Anthony Walsh
Research and Legislation Officer
Legal and Social Issues Committee
Parliament House
Spring Street, Melbourne VIC 3002
By email: lsic@parliament.vic.gov.au

17th June 2015

Dear Mr Walsh,

RE: Children, Youth & Families Amendment (Permanent Care & other Matters) Act 2014 ("the Act")

The Australian Psychological Society (APS) is the largest professional organisation for psychology in Australia representing over 21,000 members. Within the APS are nine Colleges representing a range of different areas in psychology, one of which is the APS College of Forensic Psychologists.

Following concerns raised by members within the Forensic College, the National Executive, on behalf of its members, wishes to express concern about the possible impact of the changes to the abovementioned Act (amending the Children Youth & Families Act 2005 (Vic) ("the principal Act")) on the psychological well-being of Victorian children and families.

Firstly, we commend the DoHHS on their tireless efforts to improve the lives of children and families in Victoria. There is no doubt that the welfare system presents a complex set of social policy challenges that require attention. Indeed, many of our Forensic College members work in the child welfare sector and they work tirelessly to support vulnerable families. Our comments in this letter are of no reflection on the work of our members. Rather, we believe, notwithstanding any changes made, that the decisions made by the child protection system should continue to be scrutinised by the judicial system.

We wholeheartedly support any intention to work towards providing increased security and stability for Victoria's most vulnerable children. Certainly there are times where there is a need for another carer, and children under the age of three in particular, require more immediate solutions to maximize stability and improve their long term outcomes. However, we believe that the fundamental criterion for determining the placement of a child should continue to be the Best Interests principle, and every case decided on its own unique facts. Further, it is considered critically important that there be provisions to vary the Orders to account for the dynamic nature of a child's needs throughout their developing years. We acknowledge there is a complex balance required between allowing time for parents to demonstrate change and maximizing stability for children in a timely manner. We do not believe that a reduction in judicial discretion will address this. We draw your attention to five (5) significant aspects to the amending Act.

1. We commend the efforts to reinstate s.276 in relation to services being provided at the satisfaction of the Court. The deletion of the requirement pursuant to s.276 of the principal Act that the Children's Court of Victoria must be satisfied that all reasonable steps have been taken by the DoHHS to provide services to the families prior to making a protection order. We consider that the removal of this requirement on the DoHHS is potentially catastrophic for the functionality of the community. Many of our members,

to whom the Department of Human Services regularly refer consistently help children and parents to effect change. Our members provide therapy, support and advocacy to the most disadvantaged members of Victoria's community. Reinstating this section will reduce what could otherwise lead to disenfranchisement of children and families. However, the reinstatement of s.276 will not work without addressing the issues related to the Family Reunification Orders.

2. The repeal of the Children's Court's ability to place conditions for contact on Care by Secretary Orders (replacing, for the most part, Custody to Secretary Orders) to which thousands of Victorian children are subject. We know that regular consistent contact between a child in out-of-home care and his or her parent is fundamental to that child's mental health and wellbeing. This is particularly so if reunification is being considered. There is a moral obligation to ensure decisions related to contact between the young person and their relatives are evidence based. The available evidence supports the importance of maintaining family connections, even in complex child protection cases[1] [2] and that contact is necessarily individualized for each child in consideration of their unique circumstances. Unfortunately, the legislative changes provide no guarantee that it is requisite that the Department of Health and Human Services (DoHHS) be required to arrange such contact. We believe that the Court should have the ultimate jurisdiction to decide whether reunification is appropriate and when it is not. Specifically, we believe the Court must be able to determine the contact arrangements between children and their parents, and the length of the Care by Secretary Orders. Further, we would hope that conditions on current Orders would not lapse once they are converted to the new Orders.

3. The replacement of seven protection orders with four – three of which give the DoHHS, in broad terms, custody and guardianship. Such orders, in conferring substantial power on the DoHHS, reduce the ability to scrutinise the care provided by the Department. We are deeply concerned about the treatment Victorian children have received and will likely continue to receive in state care. Children in care experience significantly poorer mental health outcomes than children who have never been in care[3]. We acknowledge that there is a portion of children for whom ongoing contact with a parent/s may not be in their best interests and there is no question that children benefit from stability generally. We also emphasise that foster care arrangements appear to be a positive experience and tend to improve a child's psychological adjustment while in care. Unfortunately, the same cannot be said for residential care. The changes to the legislation will inevitably lead to an influx of children over the age of 10 into residential care (rather than adoption or foster care which is rarely available to older children) and place an unreasonable burden on an already over-stretched and under-resourced residential care system, notwithstanding any recent financial boost to the sector. For

