



# **Cairns Community Legal Centre Inc**

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**SUBMISSION TO QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY**

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## Introduction

### Background to the Disability Discrimination Legal Service (DDLS)

The DDLS is a legal service operated by the Cairns Community Legal Centre Inc (CCLC). The CCLC is a non-profit, community based organisation run by volunteers and paid workers with Commonwealth and State Government funding.

The DDLS provides legal advice and case work which relates to disability discrimination complaints under the Federal *Disability Discrimination Act 1992* (DDA) and the Queensland *Anti-Discrimination Act 1991* (Queensland Act).

Community education and awareness-raising activities as well as law reform work are also an important aspect of the DDLS.

### Our interest in the consultation

We commend the Government on its commitment to making a full and careful inquiry of the child protection system operating in this State.

We welcome this opportunity to bring to the Commission's attention one particular area of concern to our vulnerable clients and their families – where either the child or the parent has a disability.

Currently parents of children with a disability, requiring extreme levels of support from Disability Services (DS), who find they can no longer care for their child at home for more than 50% of the time, have to relinquish guardianship through a process involving the Children's Court issuing a Child Protection Order.

At the other end of the spectrum is where parents with mental/intellectual impairment are deemed to be a danger to their children, and the children are therefore removed from their parents' care.

We consider that current practices are not within the spirit or intent of the legislation and in fact represent poor administration, by DS and Child Safety (CS). We also consider that the use of the act in this way does not facilitate the appropriate support for the parents or the children with disability requiring extreme levels of support.

## Terms of Reference

We note that the Commission is to review the progress of implementation of the recommendations published in the 1999 *Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions* (the Forde Report) and *Protecting Children: An Inquiry into Abuse of Children in Foster Care*, a report by the Crime and Misconduct Commission (CMC 2004 Report).

We note that the Issues Paper published by the Commission in September 2012 referenced these two reports (among many other publications, including the 2007 CMC report: *Reforming child Protection in Queensland: A Review of the Implementation of Recommendations Contained in the CMC's Protecting Children report*).

We consider it vital that the following additional publications are also reviewed:

- A Blueprint for Implementing the Recommendations of the CMC 2004 Report (Blueprint)<sup>1</sup>
- Blueprint Progress Report September 2004 (2004 Progress Report)<sup>2</sup>
- Blueprint Progress Report March 2005 (2005 Progress Report)<sup>3</sup>
- Progress in reforming the Queensland child protection system – Report to CMC January 2006 (2006 Report to CMC)<sup>4</sup>
- Desperate measures: The relinquishment of children with disability into state care in Victoria (Victorian Report)<sup>5</sup>

In our view the Commission cannot make a full and careful inquiry of the current operation of the child protection system without taking account of progressive steps to implement recommendations of the original inquiries.

We urge the Commission to review these listed documents as they have significant bearing on understanding the lack of progress in the main area which is the subject of our submission (relinquishment of care of children with disabilities).

## **‘Having regard to’**

### **Matters proceeding in the regular course of events**

We note that term 4(b) of the provisions of the Commissions of Inquiry Order (No. 1) 2012 (Order) requires the Commission to NOT have regard to: *any matter that is currently the subject of a judicial proceeding, or a proceeding before an administrative tribunal or commission (including, but not limited to, a tribunal or commission established under Commonwealth law), or is, as of the date of these terms of reference, the subject of police, coronial, misconduct or disciplinary investigation or disciplinary action.*

We take that to refer to any action (through the Courts, Tribunals or Commissions) requesting a review of or challenging decisions or actions taken by Child Safety, or investigating actions by related entities.

In our view term 4(b) does not refer to matters currently proceeding through the Children’s Court process in the regular course of administering the *Child Protection Act*

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<sup>1</sup> Available at <http://www.communities.qld.gov.au/childsafety/about-us/publications/blueprint-for-implementing-the-cmc-report-recommendations>

<sup>2</sup> Available at <http://www.communities.qld.gov.au/childsafety/about-us/publications/blueprint-for-implementing-the-cmc-report-recommendations/implementing-the-blueprint-progress-report>

<sup>3</sup> Available at <http://www.communities.qld.gov.au/childsafety/about-us/publications/blueprint-for-implementing-the-cmc-report-recommendations/reform-of-queenslands-child-protection-system-one-year-on>

<sup>4</sup> Available at <http://www.communities.qld.gov.au/childsafety/about-us/publications/blueprint-for-implementing-the-cmc-report-recommendations/progress-in-reforming-the-queensland-child-protection-system>

<sup>5</sup> Available at [http://www.humanrightscommission.vic.gov.au/index.php?option=com\\_k2&view=item&id=1651:desperate-measures-the-relinquishment-of-children-with-disability-into-state-care-in-victoria-may-2012&Itemid=690](http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&id=1651:desperate-measures-the-relinquishment-of-children-with-disability-into-state-care-in-victoria-may-2012&Itemid=690)

1999. It may take some considerable time for a matter to be finalised there (orders for temporary custody, adjournments pending input and support from other agencies). One of our clients has been enduring the process for more than 12 months now and still no final decision has been made. It would be failure of this client and the inquiry to deny him input on his experiences within the system.

