



**Response to the  
Discussion Paper  
Child Protection: Legislative Reform Legislative  
Proposals  
March 2013**

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## 1. About NCOSS

The Council of Social Service of NSW (NCOSS) is the peak body for the social and community services sector in New South Wales. NCOSS works with its members on behalf of disadvantaged people and communities towards achieving social justice in NSW.

NCOSS provides an independent voice on welfare policy issues and social and economic reforms. It is the major coordinator for non-government social and community services in NSW.

## 2. About this submission

NCOSS has contributed to and been engaged in many reviews and inquiries regarding child protection. Our position has consistently been based on advancing

- A cohesive, whole of government and community approach that respects and values children, young people, their families and their communities
- Focus on the needs of children, young people and families and the provision of timely, well resourced services to meet those needs
- Practice based on good information and research, planning and support, and
- Collaboration and cooperation between the non-government human services sector and Government to deliver services that improve people's lives.

NCOSS acknowledges that others have greater expertise, and the service delivery experience, that allows informed judgment to be made on the possible impact of particular proposals to amend legislation relating to the care and protection of children and young people. NCOSS has focused our comments on questions of how the proposals advance the broader reform of the NSW child protection system as envisioned by *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (The "Wood Report").

## 3. Reform of the child protection system

NCOSS has long argued that child wellbeing is a family and whole of community responsibility. We have advocated for governments to recognize this by supporting, as a matter of policy and through resources, measures that build the capacity of families and communities so that children and young people are loved, healthy and flourishing. This approach recognizes that poverty and disadvantage exacerbate family circumstances which can lead to child abuse or neglect and that it is important to recognise that solutions are broad and require whole of government and community responses.

Failure to address the broad circumstances that create disadvantage that place children and families in vulnerable situations will render specific programs designed to assist families with raising children ineffective. NCOSS firmly believes that children and young people's wellbeing is best served by a broader approach that incorporates a diverse range of measures designed to address the diversity of needs required by families and communities in ensuring the wellbeing of all children and young people.

NCOSS generally supports the stated aims of the Government's reform agenda as set out in the discussion paper to "enable community and social capital to be built, creating communities that have greater social cohesion and less child abuse"<sup>1</sup>. NCROSS also supports measures that are designed to get children and families the support they need when they need it.

The proposals outlined in the discussion paper seek to ensure that relevant legislative measures are in place to support the reform agenda. NCROSS notes that appropriate legislative change may be required to implement particular policy initiatives. With respect to the Government's child protection reforms, however, legislative change can best be described as a necessary but not sufficient mechanism to achieve the stated policy outcomes. Other measures such as sustained investment in programs, services and capacity are also required.

In a suite of measures, legislation has a particular status as an instrument of Parliament's will (or decisions) rather than an instrument of executive Government decision making. Once enacted, legislation has a legal force that other Government decisions (such as policy and program design, budget allocations for example) may not. The Discussion Paper notes that existing legislative provisions have not necessarily worked or been utilized as originally intended for a variety of reasons.

It is critical, therefore, in the case of the Government's reform agenda for all elements to be implemented to make sure the intent behind any legislative changes is not undermined by failure to invest and further develop other measures. Without such effort, legislative changes may prove to be a "blunt instrument" that fails to deliver on the aims of the broader reforms. NCROSS would urge that the Government take the necessary steps to continue to implement the other measures upon which the reform agenda is based, with adequate resourcing, to build the confidence of stakeholders and the general public in the reform process.

NCROSS would further urge that particular attention be paid to planning and properly resourcing implementation of any legislative changes to ensure some of the problems with the implementation of the current legislative provisions are avoided.

#### 4. Promoting good parenting

A number of the proposed legislative changes seek, where there is concern that the risk to a child is escalating to a point where a child protection response is required, to "mandate" participation in parenting and other programs or other requirements with the aim of improving parenting capacity. The proposals seek to create mandatory parenting capacity orders, strengthen parent responsibility contracts and extend the circumstances under which family group conferencing can occur. This framework requires sanctions for failure or refusal to comply.

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<sup>1</sup> NSW Government Discussion Paper *Child Protection: Legislative Reform Legislative Proposals* November 2012 at page 2

NCOSS notes the evidence regarding the effectiveness of parenting and other programs in a child protection context. Such programs have a role in a broad suite of measures designed to improve family capacity to ensure children and young people's wellbeing. While there is some evidence that the effectiveness of such programs are not compromised by making them mandatory, this evidence is limited and will require ongoing research and evaluation.

