Centre for Excellence
in Child and Family Welfare Inc.

Submission to the Commission for Children and Young People *Inquiry into the Implementation of the Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* Consultation Paper

November 2016

For further information, please contact Michele Lonsdale:
michele.lonsdale@cfecfw.asn.au

Centre for Excellence in Child and Family Welfare
Level 5, 50 Market St
Melbourne, 3000

Introduction

The Centre for Excellence in Child and Family Welfare (the Centre) welcomes the opportunity to contribute to the Commission for Children and Young People's (CCYP) Inquiry into the implementation of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* (the Inquiry). As the peak body for agencies working with children and families experiencing vulnerability or disadvantage in Victoria, the Centre represents a diverse range of organisations from early childhood organisations to providers of out of home care (OOHC).

This submission is not a position paper but, consistent with the aims of the Inquiry, provides aggregated findings collected from our sector members over the past few months. We thank our members for their contributions to our submission. We note that the legislative amendments have only been in effect since March 2016 and therefore there has been insufficient time to determine medium to longer term outcomes. The findings captured in our submission are indicative of emerging data trends.

I. Summary of findings

- There have been some positive effects of the legislation with changes to case planning and timelines acting as an imperative to resolve situations in a timelier manner, and contributing to a smoother process for children and families.
- These same changes to case planning and timelines have been found by members to result in premature family reunification, or to hold up some cases in contested hearings or part-heard matters in Court. The amendments present significant concerns when families cannot access the required support services within the timeframes.
- There is inconsistency in practice and processes across the state. For example, some cases show inconsistent application of contact conditions, and members have highlighted that when carers move to a Permanent Care Order (PCO) it appears that they may or may not continue to receive the enhanced payment for caring for a child with high needs.
- There is broad concern about the ability of the legislation to ensure the cultural safety and wellbeing of Aboriginal children and young people and the potential negative impact of these amendments on Aboriginal children, families, and communities. For example, a number of agencies have reported that cultural support plans are not being implemented in a timely or appropriate manner.

II. Feedback regarding implementation of the permanency amendments

It is difficult to assess the full or ongoing impact of the changes for children, families and agencies as many outcomes of the legislation are yet to be felt or measured. Despite the short time frame, agencies have identified several positive and negative impacts of the legislation since it took effect. These are initial observations and not necessarily significant trends.

Impact as a result of changes to case planning processes

Our members have noted a positive impact of the legislative changes on day-to-day decision-making for all parties. For example, it is easier to get consent forms signed for those children who are

subject to Care by Secretary Orders (CbSO) than previously when parental consent was required (on a Custody to Secretary Order), which led to delays and stress on carers.

Another positive impact is that some decisions have been made in a timelier manner, leading to the best outcome for the child in that situation, reducing stress on all parties and reducing the impact of adversarial Court processes. Agencies have also observed improvements in family finding, with some child protection staff exploring family connections more quickly and thoroughly, and referring families more efficiently to support services.

The child and family services sector has welcomed the introduction of cultural support planning for all Aboriginal children in out of home care; however for many agencies, the legislation has not yet resulted in more cultural support plans being completed or appropriately implemented. We acknowledge that this may change with additional funding and new cultural support workers being employed around the State in 2017.

The legislative changes have resulted in Long Term Care Orders being obtained for some children who were previously subject to Guardianship Orders, and whose carers felt they could not proceed to a PCO due to the number of supports required. This has improved the situations for some children and carers due to not having to return to Court every 12 months or two years, including J:

Without the legislative change, J's matter would have continued to return to Court every two years, and whilst he was aware that his aunt and uncle are committed to providing his ongoing care, returning to Court bought about a sense of unpredictability for J, involving increased anxiety and escalation of behaviours. J has reported feeling more settled knowing that he doesn't have to go back to Court and doesn't need to provide further legal instruction.

