

**Family Inclusion Network of Western Australia (Fin WA)**  
**Submission to the Department for Child Protection and Family Support of**  
**Western Australia**  
**Review of the Children and Community Services Act 2004**  
**31 March 2017**

This submission is from the Family Inclusion Network of Western Australia Inc. (Fin WA). We appreciate the opportunity to provide feedback on the consultation paper: *Review of the Children and Community Services Act 2004*. If you require further information or wish to discuss the content of this submission, we would be willing to do so.

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**Introduction**

This brief submission focusses on feedback provided to Fin WA from parents and families with a lived experience of the child protection system, as well as stakeholders working with families intersecting with the child protection system in WA. It includes feedback from a consultation session held at Fin WA during which staff met with parents, families and stakeholders about the reforms. Several individual conversations occurred with parents, members and staff. This included conversations with members of the Aboriginal community with a lived experience of the child protection system.

This submission responds to the following Terms of Reference as outlined in the review:

- (1) principles relating to Aboriginal and Torres Strait Islander children and the consultation requirement
- (2) any changes necessary to support the safety and wellbeing of adults and children subject to family and domestic violence
- (3) issues relating to the intersection between child protection proceedings and proceedings in the Family Court.

## Overview

In facilitating the consultation, Fin WA invited participants to consider responses to the following questions;

- How do families engage and operate within the current legislative framework, paying particular attention to the needs of ATSI families, and families experiencing family and domestic violence?
- Is the current legislative framework helpful for families?
- What safeguards exist within the legislative framework to ensure impartiality and independence in the process?

Our consultation with parents and families identified a number of concerns, issues and areas of opportunity relating to the proposed legislative reforms.

A recurring theme throughout the discussion was the disconnect that exists between the intent of legislation, the practice realities (informed by incongruence and differing perspectives of workers) and the resulting experience for families who intersect with the system.

Added to this is the adamant belief that any legislative reform will not, and cannot, enforce or address the key element of child protection interventions – that is the quality and skill of workers to be willing and able to work with, and alongside families; ‘*to skillfully hold authoritative practice*’. Undeniably this element is a complicated and sometimes an obstructive factor.

Of note also, are the Recommendations from *the Family Law Council Final Report on Families with Complex Needs and the Intersection of the Family Law and Child Protection Systems* (Interim Report June 2015,) and *The Royal Commission into Family Violence* (State of Victoria March 2016). Both inquiries make significant recommendations relating to legislative reform in this area and it is unclear how this work is informing this review.

## **Consultation Discussion Summary**

It was identified that many families who fall into the child protection system, or come to the attention of The Department for Child Protection and Family Support (DCPFS), have a limited understanding of the legislative framework within which this is occurring. This can have serious implications for a transferability of their rights within the system and can also compromise the way they interact with the system. This is of particular relevance for Aboriginal families residing in remote and regional areas of WA.

To bridge the gap, and increase meaning and understanding for families in this regard, it was suggested that a *Charter of Rights for Families* be incorporated into the legislative framework. The charter could also act as a conduit or 'enabler' between the intent of the legislation and the practice frameworks to support it.

It was noted that the Principles in Section 9 of *The Act* (below) could be translated into a *Charter of Rights for Families* to promote a shared understanding of behaviours between workers and families, and further, could be used as a tool to inform practice standards.

### *"9. Principles to be observed*

*In the administration of this Act the following principles must be observed —*

- (a) the principle that the parents, family and community of a child have the primary role in safeguarding and promoting the child's wellbeing;*
- (b) the principle that the preferred way of safeguarding and promoting a child's wellbeing is to support the child's parents, family and community in the care of the child;*
- (c) the principle that every child should be cared for and protected from harm;*
- (d) the principle that every child should live in an environment free from violence;*
- (e) the principle that every child should have stable, secure and safe relationships, and living arrangements;*
- (f) the principle that intervention action (as defined in section 32(2)) should be taken only in circumstances where there is no other reasonable way to safeguard and promote the child's wellbeing;*
- (g) the principle that if a child is removed from the child's family then, so far as is consistent with the child's best interests, the child should be given encouragement and support in maintaining contact with the child's parents, siblings and other relatives, and with any other people who are significant in the child's life;*

