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Dear Dr Buckley

CARE AND PROTECTION OF CHILDREN Bill 2018

Law Society Northern Territory (**Society**) appreciates the opportunity to provide a submission about the *Care and Protection of Children Bill 2019* (**Bill**).

Summary

The Society is highly supportive of the amendments outlined in the Bill and notes that the relevant issues have been articulated and the need for change has been appropriately highlighted by the Final Report of the Royal Commission in the Protection and Detention of Children in the Northern Territory[1] (**Royal Commission**). The Bill seeks to partly implement the recommendations of the Royal Commission (**Royal Commission Recommendations**) that relate to the care and protection of children.

Recommendations

Subject to clarification around the role of the Carer, the Society recommends that the Bill should be passed in its current form.

Discussion

The Society does not attempt to respond to each individual amendment. Instead, we focus the overall impact of the amendments and raise a question in relation to the role of a Carer.

Early intervention and support

The Society strongly supports the increased focus on early intervention assessment and support so that children, young people and their families thrive in supportive communities. This innovated approach promotes a public health model to the care and protection of children. The amendments provide an opportunity for families to have meaningful input, promote procedural fairness and encourage families to participate in the court process. The amendments make clear that priority is placed on having universal supports available for all families with more intensive prevention interventions provided to those families that need additional assistance with a focus on early intervention. These amendments provide for a different approach with a greater emphasis on assisting families early enough to prevent

[1] https://www.royalcommission.gov.au/royal-commission-detention-and-protection-children-northern-territory

abuse and neglect occurring. The Society sees these amendments as a positive step to help reduce the overrepresentation of Aboriginal children in the child protection system. Where a child does become in need of protection, the amendments prescribe for the least intrusive intervention.

Meaningful participation

The Society submits that action to improve the quality of representation of and capacity for meaningful participation by children and young people in the child protection system, especially Aboriginal children and young people, is to be welcomed.

This approach is in line with the Royal Commission Recommendations that the child protection system be focused on prevention and early intervention to enhance a child's wellbeing and development, to better protect them from harm, to keep families and communities together, and to ensure fewer children are subject to care orders.

Preserving connection

The Society supports the attention to and investment in culturally targeted early intervention.

The amendments effectively expand the practical application of the *Aboriginal and Torres Strait Islander Child Placement Principle*[2] (Principle). The Principle *was* developed by grassroots organisations and adopted nationally as part of the *National Framework for Protecting Australia's Children*[3]. The key purpose of the Principle include preserving Aboriginal children's connection to family and community and sense of identity and culture and enabling participation of Aboriginal and Torres Strait Islander families in child protection decision making. However, only 67 per cent of Aboriginal and Torres Strait Islander children in child protection are placed with their family, kin and community, indicating 'a failure to comply with these elements'[4]. The amendments place a positive obligation on the CEO to explore kinship care arrangements for the child.

Role of the carer

1. Section 104A (1) provides that the CEO must take steps to give each parent **and the carer** of the child notice of the application.
2. Section 124 provides that the CEO must give to each parent **and the carer** of the child a copy of the application.

This inclusion of the carers in the service of application documents is new. The current Act sets out at section 125 who are parties to proceedings. Carers are not parties to the proceedings. Additionally section 97 of the current Act restricts publication of reports of the court proceedings or the results of same. The court sits as a closed court and access to any persons who are not parties or legal representatives is controlled and monitored by the court. The material filed in the court is extremely confidential and sensitive. That is why the Act protects that information.

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[2] https://aifs.gov.au/cfca/publications/enhancing-implementation-aboriginal-and-torres-strait-islander-child/aboriginal-and

[3] https://www.dss.gov.au/our-responsibilities/families-and-children/publications-articles/protecting-children-is-everyones-business

[4] Secretariat of National Aboriginal and Islander Child Care, University of Melbourne, Griffith University and Save the Children Australia, *Family Matters Report 2016* (2016) 42 <http://www.familymatters.org.au/wp-content/uploads/2016/12/Family_Matters_Report_2016.pdf>; Productivity Commission, *Report on Government Services 2018,* Part F Chapter 16.

While it is understandable that a carer be given notice of an application the same cannot be said for serving the court documents on them. The information in the application and supporting affidavit often contains significant allegations against the parents and until the matter goes to hearing, that evidence is not tested. Additional material is often filed with the application and affidavit in these matters, being medical reports in relation to either the child or the parents, expert reports and police material. Much of this source material is confidential and has caveats that it is not to be released to any other parties. As matters progress through the court additional material can be filed and this also contains sensitive information.

Is it the intention of the Bill that the carers automatically become parties, despite section 125 of the Act and are they then expected to participate in the proceedings and file material? In view of the previous comments it is inappropriate for the legislation to mandate that the court documents be given to people who are not parties to the proceedings. There are Practice Directions in relation to the steps that must be taken by a party to the proceedings once they are served with an application. Given that carers are not parties to the proceedings there is no reason why they should be served with the court documents, and in fact there are reasons why they should not be served.

Provision of the court documents to the carers also has the potential to create division as between the carers and the family of the child of children. We do not understand why the Act would be amended to include the carers and the extrinsic materials do not give any explanation. The inclusion of the carers as set out above is effectively releasing sensitive and confidential information to non-parties, likely to cause confusion as to their role in the proceedings and does not appear to serve any purpose.

Should you have any queries in relation to this response, please do not hesitate to contact me.

Yours faithfully

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