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Care and Protection of Children Amendment Bill 2019

Danila Dilba Health Service

Submission to Economic Policy Scrutiny Committee

17 April 2019

Contents

Executive Summary

1. In the interests of promoting the welfare of indigenous children, Danila Dilba welcomes these amendments which represent the first step in what is a wider reform of Care and Protection in the Northern Territory. These amendments represent the start of a shift away from the current crisis driven, reactive regime to a proactive, culturally appropriate framework which places families and kinship groups at the centre of decision making about our children.

Recommendations

2. Danila Dilba Health Service recommends the following:

    1) That all of the amending and inserting provisions of this Bill be adopted

2) That the Northern Territory Government commit to continuing the reform in Care and Protection and Youth Justice by addressing the issues raised in this submission in the next round of reform, the "Singe Act" for Children.

Background

The role of Danila Dilba in Care and Protection

3. DDHS is an Aboriginal community controlled comprehensive primary health care service offering a wide range of health and related services to Aboriginal people in the Greater Darwin Region. Comprehensive primary health care encompasses the range of health care generally offered by general practice but extends beyond that to provide:

- Primary health care clinics for children, youth, women and men
- Specialist and allied health professionals
- Health promotion to help people get more control over their health
- Care coordination for clients with complex health needs
- Social and emotional wellbeing services
- Drug and alcohol services
- Outreach services to clients
- Support services for young people including young people at Don Dale
- Family support and strengthening through the Australian Nurse Family Partnership Program.

4. DDHS is one of the providers of the Australian Nurse Partnership Program which facilitates nurse visits for women during their pregnancy and throughout the first two years of their children's lives. This program would be considered a targeted universal public health initiative (universal to all first time mothers pregnant with an Aboriginal baby) which promotes well being of all mothers and babies and allows the identification and facilitation of supports needed for early intervention to protect the wellbeing and development of children. Danila Dilba is also in contract negotiations with Territory Families (**TF**) to commence a new Early Intervention Family Support Service under a service design developed by the Aboriginal Medical Services Alliance of the NT in collaboration with Territory Families.

5. DDHS advocates for evidence based, public health focused outcomes for Aboriginal and Torres-Strait Islander Australians, both within primary health care, determinants of health

and extending into the well being of children and young people through Youth Justice and Care and Protection.

Legislative Amendment Advisory Committee (LAAC)

6. The NTG has stated its commitment to co-design, stating that "*given that Aboriginal children are over-represented in the child protection and youth justice systems, Aboriginal people, communities and organisations will have a central role in shaping the design and delivery of local reforms*."[1]

7. We believe that Aboriginal people and organisations must be central in the design of new legislation in the key areas of Youth Justice, Care and Protection due to the over representation of our communities in both these systems.

8. We have played a key role in legislative reform, and have been an active member of the LAAC since its creation in 2017. The key role of LAAC is to assist government in the identification of legislative solutions to support policy and system reforms to the youth justice and care and protection systems.

9. We note our support for the co-design process the by this Bill was developed. We were grateful for the opportunity to provide feedback regarding earlier proposals through the Legislative Amendment Advisory Committee (**LAAC**).

Care and Protection in the Northern Territory

10. The Royal Commission into the Protection and Detention of Children correctly recognised that the welfare of children in the Northern Territory is impacted upon by a 'complex layering of pervasive disadvantage, poverty, overcrowding, poor parenting, mental health issues, substance misuse and family and community violence.'[2]

11. Aboriginal children are further disadvantaged by the intergenerational trauma and erosion of culture caused by the policies and practices of previous governments and Non-Government Organisations (NGOs), even the good intentioned actions of those NGOs.[3]

12. We recognise that further substantive changes to law and policy are intended to form a part of the wholesale reform (**Single Act for Children**), throughout this submission we recommend ways in which this Bill could be amended to better meet the particular needs of young people coming into the care and protection system.

[1] Safe, Thriving and Connected, p 5.
[2] Royal Commission Final Report, Volume 3A, 197.
[3] Ibid.