[1] Higgins, D. (2014). Past adoption practices: Implications for current interventions. *In Psych.* Australian Psychological Society. Accessed from http://www.psychology.org.au/inpsych/2014/august/higgins

[2] Scott, D., O'Neill, C., & Minge, A. (2005). Contact between children in out-of-home care and their birth families. *Centre for Parenting & Research*, NSW Department of Community Services. Accessed from: http://www.community.nsw.gov.au/docswr/_assets/main/documents/oohc_research.pdf

[3] Osborne, A., & Bromfield, L. (2007). Outcomes for children and young people in care. *Australian Institute of Family Studies*, NCPC Brief No. 3. Accessed from: https://www3.aifs.gov.au/cfca/publications/outcomes-children-and-young-people-care

residential services to be effective there needs to be "strong and effective oversight"[4] which will be difficult to achieve with the legislative changes. There is a well-documented failure to oversee and ensure the safety of every child in residential care[5] and this is unlikely to improve if there is reduced accountability and scrutiny by the Court.

Children and their families need to know with whom and where the child will be living while they are not in their parents' care – not just that they will be in state care. Further, they need to be assured that they will not be suddenly removed from a care arrangement without judicial scrutiny involving all parties. Children and families generally find great comfort and improved understanding when they know there will be judicial oversight of the decision making of DoHHS, provided by the Children's Court of Victoria. Decreasing scrutiny and increasing the power of DoHHS to make decisions about all aspects of children's lives is unjustifiable. We believe that the Court should be able to specify with whom the child will be living (as Supervised Custody Orders currently permit, but are being replaced with Family Reunification Orders) and in naming that person, stability of placement is guaranteed (in contrast to the Family Reunification Orders whereby DoHHS can move children at any time).

4. The creation of a time-frame of 12 months and in exceptional circumstances only, of 24 months, in which parents have to address the protective concerns and regain care of a child will be most difficult to achieve. Some mental health and support services have waiting lists of many months and there are even greater waiting lists in rural areas where it is often most needed. Further, change (to the degree inevitably and understandably required by DoHHS for parents to achieve) will likely take longer than 12 months. The Court must be able to take into account the lack of provision of services and allocation of a protective worker to effectively intervene and assist the family.

5. The deletion of the Children's Court's power pursuant to s.297 of the principal Act to limit the ability of DoHHS to extend a Custody to Secretary Order or Guardianship Order (long-term care order) and direct the DoHHS to bring a permanent care order in favour of a long term carer. It is emotionally stabilising for children and their families to know with whom and where that child will be living whilst not in the parent's care. If the DoHHS choose not to support such a placement, families will no longer be able to find solace in the fact the Children's Court of Victoria would be able to review and disagree with such a decision in favour of the best interests of the child.

The moral and legal consequences of removing children from the care of their primary caregivers in the aforementioned circumstances is of grave concern. It is, therefore, strongly recommended that they be given due consideration. We need to ensure that we do not risk continuing the mistakes of the past by jeopardising a child's family ties.

Professionally, we consider that there is an obvious legal obligation for DoHHS to ensure that each child has an opportunity to maintain connection to family, to help them understand their heritage and culture so as to develop a healthy sense of identity. Interrupting a parent-child

[4] Doyle, J. (2014). Residential care services for children: Victorian Auditor-General's report. *Victorian Auditor-General's Office*, March 2014. Accessed from: http://www.audit.vic.gov.au/publications/20140326-Residential-Care/20140326-Residential-Care.pdf

[5] ibid

bond, particularly if this is not done voluntarily by the parent or the child can have detrimental, long-lasting effects[6]. Many families affected by what may be perceived as forced adoption policies and practices are likely to struggle with ongoing mental, physical and social health problems as a result of their adoption experiences[7].

We strongly support action to withdraw this Amendment to the Act.

Sincerely,

Dr Julianne Read
Forensic Psychologist
Chair, APS College of Forensic Psychologists (Vic Branch)

On behalf of the APS College of Forensic Psychologists, National Executive

[6] Higgins, D., Kenny, P., Sweid, R., & Ockenden, L. (2014). Forced adoption support services scoping study. *Report for the Department of Social Services by the Australian Institute of Family Studies*, February 2014.

[7] Higgins., D. (2014). Past adoption practices: Implications for current interventions. *In Psych.* Australian Psychological Society. Accessed from http://www.psychology.org.au/inpsych/2014/august/higgins