

## Shaping a Better Child Protection System

Final Submission by  
**Community Legal Centres NSW**

**7 December 2017**

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*We acknowledge the Gadigal People of the Eora Nation, on whose traditional lands we work.*

Cover Artist : Anthony Walker

Language group: Yiman/Gurreng Gurreng

Title: Seven Sister Increase Song Cycle

Description: Depicts the Seven Sister star constellation (The Pleiades ) being "Sung Up" by men from Anthony’s grandfather’s language group, Yiman.

## 1. Executive Summary

Community Legal Centres NSW (CLCNSW) welcomes the opportunity to provide a response to the 2017 *Shaping a Better Child Protection System* Discussion Paper. CLCNSW is the peak body for 37 community legal centres in NSW. Over the past 40 years, community legal centres have been a cornerstone of access to justice for socially and economically disadvantaged groups in NSW.

The majority of community legal centres work in the area of child protection, providing help and support to parents, grandparents, families, children, carers, guardians – all the different types of people involved. CLCs work collaboratively with government agencies and non-government organisations to help these people navigate the system, with a primary outcome of providing early support to solve problems effectively and avoid escalated issues down the road.

Twelve CLCs currently receive a limited amount of Care Partner funding via Legal Aid NSW to work in this area. This submission, besides addressing a number of questions posed in the Discussion Paper, contains a detailed proposal for increased funding for community legal centres to engage in care and protection work.

If you have any questions about this submission, please contact our Advocacy & Communications Coordinator, Mark Riboldi via 02 9212 7333 or [mark.riboldi@clcnsw.org.au](mailto:mark.riboldi@clcnsw.org.au).

Regards,



Polly Porteous  
**Executive Director**  
Community Legal Centres NSW

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The following community legal centres have provided explicit endorsement of this submission, including via contributing to its formulation:



Care for community. Fight for justice.



We would also like to thank the CLCNSW Care & Protection Network, as well as Robyn Roelandts and Thea Deakin-Greenwood, for their contributions to developing the CLC Care & Protection Model.

We would further like to acknowledge the input of Wirringa Baiya Aboriginal Women's Legal Centre, Public Interest Advocacy Centre, Hume Riverina Community Legal Service, Macarthur Legal Centre, knowmore, Intellectual Disability Rights Service and Redfern Legal Centre, in providing case studies to support this submission.

## 2. Overview of Recommendations

Community Legal Centres NSW recommends that:

1. The Children's Court should not be the conferred jurisdiction to make adoption orders.
2. There is no need to further limit section 90 applications due to the impact that this may have on the ability of parents to commence rehabilitation and ultimately seek restoration of their children.
3. Shorter Term Court Orders be implemented to focus on family preservation and restoration.
4. The Department should enforce and better regulate compliance of NGOs with outcomes of mediation; NGOs should be accountable for decisions they make around contact between children and their parents, family members and/or guardians, and face consequences when they do not comply.
5. Every parent, family member and/or guardian should have the opportunity to receive one-off free, accessible legal advice before entering into the NSW child protection processes with FACS, Family Group Conferencing or the NSW Children's Court.
6. People and communities with specialist needs, for example people with cognitive disabilities and Aboriginal and Torres Strait Islander people, should receive specialist support, including legal support prior to and throughout ADR.
7. Increased funding be provided to the CLC sector, on top of the limited Care Partner funding via Legal Aid NSW, to provide early intervention legal advice and support for people involved in the care and protection system. This is estimated at \$4.7 million per annum.

## 3. Child Protection in NSW: Defining the Problem

### 3.1 Child Protection Report

The NSW Legislative Council General Purpose Standing Committee recently published one of the most comprehensive reviews of the child protection and out of home care system in NSW, the “Child Protection Report”<sup>1</sup>. This review adds to a body of literature<sup>2</sup> that has elucidated the historical and ongoing features and impacts of the child protection system, and the pressing conundrum of the rate of children, particularly Aboriginal and Torres Strait Islander children, being placed in out of home care.

In addition to family separation, the learnings have told us that unresolved and ongoing trauma and loss, past and current child welfare policies, socio-economic disadvantage, substance abuse, domestic violence and mental illness, are key to understanding the crises within our current child protection system. The ongoing impact of these factors and the social and economic cost of children in out of home care, cannot be underestimated.

The scale of the problem facing child protection services in NSW was highlighted in the evidence provided by Family and Community Services (FACS) to the review, which included that in 2015-2016:

- 196,874 reports were made to the Child Protection Helpline but less than half were found to be at Risk Of Significant Harm (ROSH).<sup>3</sup>
- 17,585 children and young people were in out of home care.<sup>4</sup>
- 36% of the children in OOHC are Aboriginal and Torres Strait Islander, and
- Three quarters of the children reported to FACS had been the subject of at least one prior report.<sup>5</sup>

### 3.2 Aboriginal and Torres Strait Islander children in the Child Protection system

Aboriginal and Torres Strait Islander children are vastly over-represented in the Australian out-of-home-care system. As of June 2016, approximately 36% of children in out-of-home-care in Australia were identified as Aboriginal or Torres Strait Islander, despite Aboriginal

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<sup>1</sup> New South Wales Legislative Council. General Purpose Standing Committee No. 2 Child Protection. Report 46 – March 2017.

