

SUBMISSION TO

Legislative Reform Project:
Amendments to the Children, Young Persons and
Their Families Act 1997

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For further information about this submission please contact:

Rev. Dr. Chris Jones
Anglicare Tasmania
GPO Box 1620
HOBART TAS 7001

Phone: (03) 6231 9602
Fax: (03) 6231 9589
Email: c.jones@anglicare-tas.org.au

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Executive Summary and Recommendations

Executive Summary

This submission uses information gathered from Anglicare services and through our policy and research arm – The Social Action and Research Centre – to address some of the questions outlined in the Legislative Reform Project Discussion Paper. It does not address all the questions but rather focuses on those where service delivery experience and the findings from research can provide valuable input.

Anglicare argues for an Act which can promote a child centered and family orientated Child Protection Service where families can work in partnership with the Child Protection System to make decisions about the protection of their children and receive support to address the factors that put their children at risk.

Recommendations

Object and Principles of the Act

- That the Object ‘to provide for the care and protection of children’ should be changed ‘to ensure the best interests of the child’ in order to promote a child-centered approach whilst seeing the child’s best interests in the broader context of supporting the family to function well and in keeping the family together.
- That the Act should enshrine the right to family in alignment with the protection of the family unit as upheld by the International Covenant on Civil and Political Rights.
- That there should be a more aspirational and positive approach to responding to abuse and neglect than that itemized in Section 7 (2).
- That a statement that refers to the rights of children and the rights of families should be added to clarify the balance between children’s and parents’ rights. This should include the rights of parents to participate in child protection decisions.

Joint or shared care arrangements

- That Supervision Orders should be promoted by the Act.

Maximising non-adversarial dispute resolution mechanisms

- That there should be a less adversarial Court process.

- That parents should have a right to representation and advocacy if they are involved in Court processes.
- That the Act should encourage the use of Family Group Conferencing as the primary decision making mechanism within the system and promote their role as an alternative to Court processes.

Strengthening child advocacy provision

- That the use of legal representatives as advocates for children and young people be phased out in favour of fostering a less adversarial and more relationship-based approach to advocacy.

Administrative efficiencies: Duration of Care and Protection Orders

- That greater flexibility be introduced in the duration of Care and Protection Orders to more closely match the needs of children and young people for protection and the needs of families for support.

About Anglicare Tasmania

Anglicare Tasmania welcomes the opportunity to provide a submission to the Legislative Reform Project.

Anglicare Tasmania is the largest community service organisation in Tasmania, with offices in Hobart, Glenorchy, Launceston, St Helens, Devonport and Burnie and a range of outreach programs in rural areas. Anglicare's services include emergency relief and crisis services, counselling and family support, accommodation support, mental health services, acquired injury, disability and aged care services and alcohol and other drug services. In addition, Anglicare's Social Action and Research Centre conducts research, policy and advocacy work with a focus on the needs and concerns of Tasmanians on low incomes.

Anglicare has a broad range of experience in working with vulnerable families, delivering a range of services to vulnerable children, young people and their families. A number of these services support those in contact with, or at risk of contact with, Tasmania's Child Protection System. Of particular note is the Therapeutic Residential Care service which provides support for young people in out-of-home care and the Pathway Home service, which provides intensive support focused on the reunification of children in out of home care with their family of origin. In addition a high percentage of the clientele of other services - like Family Matters which works to prevent family homelessness, Reconnect which works to prevent youth homelessness and North West Early Start Therapeutic Support (NESTS) which supports families with children under 5 years - are in contact, or at risk of contact, with the Child Protection System.

Other Anglicare services, specially those in the housing and homelessness sector, alcohol and other drugs services, and mental health services, offer a range of programs where the majority of clients are in contact with Child Protection Services. These include:

- Family Mental Health Support Service – supporting those affected by mental illness
- Personal Helpers and Mentors – community based support for people with severe and persistent mental illness
- Taz Kids Clubs – groups and camps for children who have a parent living with a mental illness
- Kids in Focus – which aims to improve outcomes for children in families with substance use issues
- Care Coordination Service – which coordinates specialist referral support for people with multiple and complex alcohol and other drug dependencies
- ACCESS – crisis accommodation and ongoing support for people who are homeless or at risk of homelessness
- Staying Put – support for young people to help them maintain their tenancies
- Youthcare – a crisis shelter for young males aged 13-20 years old.

