



AASW

Australian Association
of Social Workers

NSW Government Discussion Paper

*Child protection: Legislative reform
proposals*

*Strengthening parental capacity,
accountability and outcomes for children
and young people in State care*

Submission - March 2013

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Child protection: Legislative reform proposals

Strengthening parental capacity, accountability and outcomes for children and young people in State care

Feedback Form

Thank you for your interest in the NSW Government's Discussion Paper canvassing proposed legislative reforms to the NSW Child Protection system.

You are welcome to submit your feedback on each of the 29 proposals contained in the Discussion Paper using this response form.

You may choose to only comment on some or all of the proposals.

Please ensure your feedback is submitted by **8 March 2013** so it can be considered as part of the consultation process.

If you would like any further information about the consultation process, please email **CPreforms@facs.nsw.gov.au**

If you do not want your personal details or submission released, please indicate this clearly on your submission. Please note, however, that submissions may be made publicly available under

the Government Information (Public Access) Act 2009. The Department may also decide to circulate some or all submissions for further comment to other interested parties, and publish submissions on its website.

How this consultation response form works

Each of the 29 specific measures proposed in the Discussion Paper are included in this form. Questions are asked about each proposal.

You can respond to as many of the questions as you would like. Please use the boxes marked 'feedback' to type in your responses.

The last question in this form is a general one. If there are any additional issues you would like to raise please do so here. You can save this form on your computer at any time and come back to it later.

We look forward to hearing your views.

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Your Feedback

Section 1: Promoting good parenting

PROPOSAL 1: Introduce stand-alone parenting capacity orders to require parents to attend a parenting capacity-building or education course.

Question 1 (a):

Do you think parenting capacity orders would be an effective mechanism to address escalating risk in both an early intervention and child protection context? Are there other mechanisms that might be equally or more effective?

Question 1 (b):

What factors do you think the Court should consider before making a parenting capacity order?

Question 1 (c):

What should be the consequences for failing to comply with a parenting capacity order?

FEEDBACK:

Question 1(a)

The AASW supports a child protection system that recognises respect, participation and capacity-building as fundamental rights and needs of vulnerable children and families. The AASW supports the voluntary participation of families and suggests that a blanket move to compulsion:

- does not acknowledge the range of factors that may be relevant to a family's decision to refuse parenting supports
- risks creating stigma around engagement with early intervention services, which may ultimately undermine the goal of reducing the number of children and families entering the tertiary service system

The AASW believes that investments in the workforce and service system are other mechanisms that may ultimately be equally effective in engaging at-risk families in parenting programs.

Recommendation 1: Maximising chances of success

Programs aimed at developing parenting capacity must be resourced and appropriate to the needs of families if they are to be successful – that is, they need to provide a real opportunity for parents to succeed. In order to do so, the AASW recommends they:

- be tailored to meet the needs of parents who are trying to address complex and intergenerational issues such as trauma and family violence.

- allow for recognition that complex and intergenerational issues require time to be addressed
- are readily accessible to the family
- are delivered by a professional workforce with the necessary skills, training and experience

Recommendation 2: Fostering engagement

Maximising the capacity of the child protection system to effectively engage and collaborate with families requires:

- i. The development of relationships that foster engagement, which are built upon trust and collaboration (*Dumbrill 2006; Hardy & Darlington, 2008*). These relationships require a professional workforce with the skills, knowledge and support infrastructure to respectfully engage with children and families.

The AASW recommends that child protection services workforce policy should recruit professionals who are qualified to work with vulnerable children, young people and their families. At a minimum, degree level qualifications in disciplines with mandatory child protection education, such as social work and some psychology, human services and behaviour studies degrees should be the entry requirement for child protection worker positions. Where workers lack these qualifications, they should be supported by the agency to gain appropriate qualifications.

Workplace training and supervision of child protection workers should focus on developing the capacity for professional decision-making and effective practice with families. Workers need to be supported to engage with families as partners, to treat people with dignity and respect and to turn involuntary clients into voluntary partners through a process of therapeutic casework. Key relationship building skills include the capacity to demonstrate empathy, engage the families in decision-making and in change processes.

- ii. Culturally competent, safe and sensitive practice at organisational, professional and individual levels.

This should include acknowledgement and understanding of the historical and contemporary disadvantage experienced by Aboriginal and Torres Strait Islander peoples and meaningful investment in culturally appropriate processes for engaging, assessing and working alongside Aboriginal and Torres Strait Islander families and families from culturally diverse backgrounds;

- iii. Service delivery that:

- is founded on principles of respect and participation and which acknowledges capacity-building as a fundamental right and need of vulnerable children and families
- Provides families with adequate opportunities, information and support to engage with services.

- The AASW does recognise however that early intervention services may work with families where the risks are already very high and complex, in which case a PCO may be appropriate. Decision-making regarding a request for a PCO in this instance should be made on a case-by-case basis utilising the skills, knowledge and assessment of an experienced and tertiary qualified workforce consistent with the above recommendations.

Question 1b)

In deciding whether or not to issue a Parenting Capacity Order, the Court needs to consider:

- i. The risk posed to the child
- ii. An assessment of parental willingness to change
- iii. Whether adequate attempts have been made to engage the family
- iv. Whether supports offered have been culturally appropriate and sensitive
- v. Whether the recommendation to issue an Order is based on the knowledge, skill and assessment of a tertiary qualified and experienced staff team
- vi. That barriers to participation have been identified and addressed by those requesting the Order
- vii. That in issuing an Order, barriers to participation in a Parenting Capacity Program are addressed. This might include, for example, additional support for families in rural or remote settings to attend sessions.
- viii. That appropriate parenting programs will be available to the family. For example, the issues facing families at high-risk may not adequately be addressed in generic / mainstream parenting programs. The AASW is concerned that sending high-risk families to programs that are not targeted at their specific needs is setting them up to fail and can contribute to the ultimate removal of the child.