<sup>2</sup> “Bringing them home. Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families” April 1997. Sydney. Human Rights and Equal Opportunity Commission. 1997. <https://www.humanrights.gov.au/publications/bringing-them-home-appendix-9-recommendations>  
More recently, “Out of Home Care Senate Inquiry 2015” The Senate. Community Affairs References Committee. Out of home care. August 2015 Commonwealth of Australia. 2015. ISBN 978-1-76010-264  
[www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/.../Out\\_of\\_home\\_care](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/.../Out_of_home_care)

<sup>3</sup> 78,186 children were found to be at ROSH.

<sup>4</sup> Forecast to increase to 22,400 children by 2016-2017

<sup>5</sup> Australian Institute of Health and Welfare (AIHW) “*Child protection Australia 2015–16*”, March 2017; Royal Commission into Institutional Responses to Child Sexual Abuse

and Torres Strait Islander peoples making up approximately 3% of the Australian population.<sup>6</sup>

There are complex and varied reasons for the high representation of Aboriginal and Torres Strait Islander children in child protection and out-of-home-care services, connected to past policies and practices which have set the trajectory of the child removal trends of today.

As stated by the Australian Institute of Family Studies:

‘Poverty, assimilation policies, intergenerational trauma and discrimination and forced child removals have all contributed to the over-representation of Aboriginal and Torres Strait Islander children in care, as have cultural differences in childrearing practices and family structure’.<sup>7</sup>

In NSW, 7.2% of Aboriginal and Torres Strait Islander children are in out-of-home-care. In comparison, 0.7% of non-Aboriginal children are in out-of-home-care. The ratio of Aboriginal to non-Aboriginal children in out-of-home-care is around ten to one. Rates of removal of Aboriginal children are staggeringly high, and have continued to steadily increase over the past few years. As such, all recommendations regarding the child protection system should take into account the specific needs of Aboriginal and Torres Strait Islander children and families, this includes the removal of children from families being an extreme measure of last resort.<sup>8</sup>

Broadly, governments need to invest in and get behind community-led and community-driven early support services and justice reinvestment in areas that address issues such as domestic and family violence, mental health, drug and alcohol, housing and homelessness.

### 3.3 Costs of Child Protection

Currently, more than half of FACS funding on child protection is directed toward provision of out of home care<sup>9</sup> (OOHC) services and other reactive statutory interventions for children found to be “at risk of significant harm” (ROSH). In 2016-17 the budgeted expenditure for child protection related services was approximately \$1.9 billion, which was distributed as follows:

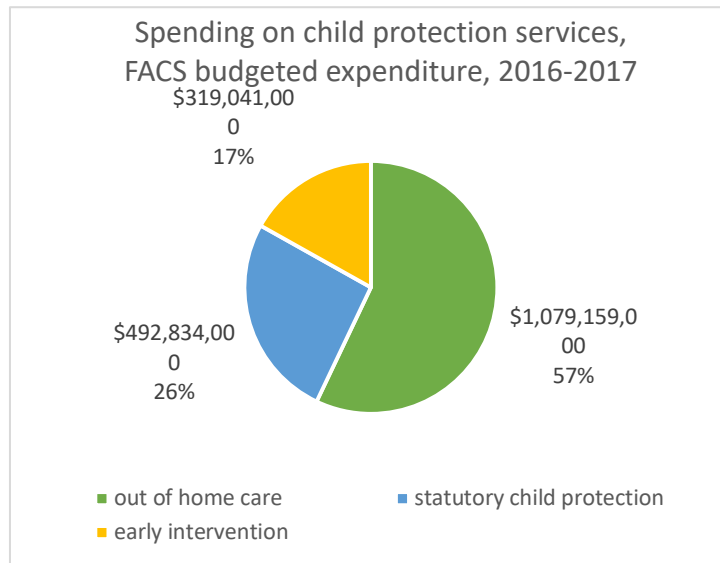
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<sup>6</sup> ‘Aboriginal and Torres Strait Islander population estimates, 2011 - preliminary’, Australian Bureau of Statistics 12/2012. Source: <https://www.creativespirits.info/aboriginalculture/people/aboriginal-population-in-australia#ixzz4zsS7kSOf>

<sup>7</sup> Australian Institute of Family Studies, *Child protection and Aboriginal and Torres Strait Islander children*. August 2017. <https://aifs.gov.au/cfca/publications/child-protection-and-aboriginal-and-torres-strait-islander-children>

<sup>8</sup> *ibid.*

<sup>9</sup> New South Wales Legislative Council. General Purpose Standing Committee No. 2 Child Protection. Report 46 – March 2017



Source: New South Wales Legislative Council. General Purpose Standing Committee No. 2 Child Protection. Report 46 – March 2017.