We note that terms 3(c) (iii) and (iv) of the Order require Commissioner the Honourable Timothy Carmody SC to review the effectiveness of Queensland's current child protection system in areas including: *tertiary child protection interventions, case management, service standards, decision making frameworks and child protection court and tribunal processes; and the transition of children through, and exiting the child protection system.*

In our view, term 4(b) is no barrier to the Commissioner speaking to witnesses about matters currently proceeding through the Children's Court in the usual child protection process, and in fact is exactly the type of matter which should be considered in the Inquiry. Only by speaking to those parents will you hear of any problems with how the child protection system (not just the Children's Court) currently operates,

We respectfully submit that the Commissioner cannot fulfil those provisions to make full and careful inquiry into the areas detailed in term 3 (c) without actually reviewing matters currently proceeding through the Children's Court in the usual manner.

### **Matters being reviewed**

In addition, if the Commission cannot inquire into matters where decisions are being reviewed or challenged, how will inadequacies identified by those reviews be considered or addressed by the Commission? Again, these are exactly the types of matters which the Commission should be considering.

We would expect few matters proceed to the Queensland Civil and Administrative Tribunal (QCAT) as most parents (especially those of children with severe disabilities) are too traumatised by their experience to actively challenge decisions made by Child Safety.

We note that the only 'reviewable decision' which can be challenged in QCAT by parents prior to an order being issued by the Children's Court, relates to contact provisions with the child.

We respectfully ask the Commission to reconsider this issue and revisit those witnesses who offered input on matters currently before the Children's Court, or QCAT. This will in no way affect the determination of that Court or Tribunal.

### **Children with disabilities - child protection issues**

We note that the Convention on the Rights of the Child recognises the rights of the child with disabilities to special care, and requires the State to encourage and ensure the extension of assistance, which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child, to the eligible child.<sup>6</sup>

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<sup>6</sup> Article 23

## Previous protocols

### CMC 2004 Report

The CMC 2004 Report recognised the necessity of a whole-of-government approach to child protection. While Child Safety would be the lead agency and have ultimate responsibility for the protective plan for each child in its care, it identified that Health, Education, Disability Services, Police, Housing and Treasury would all have a role in the promotion of child welfare. The Commission considered it preferable for certain services (such as specific medical, disability and educational services and support) to be provided within the framework of government, rather than by private agencies outside the government system.<sup>7</sup>

The report looked at placement options in the foster care system. One submission advised that when children were unable to tolerate typical foster care placements, there had been an increase in expensive, individually funded packages, or some are given temporary accommodation in motels or caravan parks. It gave an example that in 2001-02, 63 children received funding under the Children with Disabilities in Care program at a cost of \$4.3 million.<sup>8</sup>

That report recommended that a broad range of options be provided to best meet the needs of individual children and that the effectiveness of these placement options in meeting the needs of different groups of children and young people be evaluated.<sup>9</sup>

The report acknowledged that to ensure children are protected from harm in care, the government and the community at large must be prepared to invest in improving the support available to foster families. This was an investment in the children's futures. The training needed to look after children in their care would equip them with skills to cope with challenges of foster parenting and help them remain active as foster carers.

The report referred to literature which identified specific aspects of effective training programs, including Behaviour family interventions (BFI). Such programs can educate parents about ways to promote satisfying relationships with their children as well as in managing a range of problem behaviours including disruptive behaviour disorders, anxiety disorders, autism and developmental disabilities.<sup>10</sup>

Literature also identified that it was important to use a comprehensive, multi-level intervention model of parenting and family support to provide a level of intensity of parenting support tailored to a family's needs. This was reflected in the Commission's Recommendation 7.21.

The reason for that recommendation was that not receiving adequate training results in high levels of parenting stress and difficulty in retaining carers within the foster care system, which in turn results in children having more unstable placements.