The case contracted case manager reports that the legislative change has bought about a sense of greater predictability for J, and an observed settling of his behaviours. She reports from a workload consideration, the statutory administrative requirements have reduced given she is no longer required to submit Court reports.

On the other hand, some agencies have reported that the permanency hierarchy has limited the possibility for carers to obtain Long Term Care Orders because the hierarchy requires child protection to seek a PCO before a Long Term Care Order, and alternative permanent care placements have been pursued at the cost of positive carer-child relationships and stable placements.

Impact as a result of changes to simplification of orders and timelines for making protection orders

Some agencies have observed some improvement in timeliness of decision-making for some children as a result of the changes to timelines, and shortening of the timeframes between when a PCO application is made and granted. However, there has not been a notable shortening of the time it takes to get to the point of applying for a PCO.

Our members have raised concerns regarding the automatic transfer of children on to different orders from March 1, without consideration of their placement history or relationships. For example:

An 18 month old infant subject to Custody to Secretary Order – had been in care for majority of his young life – transferred to Family Reunification Order upon legislative change and since reunified despite being in care since 2 weeks of age and with no primary attachment to the mother.

The only consideration in this case is how long the child had been in care, rather than their placement history and relationships. The changes on March 1 meant that some children were put on orders that contradicted their case plans. In the case above, there was a dramatic change in case plan despite there being no possibility of reunification and that not being the direction the family had been heading. Agencies have informed the Centre that this has also been stressful for birth families who all of a sudden think they will get their child back despite there being ongoing child protection concerns and no attempts to address these by the family.

Agencies have reported that an unintended consequence of the changes to legislation, particularly regarding the introduction of the hierarchy and timeframes for reunification, is that child protection workers have been reunifying families prematurely to meet the timeframes, and to trial reunification prior to moving towards alternative longer term options. This could be despite the family not being ready to care for the child, or not having addressing the protective concerns. The need to trial reunification can have severe long-term consequences for children who experience further trauma if the reunification fails.

Many agencies have reported that the timelines for reunification are increasingly irrelevant if services to support parents to address protective concerns and care for their children are not adequately resourced, available, accessible, or do not prioritise clients who are at risk of losing their children permanently.

Impact as a result of changes to conditions that can be attached to protection orders and PCOs

Agencies have reported that a positive impact of changes to conditions that can be attached to PCOs is the maximum of 4 contact visits with birth parents in the first 12 months. This has meant that some carers appear more willing to agree to permanent care because they are not required to facilitate ongoing and sometimes onerous contact arrangements with immediate and extended family members.

On the other hand, agencies have noticed that conditions attached to orders can in some instances contradict the intent of the order. Agencies have cited cases where Child Protection workers are continuing to submit applications to the Court with contact conditions that exceed the maximum of 4 in the first 12 months, and that in one case added up to 52 contact visits in a 12 month period. In other cases the Court has also imposed unrealistic contact conditions, including a case where the contact was 4 days weekly. Sometimes contact arrangements have been reduced or eliminated after a child's transfer to a CbSO, even when they were working well. These examples show inconsistent practice regarding contact arrangements which creates confusion about what is and is not permitted.

Members have observed that when support services parents require for children who have more complex or higher needs are not being included on PCOs, it can create serious issues for carers after a PCO is granted because they have to cover the additional financial costs of those services.

Impact as a result of changes to matters that the Court can consider when making orders

Agencies have reported timelier decision-making for some children as a result of changes to matters the Court can consider when making orders, including quickly granting PCOs where family reunification is identified as not being possible. However, members have also reported that more consideration should be given to the strengthening of sibling relationships as a priority in permanency decision-making.

Some agencies have observed that an unintended consequence of the legislative changes has been lengthier usage of Interim Accommodation Orders by the Courts, and an increase in contested hearings and matters being part heard by the Courts to ensure the Department of Health and Human Services (DHHS) acts on particular requirements. For example, in cases where a Magistrate has adjourned a case to make sure that DHHS connects the biological parents with a support service before returning to Court to have the matter heard fully. Some agencies have suggested that drawing out Court proceedings allows the Court to have greater oversight of case planning decisions than they otherwise would under the new legislation.

