Children in Care Collective

Submission

The Children in Care Collective (the Collective) welcomes the opportunity to comment on the draft Stronger Communities Legislation Amendment (Children) Bill 2021. A number of the proposed amendments have implications for the out-of-home care providers who are members of the Collective. A number of these providers are also accredited adoption agencies in New South Wales.

INTRODUCTION

The Children in Care Collective was formed in 2016 by a group of out-of-home care service providers and leading experts in working with children with complex needs in out-of-home care.

The aim of the Collective is to share experience, discuss best practice informed by research, provide advocacy and learn from policy and practitioner experts in out-of-home care. The Collective seeks to address solutions to difficult systemic practice issues faced by the sector and to improve outcomes for children and young people with complex needs living in out-of-home care. The Collective's website is at http://childrenincarecollective.com.au/.

Members of the Collective are: Allambi Care; Anglicare NSW South | NSW West | ACT; Anglicare Sydney; CareSouth; Key Assets; Life Without Barriers; Mackillop Family Services; Marist180; Settlement Services International; Institute of Child Protection Studies (ICPS) - Australian Catholic University; Australian Centre for Child Protection (ACCP) - University of South Australia.

This submission does not seek to replicate individual agency submissions, but rather to draw on the experience of the Collective to address some of the broad issues with the proposed amendments.

COMMENTS ON SPECIFIC ITEMS

Amendment of Adoption Act 2000, Children and Young Persons (Care and Protection) Act 1998 and Civil and Administrative Tribunal Act 2013 concerning the appointment of Guardians ad Litem (GALs)

The Collective strongly endorses the participation of people in decisions that will have an impact on them and recognises the importance of Guardians ad Litem in protecting or promoting the interests of a person who needs assistance in being heard by Courts or Tribunals.

The Collective notes that the intention of the amendments is to provide that 'Courts and Tribunals appointing GALs are not required to specify the identity of the appointed GAL, and to apply this change retrospectively'. The Collective submits that the clearest statement of this intention would be to include a phrase that the Court/Tribunal is not required to name the person who will act as GAL.

Amendment of the Child Protection (Working with Children) Act 2012

The Collective agrees that animal cruelty is clearly an indicator that a person may not be appropriate to engage in child-related employment given that such behaviour is obviously inconsistent with the high standards of care and protection of vulnerable children and young people that is expected of carers and employees in the out-of-home care system.

The Collective endorses the proposed amendments concerning the reporting of animal cruelty offences, to Children's Guardian for determination of applications for working with children check clearances. This includes the differentiation between triggers for assessment and disqualifying offences.

Amendment of the Children and Young Persons (Care and Protection) Act 1998

With reference to the proposed amendments of Schedule 4, the Collective notes that the amendments arise from the planned introduction of the residential care worker register and the consequent result of residential care worker becoming 'authorised carers' within the meaning of the Care Act. As the amendments are intended to exclude 'authorised carers who are residential care workers from five provisions applicable to authorised carers generally', the Collective submits that it would be clearer and simpler to use the term 'residential care worker' and that this would also ensure consistency with the legislation supporting the residential care workers register.

There are however difficulties presented by the proposed approach to ensuring consistency, specifically in relation to the proposed amendment to S147 that excludes indemnity of an authorised carer in their capacity as the principal officer of a designated agency. The proposed amendment does not appear to take into account the current model and funding of out-of-home care service provision.

Many of the Collective agencies provide intensive therapeutic care (ITC) to children and young people with complex trauma whose behaviour is frequently symptomatic of that trauma, behaviour that can result in property damage. Agencies themselves regularly meet the cost of incidental damage but the funding it receives to provide ITC services does not always cover these costs and the agency then submits claims to the Department of Communities and Justice (DCJ) under S147 to be indemnified for the damage.

Sourcing affordable and appropriate insurance is a significant difficult for out-of-home care services – most recently recognised in the Community Services Ministers' Meeting Communique of 3 September 2021:

> Ministers also discussed recent issues raised by providers of children and disability services regarding difficulties in obtaining public liability insurance that includes coverage for physical and sexual abuse claims. Ministers agreed to establish a working group, co-chaired by New South Wales and Tasmania, to consider options for a consistent approach in addressing this issue. (available at https://www.miragenews.com/community-services-ministers-meeting-communique-625610/)

The loss of the safety net provided by S147 will undoubtedly exacerbate the challenge of sourcing affordable insurance if the agency is liable for these additional costs, and will in some cases likely make the provision of ITC services untenable.

In addition, authorised carers seek reimbursement for damage or wear and tear caused to their property by children in their care. As a matter of expediency, out-of-home care agencies frequently cover these costs in the first instance and then seek recompense from DCJ. While authorised carers will continue to be able to access the indemnity directly, the proposed amendment does not recognise that the current out-of-home care service provision model establishes the funded agency as the go-between between DCJ and many authorised carers, including in relation to the S147 indemnity.

In both these instances, it is likely that the proposed amendment to S147 will disproportionately affect smaller providers including Aboriginal out of home care agencies.

FURTHER QUERIES

If there are any further queries about this submission please direct them to Rob Ryan, Chair of the Children in Care Collective at Rob.Ryan@lwb.org.au