

SOUTH WEST BRISBANE COMMUNITY LEGAL CENTRE

SUBMISSION TO THE QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY – QCPCI

About us

The Youth Criminal Law and Advocacy Project at South West Brisbane Community Legal Centre is one of only three specialist youth legal advocacy services in Queensland. We provide legal representation, advice, advocacy and education to youths in South West Brisbane Communities. We act as legal representatives for young people in youth justice matters, child protection matters, as well as a range of other legal issues including domestic violence, victim support and education discipline and school enrolment matters.

South West Brisbane Community Legal Centre also provides a duty lawyer service for the child protection call over at Beenleigh, conducts community legal education talks for community workers and has developed and distributes resources to assist parents and community workers to understand the child protection system.

We have provided submissions on the following issues being addressed by the inquiry:

3(c) i

whether the current use of available resources across the child protection system is adequate and whether resources could be used more efficiently;

3(c) iii

tertiary child protection interventions, case management, service standards, decision making frameworks and child protection court and tribunal processes;

3(c) iv

the transition of children through, and exiting the child protection system.

3(c) i

whether the current use of available resources across the child protection system is adequate and whether resources could be used more efficiently;

Risk factors for young people, including homelessness, drug and alcohol abuse, disability and education dropout are not being adequately addressed in Queensland.

Primary and secondary supports should be available without a child protection order to prevent the entry of children into the child protection system and the youth justice system.

- There is no residential drug rehabilitation service in Queensland. The only services available to young people in Queensland are Alcohol and Drug Withdrawal Service (ADAWS), which is a 10 day detox program, not a rehabilitation centre, and there are non-residential counselling services.
- There are very limited residential and support services for young mothers that can be accessed without entering the child protection system.
- There is still a shortage of services available for young people with mental health issues, intellectual disabilities and substance abuse.
- There are no co-ordinated programs of support comparable to the EVOLVE Behavioural service and EVOLVE Therapeutic service available to children with intellectual disabilities or mental health issues who are not on child protection orders. We have seen a number of cases where access to EVOLVE is a compelling reason for a young person to be in care.
- There is insufficient access to psychiatrists for young people generally.
- Supports should be available to at-risk young people broadly, so that they do not have to be in the child protection system or the youth justice system in order to be supported.
- These supports impact both on the incidence of children entering the child protection system and the outcomes for young people who are in the child protection system.

There is a lack of co-ordinated response to youth with complex needs and a lack of placement options for young people who have complex issues.

- There are no mechanisms to co-ordinate a response to young people at high risk or with complex issues across the Departments of Youth Justice and Child Safety, schools and service providers.

- Young people in care who have been excluded from a variety of placement options are often left with no supported placement option at a time when they need supported accommodation in order to complete youth justice orders and to avoid detention.
- There are no systems in place to minimise the risk posed to children in the care of the department who experience homelessness due to having been excluded from numerous placement options or whose placements have not remained open for them while they spend time in custody.
- Many Child Safety Officers (“CSO”) do not come to court to support young people when they are at court for youth justice matters. This means that they are not present when a young person needs an address for bail and they are not able to provide information about the supports, such as therapeutic supports, that a young person may have when they are released from custody.
- These high risk young people who have used up all their child safety placement options may be placed in shelters with the least support, at the time that they are placed on intensive youth justice orders such as Conditional Release Orders or Conditional Bail Programs, which require well supported placements in order to assist the young person to comply with the order.

Case example of lack of placement options and lack of planning for high risk young person

S was a young person in youth remand who was to be released upon an intensive Conditional Release Order which requires daily attendance at youth justice or programs. S requested to go to a drug rehabilitation centre but no appropriate service was available. We made repeated requests that supported placement options be found for him and we requested that his CSO attend court on the day of his sentencing with a prospect of release. The Department still had no accommodation for him and was not present at court on the day of his sentencing, so the CSO found a youth shelter for him after he was released. The shelter was located on the other side of Brisbane, a bus trip of about an hour and a half from the Youth Justice office that he was required to attend every day under his conditional bail program. There was no contact between the Department of Child Safety and the Department of Youth Justice to organise a workable plan to assist him to comply with his bail program. Neither the shelter nor Departmental staff provided support to assist him to get to his Youth Justice Program from the shelter each morning. S lasted a couple of days making that trip before he decided to stay with friends locally. The Department did not notice for over a week that he was not staying at the shelter and was not attending his bail program in

breach of his bail. S fell back into former habits while staying with those friends and this had tragic consequences. More support and placement options to assist this young person in his attempts to complete his youth justice order may have prevented this outcome.