Anglicare's policy and research arm – The Social Action and Research Centre (SARC) is currently concluding two substantial research projects. The first is exploring parents' experiences of the Tasmanian Child Protection System (Hinton, forthcoming). This has entailed talking to 47 parents across the state in a mix of one-to-one interviews and focus groups and to 147 workers in 40 different non-government support services (NGOs) about their experiences of working with these parents. The focus is on gaps in the service system that supports parents and what changes both they and the NGOs that work with them would like to see. Alongside this, the research has also entailed commissioning a review of models of support for parents in child protection systems globally from the Regulatory Institutions Network at Australian National University (Ivec, forthcoming)

The second piece of research has been exploring the prevalence, characteristics and implications of youth homelessness in Tasmania with a focus on young people who have been on Child Protection Orders and/or detained at Ashley Youth Detention Centre (Pryor forthcoming). The study is gathering information on the causes, experiences and service needs of homeless young people in Tasmania from the perspectives of the young people themselves. The study has included both an online 'couch surfers' survey and a series of in-depth interviews with young people who have had involvement with Child Protection or been detained and who have experienced homelessness after leaving these systems.

The research clearly documents the difficulties and tensions in getting the legislation right so that it can provide a good basis for the delivery of services which can respond to situations where children may have suffered or be at risk of suffering harm from abuse or neglect.

Introduction

Anglicare welcomes the opportunity to provide a submission to the Legislative Amendment Review Reference Committee (LARRC) about proposed amendments to the Children, Young Persons and Their Families Act 1997.

In order to provide a commentary on the specific questions concerning the areas of the Act which have been identified for amendment Anglicare has drawn together the implications from SARC research and the experience of Anglicare in delivering services to vulnerable families. We do not comment on all the questions but only those where we feel our experience from both research and service delivery can be valuable.

Object and Principles of the Act

The current Object of the Act undertakes 'to provide for the care and protection of children' and Section 7 goes on to itemize ways of responding to abuse and neglect. This means that 'protecting children from harm' underpins the provision of child protection services. Although the Principles state that 'serious consideration must be given to the desirability of keeping the child within his or her family' Anglicare has identified a failure of the Child Protection System to work in a family-orientated way. Anglicare believes that in most circumstances the child's best interests are met by helping and supporting the family to function well. The Act however has promoted an individualistic view of children's needs and rights and this has contributed to an ambivalence on the part of the Child Protection system towards both recognizing the natural rights of parents and a family-orientated approach (which is able to intervene early and in a supportive manner to assist vulnerable families and protect children).

The SARC research has shown that the current interpretation of the Act has meant that entry into the Tasmanian Child Protection System for many parents has meant entry into an authoritative, investigative and coercive system. Families can be marginalized, their views are not necessarily taken into account, there is little support to sustain family life and once removal has occurred promoting reunification is not necessarily proactively pursued. Despite a rhetoric of partnership with families and pockets of good practice the system does not work in a family-orientated way or achieve a reasonable balance between protecting children and supporting families to parent. There was a strong push from those involved in the research – from parents, NGOs and from lawyers – to reinforce family-centered practice. For many parents the system demonstrated a failure to get the balance right. They wanted to see more work with families to enable children to remain in their homes or to reunify them with their families. As one parent said:

The Department say they take peoples' kids for the best interest of the kids. They don't say they split up families. According to them they're not there to ruin a family, they're there to protect the children. But what gets me is they actually have split up a family. (Mother with one child in kinship care)

And workers employed in NGOs expressed similar concerns:

The interpretation of the Act about what their primary focus is, is an issue. They take the first section that what we do is to take the best interests of the child. Their obligation to try and work and keep the child within the family and the reunification is very, very secondary and it only happens if people push it. This is the elephant in the room. In terms of contemporary rights, the rights of children are increasingly incorporated but families are not recognized. (Advocacy organization)

Commonly child protection focuses on the interests of the child and there is no regard for the parents. The balance is not right. Of course not all are good parents and some children must be removed as there is no capacity to parent. But we also need to support parents with their rights and with their

communications with the Department. As parents are not their client they have no reason to respond to them. (Family support service worker)

There were also concerns about the current decision-making Principles within the Act:

- S. 8 (4) The child's family and other persons interested in the child's wellbeing must be given the opportunity to present their views in respect of the child's wellbeing.
- S. 8 (5) In any proceedings under this Act in relation to a child, the child's family and other persons interested in the child's wellbeing should be provided with information sufficient to enable them to participate fully in the proceeding.