- (h) *the principle that if a child is removed from the child's family then, so far as is consistent with the child's best interests, planning for the child's care should occur as soon as possible in order to ensure long-term stability for the child;*
- (i) *the principle that decisions about a child should be made promptly having regard to the age, characteristics, circumstances and needs of the child;*
- (j) *the principle that decisions about a child with a disability should be made giving special consideration to any difficulties or discrimination that may be encountered by the child because of the child's disability, and should support the child's full and effective participation in society;*
- (k) *the principle that decisions about a child should be consistent with cultural, ethnic and religious values and traditions relevant to the child;*
- (l) *the principle that a child's parents and any other people who are significant in the child's life should be given an opportunity and assistance to participate in decision-making processes under this Act that are likely to have a significant impact on the child's life;*
- (m) *the principle that a child's parents and any other people who are significant in the child's life should be given adequate information, in a manner and language that they can understand, about —*
  - (i) *decision-making processes under this Act that are likely to have a significant impact on the child's life; and*
  - (ii) *the outcome of any decision about the child, including an explanation of the reasons for the decision; and*
  - (iii) *any relevant complaint or review procedures;*
- (n) *the principle set out in section 10(1).*

*[Section 9 amended by No. 49 of 2010 s. 39; No. 23 of 2015 s. 27.]”*

Alongside this suggestion was the need to ensure that safeguards exist within the legislative framework to provide for independent oversight. It was suggested that the right to independent advocacy (as a basic right) be incorporated into the Charter of Rights to make explicit the intent to provide for an impartial and independent process. The introduction of an *‘independent advocate’* could exist not only for families but for the children for whom Orders are being made, as is the case in the UK system.

It was identified that limited provision currently exists in the legislation for independent assessment. Parents shared their experiences of feeling as though the system was *‘weighted against them’*; they spoke about *‘selective evidence’* with little or no right to challenge and the need to prescribe to certain behaviours to be viewed as a caring or engaged parent. One parent spoke to this experience as being a *‘dehumanising’* one.

The introduction of an *intermediary stage* in which an 'Independent Chair' or Panel' is established to provide independent assessment (when Orders are made) was suggested as a safeguard, which could be built into the legislation to protect the interests and rights of families.

On the matter of legislative provisions, as they relate to keeping children and families safe from family and domestic violence, Fin WA acknowledges the significant policy shifts that have been made to lessen the victimisation of women in the context of child protection interventions. It is also pleasing to note that child protection policy frameworks are reflecting the need to acknowledge the compromised position mothers (often as the protective parent) are placed in. However, examples shared by families during the consultation highlighted the work still to be done to overcome disconnect between policy/legislative intent and practice; this gap is reflected in the following comment made during a consultation; '*current practice (in child protection) is failing both workers and families*'.

An example was given whereby a mother was assaulted by the father of her child outside a Departmental district office prior to a contact visit. The perpetrator followed the mother to her new home where he assaulted her again. At a meeting soon after, during which the client reported that she had taken out a Violence Restraining Order (VRO), she was told by the Case Worker (shortly before the meeting concluded) that contact would be occurring between her child and the father. This information, and the way it was shared, left the mother in a highly anxious and distressed state, prior to having contact with her child.

A further example was presented in which plans for a Signs of Safety Pre-Hearing Conference at LAWA included a violent ex-partner for whom the VRO was taken out. The mother was not informed of his attendance until the day prior and this jeopardised her participation in an important legal process.

The Fin WA Worker facilitated the mother's

participation by contacting the Coordinator who arranged for separate phone link up to occur, thereby minimising her exposure to her violent ex-partner. Had the Fin WA Worker not intervened, the mother would have been prevented from participating.