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<sup>7</sup> CMC 2004 Report, p 169

<sup>8</sup> *ibid*, p 190

<sup>9</sup> Recommendations 7.2 and 7.3

<sup>10</sup> CMC 2004 Report, p 205

## Blueprint

The Blueprint identified that a key characteristic of children who exhibited extreme and challenging behaviours was the presence of physical or intellectual disability. It also identified that the presence of disability and the **absence of sufficient support** for the natural family had contributed to the breakdown of the family resulting in the child being placed in care.

The Blueprint went on:

*Another issue which required urgent review, is that current policies do not enable the State to tailor specific support packages for parents who are endeavouring to care for their disabled children in home settings. The only available option is for the State to place these children in care, so that they can receive the funding necessary to support their daily and often intensive requirements.*

*This is an extremely expensive option, and one that may not be as nearly as effective as providing less intensive resource support to the parents of the disabled child in their natural home setting, supported by appropriate services and respite care. This should be an urgent integrating issue addressed by the Child Safety Directors for each of the relevant agencies.<sup>11</sup>*

However, in the 2005 Progress Report, Disability Services Queensland (DSQ) reported that in conjunction with the Department of Child Safety (CS), Queensland Treasury and the Department of the Premier and Cabinet, it was *developing options for the support of children with disabilities and highly complex needs, when their families can no longer care for them at home*. It did not address the issue of supporting families to care for children with disabilities at home, in order to prevent those children being placed in care.

## 2006 Report to CMC

In the 2006 Report to CMC, CS acknowledged that:

*there are a few families, for whom there are no active issues of child abuse or neglect, who decide that they can no longer care for and support their children with disabilities at home. The families often seek full-time/extended out-of-home placements for the children. The entry of these children into the child protection system is primarily because there is currently no out-of-home care system available, outside that system.<sup>12</sup>*

Department of Communities reported that it

*led work in conjunction with DSQ, CS, Department of Premier and Cabinet, and Queensland Treasury on options for the provision of out-of-home care for children with disabilities where their families are no longer willing or able to care for them in the family home. The aim of this work is to build up a continuum of support whereby parents of children with disabilities can retain guardianship of their children and continue to be involved in all significant decisions in their child's life.<sup>13</sup>*

Options to be considered at that time included how children with disabilities, but without protective needs, could be provided with long term out-of-home care.

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<sup>11</sup> Blueprint, p 108

<sup>12</sup> 2006 Report to CMC, p 41

<sup>13</sup> *ibid*, p 82

## Victorian Report

We commend the Victorian Report to the Commission for your consideration as it details situations which can also be found in every State, including Queensland.

## Current mechanism

Until recently, there has been no work done on providing the promised continuum of support to families with children with disabilities.

If the child is under 18 years of age, current protocol requires the following of a tortuous process which culminates in the Chief Executive of CS being granted long-term guardianship of that child by a Magistrate of the Children's Court. The parents effectively become legal strangers to their child.

The sole reason for this Court process is that for a child under 18 years of age, there is still no out-of-home care system available outside of that process.

Currently, the child suffers a loss of parental contact and assurance of love and care. The parents' guilt at not being able to care for their own child is greatly increased by the shame and humiliation of the Court process and the ongoing loss of contact, care and rights concerning their child.

Where a continuum of support can be maintained, the child's sense of security is not affected, the transition to full-time care is managed and the parents continue to be involved in their child's life.

The 2010 amendment to the *Child Protection Act 199* (CPA) emphasised the importance of stability, and required the Court to have regard to the child's need for emotional security and stability. It acknowledged the importance of a stable home, emotional security and the child's attachment to their guardian developed over time.

Apparently, such issues need not be considered when requiring parents, who require extended out-of-home care for their child with a disability, to relinquish their care of that child to the State.

The sad experience of several of our clients is that the same 'warehousing' of difficult children identified in the CMC 2004 Report is carried on today. Children and young adults with disabilities resulting in challenging behaviour problems are removed from their parents' custody and cared for by non-government service providers in isolation at great expense.

Child Safety appears to have limitless funds (for what are effectively 'body guards', and for repairs to premises resulting from violent reactions) when a fraction of that funding for use by Disability Services would have ensured that the child or young person could have continued to be cared for at home with appropriate support. Our clients (parents) have been pressured by Child Safety to relinquish care on the basis that funding for the support they desperately need for their child (specialist assessment and intervention) is only available through Child Safety (and not through Disability Services).



Although the child may be the responsibility of Child Safety for a few years, they revert to the responsibility of Disability Services when they reach 18 years of age, where they have fewer legislative protections. If appropriate care is not provided at the earliest stage possible to ensure the child remains in the long term care of its family, it will be too late to take any restorative measures after the child's 18<sup>th</sup> birthday. In addition, ongoing care for the adult for the remainder of his or her life will be a much larger drain on the State's resources.

