Child Protection Reform Bill 2017

Submission by Legal Aid Queensland

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Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission to Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee on the Child Protection Reform Bill 2017.

LAQ's specialist child protection lawyers provide a range of child protection legal services including legal advice and representation to parents whose children are the subject of child protection proceedings, separate representation of children and direct representation of children.

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ seeks to offer policy input that is constructive and based on the extensive experience of LAQ's lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ supports many of the underpinning goals of this Bill, but makes the recommendations set out below in relation to specific provisions.

Temporary custody orders (clauses 15 – 16)

Clause 15 amends section 51AB(2) of the *Child Protection Act 1999* (the Act). The proposed amendment gives an example of a decision that the chief executive may make when deciding the most appropriate action to meet a child's ongoing protection and care needs, of applying for a child protection order. We suggest this example would be better expressed as referring the matter to the litigation director, rather than applying for a child protection order. The reason for this suggestion is that it better reflects the different roles that Child Safety and the Director of Child Protection Litigation have in applying for a child protection order.

Case planning (clauses 17 – 27)

We note the proposed amendments to case planning. We commend the amendments requiring transition to independence planning goals and actions, and details about how the case plan is consistent with the connection principle for an Aboriginal or Torres Strait Islander child, to be included in case plans.

Clause 17 amends section 51B of the Act so that, for case plans where the goal is returning the child to their parent's care, the case plan must also provide an alternative goal in the event that this is not possible. We are concerned that particularly at the early stages of an intervention, discussion of this alternative goal may be damaging to Child Safety's ability to work supportively with parents. It gives a confusing message to the parent about Child Safety's commitment to working with the parent with a mutual goal of returning a child to the parent's care. If this provision is retained, we suggest that it will be particularly important that discussions about the alternative goal be handled sensitively to address this.

We propose that consideration also be given to an additional amendment, to section 51H of the Act. One of the practical effects of the proposed amendment to section 62 is likely to be that in many cases there are at most, four case plans developed where returning the child to the parents' care is the primary goal. In our lawyers' experience, family group meetings are much more likely to promote parents' and children's participation in decision-making and family-led planning, increasing the likelihood that parents will know what is expected of them under the case plan. It is not uncommon that case plans are reviewed without a family group meeting or any other meeting being held. We therefore suggest an amendment to require the chief executive to convene a family group meeting not only to develop a case plan but to revise the case plan, where the child is subject to an order granting short term custody or guardianship to the chief executive or other suitable person.

Intervention with parental agreement (clauses 28 and 29)

We are aware that section 51C of the Act provides that a child in need of protection, who needs ongoing help under the Act, must have a case plan. We believe that this provision encompasses children who are subject to an intervention with parental agreement (IPA). Consistent with this view, the Child Safety Practice Manual requires that following a decision to open an IPA, a family group meeting must be held to develop a case plan within 30 days of deciding that a child is in need of protection. However in our lawyers' experience, it is not uncommon for there to be nothing in writing (in a case plan or another form) that documents what is expected of a child's parents or Child Safety under the IPA.

For this reason, we support the amendment to section 51ZC proposed by clause 29, which provides that the case plan for the child must include these details. However, we suggest this amendment would be strengthened if the requirement in section 51C to develop a case plan was explicitly referred to by way of a note or other reference in section 51ZC.

Duration of child protection orders (clause 34)

We understand that the proposed amendment to section 62 is intended to provide for a presumption that a child should not be subject to orders for a continuous period of more than 2 years after the first order is made, unless it is in the best interest of the child that the short-term orders be in place for a longer period. We understand that the policy intent of the amendments is to promote positive long-term outcomes for children and young people in out-of-home care, by achieving legal permanency in an appropriate timeframe. We support this intent in principle, but offer the following comments regarding the effectiveness of these amendments in this context.

Expression of the amendment

We respectfully suggest that the wording of the proposed amendments to section 62 may be difficult to understand and apply, and suggest consideration be given to alternative expression of these.

Resourcing of services required to support a child to be cared for by their family

We suggest that to appropriately implement these provisions, additional and appropriate resourcing is likely to be required. We support the approach in clause 6 of the Bill, which provides that the first preference for permanency for a child is for the child to be cared for by their family. However, we are aware that service provision to support parents in addressing child protection concerns so that, consistent with this preference, their children can be reunified to their care, may be difficult to access. The availability of effective and targeted support services in our experience is already a consistent concern, with accessibility and waiting lists varying significantly depending on geographic location. These concerns will be further reinforced with the implementation of the proposed amendments to section 62, which will effectively impose a 2 year timeframe for Child Safety and families working toward returning children to the care of their parents. Child Safety Service Centres, which identify and case manage the appropriate services, and the non-government agencies that deliver them, must be appropriately resourced to ensure that referral processes are not a cause of delay in parents addressing child protection concerns.