The research demonstrated that many parents felt they were unheard within the system and were not effectively involved in decision making processes. Despite partnership working with families being an Object of the Act the research found that this was not happening in practice. In addition, the research found that it is common for parents to not have access to information they required to enable them to participate. This is despite the fact that involving parents in decision making has benefits both for the process itself by ensuring that parent's knowledge is included in planning processes and for outcomes such as increased compliance with case plans and enhancing options for family reunification. The failure to recognize parents as rights bearing citizens with a right to participate in decisions which affect their families is not consistent with contemporary governance ideals about citizen's rights.

Current failings are highlighted by the multi-generational nature of contact with the Child Protection System and the over-representation of those who grew up in out-of-home care having their own children in the Child Protection System. There is a moral imperative to improve the way families engage with child protection and this is even greater when the children being removed are the children of adults who suffered as a result of past removal policies and practice. It has been suggested that child protection should be seen as one long intervention spanning generations rather than a series of separate episodes of bad parenting or perceived risk (Hamilton 2010). This requires the rethinking of the way in which child protection workers intervene with families to counteract this phenomenon and reduce the numbers of children and young people who are removed. Those who have suffered as the result of previous practices in child protection interventions deserve an opportunity to learn positive and safe family practices.

Although furthering the Object of the Act means 'to provide or assist in the provision of services to help persons who have been under the guardianship or in the custody of the Secretary during childhood to make a successful transition to adulthood' (Section 7 (2) (h)), the research found that NGO services had concerns about the ability of those who leave care at 18 years to manage independently, particularly given their traumatic pasts and possible absence of or tenuous links with their birth family. Society is changing and many young people now live with their parents for much longer than 18 years. This is not reflected in the provisions made for these particularly vulnerable young people disadvantaged by their pasts. The State is failing in its role as grandparent. As one young parent said:

I was still in welfare 'til I hit 18. If they see that you're not doing so well, they should come in and start helping you and say, 'look if you don't pull your head in we are going to take your kids before anything bad can happen'. They sit there and say at the end of the day they want kids to be with their parents. But that mustn't be true because they don't walk in and say do this, this and this. My mother was a prostitute, an alcoholic; most of my family are alcoholics. I probably wouldn't have listened to my mother if she had tried to step in because I would have said, 'What do you know? Look what you've done to me'. I blame my mother for a lot of what's gone on. But you don't get help, nothing, just we'll fix you later but they can't fix you later. It can be such a vicious circle and it's something that needs to be looked at very, very urgently. It's not something that other services should be doing. Other services are there to do something else. Child protection should be supporting you.
(Young mother of five children with four in out-of-home care)

Anglicare argues for an Act which is aspirational and human rights focused as a better basis for a more functional service delivery system. The Object and Principles of the Act should reflect current best practice by reinforcing Principles to help families before problems occur and in finding solutions to problems with their participation. They should reflect the view that the interests of parents as stakeholders in children's lives are a key component of the best interests of the child. In some instances of course this is not the case, but these are the minority, and the majority of families should be involved in making decisions about their children's lives. To this end Anglicare argues for amending the Object and Principles as follows:

- The Object 'to provide for the care and protection of children' should be changed 'to ensure the best interests of the child'. This would promote a child-centered approach whilst seeing the child's best interests in the broader context of supporting the family to function well and in keeping the family together as expressed in Section 8 (1). This would reinforce a more family orientated approach within the Child Protection System.
- The Act should enshrine the right to family. It should be consistent with the protection of the family unit as upheld by the International Covenant on Civil and Political Rights (United Nations 1966). Article 23 states that 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the State'.
- A more aspirational and positive approach to responding to abuse and neglect as itemized in Section 7 (2).
- The addition of a statement which refers to the rights of children and the rights of families. This might include:
 - clarifying the need for balancing children's and parents' rights including balancing removal with bringing in supports
 - a reference to the United Nations Convention on the Rights of the Child, where Article 8 compels States to respect the right of the child to preserve his or her identity, including nationality, name and family relations without unlawful interference. Article 9 ensures that a child is not separated from his or her parents

