



OFFICE OF THE
PUBLIC ADVOCATE

Submission to the exposure draft of the Children Bill

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Introduction

Thank you for the opportunity to comment on the Children Bill exposure draft. The Office of the Public Advocate (OPA) acknowledges the need to seek to improve the system of support for vulnerable families and where necessary act to protect children from abuse. An appropriate legislative base framework is an important component in being able to respond to the needs of vulnerable families to ensure that children live in safety and that their development and well-being is promoted through a positive family environment.

1. Strengthening every family forum

The Public Advocate has had a long standing concern about the issues affecting parents and children with a disability when they come into contact with the Child Protection Service. In response to this concern in July 2003 the Office of the Public Advocate and Victorian Parenting Centre (VPC) hosted a forum to consider the broad range of issues confronting parents with a learning difficulty. Following this forum a working party was formed that developed a strategic plan, which identified the following vision for what the service system supporting families should be seeking to achieve:

Vision

A society that recognises the capacity of all individuals to be effective parents. This is achieved through both informal mechanisms and with the help of a service and support system that provides assistance to all parents including the most disadvantaged and vulnerable. This support focuses on the parents' strengths and acknowledges diversity of parenting styles and the changing needs of parents at different stages of their child's development.

To achieve this vision four key issues were highlighted which were seen as needing to be addressed if this vision was to be realised:

- 1. What enables parenting?**
- 2. Development and utilization of empirically validated supports and services.**
- 3. Services working together**
- 4. A legislative framework and legal system, which promotes support of the family whilst also ensuring adequate protection for children and young people at risk.**

The Children Bill exposure draft is obviously critical to point 4. Whilst many parents with a disability do not come into contact with the Child Protection System, for those that do the Public Advocate is particularly concerned by the lack of understanding and support offered to these vulnerable families. For the purpose of this submission the term disability will refer to those parents and children who have a mental illness, intellectual disability, acquired brain injury or physical disability.

Before responding to specific sections of the draft Bill, the Public Advocate would like to outline two key issues of concern, which may affect the way in which the legislation is applied leading to potentially unintended consequences for many of these vulnerable families.

2. Practice issues

The first of these is the apparent prejudicial attitudes of some child protection workers and family support staff against parents with a disability. Unfortunately the experience of the Public Advocate would tend to suggest that the presence of a disability may cause the worker to immediately conclude that the person is incapable of being able to parent effectively. There is a significant body of research, which has effectively refuted this belief (Mildon, 2003; McConnell et al, 2000). The presence of these attitudes means that some aspects of the proposed legislation may have adverse consequences because of the way in which it is implemented through poor child protection and family support practice which is not evidence based. Consequently the effectiveness of any changes to the current legislation in providing better support to vulnerable families will be as dependant on these practices changing through a clear strategy of ongoing training and support of staff in these fields that is appropriately

resourced. There also needs to be stronger links with both specialist disability and mental health agencies.

3. Adequate services

In addition to this the absence of adequately skilled workers and resourced services which can offer appropriate and flexible, intensive home based support to these families is a significant barrier to the objectives of this new legislation being realised. Therefore substantial consideration needs to be given to the resource implications of this legislation if it is going to achieve the objective of making a positive difference in the lives of these vulnerable families.

The restructuring of the service system and legislative reform will not adequately address these more central deficiencies in current service practice. What is needed is additional resourcing of family support agencies. These agencies must evaluate the effectiveness of their interventions so that an improved evidence base can inform best practice in the area of family support. Workforce issues in both Child Protection and Family Support such as staff recruitment, training, supervision also need to be addressed.

What now follows are comments on specific sections of the Children Bill exposure draft.