Inclusion of interim orders in calculating the duration of out-of-home orders

We are concerned that the duration of out-of-home child protection orders under the proposed amendments will include interim orders, as well as final child protection orders. This raises concern because:

- In our lawyers' experience, it is not uncommon for Child Safety Officers to advise parents during court proceedings that effective work toward reunification of their children cannot begin until final orders are made;
- Some delays in court proceedings are not within parents' control – for example, delays for a family group meeting or court ordered conference to be convened, or to obtain a date for final hearing;
- This may be perceived as imposing sanctions on parents or young people who seek to challenge the application being made by the Director of Child Protection Litigation;
- It is sometimes unclear what actions Child Safety requires a parent to complete to be satisfied that a child can be reunified, the required actions may change throughout the court proceedings and in some circumstances, what is required may not be clear until a final hearing.

For these reasons, we suggest a more appropriate approach would be to calculate the 2 year timeframe sought by section 62, excluding interim orders. This would effectively mean that the 2 year timeframe would begin on the day the first short-term order is made, and would only include time the child is subject to short-term orders (where those orders are continuous or continuously connected by interim orders).

In addition, we propose that in making any final order granting short term custody or guardianship to the chief executive or other suitable person, in addition to being satisfied that there is a case plan appropriate for meeting the child's protection and care needs, a court should also need to be satisfied that there is a clear and specific plan appropriate for achieving reunification within the time stated in the order. This would ensure

that it is clear what is expected of both Child Safety and the parents during the term of the order being made. Case plans usually relate to a 6 month period only, and may not include all of Child Safety's expectations for parents prior to children being returned to their care. Adherence to this plan would also become relevant evidence if there is a further application for an order at the conclusion of the order being made.

Reasonable efforts by Child Safety

In our lawyers' experience, the child protection reforms aimed at ensuring that families have better and more intensive support to address child protection concerns have yet to be meaningfully and consistently implemented. If the proposed amendment to section 62 is made, we suggest that section 59 also be amended to implement the Queensland Child Protection Commission of Inquiry's recommendation 13.20 (that before granting an order, the Childrens Court must be satisfied that the department has taken all reasonable efforts to provide support services to the child and family). A requirement for the court to be satisfied of the matters recommended in 13.20 would provide an important balance to the amendments regarding both the duration of child protection orders and the proposed new permanent care orders.

We also respectfully note that achieving legal permanency for a child will have little practical meaning in the child's life if the child does not have stable living arrangements while in out-of-home care, which in our lawyers' experience remains an aspirational goal for many children.

Variation and revocation of permanent care orders (clause 38)

Clause 38 inserts a new section 65AA, which provides that only the Director of Child Protection Litigation may apply to the Childrens Court for an order to vary or revoke a permanent care order for a child. We recognise the intent of this provision is to provide greater security to children who are subject to these orders. However, we respectfully suggest that further security would be provided if the children who are subject to these orders are able to apply to vary or revoke the order themselves. It is not appropriate that children who are subject to permanent care orders be the only children subject to child protection orders who are not able to directly seek the assistance of the court in determining whether the order should continue. While recognising that a proceeding under this section may be rare, we suggest allowing for a child to make an application in addition to the Director of Child Protection Litigation is also consistent with the broader aim of ensuring children have a voice in decisions affecting them. The ability of a child to make a complaint to Child Safety about their situation pursuant to the new section 79A (inserted by clause 43), is not an adequate substitute for a right to directly engage with the court.

Information sharing (clauses 54, 61 – 66)

Clause 54 inserts a new section 159C in the Act, which provides that the chief executive must make guidelines for sharing and dealing with information under parts 4 and 5 of chapter 5A. If an individual believes that an entity dealing with the individual's information has breached these guidelines, it is unclear what mechanism is available to hold that entity accountable to comply with the guidelines. The information sharing provisions proposed in clauses 61 – 66 also appear in parts to decentralise information sharing, so that for a person about whom information is shared, it may be difficult to know what agencies have received the information. There is a risk that these factors may make children and families reluctant to share information with support services, thereby decreasing safety.

The proposed amendments to section 159N will in effect provide that Child Safety may require information be provided by specified entities, including a prescribed entity as defined. A prescribed entity will include a specialist service provider pursuant to section 159M. It appears that “specialist service provider” will capture some community legal centres. This raises a significant concern to the extent that the operation of these sections will require entities that provide legal services to comply with information requests from Child Safety for information covered by legal professional privilege.

We do not believe that protections for lawyers who disclose privileged information in response to a s159N requirement adequately addresses the impact of this proposed amendment, which means that children and families who obtain legal advice from a community legal centre will have diminished assurance about the scope of their legal professional privilege as compared to children and families who seek legal advice from private law firms. We consider that an explicit exception to the requirement to comply is needed where the information is subject to legal professional privilege. Not providing this exception may lead to unintended consequences, such as impairing the capacity of children and families to obtain legal help, including with child protection matters.