While the majority of FACS spending goes towards families at ROSH (such as OOHC), the majority of reports<sup>10</sup> to the Child Protection Helpline relate to non-ROSH matters. These matters commonly result in either no action being taken OR a referral to NGO support agencies, or to a family referral service (FRS).<sup>11</sup>

This inversion of FACS spending on reactive rather than proactive policies has resulted in many reviews recommending a revision of spending priorities to focus more on policies and practices structured around early support and prevention frameworks, including a greater role for NGO rather than government agency responses. In light of this literature, FACS have accepted that the system need urgent reform in order to provide a service system that is:

- Flexible – focusing on client needs rather than program guidelines
- Locally responsive – working to the strengths, assets and needs of local communities
- Evidence based – grounded in what we know works and building on that knowledge
- Adaptive – continuously improving and responding to change; and
- Client centred – working with the person and family to address their needs.<sup>12</sup>

To move towards such a system, FACS has undertaken a number of reforms in order to improve intake, assessment and system navigation architecture and to ensure that vulnerable families are identified and supported before their issues escalate to the point that children are at significant risk of harm. The principles of the redesign will include:

- reducing the duplication of service between statutory and non-statutory pathways;

<sup>10</sup> Australian Institute of Health and Welfare (AIHW) “Child protection Australia 2015–16”, March 2017; Royal Commission into Institutional Responses to Child Sexual Abuse

<sup>11</sup> Ibid.

<sup>12</sup> Family and Community Services website <http://www.community.nsw.gov.au/for-agencies-that-work-with-us/early-intervention-services/targeted-earlier-intervention-reform>



- enabling better responses for children and families below the statutory risk threshold;
- increasing opportunities for early intervention; and
- avoiding entries to out of home care.

CLCs see these reforms as a positive step and with appropriate funding, are willing and able to step in and play an active role in supporting the achievement of these goals.

Further details regarding the role CLCs can play in implementing these reforms are provided in Section 5.

## 4. Responding to the *Shaping a Better Child Protection System* Discussion Paper

In this section, CLCNSW is responding directly to the questions raised in the Discussion Paper. We also note that the Department should take note of the individual submissions of our member organisations for a more detailed response to some of these areas.

### 4.1 Strengthening Court Processes

#### 4.1.1 Move from the Supreme Court to the Children's Court

Question 37 of the *Shaping a Better Child Protection System* discussion paper asks:

*“Should the Children’s Court be conferred jurisdiction to make adoption orders where there are child protection concerns? If so, why? If not, why not?”*

As noted in the Discussion Paper, this proposal was canvassed by the NSW Government in 2012 but it was not supported by stakeholders and it was not pursued. CLCNSW is of the opinion that the Children’s Court should not be the conferred jurisdiction to make adoption orders.

Some of the concerns of stakeholders who made submissions to the 2012 consultation include:

- “The possible creation of a ‘two-tiered’ adoption system with adoption under the inter-country and local adoptions programs continuing to be heard in the NSW Supreme Court
- The capacity of the Children’s Court to manage adoption matters given its current workload and the lack of specialist Children’s Court magistrates in regional and remote areas
- The suitability and expertise of Local Court magistrates, when they preside over care matters, to deal with adoption applications
- A likely substantial increase in contested adoption matters and appeals, requiring a significant increase in resources to defend those matters and time delays
- Children’s Court magistrates facing applications to disqualify themselves from hearing adoption proceedings where they have determined that the same child cannot be restored, and
- Greater scope for inconsistencies in decision-making.”<sup>13</sup>

The return of this proposal comes with the stipulation that if the jurisdiction for making adoption orders is transferred to the Children’s Court, adoption orders would only be made by specialist Children’s Magistrates. However, even with this amendment, there are significant risks associated with the proposed change.

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<sup>13</sup> Family and Community Services NSW. *A Safe Home for Life* report on the outcomes of public consultation on the child protection legislative reforms discussion paper 2012. November 2012.

This proposed change will function to streamline and fast-track adoption and permanent placement solutions for children in Care. While there are potential benefits in some cases to this fast-tracking, these changes will have the potential to estrange children from parents who may in future become able to care for their own children. In the long term, it may not be better for children to be fast-tracked to a permanent adoption solution. Additionally, research from the CREATE Foundation indicates that young people leaving care overwhelmingly wanted to return to their birth families.

NB: Women’s Legal Service NSW discusses this issue in greater depth in their submission. CLCNSW endorses the positions and recommendations put forth by WLSNSW.

**Recommendation: The Children’s Court should not be the conferred jurisdiction to make adoption orders.**

#### 4.1.2 Limiting Section 90 Applications

Question 34 of the Discussion Paper asks:

*“In what circumstances do you think that section 90 applications should be limited?”*

CLCNSW believes that limiting section 90 options will inhibit restoration of children to rehabilitated parents, usually mothers, who have established lives free from domestic violence, and will prevent other family members from seeking the placement of children into their care. As such, no further limit should be put on them.

For example, there may be parents struggling with drug addiction who initially consent to guardianship orders. They may then spend several years rehabilitating and overcoming their addiction and then wish to regain guardianship of their children. A limiting of section 90 applications could mean that these parents may never again regain guardianship of their children. This may de-incentivise rehabilitation and restoration.