Practical barriers that still exist to achieving timely, permanent outcomes

As stated earlier, agencies have observed that a continuing barrier to achieving 'timely, permanent outcomes' is the lack of resourcing for specialist services to ensure that parents can access support to address protective concerns within the legislative timeframes for reunification. As agencies have noted, achieving sustainable change in the lives of families who experience a complex array of issues takes time and is rarely achieved within twelve months, particularly if services do not prioritise clients who are at risk of losing their children permanently. Lack of culturally appropriate support is also a key barrier to achieving 'timely, permanent outcomes' for Aboriginal children and families, similarly inhibiting their ability of Aboriginal families to access the supports they need to care for their children and keep them safe and strong.

Our discussions with ACCOs and the Victorian Aboriginal Children and Young People's Alliance have highlighted concerns about the impact of the legislation on Aboriginal children and families, including that the long term implications and risks associated with the legislation changes do not accord with the Aboriginal Child Placement Principle. Consistent with recent research[1] showing lack of compliance with key legislative and practice requirements (including the Aboriginal Child Placement Principle), agencies hold concerns about DHHS's capacity to complete the required cultural support plans or ensure their adherence, or ensure that Aboriginal children are placed in culturally appropriate placements and are able to maintain connections to culture, family and community. Feedback from the sector has been that there have been no significant improvements in cultural support planning or Aboriginal Family-Led Decision Making, which contributes to this concern.

Members have also identified the drop in carer payments when going on a PCO as a barrier to permanent outcomes because it acts as a disincentive for carers to become permanent carers. Agencies have reported that if carers secure higher reimbursements to care for a child with more

[1] Commission for Children and Young People (2016) In the child's best interests. Inquiry into compliance with the intent of the Aboriginal Child Placement Principle in Victoria. Commission for Children and Young People Victoria.

complex issues and needs, this reduces to the base reimbursement rate when a PCO is made. While this has been a common issue, we have also heard that it is not the case in some regions, and the higher payments continue. This highlights inconsistency in practice, which is problematic if incorrect information is informing carer decision-making.

III. Considerations

A key theme emerging from our discussion with members is that additional resources are required for placement prevention and reunification services and specialist services to support families to care for their children. Where families are unable to care for their children safely, decisions should be made according to the individual needs and situation of every child, young person and family. Research highlights that permanency for children is about relational, physical, legal and cultural permanency, and all of these need to be taken into consideration when making decisions about security and stability for children.[2]

The six-month review needs to be a first step in an ongoing monitoring process that will give the Victorian Government and the sector information on the impacts and outcomes of the amendments for children. We suggest a further review at 12 and 24 months to understand the full impact of the legislative changes. We ask the CCYP to also consider the feasibility of conducting a longitudinal study to determine the long-term impacts and life outcomes for those children affected by the permanency planning amendments.

IV. About the Centre

The Centre for Excellence in Child and Family Welfare is the peak body representing agencies that work with children and families experiencing vulnerability in Victoria. Its members include a wide range of children and family services, local government and other sector organisations in health and education.

We provide advocacy, research, policy analysis and training to member organisations. We have a strong focus on working in partnership with organisations, including cross-sectoral collaborations. The Centre has been working closely with government and the sector to implement key reforms, including in out-of-home care, building workforce capability and implementing evidence-informed practice.

[2] Sanchez, R. M. 2004. Youth perspectives on permanency. California Permanency for Youth Project, California Youth Connection, and Tilbury, C. & Osmond, J. 2006. Permanency Planning in Foster Care: A Research Review and Guidelines for Practitioners. Australian Social Work. Vol 59, 3, and Stangeland, J. & Walsh, C. 2013. Defining Permanency for Aboriginal Youth in Care. First Peoples Child and Family Review. Vol 8, 2.