Part A – Support for provisions of the *Care and Protection of Children Amendment Bill 2019*

Section 8 - Higher threshold to be met before a child is removed

Supported

13. We strongly support the amendment to Section 8(3) which adopts the stricter test of 'unacceptable risk' of harm when assessing whether a child may be removed from their family.

Rationale

14. By adopting this change, the Northern Territory has aligned this provision with the test applied in other Australian jurisdictions, notably Victoria, with similar provisions in Queensland and interpretations in New South Wales.[4] While we note that the application of this provision differs from the other states in that it is not a consideration when making a determination about the best interests of the child, we believe the courts will not read down the strength of this provision and its meaning.

15. As acknowledged in the explanatory statement, this provision reinforces the role of the family as the primary unit responsible for the care and protection of children. There is a significant body of research which shows that the removal of a child from their family can lead to worse outcomes even where the child's welfare is currently at risk or diminished.[5] It is important to note that this principle cannot operate in a vacuum. While some of the further amendments address this issue, Territory Families will need to support and facilitate the provision of services to assist parents and families to better care for their children in culturally appropriate ways. We submit that only then will these changes have their intended affect.

Section 10 – Determining the Best Interests of the Child

Supported

16. We support the insertion of subsection (2)(ca),(cb) and (ha) which requires that:

- when a decision is made in the best interest of a child, that decision should consider the need to strengthen, preserve and promote positive relationships between the child and the child's family and broader kinship group;
- where a child has been removed that all possibilities related to reunifying the child with their parents are considered;
- the right of an Aboriginal child to enjoy aboriginal culture and tradition of the child's family and community including the need to maintain ongoing contact with the child's family and connection to country and language

[4] *s10(3)(g) Children, Youth and Families Act 2005* (VIC), *Children and Young Persons (Care and Protection) Act 1998* (NSW)

[5] *The Family Matters Report: Measuring Trends to Turn the Tide on Aboriginal and Torres Strait Islander Child Safety and Removal* (9 November 2016) p8.

Rationale

17. Human rights principles provide that all efforts should be made to keep children and young people living with their parents where appropriate, and that where a child is removed, safe reunification should always be preferred. The United Nations Guidelines for the Alternative Care of Children emphasises the importance of family,[6] and the principle that removing a child should be a measure of last resort and should be for the shortest time possible.[7]

18. These guidelines state that reunification should not only be conceived in legislation but also supported by relevant policies and procedures as a gradual and supervised process, accompanied by follow-up and support measures that take account of the child's age, needs and evolving capacities, as well as the cause of the removal.[8]

19. Considering that the time-frames for reunification depend on the availability of reunification and support services we call on Territory Families to properly fund these services to ensure compliance with these new provisions.

20. Furthermore, we ask that Territory Families publish data on the number, rate and success of reunifications taking place under this new framework to ensure transparency and accountability on these new measures.

21. We note that concerns were raised in the Royal Commission surrounding the understanding of the reunification process by parents and other interested parties.[9] While we laud the efforts in other sections of these amendments to improve the dialogue with parents, kin and community of the child, there aren't specific requirements for TF to communicate and consult over the reunification processes with the parent or previous care giver. We note the new requirements for Car Plans do go some way to addressing Royal Commission recommendation 33.2 but note that dialogue specifically regarding reunification plans is no longer the focus of the reform in that section.

22. In regards to the consideration of an Aboriginal child's connection, to culture, country and kin, we submit that it is important for both the welfare of the individual child and the Aboriginal community as a whole that where an Aboriginal child has been placed in care that the child is able to travel back to country for cultural ceremonies like, for example, Sorry Business and men's initiation ceremonies.

Section 10A - least Intrusive Intervention Principle

Supported

23. DDHS supports the insertion of s10A to require that any decision made concerning a child under the legislation be the least intrusive intervention in the child's life consonant with the best interests of the child.

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[6] United Nations Guidelines for the Alternative Care of Children, A/RES/64/142, 24 February 2010, [3].
[7] United Nations Guidelines for the Alternative Care of Children, A/RES/64/142, 24 February 2010, [14].
[8] Ibid, [52].
[9] Royal Commission, Vol 3A, 390.