The Discussion Paper argues that section 90 applications can become a barrier to placement stability and can delay adoption proceedings. However, in our opinion, section 90 serves an important function in ensuring that when circumstances significantly change, restoration of children and young people to their parents can be brought about.

**Recommendation: There is no need to further limit section 90 applications due to the impact that this may have on the ability of parents to commence rehabilitation and ultimately seek restoration of their children.**

#### **Case Study: Section 90 Restoration: Wirringa Baiya Aboriginal Women’s Legal Centre**

Wirringa Baiya assisted an Aboriginal mother whose two children had been removed from her and placed in foster care, to submit a section 90 application and regain custody of her children.

All of the client's parenting issues and the removal of the children stemmed from the extremely violent nature of the children's father. After the client's relationship with the children's father was severed, the client approached Legal Aid for a grant of aid for a section 90. Legal Aid directed her to a panel lawyer, and the client was briefly assisted to fill in a grant application form. The grant failed for lack of merit, and the client's appeal was also unsuccessful.

The client then approached Wirringa Baiya Aboriginal Women's Legal Centre. As a community legal centre, Wirringa Baiya had the flexibility to spend many hours on the phone with the client and to let her take breaks when she needed to, which was important given the trauma she had experienced from the children's father.

Wirringa Baiya were then able to spend many more hours gathering evidence to support the client's application, including glowing contact reports from the NGO case-managing the children and reports from her psychologist and counsellor. During the time Wirringa Baiya spent with client, her contact with the children went from supervised to unsupervised and finally to overnight visits. The client had attended numerous domestic violence and parenting courses and was able to articulate what it was that she found beneficial.

The client's new legal aid application, with the drafted affidavit and supporting documents, was successful. The client was granted leave from the Children's Court for her section 90, and the client's children were placed back in her care in time for Christmas; a fantastic outcome for both the client and two her young children made possible through the extensive and flexible work of Wirringa Baiya Aboriginal Women's Legal Centre.

### 4.1.3 Shorter-term court orders (STCOs)

Questions 20 through 26 of the Discussion Paper refer to shorter term court orders (STCOs). At present, longer term court orders allocate parental responsibility to the Minister until age 18. Community Legal Centres NSW believes that STCOs that allocate parental responsibility to the Minister for shorter periods of time may encourage caseworkers to work towards permanency via restoration, guardianship orders or open adoption within a defined timeframe.

STCOs have the potential to offer greater flexibility, and to leave the way open to restoration. For instance, if risk factors lead to an immediate removal of a baby from hospital, a STCO allows the baby to be placed temporarily while the risk factors are dealt with and mitigated, with a view to restoration, rather than being moved directly onto a care plan for long-term placement.

**Recommendation:** Shorter Term Court Orders be implemented to focus on family preservation and restoration.

#### **Case Study: Early Support and Advocacy: Wirringa Baiya Aboriginal Women's Legal Centre**

Wirringa Baiya provided parent advocacy to a young, rural, Aboriginal mum who was refusing to engage with FACS and was at risk of losing her newborn baby. The client was refusing to engage with the caseworker or sign a safety plan.

Wirringa Baiya provided the client with legal advice, information and advocacy casework. Wirringa Baiya staff liaised with the caseworker and the client to narrow the issues of concern for both parties. Wirringa Baiya provided the client with honest advice about the SARA process, FACS's obligation to investigate ROSH notifications and the possible consequences when safety and risk issues are not addressed.

The client agreed to work with the caseworker to address the caseworker's concerns.

Wirringa Baiya contacted the client and caseworker several months later and confirmed that the two were working together to ensure the baby's safety with the mother. The client has agreed to not return to her father's home and the caseworker assisted in finding her a house. Client said she has been very happy with the caseworker and thanked Wirringa Baiya for assistance. Caseworker was also happy with the change in the client's attitude. The baby was not removed and is still living with the mother.

## 4.2 Adoption

Women's Legal Service NSW will be addressing many of the proposals surrounding changes to Adoption in their submission. Some of these include:

- There be no targets set for adoption.
- The Children's Court not be given jurisdiction to decide adoption matters.
- There be no additional grounds to dispense with parental consent in adoption matters.

CLCNSW endorses the recommendations made by WLSNSW regarding adoption.

## 4.3 Accountability of NGOs

CLCNSW believes that there are several potential concerns when it comes to the prospects of family restoration in this area.

Generally, NGOs consider the child or the carer to be their client, rather than the parents or broader family. Further, family restoration work is resource intensive; funding and incentives should reflect this. It is for these reasons, among others, that CLCNSW recommends that the NSW Government increased funding to CLCs to carry out care and protection work. Please see Section 5.

Anecdotal evidence indicates that in many cases of Section 86 mediations, while an NGO service provider may come to an agreement in a mediation, they may not then necessarily act on this agreement, with the effect that advocates may months later still be arguing for the same position already agreed upon in mediation. The only recourse then for parents and grandparents is to pursue a Section 90 application and thus return the case to the court system.

NGOs should be obliged to prioritise restoration, and to comply with agreements made in mediation.

