for an extension be linked to circumstances where the Court is satisfied that reunification is viable and progressing?**

   All decisions should be made on a case by case basis, based on the best interests of the child. An extension should be granted if special circumstances exist and if it is considered to be in the best interests of the child.

   The Children's Court should have discretion to extend an order in circumstances where the Court deems it does not have sufficient evidence to make a determination and/or when it is not in the child's best interests.

10. Should the Act be strengthened to ensure that, before the Court makes a permanent order, it must be satisfied that the Aboriginal placement principle has been applied in the child's best interests?

Any legislative change to strengthen the ATSICPP will need to be supported by policy and practice improvements, increased resourcing, improved performance reporting and accountability to Aboriginal and Torres Strait Islander communities.

12. Are there other options that should be explored?

DCPFS provide Aboriginal and Torres Strait Islander families with supports and programs that strengthen family and community capacity to care for their children, making a child or young persons removal from parental care the option of last resort.

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The permanent removal of a child or young person from their biological family should only be an option of last resort and after all available options have been adequately explored.

15. Should the Act be amended to strengthen provisions for expeditiously dealing with protection proceedings? If so, how?

All cases should be dealt with on a case by case basis, considering all the information and evidence available and decisions made in the best interests of the child.

A review of the Children's Court care and protection matters be undertaken throughout 2016 in consultation with Court Judiciary, Court staff and Court user services.

16. Should the legislation be amended to indicate that the level of contact a child is to have with his/her birth family should reflect the priority of meeting permancy objectives?

Any decisions about the contact a child or young person has with their biological family should be based on the child's needs and be in the child's best interests.

List of references

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- DCPFS Annual report 2014-2015, pages 28 and 44.
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- Ombudsman, Western Australia *'Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities'* 19 November 2015.
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