- except when authorities subject to judicial review determine that such separation is necessary for the best interests of the child.
- clarifying the rights of parents to participate in child protection decisions. This should reinforce the decision making Principles (Section 8 (4) and (5)) to ensure that the Child Protection System actively engages with families and with children in decision making.

Joint or shared care arrangements

Parents in our research frequently commented on a lack of in-home support prior to the removal of children and the absence of opportunities to get intensive support to deal with issues which put their children at risk. They wanted to see support available to them while their children were living with them to avoid removal. This was particularly necessary for those who had been in the care system themselves in order to 'break the cycle'. Overall they asked for a change in attitudes within the Child Protection System to move from blaming parents for their situation to supporting them to change it.

If someone moved in with you instead of just coming round for two hours and everything be hunky dory and all of a sudden things just fall out of the bottom and you get your children taken off you. If they are going to spend so much money on children in care why aren't they spending that money on parents, if they are worth it, if they've got great potential, if they have a sense of the realness and reality of their dysfunctional life and want to change, why not just chuck in a worker? If someone could have stayed with us for a couple of days a week that would have actually helped us a lot more than what did happen. Two hours a week just wasn't enough for us to see the real reality. All we were doing was trying to mask what our problems really were and saying it was all bright and dandy because we were so frightened of the Department being involved with us. (Mother recently reunified with three children)

Some young people also wished their parents had been given support to prevent their removal:

Probably if me mum went and done anger management and things like that, cos she used to bash me all the time. That's probably one of the reasons (as well) why I didn't like being home... And (if she learnt) how be a proper parent, like be a proper parent to kids'. (Young man aged 16, a ward of the state and resident at Ashley for the seventh time)

NGOs wanted to see child protection working with the family and regularly monitoring their progress – daily if necessary – to improve their parenting capacity. They argued that sustaining the family is a cheaper option than the removal of children, and that removal should be the last resort.

Supervision Orders can prevent the trauma of removal and support pathways to reunification whilst working to protect the child and support parents to address the risks. Anglicare would like to see the promotion of Supervision Orders as described in the Discussion Paper - by preventing the Court from making an order allocating parental responsibility unless it has determined that a Supervision Order is not appropriate. Reinforcing family orientated practice in the Object and Principles of the Act would also facilitate an increase in the use of supervision provisions.

Maximising non-adversarial dispute resolution mechanisms

Anglicare's research describes a highly legalistic and adversarial system. Cases which go to Court tend to be long, emotional and complex. Although the Court is closed to the public during these cases, many felt it inappropriate that child protection applications are heard alongside cases where someone has stolen a car or not paid a fine.

No one, including magistrates, likes child protection work. It's difficult and unforgiving and the most traumatic hearings you can imagine. The Court is not necessarily conducive to resolving the kinds of issues presented to it. Parents are right to feel grieved by the child protection system. They are railroaded and patronized and punished and are not equal partners in the process. They are less well protected here than in the UK as there is no legal rights act which enshrines the right to family. Out of all the groups in the legislation they are the least well served. Workers feel under siege and this reflects in the manner in which parents are dealt with and they are not treated like human beings. (Lawyer)

Once parents are at risk of, or subject to, Care and Protection Orders their lives can be dominated by legal and court processes, finding and working with lawyers and advocates, attending Court and dealing with the emotional impact. Parents often described proceedings as demeaning and shaming, particularly when affidavits revealed very negative details about their lives and parenting capacity. Many felt the outcome of the Court process was just a matter of luck rather than any meaningful justice and depended on having the right legal representation, knowledge of their rights and being able to hold their head up in a system which completely disempowered them. Significant numbers of parents have gone through the Court system unrepresented and unsupported. As one mother said 'when I go to court my arms shake, my legs shake'. All these difficulties are exacerbated for parents with intellectual disabilities and as another parent said 'the legal side of this is horrendous'. Court processes enforce a deficit and risk model of working and can tip families into crisis.