Question 1 (c):

No response.

PROPOSAL 2: Strengthen the Parent Responsibility Contract (PRC) Scheme by:

- (a) introducing a new modified PRC for use in early intervention programs to support disengaged parents
- (b) extending the duration of a PRC from six to twelve months to enable parents to attend intensive parenting courses or therapeutic treatments and demonstrate abstinence from substance misuse so children can stay at home with them safely
- (c) introducing PRCs for parents with an unborn child at risk to help improve their parenting capacity in preparation for the birth of their child
- (d) requiring the Department of Family and Community Services (FACS), Community Services (CS) to attempt to use PRCs with parents prior to commencing care proceedings in appropriate matters.

Question 2 (a):

Do you think there is a place for PRCs in early intervention programs?

Question 2 (b):

If so, what should the consequences of a breach of a PRC in an early intervention context be?

Question 2 (c):

Do you agree that PRCs will be improved by extending timeframes, broadening their scope to include unborn children and mandating their use prior to commencing care proceedings in appropriate matters?

Question 2 (d):

Are there any other ways that PRCs may be improved to help parents keep their children out of out-of-home care (OOHC)?

FEEDBACK:

Question 2 (a):

The AASW supports the proposal of FAC(CS) to facilitate a cultural change within child protection that puts the focus of PRC's on family preservation and restoration rather than as a pre-emptive step before removal. The AASW believes PRC's may be useful in early intervention services as *one* tool to work with and support families at –risk but only if:

- i. PRC's are offered to families as one tool among many to identify and work towards their goals - they are voluntary.
- ii. PRC's are non-binding legally and do not impact on the provision of services or supports
- iii. Not utilising or following through on the contents of the PRC are not used as the sole basis upon which to refer a family to tertiary services and / or request a Parenting Capacity Order
- iv. Staff have the skills, knowledge and capacity to engage respectfully with families, to foster participation and support families to contribute meaningfully to their development

The AASW believes that voluntary engagement with families will be supported with a professional workforce that can work in a sensitive and technically skilled manner.

- v. They are culturally appropriate and sensitive.

Question 2 (b):

The AASW recommends there should be no consequences for a breach of a PRC in an early intervention context consistent with its utilisation as a tool to engage and foster participation rather than as a measure to assess a family or to define willingness to address concerns.

Question 2 (c):

The AASW supports interventions that provide a reasonable opportunity for families to address issues that may be intergenerational and very complex in nature. Of course, this must be balanced with the best interests of the child or children. To this end, the AASW supports long –term interventions and thus the extension of PRC timelines from 6 to twelve months (keeping top of mind the age and developmental needs of the child), where the rationale for doing so is grounded in a commitment to giving families the best possible chance of remaining intact and is supported by a workforce with the skills and capacity to support the family for the duration of the contract. Workforce stability and consistency of assessment and decision-making will be critical to ensuring the ongoing efficacy and engagement of families with a PRC.

The AASW supports the extension of PRC’s to include unborn children.

The AASW believes that family preservation and capacity-building should be a focus of the child protection system. Therefore, any tool that will support families to stay together and prevent care proceedings should be employed. The AASW supports PRC’s as a tool, but not the tool, to be utilised prior to commencing care proceedings. It may, for example, not be an appropriate or meaningful tool for Aboriginal and Torres Strait Islander families. Further consideration should therefore be given to how such strategies can be culturally appropriate and sensitive.

Question 2 (d):

The AASW recommends that PRC’s may provide an opportunity, in addition to skilled and professional case management, to:

- i. improve transparency of concerns that need to be addressed and the possible outcomes of action or inaction
- ii. support families to actively engage in the development and execution of a plan to address clearly stated risks and concerns
- iii. clearly outline what needs to happen and what supports are required to reach these goals.

In this way, the PRC can be a tool not only for families to take responsibility for addressing risks, but critically to identify the responsibilities of the service system to facilitate a good outcome for a family.

The AASW recommends that viewing PRC’s in this way and using them to account for both the actions required by the family as well as the supports that are needed to facilitate these will go some way to ensuring PRC’s do not set families up for failure.

matters to better engage families to resolve child protection concerns.

Question 3 (a):

Should there be an obligation upon FACS (CS) to refer care matters to a FGC prior to commencing care proceedings and, if so, what should be the nature of this obligation?

Question 3 (b):

Should the Court be able to refer parties to FGC in addition to or in place of a dispute resolution conference?

Question 3 (c):

What kinds of matters do you think would be appropriate for FGC in the context of care proceedings?

FEEDBACK:

Question 3 (a)

Family Group Conferencing has been shown to be an effective way of engaging families in decision making and the formulation of strategies to address protective concerns. The AASW supports the intention of this proposal to support families and their wider family network to address concerns at an earlier stage than is presently the case. The AASW recommends therefore the FGC be offered prior to commencing care proceedings.

However, Family Group Conferencing **must** be adequately resourced. Maximum effectiveness of FGC's require:

- A professional, experienced and supported staff team (through training, peer support and regular supervision) in recognition of the highly skilled nature of FGC work
- Allocation of adequate time to gather all participants relevant to the child, including for example, genealogy teams tracking down relatives
- Allocation of adequate time to prepare the family and child or young person for a conference
- Partnership between families and support teams in the development of a support package which can be fostered through a commitment to respectful, collaborative practice and a qualified staff team.
- Consensus around what is required to keep a child safe and what will occur if safety is compromised.

The AASW supports models such as Care Circles, that are designed to take into account the cultural rights and needs of Aboriginal and Torres Strait Islander families.

Question 3 (b):

The AASW recommends that the Court should be able to refer parties to FGC in addition to or in place of a dispute resolution conference where appropriate.

Question 3 (c):

The AASW suggests that virtually all child protection matters can be dealt with through FGC when adequately resourced as outlined above. Exceptions might include circumstances in which the child's safety is compromised (e.g. sexual abuse by a family member perpetrator) or where the family declines to participate and / or prefers to go to court.