**Recommendation: The Department should enforce and better regulate compliance of NGOs with outcomes of mediation; NGOs should be accountable for decisions they make around contact between children and their parents, family members and/or guardians, and face consequences when they do not comply.**

### **Case Study: Accountability of Out of Home Care Providers: Hume Riverina Community Legal Service**

Susan is the paternal grandmother of two young children placed in Out Of Home Care as a result of Children's Court Orders made about 18 months ago. At no stage was Susan considered or assessed for a kinship placement.

The children have been with 5 different carers in the past 18 months, in 3 different rural towns in the southern Riverina, which are several hours apart via car. Accordingly the children have also been in 3 different child care centres – they are not yet at school. Susan and her husband see the children monthly for two hours supervised, under the Care Plan, but this involves a road trip of two hours each way for them. The older child is now asking to stay with her grandparents.

Had Susan received early intervention legal advice, or received legal advice during the court process, she may have been assessed as the carer or even guardian and the children may not have endured the numerous changes they have experienced. With the NSW government's focus on permanency of placement, early legal advice may have resulted in a far better outcome. Now, the only option available to Susan is to negotiate more contact via ADR, or to make a s90 Application to change the Orders, both of which could be problematic and will involve more legal resources.

OOHC providers need to be more accountable to ensure that movements such as these children have experienced do not happen.

#### 4.4 Early Support & Restoration

As outlined in section 3 of this submission, CLCNSW believe a greater focus on early support is a positive step.

##### 4.4.1 Prior Alternative Action

The Intellectual Disability Rights Service addresses Prior Alternative Action in their submission:

“IDRS believes that successful alternative action for parents with cognitive disabilities is dependent upon the engagement of the FACS caseworker with the parent and includes as a minimum –

- Identification of the parent's/family's strengths
- Identification of the parent's/family's informal supports
- Identification of parent/family deficits
- Where the safety of children is threatened by domestic violence perpetrated by one family member upon the rest of the family, IDRS believes the state has a role in supporting non-offending parents to remain in the home, and support for the non-offending parent to access the protection of the ADVO system, with an emphasis on removing the offending partner from living with the victim family. This would involve cooperation between FACS and the police. Alternatively FACS should assist non-offending parents and their children to find safe accommodation as a priority
- Family Group Conferencing or other ADR prior to filing a care application unless it is unsafe

- Development of a family preservation case plan if risk assessment indicates that would be safe for the child
- Implementation of family preservation case plan including intensive family support case work such as Brighter Futures of IFSS. In the case of parents with cognitive disability engagement with intensive family support should be led by workers with experience and training in supporting people living with cognitive disability.”

CLCNSW endorses the recommendations made by the IDRS.

#### 4.4.2 Obligation of FACS to Alternative Dispute Resolution (ADR)

Community Legal Centres NSW believes the obligation of FACS to Alternative Dispute Resolution (ADR) should be strengthened. ADR informs parents of concerns earlier than at the stage of child removal and allows parents the opportunity to respond to these concerns. In order for ADR to fulfil its potential as a flexible, culturally responsive process, safeguards and supports for families are necessary.

Parents and grandparents entering ADR without legal advice are often unaware of their options and legal rights, and thus are not afforded the option of framing their own, appropriate, potential solutions. It is the opinion of our sector that every parent and grandparent should be provided with legal advice before entering dispute resolution processes so as to be able to frame their position.

Child Protection legislation must include a comprehensive framework for Alternative Dispute Resolution that supports parents, family members and/or guardians to fully participate, and that addresses power imbalances. Along these lines there should also be an obligation on FACS to ensure that people with specialist needs, including people with cognitive disabilities and Aboriginal and Torres Strait Islander people, are provided with specialist support, including legal support. For the best long-term outcomes, families should be given early legal advice, case management and support tailored to their needs.

The 2014 CLCNSW Issues Paper regarding Changes to Child Protection Laws in NSW made reference to the need for a comprehensive framework for ADR in the legislation, which must include:

- involving legal advisors where appropriate as well as other support persons in the ADR process to properly address power imbalances between parents and child protection authorities (particularly important where family violence is present);
- comprehensive screening and risk assessment frameworks and tools to assess risk and suitability of matters for ADR;
- impartiality of the mediator; and
- a court process or similar review mechanism where an outcome at ADR has the potential to affect the rights of the parties.

A comprehensive framework for ADR is still very much a necessity.



**Recommendation: Every parent, family member and/or guardian must be given the opportunity to receive one-off free, accessible legal advice before entering into the NSW child protection processes with FACS, Family Group Conferencing or the NSW Children’s Court.**

**Recommendation: People and communities with specialist needs, for example people with cognitive disabilities and Aboriginal and Torres Strait Islander people, should receive specialist support, including legal support prior to and throughout ADR.**

In order for this coordinated case management approach to be possible, community legal centres must be adequately funded to provide these services. The next section outlines the proposal for CLC funding that would provide for this necessary service, as well as other necessary services in the area of child protection.

## 5. CLCNSW Funding Proposal

### 5.1 Community legal centres: supporting families in the child protection system

Community legal centres (CLCs) help clients that fall through the gaps and have worked closely with complex client groups for many years, developing relationships of trust with hard to reach communities. CLCs interact with FACS, Legal Aid Commission, and Aboriginal Legal Services to deliver child protection legal services and casework, and expertly situated to identify, engage and connect with these clients, especially where a grant of aid is not available, or where the problem is complex and multi-layered.