## Issues to be addressed

In addition to the alleged misuse of child protection legislation to remove children with disabilities from the care of their parents when the family can no longer care for the children at home, we have identified in our case studies several other issues which have a direct bearing on the process through the child protection system.

## Assessment process

The initial process to assess the functional needs of a child with significant disabilities when the parents first apply for any support from Disability Services is often delayed, quite lengthy, and the assessment tools quite complex.

The Inventory for Client and Agency Planning (ICAP) looks at and reports on four aspects of functional need: motor skills, social and communication skills, personal living skills and community living skills. The ICAP report is apparently incomprehensible to anyone not trained in that process, so that a two page ICAP assessment summary report is produced for internal use and reporting to parents.

Those two pages set out generally what the ICAP is assessing in each of the four areas, and summarises that the ICAP Service Level score is a combination of the results of the four functional needs assessment areas and the problem behaviour assessment. It advises that there are nine levels ranging from *intensive* to *minimal*. It then gives a single sentence stating what the score 'indicates' that the child needs.

For a child with Down Syndrome and severe Autism (Case Study A) the ICAP identified a need for total personal care and intense supervision (the highest priority level). The parent of this child has had to struggle with various Departments for years to obtain crisis funding to secure an adequate level of support, so as not to have to relinquish care to Child Safety. She is no closer to securing recurrent funding, and the non-recurrent funding is set to cease early in the New Year.

Separate Specialist Disability Assessment (SDA) is conducted by EVOLVE, the interagency often used by Child Safety where challenging behaviour had led to risk of or actual relinquishment of custody of the child to the Chief Executive.

Below are examples of what an SDA report (published nine months after the child was first referred to EVOLVE) confirmed for a child with intellectual disability and Autism (Case Study B):

- The child is solely dependent on others for his survival, and will require a high level of support in all areas of his life for the remainder of his life.
- Routine and structure are both essential for the child to deal with the distress and trauma of being placed in out of home care.

- It is likely that the child developed a sense of abandonment from being in care, and that this is contributing to the frequency and severity of challenging behaviour.
- Being aggressive and violent has become a useful strategy for the child meeting his needs.
- Regular structured respite will be critical to reduce current and future risk of relinquishment.
- The government funded service provider's youth workers' individual skill sets and experience did not match with the child's disability-specific needs. It also identified inconsistencies in how staff members dealt with crisis situations, and management of behaviour, making the child's environment more confusing and unpredictable and negatively affecting his wellbeing and behaviour.
- Medication on its own will not be enough to manage the child's behaviour.
- It would be 'beneficial' for the parents to 'think about' what personal supports they could access to enhance their own coping resources and quality of life
- It would be 'prudent' to evaluate what the educational goals for the child would be at this point in his life.

The SDA report also made recommendations such as:

- that the child and his family be engaged with the Evolve Early Intervention Behaviour Support
- that the parents 'encourage all services' engaged with the child to meet regularly for structured stakeholder meetings
- that the parents 'consider how they might utilise their understanding of the child's likes, dislikes, strengths, and special interests to increase his motivation to engage in desired activities'

but offered no practical guidance on how to do any of this.

Contact with EVOLVE during the assessment process confirmed the following:

- A three hour workshop provided to the service provider was focused on providing its youth workers with 'basic' information around autism spectrum disorder (ASD), intellectual disability and crisis intervention. The focus of this workshop was to provide staff with information they could use to 'develop their own strategies' to manage the child's behaviour.
- It was suggested the parents should approach the service provider's staff to talk about and share behavioural strategies, with a focus on creating a consistent set of environments for the child.

### Training and support

We note that the CMC 2004 Report acknowledged the importance of investing in training and family support for *foster parents* to be able look after children in their care (especially those who have challenging emotional and behavioural difficulties) by equipping them with skills to cope with challenges of foster parenting and help them remain active as foster carers.

However, there appears to be no recognition of the need to provide the equivalent support and training to *parents* of children with severe disabilities to ensure they too are equipped with skills to cope with difficult behaviour, and can continue to care for their own children instead of relinquishing that full-time care to the State.

## **Lack of coordination**

Even though support for children with significant disabilities is meant to be ‘case managed’ by Disability Services, the limits on funding available through that service results in many demands remaining unmet.

Once the child passes to the control of Child Safety, even though funding may be available, the coordination of interagency support appears to be excruciatingly slow. The experience of Case Study B was that it took many months and a change of service provider to develop a comprehensive plan to cover his accommodation, personal care, medical, educational and psychological needs, with the child still requiring occasional hospitalisation.