PROPOSAL 4: Incorporate sanctions for breaches of prohibition orders that include:

- fines
- community services orders
- compulsory attendance at parenting capacity programs, counselling or drug and alcohol rehabilitation.

Question 4:

What measures should be introduced to enforce prohibition orders under the *Care Act*?

FEEDBACK:

The AASW recommends that attendance at parenting programs that are appropriate to the specific needs of the family could be a reasonable consequence to a breach of a prohibition order in so far as they support the development of parenting capacity.

PROPOSAL 5: Introduce alternative sentencing options (other than fines) to child abuse and neglect offences such as community service orders and educative and therapeutic services or rehabilitation.

Question 5:

Do you agree that there should be alternatives to fines for the child abuse and neglect offences under the *Care Act* and, if so, what type of orders would be appropriate?

FEEDBACK:

The AASW agrees, as outlined in the discussion paper, that fines alone will not address underlying issues; that fines may impose further financial and emotional hardship on families; and, that they have a disproportionate effect on families who are already disadvantaged. Attendance at parenting programs that specifically address the needs of the family may be appropriate. These might address issues such as trauma, violence and risk concerns as distinct from generic parenting programs.

The social work profession is committed to practice that minimises the use of legal compulsion (Code of Ethics 2010, 26). The AASW therefore makes no specific comment about sentencing options but rather points to a model of a child wellbeing and welfare that takes a preventative and long-term view of support to high-risk families.

The AASW recommends that the most significant way issues requiring this level of intervention are best addressed through a longer-term focus on a child wellbeing and protection system that reflects the principles of social justice, human rights and professional integrity. A system that:

- adopts a public health model of child well being and protection as defined by the *National Child Protection Clearinghouse* and reflected in the *National Framework for Protecting Australia's Children 2012-2015* in which "primary, secondary and tertiary services are all critical elements in the child welfare and child protection system. However, a well-balanced system has primary interventions as the largest component of the service system, with secondary and tertiary services progressively smaller components of the service system. Investment in primary prevention programs has the greatest likelihood of preventing progression along the service continuum and sparing children and families from the harmful

*consequences of abuse and neglect.*¹

We argue for a greater emphasis on non-stigmatising and accessible early intervention services with a well-resourced and skilled tertiary system that will together provide appropriate responses for keeping children safe and supporting vulnerable families

- ii. adopts a rights-based approach consistent with the *UN Convention on the Rights of the Child* (1989)
- iii. acknowledges the Aboriginal and Torres Strait Islander peoples, the First Australians, and pays respect to their unique values, and their continuing and enduring cultures, which deepen and enrich the life of our nation and communities.
- iv. acknowledges and understands the historical and contemporary disadvantage experienced by Aboriginal and Torres Strait Islander (ATSI) peoples and invests in meaningful culturally appropriate processes for engaging, assessing and working alongside Aboriginal and Torres Strait Islander families and families from culturally diverse backgrounds;
- v. is systemically culturally competent, safe and sensitive including at organisational, professional and individual levels.
- vi. demonstrates systemic integrity as reflected in a child wellbeing and protection system that focuses on keeping children safe in their family and community. The AASW believes this is best achieved by:
 - prioritising the investment in and delivery of universal preventative and early intervention measures as well as provision of secondary and tertiary services
 - funding and service delivery decision-making that is consistent, transparent and accountable, and
 - employment of a professional workforce that has the capacity and competence to deliver child protective services.
- vii. unified under a common framework which at its core:
 - Recognises respect, participation and capacity-building as fundamental rights and needs of vulnerable children and families
 - Supports child-safety and family well-being by ensuring a professional workforce that has the skills, knowledge and capacity to respond to the strengths and needs of vulnerable children and families
 - Is child-centred and family-focussed
 - Is systemically culturally sensitive, safe and aware

We believe such a framework would have an important part to play in helping disadvantaged and marginalised families address some of the issues they face including inter generational trauma and provide necessary support and practical assistance to redress chronic need.

• ¹ Australian Institute of Family Studies (2011). Defining the public health model for the child welfare services context. <http://www.aifs.gov.au/nch/pubs/sheets/rs11/rs11.pdf>, accessed 7/03/2013

Section 2: Providing a safe and stable home for children and young people in care

PROPOSAL 6: Achieve greater permanency for children and young people in OOHC by:

- (a) incorporating permanency into the objects of the *Care Act* including the preferred hierarchy of permanency being:
 1. Family preservation/restoration
 2. Long-term guardianship to relative or kin
 3. Adoption
 4. Parental responsibility to the Minister
- (b) requiring that the Court can only make an order for parental responsibility to the Minister if adoption or long-term guardianship is not possible
- (c) requiring permanency plans not involving restoration to include the pursuit of guardianship/adoptions or reasons why they should not be pursued.

The AASW makes the following general statement in response to questions 6 – 16:

The AASW questions the assumption that child removal will result in a stable alternative arrangement for the child. Repeated evidence to the QLD Child Protection Commission of Inquiry 2012 has shown that such stability is rarely achieved as rates of placement breakdown are high and international evidence shows that turnover occurs even where children are adopted.

Given that alternative care is often associated with poor outcomes for children, the AASW holds that child protection authorities must concentrate their efforts on achieving family preservation. If this is not possible, priority should be given to ensuring the maintenance of relationships between family and children in care. FAC(CS) should avoid turning away from parental rehabilitation (or when this is impossible, making sure that the child's identity with their birth family is maintained through, for example, life story work) even after children are removed as the longitudinal evidence shows that children and young people often return to their families after their release from care. Parental rehabilitation and family preservation should be a continuing goal of child protection authorities at all phases of intervention from initial assessment and continuing even in instances where children are removed.