A key strength of the non-government community sector is its capacity to work over longer time frames to build relationships and trust not just with individuals but also with whole communities. This together with the sector's independence from Government provides a strong and necessary foundation to work with families to make sure they get the support they need in a timely way. While recognizing the need to work at getting support and services to disengaged parents and families to reduce risk, the use of mandatory measures raises issues regarding the effectiveness of such measures when many appropriate programs use a strength based model that relies on trust and building relationships. Should parenting capacity orders be introduced thought will need to be given to minimizing any negative impact on the sector's capacity to effectively work with families and communities.

A concern raised with NCOSS by its members is the increasing legal issues facing the sector posed by the proposed legislative changes. This raises the need to strengthen the capacity of the sector to understand and manage such matters and will need to be factored into any implementation plan following changes to relevant legislation. Education, training and other resources will be required.

A further question relates to the presumed deterrent and educative effects of such measures. In criminal justice there is evidence that sanctions work best to change behavior where the use of sanctions is swift and certain.<sup>2</sup> This suggests that for mandatory participation in parenting and other programs by disengaged parents that consequences of breaching such orders, or breaching a Parent Responsibility Contract, must be clear and applied quickly to provide the necessary educative and deterrence effect proposed. The Discussion Paper describes that current practice does not achieve such a standard of "swift and certain" sanctions for breach. This raises the question of what will need to change to justify the introduction and extension of punitive measures. NCOSS notes the work that the Department is undertaking on changing practice and culture and supports those initiatives. While this may contribute to the effectiveness of parental capacity orders attention will need to be given to what else must happen, including the role of the non-government community sector.

NCOSS notes the analysis in the Discussion Paper regarding the usefulness of fines as a sanction in a child protection context. NCOSS supports the concerns that financial penalties such as fines further undermine already disadvantaged and

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<sup>2</sup> Prof Mark Kleiman, *When Brute Force Fails: How to Have Less Crime and Less Punishment* (Princeton University Press, 2009)

chaotic family circumstances and often lead to increased risk of harm for the children and young people involved. The use of Work and Development Orders, community service orders and diversion are preferred sanctions in a child protection context.

NCOSS supports the use of parent responsibility contracts as a case work tool and sees advantages of setting out clearly what's expected from both sides. Similar issues arise as with parenting capacity orders regarding managing breaches and whether such mechanisms undermine the required trust that needs to exist with those providing support and services. It is also important to note that such contracts set out what support and services will be provided to parents and families and there is an obligation to ensure that these are available and provided as intended. Questions about sanctions for breach on the part of the Department or service provider need to be considered.

NCOSS supports exploring the use of family group conferencing as an additional alternative to current models of ADR.

## 5. Providing a safe and stable home for children and young people in care

NCOSS accepts that stability of care will improve the longer term wellbeing of children and young people. NCOSS supports in principle efforts to make decisions about permanent placements more quickly while accepting in practice the tensions between the principle of permanency and the least intrusive interventions for a child or young person.

NCOSS notes that data shows that children under the care of the Minister are more likely to have multiple placements and therefore poorer wellbeing outcomes than their peers. NCOSS does not support the argument that this is an inherent feature of such care and would argue that effort can, and should, be made to improve stability in placement in such care arrangements. In other words, NCOSS advocates that across all forms of care, steps must be taken to improve stability of placements. NCOSS is therefore not convinced that the proposed hierarchy of placement is necessary and that decisions should be made based on the best interests of the child or young person in their particular circumstances and context.

While NCOSS is not opposed to proposals to make adoption in appropriate cases easier, we note the evidence and experience of agencies such as Barnardos that show the success of adoption varies by age. NCOSS is also mindful that Australia has a particular history with adoption that is different to international experience and that community hesitation is to be expected. This must be taken into account in framing the legislation to ensure mistakes and practices from the past are not repeated and the principles of open adoption are maintained in the longer term interests of children and young people.

## 6. Creating a child focused system

NCOSS supports the principle of ensuring that relevant legislation reflects a child focused system. NCOSS notes the proposed changes in this section of the Discussion Paper and has no particular issues or objections to them.

## 7. Conclusion

NCOSS welcomes the opportunity to comment on the proposals for legislative change outlined in the Discussion Paper. We look forward to further discussion with Government as it works through how it will proceed with these proposals in light of all the feedback received.