

1 April 2022

Emma Fenby

General Manager, Strategic Services

Territory Families, Housing and Communities

By email only: TFHC.LawReform@nt.gov.au

Dear Ms Fenby,

Submission on proposed reforms to the *Care and Protection of Children Act 2007* (NT)

Darwin Community Legal Service ('DCLS') welcomes this opportunity to provide feedback on the proposed amendments to the *Care and Protection of Children Act 2007* (NT) sought to be undertaken by the Department of Territory Families, Housing and Communities ('TFHC').

DCLS acknowledges the Larrakia people as the Traditional Owners of the Darwin region. We pay our respects to Larrakia elders past, present and emerging. We also acknowledge and pay our respects to the Traditional Owners of country throughout the NT and throughout Australia. We recognise their continuing connection to land, waters and culture. DCLS supports Voice – Treaty – Truth.

Darwin Community Legal Service (DCLS)

DCLS is a non-profit community-based effort committed to legal and social justice and the protection and expansion of rights, fairness and wellbeing in the NT. We especially work with people who are vulnerable or marginalised.

DCLS provides legal help, advocacy and support services; collaborates to understand obstacles to justice and try to achieve reform; and promotes understanding and acceptance of rights, justice and inclusion.

Response to Proposed Amendments

DCLS commends and supports the important work of TFHC towards improving the *Care and Protection of Children Act 2007* (NT) ('the Act').

However, we wish to express reiterate our concerns regarding aspects of the Multi-Agency Community and Child Safety Framework ('MACCSF') and the principles sought to be reviewed through these amendments.

These concerns were initially expressed during a meeting with TFHC representatives on 28 February 2022. The meeting was attended by Carl O'Connor and Yvette Nicholls from TFHC and Judy Harrison, Lachlan Rowe, and Al Cabry from DCLS.

1. Multi-Agency Community and Child Safety Framework

DCLS is concerned about the lack of resourcing provided to participants operating under the MACCSF. During the meeting, TFHC representatives noted that it was the agreed position of MACCSF participants that the positive outcomes sought to be achieved through the MACCSF will ultimately result in greater savings in the long-term.

DCLS does not dispute the logic that cost savings can and will flow from preventative and collaborative action to address community and child safety. However, the starting point of the MACCSF appears to rely upon a great deal of momentum and resourcing from participants, which may not be sustainable over the long-term and may be particularly challenging to maintain if positive change is not readily forthcoming.

Ensuring the longevity and substance of the MACCSF appears to be a central driver for the introduction of the MACCSF into legislation. Adequate and equitable resourcing should be viewed as an equally necessary component in this regard. Combined, these changes will ensure that the immense collective investment into the MACCSF by participants to date is valued and sustained.

Further, it is unclear who the MACCSF is accountable to. While the intention of the MACCSF is to facilitate better coordination between services and personnel operating in predominantly Aboriginal communities, it appears that the MACCSF is following the well-trodden path of Government-led, top-down approaches to resolving community issues.

This is an approach that endorses and further embeds the legitimacy and primacy of what Government understands the problem to be and how best it can and should be solved.

This is contrary to the recommendations of the NT Royal Commission and the ongoing treaty process which seeks to fundamentally alter the approach towards decision-making for Aboriginal people.

The MACCSF could be realigned in this vein to ensure direct accountability to Aboriginal people and organisations. DCLS defers to the opinions and preferences of Aboriginal people and organisations involved with the MACCSF in this regard.

2. Proposed changes to the principles under the Act

It should also be acknowledged that several of the proposed principles to be included in the Act, as indicated by the Discussion Paper, are already contained within the Act (see ss 7, 9, 8A, 10A, 293K).

Principles should be truly striving

DCLS previously expressed concerns regarding the unambitious and insufficient amendments proposed to the principles under the Act. The following are examples of a more striving approach:

<i>Outlined in the Discussion Paper</i>	<i>More striving approach</i>
That children have the right to grow up in an environment that enables them to reach their full potential;	Children receive their rights to grow up in an environment that enables them to reach their full potential.
The health, safety and wellbeing of all children is fundamental, inclusive of children living with disability. Children living with disability will be supported to reach their full potential;	Children living with disability experience that their health, safety and wellbeing is treated as fundamental and that they are supported to reach their full potential.
A family should be actively supported to keep children and families safely together;	Children and families experience receiving active support to keep them safely together.
The importance of trauma informed practice for children who have experienced abuse;	Children who have experienced abuse experience assistance through trauma informed practice.

The importance of information being shared in relation to a child’s safety and wellbeing in a timely manner;	Risks to children’s safety and wellbeing are reduced through timely information sharing.
Services to Aboriginal children are provided in a culturally safe and responsive way where possible by Aboriginal organisations;	Aboriginal children experience receiving services which are culturally safe and responsive. Aboriginal children receive services from Aboriginal organisations, unless ...
Trauma informed practice is required when working with children that may have suffered abuse or neglect;	Children who may have suffered abuse or neglect are responded to with trauma informed practice.
Children and their families will be treated with respect and their voices heard; and	Children and their families experience being treated with respect and their voices heard; and
Agencies will work together and apply resources to support children and families and ensure interventions are the least intrusive	Children and families experience agencies: <ul style="list-style-type: none"> • applying resources to support them, • working together, and • which apply the least intrusive interventions.