At all points of engagement with the child protection system families are best served by support that is:

- long-term in nature where required, as in the case of working with high-risk families who require support to address complex and intergenerational issues,
- culturally appropriate, and
- consistent in practice but also in terms of the service system, which as outlined in the introduction should operate under a unifying conceptual and operational framework.

Question 6:

Are there other measures for achieving greater permanency in the *Care Act* that should be considered?

FEEDBACK:

No response.

PROPOSAL 7: Legislate restoration timeframes – within six months for children less than two years and within twelve months for children older than two years.

Question 7:

Do you agree with the restoration timeframes proposed?

FEEDBACK

The AASW will not be submitting a response on this matter at this time as further consultation is required. However, as per our introduction we support a child protection system that allows for restoration to be an ongoing endeavour, while recognising that for some families, restoration will not be possible and / or not in the best interests of the child.

PROPOSAL 8: Enhance supported care placements by introducing:

- self-regulation of supported care placements by some supported carers to limit the intrusion of FACS (CS) in stable relative and kinship placements
- a two-year cap on the duration of supported care placements to achieve greater permanency and stability through permanent legal orders for these children and young people.

Question 8 (a):

Is 'self-regulation' of supported OOHC a positive step forward? Can you see any problems with this approach?

Question 8 (b):

What would be the key elements of the self-regulation model for supported OOHC?

FEEDBACK:

Question 8 (a)

Self-regulation may work for some supported carers where wider family relationships are harmonious and the supported carers have the financial capacity to manage. However, there are other placements that require strong casework support to assist carers to manage wider family relationships, and perhaps help carers manage behavioural issues of the child or children. In addition, many kinship or supported carers struggle financially and will require an allowance to enable their caregiving to be maintained.

Question 8 (b)

No response

PROPOSAL 9: Provide permanent care to children and young people when adoption is not in their best interest by:

- (a) introducing long-term guardianship orders
- (b) repealing section 149 of the *Care Act* that provides for sole parental responsibility orders as this provision is underutilised.

Question 9 (a):

Do you agree with the circumstances to which guardianship orders would apply?

Question 9 (b):

Are there other matters that should be included in the proposed features of a guardianship order for NSW?

FEEDBACK:

The AASW makes no specific comment with regard to the circumstances under which guardianship orders would apply or the proposed features of a guardianship order for NSW. However, it is the view of the AASW that long-term guardianship orders may be appropriate for some children or young people and may assist in the prevention of 'drift' in care.

The AASW recommends that adoption is not suitable for Aboriginal children.

PROPOSAL 10: Introduce concurrent planning to support timely, permanent placements for children in OOHC by either:

- (a) streamlining the assessment of authorised carers and prospective adoptive parents
- OR
- (b) creating a new category of "concurrent carer" who is authorised as both a long term carer and prospective adoptive parent.

Question 10 (a):

Would the dual authorisation of adoptive applicants as foster carers better facilitate concurrent planning in NSW?

Question 10 (b):

Are there other options that could be implemented to avoid the occurrence of multiple placements?

FEEDBACK:

Question 10 (a)

The AASW supports streamlining the process where a child or young person is in a stable, long-term placement. We suggest however that the new concurrent carer category needs careful thought. We suggest :

- It could be very difficult for carers to consider themselves carers and potential adoptees at once. Carers will require skilled support to work through these two models of care and the implications of being a concurrent carer.
- It may not be in a child's best interests for a carer to take a child wanting only adoption and then to have a child placed in long term fostering with a view to adoption. If the long term order was overturned and the child returned home, the carers would be devastated, given their real agenda was adoption.

Therefore, while we support streamlining the process, and it is possible that the assessment process could cover both adoption and fostering authorisation, a final decision about what type of care the carer is authorized for (depending on how the assessment process plays out), should be a judgement of the authorization panel of the relevant agency.

PROPOSAL 11: That the Children’s Court be conferred jurisdiction to make adoption orders where there are child protection concerns.

Question 11:

Do you agree that there are benefits in conferring adoption jurisdiction to the Children’s Court?

FEEDBACK:

Adoption is such a monumental decision, that we believe the Supreme Court should continue with its role in making adoption orders. That said, the Supreme Court judges should receive additional training on child protection concerns.

PROPOSAL 12: Amend the *Adoptions Act* to better recognise that authorised carers should not be required to undertake full assessment and authorisation as a prospective adoptive applicant.

Question 12 (a):

What other elements should be fast-tracked for OOHC adoptive applicants? Are there particular requirements and restrictions on adoption that should be relaxed for OOHC adoptions?

Question 12 (b):

Are there other differences for OOHC adoptions that should be reflected in the Adoption Act?

FEEDBACK:

We agree that where a child is already in the care of authorised carers who wish to adopt and if the child is over 12 and can voice their wishes, then a modified form of assessment and authorization could be helpful in fast-tracking the process.

The Adoption Act 2010 NSW is a good piece of legislation which has been crafted to address the serious mistakes of past adoption practices.

PROPOSAL 13: Enhance the permanency planning capacity of non-government services by merging the NSW Standards for Statutory OOHC and the NSW Adoption Standards .

Question 13:

How can the NSW Standards for Statutory OOHC be enhanced to better promote permanency planning, from restoration to adoption, for children and young people in OOHC?

FEEDBACK:

The AASW supports the merger of the two standards but recognises that not all agencies will wish to become adoption agencies.

The NSW Standards for statutory OOHC could be strengthened by including in Standard 5 the following statement– “that a permanency plan consisting of restoration or permanent OOHC has been activated in the child’s best interests”.

PROPOSAL 14: Amend the *Adoption Act* to improve the involvement of birth parents in planning for the adoption of their child including allowing non-consenting parents to be parties to an adoption plan and greater use of alternative dispute resolution in adoption proceedings so that parents are fully engaged in planning for matters such as contact arrangements.

Question 14 (a):

What is the optimum mechanism for non-consenting parents to be parties to an adoption plan?