4. Best Interests principle (Section 10)

The Public Advocate supports the inclusion of a clearly outlined best interest's principle to help provide greater clarity around what informs any assessment of best interests. The particular elements of this principle the Public Advocate will comment on are:

a. The importance of protecting the child from harm and promotes his or her development is obviously central to any assessment of risk to the child. However the second part of this which describes the need to “promote his or her development” may be open to subjective assessments of neglect which tend to often be a more common issue confronting those parents with a disability involved with the Child Protection Service.

b. The need to take account of the wishes of the child is also an important element to the principle.

c. The significance of the family as the fundamental unit is an important affirmation of the role of the family in the development and well-being of the child. It is pleasing to see the commitment to give “the widest possible protection and assistance to the family ...to ensure that intervention into family life is to the minimum extent that is necessary to secure the safety and well-being of the child”. **This affirms the United Nations *Convention on the Rights of the Child* (CROC) that Australia has ratified, which refers to the specific responsibility of the State to assist parents in the raising of their children (Advocate for Children in Care, 2005:9).**

This commitment will have significant resource and practice implications for the existing child protection and family support system. Currently there is not always a commitment shown by services to acknowledging and supporting the role of the family where a parent has a disability. The absence of support by services for these families should not result in this principle being compromised.

d. The acknowledgement of the need to strengthen, preserve and promote positive relationships between the child and the child’s family is also seen as being important. There can often be a view held by Child Protection workers that when a child is placed in out-of-home care that it is better for the child to have little or no contact with their birth family. This is despite their being no empirical support for this notion of having a “clean break” as being beneficial for the child. (Thomson and Thorpe, 2003)

d. The issue of the capacity of each parent to provide for the child’s needs is seen as an inherently problematic concept to assess in any objective way (Refer section 10 (viii)). The current lack of any empirically sound effective methods to assess parenting capacity means that there is significant scope for any assessment to be informed by professional and personal judgements. This lack of evidence based practice in the area of parenting assessments can lead to adverse outcomes where the parent has a disability as some practitioners would consider this to be sufficient

evidence of the person's inability to parent. This has potential implications for all areas including: reunification, permanent care and stability planning.

e. The statement about the need for the parent to give effect to the goals set out in the case plan may be subject to a range of factors which go beyond the capacity of the parent and raise issues about the capacity of the service system to provide adequate, intense, flexible and appropriate in-home support to these families in achieving these goals. In the absence of these services parents can be blamed for the deficiencies and failures of the service system to offer appropriate support to these families.

This capacity issue for some parents with a disability (particularly those with an intellectual disability) is also not something that can necessarily be addressed as promptly as other situations such as domestic violence, drug and alcohol or some types of mental illness, nor is their disability reversible such as some types of mental illness.

Consequently an unintended consequence of this section of the Act may be to further reinforce the existing tendency within some areas of the child protection and family welfare field for practitioners to adopt a child rights' perspective, at the cost of parents' rights. This approach considers parents with a disability unable to provide effective parenting, without considering how the service system response needs to be more flexible and appropriately resourced in order to support those families where it cannot clearly be demonstrated that the child is in any immediate risk.

5. Decision-making principle (Section 11)

The addition of these principles to provide guidance to the decision making process is an important variation on the existing legislation, in that it does enshrine some clear principles which may help to improve the fairness of the existing system if they are appropriately considered.

In stating that the interests of the child must be paramount where there may be conflict with another person this is dependent upon how the child's best interests are perceived and by whom. Secondly it needs to be remembered that in any social

relationship such as those within families, the best interests of one member of the family need to be balanced with those of others within the family.

The Public Advocate supports the need for the decision-making process to be both fair and transparent as this is not always the case in the current process. This will require a change in practice which seeks to engage much more with families than is currently the case.

Consequently there needs to be a clear approach to decision making where parties are able to participate in and understand the process, including any meetings held and decisions that are made. This should also include any plans or reports written. For many parents with a disability they are currently offered little or no assistance in understanding the various aspects of the Child Protection Service process.

Consequently their rights are often denied through processes and procedures which are poorly understood and not well explained. Indeed reports and case plans can sometimes be quite lengthy documents with important legal ramifications, but there is often limited time to ensure that the parent with a disability fully understands what is occurring. Some parents with a disability can be acquiescent.

The requirement in section 11 (h)(i) to provide sufficient information in a language and by a method that they can understand has the potential to address a long standing problem for many parents with a disability who are involved with the Child Protection Service. There are a wide range of implications for current child protection workers some of which will require training in the identification of disability in order to help guide their practice in relation to these issues. Additional resources will need to be provided to child protection for this to occur and should involve collaboration with disability services. Consideration may also need to be given to funding an independent advocacy service which can specifically work with parents and children who have a disability in order to assist them to understand and participate in the process, as well as being fully aware of their rights and responsibilities.