Rationale

24. The Royal Commission recommended (34.1) that the least intrusive intervention principle be embedded in sections 121 and 129 and we welcome the expansion of the principle to all decisions involving an intervention in the life of a child.[10]

25. Requiring the least intrusive intervention reduces the risks to the long term wellbeing and development of the child. The long term welfare and development of the child will be enhanced if childhood trauma from separation from family, kin and culture can be avoided and the Aboriginal Child Placement Principles followed.[11]

Section 12 – Allows an Aboriginal Child to Nominate a Kinship Carer

Supported

26. We support the amendment to section 12 which would give an Aboriginal child, in addition to the child's family, the right to nominate a kinship group, representative organisations or community of Aboriginal people to participate in decision making about them.

Rationale

27. The Royal Commission highlighted that children's participation in decision making was limited and that children felt they were not consulted in decisions regarding their care.[12] At the most fundamental level, allowing the child to nominate the family or kin group that can be involved in decisions about them will assist case-workers to understand who, in the child's culture, is a figure of parental responsibility.

28. Nonetheless, DDHS advocates for Aboriginal Community Controlled Organisations to be given the opportunity to take a greater role in the provision of services to provide support for Aboriginal children and their families. An Aboriginal Child Care Agency (ACCA) would have the expertise, cultural awareness and networks to assess and engage with kinship carers as well as help explain to families why children protection caseworkers have become involved with a family,

Section 42 – Empower the CEO to provide and facilitate support services and Family Led Decision Making

Supported, with request for further amendments

29. We strongly support the amendments to Section 42(1),(2) which empower the CEO to provide and, importantly, facilitate the provision of services to children, their families and communities aimed at promoting the safety, wellbeing and development of the child.

30. We also support the introduction of s 42(3) which places greater onus on the CEO to provide preventative services and services for those identified as being at risk. We do note however, that the word 'reasonable', in 'reasonable steps to ensure services' is not as high a threshold

[10] Royal Commission Vol, 3A, 489.
[11] Klevens, J and Whitaker, D (2007) 'Primary prevention of child physical abuse and neglect: Gaps and promising directions'. Child Maltreatment: *Australian Institute of Family Studies*, 12, 364–377.
[12] Royal Commission Vol 3A, 385.

as 'all steps necessary' which was the wording preferred by DDHS, Legal Aid and NAAJA in the LAAC.

31. We support the introduction of s 42(4), however, again we would have preferred a stricter threshold be applied than 'reasonable steps' in terms of ensuring that all services provided under the Act:

- Involve meaningful engagement with families in a language they understand and in a manner they understand (for example, by providing an interpreter); and
- are culturally responsive
- involve a holistic assessment of children and families to ascertain risk factors in order to enable tailored supports and services to be provided; and
- promote decision making processes that:
    - seek to empower and strengthen families to make decisions for their families; and
    - Actively involve:
        - Children; and
        - Parents, family members and members of the relevant kinship group; and
    - Are developed with regard to age, maturity, health, cognitive ability and cultural background of the children involved.

Rationale

32. We support these amendments as they follow good Public Health principles. Investing in services, ideally provided through Aboriginal organisations and culturally appropriate providers, is the most efficacious way to enhance the wellbeing and development of Aboriginal children in the Northern Territory. Furthermore, investment in these initiatives is a preventative measure which reduces the harm and costs associated with greater involvement in the 'reactive' child protection system.

33. The Public Health Model for child welfare can be broadly split into 3 stages, the Primary/Universal Intervention, the Secondary/Targeted Intervention and finally the Tertiary intervention where harm has already occurred to the child.[13]

34. There is a growing evidence base that early childhood Universal and Targeted programs improve outcomes for children, they're also far more cost effective than the reactive, Tertiary stage. For example, research into the cost-effectiveness of early intervention programs has shown that $1 spent early in life, can save $17 by the time a child reaches mid-life in regards to the child's interaction with the tertiary stage of child protection systems.[14]

35. We submit to the Economic Policy Scrutiny Committee that giving the CEO the authority to facilitate services aimed at prevention and support the welfare of children is money well spent.

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[13] Kathryn Goldsworthy, 'Defining the public health model for the child welfare services context', CFCA Resource Sheet, Australian Institute of Family Studies (December 2014).