3(c) iii

tertiary child protection interventions, case management, service standards, decision making frameworks and child protection court and tribunal processes;

The case planning process for reunification envisaged by the legislative framework is not being effectively utilised by Departmental case-workers and this results in failure to progress in addressing child protection concerns.

The legislative framework for case planning is designed to encourage parties to progress toward demonstrating that they have addressed child protection concerns.

- Case plans are designed to create a structured and orderly framework for
 - Identifying the child protection concerns
 - Identifying the specific actions required by the parent(s) to address those concerns
 - Identifying how we will know when the concerns have been addressed.
- Section 51x review documents are designed to measure the progress since the last case plan to guide the content that is required in the next case plan.

In practice, though, the following factors contribute to the failure of case planning:

- Without regular monitoring of outcomes of the best case plan agreements are often not followed up by the parties or caseworkers.
- Frequent changes of caseworker means that there is no cohesion from one case-planning meeting to the next. Parties get frustrated when each meeting goes back over historical issues without addressing the agreement reached in the last case plan.
- Section 51x reviews are not completed until after the case planning meeting and are not used to guide the development of the new case plan.
- There is often a large imbalance of power at the casework meeting if the parties are not represented and the case-planning process is not clearly explained to the parties. Meetings that occur midway through the order are often not funded by Legal Aid Queensland and this means that even if a very good case plan was made when the order was made there are no representatives for the parties to ensure that the outcomes agreed upon are followed up.
- Meetings often do not occur in an environment that is supportive of participation from young people and young people in care are often not aware of the existence of a case plan.

- Convenors often are not neutral, advocating strongly on behalf of the Department.

The role of lawyers, advocates and support persons in the child protection process is crucial, and should be extended to the case-planning process.

- Departmental offices can be very intimidating for the parties and often parties are overcome by emotion and are unable to speak for themselves.
- There is often a significant power imbalance with multiple Departmental staff meeting with one party.
- The presence of lawyers assists to:
 - Clarify the child protection concerns, how they are to be addressed and how we will know when they are addressed.
 - Negotiate for the progression of contact.

The child protection framework should recognise grandparents and other kin who have had a significant parenting role in the child's life as parties to the application.

- Grandparents have the main parenting role for many children involved in child protection proceedings when the parent is not capable of caring for the child.
- While they can apply to make submissions under section 113, they may not be informed of court dates, be served with materials or have standing to make an application to the court.

Kinship arrangements should be encouraged by the Department, more accessible, and better supported with training and specialist assistance.

Court Ordered Conferences and family group meetings should be undertaken by neutral and experienced mediators and should provide more encouragement to the parties to achieve a result.

- Court Ordered Conferences appear to rarely resolve matters but matters often get resolved on the morning of a hearing.
- We submit that different models of alternative dispute resolution should be investigated to achieve outcomes in child protection matters without lengthy proceedings and hearings and the breakdown of relations between the parties and departmental staff.

Improve the ability of child protection systems to allow young people to participate in the decisions that involve their lives, including child protection proceedings and court ordered conferences, case planning, and career and life planning.

- Subject children are currently not allowed to attend Court-Ordered Conferences even when it is their application.
- Many young people in care are not aware of the case planning process and are not encouraged to have input.
- We have noted many examples where a young person has started positively engaging in the process after having an opportunity to participate in decision-making.
- Participation may discourage a young person from attempting to influence decision-making through indirect means such as running away from their placement or through their behaviour at the foster home or care facility.

We suggest that the “child inclusive” mediations that regularly take place in the Family Relationship Centres may provide a suitable model for child inclusion in child protection family group meetings and court ordered conferencing.

Improving the role of the Department as a model litigant.