Question 14 (b):

How could alternate dispute resolution best work to engage parents in adoption proceedings?

FEEDBACK:

No response.

PROPOSAL 15: Amend the *Adoption Act* to provide for additional grounds for dispensing with parental consent, including grounds where:

- the parent is unable to care for an protect the child e.g. the parent is incarcerated for an offence against the child, or the parent repeatedly refused or neglected to comply with parental duties and reasonable efforts have failed to correct these conditions
- a parent cannot be located, despite having given an undertaking to keep FACS (CS) informed of their whereabouts
- there is no realistic possibility that the parent will be able to resume full-time care of the child or young person because reasonable efforts have failed to correct the conditions leading to the child or young person’s placement and it is in the best

interest of the child or young person to make the decision now.

Question 15:

What should be the additional grounds for dispensing with parental consent?

FEEDBACK:

No response.

PROPOSAL 16: Limit the parent's right to be advised of an adoption in the following circumstances:

- (a) where the child is over 12 years of age and has given their sole consent, or
- (b) the Children's Court has taken away parental responsibility from that parents in care proceedings and found that there is no realistic possibility of restoration.

Question 16:

Do you support limiting the role of parents in adoption proceedings in this way?

FEEDBACK:

No response.

Section 3: Creating a child-focused system

PROPOSAL 17: Where there is no possibility of restoration, contact arrangements are initially made through case planning.

Question 17:

Do you support contact arrangements being made through case work where there is no possibility of restoration?

FEEDBACK:

The AASW supports contact arrangements through case planning in recognition of inflexibility and unresponsiveness of court ordered contact arrangements. However, contact arrangements based on case planning:

a. Must be child-centred and take into account both in their conception and implementation:

- i. the child's age and stage of development
- ii. the needs of the child. A colleague has provided the example of carer being instructed not to feed a baby before contact so that the parent could do so, despite the baby being hungry and needing to feed.
- iii. the child's expressed wishes, if they can be acquired
- iv. any secondary impacts on the child of contact arrangements such as travelling long distances and being accompanied by strangers.

b. Require a professionally qualified and adequately supported case planning workforce. The AASW recommends this is best achieved by:

- i. Standardisation of the qualifications required for direct practice positions and that existing staff without these qualifications should be supported to upgrade their qualifications.
- ii. Administrative responsibilities of frontline staff should be strictly limited to that which is essential to the reporting on their practice to ensure adequate capacity and focus can be given to achievement of case planning responsibilities.
- iii. An organisational structure that support consistent and skilled assessments, consistent decision-making and skilled case planning.

We advocate that there should be at least three levels of frontline practitioner: child safety officer, senior practitioner and the consultant practitioner. These levels of seniority should reflect advanced practice knowledge and skills. The consultant practitioner should work alongside child safety officers in direct practice and decision-making particularly in high-risk matters. Further, the role of senior practitioners could be strengthened. The Practice First trial in 16 Community Services Centre's (based on a social work model from the London Borough of Hackney), shows promise in increasing the focus of highly skilled professional and thorough planning for children

- iv. Ongoing educational and training opportunities to all frontline staff.

The AASW believes that it is important advanced education is provided by researchers and practitioners with recognised knowledge and experience in child protection services, not only by workplace training units. The government should support advanced level practitioners to gain postgraduate qualifications in child protection practice from recognised tertiary education institutions.

- v. Workplace training and supervision of child protection workers that focuses on developing the capacity for professional decision-making and effective practice with families.

Workers need to be supported to engage with families as partners, to treat people with dignity and respect and to turn involuntary clients into voluntary partners through a process of therapeutic casework. Key relationship building skills include the capacity to demonstrate empathy, engage the families in decision-making and in change processes.

- vi. Specific attention given to how staff in rural and remote locations can be supported as outlined above with particular regard to training subsidies and supervision.
 - vii. Reviewing current practices of case management, in particular, the understanding of and level of actual therapeutic case management and case work in engaging with families as opposed to administrative case management
 - viii. Reviewing case loads to ascertain levels of case responsibility borne by frontline workers. Case load ceilings may provide a very helpful standard to work within and have proven useful in other jurisdictions.
 - ix. Include mandatory training on supervision for supervisors and supervisees. We suggest this could be included as part of an initial orientation package and repeated or built-upon as required.
- c. Must be culturally sensitive, appropriate and aware practice with particular regard to practice with Aboriginal and Torres Strait Islander families.**

PROPOSAL 18: Develop a common framework about contact arrangements between children and young people and their birth families to guide designated agencies when making contact decisions.

Question 18:

What should be the key elements of a common framework for designated agencies in determining contact?

FEEDBACK:

The AASW supports the development of a common framework to ensure consistency of decision-making and appropriate minimum standards of practice across the NGO sector. We believe this framework should:

- i. Recognise respect, participation and capacity-building as fundamental rights and needs of vulnerable children and families
- ii. Support child-safety and family well-being by ensuring a professional workforce that has the skills, knowledge and capacity to respond to the strengths and needs of vulnerable children and families
- iii. be child-centred and family-focussed
- iv. be systemically culturally sensitive, safe and aware

We believe such a framework would have an important part to play in helping disadvantaged and marginalised families address some of the issues they face including inter generational trauma and provide necessary support and practical assistance to redress chronic need.

The AASW suggests that such a framework should not be forensic in its guidance to caseworkers but rather that NGO's should be supported to employ a professional workforce with the necessary experience, knowledge and skill to facilitate a dynamic and complex process of assessment, review and decision-making required for truly responsive and tailored interventions and supports.