Fin WA endorses the inclusion of a common definition of family and domestic violence within the legislative framework, which it believes promotes consistency in understanding and application in the law (such a recommendation is contained within the Australian Law Reform Commission report into Family Violence and Commonwealth Laws (Aug 2010)).

However, Fin WA notes the need to exercise caution when using definitions to label victims or behaviours. For example, with the introduction of an amendment to the Children and Community Services Act 2004 to include emotional abuse as a component of family and domestic violence (Section 28 (1), Fin WA has observed that an unintended consequence of this has been the labelling of mothers as 'emotionally abusive' towards their children (in the context of child protection interventions) without due consideration being given to the complexities arising from family and domestic violence.

Such complexities, which can comprise a parent's capacity, could result in a victim becoming liable to imprisonment for ten years under the proposed new offence when accused of failure to protect. Managing such complexities comes back to workers being able to hold 'skillful use of authority' as noted previously.

In relation to the intersect between the Children's Court and the Family Court, our consultation identified difficulties and risks for families and children when matters are dealt with in separate courts. The following is a case example highlighting this;

A client had her three children removed from her care by the Department for Child Protection and Family Support (DCPFS).

The two older children have a different father to the youngest. The father of the youngest child had up until recently not been involved in his child's life; at the time of entering care,

all three children were placed in general foster care and then temporarily placed with the paternal grandmother and father of the older two.

DCPFS advised the father of the two older children to apply to Family Court for custody of his children and, actively supported his application. Meanwhile the youngest child was also in their care.

After approximately eight months the Family Court granted full custody of the two older children to the father, at which time he decided he no longer wanted to care for the youngest child, and returned that child to DCPFS where the child was placed with the original foster carer.

The decision by the Family Court to grant custody to the father means that the mother is prevented from working towards reunification with her two older children and is reduced to supervised contact. However, the father is not abiding by the contact orders and Mum is not seeing her children at all.

An unintentional outcome of this intervention is that the youngest child has been split from his siblings – something that DCPFS undertook not to do at the outset.

These decisions appear to the mother to be driven by resource constraints rather than maintaining family connections.

The youngest child is not having any contact with his siblings, his siblings' family, or extended family or friends; his support network has gone since going into OOHC. The two older children are not seeing any maternal family or friends at all.

A baby, born since Child Protection intervention, went straight to relative carers and has good contact with both parents, but is not having contact with any of their siblings and it is plausible that the older two children do not know they have a baby sibling.

The outcome for this fractured family is lost relationships that were significant and meaningful to the children.

It was noted that in instances such as this (when Family Court proceedings are occurring alongside child protection interventions) the DCPFS should remain a party to proceedings until they are satisfied that there is a suitable outcome for the children.

In this situation, the outcome would be to ensure that the children stay connected with their non-custodial parent and siblings. The alternative to this is a situation in which children get lost in the system and disconnected from their family.

### **Recommendations**

- That a *Charter of Rights for Families* be incorporated into the legislative framework to bridge the gap between the intent of the legislation and families understanding of it.
- That the right to an independent advocate (for families and children) be incorporated into the Charter of Rights to make explicit the intent to provide for an impartial and independent process.
- That an intermediary stage be incorporated into the statutory process (when Care and Protection Orders are made) during which an 'Independent Chair' or Panel' is established to provide independent assessment.
- That a common definition of family and domestic violence is included within the legislative framework to promote consistency in understanding and application in the law.
- That practice frameworks support workers exercising care when using definitions, giving due consideration to the complexities that exist in family and domestic violence situations.
- When Family Court proceedings are occurring concurrently with child protection interventions the DCPFS should remain a party to proceedings until they are satisfied that there is a suitable outcome for the children.
- Any changes to the legislative framework need to be supported by practice frameworks and consider recommendations made through relevant Federal and State Royal Commissions and Inquiries.