CLC workers receive advanced training in trauma impacts, and participate in professional development, which has positioned the legal and non-legal workers in CLCs as expert advocates in a variety of specialised fields such as gender-based violence, disability discrimination, and child protection.

With limited funding to date, a number of community legal centres in NSW have been able to develop rapport and relationships of trust with at risk families, and thus work constructively to assist clients understand why their family has come to the attention of FACS. At the same time, CLCs have been able to act as an intermediary with FACS so that FACS workers can work constructively with the family, their support network and the CLC worker to connect the family with local support services and address the child protection issues.

This non-legal advocacy and support can result in avoiding the need for a PRC or Children's Court proceedings. Increased funding for non-legal advocacy and support would mean more CLCs could work in these areas, with better outcomes for families across NSW.

#### **Case study: Early Intervention advice for a Grandmother: Macarthur Legal Centre**

Rosa is a 45-year-old mother and grandmother from a CALD background. She is married and works as a health professional. Her daughter and her daughter's boyfriend have a 9-month-old child and there are substance abuse and domestic violence issues in their relationship.

Rosa and her husband attended MLC very distressed as they had just been advised by Family and Community Services (FACS) that her granddaughter had just been assumed into Out of Home Care (OOHC) by Family and Community Services (FACS) after a medical examination had determined that her granddaughter, Eva, had a second break in her leg. (The first break had been undetected). The father is suspected of causing this harm.

Rosa was distressed because her granddaughter had been seriously injured and was now in the care of strangers. Maria was completely unaware of the Child Protection system and her right to request to be assessed as the primary caregiver for Eva.

Rosa was concerned that her request to be approved as a carer would be rejected as she herself had been sexually abused as a child. Advice was given to Maria about her merits as a carer for her own granddaughter and her strengths as a carer (supportive stable relationship, own home, employment as a health professional).

Rosa left MLC with a plan to contact the FACS caseworker and request an immediate assessment of her and her husband as carers for Eva and within 48 hours Eva was placed in Rosa's care. Parental Responsibility orders for Eva were then applied for with the consent of Rosa's daughter. Eva remains in Rosa's care and the mother and father have supervised contact with Eva whilst they sort out their individual issues.

### 5.1.1 Specialist legal services

CLCs engage in legal and non-legal, trauma-informed, culturally competent casework that is flexible, client-centred, responsive and holistic, to ensure that vulnerable families are identified and supported, ideally before their issues escalate to become legal problems. Importantly, CLCs have the time, empathy, cultural competency and skills to help families to untangle the web of the child protection system, and to forge links with government and non-government agencies delivering early support services; a link which is particularly important for Aboriginal communities, clients with complex needs, including victims/survivors of family violence and culturally and linguistically diverse clients, who may understandably have low levels of trust in institutions.

CLCs can support families already in contact with FACS through targeted legal advice and referrals, education, support and non-legal advocacy through two proposed funding models outlined below. Ultimately, CLCs want to ensure that their clients understand the child protection system, their responsibilities, and their options and to work alongside the other legal agencies such as Legal Aid and the Aboriginal Legal Service – all of which were key recommendations in the NSW Legislative Council's Child Protection Report.

Enhanced funding would enable CLCs to expand this work and help vulnerable clients to identify, address and manage their problems before they have legal problems.

#### **Case Study: knowmore legal service**

knowmore legal service was established to give free legal advice to people who are considering telling their story or providing information to the Royal Commission into Institutional Responses to Child Sexual Abuse. The organisation has developed a service model which integrates social workers and counsellors, and Aboriginal and Torres Strait Islander engagement advisors with lawyers to form client service teams and has explicitly adopted the principles of trauma-informed care and service delivery.

An independent assessment<sup>1</sup> of knowmore found that this model of service provision provides a 'text book' example of trauma-informed care and demonstrates 'best practice'

for vulnerable communities. Feedback from service providers and legal practitioners was that knowmore has had a positive and demonstrable impact on the client group's ability to reach the Royal Commission and to participate in its structures, a key learning for how to engage vulnerable clients in processes and systems that may be unfamiliar to them. Additionally, Aboriginal and Torres Strait Islander people make up over 20% of knowmore's clients, explained in part by the high rates of Aboriginal children in institutional settings, but also is due to the commitment that the service has had to employing highly skilled Aboriginal caseworkers and ensuring the cultural competency of all staff.

Aspects of what has worked well at knowmore can be incorporated into CLC Child Protection service model by bringing together multi-disciplinary skills to assist clients with multiple and complex needs.

### **Case Study: Intellectual Disability Rights Service (IDRS)**

The Intellectual Disability Rights Service provides support for parents with an intellectual disability and who are involved with FACS. IDRS advocates coordinate trained volunteers to provide court support in Newcastle, Sydney and Wollongong; these non-legal disability advocates can:

- attend court and other appointments,
- understand legal documents and how to participate in the process, and
- be a point of contact for parents when they need assurance or reminders about what they need to be doing or about appointments they need to keep.