These difficulties mean that most of those who participated in the research queried the appropriateness of trying to find solutions to complex problems in a legal system. The Court is not conducive to resolving the kinds of issues presented to it and it can be a counterproductive response which reinforces an adversarial approach. It should not be about winning an argument

but about finding a solution to a problem and this requires different processes to those at Court. If the Act is about the best interests of the child and child centred and family orientated practice the current Court system is not 'fit for purpose' and as far as possible these issues need to be removed from the Court.

In order to keep child protection matters out of the Court as far as possible the Act should put more emphasis on other dispute resolution mechanisms like Family Group Conferencing (FGC). This is currently the key mechanism in the Child Protection System for involving parents in decisions and dispute resolution. In the research positive outcomes were reported from well facilitated FGCs. They resulted in good quality plans that involved the extended family and prevented cases from going to Court.

Two thirds of parents in the research had experienced one or more FGCs. They fully appreciated being asked 'what they wanted' and having a facilitator who ensured the Department was listening. Many wanted to see FGCs being held prior to any child protection intervention if possible, to identify who can help within the family and whether the child needs to be removed. When their experiences were not so positive they reported that it was about the way the FGCs were conducted - they had felt ignored, there were difficult family dynamics and tensions or the Department had overruled the decisions made at the FGC.

They are great and the people who hold them are very good people up to a point but child protection at the end of the day make their own decision. I think that's why a lot of parents just give up. Usually it depends who's there but child protection can overrule at any time and what they say goes basically. The key to it is not to be frightened and to stand up and voice your opinion and that's what all parents should do but a lot of them don't because they're frightened of child protection and child protection make it very clear that we are very scary people. (Father with two children in out-of-home care)

We ended up having a FGC to plan what was going to go forward. There were so many things we wanted to happen. But when child protection came back in that day they really didn't want to know. They are supposed to be child friendly and family orientated but we're finding they are the total and utter opposite. Ours lasted four and a half hours. We all had rules and times to talk and we had a really strong family plan. Our facilitator was very, very supportive. Child protection came back and they just said this is not on. They didn't want to be there and we'd spent four hours doing this plan. (Grandmother supporting her son and grandchild)

For NGOs FGCs were heavily reliant on the skills of the facilitator. When they were first introduced one worker described them as 'a beacon of hope around the world'. However NGOs reported Child Protection being unwilling to collaborate during conferences, arriving late, not listening to parents or other services and overriding the decisions so that they became a legitimization of decisions which had already been made. One support service said that they now refused to attend because they did not want to be seen to participate in such a tokenistic exercise.

Another felt that, although they could be very productive, they were often only used at a point of crisis when a catalyst was required to move things forward rather than as a routine part of collaborative working with parents.

In theory there should have been lots of preparation with parents. They should have designed the agenda, there should be no surprises for them, they should be able to run it themselves. Everyone who needs to be there should be there to form a blanket of support around the parent. But instead it is exactly the opposite. It is run like a court, often no minutes are taken. It is not about empowerment and support but conducted like court proceedings. (Family support service)

They can often be a very powerful process, a turning point. But we had it in this dingy room, freezing and revolting. The Department came late, an hour late when the conference process is that they should come in that first hour for the information sharing then leave for the family to have private time and come back for the agreement and any negotiation that has to happen. So that completely undermined the whole process that's supposed to happen. It was really insulting. It's a fairly normal phenomenon that the Department workers take their child protection telling role into the conference. Part of the facilitator's role is to invite them to listen to the family after they've talked about bottom lines and the safety factors. (Counsellor)

NGOs described the distress of parents before an FGC is held, the level of support that parents often required to deal with them and the need for debriefing afterwards. There was little consideration about how parents would get to the venue or discussions with advocates who might be supporting them about their needs.

Overall, research participants described a situation where FGCs are not offered to families on a routine basis in a belief that they have a right to be engaged in decision-making prior to court intervention. Rather they are offered on the basis of professional decisions about whether it would benefit them or not. So although they can be valuable and allow families to develop their own plans, they are not about the systematic empowerment of families within the system.

