

- Keeping them home -
Safeguarding children's well-being by strengthening families

Proposed NT Therapeutic Care Court Model

- Jaquie Palavra, NT Legal Aid Commission, Darwin -

Goals

Keeping children safe and helping them achieve their full potential through:

- ❖ Engagement
- ❖ Education
- ❖ Accountability
- ❖ Empowerment
- ❖ Respect
- ❖ Proactive / solution based approach
- ❖ Setting families up to succeed
- ❖ Reunification of children

Purpose

To keep children safe with family who will help them reach their full potential.

The Problem

Early intervention programmes and return of children to families during or post statutory intervention do not always succeed in keeping children safe, at home and connected with family, culture and country.

Intergenerational trauma, poverty, homelessness, violence, alcohol and drug addiction, poor physical and mental health impact parenting capacity and increase the risk of harm to and/or, neglect of children.

Often the solution has been reactive – to remove or keep children in out of home care ('oohc') when 'early intervention' or 'reunification' attempts have failed, if indeed even considered.

While these can be attributed to a number of factors, including shortfalls in Territory Families implementing early intervention or reunification programmes, the inability of families to provide a safe and nurturing environment, lack of parental insight, understanding, capacity and willingness to engage and address care and protection concerns are significant contributors.

The cost to the children and the community is immense.

Once a child protection history is established, often other children born of the same parent/s meet a similar fate - removal (sometimes at birth) and placement in oohc. This may, or may not be in the child's best interests or an assurance of safety and nurturance in order to reach their full potential.

Systematic failures over the years in each state and territory have been well documented by the myriad of Royal Commissions or Inquiries into child protection systems and implementation of reforms. The most striking and forward thinking reforms have been in Queensland, with the establishment of the Office of the Director of Child Protection Litigation (ODCPL) and the Office of the Child and Family Official Solicitor (OCFOS). The ODCPL makes the application for child protection orders and the OCFOS provide legal advice and assistance to the child protection department to improve the quality of evidence and prepare

LEGISLATIVE ASSEMBLY OF THE NT
TABLED DOCUMENTS

Committee:
Paper No: Date: 21/5/2019
Tabled By: Jaquie Palavra, NT Legal Aid Commission
Signed:
JP

the referral to the ODCPL (effectively removing the department from the litigation role). This is in contrast to other jurisdictions where the department is the applicant and child's caseworker is directly involved in the litigation process (eg. drafting affidavits) while at the same time working with the child and their family on a therapeutic level.

A different paradigm is needed in the NT, where cultural considerations, particularly traditional child rearing practices, are significant features coupled with the disproportionate amount of Indigenous children in care as highlighted in the Royal Commission for the Protection and Detention of Children and Young Persons.

The underlying principles in each state and territory child welfare jurisdiction focus on the child's best interests, their rights and safety. Often, when an application for a child protection order is filed in court, parents find themselves defending or responding to these applications from a position of significant disadvantage, if they are able to engage at all due to remoteness, disadvantage, poverty, language barriers, poor mental health, drug and alcohol addiction, PTSD or exposure to domestic and family violence.

The current (and highly adversarial) practice in the NT has evolved to a point where there is almost an implied presumption that once a child has been removed from their family (either under a temporary, interim or final Child Protection Order), they are (or continue to be) in need of care and protection unless the family can persuade the Court (or TF) otherwise. This is evidenced by the cautionary approach taken by the Court where temporary or interim daily care and control orders are usually made. Once these orders are made, they are extremely difficult to reverse, require the making of a formal application by the family to the Court and, to a large extent, determine the course of the matter. This may have a deleterious effect not only on the child but also on the family who may lose financial support including their accommodation, making it difficult for the child to return home.

The grounds for the intervention are largely based on a summary of information/evidence contained initially only in an Originating Application filed by TF. These grounds on occasions, may be entangled with biased conclusions or arguable assessments made by caseworkers with limited experience, often relying on historical records, fragmented information obtained from other agencies, notifiers or from the subject children themselves, which caseworkers often take at face value, depending on their level of experience in working with children. The parents/caregivers are mandated pursuant to the Court's Practice Direction to file a Response within 14 days setting out what is admitted, not admitted, disputed or denied and details of 'orders' they seek. Affidavits are generally filed at a later stage in the process.

Once court proceedings are initiated, the matter proceeds on an adversarial basis. Parties are required to comply with the Local Court Rules in addition to Practice Directions of the Court for the filing of pleadings, affidavits and interlocutory applications prior to a formal hearing of the matter and testing of the evidence ...if parents can even stay the course.

A way forward and out of the vortex

Engage parents/family/kin

Parental consultants/caseworkers – (similar to the historical Family Court family [indigenous] consultants), to assist in determining capacity for parental engagement, location of other family or kin and possible litigation guardians or intervenors (an ACCA - Aboriginal Child Care Agency type organisation) and referral to legal services. All this is currently being done by TF.

Therapeutic Care Court programme

Originating Application to detail not only the legal and factual basis of why a child protection order is being sought but also:

- the child's characteristics (age & development), needs and place in the wider family;
- reasons why their needs are not being met and evidence of the impact of this on the child;
- what parents/family or kin need to do to address these needs;
- what's available to assist them in meeting these needs;
- strengths of the parents/child's wider family or community and how these can be deployed/enhanced to ensure the return of the child to family;
- using language that is not inflammatory and accusatory of parent's conduct;¹
- Reunification and Contact Plan during the length of the order setting out milestones achievements required of the parents/family/kin;

Opt-in or Court ordered

1. **Identification** of factors impacting on parents' capacity and willingness to care and protect their children (ideally court clinicians who are qualified social workers/psychologists eg. Vic & NSW) – after securing legal advice and representation and completion of a Parental Questionnaire (to be completed with assistance of legal representatives).