Where there is a conflict, IDRS can refer a parent to a specialist disability advocate who can negotiate other issues, provide parents with accessible information about stages in a care matter, contact with their child, working with community services, going to court, and accessing help in the community including the NDIS.

#### 5.1.2 Health–Justice Partnerships

Research has found that many people disclose personal problems to a GP, midwife, counsellor or health professional long before they would think of going to see a lawyer.<sup>14</sup> However, by intervening early, lawyers can work with health services such as Family Mental Health Support Services to identify clients at risk, and to assist with advice, referrals and co-located casework services. Research in this area has acknowledged the importance in identifying, accessing and engaging “hard to reach clients”; and CLCs work well with these clients already, and with sufficient funding, are well positioned to provide this work by establishing health justice partnerships.

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<sup>14</sup> Health Justice Partnerships Australia (reference)

### **Case Study: Early Intervention Work in Action in a Health-Justice Partnership: Redfern Legal Centre**

For the past three years Redfern Legal Centre and has been working in partnership with the prenatal and midwifery service at Royal Prince Alfred Hospital in a Health-Justice Partnership. This initiative has enabled collaboration between lawyers, midwives and social workers to identify women at risk and support them with holistic case-management and legal casework, and to link them to the support needed. CLCs can help in this space because of the flexibility of CLCs to work collaboratively with non-legal staff and services, across many problems, not just strict legal problems. This initiative enables women to access legal advice in a safe and trusted space, about a range of issues from child protection, to family law, credit and debt, financial management, housing issues and so on. The benefit for mothers, babies and families has been substantial in that this collaboration has connected them at a stressful time to the holistic legal advice they need, and an added benefit has been the reduction in child protection issues so that FACS are in fewer cases required to remove babies.

Increased funding for this particular service would ensure this program could continue and would enable a lawyer to be available five days a week to provide this important work. Broader funding across the sector would allow other CLCs to establish similar health-justice partnerships.

## 5.2 A model for providing specialist child protection casework in CLCs

### 5.2.1 Specialist Care & Protection Teams

CLCs require additional funding to respond to the changing child protection environment. With such, we would be able to establish specialist Care & Protection Teams to deliver specialist, holistic and trauma-informed casework services. These teams would expand on the good practice already operating in community legal centres as outlined above.

**Recommendation: That increased funding be provided to the CLC sector, on top of the limited Care Partner funding via Legal Aid NSW, to provide early intervention legal advice and support for people involved in the care and protection system. This is estimated at \$4.7 million per annum.**

*NB: An outline of the proposed spread of Care & Protection Teams in CLCs across NSW, based on the rates of ROSH Reports across NSW, is available as an Appendix.*

Under this recommendation, community legal centres already providing services through limited Care Partners funding via Legal Aid NSW would receive additional funding to increase the services they are able to provide. Centres currently not received Care Partner funding would get new funds to enable their work in this area.

Ideally, one agency should provide all of the funding, either direct to CLCs or via Community Legal Centres NSW as the peak organisation.

Features of the CLCNSW child protection legal services:

- We are client-centred, offering choice, collaboration and empowerment.
- We are flexible, responsive and focused on early support.
- We engage in community education and engagement to equip clients with the resources and information that they need within a single service.
- We offer co-located services to key 'at risk' client groups outlined above by partnering with local services such as DSS funded Family Mental Health Support Services, Women's Health Centres, Aboriginal Medical Services, mental health and counselling services, and local health networks.

#### **The CLCNSW Care & Protection Team Members:**

Lawyer:

- provides initial legal advice, legal casework and advocacy in ROSH matters
- engages in early intervention non-legal casework and advocacy in other matters
- does mediation, application for orders, PRC and PCO and other early intervention
- works co-operatively with support and specialist workers on an as needs basis

Non-legal support worker:

- Could be a social worker, community worker, counsellor or other type of support worker, depending on the needs of the community and make-up of the CLC.
- works with families both with ROSH and non-ROSH status.
- offers crisis-based counselling and support.
- makes referrals to support agencies to address welfare, housing, drug and alcohol and other support needs.
- helps to arrange and attend appointments as needed and liaise with FACS and work with family to address the issues in a parenting plan, PRC or PCO.
- helps to make links to other community services to reduce risks for family and to mitigate ongoing or escalating child protection concerns.

Specialist worker:

- Could be a disability advocate or Aboriginal Legal Access worker, for example, depending on circumstances and the needs of the community.
- in collaboration with the social worker and lawyer, attends appointments as needed and helps client to navigate the system, providing explanations as needed.
- advocates and at times, acts as intermediary for client especially in appointments or at times of stress.

- helps to establish and build relationships throughout the community and with other relevant agencies.
- provides education and upskills other services to be culturally informed, responsive and competent.

NB: Depending on the need of the CLC, and the skills available within the organisation's team, only one non-legal support worker may be required, covering both the non-legal support and specialist worker activities.

For example, the Intellectual Disability Rights Centre may require a specialist disability advocate to provide a broad range of support, or Western NSW CLC may require one Aboriginal engagement worker and one community worker.