In relation to section 11(h) (ii) where a copy of the case plan and sufficient notice of any proposed meeting requires further clarification. The case plan needs to be provided in a format which the person can understand, as mentioned earlier. In

relation to the question of sufficient notice of any meeting, this begs the question of what is considered to be “sufficient” notice. Often case planning meetings are called with only a week’s notice to parents, who may have to organise for other children to be cared for at that time or have other commitments which the planning of these meetings does not always take account. Short notice may also not allow sufficient time for the parent to organise a support person should they wish to bring one. Where parents may seek additional support for these meetings it may be more realistic to provide the parents with at least two weeks notice. They should also be provided with the case plan or documentation for these meetings a similar period in advance of the meeting as they may require assistance and support in reading these reports prior to the meeting. Having accessible reports in advance of meetings where the person has received at least two weeks notice of has the potential to reduce the levels of stress and improve the understanding of the process facing many parents with a disability.

6. Requirement to inform parents (Section 29)

The fact that there is no requirement to inform parents that a report has been made under section 27 significantly compromises the transparency and accountability of the decision making process and would appear to be inconsistent with section 11 (c) in relation to being fair and transparent. This would appear to compromise the right of parents to be able to respond to any allegations that there is significant concern for the well being of their child.

6.1. Sharing information (Section 27, 30)

The legislative provisions allowing community service organisations to share information with other community service organisations and indeed child protection without the family’s consent raises concerns about the adverse impact on the rights of the client as well as raising concerns about the transparency and accountability of the process. This may have the effect of discouraging some families from seeking assistance from services.

6.2. Requiring service providers to provide information (Section 122)

The power to require service providers to provide information to Child Protection in relation to an investigation, case planning and case management carries a number of

concerns. This has the potential to significantly undermine therapeutic and supportive relationships where parents may voluntarily seek assistance on specific issues. The creation of such powers would place an obligation on these services and practitioners to inform parents approaching them for assistance that there was this obligation to disclose information. Such advice may discourage some parents from seeking out the support in the first instance. This is of particular concern in the current context where the limited understanding of disability by child protection workers can cause them to use evidence that the parent is receiving counselling or is on antidepressants as arguments for the person not being a person capable of parenting. Consequently the parent can be caught in a bind where if they do seek support they could have such support used against them. As an unintended consequence of the legislation this needs to be seriously considered given the degree to which some parents with a disability are suspicious of the service system now.

6.3. Child Protection Investigation (Section 133 (2) (a))

In relation to cases being investigated by child protection it is important that any caution given to parents with a disability as part of this process about how the information they give may be used, must be explained in a way in which they can understand. Indeed it may be important to involve a third party who can assist with this communication in order to make sure the person understands. The onus for ensuring the person understands should rest with the Child protection worker conducting the assessment.

In relation to temporary assessment orders (Section 155-163) the requirement to set out in the order the right of the child or parent to bring an application to vary or revoke a temporary assessment order needs to be adequately explained to the child or parent as it may be insufficient to have this contained in the actual order. The right of appeal to the making or refusal to make a temporary assessment order would appear to be an inaccessible right for many parents with a disability as they would lack the resources to take a matter to the Supreme Court.

7. Reports on the unborn child (Section 28)

The provisions of the Bill which allow for a report on the unborn child are of concern in that they may have the unintended consequence discouraging expectant mothers from seeking out appropriate prenatal support and assistance for fear of the child being removed upon the birth. This section needs to offer a much stronger and clearer intent of offering the mother the opportunity to obtain additional/appropriate supports in order to maximise the potential for a positive outcome for the mother and child that will reduce the likelihood that the child will need to be placed in out-of-home care.

Again there is concern that such a provision without appropriate support services will provide an avenue for current discriminatory attitudes towards parents with a disability to result in the removal of children from a mother without attempts being made to offer appropriate support and assistance. Indeed if there had been previous pregnancies where the child was subsequently placed in out of home care this could be seen as justification for taking the same action again. This may be in spite of the fact that no adequate services may have been provided to the mother at these other times. However this is still more likely to be perceived to be a failing of the mother rather than the service system.

