



Thursday, 17 January 2013

Submission Guide: Child Protection Legislative Reform **Discussion Paper**

The NSW Government has released a Discussion Paper (DP) on proposed legislative reforms to the child protection system. You can access the paper at <http://haveyoursay.nsw.gov.au/child-protection-reforms>. The paper contains 29 proposals within three sections:

- (i) **"Promoting good parenting"**, which includes expanded processes to require and enforce participation by parents in early intervention and parenting capacity programs;
- (ii) **"Providing a safe and stable home for children and young people in care"**, which includes a focus on "permanency planning" and a new hierarchy of preferred long-term care options that include guardianship by a relative or open adoption; and
- (iii) **"Creating a child-focused system"**, which includes greater use of alternative dispute resolution and casework processes rather than court orders to negotiate care and contact plans.

Each proposal is followed by a number of questions that the Government is seeking responses to. The Greens encourage community members to make personal submissions. The Greens are also preparing a detailed submission and consulting stakeholders about potential implications of these legislative reforms.

Your submission can answer as many or as few of the questions as you would like to respond to.

Key points to include in your submission are that child protection reforms should address:

1. **Early intervention – with collaboration rather than punitive responses:** Encouraging parents who are struggling to adequately care for their children to seek and accept help is crucial. Early intervention and parenting capacity programs should provide support and encourage parental engagement.

Background: *The DP includes some approaches that might discourage parents from seeking help for fear of increasing the risk of losing their children. For instance, the paper emphasises parenting capacity orders (Proposal 1) and Parent Responsibility Contracts (Proposal 2) to get parents to engage with interventions. Failure to fulfil requirements of these orders or contracts can result in a legal presumption that a child should be removed, creating a disincentive for parents to engage with the child welfare system in the first place. Other proposals (e.g., Proposal 4) endorse punitive sanctions such as fines, which can exacerbate disadvantage and work against the best interests of the child.*

2. **Commitment to adequate and appropriate intervention services:** For an early intervention framework to be successful, the Government needs to commit funds and have a system in place that guarantees the right services will be provided to the families who need them.

Background: *The DP notes the range of intervention programs that are available but doesn't explain how families can be assured that individually and culturally appropriate programs will be delivered to address their needs. This could have been addressed in some of the existing proposals, e.g., Parent Responsibility Contracts (Proposal 2) could be reformed to ensure they are genuine mutual agreements in which the Government and/or service providers commit to deliver appropriate and adequate services and are accountable for failures to fulfil their obligations.*

3. **Decision-making flexibility to recognise the variability in individual cases:** Although timely decision-making is important, mandatory timeframes fail to deal with the underlying causes of placement breakdowns and the need to take into account individual – and changing – circumstances.

***Background:** The DP promotes permanency as the highest priority in ensuring the best interests of children are served, and it is undeniable that instability and uncertainty in care placements have a negative impact on children's wellbeing. But legislating fixed timeframes (Proposal 7) in which a permanent decision regarding care arrangements must be made ignores the variability in individual circumstances and the capacity for children's needs to change over time. This approach attempts to mandate a seemingly simple solution to a problem – instability in care placements – that has a complex set of causes, which require dedicated specialist caseworkers, carers and services to address.*

4. **Adoption issues – terminating parental rights requires a cautious approach:** There is no clear benefit to removing the capacity to grant guardianship to non-relatives, which provides the flexibility to ensure children receive safe and stable long-term care while also maintaining the connections and rights associated with their birth families. Promoting adoption – albeit "open adoption" – in its place, particularly with new restrictions on parents' capacity to be involved in the decision to terminate their parental rights, risks causing unintended and undue harm by permanently separating children from their family and culture. In many cases where children are unable to safely live with a birth parent, finding safe and stable care relationships does not require their parental links to be severed, and this approach could undermine efforts to maintain and restore important family relationships. This approach also raises the risk of dealing with adoptive relationships that break down.

***Background:** The DP sets out a hierarchy of preferred permanent care options (Proposal 6) that includes the permanent guardianship of a relative but then, with the exception of Aboriginal children, moves toward open adoption. Other proposals streamline the process of allowing foster carers to adopt (e.g., Proposals 10 & 12) and some proposals restrict the rights of birth parents to object to an adoption (Proposal 15) or even to be informed (Proposal 16). At the same time, the DP proposes removing orders available in the current laws to grant permanent parental responsibility to a long-term carer and replacing them with a guardianship order that is intended only for relatives of the child (Proposal 9).*

5. **Collaboration – a system that supports children, parents and carers is vital:** It is important to recognise some innovative and potentially beneficial reforms among the proposals.

***Background:** Despite the shortcomings of the DP highlighted above, some of the proposals promote innovative and evidence-supported approaches to reduce the adversarial nature of the child protection system and to provide greater flexibility in dealing with changing circumstances. In particular, moves toward alternative dispute resolution (Proposals 3, 14, 19 & 21) and flexible case management approaches in care, contact and supervision orders (e.g., Proposals 17 & 18) are promising initiatives, although careful consideration and stakeholder input is required for their effective implementation and to safeguard rights such as the capacity to appeal.*

You can have your say by making a submission. Write submissions in your own words, especially if you have any direct experience of the child protection system. Ensure that your submission directly responds to the questions asked in the Discussion Paper.

You can lodge a submission online or by downloading the feedback form from <http://haveyoursay.nsw.gov.au/child-protection-reforms>. Alternatively, you can create your own submission document and upload it to the website, or email it to cpreforms@fac.nsw.gov.au.

Submissions close 8 March 2013