### 5.2.2. Model of service delivery

Depending on the identified levels of children at risk of significant harm across FACS districts, as outlined in the NSW Legislative Council Report, CLCNSW has identified that some CLCs required a full-time Care & Protection Team, while others require a part-time Care & Protection Team.

#### **Full time CLC Care & Protection Team**

A full-time community legal centre Care & Protection Team comprises:

- 1 full-time lawyer at 5 days per week
- 4 days per week total for non-legal support and/or specialist support.

#### **Part time CLC Care & Protection Team**

A part-time community legal centre Care & Protection Team comprises:

- 1 part-time lawyer at 2 days per week.
- 2 days per week total for non-legal support and/or specialist support.

There are number of ways in which the CLC Child Protection service delivery model may be flexible. For example, depending on the location, the CLC Care & Protection Team may establish a local health-justice partnership, working closely with social workers already in the hospital, and supplementing this team with an Aboriginal Legal Access worker.

Additionally, depending on the level of funding secured, and in consultation with member CLCs, CLCNSW will examine the possibility of CLCs sharing Care & Protection Teams across FACS District areas. This would enable closer collaboration with FACS officers and also allow more flexibility assist in the recruitment and retention of appropriate staff.

### 5.2.3 Funding Requirements

Based on the based, Community Legal Centres NSW is requesting funding for an additional 18 lawyers and 18 non-legal support / specialist workers in community legal centres across NSW, plus support funding to administer, train and resource the program.

This request and the accompanying table is based on a rationale that:

- CLCs that currently have care and protection legal funding,<sup>15</sup> should be funded to a full-time capacity to respond to the demand being put on their service; and that
- CLCs without specific care and protection funding, be enabled to establish the specialist care and protection legal and support services.

This view has been formed after consultation with the sector and an acknowledgement that the CLCs currently providing specialist care and protection services are at capacity. Some CLCs have been forced to put clients on waiting lists, or to triage the most urgent matters for priority service. Without additional funding to increase these positions to a fulltime caseload, CLCs unable to do the vital, preventative and pre-emptive work with vulnerable families that is needed to reduce the number of children being removed and placed into out of home care (OOHC).

There are 12 CLCs that currently receive funding for care and protection work through the Care Partners funding initiative via Legal Aid NSW. Some of these CLCs employ a solicitor for 1.5, others for 2 or 3 days but no CLC has funding for a full-time solicitor. A number of these services are statewide and work with some of the most vulnerable people in the community, namely women, Aboriginal and Torres Strait Islander people, and clients with multiple and complex disabilities.

These centres are: Shoalcoast Community Legal Centre, Hume Riverina Community Legal Service, Elizabeth Evatt Community Legal Centre, Northern Rivers Community Legal Centre, Redfern Legal Centre, Macarthur Legal Centre, Western NSW CLC, Intellectual Disability Rights Service, Women’s Legal Service NSW and Wirringa Baiya Aboriginal Women’s Legal Service. Funding for these CLCs is sought in order to increase these lawyer roles to a fulltime caseload and engage and non-legal support/specialist worker.

The remaining ten centres for which funding is being sought need new funding in order to recruit specialist Care & Protection Team members at a part time capacity. This approach would enable these CLCs to commence providing specialist care and protection work. By adding these skills to existing legal centres, funding would equip these CLCs with the resources and staff necessary to provide specialist care and protection work. These centres are: Marrickville Legal Centre, Far West Community Legal Centre, North and North West Community Legal Centre, Hunter Community Legal Centre, South West Sydney Community Legal Centre, Inner City Legal Centre, Kingsford Legal Centre, Western Sydney Community Legal Centre (which has three branches), Mid North Coast CLC and Illawarra Legal Centre.

### 5.3 Aboriginal and Torres Strait Islander families: collaborating for change

CLCs recognize the need to specifically address the overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care in NSW. CLCs have a long history of providing legal advice and assistance to Aboriginal and Torres Strait Islander clients. CLCs also work alongside the Aboriginal Legal Service and other Aboriginal and Torres Strait Islander organizations to identify and address legal barriers which contribute to the

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<sup>15</sup> Through the “Care Partners” funding program



overrepresentation of Aboriginal and Torres Strait Islander children in the child protection system.

### **Case Study: ALS-PIAC partnership**

In October 2017, the Public Interest Advocacy Centre commenced a partnership with the Aboriginal Legal Service (NSW/ACT) to tackle the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in NSW.

The Indigenous Child Protection Project (ICPP) involves a full-time lawyer working between the ALS Care and Protection team and PIAC to co-ordinate a strategy for addressing systemic legal issues faced by Aboriginal and Torres Strait Islander families in the NSW child protection system. Issues already identified by the project include the need for increased participation of Aboriginal and Torres Strait Islander families and children in decision-making as well as improved cultural planning.

The new project is designed to combine the Aboriginal Legal Service's experience in representing Aboriginal and Torres Strait Islander families in care and protection proceedings with PIAC's expertise in strategic litigation and policy advocacy in order to achieve necessary change.

Additional funding is needed to ensure the PIAC-ALS partnership can be sustained over three years.