- We have noted a broad frustration among parties and practitioners resulting from the refusal by the Department to disclose materials at a timely stage and forcing the parties to rely on subpoenas and right to information requests, the Department being unable or unwilling to negotiate an outcome in a matter until the morning of trial when Crown Law becomes involved and the failure of Departmental staff to return phone calls and be contactable.
- Affidavit material often contains hearsay, irrelevant material, inaccurate material and conjecture. When this material is included parties are more likely to believe that they have not had a fair hearing or it may lead to poor relations with the Department that breaks down the ability to work together to address child protection concerns.

There are inconsistencies across the state in the approaches of Magistrates to child protection and youth justice matters.

- The Victorian Inquiry into Child Protection considered that the accreditation and training process for specialist lawyers must involve a substantive component on infant and child development, child abuse and neglect, trauma, child interviewing techniques in order to be able to assess capacity.

- We submit that specialisation of lawyers and Children’s Court Magistrates would promote the development of knowledge and experience in these areas and would promote consistency of decision making.

Direct representation of young people

- We receive phone calls from young people from 12-16 who have contacted us in secrecy, such as from a parent’s mobile phone inside a toilet block during a contact visit.
- Parents arrange for their children in care to contact us secretly in the belief that they could experience negative consequences in their relationship with the department or negative contact decisions if they openly arrange for the young person to contact a direct representative.
- Guidelines may be developed for separate representatives to assist young people to determine whether a young person is able to be directly represented.
- We submit that all children with the capacity to instruct a lawyer and a desire to be represented in proceedings should be directly represented by a lawyer.

3(c)iv

the transition of children through, and exiting the child protection system;

Young people in care are “criminalised” by the over-use of criminal charges in managing their behaviour.

- We have acted for young people in hundreds of charges that have occurred in the residential care premises. Charges can be for things as simple as “wilful damage” to food from the fridge and very minor assaults on workers such as “poking” them.
- Young people sometimes have dozens of these charges on their youth criminal histories for situations where legally an offence has been committed but it is unlikely that the situation would have been the subject of police intervention in a family or kinship environment.
- The build-up of criminal history due to unnecessary charges in residential care can lead to the refusal of bail and excessive time spent in custody and the breakdown of any positive relationships between the young people, their carers and the police.
- In most cases the child’s Child Safety Officer is not present at court, and the cause of the offending, which may be emotional or therapeutic needs that are not addressed as part of this reaction to their behaviour.

There are insufficient resources and expertise devoted to young people in care to assist them with life planning, career planning, positive skills development.

- Departmental caseworkers often focus on responding to traumas, crisis and problems faced by young people in care.
- This is a reactive approach rather than a proactive approach.
- Carers often get left the task of career planning by default.
- Putting resources into resources and expertise that can assist young people in care to focus on building a positive future would improve positive outcomes for young people in care.

Exclusion from school

- Exclusion or disengagement from school is common among children in care.
- Behaviour resulting from learning disabilities or mental health issues often results in an exclusion from school with no plan or assistance from the school to address the issues, build capacity for school or reintegration into the school.

- This results in the problem being shifted to another school or the young person being entirely denied access to education.
- The Education Act provides a large amount of discretion to the school, as long as procedural matters such as providing reasons are complied with. The reasons provided may give little guidance as to how the severity of the conduct was assessed.
- There is very little parity between schools as to what matters will result in disciplinary measures.
- Even when internal review processes can be accessed there is rarely an outcome to the appeal due to no definable criteria for “misconduct” or “conduct prejudicial to the good order and management of a school.”
- Appeals against school disciplinary measures cannot realistically be completed by young people, as the time frame often makes appeal not worthwhile and the processes are too complicated to be accessible.

Exclusions from school may be better dealt through the use of an alternative dispute resolution model or through a mediation model in a similar way to Youth Justice Conferencing.

Notable positive programs in Queensland

There are a number of features of our system, particularly in the area of youth justice, which are regularly providing good outcomes for some children in care, and good outcomes more generally in the community. These include Youth Justice Conferences, allowing for a young person to engage positively with the police and the victim and to allow the young person to develop an understanding of the consequences of offending, the Griffith Youth Forensic Program, performing assessments and specialised counselling for child sex offenders, conditional bail programs, that allow the young person to receive structured support while on bail.

We thank you for this opportunity to contribute to the inquiry by commenting on our experiences with young people in the care of the department and as legal practitioners in child protection proceedings.

Yours faithfully,

South West Brisbane Community Legal Centre

J Ward

Youth Solicitor

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