[14] Blakester, A. (2006). Practical child abuse and neglect prevention: A community responsibility and professional partnership. Child Abuse Prevention Newsletter, 14(2).

36. We hope that the term 'reasonable' does not allow the CEO to underfund key programs or avoid the requirements for programs to be culturally responsive, run in language, and involve holistic assessments.

37. The Royal Commission noted the need for more assessments to be undertaken, particularly the adequate funding of FASD assessments, recognising the unique needs that children suffering from these disorder are likely to face.

38. We note that there is much more work to be done in establishing and embedding family and community led decision making at the centre of care and protection processes. Danila Dilba believes that mandated family group conferencing mechanisms are the appropriate way to pursue such decision making. We note that some preliminary work has commenced in the development of family and community led decision making. We look forward to working within the LAAC on this framework within the Single Act for Children.

Sections 70, 71,72A, 74, 76 –Care Plan requirements

Supported

39. We support the new requirements in s70 that care plans be written in clear and plain language ((2)(aa)) and that they include the cultural needs of the child ((2)(a)). We further support the inclusion of reunification plans in the Care Plan where that has been found to be in the best interests of the child ((2)(d)). We further support requiring care plans take into account the needs of children leaving care at maturity including financial assistance in the transition ((3)(a),(b), (4)). Finally, for Aboriginal children, the requirement for the plan to maintain and develop the child's Aboriginal Identity and encourage a connection to culture, tradition, language and country.

40. We support the insertion of s72A which encourages and facilitates the participation of the child, each parent of the child, appropriate kin and the use of interpreters in the creation and modification of any Care Plan.

41. We support the amended s73(3) which requires the CEO to provide assistance to a person given a care plan to understand the contents of the plan.

42. We support the amended s74 which requires the Care Plan to be reviewed if a significant medical diagnosis for the child is made and that the same beneficial participation is facilitated as in the preparation and modification of those plans. We were disappointed that there was not another trigger for the review of the plan which had been agreed upon at the LAAC, which was where there had been a substantial change in the living arrangements of the person caring for the child.

43. We support the amendments to bring the requirements for the preparation of interim care plans into line with the other provisions.

Rationale

44. We note the following point made in the Royal Commission that decision making needs to:

recognise and promote the needs of the child and actively engages the child and their family in decision-making are required throughout all aspects of out of home care. They include the period when the child is being removed from home; while exploring reunification; when the

child is living in long-term out of home care; and when a young person is preparing to leave long-term care having reached adulthood.

45. We appreciate that these reforms attempt to resolve the issues raised around key parties not understanding the content of the care plans through the use of appropriate language both in the care plan and in the explanation of the Care Plan to the relevant parties. We note the use of translators to achieve this is line with Royal Commission recommendation 33.2.[15] The involvement and participation of the child, their relevant family, kin and carer is the key to the success of the Care Plan and the welfare of the child.

46. While that is so, the Royal Commission revealed the instability of placements for children in out of home care, it is in the interests of the child for the Care Plan to be reviewed when a placement is changed. The Royal Commission noted that 34% of Children in care in 2017 had been through between 3 and 6 placements. Therefore, the trigger for review at placement change should be added in for the next round of reform.

47. The Royal Commission found that in the past, Care Plans were often poorly drafted, not completed and in some cases not given to the person who was to care for the child.[16] We note that this was occurring in contravention of the provisions of this Act at the time and request that Territory Families properly implement these changes into internal policy to ensure its own compliance but most importantly, that the welfare of the children for whom it is responsible are protected.

Section 85A – Transition to Independence

Supported

48. We support the insertion of this new division which empowers the CEO to assist young people in care as they transition to independence by providing the necessary assistance to young people to empower them to lead a fulfilling and happy life.

Rationale

49. Considering the current crisis of youth suicide, especially amongst our Aboriginal communities,[17] reforms which help to ease the transition and make youth in the care of the CEO feel supported both financially and in terms of social, emotional wellbeing is a positive change. The alleviation of issues surrounding the process of children leaving and preparing to leave care will also have mental health benefits for young people in the Norther Territory.