The frequency with which FGCs are convened has also been affected by resource issues. When they were first developed there was a coordinator who recruited, trained and supported facilitators. This role has now been disseminated out to Area Teams which means it happens from 'the side of someone's desk'. This has meant a shortage of facilitators and a longer time frame to set up a FGC.

Anglicare calls for:

- a less adversarial Court process;
- a full commitment reinforced in the Act that parents have a right to representation and advocacy if they are involved in Court processes;
- a positive statement supporting the objectives and intent of facilitating FGCs and a move to making them the primary decision making mechanism within the system;

- amendments to simplify the factors required to convene a FGC in order to encourage their use;
- provision for FGCs to be arranged at any time where it promotes the best interests of the child;
- a legislative requirement prior to commencement of care proceedings to establish either that a FGC was utilised and was unsuccessful or why a FGC was not utilised;
- a clarification of the relationship between FGCs and the Court process.

There are a range of challenges for parents in being involved in decision making processes in meaningful rather than tokenistic ways and much depends on the ability of the Child Protection System to work in partnership with parents. For parents, as well as being involved in making decisions, partnership is about having information about the system and their rights within it, being kept informed about what is happening in their case their situation, being treated with respect and being linked in to support and advocacy services. These are basic prerequisites for any partnership working. However few parents in the research had experienced partnership working and it is suggested that this requires a change in culture within the Department. Commentators considered that the full implementation of the Signs of Safety Approach across child protection services would provide a mechanism for working in collaboration with parents from the beginning of their contact with the system to identify problems and get their input into solutions. As one child protection worker said ‘it provides a language to have those conversations in an easier and less blaming sort of way.’ This would represent a major step forwards in non-adversarial dispute resolution that could be introduced in the short term.

Strengthening child advocacy provision, limited to increased use of separate representatives

Anglicare would like to specifically address the question of what child advocacy should look like.

Our research identified difficulties with the use of separate representatives in the Court system. These difficulties concern:

- the use of lawyers as separate representatives and how this can foster a more adversarial approach.
- the lack of training for separate representatives. This can mean entrenched views of parents from the start of court proceedings which can antagonise parents and impact on outcomes.

Research with young people (Pryor, forthcoming) has highlighted the benefits of relationship-based advocacy with a known worker over a longer period of time, a worker with whom that the young person has a relationship of trust:

I can contact them whenever I need their help. I used to see a social worker in the past because I had really bad depression where I was harming myself by cutting my wrists and stuff. I was seeing social workers since I was about 11 years old. Because I get very emotional to stuff and react a lot differently to other people who are more sensitive. There was one that I used to meet with in Grade 6 and I still meet with him often now. I just give him a ring and tell him that I need to talk about something and then we'll arrange a meeting. (15 year old boy)

Anglicare suggests the phasing out of the use of legal representatives as advocates for children and young people and fostering a relationship-based approach.

Administrative efficiencies: Duration of Care and Protection Orders

The research highlighted some issues associated with the duration of Care and Protection Orders. These were to do with the flexibility of orders and more frequent revision of orders. Anglicare would like to see more flexibility available to the Court in what kind of Orders they can make. The following should be taken into consideration:

- Most families in the Child Protection System have multiple and complex needs. A 12 month order is not necessarily able to provide enough time to address and resolve a number of significant issues which might put children at risk. A longer time frame is required. One suggestion is to have a longer term order; for instance, 'not exceeding 60 months'. This would provide the ability to structure an order around a treatment plan.
- The ability to have 'staged Orders' where instead of strict time limited order for 12 months or until 18 years, there were criteria for applying a staged order. For example:
 - Stage 1: remove the child from immediate risk, establish safe home environment
 - Stage 2: address risk factors and trauma

This would need to be supported by more regular reviews and identification of 'readiness to return' or 'readiness to keep the child safe'. This would make more flexibility available to courts in what kind of orders they can make. An increase in the use of Supervision orders would help in these instances.

- The ability to extend a Care and Protection Order beyond 18 years and/or to have a facility to continue to provide support beyond 18 years. This would match contemporary ideas about parenting.

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