The AASW supports ongoing intervention that is based on a process of assessment, implementation, monitoring and review – this is a cyclical process that is ongoing. The Victorian Department of Human Services (2000) identified three overlapping processes to risk assessment: 1) gathering information; 2) analysis of information; and 3) judgement of risk. Being able to effectively undertake an holistic assessment requires that staff are properly qualified, trained and experienced. Just as we would expect a Surgeon to have the proper level of knowledge and training before making a diagnosis, we also require child protection workers to have the necessary knowledge, skills and analysis skills to put this all together. Developing a sound judgement involves forming an “independent, balanced, courageous and sometimes critical judgements, based on critical thinking and the ‘best evidence’ available to us” (Trevithick, 2000, p. 61).

PROPOSAL 19: Improve the resolution of contact disputes by:

- (a) requiring alternative dispute resolution (ADR) to be used to settle contact disputes
- (b) where ADR is unsuccessful, contact disputes will be resolved in the Children's Court or the Administrative Decisions Tribunal (ADT) or the Family Court.

Question 19 (a):

How should disputes about contact be resolved if they are not able to be resolved through ADR?

Question 19 (b):

If Model 1² is the preferred option and the Children's Court retains the power to make final orders about contact where there is no realistic possibility of restoration, should such orders be of a limited duration? For what time period?

Question 19 (c):

If Model 2³ is the preferred option and the Children's Court does not retain the power to make final orders about contact where there is no realistic possibility of restoration do you agree that:

- where the minister or a designated agency has parental responsibility, the ADT be empowered to review the contact decision and make contact orders and
- the Family Court is the best forum for making contact orders if a third party has parental responsibility?

FEEDBACK:

Question 19:

The AASW agrees that there are limitations with both models of resolving contact disputes. It is our experience that ADR may be undermined by resourcing issues and systemic pressure such as staff shortages and bureaucratic requirements that limit options for contact. Further, resolution through the Court may be inflexible and feedback from our colleagues suggests decisions are not always child-centred.

The AASW makes no further specific recommendation to the resolution of contact disputes at this time.

Question 19 (b):

No response.

Question 19 (c):

No response.

PROPOSAL 20: That the Children's Court has the power to enforce contact orders

² Model 1: Once ADR has been attempted and has not been able to resolve a contact dispute the Children's Court would retain the power to make final order regarding contact

³ Model 2: Once ADR has been attempted and has not been able to resolve a contact dispute parties would have the option of proceedings to either the ADT (if the Minister for Community Services had parental responsibility) or the Family Court (if a third party had parental responsibility).

and arrangements.

Question 20:

Should there be mechanisms for enforcement of contact agreements or orders and what should these be?

FEEDBACK:

The AASW makes no comment with regard to specific mechanisms for enforcement at this time but reiterates that contact between children and their birth family should be in the child's best interests and should be at a time and place that fits in with children's routines. Children should not be forced into attending contact visits and their wishes either way must be taken into account.

PROPOSAL 21: Establish a comprehensive legislative framework for the use of ADR in the child protection sector dealing with a range of matters including definitions, role, obligations and protections of convenors, confidentiality of ADR processes, and the limitations on the admissibility of information or documents disclosed during ADR in any subsequent court proceedings.

Question 21:

What key provisions do you think should be included in the legislative framework for ADR?

FEEDBACK:

The AASW supports the development of a comprehensive legislative framework for the use of ADR in the child protection sector.

We recommend provisions should include:

- i. the requirement that ADR staff are tertiary qualified, skilled and supported to undertake ADR functions.
- ii. that legislation is clear about the status of an outcome from an ADR process in relation to court proceedings, i.e. whether the outcome needs to be ratified by the Court.
- iii. that both statutory services and families are accountable for following through on agreements made during a family conference.

We further recommend that the Australian Law Reform Commission's report titled 'Family Violence – A national legal approach' may provide a useful starting point for considering additional key principles. Refer Part F: pp. 61-64.

PROPOSAL 22: Clarify and consolidate in the legislation the provisions relating to the regulation of special medical treatment for children and young people.

Question 22 (a):

What additional safeguards, if any, should be in place for the provision of special medical treatment to a child in OOHC? Should these be required through legislation or through administrative arrangements such as guidelines?

Question 22 (b):

In relation to the administering of psychotropic medication to children in OOHC:

- who should give consent and in what circumstances
- should there be a requirement for a treatment plan or behaviour management plan when the medication is being prescribed? If so, should such plans be required for all medical conditions or only for controlling behaviour
- what kinds of alternative safeguards might be implemented in lieu of a legislative requirement for plans?

FEEDBACK:

Question 22 (a) and (b):

The AASW recommends that:

- i. Guidelines for the administration of special medical treatment and psychotropic medication are required.
- ii. Adherence to the Standard 14 and Standard 9 of the NSW Standards in Statutory OOHC should be reviewed to contain advice to ensure that children in care are given the same access to medical treatment and especially mental health services (sadly lacking for children and young people) as to children in the community, not in care.
- iii. In general the principle of devolving decisions such as these down to the person who knows the child best could be examined.
- iv. Behaviour management plans should be in place to assist children and young people and their carers, not as a controlling and restrictive mechanism.
- v. A well trained caseworker and carer workforce is essential to ensure the health and wellbeing of children in care.

PROPOSAL 23: Minimise the improper use of social media in a child protection context by strengthening provisions in the *Care Act* to prevent the unlawful publication of names and images of children and young people on social media sites and to prevent the publication of offensive or derogatory material about FACS (CS) workers which are intended to harass.

Question 23 (a):

In what other ways can children and young people be protected from unlawful publication of information and images on social media sites?

Question 23 (b):

Should it be an offence to publish offensive comments designed to harass child protection workers on social media sites?

Question 23 (c):

Should it be an offence in the *Care Act* for a convicted sexual offender of children to use social media?

FEEDBACK:

Question 23 (a)

The AASW will not be making any recommendations with regard to specific measures at this time. However the AASW endorses a child protection system that reflects the provisions of the *UN Convention on the Rights of the Child (1989)*. As such the AASW supports measures that protect children from exploitation and protect their privacy.

Question 23 (b):

No response.