Role for children representatives (only where parents found not suitable or exited from programme or at the discretion of the Court).

2. **Assessment** of suitability to participate and entry into the programme:

- Court (court clinicians, Judicial Registrar, or Judge) either on own motion or upon application by parties, parental consultants or NGO's engaging with family;
- Qualifying criteria (eg. acceptance of responsibility or contribution to factors leading to the intervention – whether knowingly or beyond their control but acknowledgement of their circumstances and need to engage to address parenting shortfalls, demonstrate a willingness to be assessed and enter/stay the course of any proposed residential & non-residential rehabilitation or education programmes).
- Mandatory inclusion into the programme in certain circumstances (eg. young parents)
- Exclusion from programme (eg. where parents have no capacity requiring appointment of a litigation guardian or become itinerant and disengage)
- Inclusion of potential kinship carers into the programme.

3. **Parental and programme education**

- Compulsory [Aboriginal Building Connections](#) type education – prisons, rehabs, Aboriginal/community/rural/regional and urban health care centres, Centrelink referrals.

4. **Programme entry – Parental/Family Contracts**

Entry and parental contracts to involve and engage with:

¹ Whilst it is an emotive and sensitive topic for many practitioners and caseworkers, it is important that a level of objectivity and impartiality be maintained. This includes the language that is used in applications, which can sometimes be vague, based on hearsay that is later proved to have been misconceived and foster an attitude of defensiveness from parents, which prevents them from developing a relationship of trust and working cooperatively with Territory Families to address protective concerns.

- AOD assessment & rehab
- DV counselling/perpetrators courses
- Residential assessment
- Parenting programmes
- Cognitive Behaviour Therapy
- Mental health plans
- Emergency & medium term accommodation solutions
- Input into educational programme for the child such as boarding schools
- Contact/reunification plan
- Volunteer work – whilst in residential facility
- Playgroups
- Father's as parents groups
- NGO & elder/carer role modelling/mentoring in –situ
- Nutrition classes, gardening classes and budgeting classes
- Behaviour change programmes, anger management, grief and trauma counselling
- Transitional and permanent housing with ongoing casework support from caseworkers that families have developed a trusting, therapeutic relationship with
- Peer / community/elder assessment & accountability to them about insights and progress.

Engagement in/with remote communities

- Health Services – (who already work significantly with children and parents).
- Remote video link-up as they do with the Mental Health Review Tribunal.
- Funding for and admissions to residential rehabilitation programmes – eg. Milliya Rumurra² (W.A. drug & alcohol rehab)/ extension of [CAAPS programme](#) – parents come to Darwin – which address issues relating to alcohol, drugs and domestic violence through trauma counselling and cognitive behaviour therapy, have parenting courses on-site, provide 1-on-1 parental role modelling & playgroups, have regular contact with the children, and provide family counselling. Essentially providing holistic support, rehabilitation and education services to support the family unit and keep children with their family during the parental strengthening process). This is particularly important for parents with a cognitive/ intellectual disability that prevents their ability to meaningfully engage with theory based parenting programs.

Court case management upon programme entry

- A. Finding - child in need of care and protection
- B. Adjourn case for 6 months
- C. Necessary interim orders on adjournment (daily care and control/supervision directions)
- D. Assessment and preparation of a programme agenda (parents to formulate goals and achievements and provide input into programme agenda)
- E. Court approval of programme agenda with input from lawyers & interim orders for:
 - 1) Care Plan to provide for weekly contact
 - 2) Recurring 'review' mentions/hearings - 3 weekly intervals – for the court to monitor progress and for parents, TF and other key partners/services, to provide an up-date of their progress / engagement with programme. In particular, parents are required to reveal their insights into the need for strengthening their parenting capacity, investing in their children

² <http://www.dao.health.wa.gov.au/Gettinghelp/ServiceDirectory/Residentialrehabservices/MilliyaRumurra.aspx>

and building a strong family base. Progress or milestone achievements are rewarded with incremental increase in contact with their children.

- 3) Reports by TF/Rehab/Housing/DV counselling/Elders for First Nations people and community members who are supporting people from CALD backgrounds
 - 4) Reward, recognition = incremental contact. The importance of this cannot be overstated to keep parents on track so they continue to engage with the process.
 - 5) Joint family therapy
 - 6) Lawyer inclusive Family Group Meetings to formulate Care Plans, measure parental progress, whether the child's needs are being met, their development and contact with family, and placing the onus on parents to propose current and future plans to address issues impacting on their parenting – even if it means, *“I need more time, support, education, respite, housing”* etc.
 - 7) Court ordered lawyer assisted mediation – to assist parties to narrow and resolve issues.
- F. Graduation - withdrawal of application by TF or orders for supervision directions or other least intrusive orders.
- G. Termination - disengagement or failure, TF to apply for removal from programme and matter re-directed to mainstream case management.

Length

Commitment to programme for at least 12 months

Key stakeholders:

- Court
- TF
- Legal Services
- [Family Safety Framework](#)
- Territory Housing
- Education
- Health / Aboriginal Health Services
- Police/Prosecutions/Corrections
- Domestic Violence refuge caseworkers
- NGO's (Salvation Army, CatholicCareNT, Relationships Australia NT, Anglicare NT)
- Rehabilitation services (CAAPS, [Banyan House](#), [Forwaard](#), [Sunrise](#))

++ see also:

Geraldton model:

<http://elaw.murdoch.edu.au/archives/issues/special/promoting.pdf>

Victorian Family Drug Treatment Court

<http://www.childrenscourt.vic.gov.au/jurisdictions/child-protection/family-drug-treatment-court>