[15] Royal Commission, Vol 3A, 391.
[16] Royal Commission, Vol 3A 380.
[17] Brooke Fryer, 'Indigenous youth suicide at crisis point' NITV (15 Jan 2019) https://www.sbs.com.au/nitv/article/2019/01/15/indigenous-youth-suicide-crisis-point

Sections 104A, 106 – Notice of Application, Notice of Order – Temporary Protection Order

Supported

50. DDHS supports the additional requirements in s104A for the CEO to give each parent and carer of the child notice of the application of a court order 'as soon as practicable' after applying for the order and before the application is heard in court.

51. DDHS supports the requirements to explain the notice, where practicable, in language as created in s106(2A).

Rationale

52. Child protection systems require trust to be built between the agency (Territory Families), its workers, parents and their children. When communication between all parties is poor or non-existent, this requisite trust is eroded and both the children and their parents suffer. It is fundamentally important that parents receive notice when the CEO has made an application for a protection order. The requirement to explain the personally served application on each parent and the carer in the preferred language of the person was recommendation 34.15 the Royal Commission.

53. We note the experience from the Royal Commission that even where parents are given prior notice of a temporary protection order application, it may be difficult for them to seek legal advice or obtain representation in temporary protection order proceedings.[18] That is because: the notice given is often very short and given without an interpreter, and where legal advice is able to be given, it is usually limited by time pressures and/or by funding constraints.

54. We therefore submit that not only is notice required but, as with other provisions amended in this bill, care should be taken to ensure that the notice is understood in a language the parents understand.

Section 122 – Interim Care Plan Required before Application is made

Supported

55. DDHS supports the requirements placed on TF to prepare Care Plans and Interim Care Plans before an order is made as per s 122(2),(3).

Rationale

56. As discussed earlier, this provision will ensure that the court has a complete and comprehensive care plan associated with any application for a protection order. This provides an additional layer of oversight and accountability to ensure that Care Plans are being completed and avoid the long standing issue of incomplete Care Plans.

[18] Royal Commission, Vol 3A 505.

Supported Reforms

57. The following is a list of Reforms which embed the changes made in other discussed provisions:

Section	DDHS Submission	Opinion
Section 121- CEO to make least intrusive order	***Supported***	See above in discussion of Inserted Section 10A.
Section 123 – Court can order supervision of CEO	***Supported***	We support subjecting the CEO to the same level of accountability as that which is currently expected of vulnerable families in the NT.
Section 124 – Notice of Application	***Supported***	See the discussion of the new notice requirements in section104A.
Section 128 – Order of Court (Requirement to hear submissions)	***Supported***	No comment
Section 129 – When a court must make an order (Least intrusive)	***Supported***	See above in discussion of Inserted Section 10A.
Section 130 – Court to consider certain matters	***Supported***	We support the change to allow the 'Whole of Government' response to child welfare to be considered when the court is making a decision. We support the changes which make the court consider other family and Kinship before other carers before other carers in line with the Aboriginal Child Placement Principle. We support the requirements being tightened around care plans and refer to our previous discussion on that issue.
Section 137 – Variation and revocation of orders	***Supported***	Technical amendments are supported
Section 137C – Notice of application	***Supported***	Mirroring the changes to notification requirements amended in section 124.
Section 139 – Supervision Directions require a hearing	***Supported***	Technical amendments regarding the requirement for a hearing.

Part B – Further Reforms

We note there is still much work to be done, that legislative changes alone will not solve, for example, the shortage of Aboriginal foster and kinship carers.

Further steps need to be taken to:

- Develop and implement a holistic assessment tool for all children entering the child protection system;
- Develop and fund supports for parents and families to assist them to be able to resume the care of their children;
- Improve identification and assessment of Aboriginal foster and kinship carers;
- Improve support for the involvement of Aboriginal families and communities in decision-making about their children;
- Fund and expand cultural care planning and support for ongoing connection to culture;
- Track and report on measurement of compliance with the Aboriginal Child Placement Principle;
- Embed and appropriately fund family led decision making, through Family Group Conferencing, to involve Aboriginal families in decisions made about their children.
- Begin a transition to Aboriginal Child Care Agencies taking a stronger role in the care and protection assessments and placements of Aboriginal Children.