Question 23 (c):

No response.

PROPOSAL 24: Simplify the current scheme of parental responsibility orders by:

- (a) streamlining parental responsibility orders that may be made by the Court to make it easier to identify who holds which aspect of parental responsibility for a child or young person
- (b) introducing a 'self-executing' order whereby parental responsibility is with one person for a period of time and then passes to another at the end of the period.

Question 24:

In what other ways do you think that parental responsibility orders can be improved?

FEEDBACK:

No response.

PROPOSAL 25: Allow Supervision Orders to be extended for a further twelve months where the original order has expired and no report has been filed for the Court's consideration.

Question 25:

Should the maximum timeframe for supervision orders be 24 months? Why or why not?

FEEDBACK:

No response.

PROPOSAL 26: That AbSec and CREATE should have access to personal information to

permit fulfilment of their objectives.

Question 26 (a):

Should AbSec and CREATE be prescribed to permit the release of otherwise personal information about carers and children to these bodies?

Question 26 (b):

Should peak carer advocacy groups have a similar ability to receive information as is being proposed to AbSec and CREATE?

FEEDBACK:

Social workers are committed to protecting the priority of client's interest and self-determination. The AASW Code of Ethics (2010) states that social workers will collect, share and use information with the consent of clients and for the purposes for which that information was collected.

The AASW believes that sharing of personal information without consent may be warranted whereby revealing such information may prevent an actual, identifiable risk of harm, which we do not believe is relevant to this proposal.

The AASW would therefore suggest that AbSec and CREATE objectives may be fulfilled through the implementation of processes designed to ensure that children and carers are made aware of the services and supports available to them and can therefore choose to engage with these agencies at any time.

PROPOSAL 27: Private health professionals be able to share with other relevant agencies personal and health information about children, young people and families without client consent where this relates to the safety, welfare and wellbeing of a child or young person.

Question 27 (a):

Should private health professionals be prescribed to permit them to share with other prescribed bodies personal information and health information about children and young people and their families where this will promote child safety, welfare and wellbeing?

Question 27 (b):

If so, should all or only some private health professional groups be prescribed in this way?

FEEDBACK:

Question 27(a)

The AASW acknowledges the value of collaboration and communication with allied health professionals and others in the delivery of a service or support to vulnerable families however the social work profession is also committed to minimising the use of legal or other compulsion unless professionally, ethically and legally justifiable (Code of Ethics 2010, 28). The AASW supports a child protection system that works with families to establish and foster respect, trust and participation. We therefore recommend that any information sharing provisions are grounded in a commitment to the following:

- i. Promotion of client self-determination and autonomy and support for families to make informed decisions on their own behalf
- ii. Collaboration with other professional and service providers in the interests of their clients, maintaining their privacy, and with the clients knowledge and consent wherever possible. Where feasible social workers should include clients in such consultations.
- iii. Use confidential information only for the purpose for which it was acquired; or with written consent of the client for a directly related purpose; or with lawful excuse". However, social workers may reveal information "to relevant third parties where an actual, identifiable risk of harm to a specific person or persons can be prevented"
- iv. Informing the clients when a disclosure has occurred unless contraindicated by issues of potential harm or legal provisions.

Question 27 (b).

No response.

PROPOSAL 28: That there be a legislative obligation to report on the deaths of children and young people in OOHC.

Question 28:

Do you think FACS should be required by legislation to table an annual report to Parliament on their involvement with the families of children known to FACS (CS) who have died?

FEEDBACK:

The AASW supports a legislative obligation to report on the deaths of children and young people in OOHC.

PROPOSAL 29: Amend the Care Act to:

- (a) clarify that section 122 applies to funded residential providers and for-profit business only (not private citizens)
- (b) remove the penalty in section 122 of the Care Act.

Question 29:

Do you foresee any unintended consequences of clarifying these reporting requirements under the Care Act?

FEEDBACK:

No response.

General feedback

Do you have any general comment / feedback on the package of reforms as a whole which is not covered in the questions and feedback above?

FEEDBACK:

Recommendation 1: Children leaving care

The AASW recommends that FAC(CS) is more accountable for the well-being and safety of children and young people who are in or have exited the care system. This should include:

- i. Extending the age of formally leaving care with supports available to that which is normative for their peers not in care. We need to consider the merits of better supporting our most vulnerable until at least 21, by including this in legislation and not leaving to the discretion of child protection staff interpreting the legislation.
- ii. A database about the location and nature of placements of children and young people who have exited the care system.
- iii. A clear system of accountability for ensuring that these children and young people have a care plan and that the agency's responsibilities in that care plan are met.
- iv. Care plans should be facilitated by staff who have appropriate education and career planning expertise, which outlines the transition stages, supports available and nominates key people to champion and facilitate the plan, including evidence of engagement with the child or young person.
- v. Reorientation of existing staff support (school guidance officers, TAFE career counsellors, flexible education program managers/leaders) to work with children and young people in out-of-home care and their significant others, including child protection staff in supporting the cohort of young people in their transition phases including state schools, high schools, flexible learning schools and those who have been excluded from school or left prematurely.
- vi. Appointment of appropriately qualified staff in the areas of career planning and education engagement to graduated entry programs to traineeships, apprenticeships and other higher and further education opportunities for young people during the transition into independence. This could include the establishment of education officers in each region who have career planning and education expertise who are employed by FAC(CS) and report professionally through the Department of Education (?) to ensure professional isolation is addressed.

Recommendation 2: Addressing the over-representation of Aboriginal and Torres Strait Islander children

The AASW recommends that the FAC(CS) establish, as a matter of urgency, a Taskforce of Aboriginal and Torres Strait Islander people with responsibility for engaging Aboriginal and Torres Strait Islander communities in developing solutions to the urgent challenges of developing culturally appropriate forms of child protection service work that recognise the unique traditions and needs of Aboriginal and Torres Strait Islander communities. The solutions proposed by the Taskforce must be adequately resourced and monitored to address the urgent need to reduce the unacceptable rates of child removal in Aboriginal and Torres Strait Islander communities.