8. Stability plans (Section 102)

Whilst the Public Advocate does acknowledge the importance of providing stability for children this should only be after it has been clearly established that this cannot be achieved in the family of origin with appropriate supports. There is some concern that the removal of the requirement to consider reunification on every extension of a custody or guardianship order has the potential to see more children, who come from families where the parent has a disability, placed into out-of-home care.

The absence of sufficiently resourced and flexible family support services that can assist these families also adds to the potential for permanent placement of children outside the birth family to be considered the preferred option. Whilst the Public Advocate acknowledges that failed efforts at family reunification can have disastrous long-term impacts upon the child, the experience of this Office is that this is often not attempted under the current legislation, Child Protection workers instead preferring to make a “clean break” with the family of origin.

In the case of children under two where a stability plan must be prepared once they have been in out of home care for a period totalling 12 months there is a concern that this time frame may be unduly short for a number of reasons:

- The parent may have been unable to access appropriate support services in a timely way due to waiting lists for those services.
- The parent may require a reasonable lead time to be able to address the parenting issues identified.

Consequently there is a real danger that an unintended consequence of these provisions are that they will discriminate against parents who may require longer term support to be effective parents and may punish them for failings of the service system in terms of the lack of flexible, intensive in home support services who have the skills to support parents with a disability.

9. Rights of parents with children in care (Section 106)

The introduction of some minimum requirements for parents of children in out-of-home care to be informed of the progress and development of their child is a positive step towards acknowledging the fact that the rights of the parent should not cease when the child goes into care. Moreover this acknowledges the importance of maintaining clear links with the family of origin.

10. Availability of treatment programs for children with sex offending problems (Sections 168-181)

The therapeutic treatment orders provisions under subdivision 2 do offer an opportunity for children to receive appropriate treatment without requiring a finding of criminal guilt. However the absence of appropriate treatment programs for children with a cognitive disability means that treatment will still not be available to this group. This highlights the need to develop therapeutic programs for this group.

11. Voluntary child care agreements (Sections 74, 84)

Where a parent with a disability voluntarily enters an agreement with the Secretary it is important to ensure that the parent has the capacity to understand fully the implications of the agreement. This should be acknowledged in both section 74 and 84 of the Bill.

12. Children leaving the care of the Secretary (Section 16(1) (g))

The Public Advocate acknowledges the important addition of a clear responsibility on the Secretary to assist the transition of children who have been under the custody or guardianship of the Secretary to make the transition to independent living on exiting the care of the Secretary. The Public Advocate has at times been contacted with concerns about children with a disability not being adequately supported in moving out of the care of the Secretary.

13. Registration and responsibilities of services and quality assurance standards (Sections 41-53, 57, 54)

The planned registration process and introduction of relevant service standards is a welcomed development. Many services feel poorly equipped to respond to the needs of these families. Consequently there is a clear need for the establishment of a forward agenda for practice based research and the utilisation of empirically validated supports and services for families where the parent has a disability. This could be incorporated into the suggested accreditation program for children and family services. We would hope that when these standards are developed that an appropriate process of consultation will occur to enable these to reflect the requirement for services to be able to respond to the needs of vulnerable families where the parent has a disability.

14. Appropriate Dispute Resolution within the Children's Court (Sections 145-154)

These provisions have the potential to be beneficial to people with a disability, who may find more traditional court processes potentially confusing and intimidating. However in the context of alternative dispute resolution schemes adequate provisions need to be included to ensure that these are accessible to people with a disability and that they are provided with appropriate support so as to enable them to participate equally in these processes. It is expected that dispute resolution convenors appointed by the Attorney-General would be expected to have the necessary skills to be able to work effectively with parents who have a disability. (s.152) In relation to the proceedings of family conferences being confidential and only being admissible if

agreed to by all parties care needs to be taken to ensure that parents with a disability are provided with appropriate support to understand their rights in this context.

Conclusion

In closing, the significant change this legislation seeks to introduce will require considerable initial and ongoing training of both child protection workers and family support workers if these changes are not going to further disadvantage parents with a disability when they become involved in the system. Significant resourcing of the family support agencies will also be needed for them to better meet the needs of these parents who have traditionally been disadvantaged in the current service system. Consequently careful consideration needs to be given to when the legislation should come into effect given the significant lead time associated with these major changes.

References

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