Principles must be carried through in the Act

The existing principles need to be carried through in the content of the Act and adjustments to principles, including new principles, should follow this pattern. That is principles, their application and implementation need to be fully addressed in the Act.

For example, further changes to the Aboriginal and Torres Strait Islander Child Placement Principle (‘ATSICPP’) is a limited response to trying to change the rates of Aboriginal children placed with non-Aboriginal carers in the light of more significant barriers relating to the “inconsistent, culturally unsafe, and poor practice” of TFHC.¹

The Secretariat of National Aboriginal and Islander Child Care (‘SNAICC’) 2019-2020 review of the ATSICPP implementation efforts in the NT noted recent, positive legislative reforms undertaken by TFHC in March 2020 regarding the ATSCIPP. However, the review noted that these amendments, have not seen substantive improvements in the rates of Aboriginal placement in the NT.² Further, that:

“... the absence of a legal requirement for Aboriginal family-led decision-making or Family Group Conferencing remains deeply concerning, as are community reports of inconsistent and inadequate support for child and family participation. These processes should be strengthened by ACCO leadership and governance structures”.³

At a minimum, DCLS recommends that the proposed amendments incorporate greater accountability to actions and outcomes. DCLS would welcome further engagement as to how this could be achieved.

¹ Secretariat of National Aboriginal and Islander Child Care (SNAICC), ‘Review of the ATSICPP implementation efforts over the reporting period 1 May 2019 – 30 April 2020’ (March 2021) <<https://www.snaicc.org.au/wp-content/uploads/2021/03/Reviewing-Implementation-of-the-ATSICPP-2020-NT.pdf>>

² Ibid 25

³ Ibid 27.

3. Inclusion of disability-specific provisions

In our earlier meeting with TFHC representatives, DCLS expressed strong support for the introduction of principles that recognises children with a disability, as well as further amendments which are intended to support children with a disability under the Act.

TFHC's lack of knowledge regarding children with a disability in the NT, particularly children who come into contact with the child protection and youth justice systems, is alarming and must be addressed.

TFHC's current child protection reporting counts children as having 'no disability' where they are known to not have a disability and where their disability status is unknown (i.e. an assessment has not been conducted to determine whether they have a disability).⁴

As a result, the prevalence of children with disability in the NT is dramatically underestimated. This leaves a dangerous gap for children and their families, who are left to fend for themselves in a system that has little understanding of the children they are tasked with protecting.

This has the effect of exacerbating existing, and often unidentified, issues, which contribute to the likelihood of their future interaction(s) with the child protection and youth justice systems. This trend will continue without a legislated incentive for greater awareness and action regarding children with disability in the NT.

The Act should acknowledge the prevalence and likelihood of disability as a means of acknowledging, normalising, and supporting a child with disability to enjoy a full and decent life, in accordance with their rights under international law.

Further, there should be a legislative requirement that a functional impact assessment be conducted as part of an initial investigation and include all children within the household, as they are at an increased likelihood of coming to the attention of TFHC.

This assessment should be required as an essential component in a child protection application and should be included, and updated accordingly, within a child's care plan.

This approach is analogous to that of the diabetes management model, where every point of contact with the health system is viewed as an opportunity to test for diabetes to afford more opportunities for its identification and treatment.

DCLS also reiterates the Royal Commission's recommendations that the power of the Children Commissioner be extended to ensure their ability to monitor the treatment of children, including children with disability, is free and unfettered.⁵

4. Additional comments

In addition to these previously expressed concerns, DCLS encourages TFHC to revisit all outstanding Royal Commission recommendations and avenues for reform which were discussed in the Final Report.

TFHC's reform agenda should be led by the expertise of Aboriginal peak bodies and organisations, such as SNAICC, Aboriginal Peak Organisations Northern Territory and Aboriginal Medical Services Alliance Northern Territory which is inclusive of Aboriginal legal services (North Australian Aboriginal Justice Agency, North Australian Aboriginal Family Legal Service and Central Australian Aboriginal Family Legal Service).

Regard should also be had to the experiences of other jurisdictions in their reform efforts, including alternative models of delegated authority, Aboriginal-led decision-making regarding child wellbeing.

DCLS also encourages further consultation regarding the development and introduction of legislation that specifically relates to the use of Safe Care Facilities in the NT. Greater transparency and protections are needed

⁴ Office of the Children's Commissioner, 'Annual Report 2020-2021' (2021) 36

⁵ Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (November 2017) 39 [22.4]

to ensure that the rights of children living in Secure Care Facilities are upheld. At a minimum, the use of restrictive practices in these facilities should be subject to the same safeguards and reporting requirements as under the *National Disability Insurance Scheme Act 2013* (Cth) and the relevant *Restrictive Practices and Behaviour Support Rules 2018*.

For any further information regarding this submission, please contact Judy Harrison on (08) 8982 1111 or at info@dcls.org.au.

Yours sincerely,

DARWIN COMMUNITY LEGAL SERVICE INC.



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