Recommendation 3: Workforce development

Workplace training could:

- i. increase its focus on developing the capacity for professional decision-making and effective practice with families including culturally aware and sensitive practice.
- ii. Structured decision-making tools should be recognised as only one part of the decision-making process. Workers need to be supported to engage with families as partners, to treat people with dignity and respect and to turn involuntary clients into voluntary partners through a process of therapeutic casework.
- iii. The AASW believes that it is important that advanced education is provided by researchers and practitioners with recognised knowledge and experience in child protection services, not only by workplace training units.
- iv. The government should support advanced level practitioners to gain postgraduate qualifications in child protection practice from recognised tertiary education institutions.
- v. Include mandatory training on supervision for supervisors and supervisees as in other government departments such as Queensland Health. We suggest this could be included as part of an initial orientation package and repeated or built-upon as required.

Recommendation 4: Decision-making and risk assessment

- i. Structured Decision Making (SDM) tools should be recognised as only *one* part of the decision-making process. Workers need to be supported to engage with families as partners, to treat people with dignity and respect and to turn involuntary clients into voluntary partners through a process of therapeutic casework.

The process of assessment is central to ensuring professionals are making informed decisions about the needs of a particular client group. Assessment frameworks provide us with an important tool to assist us in undertaking evidence based holistic assessments. However, the AASW has seen an over reliance within the child protection system in Queensland on actuarial decision making tools as the basis for decision-making about a child and risk, as opposed to using the tools to help guide a robust risk assessment process.

The over-reliance on structured decision-making tools has contributed to a demise in the level of knowledge, judgment and expertise of staff who do not all possess a strong assessment framework.

There is also some concern that in the political context of child protection an unwritten culture has emanated from senior management placing pressure on frontline workers to lower number of cases that are “screened in” as notifications

- ii. Improve consistency of decision-making through a professional workforce

The Regional Intake Services in QLD provide a positive model to increase the level of consistency in decision making of children and families entering the tertiary sector. The AASW understands that the RIS services are being staffed by more experienced workers, which is necessary. The AASW supports the use of Structured Decision-making Tools as a complement to, not a replacement for, professional decision-making.

- iii. SDM tools should be reviewed to ensure they are culturally sensitive, particularly in relation to

Aboriginal and Torres Strait Islander children and families. Research should be commissioned into best practice in the use of, and further development of, the SDM in the Australian context with a particular focus on their use with Aboriginal and Torres Strait Islander families.

- iv. Include consideration of risks associated with removal to the out-of-home-care system.

Decision-making focused on child protection risk must be balanced with an analysis of the risks associated of removal to an over-burdened out-of-home care system, where many children experience poor quality care due to high rates of placement turnover and inadequate resources allocated to helping the children address the disadvantages they face.

Recommendation 5: Adoption

Australian governments have commissioned several inquiries into the consequences of decisions regarding long term care of children out of home. These Inquiries have included: Forde Inquiry; Forgotten Australians; Stolen Generations; and Forced Adoptions. These Inquires all highlight the significant consequences arising from removal of children, particularly with regard to heightened vulnerability to abuse and to loss of identity.

Taking into account the lessons of these Inquiries, the AASW recommends that the government develop policies based on recognition that long-term care is an absolute last resort to be invoked only when families have been afforded opportunities to change and improve their parenting (in a time frame that meets the needs of the child) and that where long-term care is necessary that safe connections with the family are maintained so that the child does not lose sight of their family and is able to develop their identity in the context of a safe home environment and safe family connections.

Recommendation 6: Non-government sector capacity

The capacity of the non-government sector needs further development and support to provide transition from care planning. The scope of the challenges in providing transition from care are unknown in part because of poor data about the transition experiences of young people leaving care.

The AASW recommends that:

- i. The sector needs better information from the FAC(CS) about the numbers of young people leaving care and the destinations of these young people once they leave care.
- ii. The sector needs to be funded to provide transition from care support and young people themselves need a guarantee from government that they will receive support from the State (which is their guardian) that is commensurate with their peers who remain with their families.
- iii. The State should provide transition from care support to at least 21 years in keeping with community norms
- iv. Systemic integrity is supported in the non-government sector through the development of a unifying conceptual framework to which non-government organisations can operate.
- v. Further consideration is given to how the non-government sector can be supported to provide responsive and non risk-averse support to families in the community. This might include, for example, simpler and less onerous governance requirements.

Recommendation 7: Further areas that require specific consideration and provisions

The AASW recommends that further consideration, research and review needs to be given to:

i. the intersection of domestic violence and child protection.

Specifically the significance of domestic violence as a factor resulting in children ending up in care; the gendered nature of domestic violence such that the responsibility for risk in such instances is fairly ascribed (in the vast majority of cases to men) and that the barriers / issues facing women in domestic violence situation are adequately identified and addressed in decision-making processes.

ii. The specific needs of children and families with disabilities.

The child protection system must have the capacity to adequately engage, assess, elicit and respond to the specific needs and views of children, young people and families with disabilities. Capacity to do so effectively must be incorporated at all points of contact with a child wellbeing and protection system. We believe this will be supported by ensuring that the service system and workforce:

- Have clear guidelines for ensuring the participation of children and families with disabilities in decision-making processes such that the rights of people with disabilities are systemically recognised and upheld
- Have the necessary skills, knowledge and training to work with, assess and provide appropriate supports to people with disabilities and / or at a minimum are funded and supported to access and consult with specialist practitioners with disability expertise as required.
- Have clear protocols that are supported by funding and service agreements that facilitate collaboration with the disability support sector
- Provides interventions that take an individuals needs into account. Strategies such as parenting programs, for example, will need to be accessible and appropriate to the needs of parents with disabilities.