## **Parents with disabilities**

We are concerned that parents with disabilities are being deemed to be a danger to their children, and the children are removed from their care without proper assessment of what is needed to protect the child, and what is in the child’s best interests.

We note that the Universal Declaration of Human Rights recognises that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. It also recognises the right of men and women to marry and found a family.<sup>14</sup>

The Convention on the Rights of the Child recognises the right of the child to know and be cared for by his or her parents<sup>15</sup>, and ensures the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her.<sup>16</sup> It also requires States to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.<sup>17</sup>

## **Intellectual disability**

Scenario A: Through networking with colleagues in disability rights, we have learnt of situations where new-born babies are permanently removed from mothers with mild intellectual impairment on the basis that the parents cannot care adequately for the child. No attempt was made to provide training or support in the lead up to or immediately after the birth of the child.

Since we have had no direct contact with parents seeking our advice or representation in such circumstances, we rely on individuals affected and supporting legal centres to contact your Commission to provide input.

## **Mental health conditions**

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<sup>14</sup> Article 16

<sup>15</sup> Article 7

<sup>16</sup> Article 3

<sup>17</sup> Article 18

Scenario B: Child Safety officers are making arbitrary decisions to remove children from their parents' care on the basis that the mental illness (such as bipolar disorder) places the children in danger.

In one situation (Case Study C) the parent's mental illness was well managed and stable for more than eight years. Even so, Child Safety used that illness as one ground for removing the children from the parents' care when an investigation into an initial Notification could not be substantiated. The other listed grounds were strongly disputed by the parents.

## Law Reform Project

We first lodged a complaint with the Queensland Ombudsman concerning relinquishment of care of children with disabilities under child protection legislation in July 2010.

In response to the Ombudsman's investigation, Disability and Community Care Service (DCCS) reported the following:

*Data on children who have a disability as defined under the Disability Services Act 2006 and who have been relinquished into the statutory child protection system shows that:*

- *Between 1 July 2006 and 30 June 2010 custody of 55 children (an average of 14 per year) was relinquished to the statutory child protection system*
- *44 (90 per cent) of these presented with extreme and complex challenging behaviours and 11 (10 per cent) presented with high medical support needs*

This does not give any reflection of the number of families who continue to struggle to support their children at home, under threat that Child Safety will take custody of their children if they can no longer care for them at home at least 50% of the time.

After a lengthy process, the Ombudsman informed us on 14 December 2011 that he had formed an opinion that:

*The practice of providing extended or full-time out-of-home care to certain disabled children by way of a Child Protection Order under the Child Protection Act because the Disability Services Act does not have a clearly defined mandate to provide extended or full-time out-of-home care for children with a disability is unreasonable ... because:*

- a. the Child Protection Act facilitates 'protection' for children. In cases such as the complaint described above, the child does not require 'protection'. Instead, the child requires 'care' and*
- b. for parents of a disabled child, the thought of declaring that they are in danger of abandoning their children, and the thought of their child's case being put before the Children's Court, may cause them severe and unnecessary emotional trauma.*

The Ombudsman recommended to the Director-General of the Department of Communities:

*That the practice of providing extended or full-time out of home care to certain disabled children by way of a child protection order under the Child Protection Act be reviewed at the earliest opportunity.*

Having accepted the Ombudsman's opinion, the Department was to review the legislative and policy frameworks that underpin the provision of out-of-home care for children with a disability. The implementation of the recommendation was to be monitored by the Ombudsman on a bi-monthly basis

It appears that all work on reviewing the policy frameworks and monitoring of that review was first interrupted by the change of Government, and is now stayed pending the outcome of your Inquiry.

You can see therefore how vital it is that your Inquiry address this important issue. Although it affects only a relatively small number of families which come to the attention of Child Safety, it has far-reaching consequences for the families involved and the wider community (as well as financial impact on relative cost of care).

### **Other submissions**

We note that the Queensland Ombudsman has made a submission based in large part on the result of his investigation into our complaint. We fully support that submission.

We also support the Commission for Children and Young People and Child Guardian in its submission where it addressed this issue: 'Disability support needs are not child protection issues'.

### **Conclusion**

As we stressed above, it is far preferable for families to be appropriately supported to continue caring for their child with a disability at home or with extended out-of-home care, rather than requiring them to surrender custody and guardianship to the Chief Executive of Child Safety.

We thank you for this opportunity to make a submission to your inquiry. If you have any queries regarding this submission, please direct your enquiries to Sue Tomasich at our office.