

## Inquiry into the Children, Youth and Families Amendment (Restrictions on the Making of Protection Orders) Bill 2015

Ms Maria Trombin

I write to you as a private citizen although I did work in the Children Youth and Families sector of the Victorian Department of Human Services from 1989 to 2012. I commenced my work in the old Baltara Reception Centre, worked in community based residential care and subsequently worked in the bureaucracy of DHS in almost all areas pertaining to vulnerable children in need of protection.

I strongly agree that there needs to be reform in the area of Children Court systems, particularly with regard to at times vexatious contests brought by families; with concomitant capacity for Child Protection services to implement effective 'permanency planning' structures.

However the Committee must take into account it is absolutely vital there be:

- judicial oversight of child protection service delivery and request for orders (and their extension)
- that there needs to be a significant increase in services (substance abuse, mental health and disability) if families are to be assisted to address their issues.
- the families with the most need for support, and require their children be removed to out-of-home care indefinitely, will have intellectual disabilities, and dual diagnosis issues e.g. substance abuse and mental health. All these service sectors chronically lack resources and are episodic in their support.
- that the majority of families who are subject to child protection intervention respond positively to family preservation services with attendant parenting education and support.
- that the Amendment Act 2014 exemplifies an underlying view that there are only 'bad families', with the obverse 'good families' available to children in the child protection system. The continuing lack of sufficient foster care proves this assumption incorrect.
- Victoria needs to examine an alternative approach to vulnerable children and families, including increasing resources to preventing the need for child protection interventions. This is both an economic, as well as a social justice issue.
- I commend to you the Law Institute of Victoria's information on this subject.

Thank you for the opportunity of submitting to the Committee. Maria Trombin



# IMPORTANCE OF JUDICIAL DISCRETION

## The diminished abilities of the Children's Court

### BACKGROUND:

- Children, Youth and Families Act (Permanent Care and Other Matters) Amendment Act 2014 ("the Amending Act"), amending significant aspects of the *Children Youth & Families Act 2005*
- Status: Royal Assent given 9 September 2014.
- Commencement date of Amending Act: Proclamation or 1 March 2016, whichever is earlier.
- Government and Stakeholders are providing training in relation to the Amending Act on the basis that the Amending Act will commence on 1 March 2016.

### THE LIV HOLDS THE FOLLOWING CONCERNS IN RELATION TO THE AMENDING ACT:

- Reduction of the Children's Court's oversight of DoHHS decision-making and care arrangements.
- New emphasis on permanent and expedited removal of children from their families, rather than support and rehabilitation.
- The changes made by the Amending Act do not reflect a number of recommendations made by the Cummins Inquiry (2012).
- The Amending Act prohibits the Children's Court from making certain orders used to manage proceedings, e.g. the Children's Court is prohibited from making an Interim Accommodation Order if it could make a final protection order. This effectively removes the Court's power to adjourn a proceeding.
- The Amending Act prohibits the Children's Court from making an order contemplating reunification (Family Reunification Order) if it has to the effect of removing the child from a parents care for a period of 12-24 months(calculated cumulatively). After this time, the Children's Court has **no** discretion or ability to decide that reunification should occur, even where the removal was a consequence of circumstances outside of the family's control, e.g. unavailability of services to the family; no allocated Protective Worker; or delayed court process.
- The Children's Court cannot attach conditions to the new Care by Secretary Order. Such an order was specifically considered and rejected by the Cummins Inquiry. Thousands of children will be subject to such an order. For such children, the Court will be prohibited from determining a contact regime for the child
- Where a child is the subject of a Permanent Care Order, the Children's Court will be limited in determining the contact regime for a child with his or her biological parents. The Court may only make a contact order up to four times per year in the first year of the Permanent Care Order. After this, the Court cannot make a contact order.
- The Amending Act removes the ability of the court to make protection orders such as Interim Protection Orders and Supervised Custody Orders. These orders permit the court to determine who will have custody of a child. The Cummins Inquiry recommended the continuation of Interim Protection Orders and Supervised Custody Orders.
- The Amending Act reduces the number of protection orders (final orders) which the Children's Court can make. The Amending Act creates a limited range of orders, several of which closely resemble 'wardship' type orders. Wardship orders were abolished following the 1984 Carney Report after the catastrophic treatment of children under such wardship orders was uncovered.
- The Amending Act will increase the number of children who may be put up for adoption by DoHHS.



- The Amending Act creates a default to a Care by Secretary Order if a permanent carer dies.
- The Amending Act allows DoHHS to apply *ex parte* to the Court to vary (including reduce) contact under a Family Reunification Order where such contact condition would be fundamentally important to the parent and child. DoHHS is not required to serve the other parties, including parents and children over 10 years old.
- The Amending Act removes the ability of the Court to limit an extension of DoHHS care (section 297).
- Current Custody to Secretary Orders, which have been in place for two or more years, will be converted to Care by Secretary orders on commencement date. This will change the frequency of contact without a fair hearing.

#### **THE LIV ADVOCATES FOR:**

- The maintenance of the current regime of protection orders which have served the Victorian community well for more than 25 years and reflect the principle that state intervention into the lives of children and families must only be to the extent necessary and no further.
  - The reinstatement of the Court's power to make an Interim Accommodation Order.
  - The reinstatement of the Court's power to decide, without time restriction, whether or not orders (including Family Reunification Order and protection orders) should be made. At the very least, the Court should be able to take into account relevant considerations, such as the availability of services, waiting lists, availability of Protective Workers and any unintended or unavoidable delay in immediate reunification.
- Where the child is the subject of a Care by Secretary Order, the reinstatement of the Court's power to determine contact and impose conditions of contact for a child with their family.
  - The reinstatement of the Court's power to determine contact frequency on a Permanent Care Order.
  - The reinstatement of the Court's power to make an Interim Protection Order and Supervised Custody Order.
  - The removal of the default to a Care by Secretary Order if a permanent carer dies and the general default to the Care by Secretary Order if Family Reunification Order cannot be made.
  - The removal of the ability for DoHHS to apply *ex parte*, to vary and/or reduce contact conditions on Family Reunification Orders; that is, the reinstatement of a requirement to serve the parent or a child over ten years old.
  - The reinstatement of section 297 so that the Court can limit DoHHS custody/guardianship powers where there is no certainty as to placement for that child and direct the DoHHS to bring an application for permanent care or to support a long-term carer by applying to the Family Court or Federal Circuit Court for parenting orders.
  - The removal of the ability for DoHHS to place children who are subject to Care by Secretary Orders up for adoption.

#### **FOR MORE INFORMATION CONTACT:**

LIV Legal Policy and Practice

Gemma Hazmi

**E:** ghazmi@liv.asn.au **W:** www.liv.asn.au